

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).NO. 17678 OF 2012 (H)

PETITIONER:

ABDUL SALAM C,
BRANCH MANAGER, VALAVANNUR,
SERVICE CO-OPERATIVE BANK, VALAVANNUR,
MALAPPURAM DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL
SRI.S.SHYAM KUMAR

RESPONDENT(S):

1. THE VALAVANNUR SERVICE CO-OPERATIVE BANK,
VALAVANNUR, MALAPPURAM-676505,
REPRESENTED BY ITS SECRETARY.
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
MALAPPURAM-676 505.

R1 BY ADV. SRI.P.VENUGOPAL (1086/92)
BY GOVERNMENT PLEADER, SRI. SRI. C.K. JAYAKUMAR

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

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: A TRUE COPY OF THE ORDER DATED 6.7.2012 ISSUED BY THE FIRST RESPONDENT SOCIETY TO THE PETITIONER ALONG WITH THE STATEMENT OF ALLEGED EXCESS PAY.

EXHIBIT P2: A TRUE COPY OF THE ORDER DATED 15.6.2012 ISSUED BY THE JOINT REGISTRAR TO THE FIRST RESPONDENT SOCIETY.

EXHIBIT P3: A TRUE COPY OF THE AUDIT REPORT OF THE YEAR 2008-2009 OF THE FIRST RESPONDENT SOCIETY.

EXHIBIT P4: A TRUE COPY OF THE ENQUIRY REPORT SUBMITTED BY THE SPECIAL GRADE INSPECTOR, OFFICE OF THE JOINT REGISTRAR MALAPPURAM.

RESPONDENTS' EXHIBITS:

EXHIBIT R1(A) : TRUE COPY OF THE ORDER DATED 29.02.2000 PASSED BY THE SECOND RESPONDENT.

EXHIBIT R1(B) : TRUE COPY OF THE ORDER DATED 28.9.2002 PASSED BY THE JOINT SECRETARY ON BEHALF OF GOVERNMENT OF KERALA.

EXHIBIT R1(C) : TRUE COPY OF THE ORDER OF THIS HONOURABLE COURT IN R.P.NO: 432/2008 IN O.P. NO: 12622/2003.

EXHIBIT R1(D) : TRUE COPY OF THE COMMUNICATION ISSUED BY THE SECOND RESPONDENT TO THE FIRST RESPONDENT DATED 12.8.2014.

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.17678 of 2012

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Dated this the 11th day of November, 2015

J U D G M E N T

The Petitioner is at present working as Branch Manager in the service of the 1st respondent Bank. While, working as Senior Clerk, he was promoted as 'Accountant' on 15.10.1998 and paid salary of the Accountant from 01.06.1999 only. The promotion was granted consequent on the promotion of Sri. A.P. Moideenkutty and Smt. Ramla, from the post of Accountant to Branch Managers in the year 2001. Now, the petitioner is aggrieved by Ext.P1 decision taken by the 1st respondent bank, directing to recover the amount, which the petitioner has received, while working as Accountant, in implementation of Ext.P2 order, passed by the 2nd respondent stating the promotion of Sri. A.P. Moideenkutty and Smt. Ramla,

-: 2 :-

from the post of Accountant to Branch Manager was illegal and unsustainable. Hence, this Writ Petition is filed with the following prayers.

- i. Issue a writ of certiorari or any other order to quash Exts.P1 and P2.*
- ii. To set aside Ext.P3 in so far as it holds that excess pay has been paid to the petitioner and further directing recovery from the petitioner.*
- iii. To declare that the petitioner is entitled to get salary in the respective posts in which he had worked, including in the post of Accountant, as authorized by the orders issued by the first respondent society to work in such posts.*
- iv. Issue any other writ order or order or direction as this Hon'ble court may deem fit in the facts and circumstances of the case.*

2. Per contra, the 1st respondent filed a counter affidavit, stating that Ext.P1 decision has been taken in implementation of Ext.P2 order, passed by the 2nd respondent, to recover the amount from the petitioner and the 2nd respondent has already passed Ext.R1(a)

-: 3 :-

stating that the petitioner was not entitled to get the salary of the Accountant from 01.06.1999 onwards, as their promotion to the post of Accountant was made consequent and the vacancy arose a wrong promotion of Smt. Ramla and Sri. A.P. Moideenkutty, from the post of Accountant to Branch Managers. Actually, Smt. Ramla and Sri. A.P. Moideenkutty were not qualified to be promoted as Branch Managers and without noticing their disqualification, the Board of Directors promoted them to the post of Branch Managers and thereby the post of Accountant, to which the petitioner was promoted, was a post left vacant erroneously, against the Rules. Therefore, the petitioner is not entitled to get salary of Accountant to which he was erroneously promoted posted, by mistake. Ext.R1(a) order, passed by the 2nd respondent was challenged before the Government and the Government, after affording an opportunity of being

-: 4 :-

heard to the petitioner passed Ext.R1(b) order, affirming the findings of the 2nd respondent, in Ext.R1(a) order. These orders are the basic orders, from which Ext.P2 order has arisen and the basic orders, under which Ext.P2 order has been passed are not challenged in this Writ Petition. Put it differently, Exts.P1 and P2 are passed in implementation of Exts.R1(a) and R1(b) orders.

3. Heard the learned counsel for the petitioner and learned standing for the respondent.

4. Going by the contentions raised in the counter affidavit and the submissions made at the Bar, it stands undisputed that Exts.R1(a) and R1(b) orders passed by the Government are not challenged in this Writ Petition and it stands proved that Exts.P1 decision and P2 order are passed in implementation of Ext.R1(a) order, which was affirmed by Ext.R1(b) order. I am of the opinion

-: 5 :-

that so long as Exts.R1(a) and R1(b) are not challenged or sought to be set aside in this Writ Petition, this Court cannot prevent the implementation of Ext.P1 decision and P2 order, invoking the jurisdiction under Article 226 of the Constitution of India. Therefore, this Court decline jurisdiction to the petitioner. It is left open to the petitioner to seek appropriate remedies as proved under law.

This Writ Petition stands disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge