

(1992) 12 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 16915 of 1988 and 13536 of 1989

Abinash Singh and Another

APPELLANT

Vs

Farrukhabad Gramin Bank and Others

RESPONDENT

Date of Decision : 22-12-1992

Acts Referred:

Citation : (1993) 2 AWC 752

Hon'ble Judges : N.B. Asthana, J;M.L. Bhat, J

Bench : Division Bench

Advocate : Keshari Nath Tripathi, B.D. Pandey and A.K. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Bhat, J.—These two writ petitions can be decided by a common judgment because common questions of law and fact are involved in both the writ petitions.

2. The common facts on which two writ petitions are based reveal that Gramin Banks were established by the Union of India to provide banking facilities in rural areas. For the supervision and control of the Gramin Banks, an autonomous body known as National Bank of Agriculture & Rural Development (NABARD) has been set up by the Union of India. The said banks are under the direct control of Union of India and its policies with regard to method of recruitment of employees and finances etc are formulated by the Union of India. The Gramin Banks are affiliated to any one of the nationalised banks. In these petitions it is averred that Respondent No. 1 (Gramin Bank) is affiliated to Bank of India which is a nationalised Bank.

3. Respondent No. 1 is said to have advertised the vacancies for the posts of officers, field officers and junior clerk-cum-cashier in the daily newspaper "Aaj" on 21-8-84. In response to the said advertisement the Petitioners are said to have applied for the post of field officers. Written test was held on January 13, 1985 for selection to the post of field officers. The Petitioners were declared

successful and they were called for interview which was held on different dates. The Petitioners case is that they were finally declared successful and qualified for being appointed as field officer against the available vacancies. Their result was published in a local newspaper "Dainik Jagran" on 27-5-85.

4. In the advertisement dated 21-8-84 by which the applications were invited, number of vacancies were not mentioned. The merit list of successful candidates was prepared in proportion to the number of vacancies in existence and keeping in view the likely vacancies to be created in future. A condition was imposed in the selection list for the first time that the list of selected candidates would remain valid only for twelve months. According to this condition the list of selected candidates would have expired on 27-5-86. Despite the alleged expiry of the list five more candidates, 3 from general category bearing roll Numbers 0481, 0169 and 0244 and 2 candidates from schedule caste category bearing roll numbers 0075 and 0049 were allowed to join on the post in the month of August, 1986.

5. The Petitioners contended that the select list cannot be cancelled and it has to remain operative till all the candidates who have qualified for being appointed are absorbed against the posts and the select list could not be cancelled on expiry of 12 months because the condition with regard to expiry of selection list after 12 months is bad in law and against the notification dated 8-2-82 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms. According to this notification further selection is to be postponed till the selected candidates mentioned in the selection list are accommodated. It is submitted that till the list is exhausted no fresh list can be made. The Respondents are trying to fill up the vacancies and have advertised the posts without accommodating the Petitioners against the posts in pursuance of the Selection list dated 27-5-85.

6. It is contended that there are 84 branches of Gramin bank in the district of Farrukhabad and there are vacancies of the post of field supervisors against which the Petitioners are to be appointed. It is contended that the Petitioners have been continuously approaching the Respondents for appointing them as field officers on the basis of the Petitioners being qualified for selection but their representation has not been considered so far. On the other hand the Petitioners were informed that the select list was valid only for one year and after expiry of one year, the Petitioners could not be appointed on the basis of the said select list which has become ineffective after one year. The Petitioners strongly refuted this condition and submitted that select list cannot be cancelled till they are appointed against the available vacancies. The Respondents also had not treated the list as cancelled because they had made appointments on the basis of select list even after the expiry of one year's period. The action of the Respondents is said to be arbitrary and violative of the Petitioners' right.

7. On the aforesaid grounds, the Petitioners seek a writ of mandamus with a direction to the Respondents to appoint the Petitioners on the posts of Field

Supervisors/Field Officers on the basis of the selection list dated 27-5-85 and for a writ of prohibition directing the Respondents not to make any appointment against the vacant posts of Field Supervisors/Field Officers either by direct recruitment or by promotion till the Petitioners are appointed.

8. At the time of admission of the writ petitions, this Court has directed the Respondents to keep two posts vacant for the Petitioners and has also directed in one of the petitions that any appointment on one of the post of the Field Officer shall be subject to any order that may be passed subsequently in the writ petition. In this manner, the Petitioners' interest pending the disposal of these two writ petitions, is protected by the Court.

9. In the counter-affidavit, Respondents have stated that recruitment for all banks is made by the Banking Service Recruitment Board. It is stated that no post of Field Officer was advertised but the posts of Field Supervisors advertised. The Respondents contention is that during the period of one year for which the list has to remain operative, if any vacancy occurs the selected persons shown in the select list would be appointed in order of merit. The Field Supervisor is not to be appointed at any branch of the Bank in the District. The appointment of the Field Supervisor would depend upon the deposits and advances of a branch and does not depend upon the number of branches of a bank. NABARD made queries regarding present staff strength and average account of business per officer to consider whether the strength of staff and field supervisor of Gramin Bank was adequate or not. It has informed by its letter dated 19-12-86 that the existing staff in the Gramin Bank was adequate for the present. It also declined to extend validity period of the selection list. That the number of selected candidates was more than the vacancies. Therefore all persons shown in the select list could not be appointed. The Respondents stated that no post of field supervisor is advertised in pursuance of the advertisement notice dated 11-7-87. The period of select list has not been extended, therefore the Petitioners cannot be appointed on the basis of the said list. The select list was extended upto December, 1986. Thereafter, it has ceased to be effective. The selected candidates were placed in the waiting list and they were accommodated in proportion to the vacancies available in the bank. Now the validity period of the list has expired, therefore, the Petitioners cannot be considered for appointment.

10. The Petitioners have filed rejoinder-affidavit also in which pleas raised by the Petitioners in the writ petitions are reiterated. They have given names of those officers who have been appointed even after expiry of 12 months of the list. However, their appointment was not challenged but it is claimed that the same treatment be given to the Petitioners which was given to those persons. It is also contended that there are vacancies against which the Petitioners can be appointed. The policy framed by the Central Government vide its circular letter dated 8-2-82 is relied upon.

11. We have heard learned Counsel for the parties and examined the record carefully.

12. It is contended by the learned Counsel for the Respondents that condition of 12 months validity period of the list is valid. The said condition is not bad in law and the Petitioners' contention that it violates the February, 1982 circular, is also contested. Vacancies in these cases were not declared at all when the posts were advertised or when the list of selected candidates was framed.

13. A copy of the circular has been placed on record. It is issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms. The circular is in respect of validity period of the list of selected candidates prepared on the basis of direct recruitment/Department competitive examination. After narrating the reasons for the issuance of the circular, the circular concludes to say as under:

Thus there would be no limit on the period of validity of the list of selected candidates to the extent of declared vacancies either by the method of direct recruitment or through a departmental competitive examination.

14. The notification dated 8-2-82 came up for consideration before the Supreme Court in *Prem Prakash Vs. Union of India (UOI) and Others*, . In this case two Petitioners who were members of scheduled caste had prayed for a writ of mandamus directing the Respondents to appoint them against the vacancies reserved for the members of SCs and STs in the Delhi Judicial service. They had also asked for a writ of prohibition to the effect that the Respondents should not fill up the reserved vacancies for which they competed, either by holding a fresh examination or by appointing the candidates who had qualified in any previous examination. The two Petitioners before the Supreme Court were included in the list of selected candidates among the four S.C. candidates. They did not figure in the final list of candidates selected by the Administrator, therefore they filed the writ petitions. The Petitioners before the Supreme Court relied on the notification dated 8-2-82 issued by the Ministry of Home Affairs. Their exclusion from the final selection to the posts was held to be invalid by the Supreme Court and the reasons given by the Supreme Court for allowing the writ petitions were as under:

(1) In the process of remedying injustice which was done to the two scheduled caste candidates of 1979 no injustice can be caused to the candidates who had qualified for the reserved seats in the examination held in 1980.

(2) The quota of seats available for reserved candidates cannot be made to depend upon the fortuitous circumstances as to how many candidates have qualified for the general seats. The reserved quota was directed to be fixed on the basis of the total number of vacancies which were to be filled at a given point of time.

(3) The notification of 1982 is good authority for adjusting the Petitioners against the reserved vacancies for the year 1980.

The Supreme Court has reproduced the notification dated 8-2-82 issued by the

Ministry of Home Affairs and held that if selected candidates are available from the previous list there should either be no further recruitment until those candidates are absorbed or in the alternative vacancies which are declared for the subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. Relying on the notification it was held that no period of validity of the list prepared to the extent of declared vacancies can be fixed. It was further held that once a person is declared successful according to the merit list of selected candidates the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates.

15. Reliance is also placed on *Kuldeep Singh and others Vs. Punjab and Sind Bank and other*, . It was held that where the vacancies are to be filled in by promotes and direct recruits in proportion of 75% and 25% respectively and the Bank had drawn a panel of candidates for promotion, the Bank cannot hold a fresh tests or make fresh panel unless and until all candidates in earlier panel are promoted. In this case a settlement was arrived at by the employees and the Bank and the list drawn up in accordance with the settlement was held to remain valid till it was exhausted irrespective of any point of time.

16. Reliance was placed on *Sandeep Kumar v. The National Bank for Agriculture & Rural Development Lucknow* 1991 Lab. IC 2093. In this case certain candidates had appeared in the written test and were eligible for being interviewed for the purposes of recruitment to certain posts in the Bank. In the meantime recruitment was placed in the hands of Banking Service Recruitment Board and the examination was cancelled on the ground that now it was the Board who could make recruitment. The action of the Banks canceling the examination was held to be bad and the Respondents in that case were directed to interview the Petitioners on the basis of the qualification which they had acquired in the written test and thereafter list would be prepared for making recruitment.

17. Mr. Tiwari submitted that the list of selected candidates is valid to the extent of the declared vacancies. The vacancies in these cases were not declared, therefore, the Petitioners are not eligible for being appointed. It is contended by him that the Banking Service Board was constituted on 23-2-91. The said Board is now responsible for making recruitment to the banking service. Therefore, the select list on which the Petitioners placed reliance is not to be relied upon. He has also relied on the various passages of the case reported in AIR 1984 SC 1931 (*Sunra*). Mr. Tiwari has lost sight of an important observation made by the Supreme Court in this judgment. It says that it is the responsibility of the appointing authority to appoint all selected candidates even if number of vacancies undergoes a change after their name was included in the list of selected candidates. He has also overlooked the interim orders passed in these two writ petitions. In one case two seats are directed to be kept vacant and in other case appointment is to be made subject to the result of the writ petition.

18. In the present case we have noticed that the list of selected candidates was prepared as earlier as on 27-5-85. The Petitioners are included in the list of selected candidates. They have not been absorbed till date. It is contended by learned Counsel for the Respondents that the list has to remain valid only for one year. This condition is not correct and is overruled. As held by the Supreme Court in Prem Prakash Vs. Union of India (UOI) and Others, the list of selected candidates has to remain in force till all the candidates are absorbed in service and no fresh selection can be made unless the selected candidates are absorbed. If any fresh selection is required to be made it shall take care of the already selected candidates and vacancies shall be kept for the candidates who are waiting for absorption on the basis of select list dated 27-5-85. Even if there is change in the number of vacancies, the selected candidates are to be absorbed in terms of the notification dated 8-2-82. The post could not be advertised by the Respondents and if any advertisement is issued for making recruitment to the post in 1987 or thereafter, the said advertisement cannot be acted upon unless the selected candidates are absorbed or it takes care of the selected candidate who are waiting for being appointed.

19. It is contended by the Petitioners and not denied by the other side that five candidates were appointed even after expiry of 12 months period of the select list. Mr. Tiwari has submitted that they were senior in the list of selected candidates therefore, they were taken in service. If the list, according to the Respondent is valid for 12 months only, the question of appointment of senior or junior from the said list would not arise. It would mean that the Respondents have also not treated the list as cancelled and they have extended life of the list from time to time. There is no provision for extending the life of the list even then the list was kept operative till the ending December, 1986 by the Respondents. However this shows the confusion which prevails with the Respondents in respect of the life of the list. The list could not lapse after 12 months or after any period till the selected candidates are absorbed in service.

20. The Respondents contention was that there was no advertisement for the post of Field Supervisor. However, this contention also cannot be accepted because if the advertisement is for officers of the Bank, that would include officers of the Bank which includes Chairman, General Manager, Manager, Administrative Officer, Accountant, Field Supervisor, Field Officer and other such officer as may be specifically included in this category by the Board with the prior approval of the Central Government. Therefore, the advertisement for officers of the Bank would include Field Officers also.

21. In Writ Petition No. 16915 of 1988 (Abinash Singh and Anr. v. Farrukhabad Gramin Bank and Ors.) two posts are directed to be kept vacant for the Petitioners. The Petitioners are, therefore, entitled to be considered for appointment against the said posts. In Writ Petition No. 13536 of 1990 (Anil Kumar Rathore v. Farrukhabad Gramin Bank and Ors.) the appointment on any one of the post of Field Supervisor after 20-7-89 shall be subject to any order

that may be passed in the writ petition.

22. For the reasons stated above, the writ petitions are allowed and the Respondents are directed by a writ of mandamus to consider the appointment of the Petitioners as Field Officers/Field Supervisors on the basis of the list of selected candidates prepared on 27-S-85 if they are otherwise eligible for such appointment. The Petitioners are entitled to get cost from the Bank which we quantify at Rs. 300/- in each case.