HIGH COURT OF JAMMU & KASHMIR AND LADAKH
SRINAGAR

Reserved on : 22.11.2024
Pronounced on: 20.12.2024

WP(C) No. 1569/2023
c/w
CCP No. 30/2024

Aaqib Rashid Sofi …..Appellant(s)/Petitioner(s)

Through: Mr. Salih Pirzada, Advocate with
Mr. Syed Mansoor, Advocate

Vs

Chairman, Jammu and Kashmir Grameen Bank and others. ….. Respondent(s)

Through: Mr. Mudasir Bin Hassan, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The petitioner in the instant petition filed under Article 226 of the Constitution has sought the following reliefs:

(i) Issue a writ of certiorari, and quash condition No. 09 of the order of appointment dated 05.03.2021 issued by the respondent bank in favour of the petitioner.

(ii) Issue a writ of mandamus, directing the respondents to return and pay an amount of Rs. 2,00,000/- (Rupees Two Lakhs) encashed by the respondent bank through the encashment of the indemnity bond executed by the petitioner alongwith interest @ 12 % per annum.

(iii) Pass any such order as this Court deems proper in the circumstances of the case against the respondents and in favour of the petitioner.

2. The background facts under the shade and cover of which the aforesaid reliefs have been prayed for and as are stated in the petition are that the Jammu and Kashmir Grameen Bank (hereinafter to be called as the respondent bank) came in existence on 30.06.2009 after amalgamation of two Regional Rural Banks being the Jammu Rural Bank and Kamraz Rural Bank, which banks were sponsored by the Jammu and Kashmir Bank Limited. The respondent bank is stated to be having a share holding of 50% by the Government of India, 35% from the Sponsor Bank (J&K Bank) and 15% from the Government of the Union Territory of Jammu and Kashmir. The respondent bank is stated to have been established to strengthen availability of basic banking facilities in the remote rural area and covers 13 districts across two Union Territories of Jammu and Kashmir and Ladakh and is, as such, stated to be performing and discharging the activities qua finances, thus being a "State under Article 12 of the Constitution of India" amenable to the writ jurisdiction of this Court.

3. It is being further stated that in the year 2020, the respondent Bank invited applications, for filling up various posts including the post of General Banking Officer, Scale-II through Institute of Banking and Personnnel Selection (IBPS), from the eligible persons and the petitioner herein being eligible in respect of the criteria fixed by the respondent bank for the post in question also applied thereto seeking his selection and appointment thereof, whereafter facing the selection process, the petitioner came to be selected and appointed as General Banking Officer, Scale-II in terms of order No. JKGB/HO/HRDD/RECT/2020-21-3948 dated 05.03.2021.

4. It is being further stated that in the appointment order dated 05.03.2021, various terms and conditions were incorporated by the respondent bank, which were required to be fulfilled in order to join the services as General Banking Officer, Scale-II and amongst the said terms and conditions, the petitioner was required to join his duties at Branch Office, Duroo, District Baramulla, which joining report was required to be attached with, educational certificates, a cash certificate of Rs. 5000/- as security deposit, an agreement, a surety bond, declaration of marital status, declaration of domicile, copy of character certificate, physical fitness certificate and statement of property owned etc etc. In addition thereto, the appointment order dated 05.03.2021 is also stated to have contained a condition requiring the petitioner to execute an indemnity bond of Rs. 2,00,000/- co-related to condition 9 of the appointment order, providing that in the event of premature resignation from the post before completion of two years of service, the said indemnity bond of Rs. 2.00 lacs shall be encashed by the respondent bank.

5. It is being next stated that in view of the fact that the petitioner secured the appointment in question on account of a huge overweight of unemployed educated youths, having no choice, accepted the terms and conditions stipulated in the appointment order dated 05.03.2021.

6. It is being also stated that the service conditions of the officers and employees of the respondent bank are governed under the J&K Grameen Bank (Officers and Employees) Service Regulations, 2010 (for short, the Regulations of 2010), however, the said Regulations of 2010 do not provide anywhere for furnishing of an indemnity bond by a new appointee while entering in the service of the respondent bank.

7. It is being further stated that even at the time of issuance of notification for making selection and appointment against the post in question, the respondent bank neither prescribed nor disclosed anything about the aforesaid terms and conditions, in particular the condition of execution of indemnity bond and its encashment in case of premature resignation from service of the respondent bank.

8. It is being next stated that upon completion of all formalities provided by the respondent bank to be fulfilled by the petitioner, the petitioner joined as General Banking Officer Scale-II in the Branch Office, Doroo of the respondent Bank on 19.03.2021 and started discharging his duties with honesty and dedication.

9. It is being further stated that in the month of June, 2022, the petitioner applied to Ellaquai Dehati Bank for the position of General Banking Officer, Scale-II and came to be selected against the said post in the said bank in the month of January, 2023, whereupon the petitioner informed the respondent bank a month before joining his new post in the new bank and submitted his resignation, which came to be accepted by the respondent bank and in the process, the respondent bank took recourse to the encashment of the indemnity bond of Rs. 2.00 lacs executed by the petitioner and consequently encashed the same on 07.04.2023 without furnishing any information to the petitioner in this regard.

10. The petitioner has maintained the instant petition in the aforesaid backdrops for seeking the aforesaid reliefs on the following grounds:

> A. BECAUSE, right to choose employment and better avenues of employment can be read as part of the right to life and earning

of livelihood in terms of the propositions of the law. It is submitted that the right of a person to choose an employment based on the acquired qualifications is guaranteed under the Constitution. No employer can restrict such a right as enshrined under Constitution by invoking/prescribing conditions as like condition No. 09 of the order of appointment dated 05.03.2021 issued by the Respondent Bank to the Petitioner. Condition No. 09 with respect to execution of indemnity bond is, therefore, ultra vires to the scheme of Constitutionality and the scheme of law as propounded by the Hon'ble Supreme Court. Hence, condition No. 09 with respect to the execution of an indemnity bond in the event of premature resignation prior to 02 years is liable to be held as illegal & null and void and, subsequently, merits to be quashed.

B. BECAUSE, the relationship between the Respondent Bank and the Petitioner, as established by the appointment order dated 05.03.2021, is purely of contractual nature. According to the provisions of the Indian Contract Act, contracts that involve illegal conditions are deemed void ab initio. Such conditions cannot hold force or binding nature on the parties involved. In the present case, the impugned condition requiring the execution of an indemnity bond was violative of not only infringed upon the Petitioner's rights but also violated the fundamental principles of contract law, Therefore, on this count also the impugned condition of the letter of appointment dated 05.03.2021 is rendered illegal and merits to be quashed.

C. BECAUSE, as per the provisions of the Indian Contract Act, the parties must enter a contract freely and voluntarily, without any undue influence or coercion. However, in the present case, the inclusion of the indemnity bond as a condition of the employment contract amounts to coercion, as the Petitioner was compelled to execute the bond in order to secure employment. This undermines the principle of free consent, rendering the condition voidable under the Indian Contract Act. Therefore, the impugned condition of the appointment letter dated 05.03.2021 fails to meet the requirements of a valid contract and should be held as unenforceable.

D. BECAUSE, the service rules governing the service conditions of the employees of the respondent bank, do not anywhere provide for execution of an indemnity bond by the appointee before joining the respondent bank. Therefore, in absence of any such condition in the J&K Grameen Bank Employees Service Rules as has been arbitrarily envisaged by the respondent bank in the appointment order of the petitioner makes incorporation of such a condition void ab initio. On this count also, the condition no 09 in the appointment order being arbitrary, merits quashment.

E. BECAUSE, the condition No. 09 impugned herein, has the effect of putting a restraint on the Petitioner from making a choice for better employment avenues based on the qualifications of the Petitioner. The impugned condition incorporated by the Respondent Bank has an effect of denying the opportunity of competing for a better employment opportunity to any candidate based on his choice and qualifications. The Respondent Bank has no competence by incorporating the impugned Condition No. 9 of the order of appointment being in direction conflict and violation of the provisions of Constitution of India prescribing the right to compete for better employment opportunities. Impugned condition would, therefore, fall in the category of the conditions which are unconstitutional and hence is liable to be quashed.

F. BECAUSE the prescribing of a condition as prescribed as condition No. 09 of the order of appointment of the Petitioner is an exercise which is unconscionable, unsustainable and unenforceable in law to the extent of the payment of Rs. 2,00,000/- in the event of leaving the post of the Respondent Bank before the expiry of the period of 02 years. Such a condition in law cannot be enforced as having the effect of denying the right to choose a better employment on part of a candidate. In the instant case, the Respondent Bank by invoking the condition No. 09 has, therefore, violated the settled position of law and hence the condition No. 09 of the order of appointment of the Petitioner having been enforced by the Respondent Bank is liable to be declared as an Act which is in extravention of the scheme of law. Hence, the impugned condition No. 09 and its enforcement on part of the Respondent Bank is liable to be held illegal by this Hon'ble Court and, subsequently, quashed.

G. BECAUSE, the Petitioner cannot be made to bind with condition which is in violation of the principles of law of contract and the principles of conditions of constitutionality as contained in the Constitution of India. Hence, the illegal condition impugned herein cannot be enforced by Respondent Bank against the Petitioner. The impugned condition, therefore, is liable to be declared null and void and ineffective on the rights of Petitioner and as a result thereof is liable to be quashed.

H. BECAUSE, the Respondent Bank even in a situation of exercise of its powers as contained in condition No. 09 was required to seek a show cause from the Petitioner with respect to the encashment of indemnity bond executed by the Petitioner under the compliance of the impugned condition in the order of appointment. In the instant case, the Respondent Bank has neither issued notice nor invited any show cause from the Petitioner and has, as such, directly invoked condition No. 09 and has encashed the amount of Rs. 2,00,000/- from the Petitioner. Absence of a right of being heard to the Petitioner has led to violation of a valid right of the Petitioner and violation of the principles of natural justice. It is a settled position of law that violation of the principles of natural justice vitiates the entire process. In the instant case, the encashment of indemnity bond on part of Respondent Bank without providing an opportunity of being heard would, therefore, render the decision of the Respondent Bank as illegal and would warrant quashment by this Hon'ble Court.

I. The Petitioner craves leave of this Hon'ble Court for submission of further factual/legal grounds at the final adjudication of the instant Writ Petition by this Hon'ble Court.

J. That the Petitioner has no other alternative, efficacious and speedy remedy available to him but to approach this Hon'ble Court through the medium of a Writ petition for the redressal of his genuine grievances and for the enforcement of his fundamental rights.

K. That no other Writ petition dealing with the same subject matter has been filed by the Petitioner before this Hon'ble court, nor has the Petitioner approached the Hon'ble Supreme Court of India."

11. Objections to the petition have been filed by the respondents, wherein the petition is being opposed, *inter alia,* on the premise that none of the rights of the petitioner be it constitutional, fundamental or legal have been infringed, which entitled the petitioner to invoke extra-ordinary writ jurisdiction of this court.

12. It is being next stated that the conditions of service in the respondent bank have been accepted without any objection by the petitioner at the time of his appointment, while stating further that even if an employee is aggrieved of any action of the respondent bank, a remedy of appeal is provided in the Regulations of 2010, which has not been availed by the petitioner.

13. It is being further stated in the reply that the petitioner upon being appointed in the respondent bank vide order dated 05.03.2021 acknowledged and accepted the terms and conditions set out therein in the appointment order and that the appointment of the petitioner was that of probation initially for a period of two years extendable by one year, however, the petitioner left the services of the respondent bank in breach of the conditions contained in the appointment order dated 05.03.2021 as also the Regulations of 2010 making him to liable to the respondent bank to the payment of the amount of Rs. 2.00

lacs covered under the indemnity bond, besides, a sum equal to his pay for the period of notice of one month if not served.

14. It is being lastly reiterated that that the relationship between the petitioner and respondent bank was governed by the appointment order dated 05.03.2021 and the terms and conditions set out therein and as per the Regulations of 2010 and once the petitioner accepted the said terms and conditions contained in the appointment order, he is not entitled to any equitable or any other relief by this Court.

Heard learned counsel for the parties and perused the record.

15. Having regard to the respective pleadings of the parties and the case set up therein, the core issue that falls for consideration of this Court is as to whether the petitioner is entitled to the reliefs prayed in the instant petition.

16. In order to address the said core issue, it is pertinent and significant to mention here that the respondent bank in terms of Section 30 of the Regional Rural Banks Act, 1976 has framed the Regulations of 2010 and in regard to the nature and character of the said Regulations, the Apex Court in the case titled as **Chairman, Ganga Jamuna Grameen Bank and others vs. Devi Sahai reported as 2009 (11) SCC 266** has held that the Regulations framed under the Regional Rural Banking Act, 1976 are statutory in character and has held as follows:

> "17. Indisputably, Appellant has been constituted under the Act. It has a regulation making power. Regulations framed by it subject to the compliance of the statutory mandate contained in Section 30 of the Act have statutory force. The provisions of the Act and the Service Regulations made by the appellant, therefore, form self-contained Code."

17. Having regard to the said statutory nature of the Regulations of 2010, a bare perusal of the said Regulations of 2010 reveal that no condition or requirement of execution of an indemnity bond by a new appointee in service of the respondent bank pledged in the name of the respondent bank and its encashment by respondent bank in the event of abandonment of the services by an employee is contained therein. However, under Regulation 30 of Regional Rural Banks Act, the condition of one month's prior notice in case of resignation is provided to be submitted by an employee before the Bank and in the event of default of serving such a notice, the employee is liable to pay by way of compensation an amount equal to pay of such notice period, which in the instant case is one month. Thus, the condition incorporated in the appointment order dated 05.03.2021 qua execution of indemnity bond is beyond the realm of Regulation 2010, rendering the said condition legally untenable and unenforceable, otherwise also in presence of Section 23 of the Contract Act of 1872, which for convenience and ready reference is extracted and reproduced as under:

> 23. **What considerations and objects are lawful, and what not.**—The consideration or object of an agreement is lawful, unless—
> (i) it is forbidden by law ; or
> (ii) is of such a nature that if permitted, it would defeat the provisions of any law; or
> (iii) is fraudulent ; or
> (iv) involves or implies injury to the person or property of another; or
> (v) the Court regards it as immoral, or opposed to public policy.
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> In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

A reference in regard to above, to the judgment of the Apex Court passed in case titled as **Central Inland Water Transport Corporation**

limited and another vs. Tarun Kanti Sengupta and another reported as (1986) 3 SCC 156 would be advantageous, wherein it has been held as under:

> "The normal rule of Common Law has been that a party who seeks to enforce an agreement which is opposed to public policy will be non-suited. The case of A. Schroeder Music Publishing Co. Ltd. v. Macaulay, however, establishes that where a contract is vitiated as being contrary to public policy, the party adversely affected by it can sue to have it declared void. The case may be different where the purpose of the contract is illegal or immoral. In Kedar Nath Motani and others v. Prahlad Rai and others, [1960] 1 S.C.R. 861 reversing the High Court and restoring the decree passed by the trial court declaring the appellants' title to the lands in suit and directing the respondents who were the appellants' benamidars to restore possession, this Court, after discussing the English and Indian law on the subject, said (at page 873):
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> > "The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Willistone and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by restoring to some subterfuge or by mis-stating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail."
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> The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void."

A further reference is made to the judgment of the Apex Court passed in the case titled as **Rattan Chand Hira Chand vs. Askar Nawaz Jung (Dead) by Lrs and others, reported as (1991) 3 SCC 67**, wherein it has been held as under:

> "17. ……It cannot be disputed that a contract which has a tendency to injure public interests or public welfare is one against public policy. What constitutes an injury to public interests or welfare would depend upon the times and climes. The social milieu in which the contract is sought to be enforced would decide the factum, the nature and the degree of the injury. It is contrary to the concept of public policy to contend that it is immatable, since it must vary with the varying needs of the society. What those needs are would depend upon the consensus value-judgments of the enlightened section of the society. These values may sometimes get incorporated in the legislation, but sometimes they may not. The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed."

18. The petitioner's contention that the respondent bank imposed the impugned condition in the appointment order in breach of the provisions of Regulations of 2010 and that the petitioner at that relevant point of time have had no option but to accept the same being not in equal in bargaining power with the respondent bank, cannot be over looked and discarded in view of the aforesaid position and principles of law.

19. Having regard to the aforesaid position obtaining in the matter, the respondent bank in the first instance ought not to have incorporated impugned condition in the appointment order qua execution of indemnity bond by the petitioner, in that, imposing of such a condition is found to be alien/foreign to the Regulations of 2010 and the manner in which the said amount covered under the said indemnity bond has been recovered by the respondent bank without any intimation to the petitioner, cannot also said to be having any sanction of law.

20. Viewed thus, for what has been observed, considered and analysed hereinabove, the instant petition deserves to be allowed and is, accordingly, allowed and **disposed of** as below:

(i) By issuance of writ of certiorari, impugned section 9 incorporated in the appointment order dated 05.03.2021, insofar it provide for execution of indemnity bond of Rs. 2,00,000/- by the petitioner in favour of the respondent bank is quashed; and

(ii) Consequently, by issuance of writ of mandamus, the respondent bank is commanded to return back the said amount of Rs. 2,00,000/- to the petitioner alongwith interest at the current bank rates till the date of its actual payment.

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

CCP No. 30/2024

In view of the disposal of the main petition as above, the interim order stands merged into the final order, necessitating closure of the instant contempt petition. Accordingly, contempt notice issued against the contemnors/respondents is recalled and the contempt proceedings are closed.

(Javed Iqbal Wani)
Judge

Jammu
20.12.2024
Karam Chand Secy.