

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 1985 of 2006 (J)

PETITIONER(S):

**PRAMOD, S/O.RAMACHANDRAN NAIR,
AGED 38, RESIDING AT SARANYA, VENCHAVOD,
SREEKARYAM P.O.**

BY ADV. SRI.J.S.AJITHKUMAR

RESPONDENT(S):

- 1. REGISTRAR OF CO.OPERATIVE
SOCIETIES, THIRUVANANTHAPURAM.**
- 2. THE PRESIDENT OF KERALA,
STATE POLICE C.I.D. STAFF, CO-OPERATIVE
SOCIETIES LTD. NO.T.322, SPECIAL BRANCH, C.I.D. OFFICE,
THIRUVANANTHAPURAM.**

**R2 BY ADV. SRI.G.ANANTHANARAYANAN
R1 BY SENIOR GOVERNMENT PLEADER SRI.K.K.SAIDALAVI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-11-2015 ALONG WITH WPC. 2291/2006& WPC. 2396/2006,
THE COURT ON 20-11-2015 DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DTD.26.12.2006.

EXT.P2: TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER TO THE
1ST RESPONDENT DTD.13.1.2006.

EXT.P3(a): TRUE COPY OF THE LETTER DTD.4.8.1992.

EXT.P4: TRUE COPY OF THE APPROVAL OF THE AMENDED BYE-LAW OF THE
1ST RESPONDENT.

EXT.P5: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DTD.3.4.2003.

EXT.P6: TRUE COPY OF THE JUDGMENT DTD.3.10.2003 IN OP.NO.7871/2003 (K) OF
THIS HON'BLE COURT.

EXT.P7: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DTD.20.1.2004.

EXT.P8: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DTD.21.1.2004.

EXT.P9: TRUE COPY OF THE COMPLAINT FILED BY THE SECRETARY OF THE
SOCIETY DTD.9.2.2004 BEFORE THE S.I. OF POLICE, MUSIUM POLICE
STATION.

EXT.P10: TRUE COPY OF THE FIR NO.50/CB-15/04 OF MUSEUM POLICE STATION.

EXT.P11: TRUE COPY OF THE REFER CHARGE IN CRIME NO.50/CB-15/04 OF MUSEUM
POLICE STATION.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.1985, 2291 & 2396 of 2006
= = = = =
Dated this the 20th day of November, 2015

JUDGMENT

The issue involved in these writ petitions relates to the eligibility of two employees of the Kerala State Police CID Staff Co-operative Society Ltd. T-322, Thiruvananthapuram to the post of Secretary of the said society on the basis of the proceedings of the Registrar of Co-operative Societies dated 26.12.2005. While, the petitioner in W.P(C) No.2291/2006 is challenging the aforesaid proceedings, the petitioner in W.P(C) No.1985/2006 is seeking implementation of the said proceedings. W.P(C) No.2396/2006 is filed by the then President of the aforesaid society challenging the aforesaid proceedings.

2. The petitioner in W.P(C) No.1985/2006 alleges that while he was working as Secretary in charge of Kerala Police CIE Staff Co-operative Society based on the education qualification, Feeder Category Rules and Bye-law (Appendix-II), the administrative committee promoted him to the post of Secretary. However, the managing committee headed by the second respondent reverted the petitioner as per resolution dated 15.1.2006 with a view to

promote the ineligible and under qualified staff of the society named Girija and as per the direction of this Court dated 28.10.2005 in W.P(C) Nos.5340/05 and 5242/05, the first respondent rescinded the reversion dated 15.1.2005 by Ext.P1 order. The petitioner alleges that even after the service of Ext.P1 order, the second respondent is deliberately delaying the implementation of Ext.P1 order arbitrarily for harassing him.

3. The petitioner in W.P(C) No.2291/2006 alleges that she is the senior-most employee in the society working in the cadre of accountant. She is an under graduate having JDC qualification. Her next promotion is to the cadre of Secretary. The petitioner further alleges that the third respondent is junior to the petitioner having the qualification of graduation. However, he was in the cadre of senior clerk which is below the cadre of accountant. The society was reclassified as Class III. The scale of pay of Secretary is enhanced beyond the starting of ₹250/-. Hence the third respondent put forward a claim for promotion in preference to the petitioner. The administrative committee took a decision in his favour. The petitioner points out that when the elected committee came into power which have reviewed the decision of administrative committee promoted the third respondent relying on the decision

reported in 1998 (2) KLT 1068 and Circular 15/87. The committee passed resolution granting exemption to the appellant from graduation and sought approval of the registrar which was pending. While so, the third respondent moved the Registrar to rescind the resolution of the committee reviewing the decision of the administrative committee. The Registrar rescinded the resolution which was challenged by the petitioner and the society in writ petitions. The decision was reversed by the Division Bench and directed the Registrar to reconsider on the basis of the aforesaid decision with notice to the petitioner. However, the Registrar without notice to the petitioner and without strictly complying with the direction of the Division Bench passed an order rescinding the decision of the elected committee and brought back the decision of the administrative committee. The petitioner further points out that this Court has set aside the order and directed the Registrar to reconsider the issue on the basis of the Division Bench decision. Again the Registrar passed an order similar to his earlier decision without properly appreciating the legal and factual issues.

4. The petitioner in W.P(C) No.2396/2006 alleges that the order passed by the Registrar of Co-operative Societies is in violation of the directions in W.A No.1886/2004 and connected

cases. The petitioner would point out that the proceedings under Rule 176 is without jurisdiction and after the amendment of Section 69 of the Co-operative Societies Act. According to the petitioner, only the Arbitration Court established under Section 70 alone has jurisdiction to deal with the dispute concerning service matters in view of Sections 69(1)(h) and 69(1)(d). Therefore, according to them, the order is unsustainable.

5. When the matter came up for hearing, the learned counsel for the petitioner in W.P(C) No.2396/2006 submitted that the petitioner has filed a memo stating that the writ petition is not pressed.

6. Arguments have been heard.

7. For convenience of discussion the petitioner in W.P(C) No.1985/2006 can be referred to as the first petitioner and the petitioner in W.P(C) No.2291/2006 can be referred to as the second petitioner.

8. The first petitioner joined the service as junior clerk in the society on 18.4.1994. He and the second petitioner were promoted to the post of Senior Clerk on 19.3.2001. On 1.4.2001, the second petitioner was promoted to the post of Accountant. This, according to the first petitioner, was without declaring her probation as senior

clerk. The learned counsel for the first petitioner would submit that the probation of the first petitioner was declared on 18.3.2002 and the administrative charge and the charge of secretary was given to him. On 25.11.2002, the second petitioner filed a petition to promote her to the post of Secretary and later she filed O.P No.7871/2003 against the classification of society into Class II and for promotion to the post of secretary. The President of the society rejected the application submitted by the second petitioner on 3.4.2003 on the ground that there was no required qualification as per the then existing bye-law to the post of secretary.

9. According to the first petitioner, he was promoted to the post of Secretary on 11.9.2003 considering his educational qualification. The learned counsel for the first petitioner would submit that O.P No.7871/2003 was dismissed on the ground that the second petitioner is under qualified and ineligible to the post of Secretary. After the election held on 4.12.200, the Board of Directors took charge on 8.12.2003 and as per resolution dated 15.1.2004, the managing committee reverted the first petitioner to the post of Senior Clerk.

10. It was pointed out that on 20.1.2004, the then President instructed the Registrar to retain the first petitioner as secretary.

Later the President of the society filed O.P No.5051/2004 on 12.2.2004. The first petitioner was suspended from the post of Senior Clerk pending the stay order. Later, the President rescinded the resolution dated 15.1.2004 and ordered reversion. The writ petitions filed by the President as well as the second petitioner was dismissed by this Court on 13.9.2004. This Court as per order dated 19.10.2004 in W.A Nos.1883, 1886 & 1890 of 2004 and as per order dated 13.12.2004 in R.P Nos.850, 85 and 853 of 2004 directed the President to reconsider the legality of the promotion of the first petitioner. Later the President directed the first petitioner to join duty as Secretary and to grant all service and monetary benefits. Though stay order was granted by this Court in W.P(C) No.5242/2005 and 5340/2005, vide common judgment in W.P(C) No.5242/2005 and 6394 of 2005 this Court directed the Registrar to pass fresh orders and to comply with the directions of the Division Bench dated 19.20.2004. Accordingly the order referred to in the opening paragraph of the writ petitions was passed.

11. Now the question to be answered is whether the said orders suffers from any illegality.

12. The second petitioner would state that the said order is incompetent. The learned counsel for the second petitioner would

submit that when the vacancy of the Secretary of the society arose, the second petitioner was legally qualified and the society gave promotion to the second petitioner. Later, the classification of the society was upgraded and on account of the amendment of the bye-laws, the first petitioner was granted promotion.

13. Though it was strenuously argued by the learned counsel for the first petitioner that the right of the second petitioner stands foreclosed on account of the previous decisions of this Court, the said argument cannot be countenanced. It is true that this Court has found that the second petitioner has no right to challenge the classification of the society. It is also true that now the society has been upgraded and for being a Secretary of such a society, the second petitioner is not having the prescribed qualification. However, the post of Secretary arose before the upgradation of the society and, at that point of time, the second petitioner who was senior to the first petitioner was promoted as per the then existing bye-law. Even if the conditions are added by statutory amendment, it can have only prospective operation for the vacancy that arose after the amendment. For the vacancies that arose prior to the amendment has to be determined on the basis of the law then in existence. Therefore, the decision of the Registrar of Co-operative

Societies that the second petitioner is not entitled to exemption as she has not completed 45 years and not completed 5 years in the feeder category is illegal and arbitrary.

14. When the vacancy of the Secretary arose, the society was in Class IV. As per the law, the starting of Secretary in Class IV society was below ₹250/-. As per Rule 186 of the Rules, graduation was not required. When classification was sought to be enhanced, the second petitioner has filed the writ petition challenging the enhancement of the classification of Class IV. In the decision, her claim for exemption was not an issue at all.

15. The general rule is that promotions are to be decided upon with reference to time of occurrence of vacancies and not the time of making the appointments. It is the time of occurrence of the vacancy that should be relevant for determining the question of promotion and not the time when the order of promotion is passed. The relevant date must be definite and shall not depend upon the volition of the authorities as otherwise the determination would be arbitrary. If it were to be the date of promotion that is to be relevant for determining the title to such promotion, the rule is capable of arbitrary exercise. Even if it is an honest exercise, that would be arbitrary because the fate of the service career would

depend in each instance upon the time taken by the concerned authority in passing the order of promotion. On the other hand, there is definiteness in treating the date of occurrence of the vacancy as that which would determine the title of the person to be considered for promotion.

16. Therefore, this Court is of the definite view that the second petitioner is entitled to succeed.

In the result,

- W.P(C) No.1985/2006 is dismissed.
- W.P(C) No.2291/2006 is allowed. Ext.P19 is quashed. The first respondent is directed to grant permission to the Resolution No.30 dated 3.4.2004 granting exemption from the qualification of graduation for the petitioner to provide her promotion as Secretary of the society.
- W.P(C) No.2396 is dismissed as not pressed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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P.A To Judge