

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 16199 of 2014 (Y)

WRIT PETITIONER(S) :

**HARIKUMAR T.V, AGED 34 YEARS,
S/O.VASUDEVAN T.N, VAYALA P.O, ELACKADU VILLAGE,
MEENACHIL TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.P.C.HARIDAS

RESPONDENT(S) :

- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO
THE DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**
- 2. REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM- 695 001.**
- 3. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL),
KOTTAYAM- 686 001.**
- 4. VAYALA SERVICE CO-OPERATIVE BANK LTD. NO.2175,
VAYALA P.O, PIN- 686 587, REPRESENTED BY ITS SECRETARY.**
- 5. THE MANAGING COMMITTEE,
VAYALA SERVICE CO-OPERATIVE BANK LTD.NO.2175,
VAYALA P.O, PIN- 686 587, REPRESENTED BY ITS PRESIDENT.**

*** ADDITIONAL R6 & R7 IMPLEADED**

- 6. TONY JOSEPH,
MUNDACKATHARAPEL HOUSE, VAYALA P.O, KOTTAYAM - 686 487.**
- 7. LIMMY SEBASTIAN,
VALLIMYALIL HOUSE, VAYALA PO., KOTTAYAM - 686 587.**

*** ADDL.R6 AND R7 ARE IMPLEADED AS PER ORDER DATED 26.02.2015 IN
I.A.NO.2609 OF 2015.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.P.M.JOSEPH
R4 & R5 BY ADVS. SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI.T.V.VINU
SRI.GEORGE PULIKUTHIYIL**

ADDL.R6 & R7 BY ADV. SRI.K.G.ANIL BABU

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE ADVERTISEMENT PUBLISHED BY
THE 5TH RESPONDENT IN DEEPIKA DAILY DATED 14-05-2014.

EXHIBIT P2: TRUE COPY OF THE MEDICAL CERTIFICATE DATED 28-07-2003
ISSUED TO THE PETITIONER FROM THE MEDICAL COLLEGE
HOSPITAL KOTTAYAM.

EXHIBIT P3: TRUE COPY OF THE IDENTITY CARD ISSUED TO THE PETITIONER
FROM THE MEDICAL COLLEGE HOSPITAL KOTTAYAM.

EXHIBIT P4 IN NOS: TRUE COPY OF THE REPRESENTATIONS DATED 16-06-2014
SUBMITTED BY THE PETITIONER TO THE RESPONDENTS
2,3 AND PRESIDENT OF THE 4TH RESPONDENT SOCIETY.

EXHIBIT P5: TRUE COPY OF THE CIRCULAR NO 11/99 DATED 23-03-2009.

EXHIBIT P6: TRUE COPY OF THE PAPER ADVERTISEMENT DATED 01-06-2014
PUBLISHED IN MANGALAM DAILY.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M.SHAFIQUE, J

W.P.C.No.16199 of 2014

Dated this the 18th day of November 2015

J U D G M E N T

Petitioner challenges Ext.P1 notification raising two specific grounds. One is that the notification is not issued in terms of Ext.P5 circular No.11/99 dated 23/03/2009 and secondly that no provision has been made for appointing physically disabled persons in terms of Section 80(5) of the Co-operative Societies Act (hereinafter referred to as 'the Act').

2. During the pendency of the writ petition, a further notification has been issued by the Society as Ext.P6, which substantially complies with Circular No.11/99. Therefore, the only question to be considered is whether the petitioner is entitled to challenge Exts.P1 and P6 notifications on the ground that the applications were not called for from physically disabled persons.

3. By virtue of Ext.P1 notification, the Society has called for applications to fill up the post of Salesman and two Attendants. The total cadre strength, according to the petitioner, is 12 and in that view of the matter, one post has to be designated to physically disabled person. Learned counsel also

relied upon the judgment of this court in **Jayaprakash v. Joint Registrar of Co-operative Societies** [2013(4) KLT 788] to contend for the proposition that when there is a cadre strength of more than 10, the 11th or 12th post has to be given to the physically disabled person taking note of the 3% reservation available under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 read with Section 80(5) of the Act.

4. Counter affidavit has been filed by the respondent society inter alia contending that the total posts were only 11, of which the post of Salesman was not an identified post for physically disabled. Three vacancies of L.D.Clerk are still available and taking into account Section 80(5) of the Act, one such post will be filled up with the physically handicapped person.

5. The short question to be considered is whether there is compliance of Section 80(5) of the Act. A reference to the judgment in **Jayaprakash** (supra) virtually covers the issue. In that case, the learned Single Judge of this Court, while considering the scope and impact of the various statutes, observed at paragraphs 12 and 13 as under:

“12. On a reading of the above, it is clear that, in a 100 point roster, what was intended was to identify the vacancies arising at the 1st point of time in a block of 33 (being 1/3rd). The same procedure can safely be adopted in the instant case also, since what is intended by the statutory mandate is to provide reservation to the disabled and it cannot be left to the caprice of the employer to decide as to when and to which post he would make such reservation.

13. The proviso indicates that in any society having more than 10, but less than 33 employees reservation shall be made to at least 1 post. The contention of the learned counsel for the respondent that the employer can wait till the 33rd post comes, defeats the very purpose intended by the Legislature. Here, particularly, the sanctioned post is only 18. What the society would contend is that they are entitled not to comply with the reservation till they have the necessary business to get the 33rd post sanctioned by the Department. This definitely defeats the purpose with which sub-s.(5) and the proviso has been introduced in S.80. Such a contingency may never arise and the language of the proviso is not to be lightly dealt with so as to absolve employers from their liability to provide reservation to the disabled. To comply with the reservation of 3%, as indicated in the

proviso; any society who employs more than 10 persons, has to make such reservation in the 11th or 12th post, if the said post is an identified post. In any event, the 1st or the 2nd identified post to which appointment is made in excess of 10 posts, should be reserved for the disabled. The fact whether the 10 posts already existing are identified or not, is immaterial. The Supreme court decisions cited above are of binding import in so far as to hold that compliance of sub-s.5 of S.80 should be to the total cadre strength and not to identified posts alone."

6. When the total cadre strength is considered, even going by the number of posts, as stated by the respondents, when there are 11 posts, the 11th post has to be given to the physically handicapped person and if there are 12 posts, as stated by the petitioner, the 12th post has to be given. The contention that the post of Salesman will be the last post, cannot be accepted, as the post of Attendant comes below the post of Salesman and in the present case, since two posts of Attendant are available, one post has to be reserved for physically disabled. The contention that, in the coming vacancies of three posts of Lower Division Clerk, one will be designated for physically disabled person, is not

sustainable as the post for physically disabled persons has to be computed on the basis of the total cadre strength and not taking into account the fact that future vacancies may arise.

Taking cue from the judgment in **Jayaprakash** (supra), this writ petition has to be allowed. Accordingly, this writ petition is allowed, setting aside Exts.P1 and P6 notifications, and the following directions are issued:

i) That the 4th respondent shall issue a fresh notification taking into account Ext.P5 circular and also the availability of vacancies for physically disabled in terms of Section 80(5) of the Act.

ii) The persons, who had already applied for the aforesaid post, shall also be considered, if they are qualified for the said post.

iii) The entire process shall be completed within a period of three months from the date of receipt of a copy of this judgment.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr