

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, KRISHNAGIRI**

**PRESENT: Tmt.V.R.Latha., M.A., B.L.,**

**Principal District Judge, Krishnagiri.**

Friday, the 25<sup>th</sup> day of April, 2025

**I.A.No.03/2024 in O.S.No.650/2024**

Augustine Samuel

...Plaintiff/Petitioner

Versus

1. The Chief Manager,  
Discipline and Fraud Monitoring Cell,  
Tamil Nadu Mercantile Bank Limited,

2. The General Manager,  
Discipline and Fraud Monitoring Cell,  
Tamil Nadu Mercantile Bank Limited,

3. The Deputy General Manager, Appellant Authority,  
Discipline and Fraud Monitoring Cell,  
Tamil Nadu Mercantile Bank Limited,

4. The Assistant General Manager,  
Disciplinary Authority,  
Discipline and Fraud Monitoring Cell,  
Tamil Nadu Mercantile Bank Limited,

5. Mr.PA.Raja (2233),  
Regional Manager,  
TamilNadu Mercantile Bank Limited,

6. Mr.D.C.Ravikumar,  
Jewel Appraiser,  
TamilNadu Mercantile Bank Limited

...Defendants/Respondents

This petition is coming up for final hearing before me on 26.03.2025 in the presence of Tr.M.Mohamed Afridi, Tr.A.M.Udhaya Raj, Tr.V.Aswin and Tr.J.Deenadayalan., Advocates for Plaintiff/petitioner, and Tr.G.T.Karunagaran, Advocate for Defendants/Respondents, and upon hearing both side arguments and upon perusing the documents and the case having stood over for my consideration till this day, I delivered the following

### **ORDER**

This petition is filed on 29.11.2024 by the Plaintiff/Petitioner u/sec Order 39, Rule (1) & (2) and Section 151 of Civil Procedure Code 1908, to grant ad-interim injunction to stay the impugned Order of appeal passed by the 3<sup>rd</sup> respondent dated 06.08.2024 in Ref.No.DFMC 03086:191:AO:2024-2025: 283 and the impugned order passed by the 4<sup>th</sup> respondent dated 02.07.2024 in Ref.No.DFMC.Disp.191/3971/H/Cor.11/2024-2025 pending disposal of the suit.

### **The Gist of the petition are as follows:-**

2] The petition is filed by this petitioner by way of stating that, he joint TMV in the year 2011, and he worked relentlessly and with unblemished record and has higher integrity because of his hard work. He joined in Krishnagiri Branch, in the year 2017 and worked deeply with all responsibility

towards the welfare of the institution. On 02.07.2024 he was dismissed from service based on allegations that are not only baseless but also reflective of a predetermined mind. His appeal towards higher authorities were met with apathy, and culminating in the confirmed dismissal of this petitioner, without any substantive consideration of the evidence.

3) The Charges framed against him in bias manner and he have a detailed replies and addressed each allegations meticulously, but they were summarily dismissed without due consideration. The disciplinary proceedings contains procedural lapse. The Inquiry Officer exhibited clear bias by way of dismissing his responses. He joined HDFC bank as a Relationship Manager, on 19.08.2024. But because of the illegal disciplinary proceedings framed by the respondents, threatening his current employment and prospects. Therefore, he has come forwards with the petition, to stay the proceedings taken by the respondents authorities which will not cause any prejudice to the respondent. He is not seeking reinstatement and his only prayer is for the suspension of the order passed in the disciplinary proceedings pending the disposal of the suit, to ensure that justice is served and requires the fair trial from the respondents.

4) He has relied upon that the High Court of Gauhati in Subho Ram Kalita ( Deceased) v. Dharmeswar Das Koch and Others held the scope and applicability of Section 151 of the Civil Procedure Code (CPC), which

preserves the inherent powers of civil courts and prays to invoke Section 151 of CPC to stay further proceedings if necessary to prevent abuse of process or to serve the ends of Justice.

5) It is further stated by the petitioner, when there is no effective alternative remedy prevails under any specific provision of the CPC or other statutes to seek a stay of the order passed in the disciplinary proceedings. Section 10 CPC which deals with the stay of orders is not applicable as there is no parallel or previously instituted suit involving the same issue. Therefore, the only recourse left to the petitioner is to invoke the inherent powers of the court under section 151 CPC to stay the order passed in the disciplinary proceedings and pray to allow this petition.

**The Gist of the counter filed by the 1<sup>st</sup> respondent/1st defendant and the Respondents 2 to 6/ defendants 2 to 6 adopts the counter filed by the 1<sup>st</sup> respondent/1st defendant as their own are as follows:-**

6] On the other hand, the respondent in the I.A.No.3/2024 has argued that the petitioner/plaintiff has filed the present suit by falsely alleging and averring imaginary facts for declaring the dismissal order passed against him as if it is bad, void a inito nonest in the eye of law. The truth is that by suppressing the true facts the petitioner/plaintiff with an ulterior motive to mislead this Hon'ble court, had filed the suit, which is barred by law to

exercise its jurisdiction on the plaint averments. The TamilNadu Mercantile Bank Limited is a Private Bank which comes under the definition of “Commercial Establishment” as per Section 2(3) of the Tamil Nadu Shops and Establishment Act 1947. So this petition is a vexatious one and not at all maintainable and liable to be dismissed for the reason that the petitioner is having an effective remedy only under section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 and not under this provision filed by him. The plaintiff is having a right to appeal to the suitable authorities on the ground that there was no reasonable cause for dispensing his services or on the ground that he had not been guilty of misconduct as held by the employer.

7) The petitioner was dismissed from the service of the Bank in connection with the serious acts of misconduct proved against him, the only remedy available to him is to prefer appeal under section 41(2) of the Act. The petitioner was working as the Branch Manager of the Bank’s Krishnagiri Branch, reappraisal of jewel pertaining to the Jewel Loans sanctioned/ disbursed by him, was made by the 6<sup>th</sup> Respondent/6th Defendant as per the instructions from the higher authorities and thereby various loans sanctioned for those fake jewels were identified. Therefore, further investigations were conducted by the Bank through the 5<sup>th</sup> Respondent/5th Defendant which revealed various irregularities and fraudulent activities were committed by the petitioner. The respondent submitted the report on 26.02.2024 and charges

were framed against this petitioner. Further more, the additional report received from the 5<sup>th</sup> respondent/5th defendant a supplementary charge sheet dated 15.05.2024 was issued to the petitioner/plaintiff. For those charge sheets the petitioner/plaintiff had submitted his explanation which were not found satisfactory as per the Bank's Code of conduct. Hence, the Disciplinary Authority order for conducting a domestic enquiry into the charges leveled against the petitioner/plaintiff. The domestic enquiry was conducted and concluded on 28.05.2024. The entire set of documents were produced by the management to the petitioner to cross examine both the management witnesses. The petitioner/plaintiff was provided sufficient opportunities under Justice, then only thereupon the findings were finalized as per the established enquiry procedure. The petitioner/plaintiff having acknowledged the findings, has submitted his comments on the findings on 11.06.2024 which was also not found satisfactory. Therefore, a show cause notice was issued dated 25.06.2024 proposed to impose on him, by way of dismissing him from service.

8) Thereafter, the petitioner/plaintiff had preferred appeal before the appellate authority of the bank vide his letter dated 05.07.2024 and 08.07.2024 against the order of the dismissal. Upon going through the records, as there was no merits on the appeal grounds, the appellate authority dismissed the appeals and confirmed the dismissal order passed against the plaintiff by order

dated 06.08.2024 by considering the grave and serious nature of the acts of misconducts proved against the petitioner/plaintiff, the imposition of the punishment of Dismissal from service imposed on the petitioner cannot be termed as harsh or disproportionate as falsely charged by the petitioner/plaintiff. The petitioner having accepted the dismissal order and claimed eligible terminal benefits from the Bank by submitting necessary forms to the Head Office, the management considering the situation on humanitarian grounds and gratuity amount of Rs.5,59,563/- was settled on 10.01.2025. The plaintiff stealthily cannot now file a suit challenging the dismissal order passed against him, by suppressing the truth and making baseless allegations as if no benefits has been paid to him and was not considered.

9) It is utter false to state that, despite the petitioner/plaintiff unwavering commitment, on 02.07.2024, the petitioner/plaintiff was dismissed from service, based on allegations that are not only baseless but also reflective of a predetermined outcome of a flawed disciplinary process as held in the plaint. It is further argued on the side of the respondent, it is totally unnecessary. The petitioner/plaintiff to crave of this Hon'ble Court to treat the plaint of this Original Suit as part and parcel of this petition. Because, while the maintainability of the suit itself is questionable then the question of seeking

interim relief does not arise at all, making this suit itself infructuous in any manner.

10) There is no prima facie case and not even a pinch of balance of convenience lies in favour of the petitioner. So the question of the petitioner disputing the order passed by the respondents is not maintainable, and making this petition infructuous. The petitioner cannot seek the imaginary relief of an ad-interim injunction against the respondents. Hence, he prayed for dismissal of the petition.'

**11) Whether this petition has to be allowed or not?**

12] On Hearing both sides and upon peruse the records, this petitioner has approached this court by way of stating that he was working in TamilNadu Mercantile Bank for more than a decade, but to his surprise he was dismissed from service. He joined the TMB in the year 2011 with the passion to service the community. He raised from a clerical cadre to the position of Officer Scale. In spite of his hard work he was dismissed from service, based on the allegations which was baseless and with the predetermined disciplinary proceedings against this petitioner and thereby he was dismissed on 06.08.2024, without any substantive consideration of the evidence and explanations, he was removed from service. The crucial evidence that was provided by him was ignored by the TMB. The enquiry proceedings were

marred by several procedural lapses, and without examining the essential documents that was pleaded by him, the Inquiry Officer exhibited clear bias and dismissed him with mere formalities rather than scrutiny, that was required. This amount to gross violation of principles of natural justice. He was not allowed to be heard. This dismissal order has inflicted irreparable harm to this petitioner.

13) Therefore, he approached this court, to stay the impugned order of the 3<sup>rd</sup> respondent dated 06.08.2024 and the purported impugned final order passed by the 4<sup>th</sup> respondent dated 02.07.2024 and will not cause any prejudice to the respondent by way of staying this petition. This petitioner not seeking reinstatement or financial benefits from TMB through interim relief. But his prayer is with regard to the suspension of the orders passed in the disciplinary proceedings, pending the disposal of this suit, to ensure that justice is served.

14) To support his petition, the petitioner has relied upon the Judgment of the Gauhati Court in **Subho Ram Kalilta ( Deceased) v. Dharmeswar Das Koch and others** to scope that 151 CPC can be invoked for this purpose and prayed before this court to allow this petition by way of granting stay and the impugned order passed by the 3<sup>rd</sup> and 4<sup>th</sup> respondents and thus render justice.

15) On the side of the respondents it is argued that all the allegations stated by the plaintiff is absolutely false. This petitioner was already dismissed from service of the bank who was also eligible to get terminal benefits, and that also settled to him and as such there is no employer – employee relationship exists in between this petitioner and the management. He filed the suit falsely with an imagination, that this dismissal order passed against him as if it is bad, void ab initio nonest in the eye of law. The truth is that by way of suppressing the real facts he approached this court. The TMB is a Private Bank which comes under the definition of “ Commercial Establishment” as per Section 2(3) of the Tamil Nadu Shops and Establishment Act. So this petition as well as the vexatious suit filed by the petitioner is not maintainable and the petitioner is having effective remedy only under Section 41(2) of the Tamil Nadu Shops and Establishment Act 1947 and not just by filing this suit before this court. This petitioner was dismissed from the service of the Bank in connection with the serious acts of misconduct proved against him, the only remedy available to him is to prefer appeal under Section 41(2) of the Act and as such the present petition and the suit are liable to be dismissed in limine.

16) It is further argued by this plaintiff that he was functioning as a Branch Manager in Krishnagiri and was holding the charge of the reappraisal

of jewels pertaining to the jewel loans sanctioned and disbursed by him, as per the instructions from the higher authorities. But the true facts are the petitioner sanctioned fake jewels which was identified by the Bank authorities and investigations were ordered to be conducted. Out of that enquiry the fraudulent activities committed by the petitioner was found out and brought to light. The Charge sheet and the enquiry reports produced in the suit are self explanatory to prove the petitioner's misconduct and his commission and omission having resulted detrimental to the Bank's and also the Code of Conduct.

17) Based on the report submitted by the 5<sup>th</sup> defendant, the charges that were framed against him is given bilaw.

“You misused the takeover funds of Rs.3,11,31,561/- received from Axis Finance Limited which were meant for closing the Term Loan (LAP) account in the name of Mr.AM Murugan. Instead, you colluded with Mr.AM.Murugan and allowed him to siphon off the funds, as detailed in para (1) of the charge sheet.

You misused the WC funds of M/s Adhi Shiva Enterprises by creating term deposits for Rs.130.00 lakhs in the name of Mr.A.M.Murugan and thereafter sanctioning an overdraft limit of Rs.117.00 lakhs to

Mr.A.M.Murugan against the said term deposits, as detailed in para (1) of the charge sheet.

You colluded with the borrower Mr.A.M.Murugan and committed a fraud on the Bank by sanctioning 67 jewel loans aggregating to Rs.755.44 lakhs to Mr.A.M.Murugan, his wife and his accomplices, against pledge of spurious gold ornaments as detailed in para (ii) of the charge sheet.

You committed flagrant violations that laid down under Standard Operating Procedures in the matter of sanctioning jewel loans, as detailed in Para (iii) of the charge sheet.

It is further submitted, on receiving the additional report received from the 5<sup>th</sup> respondent, a supplementary charge sheet dated 15.05.2024 was issued to the petitioner.

“You obstructed Mr.D.C.Ravikumar, the jewel appraiser of Ambur Branch, from carrying out the re-appraisal of jewels at Krishnagiri Branch, which was assigned to him by Regional Office, as detailed in para (1) of the supplementary charge sheet.

Upon detection of the spurious nature of the jewels pledged by Mr.A.M.Murugan/his associates, you failed to take due further action asking Mr.D.C.Ravikumar to carry out the reappraisal of all jewels pledged by Mr.A.M.Murugan/his associates. Instead, you set Mr.D.C.Ravikumar on a

course of confrontation with Mr.A.M.Murugan by asking Mr.D.C. Ravikumar to do the reappraisal in the presence of Mr.A.M.Murugan and further asking him to report to Mr.A.M.Murugan, as detailed in para (ii) of the supplementary charge sheet.

After Mr.D.C.Ravikumar detected that jewels in 67 jewel packets pledged by Mr.A.M.Murugan/his associates were spurious, you joined Mr.A.M.Murugan in intimidating Mr.D.C.Ravikumar by asking him to not submit his report to Regional Office for the next 15 days, as detailed in para (iii) of the Supplementary charge sheet.

By your acts as alleged above, you colluded with Mr.A.M.Murugan who had defrauded the Bank by pledging spurious jewels”.

18] The respondent humbly submits in response to the charge sheets, the petitioner had submitted his explanation letters dated 08.05.2024 and 16.05.2024. The Management who found it not satisfactory and ordered to conduct a domestic enquiry against the petitioner. The domestic enquiry commenced on 23.05.2024 and was concluded on 28.05.2024, in which two witnesses were examined and 33 exhibits were marked. The petitioner was provided the entire set of documents that were relied upon by the management and the same were marked with the petitioner's knowledge during the enquiry. The petitioner has also cross examined the management and also marked 5

documents on his side for defense. Reasonable opportunities were given and findings were finalized as per the establishment enquiry procedure. The enquiry Officer submitted his report along with the findings of the enquiry on 31.05.2024 holding all the charges levelled against the petitioner. The disciplinary authority also upon personal of records concurred with the findings of the enquiry officer and called for comments from the petitioner by furnishing a copy of the findings by giving opportunities to the petitioner. The petitioner having acknowledged the findings has submitted his comments on the findings on 11.06.2024 which was also not found satisfactory. Therefore, he was issued with the show cause notice, proposing to impose the punishment of dismissal order from the service. For that proposal he gave a reply which was not found satisfactory in all aspects the plaintiff was dismissed from service.

19) Against the dismissal order, the plaintiff has preferred an appeal before the appellate authority of the Bank vide his letter dated 05.07.2024 and 08.07.2024 against the order of the dismissal, The appellate authority has also not found any merits on the appeal grounds submitted by the petitioner. The appellate authority dismissed the appeals and confirmed the dismissal order passed against the plaintiff by way of considering the grave and serious nature of the acts of misconducts proved against him. The plaintiff being then Head of the Branch expected to be of highest degree of trustworthiness and

integrity, but such expectation not been fulfilled by the plaintiff. Having accepted the dismissal order and also after preferring an appeal before the appellate authority which was also ended not in favour this plaintiff suppressing all those facts, he has come forward with the suit before this court to be nubbed in bud, since it is a frivolous one where there is a separate forum available to the petitioner who has also chosen such opportunities and failed in his attempt suppressing those facts has come forward to the suit, amount to be violation of principles of natural justice. It is true that no person shall be condemned unherred. But with regard to this petitioner he was properly faced his enquiry and based on that enquiry suitable orders were also passed having aggrieved on it he ought to have preferred an appeal before the proper forum and also he was failed in his attempt by way of getting a dismissal order through that forum itself, established the fact that this petitioner in a circumvent way tried to get remedy behind back. He has not stop with it, now the petitioner is working in HDFC Bank as a relationship Manager and got it confirmed again in a banking sector. The truth is that the alleged unsustainable prayer for the suspension of the orders based in the disciplinary proceedings pending the disposal of the suit totally not entertainable before this court. Because the remedy that was sought by the petitioner is somewhere else, without approach the appropriate forum wantonly to prolong the matter as far as possible he has chosen this forum which does not require any

consideration. The petitioner has approached this court with unclean hands by the suppressing the true and actual facts and the petitioner is not eligible to seek any such relief of Injunction and prayed to dismissed the petition with the cost of the respondent.

20) On hearing both side and upon perusing the records, the plaintiff has approached this court, to get a interim relief by way of invoking section 151 of C.P.C to stay the order passed by the defendant in the disciplinary proceedings initiated against the defendants. This petitioner himself has accepted the fact that the disciplinary proceedings initiated against him, by the respondent and he has also participated in that proceedings and the order was passed by the respondent in that enquiry report says, enquiry was conducted videly and out of that enquiry report the conclusion was “ Therefore, the petitioner/plaintiff was issued that show cause notice dated 25.06.2024 proposed to impose on him, the plaintiff dismissed from the service. Since the reply submitted by the petitioner/plaintiff was not at all found to be satisfactory by the management in all aspects the petitioner/plaintiff was dismissed from service of the bank by final order dated 02.07.2024.

21) Thereupon, the petitioner/plaintiff had preferred an appeal before the appellate authority of the Bank vide his letters dated 05.07.2024 and 08.07.2024 against the order of the dismissal upon going through as there was

no merit on the appeal ground the appellate authority dismissed the appeal and confirmed the dismissal order passed against the plaintiff by order dated 06.08.2024.

22) As the defendants herein not considered the prayer of the petitioner having no other option, the petitioner has come forward with this application order to stay the order passed by 3<sup>rd</sup> respondent dated 06.08.2024 and the order passed by the 4<sup>th</sup> respondent dated 02.07.2024 to grant ad-interim injunction to stay the impugned order of appeal passed by the 3<sup>rd</sup> respondent pending disposal of the present Original Suit and thereby render justice in favour of him.

23) On hearing both side and upon perusing the records, it is the duty of the court to find out whether this petitioner having ability to sue, after obtaining benefits, deprives on the specific facts and terms of the settlement and applicability of the law. Admittedly the petitioner has accepted that he has obtained all benefits from the defendants by way of getting a full and final settlement. Generally, if a person get all final benefits he is prevented from taking further any legal action, against the management.

24) Generally after obtaining all the benefits from the bank as part of a full and final settlement that will limit an employee's ability to file a suit against the bank. The full and final settlement after implies a welfare of all further

claims including the right to sue. However, there might be exception if the settlement was obtained through quation or with there was a breach of the agreement.

25) The appeal process involved a hierarchical structure within the bank were the appeal is directed to a higher authority for example Director, Vice President or ever as CEO for review and resolution. The purpose of the appeal is to address the grievance or dispute and ensure a fair and just resolution after involving investigation and consideration of all prospectives. Herein, in this case also after getting the result of the enquiry the petitioner herein, had utilized the higher forum. But that was also ended not in favour of the petitioner herein. While so, the petitioner after availing those opportunities has expressed his interest to get the final settlements and involved in all the procedures to get his all settlements and came out of that bank. While so, after getting relief from that bank, there is no relationship survives between them as employer and employee. According to Section 41 of Tamil Nadu Shops and Establishment Act 1947 no employee shall dispense with the service for a person employee continuously for a period of not less than six months except for a reasonable cause and without giving such person atleast one month notice or wages in lieu of such notice provided. However, that such notice shall not been necessary were the services of such person or dispensed with on a charge of misconduct supported by satisfactory evidence recorded and

reviewed by a higher level of management or a designated appeals body. Here in this case also the appeal is difically reviewed by a higher level of management or a designated appeals body that was also agreed by the petitioner himself by way of stating that he has preferred a appeal into the designated appeal body.

26) The inter management appeal is an internal process within a organizational structure, where employees can challenge decision, made by their management and have their grievances reviewed by a higher authority within the same organization. That opportunity was very well allowed to this petitioner and finally it was found out that the allegations made against this petitioner is true and he was sent out of the complaint. The petitioner has also accepted the fact that he obtained full and final settlement and receives all outstanding dues, and agreed to release the employer from any further claims or liabilities. While so, this agreement is legally binding and prevent employee from any further issues. When this petitioner already waived his right by getting full and final settlement he has no right to pursue legal action against the ex-employee for any claims related to the employment.

27) Ofcourse, there are exception to this rule for example with the settlement obtained and duras or with employer breached the terms of settlement agreement are the employment contract. After obtaining all the

benefits from the bank, especially through a full and final settlement it prevents further legal action. Though he has preferred an appeal against order passed by disciplinary authority against which he has filed another appeal before the inter management appeal authority and challenged decision made by the management. But after conducted an enquiry by the said authority and came to the conclusion there was a mis management during his service and also ready to give a full and final settlement which was also accepted by the petitioner and received all outstanding dues, and thereafter if he wants to prefer any appeal he has to approach the appropriate Forum. Though this petitioner has relied upon *Kusheshwar Dubey Vs Bharat Coking Coal Limited and Others* on 6 September 1988 and wanted to insist on the point,

“ The appellant is an employee in the Balihari Colliery of the Respondent No.1 and in 1986 was working as an electrical helper. On the allegation that he physically assaulted a supervising officer by name S.K.Mandal, he was subjected to disciplinary proceedings as also a criminal prosecution. Since the disciplinary proceeding as also the criminal trial were taken simultaneously, the appellant filed a civil action in the court of Munsif at Dhanbad asking for injunction against the disciplinary action PG No.823 pending criminal trial. On 06.12.1986 the Munsif made an order staying further proceedings in the disciplinary action till disposal of the criminal case. The appeal of the Respondent No.1 against the order of learned Munsif was dismissed

on 31<sup>st</sup> March 1987 by the appellate court. Thereupon the Respondent No.1 moved the High Court in its revisional Jurisdiction. The High Court by its order dated 7.7.1987 held;

“ First information report was lodged against the opposite party (appellant) and the same was pending before the competent court. Meanwhile the petitioners (respondents) started departmental proceeding against the opposite party. The opposite party filed a suit before the trial court for declaration that appointment of the Enquiry Officer was illegal and for restraining the petitioners permanently from continuing with the departmental proceeding during the pendency of the criminal case. That was allowed by the trial court and confirmed by the lower court. There is no bar for an employer to proceed with the departmental proceeding with regard to the same allegation for which a criminal case is pending.

I am, therefore, of the opinion that the courts below were wrong in granting injunction in favour of the opposite party.

In the result, this application is allowed and the order impugned is set aside...”

28) These facts stated in this petition is not applicable to the facts of this case. There is no such simultaneous procedure were initiated against this petitioner. The facts of the case are entirely different and as such the Judgment relied by the petitioner is not at all applicable to the facts of the case. On the side of the respondent they have relied upon Judgment,

**In Federal Bank vs Sagar Thomas** reported in 2003 (10)SCC 733

(Cited Supra), the delinquent in that case was also a Branch Manager like that of the appellant herein, wherein it has been held that the Writ petition is not maintainable against a Private Bank. Even in the recent judgment of the Division Bench of the Bombay High Court in Chanda Deepak Kochhar vs ICICI Bank ( cited supra), it has been held that the Writ petition filed by the Managing Director as against a private Bank, is not maintainable. Further in the present case, the Writ petitioner is having an effective alternative remedy under Section 41(2) of the Tamil Nadu Shops and Establishments Act, and on that ground also, the Writ petition is not maintainable. Section 41 of the Tamil Nadu Shops and Establishments Act is extracted hereunder.

**“41. Notice of dismissal....(1)** No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for reasonable cause and without giving such person at least one months notice or wages in lie of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and with such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

(2-A) The appellate authority may, if it considers that any document or the testimony of any person is relevant or

necessary for the discharge of its duties under this Act as appellate authority, call for and inspect such document or summon and examine such person. For the aforesaid purposes, it shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, (Central Act V of 1908), in respect of the following matters, namely;-

- (i) Summoning and enforcing the attendance of any person and examining him on oath;
- (ii) compelling the production of document;
- (iii) issuing commissions for the examination of witnesses

(2-B) The appellate authority, may, after giving notice in the prescribed manner to the employer and the person employed dismiss the appeal or direct the reinstatement of the person employed with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the appellate authority shall be final and binding on both the employer and the person employed'...

16. It is the submission of the learned counsel for the appellant/writ petitioner that under section 4 of the Tamil Nadu Shops and Establishment Act, there is exemption for the Managerial cadre employees to file an appeal before the Appellate Authority. In order to overcome the said submission, the learned counsel appearing for the respondents-Bank brought to the notice of this court G.O.Ms.No.4074, Industries, Labour and Housing (Labour), dated 05.10.1996, which makes the provisions of the Tamil Nadu Shops and Establishment Act applicable even

to the Managerial persons. The said G.O was relied upon by this court in number of judgments including **Oriental Bank of Commerce vs Commissioner of Labour and Palat Achuthan vs Management, City Bank N.A., Mumbai** (cited supra).

The relevant portion of the said G.O is extracted hereunder;

“ In exercise of the powers conferred by Section 5 of the Madras Shops and Establishments Act 1947 (Madras Act XXXVI of 1947), the Governor of Madras hereby applies all the provisions of the said Act to the class of persons mentioned in clause (a) of sub-section (1) of S.4”

17. In view of the above submissions, it is clear that the appellant/writ petitioner is having an alternative remedy under section 41(2) of the Tamil Nadu Shops and Establishment Act. The respondents-Bank will not come within the fold of Article 12 of The Constitution of India to enable the appellant to maintain this writ petition before this court. When the respondents-Bank cannot be equated or considered as instrumentalities of the Government, the writ petition as against the respondent-writ petitioner is not maintainable. The respondents-Bank is a private Bank and it is not amenable the Jurisdiction of this Court under Article 226 of The Constitution of India. Therefore, the Writ petition is not maintainable. Hence, this court confirms the impugned order of the learned Single Judge..”

which is squarely applicable to the facts of the case.

Therefore on relying upon the above said judgment the only option available to the petitioner is to invoke Section 41(2) of the Tamil Nadu Shops and Establishment Act. With that finding this petition is dismissed.

In the result, this petition is dismissed with the cost of the respondent.

Dictated to steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the Open Court on this, the 25<sup>th</sup> day of April, 2025.

Principal District Judge,  
Krishnagiri.

Annexure:

Petitioner's side Witnesses : NIL

Petitioner's side Exhibits : NIL

Respondent's side Witnesses : NIL

Respondent's side Exhibits : NIL

Principal District Judge,  
Krishnagiri.