

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WA.No. 569 of 2015 () IN WP(C).34448/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 34448/2014 of HIGH COURT OF KERALA
DATED 23-02-2015

APPELLANT(S)/PETITIONER:

MAHESH PURUSHOTHAMAN,
S/O.PURUSHOTHAMAN, THACHEKUNNEL HOUSE
MANJOOR (SOUTH) PO, KOTTAYAM-686 603.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S)/RESPONDENTS:

1. MANJOOR SERVICE CO-OPERATIVE BANK LIMITED NO K 73,
MANJOOR PO, KURUPPANTHARA, KOTTAYAM-686 603
REP. BY ITS SECRETARY.
2. THE JOINT REGISTRAR (GENERAL).
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
KOTTAYAM-686 603.
3. LINDA JAMES,
OULOTH HOUSE, PERUVA PO, KOTTAYAM-686 610.
4. JUNKLE GEORGE,,
NJARUKALAM, KANJIRATHANAM PO, KOTTAYAM-686 603.
5. JESSY TOMY,
KARIVELIL, ERAVIMAGALAM PO, KOTTAYAM-686 613.
6. BENNY JOSEPH,
KALARIKKAL, S/O.JOSEPH, DIRECTOR BOARD MEMBER
KALARIKKAL HOUSE, MEMURI PO, KOTTAYAM-686 611.
7. JOHN ABRAHAM,, AGED 48 YEARS
S/O.ABRAHAM, PAPPURATHUKUNNEL, MANJOOR PO
KOTTAYAM-686 603.
8. KOMALAVALLY RAVEEDRAN,
W/O.RAVEENDRAN, MUNDAKKAL, KOTHANALLOOR PO
KOTTAYAM-686 632.

9. DR.PO RADHAKRISHNAN NAIR,, AGED 51 YEARS
S/O.PADMANABHAN NAIR, PARAKKATTU, MANJOOR PO
KOTTAYAM-686 603.

BY SR GOVERNMENT PLEADER SRI.M.K.ABOOBACKER
R6 -R9 BY SRI.D.KISHORE
R1 BY SRI.P.N.MOHANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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Writ Appeal No. 569 of 2015
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Dated this the 17th day of March, 2015

J U D G M E N T

Antony Dominic, J.

The unsuccessful petitioner in the writ petition is the appellant. He filed the writ petition asserting his entitlement to be considered to the post of Peon/Attender in the 1st respondent Bank. That claim of the appellant was negated by the learned single Judge.

2. We heard the learned counsel for the appellant, learned standing counsel appearing for the 1st respondent and the learned Government Pleader appearing for the 2nd respondent.

3. Ext.R1A dated 23/10/14 is the order of the Joint Registrar sanctioning the post of Attender/Peon in the 1st respondent Bank. In order to fill up vacancies, the Bank issued Ext.P1 notification dated 15/11/14 and the number of vacancies specified therein was 7 post of Peon and one attender. The qualification prescribed in the notification was pass in the 7th standard. The last date specified in the notification for receipt of the applications was 27/11/14. While so, by Ext.P2 dated 25/11/14, Rule 186 of the Kerala Co-operative Societies Rules prescribing qualification was amended and as a

result, degree holders were made ineligible for the post in question. This amendment was brought into effect from 26/11/14. The case of the appellant is that despite the ineligibility of the degree holders introduced as per Ext.P2, degree holders were considered. According to him, the recruitments, having been concluded after Ext.P2 amendment, should have been in compliance with the recruitment rules as amended. By the judgment under appeal, the learned single Judge dismissed the writ petition and it is this judgment which is under challenge.

4. According to the learned counsel for the appellant, in view of the principles laid down by the Apex Court in its judgment in **Deepak Agarwal and another v. State of Uttar Pradesh and Others** {2011 (6) SCC 725}, the eligibility of a candidate to be considered for the post should be reckoned as on the date of consideration and if so, the recruitments should have been on the basis of the rules as amended. However, as rightly pointed out by the learned counsel for the 1st respondent Bank, law has been settled in a series of judgments of this Court such as **Mohanan v. Director of Homeopathy** (2006 (3) KLT 641 (F.B.)), **Asha P. & Ors. v. State of Kerala and Ors.** (2009 (4) KHC 721) and

Shabu v. State of Kerala (2013 (2) KLT 598) that the amendment to the recruitment rules after the notification cannot have any impact on the vacancies until the rules are amended. If that be so, the appellant cannot successfully impugn the recruitments made by the Bank in pursuance of Ext.P1.

5. In so far as the judgment of the Supreme Court that was relied on by the learned counsel for the appellant is concerned, first of all, reading of the judgment itself shows that the Court was not dealing with a case of direct recruitment but was dealing with a case of promotion and therefore the principles laid down in that context cannot have any automatic application in so far as the case of direct recruitment is concerned. Therefore, we do not find any illegality in the view taken by the learned single Judge.

Appeal fails and is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//
PA to Judge