

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 4818 of 2011 (B)

PETITIONER(S):

SURESH.K., KALANGOTTUMMEL HOUSE,
KAVILUMPARA P.O., KOZHIKODE.

BY ADVS.SRI.B.S.SWATHY KUMAR
SMT.P.A.ANITHA
SMT.S.MEERA
SMT.M.G.AISHWARYA

RESPONDENT(S):

1. STATE OF KERALA REPRESENTED BY ITS
SECRETARY, CO-OPERATIVE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM. 695 001.
2. THE MARUTHONKARA PANCHAYATH SERVICE
CO-OPERATIVE BANK LTD.NO.D.2461, ADUKKATH P.O.
KOZHIKODE, 673 508, REPRESENTED BY ITS SECRETARY.
3. K.P.SINDHU, PEON,
THE MARUTHONKARA PANCHAYATH SERVICE
CO-OPERATIVE BANK LTD.NO.D.2461, ADUKKATH P.O.
KOZHIKODE 673 508
4. THE BRANCH MANAGER,
KOZHIKODE DISTRICT CO-OPERATIVE BANK
KUTTIADI BRANCH, KOZHIKODE, 673 508

R,R2 BY ADV. SRI.ANIL SIVARAMAN
R,R2 BY ADV. SMT.APARNA RAJAN
R,R3 BY ADV. SRI.M.SASINDRAN
R,R4 BY ADV. SRI.P.V.KUNHIKRISHNAN
R4 BY ADV. SRI.R.SUDHISH, SC, KOZHIKODE DIST.CO.OP. BANK, LTD.
R1 BY ADV. GOVERNMENT PLEADER SRI.T.R.RAJESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C) No.4818 of 2011

PETITIONER(S) EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE COMMUNICATION DATED 13.1.2006 OF THE SECOND RESPONDENT.
- EXHIBIT P2 : TRUE COPY OF THE ORDER NO.MPSCB 1/2007 DATED 10.7.2007 OF THE 2ND RESPONDENT.
- EXHIBIT P3 : TRUE COPY OF THE ORDER NO.AEL 577/2008 DATED 17.7.2008 OF THE JOINT REGISTRAR.
- EXHIBIT P4 : TRUE COPY OF THE RELEVANT PAGE OF THE DISPATCH REGISTER OF THE 2ND RESPONDENT.
- EXHIBIT P5 : TRUE COPY OF THE RESOLUTION DATED 21.1.2006 OF THE 2ND RESPONDENT
- EXHIBIT P6 : TRUE COPY OF THE JUDGMENT IN WP (C) NO.23681/2008 DATED 2.2.2009.
- EXHIBIT P7 : TRUE COPY OF THE COMMUNICATION NO.C/411/09 DATED 22.6.2009
- EXHIBIT P7(a) : TRUE COPY OF THE ORDER NO.AEL/1277/09 DATED 30.7.2009.
- EXHIBIT P8 : TRUE COPY OF THE JUDGMENT IN WP(C) NO.20116/2009 DATED 20.5.2010
- EXHIBIT P9 : TRUE COPY OF THE COVERING LETTER DATED 17.2.2010 FROM THE PETITIONER.
- EXHIBIT P10 : TRUE COPY OF THE ORDER NO.GO(RT) NO.72/2011/CO-OP DATED 5.2.2011
- EXHIBIT P11 : TRUE COPY OF THE COMPLAINT FILED BY THE DIRECTORS OF THE SECOND RESPONDENT BEFORE THE JOINT REGISTRAR DATED NIL.
- EXHIBIT P12 : TRUE COPY OF THE REPORT NO.705/2005/C DATED 1.12.2005.
- EXHIBIT P13 : TRUE COPY OF THE RELEVANT PAGE OF THE MINUTES OF THE MEETING DATED 10.9.2005 OF THE SECOND RESPONDENT.
- EXHIBIT P14 : TRUE COPY OF THE LETTER NO.HO:INFO/61/09-10 DATED 28.8.2009
- EXHIBIT P15 : TRUE COPY OF THE RELEVANT PAGE OF THE ENDORSEMENT OF THE DEMAND DRAFT.

RESPONDENT'S EXHIBITS:

- EXT.R2 : TRUE COY OF THE NOTIFICATION AS PUBLISHED IN THE DEEPIKA NEWS DAILY DATED 14.7.2005.
- EXT.R2(a) : TRUE COPY OF THE NOTIFICATION AS PUBLISHED IN THE CHANDRIKA NEWS DAILY DATED 14.7.2005.
- EXT.R2(b) : TRUE COPY OF THE MARK LIST IN THE WRITTEN TEST FOR THE POST OF PEON CONDUCTED ON 24.9.2005.
- EXT.R2(c) : TRUE COPY OF THE MARK LIST FOR THE INTERVIEW CONDUCTED ON 21.1.2006 FOR THE POST OF PEON.
- EXT.R2(d) : TRUE COPY OF THE CONSOLIDATED MARK LIST OF WRITTEN TEST AND INTERVIEW DATED 21.1.2006 FOR THE POST OF PEON.
- EXT.R2(e) : TRUE COPY OF THE DECISION OF THE SUB COMMITTEE APPROVING RANK LIST.
- EXT.R2(f) : TRUE COPY OF THE EXTRACT OF MINUTES OF THE BOARD MEETING DATED 24.1.2006.
- EXT.R3(a) : A TRUE COPY OF THE RANK LIST PREPARED BY THE SUB COMMITTEE FOR APPOINTMENT OF PEON IN THE SECOND RESPONDENT SOCIETY.
- EXT.R3(b) : A TRUE COPY OF THE REPLY SUBMITTED BY THE SECRETARY OF THE SOCIETY DATED 16.10.2009.
- EXT.R3(c) : A TRUE COPY OF THE REPLY DATED 4.11.2010 ISSUED BY THE ASSISTANT REGISTRAR TO THE FORMER PRESIDENT OF THE SOCIETY.
- EXT.R3(d) : A TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BY THE FORMER PRESIDENT BEFORE THE GOVERNMENT DATED 8.11.2010.

//TRUE COPY//

P.S. TO JUDGE.

V.CHITAMBARESH, J.

W.P (C) No.4818 of 2011

Dated this the 20th day of January, 2015

J U D G M E N T

Grave irregularities were alleged against the appointment of the second respondent as Peon in the second respondent Bank by the petitioner who was also a candidate. The resolution of the managing committee appointing the third respondent as a Peon was however rescinded by the Joint Registrar in exercise of the powers under Rule 176 of the Kerala Co-operative Societies Rules, 1969. The following findings of fact were entered into by the Joint Registrar after hearing all the parties and perusing the relevant files.

- i) The name of the third respondent was interpolated after scoring off the name of another candidate in the document reflecting the names of persons to whom the hall tickets were issued.
- ii) The demand draft submitted by another candidate was placed along with the application put in by the third respondent to make it appear that it was validly submitted.
- iii) The rank numbers of the candidates were

jumbled up and the name of the third respondent inserted as Rank No.3 in the minutes of the sub-committee dated 21.1.2006.

- iv) There were interpolations and manipulations in the entries and records maintained in the Bank in order to give illegal appointment to the third respondent.

2. Ext.P3 order rescinding the resolution of the Bank was the subject matter of W.P.(C) No.23681/2008 on the file of this Court at the instance of the third respondent. This Court by Ext.P6 judgment refused to interfere with Ext.P3 order observing as follows:-

“2. To exclude the controversies, I required the second respondent to make available its records. A perusal of that will show that the findings in Ext.P9, on merits, are not those which could be criticized as wholly unavailable on the records. Under such circumstances, this Court is not to extend its jurisdiction and interfere with the situation on grounds of injustice.”

The writ petition was dismissed leaving open the remedy of the third respondent to seek relief in accordance

with law before the competent statutory authority. Ext.P3 order was refused to be reviewed by the Joint Registrar by Ext.P7(a) order and the same was challenged in further appeal to the Government.

3. The Government by Ext.P10 order has set aside the findings of fact rendered by the Joint Registrar in Ext.P3 order which was not faulted with in Ext.P6 judgment either. The reasons for reversing the order of the Joint Registrar for rescinding the resolution of the Bank are as follows:-

- i) A clerical error might have happened while entering the minutes even though tampering in the entries can be visibly found.
- ii) The name of the third respondent could have been inserted in the document reflecting the candidates to whom the hall tickets were despatched perhaps after correcting the mistake on account of the entry of another candidate.
- iii) It has not been 'established beyond doubt' that the documents were intentionally fabricated with the ulterior motive of giving

appointment to the third respondent.

4. Nobody has any case before any forum that there was a clerical error or a mistake and that the allegations should be established beyond doubt as if in a criminal prosecution. No explanation is also forthcoming as regards the discrepancy between Ext.P5 and Ext.R2(f) minutes even though the same relate to the one and the same meeting. The very fact that even the name of the external agency who conducted the written test has been interpolated in Ext.P13 minutes raises suspicion. The mere fact that the mark list for the interview or the written test do not contain any interpolation or errors does not mean that the selection process is beyond doubt. I do feel that re-consideration of the issue with reference to the evidence on record is necessary at the hands of the Government in the disposal of the appeal.

5. I set aside Ext.P10 order and remit the appeal petition filed by the third respondent for reconsideration on merits. The first respondent shall re-hear the appeal with notice to the petitioner, second respondent and the third respondent within a

period of two months from the date of receipt of a copy of this judgment. The same shall however be done untrammelled by any observation contained in the orders impugned or in this judgment. The services of the third respondent shall not be terminated till orders are passed anew by the first respondent in the appeal filed by the third respondent.

The Writ Petition is disposed of. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

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