

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

W.P.(C).No. 25660 of 2003 (D)

PETITIONER(S):

V.S. RAMAKRISHNAN,
ASSISTANT SECRETARY,
WANDOOR SERVICE CO-OPERATIVE BANK LTD.,
WANDOOR P.O., MALAPPURAM.

BY ADVS. SRI. V.G. ARUN
SRI. T.R. HARIKUMAR

RESPONDENT(S):

1. STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT,
CO-OPERATION DEPARTMENT,
TRIVANDRUM.
2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, MALAPPURAM.
3. THE WANDOOR SERVICE CO-OPERATIVE BANK LTD.,
WANDOOR, MALAPPURAM, REPRESENTED BY ITS PRESIDENT.
4. M. MEDINI, SECRETARY, WANDOOR SERVICE
CO-OPERATIVE BANK, WANDOOR P.O.,
MALAPPURAM.

R1 & R2 BY GOVERNMENT PLEADER, SRI. ARUNKUMAR V.R. KARANAVAR
R3 BY ADV. SRI. B.S. SWATHI KUMAR, SC. CO. OP. E COMMN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-11-2015, THE
COURT ON 01.12.2015 DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT-P1 TRUE COPY OF THE PROCEEDINGS OF THE PRESIDENT OF the BANK NO.ESTT.99/2000 DATED 29.02.2000.
- EXHIBIT-P2 TRUE COPY OF THE LETTER NO.1935/2000 DATED 24.08.2000 OF THE ASSISTANT REGISTRAR.
- EXHIBIT-P3 TRUE COPY OF THE REPRESENTATION DATED 13.12.1999.
- EXHIBIT-P4 TRUE COPY OF THE RESOLUTION NO.16 DATED 20.10.2000.
- EXHIBIT-P5 TRUE COPY OF THE PROCEEDINGS OF THE REGISTRAR NO.EM(3) 2287/2001 DATED 07.02.2001.
- EXHIBIT-P6 TRUE COPY OF THE LETTER DATED 09.2.2001 OF THE BANK PRESIDENT.
- EXHIBIT-P7 TRUE COPY OF ORDER NO.CRP(1)6687/2001 DATED 21.1.2002 OF THE JOINT REGISTRAR.
- EXHIBIT-P8 TRUE COPY OF THE JUDGMENT IN O.P.8699/2002 DATED 09.12.2002.
- EXHIBIT-P9 TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 19.12.2002.
- EXHIBIT-P10 TRUE COPY OF G.O.(RT.) NO.238/2003/CO-OP. DATED 2.5.2003.
- EXHIBIT-P11 TRUE COPY OF THE REPRESENTATION DATED 12.4.2002.
- EXHIBIT-P12 TRUE COPY OF THE ACKNOWLEDGEMENT SIGNED BY THE JOINT REGISTRAR.
- EXHIBIT-P13 TRUE COPY OF THE LETTER DATED 23.10.2000.
- EXHIBIT-P14 TRUE COPY OF THE ENCLOSURE IN EXT.P13.
- EXHIBIT-P15 TRUE COPY OF CIRCULAR 7/1998 DATED 09.03.1998 WITH THE ENCLOSURE.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.25660 of 2003

Dated this the 1st day of December, 2015

JUDGMENT

This writ petition is filed by the petitioners seeking to quash Exts.P7 and P10 orders passed by the 2nd and 1st Respondents respectively, whereby the promotion granted to the petitioner by granting relaxation under Rule 185(8) of the Co-operative Societies Rules and affirmed by the Registrar of Co-operative Societies was set aside by the 2nd Respondent, and affirmed by the 1st Respondent.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner entered service of the 3rd Respondent Bank as Junior Clerk on 16.04.1980. He was promoted as Senior Clerk from 01.05.1982, as Accountant on 02.05.1983, as Internal Auditor on 30.06.1997 and as Assistant Secretary on 01.07.1997. The Bank attained the classification of Class-II in the year 2000.

4. The 4th Respondent, it is submitted, is far junior to the petitioner. She entered service on 09.05.1983 as Junior

Clerk. After her promotion as Senior Clerk etc. etc., she was promoted as Internal Auditor on 01.07.1997 and thereafter as Manager on 01.12.1998.

5. The previous Secretary of the 3rd Respondent Bank, Sri. Abraham retired from service on 29.02.2000. Petitioner being the seniormost was given full charge as Secretary with effect from 01.03.2000 and he took charge as the Secretary, evident from Ext.P1 proceedings. While holding the post of Secretary, petitioner was paid charge allowance, evident from Ext.P2. Petitioner is having the qualification of S.S.L.C and J.D.C. To the post of Secretary, the required qualification is degree.

6. Petitioner as per Ext.P3 representation dated 13.12.1999 sought relaxation of the rules as provided under Rule 185(8). Thereafter, petitioner has submitted further representations dated 28.03.2000 and 20.07.2000. The Committee of the Bank as per Ext.P4 resolution dated 23.10.2000 resolved to request the Registrar to grant approval of relaxation of qualification for promoting the petitioner as Secretary.

7. Ext.P4 was recommended by the Joint Registrar and by Ext.P5 order dated 07.02.2001, the Registrar of Co-operative Societies granted approval for relaxation of educational qualification of graduation, to the petitioner. Consequently, as per Ext.P6 dated 09.02.2001, petitioner was promoted as Secretary with effect from 07.02.2001.

8. Aggrieved by Ext.P6, 4th Respondent filed O.P.No.4770 of 2001 dated 12.02.2001 before this Court, seeking direction to restrain the 3rd Respondent Bank from promoting the petitioner. Ultimately, this Court had passed an order directing the Joint Registrar to consider the claim of 4th Respondent herein in accordance with law. Thereupon, the Joint Registrar passed Ext.P7 order dated 21.01.2002, holding that the 4th Respondent is entitled to be promoted with effect from 01.03.2000. The said order was challenged by the petitioner in O.P.No.8699 of 2002. The said Original Petition was disposed of by Ext.P8 judgment granting liberty to the petitioner to approach the 1st Respondent in revision. Meanwhile, the petitioner was reverted by the 3rd Respondent Bank and the 4th Respondent was given promotion as Secretary, evident from Ext.P9.

9. Thereafter, the Government has passed Ext.P10 order in Ext.P8 revision filed by the petitioner and confirmed the order passed by the 2nd Respondent. It is thus aggrieved by Exts.P7 and P10, this writ petition is filed by the petitioner.

10. 1st and 2nd Respondents have filed a counter affidavit refuting the allegations and claims and demands made by the petitioner in the writ petition. The main contention advanced by Respondents 1 and 2 is that petitioner was never promoted to the post of Secretary, but he was allowed to hold charge of Secretary. That apart, it is contended that, petitioner is not qualified to be promoted to the post of Secretary as he had not acquired educational qualification of University Degree as per the feeder category Rules of the Bank and the Kerala Co-operative Societies Rules. It is also stated that before overlooking the seniority of 4th Respondent, she was not provided with an opportunity of hearing, she being the seniormost eligible and qualified candidate for promotion as per the seniority list approved by the 3rd Respondent Bank from the date of occurrence of vacancy in the post of Secretary. It is also contended that the Registrar of the Co-operative Societies had granted approval

for relaxation of educational qualification of the petitioner without hearing the 4th Respondent. That apart, it is stated that the order of the Registrar granting approval for relaxation of the qualification of the petitioner was not an issue to be decided by the Joint Registrar in the representation filed by the 4th Respondent and therefore the validity of the orders passed by the Registrar was not considered by the Joint Registrar. Therefore, it is contended that there is no illegality in the orders passed by the Joint Registrar as alleged in the writ petition. It is also stated that the order happened to be passed without taking into account the availability of qualified hand entitled to be promoted to the post of Secretary. It is also contended by Respondents 1 and 2 that the orders were passed by statutory authorities by taking into account all the attendant provisions of law, the parameters laid down by this Court in various decisions and also taking into account the arguments advanced by the petitioner. Therefore, Respondents sought dismissal of the writ petition.

11. Petitioner has filed a reply to the counter affidavit reiterating the contentions raised and further contending that since a decision is taken by the Bank vide its resolution, which

was affirmed by the statutory authorities to relax the rules as provided under law, Exts.P7 and P10 orders cannot be sustained under law.

12. Heard learned counsel for the petitioner and the learned Government Pleader.

13. The thrust of the contention advanced by the learned counsel for the petitioner is that by virtue of Rule 185 (8) of the Kerala Co-operative Societies' Rules, the Registrar is competent to relax the qualification of an employee for the purpose of promotion in deserving cases, on the request of the Society by passing a resolution subject to the conditions recited thereunder. I think it is only proper that sub-rule (8) of Rule 185 is extracted hereunder for convenience:

"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:-

a) Minimum educational qualification for ministerial and supervisory posts other than those requiring technical qualification shall be SSLC. Exemption from passing SSLC shall not be granted under any circumstances provided that in the case of employees who were appointed direct to the ministerial posts before 1-1-1974 SSLC need not be

insisted.

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.*

x x x x x x x x x
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 x x x x x x x x x
 x."

14. On a reading of sub-rule, (8), what I understand is that the Registrar of Co-operative Societies is entitled to relax the qualification on the request of the Society by passing a resolution. But the said power is circumscribed with appropriate stipulations. The power so conferred to the Registrar is restricted by stipulating that the basic qualification and pass in the competitive examinations specified in sub-rule (5) cannot be relaxed. Clauses (a) and (b) of sub-rule (8) further stipulates certain conditions to relax the Rules. In my view, sub-rule (b) is the appropriate rule applicable in the case of the petitioner. It is true that by virtue of the said sub-rule, the academic qualification of graduation is prescribed and

exemption in acquiring the said qualification can be considered if the incumbent satisfies three conditions prescribed under sub-clauses (i) to (iii) of clause (b). Even according to the petitioner, petitioner satisfies only (b)(i) and therefore he is lacking qualifications prescribed under (b)(ii) and (b)(iii). The proviso to the said sub-rule also will not come to the rescue of the petitioner. Learned counsel for the petitioner contended that since the 3rd Respondent Bank has passed a resolution to relax the qualification, the statutory authorities were not right in taking a decision otherwise. According to the learned counsel, once the Society takes a decision by passing a resolution, the same is binding upon the Registrar and therefore having found that the Society has passed a resolution, the Registrar should not have interfered with the resolution of the Society. It is also contended that the power conferred under sub-rule (8) is only a formality of approval and nothing more.

15. However, on going through the provisions of the appropriate Rules, I do not find that relaxation can be provided to an employee by overlooking the stipulations contained in sub-rule (8). The contention of the petitioner that once the

resolution is passed by the Bank, the Registrar has no power to set aside the same, cannot be sustained in view of the fact that whenever there is a statutory stipulation under which the authorities are functioning, they are bound by the same. The relaxation provided is subject to stipulation contained thereunder and therefore the relaxation can be provided by the Bank taking into account the parameters thereunder and no relaxation over and above the one stipulated under the statute can be provided either by the Bank or by the statutory authorities.

16. As a last submission, learned counsel for the petitioner submitted that since rules are provided for promotion, it was not proper on the part of the 2nd Respondent to direct promotion to the 4th Respondent by Ext.P7 order. I do not find any substance in the same since 4th Respondent was granted promotion pursuant to an order passed by the Joint Registrar and therefore the 1st Respondent while upholding the said order has only mentioned that the 4th Respondent is entitled to promotion with effect from 01.03.2000 onwards, as a corollary while sustaining the order under challenge.

17. In this regard, learned counsel for the petitioner has invited my attention to the judgment in '**Chandran v. State of Kerala**' [1994 (1) KLT SN 27] and specifically to page 29 to canvass the proposition that Rule 185 of the Rules contemplates appointment to higher categories of service in a Society be made ordinarily by promotion from among members eligible for appointment in such category in accordance with the Rules on the basis of seniority in the feeder category and further that the promotion under Rule 185 can be demanded by an employee only on the basis of seniority in the feeder category and the feeder category for the purpose shall be prescribed by the society by framing suitable feeder category rules with the approval of the Registrar. It is also held in the said judgment that after the feeder category rules that came into force, the Joint Registrar has no jurisdiction or authority to issue any direction to make any appointment or promotion either prospectively or retrospectively against the approved feeder category rules. It is thus contended by the learned counsel for the petitioner that, when the feeder category rules are in force, the 2nd Respondent went wrong by issuing direction to appoint the 4th

Respondent. I do not think that the said judgment will render any manner of support to the arguments advanced by the petitioner. Since the appointment order of the 4th Respondent was challenged by the petitioner, the Appellate Authority was right in mentioning so in the order.

18. Having considered the rival submissions and perusal of the records, and appropriate statutory provisions, I am of the considered opinion that Exts.P7 and P10 does not suffer from the vice of arbitrariness or any apparent illegality, warranting interference by this Court under Article 226 of the Constitution of India.

Resultantly, this writ petition fails and accordingly the same is dismissed.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
27.11.2015