

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 3685 of 2015 (I)

PETITIONER:

RAJESH N.T., S/O.A.A.THANKAPPAN, AGED 42,
SECRETARY, THE ERNAKULAM DISTRICT CO-OPERATIVE
EMPLOYEES' HOUSING CO-OPERATIVE SOCIETY LTD.
NO.E-933, RESIDING AT NADUVELIL HOUSE,
KIZHAKOMBU P.O., KOOTHATTUKULAM-686 662.

BY ADVS.SRI.JAMES ABRAHAM (VILAYAKATTU)
SRI.P.BALAN (VYTILA)

RESPONDENTS:

1. STATE OF KERALA REP. BY ITS SECRETARY,
CO-OPERATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE JOINT REGISTRAR (GENERAL),
CO-OPERATIVE JOINT REGISTRAR'S OFFICE,
CIVIL STATION, KAKKANADU, ERNAKULAM-30.
3. THE ERNAKULAM DISTRICT CO-OPERATIVE EMPLOYEES'
HOUSING CO-OPERATIVE SOCIETY LTD. NO.E-933,
REP. BY ITS PRESIDENT, SITARAM COMPLEX,
1ST FLOOR, CHITTOOR ROAD, KACHARIPADY,
KOCHI-682 018.

R3 BY ADV. SRI.O.D.SIVADAS

R1 & R2 BY SPL. GOVT. PLEADER SRI.D.SOMASUNDARAM
GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 3685 of 2015 (I)

PETITIONER'S EXHIBITS:

EXT. P1 : A TRUE COPY OF THE CERTIFICATE IN BACHELOR OF COMMERCE (CO-OPERATION).

EXT. P2 : A TRUE COPY OF THE CERTIFICATE IN DEGREE OF MASTER OF COMMERCE (FINANCE).

EXT. P3 : A TRUE COPY OF THE ORDER DATED 29-05-1999 ISSUED BY THE 2ND RESPONDENT RELATING TO THE SANCTION OF ATTENDER POST.

EXT. P4 : A TRUE COPY OF THE APPOINTMENT ORDER DATED 28-01-2005 ISSUED BY THE 3RD RESPONDENT.

EXT. P5 : A TRUE COPY OF THE ORDER NO.H.M/387/08 DATED 07-02-2008 CLASSIFYING THE 3RD RESPONDENT AS CLASS I SOCIETY.

EXT. P6 : A TRUE COPY OF THE ORDER NO.H.M./1616/08/L.DIS DATED 04.04.2008 SANCTIONING THE POST OF PAID SECRETARY.

EXT. P7 : A TRUE COPY OF THE APPOINTMENT ORDER DATED 08-04-2008 APPOINTING THE PETITIONER AS SECRETARY.

EXT. P8 : A TRUE COPY OF THE DECISION DATED 01-08-2011 WHICH IS SUBMITTED ON 12-08-2011 BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT.

EXT. P9 : A TRUE COPY OF THE ORDER NO.H.M.4598/11/L.DIS DATED 18.10.2011.

EXT. P10 : A TRUE COPY OF THE ORDER NO.H.M.4598/11/K.DIS DATED 26.11.2011.

EXT. P11 : A TRUE COPY OF THE RECOVERY NOTICE DATED 19-12-2011 ISSUED BY THE 3RD RESPONDENT.

EXT. P12 : A TRUE COPY OF THE REPLY DATED 12-01-2012 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT. P13 : A TRUE COPY OF THE NOTICE DATED 15-01-2015.

EXT. P14 : A TRUE COPY OF THE G.O.(RT)NO.31/2012/CO.OP DATED 16.01.2012.

EXT. P15 : A TRUE COPY OF THE ORDER NO.C.R.B/2024/12/K.DIS DATED 31.03.2012

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

C.R.

Dama Seshadri Naidu, J.

W.P.(C)No.3685 of 2015 I

Dated this the 14th day of October, 2015

JUDGMENT

The issue in this writ petition is whether the approval of the feeder category rules is a pre-condition to effect any promotions in a society though the staff pattern already stands fixed by Rule 188 and Appendix-III of the Kerala Co-operative Societies Rules, 1969 ('the Rules' for brevity).

2. The facts in brief are that the third respondent-Society was established in 1993, with a skeletal staff of one Attender and an Honorary Secretary. In fact, the petitioner was appointed on 28.01.2005 as an Attender through Exhibit P4.

3. Later, in the course of time, with the improved performance of the Society, it was upgraded to be Class I.

As a consequence, the Joint Registrar through Exhibit P6 dated 04.04.2008, sanctioned one post of Secretary. Soon thereafter, the Society promoted the petitioner through Exhibit P7 dated 08.04.2008, as Secretary, given the fact that he was working in the feeder category and that he was eligible in all respects to be promoted. In the wake of the petitioner's promotion as Secretary, the third respondent-Society sought from the Joint Registrar the approval of his promotion. It is not clear from the record whether in 2008 itself the third respondent-Society sought the approval of the petitioner's promotion.

4. It is, however, not in dispute that in 2011 the third respondent-Society passed Exhibit P8 resolution requesting the Joint Registrar to approve the feeder category sub-rules and also to approve the petitioner's promotion as Secretary. In response, the Joint Registrar issued Exhibit P9 proceedings rejecting the third respondent's request on the

premise that the petitioner had been promoted to a non-existing post, without prior sanction. Since Exhibit P9 rejection is said to be technical, the third respondent-Society once again passed Exhibit P10/2 resolution and submitted it to the Joint Registrar for approval of the feeder category sub-rules and also the petitioner's promotion. In that context, the Joint Registrar through Exhibit P10 dated 26.11.2011, having approved the feeder category sub-rules, also approved the petitioner's promotion as Secretary. But, it was only from 26.11.2011—prospectively. Under these circumstances, aggrieved by the prospective approval rather than from 07.04.2008, the initial date of promotion, the petitioner has filed the present writ petition.

5. It is pertinent to observe that in the light of the objection raised by the Auditors, the third respondent issued Exhibits P11 and P13 notices to the petitioner seeking to recover from his salary the alleged excess pay he

had drawn in the capacity of Secretary prior to the approval of his promotion. Thus, the petitioner has laid a comprehensive challenge against the prospective approval of his promotion and also the proposed recovery of alleged excess pay.

6. In the above factual background, the learned counsel for the petitioner has strenuously contended that, as the Society has been assigned Class I status, the staff pattern in terms of Rule 188 read with Appendix III stands automatically approved. And there can be no impediment for the third respondent-Society to effect either appointment or promotion in terms thereof. In other words, it is the specific contention of the learned counsel that once the Joint Registrar, through Exhibit P6, sanctioned the post of Secretary, either appointment or promotion in terms of the statutorily fixed staff pattern needs no further approval. According to him, it does not require any prior sanction

either. In support of his submissions, the learned counsel has placed reliance on **Sherthallai Urban Co.op Bank Ltd. v. State of Kerala**¹ and **Elampal Service Co-operative Bank Ltd. v. Government of Kerala**².

7. The learned counsel for the third respondent Society, in petitioner's support, has submitted that the petitioner was eminently eligible to be promoted. Ever since the date of his promotion, i.e., 08.04.2008, he has continued to discharge his duties as Secretary. Neither is the petitioner unqualified to be promoted nor is a rival claimant affected thereby, asserts the learned counsel.

8. In elaboration of his submissions, the learned counsel for the third respondent Society has further submitted that the initial rejection by the Joint Registrar, through Exhibit P9, of the approval sought by the third respondent Society is only on technical grounds. At any

¹ 1984 KLT 971

² 2000 (3) KLT 389

rate, soon thereafter, in the light of the compliance on the part of the Society, as can be seen from Exhibit P10/2, the authorities granted the necessary approval through Exhibit P10.

9. Summing up his submissions, the learned counsel for the third respondent Society would contend that, since the very statute takes care of the staff pattern, no further efforts is needed on the part of the third respondent, much less any order from the Joint Registrar, re-affirming what is statutorily recognised. Recast, the eligibility of the Society to have a particular staff pattern and consequently to effect any appointment or promotion are matters of statutory regulations rather than those of official discretion.

10. Per contra, the learned Special Government Pleader has strenuously contested the petitioner's claim as well as the third respondent's defence in promoting the petitioner. In tune with the averments in the statement filed

by the second respondent, the learned Special Government Pleader would contend that the Society applied to the Joint Registrar for approval of the feeder category sub-rules only on 26.08.2011, though the approval was sought with effect from 01.04.2008. Since the approval was made only on 26.11.2011, the petitioner's services earlier from 08.04.2008 to 25.11.2011, according to the learned Special Government Pleader, are deemed to have been illegal. Accordingly, the learned Government Pleader has submitted that neither the prospective approval of the promotion nor the third respondent's notices to recover from the petitioner the excess salary drawn by him from 2008 to 2011 can be objected to.

11. The learned Special Government Pleader has also submitted that the Division Bench in Elampal Service Co-operative Bank Ltd. (supra) has specifically observed that it is obligatory for the Society to get prior approval from the

Registrar if there is any change in the staff pattern or even the scale of pay. In elaboration, he has submitted that, in the face of upgradation of the Society as Class I, there is a change in the staff pattern. And it essentially needs prior approval of the Joint Registrar either on account of the feeder category sub-rules or the very promotion of the petitioner.

12. Heard the learned counsel for the petitioner and the learned counsel for the third respondent, as well as the learned Special Government, apart from perusing the record.

Issue:

In the wake of re-classification of a society, whether it is mandatory for the said society to have its staff pattern approved before effecting any appointment or promotion?

13. Indeed, the facts are not in dispute. The singular issue to be determined, as has been indicated above, is as

regards the alleged need for the prior approval of the staff pattern. In this regard, we may examine Rule 188 of the Rules, which reads as follows:

“188. Staff Pattern:- Every society shall adopt the staff pattern indicated in Appendix III to these rules, according to the type and class to which it belongs:

Provided that where any society cannot adopt such staff pattern due to its financial position, the members of the committee may work in an honourary capacity in lieu of appointing any paid employee:

Provided further that where any society is in need of any change in the pattern of staff including the scale of pay under special circumstances the same may be made by the society with the prior approval of the Registrar of Co-operative Societies.”

14. Without indulging in any convoluted process of statutory construction, we may plainly discern from the Rule quoted above that the burden is cast on the society to adopt the staff pattern indicated in Appendix III of the Rules. The adoption of the staff pattern is according to the type and class to which the society belongs. The first proviso to the Rule is to the effect that, if any society cannot

adopt such staff pattern due to its financial position; the members of the committee may work in an honorary capacity, in lieu of appointing any paid employee. The second proviso to the said Rule mandates that where any society is in need of any change in the staff pattern, including the scale of pay, the Society under special circumstances may make the changes with the prior approval of the Registrar of Co-operative Societies.

15. A conjoint reading of the two provisos leads to, in my opinion, an inescapable conclusion that the adoption of the staff pattern in tune with the type and class of the society is an imperative and the provisos only carve out exceptions: the society, given its financial condition, may have the members of its committee working in an honorary capacity, instead of having any paid employees appointed.

16. Or, in the alternative, notwithstanding the applicability of the specific staff pattern, the society can

apply for its change or modification as a matter of exception. Indeed, such change or modification at the behest of the society shall be under special circumstances and also with the prior approval of the Registrar of Co-operative Societies. Conversely viewed, if the society is to adopt the staff pattern in consonance with its type and class, it does not require any prior permission or approval. The statutory mandate under the second proviso comes into operation only when the society constraints itself to deviate from the staff pattern specified in Appendix III, either as an exception or under special circumstances.

17. I am, therefore, of the opinion that the respondent's insistence that the society ought to have had the staff pattern approved at a prior point in time or that the petitioner's promotion could only be prospective from the date of the approval of the staff pattern does not pass the judicial muster.

18. In **Subair V.A. v. Anicadu Service Co-op. Bank Ltd. and another**³, this Court, per a learned Single Judge, has emphatically held that Rule 188 of the Rules does not provide for prior approval in all cases of re-classification of the societies. His Lordship has further held that the question of prior approval applies only to cases where a particular society, because of the special circumstances peculiar to that society, wants to change the pattern of staff, including the scale of pay, from what has been stipulated in Appendix III.

19. In fact, in Elampal Service Co-operative Bank Ltd. (supra) a learned Division Bench of this Court, quoting with approval an earlier judgment of this Court in Sherthallai Urban Co.op Bank Ltd. v. State of Kerala (supra), has observed that a reading of the above Rule and Appendix III makes it clear that the Rule itself fixes the staff

³ 2013 (2) KLT SN 64

pattern. Therefore, normally the society will be free to appoint staff as per the staff pattern fixed in Appendix III. The first proviso allows the society from not adopting the staff pattern due to the financial position and allows the members of the committee to work in an honorary capacity. That is for the society to decide.

20. The learned Division Bench has also held that the second proviso only makes it obligatory for the society to get prior approval from the Registrar only if there is a 'need for any change in the pattern of staff including the scale of pay under special circumstances'. The above wordings make it clear that for appointing staff as per the staff pattern fixed in Appendix III and the Rules based on the type and class to which the society belongs, no prior approval is necessary. Repetitions as it may sound only if a change in the staff pattern is necessary, approval is required.

21. It is, thus, beyond cavil that to adopt a staffing pattern commensurate with the class of a society, the prior permission or sanction of the authority is not required, so long as the society does not deviate from the pattern statutorily assigned to its class.

In the facts and circumstances, the writ petition is allowed setting aside Exhibit P9 order. Consequently, this Court declares that the petitioner's promotion as the Secretary in the third respondent-Society with effect from 07.04.2008 is in conformity with Rule 188 of the Rules. This Court further holds that the petitioner is entitled to all consequential benefits in the light of the fact that his promotion to the post of Secretary with effect from 07.04.2008 is in accordance with law.

No order as to costs.

Dama Seshadri Naidu, Judge

tkv