

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 16.10.2020

JUDGMENT DELIVERED ON: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

WRIT APPEAL NO.1500 OF 2019
AND
CMP.NO.10232 OF 2019 & 17120 OF 2019

Mrs.B.Anitha
W/o.M.Balasubramanian
Ex-Manager,
Karur Vysya Bank Ltd.,
B-Block, G-6,
Royal Sheraton Apartments,
Nanjundapuram Road,
Coimbatore-641 036.

..Appellant/Petitioner

Vs.

- 1.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, Karur,
Erode Road, Karur 639 001.
- 3.The Inquiring Authority,
The Karur Vysya Bank Limited,
Human Resource Department,
Central Office, Karur,
Erode Road, Karur 639 001.
- 4.The Branch Manager,
The Karur Vysya Bank Limited,
Sulur Branch,
Coimbatore

..Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.04.2019 passed by the learned Single Judge in WP.No.25101 of 2017 on the file of this Court.

WP.No.25101 of 2017 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.

JUDGMENT

R.SUBBIAH, J

This appeal is heard through video-conferencing today.

2. This appeal is filed as against the order passed by the learned Single Judge of this Court in W.P.No. 25101 of 2017 dated 16.04.2019, in dismissing the Writ Petition filed by the appellant herein on the ground of maintainability.

3. The brief facts which are necessary to decide the issue involved in this appeal are as follows:

a) The appellant herein/writ petitioner was appointed as Probationary Officer in the respondents-Bank and her services in the respondents/Bank were confirmed in the Officer Scale I cadre, with effect from 18.12.2007. During the course of employment, on 20.03.2015, the appellant/writ petitioner addressed a letter to the General Manager, Inspection and Audit Department, Karur Vysya Bank, Central Office, Karur, pointing out certain discrepancies in loan portfolio at Sulus Branch, Coimbatore District, where the appellant worked for the period

from 16.11.2011 to 26.03.2015. Thereafter, the appellant had written several letters on 16.04.2015, 21.04.2015 and 23.04.2015 pointing out the discrepancies found in Loan Department and also the status of accounts mentioned in her previous letters. While the appellant/writ petitioner was expecting that her letters would be considered favourably by the Management of the respondents- Bank, to her shock and surprise, the impugned suspension order dated 14.05.2015, was issued by the Assistant General Manager, HRD / second respondent herein, suspending her from service with immediate effect, pending contemplation of enquiry into charges against her. Subsequently, a charge memo dated 30.06.2015, was issued by the second respondent / Assistant General Manager, HRD, containing two charges, which are as follows:

"1) You have failed to take all necessary steps to ensure and protect the interest of the Bank, failed to discharge your duties with utmost integrity, honesty, devotion and diligence and thereby acted in a manner unbecoming of a Bank officer in violation of Regulation 3(1) of Karur Vysya Bank Officer Employees' (Conduct) Regulations.

2) You have failed to act in your best judgment in the performance of your official duties in violation of Regulation 3(3) of Karur Vysya Bank Officer Employees' (Conduct) Regulations."

b) On receipt of the charge memo, the appellant/writ petitioner submitted her representation dated 11.07.2015 to the second respondent, requesting to grant 15 more days' time to defend herself on the articles of charges and her said request was accepted. Thereafter, on 19.07.2015, the appellant/writ petitioner submitted her reply to the statement of allegations made in the charge memo, denying the charges levelled against her. Not being satisfied with the explanation given by the appellant, the second respondent/Disciplinary Authority appointed Chief Manager, HRD, Central Office-Karur as Inquiring Authority to inquire into the articles of charges, dated 30.06.2015. The second respondent also appointed the Assistant Manager, HRD, Central Office-Karur as the Presenting Officer to present the case in support of the articles of charge. Pursuant to the same, preliminary enquiry was held on 18.09.2015 by the Inquiring Authority and the appellant attended the inquiry on that day, but she was not in a position to attend the inquiry on 28.10.2015 and 27.11.2015. When the appellant attended the inquiry on 09.12.2015, without giving any copies of the 72 documents, the Inquiring Authority/third respondent herein marked the same as MEx.1 to MEx.72 and one K.Jagannatha Nayak was examined as MW1 by the Inquiry Officer. On 17.12.2015, one Shri Sathish Kumar was examined as MW2. After completion of the

enquiry, the Inquiring Authority submitted an enquiry report to the second respondent/Disciplinary Authority, wherein the Inquiring Authority held that both the charges levelled against the appellant, were proved. In turn, on 04.02.2016 the Disciplinary Authority sent a letter to the appellant, enclosing a copy of the report of the Inquiring Authority, dated 03.02.2016, directing her to submit her representation on the findings of the Inquiry Authority within a period of 7 days from the date of receipt of that letter. The appellant, by letter dated 25.02.2016, submitted her further representation on the findings of the Inquiring Authority. Thereafter, the appellant was expecting that she would be let off by the Disciplinary Authority on account of her sincere work, but to her shock and surprise, the Disciplinary Authority passed the impugned order dated 31.03.2016 dismissing her from service.

c) Aggrieved by the same, the appellant filed an appeal before the first respondent/Appellate Authority/the General Manager, HRD, which was dismissed, confirming the order passed by the Disciplinary Authority. Hence, the appellant filed W.P.No.25101 of 2017 as against the respondents-Bank.

(d) The learned Single Judge, after hearing both sides, dismissed the Writ Petition on the reasoning that the Writ Petition is not maintainable. The operative portion of the order passed by the learned Single Judge is extracted below:

"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).

Aggrieved by the same, the present Writ Appeal has been filed by the writ petitioner.

4. At the outset, the learned counsel for the appellant submitted that the learned Single Judge dismissed the Writ Petition on the ground of maintainability, by observing that the Writ Petition is not maintainable as against a Private Bank, which is against law. The learned counsel for the appellant/writ petitioner further submitted that the appellant was working in the cadre of Manager and as per Section 46-A of the Banking Regulation Act, the Manager is deemed to be a public servant. Since the appellant/writ petitioner is deemed to be a public servant, the Writ Petition is maintainable against the respondents-Private Bank. The learned counsel for the appellant/writ petitioner has also relied upon the judgment of the Supreme Court in the case of Bank of Baroda Ltd., Vs. Jeewan Lal Mehrotra, reported in 1970 (3) SCC 677, wherein, it has been held as follows:

"3. The law as settled by this Court is that no declaration to enforce a contract of personal service will be normally granted. The well recognised exception 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."

The case of the respondent did not come under any of the above exceptions. Therefore, in granting a declaration of the nature sought for by the respondent, the courts acted contrary to law and that part of the decree could not be upheld. On behalf of the appellant, the reversal of the decree for Rs.1650/- has not been pressed."

5. The learned counsel for the appellant/writ petitioner further submitted that the appellant is an Ex-Manager and she being a public servant and the respondents-Bank being a statutory body, cannot act in breach of mandatory obligations imposed by a Statute. He further submitted that the Disciplinary Authority/second respondent became "functus-officio" on the date of passing of the dismissal order, dated 31.03.2016, since he had attained superannuation in the month of February 2016 itself. Therefore, the order of dismissal passed by the second respondent, is wholly without jurisdiction and the same is liable to be set aside and that it is non-est in the eye of law. In support of the said submission, the learned counsel for the appellant/writ petitioner relied upon a judgment of the Supreme Court in the case of Central Bank of India vs. C. Bernard reported in 1991 (1) SCC 319, wherein it has been held that an

officer passing the order of punishment against the delinquent employee, after retirement, ceased to hold the office of Disciplinary Authority and became a mere ex-employee and as such, became incompetent to pass the order. Therefore, the present Writ Petition is maintainable, since the Disciplinary Authority has passed the order after his superannuation. Hence, the impugned order passed by the learned Single Judge is liable to be quashed.

6. Before the learned Single Judge, it was contended by the respondents-Bank that the appellant/writ petitioner has an alternative remedy under Section 41(2) of the Tamil Nadu Shops and Establishments Act. With regard to the above submission made by the respondent-Bank before the learned Single Judge, now it has been replied by the learned counsel for the appellant that Section 4 of the said Act clearly grants exemption to the persons employed in an establishment in the position of Manager. Therefore, Section 41(2) of the Tamil Nadu Shops and Establishments Act is not applicable to the case of the appellant/writ petitioner, since she belongs to Managerial cadre in Junior Management Scale-I. This fact was not considered by the Appellate Authority in his order dated 24.08.2016, while confirming the order passed by the Disciplinary Authority dated 31.03.2016. Hence, on this ground also, the order of the Appellate Authority dated 24.08.2016 is liable to be set aside.

7. In support of his contentions, the learned counsel for the appellant relied upon a judgment of the Supreme Court in the case of P.Venugopal Vs. Union of India, reported in 2008 (5) SCC 1 and submitted that an employee, apart from being under duties and obligations laid down in the relevant Rules, also enjoys protection of Constitutional guarantees conferred by fundamental rights and remedies available under Articles 32 and 226 of the Constitution of India. The learned counsel also relied upon another judgment of the Supreme Court in the case of Janet Jeyapaul vs. SRM University and others, reported in 2015 (16) SCC 530 to substantiate his contention that the Writ Petition against a private body is maintainable. Thus, the learned counsel for the appellant/writ petitioner sought for setting aside the impugned order of the learned Single Judge and consequently, to allow the Writ Appeal.

8. Countering the said submissions, the learned counsel appearing for the respondents-Bank, by relying upon the judgment of the Supreme Court in the case of Federal Bank Vs. Sagar Thomas reported in 2003 (10) SCC 733, submitted that the Writ Petition against a private body is not maintainable. In fact, in the judgment referred to above also, the case is only in respect of disciplinary action against Branch Manager like that of the appellant before this Court. With regard to the submission made

by the learned counsel for the appellant, by relying upon the judgment of the Supreme Court in Janet Jeyapaul vs. SRM University case (cited supra), it is the submission of the learned counsel appearing for the respondents-Bank that it pertains to a Deemed University and not a Private Bank. Therefore, the said judgment in Janet Jeyapaul vs. SRM University case (cited supra) will not apply to the facts of the present case on hand. However, the learned counsel appearing for the respondents relied upon a judgment of a Division Bench of the Bombay High Court in the case of Chanda Deepak Kochhar Vs. ICICI Bank, reported in 2020 (3) LLJ 533, wherein, it has been held that the Writ Petition filed by a Managing Director was not maintainable. In the said case before the Bombay High Court, the judgment relied upon by the learned counsel for the appellant/writ petitioner, namely, Janet Jeyapaul vs. SRM University case (cited supra) was considered by the Division Bench of the Bombay High Court.

9. With regard to the submission of the learned counsel for the appellant/writ petitioner that, since the Disciplinary Authority attained superannuation on 02.02.2016 itself, the impugned order of dismissal passed by him is not valid, the learned counsel appearing for the respondents/Bank has given reply to the effect that though the Disciplinary Authority attained superannuation on 02.02.2016, his employment was extended for 2 years, by an order dated 27.01.2016. Therefore, it is incorrect to state that the Disciplinary Authority was "functus-officio" on the date of passing of the order of dismissal. In the case of Central Bank of India vs. C. Bernard (cited supra), which was relied upon by the learned counsel for the appellant, the disciplinary authority retired on the date of passing of order therein and his services were not extended and hence, the relationship of employer-employee came to an end. Hence, the said judgment cannot be made applicable to the facts of the present case.

10. With respect to the submission of the learned counsel for the appellant/writ petitioner that as per Section 4 of the Tamil Nadu Shops and Establishments Act, there is exemption for the persons employed in the position of Manager to file an appeal before the Appellate Authority and therefore, the Writ Petition is maintainable, it is replied by the learned counsel appearing for the respondents-Bank that the Government by G.O.Ms.No.4074, Industrial Labour and Housing (Labour), dated 05.10.1996, has made provisions of the said Act applicable to even the Managerial persons. The said G.O. was considered in the judgment of this Court in Oriental Bank of Commerce vs. Commissioner of Labour, Madras and others, reported in 1982 (1) LLJ 354. Further in the case of Palat Achuthan vs. Management, City Bank N.A., Mumbai reported in 2004 (1) LLJ 147, by relying

upon the said G.O.Ms.No.4074, dated 05.10.1996, it has been held that, appeal under Section 41 (2) of the Tamil Nadu Shops and Establishments Act is maintainable, even for the persons holding the Managerial positions. Thus, the learned counsel appearing for the respondents submitted that the appellant, is having an alternative remedy and hence, the Writ Petition is not maintainable. Thus, he sought for dismissal of the Writ Appeal.

11. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

12. In view of the submissions made on either side, we are of the view that the only question that arises for consideration in this appeal is as to whether the Writ Petition is maintainable. All the other factual aspects raised by the learned counsel for the appellant/writ petitioner are inter-connected only with the issue of maintainability of the Writ Petition. Hence, if that question is answered, all the other points would be automatically answered to dispose of this appeal.

13. It is the assertive submission of the learned counsel for the appellant-writ petitioner that as per Section 46-A of the Banking Regulation Act, the post of Managerial cadre would deemed to be a public servant. Since the appellant being an Ex-manager and the respondents-Bank being a statutory body, the Writ Petition is maintainable. Section 46-A of the said Act is extracted below:

"Section 46A. Chairman, Director, etc., to be public servants for the purpose of Chapter IX of the Indian Penal Code:

Every Chairman who is appointed on a whole-time basis, Managing Director, Director, auditor, liquidator, manager and another employee of a banking company shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code (45 of 1860)."

In support of his contentions, he also relied upon the judgment reported in Bank of Baroda Ltd., Vs. Jeewan Lal Mehrotra (cited supra).

14. It is the further case of the appellant that on the date of passing of the order of dismissal dated 31.03.2016 by the second respondent / Disciplinary Authority, he has become functus officio, since he attained superannuation on 02.02.2016 itself. Therefore, the said order of dismissal is wholly without jurisdiction. Since the respondent-Bank acted in breach of the mandatory obligations imposed by the Statute, the Writ Petition is maintainable.

15. On a perusal of the records, we find that, even prior to the date of superannuation, by order dated 27.01.2016, the service of the Disciplinary Authority/second respondent was extended for two years and he was continuously in service. Therefore, the submission of the learned counsel for the appellant that the second respondent became "functus-officio" on the date of passing of order of dismissal, cannot be accepted. Further, in the judgment relied on by the learned counsel for the appellant/writ petitioner in the case of Central Bank of India vs. C.Bernard (cited supra), the disciplinary authority had retired on the date of passing of order and his services were not extended, and hence, the said judgment cannot be made applicable to the facts of the present case. However, in the judgment relied upon by the learned counsel appearing for the respondents in Federal Bank vs. Sagar Thomas reported in 2003 (10) SCC 733 (cited supra), the delinquent in that case was also a Branch Manager like that of the appellant herein, wherein it has been held that the Writ Petition is not maintainable against a Private Bank. Even in the recent judgment of the Division Bench of the Bombay High Court in Chanda Deepak Kochhar vs. ICICI Bank (cited supra), it has been held that the Writ Petition filed by the Managing Director as against a private Bank, is not maintainable. Further in the present case, the Writ Petitioner is having an effective alternative remedy under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, and on that ground also, the Writ Petition is not maintainable. Section 41 of the Tamil Nadu Shops and Establishments Act is extracted hereunder.

"41. Notice of dismissal-- (1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and with such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

(2-A) The appellate authority may, if it considers that any document or the testimony of any person is relevant or necessary for the discharge of its duties under this Act as appellate authority, call for and inspect such document or summon and examine such

person. For the aforesaid purposes, it shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of documents;

(iii) issuing commissions for the examination of witnesses

(2-B) The appellate authority, may, after giving notice in the prescribed manner to the employer and the person employed, dismiss the appeal or direct the reinstatement of the person employed, with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the appellate authority shall be final and binding on both the employer and the person employed."

16. It is the submission of the learned counsel for the appellant/writ petitioner that under Section 4 of the Tamil Nadu Shops and Establishment Act, there is exemption for the Managerial cadre employees to file an appeal before the Appellate Authority. In order to overcome the said submission, the learned counsel appearing for the respondents-Bank brought to the notice of this Court G.O.Ms.No.4074, Industries, Labour and Housing (Labour), dated 05.10.1996, which makes the provisions of the Tamil Nadu Shops and Establishment Act applicable even to the Managerial persons. The said G.O. was relied upon by this Court in number of judgments including Oriental Bank of Commerce vs. Commissioner of Labour and Palat Achuthan Vs. Management, City Bank N.A., Mumbai (cited supra). The relevant portion of the said G.O. is extracted hereunder:

"In exercise of the powers conferred by Section 5 of the Madras Shops and Establishments Act 1947 (Madras Act XXXVI of 1947), the Governor of Madras hereby applies all the provisions of the said Act to the class of persons mentioned in clause (a) of sub-section (1) of S.4".

17. In view of the above submissions, it is clear that the appellant/writ petitioner is having having an alternative remedy under Section 41 (2) of the Tamil Nadu Shops and Establishment Act. The respondents-Bank will not come within the fold of Article 12 of The Constitution of India to enable the appellant to maintain this writ petition before this Court. When the respondents-Bank cannot be equated or considered as

instrumentalities of the Government, the writ petition as against the respondent-writ petitioner is not maintainable. The respondents-Bank is a private bank and it is not amenable the jurisdiction of this Court under Article 226 of The Constitution of India. Therefore, the Writ Petition is not maintainable. Hence, this Court confirms the impugned order of the learned Single Judge.

18. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

pvs/cs

To

- 1.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, Karur,
Erode Road, Karur 639 001.
- 3.The Inquiring Authority,
The Karur Vysya Bank Limited,
Human Resource Department,
Central Office, Karur,
Erode Road, Karur 639 001.
- 4.The Branch Manager,
The Karur Vysya Bank Limited,
Sulur Branch,
Coimbatore

+1cc to Mr.K.S.Govinda , Advocate, SR.No.39983

+1cc to Mr.T.S.Gopalan & Co , Advocate, SR.No.40213

Pre-Delivery Judgment in
Writ Appeal No.1500 of 2019

SSI(CO)
KKV/28/12/2020