

(2018) 09 GAU CK 0024

In the Gauhati High Court

Case No : Civil Writ Petition No.2250, 644, 646 Of 2018, Civil Writ Petition
No.8173, 7946, 8179, 7948, 7958 Of 2017

Jwngsar Baglary

APPELLANT

Vs

Assam Gramin Vikash Bank And 3 Ors.

RESPONDENT

Date of Decision : 12-09-2018

Acts Referred:

Regional Rural Bank Act, 1976 — Section 17
Regional Rural Banks (Appointment and Promotion of Officers and Other Employees)
Rules, 1998 — Rule 4, 5, 6, 7, 8

Citation : (2018) 09 GAU CK 0024

Hon'ble Judges : Songkhupchung Serto, J

Bench : Single Bench

Advocate : J.Hazarika, M. Choudhury, H.Buzar Baruah, S.N.Krishnatraya, S.
Dutta, J.I.Borbhuiya

Final Decision : Dismissed

Judgement

Sr. No.,Name of the RRB,Present Head Office,State / UT,"Desired Local

Language

Proficiency as

prescribed by the

Participating RRBs",,,,,

1.,-,-,-,-,.,.,.,

2.,-,-,-,-,.,.,.,

3.,-,-,-,-,.,.,.,

4.,-,-,-,-,.,.,.,

5.,"Assam Gramin

Vikash",Guwahati,Assam,"Bank Assamese,
Bengali, Bodo",,,,,
Roll No.,Registration No.,"Combined Marks obtained
(out of 100)",Allotted Bank,,,,,
1432130299,1500072834,47.02,"ASSAM GRAMIN
VIKASH BANK",,,,,,

Roll No.,Registration No.,"Combined Marks obtained
(out of 100)",Allotted Bank,,,,,
1358090029,1500091006,26.05,"ASSAM GRAMIN
VIKASH BANK",,,,,,

BANK,SC,ST,OBC,GENERA L,TOTAL,Out of which,,
-,-,-,-,-,VI,HI,OC

ASSAM

GRAMIN

VIKASH

BANK",4,2,6,12,24,0,0,0

BANK,SC,ST,OBC,GENERA L,TOTAL,Out of which,,
-,-,-,-,-,VI,HI,OC

ASSAM

GRAMIN

VIKASH

BANK",1,0,1,2,4,0,0,0

â??Candidates may please note that the eligibility criteria specified is the basic
criteria for appointment to the aforesaid posts in the Regional Rural,,,,,,,,

Banks. However merely applying for, qualifying in the CRW and getting
provisionally allotted in one of the RRBs does not imply that a candidate
will",,,,,,,,,

necessarily be eligible for employment in any of the Regional Rural Banks. It is
expressly clarified that the ultimate authority for recruitment is the,,,,,,,,

Regional Rural Bank itselfâ??.,,,,,,,,

â??Merely applying for CWE/ appearing for and being shortlisted in the online

examination (preliminary and main) and/or in the subsequent interview,,,,,,
and/or provisionally allotted and/or subsequent processes does not imply that a
candidate will necessarily be offered employment in any of the,,,,,,
Regional Rural Banksâ??.,,,,,,,

K. PROVISIONAL ALLOTMENT,,,,,,

â??IBPS is not responsible in case the RRBs do not notify sufficient vacancies to
exhaust the reserve list. Similarly, neither the RRBs nor IBPS is" ,,,,,,
bound to notify every vacancy that may arise in any RRB during pendency of
reserve list. IBPS is not responsible for the recruitment of candidates," ,,,,,,
and will only act upon the vacancies notified by the RRBs in that regard within
the specified period. The decision of IBPS in provisional allotment of,,,,,,
RRBs shall be final and binding upon the selected candidates. However IBPS
reserves the right to cancel, reallocate Organisation-wise allocation/ change" ,,,,,,
the process depending upon exigencies or otherwise.â??.,,,,,,

11. The learned counsel also referred to the Annexure-1 of the advertisement
wherein heading â??RRBs CWEV vacancies (Indicative)â? is given.,,,,,,

He then referred to relevant portions of the annexure where the post to which
the petitioners had been provisionally recommended are but given under,,,,,,
the heading â??vacancy not reportedâ??. After referring to the above documents,
the learned Sr. counsel submitted that all these goes to show that the" ,,,,,,

vacancies given in the advertisement was only indicative, therefore, the
petitioners cannot claim to be appointed to such post as a matter of right." ,,,,,,

The learned Sr. counsel also referred to a copy of the letter dated 21.06.2016, of
the Chief Manager, Assam Gramin Vikash Bank addressed to the" ,,,,,,

Chief Manager, Personnel wherein, it was indicated that the vacancies given are
provisional and subject to the approval of the Board. The learned Sr." ,,,,,,

counsel thereafter, submitted that the Board of Directors have not given their
approval thereafter, and sponsor bank also did not give its approval to" ,,,,,,

the same, therefore, the Assam Gramin Vikash Bank could not proceed further
with the recruitment process. The learned counsel submitted also" ,,,,,,

that it is the sole discretion of the bank to accept or reject the recommendation,
therefore, the discretion has been exercised and it cannot be" ,,,,,,

questioned. Lastly, the learned counsel submitted that the validity of the
recommendation has expired since more than a year has passed after the" ,,,,,,

recommendation.,,,,,,

12. I have gone through the documents placed by both the learned counsels and also considered the facts and circumstances submitted by them. No,,,,,,,,

doubt it was clearly notified in the advertisement that the vacancies indicated therein and for which the combined examination was conducted was,,,,,,,,

indicative and provisional. However, that would not give the participating banks unfettered freedom or discretion to reject candidates who have",,,,,,,,

successfully completed in the examination conducted by the institute authorized by them. In a Country where the people have given to themselves a,,,,,,,,

socialistic pattern of life and a welfare State any authority or power be it constitutional or statutory cannot be said to have a discretionary power that is,,,,,,,,

totally unfettered or free from the test of reasonability. Every power or act exercised under any authority must have a reasonable reason to base on,,,,,,,,

To say that the respondents or participating banks can quietly watch and see the recruitment process going on and at the end of it all they can reject,,,,,,,,

everyone who succeeded after having put in a lot of efforts that too simply by saying that it was indicated in the advertisement itself that the vacancies,,,,,,,,

advertised was only indicative and provisional, therefore, they have their sweet discretion to do so. To allow existence of such authority or power in",,,,,,,,

their hand would amount to adorning them with cloak of unfettered discretion beyond reasonableness. Further, it would also meant that we can have",,,,,,,,

irresponsible statutory bodies who can play with the life of the people. I do not have any slightest doubt that that is or would be the intent of the law,,,,,,,,

that gives discretionary power to the banks in matters of recruitment. It is of course true that the principle of law has been already settled which says,,,,,,,,

that merely passing in the recruitment test or examination does not give indefeasible right to individual or individuals for appointment and that the,,,,,,,,

appointing authority can always refused to give appointment. But it is also true that appointing authority can do so only for appropriate reasons. On this,,,,,,,,

it would be relevant to refer to the decision of the Honâ??ble Supreme Court in the case of Shankarsan Dash â??Versus- Union of India, reported in",,,,,,,,

(1991) 3 SCC 47, para-7 of the judgment. The same is reproduced here below;",,,,,,,,

â??7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the",,,,,,,,

successful candidates acquire an indefeasible right to be appointed which cannot

be legitimately denied. Ordinarily the notification merely amounts to,,,,,,,,,
 an invitation to qualified candidates to apply for recruitment and on their
 selection they do not acquire any right to the post. Unless the relevant,,,,,,,,,
 recruitment rules so indicate, the State is under no legal duty to fill up all or any
 of the vacancies. However, it does not mean that the State has the" ,,,,,,,,,
 licence of acting in an arbitrary manner. The decision not to fill up the vacancies
 has to be taken bona fide for appropriate reasons. And if the,,,,,,,,,
 vacancies or any of them are filled up, the State is bound to respect the
 comparative merit of the candidates, as reflected at the recruitment test,
 and" ,,,,,,,,,
 no discrimination can be permitted. This correct position has been consistently
 followed by this Court, and we do not find any discordant note in the" ,,,,,,,,,
 decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1
 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, " ,,,,,,,,,
 [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others,
 [1985] 1 SCR 899." ,,,,,,,,,

13. Now reverting to the facts of the case, it is true that the institute that is IBPS
 had issued advertisement based on the provisional vacancies" ,,,,,,,,,

conveyed by the Assam Gramin Vikash Bank (respondents No. 2 & 3) but it is
 also equally true that thereafter, the Assam Gramin Vikash Bank had" ,,,,,,,,,

remained silent throughout the examination process and only came out with the
 plea or assertion that the vacancies were not approved by the Board ,,,,,,,,,

of Directors and the Sponsor bank only when these writ petitions are filed.
 Between the advertisement and the examination there was a gap of three ,,,,,,,,,

months. If the respondent Bank was not interested in recruiting officers as
 advertised already the IBPS should have been informed well ahead of time ,,,,,,,,,

so that the candidates are informed. Since they have kept quite all through they
 are already estopped by their silent acquiescence. ,,,,,,,,,

Section-17 of the Regional Rural Bank Act, 1976 and Rule-4, 5, 6, 7 & 8 of the
 Regional Rural Banks (Appointment and Promotion of Officers and" ,,,,,,,,,

Other Employees) Rules, 1998 provides as to who is responsible or has the
 authority in matters of post creation and filling up of the same in RRBs." ,,,,,,,,,

The provisions are given here below; ,,,,,,,,,

â??Section-17. Staff of Regional Rural banks; ,,,,,,,,,

(1) A Regional Rural Bank may appoint such number of officers and other

employees as it may consider necessary or desirable in such manner as,.....
may be prescribed for the efficient performance of its functions and may determine the terms and conditions of their appointment and service.â??,.....

â??Rule.4. Creation of Post;.....

The Board may create requisite number of vacancies in each category of posts as are specified in the First Schedule to these rules in accordance with,.....
the guidelines approved by the Central Government from time to time.,.....

5. Vacancies;.....

The Board may determine the number of vacancies in each category of posts to be filled by direct recruitment or promotion, keeping in view the",.....
Guidelines approved by Central Government from time to time.,.....

6. Filling up of vacancies;-.....

i) All vacancies determined under Rule-5 by the Board shall be filled by promotion or direct recruitment in accordance with the provisions contained in,.....

these rules and Third Schedule to these rules;.....

(ii) Officers in Senior Management of Scale IV and Scale V are liable to be posted to any other Regional Rural Bank sponsored by the same Sponsor,.....

Bank as General Manager as per the decision of the Sponsor Bank.,.....

7. Appointing Authority;.....

The Chairman shall be the Appointing Authority in respect of officers and the General Manager shall be the appointing authority in respect of,.....
employees, if so authorized by the Board.".....

Provided that if there is no incumbent to the post of General Manager, the Chairman shall be the Appointing Authority in respect of employees also.".....

8. Direct recruitment;.....

The vacancies of officers and employees shall be filled by each Regional Rural Bank in accordance with the provisions of Third Schedule of these,.....
rules and subject to such guidelines as may be issued by the Central Government from time to time.â??,.....

From the above provisions, it is clear that it is the Board and not the Sponsor Bank who has the authority in matters of post creation and filling up of",.....

the same. Therefore, the respondent Bank cannot take shelter under the plea that Sponsor Bank have not approved the vacancies or recruitment to",.....

the vacancies advertised.,,,,,,,,,

14. On the point of time bar raised by the learned counsel of the respondents, it may be stated here that the same would not apply in the case of the",,,,,,,,,

petitioners since they had approached the respondents before the period of validity expired and litigation followed.,,,,,,,,,

15. In view of the facts and circumstances and what has been stated above, the plea of the respondents No.1 & 2 cannot be accepted. Accordingly,",,,,,,,,

the same is rejected. In consequences, they are directed to complete the process of the recruitment by inviting the petitioners to produce their relevant",,,,,,,,,

original documents and photocopies of the same in support of their identity, eligibility, nationality, age and educational qualifications etc. and thereafter,",,,,,,,,

if their documents are found to be in order, issue appointment orders, if they are not otherwise found unsuitable. The whole process should be",,,,,,,,,

completed within a period of 1(one) month from the date of receipt of a copy of this order.,,,,,,,,,