

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 18817 of 2004 (M)

PETITIONER(S):

**RAMESH BABU P.S.
S/O. SANKARAN, PARAMEL HOUSE, KANIMANGALAM
KOORKANCHERY, THRISSUR, BRANCH MANAGER
KANIMANGALAM CONSUMERS' CO-OPERATIVE STORES
KOORKANCHERY (RETIRED).**

**BY ADVS.SRI.DILIP J. AKKARA
SRI. JOSE MECBERY
SRI K.A. STREEJITH**

RESPONDENT(S):

- 1. SECRETARY,
KANIMANIGALAM CONSUMERS' CO-OPERATIVE STORE, NO.447
KOORKANCHERY, THRISSUR.**
- 2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, THRISSUR.**
- 3. REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.**

**R1 BY ADV. SRI.P.V.CHANDRA MOHAN
R2 & R3 BY ADV. SRI.B.S.SWATHI KUMAR,SC.CO.OP.E COMMN.
R2-R3 BY ADV. JOSE ADIYODI, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1: COPY OF THE REPORT OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, RECOMMENDIGN TO UPGRADE THE SOCIETY AND TO CHANGE ITS STAFF PATTERN DATED 13.11.1993, 02.12.1994, 2.01.1998
- P2: COPY OF DECISION REPRESENTATIONS SUBMITTED BY THE SOCIETY TO THE CONCERNED AUTHORITIES DATED 20.10.1994
- P3: COPY OF RESOLUTION OF THE BOARD OF DIRECTORS OF THE 1ST RESPONDENT SOCIETY DATED 28.08.1992
- P4: COPY OF RESOLUTION NO.21/D DATED 30.04.1991 OF THE OF THE BOARD OF THE 1ST RESPONDENT SOCIETY
- P5: COPYIES OF THE REPRESENTATIONS SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT SOCIETY DATED NIL
- P6: COPY OF DECISION TAKEN BY THE BOARD OF DIRECTORS OF 1ST RESPONDENT ON EXT.P5 DATED NIL
- P7: COPY OF THE OBJECTION RAISED BY THE 2ND RESPONDENT DATED 19.06.1997.
- P8: COPY OF EXPLANATION ON THE AUDIT OBJECTION RAISED BY THE 2ND RESPONDENT SUBMITTED BY THE PETITIONER DATED 05.12.1997
- P9: COPY OF REPRESENTATIONS SUBMITTED BY THE PETITIONER DATED 07.11.2000
- P10: COPY OF THE LEGAL OPINION OF 1ST RESPONDENT DATED 27.09.2003
- P11: COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 12.02.2002
- P13: COPY OF THE ORDER DATED 17.01.2003 ISSUED BY THE 2ND RESPONDENT

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

A. MUHAMED MUSTAQUE, J.

W.P.(C) No. 18817 of 2004

Dated this the 20th day of February, 2015

JUDGMENT

The petitioner is a retired employee of Kanimangalam Consumer's Co-operative Society. The petitioner was worked as 'Secretary in charge' till the date of his retirement. He retired on 30.11.2000. Petitioner was put in charge of Secretary while he was working as a Clerk. This is on account of the fact that the regular Secretary was under suspension facing disciplinary proceedings. Ultimately by disciplinary proceedings, regular Secretary was removed from the service. By the time, petitioner attained the age of superannuation and retired. The petitioner held the post of Secretary from February 1991 till his retirement. The petitioner seeks in the writ petition for salary and pensionary benefits in accordance with the last pay drawn as Secretary.

2. It seems that an audit objection has been raised in terms of Rule 185(2) of Co-operative Society Rules. The objection is that petitioner did not possess necessary qualifications to be

appointed as Secretary and the Society appointed the petitioner without prior approval of Registrar to relax qualification. The objection has been raised after the retirement of the petitioner. Consequent to the objection, the Society by Ext.R1(a) made a request before Registrar to approve appointment of the petitioner as Secretary in Charge by relaxing qualification.

3. Learned Government Pleader appearing for the respondents points out that as per Rule 185(8), relaxation of the qualification must be preceded appointment and no approval can be given to relaxation after the appointment.

4. This is a peculiar set of facts. In normal channel of promotion, relaxation of qualification requires necessary prior approval as rightly pointed out by the learned Government Pleader. However, no promotion can be effected in this case as the regular appointee was placed under suspension as he was facing disciplinary proceedings. The Society put the petitioner in charge of the Secretary pending the disciplinary proceedings. By the time disciplinary proceedings concluded, the petitioner retired from the service attaining the age of superannuation. In such situation, I am of the view that the Society could not have obtained any permission for relaxing the qualification as

arrangement was temporary pending disciplinary proceedings.

5. The petitioner's case was recommended by Joint Registrar as per Exts.P1(a) and P13 order. In the peculiar circumstance of the case, I am of the view treating that the petitioner has been appointed relaxing the qualification, petitioner's retirement benefit shall be granted in accordance with law as the petitioner retired from the service as Secretary. Needful shall be done by the Society within a period of two months from the date of receipt of a copy of this Judgment.

The Writ Petition is disposed of accordingly.

Sd/-
A. MUHAMED MUSTAQUE,
JUDGE

JV