

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

Con.Case(C) .No. 228 of 2015 (S)

AGAINST THE ORDER IN WP(C) 2842/2011 of HIGH COURT OF KERALA DATED
17.2.2011

PETITIONERS:

P.SEN MATHEW AGED 36 YEARS
S/O.MATHEW T.C., THEKKEKKUTTU, POTHUKAL,
MALAPPURAM DISTRICT - 679 334

BY ADVS.SRI.K.SHIBILI NAHA
SRI.SAJU RAGHAVAN

RESPONDENTS/2ND RESPONDENT:

1. SRI.P.C.BINOY
AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER
SECRETARY, KERALA PUBLIC SERVICE COMMISSION, PATTOM
THIRUVANANTHAPURAM - 695 004.
2. T.K.SALIM,
AGE AND FATHERS NAME NOT KNOWN TO THE PETITIONER
DISTRICT OFFICER, KERALA PUBLIC SERVICE COMMISSION
MALAPPURAM - 679 505.

R1 & 2 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR
ADMISSION ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Con.Case (C) .No. 228 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: CERTIFIED COPY OF THE INTERIM ORDER IN W.P.(C) .
NO.2842/2011 DATED 17.2.2011 OF THIS HON'BLE COURT.

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.A. TO JUDGE.

Kp/-

P.N.RAVINDRAN, J.

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Contempt Case (C) No.228 of 2015

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Dated this the 23rd day of July, 2015

JUDGMENT

This contempt case is filed alleging that the respondents herein who are the Secretary, Kerala Public Service Commission and the District Officer, Kerala Public Service Commission, Malappuram respectively, have wilfully disobeyed Annexure A interim order passed by this court on 17.02.2011 in W.P.(C).No.2842 of 2011. The brief facts of the case are as follows:

2. By a notification published in Kerala Gazette extraordinary dated 14.12.2009 (Ext.P2 in W.P.(C).No.2842 of 2011), the Kerala Public Service Commission (hereinafter referred to as "the Commission" for short) invited applications from eligible persons for appointment by direct recruitment to the category of Branch Manager in the District Co-operative Banks in 14 districts. The selection was confined to qualified regular employees of member societies/primary societies affiliated to the District Co-operative Banks. The last date stipulated in the said notification for submission of applications was 13.1.2010. The petitioner applied pursuant to the said notification. The said application was rejected on the ground that the petitioner does not possess the prescribed qualifications. The rejection of the

petitioner's application was communicated to him by Ext.P3 letter dated 22.10.2010 produced in W.P.(C).No.2842 of 2011. The petitioner thereupon submitted Ext.P5 representation dated 3.1.2011 before the Honourable Minister for Co-operation and thereafter on 27.01.2011 filed W.P.(C).No.2842 of 2011 in this court, challenging Ext.P3 communication issued by the District Officer, Kerala Public Service Commission, Malappuram and prayed for a writ in the nature of mandamus commanding the respondents in the writ petition to reconsider the application submitted by him for appointment to the post of Branch Manager, District Co-operative Bank, Malappuram. The main contention raised in the writ petition was that as the petitioner has passed the B.Com degree examination with Co-operation as special subject and he has got the requisite work experience, the rejection of his application is not in order.

3. When W.P.(C).No.2842 of 2011 came up for consideration before me on 17.2.2011, the writ petition was admitted and following interim order was passed:

“Admit. Sri. Alexander Thomas, learned Standing Counsel takes notice for respondents.

Heard. If as on today, the selection process for appointment to the post of Branch Manager in the Pothukal Service Co-operative Bank has not been completed, the respondents shall permit the petitioner to participate in the selection process subject to the outcome of the writ petition and on a provisional basis. The result of the examination/interview in so far as it relates to the Petitioner

need not be published unless otherwise ordered by this court."

By that order I directed the respondents in the writ petition to permit the petitioner to participate in the selection process subject to the outcome of the writ petition and on a provisional basis, if the selection process has not been completed. It was also clarified that the result of the examination/interview in so far as it relates to the petitioner need not be published unless otherwise ordered by this court.

4. The question whether the persons like the petitioner who have passed the B.Com Degree examination with Co-operation as special subject, are eligible to apply for appointment by direct recruitment to the post of Branch Manager in the District Co-operative Banks pursuant to the notification dated 14.12.2009 came up for consideration before me in W.P.(C).No.8497 of 2012 filed by a candidate who had applied for the direct recruitment as Branch Manager in the Kollam District Co-operative Bank. The application submitted by the petitioner in the said writ petition was rejected on the ground that she does not possess the prescribed qualification. After considering the rival contentions, I held that B.Com Degree with Co-operation as special subject was recognized as a qualification for the post only after the notification dated 14.12.2009 was issued, with effect from 2.11.2010. It was held that as the last date stipulated for submission of applications was 13.01.2010, the mere fact that at a later point of time the qualification which the petitioner possessed was

recognized as an alternate qualification is not a reason to hold that the petitioner was qualified and eligible to apply for the post. The writ petition was accordingly dismissed.

5. Though the petitioner in W.P.(C).No.8497 of 2012 carried the matter in appeal by filing W.A.No.793 of 2012, it was dismissed by judgment delivered on 13.4.2012. The Division Bench held that as on the date of the notification and as on the last date stipulated for submission of applications, the qualification which the petitioner possessed was not recognized as sufficient. The issue again arose for consideration before another learned single Judge in W.P.(C).No.19580 of 2012 and connected cases. Having regard to the contention raised by the petitioners therein that the amendment to the qualifications was brought about to remove the disparity in the rules and therefore it should deem to have retrospective effect, the learned single Judge referred the writ petitions to a Division Bench of this court by reference order passed on 19.9.2012. The Division Bench before which the W.P.(C).No.37412 of 2009 and connected cases came up, answered the reference by judgment delivered on 19.3.2013 holding that the notification recognizing B.Com degree with Co-operation as special subject as an alternate qualification was with effect from 2.11.2010 and that there is nothing in the notification to indicate that it is retrospective in operation. The Division Bench accordingly concurred with the judgment in W.P.(C).No.8497 of 2012 and the

judgment of the Division Bench in W.A.793 of 2012 affirming the said judgment.

6. The fact however remains that W.P.(C).No.2842 of 2011 filed by the petitioner herein is still pending in this court and has not been disposed of. It is in the background of these facts that this court has to consider the question whether the respondents have wilfully disobeyed Annexure A interim order passed by this court on 17.2.2011 in W.P.(C).No.2842 of 2011. Though pursuant to the Annexure A order, the petitioner was permitted to participate in the written test provisionally, he was not called for the interview that was held on 8.10.2014. It is contended that on the terms of the interim order passed by this court, the petitioner was entitled to be called for the interview, but deliberately and purposefully, he was not called for the interview. It is stated that this amounts to wilful disobedience of Annexure A interim order passed by this court. An affidavit dated 18.3.2015 has been filed on behalf of the respondents, wherein, referring to the judgment of the Division Bench in W.P.(C)No.37412 of 2009, W.P.(C)No.130 of 2010 and connected cases it is contended that the Division Bench of this court has held that the notification amending the qualification and introducing B.Com. Degree with Co-operation as an alternate qualification has no retrospective effect and therefore, on the terms of the notification inviting applications, the petitioner was not eligible to apply for the post. It is contended that the Commission

has acted only in accordance with the decision of the Division Bench and therefore, there is no merit in the contention that the respondents have willfully violated Annexure A interim order passed by this court.

7. It is not in dispute that the contention similar to the contention raised by the petitioner in the instant case was repelled by this court on more than one occasion. A Division Bench of this court has in W.A.No.793 of 2012, affirming my judgment in W.P.(C)No.8497 of 2012 held that candidates like the petitioner who have passed the B.Com. Degree examination with Co-operation as special subject are not eligible to be appointed as Branch Manager in the District Co-operative Bank pursuant to the notification dated 14.12.2009. Yet another Division Bench has in W.P.(C)No.37412 of 2009 and connected cases taken a similar view. Though the petitioners in W.P.(C)No.37412 of 2009 and connected cases have filed Special Leave Petitions before the Honourable the Supreme Court challenging the correctness of the judgment delivered by the Division Bench on 19.3.2013 in the said cases, the petitioner in W.P.(C)No.8497 of 2012 has not filed a Special Leave Petition against the judgment of the Division Bench dismissing W.A.No.793 of 2012 filed therefrom. The said judgment has attained finality. In any case, as far as the petitioner is concerned, unless the judgments of this court in W.A.No.793 of 2012 and W.P.(C)No.37412 of 2009 and connected cases are set aside, no relief can be granted to him in the writ petition.

W.P.(C)No.8497 of 2012 was heard and dismissed by me on 3.4.2012. W.A.No.793 of 2012 arising therefrom was dismissed on 13.4.2012. W.P.(C)No.37412 of 2009 and connected cases were disposed of by judgment delivered on 19.3.2013 accepting the stand taken by the Kerala Public Service Commission. If in such circumstances, if the Kerala Public Service Commission thought that the petitioner herein who is similarly placed as the petitioners in the aforesaid cases need not be called for the interview, for the reason that going by the said decisions he is not qualified for appointment to the post, it cannot be said that it was a deliberate act or a purposeful act to deny the petitioner the benefit of Annexure A interim order. On the facts disclosed, I am not persuaded to take the view that the respondents herein have willfully disobeyed Annexure A interim order passed by this court. The respondents ought to have in my opinion instead of waiting till the contempt case was filed, taken steps to have W.P.(C) No.2842 of 2011 disposed of in the light of the binding decisions of the Division Bench of this court.

For the reasons stated above, I hold that there is no merit in the instant contempt case. The contempt case fails and it is dismissed. No costs.

**P.N.RAVINDRAN
JUDGE**