

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7154 of 2019

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1. Santosh Sarkar S/o Chitranjan Sarkar, R/O - Sirsa Colony, P.O. - Sirsa Colony, P.S. - Motihari Mufassil, District - East Champaran.
 2. Md. Nabi Alam S/o Md. Manjoor Alam, R/o Ghorashahan Bazar, P.O. - P.S - Ghorashahan, District - East Champaran-845303
 3. Vir Kumar Mahto S/o Brijnandan Mahto, R/o Village - P.O. - Palnava, P.S. - Palnava, District - East Champran-845440

... .. Petitioner/s

Versus

1. The Central Bank of India through its Chairman and Maintaining Director, Chandra Mukhi, Nariman Point, Mumabi-400021
2. The Chairman and Managing Director, The Central Bank of India, Central Office, Chandra Mukhi, Nariman Point, Mumbai-400021
3. General Manager, Human Resource Department (Recruitment and Promotion Division) of Central Bank of India, Central Office, Chandra Mukhi, Nariman Point, Mumbai-400021.
4. General Manager, Central Bank of India, Zonal Office,Muzaffarpur.
5. Regional Manager, Central Bank of India, Regional Office, Balua Tal, Motihari.
6. Chief Manager (Personnel), Central Bank of India, B. Block, 2nd Floor, Dak Bungalow Road, Mauryalok Complex Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Harendra Kumar
For the Respondent/s : Mr.Ajay Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 07-05-2019



1. Heard Mr. Prashant Kumar Sinha, learned Advocate for the petitioners and Mr. Ajay Kumar Sinha, for the Respondent/Bank.

2. The petitioners have sought direction to the respondents to complete the recruitment process initiated by them pursuant to a Memorandum of Settlement dated 09.08.2012 with respect to Motihari Regional Office of the Central Bank of India, which was cancelled after holding the interview without any apparent/good reason. It has further been prayed in the writ petition that the petitioners, who are casual/temporary workers in various Branches of the respondent/Bank, be absorbed in regular service.

3. The sheet-anchor of the argument of the learned counsel for the petitioners is that considering the rapid expansion of branch network and progressively reducing subordinate staff strength because of large scale retirement, a need was felt for recruitment of subordinate staffs. Thus, taking a pro-employee initiative, the management of respondent/Bank not only converted all the permanent part-time staff in the subordinate cadre as regular employees but



also resolved to appoint afresh such staff from amongst the casual workers serving the Bank and fresh candidates, to be called from the Employment Exchange. A Memorandum of Settlement between the management of the Central Bank of India and Central Bank Employees Federation was thus formulated and signed on 9th of August, 2012.

4. Pursuant to the aforesaid Memorandum of Settlement, the Zonal Regional Offices of the Bank were directed for initiating the process of recruitment of *Safai Karmchari* cum sub-staff and other sub-staff.

5. In accordance with the Memorandum of Settlement and the direction issued by the Central office, process of selection was started and the petitioners also participated in such selection process. Interview also was held by the respondent/Bank. However, in the meantime, by letter dated 25.06.2014, the appointment process was called off in certain regions, Motihari region being one of them. The reason for such cancellation of the process of appointment was the decision of the respondent/Bank in its meeting held on 21.06.2014, wherein the Board came to the conclusion



that there was surplus staff in some of the regions and, therefore, there was no necessity of concluding the process of selection.

6. The learned counsel for the petitioners, however, has intimated this Court that in many regions like in West Bengal, recruitment process was completed. This abrupt winding up of the appointment process led to several litigation and some of the successful candidates of Motihari region (fresh candidates and not the casual workers serving the Bank), approached this Court *vide C.W.J.C. Nos. 19254 of 2014 and 16666 of 2014*. The aforesaid writ petitions were allowed. However, the respondent/Bank preferred *L.P.A. Nos. 460 of 2016 and 449 of 2016*, which were also allowed and the order passed by the learned Single Judge in the aforesaid writ petitions was set aside. The Division Bench after analyzing the judgements reported in *The State of Haryana Vs. Subash Chander Marwaha and Ors. [AIR 1973 Supreme Court 2216]*; *Shankarsan Dash Vs. Union of India [(1991) 3 SCC 47]*; *Kulwinder Pal Singh and Anr. Vs. State of Punjab and Ors. [AIR 2016 Supreme Court 2281]*; and



Manoj Manu and Anr. Vs. Union of India and Ors. [2013 (10) SCALE 204: (2013) 12 SCC 171: (AIR 2014 SC (Supp) 927] came to the conclusion that no right had accrued to the writ petitioners/successful candidates to claim appointment as a matter of right and the decision of the respondent/Bank to call off such appointment process on the ground of surplus staff was upheld. The decision of the respondent/Bank was not held to be whimsical by the Division Bench.

7. Simultaneously, the calling off of the selection process in other regions were also challenged, one of such challenge being before the Assam High Court at Guwahati. The Assam High Court held that the cancellation of the recruitment process on the ground of surplus subordinate staff was not justified and tenable in view of the Memorandum of Settlement. The Bench, however, reminded itself that as a general proposition, there cannot be any dispute that selection *per se* does not confer any right of appointment. The objection raised by the respondent/Bank but was not sustained and the writ petitions were allowed. The challenge to the aforesaid judgement before a Division



Bench of Assam High Court and, thereafter before the Supreme Court by the respondent/Bank, failed.

8. The Division Bench order of this Court referred to above was also subject to challenge before the Supreme Court in *S.L.P. No. 22164 of 2017*, but the same was dismissed. However, liberty was granted to such casual workers, whose writ petitions were pending in Patna High Court, to pursue their cases.

9. The submission of the learned counsel for the petitioners, therefore, is that when the Memorandum of Settlement was signed on 9th of August, 2012, it was only after the vacancy position was ascertained after analyzing the reduced subordinate staffs in the Bank. The respondent/Bank could not then be permitted to make a somersault and stop the recruitment process on the ground of surplus staff. No details have been provided to the petitioners to indicate the correctness of the decision of the Board regarding the surplus staff. Since the recruitment process was taken to its logical conclusion in other/different regions, especially in West Bengal and by virtue of the order of Assam High Court in the



State of Assam, there is no reason why the respondent/Bank be permitted to leave the recruitment process incomplete midway in Motihari region in the State of Bihar.

10. The learned advocate for the petitioners additionally submits that any settlement between employer and the employees is placed on a higher pedestal than even an award passed after adjudication. The Board's decision therefore cannot neutralize the effect of the memorandum of settlement of 2012. The settlement has a binding effect on the signatories to the settlement. [*refer to P. Virudhachalam and Ors. Vs. Management of Lotus Mills and Anr.; (1998) 1 SCC 650*]

11. As opposed to the aforesaid submissions made on behalf of the petitioners, it was urged by the respondent/Bank that only on the decision of the Board which, in turn, took into account the surplus of the subordinate staffs that the appointment process was cancelled. With the decision of the Division Bench of Patna High Court in *L.P.A. Nos. 460 of 2016 and 449 of 2016* having been affirmed by the Hon'ble Supreme Court, there



would remain no occasion and space for this Court to enter into the issue of correctness of the decision of the respondent/Bank in calling off the recruitment process.

12. Apart from this, it has been urged by the respondent/Bank that the liberty to agitate the matter before the respective High Courts was given to only such persons who have intervened in *S.L.P. No. 22164 of 2017*.

13. However, on finding that the appointment process was called off only for the reason of surplusage of subordinate staff, this Court would not proceed to issue any mandamus to the respondent/Bank to complete the process of selection. No doubt, the process was initiated pursuant to the Memorandum of Settlement, referred to above, and the direction issued by the Central Office. Nonetheless, for the reason of surplusage of staff, which came to be known later and no right accruing to any candidate who had participated in the selection process, this Court would find no reason to interfere with the decision of the respondent/Bank in cancelling the appointment process.



14. This Court only expects that whenever a fresh recruitment process would be initiated, the respondent/Bank shall take into consideration that the petitioners have served the Bank for a long time as casual workers and the respondent/Bank, as it has professed in the Memorandum of Settlement of 2012, will adopt a pro-employee approach of giving weightage to the candidature of the petitioners in the shape of age relaxation and shall consider taking them into regular service.

15. With the aforesaid hope and trust, this writ petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	09.05.2019
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