IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2024

PRONOUNCED ON : 30.04.2024

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.Nos.20684 & 20812 of 2011

B.Prakash Rao ... Petitioner in both writ petitions

Vs.

1.The Karnataka Bank, rep.by
The Board of Directors,
(Appellate Authority)
Karnataka Bank Ltd.,
PB No.599, Mahaveera Circle,
Kankanady, Mangalore – 575 002.

2.The Chairman,
(Disciplinary Authority)
The Karnataka Bank Ltd.,
Mahaveera Circle,
Kankanady, Mangalore – 575 002.

3.The Deputy GM (HR & IR)
Karnataka Bank,
P.B.No.599, Mahaveera Circle,
Kankanady,
Mangalore – 575 002. ... Respondents in both writ petitions

COMMON PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the entire records of the third respondent in HO/HR&IR/D/O/102003/13859/2005-06 dated 16.11.2005 & HO/HR&IR/D/O/102003/14333/2005-06 dated 22.11.2005 respectively and quash the same.

In both writ petitions:

For Petitioner : Mr.B.Arvindh Srevatsa
For Respondents : Mr.Shushaanth
for M/s.T.S.Gopalan & Co.

COMMON ORDER

These Writ Petitions have been filed to call for the entire records of the third respondent in HO/HR&IR/D/O/102003/13859/2005-06, dated 16.11.2005 & HO/HR&IR/D/O/102003/14333/2005-06, dated 22.11.2005, respectively and quash the same.

2.The case of the petitioner is that he joined the service of the respondent Bank on 08.11.1971 as a Clerk and rose to the position of Chief Manager after completing 32 years of service. He had unblemished service throughout his career. Whileso, he was issued with a suspension order on 25.03.2003 with regard to the service irregularities at Chennai, where he was working. He submitted a detailed reply on 29.03.2003, followed by another letter dated 05.04.2003. After enquiry, the enquiry officer gave a finding that some of the charges have been proved against the petitioner. He was given a show cause notice and he submitted his reply to the findings of the enquiry officer. The second respondent, by letter dated 02.04.2005, ordered dismissal of the petitioner from service. Petitioner filed statutory appeal before the first respondent and that was rejected on 10.09.2005. Due to the harsh punishment, petitioner suffered heart attack. He was also a diabetic patient. He underwent surgery in Apollo Hospital. These factors deprived him of approaching this Court immediately. Petitioner was not paid pension and gratuity. Because of non payment of pension and gratuity, he was put to untold sufferings. As per section 4 of the Payment of Gratuity Act, 1972, the gratuity shall be forfeited on the termination of his employment only to the extent of damage or loss caused. Even as per the order of the respondents, there is no loss caused to the Bank. Petitioner granted loan to the customers only after obtaining legal opinion from the panel of Advocates and as per the Bank rules and also as per the opinion of Mr.E.D.Viswanath and Mr.B.Bhaskar Rao, the approved Valuers of the Bank. Therefore, withholding of the gratuity amount by the third respondent by proceedings dated 16.11.2005 is against law and thus the Writ Petition in W.P. No.20684 of 2011. Similarly, the third respondent forfeited the pension by proceedings dated 22.11.2005. This order is against law and therefore, W.P.No.20812 of 2011 is filed for quashing the aforesaid proceedings.

3.The case of the respondent is that the respondent is a private bank and it is not a State or instrumentality of the State or a public authority. No writ petition will lie against the respondent bank. This writ petition was filed six years after the imposition of the punishment. Therefore, on the ground of delay, latches and inaction, this petition is liable to be dismissed. Petitioner is covered by the Karnataka Bank Limited Employees' Pension Regulations and Clause 22 of the Pension Regulations. Clause 22 of the Pension Regulations provides that “in case of resignation, removal or dismissal of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

4.When the petitioner was working as Chief Manager at Chennai Thambu Chetty street branch during the period 12.05.1999 and 29.11.2002, he had committed various irregularities by recklessly accepting false title deeds of immovable properties offered as collateral security. He acted in excess of powers delegated to him and this resulted in loss of Rs. 312.61 lakhs. A disciplinary proceeding was initiated against him. The enquiry officer found majority of the charges proved against the petitioner. Therefore, the punishment of dismissal was imposed against the petitioner. The appeal was also dismissed on 30.08.2005. After issuing notice to him to show cause why his pensionary benefits should not be forfeited for causing a loss of Rs.312.61 lakhs, order was passed on 22.11.2005.

5.The respondent bank has framed the Karnataka Bank Employees Gratuity Fund which provides for better terms of gratuity than what is provided under the Payment of Gratuity Act. Section 4(6) of Payment of Gratuity Act states that the gratuity of an employee, whose services had been terminated for any act, wilful omission or any negligent causing any damage or loss or the destruction of the property belonging to the employer, shall be forfeited, to extent of the loss or damage caused. Petitioner caused loss to the tune of Rs.312.61 lakhs. A show cause notice was issued as to why the gratuity shall not be forfeited in terms of section 4(3) of the Act. After considering his representation, an order was passed on 16.11.2005 forfeiting the gratuity.

6.The learned counsel for the petitioner submitted that the petitioner had been serving in the Bank through most of his life only to serve the interest of the Bank. As already indicated, he sanctioned loans only on the basis of the legal opinion and the Valuers' report. Petitioner cannot be singled out for the alleged irregularities or illegality in granting the loans. Imposing of punishment of dismissal is a gross disproportionate to the alleged misconduct committed by him. Considering his length of service with the bank, petitioner should have been permitted to retire with other monetary and terminal benefits including gratuity. The denial of pensionary benefits and gratuity are additional punishments. Thus, he prayed for sanction of pensionary benefits and gratuity.

7.On maintainability, the learned counsel for the petitioner has produced the following judgments of the Hon'ble Supreme Court in ***(i) St.Mary's Education Society and another Vs. Rajendra Prasad Bhargava and others*** reported in ***(2023)4SCC 498.*** The relevant portion of the judgment is extracted hereunder:

> *75.1.An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or*

otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2.Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the *expansive definition under Article 12 or it was found that the action complained of has public law element.*

75.3.It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely 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 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.*

75.4.Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5.From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.

76.In view of the aforesaid discussion, we hold that the learned single Judge of the High Court was justified in taking the view that the original writ application filed by the respondent No.1 herein under Article 226 of the Constitution is not maintainable. The Appeal Court could be said to have committed an error in taking a contrary view.

(ii) Ashok Amritraj Vs. Reserve Bank of India and others reported in ***2012 (5) CTC 763.*** The relevant portion of the judgment is extracted hereunder:

24. With regard to the contention of the learned counsel for the respondent that writ petition is not maintainable in the above matter and only civil suit has to be filed, the Hon'ble Supreme Court in Hyderabad Commercialise vs. Indian Bank and others reported in AIR 1991 SC 247 held that bank is a instrumentality of the State and it must function *honestly to serve its customer. The question for consideration in that case was whether the writ petition is maintainable seeking mandamus to re-credit the amount which were un-authorisedly transferred from one account to another. Though the respondent bank therein raised the plea that the disputed question of fact were involved, it could be determined only by the civil court., The Hon'ble Supreme Court held basic facts regarding unauthorised transfer of the disputed amount from the account, as well as bank liability was admitted and there was no justification for the bank to file suit on the ground of disputed questions of fact. It is further observed that such functioning of a nationalised bank is detrimental to public interest and it follows the practice of transferring money of its customer to some other person account on oral authority, people will loose faith in the credibility of the bank. The facts of the case is similar to the case in hand. In that case the amount was transferred on oral instruction. Whereas in this case, the amount was paid to strangers based on the alleged petitioner's authorisation letter which was not verified with the petitioner and bogus FDRs which is admitted by the bank itself.*

....

However in this case, 1) it is admitted that the petitioner deposited the amount in fixed deposit and that because of the collusion of the bank officials, the amounts were withdrawn and encashed fraudulently by third parties, 2) The amount was not paid to the petitioner is admitted and that there was collusion between the bank officials and third parties to defraud the bank. 3) It is admitted that the bank officials negligently acted and paid the money to the third parties without verification. The aforesaid admissions are apparent in the complaint given to the CBI by the bank. The obligation of the bank is to pay the amount to the petitioner and the entitlement of the petitioner can not denied by the bank. In that event, there is no dispute of question of facts and there is no necessity for the petitioner to wait for conclusion of CBI investigation.

....

32. A nationalised bank is required to act fairly, justly and reasonably in the interest of public and public good. If any attempt is made to prevent this Court from rendering of justice, it cannot be tolerated by this Court. If such attempt is not nipped in the bud, it will have adverse effect on the functioning of the nationalised bank.

....

For pleading falsehood, suppressing material facts and attempting to mislead and prevent this Court from rendering justice properly, the second respondent bank which is expected to place the facts properly before this Court, should not be allowed to go scot free. Therefore, this court slaps an exemplary costs of Rs.50,000/- as a deterrent measure. Otherwise for every mistake committed by the bank officials, the depositors would be denied of their amounts, which will not be in the interest of public as found in this case. If this happens to a celebrity like the petitioner who is a world famous Tennis Player, what will be the fate of layman depositor?

8.In reply, the learned counsel for the respondents submitted that (i) the writ petition filed against the private bank is not maintainable. (ii)Petitioner was dismissed from service on 02.04.2005, but this petition was filed in the year 2011. (iii) There is a huge delay, latches and inaction on the part of the petitioner and therefore, he is not entitled for any relief. (iv) Petitioner has not challenged the punishment imposed against him and the punishment has become final. (v)When the punishment is not challenged, there is no way that he can claim pension and gratuity.

8.1.The learned counsel for the respondents produced the following judgments to show that the Writ Petition is not maintainable against private banks.

(i) S.Sundaram and others Vs. ICICI Bank Ltd., reported in ***2007 (3) LLN 509.*** The relevant portion of the judgment is extracted hereunder:

> *32.Therefore it is clear that the Pension Regulations are not statutory in character. While so in Federal Bank Ltd. Vs. Sagar Thoma and Other (2003) 10 SCC 733 it has been clearly held that writ cannot be issued where there is no non-compliance or violation of any statutory provision.*
>
> *33.In the instant case, there is no statutory obligation on the part of the respondent banker to pay the pension as demanded by the petitioners. The banker is paying the pension as per the rules and regulations. The petitioners are demanding at a different rate.*
>
> *34.There is no statutory obligation on the banker to pay the same as demanded by the petitioners.*

(ii) Federal Bank Ltd. Vs. Sagar Thomas and others reported in ***2003 (4) CTC 418.*** The relevant portion of the judgment is extracted hereunder:

> *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.

(iii) B.Anitha Vs.The General Manager – HRD and three others in ***W.P.No.25101 of 2017.*** The relevant portion of the order is extracted hereunder:

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 http://www.judis.nic.in 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.*

9.Considered the rival submissions and perused the records.

10.W.P.No.20684 of 2011 is filed against the forfeiture of gratuity and W.P.No.20812 of 2011 is filed against the forfeiture of pension. It is not in dispute that petitioner was dismissed from service on proof of the charges. Petitioner has not challenged the dismissal from service and it has attained finality. The respondent resisted the Writ Petition mainly on the grounds that (i) writ will not lie against private bank.(ii) there is delay, latches and in action on the part of the petitioner in approaching the Court after his dismissal in 2005. When a specific plea is taken that the Writ Petition is not maintainable against the private bank, it is necessary to consider the judgments relied by the counsel appearing for the parties.

11.Reading of the judgments produced by the learned counsel for the respondents shows that the Writ Petition against the private bank is not maintainable. In a private dispute, especially, in disputes relating to contract of service, even in the judgment relied by the learned counsel for the petitioner in ***St.Mary's Education Society and another Vs. Rajendra Prasad Bhargava and others*** reported in ***(2023)4SCC 498*** when a question arose as to whether the writ is maintainable against private unaided minority institutions, it was observed that the Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. The employees would not have right to invoke the powers of the High Court under Article 226 of Constitution of India in respect of the matter relating to the service where they are not governed or controlled by the statutory provisions.

12.The analysis and understanding of the judgment aforesaid makes it clear that unless the public element is not involved in a dispute or if the dispute was essentially of a private character, a Writ Petition under Article 226 cannot be filed. Thus, this Court finds substance in the submission of the learned counsel for the respondents and the Writ Petition filed against the 1st respondent is not maintainable under law. Therefore, this Court is of the view that the Writ Petition is liable to be dismissed.

13.That apart, petitioner had not challenged the order of dismissal passed against him and that has become final. When the order of dismissal is not challenged, it is not open to the petitioner to seek pension. In so far as the forfeiture of gratuity, it is submitted by the learned counsel for the respondents that the petitioner caused loss to the bank to the tune of Rs. 312.61 lakhs. As per Section 4(6) of The Payment of Gratuity Act, 1972, if an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

14.For better understanding, the relevant provision is extracted hereunder.

> ***4. Payment of gratuity***.*-(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-*
> *(a)on his superannuation, or*
> *(b)on his retirement or resignation, or*
> *(c)on his death or disablement due to accident or disease:Provided that the completion of continuous service of five years shall not be*

necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

....

(6) Notwithstanding anything contained in sub-section (1),-

(a)the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

This Section makes it abundantly clear that if an employer causes damage or loss to the employer, the gratuity shall be forfeited to the extent of damage or loss.

15.Here in this case, it is claimed that the petitioner caused loss to the tune of Rs. 312.61 lakhs to the bank, whereas the gratuity entitled to him is only Rs.3,50,000/-. Therefore, forfeiture of gratuity is in accordance with law and cannot be challenged now. Petitioner has not immediately approached the Court for the relief, but approached the Court with a delay of six years. Therefore, this Court finds that there is no merits in these Writ Petitions and thus, the Writ Petitions are liable to be dismissed on the ground of maintainability and dismissed on the ground that it is not maintainable and on the grounds of delay and latches and on merits as well.

16.In the result, these Writ Petitions stand dismissed. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition, if any, is also closed.

sli **30.04.2024**
Internet:Yes
Index:Yes/No
Speaking/Non speaking order
NCC: Yes/No

To:
1.The Karnataka Bank, rep.by

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G.CHANDRASEKHARAN, J.
sli

Pre-delivery Order in
W.P.Nos.20684 & 20812 of 2011

30.04.2024