

ARYAVRAT GRAMIN BANK

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v.

VIJAY SHANKAR SHUKLA

SEPTEMBER 20, 2007

[S.B. SINHA AND H.S. BEDI, JJ.]

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Service Law- Recruitment—As per a Circular, 33 % of the posts of officers filled by promotion—Advertisement for recruitment—Later circular specifying filling up of the posts of officers 50% by direct recruitment and 50% by promotion—By an interim order of Court, recruitment restricted to 50%—Select List for filling 35 posts—26 posts whereof meant for general category—A general category candidate, placed at 47th position in the List, filing Writ Petition, seeking appointment—Allowed by High Court, giving the relief to the challenging candidate alone—On appeal, held : The candidate was not entitled to the relief—Selection and finding place in the Select List, by itself does not confer legal right to be appointed—The act of the Bank cannot be said to be arbitrary—Appointments were made in confirmation with the policy of Central Government and NABARD—Bank as a State cannot be asked to appoint the candidate, ignoring the candidates whose names appeared higher on the List—Constitution of India, 1950—Articles 12 and 14.

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Judicial review—In the matter of appointment—Permissibility of—Held: Court should not interfere with the right to make appointment by an employer, unless its action or inaction is wholly arbitrary so as to offend Article 14 of the Constitution—Constitution of India, 1950—Articles 14 and 226.

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Appellant—Bank was governed by Regional Rural Bank Act, 1976 and functioned under instructions and control of National Bank for Agriculture and Rural Development (NABARD) and Central Government. Under a Circular dated 6.2.1984 by NABARD, 33% staff had been promoted for the post of officer. Thereafter

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A advertisement was issued for direct recruitment. Exact numbers of posts were not mentioned therein. Thereafter NABARD issued another Circular dated 31.12.1984 mentioning therein that 50% of the vacancies of the officers were to be filled up by direct recruitment and 50% by promotion. In the meantime, the promotees filed a Writ
B Petition, challenging the selection process of the direct recruits. By an interim order therein, appellant-Bank was restricted to make appointments in proportion for the quota of direct recruits. Ultimately the writ Petition was dismissed as infructuous. Bank published a select list for filling up 35 vacancies. The respondent was placed
C therein at 47th position in the category of general candidates. Out of the 35 vacancies only 26 were to be filled up from general category. Life of the panel was only for one year as fixed by Circulars by the Ministry of Finance. Bank's application for extension of life of the panel was declined by NABARD. However, the Bank appointed a
D few candidates in the 50% quota after one year.

Respondent filed Writ Petition seeking his appointment on the ground that quota for direct recruits should have been 67% as per the circular dated 6.2.1984 and not 50% and hence act of the Bank of not making appointments on the basis of select list was arbitrary.
E High Court held that by the Circular dated 6.2.1984 only 33% of the posts were filled up by promotion; that Bank stopped the selection process mid-way arbitrarily to pick the persons of its preference; that delay in filing the Writ Petition was due to conduct of the Bank in delivering him all the information; and that the respondent (herein)
F alone was entitled to relief of appointment as no other candidate approached the Court. Hence, the present appeal.

Respondent contended inter alia that all the 70 posts were meant to be filled up only by direct recruitment.

G Allowing the appeal, the Court

H **HELD:** 1. It is now a trite law that only because a person has been selected and his name finds place in the select list, the same by itself does not confer any legal right on him to be appointed. It is also trite that ordinarily a Superior Court in exercise of its power of

judicial review would not interfere with the right to make appointment by an employer unless its action or in-action is found to be wholly arbitrary so as to offend Article 14 of the Constitution of India. A

[Para 21] [601-G-H]

2. In this case despite certain confusions in regard to percentage of the posts to be filled by direct recruitment as also by the promotees, the appellant took steps to give effect to the directives issued by the Central Government as also the NABARD. It is not case that the employer had stopped the recruitment process mid-way and had arbitrarily picked up persons of its preference. No such case has been made out. For implementing the policy decision of the Central Government, the appellant proceeded on the basis that only 50% of the vacant posts be filled up by direct recruitment. For the said purpose, the reservation policy of the state was also to be given effect to. If the policy of the Central Government which was to be implemented in terms of the provisions of the Act had been given effect to by the appellant, no exception thereto, could have been taken. It is not the case of the respondent nor the High Court arrived at a finding that the appellant had appointed any person from the Select List arbitrarily ignoring the cases of those whose names appeared higher on the list. The High Court, therefore, must be held to have misdirected itself in arriving at the aforementioned decision as it posed un-to-itself a wrong question. B
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[Paras 22, 23 and 24] [602-A, C, E, F]

3. High Court was wrong in its approach that despite expiry of the life of the panel, appointment could/ should have been made. Ordinarily, even without any statutory provision, the life of panel is one year. In relation thereto the Central Government had issued two Circular Letters. Only because the appellant-Bank had appointed a few persons beyond the said period (presumably on the premise that its representation before the NABARD for extending the period of life of the panel would find favour with the authorities) the same by itself did not confer any legal right on the respondent to seek for issuance of a writ of Mandamus nor did it confer any jurisdiction on F
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A the High Court to issue the said Writ.

[Paras 25 and 27] [602-H; 603-E]

State of Rajasthan and Ors. v. Jagdish Chopra, (2007) 10 SCALE 4701, relied on.

B 4. So far as the question of delay and laches on the part of the respondent is concerned, the High Court committed a serious error in so far as it failed to take into consideration that whereas the life of the panel came to an end in June, 1986, the writ was filed in September, 1993. For the aforementioned purpose what was relevant was the conduct of the respondent and not the conduct of the appellant. [Para 28] [603-F]

D 5. The respondent in the Writ Petition had proceeded only on the basis that the quota for the direct recruits would be 67% and not 50%. If that was the case put forth by the respondent in his Writ Petition, it cannot be accepted that all the 70 posts were to be appointed by direct recruitment which apparently runs counter to the case of the appellant itself. [Para 29] [603-G-H; 604-A]

E 6. If in terms of the Select List the position of the respondent amongst the general category candidates was at serial number 47, a large number of persons were evidently above him. They might not have approached the High Court but it would not change the legal position. If the appellant, which is a 'State' under Article 12 of the Constitution of India, was to be asked by the High Court to act in terms of the Select List, it would have been obligated to appoint only those persons whose names appear high on the said list. Other candidates, advisedly, did not approach the High Court for such a relief as the life of the panel had come to an end and the appellant had been enforcing the policy decision framed by the Central Government and NABARD to which it was bound to follow.

G [Para 30] [604-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6672 of 2004.

H From the Judgment & Order dated 24.7.2003 of the High Court of

Judicature at Allahabad in C.M.W.P. No. 34881/1993.

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Ramesh Singh, Akanksha, Swigin, Neha, Bina Gupta and Nina Gupta for the Appellant.

Pramod Swarup and Goodwill Indeevar for the Respondent.

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The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Respondent herein was a candidate for being appointed in the post of Officer in the appellant Bank pursuant to or in furtherance of an advertisement made on 21.8.1984.

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2. Indisputably, Appellant Bank is governed under the provisions of Regional Rural Bank Act, 1976 (The said Act); its sponsor Bank being Bank of India. Indisputably, again its functions are under the control of National Bank for Agriculture and Rural Development (NABARD in short).

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3. The rural banks in terms of the provisions of the said Act are obligated to follow the instructions issued by NABARD as also by the Central Government.

4. We may at the outset notice some office orders and circulars issued by the Central Government as also by the NABARD so as to appreciate the rival contentions raised by the parties before us.

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5. On or about 6.2.1984, a Circular was issued by NABARD in terms whereof 33% staff had been said to have been promoted to the post of Officer. NABARD also issued a Circular on or about 31.12.1984 which was circulated amongst all the Chairmen of the Rural Regional Rural Banks, *inter alia*, stating as under:

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4. Officers:

50% of the vacancies of the officers are to be filled by direct recruitment in the open market and the balance 50% by promotion from amongst Field Supervisors. Promotions will be on the principle of seniority-cum-merit. The other terms and conditions are as given below:

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|---|------------------------------------|--|
| A | (a) Source of recruitment: | (i) By promotion -50%
(ii) By direct recruitment from open market - 50%. |
| B | (b) Qualifications/
Eligibility | (i) <u>For Direct Recruitment</u>
Graduate of a recognised University. Preference will be given to Agri/Commerce/Economics Graduates.
(ii) <u>For Promotion</u>
Five years service as Field Supervisor. |
| C | | |

D 6. To the same effect, the appellant Bank also issued a circular dated 16.2.1985. We may notice that in the aforementioned advertisement dated 21.8.1984, the exact number of vacancies which were to be filled up by reason of direct recruitment had not been specified. Written tests and interviews for filling up the said posts of Officers were undertaken sometime in April, 1985. It appears that, in the meantime, the promotees had filed a writ petition before the High Court of Judicature at Allahabad which was marked as Civil Misc. Writ Petition No.5829/1985, *inter alia*, questioning the recruitment process undertaken by the direct recruits wherein an interim order dated 14.5.2005 was passed directing the respondent not to fill up the posts of Officers contrary to the quota reserved for promotees as contemplated by Clause(20) of the Administrative Instructions dated 6.2.1984, as referred to hereinbefore.

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G 7. The said interim order came to be clarified by an order dated 2.8.1985 in terms whereof the appellant herein was given the liberty for making appointment in proportion to the quota of direct recruits or also the promotees.

H 8. A select list was published by the appellant Bank on 23.6.1985. Respondent herein who was a general category candidate and whose roll number was 2405 occupied the 47th position in the category of the general candidates. It is also not in dispute that out of the 35 vacancies which

were sought to be filled up by direct recruits, 26 posts were filled up from amongst general category candidates, seven from the scheduled castes candidates and two from the scheduled tribes candidates. A

9. Appellant has contented before the High Court as also before us that the life of the panel was only one year which was fixed by reason of a circular dated 30.9.1980 issued by the Ministry of Finance which was reiterated in circular dated 19.9.1983. B

10. Appellant Bank herein filed an application for extension of the life of the said panel, which was otherwise expiring in June, 1986 upto December, 1986, but the same was declined by the NABARD in terms of a letter dated 19.12.1986 stating as under: C

“...Please refer to your letter No. HO/PERS/11/6218 dated 1st October, 1986 on the above subject. We observe therefrom that your existing staff is adequate for the present. We, therefore, regret our inability to accede to your request for extension of validity period of the panel. You may place your indent with BSRB, keeping in view your future needs, in consultation with your sponsor bank.” D

11. It, however, stands accepted that the Bank in the meantime had appointed a few candidates in the said 50% quota after one year. E

12. Respondent herein filed a Civil Misc. Writ Petition No.34881/1993 before the High Court of Allahabad, *inter alia*- praying for issuance of a writ of or in the nature of mandamus commanding the appellant Bank to appoint him to the Officers' Cadre on the basis of his selection made through an open competitive written examination and interview. The said writ petition was filed on the premise that as the quota meant for the promotees was 33 1/3%, the appellant Bank acted arbitrarily in not making appointments on the basis of the select list prepared therefor. F

13. Appellant in his counter affidavit as also in the supplementary counter affidavit apart from bringing the aforementioned fact also stated that in terms of a circular issued by the Government of India dated 26.12.1985, the entire recruitment process is to be conducted by the Banking Service Recruitment Board. It was furthermore stated that as the posts of the Field Supervisors were abolished on 1.9.1987, the posts of H

A officers were filled up. On that premise it was contended that the Bank is now over staffed.

14. The High Court in its impugned judgment proceeded on the basis that in terms of the aforementioned circular letter dated 6.2.1984 only 33 1/3% of the posts of the Officers were filled up.

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15. In regard to the contention raised by the appellant herein, the High Court furthermore opined that although no legal right vested in the candidate only because his name figured in the select list as laid down in a decision of this Court *Shankarsan Dash v. Union of India*, AIR (1991) SC 1612 as the law does not permit an employer to proceed with selection process and then stop mid-way arbitrarily so as to enable it to pick the persons of his preference and passion and on the other hand, leave others in lurch for no justifiable cause.

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16. In regard to the contention of the appellant that the writ petition suffered from delay and latches, the Court purported to have commented upon the conduct of the appellant herein in not disclosing the full particulars of the various writ petitions pending in the said Court as also the number of actual vacancies. The High Court furthermore was of the opinion that as the respondent did not get all the information, the delay occurred.

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17. It appears that a query was made from the learned counsel appearing on behalf of the appellant Bank as to whether any other candidate had approached the Court and on being informed that there was no such writ petition pending, it was observed as under:

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“The petitioner alone has approached this Court challenging arbitrary action of the respondent Bank. the irresistible conclusion is that others have not pursued their claim. the petitioner alone, therefore, is entitled for the relief of appointment.”

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18. On the aforesaid premise a writ of mandamus was issued directing the appellant-Bank herein to appoint the respondent herein to the post of Officer cadre on the basis of the said select list.

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19. Mr. Ramesh Singh, learned counsel appearing on behalf of the appellant Bank, *inter alia*, would submit that the High Court had

committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration; A

(i) the select list did not create valid right in favour of the respondent herein to be appointed;

(ii) the life of the select list having expired and NABARD having categorically refused to extend the life of the panel, no writ of mandamus could be issued only on the ground that a few candidates had been appointed after the said date; B

(iii) the writ petition was barred under the principles of delay and laches and particularly in view of the fact that the respondent had not offered any cogent explanation therefor. C

(iv) Even it be assumed that 67% posts were to be filled up by the direct recruits, the respondent could not have been appointed therein as his position in the select list of general candidates being 47. D

20. Mr. Pramod Swarup, learned counsel appearing on behalf of the respondent, on the other hand, has taken us through the judgment of the High Court and would submit that all the 70 posts were meant to be filled up only by direct recruitment. It was contended that the circular letter dated 6.2.1984 being valid and the posts of the Officer Grade meant to be filled up from amongst the promotees having already been filled up, all the vacancies were meant to be filled up from amongst the direct recruits. Learned counsel would draw our attention to the comments made by the High Court in regard to the purported conduct of the appellant to submit that in a situation of this nature, the High Court judgment is unassailable. E

21. It is now a trite law that only because a person has been selected and his name finds place in the select list, the same by itself does not confer any legal right on him to be appointed. It is also trite that ordinarily a Superior Court in exercise of its power of judicial review would not interfere with the right to make appointment by an employer unless its action or in-action is found to be wholly arbitrary so as to offend Article 14 of the Constitution of India. F

A 22. In this case we have noticed that despite certain confusions in regard to percentage of the posts to be filled by direct recruitment as also by the promotees, the appellant took steps to give effect to the directives issued by the Central Government as also the NABARD. It may be true that some employees of the Bank filed a writ petition questioning the said
B move and obtained some interim orders but we may notice that ultimately the said writ petition had been dismissed as having become infructuous.

C 23. It is not a case as was observed by the High Court that the employer had stopped the recruitment process mid-way and had arbitrarily picked up persons of its preference. No such case has been made out even in the writ petition. No such case has even been made before us. For implementing the policy decision of the Central Government the appellant proceeded on the basis that only 50% of the vacant posts be filled up by direct recruitment. For the said purpose, the reservation policy of the State was also to be given effect to. If the policy of the Central
D Government which was to be implemented in terms of the provisions of the Act had been given effect to by the appellant, no exception thereto, could have been taken. It is not the case of the respondent nor the High Court arrived at a finding that the appellant had appointed any person from the select list arbitrarily ignoring the cases of those whose names
E appeared higher on the list.

F 24. We fail to understand as to on what basis the High Court arrived at the said finding that the appellant had picked up persons of its preference. The High Court, therefore, must be held to have misdirected itself in arriving at the aforementioned decision as it posed un-to itself a wrong question. Nothing has been brought on record to show that in the matter of implementation of the select list, the High Court had acted arbitrarily or *malafide*. In the absence of such a plea, in our opinion, the High Court was bound to follow the decision of this Court in *Shankarasan Dash* (Supra) and other decisions following the same.
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H 25. We also fail to countenance the approach of the High Court that despite expiry of the life of the panel, appointment could/should have been made. Ordinarily, even without any statutory provision, the life of panel is one year. We have noticed hereinbefore that in relation thereto the Central Government had issued two circular letters.

26. In *State of Rajasthan & Ors. v. Jagdish Chopra*, (2007) 10 SCALE 470, this Court held : A

"7. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year...." B C

It was further held :

"It is well settled principle of law that even selected candidates do not have legal right in this behalf..." D

27. In that view of the matter, only because the appellant herein had appointed a few persons beyond the said period (presumably on the premise that its representation before the NABARD for extending the period of life of the panel would find favour with the authorities) the same by itself did not confer any legal right on the respondent to seek for issuance of a writ of mandamus nor did it confer any jurisdiction on the High Court to issue the said writ. E

28. So far as the question of delay and laches on the part of the respondent is concerned, in our opinion, the High Court again committed a serious error in so far as it failed to take into consideration that whereas the life of the panel came to an end in June, 1986, the Writ was filed in September, 1993. For the aforementioned purpose what was relevant was the conduct of the respondent and not the conduct of the appellant. F

29. We have noticed hereinbefore that the respondent in the writ petition had proceeded only on the basis that the quota for the direct recruits would be 67% and not 50%. If that was the case put forth by the respondent in his writ petition, we are not in a position to accept the submission of Mr. Swarup, learned counsel that all the 70 posts were to G H

A be appointed by direct recruitment which apparently runs counter to the case of the appellant itself.

B 30. In any view of the matter if in terms of the select list the position of the respondent amongst the general category candidates was at serial number 47, a large number of persons were evidently above him. They might not have approached the High court but it would not change the legal position. If the appellant which is a 'State' under Article 12 of the Constitution of India was to be asked by the High Court to act in terms of the select list, it would have been obligated to appoint only those persons whose names appear high on the said list. Other candidates, advisedly, C did not approach the High Court for such a relief as the life of the panel had come to an end and the appellant had been enforcing the policy decision framed by the Central Government and NABARD to which it was bound to follow.

D 31. Whatever be the view, in our opinion, the respondent was not entitled to get any relief in the writ petition far less a writ of or in the nature of mandamus. The impugned judgment cannot be sustained and the same is set aside accordingly. The appeal is allowed with costs. Counsel's fee assessed at Rs. 10,000/-.

E K.K.T.

Appeal allowed.