

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.449 of 2016  
Arising out of  
Civil Writ Jurisdiction Case No. 19524 of 2014**

- =====
1. The Chairman Central Bank of India, Mumbai.
  2. The Zonal Manager, Central Bank of India, Muzaffarpur.
  3. The Regional Manager, Central Bank of India, Motihari.
  4. The Senior Manager, Central Bank of India, Motihari.

.... .... Appellant/s

Versus

1. Jitendra Kumar, Son of Lakhindra Dubey, At + P.O. - Bangra Firoj, P.S. - Baruraj, District - Muzaffarpur.
2. Ashok Kumar, Son of Raghubansh Singh, At + P.O. - Bangra Firoj, P.S. - Baruraj, District - Muzaffarpur.
3. Awadh Kishore, Son of Harinandan Upadhyay, At - Kuahi, P.O. - Chaurghatta, P.S. - Baruraj, District - Muzaffarpur.
4. Rishikesh Kumar, Son of Rambaran Singh, At - New Gopalpur Balua, P.O. + P.S. - Motihari, District - East Champaran.
5. Sanjeev Kumar, Son of Naresh Kumar Upadhyay, At - Sulsabad, P.O. - Mehshi, P.S. - Mehshi, District - East Champaran.
6. Sohan Paswan, Son of Ambika Paswan, At - Unchidih, P.O. - Ram Karan Pakadi, P.S. - Pipara, District - East Champaran.

.... .... Respondent/s

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**Appearance :**

|                      |   |                                                                                                                                    |
|----------------------|---|------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Rajeev Ranjan Prasad, Advocate.<br>Mr. Nilanjan Chatterjee, Advocate.<br>Ms. Surabhi, Advocate.                                |
| For the Respondent/s | : | Mr. Jitendra Singh, Sr. Advocate.<br>Mr. Piyush Lal, Advocate.<br>Mr. Priyank Samdarshi, Advocate.<br>Mr. Praveen Kumar, Advocate. |

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE VIKASH JAIN**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

**Date: 29-11-2016**

The challenge in the present Letters Patent Appeal is to  
an order passed by the learned Single Bench of this Court on 24<sup>th</sup> of  
November, 2015 in C.W.J.C. No. 19524 of 2014 whereby, the writ



application filed by the respondents herein was allowed and direction issued to the appellants to ensure that appointment letter is issued to the writ applicants in terms of the exercise already done and carried out.

2. The facts leading to the present Letters Patent Appeal is that a circular was issued by the Central Office of the appellants on 14<sup>th</sup> of August, 2012 for recruitment of Safai Karmachari-cum-Sub staff and/ or Sub-staff. The recruitment was to be carried out region-wise. The relevant extract from the circular read as under:-

“After ascertaining the region-wise recruitment/ vacancies on the basis of provision of one Safai Karmachari cum sub-staff to each branch (irrespective of number of sub staff at the branch) and also need and recruitment of sub staff for the branch/ office, Zonal Office should sanction required number of vacancies to the regions and regions should initiate the process for recruitment of Safai Karmachari cum Sub-staff and Sub-staff.

While undertaking such exercise, their retirements up to 31<sup>st</sup> March, 2013 may also be taken into account. So also requirement of Safai Karmachari cum Sub-Staff for branches proposed to be opened up to 31<sup>st</sup> March, 2013 may also be reckoned with to arrive at the total requirement/number of vacancies. Suitable number of candidates may be empanelled for such future requirement up to 31.03.2013 on account of retirements and new branches to be opened and as and when such vacancy arises, appointment order may be issued. Thereafter the panel will be dissolved and will not remain operative anymore.”

3. It is in pursuance of such circular, Motihari region, one of the 77 regions in the country of the appellant Bank, published



an advertisement (Annexure-1) for 49 posts of Safai Karmachari-cum-Sub Staff/Sub-Staff. The writ applicants responded to such advertisement. They were called for interview and the result of the recruitment process was notified. It is thereafter, the Central Office issued a circular on 17<sup>th</sup> of April, 2013 to maintain *status quo* in respect of recruitment process in the regions where the recruitment process was not completed i.e. 40 regions inasmuch as in 37 regions the exercise was completed and 2048 candidates were recruited. Such circular was issued in view of complaints alleging irregularities/ malpractices in the recruitment process including favouritism, nepotism, corruption etc. from different regions/zones.

4. Thereafter, the staff strength was re-assessed for the financial year 2014-15 and in respect of Motihari region, the staff strength as on 31<sup>st</sup> of March, 2014 was found as follows:-

|                                      |    |
|--------------------------------------|----|
| No. of Branches                      | 52 |
| No. of vacancies reported            | 49 |
| Sanctioned Strength as on 31.03.2014 | 65 |
| Actual Strength as on 31.03.2014     | 79 |
| Surplus                              | 13 |

5. It is also mentioned that the Board of Directors in its meeting held on 21<sup>st</sup> of June, 2014 resolved that as on 31<sup>st</sup> of March, 2015 there is excess of 2001 Sub Staff, therefore, in view of surplus



manpower, wherever the recruitment process was not completed i.e. 40 regions, the same was cancelled. Thereafter, a letter was issued on 30<sup>th</sup> of July, 2014 cancelling the letter of appointment issued to the respondents. It is the said communication which was challenged by the writ applicants before this Court claiming a writ of *certiorari* for quashing the same. The said writ application has been allowed by the learned Single Bench, *inter alia*, on the ground that a Public Sector Bank cannot be expected to work on the whims and fancies of the Managing Director of the Bank. They have an obligation towards the citizens to be fair and the plea of varying kind also surely indicates that there is something more than meets the eye, as to why these appointments did not fructify. Since a legitimate right of expectation has been generated in favour of the writ applicants, the decision of the appellants was found to be arbitrary, therefore, a direction was issued to appoint the writ applicants.

6. Before this Court, the learned counsel for the appellants contends that simply because the candidates, the writ applicants, were selected, does not confer any enforceable right to seek a direction for their appointment. Reference was made to a Supreme Court judgment reported as The State of Haryana Vs. Subash Chander Marwaha and others, AIR 1973 Supreme Court 2216, Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47 and



Kulwinder Pal Singh and another Vs. State of Punjab and others, AIR 2016 Supreme Court 2281. In Kulwinder Pal Singh's case the Court said to the following effect:-

“11. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India and Ors. V. Bhanu Lodh and Ors., (2005) 3 SCC 618:(AIR 2005 SC 2775): All India SC & ST Employees' Association & Anr. v. A. Arthur Jeen & Ors. (2001) 6 SCC 380: (AIR 2001 SC 1851) and Union of Public Service Commission v. Gaurav Dwivedi and Ors. (1999) 5 SCC 180: (AIR 1999 SC 2137).

12. This Court again in the case of State of Orissa & Anr. v. Rajkishore Nanda and Ors. (2010) 6 SCC 777:(AIR 2010 SC 2100, paras 13,15), held as under:

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.....

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required....”

13. In Manoj Manu and Anr. v. Union of India & Ors. 2013 (10) SCALE 204: (2013) 12 SCC 171: (AIR 2014 SC (Supp) 927), it was held that merely because the name of a candidate finds place in the select list, it would not give the



candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however, such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to Government to fill up the vacancies. As noticed earlier, because twenty two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by the Administrative Committee in the meeting dated 06.07.2011. The three resultant vacancies of the year 2007-2008 stood consumed with the joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary.”

7. On the other hand, learned counsel for the writ applicants argued that the circular of the Bank was to create the post of Safai Karmachari-cum-Sub Staff and to assess the requirement of the Sub Staff for each of the Branch Office, therefore, the 49 posts were advertised keeping in view the posts so assessed. Therefore, it is an arbitrary decision of the Bank to say that such posts were not available. It is contended that once temporary and casual workers have been permitted to participate in the selection process, thus, it appears that such temporary and casual workers have also been taken into consideration while giving the details of the surplus staff strength in the affidavit as mentioned above.



8. We have heard learned counsel for the parties and find that the Writ Court in exercise of power of judicial review will not examine that how many posts were available or how many posts should have been created or have been created. The stand of the Bank in the affidavit is clear and categorical that against the sanctioned strength as on 31st of March, 2014 there is already 79 Safai Karmachari-cum-Sub Staff. Thus, there is surplus staff. In respect of an argument whether the temporary or casual workers have been included in the actual strength mentioned in the affidavit, in the absence of any material on record, we are unable to agree with the learned counsel for the respondents that the casual and temporary workers have been included in such strength. The number of post required to be sanctioned is keeping in view the requirement of the Bank over which, this Court in exercise of judicial review will not sit and direct that the number of posts were more than what are mentioned in the affidavit. The Bank is categorical that there is 13 surplus staff.

9. In view of the fact that there were surplus staff, the reasoning given by the Bank not to offer appointment cannot be said to be unreasonable or arbitrary which may warrant interference in the writ jurisdiction of this Court.

10. The order of the learned Single Bench is to the effect that a Public Sector Bank cannot be expected to work on the whims



and fancies of the Managing Director of the Bank but such finding cannot be sustained for the reason that it is a decision of the Board of Directors of the Bank on 21<sup>st</sup> of June, 2014 to cancel the selection process. It is not a decision of an individual which can be said to be whimsical.

11. In view thereof, we find that the order passed by the learned Single Bench cannot be sustained in law. Consequently, the Letters Patent Appeal is allowed, the order passed by the learned Single Bench is set aside and the writ application is dismissed.

**(Hemant Gupta, ACJ)**

**(Vikash Jain, J)**

P.K.P.

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