

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14698 of 2014

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1. Dinesh Kumar Singh, son of late Awadh Bihari Singh, resident of Village Gangapur, P.S. Marihan, District-Mirjapur State of Uttar Pradesh at present New Bank Colony Fazalganj Town and P.S. Sasaram, District- Rohtas
 2. Himanshu Shekhar Jha, son of late Rameshwar Jha, resident of Mohalla-Babupara Godda, P.S. and District Godda State of Jharkhand at present Regional Office Madhya Bihar Gramin Bank, Gaya.

.... Petitioner/s

Versus

1. The Madhya Bihar Gramin Bank through its Chairman, Head Officer- Meena Plaza South of Museum, P.S. Kotwali, Town & District Patna.
2. The Chairman Madhya Bihar Gramin Bank Head Office Meena Plaza South of Museum, P.S. Kotwali Town and District Patna.
3. The General Manager, Human Resources Development Department, Madhya Bihar Gramin Bank Head Office Meena Plaza South of Museum, P.S. Kotwali Town and District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar No-1, Advocate

For the Respondent/s : Mr. Mahesh Narayan Parbat, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-01-2015

Heard the parties.

2. In the present writ petition petitioners are challenging the result dated 6.8.2014 (Annexure-4) which was published under the seal and signature of the General Manager, Madhya Bihar Gramin Bank, Head Office, Patna. As per the averment made in the writ petition petitioner no.1, Dinesh Kumar Singh, joined the service of the Bank on the post of Officer Scale-I on 27.12.1980 and he was promoted on Scale II with effect from 1.4.1997. Again he was promoted on officers scale III on



14.1.2010 and since then he was performing his duties to the satisfaction of all his seniors whereas petitioner no.2, Himanshu Shekhar Jha, joined the Bank service on the post of Officer Scale-I on 6.1.1981 and he was promoted on the post of Officers Scale II with effect from 1.4.1997 and thereafter he was once again promoted on officers scale III on 14.1.2010 and since then he was discharging his duties in the interest of Bank with full satisfaction.

3. Grievance has been raised that by applying wrong process altogether 9 persons have been promoted to Scale IV whereas cases of three persons, namely, Madan Ram, Kumar Ratnesh Ranjan and Dinesh Sharma have been kept in sealed cover.

The Union of India has framed Rule in the name and style of Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules-2010 (hereinafter referred to as Rules-2010) which provides that in what manner and what process of selection should be adopted for the purposes of promotion from Scale III to Scale IV.

4. On perusal of Rule 5 of Rule, 2010 deals with the vacancy. The Board may determine the number of vacancies in each category of posts to be filled by direct recruitment or promotion, keeping in view the Guidelines approved by the



Central Government from time to time. Process of selection from Scale III to Scale IV has been dealt with in the schedule of Rule. Rule A(III) specially provides that the number of selected candidates to be empanelled for promotion shall be equal to the number of notified vacancies in order of merit. The emphasis has been given that before process of selection the Bank will notify the number of vacancy and only thereafter the process of selection for promotion will be initiated.

5. The Bank has issued a circular vide Circular No.19 of 2014 dated 15.7.2014 by which it has provided the method of selection including keeping result in sealed cover in the case of departmental proceeding. In the notification it has been mentioned that interview will be of 40 marks and assessment of his service credential will be of 60 marks but the aforesaid notification is silent about the number of vacancy and as such the whole selection process of 10 persons is vitiated.

6. Learned counsel for the Bank has submitted that in tune of 2010 Rules, Bank has notified the vacancy on 14.7.2014, before initiation of process of selection which has been vehemently opposed by the petitioners and he has submitted that it is completely a manipulated document on the basis of web down loaded copy (Annexure-1 reply to counter affidavit) from

which it is apparent that entire record relating to recruitment has been created on 16.8.2014 on that strength learned counsel for the petitioner submits that Annexure-A to counter affidavit was not in existence and it is completely a manipulated and created document.

7. Learned counsel for the petitioner has submitted that principle of waiver and estoppel does not apply when there is flagrant violation of the Rule and when the Rule itself has not been followed, the right of petitioners can not be said to have been waived and can challenge the same. He has relied on the judgment in the case of Raj Kumar and others V. Shakti Raj and otehrs, reported in (1997)9 SCC 527, paragraph no.16.

8. Learned counsel for the respondent Bank has submitted that when petitioners themselves have participated in selection and have taken a chance of their success when they were declared unsuccessful now they cannot turn round and challenge the same. Reliance has been placed on the following judgments: (i) Union of India and others V. S. Vinodh Kumar and others, reported in (2007)8 SCC 100 (ii) Banking Service Recruitment Board, Madras V. V. Ramalingam and others, reported in (1998) 8 SCC 523 and Amlan Jyoti Borooah V. State of Assam and others, reported (2009)3 SCC 227.

9. Primarily three points have arisen firstly, whether any deviation was made in the process of selection specially in issuance of notification. Second point when the petitioners themselves participated in the process of selection now can they challenge the process of selection in view of the fact that this deviation does not constitute flagrant violation of Rule causing prejudice to petitioners, thirdly whether notification was issued before the process of selection started.

10. Petitioners have said that notification dated 15.7.2014 (Annexure-2) does not disclose the number of vacancy has been notified for promotion but notification dated 14.7.2014 provides number of vacancy, for promotion from Scale III to Scale IV and as such it is very difficult to arrive to a finding that Bank, before initiation of process of selection, did not notify the vacancy and reliance on the web copy cannot be a ground to disbelieve statement of the Bank. As some time it also happens that documents are uploaded much after creation of documents. Another point that has raised by the petitioners that principle of waiver and estoppel does not apply. This Court is of the view that deviation that has been shown or alleged does not go to the root of the case in view of the fact that when petitioners themselves have participated in the process of selection and

never challenged that process of selection, now he can not challenge the same. It will not be prudent to scrap the whole selection when third party right has been created. It is also a fact that process of selection has been completed on 6.8.2014 and it will not be proper to interfere after such a long period.

11. In this view of the matter, this Court does not find any merit in this writ petition. Accordingly it is dismissed.

Vinay/-

(Shivaji Pandey, J)

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