

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18546-2021 (O&M)

Date of Decision: 13.10.2023

Jyoti ... Petitioner

VS.

Sarva Haryana Gramin Bank ... Respondent

CWP-351-2022 (O&M)

Paras Kumar ... Petitioner

VS.

Sarva Haryana Gramin Bank ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RK Malik, Sr.Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner
Mr. GS Bajwa, Advocate for the respondent

Sandeep Moudgil, J.

(1). The issue which arise for determination of this Court, in this case, is whether the petitioner has a right to be considered for appointment on account of her placement in the reserve list?

(2). The Institute of Banking Personnel Selection (IBPS), on 21.07.2020, published an advertisement for Common Recruitment Process for recruitment of Officers (Scale-I, II & III) and Office Assistant (Multipurpose) in Regional Rural Banks (hereinafter referred as RRBs). The petitioner being eligible had applied for recruitment against 52 posts of Officer Scale-I (23 posts meant for General category), for Sarva Haryana Gramin Bank in General category. The petitioner appeared and qualified the Preliminary test on 12.09.2020 followed by Mains exam which was held on 30.01.2021 and was ultimately interviewed on 19.02.2021, the result of which was declared on 11.03.2021 (Annexure P-2). While declaring the result, 25% vacancies were kept in the reserve list for the purpose of appointing candidates in reserve list,

if candidates of original list does not accept the offer and the same reserve list was valid upto one year from the date of declaration of final result (Annexure P2) i.e. till 11.03.2022.

(3). The last candidate of general category, who was offered appointment as Officer Scale-I under general category, had obtained 58.55 marks whereas the petitioner obtained 57.75 marks and the last candidate of the reserve list from general category had obtained 57.25 marks. Out of total 23 candidates of General category who were offered appointment, only 13 candidates of that category joined and 10 posts thus remained vacant due to non-joining of the candidates. However, instead of offering appointment, on these 10 vacant posts from the reserve list, an advertisement was issued on 07.06.2021 by which 127 posts of Officer Scale-I was advertised and in pursuance to this, the aggrieved petitioner has approached this Court.

(4). Mr. RK Malik, learned senior counsel on behalf of the petitioner contended that all the RRBs of other states were making appointments from the reserve list and the petitioner has arbitrarily been deprived of the same. Instead of filling up the posts from the reserve list, the posts were re-advertised on 07.06.2021 in spite of the fact that the reserve list would remain valid for 1 year. He vehemently argued that 25% of the vacancies in each of the posts and category were placed in the reserve list and the reserve list was not even operated and that without exhausting the reserve list, the RRBs went for a new notification calling for applications which would be a fresh recruitment process. He further urged that out of 23 posts of general category, only 13 candidates accepted the offer and 10 posts remained unfilled in the respondent-Bank, it is against these posts that the petitioner was entitled to be

appointed operating the reserve list. He contends that it is the placement of the petitioners in the reserve list and the vacancies existing even as on the date, legitimate expectation demands that the petitioner be appointed to the post for which she had applied.

(5). Notice of motion was issued on 17.09.2021 and thereafter, the respondent-Bank has filed its written statement through Mithilesh Kumar Jha, General Manager of the respondent-Bank wherein it has been contended that the writ petition is liable to be dismissed as the petitioner does not have any indefeasible right for being appointed on the basis of the reserve list as it is solely the discretion of the employer to decide as to how many vacancies should be filled up and the petitioner is no one to insist the respondent-Bank or this Court to direct filling up of the vacancies as the same is within the domain and discretion of the employer only.

(6). Mr. Bajwa then argued that the Institution of Banking Personnel Selection, being the necessary party, has not been impleaded by the petitioner as the said institution is responsible for the process of selection from inviting applications till the declaration of results along with the reserve list. He further contended that the petitioner could not secure the marks up to the cut off point which was 58.55 marks for General Category, as she had obtained marks lower than the cut off marks and since she has not made to the list of meritorious candidates, she is being denied the right of appointment.

(7). Learned counsel for the respondent sought to press into aid Clause 'K' of the advertisement dated 01.07.2020 (Annexure P1) to contend that provisional allotment does not confer any right to appointment and that the reserve list will be available until or unless, the fresh process of vacancy is

not started or one year from the declaration of result, whichever is earlier. He submitted that as the exigency of vacancies had arisen in the bank for future vacancies, the fresh vacancies were requisitioned and thereafter recruitment process was initiated and as such, the reserve list automatically stood lapsed in view of fresh advertisement dated 07.06.2021.

(8). Heard the learned counsel for the parties and gone through the record.

(9). As per the advertisement issued by IBPS, it has been provided in **K PROVISIONAL ALLOTMENT**, that in the event RRBs provide further vacancies, the provisional allotment will be carried out from the reserve list subject to if such vacancies are provided before the expiry of one year period, after which the reserve list shall expire automatically. As per the result published on 11.03.2021 (Annexure P2), 25% vacancies were kept in the reserve list with an intent that in case those candidates who were figuring in the original list do not accept the offer, then the appointments shall be made from the reserve list.

(10). Further, the Ministry of Finance, Government of India had issued “The Regional Rural Banks (Appointment of Officers & Employees) Rules, 2017” and Rule 9 thereof, provides that there shall be reserve list and panel of the said list will be for one year. Rule 9 of the Rules *ibid* reads as under:-

“9. Validity of panel for direct recruitment and for promotion. -

(1) A panel of selected candidates in respect of direct recruitment to the Group 'A' posts specified in column (3), against serial numbers 1, 2 and 3, of the First Schedule and Group 'B' posts specified in column (3), against serial number 6, of the First Schedule shall be prepared by the approved agency and a panel

of selected candidates in the case of direct recruitment to the Group 'C' posts specified in column (3), against serial number 7, of the First Schedule and promotion for Group 'A' and Group 'B' posts shall be prepared by the Committee:

Provided that in the case of direct recruitment, a reserve list of candidates, not exceeding fifty per cent of the notified vacancies, subject to a minimum of two candidates in each category (General, Scheduled Castes, Scheduled Tribes and other special category), shall be drawn up to meet exigencies.

(2) The panel of selected candidates referred to in sub-rule (1) including the reserve list shall be valid for a period of one year from the date of issue of the merit list or until a fresh panel is drawn, whichever is earlier.

(11). A conjoint reading of the advertisement vis-à-vis the Rule 9 of the 2017 Rules, referred to above, as also the averments made in the written statement filed would, in unmistakable terms, establish that the panel of selected candidates including the reserve list shall be valid for a period of one year from the date of issue of the merit list but the respondent-Bank refused to operate the reserve list despite there being vacancies existing.

(12). Undoubtedly, it is the IBPS – the recruitment agency which is bound to make the reserve list and forward the same to the appointing agency i.e. respondent-Bank. It is as per the Government of India broad Policy of recruitment in RRBs that reserve list are made. The role of NABARD is limited to monitoring of recruitment process as per Govt. of India policy.

(13). It gains pertinence to highlight the fact that the non-joining of service by the selected candidates from the final result, would give space to those candidates whose name figure in the reserve/waiting list which is bound

to remain alive for one year, as per Government of India policy as well as Rule 9 of 2017 Rules. The existence of a reserve list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the reserve list. A reserve/waiting list commences to operate after the vacancies for which the requirement process has been conducted have been filled up and as such, the same would not form part of the subsequent advertisement dated 07.06.2021.

(14). It is not the case of the respondent-Bank nor is there any material placed on record to show that the respondent-Bank ever took any steps to comply with the statutory requirement of consideration of candidates from the reserve/waiting list despite the fact that out of 23 posts meant for general category, there were still 10 vacancies which were required to be filled in from amongst those candidates who were kept in reserve list. It is also not the case of the respondent-Bank that the candidates kept in reserve list were not meritorious enough to be appointed or that despite their offering appointment to reserve list candidates, no one came forward to accept the same. Had it been so, the respondent-Bank would be well within its rights to carry forward the backlog of 10 general category vacancies in the next advertisement. But the respondent-Bank impulsively, in total contravention of Rule 9 of the 2017 Rules, got issued the advertisement on 07.06.2021, just less than 3 months after the issuance of the final result i.e. on 11.03.2021.

(15). Therefore, the respondent-Bank is held responsible for not operating candidates from the reserve list notwithstanding several of them not joining, in compliance of the policy of recruitment. Once having notified the reserve list in terms of the Notification and having communicated the

candidature of the petitioner to come within the reserve list, the respondent-Bank ought to have operated the reserve list, in the wake of hundreds of vacancies becoming available, by considering the case of the petitioner for appointment to the post for which she applied. This would be feeding the legitimate expectation of the petitioner, which became a legal right of the petitioner in the facts of the case.

(16). The principle of operation of a waiting list has been explained by the Supreme Court in the case of ***State of Jammu & Kashmir and others vs Satpal (2013) 11 SCC 737*** wherein it has been held as follows:-

“11. In view of the factual position noticed herein above, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate when offers of appointment have been issued to those emerging on the top of the merit. The existence of a waiting list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate after the vacancies for which the requirement process has been conducted have been filled up.”

(17). In **RS Mittal v. Union of India, 1995(3) SCT 284** while dealing with the similar matter where the Central Government did not make any appointment in pursuance to the recommendations and issued fresh advertisement on 22.2.1990 inviting applications for the same very posts, the Supreme Court Deprecated the stand taken on behalf of the Union of India and held that the appointment should have been offered within a reasonable

time of the availability of the vacancy and thereafter to the next candidate.

The relevant extract of the said judgment read as under:

"It is no doubt correct that a person on the select- panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

(18). Various Courts have clearly held as to the importance of the reserve list/wait list, from time to time, and the right of the candidates *qua* those lists that the recruiting agency in those cases was obliged to operate the waiting list and fill up the vacancies from the candidates in the wait list/reserve list. It is well settled that once a post has not been consumed and a meritorious candidate in the reserve/waiting list is available then the vacancy could be filled in by inviting next person in merit from the reserve/waiting list. The appointing agency is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be

permitted. Reference can be made to *State of Haryana vs. Subhash Chander Marwaha (1974) 3 SCC 220*, and *Neelima Shangla vs. State of Haryana (1986) 4 SCC 268*.

(19). Even otherwise, the very objective of preparing a waiting/reserve list and, for such list to be kept operative for a specific period, is that if a vacancy arises during such period for any reason, then the whole process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period.

(20). Therefore owing to the aforesaid narratives coupled with existence of reserve list; the affidavit of the Bank as to the availability of the vacancy would lead to the conclusion that the petitioner, in the facts and circumstances of the case, did have an indefeasible right to get her candidature considered for appointment to the post that she applied for.

(21). Accordingly, this writ petition is allowed and the respondent-Bank is directed to adhere to the reserve list and to consider the petitioner's case for appointment as Officer Scale-I, as per merit in terms of reserve list, within two weeks from the date of receipt of certified copy of this order.

(22). Needless to say and in order to avoid any further confusion, it is directed that the appointment of the petitioners shall relate back from the date when other selected candidates were appointed and they shall be granted the benefit of length of service, seniority etc. on the basis of their merit position, however, they shall not be entitled to any monetary benefits during the interregnum.

(23). Ordered accordingly.

06.07.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No