

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 25551 of 2014 (T)

PETITIONER(S)/PETITIONER:

**VINOD K.J.
S/O JOSEPH, KALAPPURAKKAL HOUSE, VARANDARAPPILLY PO
PALLIKUNNU, THRISSUR DISTRICT, PIN - 680 303
(WORKING AS ACCOUNTANT, VARANDARAPPILLY PANCHAYAT
VANITHA CO-OPERATIVE SOCIETY LTD. NO.R. 114
VARANDARAPPILLY PO)**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S)/RESPONDENTS:

- 1. THE VARANDARAPPILLY PANCHAYAT VANITHA CO-OP. SOCIETY
LTD.NO.R.114
VARANDARAPPILLY PO, THRISSUR DISTRICT, PIN - 680 303
REPRESENTED BY ITS SECRETARY.**
- 2. THE BOARD OF DIRECTORS OF THE VARANDARAPPILLY PANCHAYAT
VANITHA CO-OPERATIVE SOCIETY LTD NO.R 114
VARANDARAPPILLY PO, THRISSUR DISTRICT, PIN - 680 303
REPRESENTED BY ITS PRESIDENT**
- 3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIS (GENERAL)
THRISSUR, THRISSUR DISTRICT, PIN - 680 001.**
- 4. SALINI P
SENIOR CLERK
VARANDARAPPILLY PANCHAYAT VANITHA CO-OPERATIVE SOCIETY
LTD. NO.R 114
VARANDARAPPILLY PO, THRISSUR DISTRICT, PIN - 680 303.**

**R2 BY ADV. SRI.C.E.UNNIKRISHNAN
R4 BY ADV. SRI.P.N.MOHANAN
R3 BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : A TRUE COPY OF THE ORDER NO.C.R.B 5993/2005/K.DIS DATED 09.12.2005 OF THE 3RD RESPONDENT

EXHIBIT P2 : A TRUE COPY OF THE ORDER NO.HM 1062/2012 DATED 01.03.2012 OF THE 3RD RESPONDENT

EXHIBIT P3 : A TRUE COPY OF THE NO.HM 4459/12/K.DIS DATED 19.06.2012 ALONG WITH ENCLOSURES, OF THE 3RD RESPONDENT

EXHIBIT P4 : A TRUE COPY OF THE LETTER DATED 28.06.2012 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 2ND RESPONDENT

EXHIBIT P5 : A TRUE COPY OF THE COMPLAINT DATED 20.07.2013 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT

EXHIBIT P6 : A TRUE COPY OF THE RELEVANT PAGE OF THE MINUTES OF THE MANAGING COMMITTEE MEETING HELD ON 03.08.2014

EXHIBIT P7 : A TRUE COPY OF THE ORDER NO.H M 7293/2013/K.DIS DATED 15.07.2014 OF THE 3RD RESPONDENT

EXHIBIT P8 : A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 14.08.2014

EXHIBIT P9 : A TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE MANAGING COMMITTEE MEETING HELD ON 30.08.2014

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

=====

W.P.(C). No.25551 OF 2014

=====

Dated this the 27th day of May, 2015

JUDGMENT

Petitioner challenges the proceedings of the Registrar issued under Rule 176 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act' for short), on the ground that the question involved is a service dispute between petitioner and the 4th respondent in the 1st respondent Co-operative Society. According to petitioner the Co-operative Arbitration Court constituted under Section 70A of the Act is the appropriate authority to adjudicate such disputes.

2. The petitioner commenced his service as an Appraiser in the 1st respondent Society on 5.9.2003 on a temporary basis, at a time when no post was sanctioned for the society. Thereafter, when a post of Appraiser was sanctioned in the society, he was appointed in the same post with effect from 6.3.2006, after conducting regular process of selection. The 4th respondent was temporary appointed

to the post of Clerk on 15.9.2003. The post of Clerk was sanctioned only in the year 2012. Thereupon her appointment was regularised as per Ext.P2 order dated 3.6.2012, without conducting any further process of selection. By order dated 19.6.2012, the staff pattern and feeder category Rules of the society were approved, according to which Appraiser and Junior Clerk come under the very same category, for which next promotion is to the post of Senior Clerk and from that to the post of Accountant.

3. While so the society published a draft seniority list. Petitioner was shown junior to 4th respondent, though the post in which she was appointed was sanctioned only in 2012. Based on the objection raised by petitioner, the seniority list was revised placing him above the 4th respondent. In the meanwhile the 4th respondent had submitted Ext. P4 letter relinquishing her claim for seniority above petitioner. Petitioner was thereafter promoted as Senior Clerk and thereafter as Accountant, as per resolution dated 30.7.2012.

4. The 4th respondent, immediately thereafter preferred Ext. P5 complaint before the society and thereafter to the Joint Registrar claiming seniority and promotion in preference to petitioner. The Joint Registrar of Co-operative Societies, thereupon after hearing the parties, issued Ext. P7 proceedings under Rule 176 of the Co-operative Societies Rules, cancelling the resolution of the society granting promotion to petitioner as Accountant, acceding to the claim of 4th respondent and directed to recast the seniority list published on 22.6.2012 after hearing the parties. The 1st respondent society thereupon revised the seniority list as per Ext. P9, assigning seniority to petitioner below the 4th respondent.

5. It is in the background, that petitioner filed this Writ Petition, challenging Ext. P7 proceedings of the Joint Registrar. In this proceedings the reference No.1 is a complaint of the 4th respondent, reference No.2 is the hearing conducted at the office of the Joint Registrar on 11.11.2013. Evidently the complaint of the 4th respondent was against the promotion of the petitioner, which was

stated to be contrary to the seniority list published by the Society on 22.6.2012. The Joint Registrar after considering the details of service of the petitioner as well as the 4th respondent, the seniority list published by the society and relinquishment furnished by the 4th respondent, etc., on her complaint, issued orders under Section 176 of the Act, directing cancellation of the promotion of petitioner and the final seniority list. In the operative portion of the order the Joint Registrar found that the petitioner was granted promotion against a non-existing post of Senior Clerk followed by another immediate promotion to the post of Accountant contrary to Rules. He further directed to publish the final seniority list after calling for objections to the seniority list published on 22.6.2012 and granted permission to make promotions, based on that accordingly.

6. Immediately thereafter the society took a resolution and by Ext.P9 the seniority list was revised assigning seniority to the 4th respondent at serial No.1 and petitioner at serial No.3. The orders passed by the Joint Registrar under Ext.P9 under Rule 176 of the Co-operative Societies

Act, and the consequential order under Ext.P9 are now under challenge in this writ petition, on the ground that the matter relates to service dispute of the employees in a society ought not to have been interfered with the Joint Registrar. The power of the Joint Registrar under Rule 176 is not to be invoked when Section 69 of the Co-operative Societies Act provides for a separate forum for adjudication viz., Co-operative Arbitration Court which is constituted under Section 70A of the Co-operative Societies Act.

7. The society as well as the contesting respondent and Government have, filed their respective counter affidavits defending the action of Joint Registrar. According to them, the Joint Registrar did not decide the inter se seniority or service dispute. On the other hand the action of the society contrary to Rules alone was interfered, with, which was well within his power under Rule 176 pointing out the provisions contained therein.

8. I heard the learned counsel appearing on either side.

9. Relying the judgment of this court reported in [2006 (1) KLT 199] *Prakasini v Joint Registrar*, it was contented that after 2.1.2003, the seniority disputes between the employees of co-operative societies are to be adjudicated by the Arbitration courts and that Joint Registrar is not supposed to invoke his power under Rule 176 of Kerala Co-operative Societies Rule. In *Prakasini v State of Kerala* this court was considering the validity of the resolution passed under Rule 176 in the matter interfering with the service dispute. It was held that under Sub Section (2) of Section 69 any dispute in connection with service matters of the employees including their promotion and inter-se seniority comes within the jurisdiction of Co-operative Arbitration Court, constituted under Section 70A of the Co-operative Societies Act. A Division Bench of this court in *Raveendran v State of Kerala*,: ILR 2007(3) Ker 241 affirmed the decision in *Prakasini* 's case.

10. Learned counsel appearing for the 4th respondent relied on the judgment in OPNo.3400/2002, in support of his contention that Rule 176 empowers the Joint Registrar to

deal with all the matters coming under that provision including service matters. It is to be noted that it was a case filed in the year 2002 before the constitution of Co-operative Arbitration Court under Section 70A of Co-operative Societies Act, which came into force in the year 2003.

11. The learned Government Pleader relied on the judgment in Nedumon Service Co-operative Bank Ltd. v Joint Registrar of Co-operative Societies and Others in [ILR 2014 (4) KLT 189], in which the impugned action was held to be within the powers of the Joint Registrar on being satisfied with the affairs of the Society. It is pointed out that there was every circumstances available for invoking power under Rule 176 for the Joint Registrar. But it is seen that the issue decided therein was relating to enrolment of members in a bank.

12. Going by the impugned order Ext.P7, it can be seen that it was only on the basis of a complaint of the 4th respondent that the power under Rule 176 has been invoked by the Joint Registrar. He entered into the

conclusion, in consideration of the details of service rendered by petitioner vis-a-vis the 4th respondent i.e the date of their commencement of service, date of regularisation, relinquishment of promotion, seniority, the manner in which promotions were made, etc. When there is a specific forum, constituted under the Act, which provides for resolution of service disputes of the employees, the Joint Registrar ought not have invoked his power under Rule 176, which is to be invoked sparingly. Relevant portion of Section 69 of the Co-operative Societies Act reads as follows:–

S.69 Disputes to be decided by Co-operative Arbitration Court and Registrar–

(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,

(a) among members, past members and persons claiming through members, past members and deceased members; or

xxxxxxx xxxxxx xxxxxx

(2) For the purpose of Sub-section (1), the following shall also be deemed to be disputes, namely:–

xxxxxxx xxxxxx xxxxxx

d) any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of Sec.80, including their promotion and inter se seniority”.

Therefore, going by the above provision and in the light of the judgments of this court in Prakasini and Raveendran's cases(supra)the inter-se dispute between the employees of the Society are to be adjudicated by the Co-operative Arbitration Court. The Joint Registrar was therefore not right in adjudicating the complaint of the 4th respondent invoking his power under R.176 of the rules, when a separate forum is specifically constituted for the same. Therefore the consequential decision Ext. P9 to the extent it relates to the petitioner and 4th respondent and Ext P6 also cannot stand.

13. The learned Counsel for the respondents pointed out that there was an effective alternate remedy for the petitioner under Section 83(1)(j), against the proceedings of the Joint Registrar. But, when the action of the Joint Registrar is found without jurisdiction, petitioner cannot be relegated to appellate remedies.

In the above circumstances I quash Ext.P7 proceedings and the consequential order Ext.P9, without going into the merits of the claims of the petitioner or 4th respondent for

seniority or promotion. It is open to the parties to take up the matter before the Co-operative Arbitration Court for adjudication in accordance with law.

Accordingly, this writ petition is allowed.

P.V.ASHA, JUDGE

SKV