



2024:DHC:1580



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 23.02.2024

+ W.P.(C) 1413/2024

BHUPENDRA DWIVEDI

..... Petitioner

versus

YES BANK LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Harsimran Kaur Rai, Mr. B.S. Rai,
Mr. Suresh Tripathi and Mr. Prem
Kumar, Advocates

For the Respondent :

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of India, seeking *inter alia* the following prayers :-

“a) To quash and set aside the impugned order dated 12.07.2023 passed by the Respondent Bank and issue a Writ of Certiorari or any other appropriate writ or order;

b) Appropriate writ or order or direction in the nature of mandamus directing the Respondent Bank to pay subsistence allowance during the pendency of this petition as interim relief to the petitioner;

c) Issue a Writ in the nature of Mandamus directing the Respondent Bank to release all consequential benefits, such as



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salary till the passing of a reasoned order, issuance of a clean relieving letter and service record.”

2. The case of the petitioner is that the petitioner was appointed as Senior Vice President and Regional Manager Product and Portfolio - Credit Cards in the respondent Bank that is the “Yes Bank Ltd.” at Mayapuri, New Delhi w.e.f. 28.09.2021.

3. It is the case of petitioner that one Mr. Puneet Lamba had joined the respondent-bank at the Mumbai Head Office as the petitioner’s Supervisor/Manager and subsequent thereto, the petitioner was subjected to continuous harassment in the hands of Mr. Lamba.

4. It is also the case of the petitioner that he was a whistle blower to the corrupt practices and had complained to the Executive Director of the respondent-bank about the *malafide* and illegal acts of the immediate Supervisor i.e., Mr. Lamba, who is alleged to have been working in collusion with the HR Department.

5. Apart from other allegations made against Mr. Puneet Lamba, the petitioner submits that he was harassed to such an extent that he had to escalate his grievance to the MD and the Board Members of the respondent-bank. In fact, it is alleged that the petitioner was forced to give his resignation. The petitioner submits that subsequently, on 12.07.2023, the petitioner’s laptop was taken into custody by the respondent-bank and *malafidely* and illegally, the resignation letter was uploaded through the laptop of the petitioner. To such action, the petitioner had sent multiple emails and requested the bank for revocation of his termination on the ground that the same was illegally obtained.



6. Despite writing emails, the respondent-bank did not respond. Aggrieved by the aforesaid action of the respondent-bank, the petitioner had made a complaint to the Ombudsman of the Reserve Bank of India, who had responded by the email dated 11.08.2023 asking the petitioner to approach the appropriate forum to seek remedies.

7. Petitioner also stated that within one hour of the email of the purported resignation letter, upon the petitioner's protest against that, the respondent-bank being frustrated on having no other alternative, issued a termination notice. It is also the case of the petitioner that the resignation and the termination do not go hand in hand.

8. On a query by this Court, as to how a petition under Article 226 of the Constitution of India can be maintained against a private entity, Ms. Harsimran Kaur, learned counsel for the petitioner submits that the bank is performing public functions, and as such, would be an instrumentality of the State or an authority, which is falling within the ambit of Article 12 of the Constitution of India. She submits that the bank plays a public role in the Finance Sector and hence, the nature of the work that is carried out by the bank, would fall within the terminology, if not of an instrumentality of the State, then of an authority performing public functions. On that basis, Ms. Kaur submits that the respondent would squarely be amenable to the jurisdiction of this Court under Article 226 of the Constitution of India, 1950.

9. Ms. Kaur also submits that while the petitioner was in service of the respondent-bank, the bank had undergone a huge financial loss and it was the Government, which had infused huge amount of funds to resurrect the bank.



10. Ms. Kaur also submits that it is trite that wherever there is a drastic civil consequence in administrative affairs, the principles of natural justice have to be complied with. In that, the incumbent ought to be provided an opportunity to show cause as to why no such action could be taken against him, however the same has also not been complied with by the respondent-bank.

11. On that basis, the present writ petition under Article 226 of the Constitution of India has been filed.

12. Ms. Kaur submits that despite best efforts, she was unable to place on record any judgment in her favour to substantiate her argument that the present petition is maintainable under Article 226 of the Constitution of India.

13. This Court has considered the facts arising in the present petition as also heard Ms. Kaur, learned counsel for the petitioner on the issue of maintainability.

14. The issue which needs consideration, in the present case, revolves around the fact as to whether the respondent-bank, which is a private entity, would fall within the ambit of the definition of “State” under Article 12 of the Constitution of India. Article 12 of the Constitution of India is extracted hereunder for clarity:-

“12. Definition.—In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

15. The primary document, which governs the terms and conditions of the service of the petitioner with the respondent-bank, has been



placed as Annexure P-2 at page 27 of the present petition.

16. A perusal of the terms and conditions shows that before that the same is a document arising out of a private contract between the parties. It also indicates that there is no statutory rule or regulation, which is applicable to the service conditions of the petitioner. The nature of the terms and conditions indicate that it is a pure private contract, having no statutory colour.

17. The terms of engagement as also the termination, including the resignation etc., also are enumerated therein. Nothing in the appointment letter indicates even to the remotest possibility that the same is governed by the Rules, Regulations or any Act of the Parliament.

18. That apart, the submission that the bank was in a financially poor condition on which the Government had infused funds, would also not come to the aid of the petitioner for the reason that the funds received by the Bank from the Government is of no concern, so far as the terms and conditions of service between the parties are concerned.

19. That apart, the judgments in respect of such Institutions are a galore. The latest judgment of the Supreme Court in ***St. Mary's Education Society and Another vs. Rajendra Prasad Bhargava and Ors*** reported in **2023 (4) SCC 498** would squarely cover the facts as obtaining in the present case. The relevant paragraphs are extracted hereunder :-

"37. This Court in K.K. Saksena v. International Commission on Irrigation & Drainage (2015) 4 SCC 670, after an exhaustive review of its earlier decisions on the subject, held as follows :



“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

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52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

(i) when the employee is a public servant working under the Union of India or State;

(ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and

(iii) when such an employee is “workmen” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and “status” to such an employment is attached. In the third category of cases, it



is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal.”

38. *The following decisions have been adverted to in K.K. Saxena:*

1. *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani (1989) 2 SCC 691:*

2. *G. Bassi Reddy v. International Crops Research Institute (2003) 4 SCC 225,*

3. *Praga Tools Corpn. v. C.A. Imanuel (1969) 1 SCC 585,*

4. *Federal Bank Ltd. v. Sagar Thomas (2003) 10 SCC 733.*

39. *This Court in Janet Jeyapaul v. SRM University (2015) 16 SCC 530, held that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy, not only under the ordinary law, but also by way of a writ petition under Article 226 of the Constitution. In Binny case [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] , this Court held that Article 226 of the Constitution is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in the discharge of public function.*

40. *Para 11 of the judgment in Binny [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] is reproduced below :*

“11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that



the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when it is being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”

(emphasis supplied)

41. This Court considered various of its other decisions to examine the question of public law remedy under Article 226 of the Constitution. This Court observed in Binny case as under:

“29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article



226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies.”

(emphasis supplied)

42. In the penultimate paragraph, this Court [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] ruled as under :

“32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not “State” within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.”

(emphasis supplied)

43. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there must be a public element in the action complained of.

44. A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the aims and objective of Appellant 1 herein are to impart education, which is a public function. However, the issue herein is with regard to the



termination of service of Respondent 1, which is basically a service contract. A body is said to be performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so."

20. That apart, the Supreme Court in ***Federal Bank Ltd vs. Sagar Thomas & Ors*** reported in (2003) 10 SCC 733 and even this Court in ***Subhojit Chatterjee vs. Union of India & Ors*** passed in W.P.(C) 483/2024 categorically held that it is not just the nature of the institution that alone would be the governing factor but also the fact that as to what is the governing terms of the employment itself, which would also be relevant to consider.

21. In view of the above and also keeping in view the aforesaid line of catena of judgments, this Court is of the considered opinion that the relation between the petitioner and the respondent-bank is one which is purely governed by the terms of contract, which is absolutely private in nature and have no public element at all in them.

22. In that view of the matter, this Court is of the considered opinion that the respondent Yes Bank is not a State or an instrumentality of the State or even an authority which would come within the ambit of Article 12 of the Constitution of India.

23. In view of the above, the petition is dismissed, without observing anything on merits, on the ground of maintainability.

24. The petitioner, even otherwise would be at liberty to take remedies in accordance with law, irrespective of the aforesaid decision.

TUSHAR RAO GEDELA, J

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