

Parvez Ahmad Nengroo Vs Union Territory Of Jammu & Kashmir And Others

Court: High Court Of Jammu And Kashmir And Ladakh At Srinagar

Date of Decision: Nov. 1, 2023

Acts Referred: Banking Regulation Act, 1949 " Section 10, 10B, 10B(7), 10B(9), 35B, 35B(b), 35B(1)(b)

Jammu And Kashmir Prevention Of Corruption Act, 1949 " Section 5(1)(d), 5(2)

Jammu And Kashmir State Ranbir Penal Code, 1989 " Section 120B

Companies Act, 2013 " Section 2(94)

Hon'ble Judges: N. Kotiswar Singh, CJ; Moksha Khajuria Kazmi, J

Bench: Division Bench

Advocate: Shariq J. Reyaz, D C Raina, Sajad Ahsraf, Sunil Sethi, Parimoksh Seth, Nitin Parihar

Final Decision: Dismissed

Judgement

M A Chowdhary, J

1. This letters patent appeal under Clause 12 of the Letters Patent is directed against the judgment/order dated 11.11.2020 rendered by a learned

Single Judge of this Court [for short "Writ Court"] dismissing the Writ Petition registered as WP(C) No.470/2020 preferred by the

appellant/petitioner, in limine, as not maintainable and relegating the appellant/petitioner to approach the civil court for seeking enforcement of his

contractual relationship and/or redressal of his contractual disputes with the Bank.

2. The appellant/petitioner has challenged the impugned judgment on the following grounds:

A. For that the impugned judgment and order dated 11.11.2020 is vitiated in law for in contradistinction to the succinct and the legally

substantiated case as set up by the Appellant in the Writ Petition, the impugned judgment embarks on unfortunate mis-adventurism and has

erroneously dismissed the Writ Petition not on the grounds urged by the Appellant or for that matter even on the grounds taken in

opposition by the Respondents but proceeds on wholly erroneous assumptions and conjectures that has in sequel thereto resulted in

absolute miscarriage of justice;

B. For that the learned Single Judge while rendering the impugned Judgment has erred in law in not appreciating that the Respondent No.2-

Bank being a Public Authority is in the matter of employment/service matters subject to constitutional obligation limitations therefore, any

cause accruing to an employee in relations to matter of employment/service falls clearly in the realm of Public Law and not Private Law, the

impugned judgment in so far it declines the relief prayed for by the Appellant in the writ petition entitled though ex-debito-justitiae and

relegates the Appellant to private law remedy and thus the impugned judgment in sequel thereto has been rendered bad and unsustainable

in law and liable to be set aside/reversed;

C. For that the learned Single Judge while rendering the impugned judgment has conveniently ignored the case set up by the Appellant in its

totality and has, while cherry picking lines and divorcing them from the context, led to the unwarranted and anachronistic conclusion that

the Appellant has admitted in the writ petition that the Appellant has deemed to have retired from the service of the Respondent No.2-Bank;

D. For that as a matter of fact substantiated by the records that no such admission direct or implied has been made and/or can be said to

have been made by the Appellant herein, rendering in sequel thereto the impugned judgment as well as the view taken and the conclusion

drawn as being without any basis and therefore, bad and unsustainable in law and liable to be set aside;

E. For that the learned Single Judge while rendering the impugned judgment has erred in law in not appreciating in its true and correct

perspective the unequivocal and unambiguous compensation policy of the respondent No.2 Bank that admits of no doubt vis-À-vis the

continuation of pensionary benefits to serving management including Chairman and whole-time directors and in sequel thereto is rendered

bad and unsustainable in law and liable to be set aside/reversed;

F. For that the learned Single Judge has completely misdirected in point of law when under gross misconstruction of the compensation

policy it is held that such compensation policy was not applicable to the Appellant when as a matter of fact the Appellant being the

Chairman and CEO was amongst the serving management of the Respondent No.2 Bank and was hence entitled to contribution towards

pensionary benefits on account of continued service in the Respondent No.2-Bank. The impugned judgment on this court as well is rendered

bad and unsustainable in law and thus liable to be set aside/reversed;

G. For that the impugned judgment suffers from ex-facie perversity in as much as it under gross misconception/misconstruction of the

compensation policy as well as the factum of contribution made by the Appellant towards the Pension Fund post appointment as Chairman,

duly accepted by the Respondent No.2 Bank being in sync with the compensation policy though, has been, without any basis and/or

assigning any reason therefor, virtually dubbed as an act of error on part of the Respondent No.2-Bank as well as the Respondent No.3,

rendering in sequel thereto the impugned judgment bad and unsustainable in law and thus liable to be set aside/reversed;

H. For that the records and documents of clinching evidence including but not limited to Notification dated 29.01.2013 issued by the

Ministry of Finance clarifying inter alia the scope of the concept of deemed retirement and combined service as applicable to the employees

of Public Sector Banks who quite alike the Appellant were elevated from Career Level Post to Board Level Post has been conveniently

ignored and as a consequence thereof a grotesque result is brought about in disregard of settled position as applicable to the likes of the

Appellant being employees who, after having served at a Career Level Post appointed to a Board Level Post in a Public Service Bank.

I. For that the impugned Judgment is also vitiated for the reason of the fact that the learned Single Judge failed to appreciate that if the

concept of deemed retirement was applicable in the Respondent No.2 Bank then such deemed retirement would be applicable to all such

employees who were appointed as whole time directors (executive directors) on the Board of the Respondent No.2 Bank and all such

employees would cease to be so on the case of their appointment as whole time directors in the Respondent No.2 Bank, without bestowing

any consideration that the emphatic statement of the Appellant that no such employee of the Respondent No.2 Bank on being appointed as

whole-time director was deemed to be retired and that thus the concept of deemed retirement has no relation to the service of an employee in

the Respondent No.2 Bank deserved in law, rendering the impugned Judgment unsustainable in law and liable to be set-aside/reversed.

J. For that the learned Single Judge has wrongly relied on the ratio of Chanda Kochhar's case being unmindful of the glaring fact as

substantiated in the pleadings that the ratio of Chanda Kochhar was passed in a case of private bank under no governmental control and

not a public sector Bank and that no parallel could or can in law be drawn in between the two legal entities one in the realm of private law

and other in the realm of public law being Public Authority amenable to the Writ Jurisdiction of this Hon'ble court and has thus erred in

law in not appreciating that the respondent No.2 being a public authority stood on a completely different position that the ICICI Bank

(Bank involved in Chanda Kochhar's case) and hence the ratio of that case was utterly inapplicable in the case of the Appellant

herein.

3. Brief facts of the case as pleaded in the writ petition by the petitioner are that the appellant/writ petitioner was an employee of Respondent No.2-

Jammu & Kashmir Bank Ltd (for short the Bank) having been appointed as company secretary in the year 1998; that the appellant/writ

petitioner is instrumental in placing the Bank in the higher echelons of Banking Sector in India which has resulted the Bank becoming the first listed

company of J&K on both the Bombay Stock Exchange (BSE) and National Stock Exchange(NSE); that petitioner, in a span of more than 20 years

with Bank held various positions of Deputy General Manager (June 2006-April 2008), President (April 2008- September 2011), Executive President

(September 2011-October 2016) and was eventually appointed as Chairman & CEO on 06.10.2016 for a tenure period of three years; that on

20.09.2016, the candidature of the appellant/writ petitioner was proposed for the post of Chairman of the Bank by the Board of Directors of the Bank;

that on 30.09.2016, the RBI in terms of Section 35B of the Banking Regulation Act, 1949 selected and approved the appellant/writ petitioner as the

Chairman & CEO of the Bank with effect from 06.10.2016; that in terms of clause 69 of the Articles of Association of the Bank, the

Commissioner/Secretary, Finance Department appointed the appellant/writ petitioner as Government Director; that the Bank on 06.10.2016 after

taking note of approval of the RBI dated 30.09.2016 as well as approval from the Commissioner/Secretary, Finance Department dated 03.10.2016,

accorded approval to the appointment of the appellant/writ petitioner as Chairman & CEO of the Bank for a period of three years w.e.f. 06.10.2016;

that the appellant/writ petitioner was accorded a cumulative salary package of ₹166 lakhs per annum along with other perquisites, which were duly

approved by the RBI as well.

4. It was pleaded that as serving employee of the Bank and his employment with it was to continue till his superannuation in 2024, the pensionary

benefit accruing to the petitioner prior to his appointment as Chairman and CEO was continued as per Compensation Policy and the Pension Rules;

that the continuation of pensionary benefits due to the appellant/writ petitioner as Chairman & CEO was approved by the Board of Directors of the

Bank on 27.12.2018 and also by the RBI on 15.05.2019; that the appellant/writ petitioner as Chairman & CEO, brought laurels to the Bank by bagging

prestigious awards like Outstanding Contribution through Innovative Initiatives in the Housing Sector under the Pradhan Mantri Awas Yojana

(Urban) and, for inclusive banking and inclusion in rural areas with establishment

of 35 easy payment units in the Himalayan District of Leh in J&K, Top Banker Award for its outstanding performance under the Prime

Minister Employment Generation Programmer by the Ministry of MSME, and the appellant/writ petitioner was also awarded the title of Elite

Ambassador of the Institute of Company Secretaries of India-the Golden Memoir Award.

5. Averred also was that for unknown reasons and abruptly, the respondent No.1 in arbitrary exercise of power vested under clause 69 (iii) of the

Articles of Association of the Bank issued Notification dated 08.06.2019, stopped the appellant/writ petitioner as Nominee Director of the respondent

No.1 and consequently removed him as Chairman & CEO of the Bank, and by the same communication, appointed respondent No.4 the interim

Chairman-cum-Managing Director of the Bank; that the appellant/writ petitioner made representation addressed to the Chief Secretary stating, inter

alia, that he had not reached the age of superannuation and that despite his termination as Chairman & CEO of the Bank, he substantively continued

to be in the employment and sought disbursement of his salary. In response thereto, vide communication dated 09.07.2019, the President Human

Resources Development Department of the Bank informed the appellant/writ petitioner that he is deemed to have retired from the services of the

Bank as Executive President w.e.f. 06.10.2016; that against this communication dated 09.07.2019, he filed a representation on 12.07.2019 before the

Financial Commissioner, Finance Department, Government of J&K; that the appellant/writ petitioner is also stated to have served legal notice dated

23.12.2019, upon the respondents.

6. Averment was made that as he served legal notice to the respondents, the Anti Corruption Bureau (ACB) filed the charge sheets of the FIR

No.10/2019 for offences U/Ss 5(1)(d) read with Section 5(2) of the J&K Prevention of Corruption Act, Svt. 2006 and Section 120-B RPC vide

Challan nos. 3 and 4 against the appellant/writ petitioner before the Court of Special Judge, Anti Corruption, Srinagar.

7. In the meanwhile, one Zubair Iqbal filed EMG-CM No.78-A/2020 and sought impleadment as party respondent in the writ petition. Vide order dated

29.05.2020, his application was allowed by the court impleading him as 5th respondent in the writ petition.

8. Thereafter, CM No.1961/2020 seeking amendment of the writ petition, was filed by the appellant/writ petitioner which was allowed on 19.09.2020,

wherein appellant/writ petitioner besides the prayers in the writ petition sought some additional prayers to the extent:

(i) A writ in the name of Certiorari or any other appropriate writ, order or direction of like nature quashing the impugned notice dated 08.06.2019 as

being illegal, arbitrary and unreasonable and being passed in utter violation of the Banking Regulation Act and the Articles of Association of the

Respondent No.2 Bank and thus non-est and invalid in law;

(ii) A writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the impugned communication dated 09.07.2019 as being

illegal, arbitrary and unreasonable and thus non-est and invalid in law;

(ii-a) Writ in the nature of Certiorari or any other appropriate writ quashing the impugned process initiated vide Advertisement Notices dated

27.03.2020 and 24.04.2020 for appointment against the non-existent post of Managing Director as well as the impugned appointment of the

Respondent No.5 as Managing Director of Respondent No.2 Bank be also issued in favour of the petitioner and against the Respondents.

(iii) A writ in the nature of Mandamus or any other appropriate writ, order or direction reinstating the petitioner as the Chairman and CEO of the

Respondent No.2-Bank in order to serve the remaining time of his tenure as Chairman and CEO of the Respondent No.2-Bank;

(iv) A writ in the nature of Mandamus or any other appropriate order or direction in the nature of writ of mandamus declaring the appointment of

Respondent No.4 as Chairman and CEO as illegal and unlawful being in violation of the Banking Regulation Act and the Articles of Association of the

Respondent No.2 Bank.

(v) In alternative to prayer (iv) (supra) a writ in the nature of Mandamus or any other appropriate writ order or direction commanding the Respondent

No.2 Bank to accommodate the petitioner at a Board Level Post in the Respondent No.2 Bank till his superannuation from the Respondent No.2-

Bank;

(v-a) Writ in the nature of Mandamus or any other appropriate Writ commanding/directing the Respondents in particular Respondents 2 to 4 to treat

the impugned process as well as the appointment of the Respondent No.5 to the post of Managing Director of the Respondent No.2 non-est in law

and to desist refrain and forbear from giving effect thereto and/or carrying into effect in any manner disregarding offending against the statutory

mandate contained in Section 35B(b) of the Banking Regulation Act, 1949, be also issued in favour of the petitioner and against the Respondents.

(vi) A writ, order or direction in the nature of Mandamus directing the Respondent No.2-Bank to forthwith release the monthly salary along with all

perquisites and benefits due and payable to the petitioner in law;Ã¢â¬â¸

9. Pursuant to notices in the writ petition, respondents filed their respective replies. Respondent No.1 had raised a preliminary objection to the

maintainability of the writ petition, as the appointment of the petitioner as Chairman/CEO of the Bank was a contractual appointment and that no writ

petition can be filed for enforcement of a contractual relationship.

10. The respondents no.2 and 4 have also taken objection regarding the maintainability of the writ petition as the appointment of the petitioner was a

contractual appointment. It is further stated in their objections that the petitioner had the alternate remedy of filing statutory appeal under Section

10B(7) of the BR Act which he has not done; that the petitioner is involved in a criminal case registered vide FIR No.10/2019 involving serious

offences under Prevention of Corruption Act, relating to backdoor appointments made in the Bank; that the petitioner himself accepted the decision of

the Government and that of the Board regarding his removal from the position of Chairman/CEO of the Bank, and in consequence of that, he moved

application dated 09.07.2019 to the Chairman of the Bank and sought release of salary in his favour on the ground that prior to his appointment as

Director/Chairman and CEO of the Bank, he was holding the status and position of Executive President in the Bank; that having accepted the factual

and legal position, the petitioner applied for grant of terminal/retiral benefits vide his application dated 16.09.2019 and the petitioner has suppressed

these facts; that the petitioner has also applied for the post of Managing Director but he was not selected being unsuitable by the Screening

Committee and so he cannot challenge the appointment of respondent No.5 as Managing Director.

11. The respondent No.3, the RBI, in its reply besides raising the question of maintainability of the writ petition also stated that in terms of Section

10B(9) of the BR Act, notwithstanding anything contained in Section 10B, where a person appointed on a whole-time basis as Chairman of the Board

of Directors or the Managing Director dies or resigns or is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave

or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office,

the Banking Company may, with the approval of the RBI, make suitable arrangements for carrying out the duties of Chairman or Managing Director

for a total period not exceeding four months; there was no specific proposal before the RBI for approval of termination or appointment of the

Chairman and that respondent no.2 had sought approval of the RBI for an arrangement viz the interim CMD's appointment. From a regulatory

perspective it was necessary for the RBI to ensure that the interests of the depositors banking company were safeguarded; that thus the proposal for

the appointment of an interim CMD was granted approval; that the RBI does not sit in judgment over the legality of actions taken by a banking

company in pursuance of its contracts with its employees.

12. Aggrieved of the communication dated 08.06.2019 stopping/removing the appellant/writ petitioner as Nominee Director of the respondent No.1

and consequently his removal as Chairman & CEO of the Bank; appointing respondent No.4 the interim Chairman-cum-Managing Director of the

Bank; of the communication dated 09.07.2019 informing the appellant/writ petitioner that he is deemed to have retired w.e.f. 06.10.2016, and the

subsequent reliefs as prayed for by the appellant/writ petitioner in the amended writ petition, fell for consideration of the Writ Court.

13. The Writ Court vide its judgment dated 11.11.2020 dismissed the writ petition of the appellant/writ petitioner, by observing that the writ petition

was not maintainable as in terms of Rule/Regulation 2(k) and 2(l) of the Pension Regulations, the appellant/writ petitioner is deemed to have retired

from the Service of the Bank w.e.f. 06.10.2016, therefore, his tenure as being the Chairman & CEO of the Bank is not governed by the Service Rules

of the Bank. It is also held by the learned Single Judge that any dispute sought to be raised by the appellant/writ petitioner in relation thereto could not

be gone into by this Court in its writ jurisdiction.

14. Aggrieved of the judgment and order of the Writ Court, the appellant/writ petitioner has approached this court by way of filing this intra-court

appeal, raising various grounds detailed in para 2 of this judgment.

15. Learned counsel for the appellant/petitioner, reiterating the assertions made in the writ petition/memorandum of appeal submits that the

appellant/petitioner was appointed as first qualified company secretary in the respondent no.2-Bank in the year 1998 and, as such, he had to serve till

his superannuation at the age of 60 years on 31.03.2024, i.e. in the span of more than 20 years with the respondent no.2-Bank, the appellant/petitioner

held various positions and was eventually appointed as Chairman and CEO on 06.10.2016 for a tenure period of three years; that the

appellant/petitioner on 20.09.2016 consequent upon the superannuation of the incumbent Chairman being a high ranking bank employee holding the

post of Executive President was proposed, based on his seniority and merit by the Board of Directors of the respondent No.2-Bank to hold the apex

position of the Chairman/CEO vide resolution dated 20.09.2016; that on 30.09.2016, the respondent no.3-RBI exercising supervisory control over the

respondent no.2-Bank in terms of Banking Regulation 1949 particularly Section 35B thereof responding to the communication dated 21.09.2016 issued

by respondent no.2-Bank approved the candidature of the appellant/petitioner as Chairman/CEO; that consequent upon the approval of the RBI for

the appointment of the appellant/petitioner as Chairman/CEO, the respondent no.1 Govt. of J&K appointed him on 03.10.2016, as a Government

Director in terms of Clause 69 of the Articles of Association of respondent no.2-Bank; that on 06.10.2016, the Board of Directors of the respondent

no.2-J&K Bank took note of the approval of RBI dated 30.09.2016 and the approval of respondent no.1-Govt. of UT of J&K dated 03.10.2016, and

accorded approval to the appointment of the appellant/petitioner as Chairman/CEO of the J&K Bank for a period of three years w.e.f. 06.10.2016; he

has further argued that the appellant/petitioner being a serving employee of the respondent no.2-Bank was to continue till his superannuation on

31.03.2024, the pensionary benefits accruing to him prior to his appointment as Chairman and CEO were continued as per the compensation policy

and the pension rules in vogue having been resolved specifically by the Board of Directors of respondent no.2-Bank on 27.12.2018 and also approved

by respondent RBI on 15.05.2019; that on 09.06.2019, the respondent no.1- Govt. of UT of J&K had withdrawn the candidature of the

appellant/petitioner as the Government nominee Director holding that the appellant/petitioner ceased to be Chairman/CEO of the J&K Bank.

16. Learned counsel for the appellant/petitioner has further argued that the power of removal of Chairman of a Banking Company is vested only in the

Board of Directors and not the respondent no.1 and that even that decision of removal if taken by the Board, is subject to the mandatory prior

approval of respondent no.3 under Section 35B of the Banking Regulations Act, 1949. He has further argued that the contention of the respondents

that the appellant/petitioner on his appointment as Chairman ceased to be an employee of the respondent no.2-J&K Bank and was deemed to have

retired on 09.06.2016 i.e. the date on which he was appointed as Chairman is patently false because the Pension Regulations have no relation,

whatsoever, with one's service and the concept of deemed retirement has no application in case of the appellant/petitioner herein for the reason

that when an employee was elevated from a career level post to a Board level post only the time served by the employee at the career level post was

counted for the purpose of computing qualifying years under the said Regulations and the period served at the Board level post was ignored for the

purposes of computing qualifying years and the person for the said limited purpose was deemed to have retired.

17. In support of his arguments, learned counsel for the appellant/petitioner has relied upon a Notification dated 29.01.2013 issued by the Central

government clarifying the position and extending the pensionary benefits for combined service (career level post and board level post) to various

officers of the Nationalised Banks who were appointed as whole-time directors and Chairman for various banks. As such, the said benefit of

combined service was to run till superannuation of their services from the Bank. He has also drawn the attention of this court towards the

compensation policy of the Respondent No.2-Bank which provided that "Chairman and whole-time directors shall not be covered under pension

scheme unless whole-time directors have been appointed from amongst the service management and covered as regular employees of the Bank. Such

benefits however shall be available to whole-time directors only up to the time of normal superannuation and in case they are continued with beyond

retirement the pension benefits shall be culminated." He has further argued that the expression "whole-time directors" is an expression

which includes all directors in whole-time employment of the Bank and includes both Chairman/Managing Director and Executive Directors of the

Banking Company in terms of Section 2(94) of Companies Act 2013; that in case of appellant after his elevation as Chairman/CEO of the

respondent no.2-J&K Bank, the pensionary scheme with respect to the appellant herein was continued by virtue of Board resolution dated 27.12.2018,

that was further approved by respondent no.3-RBI on 15.05.2019 rendering the concept of deemed retirement wholly inapplicable and utterly

misplaced and misdirected in point of law.

18. He further argued that the respondent no.2-J&K Bank is a government Company and the State Government holds more than 68 per cent

shareholding in this Bank, as such, the law laid down in Chanda Kochhar case by the Apex Court was not applicable to the case on hand as that was a

case of ICICI Bank which was a private bank. He has further argued that the learned Single Judge in his judgment has not rendered a finding as to

what happened to the contribution made by the appellant/petitioner for two years and 9 months pursuant to RBI approval towards his pension funds

and finally it was prayed that all the impugned orders in the petition be quashed while setting aside the judgment passed by the writ court with a

direction to reinstate the appellant/petitioner to the post in the respondent No.2-J&K Bank that he would have enjoyed if the impugned prejudicial

action were not taken against him and or reinstatement to the position in the service of respondent no.2-J&K bank as Executive President with all the

protection available in law.

19. Learned Advocate General assisted by Mr. Sajad Ashraf, GA appearing for respondent No.1, argued that since the respondent no.2-J&K Bank is

a Government Company and the respondent no.2-Govt. of UT of J&K holds more than 68% of shareholding in the Bank and all its affairs i.e.

awarding of contracts, employment of personnel, procurement of goods and services, recruitment against vacant posts, creation of new posts, have to

be done with the prior concurrence of respondent no.1 and that for appointment of a person as Chairman/CEO of the respondent no.2-J&K Bank, a

person is required to be a Director having been nominated by the Government; that the appellant/petitioner having been proposed by the government

was considered by the Board of Directors and approved by the respondent no.3-RBI was proposed to be Chairman/CEO of the respondent no.2-J&K

Bank, however, as a precondition for his appointment as Chairman/CEO the Government of J&K had nominated him as a Director, so as to be eligible

for being appointed as Chairman/CEO; it was argued that the appellant/petitioner while holding the post of Chairman/CEO of the respondent no.2-

J&K Bank was alleged to have committed malpractices and resorted to corruption in the appointment made to various posts in the J&K bank, as such,

a case was registered against him by the Anti-corruption Bureau of J&K and the respondent no.1-Govt. of UT of J&K taking note of the

malpractices by the appellant/petitioner took a conscious decision to revoke his nomination as Government nominee Director, therefore, a person who

is not a government nominee Director cannot serve as Chairman-cum-CEO of the respondent no.2-J&K Bank, as such, he was rightly removed from

his position of Chairman/CEO of the respondent no.2-J&K Bank on 08.06.2019.

20. Mr. Raina, learned AG, further argued that the appellant/petitioner, from the date he was appointed as Chairman/CEO from his earlier position as

Executive President of the respondent no.2-J&K Bank, was deemed to have retired from the service of the Bank and he cannot claim the benefits

under the J&K Bank Employees Pension Regulations 1995. He further argued that the writ court had decided the case in its right perspective and the

impugned judgment passed by learned Single Judge does not call for any interference by this court in this intra-court appeal and prayed for its

dismissal.

21. Mr. Sunil Sethi, Senior Advocate assisted by Mr. Parimoksh Seth, Advocate appearing for the respondent no.2-J&K Bank and respondent no.4-

R.K. Chibber, Chairman/CEO of the respondent no.2-J&K Bank argued that the appellant/petitioner has miserably failed to establish a case which

warrants interference by this court in the impugned judgment dated 11.11.2020 passed by the learned Single Judge which is perfectly legal and based

on true appreciation of all the legal aspects, as such, this appeal filed by the appellant/petitioner deserves to be out-rightly dismissed.

22. He has further argued that the cessation of appellant as Government nominee Director and his resultant removal as Chairman/CEO of the

respondent no.2-J&K Bank, was based on the registration of FIR No.10/2019 with Police Station Anti-Corruption Bureau, Kashmir, for offences

punishable under Section 5(1)(d) read with Section 5(2) of the J&K Prevention of Corruption Act, Svt. 2006 and Section 120-B RPC and that the

appellant/petitioner has been arraigned as accused no.1 in the charge sheets nos. 3 and 4 which have been presented by the Anti-Corruption Bureau,

Kashmir before the court of learned Special Judge Anti-Corruption Srinagar, as he had been found involved in backdoor appointments of Banking

Attendants/ Assistant Banking Associates in the J&K Bank. He has supported the observation of the learned Single Judge in para 59 of the impugned

judgment wherein it has been very categorically and specifically held that the nomination of the appellant/petitioner as director on the Board and his

subsequent appointment as Chairman-cum-Chief Executive Officer of the respondent no.2-J&K Bank was contractual in nature and not governed by

any statute or the service condition, ordinarily applicable to the employees of the J&K Bank; that the aid of law laid down in Chanda Deepak Kochar

v. ICICI Bank Ltd. wherein it has been held that the contractual duties are enforceable as matters of private law by ordinary contractual remedies

such as damages, injunction, specific performance and declaration; that the learned Single Judge has rightly held the writ petition not to be

maintainable and so far as the plea with regard to pensionary and retiral benefits in reference to the compensatory policy of the bank is concerned, it

was argued that the learned Single Judge in para 58 of the judgment had elaborately dealt with the matter; he has further argued that the learned

Single Judge has rightly held that the compensation policy and the rules of the bank in view of deemed retirement of the appellant/petitioner from his

service from the date he was elevated to the position of Chairman/CEO is not available to him and that any dispute with regard to pension regulations

in view of Chairman/CEO of the Bank not governed by the service rule of the Bank cannot be gone into under writ jurisdiction of the court; he has

finally argued that the appeal filed by the appellant/petitioner does not merit any consideration and is liable to be dismissed and prayed for rejection

thereof.

23. Mr. Nitin Parihar, learned counsel for the respondent no.3-RBI has argued that the issues involved in the instant appeal is with regard to disputed

questions of facts, arising out of a contractual obligation between a Banking Company and its employee, a matter in which no powers are vested with

the respondent no.3-RBI; he has argued that the Section 35B(1)(b) of the BR Act 1949 provides only the requirement of taking prior approval of the

RBI for appointment, reappointment etc of Chairman, whole-time director etc and does not regulate the service conditions, thus, it does not adjudicate

the rights of any person to be appointed as Chairman, whole-time director etc; that the grant of approval by the RBI does not mean that the action of

termination is valid in terms of the service dispute; he has further argued that in the present case, no such situation has arisen and therefore, Section

35B(1)(b) of the BR Act 1949 is not applicable in view of its elaborate discussion and analysis in the judgment passed by Hon'ble Bombay High

Court in Writ Petition (Lodg.) No.3315 of 2019 titled 'Chanda Deepak Kochar v. ICICI Bank Ltd. & Anr.', wherein it has been held that

proposal for approval under the said section is not scrutinized in the service of the contract. RBI does not uphold or adjudicate or decide the rights of

the parties, inter se, but only focuses on the consequences of the proposed action; the nature of employment of the previous CMD in the instant case

was in the nature of contract and the High Court is not the forum to adjudicate any alleged infraction of contractual rights; he has further argued that

this judgment dated 05.03.2020 of the Hon'ble Bombay High Court was challenged before the Hon'ble Supreme Court in SLP No.013651 of

2020 which was dismissed vide judgment dated 01.12.2020, refusing to interfere with the impugned judgment.

24. Mr. Parihar has further argued that the impugned judgment by the writ court which is in consonance with the law laid down dictum in the above

case upheld by the Hon'ble Supreme Court does not call for any interference by this court in this LPA; that the respondent no.3-RBI on

08.06.2019 was informed by respondent no.2-J&K Bank that the appellant/petitioner a nominee of the J&K Govt. on the Board of Directors of the

Bank, ceased to be a director w.e.f. June 8, 2019 vide Government of J&K order and that the Government had nominated respondent R K Chibber as

the Director on the Board of Directors of the Bank in place of the appellant/petitioner; and that the Board of Directors, had already appointed

respondent no.4, R. K. Chibber as the interim CMD subject to the approval of the RBI which was approved on 10.10.2019 in terms of Section 10 BB

of the BR Act; that as evident there was no proposal before RBI for approval of the termination of a CMD and as per the responsibilities entrusted to

RBI under the BR Act, it was necessary for it to ensure that the interest of the depositors / banking company were safeguarded and the actions of the

RBI were within this mandate and as mentioned it is not involved in sitting in judgment over an illegality of the action taken by a Banking Company in

pursuance of its contracts with its employees. Mr. Parihar finally argued that except this limited role of the RBI, the respondent RBI had no role with

regard to determination of the rights of an employee of a bank or of a contractual appointment to the highest post.

25. Heard, perused and considered.

26. The appellant/petitioner working as a senior functionary as Executive President in the J&K Bank Ltd. was proposed in the month of September

2016 by the Govt. of J&K who had a share of 68% in shareholding of the Bank, to be made as a government nominee Director, on the Board of

Directors of the respondent-J&K Bank which on the suggestion of the Govt. of J&K passed resolution No. 32 in its meeting held on 20.09.2016 and

formulated a panel of three candidates in order of preference for approval by the RBI as Chairman and CEO of the Bank w.e.f 06.10.2016 with

appellant/petitioner's name figuring at serial no.1. Consequent upon the approval by the RBI, the appellant/petitioner was appointed as

Government director in pursuance of Article 69(i) of the Article of Association of Bank by Government of J&K vide Govt. Order No. 209-F of 2016

dated 03.10.2016, which was ratified by the board of a Bank vide Resolution No.1 and w.e.f 06.10.2016, he was appointed as Chairman and Chief

Executive Officer.

27. The appellant/petitioner on taking over as Chairman/CEO of the Bank, the Board of Director of the respondent no.2-J&K Bank in its meeting held

on 27.12.2018 passed a resolution according approval to the payment of pensionary/retiral benefits to the Chairman/CEO as per the provisions of

compensation policy of the Bank which was approved by the RBI on 15.05.2019 in terms of Section 35B of the Banking Regulations Act 1949 for

contribution towards the pension of the appellant/petitioner at 10% of his basic pay of Rs.4,29,000/- per month w.e.f 06.10.2016 in terms of para 4 of

the Bank's Compensations Policy and the Pension Regulation Act 1995 with direction that the excess contribution made till then, be suitably

adjusted.

28. It is not out of place to mention that the appellant/petitioner was removed from the position of Chairman/CEO of the respondent no.2-J&K Bank

on 08.06.2019, when a case was registered against some functionaries of the respondent no.2-J&K Bank including the appellant/petitioner at Police

Station Anti-Corruption Bureau Kashmir, vide FIR No.10/2019 for offences under Sections 5(1)(d) read with Section 5(2) of the J&K Prevention of

Corruption Act, Svt. 2006 and Section 120-B RPC. On registration of this case, the Govt. of J&K through Finance Department on 08.06.2019

conveyed to the respondent no.2-J&K Bank the decision of the Government to the effect that the appellant/petitioner shall cease to be the Director on

the Board of Directors of the Bank and as a consequence shall no longer be Chairman-cum-Managing Director of the Board with further information

that respondent no.4 - R.K. Chibber is nominated as Director on the Board and may further be appointed as interim Chairman cum Managing Director

of the Board.

29. The appellant/petitioner in his petition before the writ court had assailed his removal as chairman/CEO of the respondent no.2-J&K Bank and also

the approval with regard to his deemed retirement on the date he was elevated from his position as Executive President a career level post, to the post

of Chairman-cum-CEO, a board level post and denial of pension thereafter. The appellant/petitioner also challenged the nomination of respondent

No.5-Zubair Iqbal as a Director of the Bank by the government apprehending that he may be elevated to the post of Chairman-cum-CEO of the

respondent no.2-J&K Bank.

30. The appellant/petitioner had been appointed as Chairman/CEO of the Bank on 06.10.2016 for a period of three years, meaning thereby, that he

had to continue as Chairman/CEO of the respondent no.2-J&K Bank up to 05.10.2019, however, before his contractual tenure of three years could be

over he was removed by the government of UT of J&K on 08.06.2019. Therefore, at the time of the disposal of the writ petition and also at the time

of filing of this intra court appeal, the matter has been rendered infructuous to the extent of his appointment as Chairman/CEO, which the

petitioner/appellant could not seek, beyond the contractual period of three years, ending on 05.10.2019.

31. The learned Single Judge on an elaborate discussion of the Banking Regulations has held that the positions of a Director or Chairman/CEO and

Managing Director are not promotional posts in the service of the Bank. So nomination of the appellant/petitioner as Government Director on the

Board on his appointment as Chairman/CEO of the Bank is not an elevation in the sense of promotion as construed in ordinary service parlance. While

referring to Sub Rules (k) and (l) of the Pension Regulations, and the conjoint reading of both these provisions which constitute the service conditions

of the employees of the Bank, makes it clear that date of retirement means the date on which an officer is deemed to have retired, which expression

in turn means cessation from the services of the Bank. Once the cessation from the service of the Bank takes place, there is no question of anybody,

much less of the petitioner continuing unabated and uninterrupted on the service of the Bank.

32. The writ court has rightly observed that once it is admitted by the appellant/petitioner that he is not covered under the pension regulations and,

rightly so, that automatically tantamount to admission, on his part, that he, in his capacity, has been Govt. Director on the board and Chairman/CEO

was not an employee of the Bank and in fact, the contention that the appellant/petitioner continued to be an employee of the Bank unabated and

uninterrupted, is self-defeating and contradictory.

33. The writ court has also rightly held that once the appellant/petitioner is retired w.e.f 06.10.2016, his pension culminated on that date as thereafter

he ceased to be an employee of the Bank and therefore would not be subject to its service conditions. The resolution of the Board of Directors dated

27.12.2018 is relevant to be considered which is reproduced for convenience.

“Resolved that the approval of the Board be and is hereby accorded to the payment of pensionary retiral benefits to the Chairman and

CEO as per the provisions of the Compensation Policy of the Bank and as per the Rules of the Bank from the date of appointment as

Chairman and CEO of the Bank and RBI be approached accordingly in this regard.”

The name of the appellant/petitioner is not mentioned in the resolution and in any case neither the compensation policy nor the rules of the Bank allow

any such benefit on cessation to Chairman and CEO. It is not known under what circumstances the company secretary of the Bank had written

communication No.JKB/BS/F-01/2018-19/225 dated 16.04.2019 to the RBI seeking approval to the grant of pensionary retiral benefits in favour of the

appellant/petitioner in his capacity as being the Chairman/CEO of the Bank in view of clear stand taken by the respondent no.3-RBI that the RBI is

simply a regulatory /supervisory authority and has nothing to do with the Rules of the Bank or the service contract between bank and its appointees.

Therefore, the reliance by the appellant/petitioner on the approval granted by the RBI to the aforesaid resolution would not override the express

provision of the compensation policy and the Rules of the Bank, particularly, in the face of the positive stand taken by the respondents that Chairman

and whole-time director of the Bank are not covered under Pension Schemes and that is what clause (4) of the compensation policy provides. The

writ court while relying upon Chanda Deepak Kochar case (supra) decided by a Division Bench of the Bombay High Court and upheld by the Apex

Court, had held that the nomination of the petitioner as Director on the Board and his subsequent appointment as Chairman/CEO of the Bank was

contractual in nature and not governed by any statute or the service conditions ordinarily applicable to the employees of the Bank. The Bombay High

Court in the aforesaid case has held that contractual duties are enforceable as matter of private law by ordinary contractual remedies such as

damages, injunctions, specific performance and declaration. The writ court has rightly observed that a writ of mandamus is limited to enforcement of

public duty analyzing the prayers made by the appellant/petitioner in his writ petition with regard to his challenge to communication dated 08.06.2019

addressed by the Govt. of J&K through Finance Department of the State of J&K to the respondent no.2-J&K Bank through its company secretary

conveying the decision of the government taken by it in the exercise of powers under Article 69(m) of Article of Association of the Bank that the

appellant/petitioner shall cease to be director of the board of directors of the Bank and consequently be no longer the Chairman of the board of

directors of the Bank was held to be not maintainable and the remedy lies in the civil court.

34. The appellant/petitioner besides throwing challenge to his removal as Director nominated by the Government to the Board of Directors of the

Bank and as Chairman of the Board of Directors of the Bank has also claimed that he as Chairman/Chief Executive Officer of the Bank continued to

be in service of the Bank unabated and uninterrupted and therefore, so to be governed by the service conditions of the Bank and that since the Bank

the instrumentality of the State is amenable to the writ jurisdiction of this court, the appellant had in fact challenged the communication dated

09.07.2019, whereby he was conveyed that he is deemed to have retired from service of the Bank w.e.f 06.10.2016, the writ petition is maintainable.

35. Since the petitioner was deemed to have retired from the service of the Bank in terms of rule/regulation 2(k) and 2(l) of the pension regulations,

therefore, his tenure as being the Chairman/CEO of the respondent no.2-J&K Bank is not governed by the service rules of the Bank and any dispute

sought to be raised by him in relation thereto including the challenge to communication dated 09.07.2019 could not be gone into by this court. The writ

court, in our considered opinion in view of the matter, has rightly held the writ petition not to be maintainable to that extent. The other reliefs prayed

for by the appellant/petitioner in the writ petition being relatable to the two prayers for issuance of writ of certiorari to quash the two communications

dated 08.06.2019 and 09.07.2019, the petition for those reliefs as well would not survive before the court in its extraordinary writ jurisdiction. The writ

court, to the extent of the prayer of the petitioner for a direction to the respondents for release of all prerequisites and benefits due and payable to him

in law is concerned, while referring Chapter II of the Pension Regulations which contains the pension regulations and provide for the application and

eligibility of said Regulations, held that the appellant/petitioner, being in the service of the Bank till 06.10.2016 the date he was deemed to have retired

from the service of the Bank was eligible to pensionary benefits under the pension regulations in question in lieu of his service till 06.10.2016 and that

the pensionary benefits shall be considered to be granted in accordance with the applicable rules.

36. It has been brought to the notice of this court by the respondents which has not been disputed by the learned counsel for the appellant/petitioner

that after removal of the appellant/petitioner from the position of nominated Director on the Board of Directors and Chairman/CEO of the respondent-

J&K Bank, he had participated in another exercise for appointment of new Chairman/CEO of the Bank and had also applied after he being conveyed

his deemed retirement on the date he was appointed as Chairman/CEO of the respondent J&K Bank had applied for grant of pensionary benefits up

to that date. The appellant/petitioner has thus almost reconciled to what has been decided by the respondents Government of J&K and the

management of the J&K Bank.

37. The filing of writ petition and after judgment in the writ petition further challenge through the instant intra court appeal and also simultaneously

reconciling to the decisions taken by the respondents, is a classic display of the principle of *“Approbate and Reprobate”* on the part of

appellant/petitioner as this principle of *“Approbate and Reprobate”* if put into a common understanding means that a person shall not be allowed to

blow hot and cold in terms of his/her relationship/position vis-à-vis other person, who get related to said relationship/position. This principle aims to

mean, that an act of duality on the part of a person in his conduct/relationship vis-à-vis another person is nothing but dubious which no law can

cherish. The principle of *“Approbate and Reprobate”* has been well elucidated and explained by the Hon'ble Apex Court in cases titled

“Nagubai Ammal & Ors Vs B. Shama Rao & Ors” reported in AIR 1956 SC 593, *“Ram Vs B. Baijnath Singh & Ors”* reported in AIR 1961

SC 1352, *“Karam Kapahi & Ors Vs Lal Chand Public Charitable Trust & Ors”* reported in AIR 2010 SC 2077, *“The Rajasthan State*

Industrial Development and Investment Corporation & Ors Vs Diamond and Gem Development Corporation Ltd. & Ors” reported in AIR 2013 SC

1241 and *“Bhagwat Sharan (Dead) through L.Rs Vs Purushottam & Ors”* reported in AIR 2020 SC 2361.

38. Having regard to the whole gamut of pleadings, rival submissions and the perusal of the record as well as the impugned judgment, we are of the

considered opinion that the learned Single Judge has decided the matter perfectly in consonance with law after a threadbare discussion on all aspects

of the case and has rightly held that the appointment of the appellant/petitioner as Chairman/CEO of the Bank was contractual in its nature and, as

such, there being no applicability of the service law, a writ is not maintainable to the extent of determining his removal as Government nominee

Director, Chairman/CEO of the respondent no.2-J&K Bank and his continuance from a career level post to board level post is not being amenable to

writ jurisdiction, is not maintainable and that no case is made out by the appellant/petitioner which warrants any interference in the impugned judgment

passed by the writ court which is upheld. As a consequence, the appeal is dismissed along with all connected application(s).

39. Interim direction, if any, shall stand vacated.