

GAHC010103882018



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Case No. : WP(C)/3394/2018

GAJEN DAS

S/O- KESHAB DAS, R/O- NORTH GUWAHATI, RAJADUWAR,
DIST- KAMRUP, ASSAM

2: AKHIL BORO

S/O- SRI GANGADHAR BORO
R/O- H NO. 16 ODALBAKRA
LALGANESH
GHY- 34
DIST- KAMRUP(M)
ASSAM

3: UTPAL BAISHYA

S/O- KAMESHWER BAISHYA
R/O- SAUKUCHI
DIST- KAMRUP(M)
ASSAM

4: MANJIIT RABHA

S/O- PARESH RABHA
R/O- JARAPARA
P.O- BOKO
DIST- KAMRUP
ASSAM

5: BRINDABAN DAS

S/O- SRI CHAN DAS
R/O- HAJO
PANIPARA
DIST- KAMRUP(M)
ASSAM

6: ATIKUR RAHAMAN
S/O- SRI JIYAU RAHAMAN
R/O- DIMAPUR
HAJO
KAMRUP
ASSAM

7: KAMAL SHILL
S/O- KANU SHILL
R/O- DWARKUCHI
TAMULPUR
DIST- BAKSHA
ASSAM

VERSUS

ALLAHABAD BANK AND 2 ORS.
REP. BY THE CHAIRMAN AND MANAGING DIRECTOR,
HEAD OFFICE, 2 NETAJI SUBHASH ROAD, KOLKATA-
700001, WEST BENGAL

2:THE GENERAL MANAGER(HR)
ALLAHABAD BANK
HEAD OFFICE 2 NETAJI SUBHASH ROAD
KOLKATA- 700001
WEST BENGAL

3:THE DEPUTY GENERAL MANAGER
ALLAHABAD BANK
ZONAL OFFICE
G S ROAD
OPP BORA SERVICE STATION
GUWAHATI- 781007
ASSAM

WP(C)/1735/2020

HEM CHANDRA BHARALI.
S/O SRI NANDESWAR BHARALI
R/O VILL-PUB GHAGRABASTI
P.O.-GHAGRABASTI
DIST-SONITPUR (ASSAM)
PIN-784168

2: GANESH RAJBONGSHI
S/O LATE GAJEN RAJBONGSHI
R/O VILL-KACHIMPUR
P.O.-KENDUKUCHI
DIST-NALBARI (ASSAM)
PIN-781341

3: BIKASH BHARALI
S/O SRI RATNA BHARALI

C/O SRI UTPAL KAKATI
HOUSE NO. 7
LACHIT NAGAR
BYE LANE-04
ULUBARI
P.S.-PALTANBAZAR
GUWAHATI-781007

4: BIPIN GOGOI
S/O LATE JOGESWAR GOGOI
R/O VILL-DUBIA PATHAR
P.O.-DUBIA
DIST-SONITPUR (ASSAM)
PIN-784178

5: KAMAL HANDIQUE
S/O LATE GANIRAM HANDIQUE
R/O GOROIMARI
P.O.-TETONBARI
DIST-SONITPUR (ASSAM)
PIN-784171
VERSUS

ALLAHABAD BANK.
REPRESENTED BY THE CHAIRMAN AND MANAGING
DIRECTOR
HEAD OFFICE SITUATED AT-2
NETAJI SUBASH ROAD
KOLKATA-700001 (WEST BENGAL)

2:THE GENERAL MANAGER (H.R.)
ALLAHABAD BANK
HEAD OFFICE
SITUATED AT-2
NETAJI SUBASH ROAD
KOLKATA-700001 (WEST BENGAL)

3:THE DEPUTY GENERAL MANAGER
ALLAHABAD BANK
ZONAL OFFICE
GUWAHATI
SITUATED AT-G.S. ROAD
(OPPOSITE TO BORA SERVICE STATION)
GUWAHATI-7810007 (ASSAM)

WP(C)/5479/2021

AMARJIT KAPUR
S/O SRI ASHOK KUMAR
R/O HOUSE NO. 04
BYE LANE-07
SUB BYE LANE-1
P.O.-ULUBARI
P.S.-PALTAN BAZAR

DIST-KAMRUP(M)
ASSAM
GUWAHATI-781007

2: BIREN DAS
S/O LATE MANIK DAS
R/O C/O BARMAN STORES
SANKARDEV NAGAR PATH
HENGRABARI
GUWAHATI-781006
VERSUS

INDIAN BANK
REPRESENTED BY THE CHAIRMAN AND MANAGING
DIRECTOR
HEAD OFFICE SITUATED AT 2
NETAJI SUBHASH ROAD
KOLKATA-700001 (WEST BENGAL)

2:THE GENERAL MANAGER (H.R.)
INDIAN BANK
HEAD OFFICE SITUATED AT 2
NETAJI SUBHASH ROAD
KOLKATA-700001 (WEST BENGAL)
3:THE DEPUTY GENERAL MANAGER
INDIAN BANK
ZONAL OFFICE
GUWAHATI SITUATED AT-G.S. ROAD (OPPOSITE TO BORA
SERVICE STATION)
GUWAHATI-781007 (ASSAM)

- B E F O R E -
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. S. Chakraborty, Advocate
Mr. K.R Patgiri, Advocate
Mr. S. Islam, Advocate

Advocate for the respondents : Mr. M. Sarma, Advocate

JUDGMENT (ORAL)

16.11.2023

Heard Mr. S. Chakraborty, learned counsels for the petitioners in W.P.(C) No. 3394/2018; Mr. K.R. Patgiri, learned counsel for the petitioners in W.P.(C) No. 1735/2020 and Mr. S. Islam, learned counsel

for the petitioners in W.P.(C) No. 5479/2021. Also heard Mr. M. Sharma, learned counsel appearing for the respondents/Bank.

2. The petitioners are before this Court seeking a writ mandamus and/or appropriate Writ Direction or Order to the respondents to publish the select list in connection with the selection process for appointment to the post of sweepers under various branches of the respondent Bank namely the erstwhile Allahabad Bank (Now merged with Indian Bank).

3. Some of the petitioners were engaged as part-time sweepers on casual basis under the various branches of the erstwhile Allahabad Bank. An advertisement dated 30.11.2014 was issued by the then Allahabad Bank inviting applications for full-time sweeper/Part time Sweepers on $\frac{1}{2}$ and $\frac{3}{4}$ th Scale of Wages. The mode of selection reflected in the advertisement was "through interview". The criteria for selection, age etc. were laid down in the Advertisement. The reservation for the posts i.e. branch wise was also reflected. The petitioners being eligible for being appointed in terms of the said advertisement applied for the said posts and their interviews were conducted in the respective branches. The interviews were conducted on various dates which are not disputed by the respondents. The petitioners having appeared for the interview were awaiting the results to be declared and were expecting that their appointments in terms of the advertisement issued will be made by the Bank. However, no such results were declared. The petitioners approached the various authorities in the respective branches, however, no information was forthcoming. Being aggrieved, they have approached this Court by filing the present petitions.

4. A writ petition being W.P.(C) No. 3394/2018 was initially heard and disposed of by a Co-ordinate Bench of this Court dismissing the

said writ petition by order dated 03.06.2022. Subsequently a review petition was filed by the petitioners being Review Petition No. 158/2022. The Review Petition was allowed by order dated 10.04.2023 and the earlier order dated 03.06.2022 was recalled. Thereafter, the matter has been listed for hearing and was heard on several dates.

5. From the pleadings, it is seen that that there was a decision taken at the appropriate level by the authorities of the Bank that the interviews conducted for the sweepers will be discontinued in view of an advisory received from the Ministry of Finance, Government of India. Pursuant to this advisory, the Bank had sought for clarifications in respect of the recruitment of the sweepers which is initiated by the Bank.

6. Mr. S. Chakraborty, learned counsel for the petitioners urges that pursuant to the writ petitions being filed before the Court, the Bank authorities by their pleadings have placed before the Court, a resolution adopted by the then Allahabad Bank that the selection process has been discontinued as in terms of the advisory received from the Government of India that selection by way of interviews for recruitment process of Public Sector Banks (PSB) for the post of "Sub-staff" and "clerk" should be discontinued. The learned counsel for the petitioners submits that once the selection process have been initiated by way of advertisement and the petitioners had appeared for the interviews, the same could not have been abandoned merely on the basis of an advisory without subsequently taking a decision as to the fate of the selection process in which the petitioners have participated.

7. The further submission of the learned counsel to the petitioners is that the advisory on the face of it reveals that the discontinuation of interviews for recruitment process pertains to "clerical" and "sub-staff" posts in Public Sector Banks. Sweepers are not considered to be sub-staff or clerical posts. Accordingly, there is no basis for the bank to abandon the selection process initiated by not proceeding and concluding the selection process and by declaring the results.

8. The learned counsel for the petitioners referring to the recruitment Policy of the Bank submits that for recruitment of sub-staff cadre, the various criteria's are prescribed and the vacancies under sub-staff cadre are shown to vacancies for the post housekeeper-cum-peon. There are separate regulations prescribed for filling up of post of Security Guards. Referring to recruitment policy of the bank for clerical and sub-staff posts, the learned counsel for the petitioners further submits that the job profiles reflected in the regulations for sub-staff cadre are clearly described. This job profile does not match with the job profile of a sweeper. The learned counsel for the petitioners further submits that by an inter-office order dated 19.05.2007, the Bank already has placed the policy and the procedure for recruitment of part-time sweepers. Under the said policy, the mode of selection reflected is by way of interview. It is pursuant to this recruitment policy that the advertisement dated 30.11.2014 was issued by the Bank and the petitioners had participated. It is submitted by the learned counsel for the petitioners that as on date the earlier policy has not been modified or altered or replaced. Under such circumstances the bank is duty bound to continue with the selection initiated in respect of the sweepers and carried to the logical end and declare the select list of the sweepers

conducted. The learned counsel for the petitioners in support of his arguments relied upon the Judgment rendered by the Apex Court in *N.T. Devin Katti and Ors. Vs. Karnataka Public Service Commission and Ors.*, reported in (1990) 3 SCC 157. (Paragraph 11 & 13). The learned counsels, Mr. K.R. Patgiri and Mr. S Islam, appearing for the petitioners in W.P.(C) No. 1735/2020 and W.P.(C) No. 5479/2021 have adopted the submissions made by Mr. S. Chakraborty, learned counsel in W.P.(C) No. 3394/2018.

9. Per contra, Mr. M. Sharma, learned Counsel for the Bank disputes the submissions of the learned counsel for the petitioners. He submits that in view of the advisory received from the Department of Finance, there was no option but to suspend all the selection process including the interview conducted in respect of the sweepers. The bank having now been merged with Indian bank, the decision is required to be taken at the appropriate level by the Indian bank. As on date, no such decision was forthcoming and therefore, no steps have been taken to either cancel the interview process or proceed with it any further. In support of his contentions, the learned counsel for the respondents relies upon the Judgment of the Apex Court in *Jatinder Kumar and Ors. Vs. State of Punjab and ors*, reported in 1985 1 SCC 122.

10. The rival submissions of the learned respective counsels have been carefully considered. Pleadings on record have also been perused. Judgments cited at the bar have also been carefully considered.

11. The only issue urged before this Court is the discontinuation of the recruitment process initiated by the Bank in respect of employment or engagement of part time sweepers without any basis.

A very careful perusal of the pleadings reveals that the advisory issued by the Finance Department is in respect of discontinuation of interviews in recruitment process in Public Sector Banks for junior level posts. The advisory clearly mentions that the interviews conducted for recruitment process should be discontinued for "clerical" and "sub-staff" posts in Public Sector Banks by 31.12.2015. For convenience, the same advisory is extracted below:

MOST IMMEDIATE

"F.No.2/2/2015-IR

Government of India

Ministry of Finance

Department of Financial Services

Jeevan Deep, IIIrd Floor,

Parliament Street, New Delhi

Dated the December 22, 2015

To

The Chief Executives of all PSBs

Subject: Discontinuation of Interviews In recruitment process

Sir,

I am directed to refer to the announcement made by the Hon'ble PM in his address to the Nation on the occasion of Independence Day on the subject cited above and to say that the Committee of Secretaries chaired by Cabinet Secretary in its meeting held on 13.11.2015 has recommended discontinuation of interviews in the recruitment process in Public Sector Banks(PSBs) for junior level posts by the deadline of 31.12.2015.

2. Accordingly, it has been decided to advise all PSBs to take necessary action with the approval of their respective Boards, if necessary, to discontinue Interviews in the recruitment process for the clerical & sub-staff posts in Public Sector Banks by 31.12.2015 and disseminate the information to all stakeholders accordingly. If required, PSBs may explore other alternatives to strengthen written examination such as by including psychometric tests, etc. to replace interview mechanism.

Yours faithfully

(Manish Kumar)

Under Secretary to the Government of India"

12. Thereafter, another communication was issued from the Department of Finance to all the Chief Executive of the Indian Banks association that the decision to discontinue interviews for recruitment

process of public sector banks for the post of sub-staff and clerk has been arrived at by the Cabinet Secretary/ DoPT Level and therefore, the banks which are not in agreement with the decision to approach for relaxation with full justification. It is the submission of the learned counsel for the respondents that pursuant to this advisory, however have been sought for by Allahabad Bank which clarifications have not been received as on date and consequently no decision has been taken to proceed further in the recruitment process of the part-time sweepers initiated.

13. A careful perusal of the Regulations of the bank reveals that the bank has already a recruitment policy in place and the various posts are elaborately reflected in the regulations. These Regulations also specify the manner of recruitment as well as the eligibility criteria for the various posts.

Under Regulation 3.4, procedure for recruitment in sub-staff cadre is prescribed.

Regulation 4.4.1 pertains to the post of Security Guard in subordinate staff cadre.

Regulation 4.4.2 is for other posts under the sub-staff cadre.

Under this provision, the posts specified are the housekeeper-cum-peon. The job profiles of these posts are also prescribed which is as under:

- Up keeping of branch/ office premises
- To stitch/ seal/ pack currency note bundles
- Carrying documents/ vouchers/ files/ registers within or outside Bank
- To accompany Office/ Clerk for Cash remittance from the Bank to Outside Office and Vice Versa

- Attending any other duties assigned by the Bank Suitable for the post.

The mode of selection prescribed is within both simple bilingual online tests in local vernacular language/English for evaluating the literacy level of the candidates to suit the requirement of a job role. There is also a probation period also prescribed for clerical and subordinate staff cadre.

14. Upon careful perusal of these regulations, it is seen that these regulations do not provide for recruitment of sweepers or part-time sweepers. Whereas in the additional affidavit filed by the petitioner, an extract of a recruitment policy in respect of part time sweepers is enclosed as per the communication dated 19.05.2007 issued by the General Manager of the bank. In terms of this recruitment policy, it appears that the bank has certain guidelines and procedures laid down for direct recruitment of part time sweepers. In cases such posts cannot be filled up internally by affecting changes in the cadre of existing eligible part-time sweepers. Under the said policy, the mode of selection prescribed at Clause-6 is as under:

1. selection will be made through interview only;
2. the candidates will be judged on the basis of their overall performance and the overall impressions of the members of the internal committee.

At clause-8, preparation of select list or merit list is prescribed and under the said clause, category-wise select list of the qualified candidates will be prepared by the concerned zonal offices in the order of Merit ranking.

15. In the affidavit-in-opposition filed by the bank opposing the said additional affidavit filed by the petitioner, the bank reiterates its

contentions and averments made in the earlier pleadings that in view of the advisory received from the Finance Department, Government of India, the interview process has been kept in abeyance. Although clarifications have been sought for but no communication to that effect has been received by the bank authorities. Therefore, the bank had resolved to keep the recruitment process for the sweepers in abeyance. The stand of the Bank in their affidavit-in-opposition opposing the additional affidavit is that the sweepers are indeed posts which are also included under the subordinate staff. The communication dated 19.05.2007 issued by the G.M. of the Bank has not been disputed in their affidavit-in-opposition filed.

16. There is no denial by the respondent bank that as on date the services of sweepers are being undertaken by the bank on a casual or a daily wage system. The policies in place of the bank have also not been denied. Although the contention of the petitioners and the position under the service regulations that sweepers are not included in sub-staff have been disputed, however, no specific material has been placed before the Court to suggest that there is a separate recruitment policy or separate guidelines which governs the recruitment of sweepers. The bank has maintained its consistent stand that clarifications have been sought for from the appropriate authority, but in the absence of any clarifications being received, the selection and recruitment process of the sweepers have been kept in abeyance. What is not denied is that notwithstanding the clarifications not being received from the competent authorities at the appropriate level as submitted by the counsel for the bank, there is no clarity under what circumstances and under what policy the bank has continued to undertake the services of sweepers in various branches across the state on a part-time or a daily wage basis. There

is no policy available on record and presented before the Court. There is no denial by the bank that the services of the sweepers are essential for their day to day office work at the branches and some of the petitioners are rendering their services as part-time sweepers.

17. Under such circumstances, the bank authorities cannot be permitted to take advantage of a circular issued by the Finance Department which essentially concerns with the sub-staff cadre and not the sweepers.

18. Considering that the prayers in the writ petition are for declaration of the results of the selection process, this Court is of the considered view that a bank being a public sector bank, cannot be permitted to extract services from individuals dehors any Rules or Regulations. If any services are extracted from any individuals, there must be a proper set of regulations in place by the bank. What is noted is that the bank on one hand has maintained the stand that they have applied for clarification from the Government and until such clarifications are received, the process for recruitment of sweepers, as advertised earlier will be kept in abeyance. While on the other hand, they are extracting services of the sweepers by employing them as part-time sweepers on a daily wage or casual basis without there being any policy. It is also not denied at the bar that even some of the petitioners who appeared for the interview have been allowed to work as part-time or casual sweepers without the declaration of the results or conclusion of the selection process. Under such circumstances, the bank being a public sector authority cannot be permitted to extract services contrary to its own policy. Such action if permitted will be opposed to the provisions of law and the ideals enshrined in the constitution of India. In the absence of anything to the contrary, the bank is duty bound in law to follow its

recruitment policy in place for recruitment of the sweepers, as reflected in the communication dated 19.05.2007 issued by the Bank authorities.

19. Under such circumstances, this Court is of the considered view that mandamus be issued to the bank to conclude the process undertaken by way of the advertisement dated 30.11.2014 for appointment of sweepers.

20. The results be declared and the petitioners if selected, the respective appointment orders be issued.

21. The declaration of the results is directed be made immediately within the outer limit of a period of four weeks from the date of receipt of a certified copy of this Judgment

22. With the above direction, the writ petitions stand disposed of. No order as to costs.

JUDGE

Comparing Assistant