

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WA.No. 1838 of 2014 () IN WP(C).9318/2012

AGAINST THE ORDER/JUDGMENT IN WP(C) 9318/2012 of HIGH COURT OF KERALA DATED

APPELLANTS/RESPONDENTS 1-3 IN W.P(C)

1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM 695 001
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
KASARAGOD 671121
3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, KASARAGOD 671 121

BY ADV. GOVERNMENT PLEADER SMT. GIRIJA GOPAL

RESPONDENTS/PETITIONER AND RESPONDENTS NO.4 TO 6 IN WPC:

1. M. SADANANDA, S/O. VENKATRAMANA BHAT, SECRETARY, BAYAR
SERVICE CO-OPERATIVE BANK LTD., P.O., BAYAR, KASARAGOD TALUK
AND DISTRICT 671 348
2. THE BAYAR SERVICE CO-OPERATIVE BANK LTD., NO. L 371, SAHAKARI NAGAR
P.O, BAYAR, KASARAGOD DISTRICT 671 348
3. UNIVERSITY GRANTS COMMISSION, HAHADURSHAH ZAGAR
MARG, NEW DELHI 110 002 REP. BY ITS SECRETARY
4. KARNATAKA STATE OPEN UNIVERSITY, MANASAGANGOTRI,
MYSORE 570 006 REPRESENTED BY ITS REGISTRAR.

R1 BY ADV. SRLK.SHRIHARI RAO
R1 BY ADV. SMT.N.SHOBHA
R3 BY ADV. SRLS.KRISHNAMOORTHY, CGC
R2 BY ADV. SRLP.N.ANOOP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-09-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 1838 of 2014 () IN WP(C).9318/2012

APPENDIX

APPELLANTS ANNEXURES : NIL

RESPONDENT'S ANNEXURES:

ANNEXURE R3(a) : TRUE COPY OF THE CIRCULAR NO.1-52/2000 (CPP II) DT 5.5.2004

TRUE COPY

P.A TO JUDGE

jma

ASHOK BHUSHAN, C.J. &
K.VINOD CHANDRAN, J.

W.A No.1838 of 2014

Dated this, the 17th day of September, 2015

JUDGMENT

Ashok Bhushan,C.J.:

This writ appeal has been filed against the judgment dated 23.06.2014 in W.P(C)No.9318 of 2014, by which judgment, the learned Single Judge has disposed of the writ petition directing the Joint Registrar to re-consider the claim of the writ petitioner. The brief facts necessary for deciding the Writ Appeal are that the 1st respondent was the petitioner in the writ petition. The petitioner had entered into the service of the Bayar Service Co-operative Bank in 1985 as a Junior Clerk. The Bank has recommended the petitioner for promotion on the post of Assistant Secretary to the post of Secretary with effect from 01.01.2008. A resolution dated 28.12.2007 was passed and was send to the 2nd respondent Joint Registrar of Co-operative Societies for approval.

2. The 2nd respondent directed the 4th respondent to verify the educational qualifications of the petitioner. The 2nd respondent vide letter dated 31.01.2011 informed the 4th respondent that the petitioner is not holding the requisite qualification for the post of Secretary as mentioned under Rule 186 of the Kerala Co-operative Societies Rules, 1969 and the resolution cannot be approved. The petitioner aggrieved by the said decision of the Joint Registrar, has filed the writ petition praying for the following reliefs:

- i. Issue a writ of mandamus of any other appropriate writ order of direction directing the 2nd respondent to approve the appointment of the petitioner as the Secretary of the 4th respondent Bank w.e.f 1.1.2008 in the light of Exhibit P7 and P8.
- ii. Issue appropriate direction to the respondents 1 to 3 to consider and pass orders on Exhibits P9

after hearing the petitioner and thereby relax the rules regarding the qualification to the post of Secretary of the 4th respondent Bank now held by the petitioner w.e.f 1.1.2008.

3. The learned Single Judge relying on a judgment of this Court in *Mani v Tirur Urban Co-operative Bank Ltd.* (2013 (2) KLT 609), has come to the conclusion that the Post Graduate Degree obtained by the petitioner from Karnataka State Open University, the 6th respondent, is liable to be reckoned as eligible and valid qualification for the purpose of promotion.

4. The learned Single Judge issued the following directions in Paragraph 8:

“The second respondent/Joint Registrar is directed to re-consider the matter in the light of the law declared by this Court as per the decision cited *supra* (i.e 2013 (2) KLT 609) and pass appropriate

orders after hearing the petitioner and also the 4th respondent/Bank. The proceedings as above shall be finalized at the earliest, at any rate, within two months from the date of receipt of a copy of this judgment.”

5. The State aggrieved by the reconsideration judgment as come up with this appeal.

6. We have heard the Special Government Pleader Smt. Girija Gopal for the appellant and Sri. K. Shri Hari Rao for the 1st respondent.

7. It is submitted by the learned Special Government Pleader that the petitioner did not fulfill the statutory requirement of qualification as laid down in Rule 186(i) of the Rules of 1969. It is submitted that the petitioner's only qualification was SSLC, Higher Diploma in Co-operation and Post Graduation in Arts. It has been specifically submitted that the

petitioner did not have a graduate degree. It is stated that he obtained a Post Graduate Degree in M.A (History) from the open university which cannot be treated to be eligible qualification as required under Rule 186.

8. It is submitted that the University Grant Commission, which is also a party to the writ petition, has filed a counter affidavit wherein it has been clearly pleaded that any Post Graduate Degree which has been obtained by a candidate from an open university without there being Bachelors Degree, cannot be recognised. It is submitted that the learned Single Judge without adverting to the aforesaid has disposed of the writ petition.

9. We have considered the rival contentions and perused the record. Rule 186(i) which is relevant for the present cases narrated below:

“186(1) : No person shall be eligible for appointment
in any post unless he possess the qualification
prescribed for the post as shown below:

- (i): All posts other than those requiring technical qualifications, the starting pay of which is Rs.250 or
- | | |
|---|---|
| <p>and above as it existed on the 1st January, 1974 and such pay being revised from time to time.”</p> | <p>A A degree in commerce or Masters degree in Arts of a recognised University, with Co-operation as special subject</p> <p>B. Any Bachelors Degree from a recognised University</p> <p>ii) Higher Diploma in Co-operation or Higher Diploma in cooperation and Business Management (H.D.C) or H.D.C & B.M of State Co-operative Union of Kerala or H.DC and H.D.C.M of the National Council for Co-operative Training or successful completion of the Subordinate (Junior) Personnel Co-operative Training Course (Junior Diploma in Co-operation)</p> |
|---|---|

10. The qualifications as extracted above contains two qualifications A and B. A has also two alternative degree in Commerce and Master Degree in Arts of a recognised University with Co-operation as special subject. The petitioner does not

even claim the above qualification. Now comes, the alternative qualification as mentioned in Class B which is any Bachelor degree of the recognised university with higher Diploma in Co-operation and Business Management.

11. The petitioner does not admittedly possess qualification in Class A. The claim which was laid by the petitioner was that he has a Post Graduate Degree in History from an open University which is sufficient to fulfill the qualification as required in Clause B. He claims he also has a Higher Diploma in Cooperation. Now, the question which is to be answered by us is as to whether on the basis of the Post Graduate Degree in M.A (History) he can be treated to have fulfilled the qualifications as mentioned in Rule 188 (i)B.

12. A counter affidavit has been filed by the State in Paragraph 4 of which the details of qualifications possessed by the petitioner had been clearly stated. It is useful to extract the

pleading on behalf of the respondents in the above counter affidavit which is of the following lines:

“Para 5: As per Rule 186 of the Kerala Co-operative Societies Act, 1969 the qualification required for the post of Branch Manager and above is a Degree from a recognised University with Co-operation as special subject or Degree with JDC or HDC. The petitioner does not have a Degree from recognized University. His qualification is SSLC and Co-operative Training. As such he should have obtained exemption order from education qualification for the post of Branch Manager. But he did not apply for such an exemption.”

13. The petitioner filed reply to the aforesaid counter affidavit filed by the State dated 12.10.2012 . We have perused

the reply. The reply has been filed by the petitioner on 1.12.2012.

We have perused the reply submitted by the petitioner. There is no specific reply to the allegations in Paragraph 5 of the counter affidavit nor even paragraph 5 has been adverted to by the petitioner. In the writ petition which has been filed by the petitioner, in paragraph (1), the petitioner has only referred to having obtained a Post Graduate Degree in History from the Karnatak Open University, Mysore besides having technical qualification Higher Diploma in Co-operation.

14. The University Grants Commission has in its counter affidavit dated 26.2.2013 explained the position in paragraph 7, 9 and 19, which are extracted herein.

“Paragraph 7: That it is respectfully submitted that the University Grants Commission in exercise of its powers conferred under Section 26(1)(f) of the University Grants Commission Act, 1956 framed the UGC(the minimum standards of instructions for the

grant of the first degree through non-formal/distance education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985. The Regulation 2 deals with the admission/students and provides as under:-

“2. Admission/Students

(1) No student shall be eligible for admission to the 1st degree course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 18 years on July 1 of the year of admission.

(2) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A/B.Sc/B.com (general honours/Special Degree as the case may be.

Provided that no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first degree course of three years duration.

Provided further that, as a transitory measure where the Universities are unable to change over to a three year degree ;course, they may award a B.A/B.Sc./B.Com (Pass) degree on successful completion of two year course, but that no student of this stream shall be eligible for admission to the Master's course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed as B.A/B.Sc/B.Com (Pass) degree”.

“Paragraph 9: That in the circumstance it is respectively submitted that in the light of Regulation 2(3) of the aforesaid University Grants Commission Regulation, unless and until a candidate successfully pursues the first degree course of three years duration, he/she shall not be eligible for the award of the first degree called

B.A/B.Sc./B.Com. (General/Honours/Special) degree. It is further respectfully submitted that if a candidate has obtained a Master's degree in contravention of Regulation 2 of the aforesaid University Grants Commission Regulations, such Master's degree cannot be termed a valid degree for any purpose including employment.”

“Paragraph 19: That in the circumstances it is respectfully submitted that in the light of the aforesaid University Grants Commission Regulation, unless and until a candidate successfully pursues the first degree course of three years duration he/she shall not be eligible for the award of the first degree called the B.A/B.Sc/B.Com(General/Honours/Special) degree and he/she cannot be eligible for admission to the Master's course. It is further respectfully submitted that if a candidate has obtained a Bachelor's or / and Master's degree in contravention of the aforesaid University Grants Commission Regulations, such Bachelor's or/and Master's degree cannot be termed a valid degree for any purpose including employment”

15. The University Grants Commission is the authority under Section 22 in accordance with the University Grants Commission Act, 1956 to regulate the grant of degrees by various universities. Open universities have also to fall in line regarding regulations and directions issued by the University Grants Commission with regard to the award of degree and post graduate degree. In view of the specific stand of the University Grants Commission as extracted above, it is clear that no post graduate degree can be awarded without first a candidate having passed a graduation degree. In the present case, the petitioner does not claim any graduation degree nor is there anything on the record to indicate that he possesses such degree. The only basis of promotion is claimed on the Post Graduate degree from the open university which cannot be relied nor on that basis it can be held that the petitioner fulfills the qualification as prescribed in Rule 186 of the 1969 Rules.

16. The judgment in which reliance has been placed by the learned Single judge in Mani (supra) was a case where a degree was being claimed from Tamil Nadu open university. The question was whether the degree obtained from distant education ought to have been treated as equivalent. There the employee was claimed the post of Branch Manager in a Co-operative Societies. The present is a case where the petitioner does not claim possessing any degree or pre-degree. Thus in the above judgment the learned single judge took a view that there is no distinction between the degree certificate obtained by way of Distance Education Programme or by way of regular study.

17. The above issue is not up for consideration in the present appeal. Here the petitioner does not have any degree and has laid his claim for promotion on the basis of post graduate degree obtained from the respondent University which cannot be treated as equivalent to essential qualification as

prescribed under rule 186. He has never passed and obtained any graduate degree qualification. We are thus of the view that no error was committed by the Joint Registrar in refusing the approval of the promotion and the direction given by the learned Single Judge directing the Joint Registrar to reconsider cannot be sustained.

In the result, the writ appeal would stand allowed. Judgment dated 23.06.2014 shall be set aside and the writ petition filed by the 1st respondent is dismissed.

Sd/-
Ashok Bhushan,
Chief Justice

Sd/-
K.Vinod Chandran,
Judge.

jma/18.09

//true copy//

P.A to Judge