IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	2/1/2024
Delivered on	31/1/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.38804 of 2015

V.Karthikesan ... Petitioner

Vs

1. ICICI Bank Limited
   rep. By its The Managing Director &
   Executive Officer
   Corporate Office, ICICI Towers
   Ambattur Industrial Estate
   Ambattur.

2. The Regional Manager
   ICICI Bank Limited
   7/A Reynolds Road, Cantonment
   Trichy 1. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus directing the respondent Bank to accord the pension benefits to the petitioner retired from service under the Voluntary Retirement Scheme given on 9/7/2012 with effect from 3 months thereafter and accord the petitioner the benefit from the said date together with arrears of pension with interest.

For petitioner ... Mr.V.Prakash
Sr.Advocate
for Mr.K.Krishnamoorthy

For respondents ... Mr.S.Shivathanu Mohan
for Mr.S.Ramasubramaniam & Associates

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O R D E R

This writ petition is filed seeking mandamus to direct the respondents to accord educational benefits to the petitioner who retired from service under Voluntary Retirement Scheme 2012 along with other consequential benefits.

2. The facts in brief as per the affidavit enclosed in this writ petition are that the petitioner joined the service of Bank of Madura as Clerk on 13/7/1981. Bank of Madura was amalgamated with ICICI Bank Limited by the Scheme of amalgamation approved by Reserve Bank of India on 26/2/2001. As per the said scheme, all the employees of Bank of Madura stood transferred to the service of ICICI Bank Limited however, all the service conditions of the employees of Bank of Madura are protected.

3. After completion of 31 years of service, during the year 1996, the petitioner, had applied for voluntary retirement, at the age of 56 years, on account of health reasons. The petitioner underwent bye pass surgery and that the respondent Bank relieved him from service with effect from 2/8/2012. The petitioner had applied for pension on 1/11/2012 but the same was returned on 15/2/2013 stating that the petitioner is not entitled for the pension scheme.

4. The respondent Bank has settled gratuity of the petitioner on 5/9/2012. The petitioner got issued a notice through Advocate on the respondent Bank dated 26/11/2013 seeking pension under the Employees Pension Regulations. Reply was given on 30/1/2014 stating that the petitioner has resigned from service, thereby, not entitled for pension and that the petitioner has not given three months notice making himself eligible for pension. It is mentioned in the affidavit enclosed to the writ petition that the respondent Bank has not acted fairly and deprived the pension and that the respondent Bank is a private Bank has a public duty which has got a statutory duty to accord the petitioner benefits of pension under ICICI Bank Employees Pension Scheme 1995.

5. The respondent has filed a counter affidavit wherein it is stated that the Early Retirement Option was in 2003 was in operation from July 1, 2003 to July 31, 2003 and thereafter, it was closed. The petitioner had not submitted a letter seeking to opt for the said Early Retirement Option instead submitted his resignation on 19/7/2012 and made an attempt to get the benefits of ERO 2003, which was closed in July 2003 itself. The request for opting for ERO 2003 post the expiry of the same does not hold any ground and not applicable to the petitioner.

6. Heard Mr.V.Prakash, learned Senior Advocate for the petitioner and Mr.S.Shivathanu Mohan, learned counsel for the respondents.

7. Mr.V.Prakash, learned Senior Counsel for the petitioner submitted that the petitioner has filed his application on 19/7/2012 seeking permission to retire from service and requested the respondent Bank to relieve him at the earliest. However, the respondent Bank has not considered the same and informed the petitioner that the submission of application has to be made through on line. However. there was no provision for Voluntary Retirement and there was no column for

exercising the provision for Voluntary Retirement through on line thereby the petitioner was forced to complete the form on-line as if he has submitted the resignation.

8. It is submitted by the learned counsel for the petitioner that when the petitioner has put more than 30 years of service, which is four years less than the retirement, when he has no other option in on line, except to submit the resignation instead of Voluntary Retirement, when the petitioner was fully aware of the fact that he will not get any pension in case if he resigns from the job, and that he will get the pensionary benefits only if he retires voluntarily. The letter submitted by the petitioner to the respondent Bank on 2/8/2012 has to be considered not as a resignation but as a Voluntary Retirement as mentioned in the letter dated 19/7/2012.

9. Learned counsel appearing for the respondents on the other hand submitted that the petitioner though submitted an application on 19/7/2012 seeking Voluntary Retirement, the said application could not be considered as the petitioner intended to retire from service under Early Retirement Option 2003, which was in force only for the period of one

month and during the said period, the petitioner has not applied for voluntary retirement.

10. It is submitted further that the petitioner has submitted an application on 2/8/2012 specifically mentioning that he has been resigning from his position in ICICI Bank Limited, and accordingly, proceedings were issued during March 2013 and the petitioner was relieved from service with effect from 2nd August 2012 and therefore, since the petitioner has submitted the resignation, he is not entitled for pensionary benefits and he is entitled for gratuity which was already paid.

11. Considering the rival contentions, this Court is required to consider the letter submitted by the petitioner to the respondent Bank on 19/7/2021 and also on line application submitted on 2/8/2012 and to interpret them as to whether basing on those two letters, the petitioner has either resigned from service or has taken Voluntary Retirement.

12. As per the documents filed by the respondents, Scheme of Early Retirement Option 2003 envisages that the employees who opt for the

Scheme, required to make an application in the prescribed form on or before 31st July 2003, Full and final payment under the Scheme will be made on or before 8th August 2003. According to the respondents, the petitioner has not applied for Early Retirement Option, 2003, during the relevant time i.e., from 1/7/2003 to 31/7/2003 and that the respondents have not extended the said scheme to any further time. Initially, the petitioner has filed an application for Voluntary Retirement on 19/7/2012 under Early Retirement Option, 2003. On the date of filing of Application by the petitioner on 19/7/2012, Early Retirement Option 2003 was not in force and it was closed on 31/7/2003 itself. Therefore, the petitioner cannot contend that he has submitted an application in the year 2012 for Voluntary Retirement under the scheme of Early Retirement Option 2003 which was closed in July 2003 itself.

13. Paragraph 7 of the affidavit filed in support of the writ petition, reads as under:-

> "It is submitted that therefore, the respondent Bank treating my Early Retirement as if it is a case of resignation and as if I did

not give 3 months notice and relying on regulation 22 of my service regulations to say my past service of 31 years is forfeited is both unfair and illegal. To say that I did not give 3 months notice so as to fall under Pension Regulation 29 is also not correct for the reason that in my letter of Voluntary Retirement Scheme on 19/7/2012, I referred to the pension scheme and opted for early retirement under the pension scheme and that was on 19/7/2012 and my sentence requesting to relieve me at the earliest has to be construed as per the retirement provision under the 1995 pension regulation scheme, meaning thereby earliest date after 3 months. Therefor, the respondent Bank has not acted fairly with regard to me and the deprivation of my pension that I am entitled to by virtue of my option for pension scheme during 1996 and the same is in violation of my fundamental right under Article 21 of the Constitution of India."

14. Since the respondents have taken the defence that the petitioner did not give three months notice, as per Regulation 22 of Service Regulations, the petitioner has taken the plea that in the letter dated 19/7/2012, for Voluntary Retirement the petitioner though has referred the Pension Scheme and opted for Early Retirement Option since he has requested for early relieving, same has to be construed, as the letter of giving three months notice, as per the retirement provision under 1995 Pension Regulation Scheme.

15. The respondent has filed Bank of Madura Employees Pension Regulations. For ready reference, Regulation 29 of the said Pension Regulation is extracted hereunder.

'Pension on Voluntary Retirement -

(i). On or after the 1st day of November 1993 at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the Appointing Authority retire from service;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year;

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or Institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement.

2. The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the Appointing Authority;

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the due to expiry of the said period.

16. Basing on the above Regulations, it has been vehemently submitted by Mr.V.Prakash, learned Senior Counsel that letter dated 19/7/2012 has to be considered as notice. Under the Pension Regulations, the petitioner is expected to file an application for voluntary retirement by giving not less than 3 months of notice in writing. It is also the submission of the learned Senior counsel that the respondent Bank is expected to reject the application within three months and in case if the said application has not been rejected within three months, it is deemed that the permission for retirement shall become effective. Therefore, according to the learned counsel for the petitioner, since the application

dated 19/7/2012 has not been rejected by the respondent Bank, it is deemed that the Voluntary Retirement came into effect.

17. The submissions of the learned counsel for the petitioner are not convincing. On a careful perusal of the letter dated 19/7/2012, it is specifically mentioned that the petitioner is seeking permission to retire from service, under the Scheme of Early Retirement Option, 2003. However, the petitioner wanted this Court to accept the petitioner's contention that the letter dated 19/7/012 has to be considered as Voluntary Retirement under Section 29 of Bank of Madura Employees Pension Regulations. If at all the intention of the petitioner is to exercise the option under Regulation 29 of the Pension Regulations, the petitioner should have mentioned in the application dated 19/7/2012 in clear terms that he intending to retire under Pension Regulations.

18. Further, under Regulation 29 of the Pension Regulations, the petitioner has to give a notice of not less than three months in writing to the appointing authority that he would retire from service. In the letter, dated 19/7/2012, the petitioner has requested the respondents to relieve him at the earliest. Even if the letter dated 19/7/2012, is interpreted to

the effect that it will come into force only after three months, still there is a problem. If at all the interpretation of the learned counsel for the petitioner is accepted, Voluntary Retirement of the petitioner, basing on the letter dated 19/7/2012, and as per Regulation 29 of the Pension Regulation, would come into effect only three months after 19/7/2012, which means it will come into effect from 19/10/2012. The petitioner was relieved from service even according to the petitioner with effect from 2/8/2012. Therefore, if at all the petitioner has retired voluntarily, under Regulation 29 of the Pension Regulations, he should have been relieved three months after 19/7/2012 but he was relieved on 2/8/2012, i.e., within three months. Therefore, the letter dated 19/7/2012 cannot be construed as the letter of Voluntary Retirement under Regulation 9 of Pension Regulations.

19. Now let me consider the contention of the respondents that the petitioner has not taken Voluntary Retirement but has submitted the resignation. It is the case of the petitioner that he filed an application dated 19/7/2012 physically. However, he was informed that in order to consider the application, petitioner has to submit on-line application and in on line application form, there was no provision for Voluntary

Retirement, thereby, he has to opt for resignation. Therefore, he was forced to opt resignation and hence the resignation option exercised by the petitioner by way of on line application has to be considered as Voluntary Retirement.

20. The respondent has filed screen shot of on-line application submitted by the petitioner for alleged Voluntary Retirement. On going through this, it is clear that the petitioner has submitted on line application on 8/2/2012 wherein it is mentioned as "please accept this application as a formal notification of resignation from my position in ICICI Bank. You are requested to kindly accept the same and notify me my last working date. Thanks and regards".

21. It is the case of the petitioner that in on line application form, there is no provision for voluntary retirement. Though there was no provision for selection of voluntary retirement i.e., on line application, but there was a provision for typing by the petitioner at relevant column and the petitioner could have typed in the said relevant column of resignation letter that he has not been submitting the resignation and he has only submitting Voluntary Retirement application and it is for the

respondent Department to accept or not to accept. Therefore, when there is a provision in on line application to mention that he is taking Voluntary Retirement, the petitioner cannot contend that there was no option for him to inform the Management that he was exercising the option of Voluntary Retirement, thereby, his application has to be considered as Voluntary Retirement and not as resignation.

22. Even otherwise, if at all there was no option for the petitioner to send the on line application for Voluntary Retirement and if he required to submit the application only for resignation, the petitioner should have refrained from filing any such application at the first place. He should have continued to work and if at all his health condition does not permit. He should have gone on medical leave and should have entered into correspondence with the respondent Bank that he is unable to submit on line application for voluntary retirement on account of software problem and he should have requested for Voluntary Retirement specifically under the Pension Regulations. But he did not do so.

23. Another issue raised by the respondent is that writ petition will not at all lie against the respondent which is the Bank. According to the petitioner though the respondent is a private Bank it does public function on banking business on par with Nationalised Banks and as per 1995 Pension Regulation of the respondent Bank. The respondent Bank has been providing pensionary benefits to its employees. It is also submitted that respondent Bank has to implement the Pension Scheme fairly in accordance with the Regulations as a public duty, which is akin to the statutory duty and thereby writ petition will lie even against the private Bank.

24. Learned counsel for the respondent Bank has submitted a decision of this Court decided by the Division Bench in ICICI BANK LIMITED Vs. LAKSHMI NARAYANAN {2009 (1) CTC 22}, wherein it is held that

> "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.

17. In the present case also, as 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. Hence, the first question is answered in the negative against the respondent-Writ Petitioner and

in favour of the appellant-Bank of Madura Ltd. (now ICICI Bank Ltd.)”

25. In the case on hand, the petitioner was working in Madura Bank which was ultimately mortgaged by ICICI Bank and the issue involved in the case on hand also a case of grant of pension to the petitioner and therefore, on this ground, writ petition is not maintainable against the private Bank.

26. The respondent has submitted another authority of this Court in ***THE MANANGING DIRECTOR AND EXECUTIVE OFFICER, ICICI BANK LTD AND ORS Vs. ADDITIONAL SECRETARY MINISTRY OF FINANCE AND COMPANY AFFAIRS AND ORS (W.A.Nos.1435 to 1442 of 2008),*** wherein at paragraph 9, it has been held thus:-

> “In this background, we are of the view that the decision in ICICI Bank Ltd., being binding on learned Single Judge hearing a writ petition, judicial discipline requires that she either followed

> it or referred the matter to a Larger Bench. Sitting single, learned Single Judge could not have taken a different view on the ground that the decision was based on facts of one retired employee and in the present case number of retired employees are concerned."

27. In the case referred above, originally, the learned Single Judge has taken a view that writ petition against ICICI Bank is maintainable. However, the same was reversed by the Hon'ble Division Bench in W.A.Nos.1435 to 1442 of 2008.

28. The learned counsel appearing for the petitioner has filed a decision of the Hon'ble Apex Court in ***V.KANNAPPAN AND OTHERS Vs. UNION OF INDIA THROUGH ADDITIONAL SECRETARY, MINISTRY OF FINANCE AND COMPANY AFFAIRS (2015) 2 SUPREME COURT CASES 623.*** In the case referred, though issue involved in a case of grant of pension Scheme on ICICI Bank, the issue as to whether the writ petition will lie against the private Bank i.e., ICICI Bank was not fell for consideration before the Hon'ble Supreme Court

and it has not been answered. The said Writ Appeal was decided on merits and appeals are accordingly dismissed. Therefore, this authority of the Apex Court will not help the petitioner. The order of the Division Bench of this Court referred above are not reversed by the Appellate Courts.

29. Considering the same, since the issue involved in this case also pertains to pensionary benefits of the petitioner, this Court is of the opinion that writ petition against the private Bank will not lie.

30. Considering the discussion made above, this Court is of the opinion that the application filed by the petitioner dated 19/7/2012 cannot be considered as an application for Voluntary Retirement under Bank of Madura Employees Pension Regulations and that it can only be interpreted as an application submitted consciously for resignation from the service.

31. In view of the discussion made above, the petitioner has failed to convince this Court and therefore, writ petition fails.

32. In the result, this writ petition is dismissed. No costs.

31/1/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
W.P.No.38804 of 2015

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