

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C). No. 11774 of 2014 (V)

PETITIONER(S):

**JOSEPH KURIAN,
S/O KURIAN, ARIKUDIYIL HOUSE, PULINKUNNU P.O.,
ALAPPUZHA DISTRICT-688504.**

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

RESPONDENT(S):

- 1. THE PULINCUNNOO SERVICE CO-OPERATIVE BANK LTD. NO.4015,
REPRESENTED BY ITS SECRETARY, PULINKUNNU P.O.,
ALAPPUZHA DISTRICT 688504.**
- 2. THE BOARD OF DIRECTORS OF THE PULINKUNNO SERVICE CO OPERATIVE
BANK LTD. NO. 4015,
REPRESENTED BY ITS PRESIDENT, PULINKUNNU P.O.,
ALAPPUZHA DISTRICT 688504.**
- 3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
ALAPPUZHA 688001.**
- 4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
KUTTANAD, MANCOMPU, ALAPPUZHA DISTRICT - 688504.**
- 5. PAUL MATHEW,
KIZHAKKEPPATTU HOUSE, PULINKUNNU P.O
ALAPPUZHA DISTRICT - 688504.**

**R5 BY ADV. SRI.P.C.SASIDHARAN
R1 & 2 BY ADVS. SRI.K.K.CHANDRAN PILLAI (SR.)
SRI.THOMAS JAMES MUNDACKAL
SMT.K.V.SHENU
SMT.S.AMBILY
SRI.ARUN ANTONY
SRI.M.K.HARIPRIYESH
BY GOVERNMENT PLEADER SRI. RAFAEEK V. K.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- COPY OF THE RELEVANT PAGES OF THE AUDIT CERTIFICATE FOR THE YEAR 2012-2013 OF THE FIRST RESPONDENT SOCIETY.**
- P2:- COPY OF THE NOTIFICATION PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 01-04-2014.**
- P3:- COPY OF THE MEMO FOR THE WRITTEN TEST OF PEON ISSUED BY THE 1ST RESPONDENT TO ANU JOSEPH, ONE OF THE CANDIDATE, DATED 17-04-2014.**
- P4:- COPY OF THE MEMO OF THE WRITTEN TEST OF SALESMAN ISSUED BY THE 1ST RESPONDENT TO ANU JOSEPH, ONE OF THE CANDIDATE, DATED 17-04-2014.**
- P5:- COPY OF THE LEGAL OPINION GIVEN BY THE BANK'S COUNSEL DATED 31.3.2012.**
- P6:- COPY OF THE RELEVANT PAGES OF THE LOAN PASS BOOK OF THE PETITIONER AND HIS WIFE, ISSUED BY THE FEDERAL BANK.**

RESPONDENT(S)' EXHIBITS : NIL

KRJ

**/True Copy/
P.A to Judge**

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.11774 of 2014

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Dated this the 27th day of March, 2015

JUDGMENT

The petitioner, who is a member of the first respondent society, has approached this Court seeking the following reliefs:

(a)to issue a writ of mandamus or any other appropriate writ, order or direction, directing respondents 3 and 4 to issue necessary orders requiring respondents 1 and 2 not proceed with selection and appointment to the post of Peon and Salesman notified under Ext.P2.

(b)To declare the appointment of an individual as outside agency to conduct the written test and the written test conducted by such outside agency, in connection with selection and appointment to the post notified under Ext.P2, as illegal.

2. The petitioner alleges that the first respondent society presently classified as 'Class V' is running under a huge loss of

₹1,62,53,275/- as per the audit report for the year 2012-13. At the time of filing of the writ petition, the staff of the society consisted of the Secretary, Clerk and a Peon which is as per the approved staff pattern. Recently, the co-operative department has sanctioned an additional post of salesman for the first respondent society and the peon post fell vacant in August, 2014 due to retirement. The board of directors of the society, therefore, published a notification inviting applications for filling up of newly sanctioned post of salesman as also the post of peon.

3. The petitioner points out that pursuant to Ext.P2 notification, the director board of the society resolved to authorize the President of the society to appoint a person of his choice as the outside agency for conducting the written test in connection with the selection process. The President of the society thereupon appointed one Sasikumar, a retired Assistant Registrar and a known political activist owing allegiance to the CPI(M). The petitioner further alleges that the selection and appointment of an individual as an outside agency is against the judgments rendered by this Court. It is further stated that since news had spread that respondents 1 and 2 had already decided the persons to be

appointed to the post of peon and salesman, only 24 persons have applied to the post of peon and 15 persons have applied to the post of salesman.

4. The petitioner further alleges that the written test for the posts of peon and salesman was conducted on 26.4.2014 at 10 a.m and 2 p.m respectively. It was stated that the 5th respondent, who is the son of a Marxist party leader and is having the educational qualification of B.Com and Diploma in Engineering, is going to be appointed to the post of salesman. It was further stated that the 2nd respondent has decided upon the person to be appointed to the post of peon and negotiations in this regard were held on 3.5.2014 and the meeting of the director board was also scheduled to be held on the same day so as to complete the selection process and to make appointments on the same day. According to the petitioner, the hurried manner in which the the interview and appointment was going to be effected is further proof of the *mala fides* behind the selection process. Although complaints were filed before respondents 3 and 4 pointing out the illegal manner in which the selection and appointment to the posts of peon and salesman was being effected in the first respondent society, no action to

prevent the illegal appointment has so far been taken. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by respondents 1 and 2, they have justified their stand in making appointments. It was also contended that the selection procedure was strictly in accordance with law and that without ill motive at all.

6. The 5th respondent, who is the person selected has also filed a detailed counter affidavit stating that he was selected after a due process of selection and the ranked list was prepared. It was further contended that the petitioner was not a person who has participated in the selection process and he is total stranger. Therefore, he has no *locus standi* to file this writ petition.

7. Arguments have been heard.

8. The following are the main arguments advanced by the learned counsel for the petitioner.

(1)The first respondent society is running at a loss and the selection process was conducted without considering the financial position of the society.

(2)The appointment of the outside agency to conduct the test was not in accordance with the rules as well

as the guidelines issued by the Registrar of the Co-operative societies.

(3)Ext.P2 notification suffers from an infirmity as it does not contain the details required as per the rules.

10. Regarding the first argument, it was pointed out by the learned counsel for the petitioner that the first respondent society is running at a huge loss of ₹1,62,53,275/- . My attention was invited to the decisions of this Court in **Mohanan** v. **State** [ILR 2010 (3) Kerala 776] and **Mannadi SCB** v. **Krishnakumar** [ILR 2011 (2) Kerala 619] wherein this Court has held that losses being made by a society is a relevant factor to be considered while deciding to make fresh appointment and without considering the financial stability of the society, the managing committee cannot go ahead making further appointments thereby burdening the society with additional financial stability. It was also pointed out that the vacancy of the post of peon arose in August, 2014 and though the post of salesman has been sanctioned, the first respondents does not have a properly functioning sales outlet, justifying the hurried appointment to the post of salesman.

11. It is crucial to note that in ***Mohanan's case*** (cited supra), the respondent in the counter affidavit took a stand that the financial position of the society is not a relevant factor to be taken into account while deciding to make fresh appointment. Therefore, this Court observed that the managing committee does not appear to have taken into consideration all the relevant aspects before issuing the notification in that case.

12. The fact situation in the present case can be distinguished. The learned senior counsel for the first respondent pointed out that the respondent bank has got a manure sales depot also which is situated about 2 kms. away from the office of the bank. The said outlet was established for the benefit of the members of the society, who are mostly engaged in agriculture. The bank has got approved staff strength. At present, there is a Secretary, Senior Clerk and a Peon is working there. The service of a part time sweeper is also there. It was pointed out by the learned senior counsel that in view of the constraints of the bank, they have not taken steps for appointment of any other staff in the approved feeder category. The sales depot is being managed with the service of the existing staff who are sincerely co-operating with

the functioning of the bank; it was submitted.

13. When anyone of the staff is on leave in an unavoidable circumstance, the bank was finding it difficult to manage the day to day affairs. Admittedly, at present, the bank has got a membership of 1800 members. The existing peon was about to retire in July. Therefore, the bank felt that it would not be able to function without the service of peon/salesman. Under the above compelling circumstances, the bank has decided to appoint a salesman which was approved as per existing feeder category and accordingly, sought permission from the department for the appointment and the third respondent as per Ext.R(1)(a) has granted the permission. Therefore, it can be seen that the first respondent has taken into account all the relevant circumstances while proceeding with the appointment. The financial constraints of the bank was also taken into account. Therefore, it cannot be said first respondent has blindly proceeded with the appointment.

14. Now the next contention raised by the learned counsel for the petitioner is that an individual was appointed for conducting the written test. This, according to the learned counsel for the petitioner, was against the circular issued by the Registrar of Co-

operative Societies. However, the learned senior counsel for respondents 1 and 2 invited my attention to the Circular No.79 of 2011 issued by the Registrar of Co-operative Societies. Clause IV (C) of the circular permits appointment of individuals also to conduct the examination.

15. In the instant case, it was pointed out that on receipt of the applications, the President had taken steps for conducting written examination through an outside agency. Steps were made to identify the agency who conducted the test. Enquiries were made in the nearby corporative bank where similar appointments were made in the near past and accordingly, the President approached a person by name N. Sasikumar who had agreed to conduct the test as per the directions issued by the co-operative department. He was a retired Assistant Registrar of the corporative department. Since he had agreed to conduct the test, orders were issued to conduct examinations as per Ext.R1(d). On receipt of Ext.R1(d), the aforesaid person directed the bank to issue memos to the candidates directing them to appear for the written test. The form of the memo to be issued to the candidates also was given to the bank. True copy of the letter given by him dated 16.4.2014

and copy of the model memo given by him is produced as Exts.R(1) (e) and (f) respectively.

16. Accordingly, memos were issued. As scheduled, the tests were conducted and the answer papers were valued. After valuation, the answer sheets were handed over to the bank in a sealed cover and it was kept as such in the bank. Mark list were handed over to the bank in two sealed covers which were kept confidentially in the bank under lock and key.

17. After the written test, memos were issued to the selected candidates directing them to appear for the interview in the bank on 3.5.2014. The interview was conducted by the board and the interview for the selection of salesman was conducted first from 11 a.m onwards on the said date. After the completion of the interview to the said post, interview to the post of peon was conducted continuously. All the members of the director board were present in the interview and all of them were permitted to ask question and to ascertain the marks. Earlier it was resolved that the the average marks given by the board members would be taken as the marks obtained by each candidate. Accordingly, the interviews were completed. Thereafter the average of the marks were calculated.

Then the mark list of the written test which were handed over by the outside agency was opened and combined table was prepared after correlating the false numbers with the original numbers. Thereafter the total marks obtained by all the candidates were calculated with reference to the marks given by each of the director board members. On the basis of the total marks obtained by the candidates, the ranked list was prepared. It cannot be said that there was foul play for the test conducted. Though it was vehemently argued that the first respondent cannot authorize the outside agency, it was submitted by the learned senior counsel for the first respondent that it was on the instructions of the board.

18. The next contention was regarding the contents of Ext.P12 notice. However, by Ext.P12 it can be seen that it contains the details regarding the post to which the applications were invited and the details to be contained in the applications to be submitted by the candidates.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is not entitled to get the relief prayed for.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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