IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.03.2019

Delivered on: 16.04.2019

CORAM
THE HON'BLE DR. JUSTICE ANITA SUMANTH

WP. No. 25101 of 2017
and
WMP. Nos.26539 & 26540 of 2017

B.Anitha ...Petitioner

Vs

1.The General Manager-HRD
Appellate Authority,
The Karur Vysya Bank Limited,
Erode Road, Karur 639 001.

2.The Assistant General Manager -HRD,
Disciplinary Authority,
The Karur Vysya Bank Limited,
Human Resource Department,
Central Office, Erode Road,
Karur 639 001.

3.The Inquiring Authority,
The Karur Vysya Bank Limited,
Human Resource Department,
Central Office,
Erode Road, Karur 639 001.

4.The Branch Manager,
The Karur Vysya Bank Limited,
Sulur Branch,
Coimbatore . ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other writ or order or direction in the nature of a writ calling for the records, relating to impugned orders bearing No.HRD/DP/402/2016 dated 31.03.2016 issued by the 2nd respondent herein namely the Assistant General Manager-HRD, Disciplinary Authority, The Karur Vysya Bank Limited, Human

Resource Department, Central Office, Karur, Erode Road, Karur 639 001 and impugned order bearing No.HRD/DP/OFLT1141/2016 dated 24.08.2016 the Appellate Authority, The Karur Vysya Bank Limited, Erode Road, Karur 639 001, quash the above said two orders as non-est in the eye of law and consequently direct the 1st and 2nd respondent herein to reinstate the petitioner into service as Manager, Karur Vysya Bank Ltd., Coimbatore Region and to further direct the 1st and 2nd respondent herein to treat the period of suspension from 14.05.2015 to date of rejoining as one of duty for all purposes with full pay and allowances for the above said period in the post of Manager with attendant, service and monetary benefits and continuity of service within a time-frame that may be stipulated by this Court.

For Petitioner: Mr. K.S.Govinda Prasad

For Respondents: Mr.Anand Gopalan for

M/s.T.S.Gopalan & Company

O R D E R

The petitioner challenges orders of the Disciplinary Authority dated 31.03.2016 and of the Appellate Authority dated 24.08.2016 as being non-est in the eye of law.

2. The sole ground raised in the writ petition and argued by the learned counsel for the petitioner before me is that the Disciplinary Authority had no jurisdiction to issue the said order seeing as he had retired from the services of the Bank upon her superannuation during February 2016 and consequently the order of the appellate authority confirming the original order is bad in law.

3. The petitioner was employed as a Manager in Karur Vysya Bank, Sulur Branch, Coimbatore, on 18.12.2007. There appear to have been certain discrepancies and irregularities that arose in regard to certain loans granted by the petitioner during the period 16.11.2011 to 26.03.2015. A charge memo was thus issued to her on 30.06.2015 alleging violation of Regulation 3(1) and 3 (3) of the Karur Vysya Bank Officer Employee's (Conduct) & (Discipline & Appeal) Regulations. The petitioner replied to the charges.

4. The 2nd respondent i.e., the Assistant General Manager HRD was appointed as the Presenting Officer on behalf of the Bank and the Chief Manger HRD appointed as Inquiring Authority. Enquiry was commenced by the 3rd respondent on 18.09.2015, that concluded in order dated 30.01.2016 adverse to the petitioner and dismissing her from service from the Bank with immediate effect. The dismissal of her service was to serve as a

disqualification to future employment. The order was appealable before the Appellate Authority i.e. General Manager within 45 days on its receipt.

5. The petitioner challenged the aforesaid order by way of appeal before the Appellate Authority, the General Manager HRD. The appeal was taken up for hearing by the first respondent confirming the dismissal of the petitioner and rejecting the appeal. Contesting the aforesaid two orders, the petitioner is before this Court by way of the present writ petition.

6. The petitioner draws attention to the Karur Vysya Bank Officer Employees' (Conduct) & (Discipline and Appeal) Regulations stating that a 'Disciplinary Authority' as defined in Regulation 3 (f) is one who has been nominated by the Chairman/Chief Executive Officer/Competent Authority to initiate disciplinary proceedings to hold an enquiry and impose penalty if need be. According to the petitioner since the 2nd respondent had superannuated from regular services during February 2016, there is no employer-employee relationship between him and the bank and he thus, lacks competence to act as Disciplinary Authority.

7. Thus, the sole ground canvassed before me is, that the original order of dismissal was passed by the 2nd respondent on 31.03.2016, when the said Officer had superannuated from service even during February 2016. It is relevant to note that no ground has been taken by the petitioner before the first Appellate Authority stating that the order of Disciplinary Authority was bad in law on account of his superannuation prior to her appointment as Enquiry Officer, since the petitioner states that she was unaware of the fact at that relevant point of time.

8. According to the respondent, the petitioner is bound by the Karur Vysya Bank Officers Employees (Conduct Regulations) Rules and the enquiry has been conducted perfectly in tandem with the aforesaid Regulations. The Bank points out that the tenure of enquiry officer had been extended for a period of two years and he had thus been in service when the order dated 31.03.2016 had been passed by him.The confirmation of the order of the disciplinary authority is also proper and warrants no interference in the light of the proper procedure adopted as well the gravity of charges laid against the petitioner by the Bank.

9. However, prior to addressing the merits of the matter, the Bank raises serious objection with regard to the maintainability of the Writ Petition itself. According to the Bank, the dispute in question cannot be resolved in terms of Article 226 of the Constitution of India, since the question of rights of a private employee vis-a-viz the bank/employer are not liable to be tested in Writ jurisdiction. Reliance is placed on

the judgment of the Supreme Court in the case of Federal Bank Ltd. Vs. Sagar Thomas and others [2003 (4) CTC 418] where the Supreme Court considers a case very similar on facts to the matter before me.

10. The respondent in that case, Mr.Sagar Thomas was employed by the Federal Bank Limited and had been suspended following disciplinary enquiry for various incriminating, irregular and fraudulent acts in the disbursal of loans. The order of suspension was challenged by way of a Writ Petition. A preliminary objection was taken by Bank to the effect that the writ was not maintainable insofar as Federal Bank was not a 'State' within the meaning of Article 12 of the Constitution of India, but a private entity. The learned single judge, while considering the question of maintainability, held that the Bank was engaged in performing a 'public duty' and thus would thus come within the sweep of the phrase 'other authority' used in Article 12 of the Constitution of India holding that the Writ Petition was maintainable.

11. This decision was reversed by the Division Bench relying on a judgment of the Supreme Court in the case of U.P. State Co-operative Land Development Bank Limited V. Chandra Bhan Dubey & Others, [AIR 1999 SC 753]. The order of the Division Bench was challenged by way of appeal before the Supreme Court. The lis that was decided by the Supreme Court has been set out in Paragraph No. 4 of the judgement in the following terms:

> '4. The question thus, which falls for consideration is as to whether the appellant bank is a private body or falls within the definition of the State or local or other authorities under the control of the Government. A body of organization which is an instrumentality or agency of the State or a company owned and controlled by the State are all included in the expression "the State". If is found that the petitioner falls within the later category, there would be no hurdle in holding that such a body or organization would undoubtedly be amenable to the writ jurisdiction under Article 226 of the Constitution of India. On the other hand, if it is found that the appellant is private body in that event it may have to be examined whether a writ petition would be maintainable or not and the extent to which such powers can be exercised.'

12. Several earlier judgments on the issue were discussed by the Supreme Court. In summation of the issue, the Bench states thus at paragraph 18 extracted below:

> '18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.'

13. Since the Supreme Court was considering the issue with specific reference to a private, scheduled Bank, the Bench considered the control exercised by the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1941 as well as Industrial (Development and Regulation) Act, 1951 over all Scheduled Banks, noticing that the control exercised was all pervasive and extended to all aspects of functioning of the Bank. At Paragraph 25, the Bench notices that the control and supervision exercised was in order to protect the interests of the share holders and/or the banking companies itself.

14. At paragraphs 26 to 29, the Bench speaks with specific reference to the case of scheduled, private sector banks as follows:

> '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 c ontributed 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 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 guideline 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. The 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.

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment say Air (Prevention and Control of Pollution) Act, 1981 or Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance of those provisions. For instance, if a private employer dispense with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and have issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

28. The six factors which have been enumerated in the case of Ajay Hasia (supra) and approved in the later decisions in the case of Ramana (supra) and the seven Judges Bench in the case of Pradeep Kumar Biswas (supra) may be applied to the facts of the present case and see as to those tests apply to the appellant bank or not. As indicated earlier, share capital of the appellant bank is not held at all by the government nor any financial assistance is provided by the State, nothing to say which may meet almost the entire expenditure of the company. The third factor is also not answered since the appellant bank does not enjoy any monopoly status nor it can be said to be an institution having State protection. So far control over the affairs of the appellant bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the appellant bank nor anyone of them is a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be kept maintained and not get disturbed by the mal-functioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purposes of maintaining the healthy economic atmosphere in the country. Such regulatory measures are provided for other companies also as well as industries manufacturing goods of importance. Otherwise these are purely private commercial activities. It deserves to be noted that it hardly makes any difference that such supervisory vigilance is kept by the Reserve Bank of India under a Statute or the Central Government. Even if it was with the Central Government in place of the Reserve Bank of India it would not have made any difference, therefore, the argument based on the decision of All India Bank Employees' Association (supra) does not advance the case of the respondent. It is only in case of mal-functioning of the company that occasion to exercise such powers arises to protect the interest of the depositors, shareholders or the

company itself or to help the company to be out of the woods. In the times of normal functioning such occasions do not arise except for routine inspections etc. with a view to see that things are moved smoothly in keeping with fiscal policies in general.

29.There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the governmental functions. It is an old profession in one form or the other carried on by individuals or by a group of them. Losses incurred in the business are theirs as well as the profits. Any business or commercial activity, may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are no doubt, are such which do have impact on the economy of the country in general. But such activities cannot be classified one falling in the category of discharging duties, functions of public nature. Thus the case does not fall in the fifth category of cases enumerated in the case of Ajay Hasia (supra). Again we find that the activity which is carried on by the appellant is not one which may have been earlier carried on by the government and transferred to the appellant company. For the sake of argument even if it may be assumed that one or the other test as provided in the case of Ajay Hasia (supra) may be attracted that by itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of public nature. In this connection, observations made in the case of Pradeep Kumar Biswas (supra) quoted earlier would also be relevant'

15. After analysing the aforesaid decisions, the Division Bench comes to the conclusion that private companies are normally entitled to carry on the business or commercial activity of banking but in doing so, cannot be said to be discharging a public function/ duty. The conclusions, at paragraphs 32 and 33 are thus:

'....32. Merely because the 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. 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 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 acquiring authority.

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 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 puts 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. 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.

34. In the result, the appeal is allowed and the judgment and order passed by the High Court is set aside and the writ petition is held to be not maintainable. There will, however, be no order as to costs.'

16. The petitioner objects to the objection raised on maintainability. According to the petitioner, the Bank is engaged in rendition of 'public duty' and as such must yield to the jurisdiction of the Courts under Article 226 of the Constitution of India. Reliance is placed upon the following judgments:

(i) Zee Telefilms Limited and another Vs. Union of India and others [(2005) 4 SCC 649]

(ii) P.Venugopal Vs. Union of India [(2008) 5 SCC 1]

(iii) Janet Jeyapaul Vs. SRM University and others [(2015) 16 SCC 530].

(iv) Central Bank of India Vs. C.Bernard [(1991) (1) SCC 31]

17. In the case of Zee Tele Films (Supra) a Full Bench of the Supreme Court was considering the maintainability of a Writ Petition under Article 32 of the Constitution of India against the Board of Control for Cricket in India (BCCI). The argument raised on behalf of the BCCI was that it is an autonomous body, the administration of which is not controlled by any other authority including the Union of India. It is also not dependant on financial assistance or scrutiny by the Government.

18. The preliminary objection was opposed on the ground that the activities of the BCCI and its powers were extensive in matters relating to selection of the Indian National Team. The BCCI has the authority to invite foreign teams to play in India and held sole control for organizing major cricket events in the country. It exercised disciplinary control over the players/umpires and other officials involved in the game of Cricket and sports being a subject under the control of the States, in substance, the BCCI exercised functions of a Government in the area of Cricket.

19. The majority judgement was in favour of the BCCI holding that the Writ Petition filed by Zee Telefilms was not maintainable. Several judgments were discussed by the Bench. It was also noticed that there was a conflict arising from out of the judgments of the Supreme Court in the case of Subhajit Tewary v. Union of India [(1975) 1 SCC 485] and Ajay Hasia vs. Khalid Mujib Sehravardi [(1981) 1 SCC 722], wherein the Supreme Court had laid down the following tests to serve as guidelines as to whether a Corporation can be said to be an instrumentality or agency of the Government:-

> '(1) One thing is clear that it the entire share capital of the corporation is held by Government, it would go a long way towards indicting that the corporation is an instrumentality or agency of Government. (see p.507. Parar 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. (see-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.508, para 15)
>
> (5) If the functions or the corporation are of public importance and closely related to governmental functions, 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.10, para 18)'

20. The cleavage of opinion was noticed in the case of Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology [(2002) 5 SCC 111] and was referred to a larger Bench of seven (7) Judges. The tests laid in the case of Pradeep Kumar Biswas (supra) to gauge whether a particular body could be termed as a

'State' for the purpose of Article 12 of the Constitution of India are as follows:

> '40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

21. The ratio decidendi has been set out as a series of guidelines at paragraph No. 22 of the judgment of the Supreme Court in the case of Zee Telefilms (supra) as follows:

> '22. Above is the ratio decidendi laid down by a seven Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touch stone of the parameters laid down in Pradeep Kumar Biswas's case (supra). Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in Pradeep Kumar Biswas's case (supra) for a body to be a State under Article 12. They are:-
>
> (1) Principles laid down in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.
>
> (2) The Question in each case will have to be considered on the bases of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.’

22. In applying the parameters as above to the facts of the case in Zee TeleFilms (Supra), the Bench went one step further, noticing that the Board discharged public duties which are in the nature of State functions, concluding at Paragraph 31 that in the light of the aforesaid position, it would be always open to an aggrieved person to avail of the remedy under Article 226 of the Constitution of India, where there is any violation of a constitutional or statutory obligation. The Bench referring to the earlier judgments of the Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust V. V.R. Rudani [(1989) 2 SCC 691] extracted the observations of the Bench in that case relating to powers under Article 226 of the Constitution of India as follows:

‘32. This Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust V. V.R. Rudani has held: (SCC pp.692-93)

Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". The term "authority"used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers powers 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 owned 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.

33.Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non- governmental body exercises some public duty that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in Pradeep Kumar Biswas case (supra), hence there is force in the contention of Mr. Venugopal that this petition under Article 32 of the Constitution is not maintainable'.

23. In conclusion the Bench held that even if a private body exercises a 'public function' though it may not fall within the sweep of Article 12, the aggrieved person has a remedy, not only under ordinary law but also under the Constitution, by way of a Writ Petition under Article 226 of the Constitution of India.

24. In summary the Bench states as follows:

' 35. In conclusion, it should be noted that there can be no two views about the fact that the Constitution of this country is a living organism and it is the duty of Courts to interpret the same to fulfil the needs and aspirations of the people depending on the needs of the time. It is noticed earlier in this judgment that in Article 12 the term "other authorities" was introduced at the time of framing of the Constitution with a limited objective of granting judicial review of actions of such authorities which are created under the Statute and which discharge State functions. However, because of the need of the day this Court in Rajasthan State Electricity Board (supra) and Sukhdev Singh (supra) noticing the socio-economic policy of the country thought it fit to expand the definition of the term "other authorities" to include bodies other than statutory bodies. This development of law by judicial interpretation culminated in the judgment of the 7-Judge Bench in the case of Pradeep Kumar Biswas (supra). It is to be noted that in the meantime the socio-economic policy of the Government of India has changed [See Balco Employees' Union (Regd.) v. Union of India & Ors.

(2002 2 SCC 333)] and the State is today distancing itself from commercial activities and concentrating on governance rather than on business. Therefore, the situation prevailing at the time of Sukhdev Singh (supra) is not in existence at least for the time being, hence, there seems to be no need to further expand the scope of "other authorities" in Article 12 by judicial interpretation at least for the time being. It should also be borne in mind that as noticed above, in a democracy there is a dividing line between a State enterprise and a non- State enterprise, which is distinct and the judiciary should not be an instrument to erase the said dividing line unless, of course, the circumstances of the day require it to do so.'

25. In P.Venugopal's case (supra) a Division Bench of the Supreme Court considered a challenge by the petitioner, a medical doctor in the All India Institute of Medical Sciences ('AIMS'), to Section 11 of the AIMS (Amendment) Act 2007, holding that an employee, apart from being bound by duties and obligations laid down in the relevant Rules also enjoys protection of constitutional guarantees conferred by fundamental rights as well as remedies available under Article 32 and 226 of the Constitution of India. The petitioner relies upon the following paragraph in the judgement:

'12. A person entering into a Government service is no doubt liable to be dealt with by the relevant Act or the Rules but it ceases to be so in the event of his success in challenging the constitutional validity of the same. A Government servant entering into a Government service does not forego his fundamental rights. On the other hand, because of his status as a person in public employment, he acquires additional rights constitutionally protected. The State or other public authorities are not, therefore, entitled to make and impose laws governing the service conditions of an employee which manifestly deprive him of the privileges of that status. A person in public employment is endowed with a status not merely subjecting him to liabilities and obligation but also protecting him against any arbitrary, unreasonable and unequal treatment. Such a person is also entitled to constitutional remedies whether under Article 32 or under Article 226 of the Constitution. In India, a law cannot be accepted merely because it purports to be a law falling within the legislative filed of the maker thereof. Each provision of law is required to stand the test of Article 13(2) of the Constitution and survive.'

26. In the case of Janet Jeyapaul (supra) tests were laid down by a Division Bench of the Supreme Court to determine the ambit of public functionality or duty by an organization, a deemed university in that case. The Court considered that in the light of several judgments to that effect the question that 'impartation of education to students at large' was a 'public function' was no longer res integra. Thus the body or authority engaged in the aforesaid activity would be amenable to writ jurisdiction under Article 226 of the Constitution of India. After examining various authorities on the issue, the Supreme Court concluded that the University did discharge a public duty and was amenable to writ jurisdiction of the High Court under Article 226 of the Constitution of India. The Bench, answering the argument urged by the deemed university in that case to the effect that the Tribunal /District Judge ought to have been approached for redressal of grievances by the petitioner, states that though, normally, it would have been inclined to accept the submission of alternate remedy, since the learned single Judge in that case had considered merits of the matter in extenso, on the facts of that case they did not deem it appropriate to relegate the appellant to the tribunal. The matter was remanded to the Division Bench for consideration of the dispute on merits.

27. Both the judgements of the Supreme Court in the case of Janet Jeyapal and Dr.Venugopal are distinguishable for the reason that the employer in that case was a deemed university that was held to be an instrumentality of the state. This was over and above the factor that the function of the University was itself the 'spread of education' which is in itself a public purpose.

28. The question of maintainability would have to be seen specifically with reference to the functions rendered by the employer and the conclusion on this aspect in the case of one employer would not be automatically applicable in the case of another. Thus, the cases of Janet Jeyapal and Dr.Venugopal are of no help to the petitioner.

29. The question that arose in Bernards' case (supra) is whether the departmental enquiry entrusted to and conducted by a bank officials would stand vitiated by virtue of the fact that the official proceeded with, and completed the enquiry after his superannuation. The Karnataka High Court had answered the question in favour of the employee holding the enquiry officer to have been incompetent and the enquiry itself without jurisdiction. As against the aforesaid order, the Bank filed an

appeal before the Supreme Court. The Bench considered the conclusion of the High Court to the effect that the 'employee was nobody in the hierarchy of the authorities and since he has passed the order imposing punishments after his superannuation and is thus without jurisdiction'. This order was confirmed in appeal.

30. Even in the case of Bernard (supra) as in the case before me, the employee had not challenged the jurisdiction assumed by the enquiry officer in the first Appeal filed and raised the issue only before the High Court for the first time. Be that as it may, the case of Bernard is distinguishable for the reason that the employment of the disciplinary officer in that case had come to an end even during the enquiry, despite which he proceeded with the same, whereas in the case on hand the tenure of employment of the disciplinary officer had continued by virtue of his re-employment under contract with the Bank.

31. I digress from the issue of maintainability briefly and for the sake of completion, seeing as the parties have also spoken on the merits of the matter. The respondent has filed a copy of the appointment order of R2 dated 27.01.2016, appointing him as the Assistant General Manager, The Karur Vysya Bank Limited, Central Office of Human Resources Department, Karur on contract basis. The petitioner points out immediately that the employee code that was issued upon original appointment of R2 stood terminated with his superannuation in so far as there is no employment code in the appointment order dated 27.01.2016 and that he was thus, not part of Bank staff or in regular employment with the Bank. The petitioner would also point out that R2 was not entitled to Provident Fund or other statutory allowances. Thus, according to him, an employee appointed on contract basis could not render the services of a Disciplinary Authority as per the prevalent and accepted norms of service law. This argument will be taken up for consideration in the event that the preliminary objection is rejected.

32. Reverting to the discussion on the aspect of maintainability, the learned counsel for the petitioner seeks to distinguish the case of Federal Bank (supra) relied upon by the Bank stating that the judgement omits to take into account the fact that the Bank is discharging a public duty and the petitioner is a public servant, and this writ petition is thus maintainable. He draws attention to paragraph 6 thereof, where the Division Bench of the Supreme Court refers to the judgement in the case of Bank of Baroda Ltd. V. Jeewan Lal Mehrotra [1970 (3) SCC 677] in the following terms:

'6....

The appellant then refers to a decision in Bank of Baroda Ltd. vs. Jeewan Lal Mehrotra , which is a decision of a three Judge Bench, wherein it has been laid down that a contract of service could not be enforced on a private employee. Needless to say that the case is related to the services of an employee of a Scheduled bank. Our attention has been particularly drawn to paragraph 3 of the judgment where it is observed:'

> ...The law as settled by this Court is that no declaration to enforce a contract of personal service will be normally granted. The well recognized exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Article 311, (2) where reinstatement is sought of a dismissed worker under the industrial law by labour or industrial tribunals, (3) where a statutory body has acted in breach of a mandatory obligation imposed by statute...'

33. In the case of Janet Jeyapaul Vs. SRM University and others [(2015) 16 SCC 530], the Bench states this, at paragraphs 26:

> 26. This Court examined the legal issue in detail. Justice K. Jagannatha Shetty speaking for the Bench agreed with the view taken by the High Court and held as under:
>
> > ......15. 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 equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants 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.3 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.

.....

...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 exists mandamus cannot be denied."...'

34. According to the petitioner, the above paragraph makes it clear that the employee in a concern discharging 'public functions' is to be construed as a 'public servant'. I reject this submission outright. Though I have held in the later portion of this judgement that the Bank renders various functions that impact the working of society, both at a macro as well as a micro level, and that it serves a 'public purpose', this logic cannot be extended so far as to state that the officials of a bank are public servants. While the many activities and functions of a bank may be categorised into public as well as private in nature, its employees are governed by the private contract of service entered into by them with the Bank and the applicable Rules and Regulations.

35. It is relevant to note that no dispute has been raised with regard to the factual aspects of the matter at all, even by way of a formal ground in the writ petition, raised for the purpose of completion, and this Court thus proceeds on the basis that the same are uncontroverted. The allegations against the petitioner are that she had sanctioned various loans and disbursed the same without any security. The documentation executed with the borrowers was found to be incomplete in many cases and held to be forged in some others. The disbursal of the loans was itself irregular. In some instances the petitioner is said to have appropriated part of the loans sanctioned and used the funds amassed from these fraudulent transactions to purchase property to benefit herself. She is also alleged to have given and admitted in writing to various discrepancies in the sanction and disbursal of loans.

36. The principles of natural justice appear to have been adhered to by both the Disciplinary as well as Appellate authority. Witnesses have been produced on the side of the Management and none by the petitioner. She also did not choose to cross-examine the witnesses produced by the Management.

37. I refer, at this juncture to the Karur Vysya Bank Officer Employees' (Conduct) & (Discipline and Appeal) Regulations, wherein at clause 3, the following general conduct rules are laid down:

> General
>
> 3. (1) Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

(4) Every officer employee shall take all possible steps to ensure integrity and devotion to duty of all persons for the time being under his control and authority.

Clause 23 states that a breach of any clauses shall be construed as a 'misconduct', punishable under the Regulations.

38. I only refer to the above facts and Regulations to support my conclusion that the dispute raised by the petitioner is very clearly one that emanates from a private contract of service between the parties.

39. In the course of its regular activities, a Bank, be it nationalized, scheduled or private, renders several functions that impinge into public as well as private space. A determination of the nature of the duties carried on by the parties are thus, first to be undertaken to evaluate whether such duties fall with the domain of private or public duty.

40. The Karur Vysya Bank is a Private Sector Bank. It is a scheduled Bank in terms of Schedule 2 to the Reserve Bank of India Act, 1934. Admittedly, there is neither financial stake nor participation, nor monitoring in any way by the Government in its function. The only control exercised by an external authority is the Reserve Bank of India, and that, in a regulatory capacity.

41. However all financial institutions today, be they Private or Public, play a critical role in the financial system of the country. The services rendered by all Banks are more or less the same, and the differences arise from their structure, functioning and administration. After the nationalization of major banks in 1969 by the Government of India, the next land mark event was the Reserve Bank of India opening the doors for private banking in 1994. The hallmarks of Private Banks are said to be expeditious and committed service. It is the Private Sector Banks that have heralded the advent of technology in banking including the concept of online-banking. All banks, however, carry out essentially the same functions and are

governed by the policies and regulatory controls exercised by the Reserve Bank of India.

42. Thus, banks, sans categorization, are one of critical drivers for the advancement of the economy. They serve a great public need and carry enormous powers in setting the scene for development of society and, of the country. There is thus no dispute on the position that they render a public service and a public duty and herald enormous power in this area. However with such great power comes great responsibility and it is imperative that this responsibility should be subject to check, if necessary. it is in this context that the observations of the Supreme Court in the case of Zee Tele Films can be called upon to apply specifically in the case of Banks, including Private Sector, Scheduled banks.

43. Private Banks play a critical role in incentivising foreign economies to invest in India and the facilities and infrastructure provided by Banks to facilitate free movement of currencies, are vital to development. It follows that particularly in the context of various untoward events that are presently plaguing the banking sector, that the activities of Banks are rendered in public domain and call for strict checks and balances. To the extent to which the functioning of bank and its activities impact the working of the economy at large they fall within the domain of 'public purpose', subject to Article 226 of the Constitution of India.

44. The conclusion that I am led to after perusing carefully the judgments relied upon are the following:

(i) It is not a general rule that no Writ Petition is maintainable as against a Bank.

(ii) However, in order to ascertain whether the lis canvassed against the Bank is amenable to Article 226 of the Constitution of India, the nature of the lis inter se the parties would have to be first determined.

(iii) In the present case, the argument raised is that though it is a dispute qua a contract of service entered into between both parties, the fact that the impugned order has been passed by an authority engaged in the rendition of public service would make it amenable to Article 226 of the Constitution of India. However, this argument runs counter to the judgment of the Supreme Court in the case of Zee Telefilms (supra).

45. The petitioner before me has suffered two orders by officers who have examined the facts and issues iin detail. The nature of charges leveled against the petitioner are extremely serious and grave and both the original (disciplinary) as well as the Appellate Authority have confirmed the offences as against the petitioner. Most importantly, the findings on the facts in both the impugned orders are not challenged and the sole ground on which this Writ Petition rests is that the Disciplinary Authority who passed the original order did not have the jurisdiction to do so and had become functus officio. For all practical purposes and intents once the Writ Petition filed by the petitioner is held to be non-maintainable, nothing further survives in the matter, since no dispute has been raised on the factual conclusions.

46. The Writ Petition is dismissed as non-maintainable. Connected Miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

rkp

TO

1.The General Manager-HRD
Appellate Authority,
The Karur Vysya Bank Limited,
Erode Road, Karur 639 001.

2.The Assistant General Manager -HRD,
Disciplinary Authority,
The Karur Vysya Bank Limited,
Human Resource Department,
Central Office, Erode Road,
Karur 639 001.

3.The Inquiring Authority,
The Karur Vysya Bank Limited,
Human Resource Department,
Central Office,
Erode Road, Karur 639 001.

4.The Branch Manager,
The Karur Vysya Bank Limited,
Sulur Branch,
Coimbatore

+1cc to Mr. K.S.Govindaprasad, Advocate, S.R.No. 37599

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No. 37438

WP. No. 25101 of 2017

and

WMP. Nos.26539 & 26540 of 2017

BS(CO)

GN(23/04/2019)