

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24351-2018

Reserved on 04.08.2023

Decided on 14.11.2023

Partik

... Petitioner

VS.

Institute of Banking Personnel Selection & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SK Nehra, Advocate and
Mr. Tanvir Singh Malik, Advocate for the petitioner

Ms. Neha Rana, Advocate for
Mr. RN Lohan, Advocate for respondent No.1

Mr. RS Bhat, Advocate for respondent No.2

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondent No.1 & 2 to forward the reserve list and issue appointment letter to the petitioner on the post of Office Assistant (Multipurpose).

(2). Learned counsel for the petitioner submits that the petitioner applied in pursuance to an advertisement issued by respondent No.1-IBPS for recruitment to 267 various posts of Officers (Scale I, II & III) in Regional Rural Banks (Annexure P1). In the result, the petitioner obtained 132.75 marks and it was mentioned in the result that "*you have been considered for the reserve list subject to vacancies reported by the Regional Rural Banks*". The petitioner moved an application under RTI and in response thereto, it was informed that 143 candidates had joined as Office Assistants (Annexure P3). As such, a total of 267 number of posts were advertised against which

only 143 persons have joined meaning thereby, 124 posts still remained to be filled up.

(3). It is lastly submitted that since the petitioner was not given appointment, he submitted a representation to the respondent No.1 & 2, praying for appointment from amongst the reserve list but to no effect. Hence the present writ petition has been filed.

(4). Notice of motion was issued on 03.10.2018 and pursuant thereto, the respondent No.1 & 2 have filed their respective replies.

(5). The respondent No.1-IBPS has averred that IBPS is only a test conducting personnel and the reserved list in dispute does not guarantee provisional allotment/recruitment by RRBs and the provisional allotment from the reserved list is done by IBPS only when required or asked by the banks in lieu of any vacancies sustaining. In the present case, the Respondent No.2 has not provided any vacancy and rather intimated that they have no vacancy to communicate to the petitioners and do not require reserve list for provisional allotment of candidate under different cadre.

(6). At the same time, the respondent No.2-Bank has raised a preliminary objection urging that the writ petition against the said Bank is not maintainable as has been held by this Court in CWP No.16912 of 2014 (Anupam versus IBPS) decided on 19.03.2015 (Annexure R2/1).

(7). On merits, it has been contended that merely petitioner's securing 132.75 marks in the online main examination does not create any right in favour of the petitioner for appointment and there is a clear stipulation that the petitioner will be considered for the reserve list subject to vacancies.

(8). It is further stated by Sh. RS Bhatt, Advocate for respondent No.2 that respondent No.1 had sought information regarding status of vacancies as on 29.05.2018, in response thereto, it was intimated that total vacancies available were 64 for Office Assistant (Multipurpose) and for this purpose, interview has already been conducted by respondent No.1 on 03.12.2018 who has given provisional allotment of vacancies under CRP RRB-VII. In so far as the present advertisement is concerned, this Court was apprised that there is no such post existing with respondent No.2-Bank under CRP RRB-VI and thus the contention of the petitioner that 124 posts are lying vacant, is incorrect and as such no post is lying vacant as no reserve list in respect of respondent No.2 is operating in State of Haryana has been given.

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

(10). The petitioner, meanwhile, has filed CM No.154-CWP-2019 for disposing of the present writ petition in terms of judgment dated 21.11.2018 in CWP No.29443 of 2018 (Abhishek Kumar vs. IBPS) (Annexure A1) wherein a direction has been issued to respondent No.1 to send the reserve list to respondent No.2 within two weeks and respondent No.2 shall issue appointment letters to the writ-petitioners, as per seniority.

(11). The respondent No.1 has filed reply to the application dated 25.01.2019 wherein it has been informed that the judgment in CWP No.29443 of 2018 has been challenged before the Division Bench in LPA-7728-2018. The said LPA has been disposed of vide order dated 25.03.2019 observing as follows:-

“A perusal of the impugned judgment goes to show that no notice was issued to the respondents. The appellant herein and respondent No.6, the bank, both are on the same page to contend that no notice or opportunity was given to them to contest the proceedings and the impugned order is an ex-parte order.

The respondent-bank, in its reply to the appeal, has set up a case as to for what reasons the candidates from the reserved list were not called for. Since the issue raked up in the writ petition is still required to be adjudicated after hearing the parties on merits, we are not entering into the controversy at this stage. Suffice it to say that since, admittedly, the impugned order passed by learned single Judge is an ex-parte order without any notice or opportunity of hearing to the appellant as well as respondent No.6, the same being in violation of the principles of natural justice is not liable to be sustained and is hereby set aside. The matter stands remitted to learned single Judge to decide the same afresh after affording opportunity to the respondents to file written statement. Needless to say that all efforts would be made to decide the dispute as expeditiously as possible.

The parties are directed to appear before the learned single Judge on 10.04.2019.”

(12). The matter, after remand to the Single Bench, has been heard at length by this Court and this Court has disposed of the writ petition i.e. **CWP-29443-2018 (Abhishek Kumar vs. IBPS)** with the following observations:-

“Moreso, a perusal of the communication received from NABARD would show that information sought pertaining to finalizing the audited balance sheet for the year 2017-18. Meaning thereby that the selections are conducted once in an year during the course of the said year for filling up anticipated vacancies which is to arise during the next year. The entire

process of conduct of the common written examination, interview, provisional allotment etc. are to be carried out within the year in question. If the RRBs provide any further vacancies which arise during the year 2018-19 to the IBPS during the currency of the said reserve list, provisional allotments can be made by IBPS from the said reserve list i.e. before expiry of one year from the date of publication of result by IBPS.

In other words, the candidates who did not join pursuant to the original list would give space for those candidates whose name figure in the reserve/waiting list which would survive for one year, as per Government of India policy. 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 information sought by the NABARD.

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 petitioners 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 petitioners for appointment to the posts for which they have applied. This would be feeding the legitimate expectation of the petitioners, which became a legal right of the petitioners in the facts of the case.

*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.”

*Various Courts have clearly held as to the importance of the reserved 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**.*

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 all lead to an unmistakable conclusion that the petitioners, in the facts and circumstances of the case, did have an indefeasible right to get their candidature

considered for appointment to the posts that they have applied for. The court is of the considered view, that there has been lapse on the part of IBPS in not providing the reserve list along with the main list and grave negligence on the side of respondent no.2 in not considering the reserve list before issuing fresh vacancies wherein they were well aware of the vacancies for the posts of Office Assistant (Multipurpose).

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

(13). In view of the fact that the question involved in the present writ petition is akin and similar to the one raised in Abhishek Kumar's case (CWP-29443-2018) which has since been decided by this Court vide order dated 06.07.2023, this writ petition is also disposed of in terms of order dated 06.07.2023 passed in CWP-29443-2018, reproduced above.

(14). Needless to say that the observations and directions issued by this Court in CWP-29443-2018 shall be binding in the present case as well.

(15). Ordered accordingly.

14.11.2023

V.Vishal

(Sandeep Moudgil)

Judge

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No