

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 24073 of 2012 (H)

PETITIONER(S):

**MANJU B., AGED 35 YEARS,
D/O. THANKAPPAN NAIR, MANJU NIVAS, TC 9/1347
PAIPUMMOOD, SASTHAMANGALAM P.O.
THIRUVANANTHAPURAM-10.**

**BY ADVS.SRI.R.T.PRADEEP
SRI.P.BIJIMON**

RESPONDENT(S):

- 1. REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM-695001.**
- 2. KERALA STATE CO-OPERATIVE AGRICULTURAL AND
RURAL DEVELOPMENT BANK LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
THIRUVANANTHAPURAM-695001.**
- 3. THE MANAGING DIRECTOR,
KERALA STATE CO-OPERATIVE AGRICULTURAL AND
RURAL DEVELOPMENT BANK LTD.,
THIRUVANANTHAPURAM-695001.**

**R1 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL
R2 & 3 BY ADV. SRI.GEORGE POONTHOTTAM,SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-03-2015
ALONG WITH WPC. 28723/2012 AND CONNECTED CASES, THE COURT ON
21-05-2015 DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S) EXHIBITS

- P1 : COPY OF THE IDENTITY CARD OF PETITIONER FOR HER REGISTRATION WITH EMPLOYMENT EXCHANGE, THIRUVANANTHAPURAM.**
- P2 : COPY OF THE CIRCULAR NO.31/1995.**
- P3 : COPY OF THE COMMUNICATION OF GOVERNMENT DTD.3.3.2011.**
- P4 : COPY OF THE PAPER REPORTS IN LEADING DAILYS (DESHABHIMANI DAILY, DT.29/9/12).**
- P4(a): COPY OF THE PAPER REPORTS IN LEADING DAILYS. (DESHABHIMANI DAILY, DT.5/10/12).**
- P5 : COPY OF THE NOTE DTD.27.9.2012 PLACED BY THE 3RD RESPONDENT IN THE MEETING OF THE BOARD OF DIRECTORS.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

**W.P.(C) Nos. 24073, 28723 & 28767 of 2012 &
31353 of 2013**

Dated this the 21st day of May, 2015

J U D G M E N T

The issue raised in these writ petitions relates to the filling up of certain vacancies in the Kerala State Co-operative Agricultural and Rural Development Bank Ltd. (hereinafter referred to as, “the bank”) adopting open market selection without resorting to the appointment by the Kerala Public Service Commission or from the Employment Exchange.

WP(C) No.24073/2012

- The petitioner, a B.Com degree holder with specialization in Co-operation and having registration with the Employment Exchange, alleges that she is qualified for selection and appointment to the post of Assistant in the 2nd respondent bank. According to her, Ext.P2 circular of the Registrar of Co-operative Societies categorically provides that the appointment to

the post under the purview of the Kerala Public Service Commission can be resorted to on contractual basis only through the Employment Exchange. Her grievance is that respondents 2 and 3, in defiance of Ext.P2 and without obtaining sanction from the 1st respondent, are resorting to make selection and appointment to the post of Assistant otherwise than through Employment Exchange. Thus, the petitioner is challenging the selection and appointment to the post of Assistant under the respondent bank.

WP(C) No.28723/2012

- This writ petition is filed by the Kerala State Co-operative Agricultural and Rural Development Bank Ltd. The petitioner alleges that the petitioner being an apex society, initiated a recruitment process for filling up the posts of Assistant vide Ext.P2 notification. The 1st respondent filed Ext.P3 complaint before the Kerala Lok Ayukta to the effect that the selection process was a ruse to fill up the posts in association with the Chairman and

his relatives. The said complaint was entertained by the Lok Ayukta. According to the petitioner, it has no jurisdiction to do so under the Kerala Lok Ayukta Act. However, the Lok Ayukta passed Ext.P4 order directing the petitioner bank not to proceed further on the basis of Ext.P2 notification and further not to appoint any person on the basis of the notification. This was done despite the complaint not being in the manner as provided under the Kerala Lok Ayukta (Form and Manner of Complaint) Rules, 1999. It was also pointed out that the complaint does not disclose any maladministration/grievance empowering the Lok Ayukta to entertain the complaint and pass orders thereon. Hence, the writ petition.

WP(C) No.28767/2012

- This writ petition also is filed by the bank. The petitioner alleges that the bank initiated a recruitment process for filling up the posts of System Administrators on the basis of Ext.P2 notification. The petitioner points out that these posts are not in the staff pattern of the bank. However,

the said posts have to be filled up to keep pace with the advanced technology. Therefore, recruitment cannot be carried out by the Kerala Public Service Commission. The 1st respondent filed Ext.P3 complaint before the Kerala Lok Ayukta to the effect that the selection process was a ruse to fill up the posts with the supporters of the political party of the Chairman and his relatives. The Lok Ayukta entertained the said complaint without jurisdiction and passed Ext.P4 order directing the petitioner bank not to proceed further on the basis of the test conducted pursuant to Ext.P2 notification. This, according to the petitioner, was without jurisdiction.

WP(C) No.31353/2013

- The petitioner in this writ petition, who is registered with the Employment Exchange under Ext.P1 and seeking employment, is challenging the proposed appointment on the basis of Ext.P2 advertisement. The petitioner alleges that Ext.P2 advertisement is to make appointments according to the whims and fancies of the respondents.

2. In WP(C) No.24073/2012, the State has filed a counter affidavit, wherein it was contended that the respondent bank, vide resolution dated 06.02.2012, requested the office of the 1st respondent to accord sanction to appoint 15 Assistants on contract basis for one year in the vacant posts through newspaper notification. The Registrar of Co-operative Societies submitted this proposal to the Secretary to Government, Co-operation Department for guidance stating that the 1st respondent has not given permission to the bank to fill the vacancies otherwise than through Employment Exchanges. It was further stated that the bank is taking steps to get the approval of Recruitment Rules from the Kerala Public Service Commission. Due to non finalization of Recruitment Rules, the Co-operative Societies are permitted to appoint on temporary basis through Employment Exchanges to carry on the day-to-day affairs till direct recruitment is resorted to by the Kerala Public Service Commission.

3. I have heard Mr.R.T.Pradeep, Mrs.Usharani and

Mr.George Poonthottam, the learned counsel appearing for the petitioners. I have also heard Smt.D.P.Renu, the learned standing counsel for the Lok Ayukta.

4. Evidently, the bank has intended to fill up the vacancies to the posts of Assistants as well as System Administrators; and notifications have been issued by the bank. The party petitioners, who are registered with the Employment Exchange and who are seeking employment, allege that the publication issued by the bank is only a ruse to appoint their own persons. According to them, the usual method that has to be followed is to get candidates through Employment Exchange.

5. Admittedly, the selection process has been interdicted by the orders of the Kerala Lok Ayukta. The learned counsel for the bank would submit that the said order is incompetent for two reasons. Firstly, it was submitted that the complaint was not in the manner as provided in the Kerala Lok Ayukta (Form and Manner of Complaint) Rules, 1999. Secondly, it was pointed out that

the complaint does not disclose any maladministration/ grievance empowering the Lok Ayukta to entertain the complaint and pass orders thereon. It was also submitted by the learned counsel for the bank that the prohibition in terms of Second Schedule read with Section 8 of the Act also applies.

6. Mrs.D.P.Renu referring to the counter affidavit filed by the second respondent in WPC No.28767/2012 submitted that the Lok Ayukta has jurisdiction and power to examine all the allegations in Ext.P3. It was pointed out that as per Section 2(o) of the Kerala Lok Ayukta Act, the Lok Ayukta has the authority to examine the allegations in the complaint, particularly, when the Managing Director as well as the Chairman of the bank are public servants coming within the purview of the Act. Therefore, Mrs.D.P.Renu argued that the complaint is perfectly maintainable. Referring to the decision of this Court in **Dr.M.K.Ramachandran Nair and others** v. **State of Kerala and others** [2009(3) KHC 919], it was

submitted by the learned counsel for Lok Ayukta that the complaint filed in the instant case is an allegation and the Lok Ayukta was perfectly competent to entertain the complaint.

7. Mr.R.T.Pradeep, the learned counsel for the petitioner in WP(C) No.24073/2012, would submit that in the matter of appointment to the bank in the absence of Recruitment Rules, appointments are to be made on temporary basis through Employment Exchanges to carry on the day-to-day affairs.

8. Per contra, Mr.George Poonthottam, the learned Standing Counsel for the bank, invited my attention to the decision of this Court in **A.T.George and others** v. **P.Saralakumari and another** [2007(4) KHC 582] and submitted that a mere allegation of maladministration is not sufficient to clothe the Lok Ayukta with the jurisdiction to proceed to make recommendation under Section 12 of the Act. It was pointed out that satisfaction of the Lok Ayukta requisite in terms of Sec.12(1) of the Act must specifically

relate to the existence of maladministration. It was further argued that the prohibition under Section 8(1) read with Section scheduled to the Act is relatable to a complaint involving a 'grievance' as defined in Section 2(h). It was submitted by the learned Standing Counsel for the bank that as the complaint submitted before the Lok Ayukta was relating to a grievance only and not in relation to an allegation, the Lok Ayukta should not have entertained the complaint. In the aforesaid decision, it was observed by this Court that the legislature has chosen to make a distinction between a 'grievance' and an 'allegation' and the prohibition contained in Section 8 is restricted only in respect of a case of a grievance. I see valid force in the submission made by Mr.George Poonthottam that the complaint before the Lok Ayukta in the matter was incompetent.

9. Admittedly, the bank has taken steps to get approval of the Recruitment Rules from the Kerala Public Service Commission and the same has not been finalized so

far. The stand taken by the bank is that the inordinate delay by the PSC has resulted in administrative stalemate in the working of the bank. That is why, the notification has been issued. One of the posts to be filled up as System Administrators is not a post included in the staff pattern of the bank. However, those posts are required to be filled up with competent hands since advanced technology is used.

10. It was pointed out that with the introduction of computerization, System Administrators have become indispensable for the proper maintenance and functioning of the software and hardware installed. It was also pointed out that the bank had initially appointed 15 System Administrators on contract basis for a period of one year extendable up to a period of five years pursuant to the necessary sanction of the Government. Out of the 15 so appointed, 14 were appointed to each of the Regional Offices and one was appointed to the Head Office. Meanwhile, several System Operators have resigned in search of better prospects. As such, the bank is facing an

acute shortage of System Administrators. It was also submitted that the number of primary societies have also increased from 46 to 63 adding to the work of the bank. In addition, the NABARD has noted certain defects in the software of 19 primary societies and has directed that the same be rectified as early as possible. This would require the services of at least 19 System Administrators to be deputed to those primary banks in addition to the posts already existing. Therefore, according to the bank, it is highly essential to modify the order dated 18.03.2013 and permit the bank to fill up the vacancies in the post of System Administrators on daily wage/contract basis for smooth and effective day-to-day functioning of the bank.

11. Undoubtedly, the inordinate delay in commencing the selection process by the PSC has also resulted in administrative stalemate in the working of the bank due to want of employees since the bank cannot resort other modes of appointment on regular basis. The bank has already forwarded the Recruitment Rules to the

Government through the Registrar of Co-operative Societies and the same is under processing. However, the work of the bank cannot wait till the said process is over. Therefore, this Court is of the view that it is only just and proper to allow the bank to have direct appointments to the posts as the Government had given permission to make appointments taking into account the indispensable nature of service required.

In the result, the writ petitions are disposed of as under;

- WP(C) No.28723/2012 is allowed. Ext.P4 is quashed.
- WP(C) No.28767/2012 is allowed. Ext.P4 is quashed.
- WP(C) Nos.24073/2012 & 31353/2013 are dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-