HIGH COURT OF TRIPURA
AGARTALA

1. WP(C) No.1421/2019

Sri Mithun Sharma, S/O. Sri Swapan Chandra Sharma, residence of Aralia, P.O. Aralia, PIN: 799004, Agartala, District-West Tripura.

----Petitioner(s)

Versus

1. The Tripura Gramin Bank, represented by its Chairman, P.O. Abhaynagar, PIN: 799005, Agartala, District: West Tripura.

2. The Chairman, Tripura Gramin Bank, P.O:Abhaynagar, PIN:799005, Agartala, District: West Tripura.

3. The Institute of Banking Personnel Selection (IBPS) represented by its Chairman, IBPS House, near Thakur Polytechnic, off Western Express Highway, PB No.8587, Kandivali, East Mumbai: 400101.

-----Respondent(s)

Connected with

2. WP(C) No.1422/2019

Sri Tathagata Chanda, S/O. Sri Sajal Chanda, resident of Joy Nagar Lane No-4, P.O. Joynagar, PIN: 799001, Agartala, District-West Tripura.

----Petitioner(s)

Versus

1. The Tripura Gramin Bank, represented by its Chairman, P.O. Abhaynagar, PIN: 799005, Agartala, District: West Tripura.

2. The Chairman, Tripura Gramin Bank, P.O:Abhaynagar, PIN:799005, Agartala, District: West Tripura.

3. The Institute of Banking Personnel Selection (IBPS) represented by its Chairman, IBPS House, near Thakur Polytechnic, off Western Express Highway, PB No.8587, Kandivali, East Mumbai: 400101.

-----Respondent(s)

3. WP(C) No.1423/2019

Ms. Swarupa Bhowmik, D/o. Sri Swapan Bhowmik, resident of North Badharghat, near Bapuji School, P.O. A.D. Nagar, PIN:799003, Agartala, District-West Tripura.

----Petitioner(s)

Versus

1. The Tripura Gramin Bank, represented by its Chairman, P.O. Abhaynagar, PIN: 799005, Agartala, District: West Tripura.

2. The Chairman, Tripura Gramin Bank, P.O:Abhaynagar, PIN:799005, Agartala, District: West Tripura.

3. The Institute of Banking Personnel Selection (IBPS) represented by its Chairman, IBPS House, near Thakur Polytechnic, off Western Express Highway, PB No.8587, Kandivali, East Mumbai: 400101.

-----Respondent(s)

4. WP(C) No.1424/2019

Ms. Anamika Rudra Pal, D/o. Sri Nityananda Rudra Pal, resident of ONGC North Colony, P.O. ONGC, PIN:799014, Agartala, District-West Tripura.

----Petitioner(s)

Versus

1. The Tripura Gramin Bank, represented by its Chairman, P.O. Abhaynagar, PIN: 799005, Agartala, District: West Tripura.

2. The Chairman, Tripura Gramin Bank, P.O:Abhaynagar, PIN:799005, Agartala, District: West Tripura.

3. The Institute of Banking Personnel Selection (IBPS) represented by its Chairman, IBPS House, near Thakur Polytechnic, off Western Express Highway, PB No.8587, Kandivali, East Mumbai: 400101.

-----Respondent(s)

For Petitioner(s) : Mr. C.S. Sinha, Advocate,
Ms. Swarupa Chisim, Advocate.

For Respondents No.1 & 2 : Mr. A. Roy Barman, Advocate.

For Respondent No.3 : Mr. H. Deb, Asstt. S.G.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment: **6th March, 2020**.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Heard learned counsel for the parties for final disposal of the petitions.

2. With minor differences facts in all petitions are common which are as under:

In WP(C) No.1421 of 2019 petitioner Sri Mithun Sharma belongs to the Other Backward Class (OBC) category. In WP(C)

No.1422 of 2019 the petitioner Sri Tathagata Chanda belongs to Un-reserved (UR) category. In WP(C) No.1423 of 2019 petitioner Ms. Swarupa Bhowmik belongs to Scheduled Castes (SC) category and in WP(C) No.1424 of 2019 petitioner Ms. Anamika Rudra Pal belongs to OBC category. All the petitioners had applied in response to the recruitment notification issued by the respondent No.1, Tripura Gramin Bank under advertisement dated 06.06.2018 for filling up the posts of Officers Scale-I. A total of 20(twenty) vacancies were notified, out of which 3(three) were reserved for SC, 1(one) for ST, 5(five) for OBC and 11(eleven) were UR posts. In response to the said advertisement, the petitioners appeared in the online examination on 30.09.2018 and having qualified were called for oral interviews on 16.11.2018. The advertisement envisaged keeping 25% of the total vacancy notified as reserved list which would be operated for appointment as per the availability of vacancies. The life of such reserved list would be for a period of one year which would expire on 31.12.2019. The names of the petitioners were shown in the reserved list of respective categories to which they belong. Case of the petitioners is that out of the selected candidates several candidates did not join the duty and such vacancies, therefore, should have been offered to the petitioners by operating the reserved list. Instead the Bank had commenced a fresh selection process by issuing fresh advertisement in which 6(six) vacancies out of the previously notified vacancies were advertised. At that stage, the petitioners filed these petitions. By an order dated 20.12.2019 a limited stay

against filling up the 4(four) posts was granted. It was pointed out that 2(two) of the vacancies out of 6(six) re-notified arose because the appointed candidates joined but later on resigned. In the said order it was provided that the Bank shall file reply and state if there are any specific reasons why the reserved list was not operated.

3. From the record which I perused with the assistance of learned advocates for the parties, it would further emerge that there were no vacancies in the SC category on account of non-joining of service by any of the appointed candidates. The petitioner in case of WP(C) No.1423 of 2019 who belongs to SC category and seeks appointment on the basis of her placement in the reserved list, therefore, must fail. However, it is undisputed that on account of non-joining of selected candidates there are two vacancies in OBC category and one in UR category which were re-notified by the Bank in the subsequent selection process but against filling up of which this Court had granted interim stay.

4. It is undoubtedly true that a candidate upon being placed in the select list does not have a right to be appointed. More so in case of a waitlisted candidate, he has no indefeasible right of appointment. However, the very purpose of maintaining a wait list or a reserved list is to cover for a situation where a selected candidate though offered appointment, does not accept it and as a result, a vacancy remains unfilled. In such circumstances, the wait list can be operated. Waitlisted candidate who has also undergone the full selection process and is otherwise found to be eligible and

meritorious can be appointed on such vacancy. If the employer has any specific reason for not operating the wait list and if such reason appears to be reasonable, the Court would undoubtedly not give directions for operating the wait list. One such reason could be lapsing of the validity of the select or the wait list. However, during the validity period of the list, be it select or wait list, there has to be some semblance of ground or reason why the employer would refuse to operate it despite the requirement to do so has arisen. It was, therefore, that in the order dated 20.12.2019 the Bank was asked to give specific reason why the reserved list was not operated. All that in this context has been stated by the Bank in the reply is this:

> "In view of the said paragraph, the answering Respondent Nos.1 & 2 most respectfully submit that, the Respondent Bank may appoint from the Reserved List (waiting list) only on the basis of exigencies. Since there is no exigencies during the period, the Bank did not consider to allot from Reserved List."

5. The defence of the Bank thus is that the wait list had to be operated if exigency arose. In the present case, in the opinion of the Bank no such exigency arose. Accepting the explanation and the stand of the Bank would permit completely willful choice to the Bank whether to operate the wait list or not. The wait list, as noted above, is meant for operating in case the candidate from the select list refuses to accept offer of appointment. Such an exigency in the present case has arisen. Without citing any reasons, the Bank refused to operate the wait list. Leaving such wide latitude to the

employer to choose to operate or not to operate the wait list even though the exigency has arisen and there is no reason at all for not operating the wait list, would enable the Bank to make totally arbitrary decisions. The Bank must, therefore, operate the reserved list for two vacancies of OBC and one for UR candidate.

6. Before issuing final directions, minor clarification would be needed. Though the Bank does not dispute that the names of the petitioners were included in the reserved list, neither the petitioners nor the Bank have stated their positions in the reserved list. Operation of reserved list can result into offer of appointment in favour of the petitioners only if their turn for appointment arrives. In other words, if there are other candidates higher in the reserved list such offer must first go to them.

7. In the result, WP(C) No.1423 of 2019 is dismissed.

8. In WP(C) No.1421 of 2019 and WP(C) No.1424 of 2019 it is directed that the Bank shall operate the reserved list for OBC candidates for 2(two) vacancies and offer appointment to those who are placed at Sl. No.1 & 2 in such reserved list, be it the petitioners or any other candidates.

9. In WP(C) No.1422 of 2019 the respondents are directed to operate the reserved list for UR category for one vacancy to be offered to the first person in the reserved list, be it the petitioner or anyone else.

10. This exercise shall be completed within a period of 2(two) months from today. Appointments would only be prospective. Stay against filling of the posts is vacated.

11. All petitions are disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

HIGH COURT OF TRIPURA

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