

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

W.P.(C).No. 13498 of 2012 (J)

PETITIONER(S):

1. **BIJI K. JOSE,**
VADAKKAN HOUSE, KRISHNAPURAM,
OLLUKKARA P.O, THRISSUR DISTRICT.
2. **LINCEMON THOMAS,**
PULIKKEN HOUSE, MANALLOOR P.O, THRISSUR.
3. **TENCY CHACKO,**
VADAKKETHALA HOUSE, BISHOP PALACE ROAD,
EAST FORT, THRISSUR.

BY ADVS. SRI. K.R.B. KAIMAL (SR.)
SRI. B. UNNIKRISHNA KAIMAL
SRI. V. MADHUSUDHANAN

RESPONDENT(S):

1. **REGISTRAR OF CO-OPERATIVE SOCIETIES,**
THIRUVANANTHAPURAM - 695 001.
2. **THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),**
THRISSUR - 680 001.
3. **THE MOOSPET SERVICE CO-OPERATIVE BANK LTD. NO. 682,**
MOOSPET ROAD, THRISSUR - 680 005,
REPRESENTED BY ITS SECRETARY.
4. **ARUN. A.G,**
ARAKKAL HOUSE, 'CHEMKAVIL',
PERINGAVU P.O, THRISSUR - 680 018.
5. **BINDU. V.P,**
D/O. VAISYAPPATTU PARASURAMAN, 'KARTHIKA',
MADAKKATHARA, THRISSUR - 680 651.
6. **BIJI. O.V,**
W/O. SUDHEESH, KORAPPULLY HOUSE,
VELAPPAYA P.O, THRISSUR - 680 596.

**6. RASMY. A,
35/671, KRISHNA GARDEN,
THRISSUR - 680 001.**

**7. PRIYA. N.P,
W/O. BABU. T.S,
THACHANADAN HOUSE,
OLLUR. P.O, THRISSUR - 680 306.**

**8. PRASOON PAVITHRAN,
MOOTHEDATH HOUSE,
CHEROOR. P.O, THRISSUR - 680 008.**

**R1 & R2 BY GOVERNMENT PLEADER SRI. A. MOHAMMED SAVAD
R3 BY ADVS. SRI. P.C. SASIDHARAN
SRI. C.P. PRADEEP
R4 & R5 BY ADVS. SRI. V. RAJENDRAN
SMT.V.B.SANTHINI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-06-2015,
ALONG WITH W.P. (C) NO. 14512/2012, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P-1: TRUE COPY OF THE RELEVANT PORTION OF THE RANK LIST PUBLISHED BY THE CO-OPERATIVE SERVICE EXAMINATION BOARD ON 27.01.2009.**
- EXT. P-2: TRUE COPY OF THE JUDGMENT DATED 26.06.2009 OF THIS HON'BLE COURT IN W.P.(C) NO. 10569 OF 2009.**
- EXT. P-3: TRUE COPY OF THE JUDGMENT DATED 07.03.2011 OF THIS HON'BLE COURT IN W.A. NO. 1822 OF 2009.**
- EXT. P-4: TRUE COPY OF THE ORDER DATED 16.06.2011 OF THIS HON'BLE COURT IN R.P.NO. 418/2011.**
- EXT. P-5: TRUE COPY OF THE ORDER NO. CRP-1352/2011 DATED 17.01.2012 ISSUED BY THE 2ND RESPONDENT.**
- EXT. P-6: TRUE COPY OF THE ORDER NO. CRP-1352/2011 DATED 29.03.2012 ISSUED BY THE 2ND RESPONDENT.**
- EXT. P-7: TRUE COPY OF THE REPRESENTATION DATED 12.03.2012 SUBMITTED BY THE PETITIONERS TO THE 3RD RESPONDENT.**

RESPONDENT(S)' EXHIBITS

- EXT. R3(a): TRUE COPY OF THE DECISION TAKEN ON 27.10.2011.**
- EXT. R3(b): TRUE COPY OF THE DECISION TAKEN BY THE SOCIETY DATED 02.11.2012.**

//TRUE COPY//

P.A. TO JUDGE

A.M.SHAFIQUE, J.

W.P.(C)Nos.13498 & 14512 of 2012

Dated this the 24th day of June, 2015

JUDGMENT

These two writ petitions arises out of a common issue and hence decided together.

2. W.P.(C)No.13498/2012 has been filed by three candidates who is in the select list prepared by the respondent Co-operative Bank (hereinafter referred as the Bank) in the matter relating to appointment to the post of Junior Clerk. Though the rank list was published on 27.01.2009, no appointments were made based on the said rank list. The persons having rank Nos. 2 and 3 approached this Court by filing W.P.(C)No.10569/2009. By judgment dated 26.06.2009, this Court having found that the reasons stated by the Bank in not making appointment was not justifiable disposed of the writ petition directing the Bank to make appointments from the rank list and the Joint Registrar was directed to ensure compliance of the said direction. The matter was carried in appeal by the Bank

in W.A.No.1822 of 2009. The Writ Appeal was disposed of by judgment dated 07.03.2011, in which the Division Bench observed that even though only rank holders 2 and 3 were claiming employment from the list of selected candidates, appointment has to be made strictly in terms of the rank list, including those who have not approached the Court as well. Review Petition was filed by the Bank and the same was rejected. Pursuant to the same according to the petitioner, 5 persons were offered appointment, but only two persons joined. Since there were three vacancies to be filled up, the petitioner submitted a representation to the Joint Registrar and by Ext.P6 order dated 29.03.2012, direction was issued to the Bank to fill up the balance three seats from the rank list.

3. The petitioners are included at Sl.Nos.11, 12 and 14 in the rank list and appointment orders were issued to only rank Nos.1 to 5. According to the petitioners, though the period of rank list had expired, on account of the directions issued by this Court in the Writ Appeal judgment, and the Joint Registrar, the Bank is bound to comply with the same.

4. W.P.(C)No.14512 of 2012 is filed by the Bank

challenging Ext.P5 order dated 22.09.2011, Ext.P6 order dated 17.01.2012 and Ext.P8 order dated 25.02.2012 issued by the Joint Registrar. These orders according to the Petitioner, Bank is illegal and therefore the Bank also seeks for a declaration that non-joining duty vacancies cannot be filled up from the time expired ranked list. According to the Bank as per directions issued by the Division Bench of this Court, rank Nos. 1 to 5 were advised, only two of them joined duty and there is no statutory obligation on the part of the Bank to fill up the three other vacancies from the same rank list which has already expired. That apart the contention is that the Bank was being computerised and as there is enough staff in the Bank, there is no necessity to appoint any other person.

5. The learned counsel for the Bank also relied upon a Division Bench judgment of this Court in **Babu v. Public Service Commission [1996 (1) KLT 349]**. Paragraph 3 of the said judgment is relevant which reads as follows;

“3. According to counsel, the non-joining duty vacancy should be treated as vacancies that had already been reported to the Public Service Commission prior to the date of expiry of the list. This argument cannot hold good,

because to fill up 115 vacancies, which were reported to the Public Service Commission prior to the date of expiry of the ranked list, candidates were advised. Once the advice is issued, vacancy stands extinguished. After the extinguishment of the vacancy, on account of the advice of the candidates alone could the appointing authority ascertain the non-joining duty. Such vacancies, which came to the notice of the appointing authority on a subsequent day, can only be treated as a vacancy that was reported on that day. If that day happens to be a day after the expiry of the ranked list, for filling up that vacancy the expired list cannot be operated on.”

6. Further reference is made to the judgment of the Supreme Court in **Kodakara Farmers Service Co-operative Bank Ltd v. Neena [2013(1) KLT 344 (SC)]**. Paragraph 4 of this judgment is relevant which reads as follows;

“4. Learned counsel for the First Respondent fairly stated that no junior to her in the rank list was appointed in the Bank as Junior Clerk. Learned counsel appearing for the Bank on the other hand stated that due to computerization there was no dearth of staff in the Bank and financial constraints also deter the Bank in making further appointments. The Government, in our opinion, has clearly held that a Corporate Bank cannot be compelled to fill up the posts even if posts are permanent. There is nothing to show that the Bank has acted arbitrarily in not filling up the posts. On the other hand, as per the select list, six candidates were already appointed. That being the factual and legal position,

we are of the view that the High Court was not justified in upsetting the order passed by the Government. The appeal is, accordingly, allowed and the order of the learned Single Judge as well as of the Division Bench are set aside, with no order as to costs.”

7. It is also submitted by the learned counsel for the Bank that in the absence of any violation of statutory rules the petitioners are not entitled to file a writ petition against the Bank/Society. It is pointed out that the Joint Registrar has no jurisdiction to direct the Bank to make appointments with reference to a rank list which has already expired.

8. On the other hand, the learned counsel for the petitioners in W.P.(C)No.13498/2012 would submit that despite the fact that the rank list had expired the Joint Registrar has only issued orders based on the Division Bench judgment of this Court.

9. Having heard the learned counsel on either side and having perused the records and the judgments relied upon, I am of the view that this is a case in which the directions issued by the Division Bench in W.A.No.1822/2009 had already been complied with by the Bank, by issuing appointment orders to

persons 1 to 5 in the rank list. There were only five vacancies notified. On receipt of the advise for appointment, two persons alone joined duty. In the meantime, even before issuing such advise, the rank list had expired. The question is whether the vacancies that had arisen on account of such non-joining should be treated as fresh vacancies or else whether there is any obligation on the part of the Bank to issue advise to the persons who are in lower ranks. Even according to the petitioners, they are in rank Nos. 11, 12 and 14. The other rank holders are made parties to the writ petition. Going by the Division Bench judgment in Babu's case (Supra), it is clear that, after the vacancies are advised, the appointing authority has to ascertain the non-joining vacancies. Such vacancies which came to the notice of the appointing authority on a subsequent day, can only be treated as a vacancy that was reported on that day. If that day happens to be a day after the expiry of the ranked list, for filling up that vacancy the expired rank list cannot be operated. When this position of law is clear, I do not think that there is any illegality on the part of the Bank in not issuing advise to any other candidates. In the said circumstances, the orders issued by the

Joint Registrar is bad in law, and cannot be enforced.

10. In the result, these writ petitions are disposed of as under;

- i) W.P.(C)No.13498/2012 is dismissed.
- ii) W.P.(C)No.14512/2012 is allowed setting aside Exts.P5, P6 and P8 to the extent it directs the Bank to make appointment from the rank list which has already expired.

Sd/-
A.M.SHAFIQUE
JUDGE

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P.A. TO JUDGE