IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10217 OF 2024

Kapil s/o Ashok Nugurwar,
Age: 35 Years, Occu. Nil,
R/o. Janki Nagar, Hanuman Gadh,
Nanded, Tq. and Dist. Nanded at present C/o.
Pandit Sonwane, Miranagar, Padegaon,
Chhatrapati Sambhajinagar. ..Petitioner

Versus

1. The Union of India
Through its Secretary,
Ministry of Finance Department,
New Delhi.

2. The Hon'ble General Manager,
Human Resource Department,
IDBI Bank, Central Office,
Mumbai. ..Respondents

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Mr. S. S. Thombre, Advocate for the Petitioner.
Mr. S. W. Munde, Standing Counsel for Respondent No.1.

...

CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.

Reserved on	**:**	**11th OCTOBER, 2024.**
Pronounced On	**:**	**24th OCTOBER, 2024.**

JUDGMENT (Per S. G. Chapalgaonkar, J):-

1. The petitioner has approached this Court under Article 226 of the Constitution of India with following prayer:-

> *"B. By issuing a writ of mandamus, orders, directions or any other appropriate writ in like nature, clause 8(2) AND clause © under the caption of "**Note**" of the advertisement No.7 of 2024-2025, dated 28.08.2024; Recruitment of Specialist Cadre Officers-2024-2025 issued by respondent No.2 may kindly be quashed and set aside.*

2. The petitioner intends to participate in selection process initiated under advertisement no.7 of 2024-2025 dated 28.08.2024 by IDBI Bank, Mumbai and seeks to challenge clause no.8(2) of the

advertisement as well as clause (c) under caption of 'Note' of the advertisement.

3. The petitioner contents that he worked as Assistant Manager with Maharashtra Gramin Bank since 01.12.20211 till 26.04.2024 and earned experience of 12 years, 4 months and 26 days in the banking sector. Lastly, he was subjected to departmental action on trifle issues. Consequently, Board of Directors appointed Enquiry Officer and finally he was subjected to punishment of removal from service without disqualification for future employment. However, according to the petitioner clauses incorporated in the subject advertisement dated 28.08.2024 issued by respondent no.2 debars him from participation in the selection process owing to his removal from service. According to the petitioner, he made representation to the IDBI Bank to delete aforesaid clauses or permit him to participate in the selection process ignoring aforesaid clauses. However, there is no response from respondent no.2.

4. Clause No.8(2) of the advertisement dated 28.08.2024 reads thus:

*"8. **<u>Other Eligibility criteria:</u>***
8.2 Candidature of candidates against whom there is/are adverse report regarding character, antecedents, moral turpitude etc. is also liable to be rejected at any stage of the recruitment process"

5. The petitioner also impugns stipulations under caption 'Note' of the said advertisement, which states as under:

"Candidature of the candidates who were not selected/not joined/joined in similar selection process during last two years of Recruitment process shall not be considered."

6. Heard Mr. Thombre, learned Advocate appearing for the petitioner and Mr. Munde, learned Advocate appearing for respondent no.1.

7. The petitioner seeks Writ of Mandamus to delete clauses in the advertisement published by respondent no.2-IDBI Bank, Mumbai, so that his candidature for selection to the post of Assistant General Manager (Grade-C) and Manager (Grade-B) can be facilitated. At this stage, we have specifically called upon Mr. Thombre to satisfy us as to the maintainability of the Writ Petition against IDBI Bank. Mr. Thombre endeavours to contend that IDBI Bank can be regarded as undertaking of Government of India since, majority of shares are still hold by Government undertaking i.e. Life Insurance Corporation. Further there is vigilance control over IDBI Limited by Central Vigilance Commission. According to him, since Life Insurance Corporation could be defined as State under Article 12 of the Constitution of India, by necessary implication IDBI Limited whose 51% share capital is with Life Insurance Corporation, shall also be regarded as State within the meaning of Article 12 of the Constitution of India. In support of his contentions he relies upon various judgments, enlisted as under:

1. *N. B. Shukva Vs. Bank of Baroda and ors (Manu/MH/0143/1978).*
2. *Sukhdev Ratilal Patel Vs. Chairman, Bank of Baroda and ors. (MANU/GJ/0051/1976)*
3. *Sukhdev Singh and Ors. Vs. Bhagat Ram and Ors. (MANU/SC/0667/1975)*
4. *Ramana Dayaram Shetty Vs. International Airport Authority of India (1979 DGLS (SC) 280)*
5. *Board of Control for cricket Vs. Cricket Association of Bihar and Ors. (MANU/SC/0781/2016)*
6. *ABL International Ltd and another Vs. Export Credit Guarantee Corporation of India Ltd. and others (Scc (3) 2004)*

7. *Shri. Vallabh Glass works Ltd. and another Vs. Union of India and others. (SCC (3) (1984) (362)*
8. *B. S. Yadav Vs. Chief Manager, Central Bank of India (1987 DGLS(SC) 478)*
9. *P.V. Nayak VS. Syndicate Bank and another. (Karnataka High Court)*
10. *Bank of India and ors Vs. O.P. Swaranakar and Ors. (MANU/SC/1179/2002)*
11. *Metro Exporters P. Ltd and anr. Vs. State Bank of India and Ors.(AIR 2014 SC 3206)*
12. *Ajay Hasia and Ors. Vs. Khalid Mujib Sehravard and Ors. (MANU/SC/0498/1980)*

8. We have considered submissions advanced by Mr. Thombre, learned Advocate appearing for the petitioner and also gone through the judgments cited by him. There cannot be dispute over proposition of law espoused in enlisted judgments. However, the issue raised in this petition is set at rest by the Supreme Court of India in case of ***Mrinmayee Rohit Umrotkar Vs. Union of India and Others***[1]. The issue involved in that case was pertaining to admission of the petitioner to medical course. She passed her HSC examination from State of Telangana, since her father was employee of IDBI Bank Limited and posted in Telangana at the relevant time. Thereafter, he was transferred to Maharashtra. However, on the basis of regulations governing admission to medical course in the State of Maharashtra, she was held ineligible for admission on the ground that her father was not employee of Nationalized Bank. While deciding the controversy, the Supreme Court of India dealt the issue as to whether IDBI Bank can be regarded as undertaking of Government of India. The issue has been finally concluded based on provisions contained in Section (5) of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 enacted by Parliament, thereby providing for

1 **2021 (4) Mh.L.J. 376.**

transfer and vesting of undertaking of the Bank in a Company to be formed and registered under Companies Act, 1956. The Supreme Court of India in paragraph nos.18 and 19 concluded the issue with following observations:

> *"18. In our considered view, section 5 of the 2003 Act is crucial and clinches the issue against the petitioner and for the respondents. Perusal of the 2003 Act clearly reveals cessation of the Development Bank as a body corporate which, by operation of the said Act, would stand transferred to and vested in the Company to be formed and registered under the 1956 Act. The Development Bank, from a body corporate, by reason of the 2003 Act (which also repealed the IDBI Act) attained an identity of a "Company" governed by the 1956 Act.*
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> *19. Though „undertaking" is a word of large import, it has to be read and understood in the context where it occurs. In the present context, a Government of India undertaking would mean an undertaking run by the Government of India, that is to say, it belongs to the Government of India. We regret to record, it has not been so shown that IDBI Limited belongs to the Government of India and is run by it. The transition of the Development Bank from a body corporate to a Company (IDBI Limited) without deep and pervasive administrative, financial and functional control of the Government of India over such Company having been shown gives us little reason to hold that after the enactment of the 2003 Act, IDBI Limited WPL-6704.2020.doc could still be regarded as an undertaking of the Government of India. We place on record that Shri Bapat has not referred to any authority which lays down the test for identifying an entity as an undertaking of the Government of India and, hence, we have proceeded to decide the issue formulated at the beginning of the judgment based on our reading of the IDBI Act and the 2003 Act and our understanding of the meaning of the word „undertaking" referred to above."*

9. In light of the aforesaid observations, it is clear that IDBI Bank cannot be regarded as public undertaking or State within the meaning of Article 12 of the Constitution of India. The petitioner's prayer to quash and set aside the clauses in the advertisement issued by IDBI Bank cannot be subject matter of Writ jurisdiction of this Court under Article 226 of the Constitution of India. We do

not find any force in the contentions of Mr. Thombre that Writ jurisdiction of this Court can be exercised for grant of reliefs as prayed against respondent no.2-Bank.

10. Hence, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/October-2024