

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 5878 of 2009 (D)

PETITIONER(S):

V.R.KALAKUMARI,
SREELAYAM, KARODE P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.SREEKUMAR

RESPONDENT(S):

STATE CO-OPERATIVE UNION KERALA,
REPRESENTED BY ITS SECRETARY, SAMSTHANA
SAHAKARANA BHAVAN, OOTTUKUZH, THIRUVANANTHAPURAM.

BY ADV. SRI.C.P.MOHAMMED NIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015, THE
COURT ON 13.08.2015 DELIVERED THE FOLLOWING:

P.T.O.

W.P.(C) NO.5878 OF 2009

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT - P1 A TRUE COPY OF THE REPRESENTATION DATED 06.02.2007 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXHIBIT - P2 A TRUE COPY OF THE COMMUNICATION DATED 19.01.2007.

EXHIBIT - P3 A TRUE COPY OF THE ORIGINAL MARK SHEET

EXHIBIT - P4 A TRUE COPY OF THE COMMUNICATION.

EXHIBIT - P5 A TRUE COPY OF LETTER.

EXHIBIT - P6 A TRUE COPY OF RULE.

EXHIBIT - P7 A TRUE COPY OF JUDGMENT IN W.P.(C) NO.11757/2007 DATED 12.08.2008.

EXHIBIT - P8 A TRUE COPY OF THE REPRESENTATION.

EXHIBIT - P9 A TRUE COPY OF ORDER.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.5878 of 2009

Dated this the 13th day of August, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Exts.P2 and P9 and to declare that the clauses in the Rules regarding the revaluation marks would be accepted only if it is above 5% is unjustifiable and confusing and for other related reliefs.

2. Brief facts necessary for the disposal of the writ petition are as follows:

3. Petitioner was a salesman in Ponvila Service Co-operative Bank Ltd. There were vacancies in the Bank in the cadre of Junior Clerk. The Bank had sent the petitioner for J.D.C Course conducted by the Respondent with the object of enabling her to acquire the qualification for promotion as Junior Clerk and to provide better service to the customers.

3. Petitioner joined the J.D.C. Course in the Co-operative Training College and appeared for the examinations conducted by the respondent during May, 2006. Altogether there were eight papers and the total marks prescribed for

eight papers together was 1000 and there was also field placement. The minimum marks required for a pass was 400. The petitioner could secure 414 marks but she was not declared passed for the reason that she could not secure minimum marks required for certain individual papers.

4. Accordingly, petitioner had applied for revaluation of four papers, i.e. Paper No.3 - Constitution and working on Non Credit Co-operative Societies, Paper-5, Co-operative Laws and other Laws, Paper-6, Accountancy and Paper-8-Banking. After revaluation, the petitioner was issued with the mark list of revaluation and they are as follows:

<i>Paper</i>	<i>Subject</i>	<i>Marks obtained in the Examination in May</i>	<i>Marks obtained on Revaluation</i>	<i>Marks obtained as per new mark list</i>
Paper III	Constitution and working of non credit Societies.	21	25	25
Paper V	Co-operative Laws and other Laws.	20	18.5	20
Paper VI	Accountancy	31	33	31
Paper VIII	Banking	22	26.5	22

5. The contention put forth by the petitioner was that the respondent had not allotted the marks obtained on revaluation for Paper Nos.6 and 8 referred *supra* and moreover, the respondent had provided moderation marks to persons who obtained marks on the verge of pass marks. But the petitioner was singled out and the attitude of the respondent was hostile discrimination. Apart from the said allegation, petitioner apprehends *mala fide* intention on the part of the respondent. Being confronted with such a situation, petitioner submitted Ext.P1 representation dated 06.02.2007 before the respondent. Petitioner was also served with Ext.P2 revaluation results and in Ext.P2, it was stated that since the increase was not more than 5%, the marks obtained on revaluation was not taken into account. In that background, it was contended by the learned counsel for the petitioner that there was no statutory rule enabling the respondent to insist that the marks secured under revaluation will only be considered if it is above 5% of the original marks awarded. It was also stated by the petitioner that unlike the stipulation contained under the laws of the Universities, there are no enabling statutory rules under the Co-operative

Societies laws or any other rules stipulating the respondent to consider the marks of revaluation only if it is above 5%. It was also contended that the respondent has no power under any of the statutes in order to prescribe such a stipulation. The learned counsel has also contended that if the petitioner had received altogether 21 marks, the petitioner would have been qualified for receiving moderation marks and thereupon she could have passed the J.D.C. Course, enabling her to secure a higher post. It was also the case of the petitioner that there was no logic in fixing minimum 5% enhancement of marks in revaluation and the same has no nexus with the purpose sought to be achieved.

6. On an earlier occasion, petitioner had approached this Court by filing W.P.(C) No.11757/2007 and has secured Ext.P7 judgment dated 12.08.2008 by which the petitioner was directed to make a representation before the respondent seeking to ventilate her grievances and the same was directed to be considered and final decision communicated to her within an outer limit of 45 days from the date of receipt of such representation. Pursuant to the direction contained in the said judgment, petitioner has submitted Ext.P8 representation

before the respondent seeking to ventilate the grievances voiced by her in the said representation.

7. Thereupon, the respondent has passed Ext.P9 order dated 01.11.2008, declining enhancement of marks to her by stating the very same reason of not securing minimum 5% marks under revaluation. In Ext.P9, it was stated that out of the 4 papers, petitioner could secure above 5% marks only for two papers and the other two papers she could secure only less than 5% marks and in that circumstances, in order to enable the petitioner to secure moderation, she could have at least secured 21 marks in revaluation. It is thus aggrieved by Ext.P9, this writ petition was filed by the petitioner and in that process, she seeks to quash Ext.P6 also which is a notification dated 20.01.2002 issued by the respondent fixing the minimum 5% increase on the maximum marks between the marks originally secured by candidates and the average of the marks awarded by the examiners on revaluation, which came into force with effect from 28.11.2001.

8. The respondent has filed a counter affidavit contending that the allegations made against the respondent regarding *mala fide* and hostile discrimination were not true or

correct and further contending that since she could not secure minimum marks in revaluation as prescribed under the notification she was not entitled to get moderation to secure pass marks and therefore there was no illegality on the part of the respondent as alleged by the petitioner in the writ petition. Apart from the same, the allegations with regard to award of marks overlooking the 5% increase rule to others was also denied by the respondent.

9. The petitioner has filed a reply affidavit refuting the contentions raised in the counter affidavit and also reiterating her contentions in the writ petition.

10. I have perused the pleadings in the writ petition, counter affidavit and the reply affidavit and appreciated the rival contentions advanced by the learned counsel for the petitioner as well as the respondent.

11. The subject matter of the dispute is dependent upon the validity of Ext.P6 notification issued by the respondent by which a prohibition is created in the matter of award of the marks in the revaluation of papers if the difference was less than 5%. The learned counsel for the petitioner contended that since the respondent was not empowered under any of

the statutes to issue such a notification, Ext.P6 has no legal sanctity and therefore the same will have to be set aside on that ground alone. Further, the learned counsel has contended that there was no logic in fixing such a stipulation since the purpose for sending the candidates for J.D.C Course by the Co-operative Banks is with the basic intention of enabling its staff to provide better service to the customers who are approaching the Banks for various purposes. On the other hand, the learned counsel for the respondent contended that ever since the introduction of Ext.P6 notification in the year 2001, they were following the very same stipulations and the same were followed scrupulously so as to have a discipline in the matter of revaluation. Further, he contended that if such a stipulation was not prescribed, there would have anomalous situations in the matter of revaluation of the papers and it will be difficult for it to control such a course or circumstances.

12. After evaluating the contentions put forth by the learned counsel, I am of the opinion that there is force in the arguments advanced by the learned counsel for the respondent that it will be difficult to manage the situation without such a stipulation as provided under Ext.P6 notification. However, the

learned counsel for the petitioner has contended that even though the petitioner did not get minimum 5% marks as stipulated for Paper-3, as shown in the chart *supra*, she was awarded with 25 marks after revaluation even though she had secured only 21 marks for the said paper. Therefore, the learned counsel contended that likewise if the marks secured in revaluation were added to the existing marks in the other papers also, she would have been qualified for securing moderation. Therefore, the counsel contended that in the matter of awarding marks under revaluation also there was a grave discrepancy which shows the wilful intention of the respondent to see that petitioner do not secure the minimum marks required for the individual papers.

13. On a perusal of Ext.P2 marks sheet after the revaluation, I also feel that there was a visible discrepancy in the matter of awarding marks against Papers 6 and 8 by not providing the marks secured in revaluation whereas the respondent has added the marks to Paper-3 even though the same was less than 5% as per Ext.P6 notification. The learned counsel for the respondent on the other hand, submitted that the same can only be a mistake. But, in the peculiar

circumstances of the matter, I think the entire aspects require re-consideration at the hands of the respondent.

14. Therefore, in the facts and circumstances of the case, I am inclined to set aside Ext.P9 and direct the respondent to re-consider the whole issue also taking into account the fact that after all Ext.P6 is only a notification of a procedural nature and the same was not supported by any enabling statutory provisions. In the circumstances, I direct the respondent to take a decision on Ext.P8 representation submitted by the petitioner pursuant to the direction in Ext.P7 judgment of this Court referred *supra*, within a period of one month from the date of receipt of a copy of this judgment, taking into account the observations made *supra*. I also make it clear that this direction is issued taking into account the peculiar circumstances involved in the case as stated above.

The writ petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-