

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

Present :- Hon'ble Justice Amrita Sinha

WPA 1300 of 2023

**Kamruzzaman
Vs.
The State of West Bengal & Ors.**

For the writ petitioner	:-	Mr. Nripen Das, Adv. Mr. Debanjan Das, Adv.
For the State	:-	Mr. Hirak Barman, Adv. Mr. Momenur Rahman, Adv.
For Respondent nos. 3 & 5	:-	Mr. Sudipto Majumder, Sr. Adv., DSGI Mr. Tapas Ch. Bhattacharya, Adv. Mr. Ajoy Kumar Singhania, Adv.
Heard on	:-	24.01.2024 & 31.01.2024
Judgment on	:-	02.02.2024

Amrita Sinha, J.:-

The petitioner was employed with the Sonali Bank Limited. He was appointed in the year 2005 and confirmed in service in the year 2006. Relying upon an unsigned and undated communication allegedly made by a well wisher a show cause was issued to the petitioner in the month of May, 2022 and the petitioner was directed to show cause why administrative and legal action will not be taken against him as he submitted fake certificate at the time of joining where his date of birth is incorrectly recorded. The petitioner replied to the show cause within the stipulated time period. The

employer lodged a complaint before the police and he was arrested and later obtained bail from the learned Court in April, 2023. Charge sheet was filed against the petitioner in January, 2023.

The petitioner was suspended on 8th May, 2023. The instant writ petition has been filed by the petitioner on 16th June, 2023 praying for setting aside or revoking the order of suspension. During pendency of the writ petition, the petitioner has been dismissed from service on 29th November, 2023.

The grievance of the petitioner is that the bank ought not to have taken steps in response to an anonymous complaint. The complaint itself appears to be plainly false and incorrect. It has been submitted that the petitioner has already served the bank from 2005 till his date of suspension on 8th May, 2023 without any blemish from any corner. The petitioner at the time of appointment relied upon the school leaving certificate wherein his date of birth is recorded as 2nd October, 1976. The date of birth in the school leaving certificate of Gudhia High School (HS) relying upon which his service has been dismissed is a false document. The petitioner was not a student of the said school. The petitioner was a student of Kharera A.N.H.M. High School (HS) wherein his date of birth has been record as 2nd October, 1976. No proceeding whatsoever was initiated against the petitioner to dismiss him from service.

Prayer has been made for permitting the petitioner to rejoin service as he is a family man and his family is starving as the petitioner is without any salary after the order of dismissal was passed.

The petitioner relies upon the details of the Sonali Bank Limited in support of the submission that the bank will be amenable to the writ jurisdiction despite the fact that the same is a foreign bank. Reference has been made to the order dated 9th April, 2021 passed by a coordinate Bench of this Court in WPO 142 of 2921 (***Sonali Bank Employees Association & Anr. Vs. Union of India & Ors.***) wherein the Hon'ble Court was pleased to entertain the writ petition filed by the employees association of the said bank.

Reliance has also been placed on the judgment passed by this Court in the matter of ***M/s. Pearson Drums and Barrels Private Limited vs. The General Manager, Consumer Education and Protection Cell of Reserved Bank of India & Ors.*** wherein the Court was pleased to entertain the writ petition against Indus Ind Bank.

The petitioner also relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***St. Marys Education Society & Ors. Vs. Rajendra Prasad Bhargava & Ors.*** reported in ***(2023) 4 SCC 498*** wherein the Hon'ble Court held that judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. It was held that application under Article 226 of the Constitution is maintainable

against a person or a body discharging public duties or public functions. Individual wrong or breach of mutual contract without having any public element as its integral part cannot be rectified through a writ petition. It was further held that writ jurisdiction cannot be invoked in respect of matters relating to service where they are not governed or controlled by statutory provisions.

The respondent bank opposes the prayer of the petitioner. It has been submitted that the bank in question is a foreign private bank and the writ petition will not be maintainable against the bank.

In support of the aforesaid submission reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Federal Bank Limited vs. Sagar Thomas & Ors.*** reported in **(2003) 10 SCC 733**. It has been contended that the issue in question revolves around a dispute between the employer and the employee and there is no public duty element on which the writ jurisdiction can be invoked. It has been submitted that the petitioner has not filed any application challenging his dismissal from service. The prayer in the writ petition is restricted only with regard to suspension. The termination not being challenged by the petitioner the Court ought not to decide the same.

Prayer has been for dismissal of the writ petition.

As an issue has been raised with regard to the maintainability of the writ petition, the Court intends to decide the same at the very first instance.

Admittedly, the bank in question is owned by the Government of Bangladesh. The bank is conducting business in India on the license issued by the Reserve Bank of India. The bank is a member of the Indian Bank Association with head office at Dhaka. It has two branches; one in Kolkata and the other at Siliguri.

The document relied upon by the petitioner in connection with the Sonali Bank Limited mentions that the staff and sub staff of the bank will be covered by the Industrial Disputes Act and the bipartite settlement. There is no existing service rule of the bank employees, neither is there any disciplinary and appeal rules or regulations. There is no code of conduct for its accountability.

The Ministry of Finance, Government of India has published the list of public sector banks in the country. Sonali Bank Limited is not included in the list of public sector banks. It is the specific contention of the bank that the same is a private bank and the Government does not have any role to play. License for banking has been issued by the Reserve Bank of India, but that apart, there is no manner of control by the Government.

It appears that the petitioner being the employee is aggrieved by some act on the part of the bank who is his employer. The bank may deal with public function but the service of the petitioner with the bank does not bear any public element. It is out and out a private dispute between the employer and the employee.

Even though the bank performs public functions but the dispute in question does not have any public element in it. The Hon'ble Supreme Court in *St. Marys* (supra) clearly laid down that in the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service. The terms of employment of contract between the employer and the employee does not have any public element in it. The action or decisions taken within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution.

In ***Saptarshi Basu vs. Union of India*** reported in **(2016) (5) CHN (CAL) 132** the Court held that merely because a juristic entity, which is a aggregate of several human individuals is required to obtain a license or registration from a public body, does not imply that such juristic entity or body of persons, by virtue of such license or registration, develops attributes of a public nature making it amenable to the writ jurisdiction. Merely because the license to do business is obtained from a statutory authority or a body of persons is registered with a statutory authority the same does not imply that such entity becomes a public body or is amenable to the writ jurisdiction.

In *Sonali Bank Employees Association* (supra) there is no finding that the writ petition will be maintainable against the bank in connection with the service matter of an employee.

In *M/s. Pearson Drums (supra)* the act of the Reserve Bank of India and Indus Ind Bank was under scrutiny. The Court held that the cause of action had a wider connotation insofar as the liabilities of banks in respect of refund of processing fees is concerned. The same is not the case here. In the present case the dispute is between the employer and the employee. The dispute has no connection with the public in general.

In *Federal Bank (supra)* the Hon'ble Supreme Court considered several judgments and held that disciplinary action taken against its employees by a bank cannot be adjudicated by the writ court.

In view of the aforesaid finding by the Hon'ble Supreme Court, the Court is constrained to hold that the writ petition against the bank at the instance of an employee challenging the order of suspension or termination will not be maintainable.

As the petitioner has failed to overcome the hurdle of satisfying the Court that the writ petition against the bank will be maintainable, accordingly, there is no reason to decide the other issues raised in the writ petition.

The writ petition fails and is, accordingly, dismissed.

Dismissal of the writ petition will, however, not stand in the way of the petitioner from approaching the competent forum for relief, if permissible in law.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)