IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 7034 of 2014 (D)

PETITIONER : -

C.R. AJAYAKUMAR, SENIOR CLERK,
KIZHUVILAM SERVICE CO-OPERATIVE BANK LIMITED NO.2405,
MUDAPURAM P.O., CHIRAYINKEEZHU,
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SMT.ASHA BABU
SRI.M.MANOJKUMAR (CHELAKKADAN)
SMT.AMMU CHARLES

RESPONDENTS : -

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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   DEPARTMENT OF CO-OPERATION,
   THIRUVANANTHAPURAM-695001.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
   THIRUVANANTHAPURAM-695001.

3. THE ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES,
   CHIRAYINKEEZHU-695304, THIRUVANANTHAPURAM DISTRICT.

4. THE KIZHUVILAM SERVICE CO-OPERATIVE BANK LIMITED NO.2405,
   MUDAPPURAM P.O., PIN 695314, CHIRAYINKEEZHU,
   THIRUVANANTHAPURAM DISTRICT, REPRESENTED BY ITS SECRETARY.

<u>ADDL. R5 TO R8 IMPLEADED:</u>

ADDL. R5. S. SIVAKUMAR, ACCOUNTANT,
KIZHUVILAM SERVICE CO-OPERATIVE BANK LIMITED No. 2405,
MUDAPURAM P.O., CHIRAYINKEEZHU,
THIRUVANANTHAPURAM DISTRICT,
RESIDING AT VYDHYASALAYIL, VILAYILMOOLA,
ATTINGAL P.O., THIRUVANANTHAPURAM - 695 101.

WP(C).No. 7034 of 2014 (D)

ADDL. R6. G. SIVAKUMAR, ACCOUNTANT,
KIZHUVILAM SERVICE CO-OPERATIVE BANK LIMITED No. 2405,
MUDAPURAM P.O., CHIRAYINKEEZHU,
THIRUVANANTHAPURAM DISTRICT,
RESIDING AT SANTHA BHAVAN, MUDAPURAM P.O.,
THIRUVANANTHAPURAM - 695 314.

ADDL. R7. S. PADMAN, ACCOUNTANT,
KIZHUVILAM SERVICE CO-OPERATIVE BANK LIMITED No. 2405,
MUDAPURAM P.O., CHIRAYINKEEZHU,
THIRUVANANTHAPURAM DISTRICT,
RESIDING AT THOTTINKARAVILA VEEDU, KODUMAN,
ATTINGAL P.O., THIRUVANANTHAPURAM - 695 101.

ADDL. R8. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
THIRUVANANTHAPURAM - 695 001.

(ADDITIONAL R5 TO R8 ARE IMPLEADED VIDE ORDER DATED 04.04.2014 IN I.A. No. 5104/2014)

R4 BY ADV.SRI.V.G.ARUN
R4 BY ADV.SRI.T.R.HARIKUMAR
R5-R7 BY ADV. SRI.DEVAN RAMACHANDRAN
R5-R7 BY ADV. SRI.K.M.ANEESH
R5-R7 BY ADV. SRI.K.SANTHOSH KUMAR (KALIYANAM)
R5-R7 BY ADV. SRI.ADARSH KUMAR
BY SR.GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 7034 of 2014 (D)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT-P1 : TRUE COPY OF REPRESENTATION DATED 3.3.2014 SUBMITTED BY THE PETITIONER BEFORE R1.

EXHIBIT-P2 : TRUE COPY OF REPRESENTATION DATED 25.2.2014 SUBMITTED BY THE PETITIONER BEFORE R3.

EXHIBIT P3 : TRUE COPY OF LETTER DATED 1.1.2013 OF THE ASSISTNAT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL) ADDRESSED TO THE 4th RESPONDENT.

RESPONDENTS' EXHIBITS : -

EXHIBIT R3(a) : TRUE COPY OF THE CIRCULAR No. 31/2013 DATED 20.04.2013.

EXHIBIT R5(a) : TRUE COPY OF THE RULES FRAMED BY THE SOCIETY WITH THE PRIOR APPROVAL OF THE 2nd RESPONDENT DATED 31.10.2012.

EXHIBIT R5(b) : TRUE COPY OF THE CIRCULAR ISSUED BY THE 2nd RESPONDENT DATED 09.11.2011.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 7034 of 2014

Dated this the 29th day of June, 2015

JUDGMENT

The petitioner, having joined the fourth respondent Society on 27.12.1993 as a Bill Collector, is presently working as a Senior Clerk. He is said to possess graduation degree, apart from Higher Diploma in Co-operative Management.

2. When the vacancy in the post of Internal Auditor arose, as the Society could not find any candidate eligible from the feeder category, i.e. Accountant/Head Clerk, for none of the employees in the said category possessed graduation, it invoked Rule 185(8)(b) of the Kerala Co-operative Societies Rules (the 'Rules' for brevity) and applied to the second respondent for exemption of the basic qualification to the employees in the feeder category. At this juncture, the petitioner filed Exhibit P1 application before

the Government and Exhibit P2 before the Joint Registrar ventilating his grievance that the respondent Society, instead of seeking exemption from the employees in the feeder category, ought to have considered his case, because he possessed all the necessary qualifications, apart from having been placed in the category immediately below the feeder category, in terms of Rule 185(1) second proviso. When neither the Government, nor the third respondent has acted on the petitioner's representation, he has approached this Court.

3. The learned counsel for the petitioner has strenuously contended that none of the additional respondents 5 to 7 possessed graduation qualification to be considered for the promotional post, though they are in the feeder category. Laying much emphasis on the second Proviso to Rule 185, the learned counsel would contend that there is ample power for the respondent Society to promote the petitioner to the feeder category by creating a supernumerary post and soon thereafter consider his case for promotion to the post of Internal Auditor.

4. The learned counsel, having taken me through Rule 185 as well as Rule 181 of the Rules, has contended that exemption sought from the second respondent is not automatic. In expatiation of his submissions, the learned counsel would contend that the second respondent could consider the issue of exemption from possessing graduation only in deserving cases.

5. Summing up his submissions, the learned counsel has contended that instead of seeking exemption for candidates who do not possess the basic qualification of graduation, it will well serve the interest of the Society if the fourth respondent considers the petitioner's case to be promoted in terms of second Proviso to Rule 185.

6. The learned counsel for the fourth respondent, on the other hand, has submitted that the Society has sought exemption from the basic qualification for respondents 5 to 7, but the Government is believed to have already rejected the case of the 6^{th} and 7^{th} respondents, as could be seen from Exhibit P3. According to him, the application of only the fifth respondent is still pending.

7. The learned counsel for the additional respondents 5 to 7 has made strenuous efforts to refute petitioner’s contentions. Initially, he has submitted that given the experience of the additional respondents 5 to7, apart from the fact that they are seniors already positioned in the feeder category, the question of the respondent Society considering the petitioner's case does not arise.

8. In elaboration of his submissions, the learned counsel would contend that the second Proviso to Rule 185 could come into operation only when all the eligible employees in the feeder category relinquished their claim to the promotional post. Differently expressed, it is the contention of the learned counsel for the additional respondents 5 to 7 that so long as the aspect of relinquishment has not come into picture, the question of invoking the second Proviso to Rule 185, thereby considering the petitioner’s case for promotion, does not arise.

9. Heard the learned counsel for the petitioner, the learned counsel for the fourth respondent, as well as the learned counsel for the additional respondents 5 to 7, apart

from perusing the record.

10. In the first place, the facts are not in dispute; secondly the issue raised by the petitioner falls in a narrow compass. Essentially, it is an issue of balancing the competing interests of the employees falling under Rule 185 sub-rule (8) on one hand and those falling under 185(1) Proviso (2) of the Rules.

11. Before proceeding further, it is profitable to examine the statutory scheme of Rule 185 of the Rules, which is extracted herein below to the extent relevant, for much turns upon the interpretation of the said provision:

> "**185. Promotion** - (1) Subject to the provisions of sub-rules (2), (3) and (4), appointments to the categories of posts in a society, other than those mentioned in sub-rules (2), (3) and (4) shall be made by promotion, on the basis of seniority in the feeder category. The feeder categories for this purpose shall be specified by the society by framing suitable regulations, with the approval of the Registrar.
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> ....
>
> Provided further that if all the employees in the feeder category to a post relinquishes promotion an employee on the immediate lower category

shall be promoted to the post after promoting him to the feeder category post by creating a supernumerary post. The supernumerary post so created shall be abolished on promotion of the said employee to the higher posts.

185. (8) It shall be competent for the Registrar of Co-operative societies to relax the qualification, other than basic qualification and pass in the competitive examination specified in sub-rule (5), of an employee, for the purpose of promotion in deserving cases, on the request of a society by passing a resolution subject to the following conditions: -

....

(b) Where the academic qualification prescribed is graduation and above, exemption from acquiring the said qualification may be considered if the incumbent satisfied the following conditions, namely :-

i) should have passed JDC or equivalent;
ii) should have a minimum service of five years in the feeder category; and
iii) should not be less than forty five years of age:”

12. Indeed, if all the eligible employees in the feeder category relinquished their claim to the promotional post, in the present instance Internal Auditor, the question of considering the case of an employee who is placed in the cadre immediately below the feeder category would come into picture. As per the mechanism provided, such an employee who is otherwise eligible can be promoted to the feeder category by creating a supernumerary post and thereafter further considered to be promoted to the very promotional post.

13. If we examine Rule 185(8) it is manifest that the Registrar of Co-operative Societies is competent to relax the qualification other than the basic qualification for considering the case of a person in feeder category to be promoted. In the present instance, the respondent Society has already made its efforts for seeking exemption of qualification for the employees in the feeder category, i.e. respondents 5 to 7. Though it is said that the claim of respondents 6 and 7 has been rejected, the case of the fifth respondent is still pending with the second respondent, the Registrar of Co-operative Societies.

14. Indeed, on a comprehensive reading of Rule 185 it is evident that the respondent Society, the employer, has got two options: it can either seek exemption from the Government for any of its employees in the feeder category from possessing the basic qualification, or promote any of its employees from the category immediately below the feeder category by creating a supernumerary post in the feeder category.

15. To exercise the second option, as delineated above, I am of the opinion that the primary stipulation of Rule 185 (1), i.e., the relinquishment on the part of the qualified employees in the feeder category should have been a pre-condition. In the present instance, such a contingency has not arisen.

16. Though the learned counsel for the petitioner has strenuously contended that the expression of relinquishment has to be read down so as to include ineligibility, I do not propose to consider the said aspect for the reasons mentioned herein below.

17. As has already been adverted to, the employer has the two options; it cannot be compelled to choose either

of these two, once it is a matter of discretion. In the present instance, the respondent Society has already taken recourse to one particular method; namely, seeking exemption for its employees in the feeder category from possessing the qualification in terms of Rule 185(8). As such, the question of reading down a provision to render another person eligible does not arise. It is a question of election between two equally possible options, and the employer has already acted upon and chosen one particular course of action. There remains nothing to be added to or subtracted from the said option.

18. Under these facts and circumstances, I am of the considered opinion that the respondent may press on with its application before the second respondent for exemption to any of its employees in the feeder category. As could be seen from Exhibit P3, since the claim of the additional respondents 6 and 7 has already been rejected, the second respondent may consider the claim of the fifth respondent for exemption.

19. Once the exemption, if at all, is granted, any person aggrieved, including the petitioner herein, may take

appropriate measures in that regard. Needless to observe that subject to the above contingency, the respondent Society can further proceed with the promotions on the strength of exemption, if any, provided by the second respondent. On the other hand, if exemption is to be denied to the fifth respondent as well, it is entirely left for the fourth respondent Society to consider the case of petitioner in terms of Proviso (2) to Rule 185 of the Rules.

20. At this juncture, the learned counsel for the additional respondents 5 to 7 has submitted that the reported rejection of the claim of respondents 6 and 7 from exemption was pending the writ petition. As it is a *lis pendens* development, the additional respondents 6 & 7, contends the learned counsel, could not take effective remedial steps in that regard.

21. In the first place, I am of the opinion that no observations have been made in the present disposition causing any prejudice to their rights. Secondly, it is further made abundantly clear that if those persons are aggrieved concerning Exhibit P3 rejection, they are always at liberty to take proper remedial steps. It is hoped that, to put a lid on

the litigation, the second respondent may consider the claim of the additional fifth respondent from exemption expeditiously in accordance with law.

With the above observations, the writ petition stands disposed of.

DAMA SESHADRI NAIDU
JUDGE

DMR/-