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**(2023) 06 KL CK 0397**  
**In the High Court Of Kerala**  
**Case No : Writ Appeal No. 986 Of 2023**

Jaison T

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision : 06-06-2023**

**Acts Referred:**

<l>Kerala High Court Act, 1958 — Section 5(i)  
Kerala Co Operative Societies Act, 1969 — Rule 185(1)

**Citation : (2023) 06 KL CK 0397**

**Hon'ble Judges :** Alexander Thomas, J;C. Jayachandran, J

**Bench :** Division Bench

**Advocate :** Pramod J.Dev, Swathi Kumar B.S., Anitha Ravindran, Harisankar N Unni, K. P Harish

**Final Decision :** Dismissed

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## Judgement

Alexander Thomas, J

1. The aforecaptioned writ appeal has been directed against the impugned judgment dated 22.03.2023, rendered by the learned Single Judge dismissing WP(C) No.9880/2022. The appellant herein is the petitioner in the WP(C) and the respondents herein are the respondents in the WP(C).

2. Heard Sri.Pramod J. Dev, learned counsel appearing for the appellant, Sri.K.P.Harish, learned Senior Government Pleader appearing for official respondents 1 & 2 and Sri.B.S.Swathikumar, learned counsel appearing for R3 & R4 (Co-operative Society Employer).

3. The prayers in the instant Writ Petition (Civil) WP(C) No.9880/2022, filed by the appellant herein, are as follows:

(i) To issue appropriate writ order or direction declaring that the respondents 3 & 4 are bound to fill up the post of Assistant Secretary in the society by promotion.

(ii) To issue a writ of certiorari or other appropriate order or direction quashing

Ext.P6 order passed by the 2nd respondent.

(iii) To issue a writ of mandamus or other appropriate order or direction directing the respondents 3 & 4 to fill up the post of Assistant Secretary in the society by promotion expeditiously.

(iv) To issue a writ of mandamus or other appropriate order or direction restraining the respondents 3 and 4 from filing up the post of Assistant Secretary in the society by direct recruitment.

(v) To grant such other and further reliefs as this Hon'ble Court may deem fit to grant in the facts and circumstances of the case."

4. The learned Single Judge after hearing both sides has rendered the impugned judgment on 22.03.2023 dismissing the above WP(C) on the ground that the claim of the petitioner for promotion to the post of Assistant Secretary/Manager even though he is in a feeder category which is two places down the ladder viz, Head Clerk/Accountant by relying on Rule 185(1), 2nd proviso is not tenable, inasmuch as he is not in the feeder category concerned namely Chief Accountant/Chief Cashier and further that this was done by relinquishing the promotion to the held post in question etc and that therefore, though the vacancy in question arose in the promotion turn of 3:1 ratio, since none was qualified, the respondent Co-operative employer was justified in resorting to the method of appointment by direct recruitment by invoking the "Doctrine of Necessity". It is this judgment of the learned Single Judge dismissing the above WP(C) that is under challenge in this intra court appeal instituted under Sec.5(i) of the Kerala High Court Act.

5. We have heard both sides in extenso and we are of the considered view for the reasons to be stated hereinafter, that the impugned judgment is a well considered one and is not liable for interdiction at the hands of the appellate Court. Before giving the reasons for arriving at this conclusion, it may be pertinent to refer to the basic facts of the case.

6. The appellant is presently working in the category of Accountant/Head Clerk in the 4th respondent Co-operative Society. While so, the 4th respondent Co-operative Society has issued Ext.P2 selection notification dated 03.08.2021 inviting applications from eligible candidates for selection by direct recruitment to the post of Assistant Secretary. The appellant has claimed that he has applied for appearing in the qualifying examination conducted by the Examination Board concerned and he had appeared and participated in the qualifying examination which is a requisite for promotion to the post of Assistant Secretary/Manager, but later the authorities concerned has refused to publish his result on the ground that he is not in the feeder category of Chief Accountant/Chief Cashier. Further the appellant has asserted that there is a ratio of 3:1 for promotion to the post of Assistant Secretary/Manager for working out the two methods of recruitment namely, promotion and direct recruitment and that going by the turn, the present vacancy in question covered by Ext.P2 Selection Notification is in the promotion

quota and that even the next vacancy should be assigned in the promotion quota and that only the succeeding vacancy thereafter, in the abovesaid higher post could be assigned in the direct recruitment quota. The staff pattern of the 4th respondent Co-operative Society dealing with the hierarchy of posts and the sanctioned strength of the post, in terms of the requirements of the Kerala Co-operative Society Rules are appended as follows:

Secretary

1

Assistant Secretary

1

Chief Accountant/Chief Cashier

1

Internal Auditor

1

Head Clerk/Accountant

4

Junior Clerk/Senior Clerk/Cashier

14

Typist/Data Entry Operator

2

Attender

2

Peon

3

Night Watchman

1

Part Time Sweeper

1

Total

31

7. There is no dispute of the abovesaid factual aspects regarding the staff pattern and going by the said provisions, the post covered by Ext.P2 is Assistant

Secretary/Manager and the post immediately below that is Chief Accountant/Chief Cashier and the post below that is Internal Auditor and the post further below that is Head Clerk/Accountant. In other words, feeder category for the post of Assistant Secretary/Manager is not the post of Head Clerk/Accountant held by the petitioner, but the post of Chief Accountant/Chief Cashier, which is 3 places in the hierarchical ladder, above the post of Head Clerk/Accountant held by the petitioner. It appears that going by the norms, a qualifying examination is prescribed for holding the post of Assistant Secretary/Manager and the said qualifying examination is conducted by the statutory Examination Board constituted as per the KCS Rules.

8. The appellant has appeared and participated in the said qualifying examination, but when the Selection Examination Board authorities came to know that he is not in the feeder category of Chief Accountant/Chief Cashier, but in a post which is much below, they have refused to publish his results. It is indeed common ground between the rival parties that the present vacancy of Assistant Secretary/Manager which is covered by Ext.P2 Direct Recruitment Selection Notifications is one which has arisen within the promotion quota of 3:1, as the norms stipulate that substantive vacancies in the abovesaid post of Assistant Secretary is to be filled up by the two methods of appointments/promotion and direct recruitment in the ratio of 3:1. The essence of the claim made by the writ appellant is that he is entitled to get the benefit of the 2nd proviso to Rule 185(1) of the Kerala Co-operative Societies (KCS Rules). The said 2nd proviso reads as follows:

“Provided further that if all the employees in the feeder category to a post relinquishes promotion an employee on the immediate lower category shall be promoted to the post after promoting him to the feeder category post by creating a supernumerary post. The supernumerary post so created shall be abolished on promotion of the said employee to the higher posts.”

9. The jurisdictional facts required for the invocation of the said 2nd proviso to Rule 185(1) is that if all the employees in the feeder category to a post relinquishes the promotion, then an employee in the immediate lower category shall be promoted to the feeder category by creating a supernumerary post and the supernumerary post so created shall be abolished on promotion of the said employee to the higher post. We are more concerned with the beginning portion of the 2nd proviso that for invoking such a benefit, the employees in the feeder category to the promotion post should have relinquished promotion and in that case, an employee of the immediate lower category could be promoted to the post and that too, on the basis of the process of creating a supernumerary post etc. So that in a case involving promotion to the post of Assistant Secretary/Manager, the feeder category post is the post of Chief Accountant/Chief Cashier and to get the benefit of 2nd proviso, all the eligible employees in the feeder category post of Chief Accountant/Chief Cashier should have relinquished their right to be considered for promotion to the next higher category post of Assistant

Secretary/Manager and in such a case, if there is an eligible and qualified hand in the next below post of Internal Auditor, then such an incumbent could be considered for out of turn promotion in exercise of the powers conferred under the 2nd proviso. This is subject to process of supernumerary post creation, with which we are not concerned in the facts of this case. The case of the petitioner/writ appellant is that there are no serving employees either in the category of Chief Accountant/Chief Cashier or in the next below post of internal Auditor and that therefore, the petitioner, who is in the feeder category of Head Clerk/Accountant should be given the benefit of the said proviso to the 2nd proviso as above. When a benefit giving out of turn promotion is considered the provisions of the Rules will have to be considered strictly and one will have to gather the meaning of the plain language employed in the Rules unless there are extreme difficulties in working out such an interpretation. Going by the provisions of the 2nd proviso, only if all the employees in the category of Chief Accountant/Chief Cashier have relinquished their claim for promotion to the post of Assistant Secretary/Manager, an eligible and qualified hand in the next below post of Internal Auditor could have been considered for claiming the benefit of the 2nd proviso. That indeed is not the facts of this case, since the petitioner is holding the post of Head Clerk/Accountant, which is immediately below the post of Internal Auditor and 3 posts below the hierarchical ladder, viz a viz the post of Assistant Secretary/Manager. The matter in issue in this case may not be res integra, inasmuch as the learned Single Judge of this court has held in the decision in *Padmaja vs. Joint Registrar of Co-operative Societies* [2009 (3) KLT SN 76] that the 2nd proviso applies only to the immediate lower category in question. As mentioned above, there are two categories of posts lying vacant in between the post of Assistant Secretary claimed by the petitioner and the present post of Accountant held by him now. Hence, the petitioner's contention is not tenable, in the light of the well settled legal position. Further it has been, *inter alia*, held that the abovesaid proviso works in the zone of the feeder category and its immediate lower category and the said proviso does not admit any elasticity to stretch it to categories further down the feeder category. Faced with this situation, the petitioner's counsel has placed reliance on the Division Bench decision of this Court in *Kizhuvilam Service Co-operative Bank Ltd. v. Ajayakumar* [2020 (1) KLT 206]. In the said facts of the case, it can be seen that there is only one mode of appointment provided under the norms in question, which is only promotion and there is no direct recruitment. In the instant case, since the abovesaid benefit in terms of 2nd proviso in question, cannot be claimed by the petitioner in the higher post of Assistant Secretary/Manager and as the 4th respondent employer has found that it is imperative to fill up the post of Assistant Secretary/Manager, they are justified in invoking the doctrine of necessity that, though the vacancy in question, covered by Ext.P2, may not be in the direct recruitment quota, since promotion cannot be legally effected at all, there is no other way, but to fill up the post on the basis of direct recruitment. We are told that pursuant to Ext.P2 selection notification, a select list for appointment to the post of Assistant Secretary/Manager has also been prepared,

as per Annexure 1 dated 05.12.2021. Sri.B.S.Swathikumar, learned counsel appearing for R3 & R4 and Sri.K.P.Harish, learned Senior Government Pleader appearing for R1 & R2 would submit on the basis of instructions that the candidates with rank nos.1 & 2 in Annexure 1 select list have not turned up and therefore, the appointment order was offered in favour of rank no.3 thereof, who has already joined duty on 10.05.2023. Incidentally, it is also to be noted that though Annexure 1 selection list was issued as early as on 05.12.2021, the appellant/petitioner has not chosen to challenge the same by amending his prayers in the WP(C), even though the same was disposed only later on 22.03.2023. The upshot of the above discussion is that the learned Single Judge cannot be faulted for having taken the view that the claim of the petitioner in terms of invoking the 2nd proviso as above is not tenable. In that view of the matter, the above WA will stand dismissed.