

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 29614 of 2013 (B)

PETITIONER(S) :

1. RAVEENDRAN NAIR.C,
FULL TIME SWEEPER,
VELINALLOOR SERVICE CO-OPERATIVE BANK LTD NO.2873
KARINGANNOOR.P.O., KOLLAM DISTRICT - 691 516.

2. ISHA BEEVI.P
FULL TIME SWEEPER
VELINALLOOR SERVICE CO-OPERATIVE BANK LTD.NO.2873
KARINGANNOOR.P.O., KOLLAM DISTRICT - 691 516.

BY ADVS.SRI.O.D.SIVADAS
SRI.S.SHAJI

RESPONDENT(S) :

1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
(GENERAL), O/O. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
KOLLAM - 691 001.

2. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,
(GENERAL), O/O.THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES, KOTTARAKKARA.

3. VELINALLOOR SERVICE CO-OPERATIVE BANK LTD.NO.2873,
REPRESENTED BY ITS SECRETARY
VELINALLOOR SERVICE CO-OPERATIVE BANK LTD.NO.2873
KARINGANNOOR.P.O., KOLLAM DISTRICT - 691 516.

R3 BY ADV. SRI.A.JANI (KOLLAM)
R3 BY ADV. SRI.P.PRIJITH
R BY GOVERNMENT PLEADER SHRI V.K.RAFEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE ORDER NO.CRP(2) 5319/2004 DATED
13/09/2004.

EXHIBIT-P2: TRUE COPY OF THE ORDER NO.CRP(2)5318/2004 DATED
13/09/2004.

EXHIBIT-P3: TRUE COPY OF THE PROVISIONAL SENIORITY LIST FOR THE
PERIOD FROM 08/12/2009 OF THE BANK.

EXHIBIT-P4: TRUE COPY OF THE SANCTIONED POSTS AND STAFF PATTERN OF
THE BANK.

EXHIBIT-P5: TRUE COPY OF THE RELEVANT PORTION OF G.O(P)
NO.12/2013/CO-OP DATED 19/01/2013.

EXHIBIT-P6 & P6(a): TRUE COPY OF THE REPRESENTATIONS DATED 03/02/2013
& 15/01/2013 BEFORE THE 3RD RESPONDENT BANK.

EXHIBIT-P7 & P7(a): TRUE COPY OF THE REPRESENTATIONS DATED 04/02/2013
BEFORE THE 1ST RESPONDENT.

EXHIBIT-P8: COPY OF THE ORDER ISSUED BY THE JOINT REGISTRAR DATED
25.7.2013.

EXHIBIT-P9: COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT DATED
29/11/2013.

RESPONDENT(S) ' EXHIBITS

EXT.R3(a): TRUE COPY OF OFFICE LETTER NO.CRP(2) 5800/2003
DT.12.01.2004 ISSUED BY THE JOINT REGISTRAR (GENERAL) KOLLAM TO 3RD
RESPONDENT.

EXT.R3(b): TRUE COPY OF BOARD MEETING OF 3RD RESPONDENT
DT.30.03.2004.

EXT.R3(c): TRUE COPY OF ORDER NO.CRP(2) 780/04 DT.27.03.2004 OF JOINT
REGISTRAR (GENERAL) KOLLAM.

EXT.R3(d): TRUE COPY OF MINUTES OF MEETING NO.18 DECISION NO.419
DATED 30.03.2004.

EXT.R3(e): TRUE COPY OF JUDGMENT DT.2.4.2013 IN WPC NO.8720/2013 OF
THIS HON'BLE COURT.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.29614 of 2013-B

Dated this the 9th June, 2015

J U D G M E N T

The petitioners are working as Full Time Sweepers in Velinalloor Service Co-operative Bank Ltd., the 3rd respondent. They were initially appointed as part-time sweepers. They were doing several other duties also in the bank. They had approached the Bank as well as the Joint Registrar of Co-operative Societies for appointing them in full time posts such as Attender etc. The Joint Registrar considered their representations and after calling for a report from the Assistant Registrar, ordered that they be absorbed as full time sweepers in the scale of pay of Rs.2550-4325 w.e.f 12.01.2004. By Ext.P1 order the Joint Registrar had approved the appointment of the 1st petitioner as full time sweeper. Ext.P2 is the proceedings in respect of the second petitioner, by which the Joint Registrar directed her appointment as full time sweeper w.e.f 1.4.2004 in the scale of pay of Rs.2550-4325/-. In the said order, the Joint Registrar has stated that the committee of the society as per resolution dated 30.03.2004 has requested for appointing her as

full time sweeper, as she has completed two years of service as part-time sweeper and to grant her the scale of pay admissible to the post of attender. On the basis of the report of the Assistant Registrar the Joint Registrar issued orders approving her appointment as full time sweeper. In the seniority list published by the 3rd respondent bank which is produced as Ext.P4, the name of the petitioners are included as Sl.Nos.19 and 20 respectively, shown against the post of full time contingency.

2. According to the petitioners, Rule 188 of the Co-operative Societies Act have been amended incorporating the post of part-time sweeper in the Co-operative Banks. It is submitted by the learned counsel appearing on either side that the post of part-time sweeper is available for the Bank, as per the staff pattern admissible to the Co-operative Societies, on account of Ext.P5 amendment ordered in G.O(P) No.12/2013/Co-op dated 19.01.2013. The post of part-time sweeper was included in the categories in the Co-operative Societies, by way of Ext.P5 amendment ordered in G.O(P) No.12/2013/Co-op.

3. Thereupon the petitioners submitted Exts.P7 and P7 (a) representations before the Joint Registrar requesting to change the nomenclature of their post as part-time sweepers or

Peons so that they will be included in the feeder category of Peon/Night Watchman. Thereafter they approached this Court in W.P(c) No.8720 of 2013, and this Court directed the Joint Registrar to consider and pass orders on those representations. The Joint Registrar, after hearing them issued Ext.P8 order, finding that their appointment as part-time sweepers in the Bank was illegal and contrary to the feeder category rules. It was found that there was no post of full time sweeper in the bank in accordance with the staff pattern. Therefore the appointments made contrary to Section 80 of the Co-operative Societies read with 188 and the staff pattern fixed as per Appendix 3 of the Kerala Co-operative Societies Rules are illegal and the appointment of the petitioners have to be cancelled. It is further ordered that the petitioners shall be reverted to the post of part-time sweepers and the excess pay received by them shall be recovered on account of their appointment as full time sweepers. The petitioners challenge Ext.P8 order.

4. The 3rd respondent, bank has filed a counter affidavit. It is stated that there was no post of full-time sweepers when the petitioners were working as part-time sweepers and they were also doing various works in the society. They were absorbed as

full time sweepers on humanitarian consideration on the basis of the direction issued by the Joint Registrar. In the counter affidavit the 3rd respondent stated that the 1st petitioner was appointed as part time sweeper w.e.f 01.12.1998 and the 2nd petitioner was appointed in the same post w.e.f 26.03.2002 on consolidated monthly salary. Both the petitioners had submitted representations requesting to appoint them in any last grade posts in the bank. On humanitarian considerations, the bank had also requested the Joint Registrar for permission to absorb them in any of the permanent posts in last grade. It was thereafter that the Joint Registrar issued orders allowing absorption of petitioners as full time sweepers.

5. In the circumstances of the case, the direction of the Joint Registrar to recover the pay already drawn by the petitioners is illegal. The petitioners have performed more onerous duties on the basis of the orders issued by the Joint Registrar and the consequential order of their absorption as full time Sweepers. Their request was for absorption in any of the last grade posts. They cannot be penalised for the absorption in nonexistent posts. Moreover the Joint Registrar has issued an order reversing the order issued by another Joint Registrar,

which is not permissible. Therefore Ext.P8 order is without any basis and without authority. Hence the same is quashed. The consequential order Ext.P9 also is therefore quashed. In case the petitioners have any grievance regarding their posting, they are free to approach the Arbitration Court under Section 69 of the Co-operative Societies Act.

This Writ Petition is disposed of accordingly.

Sd/-

(P.V.ASHA, JUDGE)

rtr/