20.03.2025

Item : ML303
Court No. 23

Asraf, A.R.(Ct.)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Case No. **WPA 11052 of 2024**

KAMAL DEBNATH

....Writ Petitioner

VS.

UNION OF INDIA & ORS.

....Respondents

For the Writ Petitioner :

Mr. Sanjib Das

....Advocate

For the Respondents / State :

Mr. Sudipto Panda

Ms. Ananya Neogi

....Advocates

For the Respondent nos. 3 & 4 :

Mr. Baidurya Ghosal

Mr. Saikat Mukherjee

....Advocates

It appears that the name of the learned advocate representing the petitioner was inadvertently not recorded in the order dated 20th June, 2024. The said order should be read and meant as if the petitioner was represented by Mr. Sanjib Das, learned advocate appointed by the High Court Legal Services Committee.

Report in the form of an affidavit by respondent nos.3 and 4 and petitioner's exception thereto are taken on record.

The petitioner has prayed for a writ in the nature of mandamus commanding the Paschim Banga Gramin

Bank (hereinafter referred to as 'the respondent/bank') and its men, agents and subordinates to justify as to why the letter dated 8th September, 2023 should not be set aside and / or quashed.

The letter dated 8th September, 2023 is at page 45 of the writ petition wherefrom it appears that the same is a reply under the Right to Information Act, 2005 (for short, '2005 Act'). It has been clearly stated in the said letter that if the petitioner is dissatisfied with the reply given under the 2005 Act. In such a case the petitioner has to prefer an appeal before the appellate authority under the 2005 Act. If the matter rested at this stage, the petitioner could have been easily relegated to the appellate forum by disposing of the writ petition. The same, however, cannot be done as the petitioner has made further prayers directing the respondents to pay service benefits, fees and commission on and from 1st June, 2023 till actual realization in accordance with law and to reinstate the petitioner to his service in the post of "Bankmitra" and / or "Business Correspondent (BC)".

So far as the first prayer is concerned, the petitioner's remedy lies by preferring an appeal under the provisions of 2005 Act. So far as the remuneration and reinstatement as claimed by the petitioner are concerned, this Court is of the view that the petitioner cannot invoke the extraordinary jurisdiction under Article 226 of the Constitution of India for the said relief. The reason is simple. The respondent/bank is a rural bank constituted under the Regional Rural Banks Act, 1976. The respondent no.3, therefore, can be said to be an authority under Article 12 of the Constitution of India in view of the Government control as to its policy matters while the respondent is carrying banking business as a rural bank.

However, individual wrong or breach of mutual contract without having any public element as its integral part cannot be rectified through a petition under Article 226 of the Constitution of India. Whenever, Courts have intervened in their exercise of jurisdiction, either the service conditions were regulated by 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. In this regard, we may refer to the ratio laid down in the judgment reported in **(2023) 4 SCC 498 (St. Mary's Education Society & Anr. versus Rajendra Prasad Bhargava & Ors.).**

In the instant case, the service conditions of the petitioner were not regularized by any statutory provision. The petitioner was engaged as "Bankmitra" and/or "Business Correspondent (BC)" by an agreement dated 25th February, 2023. The relationship between the petitioner and the bank was described in clause 4 of the said agreement. It has been clarified under clause 4.3.1 that there is no relationship of employer or employee between the parties in any manner whatsoever. The petitioner's role was as a facilitator and not even to be an agent of the bank. The said agreement was terminable in nature. Clause 8 of the said agreement clearly says that such agreement shall be valid for a period of two years from the date of execution unless terminated earlier by either party by giving a prior written notice of 30 days without assigning any reasons or without any cost or compensation thereof. The agreement also speaks that the petitioner was not entitled to any salary but commission of 20 % on the target. The said agreement also provides for an alternative dispute resolution mechanism with a specific arbitration clause embodied therein.

After considering the averments made in the writ petition, it is clear that the petitioner is alleging breach of the agreement and, as such, has sought for reinstatement and alleged arrears and commission / remuneration. The dispute, therefore, clearly comes under the ratio laid down in **St. Mary's Education Society (supra)** as its individual wrong or breach of mutual contract and the contract is without having any public element as its integral part.

The maintainability of a writ petition against a body, public or private, fell for consideration in a very recent judgment reported in **2025 SCC OnLine SC 177 (S. Sobha vs. Muthoot Finance Ltd.)**. The writ petition also does not satisfy the tests laid down in the said judgment of **S. Sobha (supra)**. Even though, the respondent no.3 can be coined as an authority under Article 12 of the Constitution of India but going by the relationship as evident from the agreement between the parties, the writ petition is not maintainable.

The writ petition is accordingly **dismissed**.

However, dismissal of the writ petition will not disentitle the petitioner from claiming any relief as may be available to the petitioner in law before appropriate forum subject to its maintainability.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)