

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 29537 of 2013 (N)

PETITIONER : -

ANITHA.S, W/O SHANMUGHA DAS,
JUNIOR CLERK- IN- CHARGE OF SECRETARY,
NEENDAKARA SERVICE CO-OPERATIVE BANK LIMITED NO Q 289,
PUTHENTHURA, NEENDAKARA P.O,
KOLLAM, RESIDING AT MAMOOTTIL VEEDU,
NEENDAKARA P.O., KOLLAM

BY ADV.SRI.B.MOHANLAL

RESPONDENTS : -

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
CO-OPERATIVE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM 695001.
2. THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTON,
THIRUVANANTHAPURAM 4
3. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
ANDAMUKKOM, KOLLAM 691001.
4. THE KOLLAM DISTRICT CO-OPERATIVE BANK LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR, CHINNAKKADA,
KOLLAM 691001.

R2,R3 BY ADV.SRI.P.C.SASIDHARAN, SC, KPSC

R1 BY SR. GOVERNMENT PLEADER SRI. K.C. VINCENT

R4 BY ADV.T.R.HARIKUMAR, SC, KOLLAM DISTRICT CO-OPERATIVE
BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29537 of 2013 (N)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : TRUE COPY OF THE NOTIFICATION ISSUED BY P.S.C IN CATEGORY NO 233/2008.

EXHIBIT P2 : TRUE COPY OF THE MAIN RANK LIST NO 249/13/DOQ DATED 18-06-2013 ISSUED BY THE 2NDRESPONDENT IN CATEGORY NO 232/2008 AND 233/2008.

EXHIBIT P3 : TRUE COPY OF THE COMMUNICATION NO QSS-1(2) 5191/11/38 DATED 21-11-2012 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT P4 : TRUE COPY OF THE REPLY NO BGM/11/19255 DATED 28-09-2013 ISSUED BY THE 4TH RESPONDENT OT THE PETITIONER'S HUSBAND.

RESPONDENTS' EXHIBITS : - NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 29537 of 2013

Dated this the 09th day of September, 2015

JUDGMENT

The petitioner belonging to OBC category, working as a Junior Clerk in a Primary Co-operative Bank, staked a claim to an anticipated vacancy in the fourth respondent District Co-operative Bank under the 50% in-service category. He stood first in the rank list in Part-I issued by the PSC for the in-service candidates. The respondent Public Service Commission, has, simultaneously, also notified for recruitment under the open category another anticipated vacancy, for which it issued Part-II rank list. In both the instances, the notifications, as has been stated above, were issued for the anticipated vacancies.

2. Since a vacancy arose in the open category first, the petitioner, though shortlisted in the Part-I rank list pertaining to the in-service candidates, has sought appointment under the open category on the ground that the

respondent Bank through Exhibit P4 is engaging personnel through temporary appointments. Aggrieved by what is said to be the inaction on the part of the respondent Public Service Commission in advising the petitioner, he has approached this Court.

3. In response to the submissions made by the learned counsel for the petitioner, the learned Standing Counsel for the respondent Commission has submitted, in tune with the averments made in the counter affidavit, that there are two streams of appointment: Open Category and In-service Category. He has further submitted that two distinct and separate rank lists have been published concerning the anticipated vacancies in the respective categories.

4. The learned counsel has also submitted that though the petitioner has secured the first rank, he cannot, still, stake a claim to a post in another category, which according to the learned counsel is impermissible.

5. The learned counsel for the fourth respondent Bank has submitted that one vacancy arose in the open category, for which the first respondent Commission advised two candidates, but neither of them joined the duty. As a result,

the fourth respondent Bank reported the non-joining vacancy to the respondent Commission seeking further action in that regard. He has further stressed the fact that the respondent Bank has not employed anybody even on a temporary basis in violation of the Rules.

6. I do find sufficient force in the submission of the learned Standing Counsel for the respondent Commission that a candidate who has secured rank in Part-I rank list cannot stake a claim to a post under Part-II rank list, i.e. open category. In this context, we may refer to Rule 187 of the Kerala Co-operative Societies Rules, 1969 that prescribes the method of filling up the vacancies in the Apex or Central Society. The Rule reads as follows:

"187. Vacancies in Apex Society or Central Societies.- Notwithstanding anything contained in Rule 186, in appointments to apex societies or central societies, 50% of the vacancies shall be reserved to the employees of similar or higher categories of the member societies, of the respective apex society or central society as the case may be, having a minimum regular service of 3 years and having the required qualification for the notified posts in the apex society or central society.

Provided that out of the above, 50% vacancies shall be reserved for the posts of Peon/Watchman/Lift Operator of the member societies of the District Co-operative Banks, and 10% of such vacancies may be filled up by promotion from among the qualified Part-time Contingent Employees of the District Co-operative Banks recruited as per rules who completed 7 years of service in the bank.

Provided further that the reservation as stipulated in rule 187 shall be applicable to those employees who should be in the service of the member society not only on the date of application but also on the date of appointment.

Provided also that the requirement that the employees should be in the service of the member society even on the date of appointment will not be applicable to those who were recruited through the Public Service Commission to a post in the Apex/Central Societies reserved for the employees of the affiliated primary co-operative/member societies, provided they are continuing in service in that Apex/Central Society.

In the facts and circumstances, as the above statutory mandate admits of no ambiguity, I do not find any merit in the claim of the petitioner and accordingly dismisses the writ petition. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-