IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.20819 of 2018

K.Subramaniam ..Petitioner

vs.

1.The General Manager cum
Appellate Authority,
Karur Vysya Bank Ltd.,
Human Resources Department,
Central Office, Karur.

2.The Assistant General Manager cum
Disciplinary Authority,
Karur Vysya Bank Ltd.,
Human Resources Department,
Central Office, Karur. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Appeal order dated 31.07.2017 passed by the first respondent confirming the final order of the second respondent dated 30.03.2017, quash the same and consequently, direct the respondents to reinstate the petitioner in service.

For Petitioner : Mr.D.R.Arun Kumar

For Respondents : Mr.J.Jayashankar for
M/s.T.S.Gopalan & Co

ORDER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records relating to the impugned Appeal order dated 31.07.2017 passed by the first respondent confirming the final order of the second respondent dated 30.03.2017, quash the same and consequently, direct the respondents to reinstate the petitioner in service.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondents and I have carefully perused the entire material available on record.

3.The learned counsel for the respondents has raised a preliminary objection with regard to the maintainability of the Writ Petition as the respondent Bank is a private Bank and as such, it is not amenable to the Writ jurisdiction.

4.Admittedly, the petitioner is an employee of the respondent Bank and he was dismissed from service by the respondents vide proceedings dated 30.03.2017, which was confirmed by the Appellate authority by order dated 31.07.2017.

5. The Hon'ble Apex Court and this Court, time and again, declared that the Writ Petition by an employee working in a Private Bank, challenging the orders passed against him/her, is not maintainable.

6. Considering the similar issue, this Court by order dated 14.03.2004 dismissed a batch of Writ Petitions in WP.No.7779 of 2017 etc., holding that the Writ Petition is not maintainable against the Private bank, which is not performing public duty or public function. The relevant paragraphs of the said order are extracted hereunder:

> *"16. Admittedly, the third respondent Bank is a private Bank, it cannot be treated as a scheduled Bank carrying on any statutory or public duty. In the present case, the issue involved is with regard to claiming pension to the petitioners who retired from service under Voluntarily Retirement Scheme, prior to formulation of the pension scheme. Now the question is whether the writ petitions are maintainable against a private Bank and writ can be issued against the private Bank which has no statutory or any public duty imposed by statute.*

17. The same question arises for consideration before the Hon'ble Apex Court and this Court on several occasions. The finding of the Division Bench of this Court in ICICI Bank Ltd., is very apt to the present cases, wherein, it is held that the appellant Bank of Madura Ltd., is a private Company, carrying on private banking business and not carrying on any statutory or public duty, no "Writ Petition" under Article 226 of the Constitution of India is maintainable against the appellant~Bank of Madura Ltd. Merely because the Bank has made provisions to grant "pension" on VRS, under the relevant Pension Scheme, the same cannot be a ground to hold that the Bank is performing a public duty or public function. The ratio laid down as stated above is squarely applicable to the present cases. As such, in our considered view, these Writ Petitions are not maintainable and this Court cannot issue any writ against the third respondent.

7. Further, a Division Bench of this Court also in the case of "***ICICI Bank Limited vs. Lakshmi Narayanan [2009 (1) CTC 22]***, has categorically held as follows:

"16. Similar question relating to maintainable of a

"Writ" under Article 226 of the Constitution of India, was considered by the Supreme Court in Federal Bank Ltd. Vs. Sagar Thomas and Others, . In the said case, the Supreme Court observed that a Writ Petition under Article 226 of the Constitution of India may be maintained against a private body discharging public duty or positive obligation of public nature. Similar argument advanced on behalf of an employee that the Federal Bank performs public duty, in the light of the control of the Reserve Bank of India over the Banking industries, was accepted by the High Court. However, the Supreme Court, on appeal preferred by the Federal Bank Ltd., reversed such finding with the following observation:

> *18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.*

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may *arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to."*

32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided u/s 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring *authority.*

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 a 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 put 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. The 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."

8. In the present case also, the petitioner is an employee of the

respondent bank, viz., Karur Vysya Bank, which is a private Bank and he challenged the dismissal order of the respondent Bank. Considering the ratio laid down in the judgments cited supra, which are squarely applicable to the present case, in my considered view, this Writ Petition is not maintainable and this Court cannot issue any *writ* against the respondents/Karur Vysya Bank. Accordingly, the Writ Petition is liable to be dismissed.

9. In the result, the Writ Petition is dismissed as not maintainable. However, considering the request of the learned counsel for the petitioner, liberty is granted to the petitioner to approach the appropriate forum against the dismissal order, if he is so advised.

No costs.

18.11.2024

Index : Yes/No
Speaking order:Yes/No
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BATTU DEVANAND, J

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To

1.The General Manager cum
Appellate Authority,
Karur Vysya Bank Ltd.,
Human Resources Department,
Central Office, Karur.

2.The Assistant General Manager cum
Disciplinary Authority,
Karur Vysya Bank Ltd.,
Human Resources Department,
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