



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) Nos.15742, 15746, 15749, 15751, 15752, 15754, 15756, 15757,
15758, 15763, 15765 & 15767 of 2020

and

W.M.P (MD) Nos.13190, 13191, 13193, 13196, 13198, 13199, 13201, 13202,
13204, 13205, 13207 & 13209 of 2020

K.R.Saru Priya Dharshini	... Petitioner in W.P (MD) No.15742/2020
L.S.Vignesh Babu	... Petitioner in W.P (MD) No.15746/2020
L.S.Manikandan	... Petitioner in W.P (MD) No.15749/2020
S.S.Chandrasekaran	... Petitioner in W.P (MD) No.15751/2020
J.Thoulath Nisha	... Petitioner in W.P (MD) No.15752/2020
M.M.Sevugaraja	... Petitioner in W.P (MD) No.15754/2020
M.Shanmugalakshmi	... Petitioner in W.P (MD) No.15756/2020
G.Poornima	... Petitioner in W.P (MD) No.15757/2020
K.S.Padmapriya	... Petitioner in W.P (MD) No.15758/2020
E.S.Banumathi	... Petitioner in W.P (MD) No.15763/2020
M.Subashini	... Petitioner in W.P (MD) No.15765/2020
P.S.Saravanan	... Petitioner in W.P (MD) No.15767/2020

Vs.

1.The Chief Manager, (HRM),
Indian Bank,
HRM Recruitment,
Corporate Office,
No.254-260, Avvai Shanmugam Salai,
Royapettah, Chennai - 600 014.

... 1st Respondent in all W.Ps'



2.The Branch Manager,
Indian Bank,
No.101, South Masi Street,
Madurai - 625 001. ... 2nd Respondent in W.P (MD) No.15742/2020

2.The Branch Manager,
Indian Bank,
No.100-101, East Avani Moola Street,
Madurai - 625 001. ... 2nd Respondent in W.P (MD) No.15746/2020

2.The Branch Manager,
Indian Bank,
TVS Nagar Branch,
Madurai - 625 003. ... 2nd Respondent in W.P (MD) No.15749/2020

2.The Branch Manager,
Indian Bank,
Kochadai Branch,
No.2/3, G.V.Towers 1st Floor,
Melakkal Main Road,
Nadaraja Nagar, Kochadai,
Madurai - 625 016. ... 2nd Respondent in W.P (MD) No.15751/2020

2.The Branch Manager,
Indian Bank,
Bye Pass Road Branch,
Ponmeni,
Madurai - 625 010. ... 2nd Respondent in W.P (MD) No.15752/2020

2.The Branch Manager,
Indian Bank,
No.161-A, East Veli Street Branch,
Madurai - 625 001. ... 2nd Respondent in W.P (MD) No.15754/2020

2.The Branch Manager,
Indian Bank,
Erukkancheri Branch,
No.51, GNT Road,
Chennai - 600 118. ... 2nd Respondent in W.P (MD) No.15756/2020

2.The Branch Manager,
Indian Bank,
Y.Othakadai,
Madurai - 625 107. ... 2nd Respondent in W.P (MD) No.15757/2020

2.The Branch Manager,
Indian Bank, Ayappakkam Branch,
ICF Colony Main Road,
Ambathur Phase - III Scheme,
Ambathur,
... 2nd Respondent in W.P (MD) No.15758/2020



2.The Branch Manager,
Indian Bank, Salaigramam Branch,
Sivagangai District. ... 2nd Respondent in W.P (MD) No.15763/2020

2.The Branch Manager,
Indian Bank,
Oomatchikulam Branch,
No.1/150, Natham Main Road,
Oomatchikulam,
Thirumalpuram,
Madurai - 625 014. ... 2nd Respondent in W.P (MD) No.15765/2020

2.The Branch Manager,
Indian Bank,
Bibikulam Branch,
8A, Rethinasamy Nadar Cross Cut Street,
Madurai - 625 002. ... 2nd Respondent in W.P (MD) No.15767/2020

COMMON PRAYER in W.P (MD) Nos.15742, 15746, 15749, 15751, 15752, 15754, 15756, 15757, 15758, 15763 & 15765 of 2020: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuances of Writs of Certiorarified Mandamus, to call for the entire records relating to the impugned letter issued by the first respondent dated 05.08.2020 and to quash the same and consequently direct the respondents herein to select and appoint the petitioners to the post of sub-staff based on the application of the petitioners, dated 15.02.2015, 27.03.2017, 27.03.2017, 18.09.2015, 18.07.2015, 03.11.2015, 07.03.2017, 19.12.2015, 18.09.2014, 05.02.2018 & 12.10.2018 respectively.

PRAYER in W.P (MD) No.15767 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, directing the respondents herein to select and appoint the petitioner to the post of sub-staff based on the application of the petitioner dated 27.08.2015.

For petitioners : Mr.A.Saravanan
(In all W.Ps')

For Respondents : Mr.Pala.Ramasamy
(In all W.Ps') Standing Counsel

COMMON ORDER

Mr.Pala Ramasamy, learned Standing Counsel takes notice for the respondents.

2.By consent, all the Writ Petitions are taken up for final disposal at the stage of admission itself.



3.The petitioners have preferred the present Writ Petitions to quash the order dated 05.08.2020 passed by the first respondent and consequently direct the respondents to select and appoint the petitioners to the post of sub-staff, based on their applications.

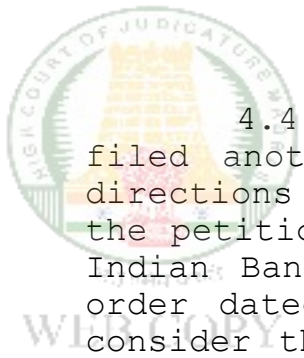
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4.The necessary facts leading to the filing of the present writ petitions are as follows:

4.1 The petitioners made respective applications on 15.02.2015, 27.03.2017, 27.03.2017, 18.09.2015, 18.07.2015, 03.11.2015, 07.03.2017, 19.12.2015, 18.09.2014, 05.02.2018, 12.10.2018 and 27.08.2015 to the post of Sub-staff in the second respondent Bank. The Assistant General Manager (HRM) of the first respondent, vide letter dated 26.02.2015, stated that the appointment to any post in the Bank is made through the Institute of Banking Personal Selection (IBPS), Mumbai or directly by issuing advertisement in leading newspapers inviting applications from the eligible candidates, who fulfill the age, educational qualifications, etc. prescribed for the post. It was further informed that no vacancy in the Bank is filled up by entertaining applications directly from the candidates sans any public advertisement or other approved mode of recruitment.

4.2 Stating that in the absence of any recruitment rules for selection and appointment to the post of sub-staff, the calamities arose leading to no equal opportunity for qualified persons like that of the petitioners, they along with others filed two batches of Writ Petitions in W.P(MD)Nos.19241 to 19270 of 2017 and W.P(MD)Nos.12395 to 12399 of 2019 & 1473 of 2019, seeking to direct the respondents therein to frame appropriate necessary guidelines and recruitment process for the selection to the post of sub-staff in the Indian Bank and to select the petitioners for the said post on satisfaction of the educational qualification and other norms prescribed. This Court by separate orders dated 08.03.2019 and 23.04.2019, disposed of the said batches of writ petitions, granting liberty to the petitioners to send representations to the respondents within a period of two weeks and on filing of such representations, the same should be dealt with on merits and in accordance with law and necessary orders be passed, by the IBPS, after affording opportunity of hearing to the petitioners.

4.3 As directed by this Court, the petitioners sent representations to the IBPS, which, intturn, vide communication dated 20.03.2019, stated that they are only a test conducting agency and not a recruiting agency and they have not conducted any common recruitment process for selection to the post of sub-staff cadre in the Indian Bank and they are not the concerned authority in this regard and accordingly, directed the petitioners to approach the concerned Bank.



4.4 Thereafter, the petitioners along with others jointly filed another writ petition in W.P(MD)No.6027 of 2020 seeking a directions to the respondents 2 to 25 therein to select and appoint the petitioners therein for the post of sub-staff in the respective Indian Bank Branches based on their applications. This Court, by order dated 24.03.2020, directed the fourth respondent therein to consider the petitioners' applications on merits and in accordance with law, within a period of eight weeks. Pursuant to the said order, the petitioners sent representations dated 12.06.2020 to the respondents enclosing a copy of the said order. However, the first respondent, vide impugned order, dated 05.08.2020, rejected the claim of the petitioners for appointment to the post of sub-staff. Feeling aggrieved, the present writ petitions came to be filed for the aforesaid relief.

5.The learned counsel for the petitioners submitted that based on the requirements, the concerned Branch Manager of the Bank utilises the services of the casual labourers on adhoc basis and in this manner, the post of sub-staff has been recruited on discretion and subsequently, they have been promoted to clerical cadre. As such, there are no rules and regulations so far framed for recruitment to the post of sub staff in the respondent Bank. In support of the same, he drew the attention of this Court to the RTI reply given by the Central Public Information Officer, dated 08.10.2020, the contents of which, for better appreciation, are extracted hereinbelow:

"Recruitment of sub-staff has not taken place recently and hence no public advertisement issued. Rules and Regulations are formulated in line with GOI guidelines as and when recruitment process takes place."

Thus, according to the learned counsel, recruitment rules have to be framed to the post of sub staff and a transparent method of selection is imperative for appointment to the said post.

6.The submissions so made on the side of the petitioners are seriously refuted by the learned standing counsel for the respondents. Referring to the order impugned herein, he submitted that the appointment for the post of sub-staff in the respondent Bank, will be made by following due process and no candidate is appointed by receiving their applications directly. He further submitted that the first respondent, after notifying the vacancies and calling for applications from the eligible candidates through public advertisement, will consider the applications, according to the eligibility criteria and upon clearing the selection process, as per the Rules and Regulations of the Bank. Hence, there is no ground much less valid ground made out by the petitioners to interfere with the order impugned herein and the writ petitions are liable to be dismissed.



7.This Court considered the rival submissions and perused the materials available on record.

8.Admittedly, the petitioners directly made repeated applications to the respondent Bank seeking appointment to the post of sub-staff, which were not considered. Hence, they preferred writ petitions on two occasions. However, they failed in their attempts. Finding no other alternative, the petitioners have again come up with the present writ petitions for the very same relief.

9.It is the specific stand of the learned counsel for the petitioners that there are no rules and regulations for recruitment to the post of sub staff in the respondent Bank and hence, the same have to be framed, so as to regulate the process of selection and appointment for the said post, whereas the learned Standing Counsel appearing for the respondents submitted that the petitioners cannot straight away approach the respondent Bank for appointment to the post of sub staff and there is a procedure for selection to any post. However, he has not produced any material relating to rules and regulations to be followed by the respondent Bank. The RTI reply referred to by the petitioners, would only go to show that the Rules and Regulations are formulated in line with the guidelines framed by the Government of India, as and when recruitment process takes place. Thus, it is clear that there are no standard rules and regulations to be followed in the respondent Bank for recruitment to the post of sub staff.

10.Indisputably, Recruitment Rules will be required to any post, which is being filled up or any service which is being created. Equal opportunity in public employment is a constitutional mandate and all the citizens, who are eligible for public employment should be provided an opportunity to participate in the open competitive process and all the selection to the public post must be done in accordance with the rules in force.

11.At this juncture, it is appropriate to refer to the decision of the Supreme Court in **State of Himachal Pradesh v. Suresh Kumar Verma, [1996 AIR 1565]**, wherein, it was held as follows:

"The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments, which would be a backdoor entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled



law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists".

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12. That apart, the Constitutional Bench of the Supreme Court settled the legal principle in this regard in **Secretary, State of Karnataka and others v. Umadevi and others [(2006) 4 SCC 1]** and the relevant portion of the same is reproduced hereunder:

"34....Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the



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earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

13. Such being the factual and legal position, this Court is of the opinion that the petitioners cannot claim as a matter of right to be recruited to the said post of sub staff, in the absence of any recruitment rules in the respondent Bank. Further, by the order impugned herein, the first respondent has clearly stated that in the matter of recruitment of staff in the bank, due process is followed, which includes notifying the vacancies, calling for applications from the eligible candidates through a public advertisement and the applications thus received will be considered subject to fulfilling the eligibility criteria and upon clearing the selection process, as per the rules and regulations of the Bank. Therefore, the relief sought in these writ petitions cannot be granted to the petitioners.

14. At the same time, this Court, to sub-serve the interests of justice, directs the respondent authorities to frame recruitment rules, if not already framed, prescribing qualification for the post of sub staff and the same has to be notified in the Gazette. Needless to state that the formation of Recruitment Rules does not prevent the petitioners to compete in the selection process, if they satisfy the norms as prescribed in the Recruitment Rules.

15. Accordingly, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

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Sub Assistant Registrar (CS)



- To
- 1.The Chief Manager, (HRM) ,
Indian Bank,
HRM Recruitment,
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Thirumalpuram,
Madurai - 625 014.

13.The Branch Manager,
Indian Bank,
Bibikulam Branch,
8A, Rethinasamy Nadar Cross Cut Street,
Madurai - 625 002.

+12 CCs to M/s.A. SARAIVANAN, Advocate (SR-21814 to 21825[F] dated
11/11/2020)

**W.P (MD) Nos.15742, 15746, 15749, 15751, 15752, 15754, 15756, 15757,
15758, 15763, 15765 & 15767 of 2020**

10.11.2020

SE (CO)
NR (04/12/2020) 10P : 26C