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W.P.No.18835 of 2013

For Petitioner : Mr.K.M.Ramesh
Senior Advocate
for Mr.V.Subramani
For Respondents : Mr.C.Mohan
Ms.A.Rexy Josephine Mary
for M/s.King and Partridge (Law Firm)

ORDER

The petitioner, a registered Tamil Sri Lankan refugee, is before this Court challenging the order dated 28.06.2013 passed by the first respondent, by which her services in the respondent Bank were terminated.

2. The facts of the case:

2.1. Pursuant to the advertisement dated 01.10.2007 and the notification dated 17.12.2007 issued by the respondent Bank, applications were invited for appointment to the post of Officer-Marketing and Recovery (Rural). The petitioner, claiming that she possessed the requisite qualifications and eligibility, submitted her application for the said post. Upon consideration, the petitioner was found suitable and an order of appointment was issued in her favour on 05.04.2008.



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2.2. The Respondent contends that petitioner was appointed as Officer-Marketing and Recovery on a contractual basis for a period of two years from 31.03.2008 to 30.03.2010. During the subsistence of her contractual employment, the State Bank of India Contract Officers' Welfare Association filed a writ petition in W.P.No.7431 of 2010 seeking absorption of the contract employees as permanent employees. The petitioner claims to be a member of the said Association. When the said writ petition was pending, the State Bank of India issued an advertisement dated 30.01.2010 for recruitment of Probationary Officers (Rural Business) from the open market and for consequential appointment of existing officers – Marketing & Recovery (Rural) including the petitioner as permanent officers.

2.3. Subsequently, the Executive Committee of the Central Board of State Bank of India, in its meeting held on 14.07.2010, approved a policy for permanent absorption of officers – Marketing & Recovery (Rural), who were in service of the Bank as on that date subject to the condition that they had achieved a minimum of 60% of the prescribed targets during the year



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2009 – 2010. Recording the said subsequent development, the aforesaid writ petition was disposed of on 25.10.2010 granting liberty to the members of the SBI Contract Officers Welfare Association to agitate their individual cases for non-absorption, if the need arises.

2.4. Pursuant thereto, the petitioner's name was included in the final list of selected candidates. However, during scrutiny of the documents and certificates submitted by the petitioner, the respondent Bank noticed that the petitioner is a Sri Lankan National. It was found that she did not fulfill the primary eligibility requirement under the advertisement dated 01.10.2007, which mandated Indian Citizenship for appointment to the post of Officer – Marketing and Recovery (Rural). Consequently, the respondent Bank took a decision to terminate the petitioner from service and the same was effected by the impugned order dated 28.06.2013. Aggrieved by the impugned order, the present writ petition has been filed.



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3. Submissions on behalf of the petitioner:

3.1. Mr.K.M.Ramesh, learned Senior Counsel appearing on behalf of the petitioner, submitted that owing to ethnic conflict prevailing in Sri Lanka at the relevant point of time, the petitioner along with her parents fled to the State of Tamil Nadu in the year 1990. It was contended that the petitioner is of Indian Origin by birth.

3.2. It was therefore contended that, for all the practical purposes, the petitioner has been extended rights and benefits akin to those enjoyed by Indian Citizens. Merely on the ground that the petitioner is a Sri Lankan Tamil refugee, she cannot be deprived of her valuable right to employment in the respondent Bank. Such denial, according to the learned Senior Counsel, would be antithetical to the concept of equality enshrined under Article 14 of the Constitution of India.

3.3. It was further submitted that the petitioner's grandparents were born in India and subsequently migrated to and settled in Sri Lanka.



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Therefore, the petitioner is of Indian origin by birth and cannot be discriminated against solely on the ground that she has not formally acquired Indian citizenship, despite having taken refuge in India and having been residing here legally ever since.

4. Submissions on behalf of the respondent Bank:

4.1. Per contra, Mr.C.Mohan, learned counsel of M/s.King and Partridge (Law Firm) on behalf of respondents - Bank, submitted that the advertisement dated 01.10.2007 explicitly invited applications only from Indian Citizens. The petitioner, despite being a Sri Lankan national and not an Indian Citizen, suppressed this material fact and applied for the post, pursuant to which she obtained an order of appointment fraudulently.

4.2. It was contended that since the petitioner did not fulfill the basic eligibility condition relating to nationality, the termination of her services from the respondent Bank cannot be said to be arbitrary and discriminatory. The respondent Bank, upon discovering the ineligibility during verification



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of records, was justified in terminating her services.

4.3. The learned counsel further submitted that the petitioner, not being an Indian citizen, has no locus standi to maintain the present writ petition as the invocation of fundamental rights under the Constitution of India is available only to citizens of this Country. On this ground also, the learned counsel sought for dismissal of the writ petition.

5. In support of his submission, the learned counsel for the respondents placed reliance on the following decisions:

(i) Dulu Deka Vs. State of Assam and others [2023] 9 SCC 749;

(ii) Kendriya Vidyalyaya Sangathan and others Vs. Ram Ratan Yadav [2003] 3 SCC 437;

(iii) Chief Manager, Punjab National Bank and another Vs. Anit Kumar Das [2021] 12 SCC 80;

(iv) State Bank of India Vs. A.G.D. Reddy [2023] SCC OnLine SC 1064;

(v) Order dated 08.10.2014 passed in W.P.No.18373 of 2008 [Gnanaprakasam Vs. Government of Tamil Nadu].



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6. The arguments advanced by learned counsel on either side and materials available on record have been duly considered.

7. Before delving into the merits of the case, it is imperative to first examine the locus standi of the petitioner to maintain this writ petition.

8. A plain reading of Article 226 of the Constitution of India makes it abundantly clear that the High Court, in exercise of its writ jurisdiction, is empowered to issue writs, orders, or directions to any person, authority, or Government not only for the enforcement of fundamental rights guaranteed under part III of the Constitution of India, but also “for any other purpose”. Articles 12 to 35 contained in Part III of the Constitution define and guarantee Fundamental Rights. While certain rights, particularly those under Articles 16 & 19, are expressly available only to Citizens, other fundamental rights such as the right to equality, Protection from Exploitation, Freedom of Religion, Culture and Educational rights are guaranteed to “all persons” and not merely to citizens.



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9. The Hon'ble Apex Court in the case of ***Louis De Raedt Vs. Union of India [1991] 3 SCC 554***, authoritatively held that although a foreign national does not enjoy the fundamental rights guaranteed under Article 19, the protection of Article 21 of the Constitution extends to all persons, including non-citizens and foreigners. The Apex Court unequivocally recognized that a foreigner is entitled to challenge the State action which adversely affects his life or personal liberty, subject only to procedure established by law.

10. Similarly, the Hon'ble Apex Court in the case of ***National Human Rights Commission Vs. State of Arunachal Pradesh [1996] 1 SCC 742***, held that refugees, though not citizens of India, are entitled to the full protection under Article 21 of the Constitution of India. It was further held that the State is under a constitutional obligation to safeguard the life and liberty of every human being, irrespective of nationality. The Apex Court further recognized that refugees have the locus standi to invoke constitutional remedies when subjected to arbitrary, unreasonable or



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unlawful State action. The ratio laid down in the aforesaid decisions clearly establishes that citizenship is immaterial for the purpose of invoking writ jurisdiction. So long as the impugned action affects or infringes the rights guaranteed under Articles 14 and 21 of the Constitution of India, a non-citizen, including a refugee, is entitled to seek redressal under Article 226 of the Constitution of India.

11. Reliance was placed by the learned counsel for the respondent Bank on the decision of Hon'ble Division Bench of the Bombay High Court in *Stelmakh Leonid Iuliia Vs. Secretary to the Ministry of External Affairs, Mumbai and another 2011 (1) Mh.L.J 893*. In the said decision, the Hon'ble Division Bench held that Article 16 of the Constitution of India, which guarantees equality of opportunity in matters relating to public employment, is confined exclusively to citizens of India, and a non-citizen cannot invoke Article 16 in any manner whatsoever. The Hon'ble Division Bench, while arriving at the said conclusion, placed reliance on the judgment of the Hon'ble Supreme Court in *Chairman, Railway Board and*



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Others Vs. Mrs.Chandrima Das and Others, AIR 2000 SC 988. In the said decision, the Hon'ble Apex Court observed that Article 14 of the Constitution, which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to “persons” which would also include the “citizen” of the Country and “non-citizen” both. However, the Hon'ble Apex Court also drew a clear constitutional distinction by observing that Article 15 of the Constitution of India speaks only of “citizen” and it is specifically provided therein that there shall be no discrimination against any “citizens” on the ground of religion, race, caste, sex, place of birth or any of them. Likewise, in ***Chairman, Railway Board and Others Vs. Mrs.Chandrima Das and Others***, it was reiterated that the word “citizen” used in Article 19 has not been used in a sense different from that in which it has been used in Part II of the Constitution dealing with “citizenship”. It has also been held in this case that the words “all citizens” have been deliberately used to keep out all “non-citizens” which would include “aliens” and Article 19 was held to be applicable only to “citizens”.



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WEB COPY 12. From a conspectus of the legal principles laid down in the aforesaid decisions, the following propositions emerge:

(a) A non-citizen cannot invoke writ jurisdiction of this Court for enforcement of fundamental rights guaranteed exclusively to citizens under Articles 15, 16 and 19 of the Constitution of India;

(b) However, where the State action is alleged to be arbitrary, unreasonable discriminatory and results in violation of the rights guaranteed under Articles 14 and / or 21 of the Constitution of India, a non-citizen is entitled to invoke the writ jurisdiction of this Court;

(c) In the present case, though the petitioner is admittedly a non-citizen, she has challenged the action of the respondent Bank terminating her services solely on the ground that she is not a citizen of this Country, contending that such action is arbitrary and discriminatory and violative of Article 14 of the Constitution of India;



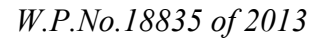
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(d) Therefore, when the challenge is founded on an allegation of discrimination and arbitrariness attracting Article 14 of the Constitution of India, the captioned writ petition is held to be maintainable. Consequently, the objection raised by the learned counsel for the respondent Bank with regard to maintainability is misplaced and cannot be accepted.

13. Before proceeding to examine whether the petitioner is entitled to appointment or continuation in service in the respondent Bank, it becomes necessary to advert to the relevant provisions of the Citizenship Act, Immigration and Foreigners Act, the Immigration laws in force and the scheme governing Sri Lankan refugees.

14. The Director of Rehabilitation, Government of Tamil Nadu, has formulated various schemes for the rehabilitation of Sri Lankan Tamil refugees, under which refugees are provided with food, shelter, monthly financial assistance, and other basic amenities (copy downloaded from the official website). In addition, free bus passes are issued to students pursuing education in Arts, Science, and Engineering Colleges; business and housing



15. Section 3 of the Immigration and Foreigners Act, 2025, deals with the requirement of passport or other travel document and visa. The said provision mandates that no person proceeding from any place outside India shall enter, or attempt to enter India by air, water or land unless he is in possession of a valid passport or other travel document. In the case of a foreigner, possession of a valid visa is also mandatory. It further stipulates that any foreigner present in India shall continue to possess a valid passport or other valid travel document and a valid visa, unless exempted under Section 33 or through intergovernmental agreements.

16. Section 33 of the Act 2025 empowers the Central Government to declare that all or any of the provisions of this Act or of any rule or order made there under shall not apply, or shall apply only in such circumstances



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or with such exceptions or modifications in relation to the citizens or classes of citizens of any such Country as may be so specified or to any other individual foreigner or class of description of foreigner.

17. In exercise of the powers conferred under Section 33 of the Act 2025, the Central Government enacted the Immigration and Foreigners (Exemption) Order 2025. Section 3 of Order 2025 deals with exemptions. Sub-section (2) of Section 3 specifically provides that the provisions contained in sub-sections (1), (2) and (3) of Section 3 of the Act 2025, insofar as they relate to the requirement of possession of a passport and visa for stay in India and for the purpose of exiting India, shall not apply to registered Sri Lankan Tamil nationals, who have taken shelter in India upto the 9th January 2015.

18. Thus, the aforesaid exemption expressly excludes the application of Section 3 of the Act 2025, which otherwise mandates compulsory possession of a valid passport and visa for a foreigner to reside in India. Consequently, the residence of the petitioner who is a registered Srilankan



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Tamil Refugee in this Country cannot be characterized as illegal. On the contrary, her stay stands regularized and protected by virtue of Section 3 of Order 2025, who admittedly is a registered Sri Lankan Tamil national.

19. Insofar as the provisions of Citizenship Act are concerned, the same need not be adverted to in detail, as no material has been produced to substantiate that the petitioner has acquired Indian citizenship either by registration, naturalization or descent.

20. In the light of the foregoing discussion, it is evident that the petitioner has been conferred with a lawful right of residence in India. The rehabilitation scheme formulated for Sri Lankan Tamil refugees also extends benefits such as shelter, education and employment in India, particularly in the State of Tamil Nadu.

21. The petitioner, having entered into India in the year 1990 at the age of 5, has pursued and completed her education within the State of Tamil Nadu. She has been awarded educational qualifications duly recognized by



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the competent authorities of the State. It is true that the appointment notification issued by the respondent Bank stipulated that the applications were invited only from Indian citizens. However in the application submitted by the petitioner, she had clearly disclosed that her place of birth was Columbo, Sri Lanka. Significantly, the application form did not contain any specific column requiring disclosure of citizenship or nationality. In the absence of such a column, no adverse inference can be drawn against the petitioner for non-disclosure of her nationality or citizenship.

22. No doubt, the respondent Bank has the right to restrict non-citizens from applying for the post. However, in the circumstances of the present case, the petitioner was appointed pursuant to the recruitment notification and in compliance with the interim order of this Court, and has continued in service uninterruptedly from 2008 till date. At this stage, the respondent Bank cannot seek to terminate her services, as such action would be arbitrary, unreasonable, and discriminatory, offending the principles of fairness and equality, and would defeat the petitioner's legitimate



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expectation arising from long and continuous service. Such termination would also result in depriving the petitioner of her only source of livelihood.

23. The Government of India, Ministry of Personnel, Public Grievances and Pensions, has issued the Handbook on Personnel Officers, 1987. Chapter VII of the said Handbook deals with the appointment of non-Indian nationals. As per Chapter VII, which sets out the standard rules for recruitment to posts under the Government of India, a candidate for appointment to any Central Service or post must be a citizen of India, or a subject of Nepal, or a subject of Bhutan, or a Tibetan refugee who came over to India before 1st January 1962 with the intention of permanently settling in India, or a person of Indian origin who has migrated from Pakistan, Burma, Sri Lanka, East African countries, etc., with the intention of permanently settling in India, provided that a candidate belonging to any of the above categories other than a citizen of India shall be a person in whose favour a certificate of eligibility has been issued by the Government of India.



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WEB COPY 24. It is further provided that candidates belonging to the above categories, other than citizens of India, shall not be eligible for appointment to the Indian Foreign Service. Therefore, under the Handbook on Personnel Officers, 1987, there is no bar for a person of Indian origin who has migrated from Sri Lanka with the intention of permanently settling in India from seeking appointment to posts under the Government of India, subject to the issuance of a certificate of eligibility by the Government of India.

25. Regulation 4 of the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 deals with the conditions of eligibility to compete in the examination and provides that, to be eligible, a candidate must be a citizen of India or must belong to such categories of persons as may, from time to time, be notified in this behalf by the Central Government. Similar provisions are also incorporated in Regulation 4 of the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967. Therefore, there is no absolute statutory bar to appointment to the IAS or IFS, subject to the Central Government issuing



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26. The petitioner applied for the post under the *bona fide* belief that the recruitment was open to all eligible persons. Even assuming that the petitioner was aware that she was not an Indian citizen at the time of applying, she cannot be terminated from service at this stage in the absence of any statutory provision or service regulation expressly prohibiting the appointment of non-citizens to the post in the respondent Bank more particularly in peculiar facts and circumstances of the case.

27. The petitioner was initially appointed in the year 2008 and has continued in service till date. At the time of admission of the present writ petition, this Court granted an interim order directing maintenance of status quo, and the said interim order continues to remain in force even as of today. By virtue of the said order, the petitioner has been uninterruptedly discharging her duties with the respondent Bank.



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WEB COPY 28. It is the specific contention of the petitioner that, during the course of her service, she has been granted incentives for achieving prescribed targets and for her overall performance, thereby demonstrating her suitability and efficiency in the post held by her.

29. It is further brought to the notice of this Court that the petitioner is married to an Indian citizen and that two children born from the said wedlock are Indian citizens. The petitioner, having rendered more than 17 years as of today, if now discharged from service, would be subjected to irreparable loss and grave hardship. Such termination would not only deprive her of her means of livelihood but would also adversely affect the welfare and future of her children.

30. Merely because the recruitment advertisement stipulated that applications were invited only from Indian citizens, the same cannot, by itself, constitute a valid ground for termination of services, particularly when the petitioner was initially appointed without any demur, is not an illegal immigrant, and her residence in India stands regularized by virtue of Section



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3 of the Order of 2025. The petitioner is extended all benefits available to Indian citizens, except such privileges and fundamental rights as are specifically reserved for citizens under Articles 16 and 19 of the Constitution of India.

31. Therefore, the action of the respondent Bank in terminating the petitioner's services solely on the ground that she is not a citizen of this Court is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The impugned order of termination is thus, unsustainable in law and liable to be set aside.

32. This Court has not examined the validity of the power of the respondent Bank to restrict appointments exclusively to Indian citizens and to exclude registered Sri Lankan Tamils whose stay in India is legalised and who are permitted to seek employment commensurate with their qualifications, as the validity of such restriction has not been challenged in the present writ petition. This order is passed in the peculiar facts and circumstances of the case and shall not be treated as a precedent. The right



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of the respondent Bank to restrict employment to Indian citizens is left open and has not been adjudicated.

33. Accordingly, the captioned Writ Petition is allowed. The impugned order dated 28.06.2013 is hereby quashed. There shall be no order as to costs.

23.01.2026

Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-speaking

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To

1. State Bank of India
Rep. By its General Manager
Local Head Office, 16, College Lane,
Chennai-6.
2. State Bank of India
Rep. By its Deputy General Manager (B&O)
Administrative Office, Madurai Zone,
Madurai.

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HEMANT CHANDANGOUDAR, J.,

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