

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C)No.679 of 2021

Shri Naorem Rajesh Singh, aged about 36 years old, S/o N. Tonjao Singh, Kakching Khunyai Leikai, Heinoubam Pareng, PO & PS Kakching, Kakching District, Manipur-795103.

...Petitioner

- Versus -

The Manipur Rural Bank through the Senior General Manager, Manipur Rural Bank, Keishampat Keisham Leikai, PO Imphal, PS Imphal, Imphal West District, Manipur State.

2. The Chairman, Board of Directors, Manipur Rural Bank, Keishampat Keisham Leikai, PO, Imphal, PS Imphal, Imphal West District, Manipur.

3. Institute of Banking Personnel Selection IBPS House, 90 feet, D.P. Road, Near Thakur Polytechnic, Off, Western Express Highway, P.B No.8597 Kandivali(E) Mumbai 400101 India through its Member Secretary.

...Respondents

BEFORE
HON'BLE JUSTICE MR. JUSTICE A. GUNESHWAR SHARMA
ORDER
(Oral)

23.02.2024.

[1] Heard Mr. S. Gunabanta, learned counsel appearing for the petitioner, Mr. S. Samarjeet, learned Sr. PCCG for respondent Nos. 1 & 2 and Mr. BR. Sharma, learned CGC for respondent No.3.

[2] IBPS (Institute of Banking Personnel Selection), respondent No.3 herein issued notification dated 01.07.2022 for common recruitment process for the posts of Officers and Office Assistants(Multipurpose) in Regional Rural Banks all over the country. For the State of Manipur, 10(ten) posts of Office Assistants(Multipurpose) were advertised whereas 3(three) posts were earmarked for ST, 2(two) posts for OBC, 5(five) posts for General Category and 1 (one) post out of 10(ten) posts for ex-servicemen candidates as horizontal reservation.

[3] In pursuance to the common advertisement, the petitioner applied for the post of Office Assistants(Multipurpose) and in the application form he mentioned himself as SC category and person belonging to Ex-servicemen sub-category. Since no seat was earmarked for the SC candidates, the petitioner appeared in the General category as an Ex-servicemen candidate.

[4] The respondent No.3 published minimum scores for the Common Recruitment Examination and in the reserved list with respect to Ex-servicemen category for the State of Manipur, cut off mark was fixed at 33.88. It is stated the petitioner scored 33.88 marks in the common examination, thereby eligible for consideration under Ex-servicemen horizontal reservation.

[5] It is stated that 3(three) candidates belonging to ST, 2(two) of OBC and 4(four) of General category were recommended by respondent No.3. As none was allegedly found eligible from the Ex-servicemen candidates, one seat was kept apart from the General quota of 5(five) seats.

[6] Admittedly, as per marks issued by respondent No.3, the petitioner scored 33.88 marks in the common examination. However, he was not adjusted against the seat earmarked for Ex-servicemen category. Being aggrieved by the same, the petitioner has approached this Court for direction to the respondent Nos.1 & 2 to consider and appoint him against the one seat of Ex-servicemen kept unfilled in the General Category.

[7] The case of the petitioner is that he is ought to be considered against the one seat left out from the General Category considering his status of first/topper amongst Ex-servicemen candidates. As aggrieved by his non-recommendation and selection, the petitioner has approached this Court inter-alia praying for direction to the Respondent Bank for considering him for appointment to the post of Office Assistant(Multipurpose) in Manipur Rural Bank under the Ex-Servicemen category. Prayer in the writ petition is reproduced below:

i) issue nisi and call for the record.

ii) issue a writ in the nature of mandamus or any other appropriate writ or direction to the Respondent Bank for considering the case of the present petitioner for appointment to the post of Office Assistant(Multipurpose) in Manipur Rural Bank under the Ex-servicemen category as the petitioner is first amongst the Ex-servicemen in the open/General category and that the respondents has kept one post of Office Assistant(Multipurpose) unfilled in the General Category.

iii) issue a writ in the nature of mandamus or any other appropriate writ or direction to the respondents for considering the case of the petitioner.(who is an Ex-Servicemen) strictly in terms of the horizontal concept of reservation.

iv) in the interim, pending consideration of the present petition, the unfilled post of Office Assistant(Multipurpose) under the General Category may not filled up or carry forward for subsequent advertisement/recruitment

[8] This Court issued notice on 08.10.2021 and passed an interim order not to fill up one post of Office Assistant(Multipurpose) in Manipur Rural Bank under the General Category.

[9] The respondent Nos. 1 & 2 filed counter affidavit inter alia stating that they do not have any role in the conduct of examination as well as in preparing merit list and as per respondent No.3, one post of Office Assistant(Multipurpose) could not be filled up as qualified Ex-servicemen candidate was not available.

[10] Mr. S. Samarjeet, learned Sr. PCCG for the bank submits that since the petitioner applied under SC category, he could not be

considered against the Ex-servicemen seat kept unfilled in General Category.

[11] Referring to the counter affidavit of respondent No.3, Mr. BR. Sharma, learned CGC for respondent No.3 has raised preliminary objection of maintainability of the writ petition. It is pointed out that the IBPS does not fall within the meaning of 'State' as defined by Article 12 of the Constitution of India and hence, writ petition under Article 226 of the Constitution of India is not maintainable. He further submits that as per general instruction in the common advertisement dated 01.07.2020, it is clearly written that any dispute arising out of the advertisement including the recruitment process shall be subject to sole jurisdiction of the courts situated at Mumbai. It is pointed out that this Court does not have territorial jurisdiction.

[12] It is stated that no seat is earmarked for SC in respect of the State of Manipur and as such, the petitioner belonging to SC category cannot be adjusted against the one unfilled seat of General category.

[13] Mr. BR. Sharma, learned CGC for respondent No.3 refers to Clause 4(2) of the Ex-servicemen(Re-employment in Central Civil Services and Posts) Rules, 1979, that if any Ex-servicemen belonging to the Scheduled Caste or Scheduled Tribe is selected, his selection shall be counted against the overall quota of reservations

that shall be provided for the Scheduled Caste or Scheduled Tribe in accordance with the order issued by the Central Government from time to time.

[14] Mr. BR. Sharma, learned CGC for respondent No.3 submits that life span of waiting list of 1(one) year has already lapsed and it will not be proper to recommend the petitioner at this stage. He has further submitted that respondent No.3 cannot recommend any person beyond the seat requisitioned by the concerned Bank. Accordingly, it is prayed that the present writ petition may be dismissed on these grounds.

[15] Mr. S. Gunabanta, learned counsel appearing for the petitioner further submits that the writ petition is maintainable against the respondents as they are performing public functions of running business of banking and conducting of examination for recruitment of posts in public sector. It is stated that Article 226 of the Constitution of India covers both violation of fundamental as well as the legal rights.

[16] In the case of *Zee Telefilms Ltd. and Ors. Vs Union of India (UOI) & Ors: (2005)4 SCC 649*, a Constitution Bench of Hon'ble Supreme Court held that with respect to a private body performing public functions, even if it is not a 'State' as defined under Article 12, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article

226. Writ petition under Article 32 may not be maintainable against the said body. Accordingly, Mr. S. Gunabanta, learned counsel for the petitioner submits that the present writ petition is maintainable against the respondents under Article 226 of the Constitution of India.

[17] It may be noted that respondent Nos. 1 & 2 are rendering banking business under the licence from RBI and respondent No.3 is conducting recruitment of public employment. This Court is of considered view that the respondents are performing public functions irrespective of the fact of being a State or not within the meaning of Article 12. Accordingly, it is held that the writ petition under Article 226 of the Constitution of India is maintainable in the present form.

[18] With respect to territorial jurisdiction, learned counsel for the petitioner relied upon the decision in *Nawal Kishore Sharma Vs. Union of India reported as (2014) 9SCC 329* wherein it was observed in para 16 that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court, has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In the present case, the petitioner has not challenged the recruitment process initiated by respondent No.3 and he is aggrieved by non-consideration of his name by respondent Nos. 1 & 2. It is pointed out that respondent Nos. 1&2 are within territorial jurisdiction of this Court

and the petitioner received all documents including RTI reply in Manipur. It is held that this Court has territorial jurisdiction to deal with the writ petition against respondent Nos. 1 & 2.

[19] Since recruitment process is not challenged as such and prayer is against the respondent Nos. 1 & 2, this Court is of the view that the plea of the non-maintainability on the ground of territorial jurisdiction is without any merit. Accordingly it is held that writ petition is maintainable in the present form.

[20] On merit, it seen that 10(ten) posts of Office Assistants(Multipurpose) have been advertised for the State of Manipur and out of which 3(three) posts are reserved for ST, 2(two) posts for OBC, 5(five) posts for General Category and one post out of 10(ten) posts has been earmarked for ex-servicemen candidates as horizontal reservation. It means that if any candidate is recommended against the Ex-servicemen and if such candidate belongs to SC, OBC or General, one seat has to be adjusted against the seat reserved for ST, OBC or General.

[21] Admittedly, in the present case, 3(three) candidates belonging to ST and 2(two) candidates belonging to OBC were recommended and none of them belongs to the Ex-servicemen. Accordingly, one seat for the Ex-servicemen has to be adjusted against the 5(five) seats earmarked for General category. It is an

admitted fact that the petitioner applied as candidate belonging to SC as well as Ex-servicemen and appeared in the General seats.

[22] As per respondent No.3, since none was found eligible from the Ex-servicemen category, only 4(four) candidates were recommended against the General category and one seat was kept unfilled.

[23] Mr. S. Gunabanta, learned counsel appearing for the petitioner submits that the petitioner belongs to SC category and as there is no seat reserved for SC category, he has appeared in the General category seat as an Ex-servicemen candidate.

[24] It is submitted that respondent No.3 has not considered the case of the petitioner properly. He could have been considered against the one seat kept apart for Ex-servicemen from General category since the petitioner scored highest mark amongst the Ex-servicemen candidates. He ought to be recommended against the one seat earmarked for Ex-servicemen adjusted against the General category.

[25] This Court has considered the materials available on record and relevant law in this regard. No seat is reserved for SC category. It is clear that the petitioner, even though he belongs to SC category, has to compete in the General category. It is the settled proposition of law that any candidate belonging to a special category

can compete in the unserved seat on his/her own merit. The petitioner has obtained the minimum cut off mark of 33.88% determined by the respondent No.3 for Ex-servicemen horizontal reservation.

[26] This Court is of the opinion that due to over sight, the respondent No.3 did not recommend the petitioner as Ex-servicemen candidate against 1(one) seat kept vacant in General category.

[27] It is clearly seen from the record that the petitioner got maximum marks amongst the candidates appearing under Ex-servicemen special sub-category and he could have been considered against the one unfilled seat kept in the General category for Ex-servicemen. Respondents did not consider his name on false presumption of SC candidate being ineligible for General seats. As observed in para 25 above, a candidate belonging to a special category can compete in open seat on his/her merit.

[28] It is also seen that when the petitioner approached this Court and at the time of passing an interim order on 08.10.2021, the life span of the waiting list was valid.

[29] Accordingly, it is held that the petitioner is eligible for consideration against one seat kept apart from General category for Ex-servicemen candidate, as he got maximum marks in this sub-category. The respondent Nos. 1 & 2 are directed to appoint the petitioner to the 1(one) unfilled post of Office Assistant(Multipurpose)

in General category under Ex-servicemen as horizontal quota within period of 3(three) months from the date of receipt of copy of this order.

[30] No costs.

[31] This Court appreciates the assistance rendered by the learned counsel appearing for the parties.

[32] A copy of this order be furnished to the learned counsel appearing for the parties for information.

JUDGE

John Kom