

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-29443-2018 (O&M)

Date of Decision: 06.07.2023

Abhishek Kumar & Ors.

... Petitioners

VS.

The Institute of Banking Personnel Selection & Anr.

... Respondent

CWP-29444-2018 (O&M)

Date of Decision: 06.07.2023

Raj Kumar & Ors.

... Petitioners

VS.

The Institute of Banking Personnel Selection & Anr.

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RK Malik, Sr.Advocate with
Mr. Sachmeet S. Randhawa, Advocate for the petitioners

Mr. Hemant Hans, Advocate for
Mr. Bhushan Bhatia, Advocate for the respondent No.2

Sandeep Moudgil, J.

(1). Both the above-cited writ petitions are being disposed of by this common order as the factual and legal aspects in both the petitions are common.

(2). For brevity, facts are being taken from CWP-29443-2018.

(3). The issue which arise for determination of this Court, in this case, is whether the petitioners have a right to be considered for appointment on account of their placement in the reserve list?

(4). The Institute of Banking Personnel Selection (IBPS) - respondent No.1, on 24.07.2017, published an advertisement for recruitment on various posts for different State Regional Rural Banks (hereinafter referred

as RRBs). The petitioners who were eligible had applied to the post of Office Assistant (Multipurpose) in Sarva Haryana Gramin Bank. The total posts advertised were 267 (145-General, 50-SC, 72-OBC). Petitioner No.1 who is from SC category and petitioners No. 2 to 5, who are from General category, also applied in response thereto.

(5). The Preliminary test for the said post was held on 17.08.2017, 23.09.2017, 24.09.2017 followed by Mains exam which was held on 12.11.2017 and the result was declared on 01.02.2018 (Annexure P-2). While declaring the result, 25% vacancies were kept in the reserved list for the purpose of appointing candidates in reserved list, if candidates of original list does not accept the offer and the same reserved list was valid up to 31.01.2019. The petitioners had qualified the Mains exam, in their respective categories, and were kept in the reserved list. Despite various representations to the respondent to fill up the vacant posts due to non-joining of original candidates, no action was taken, however, respondent vide letter dated 11.09.2018 (Annexure P3) informed that the respondent No.1 is only a test conducting agency acting as per the mandate given by the participating RRBs to selection personnel for filling up the reported vacancies who is solely the decision-making and appointing authority. On the other hand, Respondent No.2 – Sarva Haryana Gramin Bank vide letter dated 25.10.2018 (Annexure P4) informed that no reserved list has been received from IBPS and as such appointments could not be made. As per the information received under RTI Act 2005 from Sarva Haryana Gramin Bank on 12.11.2018 (Annexure P-5), only 79 candidates of unreserved, 39 candidates of OBC category, 22 candidates of SC category have joined the posts. The petitioners filed various

representations before the respondents for making appointments from the reserved list on 26.09.2018 and 05.11.2018 (Annexures P6 & P7) but to no avail. Hence this writ petition.

(6). Mr. RK Malik, learned senior counsel on behalf of the petitioners contended that all the RRBs of other states were making appointments from the reserved list and the petitioners have arbitrarily been deprived of the same. Instead of filling up the posts from the reserved list, the posts were re-advertised on 08.06.2018 in spite the fact that the reserved list would remain valid for 1 year i.e. upto 31.01.2019. 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 operating 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 145 post of general category, only 79 candidates accepted the offer and 66 posts remained unfilled in the respondent-Bank, it is against these posts that the petitioners were 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 petitioners be appointed to the posts for which they had applied.

(7). Counsel for the petitioners further placed heavy reliance on a case law wherein the same controversy has been settled by this Court in **CWP No.16988 of 2014 (Suman Rani vs State of Haryana)** while considering the justifiability of the Government to sleep over the matter of selection from the waiting list and on the other hand confronting the writ petitioners with the defense that the waiting list has now expired, this Court held that though a

person on the select panel has no vested right to be appointed but at the same time, the appointing authority cannot ignore the select-panel or decline to make appointment on its whims. The said decision was upheld by the Division Bench in LPA No 427 of 2017 (Annexure P-9) as well as by the Supreme Court in **SLP (Civil) No.10604/2013 (State of UP & Anr. vs. Rajiv Kumar Srivastava & Anr.)** (Annexure P-10).

(8). When this matter came up for preliminary hearing, a Coordinate Bench of this Court disposed of this writ petition vide order dated 21.11.2018 with a direction to respondent No.1-IBPS to send the reserved list of Office Assistant (Multipurpose) to respondent No.2-Bank, who in turn shall issue appointment letters to the petitioners as per seniority. However, the said decision dated 21.11.2018 was set aside in intra-court appeal observing that the controversy has not been decided on merits and remanded for afresh hearing back to the Single Bench.

(9). Since counsel for respondent No.1 raised the objection *qua* maintainability of the writ petition against respondent No.1-IBPS asserting that no relief *qua* him has been sought, the name of respondent No.1 was ordered to be deleted from the memo of parties, as the petitioners' counsel also agreeing to it, orally prayed on that lines.

(10). Written statement was filed by respondent No.2-Bank on 01.07.2019 wherein it has been contended 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 details of vacancy and rather intimated that they have no vacancy to accommodate the petitioners vide letter dated 05.10.2018 & 12.11.2018.(Annexure R-1/1 & R-1/2 respectively).

(11). Mr. Hemant Hans, Advocate for the respondent No.2-Bank would contend that the writ petition is liable to be dismissed being barred by the principle of *res judicata* as similar issue stands settled against the petitioners by the Supreme Court. Even otherwise, he urged, the petitioners do 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 petitioners are no one to insist the respondent-Bank or this Court to direct filling up of the vacancies as the same is in the domain and discretion of the employer only.

(12). It is further informed that out of 265 candidates who were allotted to the Bank for their appointment vide communication dated 01.02.2018, only 164 candidates actually joined and the last one to join as such was on 14.08.2018. However, upon receiving communication from NABARD asking for IBPS vacancy position as on 31.03.2018, it was mentioned that vacancy position by direct recruitment is determined by considering the number of candidates actually joined in the Bank and as such no reserved list was received by the Bank from IBPS till then and therefore, no provision was made for provisional allotment of candidates for recruitment as reserved list was not provided by IBPS to respondent-Bank along with the main list on 01.02.2018. As such, the left-out vacancies under CRP RRB-VI were accounted for while determining of the vacancies under CRP RRB-VII

that is to say that the purported reserved list, if any, stood expired with the initiation of the new recruitment process i.e. CRP RRB-VII.

(13). Application i.e. CM-12632-CWP-2021 has been filed by the petitioners with a prayer to dispose of the writ petition in terms of the judgment dated 16.04.2021 rendered by the Karnataka High Court in Writ Petition No.5317 of 2019 (Annexure P12).

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

(15). 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.

(16). Further, as per the result published on 01.02.2018 (Annexure P2), 25% vacancies were kept in the reserve list with an intent that in case the candidates whose figuring in the original list does not accept the offer, then the appointments shall be made from the reserve list. This communication is in tune with the advertisement, the relevant portion of which is extracted as under:-

"11. A reserve list to the extent of vacancies as per extant provision will be drawn in each category subject to exigencies and availability of candidates. This does not guarantee provisional allotment to/recruitment by the RRBs. In the event of RRBs providing further vacancies, provisional allotment will be carried out for the candidates in the reserve list subject to vacancies being provided within one year after the date of

provisional allotment. However, if no vacancy is furnished by the RRBs owing to exigencies or otherwise during the validity period the candidates under the reserve list will not be considered for provisional allotment. The reserve list will expire automatically on the day which is one year after the date of provisional allotment or until a fresh provisional allotment is made, whichever is earlier, with or without any notice...”

(17). A conjoint reading of the advertisement, the result and the written statement filed would in unmistakable terms indicate that vacancies did exist even as on 31-01-2019 and the RRBs refused to operate the reserve list despite there being vacancies existing. The existence of vacancies is also indisputable in terms of the reply dated 29.05.2018 (Annexure R/2-2) furnished by the Bank in response to the letter of NABARD dated 27.04.2018 (Annexure R/2-1) seeking information on vacancy position, in terms whereof, there were 64 vacancies of Office Assistant (Multipurpose) as on 31.03.2018.

(18). In the present case, the petitioners have raised the issue of appointing the petitioners listed in the reserve list in lieu of the candidates in original list, who had rejected the offer of appointment and the petitioners being eligible for the same were not considered despite the vacancies in the post of Office Assistant (multipurpose). Where the other RRBs were appointing candidates from the reserve list, the respondent no.2 re-advertised the posts on 08.06.2018 without considering the reserve list from the earlier advertisement.

(19). 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. The communication sent by NABARD (Annexure R/2-1) seeking information of vacancy position is for assessment of manpower in RRBs not in respect of recruitment process which has already been initiated. The said assessment is for the purpose of new vacancy which may arise after the completion of recruitment process i.e. CRP RRBs VI. That would necessarily include the consideration of candidates from amongst the reserve list which is mandatorily to be maintained for a period of one year.

(20). 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.

(21). 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.

(22). 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.

(23). 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.”

(24). 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*.

(25). 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 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. In the case in hand, the process of recruitment continued upto 14.08.2018 i.e. the last joining of the candidate, and therefrom, the period of waiting list shall commence from which date, the right of petitioners for consideration accrued. There is no weightage in the argument raised on behalf of respondent No.2-Bank that since the result was declared on 01.02.2018 (Annexure P2), as such,

the validity of the reserve list was upto 30.01.2019 i.e. one year from the date of declaration of the result.

(26). This 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).

(27). Accordingly, this writ petition is allowed and the respondent-Bank is directed to adhere to 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.

(28). Ordered accordingly.

06.07.2023
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No