

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WA.No. 875 of 2014 () IN WP(C).37760/2010

AGAINST THE ORDER/JUDGMENT IN WP(C) 37760/2010 of HIGH COURT
OF KERALA DATED 20-03-2014

APPELLANT(S) : /THIRD PARTY

NISHA N.A, W/O.K.ANOOP,
AGED 41 YEARS, 'PARNASALA',
NEAR GOVERNMENT HIGH SCHOOL,
BYE PASS ROAD, NORTH KALAMASSERY,
PIN - 683 104.

BY ADVS.SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE
SRI.DESI MATTHAI

RESPONDENT(S) : /PETITIONER AND RESPONDENTS

1. SUBHAMMA S.,
PALlichambayil HOUSE, PIPELINE ROAD,
PALARIVATTOM P.O., ERNAKULAM - 682 025.
2. CO-OPERATIVE SERVICE EXAMINATION BOARD,
REPRESENTED BY CHAIRMAN,
THIRUVANANTHAPURAM - 695 001.
3. PREMIER TYRES EMPLOYEES MULTI PURPOSE
CO-OPERATIVE SOCIETY LTD. NO.E-282,
REPRESENTED BY PRESIDENT, KALAMASSERY,
PIN - 683 104.
4. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
CO-OPERATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

R1 BY SRI.P.N.MOHANAN
R2 BY SMT.RASHMI. K.V., SC,
CO.OP.SERVICE EXAMINATION BOARD
R2 BY ADV. SRI.ANIL THOMAS, SC,
CO.OP. SERVICE EXAMINATION BOARD
R3 BY SRI.M.GOPIKRISHNAN NAMBIAR
R3 BY ADV. SRI.P.GOPINATH
R3 BY ADV. SRI.P.BENNY THOMAS
R3 BY ADV. SRI.K.JOHN MATHAI
R4 BY SRI.E.M.ABDUL KHADER, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21-10-
2015, ALONG WITH WPC. 16542/2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

.....
W.A.No.875 of 2014
and
WP(C) No.16542 of 2013
.....

Dated this the 21st day of October, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.Appellant in the captioned writ appeal, Smt.Nisha, has also filed the captioned writ petition. She was not a party to WP(C) No.37760 of 2010, which was filed by Smt.Subhamma. Smt.Nisha was given leave to appeal against the judgment delivered in WP(C) No.37760 of 2010 because the decision contained therein affects the rights of Smt.Nisha.
- 2.We have heard the respective learned counsel for Smt.Nisha and Smt.Subhamma, the learned counsel appearing for the Premier Tyres Employees Multi Purpose Co-operative Society Ltd. No.E 282, which is a primary co-operative society registered under the provisions of the Kerala Co-operative Societies Act, 1969, as also the learned standing counsel for the Co-operative Service

Examination Board.

3. Smt. Nisha applied for being considered and was included in the ranked lists prepared for the posts of secretary and clerk in the services of Premier Tyres Employees Multi Purpose Co-operative Society Ltd. No.E 282, hereinafter referred to as 'Society'. Smt. Subhamma also found a place in the ranked list prepared for the post of secretary.
4. Smt. Subhamma filed WP(C) No.37760 of 2010 alleging that she is entitled to award of five marks over and above the marks for interview as grace marks in view of Rule 182(4)(ivA) of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the 'KCS Rules'. The plea was that she resides in Ernakulam District along with her husband and, therefore, that is her home district, though she was born in Alappuzha District. The learned single Judge through the judgment in WP(C) No.37760 of 2010 held that the term 'home district' for the purpose of the aforesaid clause of Rule 182(4) includes the place where the person resides, and that

expression cannot be confined to the place of one's birth. This is how the Explanation occurred after Rule 182(4)(ivA) was interpreted by the learned single Judge.

5. The Explanation to clause (ivA) of Rule 182(4) reads as follows:-

“Explanation:- For the purpose of this item, candidates of home district means the candidates belonging to the district or districts to which the area of operation of the society extends.”

6. Fluidity of that Explanation stems from the fact that it stands on the question as to which district a candidate belongs to. There is a similar provision among the Kerala State & Subordinate Services Rules, 'KS&SSR', for short. That fell for consideration at the hands of the learned single Judge in Suhara v. Kerala Public Service Commission [2012(1) KLT 402]. The learned single Judge has held through that judgment that place of residence has no relevance and place of birth is the sole criterion on which a nativity certificate could be issued, taking into consideration the expressions “belonging to” and “nativity” contained in Rule 5A of

the KS&SSR. We are told that that judgment is pending in appeal before the Division Bench of this Court.

7. The resultant situation available as on today following the judgment in WP(C) No.37760 of 2010 delivered on 21.03.2014 is that Smt.Subhamma, who was the petitioner therein, was appointed and admitted to duty as secretary of the Society following that judgment and when we hear these cases in October, 2015, she is serving as the secretary of that Society. Even if we take it that the grace marks award under clause (ivA) of Rule 182(4) of the KCS Rules have to be excluded from being considered, the plea of Smt.Nisha would be relevant for further consideration. But, as a matter of fact, the person appointed as clerk from the list in which Smt.Nisha also finds a place, had joined the services of the Society, but was thereafter selected and appointed as clerk in the District Co-operative Bank from the quota allotted to primary societies and that vacancy arose during the currency of the ranked list prepared by the Examination Board for the category of clerk. It is agreed to by the learned counsel

appearing for the contesting parties that it would suffice if Smt.Nisha is accommodated by the Society in the vacancy of clerk which arose during the currency of the ranked list and in that event, situational justice can be meted out to both parties. We are also told that there are other vacancies in the Society still lying vacant.

8. While it may be technically possible to say that the vacancy, which has arisen by reason of the appointment of the initial recruit to the Society as clerk to the services of the District Co-operative Bank, has to be re-notified as a newly arising vacancy; on the totality of the facts and circumstances of the case, we visualise the situation where the Examination Board had made a list and that the said list was in force, in the sense that its term had not expired. Instead of treating that its term had not expired on the sole reason that the person appointed on initial recruitment as clerk is no more available to man that post, if Smt.Nisha is accommodated in that vacancy of the clerk in the Society, both the women can be accommodated since in such event, Smt.Nisha

will not have any further claim to the vacancy which was filled by appointing Smt.Subhamma as secretary, giving effect to the judgment of the learned single Judge. While paving way to such a conclusion of this litigation, we clarify that we have not given the seal of approval of the Division Bench of this Court to the views taken by the learned single Judge as to the manner of interpretation of clause (ivA) of Rule 182(4) and the Explanation occurring therein, more particularly having regard to the pendency of the writ appeal as against the decision in Suhara (supra) and also having regard to the term 'domicile' which may be relevant for consideration. Adverting to Article 5 of the Constitution of India, it would be worthwhile to consider whether the concept of 'domicile' or 'nativity' depends on the place of birth or depends on the ordinary residence of a person at a given point of time. The concept of 'ordinary residence' has such nexus to the question of 'domicile' as it would have to the issue of nativity.

In the result, the writ appeal and the writ petition are ordered directing that the Society shall appoint Smt.Nisha in the vacancy

of clerk that has arisen in its service consequent on the resignation or relieving of the incumbent who was appointed from the list prepared by the Examination Board and who has since been appointed in the District Co-operative Bank. It is also clarified that the direction contained in the impugned judgment has been given effect to, however that, the Division Bench does not affirm the findings on principle of law as to the interpretation of the aforementioned statutory provision, namely, Rule 182(4)(ivA) of the KCS Rules. We record the submission on behalf of Smt.Nisha that the Society ought to do the needful at the earliest.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)