

(2013) 01 KL CK 0176
In the High Court Of Kerala
Case No : W.A. No. 924 of 2010

Ibey Susan Issac

APPELLANT

Vs

Anicadu Service Co-operative Bank Ltd. and Another

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Citation : (2013) 2 KHC 399

Hon'ble Judges : S. Siri Jagan, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : S. Subhash Chand, for the Appellant; D. Somasundaram, Special Government Pleader and P.N. Mohanan, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The appellant in this writ appeal is challenging the judgment of a learned Single Judge of this Court in WP(C) No. 6384/10. She was not a party to the writ petition. But it so happened that the order of the Joint Registrar of Co-operative Societies, which was under challenge in that writ petition, was passed at the instance of the appellant on a complaint made by her. But the writ petition was filed without impleading her as a party to the writ petition which was allowed and the order passed in favour of the appellant was set aside by the learned Single Judge. Therefore the appellant filed IA No. 388/10 seeking leave to file writ appeal against the judgment of the learned Single Judge which was allowed and leave was granted. Consequently the writ appeal has been numbered, which has later been admitted. The bone of contention between the parties relate to appointment to a post of peon in the 1st respondent Co-operative Bank. The bank issued a notification inviting applications for 3 posts of Peon in the bank by Ext. P1 notification. As per that notification the last date for submitting applications was on 05/05/2009. At the instance of a member of the Society the very act of the bank in making appointments to the post was under challenge in WP(C) No. 13901/09. That writ petition was allowed, against which WA No. 2066/09 was pending. After issuing Ext. P1 notification one more vacancy of

peon arose in the bank on 31/08/2009, on account of one incumbent availing of voluntary retirement from service. Subsequently the bank completed the selection process and published Ext. P4 rank list of 10 persons. From the said rank list 4 persons were appointed to 4 vacancies including the one which arose on 31/08/2009 subsequent to the last date fixed in Ext. P1 notification for submitting applications for selection to the 3 notified vacancies. The appellant filed a complaint against the appointment to the 4th post before the Registrar of Co-op. Societies on the ground that only the notified vacancies could have been filled up pursuant to the selection. By Ext. P10 order the Joint Registrar held that no appointments could have been made to vacancies other than the notified vacancies and therefore appointment to the 4th vacancy from the rank list was illegal. The 1st respondent bank filed the writ petition challenging Ext. P10 order of the Joint Registrar of Co-op. Societies. While that writ petition was being argued it was pointed out that a final decision in the WA No. 2066/2009 would materially affect the decision in the writ petition. Relying on the decision of the Division Bench in Kodakara Farmers Service Co-op. Bank Ltd. Vs. Neena, the learned Single Judge allowed the writ petition setting aside Ext. P10 order, but making it clear that the appointment made by the bank to 4 posts of Peon pursuant to Ext. P3 judgment shall be subject to the final order in WA No. 2066/09. The appellant is challenging that judgment. The contention of the appellant is that it is settled law that no appointment can be made to vacancies other than the notified vacancies, unless there is a specific rule for preparation of a rank list, keeping the same alive for a specified period for appointment from the rank list to vacancies arising during the period of currency of the rank list. It is submitted that in the case of appointment to sub staff in Co-operative Societies, there is no provision of law which enables Co-operative Societies to prepare a rank list of selected persons to the post of sub staff and to make appointments from the list to vacancies which arose during the period of currency of the rank list. It is submitted that reliance by the learned Single Judge on the decision of the Division Bench in Kodakara Farmers Service Co-op. Bank Ltd. Vs. Neena, is inapposite because the decision applies to appointments in accordance with Rule 182(4) of the Co-operative Societies Rules, which in turn is the procedure prescribed for appointment in Co-operative banks as per Section 80B of the Cooperative Societies Act through Co-operative Service Examination Board. The post of sub staff is expressly excluded from the purview of Section 80B and consequently the procedure prescribed in Rule 182(4) is clearly inapplicable for appointment to the post of sub staff in Co-operative Societies. The contention is that the post of peon comprises of the sub staff of Co-operative Societies and therefore Rule 182(4) does not apply for recruitment to the post of peons. Therefore the procedure of preparing a rank list of successful candidates to be kept alive for a specified period and of making appointments from the list to vacancies arising during the currency of rank list is not applicable to the post of peons. Consequently there cannot be any preparation of a rank list, keeping it alive for a specified period and appointment to vacancies which arose during the currency of the rank list in excess of the notified vacancies. Therefore the

decision in Kodakara Farmers Service Co-op. Bank Ltd. Vs. Neena, is clearly distinguishable is the contention raised by the learned counsel for the appellant. The learned counsel for the appellant relies on decisions of the Supreme Court and that of this Court wherein it has been categorically held that in the absence of Rules providing for preparation of a rank list to be kept alive for a specified period and for appointments to vacancies which arose during the currency of the rank list, no appointment could have been made to vacancies other than the notified vacancies. The appellant relies on the Division Bench decision of this Court in Deepthy Vijayakumar Vs. Jt. Registrar of Co-op. Societies and Others, and the decision of the Supreme Court in Rakhi Ray and Others Vs. The High Court of Delhi and Others, and Thrissur District Co-operative Bank Limited Vs. Delson Davis P. and Others, in support of the said contention. The appellant therefore submits that the appointment to the 4th post which has not been notified as per Ext. P1 notification inviting applications to the post of peons in the 1st respondent Bank is clearly illegal and unsustainable.

2. Learned counsel for the 1st respondent submits that by implication sub-rule (4) of Rule 182 has been made applicable to appointments to the post of sub staff as well. The reasoning of the learned counsel for the 1st respondent is that under sub-rule (5) of Rule 182 in respect of societies and posts not covered by Section 80B of the Act, the appointment shall be made by the committee after conducting a written examination and interview as per the guidelines issued by the Registrar. The Registrar has issued guidelines in respect of the same, which forms part of sub-rules (1) to (4) of Rule 182 also and therefore by implication of the procedure prescribed in sub-rules (1) to (4) of Rule 182 applies to appointment of the post of sub staff also. Sub-rules (1) to (4) of Rule 182 prescribes for preparation of a rank list and keeping it alive for a period of two years, in which case vacancies which arose after the notification also can be filled up from the rank list pursuant to the notification, which only has been done by the 1st respondent in this case, is the contention. We have heard learned Special Government Pleader (Co-operative Societies) also. On a consideration of the arguments raised we are inclined to agree with the counsel for the appellant. In view of the decisions quoted by the learned counsel for the appellant, two of which relate to appointments in Co-operative Societies themselves, it is settled law that in the absence of any Rules for preparation of a rank list and appointment to vacancies which arose subsequent to the notification from the rank list during the currency of the rank list, no appointments can be made to vacancies in excess of the notified vacancies. Reliance by the learned Single Judge on the decision in Kodakara Farmers Service Co-op. Bank Ltd. Vs. Neena, is clearly inapposite. As pointed out by the learned counsel for the appellant that decision was in the context of the sub-rules (1) to (4) of Rule 182 of the Kerala Co-operative Societies Rules, which specifically provide for preparation of a rank list and appointment to vacancies, which arose during the currency of the rank list from the rank list so prepared, which is applicable only to selection made by the Co-operative Service Examination Board to posts covered by Section 80B of

the Co-operative Societies Act. The post of peon has not been brought within the purview of the Examination Board u/s 80B. The interpretation put to sub-rule (5) of Rule 182 by the counsel for the 1st respondent does not appeal to us. Under Rule 182(5) a separate procedure has been prescribed for selection to the post not covered by Section 80(3)(a) and 80B of the Co-operative Societies Act. The selection and appointment has to be made after conducting the written examination and interview as per the guidelines issued by the Registrar. The Registrar has in fact issued Ext. A5 circular laying down the guidelines for selection and appointment which specifically prescribe that the notification inviting applications should specifically mention the number of vacancies available. That circular does not postulate preparation of a rank list and keeping it alive for a specified period and making appointments to subsequent vacancies arising during the currency of the rank list, in excess of the notified vacancies, from the rank list prepared. Therefore evidently there is no Rule enabling the 1st respondent bank to prepare a rank list pursuant to Ext. P1 notification and to make appointments to vacancies, which arose in excess of the notified vacancies also from the rank list so prepared keeping the rank list alive for a specified period. Therefore the appointment made by the 1st respondent to the 4th post of Peon in the 1st respondent bank is clearly unsustainable. As such Ext. P10 order of the Joint Registrar is perfectly valid and proper. Consequently quashing of that order by the learned Single Judge is unsustainable. Accordingly we allow the appeal setting aside the judgment dated 11/03/2010 of the learned Single Judge in WP(C) 6384/10 and restoring Ext P10 order of the Joint Registrar of Co-operative Societies.

The Writ Appeal is allowed as above.