

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(C).No. 12247 of 2015 (E)

PETITIONER:

K.PRADEEPKUMAR, AGED 53 YEARS,
S/O. K.KRISHNANA NAIR, ACCOUNTANT,
CHANGANACHERRY NORTH SERVICE COOPERATIVE
BANK LTD NO.3489, CHANGANACHERRY,
KOTTAYAM DISTRICT.

BY ADV. SRI.S.JAYAKRISHNAN

RESPONDENTS:

1. STATE OF KERALA REP. BY THE SECRETARY,
CO-OPERATION (C) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM PIN-695 001.
2. THE JOINT REGISTRAR (GENERAL),
CO-OPERATIVE SOCIETIES, KOTTAYAM-686 002.
3. THE ASSISTANT REGISTRAR,
CO-OPERATIVE SOCIETIES,
CHANGANACHERRY, PIN-686 101.
4. CHANGANACHERRY NORTH SERVICE CO-OPERATIVE BANK
LTD NO.3489, REP. BY ITS SECRETARY, TEMPLE ROAD,
VAZHPPALLY EAST, CHANGANACHERRY, KOTTAYAM-686 103.

R1 TO R3 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

R4 BY ADVS. SRI.JOMY GEORGE
SRI.SEBASTIAN THOMAS
SRI.DEEPAK MOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-08-2015 ALONG WITH WPC. 15533/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 12247 of 2015 (E)

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF REPRESENTATION DATED 16.06.2014
SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT

EXHIBIT P2: TRUE COPY OF REPRESENTATION DATED 20.02.2015
SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT

EXHIBIT P3: TRUE COPY OF REQUEST NO.1615/2015 DATED 05.03.2015
SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT

EXHIBIT P4: TRUE COPY OF FEEDER CATEGORY RULES OF THE 4TH
RESPONDENT

EXHIBIT P5: TRUE COPY OF THE REPRESENTATION DATED 24.03.2015 FILED
BY THE PETITIONER BEFORE THE 1ST RESPONDENT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.12247 and 15533 of 2015

Dated this the 17th day of August, 2015

COMMON JUDGMENT

The petitioner, a Senior Accountant in the fourth respondent Bank, has filed W.P.(C)No.12247/2015 questioning the action of the respondent Bank in not promoting him as Assistant Secretary. Later, the petitioner filed W.P.(C)No.15533/2015 seeking promotion to the post of Secretary, on the premise that he is entitled to a double promotion, given his age, and also his passing the departmental test conducted by the Kerala Co-operative Examination Board. Since the petitioner has filed both the writ petitions seeking promotion, though to two different posts, in the service of the same respondent Bank, this Court has proposed to dispose of both the writ petitions through a common judgment.

2. To begin with, the facts are not in dispute. Further, the learned counsel for the respondent Bank has submitted that since the petitioner has passed the departmental test on 13.07.2015, he is entitled to be promoted as Assistant Secretary. He has, however, had an objection vis-a-vis the petitioner's claim to be promoted as the Secretary.

3. The learned counsel for the petitioner has submitted that Rule 184(4) of the Kerala Co-operative Societies Rules ('the Rules' for brevity) provides for a double promotion. He has further drawn my attention to Rules 185(1) and 185(5) of the Rules to submit that once an employee has crossed the age of fifty-two, he shall be given promotion without the employer insisting on merit and ability to be assessed through a qualifying examination.

4. Be that as it may, Rule 184(4) of the Rules only enables an employee to be promoted even before his

probation could be completed. It is not a substantive provision declaring that an employee is required to be given promotion before he could complete his probation. At the same time, there is no denying the fact that the third proviso to sub-rule (5) of Rule 185 specifies that once a person has crossed the age of fifty-two, he shall be considered for promotion without reference to his passing the qualifying examination. The said consideration shall be confined to 10% of the vacancies to be filled up by promotion under sub-rule (2).

5. It is the specific contention of the learned counsel for the petitioner that the post of Assistant Secretary fell vacant on 01.06.2014 and the petitioner passed the departmental test on 13.07.2015. In the light of the third proviso to sub-rule (5) of Rule 185, for promoting the petitioner his passing the departmental test is not material. Accordingly, the respondent Bank ought to have considered the petitioner's claim for promotion from 01.06.2014.

6. It is also the contention of the learned counsel for the petitioner that the senior most employee working in the cadre of Secretary attained the age of superannuation and retired from service on 30.04.2015. According to the learned counsel, the petitioner, as is evident from Exhibit P4 in W.P. (C)No.15533/2015, being the next senior most employee, ought to have been considered for promotion as Secretary.

7. In the first place, the learned counsel for the respondent Bank has strenuously contended that with regard to the petitioner's entitlement to be straight away promoted as Secretary in terms of sub-rule (5) of Rule 185 of the Rules has not been pleaded in the writ petition. According to him, the relief sought is beyond the pleadings. The learned counsel for the petitioner has, however, drawn my attention to the pleadings in W.P.(C)No.15533/2015. There is, in fact, a specific plea and reference to Rule 185 of the Rules and the petitioner's entitlement thereof.

8. This Court does find merit in the contention of the learned counsel for the petitioner. In terms of sub-rule (5) of Rule 185, the respondent Bank ought to have promoted the petitioner to the post of Assistant Secretary, provided there is a clear vacancy and further provided that the petitioner is otherwise eligible, without reference to his not passing the departmental examination. As a result, this Court directs the respondent Bank to consider the petitioner's case for retroactive promotion as Assistant Secretary from 01.06.2014, provided he fits into the exemption carved out under the third proviso to sub-rule (5) of Rule 185 of the Rules.

9. At any rate, once the respondent Bank promotes the petitioner as Assistant Secretary after duly considering his claim for retroactive promotion, it shall also consider the petitioner's claim to be promoted as Secretary in terms of sub-rule (5) of Rule 185, provided he is otherwise eligible, and if there is a clear vacancy.

Needless to observe, the respondent authorities shall consider the petitioner's claim for promotion to the post of Assistant Secretary as expeditiously as possible, at any rate, within a period of two weeks from the date of receipt of a copy of this judgment.

With the above observation, both the writ petitions stand disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv