

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.K. ABDUL REHIM

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

**WP(C).No. 12893 of 2009 (F)**  
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PETITIONER:  
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M.A. RADHA,  
W/O. KRISHNAN,  
VAISHNAVAM, PAYYANNUR P.O., THAYINERI  
KANNUR DISTRICT,  
NOW WORKING AS BRANCH MANAGER, KANNUR.

BY ADV. SRI. SANTHEEP ANKARATH

RESPONDENTS:  
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1. THE STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY  
DEPARTMENT OF CO-OPERATION, THIRUVANANTHAPURAM.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,  
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,  
THIRUVANANTHAPURAM.
3. THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES,  
KANNUR, OFFICE OF THE JOINT REGISTRAR, KANNUR.
4. PAYYANNUR SERVICE CO-OPERATIVE BANK,  
REPRESENTED BY ITS SECRETARY,  
PAYYANNUR SERVICE CO-OPERATIVE BANK,  
PAYYANNUR, KANNUR DISTRICT.
5. THE PRESIDENT,  
REPRESENTING THE BOARD OF DIRECTORS  
PAYYANNUR SERVICE CO-OPERATIVE BANK, PAYYANNUR  
KANNUR DISTRICT.

R4 & 5 BY ADV. SRI. M. SASINDRAN  
R1 TO R3 BY SR. GOVERNMENT PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-03-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**APPENDIX**

**PETITIONERS' EXHIBITS**

- EXT- P1- TRUE COPY OF THE ORDER No.EST.P.O/1/99 DATED 13-07-1999 PROMOTING THE PETITIONER AND OTHERS ISSUED BY THE 4TH RESPONDENT.
- EXT- P2- TRUE COPY OF THE ORDER DATED 06-05-2005 ISSUED BY THE 4TH RESPONDENT.
- EXT- P3- TRUE COPY OF THE ORDER No.B.EST/P (2)/09 DATED 28-02-2009 ISSUED BY THE 5TH RESPONDENT.
- EXT- P4- TRUE COPY OF THE APPLICATION No.B/EXEMPT/1/2008 DATED 10-06-2008 SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXT- P5- TRUE COPY OF THE LETTER DATED 03-04-2009 FROM THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- EXT- P6- TRUE COPY OF G.O. (RT) No.476/07-CO-OP DATED 23-07-2007 ISSUED BY THE GOVERNMENT.

**RESPONDENTS' EXHIBITS**

NIL

True copy

P.A. To Judge

AMG

**C.K. ABDUL REHIM, J.**

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**W.P.(c) No. 12893 OF 2009-F**  
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DATED THIS THE 17<sup>th</sup> DAY OF MARCH, 2015.

**J U D G M E N T**

The petitioner joined service of the 4<sup>th</sup> respondent Bank as Peon in the year 1982. Subsequently she was promoted as Typist and then as Senior Clerk, respectively in the year 1985 and 1992. The petitioner was promoted as Accountant with effect from 13-07-1999, consequent to the promotion granted to her superiors, pursuant to arising of a retirement vacancy in the cadre of Assistant Secretary/Manager. It is evident from Ext.P1 order issued by the president of the 4<sup>th</sup> respondent society that, the petitioner was given promotion to the post of Accountant as a consequence of the promotion of his immediate superior, Sri. P.M. Vijayakumar as Branch Manager. Sri. P.M. Vijayakumar was promoted as Manager in the vacancy of Smt. K.P. Soudamini who was promoted as Assistant Secretary against a retirement vacancy. But Smt. K.P. Soudamini was not possessing the prescribed educational

qualification. Therefore the 4<sup>th</sup> respondent had approached the 1<sup>st</sup> respondent seeking exemption under Rule 181 of the Co-operative Societies Rules. But, since the 1<sup>st</sup> respondent had not granted the exemption, the Bank resolved to revert Smt. K.P. Soudamini to the post of Branch Manager. Consequently, promotion given to the petitioner as Accountant was also reverted with effect from 16-12-2002. Subsequently, the application for exemption submitted by the 4<sup>th</sup> respondent society with respect to Smt. K.P. Soudamini was allowed by the 1<sup>st</sup> respondent with retrospective effect. On that basis the petitioner was again promoted as Accountant as per Ext.P2 order, dated 06-05-2005. The petitioner continued as such till 01-03-2009 till she was promoted as Branch Manager, as per Ext.P3 order. On promotion of the petitioner to the post of Branch Manager, the society took a resolution and approached the 1<sup>st</sup> respondent seeking exemption under Rule 185 (8) (b). According to the petitioner, seeking of such exemption was not required in view of the fact that the 4<sup>th</sup> respondent society was already granted with exemption in the case of

Smt. K.P. Soudamini and that the petitioner had satisfied all the conditions stipulated under Rule 185 (8) (b) of the Co-operative Societies Rules. However, the petitioner was subsequently informed that the Registrar of Co-operative Societies had intimated that the Government have declined the exemption sought for, through G.O (Rt) No.2142/C3/09/Co-op, dated 06-03-2009. Exhibit P4 is the copy of the Government order through which the 4<sup>th</sup> respondent was granted relaxation from acquiring degree qualification in the case of Smt. K.P. Soudamini for holding the post of Branch Manager. The petitioner in this writ petition is challenging the Government decision through which exemption in her case was declined. Inter alia, the petitioner seeking direction for exempting her from acquiring the degree qualification.

2. It is evident that the petitioner was initially promoted as Accountant with effect from 13-07-1999 and she continued as such till 16-12-2002, till she was reverted subsequently. Based on Ext.P6 relaxation consequential promotion was given to the petitioner to the post of

Accountant, with effect from 01-04-2002. The petitioner continued as such till 01-03-2009, till she was promoted as Branch Manager. Therefore it is evident that the petitioner had worked as Accountant from 13-07-1999 to 16-12-2002 and from 01-04-2005 to 01-03-2009. From Ext.P6 it is evident that the 4<sup>th</sup> respondent society had granted relaxation with respect to the qualification of degree for promoting Smt. K.P. Soudamini as Branch Manager. In the ruling of this court in **Praveenchandran V. State of Kerala (2008 (1) KLT 478)** it is held that, the power vested under Rule 181 is to grant exemption for the institution as such, i.e. to the individual society or to a class of societies. The Government cannot pick and choose between different employees of a Co-operative society while making an order of exemption under Rule 181. When the Government have exercised power under Rule 181 and exempted the society from the provisions of Rule 185 (8) (b), such relaxation applies to the institution, i.e. to the society and not to any individual employee. In the case at hand, in the post of Branch Manager, the academic

qualification prescribed is graduation. But sub rule (8) (b) of Rule 185 prescribes that exemption from acquiring the said qualification can be considered if the incumbent satisfies the following conditions. Namely;

- (i) Should have passed JDC or equivalent.
- (ii) Should have a minimum 5 years in the feeder category.
- (iii) Should not be less than 45 years of age.

3. In the case of Smt. K.P. Soudamini, by virtue of Ext.P6 the relaxation was approved from acquiring the basic qualification of degree. Going by the ruling cited above, the relaxation is granted to the society and it can be made use with respect to any of its incumbents. In the case of the petitioner the society had passed a resolution to seek relaxation, based on the impression that the petitioner has not satisfied the 3 conditions stipulated in sub rule (8) (b), especially with respect to minimum service of 5 years in the feeder category. This is evident from Ext.P4 application. In the counter affidavit filed on behalf of the 1<sup>st</sup> respondent it is mentioned that the petitioner had completed only 3 years and 10 months in the post of Accountant, presumably on the

basis that, his promotion from 01-04-2005 alone was reckoned for consideration. Learned Government Pleader contended that, service of the petitioner in the post of Accountant during the earlier period from 13-07-1999 to 16-12-2002 cannot be considered because she was reverted from that post consequent to the reversion of Smt. K.P. Soudamini. But on a scanning of the provisions contained in Rule 185 (8) (b) of the Co-operative Societies Rules, it does not prescribe any condition that the service in the feeder category should be a regular service or a permanent service. The legislative intent is very clear that the person with respect to whom relaxation is to be granted should have the requisite minimum experience in the feeder category. Viewed in that angle, it cannot be insisted that the service of 5 years stipulated in the feeder category should be a regular or temporary service. Since it is evident that the petitioner had completed more than 5 years service in the category of Accountant she can be treated as qualified for the exemption contemplated under Rule 185 (8) (b). In view of Ext.P6 exemption already granted with respect to

the 4<sup>th</sup> respondent society, it is to be held that the petitioner was duly qualified for promotion as Branch Manager as on the date of Ext.P3.

4. Under the above mentioned circumstances the writ petition is allowed and G.O (Rt) No.2142/C3/Co-op is hereby quashed. It is declared that promotion granted to the petitioner as Branch Manager based on Ext.P3 proceedings is proper and valid.

Sd/-  
**C.K. ABDUL REHIM**  
**JUDGE**

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True copy

P.A. to Judge