

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 16731 of 2014 (N)

PETITIONER:

SREEKUMAR. K,
SREEMANGALAM, MULLAKKAL, MACHEL.P.O
THIRUVANANTHAPURAM.

BY ADVS.SRI.P.N.MOHANAN
SRI.K.N.AJAYAN
SMT.I.VINAYAKUMARI
SRI.K.S.ARUNDAS
SRI.C.P.SABARI

RESPONDENT (S) /RESPONDENT:

1. KERALA CO-OPERATIVE DEVELOPMENT WELFARE FUND BOARD
REPRESENTED BY ITS SECRETARY
GANDHARIYAMMAN KOVIL ROAD, STATUE
THIRUVANANTHAPURAM-695001.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM, PIN-695001.

3. GOVERNMENT OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT
CO-OPERATIVE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM, PIN-695001.

4. SANDHYA.V.S,
L D CLERK,
KERALA CO-OPERATIVE DEVELOPMENT WELFARE FUND BOARD
GANDHARIYAMMAN KOVIL ROAD, STATUE
THIRUVANANTHAPURAM-695001.

Addl.5. SREEJA THAVARA
W/O.MANOCHARAN.P.K., VAISHNAVI, NEAR POYILERYKAVU
PO-MAVILAYI, KANNUR -670 622.

Addl.6. SMT.SALINI T.N, LD CLERK,
KERALA CO-OPERATIVE DEVELOPMENT WELFARE FUND BOARD,
REGIONAL OFFICE, TRISSUR-680 001.

Addl.7. SMT.SHEEBA V.B., LD CLERK,
KERALA CO-OPERATIVE DEVELOPMENT WELFARE FUND BOARD,
REGIONAL OFFICE, TRISSUR-680 001.

Addl.8. SRI SANTHOSH, ATTENDER,
KERALA CO-OPERATIVE DEVELOPMENT WELFARE FUND BOARD,
REGIONAL OFFICE, TRISSUR-680 001.

Addl.9. SMT.DEEPA B, LD CLERK,
KERALA CO-OPERATIVE DEVELOPMENT WELFARE FUND BOARD,
HEAD OFFICE, TRIVANDRUM-695 001.

(ADDL. R5 IS IMPEADED AS PER ORDER DATED 18/08/2014
IN IA 11008/2014.)

(ADDL.R6 TO R9 ARE IMPEADED AS PER ORDER DATED 14.10.2015
IN I.A.NO.14806/2014)

R4 BY ADV. SRI.G.P.SHINOD
R4 BY ADV. SRI.RAM MOHAN.G.
R4 BY ADV. SRI.MANU V.
R4 BY ADV. SRI.V.SANJEEV
R4 BY ADV. SRI.GOVIND PADMANAABHAN
R5 BY ADV. SRI.GEORGE POONTHOTTAM
R1 BY ADV. SRI.T.M.RAMAN KARTHA, SC, KERALA CO.OP. DEVP. AND
WELFARE FU
R9 BY ADV. SRI.V.G.ARUN
R9 BY ADV. SRI.T.R.HARIKUMAR
ADDL6-R 8 BY ADV. SRI.VINAY RAMDAS
R2-R3 BY SENIOR GOVERNMENT PLEADER SRI E.M.ABDUL KHADER
R1 BY ADV. SRI.BRIJESH MOHAN, SC, KCDWFB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 COPY OF THE NOTIFICATION DATED 19.7.2013 PUBLISHED IN THE
KERALA KAUMUDI DAILY.

EXT.P2 COPY OF THE HALL TICKET.

EXT.P3 COPY OF THE POST SANCTION ORDER DATED 19.6.2014.

EXT.P4 COPY OF THE JUDGMENT REPORTED IN 2010(2)SCC 637.

EXT.P5 COPY OF THE JUDGMENT REPORTED IN 2013(2)KHC 399.

EXT.P6 COPY OF NEWS ITEM PUBLISHED IN SUPRABHATHAM DAILY DT.7.9.2014.

4TH RESPONDENT'S EXHIBITS

EXT.R4(a): TRUE COPY OF THE RESOLUTION NO.14(2) DT.27.6.2014 OF THE
FIRST RESPONDENT BOARD.

EXT.R4(b): TRUE COPY OF THE RESOLUTION NO.5 DATED 3.2.2014 OF THE
FIRST RESPONDENT.

EXT.R4(c): TRUE COPY OF THE APPOINTMENT ORDER NO.2952/2014 DATED
28.6.2014 ISSUED BY THE SECRETARY OF THE FIRST RESPONDENT BOARD.

5TH RESPONDENT(S) ' EXHIBITS

EXT.R5(a): TRUE COPY OF THE APPOINTMENT ORDER NO.2952/2014
DT.28.6.2014.

EXT.R5(b): TRUE COPY OF THE COMMUNICATION NO.2952/14 DT.11.7.2014.

EXT.R5(c): TRUE COPY OF THE ORDER NO.2969/2014 DT.1.7.2014.

EXT.R5(d): TRUE COPY OF THE JOINING REPORT OF SRI P.P.HARISH DATED
1.7.2014.

6TH RESPONDENT'S EXHIBITS

EXT.R6(a): TRUE COPY OF SCHEME MADE UNDER SECTION 57A OF THE KERALA
CO-OPERATIVE WELFARE AND DEVELOPMENT SCHEME 2000, NOTIFIED VIDE S.R.O
616/2000 IN OFFICIAL GAZETTE.

/TRUE COPY/

P.S TO JUDGE

P.V ASHA, J.

W.P(C) No.16731 of 2014-N

Dated this the 30th day of October, 2015

JUDGMENT

The writ petitioner who claims to be an unemployed youth, has filed this Writ Petition seeking direction to the 1st respondent not to make any appointment against the posts created as per Ext.P3, on the ground that vacancies arising out of it were not notified in Ext P1. He seeks a declaration and direction to the 1st respondent to make appointments to those posts only after issuing a fresh notification.

2. By Ext.P3 order, Government created 4 posts of L.D Clerks/Junior Clerks and 2 posts of Attenders in the Kerala Co-operative Welfare Development Board (hereinafter referred to as 'Board') - the 1st respondent, on the basis of the proposal submitted by the 1st respondent. Before Ext.P3 order was issued, the 1st respondent Board had, by Ext.P1 notification dated 19.07.2013, invited applications for appointment against the posts which were already created before Ext.P3 order, i.e against 4 posts of LDCs, 1 post of Driver, 1 post of Attender and 1 post of Peon. The qualification required for the post of LDC is a

recognised degree, HDC/JDC/B.Sc Banking and Co-operation etc.); whereas the educational qualification for appointment to the other 3 posts is a pass in the 7th class. Claiming that petitioner had applied for the posts of Driver, Attender and Peon, he has produced Ext.P2 hall ticket issued to him for appearing in the written test for the post of Driver. Petitioner has stated that rank lists were prepared for all these posts based on Ext.P1 notification and appointments were made from it against the vacancies notified. However the petitioner is not included in any of those rank lists.

3. Ext.P3 order creating additional posts, was issued by Government, at a time when the vacancies in all the 4 posts, which were notified in Ext.P1, were filled up from the ranked list. This writ petition is filed at this stage, alleging that vacancies which arose against newly sanctioned posts were being filled up by appointing candidates included in the rank list. It was stated that the 4th respondent was appointed on 30.06.2014 as L.D Clerk, eventhough all the vacancies notified in Ext.P1 were already filled up. Referring to various decisions of this Court and the Supreme Court, petitioner challenges the appointments/steps being taken for appointments by the Board

against those additional posts, saying that a fresh notification is necessary. According to the petitioner, there is no provision either for fixing a lifetime for the rank list or for appointing a candidate in excess of the vacancies notified. The petitioner submits that it affects his fundamental rights.

4. From the counter affidavits filed by the contesting respondents, it is seen that the Board had taken a decision on 3.2.2014 [Ext.R4(b)], to approve the rank list prepared pursuant to Ext.P1 notification and to fill up the vacancies from the rank list. At the relevant time, the number of sanctioned posts in the categories of LDCs were only 4, whereas that of Driver, Peon and Attender were one each. The Board further decided that the rank list will be valid for a period of one year in respect of the posts of LDC, Driver, Attender and Peon. As there was no vacancy in the post of Attender, it was decided that the rank list will be considered against the future vacancies that may arise. Therefore the vacancies were filled up from among the candidates included in the rank list based on their rank. The Government issued Ext.P3 order, creating the additional posts thereafter. Since the ranked list was in force, the Board, as per Ext.R4(a) decision resolved to fill up the vacancies against the

newly created posts of L.D Clerks from the ranked list, one post of Attender, by promotion of Peon, one by separate notification for SC/ST and the consequential vacancy which arose by promotion of Peon, by appointing the next candidate from the existing rank list for the post of Peons. Accordingly, Ext.R4(c) order was issued, appointing respondents 4,6,7 and 9 as L.D Clerks.

5. When this petition came up for admission on 2.7.2014, this Court granted an interim order, staying further appointments to the post of Clerks and Attenders, pursuant to Ext.P3.

6. In the meanwhile, the 5th respondent was appointed by the 1st respondent Board, as per Ext.R5(a) dated 28.6.2014, to the post of Peon. Even though the interim order was against filling up of the post of Clerks and Attenders, she was not allowed to join duty in the light of the interim order. Therefore the 5th respondent got herself impleaded. The petitioner sought impleadment of respondents 6 to 9 thereafter. Respondents 4, 6, 7 and 9 were appointed as L.D.Clerks as per Ext.R4(c) order dated 28.06.2014, whereas the 5th respondent was appointed as Peon and 8th respondent as Attender. The petitioner has filed

I.A.No.14849 of 2015 seeking the following amendments:

“To insert para 8 below para 7

By Ext.P1 four vacancies of L.D.Clerk, One Attender, one Driver and one Peon was notified. All the said notified vacancies were filled by appointing the candidates by Ext.R4 (b) dated 3.2.2014. Subsequently after filling the notified vacancies, respondent No.4, additional respondents 6, 7 and 9 were appointed as L.D.Clerks by Ext.R4(a) dated 27.6.2014, and they joined duty on 1.7.2014 except respondent No.9. The respondent No.9 joined on 6.7.2015 subsequent to issuance of interim order dated 2.7.2015. Subsequently two post of Attender, sanctioned by Ext.P3 order was also filled by appointing 8th respondent as seen from Ext.R4(a) and another post of Attender was filled by promoting Sri.Harish, Peon. Due to the promotion of Sri.Harish, steps are taken to fill the resultant vacancy by appointing additional 5th respondent from the lapsed rank list as seen from Ext.R5(a) order and the same was kept in abeyance by Ext.R5(b) in view of the interim order issued by this Court.

In the prayer portion to substitute prayer No.iii and to renumber existing prayer iv as v and to insert prayer No.iv above prayer No.v.

iii) Call for the records leading to issue the appointments of the respondents 4 to 9 as evidenced by Ext.R4(a) and quash the same by issuing a writ of certiorari or any appropriate writ order or direction.

iv) declare that the respondents 4 to 9 are not entitled to get appointment from the rank list prepared on the basis of Ext.P1 notification as all the notified vacancies are filled by Ext.R4 (b).”

In the affidavit in support of the petition for amendment, it is pointed out that the notified vacancies were filled up by appointing candidates by Ext.R4(b) on 3.2.2014 and after the notified vacancies were filled up, the 4th respondent and respondents 6, 7 and 9 were appointed as L.D Clerks. It is also stated that steps were taken to fill up the resultant vacancy of

Peon by appointing the additional 5th respondent, as per Ext.R5 (a) order, which was kept in abeyance by Ext.R4(b).

7. Ext.R4(a) shows that pursuant to Ext.P3 order passed by the Government on 19.06.2014, sanctioning 4 additional posts of LDCs/Junior Clerks and 2 posts of Attenders, the Board decided to fill up those vacancies, from among the candidates included in the rank list, prepared pursuant to Ext.P1, by appointing rank Nos.4,6,7 and 9. Similarly, as against the 2 additional posts of Attenders, one was decided to fill up by promoting a Peon and the other one by appointing a candidate from the existing rank list of attenders by direct recruitment. Accordingly, it was decided to promote Sri Harish P.P, who was rank No.1 in the rank list prepared for the post of Attenders pursuant to Ext.P1 notification and was appointed as Attender. Consequent to the promotion granted to Sri Harish-the 1st rank holder as Attender, it was decided to fill up that vacancy by appointing the 5th respondent, who was the next candidate in the rank list. It was further decided to reserve the existing vacancy of LDC for SC/ST and to make appointment after notifying the same. The appointment of the candidates mentioned in Ext.R4(b) was made accordingly. It was thereafter that the additional

posts were sanctioned and the Board decided to fill up those vacancies by the candidates available in the rank list.

8. The 5th respondent filed a counter affidavit along with I.A.No.14503 of 2014, praying for a direction to modify the interim order, pointing out that she was not allowed to join duty in view of the interim order, and seeking orders to clarify the interim order dated 2.7.2014 to the effect that the same will not stand in the way of her appointment as Peon.

9. Respondents 6 to 9 have also filed counter affidavits. I heard the learned Counsel appearing for the respondents and the learned Government Pleader. The learned counsel for the 1st respondent contended that the petitioner has not challenged Ext.R4(b) resolution fixing the validity period of the rank list and the petitioner has no locus standi to challenge the selection.

10. Respondents 4 to 9 seriously oppose the prayers in the Writ Petition and challenge the locus standi of the petitioner pointing out that the writ petition is in the nature of a public interest litigation and the petitioner does not have any personal grievance in the matter. On a query from the Court, the learned counsel for the petitioner stated that the qualification of the petitioner is only SSLC and he had submitted applications

only against the posts of Driver, Attender and Peon, in which he did not come successful and did not find any place in the rank list.

11. The petitioner has relied on the decision in **Rakhi Ray and others v. High Court of Delhi and others** [(2010) 2 SCC 637] referred to in Ext.P5 judgment of a Division Bench of this Court in **Ibey Susan Issac v. Anicadu Service Co-operative Bank Ltd.** [2013 (2) KHC 399], **Suresh v. M.G.University** [2009 (1) KLT 950], and **Dimply v. M.G.University** [2007 (2) KLT 519], in support of his contention that there cannot be any appointment in excess of the vacancies notified. On the other hand, the learned counsel appearing for the 5th respondent vehemently opposes the contentions of the petitioner pointing out that, the petition itself is not maintainable and the petitioner cannot be said to be a person aggrieved. Hence the petitioner is not entitled to any relief as against any of the respondents. The learned counsel for the 5th respondent points out that the 1st respondent Board was formed only in the year 2000 and the notification was with respect to the vacancies available in those posts which were sanctioned by the Government and at the time when notification was issued, there

was not even a scope for even indicating any future vacancies that were likely to arise at the relevant time. It was pointed out that since the Board has already decided that the validity of the rank list will be for a period of one year, as per Ext.R5(b) dated 3.2.2014, while the rank list exists, there cannot be any objection as against the appointment made from the rank list, when vacancies arose within the validity period of the rank list. The learned Counsel pointed out that the circumstances, under which this Court and the Apex Court rendered the above referred judgments relied on by the petitioner, were entirely different, in so far as in all those cases, the relevant rules provided for notification which should indicate the number of vacancy or notification preceding appointment against any vacancy apart from a prohibition against filling up of vacancies not notified. It was also pointed out that the petitioner who was not successful in the selection for appointment to any of the posts, is unnecessarily dragging these respondents, who were found meritorious and included in the rank list, and therefore he is liable to be non suited. The learned counsel asserted that a perusal of the averments in the Writ Petition will reveal that the petitioner's attempt is only in the nature of a public interest and

not for getting any relief for him.

12. At the same time, the learned counsel for the petitioner argued that there is no enabling provision in Ext.R5(a) scheme which empowers the 1st respondent to prepare a rank list or to fix life of the rank list. He relied on Ext.P5 judgment of this Court - **Ibey Susan Issac v. Anicadu Service Co-operative Bank Ltd.** (supra), in support of his contention that there should be some enabling provision to prepare a rank list and to fix the life period of the same.

13. Having regard to the pleadings and rival contentions on either side, I find that the writ petitioner does not have any locus standi to challenge the selection and appointment to the post of L.D Clerks, as far as he does not have even the requisite qualification for the post and is hence ineligible to apply for the same. Therefore respondents 4, 6,7 and 9, who were appointed as L.D Clerks, after being successful in the process of selection conducted by the Board, should not have been driven to this Court unnecessarily. Even though it was argued that the fundamental rights of the petitioner are violated on account of the manner in which the appointments were made in the Board, I am not satisfied with the contentions raised by the petitioner

that he is aggrieved by the selection and appointment to the post of LDCs, when he is not and can never be a competitor for the post. Further, it is to be noted that this writ petition is not one filed as Public Interest Litigation. Moreover, it is settled law that there is no public interest litigation in service matters (See **Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra** (1998) 7 SCC 273), **B. Srinivasa Reddy, Dattaraj Nathuji Thaware v. State of Maharashtra** [(2005) 1 SCC 590], **Ashok Kumar Pandey v. State of W.B** [(2004) 3 SCC 349] and **Hari Bansh Lal. Girjesh Shrivastava v. State of Madhya Pradesh** [(2010) 10 SCC 707], **Hari Bansh Lal v. Sahodar Prasad Mahto** [(2010) 9 SCC 655] , etc) The question of their selection cannot be considered in a writ petition at the instance of the petitioner. Therefore, I do not find any merit in the contentions raised by the petitioner as against the appointments made to the post of L.D Clerks.

14. As far as the other posts-Attender and Peon- are concerned, it is seen that the petitioner had submitted an application and participated in the process of selection, though he was not successful.

15. Now the question to be considered is whether the 1st

respondent was competent to prepare a rank list and to fix its period of validity. The contention of the petitioner is that there is no enabling provision for the same. In Ext.P5 judgment, relied on by the Counsel for the petitioner, the Division Bench of this Court was considering the issue relating to the appointment to the post of Peon in a Co-operative Bank, where a rank list was prepared and appointments were made in excess of the notified vacancies contrary to the circular issued by the Registrar of Co-operative Societies. As per the guidelines contained in that circular, the appointments to the post of Peon in Co-operative Societies are to be made after conducting a written examination and an interview. That circular did not contain any provision for preparation of rank list or for the validity period of ranklist. Moreover it was directed therein that the notification inviting application should specifically mention the number of vacancies available. Hence this Court found that the preparation of rank list, its period of validity as well as the appointment made in excess of notified vacancies, contrary to that circular, were illegal.

16. As rightly contended by the learned counsel for the 5th respondent, the circumstances arising in this case and in the

case considered by the Division Bench were different and in the present case there is no circular like Ext.P5 considered in that judgment, which contains the guidelines as to procedure to be followed in making appointments, which mandates filling up of each of the vacancies after separate notification. In this case, the selection and appointment made pursuant to Ext.P1 were made in the 1st respondent Board for the first time against the vacancies in the only available posts. The 1st respondent has decided to make the appointments based on merit after conducting a regular process of selection.

17. When the 1st respondent conducted a competitive test for selection, in which several candidates participated, it is bound to prepare and publish a rank list based on merit. The selection is made on the basis of the resolutions taken by the Board. Therefore there is no merit in the contention that the 1st respondent does not have any right to prepare a ranked list for appointments, in the absence of any enabling provision.

18. Regarding the question of appointments in excess of notified vacancies, it is settled law now that there cannot be any appointment in excess of the vacancies notified. In this case, it is

true that this was the first appointment made in the 1st respondent Board and the candidate, who was rank No.1 in the rank list who got appointment on the basis of Ext.R4(b) decision taken on 3.2.2014, got promoted to the post of Attender immediately on 28.06.2014 on the basis of Ext.R4(a) and there arose a vacancy. Going by the judgments of the Apex Court in **Arup Das v. State of Assam** [(2012) 5 SCC 559], **Rakhi Ray and others v. High Court of Delhi and others:** [(2010) 2 SCC 637], **State of U.P. v. Rajkumar Sharma:** (2006) 3 SCC 336, **Prem Singh v. Haryana SEB** [(1996) 4 SCC 319], etc. and of this Court in **Athira Ashok V Kannur University:** [2012(1) KHC 231], **Suresh v. M.G.University :** [2009 (1) KLT 950], and **Dimply v. M.G.University :** [2007 (2) KLT 519], etc., it is settled law that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that mere inclusion of candidates in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled. In this case, the notification Ext.P1, while indicating the number of vacancies, did not indicate that

the number of vacancies mentioned therein were likely to be varied or that vacancies arising during the currency of list would be filled up from the list. Therefore appointments made to the post of Peon and that of Attender, in excess of the vacancies notified, cannot be said to be proper or legal, in the light of the settled legal position.

19. However, in view of the fact that further process of selection is likely to take much time and the 5th respondent shall be permitted to join duty and to work temporarily as per Ext.R5 (a), she being the next candidate in the rank list on being found meritorious, in the process of selection already conducted. Similar shall be the case of 8th respondent in the post of Attender.

Therefore I direct that the appointments of respondent Nos.5 and 8 shall be treated as provisional, till appointments are made to those posts after issuing fresh notification. In the case of appointments of other party respondents as L.D Clerks, the petitioner cannot have any grievance and their appointments shall not be disturbed in these proceedings. The 1st respondent shall complete the proceedings for fresh selection and appointment, within a period of 4 months from the date of

receipt of a copy of the judgment.

This Writ Petition is disposed of accordingly.

Sd/-
P.V.ASHA
Judge

rtr/