

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6403 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 15785 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

SOLANKI VIPULKUMAR VIRABHAI

Versus

INSTITUTE OF BANKING PERSONNEL SECTION (IBPS)

Appearance:

MR PARESHKUMAR B TRIVEDI(9926) for the Petitioner(s) No. 1

MR AS VAKIL(962) for the Respondent(s) No. 2

MR DARSHAN M PARIKH(572) for the Respondent(s) No. 3

MS NALINI S LODHA(2128) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 18/02/2022

COMMON CAV JUDGMENT

1. *Rule* returnable *forthwith*. Learned advocates waive service of notice of Rule for the respective respondents.

2. With the consent of the learned advocates for the respective parties, the petitions were taken up for final hearing on 31.1.2022 and reserved for orders.

3. In this petition i.e. SCA No.6403 of 2021, under Article 226 of the Constitution of India, the petitioner has prayed that the communication dated 20.3.2021 issued by the Saurashtra Gramin Bank be quashed and set aside and the petitioner be allowed to join duty as Office Assistant (Multipurpose) as per the allotment made by the respondent No.1 - Institute of Banking Personnel Selection (for short 'IBPS') allotting the petitioner in SC category in the respondent No.2 - Bank.

4. The facts in brief are as under:

4.1. The petitioner applied for the post of Office Assistant (Multipurpose) in response to an advertisement issued by the respondent No.1 - IBPS. It is the case of the petitioner that he was

provisionally allotted by the respondent No.1 to the Saurashtra Gramin Bank - respondent No.2. The petitioner has received an email dated 20.3.2021 by which the respondent No.2 Bank has informed the petitioner that since there was no specific request by the Bank for a visually impaired candidate, his case has been referred to IBPS.

5. Mr. K.B. Pujara, learned counsel for the petitioner would submit that the advertisement issued by IBPS would show that as far as Gujarat is concerned, there were two Banks for which vacancies were notified namely; Baroda Gujarat Gramin Bank and Saurashtra Gramin Bank. For SC category, 14 and 7 vacancies were notified. Two visually impaired (VI) vacancies were notified for Baroda Gramin Bank whereas no vacancy for VI were notified for Saurashtra Gramin Bank. He would submit that merely because the petitioner belonged to VI category, his candidature could not have been rejected. He would submit that this objection of the Bank would be contrary to the protection granted to disabled people under the

Rights of Person with Disability Act, 2016 and Persons with Disability (Equal Opportunity Protection of Rights and Full Participation) Act, 1995.

5.1. Mr. Pujara would submit that his first preference was Saurashtra Gramin Bank and the second for Baroda Gujarat Gramin Bank. The receipt received from IBPS would indicate that the petitioner applied for SC - VI - Blindness category. The allotment was provisionally made to the respondent No.2 - Bank against SC category. He would invite the attention of the Court to the scores of online main examination and submit that the petitioner secured 41.25 marks far above cut off.

6. Having therefore being provisionally allotted to the respondent No.2 - Bank, merely because he happened to be Visually Impaired (VI), the denial of allotment to the respondent No.2 - Bank was unfair. In the alternative, it was the case of the petitioner that he be accommodated with the respondent No.2 Baroda Gujarat Gramin Bank.

7. Mr. A.S. Vakil, learned advocate appearing for the respondent No.2 submitted that the Bank had not requested for any VI candidate. The IBPS was fully aware that a requisition was made only for SC candidates and not for any VI candidate.

7.1. Mr. Vakil would rely on various clauses in the advertisement to submit that by mere provisional allotment to the RRB, it would not imply that a candidate will necessarily be eligible for employment. Merely applying for CRP and being short listed does not imply that the candidate will necessarily be offered appointment.

7.2. Mr. Vakil would further submit that the petitioner has clearly stated that he is a person with benchmark disability of 40% and the disability is "VI." There was no question of considering the candidature of the petitioner in any category other than which the petitioner had applied. The petitioner is unnecessarily trying to capitalize on some

erroneous statement based on the provisional allotment. The petitioner had asked for help of a scribe and, therefore, evidently, had applied for VI category. It is the sole discretion of the respondent No.2 - Bank to deny appointment.

7.3. Relying on an additional affidavit filed on behalf of the Bank, Mr. Vakil would submit that the Bank never notified IBPS for VI category. Even if, the petitioner claims his entitlement of SC category, as per the advertisement, the qualifying age for Office Assistant (Multipurpose) is between 18 and 28 years and the candidate should not have been born earlier than 2.7.1992 and later than 1.7.2002. The permissible relaxation in SC / ST category is five years. The petitioner's date of Birth was 1.6.1987 and, therefore, he was over 33 years, the age that is beyond permissible relaxation for SC category. Therefore, not only the petitioner is ineligible if the petitioner's allotment is to be considered in SC category alone, but he is not eligible even for VI category as the respondent No.2 - Bank has not

notified any vacancy in the VI category. He would submit that as far as VI candidates are concerned, two visually impaired candidates were recommended for Baroda Gujarat Gramin Bank and they joined services.

8. Mr. Darshan Parikh, learned counsel appearing for the respondent - Baroda Gujarat Gramin Bank would submit that for the two vacancies recommended for VI, the Bank has already received and filled in those two reserved vacancies for VI persons and it is not in a position to absorb any other VI person.
9. Ms. Nalini Lodha, learned counsel has appeared for respondent No.1 - IBPS. She has taken a preliminary objection as to the maintainability of the petition as the institute is not a "State" within the meaning of Article 12 by the Constitution of India. She would further submit that the petition is not maintainable in view of the territorial jurisdiction which vests in Courts situated at Mumbai.

9.1. On merits, she would submit that based on the mandate given by the participating Banks, IBPS in consultation with them publishes proper advertisement. The entire process of selection is undertaken and call letters are issued to the successful candidates. The IBPS, then makes provisional allotment of meritorious candidates subject to further verification of all documents. The role of the IBPS therefore is to merely conduct examination, facilitate interview and publish results and provisionally allot them to the participating Bank.

9.2. As far as the petitioner is concerned, he applied for the post of Office Assistant (Multipurpose) under Category SC - VI Category. The petitioner selected under SC category on his own merit and not under the PWBD category and hence there was no error in the process of provisional allotment.

10. Having considered the submissions made by the learned advocates for the respective parties, what is

evident is as under:

(i) An advertisement was issued for the post of Office Assistant (Multipurpose). For Gujarat, two Banks namely Baroda Gujarat Gramin Bank and Saurashtra Gramin Bank participated. For Baroda Gujarat Gramin Bank, there were 14 vacancies in SC category and 2 for VI. For Saurashtra Gramin Bank, there were 7 vacancies for SC and 0 (Zero) for VI. The petitioner applied for the post. The application in the category stated SC in the column for type of disability, the petitioner had mentioned VI. His date of Birth was shown as 1.6.1987. Hence, he had completed 33 years of age as on 1.7.2020. Pleadings in the petition would indicate in context of the prayer made that the petitioner seeks a writ of mandamus against the respondent No.2 - Saurashtra Gramin Bank to allow the petitioner to join duty as Office Assistant (Multipurpose) as per allotment made by IBPS.

(ii) The communication of IBPS would indicate that

the petitioner had been provisionally allotted against vacancies in SC category in Saurashtra Gramin Bank which was the petitioner's first option. That was even emphasized while drawing the Court's attention to the merit score.

(iii) The petitioner seems to be playing hot and cold inasmuch as, based on the E-receipt, it was his case that his case be considered for a vacancy in VI category. However, the prayer is that since he was allotted in SC category, that communication be enforced.

11. Subsequently, an amendment was made in the petition extensively taking a recourse to the provisions of the Rights of Persons with Disability Act, 2016 read with Persons with Disability (Equal Opportunity, Promotion of Rights and Full Participation) Act, 1995. Sections 20, 33 and 34 were pressed into service.

12. Obviously, this indicates that the petitioner himself is

trying to take advantage of the uncertain stand of the recruiting agency that is IBPS which issued the e-receipt showing his candidature for SC - VI, whereas, provisionally allotting him to SC category. It is in this context, the stand of the respondent No.2 , the participating Bank needs to be appreciated. It has come out from the affidavits filed by the participating Bank, respondent No.2 that they had not requisitioned any vacancy in the VI category. That is evident from the letter dated 9.4.2021 written by the respondent No.2 - Bank to the respondent No.1 IBPS wherein it had categorically stated that :

“In our indent, submitted to IBPS, we have not requested visually impaired persons from IBPS, however, of this 33 candidates, who VI candidates are allotted to our Bank....”

In this context, we would like to bring to your kind notice that Bank does not have any specific duty role for such VI candidates and hence we request you to reallocate these candidates to other RRB, where such requirement is raised.”

13. Even if the relevant clauses of the advertisement are seen, merely, because a provisional allotment is made, that would not be a right to appointment qua such allottees. Relevant it will be to reproduce Clause (B) of the advertisement which reads as under:

B. ELIGIBILITY CRITERIA:

“Prospective Candidates should ensure that they fulfill the specified eligibility criteria before applying for the CRP.

Candidate 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 CRP 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 itself. The RRB concerned may, in its sole discretion, reject the candidature of anyone provisionally allotted to it through the CRP.

Please note that the eligibility criteria specified herein are the basic criteria for applying for the

post. Candidate must necessarily produce the relevant documents in original and a photocopy in support of their identity and eligibility - pertaining to category, nationality, age educational qualifications etc. as indicated in the online application form at the time of interview / document verification, as the case may be. Please note that no change of category will be permitted at any stage after registration of the online application and the result will be processed considering the category which has been indicated in the online application, subject to guidelines of the Government of India in this regard. Merely, applying for CRP / 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 process does not imply that a candidate will necessarily be offered employment in any of the Regional Rural Banks. No request for considering the candidature under any category other than the one in which one has applied will be entertained."

14. Even the advertisement clearly pointed out that depending on the vacancies as per the business needs of the RRBs as reported to IBPS, candidates short listed will be provisionally allocated to one of the

RRBs. These clauses would indicate that because of merely applying for and appearing for and being short listed in the online examination and / or in the subsequent interview being provisionally allotted does not imply that a candidate will necessarily be offered employment in any other RRBs. The advertisement further stipulated that no request for considering the candidature under any category other than the one in which one had applied will be entertained.

15. On the twin counts therefore, the petition need not be entertained. *Firstly*, the petitioner has applied claiming and pressing for his claim against SC vacancy. If that be so, pursuant to the criteria of age, even if the petitioner is given five years relaxation, taking his date of Birth as 1.6.1987, he was beyond the permissible relaxation for the SC category. *Secondly*, if the petitioner is to be considered for the VI category, since the respondent No.2 Bank did not notify any vacancy in the VI category and the petitioner having applied under SC - VI category, the

petitioner cannot be given appointment. The provisions of the 2016 Act do not envisage a situation to give appointment to a person in absence of any vacancy in the category. Even the letter of the Bank dated 9.4.2021 made it categorical that the Bank does not have any specific duty role for such VI candidates as the petitioner of the present petition and that of SCA No.15785 of 2021. As far as the present petitioner is concerned, it is specifically pointed out by the respondent No.3 - Baroda Gujarat Gramin Bank that they already have appointed two VI candidates who have joined. The alternative prayer of the petitioner therefore also cannot be considered.

16. On these counts therefore the present petition deserves to be dismissed and is accordingly dismissed. Rule discharged. No costs.

Special Civil Application No.15785 of 2021:

17. It is the case of the present petitioner that he applied for the same post under SC - VI category. His first preference was Baroda Gujarat Gramin Bank and the Second preference was Saurashtra Gramin Bank. It is

his prayer that he be appointed with the respondent Bank under SC category. During the course of argument, Mr. Munjaal Bhatt, learned advocate for the petitioner submitted that his case ought to be considered on SC vacancy with the respondent No.1 - Bank.

18. In addition to the reasons assigned by this Court in SCA No.6403 of 2021, the case of the petitioner should also fail here on two counts; **(a)** his first preference was Baroda Gujarat Gramin Bank whereas the prayer is that he be appointed under SC category with the Saurashtra Gramin Bank. There is no reason forthcoming as to why IBPS despite the preference that he gave allotted him to the respondent - Saurashtra Gramin Bank. If the petitioner claims to be a VI candidate, then, on account of no vacancy being notified of VI category with respondent No.1 Bank, the claim of the petitioner would fail. **(b)** On account of his claim if any with the Baroda Gujarat Gramin Bank, which was his first preference, not only have the VI vacancies been filled in even otherwise

his claim as SC candidate cannot be considered with the Baroda Gramin Bank without a Bank being made a party to the petition. Therefore, in addition to the reasons assigned in Special Civil Application No.6403 of 2021, this petition also deserves to be dismissed and accordingly, it is dismissed.

19. Rule discharged. No costs. Interim relief stands vacated forthwith.

VATSAL S. KOTECHA

[BIREN VAISHNAV, J.]

