

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

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

WP(C).No. 10377 of 2005 (I)

PETITIONERS:

1. K.K.REMESAN, S/O.KUNHAMBU PODUVAL,
MAHADEVA GRAMAM, PAYYANNUR, PO.PAYYANNUR,
KANNUR, DISTRICT, (JUNIOR CLERK,
PAYYANNUR SERVICE CO- OPERATIVE BANK LTD. NO. F1401
P.O. PAYYANNUR.)
2. K.P.MURALEEDHARAN,
S/O.LATE V.CHATHAPPAN PODUVAL, KARAYIL, P.O. ANNUR,
PAYYANNUR, KANNUR DISTRICT, (SALES MAN,
PAYYANNUR SERVICE CO-OPERATIVE BANK LTD., NO.FA.1401
P.O. PAYYANNUR).

BY ADVS.SRI.V.N.RAMESAN NAMBISAN
SRI.M.V.AMARESAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF CO-OPERATION,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.
3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), KANNUR.
4. THE PAYYANNUR SERVICE CO-OPERATIVE BANK
LTD. NO.F.1401, PAYYANNUR, REPRESENTED BY ITS
SECRETARY.
5. THE PRESIDENT REPRESENTING BOARD OF DIRECTORS,
PAYYANNUR SERVICE CO-OPERATIVE BANK LTD. NO.F.1401
PAYYANNUR.

R,R4 BY ADV. SRI.M.SASINDRAN
R,R BY ADV. SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

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| EXT.P1 | : TRUE COPY OF ORDER DATED 16.12.2002 B/EST/REVERSION/1/02/03 OF 5TH RESPONDENT. |
| EXT.P2 | : TRUE COPY OF REPRESENTATION DATED 21.12.2002 SUBMITTED BY THE 1ST PETITIONER TO THE BOARD. |
| EXT.P2(a) | : TRUE COPY OF THE ACKNOWLEDGMENT EVIDENCING RECEIPT OF EXHIBIT P2 DATED NIL. |
| EXT.P3 | : TRUE COPY OF THE REQUEST DATED 27.12.2002 SUBMITTED BY THE 2ND PETITIONER TO THE BOARD. |
| EXT.P4 | : TRUE COPY OF OFFICE ORDER NO.12/04 DATED 11.02.2004 OF THE SECRETARY OF THE BANK COMMUNICATING TO THE PETITIONERS RESOLUTION NO.21 DATED 31.01.2004. |
| EXT.P5 | : TRUE COPY OF REPRESENTATION DATED 20.02.2004 FILED BY THE 1ST PETITIONER TO THE ADMINISTRATOR. |
| EXT.P6 | : TRUE COPY OF REPRESENTATION DATED 12.03.2004 FILED BY THE 2ND PETITIONER TO THE ADMINISTRATOR. |
| EXT.P7 | : TRUE COPY OF THE ORDER DATED 12.08.2000 PROMOTING SRI. K.P. RAJAN TO THE POST OF SENIOR CLERK. |
| EXT.P8 | : TRUE COPY OF JUDGMENT DATED 25.03.2004 IN W.P.(C) NO. 9479/04 OF THE HON'BLE HIGH COURT. |
| EXT.P9 | : TRUE COPY OF ORDER NO.2152/04/C.R.P./K.DIS. DATED 27.05.2004 OF THE 3RD RESPONDENT. |
| EXT.P10 | : TRUE COPY OF PROCEEDINGS NO.B/EST/PROMOTION/01 DATED 18.01.2001 OF THE 5TH RESPONDENT. |
| EXT.P11 | : TRUE COPY OF JUDGMENT DATED 28.07.2004 IN W.P.(C) NO. 22287/2004 OF THE HON'BLE HIGH COURT. |
| EXT.P12 | : TRUE COPY OF MEMORANDUM OF APPEAL ALONG WITH THE STAY PETITION DATED 09.08.2004 PREFERRED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT. |
| EXT.P13 | : TRUE COPY OF THE REPORT DATED NIL FILED BY THE SECRETARY OF THE BANK BEFORE THE 1ST RESPONDENT DATED NIL. |
| EXT.P14 | : TRUE COPY OF STATEMENT DATED 19.01.2005 FILED BY THE PETITIONERS IN REPLY TO EXHIBIT P13. |
| EXT.P15 | : TRUE COPY OF ORDER G.O.(RT.) 176/05/CO-OP DATED 15.03.2005 ISSUED BY THE 1ST RESPONDENT. |

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: 3 :

PETITIONERS' EXHIBITS:

EXT.P16 : TRUE COPY OF ORDER G.O.(RT.) 478/04/CO-OP. DATED
25.08.2004 OF THE 1ST RESPONDENT.
EXT.P17 : TRUE COPY OF G.O.(RT) 476/07/CO-OP. DATED
23.07.2007.
EXT.P18 : TRUE COPY OF JUDGMENT DATED 17.03.2015 IN W.P.(C)
NO. 12893/2009.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 10377 of 2005 (I)

Dated this the 17th day of September, 2015.

JUDGMENT

The petitioners having been promoted — after their putting in about three years' service — were reverted owing to a supervening event: somebody else at the higher echelon getting reverted. Pending the writ petition, however, the person at higher echelons again got her position restored. As a consequence, now the petitioners also seek restoration of their position and also payment of salary that had been recovered from them.

2. The facts in brief are that the first petitioner joined the service of the 4th respondent Bank as a Peon on 06.07.1983 and was promoted as a Junior Clerk on 06.03.1993. In the course of time, i.e., on 01.07.1999, he was further promoted to be a Senior Clerk. The 2nd petitioner, on the other hand, joined the 4th respondent's service on 16.11.1988 as a salesperson and was later promoted as a Junior Clerk on 01.07.1999. At any rate, on 16.12.2002, both the petitioners had been reverted to their original positions; that is, Junior Clerk and

Salesman respectively owing to the reversion of one Smt. Saudmini at higher echelons of the cadre.

3. Assailing Ext.P1 order of reversion dated 16.12.2002, both the petitioners submitted Exts.P2 and P3 representations before the 5th respondent, the President of the 4th respondent Bank. Notwithstanding the petitioners' representations, the 5th respondent ordered through Ext.P4 the recovery of salary as well from the petitioners for the period they worked in the promotional position.

4. Aggrieved, questioning the reversion and recovery of salary, the petitioners filed W.P.(C) No. 9479 of 2004 and invited Ext.P8 judgment, through which this Court directed the 3rd respondent to consider the issue. In compliance with the direction of this Court, the 3rd respondent did consider the claim of the petitioners and issue Ext.P9 order of rejection. Once again, the petitioners filed W.P.(C) No. 22287 of 2004 assailing Ext.P9 order of rejection by the 3rd respondent. This Court through Ext.P11 judgment gave liberty to the petitioners to file a statutory appeal, instead.

5. The petitioners, as had been directed by this Court in Ext.P11 judgment, filed an appeal, in which the Government passed Ext.P15

orders further rejecting the petitioners' claim for restoration of their positions. Under these circumstances, assailing compendiously Exts.P1, P4, P9 and P15, the petitioners filed the present writ petition.

6. The learned counsel for the petitioners has submitted that one Smt. Saudamini, working as Manager, was promoted as an Assistant Secretary. Her promotion was in the wake of the retirement of one Smt. A.K. Rajamkuttu Ammal working as Assistant Secretary. In fact, the retirement of Smt. A. K. Rajamkuttu Ammal has facilitated promotions down the cadres percolating up to the 2nd petitioner.

7. In the vacancy that arose on account of Smt. Saudamini's promotion, one Sri. P. Krishnan, working as the Manager, was promoted; in his vacancy, one Sri. P.M. Vijaya Kumar, the Accountant, was promoted; in his vacancy, one Smt. M.A. Radha, the Senior Clerk, was promoted; in her vacancy, the first petitioner, then working as Junior Clerk, was promoted; and in the resultant vacancy, the 2nd petitioner, the salesman, was promoted.

8. Since Smt. Saudamini was promoted to be the Manager without her possessing the necessary qualification, the 4th respondent Bank sought from the Joint Registrar exemption of

qualification. Having conducted Section 65 enquiry, the Joint Registrar rejected the request for exemption. This rejection, in fact, has led to a domino effect of consequential reversions. In other words, unable to obtain an exemption, the 4th respondent Bank reverted Smt. Saudamini to her original cadre of the Branch Manager. As a result of the cascading effect, both the petitioners have also been reverted to their original positions of Junior Clerk and salesperson.

9. The learned counsel for the petitioners has brought to my notice the subsequent developments. Initially, the Government, in appeal preferred by the 4th respondent Bank, reversed the rejection order passed by the Assistant Registrar concerning the exemption of qualification. As a result, through Ext.P17, apart from providing the exemption, the Government also gave retroactive effect to the order. Thus, the entire service of Smt. Saudamini in the promotional position had been regularised. Similarly, Smt. M.A. Radha, the Senior Clerk, who was promoted as Accountant, also had the advantage of exemption through Ext.P18 judgment of this Court. Under these circumstances, the learned counsel has strenuously contended that both the petitioners should also be extended the benefit.

10. The learned counsel for the 4th respondent Bank has submitted that the Bank is willing to consider the petitioners' claims in the light of Exts.P17 and P18. Thus, the said representation made by the learned counsel for the 4th respondent, I am of the opinion, obviates the need of adjudicating the issue on merits.

In the facts and circumstances, having regard to the submissions of the learned counsel for the petitioners and the learned counsel for the 4th respondent Bank, this Court disposes of the writ petition directing respondents 4 and 5 to consider the petitioners' claims in the light of Exts.P17 and P18 and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv/DMR

