

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 14694 of 2014 (J)

PETITIONER:

K.K.PRAKASAN
KODIVEETIL HOUSE CHERTHALA P.O.
ALAPPUZHA DISTRICT (NOW WORKING AS SECRETARY
THANKI SERVICE CO-OP. BANK LTD. NO.1003
KADAKKARAPPALLY P.O., CHERTHALA).

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

RESPONDENTS:

1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPURAM-695 001.
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
ALAPPUZHA-688 001.
3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
CHERTHALA, ALAPPUZHA-688 529.
4. THE THANKI SERVICE CO-OPERATIVE BANK LTD NO.1003
REPRESENTED BY ITS SECRETARY, KADAKKARAPPALLY P.O.
CHERTHALA-688 529, ALAPPUZHA DISTRICT.
5. THE BOARD OF DIREICTORS OF THE THANKI SERVICE CO-OPERATIVE
BANK LTD NO.1003
REPRESENTED BY ITS PRESIDENT, KADAKKARAPPALLY P.O.
CHERTHALA-688 529, ALAPPUZHA DISTRICT.

R1,2,3 BY GOVERNMENT PLEADER SRI. A MOHAMMED SAMAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 14694 of 2014 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. A TRUE COPY OF THE RESOLUTION NO.432 DATED 3/9/2010 OF THE
5TH RESPONDENT
- EXT.P2. A TRUE COPY OF THE REPORT SUBMITTED BY THE PRESIDENT BEFORE
THE 3RD RESPONDENT DATED 20/12/2013.
- EXT.P3. A TRUE COPY OF THE ORDER NO.EM (2) 22749/13 DTED 11/2/2014 OF
THE 1ST RESPONDENT
- EXT.P4. A TRUE COPY OF THE JUDGMENT IN WPC NO.1424/2010 DATED
9/2/2010.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN,J.

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W.P.(C).No.14694 of 2014

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Dated this the 20th day of July, 2015

JUDGMENT

The petitioner is an employee of the 4th respondent Co-operative Society. By Ext.P1 resolution adopted by the Managing Committee of the Society, the petitioner was sought to be promoted to the post of Secretary of the Society by seeking relaxation from possessing educational qualification of graduation under Rule 185(8) of the Kerala Co-operative Societies Rules. By Ext.P3, the Registrar of Co-operative Societies passed an order permitting the Society to promote the petitioner by relaxing the educational qualification. However, it was stated that the relaxation would take effect only from the date of the order. Challenging the date of the effect given in the order, the petitioner has preferred this writ petition seeking the following prayers:-

“i) to issue a writ of certiorari calling for the records leading to the issuance of Ext-P3 and quash the same to the extent it limits the date of relaxation of qualification under Rule 185 (8) of the Kerala Co-

operative Societies Rules, from the date of Ext-P3;

ii) to declare that the petitioner is entitled to get relaxation as granted in Ext-P3, from the date of Ext-P1 resolution by the 5th respondent."

2. It is alleged in the counter affidavit filed on behalf of the 2nd respondent that the request by the Co-operative Society for granting promotion by relaxation of qualification was made only on 03.09.2010, after the amendment of the Rules and the relaxation takes effect only with effect from the date of order of the Registrar, who is the competent authority.

By G.O.(P).No.197/2005/Co-op. dated 10.08.2005, Rule 185(8) was amended as follows:-

"8. Registrar of Co-operative Societies do not have the power to restrict effect of relaxation in qualification granted by the Managing Committee to the date of order. Petitioners challenge order of the Registrar of Co-operative Societies by which relaxation of qualification granted to employees of the society was restricted to the date of his order. It was contended by the petitioners that governing body of the society has ample power to relax the qualification and Registrar has to approve the decision taken by the governing body and cannot reject or modify the decision. It was contended by the State that the rule was amended in 2005, as per which the Registrar of Co-operative

Societies can grant conditional approval. Allowing the Writ Petition, the Court held that employees are entitled for relaxation of promotions already effected from the date of order and they are entitled to consequential benefits."

3. Going by the amended provisions in Rule 185(8) of the Kerala Co-operative Societies Rules also, the order of the Registrar is to be issued on the request of the Society by passing a resolution. In the above circumstances, it cannot be said that the resolution of the society for grant of promotion to the employee has no relevance. The competence to issue a resolution seeking exemption is still with the Managing Committee of the Society. In the instant case, the committee had adopted the resolution on 03.09.2010. However, after calling for reports and considering the matter, the proceedings were issued by the Registrar only by Ext.P3 order dated 11.02.2014. Under the unamended rules, this Court had, by a decision in **Dasan v. Registrar of Co-operative Societies** (2007(1) KLT 581), held that where the society resolves to seek permission for relaxation of qualifications, the relaxation has to take effect from the date of resolution and it is not open to the Registrar to contend that the exemption will take effect only from the date of the order of

the Registrar approving the grant of such exemption. Though it is noticed that the power to grant relaxation is now vested with the Registrar, it is clear from the reading of the amended rule that the power has to be exercised with reference to the request to be made by the committee of the society. If the respondents are heard to contend that the administrative delay in the office of the Registrar in deciding the question of relaxation, however long it may be, is to be borne by the society and the employee concerned, I am of the opinion that the result would be the perpetuation of injustice.

In the above circumstances, I am of the opinion that even in cases of resolutions taken by the society for exemption or relaxation of educational qualifications after the amendment effected to Rule 185(8) of the Kerala Co-operative Societies Rules, the exemption granted by the Registrar is to take effect from the date of the resolution adopted by the committee of the society of which the order of exemption is passed by the Registrar unless there are special circumstances which warrant a departure from the above position. The writ petition is therefore allowed. It is declared that the petitioner will be

entitled to relaxation of educational qualifications granted in Ext.P3 from the date of Ext.P1 notification. The petitioner will be entitled to all consequential benefits.

sd/-

Anu Sivaraman, Judge

sj