

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WA.No. 131 of 2015 () IN WP(C).26698/2011

**AGAINST THE ORDER/JUDGMENT IN WP(C) 26698/2011 of HIGH COURT OF KERALA
DATED 05-01-2015**

APPELLANT(S)/PETITIONERS :

- 1. C.ASHOK KUMAR
SENIOR ACCOUNTANT
KOLLAM DISTRICT CO-OPERATIVE BANK LTD., KOLLAM-01.**
- 2. M.YOHANNAN
SENIOR ACCOUNTANT
KOLLAM DISTRICT CO-OPERATIVE BANK LTD., KOLLAM-01.**
- 3. C.G.BALACHANDRAN PILLAI
SENIOR ACCOUNTANT
KOLLAM DISTRICT CO-OPERATIVE BANK LTD., KOLLAM-01.**

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S)/RESPONDENTS :

- 1. KOLLAM DISTRICT CO-OPERATIVE BANK LTD.
REPRESENTED BY ITS GENERAL MANAGER, KOLLAM-01.**
- 2. K.BINDU LAL
JUNIOR ACCOUNTANT
KOLLAM DISTRICT CO-OPERATIVE BANK LTD.
CHADAYAMANGALAM BRANCH, KOLLAM.**
- 3. THE KERALA CO-OPERATIVE TRIBUNAL
THIRUVANANTHAPURAM, REPRESENTED BY THE SECRETARY.**

**R1 BY ADV. SRI.T.R.HARIKUMAR, SC, KOLLAM DISTRICT
COOPERATIVE BANK LTD.**

**BY SRI.ANOOP.V.NAIR
BY SR GOVERNMENT PLEADER SRI.M.K.ABOOBACKER**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19-02-2015
ALONG WITH WA NOS.236, 300 & 372/15, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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**Writ Appeal Nos. 131, 236, 300 &
372 of 2015**
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Dated this the 19th day of February, 2015

J U D G M E N T

Antony Dominic, J.

These writ appeals arise from the common judgment of the learned single Judge disposing of WP(C) No.26645, 26698 and 27650/11. All the aforesaid writ petitions were filed against the judgment of the Kerala Co-operative Tribunal, Thiruvananthapuram in Appeal No.80/2010.

2. By the judgment under appeal, the learned single Judge disposed of the writ petitions modifying the order of the Tribunal and directing that the seniority of the respective parties shall be assigned as on their date of joining duty. It was also ordered that defendants 6 to 9 before the Tribunal would retain the seniority above the plaintiff as on the date of joining and that defendants 2 to 4 before the Tribunal would have to content with the seniority as on the date of joining. It was also directed that necessary revision shall be made to the seniority list in accordance with the directions in the judgment. It is this judgment, which is under challenge before us.

3. Before we deal with the contentions raised by the respective counsel for the parties, we shall state the facts which led to the filing of the writ petitions. For convenience, we will refer the parties according to their status before the Co-operative Tribunal.

4. On 18/6/1989, the Kollam District Co-operative Bank issued a notification inviting applications for the post of Clerk/Cashier reserving 50% of the posts to the employees of the member societies and 10% to candidates belonging to SC/ST category. After a process of recruitment, rank list was published by the Bank on 13/3/91. This list contained 554 candidates from the open merit, 45 from the member societies and 8 from the SC/ST category. The period of the rank list was three years and it expired on 12/3/94.

5. In so far as it is relevant for the purpose of this judgment, it is sufficient to notice that respondents 2 to 4 and 8 and 9 were included in the rank list at Sl.Nos. 22, 36, 38, 12 and 18 respectively. Long before the rank list was published, on 31/5/1986, the Registrar of Co-operative Societies had issued a

circular directing that reservation shall be maintained in the matter of appointments to Co-operative Societies. Placing reliance on this circular, though from the rank lists, 40 persons were appointed, the claims of respondents 2 to 4 and 8 and 9 were overlooked.

6. While matters stood thus and after the rank list expired on 12/3/94, Kerala Public Service Commission (Additional Functions as Respects Certain Societies) Act, 1996 came into force w.e.f. 27th October, 1995. Section 3 of the Act provided that it shall be the duty of the PSC to prepare select list for appointment, by direct recruitment of officers and servants of the services under a society. The term 'society' is defined in Section 2 (b) as a Co-operative Society mentioned in the schedule to the Co-operative Societies Act. The Co-operative Societies Act was also amended by the Kerala Co-operative Societies (Amendment) Act, 1995 and in the schedule to the said amendment Act, Kollam District Co-operative Bank was included at Sl.No.17. Subsequent to the introduction of the said Act, the District Co-operative Bank reported vacancies in the category of Clerk/Cashier and

accordingly PSC initiated recruitment process for advising candidates.

7. In the meanwhile, on 10/2/2000, the Registrar of Co-operative Societies issued order bearing No.EM (1) 50041/99 clarifying that the circular dated 31/5/86 only contained certain suggestions and was not mandatory in nature and directed the Kollam District Co-operative Bank to revise the seniority list of Junior Clerks according to their ranking in the select list for appointment prepared on the basis of the notification dated 18/6/1989. It was also ordered that all promotions shall be in accordance with the seniority list prepared as above. On the issuance of the order dated 10/2/2000, OP Nos.3363, 3844, 7267 and 8597/2000 were filed by certain candidates, including respondents 2 to 4 and 8 and 9, complaining that it was relying on the circular dated 31/5/1986, they were overlooked in the matter of appointment and that in view of the order dated 10/2/2000, they are entitled to be appointed from the rank list published on 13/3/91.

8. During the pendency of those original petitions, on 8/1/2001, Government issued order setting aside the order dated 10/2/2000 issued by the Registrar of Co-operative societies. This order issued by the Government was challenged before this Court in OP No.5535/2001. During the pendency of that OP, by judgment dated 8/11/01 (produced as Ext.R2(c) in WA No.131/15), a Division Bench of this Court dismissed the original petitions mentioned in paragraph 7 above claiming appointment, on the ground of delay and the expiry of list as early as in 1994. However, taking note of the submission made by the petitioners in those cases that they were subjected to injustice and that though they were ranked higher in the rank list, they were not given appointments because of the circular dated 31.5.1986, this Court left the matter to the best judgment of the District Co-operative Bank to find a solution to the problem, if possible and to grant them relief within the four corners of law.

9. The relevant part of this judgment contained in paragraphs 4, 5 and 6 reads thus;

"4. In these circumstances, whether the petitioner entitled to any relief, is the issue debated before us. Our answer is a categorical negative. The reasons are several. Firstly, the petitioners are trying to impugn by petitions filed in late 2000 the order dated 17.6.92 declining to grant relief. Such delayed petitions can neither be entertained, nor relief be granted, whatever be the merits. It is urged that the pendency of OP No.10095 of 1992 gave them the impression that it was in a representative capacity and that they immediately rushed into this Court when they knew that it was not filed in a representative capacity. In the field of writ petitions, unless the court otherwise directs, it is each for himself and God for all. O.P.No.10095 of 1992 was not a representative petition and claimed relief only for the petitioner therein. There was no basis for the wrong impression at all.

5. The next difficulty in the way of the petitioners is that whatever be their position in the rank list dated 13.3.1991, the rank list expired after three years and is no longer in existence. It is not possible for this Court to give a legal direction to the Quilon District Co-

operative Bank to revive the rank list, which has long ago expired. For these two reasons, the petitioners cannot be granted any relief by this Court in these writ petitions.

6. Counsel for the petitioners urge that, irrespective of their legal rights, they have been subjected to injustice and though they were higher in the rank list, they were not given appointments because of a Circular wrongly issued by the Registrar of Co-operative Societies, without any legal basis whatsoever. This factual situation appears to be correct. The cure for that is only to leave the matter to the best judgment of the Quilon District Co-operative Bank to find a solution to the problem, if possible. While giving no direction to the Quilon District Co-operative Bank, we trust that the case of the present petitioners would be sympathetically considered, and if possible, relief granted to them within the four corners of law."

10. In pursuance of the observations contained in para 6 of the Division Bench judgment, the Bank passed resolution dated 6/2/2002 (produced as Ext.P4 in WA No.300/15). This resolution shows that out of 40 appointments made, four vacancies were to

be earmarked for SC/ST candidates being 10% of the total vacancies and that from out of the balance 36 appointments made, 18 were to be made towards the 50% quota earmarked to the employees of the member societies. It is stated that if the entitlement of those included in the ranked list dated 13/3/91 and allegedly overlooked were worked out, among respondents 2 to 4 and 8 and 9, only 8 and 9, being rank nos. 12 and 18, would have been appointed. On that basis, by Ext.P4 resolution dated 6/2/2002, the Bank resolved to appoint respondents 8 and 9 and not to entertain the grievance of the other petitioners, whose rank numbers are not above 18. Relevant part of Ext.P4 resolution reads thus;

“Here the petitioners are (1) Smt.G.Prasannakumari (2) Sri.G.Jayachandran Pillai (3) Sri.C.Ashok Kumar (4) Sri.M.Yohannan (5) Sri.C.G.Balachandran Pillai and (6) Sri.G.Unnikrishna Pillai. Their rank numbers in the ranked list of employees of the affiliated Societies are 12, 18, 22, 36, 38 and 42 respectively. Since the Circular letter No.G.6028/86 dated 31.5.1986 is not legally

sustainable, the appointment made from the ranked list is to be in accordance with the ranking. If so, the candidates 1 to 18 from the ranked list were eligible to get appointment in the service of the Bank as Clerk/Cashier. Here from the petitioners in the above referred OP's, Smt.G.Prasannakumari and Sri.Jayachandran Pillai are the two candidates having rank numbers above 18. Their rank numbers are 12 and 18. The other petitioners rank numbers are 22, 36, 38 and 42.

In the light of the above facts and as per the directions of the Division Bench of the Hon'ble High Court of Kerala, in the judgment dated 18.11.2001 in OP Nos. 3363, 3844, 7267 and 8597 of 2001 the Executive Committee of the Bank considered the grievances of the petitioners sympathetically and resolved to appoint Smt.G.Prasannakumari and Sri.G.Jayachandran Pillai, the 12th and 18th rank holders in the ranked list of employees of affiliated Societies of the Bank published on 13.3.1991, as Clerk/Cashier in the service of the Bank provisionally.

Further resolved not to entertain the grievances of the other petitioners whose rank numbers are not above 18."

11. Accordingly, circular office memorandum dated 7/2/2002 (Ext.P5 in WA No.300/15) was issued by the Bank. It is stated that on the above basis, appointment orders were issued and respondents 8 and 9 joined the post on 8/2/2002. Though resolution dated 6/2/2002 referred to above shows that the Bank had specifically resolved not to entertain the grievance of the other claimants, the Bank again issued circular office memorandum dated 27/4/2002 (Ext.P3 in WA No.131/15) to appoint respondents 2 to 4, who were having rank Nos.22, 36 & 38 in the ranked list dated 13/3/1991. It is stated that on the strength of Ext.P3, they too joined service on 27/4/2002 itself.

12. Though not relevant for the purpose of this appeals, for completion of facts, we may also state that the 5th respondent before the Tribunal was appointed on 15/12/1997 under the dying in harness category, that at the time of his appointment, he did not have the qualifications and he acquired the qualification on

29/10/2002. In so far as respondents 6 and 7 are concerned, they joined the Bank on 8/2/2002 on inter bank transfer as Clerk/Cashier.

13. In so far as the appellant before the Tribunal, who has filed WA Nos.236 and 372/15 is concerned, pursuant to the vacancies that were reported by the Bank, PSC prepared a rank list and from that rank list, he was advised for appointment on 31/12/2001. On that basis, Bank issued appointment order dated 8/2/2002 and accordingly he joined the District Co-operative Bank, Kollam as Clerk/Cashier on 14/2/2002.

14. By Ext.P6 in WA No.300/15, the Bank published seniority list of employees as on 28/2/2002. In that seniority list, respondents 8 and 9 and the appellant are shown at Sl.Nos.230, 231 and 280 respectively. Subsequently, on 7/3/2005, the Bank issued Ext.P7 (in WA No.300/15) whereby the appellant and respondents 6 to 9 were promoted as Junior Accountants. In this order also, respondents 8 and 9 and the appellant are shown at Sl.Nos. 6, 7 and 55 respectively. Ext.P8 in WA No.300/15 is the seniority list published by the Bank as on 31/3/2005. In this list

also, respondents 8 and 9 and appellant are shown at Sl.No.183, 184 and 231 respectively. Ext.P9 in WA No.300/15 is a draft seniority list published by the bank in 2009, where also respondents 8, 9 and the appellant are shown at Sl.Nos.148, 149 and 196. In this seniority list, respondents 2 to 4, who were juniors to the three persons in all the above seniority lists also figured at Sl.Nos.236, 237 and 238 respectively.

15. Ext.R2(d) in WA No.131/15 is a circular office memorandum dated 11th of February, 2009, which show that the management of the Bank in its meeting held on 11/2/2009 resolved to refix the seniority of respondents 2 to 4 immediately below respondents 8 and 9 and also to promote them as Junior Accountants w.e.f. 11/2/2009. On the next day, viz., 12/2/2009, the Bank also issued Ext.R2(e) in WA No.131/15 whereby respondents 2 to 9 were promoted as Senior Accountants.

16. We have already stated that in the meanwhile, in 2001, OP No.5535/2001 was filed before this Court challenging the order dated 8/1/2001 issued by the Government setting aside the order dated 10/2/2000 issued by the Registrar of Co-operative

Societies. This OP was filed by certain employees of the Bank who were then working as Clerks/Cashiers and none among respondents 2 to 9 were parties to this OP. OP No.5535/2001 was disposed of by judgment dated 22/1/2008 setting aside order dated 8/1/2001 issued by the Government and directing that the parties shall be bound by the order dated 10/2/2000 issued by the Registrar of Co-operative Societies. WA No.1314/2008 filed against the judgment of the learned single Judge was dismissed by a Division Bench of this Court on 3/2/11 and this judgment, we are told, has been confirmed by the Apex Court by dismissing SLP filed.

17. After the issuance of Ext.R2(e) dated 12/2/2009 whereby respondent 2 to 9 were promoted as Senior Accountants, the appellant in WA Nos.236 and 372/15 filed ARC No.30/2009, a copy of which is Ext.P6 in WA No.131/15. In that ARC, the prayer was to look into the irregularities and illegalities in Ext.A7 therein and to cancel the order of the Bank promoting defendants 2 to 9 to the post of Senior Accountant. Ext.A7 mentioned in the ARC is Ext.R2(e) dated 12/2/2009 (supra). By Ext.P10 in WA No.131/15

rendered on the 30th of July, 2010, award was passed dismissing the plaint. The appellant in WA Nos.236 and 372/15 filed Appeal no.80/10 before the Co-operative Tribunal. The Tribunal disposed of the appeal by Ext.P12 (produced in WA No.131/15), the concluding portion of which reads thus;

"In the result, the award of the Co-operative Arbitration Court, Thiruvananthapuram in A.R.C. 30/2009 is set aside and an award is passed as follows;

- 1. Promotion of Respondents 2 to 4 and 6 to 9 as Senior Accountants as per the Order dated 12.2.2009 of the 1st respondent was irregular and being so their promotion as Senior Accountants is cancelled.*
- 2. Respondents 6, 7, 8, 9, 2, 3 and 4 shall be placed in the rank list only as juniors to the Appellant and the Appellant is entitled to get promoted as Senior Accountant before their promotion as Senior Accountants unless there are justifiable grounds other than seniority for denying him promotion.*
- 3. The observations and findings herein will in no way affect the seniority of the employees of the 1st respondent in the cadre of Clerks,*

Junior Accountant and Senior Accountant in relation to the Appellant and Respondents 2 to 4 and 6 to 9.

4. The promotion of the 5th Respondent as Senior Accountant as per the Order dated 12.2.2009 is upheld as she is senior to the Appellant."

18. It was in these circumstances, WP(C) No.26698/11 was filed by defendants 2 to 4, WP(C) No.26645/11 was filed by defendants 6 and 7 and WP(C) No.27650/11 was filed by defendants 8 and 9 before the Tribunal. By a common judgment rendered on 5/1/15, the learned single Judge disposed of the writ petitions with the following directions.

"28. Resultantly, the order of the Tribunal, reversing the award of the Arbitration Court, would stand modified to the extent that the respective parties ought to be assigned seniority as on their date of joining duty. The defendants 6 to 9 would retain their seniority above the plaintiff as on their date of joining. The defendants 2 to 4 would also have to contend with the seniority as on their date of joining. Necessary revision shall be made in the

seniority list in accordance with the directions herein above. The promotions too have to concede to the revision of seniority.”

19. WA Nos.236 and 372/15 are filed by the appellant before the Tribunal challenging the judgment of the learned single Judge in WP(C) Nos.26645 and 27650/11. WA No.131/15 is filed by defendants 2 to 4, who are aggrieved by the judgment of the learned single Judge in WP(C) No.26698/11.

20. In so far as WA No.300/15 is concerned, that is filed by four persons, who are working as Senior Accountants in the Bank, claiming to be seniors to the appellant in WA Nos.236 and 372/15. These appellants, who were not parties either before the Arbitrator, Tribunal or before the learned single Judge, have filed this appeal after obtaining leave from this Court.

21. We heard the learned counsel Sri.George Poonthottam appearing for the appellant in WA No.131/15, Dr.K.P.Satheesan, senior advocate for the appellants in the remaining three appeals, Sri.M.R.Hariraj, appearing for respondents 8 and 9 before the

Tribunal, Sri.P.N.Mohanan and the learned standing counsel for the Bank.

22. According to respondents 2 to 4, the appellants in WA No.131/15, they were appointed in the category of Clerk/Cashier by the circular office memorandum dated 27/4/2002 issued in pursuance of the directions contained in Ext.R2(c) judgment of the Division Bench of this Court, which took note of the fact that they were included in the rank list dated 13/3/91 and were overlooked in view of the circular dated 31/5/1986. Therefore, they say that they are entitled to seniority as ordered by the Registrar of Co-operative Societies in the order dated 10/2/2000, by fixing the seniority as per the rank list. It is also their contention that by the judgment in OP No.5535/01, this Court set aside order dated 8/1/2001 issued by the Government and ordered that seniority be fixed as ordered by the Registrar in his order dated 10/2/2000. This judgment was confirmed by the Division Bench in the judgment in WA No.1314/2008. On this basis, they argue that by Ext.R2(d) in WA No.131/15, they were rightly assigned seniority immediately below respondents 8 and

9. It is stated that such fixation of seniority was not challenged either before the Arbitrator or before the Tribunal and that in spite of it, seniority so assigned to them was modified by the learned single Judge by directing that they will be entitled to seniority only from the date of joining service pursuant to the circular office memorandum dated 27/4/2002. This, according to the learned counsel, is illegal and therefore the judgment of the learned single Judge has to be interfered with.

23. The appellant before the Tribunal, who has filed WA Nos.236 and 372/15 and who is also the 2nd respondent in WA No.131/15 contended that on the implementation of the Kerala Public Service Commission (Additional Functions as Respects Certain Societies) Act, 1996 w.e.f. 27th of October, 1995, the only source from which appointments could be made to the post of Clerk/Cashier was from the candidates advised by the PSC. It is stated that when the vacancies were reported by the Bank, the PSC completed the recruitment process and published its rank list. According to the appellant, from this rank list, he was advised for appointment on 31/12/2001 and order appointing him was

issued by the Bank on 8/2/2002 and that he joined the Bank on 4/2/2002. Counsel says that in view of the principles incorporated in Rule 27(c) of KS & SSR, a candidate like him who is appointed on the basis of advice by the PSC is entitled to have seniority from the date of effective advice. In support of this, he also placed reliance on the Division Bench judgment of this Court in ***Ambikakutty v. Kerala Co-operative Tribunal*** (2003(1) KLT 153). Counsel therefore states that the seniority assigned to him w.e.f. 14/2/2002, when he joined service, is illegal and he is entitled to have his seniority restored w.e.f. 31/12/2001.

24. However, the contentions raised as above were disputed by the learned counsel, who appeared for respondents 8 and 9. According to the learned counsel, Ext.P6 seniority list as on 28/2/2002, Ext.P7 promoting them for the post of Junior Accountants with seniority above the appellant and Exts.P8 and P9 seniority lists were not challenged by anybody and that therefore the seniority assigned to them above the appellant has become final. Therefore, they say that it is not open to the appellant to now claim seniority over them w.e.f. 31/12/2001,

when he was advised by the PSC. In this context, counsel placed reliance on the Full Bench judgment of this Court in **Sajeeve N.J. v. Union of India and others** {2009(4) KHC 627}, where this Court has upheld the contention that on account of delay and application of the principle of sit back, relief is liable to be declined. Counsel also contended that the judgment in **Ambikakutty** (supra) can have application only when recruitment is made from one source and candidates are appointed from one common select list. According to him, in so far as the appointments made to the post of Clerk/Cashier in the District Co-operative Bank, Kollam is concerned, this was from more than one source and therefore the principles laid down by the Division Bench in **Ambikakutty's case** (supra) have no application.

25. We have considered the submissions made.

26. We shall first deal with WA No.300/15. This writ appeal, as we have already mentioned, is filed by four employees of the Kollam District Co-operative Bank, who are now working in the category of Senior Accountant and the appeal is filed against

the judgment in W(P(C)No.27650/11 which was filed by respondents 8 and 9. The contention raised by them is that they were also advised by the PSC from the ranked list published by it and that therefore, in view of the principles contained in Rule 27 (c) recognised in **Ambikakutty's case** (supra), they are entitled to seniority from the date of effective advice. They say that if the seniority is so reckoned, they will be entitled to seniority even above the appellant. It is with this contention they have filed the writ appeal. However, they did not dispute the seniority assigned to them either before the Arbitrator, the Tribunal or before the learned single Judge and are now contending for seniority even above the appellant by filing this appeal. This, therefore, means that this is a case where the appellants herein are guilty not only of sit back, but also of delay and laches. That apart, we also notice that this appeal is defective for non joinder of necessary parties. The cause title to the appeal memorandum shows that they have impleaded only the writ petitioners and respondents 1, 3 and 5 in the writ petition as respondents in the WA. In other words, respondents 2, 4 and 6 to 8 in the writ petition are not

impleaded in the writ appeal. Therefore, for both the aforesaid reasons, WA No.300/15 filed by third party appellants is liable to be dismissed and we do so.

27. In so far as WA Nos.236 and 372/15 are concerned, these appeals are filed by the appellant before the Co-operative Tribunal and challenge is against the judgment in WP(C) Nos.26645 and 27650/11 respectively. As we have already stated, the contention raised is that the appellant is entitled to be assigned seniority from the date of effective advice viz., 31/12/2001 and that therefore, the learned single Judge ought not have modified the same and made it effective from 14/2/2002, when he joined the Bank as Clerk/Cashier. This argument is raised mainly on the basis that in view of the provisions contained in Rule 27(c) of KS & SSR, appellant is entitled to such seniority and the learned senior counsel also pressed into service the Division Bench judgment in **Ambikakutty's case** (supra).

28. It is true that Rule 27(c) recognises seniority to candidates advised by the PSC with effect from the effective date of advice. However, that rule *ipso facto* would not apply to the

employees in the Co-operative Societies for the reason that KS & SSR is neither applicable to such employees nor the Co-operative Societies Act has incorporated the provisions of KS & SSR into the Act. However, in **Ambikakutty's case** (supra), the criteria on the basis of which seniority of the employees in the Co-operative Societies is to be reckoned came up for consideration before the Division Bench of this Court. The facts of that case show that the challenge was against an order passed by the Co-operative Tribunal that in the absence of rules, regulations, bye laws, etc., it is the rank on merit assigned to the candidates appointed by a common order that has to be reckoned as the relevant input for ascertaining the *inter se* seniority. However, the learned single Judge took the view that in the absence of any or term of employment, the date of actual commencement of service alone has to be reckoned. In the appeal that was filed, Division Bench of this Court held thus in para 10;

“10. We are in agreement with the learned counsel for the appellant that determination of seniority, ignoring the ranking in the merit list,

merely on the basis of the date of actual joining service, would be unreasonable, perverse and unfair. R.27(c) only incorporates a salutary principle of fairness and equity. Where two persons are selected by a common selection procedure and are selected/advised for appointment as per the same order, their seniority has got to be decided normally on the basis of the rank assigned for them in the common selection procedure based on merit etc. For no fault of such person ranked higher, he should not be compelled to lose his seniority. Even if R.27(c) is not strictly applicable, the principle embodied therein must certainly be followed by all persons acting fairly and reasonably. Accepting the contra position would result in unreasonable and perverse results. It would facilitate actions with oblique motives. If 2 persons ranked on merit were appointed by the same order and the more meritorious were posted to a farther and more distant place, the less meritorious would steal a march over his colleague by joining duty at a nearer place. Managements will thus be able to tinker with the merit ranking by manipulating the place of initial posting. Such an approach

would be unjust, irrational and perverse. That would lead to injustice and inequity.”

29. Reading of this judgment shows that according to the Division Bench, where two persons are selected by a common selection procedure and are advised for appointment as per the same order, their seniority has to be decided normally on the basis of the rank assigned to them in the common selection procedure based on merit. It is also stated that for no fault of person ranked higher, he should not be compelled to lose his seniority. Division Bench further held that even if Rule 27(c) is not strictly applicable, the principles embodied therein must certainly be followed by all persons acting fairly and reasonably.

30. This, therefore, makes it clear that the seniority on the basis of ranking in the merit list is to be followed where persons are selected by common selection procedure and are advised for appointment in the same order. This principle cannot be applied in so far as these cases are concerned for the reason that while the appellant was advised by the PSC, respondents 2, 3, 4, 8 and 9 involved in these appeals came to be appointed only from the

rank list dated 13/3/91 which was published by the District Co-operative Bank itself. In fact, the 5th respondent before the Tribunal was appointed in the dying in harness category and respondents 6 and 7 were appointed on inter bank transfer. Evidently, therefore, the appointment of the aforesaid persons were not from a common selection procedure to attract the principles laid down by the Division Bench in **Ambikakutty's case** (supra).

31. Yet another aspect of the matter is that, as we have already stated, Exts.P6, P8 and P9 in WA No.300/15 are three seniority lists, in which, respondents 8 and 9 were assigned seniority above the appellant. Ext.P7 in WA No.300/15 is an order issued by the Bank promoting respondents 6 to 9 before the Tribunal as Junior Accountants. Here also, respondents 8 and 9 are assigned seniority above the appellant. Subsequently, by Ext.R2(e) order dated 12/2/2009, respondents 2 to 9 before the Tribunal were promoted as Senior Accountants. It was only thereupon ARC No.30/09 was filed by the appellant. Even in this ARC, the challenge was only against Ext. A7 therein, which is

Ext.R2(e) mentioned above. In other words, at no point of time did the appellant challenge Exts.P6 to P9 or even Ext.R2(d) whereby respondents 2 to 4 herein were assigned seniority at Sl.Nos.148, 149 and 150 of Ext.P9, which was immediately below respondents 8 and 9. Therefore, having acquired and allowed the seniority of others to attain finality, it was too late for the appellant to contend that he is entitled to be assigned seniority w.e.f. 31/12/2001, the date of his effective advice. Therefore, for that reason also, appellant was not entitled to the relief claimed and the learned single Judge has rightly ordered that he shall be entitled to seniority only w.e.f. 14/2/2002, when he joined the post of Clerk/Cashier.

32. Now, we are left with WA No.131/15. In so far as the appellants herein, who are defendants 2 to 4 before the Tribunal, are concerned, certain facts are required to be noticed. They were included in the rank list dated 13.3.1991 at Sl.Nos.22, 36 and 38, whereas respondents 8 and 9 mentioned above were at Sl.Nos.12 and 18 respectively. In Ext.R2(c), the judgment of the Division Bench in OP No.3363/2000 and connected cases, the

appellants herein are also parties. Their claim for appointment on the basis of their inclusion in the rank list dated 13/3/91 was negated by this Court on grounds of delay and laches and also expiry of the list way back on 12/3/94. However, taking note of the submission that injustice was caused to them, this Court took the view that the cure to that injustice is only to leave the matter to the best judgment of the Bank to find a solution to the problem, if possible. On that basis, this Court ordered that the Bank would consider their case sympathetically and if possible relief would be granted to them within the four corners of law. These observations amply make it clear that the bank was not expected to do anything which was not permissible in law. It was in pursuance of the above observations contained in Ext.R2(c) judgment that the Bank considered the matter and passed resolution dated 6/2/2002 marked as Ext.P4 in WA No.300/15. The relevant portion of this resolution has already been extracted in the earlier part of this judgment.

33. From Ext.P4, it is evident that candidates at Sl.Nos.1 to 18 from the rank list of 13/3/91 alone were eligible to get

appointment in the service of the Bank and that therefore defendants 2 to 4 being rank Nos.22, 36 and 38 were not eligible to be so appointed. The Bank also resolved not to entertain the grievance of these defendants. This therefore means that by virtue of Ext.P4 resolution, defendants 2 to 4, the appellants in WA No.131/15, were not eligible for any benefit arising out of Ext.R2(c) judgment of the Division Bench of this court. It was in spite of it that by Ext.P3 circular office memorandum produced in WA No.131/15, the Bank ordered on 27/4/2002 to appoint these defendants in the service of the Bank. Here, it is also to be noticed that this circular office memorandum does not even make reference to any resolution of the Bank on the strength of which such a memorandum was issued. It was in pursuance of this circular office memorandum that defendants 2 to 4 joined the service of the Bank.

34. It is true that by Ext.R2(d) in WA NO.131/15 dated 11/2/2009, seniority was revised and defendants 2 to 4 were assigned seniority immediately below defendants 8 and 9 and the

Tribunal in Ext.P12 judgment upset the said seniority and ordered that the same shall only be with effect from the date of joining.

35. The contention now raised before us is two fold. First is that Ext.R2(d) was not under challenge in the ARC or before the Tribunal, Secondly, in the judgment in OP 5535/01 rendered on 22/1/2008, the learned single Judge of this court had set aside the Government Order dated 8/1/2001 setting aside the circular dated 10/2/2000 issued by the Registrar and ordered that seniority be revised as ordered in circular of 10/2/2000 in accordance with the rank list dated 13/3/91. Therefore, it is contended that on the basis of the circular of 10/2/2000, defendants 2 to 4 are entitled to get seniority on the basis of their ranking in the list of 13/3/91. It was in this context that the learned counsel for the appellants in WA No.131/15 placed reliance on the principles laid down by the Apex Court in the judgment in **State of U.P. v. Arvind Kumar Srivastava** [(2015) 1 SCC 347].

36. **Arvind Kumar Srivastava** was a case where the Supreme Court explained the distinction between the judgment *in rem* and the judgment *in personam*. According to the Apex Court,

to sustain a claim for the benefit of a judgment *in personam*, unless the claim is made within reasonable time, it would be hit by the principles of delay and laches. On the other hand, according to the lordships, if the judgment is *in rem*, it is the obligation of the authority against whom the directions are issued to give the benefit of the judgment to all similarly situated persons and therefore the claim made for the benefit of the said judgment is sustainable at any point of time and that the concept of delay and laches are inapplicable.

37. The contention raised is that the judgment in OP No.5535/01 is a judgment *in rem* and that therefore the appellants in WA No.131/15, being similarly situated to the petitioners therein, are also entitled to get their seniority restored in terms of their position in their ranked list of 13/3/91. However, as we have already noticed, in compliance with Ext.R2(c) judgment, when the Bank reconsidered the matter and passed Ext.P4 resolution, Bank has clearly negated the claim of the appellants in WA No.131/15 for appointment as according to the Bank, appellants were not within rank No.18, who alone were

eligible for appointment. It was despite this that subsequently by a circular office memorandum (Ext.P3 in WA No.131/15) dated 27/4/2002, Bank offered them appointment. Such appointment offered to the appellants despite their ineligibility to get appointment on the basis of the ranking cannot be traced back to Ext.R2(c) judgment or the rank list and a claim for seniority in terms of the ranking in the rank list dated 13.3.1991 is totally untenable. If that be so, they cannot claim any benefit on the strength of the judgment in OP No.5535/2001 where this Court set aside the Government Order dated 8/1/01 and upheld the circular dated 10/2/2000 issued by the Registrar of Co-operative Societies.

38. We cannot also forget the fact that the appellants having joined service pursuant to the order dated 27/4/2002, if allowed the benefit that is claimed, will be getting seniority on the basis of their inclusion in the rank list dated 13/3/91, which had expired as early as on 12/3/94. Such restoration of seniority would be illegal by any standards. Therefore, we are unable to

accept this contention raised by the learned counsel for the appellants in WA No.131/15.

39. Further, in the circular dated 10/2/2000, it was ordered by the Registrar of Co-operative Societies to revise the seniority list of Junior Clerks according to their ranking in the select list for appointment. It was also ordered that promotion shall be in accordance with the seniority list finalised as above. We have also explained that this circular was issued clarifying that the earlier circular of 31/5/1986 directing the Co-operative Societies to maintain communal reservation for OBC candidates was not mandatory. In the judgment in OP No.5535/2001, which was confirmed in WA No.1314/2008, in effect and substance, what this Court has ordered was implementation of the circular dated 10/2/2000. This, therefore, means that the dispute in OP NO.5535/01 was one between the general candidates and the OBC candidates from the rank list dated 13/3/91, who were appointed in the service of the Bank. The nature of the dispute which led to the judgment being one as above, the judgment in OP No.5535/01 cannot have any relevance in the seniority now

claimed by the appellants in WA No.131/15 or over the appellant in WA Nos.236 and 300/15, who was advised from the rank list published by the PSC.

40. In so far as Ext.R2(d) of 11/2/2009 referred to above is concerned, it is true that the Bank is seen to have reassigned seniority and this order was not in challenge in ARC No.30/09 or appeal No.80/10. However, it was based on such reassignment of seniority that by Ext.R2(d) order of 11/2/2009, these persons were promoted to the post of Junior Accountants w.e.f.11/2/2009. It was on that basis that they were again promoted to the post of Senior Accountant on 12/2/2009 itself. When order dated 12/2/2009 was under challenge before the Arbitration Court and the Tribunal as a result of the Tribunal's conclusion, necessarily, Ext.R2(d), being a dependent proceedings, will also get invalidated. Therefore, we are not impressed by the contention now raised by the learned counsel that since Ext.R2(d) was not in challenge, seniority could not have been disturbed by the Tribunal. In our view, the Tribunal has not done any injustice by directing that the appellants herein will be entitled to seniority only from their date of appointment

and not on the basis of their ranking in the rank list which did not confer on them any right to appointment, which had expired almost ten years prior to their appointment.

41. In the result, we do not find any reason to interfere with the judgment under appeal.

Appeals, therefore, are only to be dismissed and we do so.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge