

ASHOK KUMAR AND ORS.

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v.

THE CHAIRMAN, BANKING SERVICE RECRUITMENT BOARD
AND ORS.

NOVEMBER 9, 1995

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[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

Service Law :

Constitution of India, 1950 : Articles 14 and 16(1).

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Banks—Recruitment—Recruitment Board—Selection in excess of notified vacancies—Held unconstitutional—Candidates ranking in selection list far in excess of notified vacancies—Held not entitled to relief—Practice of making appointment in excess of notified vacancies—Deprecated.

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While making recruitment for the State Bank of India and other nationalised banks, the Recruitment Board prepared a select list in excess of the vacancies notified by the respective banks. Appellant No. 3 who was ranking in the merit list far in excess of the notified vacancies was not appointed. Consequently, he filed a writ petition in the High Court. Appellants 1 and 2 filed an application for intervention while the other 27 persons filed another writ petition. The High Court dismissed both the writ petitions against which appeals were preferred before this Court.

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Dismissing the appeals, this Court

HELD : 1. Article 14 read with Article 16(1) of the Constitution enshrine fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. [37-F-G]

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2. The procedure adopted in this case in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitu-

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A tional. However, as the appointments have already been made and none was impleaded, the Court is not inclined to interfere with these matters adversely affecting their appointments. [37-G-H]

B 3. The ranking of appellant No. 3 in the selection list was admittedly far in excess of the notified vacancies. He cannot be granted any relief. Others are not entitled as they did not file any writ petition in the High Court. It is true that this Court had given a direction to find out whether the Ministry of Finance could accommodate these three persons in any of the nationalised institutions and to obtain their response. However, the Ministry of Finance has only the controlling power but it has no power to recruit any of the employees of the nationalised banks. It is the Board which has the power for recruitment and that is the proper forum for selection of the candidate. [38-C;D; 37;E]

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 484-85 of 1989.

D From the Judgment and Order, dated 24.11.86 of the Patna High Court in C.W.J.C. Nos. 5970/85 & 3389 of 1986.

E S.K. Sinha, P.N. Gupta, Shanti Swarup Sharma, Ghanshyam Vasisht, Ram Swarup Sharma, C.N. Sheekumar (N.P), Atul K. Bandhu, V. Shekhar for Gagrart & Co. (N.P.), O.C. Mathur, Ms. Meera Mathur for JBD & Co., G. Joshi, A.K. Sil, Satish Agrawal for the appearing parties.

The following Order of the Court was delivered :

F It is rather unfortunate that the Recruitment Boards have adopted wholly unconstitutional procedure in selecting candidates for the State Bank of India ('SBI', for short) and other nationalised banks in Eastern Region of India. On April 19, 1982, a requisition was given by the SBI for recruitment of 960 vacancies. Equally, other nationalised banks pooled together and had given requisition for recruitment of 1713 vacancies.

G It would be clear that in 1983, while making recruitment the Recruitment Board for the SBI prepared a select list in excess of the requirement notified by the respective banks, i.e., 3100 candidates were put in the select list to be appointed by the State Bank of India. Equally, since vacancies had arisen to the extent of 6700, combined examination Board for the national banks made a mess in the recruitment of the candidates in excess

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of the notified vacancies.

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It would also appear that with a view to clear the mess created by Recruitment Boards, a high-power committee was constituted by the Ministry of Finance, Banking Division. The high-power committee had gone into the question and recommended that instead of calling fresh applications for the vacancies that had arisen between the date of the notification for recruitment and the date of selection made by the respective Boards, it had directed the Banks to adjust the candidates whose names found place in the wait list prepared by the Recruitment Board for the SBI in the vacancies to be filled up in the nationalised banks. In the process, Mohammed Shahzad, appellant No. 3 who was standing at No. 2156 of the merit list for the nationalised banks was not appointed. Consequently, he filed a writ petition in the High Court. Appellants 1 and 2 appear to have filed an application for intervention. Other 27 persons appear to have filed another writ petition. The High Court dismissed both the writ petitions. Thus appellants 1 and 2 along with Mohammed Shahzad, the original writ petitioner before the High Court, have filed these appeals.

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It is true that this Court had given a direction on May 19, 1995 to find out whether the Ministry of Finance could accommodate these three persons in any of the nationalised institutions and to obtain their response. It is seen that the Ministry of Finance has only the controlling power but it has no power to recruit any of the employees of the nationalised banks. As seen, it is the Board which has the power for recruitment and that is the proper forum for selection of the candidates.

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Article 14 read with Article 16 (1) of the Constitution enshrine fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16 (1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impleaded, we are not inclined to interfere with these

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- A matters adversely affecting their appointments. However, hereafter the respective Boards should notify the existing and excepted vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection.
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- As regards the relief to the appellant No. 3 is concerned, it is unfortunate that we are not able to give relief to him. While deprecating the practice in making appointment in excess of the notified vacancies, we cannot commit the same mistake in giving direction to consider the case of the appellant No. 3 since admittedly his ranking in the select list was 2156 far in excess of the notified vacancies.
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- In these circumstances, though reluctantly and with constraint, we are unable to grant any relief to the unfortunate appellant No. 3. Others are not entitled as they did not file any writ petition in the High Court.
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These appeals are accordingly considered to be dismissed under these circumstances. No costs.

T.N.A.

Appeals dismissed.