IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WP(C).No. 22623 of 2015 (C)

PETITIONERS:

1. SUNIKUTTAN, S/O.GANGADHARAN, ARAKKULATH HOUSE, PUSHPA NAGAR, CHUNANGAMVELI, ERUMATHALA.P.O., ALUVA-683 105.

2. BIJOY M.J., S/O.M.K.JACOB, MUTTATH HOUSE, AYYAMPILLY.P.O. PIN-682 501.

3. ALIAS M.V., S/O.VARGHESE M.P, MOLATHAN HOUSE, METHALA.P.O., KURUPPAMPADY (VIA), PIN-683 545.

4. VIPIN P.R., S/O.K.RAGHAVAN, PURAKKODATH HOUSE, POICKATTUSSERY, CHENGAMANAD.P.O., ALUVA.

5. SAJU E.K., S/O.KURIAKOSE, EDAPPATTUKARAYIL HOUSE, SOUTH MARADY.P.O., MUVATTUPUZHA, PIN-686 673.

6. AYYAPPAN P.P., S/O.P.C.PALLY, PERUMPADATHI HOUSE, ATHIRAPPALLY, VETTILAPPARA.P.O., CHALAKKUDY (VIA).

7. A.B.SIVAN, S/O.BHASKARAN, ARACKAL HOUSE, VADATHIPARA.P.O., KOTHAMANGALAM.

8. PLACEMON P.I., S/O.P.T.ISSAC, PUNNACKAL HOUSE, KUTHUKUZHI.P.O., KOTHAMANGALAM, PIN-686 691.

9. SHAJAN B.T., S/O.B.K.THANKAPPAN, BELIKKALATHIL HOUSE, KOOVALLOOR.P.O., POTHANIKAD, PIN-686 671.

10. PAULOSE M.J., S/O.JOSEPH, MANACHORY HOUSE, KAVALAPPARAMBU, MAYATHOD.P.O.

11. VARGHESE T.D., S/O.T.V.DEVASSY, THOTTUPURAM HOUSE, POTHIYAKKARA, YORDHANAPURAM.P.O., KALADY-683 574.

12. K.E.NAUSHAD, S/O.K.S.EBRAHIM, KANJIRATHINGAL, P.P.ROAD, PERUMBAVOOR.

13. SREEJITH K.S., S/O.K.K.SURENDRAN, KATTIPPARAMBIL HOUSE, MADAPLANTHURUTH, MOOTHAKUNNAM.P.O.-683 516.

14. SATHINATHAN P.K., S/O.KUMARAN, PAYYAPPILLY PARAMBIL HOUSE, KACHERIPPADY, NORTH PARUR.

15. M.S.SOMANATHAN, S/O.P.SIVASANKARA PILLAI, KIZHAKKE MOOTHATTU HOUSE, MAYATHODE.P.O., ANGAMALY.

16. RAJENDRAN C.K., S/O.KESAVAN, CHEMBALUPARAMBU HOUSE, MOOTHAKUNNAM, MOOTHAKUNNAM.P.O.

17. SHAJI C.R., S/O.RAMAKRISHNAN P.K, CHERUTHURUTHIKUNNEL HOUSE, CHETHIKKOD.P.O., KANJIRAMATTOM, PIN-682 315.

18. P.R.ANILKUMAR, S/O.RAMAN NAIR, PERUNTHANATHU HOUSE, KOOTHATTUKULAM.P.O., PIN-686 662.

19. DINESHKUMAR C.S., S/O.SANKARAN NAIR.C.P, CHIRAKKAL HOUSE, THRIKKALATHOOR.P.O., MUVATTUPUZHA-683 557.

20. RAJESH T.A., S/O.AABEL T.T, THOTTUNGAL HOUSE, PAMPAKUDA.P.O., ERNAKULAM DISTRICT, PIN-686 667.

21. SURESH K.S., S/O.SUKUMARAN K.K, KANAPPILLY HOUSE, CHERAI.P.O., PIN-683 514.

22. RAJAN V.K., S/O.KUMARAN, VALIYAVEETTIL HOUSE, AYYAMPILLY.P.O., PIN-682 501.

23. SANALKUMAR O.S., S/O.O.K.SUDHAPPAN, OTTANATH HOUSE, THEKKUMBHAGAM, THRIPUNITHURA.P.O.-682 301.

BY ADVS.SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE
SRI.T.KOSHY

RESPONDENTS:

1. ERNAKULAM DISTRICT CO-OP.BANK LTD., KAKKANAD, COCHIN-682 030 REPRESENTED BY ITS GENERAL MANAGER.

2. BOARD OF DIRECTORS, ERNAKULAM DISTRICT CO-OP. BANK LTD., KAKKANAD, COCHIN-682 030, REPRESENTED BY ITS PRESIDENT.

3. JOINT REGISTRAR OF C-OPERATIVE SOCIETIES (GENERAL), ERNAKULAM, COCHIN-682 016.

4. REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM-695 001.

5. STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF CO-OPERATION, GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R1 & R2 BY ADV. SMT.I.SHEELA DEVI
R3 to R5 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 22623 of 2015 (C)

PETITIONER'S EXHIBITS:

EXT. P1- TRUE COPY OF THE CIRCULAR NO.10/2005 DATED 13.4.2005.

EXT. P1(a)- TRUE ENGLISH TRANSLATION OF EXT.P1.

EXT. P2- TRUE COPY OF THE CIRCULAR NO.4/2006 DATED 20.2.2006.

EXT. P2(a)- TRUE ENGLISH TRANSLATION OF EXT.P2.

EXT. P3- TRUE COPY OF THE CIRCULAR NO.42/2009 DATED 14.8.2009.

EXT. P3(a)- TRUE ENGLISH TRANSLATION OF EXT.P3.

EXT. P4- TRUE COPY OF THE ORDER DATED 3.1.2012 OF CO-OPERATION DEPARTMENT.

EXT. P4(a)- TRUE ENGLISH TRANSLATION OF EXT.P4.

EXT. P5- TRUE COPY OF THE MEMO DATED 20.5.2006 ISSUED BY THE GENERAL MANAGER IN CHARGE OF THE KANNUR DISTRICT CO-OPERATIVE BANK LTD., MAKING PERMANENT ONE OF ITS DEPOSIT COLLECTORS SRI.SHAJI.

EXT. P5(a)- TRUE ENGLISH TRANSLATION OF EXT.P5.

EXT. P6- TRUE COPY OF THE MEMO DATED 12.3.2008 OF THE GENERAL MANAGER IN CHARGE OF THE KASARAGOD DISTRICT CO-OP.BANK LTD., WHICH SHOWS THAT PERMANENCY WAS GIVEN TO THE DEPOSIT COLLECTORS OF THE SAID BANK IN 2007.

EXT. P6(a)- TRUE ENGLISH TRANSLATION OF EXT.P6.

EXT. P7- TRUE COPY OF THE ORDER DATED 13.11.2009 OF THE CO-OPERATION (B) DEPARTMENT.

EXT. P7(a)- TRUE ENGLISH TRANSLATION OF EXT.P7.

EXT. P8- TRUE COPY OF THE NOTIFICATION DATED 26.2.2011 OF THE CO-OPERATION (D) DEPARTMENT.

EXT. P9- TRUE COPY OF THE JUDGMENT DATED 28.6.2012 IN W.P[C]NO. 20828/2011.

EXT. P10- TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 29.9.2012.

EXT. P10(a)- TRUE ENGLISH TRANSLATION OF EXT.P10.

EXT. P11- TRUE COPY OF THE PROCEEDINGS OF ADMINISTRATOR OF THE BANK DATED 31.10.2012.

EXT. P12- TRUE COPY OF THE RECOMMENDATION LETTER DATED 18.12.2012 OF THE 3RD RESPONDENT.

EXT. P12(a)- TRUE ENGLISH TRANSLATION OF EXT.P12.

EXT. P13- TRUE COPY OF THE COMMUNICATION OF THE 1ST RESPONDENT BANK DATED 17.4.2013 TO THE 4TH RESPONDENT.

EXT. P14- TRUE COPY OF THE COVERING LETTER DATED 30.4.2013 SENT BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT ENCLOSING EXT.P13.

EXT. P14(a)- TRUE ENGLISH TRANSLATION OF EXT.P14.

EXT. P15- TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT REGISTRAR OF CO-OPERATIVE SOCIETIES DATED 20.8.2013.

EXT. P15(a)- TRUE ENGLISH TRANSLATION OF EXT.P15.

EXT. P16- TRUE COPY OF THE JUDGMENT DATED 26.2.2015 IN W.P[C]NO. 30087/2013.

EXT. P17- TRUE COPY OF THE LETTER DATED 15.5.2015 OF THE 1ST RESPONDENT BANK.

EXT. P18- TRUE COPY OF THE REQUEST DATED 4.6.2015 SUBMITTED BY THE PETITIONER NO.4 TO THE 1ST RESPONDENT.

EXT. P18(a)- TRUE ENGLISH TRANSLATION OF EXT.P18.

EXT. P19- TRUE COPY OF THE APPLICATION DATED 4.6.2015 SUBMITTED BY THE PETITIONER NO.2 UNDER RIGHT TO INFORMATION ACT.

EXT. P19(a)- TRUE ENGLISH TRANSLATION OF EXT.P19.

EXT. P20- TRUE COPY OF THE REPLY DATED 27.6.2015 ISSUED UNDER THE RIGHT TO INFORMATION ACT.

EXT. P20(a)- TRUE ENGLISH TRANSLATION OF EXT.P20.

EXT. P21- TRUE COPY OF THE ORDER NO.EST/PLGL93/05-06 DATED 25.11.2010 OF THE FIRST RESPONDENT

EXT. P22- TRUE COPY OF THE BALANCE SHEET OF THE BANK FOR 2014-2015 AS PUBLISHED BY THE BANK IN ITS GENERAL BODY

EXT. P23- TRUE COPY OF THE AUDIT CERTIFICATE AND AUDIT REPORT FOR THE YEAR 2014-2015 PUBLISHED IN THE GENERAL BODY

EXT. P24- TRUE COPY OF THE RELEVANT PAGES OF THE BUDGET-ESTIMATE OF THE BANK FOR THE YEAR 2016-17

EXT. P24(a)- TRUE ENGLISH TRANSLATION OF EXT.P24

EXT. P25- TRUE COPY OF THE ORDER DATED 15.7.2015 OF THE GOVERNMENT OF KERALA, CO-OPERATION DEPARTMENT

EXT. P25(a)- TRUE ENGLISH TRANSLATION OF EXT.P25

RESPONDENT'S EXHIBITS:

EXT. R1(a) TRUE COPY OF THE STATEMENT SHOWING THE DEPOSITS AND COMMISSION RECEIVED BY THE PETITIONERS

EXT. R1(b) TRUE COPY OF THE ORDER NO.C.B(4)56149/2013 DATED 07.06.2014 ISSUED BY THE FOURTH RESPONDENT TO THE FIRST RESPONDENT

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.22623 of 2015 C

Dated this the 14th day of December, 2015

JUDGMENT

The petitioners, 23 in number, are the Daily Deposit Collectors working in the first respondent Bank. Petitioners 3, 5, 10, 14 to 16 and 23 were appointed in 1989; whereas other petitioners were appointed subsequently on different dates. Their singular grievance is that despite clear, binding directions by the Government as well as the Registrar of Co-operative Societies, the first respondent Bank has not regularised them.

2. On 13.04.2005, the Registrar of Co-operative Societies issued Exhibit P1 circular commemorating the centenary of the Co-operatives and also on humanitarian grounds. The purpose of the circular, inter alia, is to regularise the Daily Wagers and the Deposit Collectors. Later, the same authority issued Exhibits P2 and P3

consequential circulars enhancing the monthly emoluments of and providing other service benefits to the Daily Deposit Collectors.

3. On the Government's part, it has issued Exhibits P4 and P7 orders improving the pay and other service conditions of the Daily Deposit Collectors. Exhibits P5 and P6 are said to be the orders issued by two other District Co-operative Banks regularising the services of Daily Deposit Collectors working in their establishments.

4. Initially, questioning the non-implementation of the circulars issued by the Registrar and also the orders issued by the Government, the petitioners filed W.P.(C)No. 20828/2011 and invited Exhibit P9 judgment: This Court directed the Registrar to consider the issue and take appropriate decision. In compliance thereof, the Registrar issued Exhibit P10 circular directing the first respondent Bank to create the required number of posts by obtaining necessary approval and thereafter regularise the petitioners

in those sanctioned posts.

5. In furtherance of Exhibit P10 order of the Registrar, the Administrator of the first respondent Bank, then being at the helm of affairs, issued Exhibit P11 proceedings resolving to create 29 posts and forwarded the same through Exhibit P12 to the Registrar. Exhibit P14 is another forwarding letter.

6. Eventually, the Registrar, through Exhibit P15, sanctioned 29 posts as had been required by the first respondent Bank. At this juncture, once again ventilating their grievance that their services had not been regularised despite all the exercise that had been undertaken so far, the petitioners filed W.P.(C)No.30087/2013 and invited Exhibit P16 judgment. This Court, this time, directed the respondent Bank to take a decision keeping in view the earlier circulars and orders. As a result, the respondent Bank has passed Exhibit P17 resolution concluding that it is not viable for the Bank to regularise the petitioners' services.

7. Subsequently, on 15.07.2015, the Government issued Exhibit P25 order, which is said to be based on the findings of a Commission appointed by it. As can be seen, the Government having considered the Commissioner's report issued many directions for improving the service conditions of the employees in the co-operatives across the State.

Submissions:

Petitioners':

8. The learned counsel for the petitioners has, to begin with, contended that Exhibit P17 resolution is illegal, irrational and ultra vires of the Executive Committee of the Bank. He has submitted that this Court in Exhibit P16 has given a peremptory direction to regularise the petitioners' services.

9. Drawing my attention to the specific reason assigned by the respondent Bank in Exhibit P17 that the regularisation would not be viable, the learned counsel has further contended that the committee of the Bank has failed

to make it clear how the proposal was unviable.

10. The learned counsel has also submitted that the Government Orders and administrative directions of the Registrar squarely bind the respondent Bank, and it cannot wriggle itself out of its statutory obligation to regularise the petitioners. Eventually, the learned counsel has submitted that the petitioners have been working for the last 11-26 years, and most of them have been well past their age of eligibility to secure fresh employment. According to him, denial of the petitioners' regularisation amounts to deprival of their livelihood which is guaranteed under Article 21 of the Constitution of India.

Respondent Bank's:

11. The learned counsel for the respondent Bank has, on the other hand, submitted that neither the Government nor the Registrar of the Co-operative Societies has any power to direct or compel the respondent Bank to regularise the petitioners' services. According to her, the

administration of the Bank is best suited to decide when and how it can appoint its staff or, for that matter, regularise the services of the employees working on commission basis.

12. The learned counsel for the respondent Bank has robustly refuted the contention of the learned counsel for the petitioners that all other District Co-operative Banks had regularised their Daily Deposit Collectors. In that context, she has submitted that only two out of fourteen Banks seem to have regularised the services of the Daily Deposit Collectors.

13. The learned counsel has further submitted that the petitioners' pay is linked to their performance. It is, according to her, an equitable arrangement since the Daily Deposit Collectors are assured of minimum wages, over and above what they are paid as commission. In essence, the learned counsel has contended that the respondent Bank has no intention to replace the petitioners with another set of employees, nor has it proposed to dispense with their

services. In that regard, she has further submitted that the respondent Bank is always willing and ready to consider the petitioners' claim in future, however, based on their improved performance and also that of the Bank.

14. Heard the learned counsel for the petitioners and the learned Standing Counsel for respondents 1 and 2, as well as the learned Government Pleader, apart from perusing the records.

Issues:

I. Whether the Government or the Registrar of Co-operative Societies has the power to direct a co-operative bank or society to either appoint persons in its ranks or regularise the services of the existing employees?

II. Whether Exhibits P1, P2, P3, P10 and P15 bind the respondent Bank?

III. Whether Exhibit P16 judgment of this Court has directed the respondent Bank in mandatory terms to regularise the services of the petitioners?

Issue No.I:

15. Indisputably, most of the petitioners have been working on a contract basis in the respondent Bank since 1989, though some of them have joined the service subsequently. Indeed, it is further not in dispute that they have still been working in the Bank temporarily, however. The record reveals that on 13.04.2005, the Registrar of Co-operative Societies issued Exhibit P1 circular commemorating the centenary of the co-operatives and also what is said to be on humanitarian grounds. The Registrar did order that the co-operatives should regularise the services of the Daily Deposit Collectors.

16. In the course of time, the Registrar has also issued Exhibits P2 and P3 consequential orders reiterating what has been stated in Exhibit P1, apart from providing certain benefits to the employees. It is also one of the principal contentions of the learned counsel for the petitioners that the Government through Exhibits P4 and P7

orders further directed the Co-operative Banks/Societies to regularise the services of certain categories of employees, including the Daily Deposit Collectors. At any rate, the learned counsel for the petitioners has drawn my attention to the reference part of Exhibit P1 to contend that the circular was issued based on the deliberations held at the Legislative Assembly Hall on 29.03.2015 under the Chairmanship of the Hon'ble Minister for Co-operation. On a perusal of Exhibits P4 and P7, which deal with the aspects of emoluments and service conditions, I do not, however, see any specific reference to the issue of regularisation.

17. Consequent to Exhibit P9 judgment, the Registrar did consider the issue of non-implementation of Exhibit P1 and other circulars and issue Exhibit P10. He directed the respondent Bank to create the required number of posts after obtaining the necessary approval. Acting on Exhibit P10 circular, the Administrator of the respondent Bank issued Exhibit P11 resolving to create 29 posts. Eventually

through Exhibit P15, the Registrar sanctioned 29 posts.

18. Seeking the implementation of the circulars, especially in the face of the fact that 29 posts have already been sanctioned, the petitioners once again approached this Court and invited Exhibit P16 judgment. In compliance with Exhibit P16 judgment, the respondent Bank passed Exhibit P17 resolution concluding that it is not viable for the respondent Bank to regularise the petitioners' services.

19. Not in dispute is the fact that the Registrar did direct regularisation of the Daily Deposit Collectors. Posts have also been created. Now, the defence offered by the respondent Bank is that the Bank has already been downgraded: It is presently classified as Class-II. And at this juncture, it is too much of a burden for the respondent Bank to regularise the petitioners' services. The learned counsel for the respondent Bank has, however, submitted that the Bank may consider regularising the petitioners' services as and when the financial position of the Bank improves. In

that context, she has also contended that it is up to the petitioners, the Daily Deposit Collectors, to raise the bar of their performance to ensure that the Bank earns considerable profits. Be that as it may, at this juncture, the issue that concerns the Court is whether either the Registrar or the Government has the necessary power to direct the respondent Bank to regularise the services of its employees.

20. The learned counsel for the petitioners has drawn my attention to Sections 66 and 66A of the Kerala Co-operative Societies Act, ('the Act' for brevity) to contend that both the authorities have the power. According to him, Exhibit P16 judgment also mandates to the same effect.

21. Section 66 delineates the powers of the Registrar to supervise the affairs of the Societies and also to inspect them. In elaboration, it can be stated that the Registrar has the necessary powers to supervise or caused to be supervised by a person authorised by him the working of

every society as frequently as he may consider necessary. The supervision includes inspection of the books of the society as well. The Registrar may either on his own motion or the application of a creditor of a society, inspect or direct any person to inspect the books of the society. Section 66A, on which much emphasis has been laid by the learned counsel for the petitioners, reads as follows:

> "66A. Powers of Registrar to give directions:- Subject to the provisions of the Act and the rules made thereunder the Registrar may issue general directions and guidelines to any or all of the co-operative societies in furtherance of the purposes of the Act or for implementing government policies for the benefit of the members and the general public."

22. As can be seen, the power to be exercised or the directions to be issued by the Registrar shall be subject to the provisions of the Act and the Rules made thereunder. Further, the directions and guidelines to be issued by the Registrar shall be for the purpose of implementing the Government policies for the benefit of the members and the general public. It is indeed contentious whether a direction

to regularise the services of certain employees could be stated to be for the benefit of the members or the general public.

23. Under the scheme of the Act, it is beyond any pale of controversy—as has been settled by a catena of judgments of this Court—that a co-operative society is an autonomous institution which has now, in the light of the 97th constitutional amendment, a special status. For the right to establish a society is a fundamental right under Article 19(1)(c) of the Constitution.

24. Indeed, the Government has a regulatory role—but it cannot be pervasive, much less insidious. If a society is acting to the detriment of its members or the general public, it is desirable, nay essential, for the Government to interfere and regulate the affairs of the society. Such interference is minimal and is in the nature of a course correction which partakes the character of a policy preference rather than a superimposition of the

Government's will on the society.

25. In **P.Bhaskaran v. Additional Secretary**[1], a learned Full Bench of this Court has held that even though Act and Rules have given certain powers to the Registrar of Co-operative Societies to regulate the affairs of the societies, the control is not deep and pervasive. The managing committee of a society is not functioning under the Registrar or Government or the representatives appointed by them. The management of a society is under the effective control of a committee elected by the members of a society, and the members, in turn, constitute a general body.

26. Even if we confine our discussion to Sections 66 and 66A of the Act, I do not find any specific power available to the Government or the Registrar to compel a co-operative institution to either employ any particular person or regularise the services of an existing employee. It is, in my considered view, entirely within the administrative

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[1] 1987 (2) KLT 903 (FB)

discretion of the managing committee, which is at the helm of the affairs of the Bank or Society.

27. In **G.K.Saila Kumari v. State of Kerala & Ors.**[2], a learned Single Judge of this Court has held that the Registrar has got ample powers under Section 66 of the Act to give suitable directions to the co-operative societies. There is no gainsaying the said aspect of the law. As can be seen from the facts of the said case, the direction was concerning an enquiry by the Vigilance and Anti-Corruption Bureau. I must hold that the power under Section 66 is by no means an unleashed bull in a china shop trampling upon and, then, pulverizing a society, an autonomous institution, out of its existence.

28. In **Akalakunnam Village Service Cooperative Bank Limited and Another v. Binu N. & Others**[3] the Hon'ble Supreme Court has held that the circulars issued by the Government or the Registrar of the Co-operative

[2] 2014 (4) KLJ 400
[3] (2014) 9 SCC 294

Societies have statutory force. As can be seen, the observation of their Lordships was in the context of stipulating the procedure for conducting the selection to certain posts in the co-operative societies.

29. Indeed, in the present instance, either the Government or the Registrar has the power to fix the staffing pattern of a society. By extension, it has got the power to sanction the posts as well. At any rate, filling up those posts based on the need and necessity is in the domain of the management. Without cavil, I may further observe that the manner and method of recruitment is certainly required to be prescribed by the Government, but not the actual timing of the recruitment. Such power is unavailable either from Section 66 or Section 66A or even Section 80 of the Act. The Government can guide, even lead, a society, but it cannot take over the very administration of the society. There can be no usurpation.

30. In **Employees' State Insurance Corporation v. M.R.F. Ltd.**[4], a learned Division Bench of this Court has held that an order by a competent court, even if erroneous, is binding unless it is challenged and set aside by a higher forum.

31. In **Cochin College v. Ajith Kumar K. & Ors.**[5], the facts are that the Government directed reinstatement of a particular employee, but the management of the College did not. The aggrieved employee filed a writ petition and obtained a favourable judgment. This Court, per a learned Single Judge, has brushed aside the objections of the College, especially by observing that the Government itself has created a supernumerary post to accommodate the said employee. Having taken an intra-court appeal, the College has contended that the Government has no power to direct appointment of a person and that once an order is ultra vires, it can be negated even collaterally.

4 2012 (1) KLT 290
5 2014 (4) KLJ 443

32. In the present instance, the respondent Bank has not refused to appoint or regularise the employees. Its only concern is that the time is not ripe for the regularisation of the petitioners' services given the financial condition of the respondent Bank. Be that as it may, in my considered view, it entirely lies in the domain of the employer to best assess the prospects of the organisation and, then, go for recruitment or regularisation, as the case may be.

33. In **Raghavan Nair v. Joint Registrar of Co-op. Societies**[6], this Court has held that the Government or the Registrar of Co-operative Societies has no power to effect appointment in a co-operative society under either Section 32 or Section 33. The Registrar has got the power to remove the committee and appoint Administrator or Administrators or Administrative Committee. In other words, the Registrar can exercise the powers through the officers appointed by him. Nevertheless, the statute has not delegated any power

6 1998 (2) KLT 1068

to the Registrar to effect, in real terms, appointments in a society. According to their Lordships, the Administrator is only a delegate appointed by the Registrar. A sub-delegate cannot exercise powers which even the delegate does not possess.

34. In the facts and circumstances, I am unable to persuade myself to accept the contention of the learned counsel for the petitioners that either Section 66 or Section 66A clothes the Government or the Registrar with the necessary powers to compel the respondent Bank to regularise the petitioners' services.

Issue No.II:

35. Section 80 of Chapter XII of the Act dealing with the issue of 'establishment' empowers the Government to classify the societies in the State according to their type and financial position. In that process, the Government, in consultation with the Registrar, is required to fix or alter the number and designation of the officers and servants of

different classes of societies. The Government should either make the rules prospectively or retrospectively regulating the qualification, remuneration, allowances and other conditions of service of the officers and servants of the different classes of societies. In other words, Section 80 read with the schedules appended thereto empowers the Government to fix the staffing pattern and other service conditions of the employees of the society.

36. At any rate, Section 80 of the Act does not empower the Government to compel the societies to go for recruitment, which includes regularisation. Section 80, to me, is regulatory in nature. As can be seen from the record, Exhibit P15 is the order passed by the Registrar exercising his powers under Section 80. He did sanction 29 posts for the respondent Bank. However, it is one thing to say that the posts have to be or been created; it is another to say that the posts have to be filled up.

37. The regulatory role of the Government comes to an end the moment it creates the posts, which is usually at the request of a particular society or bank. It is for the management to fill up the posts based on its need and viability, as has been rightly contended by the learned counsel for the respondent Bank.

38. In the facts and circumstances, in my considered view, notwithstanding the direction in Exhibits P1 to P3, the action of the respondent Bank in passing Exhibit P17 resolution cannot be found fault with.

39. Indeed, the Government appointed a Commission to study and report on the conditions regarding the cadre structure, service conditions, and wages of Deposit/Loan Collectors and Appraisers working in Co-operative Institutions. Having received the report of the Commission, the Government issued Exhibit P25 order. The learned counsel for the petitioners has drawn my attention particularly to paragraphs 1 to 3, 5, 14 and 20 thereof. A

perusal of those paragraphs reveals beyond doubt that they deal with the improved service conditions or additional benefits to be provided to the Collection Agents and Appraisers. None of the directions or guidelines in Exhibit P25, in fact, concerns the aspect of regularisation, though.

40. It is also one of the contentions of the learned counsel for the petitioners that all other District Co-operative Banks have regularised the services of their Daily Deposit Collectors. In this regard, he has placed reliance on Exhibits P5 and P6 orders issued by two other District Co-operative Banks. The learned counsel has, however, contradicted the said statement by contending that out of fourteen District Co-operative Banks, only two Banks have regularised the services—not all.

41. Be that as it may, unless there is a statutory compulsion or administrative exigency in the respondent Bank, the action of other Banks does not bind it. Having already held in answer to issue No.I that neither the

Government nor the Registrar has the power to compel the respondent Bank to appoint or regularise any employees, I further hold that none of Exhibits P1 to P3 and P7 has the impact of compelling the respondent Bank to regularise the petitioners' services.

42. Since the learned counsel for the respondent Bank has submitted that the financial position of the respondent Bank does not permit regularisation, this Court has suggested that it may consider regularising the petitioners' services as and when the Bank's fiscal health improves. And if it gets classified as Class-I society. The learned counsel for the petitioners has readily agreed to this proposal. The learned counsel for the respondent Bank, on the other hand, has submitted that the issue is not that simple. According to her, regularisation has many concomitants, and the management is required to take a holistic view of this issue.

Issue No. III:

43. This Court in Exhibit P16 judgment has observed as follows:

> "Having regard to the fact that Exhibit P1 had been implemented in various other District Co-operative Banks and the Registrar had issued appropriate orders from time to time, posts had been created, and the list had been prepared, there is no reason to deny the same benefit to the petitioners. Under such circumstances, I am of the view that appropriate decision has to be taken by the first respondent within a time frame."

44. As can be seen from the above extract, the respondent Bank is required to take an appropriate decision in the face of the fact that Exhibit P1 circular had been implemented, and the Registrar issued appropriate orders from time to time. They include the creation of the posts required. Undeniable is the fact that this Court has observed that there is no reason to deny the benefit to the petitioners. It is, however, an observation in the context of implementation of Exhibit P1 and creation of posts as a consequence. More pertinently, the impression the Court

had then was that the scheme was implemented in various other District Co-operative Banks. The fact, however, remains that it was implemented only in two out of 14 Banks.

45. It is too well established as a proposition of law to be reiterated that creation of posts does not ipso facto result in recruitment, appointment, or, for that matter, regularisation. There can be no statutory mandate, to my mind, that an employer is always required to function with a full complement of its staff. Notwithstanding the existence of posts, their filling depends upon the need and necessity of the employer. Generation of employment is not the primary purpose of a society; it is an incidental one. However, serving its members is.

46. In the present instance, the management has taken a conscious decision not to go for the recruitment or regularisation, at least, for the time being. It is certainly not the case in which the employer has schemed to discontinue one set of employees and bring in another set of employees

in the nature of ad hocism. The learned counsel for the respondent Bank has emphatically submitted that the Bank has no intention of dispensing with the petitioners' services. In fact, they will be allowed to continue on a commission basis, which is directly linked to their performance. The better they perform, the more they earn. The commission is in addition to the minimum wages assured to them.

47. In the facts and circumstances, I cannot hold that this Court through Exhibit P16 judgment has issued any peremptory direction or judicial fiat that there shall be regularisation.

48. Given the assurance on the part of the respondent Bank that it will allow the petitioners to continue on commission basis and will consider their regularisation based on the petitioners' improved performance, as well as that of the Bank, especially given the fact that posts have already been created, I deem it inappropriate, nay impermissible, to thrust on the unwilling

employer any employees either in the name of fresh appointment or regularisation. A co-operative society is no feather-bedding.

In the facts and circumstances, the writ petition is disposed of subject to the above observations. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'