

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WA.No. 270 of 2014 () IN WP(C).10829/2013

(JUDGMENT IN WPC.10829/13 OF THE HIGH COURT OF KERALA DT.3.1.2014)

FOURTH RESPONDENT/APPELLANT:

P.G.SHIBU AGED 42 YEARS
S/O.P.N.GOPI, PUTHENPARAKKAL HOUSE
PERUMPALLY CHURCH ROAD, NJARAKKAL P.O., VYPEEN VIA
ERNAKULAM DISTRICT-682505.

BY ADV. SRI.P.N.MOHANAN

RESPONDENT(S)/PETITIONERS/RESPONDENTS 1 TO 3:

-
1. BIJU.M.G.
S/O.GOPALAKRISNAN, MANISSERI HOUSE, NJARAKKAL P.O.
PERUMPALLY WEST, (PEON
NJARAKKAL SERVICE CO-OPERATIVE BANK LTD
ERNAKULAM DISTRICT.) PIN 682001.
 2. LILLY K.M.
D/O.K.A.MATHUNNY, PAYYAPPILLY HOUSE, NJARAKKAL P.O.
ERNAKULAM, (PEON
NJARAKKAL SERVICE CO-OPERATIVE BANK LTD.
ERNAKULAM DISTRICT.) PIN 682001.
 3. THE JOINT REGISTRAR (GENERAL)
CO-OPERATIVE SOCIETIES, CIVIL STATION, KAKKANAD
ERNAKULAM-682030.
 4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
KOCHI-682001.
 5. NJARAKKAL SERVICE CO-OPERATIVE BANK
REPRESENTED BY ITS SECRETARY, NJARAKKAL P.O.
VYPEEN VIA, ERNAKULAM DISTRICT-682505.

R3-R4 BY SR GOVT PLEADER SRI.M.K.ABOOBACKER
R1, R2 BY ADV.SMT.ANU SIVARAMAN
R5 BY ADV.SRI.M.M.MONAYE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.A.270/14

APPELLANTS' EXHIBITS:

ANNEXURE A1: A TRUE COPY OF THE JUDGMENT DATED 3.1.2014 IN W.P(C).
NO.10829/2013.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

W.A.No.270 of 2014

Dated this the 27th day of February, 2015

JUDGMENT

Antony Dominic, J.

1. This appeal is filed by the 4th respondent in W.P(C). No.10829/13. The said writ petition was filed by respondents 1 and 2 herein. In the writ petition, what they wanted essentially was to interdict the authorities from proceeding with Ext.P4, a show cause notice issued by the third respondent, the Joint Registrar of Co-operative Societies. By the judgment under appeal, learned single Judge allowed the writ petition and interdicted the third respondent from proceeding with Ext.P4. It is this judgment which is under challenge before us.

2. We heard learned counsel for the appellant and the learned Government Pleader appearing for the respondents.

3. Briefly stated, facts of the case are that the 5th respondent society issued Ext.P2 notification inviting applications for the post of Peon. In this

notification, it was made clear that the ranked list prepared on the basis of the written test and interview would remain valid for a period of two years and that vacancies arising during the currency of the ranked list would be filled up from the list itself.

4. Accordingly, written test and interview were held assigning 80 and 20 marks each respectively. The ranked list was prepared and at that stage, the appellant made a complaint to the Joint Registrar alleging that the ranked list prepared was in violation of circular No.79/11 dated 9.11.2011 issued by the Registrar that contrary to the direction that the written test should have a minimum of 100 marks, the maximum marks assigned to the written test was only 80. The Joint Registrar found substance in the complaint and issued Ext.P4 show cause notice calling upon the society to show cause why the decision taken by the Committee shall not be rescinded.

5. In the mean time, respondents 1 and 2 were appointed as Peons in the service of the bank. Finding that in

view of Ext.P4, their continuance in the bank was under threat, they filed the writ petition, which, as stated above, was allowed by the learned single Judge.

6. Before us, the contentions raised by the counsel for the appellant are mainly two fold. One is that though he had performed well in the interview, he was awarded only 5 marks and that in order to pave way for the appointment of respondents 1 and 2, they were deliberately awarded 18 marks each. Counsel also contended that the bank could not have maintained a ranked list and could only have filled up the notified vacancies. Learned counsel also argued that when appointments were made to more vacancies than that are notified, candidates who participated in the selection but did not get appointment also had the locus standi to challenge the appointments made illegally.

7. We have considered the submissions made. In so far as the contention that only 80 marks were awarded in the written test in violation of the circular of the

Registrar instead of 100 marks is concerned, it is true, as found by the learned single Judge, that such a circular was issued by the Registrar. However, as found by the learned single Judge, this by itself did not result in any prejudice to the candidates and therefore, the fact that technically there is such a deviation, we do not think that this should result in invalidating the whole selection process. That apart, even if the marks are proportionately increased to make it in tune with the circular of the Registrar, the resultant ranking would remain the same. In such circumstances, we do not think that accepting this contention, the selection process should be upset.

8. As far as the complaint of the appellant that he was deliberately awarded lower marks in the interview is concerned, the judgment under appeal shows that the learned Judge had called for the records and was satisfied that there were several candidates who got higher marks than the appellant. This, therefore, suggests that on facts, it cannot be concluded that

marks were deliberately awarded in such a manner to ensure appointment of respondents 1 and 2.

9. The other contention raised by the counsel for the appellant is that appointments were made to more than the notified number of vacancies and that the bank was not empowered to maintain a ranked list. This contention will have to be dealt with in the light of Ext.P2 notification issued by the bank. Reading of this notification shows that the bank did not specify the number of vacancies and instead, stated that the ranked list would be valid for a period of two years and the vacancies that arise during the currency of the ranked list would be filled up from that list. Though the appellant may be justified in arguing that there is no provision in the Kerala Co-operative Societies Act or the Rules empowering the bank to maintain such a ranked list, even the appellant did not challenge the notification in question and on the other hand, by responding to the notification and participating in the selection process, he was only trying to be benefited by the notification. Therefore, at this distance of time, the appellant

cannot be allowed to turn around and challenge the validity of the notification and that too, in this appeal.

10. It is true that in the judgment in Suresh v. M.G. University [2009 (1) KLT 950], a Division Bench of this Court has held that when appointments were made to more than vacancies that are notified, persons who participated in the selection process can challenge the appointment. It was relying on this judgment, the counsel was seeking to sustain his challenge against the appointments. However, reading of this judgment of the Division Bench shows that in the circular which was considered in that case, it was specified that appointments were to be made to two posts and when appointments were made to more than the notified posts, challenge was raised before this court. As we have already stated, in this case, the notification did not specify the number of vacancies and instead, the notification only stated that ranked list would be maintained and appointments would be made from the ranked list. Therefore, the case of the appellant is totally different from the

case that was considered by the Division Bench in the judgment in Suresh (supra). We are therefore unable to find any support from this judgment for the appellant to sustain his case.

11. Similarly, since the notification did not specify any number of vacancies, we do not find any substance in the case of the appellant that more than the declared number of vacancies could not be filled up by the bank. In such a situation, we do not find any relevance for the judgments of this Court in Dimpley v. M.G.University [2007 (2) KLT 519] and Ibey Susan Issac v. Anicadu Service Co-operative Bank Ltd., Pathanamthitta [2013 (2) KHC 399], relied on by the counsel.

We do not find any merit in this appeal. It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

k kb.