
(2012) 07 KL CK 0227

In the High Court Of Kerala

Case No : WA. No. 1265 of 2012 in WPC/27653 of 2009

District Co-Operative Bank

APPELLANT

Vs

Dinesh M.

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 186(1B)

Citation : (2012) 3 KLJ 636

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.N. Mohanan, for the Appellant; Saidu Alavi, Government Pleader and Sri. P.C. Sasidharan, SC, KPSC, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The short but interesting question that arises for consideration is whether a school teacher by virtue of his past experience as sales supervisor in a Liquor Company for three years is eligible to be appointed as General Manager of a large District Co-operative Bank which has 42 Branches, 350 employees, Rs. 1,400 crores and more of public deposits and Rs. 1,800/- crores in advances and investments. Since the Single Judge declared eligibility, the Bank is in appeal with the support of the Public Service Commission. Appellant, a District Co-operative Bank, requested the Kerala State Public Service Commission (PSC) to make selection of General manager for the Bank through direct recruitment. The PSC, on scrutiny of the application of the first respondent, a school teacher, found him ineligible for selection to the cadre of General Manager, because the qualifying experience claimed by him from 2001 to 2004 was in a supervisory cadre in the sales wing of a liquor manufacturing company on a consolidated monthly salary of Rs. 6,000/-. The disqualification notified by the PSC, namely Ext. P9 was challenged by the first respondent by filing the writ petition and through an interim order, the learned Single Judge directed the PSC to interview the first respondent who secured second position in the select list. The first Rank holder did not join and therefore the first respondent staked his claim for appointment. Even though appellant Bank and

PSC raised serious objections on first respondent's eligibility and suitability for the high post of General Manager, the learned Single Judge declared the first respondent eligible and directed the PSC to advise him for appointment as General Manager against which the Bank has come up in writ appeal. We have heard Sri. P.N. Mohanan, learned Counsel appearing for the Bank, Advocate Sri. Kaleeswaram Raj, appearing for the first respondent, Special Government Pleader for the State and standing counsel for Public Service Commission which is supporting the appellant.

2. Since the post claimed by the first respondent is that of General Manager of the District Co-operative Bank, which is the post of chief executive officer of the bank, we feel the qualification and eligibility with reference to Rules and notification of PSC have to be considered with reference to the nature of operations of the Bank and responsibility of General Manager of the Bank. We have to first consider the nature of constitution, the stake holders and magnitude of operations of the Bank which is a Central society to which as many as 522 societies in the District are affiliated. The Bank has, besides the head office, 42 branches and one mobile branch, employing a total number of 348 regular employees. It has public deposits of over Rs. 1,410 crores, has made an advance of Rs. 1,100 crores and an investment of about Rs. 700 crores. A District Co-operative bank with the level of operations and commitment to the public as above should have a very qualified and matured person with experience to be made the chief executive officer under whom there are 350 employees including 42 branch managers work. We have to necessarily consider the eligibility and qualification of the candidate with reference to the requirement for the post he has to hold on appointment i.e. as General Manager of a Bank with operations spreading all over the District as a whole. The first respondent has acquired MBA degree from Bharathiar University, Coimbatore, in October, 2001. However, he did not pursue his career utilizing the educational qualification acquired namely, a degree in Management because he has served only as a supervisory personnel in the sales wing of a liquor company just for three years from 2001-2004 and thereafter became a school-teacher which he is continuing for the last nearly eight years. In the first place, we have to notice that the first respondent could not make a career in Business Management because he joined at a lower level as a supervisory man and not in a managerial position that too on a consolidated pay of Rs. 6,000/- per month, that too, for a short period of three years and thereafter, discontinued the profession. The question therefore, to be considered is whether supervisor turned teacher is rightly found eligible by the learned single judge for appointment as General manager of a big bank like the appellant, the successful management of which is essential at large to protect the interest of thousands of depositors from the poor and middle class cadre of the society?

3. If there are no Rules prescribing qualification and experience for selection to the post of General Manager and if the selection was to be made objectively just looking at the qualification and experience of the person, nobody can doubt that

no well-advised system will select the first respondent for appointment as General Manager of a big bank. However, when educational qualifications and experience and procedures for selection are prescribed, the question to be considered is whether the PSC rightly found him ineligible and if not to uphold the judgment of the Single Judge directing PSC to advise first respondent for appointment as General Manager. Both the appellant Bank, the PSC and the Government are seriously opposing the judgment.

4. The contention of the Bank and the PSC is that the learned Single Judge has not understood the scope of "experience" covered by the Rules and the notification issued by the PSC and the court has simply gone by a certificate issued by a company which once employed the first respondent and just based on the company's experience certificate, declared eligibility of the first respondent. We have to look at the correctness of the judgment of the learned Single Judge with reference to the rules on qualification and experience. The appellant or the PSC has not disputed the educational qualification claimed by the first respondent, which is MBA and so much so, the issue to be decided is in a narrow campus i.e. suitability of the experience claimed by the first respondent with Ext. P5 certificate, which though not is acceptable to the Bank or PSC found acceptance with the learned Single Judge. Since the controversy is only on suitability of experience for appointment of General Manager, we extract hereunder the experience required and that notified by Ext. P1 by the PSC, which is an extract from Rule 186(1B) of the Kerala Co-operative Societies Rules, which is as follows;

(2) Experience of not less than Three years in Managerial/Supervisory Cadre in Co-operative Institutions/Scheduled Banks/Government/Quasi Government Institutions/Public Limited Companies. (The experience prescribed as qualification shall be one gained by the candidate after acquiring the basic qualifications prescribed for the post and should be received before the last date fixed for receipt of applications).

5. The certificate of experience produced by the first respondent from SDF Industries Limited is as follows:

This is to certify that the above mentioned person has worked in this institution as "Territory Sales Manager" (Regular employee in Supervisory cadre) held in capacity on Rs. 6,000/- per month plus T.A. for a period of 3 years, 2 months & 15 days from 01.08.2001 to 15.10.2004.

The case of the appellant as well as the PSC is that the experience as certified above cannot be treated as an experience in conformity with the one given in the notification which is experience in managerial or supervisory cadre in co-operative institutions, scheduled banks, government or Quasi Government institutions or public Limited companies. Sri. Kaleeswaram Raj, learned Counsel for the first respondent relied on the very same certificate and submitted that the employer itself has declared the post held by the first respondent as a

supervisory cadre post and therefore, the certificate satisfies the requirement of the notification. Standing counsel appearing for the appellant Bank and also the counsel for PSC submitted that the experience required is not in sales, that too, in a liquor company, but in cooperative or financial institutions or public sector companies which implies that experience required is in finance. However, counsel for the first respondent canvassed the position that among the conditions mentioned in Ext. P1, public limited companies are covered and by relying on Ext. P6 he contended that the company in which the first respondent was employed was a public limited company, that too, a listed company and when the employer certifies that the first respondent was employed in a supervisory cadre, the PSC or the appellant Bank has no authority to question the correctness of it. Counsel for the first respondent has also relied on the decision in P.S. Latha Vs. Kerala Public Service Commission and Others in support of his contention that the experience certificate produced cannot be rejected by P.S.C.

6. The Special Government Pleader supported the appellant and also the stand taken by the PSC. because according to him also, the experience of the first respondent is not suitable to make him eligible for selection as General Manager of the Bank.

7. After hearing counsel on all sides and on going through Ext. P5, we are unable to uphold the decision of the learned Single Judge declaring the first respondent's experience as sufficient to make him eligible for the post of General Manager of the Bank. It is not uncommon that companies in private sector issue liberal certificates glorifying employees after relieving them from their service and we have to examine whether Ext. P5 is one such certificate given by the manager of a company where the first respondent served for three years. The first respondent obviously joined the company as a new entrant after acquiring degree in management and the post assigned to him as per certificate produced was "Territory Sales Manager". Going by the meaning of the post, anybody can guess that he is in a managerial cadre controlling a territory. However, in the certificate in bracket the company has down graded the first respondent as a supervisory cadre employee. This inconsistency in the certificate issued two years after the first respondent left the service only shows that the first respondent could get the certificate in the way he wanted to present it to the PSC in support of his application for selection to the post of General Manager of the Bank. Strangely, the consolidated pay given to a territory sales manager by a public limited company engaged in liquor production and sales was a paltry sum of Rs. 6,000/- per month which intrinsically proves that the first respondent was engaged probably in the lowest grade of employment in the company. We are unable to accept the legal position canvassed by the learned Counsel for the first respondent relying on the above decisions because in our view, the PSC, while scrutinizing the eligibility of the candidate is not doing a clerical work of accepting certificate on face value. The communication issued by the PSC vide Ext. P9 that was successfully challenged before the learned Single Judge, is in a prescribed form wherein the only statement is that the first respondent did not

have the required experience. Obviously, what is conveyed by Ext. P9 is that the experience claimed by the first respondent is not suitable for the post. Even the standing counsel for the PSC could not tell us as to whether Ext. P9 was issued by an office staff or it was subjected to any kind of appreciation by experts in the PSC Office. We do not think there is any need to enquire into this because in our view, the decision taken by the PSC to reject the experience of the first respondent as insufficient or inadequate is perfectly justified for the reasons stated hereunder.

8. The educational qualification required for appointment by direct recruitment as General Manager is Master's degree in Business Administration or any other equivalent qualification or membership of the Institute of Chartered Accountants of India. Obviously, the qualification is of such nature that people with these educational qualifications are supposed to be engaged only in managerial work. In the normal course, an MBA degree holder or Chartered Accountant does not take up even a supervisory job and the minimum post they would get is that of Assistant Manager. Further, the experience required under the notification issued by PSC which is an extract from the Rules is in Co-operative Institutions, Scheduled Banks or in Public Limited Companies. We have in another decision adversely commented upon Rule 186(1B) which prescribes experience in supervisory cadre as sufficient for appointment as Deputy General Manager of Thrissur Co-operative Bank, directly. In this case, the position is worse because the post is that of General Manager who has to control managers at different levels such as Branch Managers, Assistant General managers, and even deputy general managers. We do not know how a supervisory cadre man who has not reached the first level of managerial post is allowed to occupy the post of General Manager who is the manager of managers in a big bank like the first respondent. In the first place, we have to adversely comment upon the Rule because it is self conflicting and is not sufficient to suit the requirement of the high post of General Manager. Supervisory or even managerial cadre experience in sales certainly is not sufficient experience to make a person eligible to be the General Manager of a big Co-operative Bank. Experience should therefore be in the line of banking or financing like investment companies, mutual funds etc. and not in trading companies engaged in marketing of products. The whole confusion arose because of the existence of a Rule made years back, which ultimately end up in selection of thoroughly unqualified persons to hold responsible posts in Co-operative bank, which we are afraid may lead to mismanagement and ruin of the otherwise well-run institutions. Considering the magnitude of operations of District Cooperative Banks and the State Co-operative Bank and their commitment and responsibility to the members and public at large, we feel the Government should immediately amend the Rule suitably, so that only well-experienced and qualified persons are appointed in high positions in the Banks like Deputy General Managers and General Managers.

9. Even though Rule does not stipulate that the experience should be in banking or financing, we feel, the PSC, while scrutinizing the application, can certainly

appreciate the experience with reference to the post for which the selection is made and if they find that the applicant's experience is not suitable for the employment, it is up to them to reject the application. The very object of entrusting selection for high level appointments in banks to the PSC is to have the selection made by a specialized body with expertise to make selection in a fair and transparent manner. We are unable to uphold the technical way the learned Single Judge has looked into the question i.e. first by checking whether the company which issued the certificate is a public limited company and if so whether the certificate of experience issued is literally in terms of the notification issued by the P.S.C. Considering the high position to which selection was made by the PSC, we find that the approach made by the PSC is perfectly reasonable and justified. As already found by us, the experience certificate produced by the respondent does not prove even the facts stated therein as correct because no supervisory cadre employees are given such low pay and no territory sales manager is engaged in supervisory work. Supervisory work is essentially supervising the work of subordinate staff and a sales manager is head of sales division and he is not a supervisor. In short, we are of the view that the PSC rightly rejected the experience certificate produced by the first respondent as it is self conflicting and unreliable and does not prove the experience claimed by first respondent in supervisory cadre. Further, experience in sales is not what is required in Ext. P1. Experience prescribed in Ext. P1 has to be understood with reference to the nature of employment and so much so, as found by us above, experience in sales is not the one that is suitable for appointment as General Manager of a bank. We, therefore, do not find any justification to support the finding of the learned Single Judge that the first respondent's experience is sufficient in terms of Ext. P1 for the selection to the post of General Manager. As observed by us, all the confusion arose because of the existence of the Rules which are self conflicting and which do not serve the purpose of selection of right people to high positions in the Bank like General Manager, Deputy General Manager etc. Experience required for Deputy General Manager and General Manager of Co-operative Banks of this type should be in banking and finance and not in sales or marketing. Section 80 of the Co-operative Societies Act authorises the Government to prescribe qualification for employment of staff and officers of the Cooperative Societies in consultation with the State Co-operative Union. There should be no difficulty for the Government to get very qualified officers in the managerial cadre from any nationalized banks either on absorption basis or on deputation basis for appointment as Deputy General Manager and General Manager. There will be nothing wrong in even appointing retired bank officers for a tenure of three or five years on contract basis because well experienced people are required to run fairly big banks like the appellant. We also feel that the Rule should give sufficient flexibility to the PSC to assess the general suitability with reference to the educational qualification and experience so that undesirable persons do not get selected to high positions where responsibilities are sensitive and important to the society. We, accordingly, allow the writ appeal by vacating the judgment of the learned Single Judge and the interim order issued directing

selection of the first respondent. The Government is directed to immediately look into the inadequacies in the Rules as pointed out by us and make suitable amendment prescribing qualifications and experience required for appointment to high positions in the Bank for direct recruitment with guidance to PSC. The selection process should start immediately after amendment is carried out in the Rules. It may also be noticed that cooperative employees starting their career from low level will reach a stage beyond which they cannot handle the work of this big Banks like the appellant and therefore, it would always be desirable to appoint people by direct recruitment at least at the level of Deputy General manager and General Manager. In fact, Government itself can think of constituting Selection Board like the Public Enterprises Selection Board functioning under the Central Government for selection of executives for Public Sector Undertakings including General Managers and Deputy General Managers in Co-operative Banks even on deputation basis so that qualified Keralites working outside in nationalized banks and public financial institutions will get an opportunity to serve in high position in state either on deputation, absorption or on contract basis.