

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 19083 of 2015 (I)

PETITIONER:

J.SREELATHA, W/O.SURESH BABU, CLERK,
UMAYANALLOOR SERVICE CO-OPERATIVE BANK
LIMITED NO:3034, UMayANALLOOR P.O.,
KOLLAM DISTRICT, RESIDING AT KADAMPATTUPANAYIL
VEEDU, VADAKKUMKARA KIZHAKKU, UMayANALLOOR P.O.,
KOLLAM.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:

1. STATE OF KERALA REP. BY THE SECRETARY TO GOVT.,
CO-OPERATIVE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPPURAM.
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
COLLECTORATE, CUTCHERY P.O., KOLLAM - 691 013.
3. THE UMayANALLOOR SERVICE CO-OPERATIVE BANK
LIMITED NO.3034, UMayANALLOOR P.O., KOLLAM DISTT.
REPRESENTED BY ITS SECRETARY, PIN - 691 589.
4. THE BOARD OF DIRECTORS OF THE UMayANALLOOR
SERVICE CO-OPERATIVE BANK LIMITED NO:3034,
UMAYANALLOOR P.O., KOLLAM DISTRICT
REPRESENTED BY ITS PRESIDENT, PIN - 691 589.

R3 & R4 BY ADV. SRI.K.SUBASH CHANDRA BOSE

R1 & R2 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 19083 of 2015 (I)

PETITIONER'S EXHIBITS:

EXHIBIT P1. THE TRUE COPY OF THE DECISION CR NO:837 DATED 17.11.1999 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P2. THE TRUE COPY OF THE ORDER CRP (2)2318/13 DATED 29.01.2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P3. THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS 3 AND 4 DATED 20.8.2014.

EXHIBIT P4. THE TRUE COPY OF THE DECISION NO:164 DATED 20.08.2014 FORWARDED BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT.

EXHIBIT P5. THE TRUE COPY OF THE JUDGMENT DATED 06.02.2015 IN W.P. (C)NO.26577/2014 OF THIS HON'BLE COURT.

EXHIBIT P6. THE TRUE COPY OF THE ORDER NO:C.R.P.(2)8956/14 DATED 01.04.2015 ISSUED BY THE 2ND RESPONDENT AND ITS TRUE ENGLISH TRANSLATION.

EXHIBIT P7. THE TRUE COPY OF THE CIRCULAR NO:18/91 DATED 07.06.1991 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES.

EXHIBIT P8 THE TRUE COPY OF THE JUDGMENT DATED 11.01.2011 IN O.P.NO.27006/2000 OF THIS HON'BLE COURT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.19083 of 2015 I

Dated this the 27th day of November, 2015

JUDGMENT

The petitioner, possessing the qualification of M.Com. with Co-operation, was appointed as a temporary Clerk on a consolidated pay by the third respondent Bank on 22.11.1999. In the course of time, as is evident from Exhibit P2, the respondent Bank was classified as Class I Special Grade. Having thus been classified, the respondent Bank had a vacancy of Clerk arising on 01.05.2009.

2. With a view to filling up the vacancy of Clerk, which is as per the staff pattern mentioned in Section 80 and Appendix III of the Kerala Co-operative Societies Act, 1969 read with Rule 182 of the Kerala Co-operative Societies Rules, the Managing Committee of the third respondent Bank passed Exhibit P4 resolution. It proposed

to regularise the services of the petitioner with effect from 01.05.2009, when the regular vacancy arose. The Bank did forward the resolution to the Joint Registrar for his approval.

3. Initially, questioning what is said to be the delay on the part of the Joint Registrar, the petitioner filed W.P. (C)No.26577/2014 and invited Exhibit P5 judgment, through which this Court directed the Joint Registrar to consider the issue and pass appropriate orders within one month.

4. In compliance with Exhibit P5 judgment, the Joint Registrar passed Exhibit P6 order rejecting the request of the respondent Bank. Aggrieved, the petitioner has approached this Court.

5. The learned counsel for the petitioner has submitted that the petitioner has got the necessary qualification and he has been working since 22.11.1999, for more than sixteen years. He has further submitted that the principal reason that has weighed with the Joint Registrar

to reject the respondent Bank's request to regularise the petitioner is the alleged violation of Circular No.18/91. According to the learned counsel, the said circular has no application to the case of the petitioner. In this regard, the learned counsel has placed reliance on Exhibit P8 judgment.

6. The learned counsel has also submitted that the petitioner has been barred by age and she has no other avenue available for securing employment. Given her long, unblemished service and given the recommendation made by the respondent Bank, the employer; the Joint Registrar ought to have taken, at least, a sympathetic view and accorded the necessary permission for regularising the petitioner's services. In support of his submissions, the learned counsel has placed reliance on **Secretary, State of Karnataka and Others v. Umadevi (3) and Others** ((2006) 4 SCC 1).

7. The learned Government Pleader, on his part, has submitted that Exhibit P8 judgment has no application to

the case on hand. He has further submitted that the petitioner's initial entry into the service is without any due process. In elaboration, he has submitted that Circular No. 18/91 squarely binds the respondent Bank, and as per the said circular there could have been a proper recruitment calling for applications from all eligible candidates.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank, as well as the learned Government Pleader, apart from perusing the record.

9. At the outset, it cannot be denied that the petitioner's initial appointment was not in conformity with Circular No.18/91. At the same time, it is equally indisputable that since inception the petitioner has been qualified. She has been working for more than sixteen years. By now all her employment avenues are shut owing to the fact that she has been barred by age.

10. The courts have time and again deprecated the practice of ad hoc and expedient appointments by the employer, making most of the organisations featherbeddings. At the same time, the courts have also taken into account the plight of certain hapless employees who have been got unawares and who have all alone been legitimately expecting, given their eligibility and length of service, that their services would be regularised one day—as an ameliorative justure. The Courts have thus held that their services could be regularised subject to certain conditions to be complied with—as a one time measure.

11. Indeed, in this case the petitioner with the requisite qualification secured her entry into the respondent Bank as what is called, a temporary Clerk on 22.11.1999. For the first time on 01.05.2009 there arose a regular vacancy. Presumably, at least from 01.05.2009 the petitioner has been discharging her duties in a regular vacancy. In a very elaborate judgment, a Constitutional

Bench of the Hon'ble Supreme Court has highlighted to a telling effect the perils of public employment and the perversion of the system of recruitment. In the face of those observations, the Constitution Bench has nevertheless taken note of the ground realities and provided as a one time measure relief to the deserving candidates. The observation of the Hon'ble Supreme Court bears repetition and is accordingly quoted hereunder:

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V.Narayanappa (State of Mysore v. S.V.Narayanappa)* (AIR 1967 SC 1071), *R.N.Ranjundappa (R.N.Nanjundappa v. T.Thimmiah)* ((1972) 1 SCC 409) and *B.N.Nagarajan (B.N.Nagarajan v. State of Karnataka)* ((1974) 4 SCC 507) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have not be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that Context, the Union of India, the State Government and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to

fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

12. In my considered view, the petitioner's case squarely falls within the exception provided in the paragraph extracted above.

13. As a result, this Court, apart from setting aside Exhibit P6, further directs the second respondent to consider Exhibit P4 resolution keeping in view the judicial dictum, especially paragraph 53 in Umadevi (supra) and pass appropriate orders thereon as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

14. At this juncture, the learned counsel for the petitioner has apprehended that a direction from this Court to consider the petitioner's case may not yield the desired

result. He has further urged this Court to issue a mandamus to the second respondent to regularise the petitioner's services.

15. It is well established that this Court, in the usual circumstances, will not be inclined to usurp the power of an executive. After specifying the statutory parameters and their implication on the issue brought before it, the court, as a matter of institutional deference, expects the executive to follow the law and do what is necessary. No doubt, in the present instance, earlier there was a rejection by the second respondent. In the present instance, the court has spelt out under what circumstances the petitioner's case has to be considered. The precedential impact has also been specified.

16. Under the facts and circumstances, despite the fervent request of the learned counsel for the petitioner, this Court is not inclined to issue a mandamus in mandatory terms. Nevertheless, this Court hopes that the second

respondent will consider the issue in the right spirit keeping in view the adjudication in this judgment.

With the above observations, the writ petition stands disposed of.

Dama Seshadri Naidu, Judge

tkv

'C.R.'