

**(2003) 06 KL CK 0038**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 7020 of 2003**

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|-----------------------------------------|------------|
| Clappana Service Co-operative Bank Ltd. | APPELLANT  |
| Vs                                      |            |
| State of Kerala                         | RESPONDENT |

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**Date of Decision :** 03-06-2003

**Acts Referred:**

**Citation :** (2003) 2 KLT 1032

**Hon'ble Judges :** M. Ramachandran, J

**Bench :** Single Bench

**Advocate :** M.K. Damodaran and P.K. Vijayamohanan, for the Appellant;  
Thomaskutty, Government Pleader, for the Respondent

**Final Decision :** Allowed

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## Judgement

M. Ramachandran, J.—By Ext. P1 notification dated 24.09.2001, the petitioner, a Service Co-operative Bank, had invited applications for appointment to an existing vacancy of salesman. It had been indicated that selection would be on the basis of a written test and interview. The post has been reserved to be filled up by member of a Scheduled Caste. The averments in the Original Petition indicate that a test had been held, but before the appointment could be made a stay had been issued by the Joint Registrar of Cooperative Societies, Kollam.

2. The petitioner had challenged the orders by filing O.P. No. 827 of 2002. It had been disposed of on 8.1.2002 directing the Joint Registrar to consider the matter appropriately and orders passed thereon. By Ext. P3 dated 22.3.2002, the Joint Registrar had cancelled the entire proceedings taken up for recruitment. An appeal thereupon had been preferred before the Government. However, the Government had upheld the orders passed by the departmental officer (Ext, P5). Exts. P3 and P5 orders are under challenge.

3. The circumstances leading to the recruitment, the counsel for the petitioner submits, are highly relevant to notice the level of arbitrariness employed. A junior Clerk of the Clappana Service Co-operative Bank had retired from service

on 31.03.2001. A salesman, who had been qualified for promotion already on the rolls, had been promoted to the vacancy so resulted. This vacancy was decided to be filled up and that had been notified by Ext. P1. The Bank is classified as Class IV, as stipulated in Appendix III of the Kerala Co-operative Societies Rules. The normal staff strength admissible to such a society is seven, but at the time of notification only five posts were being operated which were that of Secretary (1), Senior Clerk (1), Junior Clerk (1), Attender (1) and Peon (1). It appears that immediately before Ext. P1, there were two Attenders working, and therefore one of them was promoted.

4. The Joint Registrar has taken a view that since the Bank was working on loss, the appointment will result in additional expenditure. He also observed that on an examination of the working, he was of the opinion that instead of a Salesman it would have been in the better interest of the Bank, if appointment to the cadre of a Clerk was made, as the present Junior Clerk was overburdened with work.

5. It is evident that the initial stay order and the subsequent proceedings interdicting the Bank from going on with the recruitment was on the allegation that there were irregularities in the process of selection. However, in respect of the said allegations, Ext. P3 has held that there was no sufficient evidence to substantiate the accusations. Nevertheless the officer has made an observation that notwithstanding these, it cannot conclusively be stated that there was no illegal gratification, irregularity or favouritism involved.

6. The Government while considering the appeal had endorsed the view, and observed that the reasons stated by Ext. P3 were valid.

7. Sri. P.K. Vijayamohanan appearing for the petitioner submits that Exts. P3 and P5 were totally perverse and even passed without jurisdiction. He invited my attention to a Division Bench ruling of this Court reported in 2003 (3) KLT 389 (Elampal Service Co-operative Bank Ltd. v. Government of Kerala) and submitted that in the matter of filling up of posts the discretion was wholly vested with the Committee. According to him, the Joint Registrar has no jurisdiction to sit in judgment over the decision of the Committee. On the merits, it is argued that the allegations were favouritism in the matter of selection, but it was found that there was no evidence forthcoming about the allegations. But nevertheless the officer had travelled far and wide and has attempted to import his discretion by substituting and overruling the decision of the Committee, who were in fact competent to take a policy decision in the matter. The result was that, according to him, the appointment has been delayed for over two years and to a vacancy which was to go to a member of a weaker section is kept unfilled.

8. I find that initially the appointment had been stayed on the allegation that the selection was irregular. The Joint Registrar was not justified in entering a finding that notwithstanding any evidence it would be probable that there were substance in the allegations. This was a perverse finding. Further, a society, which is a legal person, has been invested with jurisdiction to take policy

decisions in its discretion and a third party is not authorised to impose its dictates unless it is statutorily warranted. The facts indicate that a Salesman had been promoted as Junior Clerk and the vacancy had resulted. It is not argued before me that in a Class IV Society only one Attender can be appointed. Obviously, before 2001 there were two Attenders, and no objection had been raised at that time. The Joint Registrar or the Government had no jurisdiction therefore to compel the society that the Salesman's vacancy is not to be filled up and they can opt for appointing a Junior Clerk. As pointed out by counsel for the petitioner, there were seven sanctioned posts to which appointments could have been made and the Committee had refrained from taking steps for making such appointments for full compliment in the interest of the institution, and as a measure of austerity.

9. It has not been possible for the respondents to justify Ext. P3 or Ext. P5. The approach is on the border lines of perversity and arbitrariness. Also, it has not been possible for the respondents to point out that they have jurisdiction under the Act to pass on such instructions and enforce them.

10. Exts. P3 and P5 consequently stand set aside. As far as possible, the decisions on internal administration should be left to the Society, and the Department is not expected to throw its weight in such day to day matters, unless they are patently illegal or mala fide. I make it clear that it will be permissible for the petitioner to complete the process of selection, without interference from the respondents in any manner whatsoever.

The Original Petition will stand allowed. No order as to costs.