IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2024

PRONOUNCED ON : 12.11.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.17797 of 2018

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165. Kamath B J
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167. Shashi Agarwal
168. Abhay Kumar Das
169. Ashwani Kumar Vyas
170. Ashim Kumar Chowdhury
171. Suman Nath Sharma
172. Mahesh Chander Tiwari
173. Lakshanan L
174. Mr. Ramanathan M
175. Mr. Lakshmanan T ...

Petitioners

Vs.

1. The Management of ICICI Bank Ltd.
Rep. by its Managing Director,
ICICI Bank Towers,
Ambattur Estate, Chennai.

2. Indian Bank Association
Rep. by its Chairman
World Trade Centre, 6th Floor, Centre 1 Building,
Cuffe parade, Mumbai – 400 005.

3. ICICI Bank Limited Employees' Pension Fund
Rep. by its Board of Trustees
ICICI Bank Towers, ICICI Towers, Industrial Towers,
Ambattur Estate, Chennai-600 058. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to extend for the petitioners an opportunity to exercise option notionally with effect from 1.8.2003 or any subsequent dates based on the date of cession of service, in any event as per the 9th bipartite settlement.

For Petitioner : Mr.V.Prakash, Senior Counsel for Mr.K.Krishnamurthy

For Respondents

| | | |
|---|---|---|
| for R1 | : | Mr.A.L.Somayaji, Senior Counsel for Mr.V.Perumal |
| for R2 | : | No Appearance |
| for R3 | : | Mr.C.Chandrasekar |

**ORDER**

This writ petition is filed seeking mandamus to direct the respondents to extend the petitioners an opportunity to exercise option notionally with effect from 1.8.2003 or any subsequent dates based on the date of cession of service, in any event as per the 9th bipartite settlement.

2. The facts in brief in this writ petition are that the petitioners were originally joined their service at the Bank of Madura at various positions on different dates. The Bank of Madura was amalgamated with the 1st respondent Bank under the Scheme of amalgamation sanctioned by the Reserve Bank of India with effect from 10.03.2001. 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 were protected.

3. During 1995, the Banking industry had undergone a major change and the 3rd respondent negotiated with various trade unions of Banking Industry in respect of Pension Scheme and the 2nd respondent herein had entered into a settlement at the National Level with various bank unions for creating pension as a superannuation benefit. At that point of time, the employees at all India Level were not conversant with the pension scheme and the benefits that flow from that scheme and so the petitioners did not exercise option within 25.07.1995 or during the subsequently extended date i.e. 30.05.1996.

4. After the amalgamation of the erstwhile Bank of Madura with the 1st respondent bank, the 1st respondent bank had introduced Early Retirement Option Scheme on 17.06.2003 and as per the said ERO scheme eligible employees who opted and whose options were accepted by the Bank and retired before 31.07.2003 are entitled for pension. Most of the

employees of erstwhile Bank of Madura including majority of the petitioners herein had opted for Early Retirement Option and thus retired from service. Some of the petitioners had duly retired on attaining superannuation and a few had retired on VRS in the latter years.

5. Further, on 30.06.2003 certain amendments were introduced to the Pension Regulation including the Early Retirement of ICICI Bank of 2003 and making it effective from the next month i.e., following the month of retirement. Therefore option should have been called for by the 1st respondent Bank for opting the pension scheme, but it was not done by the 1st respondent Bank.

6. The main grievance of the petitioners is that as an amendment was carried out in the year 2003, the employees should have been given option at that time and opt for pension or atleast permitted to exercise option by the petitioner in 2003. Hence, the present writ petition.

7. It is the contention of the respondents that as per eBoM Employees' Pension Regulation 1995, employees joined on or after 1.11.1993 were automatically covered under pension scheme in lieu of CPF. However, employees who were already in the services of the Bank of Erstwhile Bank of Madura as on 31.10.1993 were required to exercise option to choose between CPF and Pension (in lieu of CPF) as both benefits were not available. It was made clear that to become eligible to receive pension benefit, an employee has to be a member of the Employees' Pension Fund trust and such membership can be obtained only by way of exercising option for pension within given time frame. Consequently, eBoM issued first staff circular on 25.01.1995 inviting pension option in lieu of CPF from all employees who were in the services of the Bank on 31.10.1993 and the time limit for exercising irrevocable option for pension in lieu of CPF got expired on 30.05.1996. Therefore, not exercising such option within the given time frame would mean that they are not interested in pension benefits and are comfortable to remain a CPF optees.

8. The respondent further submits that the contention and the

reason for not exercising pension option during the stipulated time frame is without any merits and the petitioners are not entitled to the relief sought in the present writ petition.

9. Further, the 1st and 2nd respondent is only an unregistered voluntary Association of Public and Private sector banks and it has no legal status, it was neither incorporated under Central laws nor State laws. Therefore, the present writ petition is not maintainable and filed without any locus standi and hence sought for dismissal on the ground of maintainability.

10. During the course of hearing, the learned Senior Counsel appearing for the first respondent Bank has raised a preliminary objection with respect to the maintainability of the Writ Petition stating that the first respondent/ICICI Bank Limited is a Private Bank and it is not amenable to the Writ Jurisdiction.

11. In contra, the learned counsel for the petitioners contended that the issue in this Writ Petition was already considered by the Apex Court and this Court and held that it is amenable to the Writ Jurisdiction.

To substantiate his arguments, he relied on the following judgments:

i) ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others vs. V.R.Rudani and Others*** reported in (1989) 2 Supreme Court Cases 691**.** The relevant portion of the said oder is extracted hereunder:

> *"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."*

ii) ***Federal Bank Ltd. vs. Sagar Thomas and Others*** reported in (2003) 10 Supreme Court Cases 733, wherein the Hon'ble Apex Court has observed as under:

> *"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."*

iii) ***Ramakrishna Mission and Another vs. Kago Kunya and Others*** reported in (2019) 16 Supreme Court Cases 303. The relevant portion of the said oder is extracted hereunder:

"*34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K K Saksena vs. International Commission on Irrigation and Drainage this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.*

*36. For the above reasons, we are of the view that the Division Bench of the High Court was not justified in coming to the conclusion that the appellants are amenable to the writ jurisdiction under Article 226 of the Constitution as an* *authority within the meaning of the Article.* "

12. The learned Senior Counsel for the first respondent in support of his contentions relied on the following judgments:

i) ***Rajkumar vs. State of M.P.*** reported in (2004) 12 Supreme Court Cases 77

ii) ***B. Anitha vs. General Manager-HRD*** reported in SCC Online Mad 25525

iii) ***S.Sundaram and others vs. ICICI Bank, Ltd. and another*** reported in 2007 (3) L.L.N.509

iv) ***Nadar Mahajana Sangam, Madurai vs. Reserve Bank of India and others*** reported in 2006(1) CTC 776

v) ***ICICI Bank Limited, Corporate Office, Chennai Unit, vs. Lakshminarayanan*** reported in 2009 (1) CTC 22

vi) ***Chanda Deepak Kochhar vs. ICICI Bank Limited and Another*** reported in (2020) SCC Online Bom 374

vii) ***Chanda Deepak Kochhar vs. ICICI Bank Limited and Another*** reported in (2021) 14 Supreme Court Cases 643

viii) ***R. Geethanjali an Others vs. Deputy General Manager, Disciplinary Authority, Karur Vysya Bank Limited*** reported in 2021 SCC OnLine Mad 9469

ix) ***U. Sukumar Shetty vs. Deputy Commissioner for Hindu Religious and Charitable Endowments*** reported in 2018 SCC OnLine SC 1273

x) ***A. Varadarajan vs. The Deputy Registrar, Co-operative Societies (Milk), Cuddalore and another*** reported in 1992-2-L.W.109

xi) ***R. V. Natarajan vs. Union of India and others*** in W.P.No.7779 of 2017 etc. batch, dated 14.03.2024

xii) ***V. Karthikesan vs. ICICI Bank Limited in*** W.P.No.38804 of 2015, dated 31.01.2024

xiii) ***S.Sundaram and 2 others vs. ICICI Bank Limited rep. by its Chairman and Managing Director and another*** in W.A.No.480 of 2007 dated 09.02.2009.

xiv) ***R.Anand Kumar vs. M/s.Dhanalakshmi Bank, Rep. by its Authorized Officer*** in W.P.No.4040 of 2018 dated 18.04.2018.

13. Having heard the respective counsels, this Court intends to decide

the issue of maintainability of this Writ Petition at the first instance and proceed further on merits, if this Court comes to the conclusion that this Writ Petition is maintainable.

14. This Court carefully perused the judgments relied on by the learned counsel for the petitioners. In the considered opinion of this Court, the said judgments are not applicable to the facts of the present case.

15. On perusal of the judgments relied on by the learned Senior counsel for the first respondent, the Apex and this Court time and again declared that the Writ Petition by an employee working in a Private Bank seeking payment of pension or for service issues is not maintainable.

16. In the judgment relied on by the learned Senior Counsel for the first respondent in ***ICICI Bank Limited vs. Lakshmi Narayanan [2009 (1) CTC 22]***, a Division Bench of this Court 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."*

17. All the other judgments relied on by the learned Senior Counsel for the first respondent also on the same lines.

18. In the present case also, the petitioners worked in the Bank of Madura Ltd., which was ultimately merged with the ICICI Bank Limited and the issue raised in this Writ Petition is also against the Private Bank and as such, the Writ Petition is not maintainable.

19. Admittedly, the first respondent/ICICI Bank Limited is a Private Bank and it cannot be treated as Scheduled Bank as it is not carrying on any statutory or public duties. 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."*

20. Considering the ratio laid down in the judgments relied on by learned Senior counsel for the first respondent, which are squarely applicable to the present case, in my considered view, this Writ Petition is not maintainable. This Court Court cannot issue any Writ against the first respondent/ICICI Bank Limited.

21. In view of the above, this Writ Petition is dismissed on the ground of maintainability without going into the merits of the case. No costs.

12.11.2024

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
pvs

To

1.The Managing Director,

The Management of ICICI Bank Ltd.

ICICI Bank Towers,

Ambattur Estate, Chennai.

2. The Chairman,

Indian Bank Association

World Trade Centre, 6th Floor, Centre 1 Building,

Cuffe parade, Mumbai – 400 005.

3.The Board of Trustees,

ICICI Bank Limited Employees' Pension Fund,

ICICI Bank Towers, ICICI Towers, Industrial Towers,

Ambattur Estate, Chennai-600 058.

**BATTU DEVANAND.J.,**
pvs

Pre-delivery order in

W.P.No.17797 of 2018

12.11.2024