

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 1026 of 2007 (V)

PETITIONER :

**THE VALLAPUZHA SERVICE CO-OPERATIVE
BANK LIMITED NO.F.1207, P.O.NELLAYA, PIN-679 335,
PALAKKAD DISTRICT, REPRESENTED BY
ITS PRESIDENT SRI. P.K.KOYA.**

**BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADVS. SMT.SARITHA DAVID CHUNKATH
SMT.T.O.RAJITHA
SRI.VINOD.V (EDAPPUNATHIL)**

RESPONDENT :

**THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), PALAKKAD.**

BY GOVERNMENT PLEADER SRI.ABHIJETT LESSLI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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WP(C).NO.1026/2007

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE ORDER NO.5329/03/C.R.P./K.DIS. DATED 6/10/2003 BY THE RESPONDENT.**
- P2 COPY OF THE NOTIFICATION DATED 16/8/2006 BY THE PETITIONER BANK.**
- P3 COPY OF THE PROCEEDINGS DATED 16/9/2006 BY THE PETITIONER BANK.**
- P4 COPY OF THE INTIMATION DATED 18/9/2006 BY THE PETITIONER BANK.**
- P5 COPY OF THE ORDER NO.4648/2006/C.R.P. DATED 29/9/2006 ISSUED BY THE RESPONDENT.**
- P6 COPY OF THE PETITION DATED 9/10/2006 SUBMITTED BY THE PETITIONER BANK**
- P7 COPY OF THE ORDER NO.4648/2006/CRP DATED 22/2/2007 ISSUED BY THE RESPONDENT.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY

P.S.TO.JUDGE

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K. SURENDRA MOHAN,J.

W.P(C) NO.1026 OF 2007

Dated this the 6th January, 2015.

JUDGMENT

The petitioner is a Co-operative society registered under the provisions of the Kerala Co-operative Societies Act, 1969 and the Kerala Co-operative Societies Rules, 1969 (the 'Act' and the 'Rules' for short). The petitioner has filed this writ petition challenging Ext.P7 order of the respondent setting aside the proceedings for selection to two posts of peon/driver/security watchman initiated as per Ext.P2. Initially, though a written test was scheduled to be conducted on 17.9.2006, as per Ext.P3 the same was postponed to 2.10.2006. When the proceedings for selection were in progress, complaints arose regarding the manner in which the selection process was being conducted. There were complaints that, the selection process was a farce. The same

was intended only to select two persons who have been named in the complaints and that, the postponement of the written test from 17.9.2006 to 2.10.2006 was for the reason that one of the favoured candidates was suffering from chicken pox. The authorities had an enquiry conducted into the complaints. Thereafter, Ext.P5 order was passed by the respondent staying all further proceedings for the selection. This writ petition was filed at the said stage, challenging Ext.P5. As per the interim order dated 13.2.2007, this Court directed the respondent to consider the issue and pass final orders in the matter. Accordingly Ext.P7 order was passed. As per Ext.P7, the selection proceedings have been set aside.

2. The writ petition was amended thereafter, challenging Ext.P7. This Court considered Ext.P7 and by interim order dated 6.11.2008, ordered that the petitioner could proceed with the process of selection and filling up of the sanctioned posts in accordance with the staff pattern. However, the same has been made subject to further orders in this writ petition.

Accordingly, two posts that were notified have been filled up and appointments have also been made. According to the counsel for the petitioner, the persons who have been so appointed have been continuing in service, till date. The selected candidates are not parties to this writ petition.

3. According to Smt. Ammu Charles, the counsel for the petitioner, Ext.P7 has been passed for the only reason that, provision for reservation of posts for candidates belonging to Scheduled Castes/Scheduled Tribes have not been made in the notification issued by the petitioner. Sub Section (4) of Section 80 stipulates that 10% posts of employees of every society shall be reserved for appointment from persons belonging to Scheduled Castes/Scheduled Tribes. The mandate of the said provision not having been complied with, it has been ordered that the selection proceedings were set aside. The counsel for the petitioner points out that, the said provision has been introduced into the statute book only by Act 29/1986 dated 30.1.1986. Only 25 appointments have

been made by direct recruitment after the date of coming into force of the said provision. 10% of the direct recruitees, numbering 3 belonging to Scheduled Castes/Scheduled Tribes are already in the service of the society. For the above reason it is contended that the mandate of the provision already stands satisfied. In view of the above, there is no necessity for reserving any further posts. It is therefore contended that Ext.P7 is unsustainable and liable to be set aside.

4. Regarding the other allegations contained in Ext.P7, with respect to the candidates who have been selected the counsel contends that there are absolutely no materials or evidence to substantiate the same. The selection has been made properly and the meritorious candidates have been selected. The services of additional staff was required for the proper functioning of the society and that was the reason why this Court had permitted the appointments to be made. It is contended that Ext.P7 is therefore liable to be set aside.

5. The learned Govt. Pleader who appears for the respondent disputes the contentions of the counsel for the petitioner. Reference is made to the additional counter affidavit filed to contend that, the names of the persons who have actually been selected had been mentioned in the complaint made against the selection process. The written examination that was scheduled to be conducted had been postponed to suit the convenience of one of the favoured candidates who was suffering from chicken pox at the relevant time. It is therefore contended that, the absence of provision for reservation was not the only ground on which the selection was set aside. It is therefore contended that, Ext.P7 does not require to be interfered with by this Court.

6. Heard. It is true that, as per Ext.P3 the written test that was initially scheduled on 17.9.2006 was postponed to 2.10.2006. The reason that is put forward is two out of the 25 candidates who had been issued with call letters had not received the same. The Assistant Registrar who enquired into

the allegations has found the reason stated to be absolutely flimsy. This is in view of the fact that the two persons who had complained were actually persons residing within the area of operation of the society. It is also true that, the persons who have actually been selected are the persons named in the complaint. But according to the counsel for the petitioner they are the persons who were found to be the best candidates at the selection.

7. Though the circumstances referred to above can certainly give rise to suspicion regarding the manner in which the selection was conducted, the fact remains that there is no substantive evidence to show that any irregularity had in fact taken place. In Ext.P7, reliance has been placed on the statement made by the complainant that the postponement of the written examination was only to favour one of the candidates whom the Managing Committee wanted to select. Therefore, what has been stated in Ext.P7 is only that, the complainant had given a statement in tune with the above

allegations. A perusal of Ext.P7 shows that, the selection proceedings have been set aside for the only reason that the mandate of Section 80(4) of the Act has been violated.

8. The counsel for the petitioner has placed reliance on the decision of this Court reported in *Anandavally M. v. President, Alappuzha District Co-operative Bank* {2008(3) KHC 878} to contend that, the respondent has erred in computing the number of posts to be reserved in the society on the basis of the total staff strength thereof. It has been held by this Court that, such an exercise is wrong and unjustified. Therefore, the proper procedure is to limit the number of posts to be reserved to the number of posts available for direct recruitment. Paragraph 8 of the said judgment reads as follows:–

“Therefore, the rule of reservation prescribed by the legislative mandate in S.80(4) can be achieved only by making appointments against vacancies arising after the introduction of that provision, in such a manner as to ensure

that by such appointments, ten per cent of the entire posts for which direct recruitment is the method of appointment, is manned by members of the Scheduled Castes and Scheduled Tribes, recruited with the support of that rule of reservation, on or after 25.2.1985, the date of coming into force of the Ordinance that preceded Act 29 of 1986.”

A perusal of Ext.P7 shows that the total staff strength of the petitioner society being 41, the respondent has directed that four seats should be reserved in terms of the mandate of Section 80(4). The said conclusion cannot be sustained in view of the dictum of this Court referred to above. Since the total number of seats available for direct recruitment is only 25 and since there are already three employees belonging to the reserved category recruited, it was not necessary to provide for reservation of any posts in the present notification. Presumably, for the said reason this Court had permitted the petitioner to make the appointments, subject to further orders in this writ petition. The candidates so appointed are

continuing in service till date and there is no justification for disturbing the said appointments at this length of time.

For the above reasons, this writ petition is allowed.
Ext.P7 is set aside.

Sd/-
K. SURENDRA MOHAN
Judge

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