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Akash Sethi Vs. Union Of India

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Court : Karnataka

Decided On : Apr-16-2021

Judge : M.Nagaprasanna

Appeal No. : WP 5317/2019

Appellant : Akash Sethi

Respondent : Union Of India

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE16H DAY OF APRIL, 2021 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA WRIT PETITION No.5317 OF2019(S - RES) BETWEEN1 AKASH SETHI S/O ASHOK SETHI, AGED ABOUT26YEARS, RESIDENT OF6G-24, JAWAHAR NAGAR, SHRI GANGA NAGAR, RAJASTHAN - 335 001.

2. JAYPRAVAS MISHRA S/O HEMANTA KUMAR MISHRA, AGED ABOUT28YEARS, RESIDENT OF BRAHAMANBHUIN, PO-KALARABANK, DIST-CUTTACK, ODISHA-754132.

3. MANISH JANGIR S/O SARDAR SINGH, AGED ABOUT27YEARS, RESIDENT OF WARD NO.2, PO-MAKRO, VILL. SINGHANA, DIST. JHUNJHUNU, RAJASHTHAN-333504.

4. SAJAN PUNYANI S/O HARBANSHLALA PUNYANI, AGED ABOUT26YEARS, R/O INDIRA COLONY, 2 GALI NO.9, WARD NO.42, DIST. SRIGANGANAGAR, RAJASTHAN-335004.

5. RAVI KUMAR S/O BALDEV PRAKASH, AGED ABOUT23YEARS, RESIDENT OF WARD NO.4, PO-BOLANWALI, SANGARIA, DISTT. HANUMANGARH, RAJASTHAN-335063.

6. KUNDAN KUMAR S/O BALMIKI PARASAD SINGH, AGED ABOUT30YEARS, R/O VILL. JHITKAHI, PO-PHULKAN, PS SHYAMPUR, BHATAN, DIST. SHEOHAR, BIHAR-843329.

7. KAUSHIK KUNAL S/O RAN VIJAY PANDEY, AGED ABOUT29YEARS, RESIDENT OF PANDEY KOTHI, YARPUR, GARDANIBAGH, ROAD NO-1, PATNA, BIHAR - 800001.

8. LOKANATH CHOUDHURY S/O AWEDHESH KUMAR SHARMA, AGED ABOUT25YEARS, RESIDENT OF PLOT NO.1859, MAHATAB ROAD, ANANT NAGAR, OLD TOWN, BHUBHNESHWAR, DIST-KHURDA, ODHISA-751002.

9. SANWAR MAL JAT S/O MADAN LAL, AGED ABOUT24YEARS, RESIDENT OF BAJROLI, MEERAN, SIKAR, RAJASTHAN-332312. 3

10. SUMAN SAURABH SHARMA S/O AWADESH KUMAR SHARMA, AGED ABOUT28YEARS, R/OF KANHAULI KHADI, BHANDAR CHOWK, GANDHINAGAR, MUZAFFARPUR, BIHAR-842002 11. DIPU PANDEY S/O ASHUTOSH PANDEY, AGED ABOUT29YEARS, RESIDENT OF GABHIRAR, PS-RAGHUNATHPUR, DIST-SIWAN, BIHAR-841509.

12. VIJENDER KUMAR S/O VINOD KUMAR, AGED ABOUT26YEARS, RESIDENT OF WARD NO.7, PO-NUKERA, TEHSIL SANGARIA, DIST-HANUMANGARH, RAJASHTHAN-335063. ... PETITIONERS (BY MS. SUNIETA OJHA, ADVOCATE FOR SRI PREM PRASAD SHETTY, ADVOCATE (VIDEO CONFERENCING)) AND1 UNION OF INDIA REP. BY DEPARTMENT OF FINANCIAL SERVICE, MINISTRY OF FINANCE, 3RD FLOOR, JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI-110001.

2. KARNATAKA VIKASH GRAMEENA BANK REP. BY CHAIRMAN, HEAD OFFICE, P.B. NO.111, BELGAUM ROAD, DHARWAD-580008. 4

3. KAVERI GRAMEENA BANK REP. BY CHAIRMAN, CA-20, VIJAYANAGAR2D STAGE, MYSURU-570017.

4. PRAGATHI KRISHNA GRAMEEN BANK REP. BY CHAIRMAN, POST BOX NO.55, NO.32, SANGANKAL ROAD, GANDHINAGAR, BALLARI-583103.

5. INSTITUTE OF BANKING PERSONNEL SELECTION REP. BY DIRECTOR, IBPS, IBPS HOUSE, 90 FEET, D.P. ROAD, NEAR THAKUR POLYTECHNIC, OFF. WESTERN EXPRESS HIGH WAY, P.B. NO.8587, KANDIVALI (E), MUMABI-400101. ... RESPONDENTS (BY SRI ARUN K.S., ADVOCATE FOR R1 SRI T.P. MUTHANNA, ADVOCATE FOR R3 AND R4 SRI A. RAVISHANKAR, ADVOCATE FOR R5 (PHYSICAL HEARING), R2 IS SERVED AND UNREPRESENTED) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 - R-3 TO ISSUE THE APPOINTMENT LETTER TO THE PETITIONERS FOR THE POST WHICH THEY HAVE APPLIED AND KEPT IN THE RESERVE AGAINST THE AVAILABLE VACANCIES. THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER
S ON2302.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER
The petitioners in this writ petition have sought for a direction by issuance of a writ in the nature of 5 mandamus directing respondents 2 to 4 to issue appointment letters to the petitioners for the posts for which they have applied and which were kept in reserve against the available vacancies.

2. Filtering out unnecessary details, the facts that are germane for consideration of the lis are as follows:- On a requisition made by respondents 2, 3 and 4 - Karnataka Vikash Grameena Bank, Kaveri Grameena Bank and Pragathi Krishna

Grameena Bank (hereinafter referred to as 'the RRBs' for short) to the 5th respondent - Institute of Banking Personnel Selection, the 5th respondent initiated selection process by issuance of a Notification calling for applications from eligible candidates. The selection process was to be on scrutiny of applications, examination conducted by the 5th respondent and furnishing of names of selected candidates again by the 5th respondent and issuance of orders of appointments by the RRBs. 6

3. The petitioners herein finding themselves eligible applied to the posts of Office Assistant (Multipurpose) in terms of the Notification issued and the call letters issued for examinations by the 5th respondent. Pursuant to the process of selection, a communication was issued to the 1st petitioner which was identically issued to all the petitioners that their candidature is found to be in the reserved list which has been kept to the extent of 25% of the vacancies under each post and category subject to availability of candidates. It was further indicated that reserve list would expire automatically on completion of one year from the date of provisional allotment i.e., on 31-01- 2019 or until a fresh allotment is made whichever would be earlier. Thus, the petitioners were notified for having been placed in the reserve list by the 5th respondent. When no proceedings further to placing the petitioners in the reserve list took place, the petitioners approached this Court in the subject writ petition on 29-01-2019 as 7 the provisional allotment made was to expire on 31-01- 2019.

4. This Court by a detailed order dated 30-01- 2019 directed that the list will not expire on 31-01- 2019. The said interim order is in operation even as on date. After the grant of interim order, the respondent- RRBs filed applications seeking vacation of the interim order, which were directed to be heard along with the main writ petition as vacating the interim order would render the writ petition infructuous. Subsequent to the aforesaid interim order, several proceedings took place before this Court and this Court directed the Bank to file an affidavit with regard to number of vacancies notified and the number of vacancies unfilled. The Bank filed an affidavit with regard to vacancies existing after the aforesaid recruitment process. It is on this premise, the petitioners are seeking a mandamus to appoint them pursuant to them being placed in the reserve list. 8

5. Heard Ms. Sunieta Ojha, learned Advocate for Prem Prasad Shetty, learned Advocate for petitioners; Sri Arun K.S., learned Advocate for respondent No.1; Sri T.P.Muthanna, learned Advocate for Respondents 3 and 4 and Sri A.Ravishankar, learned Advocate for Respondent No.5.

6. The learned counsel appearing for the petitioners would vehemently argue and contend (i) that 25% of the vacancies in each of the posts and category were placed in the reserve list and the reserve list was not even operated; that without operating the reserve list, the RRBs went for a new notification calling for applications which would be a fresh recruitment process; she would further contend that total number of vacancies existing in Kaveri Grameena Bank and Pragathi Krishna Grameena Bank is 344 in all the categories which remain unfilled and in Karnataka Vikash Grameena Bank a total 106 posts are left 9 unfilled and it is against these posts that the petitioners were entitled to be appointed operating the reserve list. The learned counsel would further contend that it is the placement of the petitioners in the reserve list and the vacancies existing even as on date, legitimate expectation demands the petitioners be appointed to the posts for which they have applied.

7. Per-contra, the learned counsel appearing for the Bank and the 5th respondent would in unison contend that the writ petition is to be dismissed at the threshold as the petitioners and the like had approached the Hon'ble Supreme Court by filing a petition under Article 32 of the Constitution of India with a similar prayer, which came to be dismissed and the said dismissal will operate as a bar to file a writ petition on the same set of facts seeking the same prayer on the principle of res judicata. Insofar as the other contentions are concerned, the learned counsel 10 would submit that the petitioners do not have an indefeasible right to be appointed on the ground of their placement in the reserve list, it is for the employer to decide how many vacancies should be filled up and the petitioners cannot insist this Court to direct filling up of the vacancies as the same is in the domain and discretion of the employer.

8. I have given my anxious consideration to the submissions made by the learned counsel appearing for the parties, have perused the material on record and in

furtherance whereof, the following points arise for my consideration: (1) Whether the writ petition filed under Article 226 is not maintainable on the ground that the petitions filed under Article 32 of the Constitution of India have been dismissed in limine on the same set of facts and the prayer?. (2) Whether the petitioners have a right to be considered for appointment in the light of the 11 fact that they were placed in the reserve list?. and (3) Whether the action of the Bank depicts illegality in the selection process?.

9. Point No.1: Whether the writ petition filed under Article 226 of the Constitution of India is not maintainable on the ground that the petitions filed under Article 32 of the Constitution of India have been dismissed in limine on the same set of facts and the prayer?. It is not in dispute that the petitioners and the like had approached the Apex Court by filing a writ petition under Article 32 of the Constitution of India. The Apex Court on 01-07-2019 dismissed the writ petition by the following order: Heard learned counsel appearing for the parties. We see no reason to entertain this petition. This writ petition is dismissed. 12 Pending applications, if any, also stand disposed of. The aforesaid order of the Apex Court dismissing the writ petition under Article 32 of the Constitution does not determine the rights of the parties. The Apex Court found no reason to entertain the petition. Article 32 of the Constitution reads as follows:- 32. Remedies for enforcement of rights conferred by this Part: (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by Clause (1) and (2),Parliament may by law empower any other court to exercise within the local limits 13 of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution. Article 32 of the Constitution as extracted hereinabove is exercisable only on an infringement of a fundamental right which the Apex Court found in the case on hand that there is no fundamental right of the petitioners infringed that too without determining or adjudicating the matter. It is

after this, the petitioners have filed the present writ petition under Article 226 of the Constitution of India with the same prayer. A Constitution Bench of the Apex Court in the case of Daryao & others Vs. State of U.P. & others reported in AIR 1961 SC1457 analyzing the principle whether Article 226 of the Constitution would be a bar to maintain a petition under Article 32 or once a petition is filed under Article 32 of the Constitution would be a bar 14 for the High Courts to entertain the petition under Article 226 of the Constitution, the Apex Court has held as follows: 15.The next question to consider is whether it makes any difference to the application of this rule that the decision on which the plea of res judicata is raised is a decision not of this Court but of a High Court exercising its jurisdiction under Art.

226. The argument is that one of the essential requirements of S. 11 of the Code of Civil Procedure is that the Court which tries the first suit or proceeding should be competent to try the second suit or proceeding, and since the High Court cannot entertain an application under Art. 32 its decision cannot be treated as res judicata for the purpose of such a petition. It is doubtful if the technical requirement prescribed by S. 11 as to the competence of the first Court to try the subsequent suit is an essential part of the general rule of res judicata; but assuming that it is, in substance even the said test is satisfied because the jurisdiction of the High Court in dealing with a writ petition filed under Art. 226 is substantially the same as the jurisdiction of this Court in entertaining an application under Art.

32. The scope of the writs, orders or directions which the High Court can issue in appropriate cases under Art. 226 is concurrent with the scope of similar writs, orders or directions which may be issued by this Court under Art.

32. The cause of action 15 for the two applications would be the same. It is the assertion of the existence of a fundamental right and its illegal contravention in both cases and the relief claimed in both the cases is also of the same character. Article 226 confers jurisdiction on the High Court to entertain a suitable writ petition, whereas Art. 32 provides for moving this Court for a similar writ petition for the same purpose. Therefore, the argument that a petition under Art. 32 cannot be entertained by a High Court under Art. 226 is without any substance: and so the plea that the judgment of the High Court cannot be treated as res judicata on the

ground that it cannot entertain a petition under Art. 32 must be rejected.

16. It is, however, necessary to add that in exercising its jurisdiction under Art. 226 the High Court may sometimes refuse to issue an appropriate writ or order on the ground that the party applying for the writ is guilty of laches and in that sense the issue of a high prerogative writ may reasonably be treated as a matter of discretion. On the other hand, the right granted to a citizen to move this Court by appropriate proceedings under Art. 32(

1) being itself a fundamental right this Court ordinarily may have to issue an appropriate writ or order provided it is shown that the petitioner has a fundamental right which has been illegally or unconstitutionally contravened. It is not 16 unlikely that if a petition is filed even sunder Art. 32 after a long lapse of time considerations may arise whether rights in favour of third parties which may have arisen in the meanwhile could be allowed to be affected, and in such a case the effect of laches on the part of the petitioner or of his acquiescence may have to be considered; but, ordinarily if a petitioner makes out a case for the issue of an appropriate writ or order he would be entitled to have such a writ or order under Art. 32 and that may be said to constitute a difference in the right conferred on a citizen to move the High Court under Art. 226 as distinct from the right conferred on him to move this Court. This difference must inevitably mean that if the High Court has refused to exercise its discretion on the ground of laches or on the ground that the party has an efficacious alternative remedy available to him then of course the decision of the High Court cannot generally be pleaded in support of the bar of res judicata. If however, the matter has been considered on the merits and the High Court has dismissed the petition for a writ on the ground that no fundamental right is proved or its breach is either not established or is shown to be constitutionally justified there is no reason why the said decision should not be treated as a bar against the competence of a subsequent petition filed by the same party on the same facts and for the same reliefs under Arts.

32. 19.We must now proceed to state our conclusion on the preliminary objection 17 raised by the respondents. We hold that if a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the

decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art. 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32 If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend up on the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without 18 passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is ture that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all: but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Art.

32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Art.

32. Because in such a case there has been no decision on the merits by the Court. We wish to make if clear that the conclusion thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other. It is in the light of this decision that we will now proceed to examine the position in the six petitions before us. (Emphasis supplied) In terms of the law declared by the Apex Court supra, the writ petition before this Court

under Article 226 of the Constitution would be maintainable albeit dismissal of the writ petition filed before the Apex Court under 19 Article 32 of the Constitution of India if the dismissal of the petition is not on its merit. Therefore, the submission that the writ petition ought to be dismissed on the principle of res judicata deserves to be rejected on the plain reading of the Article and its interpretation by the Apex Court in the afore-extracted judgment. Hence, I hold Point No.1 in favour of the petitioners.

10. Point Nos. 2 and 3:- Whether the petitioners have a right to be considered for appointment in the light of the fact that they were placed in the reserve list?. and Whether the action of the Bank depicts illegality in the selection process?. Since both points 2 and 3 are intertwined, they are taken up together. The Notification calling for applications led to the petitioners writing the main 20 examination and facing the interview on 01-02-2017. A communication was also sent to the petitioners stating that their performance has resulted in inclusion of their names in the probable reserve list of 25% of the candidates of total vacancies in the RRBs which was subject to availability of vacancies. This communication is in tune with the Notification calling for applications, the relevant portion of which is extracted hereunder for the purpose of ready reference:

"A reserve list to the extent of vacancies as per extant provision will be drawn in each category subject to exigencies and availability of candidates. This does not guarantee provisional allotment to/recruitment by the RRBs. In the event of RRBs providing further vacancies, provisional allotment will be carried out for the candidates in the reserve list subject to vacancies being provided within one year after the date of provisional allotment. However, if no vacancy is furnished by the RRBs owing to exigencies or otherwise during the validity period the candidates under the reserve list will not be considered for provisional allotment. The reserve list will expire auto- matically on the day which is one year after 21 the date of provisional allotment or until a fresh provisional allotment is made, whichever is earlier, with or without any notice. Candidates who are not provisionally allotted or not in the reserve list will not be considered for any further process under CRP RRBs-VI. 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 the IBPS in provisional allotment of RRBs shall be final and binding upon the selected candidates. However, IBPS reserves the right to cancel, reallot organization-wise allocation/change the process depending upon exigencies or otherwise. Provisionally allotted candidates (subject to fulfilling all required criteria) may be posted anywhere."

(Emphasis added)

Therefore, placement of the petitioners in the reserve list was in tune with the notification. The communication sent to the petitioners reads as follows:- 22 "Based on your performance in the Online Main Examination and interview, you have been considered for the Reserve List subject to vacancies provided by the RRBs. Please note:- 1. The reserve list has been kept to the extent of 25% of the vacancies under each post and category, subject to the availability of candidates. This however does not give any guarantee for further selection process.

2. In the event of RRBs providing further vacancies, provisional allotment will be carried out for the candidates in the reserve list subject to vacancies being provided within one year after the date of provisional allotment or before a fresh allotment is made, whichever is earlier. However, if no vacancy is furnished by the RRBs owing to exigencies or otherwise during the validity period the candidates under the reserve list will not be considered for provisional allotment.

3. The reserve list will expire automatically on the day which is one year after the date of provisional allotment i.e., 31-01- 2019 or until a fresh provisional allotment is made, whichever is earlier, with or without any notice. 23

4. In case it is detected at any stage that, you do not satisfy the eligibility criteria at any stage of the recruitment process your candidature/chance in the process shall stand forfeited.

5. The minimum qualifying marks/scores in interview is 40% (35% for SC/ST/OBC/PWD candidates).

6. The respective weightage (ratio) of online Main Exam and Interview is 80:20"

(Emphasis added)
This communication also indicated that the reserve list would expire automatically on completion of one year after the provisional allotment. The date was also indicated that it would expire on 31.01.2019. Apprehending expiry of the list, the petitioners approached this Court in the subject writ petition on 29-01-2019. This Court by its order dated 30-01-2019 granted an interim order which reads as follows:- "Issue Emergent notice to the respondents. Learned counsel for the petitioners is permitted to serve copy of the writ 24 petition along with Annexures on the learned Assistant Solicitor General, who appears for respondent No.1-Union of India. The grievance of the petitioners is that in spite of the petitioners having been placed in the 'Reserve List' subject to vacancies provided by the Regional Rural Banks (RRBs) as on 31-12-2018, the respondents have not considered the case of the petitioners, while condition No.3 in the said list at Annexure-B series would provide that the 'Reserve List' would expire automatically on the day which is one year after the date of provisional allotment i.e., 31.01.2019 or until a fresh provisional allotment is made, whichever is earlier, with or without any notice. The grievance of the petitioners is that in spite of the petitioners being eligible and having waited for a period of one year, the respondents have not acted on the 'Reserve List' even though the vacancies have arisen on account of some selected candidates not having joined the services. In that view of the matter, the respondents are directed to keep the requisite posts vacant and also validity of the panel shall not be treated as expired as on 31.01.2019.

(Emphasis added)
A perusal at the interim order granted clearly indicates that the validity of the panel would not be treated as 25 expired on 31.01.2019. Therefore, the expiry of the list in terms of the communication (supra) froze on 31-01- 2019 in terms of the order passed by this Court and the said interim order even as on date is in operation. The matter came up before the Court on several occasions and on 20-01-2021

again this Court passed a detailed order and directed an affidavit to be filed by the RRBs, which reads as follows:

"Sri A.Ravishankar, learned counsel appearing for respondent No.5 would submit that an identical prayer was sought before the Apex Court in a petition under Article 32 of the Constitution of India which came to be turned down in limine by several other candidates concerning the very same recruitment in RRB-6. The same prayer is sought in this writ petition and the writ petition would not be maintainable in the form that is presented in the light of the order passed by the Apex Court and would also submit that there is a subsequent notification, as the life of RRB-6 was only for one year, and RRB-7 is now notified on 01.01.2019 and would submit that the writ petition filed on 29-01-2019 which is subsequent to 01-01-2019 is not maintainable and would not survive for further consideration. Be that as it may. 26 Learned counsel appearing for respondents 3 and 4 Kavery Grameena Bank and Pragathi Krishna Grameena Bank with regard to query raised under the Right to Information Act, 2005, the reply given by the Banks is that out of 450 vacancies 106 have been unfilled in Pragathi Krishna Grameena Bank and about 14 vacancies in Kaveri Grameena Bank would submit that he would seek instructions and filed an affidavit to that effect. The learned counsel should also place on record as to the fact that the vacancies did remain unfilled and why the reserve list was not operated despite there being one, to the tune of 25%. Learned counsel would further submit that all the vacancies that were notified are filled by the respective Banks and the appointment orders are issued. This submission goes contrary to the information that is given by the respondent Bank on 16-10-2018. Therefore, an affidavit with clarify with regard to the vacancies that were notified, the vacancies that were filled and the appointment orders issued in terms of notification RRB-6 be placed before the Court by the next date of hearing. List the matter on 05-02-2021."

27 In terms of the order passed by this Court supra, an affidavit is filed by the representative of RRB which is extracted hereunder for the purpose of quick reference as the entire issue now revolves around the affidavit of the Bank:-

"4. I state that on allotment of candidates/ provisional list by respondent No.5, the respondent No.3 issued appointment orders to the candidates mentioned in the provisional list in the month of May, 2018. Similarly, respondent No.4 also issued appointment orders to the candidates mentioned in the provisional list in the month of April, 2018. After issuance of the appointment orders, 84 candidates out of allotted 100 candidates of Officer Scale-1 and 120 candidates out of allotted 225 candidates in the cadre of Office Assistant (Multi Purpose) joined the services of respondent No.3. Likewise, 354 candidates out of allotted 393 candidates in Officer Scale-I and 174 candidates out of allotted 299 candidates in Office Assistant (Multi Purpose) cadre joined the services of respondent No.4.

5. I state that clause K of notification (Annexure-C to the writ petition) for recruitment of officers/assistants in RRBs, specifically states that in the event of RRBs 28 providing further vacancies, provisional allotment will be carried out for the candidates in the reserve list subject to vacancies to be provided within one year after the date of provisional allotment. However, if no vacancy is furnished by the RRBs owing to exigencies or otherwise during the valid period, the candidates under the reserve list will not be considered for provisional allotment. Further, neither RRBs nor IBPS is bound to notify every vacancy that may arise in any RRB during the pendency of reserve list.

6. I state that the number of posts in Officer Scale-I & Office Assistant (Multi Purpose) cadre indented with respondent No.5 was only indicative and anticipated depending upon business growth, health of the organization, branch expansion, internal and external factors, structural changes etc. The business position of the respondent bank had come down during 2018-19 and there was no branch expansion during the said year. Further, in view of the communication dated 07-06-2018 received from Department of Financial Services addressed to the Chairman/CMDs/MDs of sponsor Banks of all RRBs, there was anticipation of amalgamation of three RRBs in the State of Karnataka. The amalgamation of RRBs will result in availability of additional manpower due to structural changes. Upon amalgamation of RRBs, only one head office would be retained and head offices of other RRBs would be closed and the manpower of 29 closed head office would be available for posting to Branches. Hence, the respondent bank did not

proceed further to place indent as there was no immediate requirement of manpower.

7. I state that the petitioners have no judicially enforceable right for seeking mandamus directing the respondent bank to issue appointment letters claiming that they are in the reserve list. The existence of right is the foundation of the jurisdiction of the Court to issue a writ of mandamus as held by the Apex Court in State of Kerala v. Laxmi Katti and others. As stated above, the immediate requirement of the employees after absorbing the candidates provisionally allotted to the respondent bank, no further indent for recruitment was placed with respondent No.5."

... .

9. I state that the petitioners have approached this Hon'ble Court on 29-01- 2019 seeking mandamus, directing the respondent Bank to issue appointment orders. The Hon'ble Court granted ex-parte interim order on 30.01.2019 directing the respondents to keep the requisite posts vacant and also validity of the panel shall not be treated as expired as on 31-01-2019. As per the notification for recruitment - CRP RRBs VI (Annexure-C to the Writ Petition), the reserve list would expire automatically one year from the date of provisional allot- ment, i.e., on 31-01-2019 or until a fresh allotment is made, whichever is earlier. The 30 respondent No.5 has made fresh provisional allotment of candidates on 01.01.2019. Hence, the writ petition does not survive for consideration.

10. I state that the candidates who are in the reserve list have no right to seek appointment once the requisite number of candidates is appointed. The reserve list is operative only for the contingency that if any of the selected candidates does not join, then the person from the reserve list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency. In the instant case, owing to drastic decrease in the business etc., after joining of the candidates who were appointed from the provisional list, the necessity of placing further indent for recruitment did not arise. Hence, the respondent Nos. 3 and 4 did not place indent for the vacancy that arose on account of non-joining of the candidates after issue of appointment orders."

(Emphasis added)

A conjoint reading of the communication; the interim order and the affidavit filed would in unmistakable terms indicate that vacancies did exist even as on 31- 31 01-2019 and the RRBs refused to operate the reserve list despite there being vacancies existing.

11. The existence of vacancies is also indisputable in terms of the document furnished by the Bank under the Right to Information Act. The information is furnished on 16-10-2018 with regard to total number of vacancies and number of persons joined in terms of the recruitment process. The vacancy position is as under:- The information pertaining to KVG Bank is as under: Category No.of vacancies SC67ST33OBC122General 228 TOTAL450The information pertaining to KVG Bank is as under: Category Joined as Officer Scale-1 SC49ST24OBC95General 176 TOTAL34432 The unfilled vacancy information pertaining to KVG Bank is as under: Category Unfilled under Officer Scale-1 SC18ST09OBC27General 52 TOTAL106Therefore, there were 450 vacancies in Krishna Vikas Grameena Bank and only 344 joined as a result of which, 106 vacancies were left unfilled, the same goes with Kaveri Grameena Bank and Pragathi Krishna Grameena Bank. It is further germane to notice that information provided to one of the petitioners to the query sought under the Right to Information Act, 2005 in the form of a chart which is germane and is extracted for the purpose of quick reference: Shri Yagyadatt Pandey Query Information sought Information furnished No.for 33 1. Who make reserve IBPS list of RRBs bank.

2. Who is responsible RRB concerned. for asking reserve list.

3. Is IBPS asked RRBs The desired information bank to report non- is not available with joining candidates to NABARD bank or RRBs bank report to IBPS for clear reserve list.

4. Is bank is Bank is responsible responsible to indent to IBPS of non-joining candidates to recruit from reserve list or IBPS has right to ask from Bank to report non-joining candidates.

5. What is reserve list in 25% of vacancies RRBs bank subject to recruitment recruitment?. in RRBs 6. Why IBPS makes As per GoI Broad Policy reserve list or RRBs of recruitment in RRBs or RRBs said IBPS to make reserve list.

7. What is logic behind As per GoI Broad making reserve list. Policy of recruitment in RRBs 8. NABARD role in RRBs Role of NABARD is recruitment process limited to monitoring of recruitment process as per GoI instructions only. 34 Therefore, the Bank is held responsible for not operating candidates from the reserve list notwithstanding several of them not joining, in compliance of the policy of recruitment. Once having notified the reserve list in terms of the Notification and having communicated the candidature of the petitioners to come within the reserve list, the respondent Bank or the 5th respondent ought to have operated the reserve list, in the wake of hundreds of vacancies becoming available, by considering the case of the petitioners for appointment to the posts for which they have applied. This would be feeding the legitimate expectation of the petitioners, which became a legal right of the petitioners in the facts of the case.

12. The affidavit filed by the Bank clearly indicates that the reserve list was not operated; the Bank did not want any surplus staff as they had adequate staff. This statement is belied by two subsequent actions. The vacancies that were available to be filled from the reserve list were not filled up on the specious plea of 35 surplus staff but the very next year i.e., 2019-20, a fresh notification is issued and a fresh requisition is sent to the 5th respondent to recruit 1350 staff which includes those vacancies that were left over in the previous recruitment in which the petitioners were placed in the reserve list.

13. Therefore, though in law, the petitioners would not get an indefeasible right, but in the facts and circumstances of the case, the right of the petitioners was available and the respondent/Bank deliberately chose not to operate the reserve list and grant appointments to the petitioners and called for a fresh recruitment the very next year for the same vacancies. Therefore, the legal right of the petitioners is crystallized with the illegality committed by the respondent- Bank.

14. Operating the reserve list is a known norm in the service jurisprudence. The Apex Court in the case of 36 MANOJ MANU v. UNION OF INDIA reported in

(2013)12 SCC171has held as follows:

10. We are conscious of the legal position that merely because the name of a candidate finds place in the select list, it would not give him/her indefeasible right to get appointment as well. It is always open to the Government not to fill up all vacancies. However, there has to be a valid reason for adopting such a course of action. This legal position has been narrated by this Court in Neelima Shangala v. State of Haryana [(1988) 4 SCC268. In that case: The appellant was the candidate for appointment to the post of Subordinate Judge in Haryana. Under the scheme of the Rules, the Public Service Commission was required to hold first a written test in subjects chosen by the High Court and next a viva voce test. Unless a candidate secures 45% of the marks in the written papers and 33% in the language paper, he will not be called for the viva voce test. All candidates securing 55% of the marks in the aggregate in the written and viva voce tests are considered as qualified for appointment. The appellant though secured 55% of the marks was not appointed as her name was not sent by the Public Service Commission to the Government. The Supreme Court in such fact situation found that the Public 37 Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the name of any qualified candidate. The duty of the Public Service Commission is to make available to the Government, a complete list of qualified candidates arranged in the order of merit. How should the Government, act is stated by the Supreme Court in the following words: (Neelima Sangla case, SCC pp.271-72, para

2) 2 Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the regist3er maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that, though 55% is the minimum qualifying mark, in the interest of higher standards, they would not appoint anyone who has obtained less than 60% of the marks.

11. The Court after making reference to the decision of the Supreme Court in State of Haryana v. Subash Chander Marwaha 38 [(1974) 3 SCC220 further observed as under: (Neelima Sangla case, SCC p.272. para

2) 2. . However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of mind of the Government, and the High Court before the number of persons selected for appointment is restricted. Any other interpretation would make Rule 8 of Part D meaningless (emphasis supplied) 12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once it is found that the decision of the Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.

13. In the present case, however, we find that after UPSC sent the list of 184 persons/recommended by it to the 39 Government for appointment, six persons out of the said list did not join. It is not a case where the Government decided not to fill up further vacancies. On the contrary Do PT sent requisition to UPSC to send six names so that the remaining vacancies are also filled up. This shows that insofar as the Government is concerned, it wanted to fill up all the notified vacancies. The requisition dated 20.11.2009 in this behalf was in consonance with its Clause 4(c) of OM dated 14-07-1967. Even when the Government wanted to fill up the posts, UPSC chose to forward names of three candidates. (Emphasis supplied) Following the said judgment, a Division Bench of this Court in the case of G.MANJUNATHA AND OTHERS v. STATE OF KARNATAKA in W.P.No.52931-52936 of 2016 disposed on 11th January 2017 has held as follows: 15. As recorded hereinabove, petitioners are denied appointments on the premise that with the issuance of subsequent notifications, as per Rule 12-B of Recruitment Rules, the main and the additional list shall cease to be operative. Had it been the stand of the respondent-KPSC or Government that since unfilled 21 seats were

included in subsequent notification inviting application of eligible candidates and hence earlier waiting 40 list had ceased to operate, it would stand on different footing and on different consideration.

16. The principle of operation of a waiting list has been Explained by the Honble Supreme Court in the case of State of Jammu and Kashmir and others v. Sat Pal reported in (2013) 11 SCC737 The facts delineated in the judgment reveal that the private respondent therein namely, Sat Pal participated in the selection process for the post of Junior Engineer (Civil), Grade- II. Having learnt that a candidate above him in the merit list had not joined, he submitted a representation seeking appointment on the premise that one Trilok Nath, who had been offered appointment had not joined. Since his representation was not considered, he moved the High Court in a writ petition. It was disposed of with a direction to the appointing authority to examine his claim. The State Government therein rejected his claim on the ground that the waiting list issued in respect of the recruitment had outlived its validity. The private respondent again moved the High Court with a contempt petition, wherein, the High Court granted four weeks for compliance. Being aggrieved, the State was in appeal before the Apex Court. After analyzing the factual matrix of the case, the Honble Supreme Court precisely held as follows:- 11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for 41 appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate when offers of appointment have been issued to those emerging on the top of the merit. The existence of a waiting list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate after the vacancies for which the requirement process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil), Grade-II for which the recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the post for which the process of selection

was conducted were duly filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil), Grade-II on 22-04-2008. The aforesaid offer was made consequent upon his selection in the 42 said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22-04-2008, because the vacancy was offered to Trilok Nath on 22-04-2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23-08-2011 (extracted above), that the waiting list was valid till May 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, insofar as the present controversy is concerned. (emphasis supplied) 17. When the facts of the petitioners herein are examined with reference to the above judgment, what emerges is that though the petitioners herein have also participated in the selection process pursuant to notification dated 4-08-2009, they are not appointed through 21 selected candidates did not report for duty, as KPSC did not issue the waiting list simultaneously with the main selection list. In any event, they were called upon to furnish their testimonials for verification on 21-12-2012 and their certificates were verified between December 43 2012 and January 2013 which is well within six months from the date of issuance of additional list. Respondent-State took a conscious decision not to include the 21 unfilled posts in the subsequent list. Therefore, following the judgment of the Honble Apex Court in the case of Sat Pal, supra, the cases of the petitioners herein, who are in the waiting list deserved to be considered, since 21 posts notified earlier had remained unfilled and not even included in the subsequent notification when the applications are invited to fill up posts from eligible candidates.

18. Out of the three judgments relied upon by the learned counsel for the petitioners, two judgments are not applicable to the facts of this case. However, in the case of Neelima Shangla, the Honble Supreme Court has held as follows:- 2..The duty of the Public Service Commission is to make available to the Government a complete list of qualified candidates arranged in order of merit.

Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination The Apex Court has also further held as follows:- 44 2 However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of the mind of the Government and the High Court before the number of persons selected for appointment is restricted. Any other interpretation would make Rule 8 of Part D meaningless. In the present case, though the rules required the Public Service Commission to publish the result of the examination and, apparently, also to communicate the result to the Government, the Public Service Commission did not publish the result in the first instance and sent only the names of 17 candidates belonging to general category to the Government, though many more had qualified. That was wrong. The names of all the qualified candidates had to be sent to the Government. (Emphasis supplied) 19. As rightly recorded by the Tribunal, KPSC ought to have sent the additional list simultaneously to the Government. The file notings produced before us indicate that there was protracted correspondence on the subject. Therefore, in the facts and circumstances of this case, we are of the considered view that, petitioners cases merit consideration in the hands of the 45 respondent-State. We hasten to add that, in view of inordinate delay in approaching the KAT, the petitioners shall not be entitled for seniority above the candidates appointed pursuant to subsequent notification. (Emphasis supplied) The judgment of the Apex Court and the judgment of the Division Bench of this Court have clearly held as to the importance of the reserved list/wait list and the right of the candidates qua those lists and have concluded that the recruiting agency in those cases was obliged to operate the wait list and fill up the vacancies from the candidates in the wait list/reserve list. Therefore owing to the aforesaid narrative; the interim orders granted by this Court; existence of list even as on date; the affidavit of the Bank and information given under the Right to Information Act, 2005 would all lead to an unmistakable conclusion that the petitioners in the facts and circumstances of the case, did have an indefeasible right to get their candidature considered for 46 appointment to the posts that they have applied for. Wherefore, I answer point Nos.2 and 3 in favour of the petitioners.

15. For the praefatus reasons, I pass the following:

ORDER

(a) Writ Petition is allowed. (b) A mandamus is issued to the respondents/RRBs to consider the case of the petitioners who are found eligible in the reserve list and offer them appointments, if they are found to be otherwise eligible. (c) This exercise shall be completed by respondents 2 to 4 herein as expeditiously as possible and at any event, within three months from the date of receipt of a copy of this order. Sd/- JUDGE bkp CT:MJ

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