

3 SCOB [2015] AD 24**Appellate Division****PRESENT****Madam Justice Nazmun Ara Sultana****Mr. Justice Syed Mahmud Hossain****Mr. Justice Muhammad Imman Ali**

CIVIL PETITION FOR LEAVE TO APPEAL NO. 1659 OF 2013

(From the judgment and order dated 17th of June, 2012 passed by the High Court Division in Writ Petition No.9031 of 2010.)**Pubali Bank Limited**

... Petitioner

= Versus =

Md. Abdur Rashid Miah and others

... Respondents

For the Petitioner:Mr. Mahmudul Islam,
Senior Advocate,
instructed by
Mr. Syed Mahbubur Rahman,
Advocate-on-Record

The Respondents

:Not represented

Date of hearing & judgement:The 18th of November, 2014**Ambit of article 102(5) of the Constitution:**

The bank concerned being a company under the Companies Act, does not come within the ambit of article 102(5) of the Constitution. So, we are of the view that the Rule in the instant case ought to have been discharged on the same ground, especially when the same Bench had decided earlier that the employees of Pubali Bank Limited are not in the service of the Republic or of any Corporation, National Enterprise or Local Authority. ... (Para 8)

Public Servants (Retirement) Act 1974:

The subsequent amendment to the Public Servants (Retirement) Act 1974 will not be automatically incorporated in the Service Regulations of the Bank, until and unless the Bank chooses to adopt the same by amending the relevant Service Regulations.

... (Para 8)

There was no finding that the petitioners had any such legal right to have their period of service extended up to 59 years of their age. Indeed, in our view the Bank giving such benefits to its employees by means of a circular post dates the writ petitioners' superannuation and is, therefore, not applicable in their case. ... (Para 9)

JUDGMENT

MUHAMMAD IMMAN ALI, J:

1. The delay of 393 days in filing the civil petition for leave to appeal is hereby condoned.

2. This civil petition for leave to appeal is directed against the judgment and order dated 17.06.2012 passed by the High Court Division in Writ Petition No. 9031 of 2010 disposing of the Rule.

3. The facts of the instant case, in brief, are as follows:

The Writ petitioners (respondents herein) were Freedom Fighters and appointed in different posts by Pubali Bank Limited in the year 1973. The writ petitioner No. 1, 2 and 3 went on Leave Preparatory to Retirement (L.P.R.) on 31.03.2009, 30.04.2009 and 31.12.2008 respectively and their L.P.R. period had expired on 30.03.2010, 29.04.2010 and 30.12.2009 respectively. The Public Servants (Retirement) Act, 1974 was amended by the Public Servants (Retirement) Act, 2010 adding inter alia section 4A, which provides for extension of the period of service to public servants who were freedom fighters from 57 to 59 years of age. The writ petitioners who were on LPR claimed that they would get the benefit of the provision since the law provided that they would be taken out of LPR and would continue to serve up to the 59th year.

4. Pubali Bank Ltd., writ respondent No. 6, petitioner herein, in its affidavit in opposition claimed that the writ petitioners were not public servants as they were under the employment of a private bank and as such the principle of master and servant was applicable and matters relating to their service was not amenable to the writ jurisdiction, and therefore the writ petition was not maintainable. Moreover, since the bank is not a statutory corporation or a local authority, the employees were bound by the Pubali Bank (Employees) Service Regulations, 1981 which in fact adopted certain provisions from the Public Servants (Retirement) Act, 1974, but the subsequent amended provisions of 2010 have not been incorporated in the Bank's Service Regulations and hence are not applicable to the writ petitioners.

5. The High Court Division heard the parties and upon consideration of the submissions and materials on record, by the impugned judgment and order, disposed of the Rule suggesting that the Pubali Bank Limited may consider to allow the petitioners to serve in their respective posts from 57 to 59 years. The Pubali Bank is now before us with the instant civil petition for leave to appeal.

6. Mr. Mahmudul Islam, learned Senior Advocate appearing on behalf of the petitioner submits that the writ petitioners relied upon a circular of the Pubali Bank Ltd. dated 31.01.2012 by which the benefits under section 4A of the Public Servants (Retirement) (Amendment) Act, 2010 were given to employees of Pubali Bank Ltd, who were freedom fighters. However, he points out that the said circular was effective from 01.01.2012, whereas the writ petitioner's LPR period expired long before that. The learned Advocate further submits that, Pubali Bank Ltd, being a private bank, the writ petition was not maintainable as held by the same Bench of the High Court Division in Writ Petition No. 6017 of 2010 wherein judgement was delivered on 13.03.2011 holding that since Pubali Bank Limited was a private bank, the writ petition was not maintainable. He points out further that in the

impugned judgement their Lordships of the High Court Division did not decide the question of maintainability of the writ petition, but as a pious wish suggested that since the Board of Directors of the writ respondent Bank had decided to extend the service period of employees from 57 to 59 years, “for the cause of justice, equity and fair play the Pubali Bank Limited may also consider to allow the petitioners to serve their respective posts from 57 to 59 years.”

7. No one has appeared on behalf of the respondents.

8. We have decided earlier in *Md Anwarul Alam Vs. Government of Bangladesh* in *Civil Petition for Leave to Appeal No. 227 of 2012*, which arose out of Writ Petition No. 6017 of 2010, that the bank concerned being a company under the Companies Act, does not come within the ambit of article 102(5) of the Constitution. So, we are of the view that the Rule in the instant case ought to have been discharged on the same ground, especially when the same Bench had decided earlier that the employees of Pubali Bank Limited are not in the service of the Republic or of any Corporation, National Enterprise or Local Authority. Moreover, we accept the submission of Mr. Mahmudul Islam that the writ petitioners will not get the benefit of the Bank’s circular dated 31.01.2012 since the writ petitioners’ LPR period had expired prior to the circular coming into force. We also accept that the subsequent amendment to the Public Servants (Retirement) Act 1974 will not be automatically incorporated in the Service Regulations of the Bank, until and unless the Bank chooses to adopt the same by amending the relevant Service Regulations.

9. Finally, we find that in this case the learned Judges of the High Court Division merely expressed their wish that the Bank may consider allowing the petitioners to serve up to their age of 59 years since the Board of Directors of the Bank had decided to extend the service period of its employees from 57 to 59 years. However, there was no finding that the petitioners had any such legal right to have their period of service extended up to 59 years of their age. Indeed, in our view the Bank giving such benefits to its employees by means of a circular post dates the writ petitioners’ superannuation and is, therefore, not applicable in their case.

10. With the above observations the instant civil petition for leave to appeal is disposed of.