

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 32872 of 2015 (H)

PETITIONER:

S.SHAJIHAN,
S/O.SHAHUL HAMEED, ACCOUNTANT, (IN-CHARGE OF MANAGER),
KOTTIYAM BRANCH,
MAYYANAD REGIONAL CO-OPERATIVE BANK LIMITED NO.94,
MAYYANAD.P.O., KOLLAM, RESIDING AT NADAKAVIL,
VADAKKEVILA.P.O., KOLLAM.

BY ADVS.SRI.B.MOHANLAL
SMT.P.S.PREETHA

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
CO-OPERATIVE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM. PIN-695 001.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
CO-OPERATIVE DEPARTMENT,
THIRUVANANTHAPURAM.PIN-691 001.
3. THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES,
COLLECTORATE, CUTCHERY.P.O., KOLLAM-691 013.
4. THE ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES,
COLLECTORATE, CUTCHERY.P.O., KOLLAM-691 013.
5. THE MAYYANAD REGIONAL CO-OPERATIVE BANK LIMITED NO.94
MAYYANAD P.O., KOLLAM
REPRESENTED BY ITS SECRETARY.691 303.
6. SRI.ABDUL GAFFER KHAN,
ACCOUNTANT,
MAYYANAD REGIONAL CO-OPERATIVE BANK LIMITED NO.94,
KOTTIYAM BRANCH, KOLLAM.691 571.

R1-R4 BY ADV. SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

P1- THE TRUE COPY OF THE RESOLUTION NO.342 DATED 27.12.2010 ISSUED BY THE BOARD OF DIRECTORS OF THE 5TH RESPONDENT BANK TO THE 3RD RESPONDENT.

P2- THE TRUE COPY OF THE PERFORMA OF APPLICATION NO.E.M.(3)44676/97 DATED 15.03.1998 AS PER CIRCULAR NO.7/1/1990 SUBMITTED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT.

P3- THE TRUE COPY OF THE COMMUNICATION REFERENCE NO.272/10 DATED 19.02.2011 SUBMITTED BY THE 5TH RESPONDENT TO RESPONDENTS 3 AND 4.

P4- THE TRUE COPY OF THE COMMUNICATION NO.321/13 DATED 28.11.2013 ISSUED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT.

P5- TRUE COPY OF THE RESOLUTION NO.246 DATED 20.12.2013 ISSUED BY THE BOARD OF DIRECTORS OF THE 5TH RESPONDENT BANK TO THE 3RD RESPONDENT.

P6- TRUE COPY OF THE COMMUNICATION NO.CRP(2)9166/13 DATED 05.02.2014 AND SCHEDULE OF THE CIRCULAR NO.31/2013 ISSUED BY THE 3RD RESPONDENT TO THE 5TH RESPONDENT.

P7- TRUE COPY OF THE STAFF PATTERN OF THE 5TH RESPONDENT BANK.

P8- THE TRUE COPY OF THE RELINQUISHMENT SUBMITTED BY THE 6TH RESPONDENT BEFORE THE PRESIDENT OF THE 5TH RESPONDENT BANK.

P9- TRUE COPY OF THE COMMUNICATION NO.453/14 DATED 13.03.2014 ISSUED BY THE 5TH RESPONDENT TO THE RESPONDENTS 2 TO 4.

P10- TRUE COPY OF THE COMMUNICATION NO.EM(2)46544/2014 DATED 28.10.2014 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

P11- TRUE COPY OF THE COMMUNICATION DATED 04.02.2015 ISSUED BY THE 2ND RESPONDENT TO THE RESPONDENTS 3 AND 4.

P12- TRUE COPY OF THE COMMUNICATION NO.EM(2)46544/2014 DATED 20.02.2015 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

P13- TRUE COPY OF THE COMMUNICATION NO.EM(2)46544/2014 DATED 09.06.2015 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

P14- TRUE COPY OF THE COMMUNICATION NO.1702/15 DATED 30.07.2015 ISSUED BY THE 3RD RESPONDENT TO THE 5TH RESPONDENT.

P15- TRUE COPY OF THE APPLICATION DATED 18.08.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT THROUGH THE RESPONDENTS 3 AND 4.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 32872 of 2015 (H)

Dated this the 20th day of November, 2015.

JUDGMENT

The petitioner, presently working as an Accountant (Manager-in-Charge) in the 5th respondent Bank, seeks to be promoted to be the Branch Manager. In the face of the fact that the 6th respondent, admittedly senior to the petitioner, had given up through Ext.P8 letter of relinquishment his claim to promotion the respondent Bank is said to have requested the respondent authorities to provide an exemption to the petitioner from the required qualification. The request was under Rule 185(8) of the Kerala Co-operative Societies Rules (the Rules).

2. The third respondent has, however, responded through Ext.P13 to the effect that the 6th respondent's relinquishment should be attested by a competent authority and then affixed in his service register. Aggrieved, the petitioner has approached this Court.

3. The learned counsel for the petitioner has submitted that the law does not mandate that any relinquishment of a senior employee, once it is not in dispute, needs to be attested by any official, much less to be affixed in the service register.

4. The learned Government Pleader, on his part, has submitted that once the so-called relinquishment has not had the official imprimatur, it leads to a lot of litigation, for on most occasions, the employees who were said to have relinquished their claims, later, raised disputes on various grounds.

5. Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.

6. Since Ext.P13 is in vernacular, I did not have the advantage of knowing the exact purport of the order. At any rate, in the counter affidavit filed by the second respondent, it is stated that the employee who relinquished promotion by issuing a letter, on most occasions, challenged the same later contending that it had been obtained fraudulently and that he should be considered for promotion. Such challenges, according to the authorities, have led to much unwanted litigation.

7. In that context, the action of the third respondent, I must observe, is justified since the process indicated in Ext.P13 is said to have been insisted upon only as a matter of abundant caution.

8. To be fair to the authorities, I do not see anything amiss in

Ext.P13 (translated and read out to me). Once a statute is porous, it is always open for the executive to take necessary remedial measures to fill any statutory interstices. Accordingly, I hold that the method adopted by the respondent authorities in having the relinquishment letter approved by the official concerned and later having it affixed in the service register of the person who relinquished is in order and unexceptionable. silent

9. Nevertheless, in this case, none of the parties has seriously disputed the fact that the 6th respondent has relinquished his claim. The Bank has not chosen to appear before this Court, despite the service of the notice. So is the case with the 6th respondent, who is otherwise affected, and who in fact is said to have relinquished his claim.

10. To ensure that the notice has been properly served on the respondent Bank as well as the 6th respondent, I directed the Registry to place before the Court proper material in that regard. In response, the registry has placed on the record the hard copies of the delivery challans of the speed post taken from the portal of India Post.

11. The fact in this case remains that the petitioner is to retire

by 30.11.2015. If the procedure as has been indicated in the counter affidavit, though entirely justifiable, is to be insisted upon, the petitioner in the meanwhile may retire, thus having his case prolonged further. Given the peculiar facts and circumstances, this Court despite holding that the procedure being adopted by the respondent authorities is entirely justifiable, as an exception, holds that the 2nd respondent shall consider the petitioner's case based on Ext.P8 relinquishment letter of the 6th respondent expeditiously and pass appropriate orders thereon, at any rate, before 30.11.2015, keeping in view Exts.P5, P9 and P11 resolutions passed by the respondent Bank.

12. It is made abundantly clear that the present disposition cannot be treated as a precedent and as a judicial imprimatur to deviate from the procedure adopted by the authorities concerned.

In the manner indicated above, the writ petition is allowed. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

