IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9259 OF 2021

1. Ashwini d/o Gopinath Jadhav,
Age: 28 years, Occu: Nil,
R/o: At Post Pal, Tq. Phulambri,
Dist. Aurangabad

2. Vishal s/o Vasudeo Date,
Age: 28 years, Occu: Nil,
R/o: Police Quarters, Type-II-D-002,
Tukum, Chandrapur,
Tq. & Dist. Chandrapur

3. Pravin s/o Ganpat Kutemate,
Age: 30 years, Occu: Nil,
R/o: Ganpati Ward No.11,
Near Water Tank, Gaurala,
Bhadrawati, Chandrapur,
Tq. & Dist. Chandrapur

4. Nitesh s/o Vasantrao Chinchghane,
Age: 30 years, Occu: Nil,
R/o: At Gangalwadi, Post Dongargaon,
Tq.: Mul, Dist. Chandrapur ….PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Co-operation, Marketing and
Textile Department, Mantralaya,
Mumbai-32

2. The Commissioner,
Co-operation and Registrar,
Co-operative Societies, Maharashtra,
New Central Building, B. J. Road,
Pune – 411 001

3. The Divisional Joint Registrar,
Co-operative Societies, Nasik Division,
Nasik – 422 0002

4. The District Deputy Registrar,
Co-operative Societies, Jalgaon,
Tq. & Dist. Jalgaon

5. The Jalgaon District Central Co-operative Bank Ltd.,
Having Head Office at 27, Ring Road,
Jalgaon, Tq. & Dist. Jalgaon,
Through its Managing Director ….RESPONDENTS

….

Mr Avishkar S. Shelke, Advocate for petitioners
Mr R. K. Ingole, A.G.P. for respondent Nos.1 to 4
Mr V. D. Salunke, Advocate for respondent No.5

CORAM : MANGESH S. PATIL
AND
PRAFULLA S. KHUBALKAR, JJ.

RESERVED ON : 9th January, 2025

PRONOUNCED ON : 8th April 2025

JUDGMENT (PER : PRAFULLA S. KHUBALKAR, J.)

1. Heard. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. Invoking writ jurisdiction of this Court, the petitioners have prayed for mandamus seeking direction to respondent No.5/Bank to allow them to join duties on the posts of Clerk (Support Staff) based

on the appointment orders dated 08/07/2020, and have also prayed for grant of consequential benefits including seniority. The petitioners' real grievance is against the decision of respondent No.5/Bank which has refused to join them on their respective posts.

3. The factual setup in which the controversy has arisen is stated in nutshell below :-

(a) Managing Director of Jalgaon District Central Co-operative Bank Ltd., Jalgaon-respondent No.5 published an advertisement on 01/08/2019 for recruitment of 220 posts of Clerk (Support Staff).

(b) The petitioners being qualified for the posts submitted their online applications.

(c) The online examination was held on 22/09/2019.

(d) Respondent No.5 published merit list of 695 candidates out of 2743 candidates and thereafter, 622 candidates were called for interview.

(e) The petitioners were called for interview and accordingly they appeared and were selected.

(f) Respondent No.5 issued appointment orders dated 08/07/2020 in favour of the petitioners by which they were appointed as Probationary Clerks (Support Staff). The appointment orders contained certain terms and conditions. E-mails of appointment orders were sent to the petitioners on 16/07/2020 and they were called upon to join the duties within 15 days from 20/07/2020.

(g) The petitioners did not join their duties within the time of 15 days, neither they complied with the terms of appointment order, including the deposit of Rs.50,000/- as a security deposit.

(h) Petitioner No.1 claims to have visited the office of respondent /Bank on 30/07/2020 and the petitioner Nos.2 to 4 claim to have visited the office of respondent/Bank on 31/07/2020, but they were not allowed to join the duties.

(i) The petitioners raised their grievance before the District Deputy Registrar, Cooperative Societies, Jalgaon (respondent No.4) by representations dated 05/08/2020.

(j) Respondent No.4 conducted enquiry into the grievance of the petitioners and submitted his report dated 18/01/2020 (about petitioner Nos.2 to 4) and on 23/06/2021 (about petitioner No.1) by observing that nothing was established about petitioners deposit of security amount and the grievance being related to terms of appointment order, the petitioners were asked to approach the competent court.

On this backdrop, the petitioners have filed the instant petition seeking mandamus.

4. In response to the petition, respondent No.5/Bank filed its affidavit-in-reply dated 08/10/2021, by which, the plea of acquiescence by conduct is put forth. The basic contention of respondent No.5 is that the petitioners have failed to comply with the mandatory conditions of the appointment order, particularly, condition Nos.19, 24 and 27 and therefore, they cannot claim any right of joining the posts and there is no illegality in the decision of respondent No.5. The reply affidavit gives details about recruitment process, specifically stating that 220 candidates who had complied with the mandatory requirements, have been allowed to join. It is the stand of respondent No.5 that there is clear noncompliance on the part of petitioners with the mandatory conditions and since the recruitment process with

respect to other persons was regularly carried out and 220 persons were appointed, no illegality can be attributed to the respondent/Bank.

5. To controvert the stand taken by respondent No.5, the petitioners have filed their rejoinder affidavit dated 12/11/2021, which categorically states that each of the petitioners were desirous of joining the duties and were ready with the amount of Rs.50,000/- by withdrawing from their respective bank accounts on the given dates although the amounts were not deposited. The petitioners have averred that they had no intention to avoid the compliance of mandatory requirements and despite readiness on their part, respondent No.5/Bank has not allowed them to join the duties.

6. We have heard the learned counsel for the petitioners and the respondents.

7. Advocate Avishkar Shelke, learned counsel for the petitioners vehemently submitted that the petitioners have got a vested right to join the duties on the basis of appointment orders and the decision of respondent No.5 to refuse them to join is grossly illegal. He vehemently submitted that the petitioners have attended the office of respondent No.5 on 30/07/2020 and 31/07/2020 i.e. within the time

granted, however, without any justifiable reason, respondent No.5 refused them to join the duties. By referring to the rejoinder affidavit and extracts of bank accounts, he submitted that the petitioners had made arrangements for depositing the amount of Rs.50,000/- by withdrawing the amounts from their respective bank accounts, which demonstrates their genuine intention to join the duties. He, therefore, asserted their entitlement to seek a mandamus against respondent No.5/Bank.

8. Per contra, Advocate V. D. Salunke, learned counsel for respondent No.5 opposed the petition and raised a preliminary objection about maintainability of the writ petition. He vehemently submitted that the petition seeking mandamus against a cooperative society in a service matter is not maintainable since respondent No.5/Bank is not a ‘State’ within the meaning of Article 12 of the Constitution of India. This apart, he opposed the petition by pointing out petitioners’ failure to comply with the mandatory conditions in Clauses 19, 24 and 27 of the appointment orders. As regards the readiness of the petitioners to deposit the amount of Rs.50,000/-, he submitted that the readiness to deposit did not amount to compliance

and in any case, these contentions are purely disputed questions of fact and cannot be made basis to claim any right.

9. Advocate R. K. Ingole, learned A.G.P. for respondent Nos.1 to 4 adopts the arguments submitted on behalf of respondent No.5 and opposes the petition.

10. To meet the challenge of maintainability of the petition, advocate Shelke for the petitioners submitted that the petitioners have sought to enforce their right to join the duties based on the appointment orders. He vehemently submitted that the writ petition even against a private body is maintainable and in support of his submission he relied on the judgment in the matter of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V. R. Rudani and others, (1989) 2 SCC 691.** In support of his arguments, he also relied on judgment of the division bench of this Court in **Vinod s/o Subhashrao Shinde and others Vs. State of Maharashtra and others, 2007 (5) ALL MR 540** and unreported judgment dated 05/04/2019 in Writ Petition No.8811/2018 (**Ahmednagar District Central Co-operative Bank Ltd., Ahmednagar Vs. State of Maharashtra and others).**

11. We have considered the rival submissions and perused the papers .

12. Undisputedly, respondent No.5 had issued appointment orders dated 08/07/2020 in favour of the petitioners. The appointment orders contained about 29 conditions including condition No.19, which required the candidates to produce original documents at the time of joining; condition No.24 required the candidates to join the post within a period of 15 days and condition No.27 required the candidates to deposit an amount of Rs.50,000/- by way of security deposit and to submit a copy of the receipt at the time of joining. Pertinent to note, condition No.27 specifically mentions that the candidates would not be allowed to join if they did not produce a receipt of deposit of the amount of Rs.50,000/-. It is also undisputed that the petitioners have not deposited the security deposit amount of Rs.50,000/- within a period of 15 days.

13. In the backdrop of these undisputed facts, the contentions of the petitioners that they have visited the office of respondent No.5 on 30/07/2020 and 31/07/2021 and that they had made arrangements to deposit the amount of security deposit, even if given due consideration, the fact remains that there was no compliance of the

conditions of the appointment orders. The petitioners' readiness to deposit the amounts as expressed in rejoinder affidavit does not amount to fulfillment of the mandatory condition. The relevant conditions of appointment order i.e. condition Nos.19, 24 and 27 are reproduced below :-

> "19) आपण रुजु होतेवेळी सर्व प्रकारच्या मुळ प्रमाणपत्रांच्या प्रती व त्यांच्या सत्यप्रती उदाहरणार्थ शाळा सोडल्याचा दाखला जातीचा दाखला, शैक्षणिक अर्हतेबाबत गुणपत्रिका, इत्यादि आवश्यक कागदपत्रे सादर करणे बंधनकारक राहील.
>
> (At the time of joining, it will be mandatory to submit necessary documents like copies of all original certificates and their attestations, for example, school leaving certificate, caste certificate, mark sheets regarding educational qualifications, etc.).
>
> 24) आपण नियुक्तीच्या ठिकाणी कमाल 15 दिवसात रुजु न झाल्यास आपली नियुक्ती आपोआप संपुष्टात येईल.
>
> (If you do not join at the place of appointment within a maximum period of 15 days, your appointment will be automatically cancelled).

27) आपण बँकेच्या सेवेत रुजु होणे अगोदर हिशोब विभाग मुख्य कचेरी रिंगरोड जळगांव येथे सिक्युरिटी डिपॉझिट रु.५०,०००/-भरून रक्कम भरलेबाबतची पावतीची झेरॉक्स प्रत रुजु रिपोर्ट सोबत जोडणे आवश्यक आहे. त्याशिवाय आपणास नेमणुकीचे ठिकाणी रुजु केले जाणार नाही.”

(Before joining the service at the bank, it is necessary to attach a copy of the receipt of the security deposit of Rs. 50,000/- paid at the Accounts Department, Main Office, Ring Road, Jalgaon along with the joining report. Without this, you will not be allowed to join at the place of appointment.)

14. On careful consideration of these conditions of the appointment orders, it is clear that the conditions are mandatory in nature and the candidates/petitioners were required to comply with all the conditions within a period of 15 days. The contentions of the petitioners that they were unable to fulfill the conditions on account of adversity due to Covid-19, has to be rejected as a lame excuse. The petitioners have failed to demonstrate any *mala fides* on the part of respondent No.5 in refusing to join them, although undisputedly respondent No.5 had conducted the recruitment process and allowed 220 other candidates to join the duties.

15. Although petitioners have vehemently argued that they had made arrangements to deposit the amount of security deposit by withdrawing the amount from their bank accounts and have filed rejoinder affidavit with extract of bank statements, but question remains as to why the amounts of security deposits were not deposited and receipts were not produced within the stipulated time, when it was a mandatory requirement. Further, whether the petitioners had in fact made the amounts available and whether the amount was made available for the purpose of depositing as security deposit and what prevented the petitioners from depositing the amounts in time, are all disputed questions of fact being bare assertions, which cannot be gone into in exercise of writ jurisdiction.

16. In view of the clear non compliance of the mandatory conditions of the appointment order, the petitioners' claim for right to join the duties is unsustainable. Apart from this, the issue of maintainability of the petition against respondent No.5 is also crucial. The petitioners have claimed mandamus against respondent Nos.1 to 4 to issue direction to respondent No.5/Bank to allow them to join on the post of Clerk. Although prayer clause is articulated to create an impression of a relief being claimed against

respondent Nos.1 to 4, however, the petitioners are claiming writ of mandamus against respondent No.5/Bank to issue directions to allow them to join on the post of Clerk (Support Staff) as per the appointment orders dated 08/07/2020. As such, the petitioners have claimed writ against respondent No.5/Bank.

17. The position of law about maintainability of a writ petition against a cooperative Bank is no more *res integra* in view of the decision of the Full Bench in the matter of **Vasudev Madkaikar and others Vs. State of Goa and others, 2021 (6) AIR Bom. R 718.** The Full Bench has dealt with the issue about maintainability of a writ petition against the State Cooperative Bank and categorically held that Goa State Cooperative Bank Ltd. was not a 'State' within the meaning of Article 12 of the Constitution of India and it is not amenable to writ jurisdiction under Article 226 of the Constitution of India. For ready reference, the relevant concluding paragraph from this judgment is reproduced below :-

> *"40. It is trite position of law that the power of the High Court conferred under Article 226 of the Constitution to issue writs, for enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose can be directed to any person or authority. But it is well understood that a mandamus would lie to secure the performance of a public or statutory duty*

in the performance of which, the person who seek such a writ has a sufficient legal interest. The writ, in form of a command directing particular act to be done would lie against a nature of public duty, though the person or authority on whom the statutory duty is imposed need not be a public official or an official body. A writ in the nature of mandamus would also lie against a private body, but only when such body performs any public function. The commercial business of banking, though is a function of public importance is not a public function and this position, succinctly flow from the decision of the Apex Court in case of Federal Bank Ltd. (supra). Merely because the Reserved Bank of India prescribe the banking policy for the sound economic growth and any particular bank function under the Banking Regulation Act, a private company carrying on business or commercial activity of banking do not conclusively establish that it discharge any public function or public duty. The Regulations are to be ranked not more than regulatory measures and if there is a failure to adhere to the said regulations, certain consequences are visited, is also not an indication to categorize the functioning as public duty. Similarly, merely because an organisation carries on function of public importance which are akin to or closely related to government functions, it would be no reason to hold that it discharge public functions.

Another important aspect which has to be borne in mind is that a writ can be issued for the discharge of only that public function if at all a body performs a public function and not any other function performed by it in the course of its business. Even if a body is performing public duty and amenable to writ jurisdiction, as a necessary sequel, all its decisions are not subject to judicial review but only those decisions which have public element therein can be judicially reviewed in exercise of writ jurisdiction. A fine line needs to be drawn between the contract of service by bearing its connection to the nature of contract and a contract of personnel service cannot be enforced

> *with the exception when the employee is a public servant working under the Union of India or State, or an employee who is employed by any authority which is recognised as 'State' within the meaning of Article 12 and when such an employee fall within the ambit of "workman" within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. There cannot be any dispute that writ is maintainable under Article 226 of Constitution of India even against a private management for enforcing the 'public duty' cast upon them, but it cannot be said that the same is available also for enforcing the terms and conditions of service in every situation. ………………………..."*

18. It is pertinent to note that, while deciding the issue, the Full Bench has also given due consideration to the judgment in the matter of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust** (supra), which is relied upon by learned counsel for the petitioners in support of his submission that writ petition is maintainable even against a private body. In view of the law laid down by the full bench in the judgment of **Vasudev Madkaikar and others** (supra), the position of law is clear that writ petition against a cooperative Bank with respect to service matter is not maintainable.

19. Reliance placed by the petitioners on judgments in the matters of **Vinod s/o Subhashrao Shinde and others** (supra) and **Ahmednagar District Central Co-operative Bank Ltd.,**

Ahmednagar (supra) is misplaced since these judgments do not lay down any principal of law, holding a writ petition maintainable against a cooperative Bank. Although, the judgment in the matter of **Vinod Subhashrao Shinde** (supra) deals with the subject matter of recruitment of a cooperative bank, but the decision is based on a government circular and it is specifically observed that the issue about maintainability of petition against a cooperative bank was not being decided. The judgment in the matter of **Ahmednagar District Central Co-operative Bank Ltd., Ahmednagar** (supra) is about issue of cancellation of recruitment process which is decided on facts and there is no decision on issue of maintainability of petition. On the issue of maintainability of petition against a cooperative bank with respect to service matter, we are bound by recent pronouncement of the judgment of the full bench in **Vasudev Madkaikar** (supra).

20. In the light of above mentioned factual and legal position, we are of the considered view that the instant petition is liable to be dismissed. The same is accordingly dismissed. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.) **(MANGESH S. PATIL, J.)**

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