

PETITIONER:
RANI LAXMIBAI KSHETRIYA ,& GRAMIN BANK CHAIRMAN.

Vs.

RESPONDENT:
CHAND BEHARI KAPOOR & ORS. & KANTYA NAOWANI & ORS.

DATE OF JUDGMENT: 09/09/1998

BENCH:
SUJATA V. MANOHAR & G.B. PATTANAIK

JUDGMENT:

PATTANAIK, J.

The judgment and order dated 22nd December, 1992 of the Division Bench of Allahabad High Court is the subject matter of challenge in these appeals. By the said judgment the High Court directed the appellant - bank to appoint the respondents against the vacancies of Field Supervisors and prohibited the appellant from filling up the vacancies by making appointments to the post of Field Supervisors from outside the list prepared in May, 1984 in Civil Appeal Nos. 2650-55 of 1993. By the said common judgment the High Court also directed the appellant to appoint the respondent in Civil Appeal No. 2649 of 1993 as Probationary Officer.

The respondents filed writ petitions contending inter alia that an advertisement had been issued inviting applications for 35 posts of Probationary Officers (Branch Managers) and 35 posts of Field Supervisors on 18.7.1983. The respondents applied for one of the posts of Field Supervisor/Probationary Officer and appeared at the written test conducted by the appellant for selection. On being declared successful in the written test they were also called for interview and finally were included in the list of selected candidates and as such was eligible to be appointed as Field Supervisor/Probationary Officer. Subsequent to the said advertisement the appellant decided to increase the number of posts of Field Supervisors from 35 to 55 but notwithstanding the respondents inclusion in the list of successful candidates only 26 Field Supervisors and 36 Probationary Officers were appointed. The life of the panel of successful candidates which was to remain operative for one year was extended for a period of six months by the Board of the bank in its meeting dated 28.3.1985. But yet the respondents could not be appointed and on account of disgruntlement amongst the respondents there was an agitation and ultimately an agreement was reached between the officers of the bank and the members of the union and the bank agreed to further extend the life of the panel until all persons included in the list are absorbed. This agreement was reached on 16.10.1985. But in spite of the aforesaid agreement no appointments having been made, they approached the High Court for necessary direction.

The bank in its counter-affidavit denied its liability to appoint all the persons who were in the panel as Field Supervisors or Probationary Officers. The further stand of

the bank was that inclusion of a candidate's name in the panel does not confer an indefeasible right to be enforced by way of issuing a writ of mandamus. The bank also took the stand that in accordance with the resolution of the Finance Ministry conveyed to all banks the life of a panel lapses after one year, and therefore, respondents cannot claim any right to be appointed as Field Supervisors or Probationary Officers. Supplementary affidavits were also filed on behalf of the bank indicating therein that no posts are available, and therefore question of appointment of respondents does not arise.

The High Court by the impugned judgment came to the conclusion that it cannot be believed that there is no vacancy in the bank to the post of Field Supervisor. The High Court also relying upon a notification issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms came to the conclusion that list prepared does not get exhausted after expiry of one year and it remains valid till all the candidates mentioned in the list are appointed. According to the High Court the bank has an obligation to appoint candidates against the declared vacancies and that claim cannot be resisted. With these conclusions the High Court directed the bank - appellant to appoint the respondents as Field Supervisor/Field Officer and hence the present appeal.

Mr. Mehta, the learned counsel appearing for the appellant contended that an applicant has no indefeasible right to be appointed even if he is selected and included in the merit list and even if a vacancy exists in the post for which the application had been made. But in the case in hand there did not exist any vacancy, and therefore, the High Court committed serious error in issuing the impugned direction to appoint the respondents against the post of Field Supervisor, Mr. Mehta further submitted that the life of the panel which was drawn on 2.5.1984 expired on 2.5.1985. By virtue of the decision of the Board the said life has been extended for six months and again by virtue of the agreement between the parties dated 13.10.1985 it stood further extended by six months and panel expired on 30.4.1986. In this view of the matter no direction could have been given by the High Court to issue appointment letters to the respondents by its judgment dated 22nd December, 1992. Mr. Mehta also urged that the High Court committed serious error in relying upon the notification issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms on the question of the period for which a panel would remain alive inasmuch as the said circular of the Home Department has no binding effect so far as the appellant bank is concerned and on the other hand it is a circular of the Finance Ministry which is binding and under which the life of a panel remains valid for a period of one year from its preparation. The learned counsel also submitted that the conclusion of the High Court that vacancy exists is erroneous and in arriving at that conclusion the High Court relied upon the decision of the bank to open more branches and consequential creation of vacancies but in fact no such branch has been opened and no vacancy exists. Mr. Mehta lastly submitted that under the constitutional scheme engrafted under Articles 14 and 16 of the Constitution a court can at the most direct consideration of the case of an applicant if it finds that he has been denied of such consideration but the court cannot direct appointment of an applicant against any post.

Mr. Rakesh Dwivedi, the learned senior counsel appearing for the respondents did not dispute with the legal proposition that: mere inclusion in the list of successful candidates does not confer an indefeasible right to be appointed. He, however, contended that the employer while filling up of the vacancies for which advertisement had been issued has to act bona fide and not arbitrarily and in the case in hand the High Court has granted the relief after coming to the conclusion that there exist vacancies in the cadre and no Justifiable reason had been advanced for not fixing up those vacancies and in such a situation the court would be amply justified in issuing mandamus to the employer to consider a case of appointment of the applicant who after undertaking the test got themselves selected and are waiting for appointment. On the basis of assertion made by the appellant in the special leave petition filed in this court to the effect "by 31.12.85 19 more branches were opened" Mr. Dwivedi submitted that the High Court was fully justified in coming to the conclusion that there exist vacancies and non-filling up of those vacancies has rightly been held to be arbitrary. Mr. Dwivedi, the learned senior counsel further submitted that the bank not having controverted the contention that out of the Field Supervisors who had been appointed, six of them resigned, even though the court specifically directed to give reply, the conclusion that there exist vacancies in the cadre of Field Supervisors is unassailable and as such the right of the respondents to be appointed against those vacancies cannot be arbitrarily taken away. The learned counsel ultimately submitted that in the facts and circumstances of the case in hand there is no infirmity in the judgment of the High Court requiring interference by this Court.

In view of rival submissions at the Bar the following questions arise for our consideration:

1) Is the High Court justified in arriving at the conclusion that there exist vacancies in the post of Field Supervisors in the bank?

II) Does inclusion of name in the list of selected candidates confer any right to be appointed which could be enforced by issuance of a writ of mandamus?

III) What is the period for which a list of successful candidates remain alive and after expiry of its life can the court direct appointments to be made from the said list?

IV) Did the agreement dated 13.10.1985 contain any stipulation that the list of successful candidates would remain alive until those in the list are appointed in the bank?

Coming to the first question it transpires that the appellant bank opened only two branches in the rural area in the year 1982. For extending its banks, it had applied to the Reserve Bank of India for 30 new licenses for opening of new branches. Calculating the number of officers which may be necessary to man these new branches, advertisement had been issued on 18.7.1983 inviting applications for 35 posts of Probationary Officers and 35 posts of Field Supervisors. The appellant then applied to the Reserve Bank for licenses to open 27 more branches in the year 1983 and during 1984 and 1985 similar applications had been made for licenses to

open 20 branches in 1984 and 17 branches in the year 1985. in anticipation of grant of licenses by the Reserve Bank of India and consequential opening of branches in different rural areas the appellant had taken the decision to increase the number of posts of Probationary Officer's as well as Field Supervisors. But as against 94 applications for licenses for opening new branches in fact only 46 branches had been opened and there could not be expansion of business activity by opening new branches because of the reused licensing policy of the Reserve Bank of India issued in October, 1985. The appellant had categorically asserted before the High Court that there exist no vacancy in the cadre of Field Supervisor or Probationary Officer and in view of such assertion it was for the respondents who claim the right of being appointed to establish that in fact vacancies exist. But we do not find any reliable materials produced by the respondents from which a conclusion could be arrived at that there exist vacancies in the bank. The High Court, however, entered into the arena of calculation basing upon the principle that there should be appointment of one Field Officer for 500 accounts as was decided by the Board in its resolution and taking into account the 46 branches which the bank had the number of vacancies in the post of Field Supervisors must be much more than 55 and only 26 Field Supervisors had been appointed pursuant to the advertisement dated 18.7.1983. This process of conclusion in our considered opinion is wholly erroneous and is not permissible for a court in exercise of its jurisdiction under Article 226 of the Constitution. As has been stated earlier the process of selection to different posts in the bank being made in anticipation of opening of new branches and the requirement of officers for new branches. But that does not mean that at the material point of time in fact any vacancy exists and at any rate no materials having been produced by the respondents, the court could not have come to the conclusion that vacancies exist. It is in this connection, it would also be appropriate to notice that whether six of the Field Supervisors appointed resigned and thus consequential vacancies were available. We have carefully scrutinised the averments made in the writ petitions filed by the respondents in the High Court as well as the rejoinder affidavit filed in the said court and we do not find any assertion has been made in that regard. From the impugned judgment, however, it appears that in course of argument a contention in that regard had been advanced by the respondents and the bank had been called upon to give its reply but no positive reply had been filed the High Court jumped to the conclusion that in fact six persons resigned and consequential vacancies were there. We, however, are unable to sustain this line of reasoning of the High Court. The writ petitioners not having made any averments alleging resigning of six of the Field Supervisors after being appointed the bank had no obligation to give any reply, in course of hearing if a contention had been raised and supporting material is produced then the bank might have been obliged to file the specific reply but no such material appears to have been produced by the writ petitioners before the High Court and in such context absence of reply by the bank does not ipso facto establishes the contention raised. It is too well settled that the petitioner who approaches the court invoking the extra-ordinary jurisdiction of the Court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring respondent to indicate its stand either by denial or by positive assertions. But in the absence of any averments in

the writ petition or even in the rejoinder affidavit it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of submissions made in course of hearing. The High Court, therefore, in our view committed serious error in coming to the conclusion that there existed vacancies in the post of Field Supervisor on the materials produced before it. In fact the respondents herein who were the petitioners in the High Court had not produced any material in support of their stand that vacancies existed and yet appointments have not been made. We are of the considered opinion that conclusion of the High Court that there existed vacancies is unsustainable in law and is accordingly set aside.

Coming to the second question, it requires no detailed scrutiny and it is well establish that inclusion of name in the list of successful candidates does not confer an indefeasible right to be appointed. it has been so held in the Constitution Bench decision of this Court in the case of SHANKARSAN DASH vs. UNION OF INDIA, (1991) 3 SCC, 47. in the said case the court has gone to the extent of following:

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"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. "

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Mr. Dwivedi, the learned senior counsel for the respondents also did not join issue on this principle of law. He, however, had raised the issue on the question that there was no justifiable reason for not appointing respondents in the vacancies which still exist and consequentially the action of the appellant must be held to be arbitrary. But this submission is devoid of any force in view of our conclusion on the first question that there did not exist any vacancy in the post of Field Supervisor or Probationary Officer. In this view of the matter, neither any right accrued to the respondents on being included in the list of successful candidates nor their non-appointment can be held to be arbitrary or discriminatory.

So far as the third question is concerned, namely, for how long a pane) prepared should be kept alive, it appears that the Government of India in the Ministry of Finance, Department of Economic Affairs (Banking Division) by its letter dated 30th September, 1980 had communicated to the Chairman of all regional rural banks that the panel should normally be kept alive only for a period of one year and i'f any deviation from the said guidelines becomes necessary in the interest of the bank then it should be undertaken with the prior permission of the Board of Directors and under intimation to the Government in the Banking Division. Notwithstanding the aforesaid guidelines issued as it was observed that several rural banks stiff took recourse to extending the validity of the panel for long periods

stretching over the 2/3 years on obtaining the approval of the Board, the Ministry of Finance by its letter dated 19th September, 1983 again communicated to the Chairman of all regional rural banks that preparation of panels to cover the requirements of regional rural banks for 2/3 years and then extend the validity of the panel beyond one year cannot be construed as merely a deviation and it is doubtful if it can be considered even as being in the interest of the regional rural bank from long term point of view. Under Section 24 of the Regional Rural Banks Act, 1976, a rural bank in the discharge of its functions is required to be guided by such directions as the Central Government may after consultation with the reserve Bank give in regard to matters of policy involving public interest. In view of the aforesaid provisions of the Act, the directions/guidelines issued by the Central Government indicating the periods for which the life of a panel would kept alive has a binding effect on the bank, and therefore, in our considered opinion so far as the life of the panel prepared by the rural banks are concerned it must be held that same remain alive ordinarily for a period of one year. The High Court committed serious error in relying upon the circular of the Ministry of Home Affairs, Department of Personnel and Administrative Reforms to come to the conclusion that the panel remains alive until all the persons in the panel are appointed. The said conclusion is wholly erroneous and cannot be sustained.

Though the panel ordinarily remains alive for one year but in accordance with the guidelines of the Government of India, Ministry of Finance, it would be open to Board to extend the said period under intimation to the Government in the Banking Division. in the case in hand the resolution of the Board dated 28.3.1985 indicates that the life of the panel had been extended by for a further period of six months, and therefore, after expiry of the said period it was not open for the court to issue direction to appoint people from the said panel.

Coming to the next question the answer to the same depends upon the terms and conditions of the agreement between the parties dated 16.10.1985. The minutes of discussion as recorded no doubt indicates that some members of the Board did express their views that the life of the panel should be extended till the last candidate is adsorbed by the bank as it is the moral and legal responsibility of the bank. If further appears that it was decided to have the concerted efforts for obtaining licenses for opening new branches but the very agreement between the parties was to the effect that first of successful candidates for the appointment of Field Supervisors and Probationary Officers declared on 2.5.1984 will be valid for a further period of six months after 31.10.1985 and that the management of the bank will appoint as far as possible the remaining selected candidates in the aforesaid list as soon as possible. This being the terms of agreement the conclusion is inescapable that such agreement did not confer a right on the respondents to be appointed ^ to the posts of Field Supervisors/Probationary Officers and the court would not be justified to make it enforceable by issuing a writ of mandamus. The High Court, therefore, in our considered opinion committed serious error of law in issuing the impugned directions calling upon the appellant to appoint the respondents to the posts of Field Supervisor/Probationary Officer.

In the premises aforesaid, the impugned judgment dated 22.12.1992 of the High Court is set aside and these appeals are allowed, the writ petitions by the respondents stand dismissed, however, there will be no order as to costs.

JUDIS