

(2023) 03 KL CK 0206
In the High Court Of Kerala
Case No : Writ Petition (C) No. 9880 Of 2022

Jaison T

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 22-03-2023

Acts Referred:

Kerala Co Operative Societies Act, 1969 — Section 69, 101, 185(1)
Kerala Co Operative Societies Rules, 1969 — Rule 181, 185(2)(iv)

Citation : (2023) 03 KL CK 0206

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : K.T.Thomas, Mathew Bob Kurian, B.S.Swathi Kumar, Anitha Ravindran, Harisankar N Unni, Sarangadharan P., N.S.Shamila, Sunil Kumar Kuriakose

Final Decision : Dismissed

Judgement

Sathish Ninan, J

1. The petitioner is working as an Accountant/Head Clerk in the 4th respondent Society. The Society issued Ext.P2 notification for selection to the post of Assistant Secretary through direct recruitment. The claim of the petitioner is that, the appointment is to be effected by promotion and not through direct recruitment. On Ext.P4 representation filed by the petitioner before the Joint Registrar, he was relegated to the remedy under Section 69 of the Co-operative Societies Act. He also seeks for a declaration that the vacancy is liable to be filled up by promotion and a direction to fill up the vacancy accordingly.

2. Heard learned counsel Sri.K.T.Thomas, on behalf of the petitioner, Sri.Harisankar N. Unni, the learned counsel for respondents 3 and 4 and the learned Senior Government Pleader.

3. The staff pattern of the 4th respondent Society is as under :-

Secretary

1

Assistant Secretary/Manager

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

4. In terms of Rule 185(2)(iv) of the Co-operative Societies Rules, substantive vacancies to the post of Assistant Secretary in a primary Co-operative Society is to be filled up by promotion and direct recruitment in the ratio of 3:1. The vacancy notified is due to be filled up by promotion and not direct recruitment, is the contention. According to the petitioner, though he had appeared for the qualifying examination for the post of Assistant Secretary, the results were not declared for the reason that he is not included in the feeder category. When the Rules provide for filling up of the vacancy by promotion, the Society is not entitled to resort to direct recruitment, it is contended.

5. On 06.02.2023, this Court passed the following order:-

"3rd and 4th respondents to file an affidavit as to whether the post presently notified under Ext.P2 is one to be filled up by promotion or direct recruitment in the ratio of 3:1 as provided in Rule 185(2)(iv) of the Kerala Co-operative Societies Rules. The affidavit shall indicate regarding the previous 4 appointments also."

6. In terms of the direction, the Society has filed an affidavit wherein it is admitted that the present vacancy is, going by the rotation, is due to be filled up by promotion.

7. The contention of the Society is that, the feeder category to the post of Assistant Manager (as shown supra) is from the post of Chief Accountant/Chief Cashier, which is lying vacant. So also the feeder category to the post of Chief Accountant/Chief Cashier is from the post of Internal Auditor which is also lying vacant. It is in the said circumstances that the Society had to resort to the "Doctrine of Necessity" and proceed for appointment through direct recruitment. The petitioner being two tiers down in the line, could not be considered for appointment to the post of Assistant Secretary by promotion, it is contended.

8. The learned counsel for the petitioner relies on proviso 2 to Section 185(1). Since the said proviso alone is relevant for the present purposes, that alone is extracted hereunder:-

"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. Since the feeder category is vacant, the juniors are to be promoted by creating a supernumerary post, is the contention. The said submission is not liable to be accepted for reasons more than one – firstly, as is evident from the proviso referred to, it applies only in a case where the employee in the feeder category "relinquishes" promotion; secondly, this Court has in *Padmaja v. Joint Registrar of Co-operative Societies* 2009 (3) KLT SN 76 held that the proviso above applies only to the immediate lower category. As noticed supra, there are two categories lying vacant in between the posts of Assistant Secretary and the post of Accountant. Therefore, the contention of the petitioner fails.

10. Now I shall deal with the plea of, "Doctrine of Necessity". There being no candidates in the feeder category, appointments could not be done through promotion and thus impelling the Society to effect appointment through the ordinary mode of direct recruitment, is the stand of the Society. Relying on the judgment of this Court in *Kizhuvilam Service Co-operative Bank Ltd. v. Ajayakumar* [2020 (1) KLT 206], the learned counsel for the petitioner would contend that, mere absence of employees in the feeder category is not a ground

to import the doctrine of necessity; the Society can seek for exemption in terms of Section 101 of the Co-operative Societies Act and Rule 181 of the Co-operative Societies Rules and effect promotion to the post of Assistant Secretary.

11. The judgment in Kizhuvilam Service Co-operative Bank case (supra) dealt with a case where the only mode of appointment provided under the Rules was promotion. Here the facts are different. Here the modes of promotion and direct recruitment are prescribed, of course subject to the ratio. So also, in the case at hand, there are no qualified hands in the feeder category and even in its next lower category. The post held by the petitioner is further lower in the category. It is for the Society to initially consider whether exemption from the Rules is to be sought for. It is relevant to note that there is no allegation of mala fides as against the Society. Seeking for exemption from the Rules is not a matter of right of an employee. In the case at hand, no employees were available in the feeder category and in the next lower category. The Society considered it appropriate to choose the mode of direct recruitment rather than seeking for exemption from the Rules.

12. Thus, the claim of the petitioner is turned down on merits but, notwithstanding the reasons stated in Ext.P6 order.

Resultantly the writ petition fails and is dismissed.