

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,

Chief Justice

Mr. Justice Hasan Foez Siddique

Ms. Justice Zinat Ara

Mr. Justice Md. Nuruzzaman

CIVIL APPEAL NOS.121-124 of 2018.

(From the judgment and order dated 16.11.2017, 27.07.2017 passed by the High Court Division in Writ Petition Nos.11249 of 2016, 2611 of 2017 and 3877 of 2016.)

Managing Director, Rupali Bank Ltd., Appellant.
Head Office, Dhaka : (In C.A.No.121/18)

Managing Director and CEO, Janata Bank Appellant.
Ltd., Head Office, Dhaka and another : (In C.A.No.122/18)

Managing Director and CEO, Janata Bank Appellant.
Ltd., Head Office, Dhaka and another : (In C.A.No.123/18)

Banker's Selection Committee Appellant.
represented by its Chairman, Banker's (In C.A.No.124/18)
Selection Committee Secretariat,
Bangladesh Bank, Head Office, Dhaka:

=Versus=

Md. Shahrier Perves and others : Respondents.
(In C.A.No.121/18)

Suman Kanti Nath and others : Respondents.
(In C.A.No.122/18)

Nur Mohammad and others : Appellant.
(In C.A.No.123-124/18)

For the Appellant : Mr. Mahbubey Alam, Senior
(In C.A.No.121/18) Advocate (with Mr. Masum,
Advocate & Mr. Masud Ahmed
Sayeed, Advocate) instructed
by Mrs. Nahid Sultana,
Advocate-on-Record.

For the Appellant : Mr. Mahbubey Alam, Senior
(In C.A.No.122-123/18) Advocate (with Mr. Masum,
Advocate & Mr. Masud Ahmed
Sayeed, Advocate) instructed
by Mr. Ferozur Rahman,
Advocate-on-Record.

For the Appellant : Mr. Shamim Khaled Ahmed,
(In C.A.No.124/18) Senior Advocate instructed by
Mr. Md. Abdul Hye Bhuiyan,
Advocate-on-Record.

For Respondent Nos.1-42 & 44-94: Mr. Bivash Chandra Biswas,
(In C.A.No.121/18) Advocate-on-Record.

For Respondent No.43 : Mr. Md. Bahar Uddin Al Razi,
(In C.A.No.121/18) Advocate-on-Record.

Respondent Nos.95-102 : Not represented.
(In C.A. No.121/18)

For Respondent No.1 : Mr. Sheikh Fazle-Noor-Taposh,
(In C.A.No.122/18) Advocate instructed by Mr.
Zainul Abedin, Advocate-on-
Record.

Respondent Nos.2-7 : Not represented.
(In C.A.No.122/18)

For Respondent No.1-73 : Mr. M. Amirul Islam, Senior
(In C.A.No.123/18) Advocate instructed by Mr.
Shamsul Alam, Advocate-on-
Record.

Respondent Nos.74-276 : Not represented.
(In C.A.No.123/18)

For Respondent No.1-187 : Mr. M. Amirul Islam, Senior
(In C.A.No.124/18) Advocate instructed by Mr.
Shamsul Alam, Advocate-on-
Record.

Respondent Nos.188-246 : Not represented.
(In C.A.No.124/18)

Date of hearing on : 02.04.2019, 09.04.2019 & 23.04.2019.
Date of judgment on : 30.04.2019.

J U D G M E N T

Hasan Foez Siddique, J: All these appeals being Civil Appeal Nos.121,122,123 and 124 of 2018 have been heard together and they are being disposed of by this common judgment.

Civil Appeal No.121 of 2018 has been preferred by the Rupali Bank Limited (Rupali Bank, in short) against the judgment and order dated 16.11.2017 passed by the High Court Division in Writ Petition No.11249 of 2016 and rest of the appeals, that is, Civil Appeal Nos.122,123 and 124 of 2018 have been preferred against the judgment and order dated 27.07.2017 passed by the High Court Division in Writ Petition No.2611 of 2017 and 3877 of 2016. In all the writ petitions, the writ petitioners have challenged the job circular No.42 of 2016 dated 26.07.2016 and Circular No.45/2016 dated 03.08.2016 issued by the Bankers Selection

Committee and prayed for a direction upon the writ respondents for their recruitment before making any further recruitment since their names were earlier empanelled by the respective Banks, that is, Rupali Bank and Janata Bank Limited (briefly, Janata Bank).

The facts of Writ Petition No.11249 of 2016, inter alia, were that the Rupali Bank Limited issued job circulars and those were published in various Daily Newspapers on different dates. The said circulars were also posted in its website. Those circulars were subsequently amended inviting applications from eligible candidates for preparing a panel of qualified candidates for recruitment in the posts of 'Senior Officers' and 'Officers'. Last date of submitting applications was on 10.07.2013. The writ petitioners applied for the posts advertised and participated in the MCQ test and written examination which were held on 27.09.2013 and 04.10.2013 respectively. Results of MCQ and written examinations were duly published. A total number of 2655 candidates for the posts of Senior Officers, and 1414 candidates for the posts of Officers, were passed in the MCQ and written examinations. The Viva Voce tests were held from 17.01.2014 to 29.01.2014 for the posts

of Senior Officers and from 13.12.2013 to 15.12.2013 for the posts of Officers. Final result of the candidates, who passed in the viva voce test, was published officially on 03.07.2014. A total number of 401 candidates were selected for recruitment in the posts of Senior Officers and a waiting list was prepared. Similarly, a total number of 501 candidates were selected for recruitment in the posts of Officers and a waiting list was prepared. On 21.09.2015, a circular was issued under the signature of the Deputy Secretary, Ministry of Finance, forming a 17 members Bankers Selection Committee (shortly, the BSC) for appointment of Officers (1st and 2nd Class) of State owned Commercial Banks, Specialized Banks and Financial Institutions. Member Secretary of the BSC issued a letter communicated under memo No. বিএসসিএস-১০৩/২০১৫-১১ তারিখ ০৩/১১/২০১৫ addressing the Managing Director, Rupali Bank informing him about the resolution of the 1st meeting, held on 28.10.2015, of the BSC for recruitment in the posts of Senior Officers and Officers. The writ petitioners tried to know about the fate of empanelled candidates but the Bank authority did not publish their names/roll numbers despite repeated requests. The Bank for unknown

reasons delayed recruitment from the said waiting list inasmuch as writ petitioners are supposed to be recruited in those posts according to their position in the merit list. The Bank, by not taking any step for the recruitment of the writ petitioners, frustrated their legitimate expectation causing immense sufferings to the writ petitioners. News has been published in different electronic and print media that about seven thousand candidates have been depriving from the opportunity of being appointed for the decision of the Finance Ministry. The writ petitioners including other candidates of Sonali Bank, Janata Bank and Rupali Bank filed applications to the Government for their appointments but without giving any attention to their right and legitimate expectation to be appointed, the writ respondent No.3, Member Secretary of the BSC published the impugned job circulars. Thereby, the writ respondents violated the writ petitioners' fundamental right guaranteed under articles 27 and 29 of the Constitution and frustrated their legitimate expectation to be appointed in those posts. Thus, they filed the aforesaid writ petition and obtained Rule.

The Rupali Bank contested the Rule, by filing an affidavit-in-opposition and a supplementary affidavit-in-opposition contending that the BSC is a Committee that has been formed to prepare a panel for holding examination, scrutinization and selection of the candidates for the purpose of appointments in the posts of 1st and 2nd Class Officers in the nationalized banks and financial institutions.

It is stated that earlier Rupali Bank issued an employment notification inviting applications from competent candidates for recruitment in the posts of Senior Officers and Officers. The MCQ test and written examination were held on 27.09.2013 and 04.10.2013 respectively. Result of written test was published on 26.11.2013. In total 2655 candidates for the posts of the Senior Officers and 1414 candidates for the posts of the Officers passed in MCQ and written examinations. Their Viva voce test was held from 13.12.2013 to 29.01.2014 for the post of Senior Officers and Officers. A total number of 1322 candidates appeared in the Viva Voice test for the post of Officers and 2308 candidates for the post of Senior Officers. Finally, 501 candidates were selected for the post of Officers and 403

candidates were selected for the post of Senior Officers. It was further contended that appointment letters for the post of Senior Officers were issued to 401 selected candidates and appointment letters for the posts of Officers were issued to 501 selected candidates in order to their merit and following quota system. Out of them 351 selectees joined in the post of Senior Officers and 478 selectees joined in the post of Senior Officers. Out of 401 selectees, 22 in merit quota, 17 in freedom fighter quota, 9 in district quota and 6 in women quota, that is, in total 54 selectees did not join in the service. Similarly, 16 in merit quota, 3 in freedom fighter quota, 3 in district quota and one in women quota did not join in the post of officers. It was further contended that writ petitioners are not aggrieved persons as validity period fixed for waiting list had already expired. It was further contended that writ petitioners No.15, 48, 54, 56, 72, 74, 83 and 93 did not pass in viva voce test and writ petitioner Nos.50 and 87, 44 and 88 are identical candidates. It was contended that the names of the applicants, who were claiming their appointments in Freedom Fighter quota, were sent to the Ministry of Finance vide letter dated 30.06.2014

for verification. In supplied lists of freedom fighters, name of Haji Mohammad Khalil Uddin father of candidate Nurun Nahar Munni was not communicated. Subsequently, the Ministry of Finance by letter dated 30.09.2014 supplied verified list, in which, name of Haji Mohammad Khaliluddin father of candidate Nurun Nahar Munni appeared as freedom fighter. Considering the same, Rupali Bank appointed Nurun Nahar Munni as Senior Officer.

Facts, in short, in Civil Appeal Nos.122,123 and 124 of 2018 are that the writ petitioners filed Writ Petition Nos.3877 of 2016 and 2611 of 2017 stating, inter alia, that on 19.08.2014, Janata Bank published a recruitment circular dated 14.08.2014 in the Daily Ittefaq seeking applications from eligible candidates for preparing a panel of qualified candidates for the post of 'Assistant Executive Officer' (AEO) and 'Assistant Executive Officer-Teller' (AEO-Teller). The writ petitioners applied for the above mentioned post and got admit cards for sitting in MCQ test and written examination. The MCQ test, written examination and Viva Voce tests were held duly. Thereafter, final results of the qualified candidates were published on 08.06.2015 for the

post of AEO and on 27.08.2015 for post of AEO-Teller. Of them, 189 candidates were selected for appointment in the post of AEO and other 583 candidates were kept in the Panel for future recruitment. For the post of AEO-Teller, more than 1883 candidates were found successful in the Viva Voce test. Among them, initially 497 candidates were selected for appointment and 1386 candidates were kept in the waiting list. Thereafter, 10 more were recruited in the post of AEO on 05.08.2015 from waiting list in order of their merit. Thereafter, again one on 18.10.2015 and 12 on 24.11.2015 were recruited for the post of AEO. A panel of 570 candidates was prepared. The writ petitioners further contended that there is established practice of appointments from empanelled candidates. But a new committee namely the 'Bankers Selection Committee' (the BSC) was formed by the Ministry of Finance (Bank and Financial Institution Division) on 21.09.2015 for recruitment of 1st and 2nd Class Officers in the State owned banks and other financial institutions replacing the old 'Bankers Recruitment Council' (BRC). The Member Secretary of the BSC have published the impugned circulars being Circular Nos.16/2016 and 17/2016 in various

dailies on 24.03.2016 and 25.03.2016 for recruitment to the posts of AEO and AEO-Teller without appointing the successfully passed and eligible candidates from the existing panels prepared in 2015. Accordingly, the writ petitioners filed the aforesaid writ petitions and obtained Rules.

The Janata Bank contested the Rule by filing an affidavit-in-opposition contending that, against vacant post of AEO, 189 qualified candidates and against vacant post of AEO-Teller, 497 persons were appointed directly and a panel was prepared keeping 583 candidates in the list for further recruitment in the post of AEO against those who would fail to join by 31.12.2015 maintaining quota system strictly. The posts falling vacant due to not joining of respective selectees or leaving the job for any reason would be fulfilled from the panel against the quotas of the same candidates. Likewise 497 candidates were directly appointed in the post of AEO-Teller and a list of panel consisting 1386 candidates were prepared for future appointment against those who would fail to join by 29.02.2016 from the same quota. Waiting list was prepared to fulfill the posts falling vacant due to not joining or

otherwise leaving the job from among the panel. Specific validity period of panel was fixed on 31.12.2015 for the post of AEO and 29.02.2016 for the post of AEO-Teller. Within the said period if any post is lying or falling vacant in the posts of AEO and AEO-Teller the same should be filled up from among the panel strictly maintaining quota system. It was never decided to give appointment to all candidates from the panel list. Some of the posts as mentioned have been filled up against those who did not join the job even after receipt of appointment letters. In the meantime, some more posts i.e. 302 in the posts of AEO and 417 in the posts of AEO-Teller had fallen vacant. Human Resource Development Department of Janata Bank with a view to fill up the vacant posts, wrote a letter to the MD and CEO of the Bank for filling up the vacant posts of AEO & AEO-Teller from the existing panel list by obtaining permission from the Ministry of Finance. The Board of Directors of the Bank approved the proposal for appointment subject to prior permission from the Ministry of Finance. But the Ministry of Finance vide its letter dated 24.05.2015 refused to give permission for appointment from the existing panel. It has been made binding upon the banks to obtain

clearance from the Ministry of Finance in case of any appointment of manpower vide letter dated 17.12.2009. The Chairman of the respondent Bank had no independent power to give appointment in any post of Janata Bank without prior clearance of the Ministry of Finance. Since the Ministry had already refused approval for appointment in the posts of AEO & AEO-Teller to meet urgent manpower requirement of the bank from among the existing AEO & AEO-Teller panel list which was recommended by the Board of Directors of Janata Bank, as such, the Chairman was unable to exercise any power regarding appointment in any post of this bank. When the Janata Bank wrote letters to the Ministry of Finance through MD and CEO and Board of Directors, the Ministry replied in the negative vide letter dated 26.11.2015 stating, “জনতা ব্যাংক লিমিটেড-এ এ্যাসিস্ট্যান্ট অফিসার (এইও) পদে অতিরিক্ত ৩০২ জন এবং এ্যাসিস্ট্যান্ট এক্সিকিউটিভ অফিসার-টেলর (এইও-টেলর) পদে ৪১৭ জন কর্মকর্তা নিয়োগের লক্ষ্যে অত্র বিভাগ হতে অনুমাদন/ছাড়পত্র প্রদান করার সুযোগ নেই এবং বিষয়টি ‘ব্যাংকার্স সিলেকশন কমিটি’ -কে অবহিত করে উক্ত কমিটির সুপারিশ/মতামত গ্রহণ করা যেতে পারে।” Thereafter, Janata Bank applied to Bangladesh Bank, who is one of the members of ‘Bankers Selection Committee’ for arranging appointment to fill up the vacant posts of AEO & AEO-Teller. The Bangladesh Bank wrote letter to the Ministry of Finance for according

permission to fill up the vacant posts from empanelled candidates. But the Ministry of Finance, instead of according permission to fill up the vacant posts from among the existing panel, directed Janata Bank to arrange for fresh appointments. As per direction of Ministry of Finance, the BSC published an advertisement in Daily Ittefaq on 10.03.2016 for filling up the vacant posts since the validity of previous panel had expired.

After hearing the parties, the High Court Division disposed of the Rule issued in Writ Petition No.11249 of 2016 with the observations that,- "if a candidate from a Waiting List is given appointment after formation of the Banker's Selection Committee, the petitioners are also entitled to be treated likewise as per merit and equally before new appointment by new circular which should be determined within period of 60 days from the date of the receipt of the judgment."

The Rules issued in Writ Petition Nos.3877 of 2016 and 2611 of 2017 are made absolute with the observation and direction that,-

"the writ petitioners in these two writ petitions, the Bank concerned and indeed all the writ respondents are,

accordingly, to read the beneficial disposal of these two Rules Nisi as a 'one off' privilege to be appointed as AEOs or AEO-Tellers from existing panels recognized judicially under exceptional circumstances which process must, however, draw to a close within a period of 6(six) months computed from the date of receipt of certified copy of this judgment."

Against the aforesaid judgment and order, Rupali Bank preferred Civil Appeal No.121 of 2018 and Janata Bank preferred Civil Appeal Nos.122 and 123 of 2018 and Bangladesh Bank and another preferred Civil Appeal No.124 of 2018.

Mr. Mahbubey Alam, learned Senior Counsel appearing for the appellant in C.A.Nos.121,122 and 123 of 2018 submits that since the job circular did not contain any provision of preparing any panel for future appointments in the banks, the High Court Division committed an error of law, virtually, in directing to appoint Senior Officers and Officers from the alleged panel list of Rupali Bank. He further submits that Rupali Bank appointed Nurun Nahar Munni from the freedom fighter quota and not from the panel list, the High Court Division committed error of law in holding that other candidates of the panel list prepared had not been treated equally. He further

submits that since in the earlier advertisement no assurance was given to the unsuccessful candidates that they would be appointed from the Waiting List, who were not finally selected earlier, the question of legitimate expectation does not arise at all, the High Court Division erred in law in making the impugned observations and direction. He further submits that the Government having formed Bankers Selection Committee for selecting the Officers of all State owned banks including Rupali Bank and Janata Bank for fair and impartial appointment of Officers for the banks, the High Court Division erred in law in holding that in case of the Rupali Bank and Janata Bank the appointment should be made from those candidates who have not yet been selected. He finally submits that the writ petitioners, who are allegedly placed in the Waiting list, can not compel the banks for their recruitment only because their names were included in the waiting list which did not create any enforceable right to be appointed, the High Court Division erred in law in making the impugned direction.

Mr. Shamim Khaled Ahmed, learned Senior Counsel appearing for the appellant in Civil Appeal No.124 of 2018, submits that the impugned

judgment of the High Court Division is liable to be set aside since it failed to appreciate that inclusion of the writ petitioner's name in the alleged panel/waiting list pursuant to the job circular did not create any enforceable right in their favour, particularly, when the same was subject to validity period, which admittedly, having expired and not having been re-validated no tacit or implied promise or undertaking of assured employment in favour of the writ petitioners accrued with a concomitant obligation imposed upon the writ petitioner-respondents to positively employ or appoint the writ petitioners to the vacant posts.

Mr. A.M. Aminuddin, learned Senior Counsel appearing for the respondents in C.A. No.121 of 2018 submits that Annexure-U and Memo dated 03.08.2017 show that Rupali Bank prepared a panel list with remaining successful candidates and this Bank also sought for permission to appoint the empanelled candidates in the vacant posts, the High Court Division rightly disposed of the Rule with the direction. He submits that the Rupali Bank complying the recruitment process, prepared panel for appointment of the empanelled candidates in the vacant posts, the High Court Division upon

proper consideration of the facts rightly passed the impugned direction. He submits that one Nurun Nahar Munni was arbitrarily appointed as Senior Officer from empanelled candidates but the Rupali Bank, discriminating the writ petitioners, did not appoint them, as such, they are entitled to be treated equally.

Mr. Sheikh Fazle-Noor Taposh, learned Senior Counsel appearing for the respondent in Civil Appeal No.122 of 2018 submits that the High Court Division rightly observed that Janata Bank had the authority to deal with the empanelled candidates but they have been denying the same to the writ petitioners most illegally and arbitrarily violating the Janata Bank Service Rules, 2018 (the Rules) as well as violating the provision of articles 27,29 and 31 of the Constitution. He further submits the subsequent job circular issued by the Banker Selection Committee is ex-facie illegal and arbitrary inasmuch as before exhausting empanelled candidates the said process is discriminatory and unfair as well. He finally submits that every citizen should be treated with law and only accordance with law under the Constitution, the appellant, taking discriminatory steps, deprived the writ petitioner-respondents

from getting their appointments inasmuch as their names were duly empanelled.

Mr. M. Amirul Islam, learned Senior Counsel appearing for the respondents, in Civil Appeal Nos.123 and 124 of 2018 submits that the High Court Division rightly observed that the Janata Bank had the authority to deal with the empanelled writ petitioners as per rule 504 of the “জনতা ব্যাংক লিমিটেড চাকুরী বিধিমালা-২০০৮” but they have been denying the same to the writ petitioners most illegally. He submits that the job circulars of Bankers Recruitment Committee before appointment of the respondents is arbitrary and malafide. He submits that in view of the fact that the writ petitioners, who were empanelled are entitled to be appointed before any other recruitment and that they legitimately expected so since their names have been empanelled for future appointment. He further submits that the writ petitioners should be appointed in view of the fact that earlier in similar circumstances the candidates empanelled were appointed. He next submits that the Janata Bank in its 399th meeting decided that the panel would be remained valid till 30.06.2016 whereas impugned notification was made by the Bankers Selection Committee before expiry of the validity

period of the panel which is malafide. He submits that Janata Bank in its Board meeting observed that it urgently needed more than 4000 employees and that since the names of the petitioners were empanelled for future recruitment they are entitled to be appointed in the vacant posts and therefore, the High Court Division passed the impugned judgment rightly.

In Civil Appeal No.121 of 2018, it appears that in 2013 Rupali Bank issued a job circular for appointment in the posts of Senior Officers and Officers and it was published in different daily newspapers in different date and also posted in its website. Last date of submitting applications was on 10.07.2013. In response to the said circular, the writ petitioners filed applications for getting job. They participated in the Multiple Choice Question (MCQ) test and, thereafter, in written examinations on 27.09.2013 and 14.10.2013 respectively. Result was published on 26.11.2013. In total, 2655 candidates for the post of Senior Officers and 1414 candidates for the post of officers were passed in the said MCQ and written examination. A total number of 2308 candidates for the posts of Senior Officers and 1322 candidates for the post of Officers appeared in viva-voce

examination. Final result of the candidates, who passed in the viva-voce test, was published officially on 03.07.2014. Out of 2308 candidates 401 candidates were selected for recruitment in the post of Senior Officers. It is the case of the writ petitioners that rest 1907 candidates including the writ petitioner-respondents were empanelled for future recruitment in the post of Senior Officers. Similarly, on 12.01.2014 501 candidates out of 1322 were selected for recruitment in the post of officers.

It is the case of the writ petitioners that the rest 821 candidates including the writ petitioner-respondents were kept in the panel list for future recruitment in the posts of Officers.

Rupali Bank selected 401 candidates for appointment in the post of Senior Officers. Out of them, 45%, that is, 206 candidates were appointed according to merit, 80 candidates were appointed in freedom fighter quota (though 137 candidates were entitled to get appointment in freedom fighter quota only 80 candidates were passed), 46 candidates were appointed in district quota. Another 46 were candidates were appointed from the female quota and 23 candidates were appointed from tribal people. In the post of Officers, 501 were

selected for appointment. Of them, 301 candidates were selected for appointment on the basis of merit, 33 candidates were selected from freedom fighters quota (though as per quota 201 candidates were entitled to get appointment only 33 candidates were passed in freedom fighter quota), 67 candidates were selected in district quota, 67 candidates were selected in female quota and 29 candidates were selected from tribal people. The list of selected candidates for appointment in the post of Senior Officers was published on 03.07.2014. Similarly, list of selected candidates for the post of officers was published on 12.01.2014.

It is the case of the writ petitioners that name of one Nurun Nahar Munni appeared in the waiting list in serial 1259 and she was appointed but the case of the other writ petitioners has not been considered, thereby, the authority discriminated them.

From the supplementary affidavit-in-opposition dated 14.11.2017 filed by Rupali Bank it appears that Nurun Nahar daughter of Haji Khalil Uddin claimed that she was entitled to get job in freedom fighter quota. Rupali Bank sent her papers to the Ministry of Finance for necessary

verification. The Ministry of Finance, by letter dated 30.09.2014, supplied a verified list (Annexure-4), in which, name of said Haji Md. Khalil Uddin father of Nurun Nahar appeared. In the said supplementary affidavit-in-opposition, the Bank produced some documents in support of the claim of said Nurun Nahar Munni that her father was a freedom fighter (Annexure-4-1, 4-2, 4-3, 4-4, 4-9). Considering all those documents and verified list submitted by Ministry of Finance, said Nurun Nahar Munni was finally selected in freedom fighter quota. So, it is difficult to say that she was appointed arbitrarily and authority concerned adopting pick and choose policy appointed her. Conclusion arrived at by the High Court Division in this regard is erroneous.

In Civil Appeal Nos.122, 123 and 124 of 2018 in its advertisement, Janata Bank mentioned the number of posts to be appointed specifically. Said advertisement was published in the 'Dainik Ittefaq' on 19.08.2014 for appointment in 254 posts of Assistant Executive Officers and in 494 posts of Assistant Executive Officers-Teller after getting approval from Ministry of Finance dated 29.06.2014. After holding MCQ and written tests 254 and 494 candidates were selected primarily for

the posts of Assistant Executive Officers and Assistant Executive Officer-Teller respectively. Out of 254 candidates 115 were appointed according to merit, 11 were appointed in freedom fighter quota (As per quota system 76 candidates were entitled to get appointment in freedom fighter quota but only 11 were found eligible) 25 candidates were appointed in female quota, 25 candidates from district quota, 2 was appointed from tribble people and one was from physically challenged candidate. Janata Bank prepared a panel list of 583 candidates and the validity period of the said panel was initially provided till 31.12.2015. Out of 189 appointed candidates, 12 did not join. Accordingly, out of 583 empanelled candidates, 10 were selected from merit list. 2 were entitled to get appointment in freedom fighter quota. Since there was no son/daughter of freedom fighter enlisted in the panel those two posts were kept reserved for them. Out of those 10 appointed in merit list, one did not join and, accordingly, another one was appointed from merit list.

In the post of Assistant Executive Officer-Teller 293 candidates were selected in merit list, 42 were selected in freedom fighter quota but 195

persons were entitled to get appointment in that quota (153 were kept reserved for filling up from freedom fighter quota). 65 candidates were selected in female quota, 65 candidates were selected in district quota and 5 were selected from tribble people but 32 persons were entitled to get appointment as per quota system. But due to non-availability of successful candidates in the all freedom fighter quota and physically challenged person quota those posts were kept reserved for future appointment. 25 selected candidates did not join from different quotas. Of them, 15 were from merit quota, 3 were from freedom fighter quota and 3 from female quota. Out of the approved panel of 1719 candidates, 22 were appointed following the quota system and 3 posts were kept reserved for freedom fighter quota.

Those are the exact pictures of the appointments made by Rupali Bank and Janata Bank as appeared from the materials available in the record. The subsequent appointments from the waiting list were given following the quota system strictly. The allegation of arbitrariness is unacceptable. Generally, waiting list candidates would serve as a reservoir of the candidates in order to fill up the remaining requisitioned and

advertised vacancies. If that can not be done within a reasonable period, the reservoir will dry up and the entire list will get exhausted.

The names of writ petitioners and others were enlisted in the waiting list. Main issue for our consideration is that though the writ petitioner-respondents are not in the original merit list of selectees of higher merit, they are to be appointed in the future vacant posts or not. In this connection let us examine the views expressed by the Apex Courts of the subcontinent.

As to whether a candidate acquires any right to appoint since his name was listed in the waiting list has been examined by the Supreme Court of India in number of cases, time and again.

In the case of State of Haryana V. Subash Chandra Marwaha reported in (1974) 3 SCC 220 it was held that the State has a right not to appoint a candidate even if his name appears in the merit list. Observation was as under:

“In the present case it appears that about 40 candidates had passed the examination with the minimum score of 45%. Their names were published in the Government Gazette as required by Rule 10(1) already referred to. It is not

disputed that the mere entry in this list of the name of candidate does not give him the right to be appointed. The advertisement that there are 15 vacancies to be filled does not also give him a right to be appointed. It may happen that the Government for financial or other administrative reason may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have a right to be appointed. The list is merely to help the State Government in making the appointments showing which candidates have the minimum qualifications under the Rules. The stage for selection for appointment comes thereafter, and it is not disputed that under the constitution it is the State Government alone can make the appointments."

In the case of *Jatindra Kumar V. State of Punjab* reported in (1985)1SCC 122 it was observed by the Supreme Court of India that,- "the process for selection and selection for the purpose of recruitment against anticipated vacancies does not

create a right to be appointed to the post which can be enforced by a mandamus."

In this context, we have also to bear in mind the exposition of law by Constitutional Bench in the case of Shankarrao Dash V. Union of India (1991) 3SCC 47. In that case the Indian Supreme Court observed that,- "it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment Rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner."

In Food Corporation of India V. Bhanu reported in (2005)3SCC 618, considering the submissions, Indian Supreme Court observed that,- "it is fairly well settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may

appear in the merit list but he has no infeasible right to an appointment."

In *Batiarani Gramiya Bank V. Pallab Kumer*, (2004)9 SCC, Indian Supreme Court dealing with the question held that the State as an employer has a right to fill up all the posts or not to fill up them. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus.

We shall now refer the decision in the case of *Pitta Naveen Kumar and others V. Raja Narasaiah Zangiti and others*, (2006) 10 SCC 261 in which by expressing indentifical view Supreme Court of India observed that a person does not acquire a legal right to be appointed only because his name appears in the select list.

Similar view has been expressed in the case of *S.S. Balu Vs. State of Kerala* reported in (2009) 2 SCC 479 where it was held that the State as an employer has a right to fill up all the posts and not to fill them up. A Candidate will have no legal right for claiming a writ in the nature of mandamus unless there is discrimination or

arbitrariness in regard to the filling up of the vacancies.

In another judgment in the case of Manoj Manu Vs. Union of India, (2013) 12 SCC 171 it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.

Indian Supreme Court again in the Case of State of Orissa Vs. Rajkishore Nanda reported in (2010) 6 SCC 777 observed that empanelment at best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed.

In a recent case reported in (2016) 6 SCC 532 (Kulwinder Pal Sing Vs. State of Punjab) Supreme Court of India made a survey of the authorities and again observed that the name of a candidate

may appear in the merit list but he has no indefeasible right to seek an appointment.

That view of the Supreme Court of India in this regard is consistent that a wait listed candidate has no right to claim appointment and the appointing authority is under no legal obligation or duty to fill all or any vacancy.

In an identical circumstances, in the case of Md. Shamimul Ahsan, and others Vs. the Secretary, Ministry of Finance, in Civil Petition for Leave to Appeal Nos.161 of 2018 heard analogously with C.P.Nos.397,699,716-17 of 2018, this Division has observed:

“On perusal of the materials on record, we do not find anything to suggest that any indication was given to the intending applicants that they would be included in a ‘Panel’ or ‘Waiting List’ and would be considered for recruitment in the future. The advertisement in response to which the petitioners applied was for a finite number of vacancies. Once those vacancies are filled in there cannot be any expectation that the candidates who were successful in the examination would

automatically be appointed in any future recruitment drive. We do not find that any such assurance was given by the authorities."

This Division again in the case of Public Service Commission Vs. Ripon Chandra Shil and others in Civil Appeal No.99 of 2018 heard with C.P.Nos.1829,1830,1843, 2379-2380 of 2018 has observed:

"The total scenario, in a nutshell, is that advertisement was published for appointment of 411 vacant posts which was subsequently increased at the instance of requisitioning authority adding 135 more posts. Accordingly, the PSC recommended 546 persons for appointment. The recruitment process, as is well known, must commensurate with the statute or the statutory rule operating in the field. In advertisement published it was not indicated that a panel for filling up of the future vacancies is to be prepared by the PSC. From the notification of the PSC it appears that the life of the panel prepared was for a limited period and limited purpose and purpose was that if

out of 546 candidates any candidate or candidates do not join the same should be filled up from the panel."

There may be vacancies but, for financial constrains, the appointing authority may not in a position to initiate the selection process for making appointments. It is left at the discretion and wisdom of the employer. Looking to the need, administrative exigency, financial capability, availability of infrastructure for the post, in question, and/or such other relative aspects, the appointing authority may not think it fit to fill up all the vacancies, if any, vacancy of the post is one thing and advertisement to fill up the vacancy is altogether another thing. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is not obligatory on the part of the appointing authority that whatever is the vacancy of the post, must be filled up and correspondingly there is no right, vested in the writ petitioners that even they are in waiting list, they can recalculate the vacancies and transgress waiting listed candidates into the list of the selected candidates.

It cannot be used as a perennial source of recruitment filling up the vacancies not advertised. It is not approved that since vacancies had not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed. Candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate, selected against existing vacancy, does not join for some reasons and the waiting list is still operative. Waiting list is operative only for the contingency that any of the selected candidates does not join then the candidate from the said list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the appointing authority may pick up in order of merit therefrom. The notification amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the appointing authority is under no legal obligation to fill up all or any of the vacancies. The selection process by way of requisition an advertisement can be started for clear vacancy but not for future vacancy. In the instant case although the names of

the writ petitioners were empanelled, they had not acquired any vested right to get appointment. In the notification for employment there was no stipulation that any such panel was to be prepared for future appointment in future vacancies.

The writ petitioners in every petitions prayed for a direction to appoint them before any other recruitment. But the writ petitioners for an order of mandamus must show that they have acquired a legal right to the performance of a legal duty by the party against whom mandamus is sought for. It is elementary that no one can ask for mandamus without a legal right. The Court can not force the bank to accommodate waiting listed candidate. There must be a judicially enforceable right as well as a legally protected right before one suffering a grievance can ask for a mandamus.

The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Each one of the listed candidates stands on a separate level of competence as compared with another. It is not the case of the writ petitioners that they are the selectees higher in merit list and the appointing authorities

overlooked the merit lists. Even if vacancies are available and the employer bonafide declines to make appointment, the candidates on the Panel list have no right to claim appointment.

Mr. M. Amirul Islam submits that the writ petitioners legitimately expected that they would be appointed since their names were empanelled and in view of the fact that earlier the Bank appointed officers from the waiting list and since the Board of Directors of the banks approached the Ministry of Finance to accord necessary approval for appointing the empanelled selectees.

The doctrine of legitimate expectation is at a stage of evolution. It can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. Unless a legal obligation exists, there cannot be any legitimate expectation. Where the expectations are based upon some statement or undertaking by or on behalf of the public authority, a person having no enforceable right but affected or likely to be affected by an action of the public authority, may approach a court of law for appropriate relief. Mr. Islam failed to show any statement or undertaking that the Bank authorities assured the writ petitioners that they would be appointed

since their names are in the waiting list. Mere advertisement is not a promise to appoint. The same is an invitation to fairly compete with all similarly situated persons who think that fulfill particular eligibility criteria. The doctrine does not give scope to claim relief straightway from the appointing authority as no crystallized right as such is involved. It is relevant here to refer decision of Chanchal Goyal V. State of Rajasthan reported in AIR 2003 SC 1713. In that case appellant was appointed Lady Doctor temporarily for six months or till the candidate selected by the Public Service Commission (PSC) was available, which ever was earlier. Her services were terminated on the ground that the candidate selected by the PSC was available. Appellant challenged the action. The single Judge allowed the petition, inter alia, on the ground of legitimate expectation as at the time of the impugned order, she had completed service of fourteen years. The Division Bench, however, reversed the order, Appellant approached the Supreme Court.

Dismissing the appeal and confirming the judgment of the Division Bench, the Supreme Court of India, observed, "On the facts of the case

delineated above, the principle of legitimate expectation has no application. It has not been shown as to how any act was done by the authorities which created an impression that the conditions attached in the original appointment order were waived. Mere continuance does not imply waiver. No legitimate expectation can be founded on such unfounded impression." The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established Procedure followed in regular and natural sequence which is unfounded in these cases.

The Constitutional discipline requires that the High Court Division should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates.

From the materials produced before us it is fully established that there was no arbitrariness whatsoever on the part of the banks in filling up the posts which were made from the waiting list as referred by the learned Counsel for the respondents. Since the advertised vacancies had been filled up according to merit and following the quota system, therefore, selection process in

that respect stood exhausted. The waiting list does not survive.

Moreover, in absence of any statutory provision one year can be considered as reasonable period for validity of a waiting list. Since the validity of the select panel has come to an end of the effix of time, therefore, there can not be any order to appoint the persons from such select list prepared about 4/5 years ago.

The writ petitioner-respondents have not acquired any enforceable right to be appointed. It is settled principle that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the writ petitioners directing the Banks to appoint the writ petitioners since they failed to establish that they have acquired an enforceable legal right to be appointed in the Banks since their names were empanelled and that the Banks have legal duty to appoint them.

Considering the facts, circumstances and discussions made above, we are of the view that

the High Court Division committed an error of law in making the directions as stated earlier.

Accordingly, we find substance in the appeals, Thus, all the appeals are allowed. The judgment and orders of the High Court Division in Writ Petition Nos.11249 of 2016, 2611 of 2017 and 3877 of 2016 are hereby set aside.

C.J.

J.

J.

J.

The 30th April, 2019.

M.N.S./words-7555/