

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

AND

The Hon'ble Justice Bibhas Ranjan De

MAT No. 35 of 2022

With

CAN 1 of 2022

With

CAN 2 of 2022

Arup Kumar Sengupta

Vs.

State Bank of India & Ors.

For the Appellant : Mr. Bikramaditya Ghosh

For the State Bank of India : Mr. Momenur Rahaman

Heard on : 15.06.2022

Judgement on : 15.06.2022

DEBANGSU BASAK, J.:

1. **CAN 2 of 2022** is an application for condonation of delay under Section 5 of Limitation Act in filing the appeal.

2. There is a delay of six days. For the ends of justice the causes shown in the application for condonation of delay are accepted as sufficient.
3. Accordingly, the delay in filing the appeal is condoned.
4. Accordingly, **CAN 2 of 2022** is thus, disposed of.
5. The appeal is directed against the order dated March 7, 2022 by which, the learned single judge was pleased to dismiss the writ petition on the ground that the writ petitioner was a contractual employee. The writ petitioner cannot enjoy the protection available to a regular employee. The Court did not find that there was any error or irregularity in the decision making process to terminate the writ petitioner from service.
6. Learned advocate appearing for the appellant submits that the appellant is a retired employee of State Bank of India. Subsequent to his retirement, by an order dated January 25, 2019, the appellant was appointed as a facilitator for ATM management in the State Bank of India on contractual basis on terms and conditions contained in such order. He refers to the relevant portions of the order dated January 25, 2019. He submits that the appointment of the appellant was for an initial period of six months with effect from February 1, 2019.

The initial appointment was to be reviewed after six months. On successful review, the services of the appellant was promised to be extended for a maximum period of three years or attaining the age of 65 years whichever is earlier.

7. Learned advocate appearing for the appellant submits that the appellant was kept in the dark with regard to the review after six months. His service thereafter was sought to be terminated by a letter dated November 15, 2019 on the ground that the performance of the appellant was reviewed after six months by the appropriate authority and found to be not satisfactory. He submits that the documents relating to the alleged review was not made over to the appellant. The appellant approached the writ court by way of WPA 1054 of 2019 which was disposed of by an order dated February 4, 2021 by permitting the appellant to submit a representation before the State Bank of India stating his case on the report of the Review Committee. The State Bank of India was directed to consider his representation in accordance with law and take a final decision on merit with regard to his service. He submits that the appellant made a representation in terms of such order of the High Court. He refers such representation. He refers to the disposal of such representation. He contends that his

representation was inappropriately dealt with by the State Bank of India.

8. Relying upon (2011) 15 Supreme Court Cases 16 (Gridco Limited and Another Vs. Sadananda Doloi and Others),

learned advocate appearing for the appellant submits that a writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action no matter that the action is in the realm of contract, in respect of an authority within the meaning of Article 12 of the Constitution of India.

9. Learned advocate appearing for the State Bank of India submits that the appellant was initially appointed on February 29, 2019 on the terms and conditions of the letter of appointment. His performance was reviewed. On review, the performance was found to unsatisfactory. Therefore, the service of the appellant was terminated by the letter dated November 15, 2019. He draws the attention of the Court to the review order. He submits that subsequent to the order of the High Court dated February 4, 2021, the authorities considered the representation of the appellant and could not accept such representation. He submits that a contract for personal

employment cannot be specifically enforced by writ court. According to him, there is no infirmity in the impugned order.

10. The appellant is a retired employee of the State Bank of India. After his retirement, he was appointed as a facilitator for ATM management in the State Bank of India on contractual basis on the terms and conditions appearing from the letter of appointment dated January 25, 2019. The engagement of the appellant was initially for a period of six months with the power to review after six months. The total period of engagement was three years or the appellant attaining the age of 65 years whichever is earlier.

11. The State Bank of India reviewed the performance of the appellant and did not find it to be satisfactory. The State Bank of India terminated the services of the appellant by letter dated November 15, 2019. Being aggrieved with such letter of termination, the appellant filed a writ petition being WPA 1054 of 2019 which was disposed of by the order dated February 4, 2021. In such writ petition, the State Bank of India disclosed the report of the Review Committee dated October 25, 2019. Finding that the appellant was not afforded an opportunity of hearing by the Review Committee of the High Court allowed the appellant to make a representation to the State Bank of India.

The State Bank of India was directed to consider such representation.

12. Pursuant to the order dated February 4, 2021 of the High Court, the appellant made a detailed representation to the authorities. Such representation was considered by the State Bank of India and rejected on March 31, 2021.

13. The writing dated March 31, 2021 of the State Bank of India which deals with the representation of the appellant contains reasons for terminating the service of the appellant. The reasons shown are not established to be perverse. In any event, it would require a detailed examination of both oral and documentary evidence to arrive at a finding as to whether, the reasons given in the writing dated March 31, 2021 are perverse or not. A writ court need not enter into such arena.

14. On the face of it, the writing dated March 31, 2021 contains reasons and the writ petitioner is unable to conclusively establish it be perverse on the basis of materials on record.

15. ***Gridco Limited and Another (Supra)*** is of the following view:

38. A conspectus of the pronouncements of this Court and the development of law over the past few

decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the

action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge.

- 16.** A writ court can interfere with a decision taken by an Article 12 authority in the event, it is established that fundamental right of the writ petitioner stands breached or that, the impugned action is without jurisdiction or that such impugned action is tainted with *mala fides* or is arbitrary or is irrational.
- 17.** We do not find that the actions taken by the State Bank of India suffers from any unreasonableness or irrationality or arbitrariness. The action taken cannot be said to be without jurisdiction. No fundamental right of the appellant is established to be breached by the action taken by the State Bank of India in terminating his services.
- 18.** Needless to say that the State Bank of India will disburse the just entitlement of the appellant during his period of service. It is contended on behalf of the State Bank of India that all dues stands paid.
- 19.** In such circumstances, we find no merit in the present appeal.

20. Accordingly, **MAT 35 of 2022** along with all connected applications are disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

21. I agree.

(BIBHAS RANJAN DE, J.)