
(2015) 08 KL CK 0155

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24461 of 2014 (G)

James Joseph V.

APPELLANT

Vs

The Thrissur District Co-Operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Citation : (2015) 08 KL CK 0155

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : K.K. Mohamed Ravuf, for the Appellant; D. Sreekumar, SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.V. Asha, J—The petitioner is a candidate included as rank No. 2 in the rank list for appointment to the post of Deputy General Manager in Thrissur District Co-operative Bank (hereinafter referred to as the "bank" for short), published by the Kerala Public Service Commission (hereinafter referred to as "PSC"). As per Exts. P1 and P3 notifications, the PSC had invited applications for appointment to the post of Deputy General Manager by direct recruitment from open market as well as from among qualified regular employees of the Member Society/Primary Societies affiliated to District Co-operative Bank, in various districts including Thrissur. It was notified that 50% of the total vacancies shall be filled up from either of the lists to be prepared on the basis of the selection to be conducted on the basis of the notification. The qualification prescribed was Master's Degree in Business Administration or any other equivalent qualification recognised by the University in the subject with experience of not less than 3 years in ministerial supervisory cadre in Cooperative Institutions/Scheduled Banks/Government/Quasi Government Institutions/Public Ltd. Co. For the service candidates, a service certificate was to be produced and there should have been regular employees with a minimum regular service of 3 years in any cadre in the Member Society/Primary Co-operative Societies affiliated to the concerned Co-

operative Bank (as far as direct recruitment is concerned). The petitioner submitted applications for appointment under direct recruitment as well as in the quota for member societies. He was included as rank No. 2 in both the ranked lists - Ext. P2 rank list (Part II - by transfer) as well as in Ext. P4 rank list for the post (Part I - direct recruitment). There are only 2 candidates in both the lists, which came into force on 26.09.2011. The petitioner is ranked as No. 2 in both the lists. Rank No. 1 was appointed on 3.9.2014.

2. The appointment to the post of Deputy General Manager is governed by Rule 185(3) of Kerala Co-operative Societies Rules (hereinafter referred to as "the Rules"), according to which, substantive vacancies in the post of Deputy General Manager in the Kerala State Co-operative Bank and District Co-operative Banks are to be filled up by promotion and direct recruitment in the ratio of 1:1. 50% of the vacancies in the quota for direct recruitment shall be filled up by appointment from member societies and the other 50%, by way of direct recruitment from open market, as per Rule 187.

3. It is the case of the petitioner that the Bank has been filling up the vacancies in violation of quota rule by appointing promotees in the quota for direct recruits. After publication of the rank list also, there arose several vacancies. But the 1st rank holder alone was appointed by direct recruitment, that too only in September 2014. In Ground B of the Writ Petition the petitioner illustrated the details of the illegal appointments made by the Bank as follows:

"B) As is evident from the additional affidavit filed by the petitioner on 23/9/2014, it is evident that the following persons were promoted and appointed as the Deputy General Managers, after the publication of the Rank list, namely (1). Susheela N., (1/1/2012), (2). Gangadevi (1/6/2012), (3). Varghese R. Alapat (1/12/2012), (4). Nandini P. Nair (1/6/2013), (5). Remani K.K. (1/9/2013), (6). Nalini K.R., (1/11/2013), (7). Remani P. Raja (1/1/2014), (8). Rosy K.K. (1/8/2014). As per the Act and Rules, the petitioner is entitled to be appointed as Deputy General Manager in the 4th vacancy following the ratio of 1:1. As such the name of the petitioner ought to have been reported in the vacancy which arose on 1/12/2012, in which Varghese R. Alapat was appointed. As is evident from Ext. P-5, Smt. K.K. Remani and K.K. Rosy who retired on 29/11/2014, during the pendency of Writ Petition, the petitioner's name should have been reported to the P.S.C. for advising for appointment. It is in that post the 5th respondent is now provisionally appointed. Thus, the appointment of the 5th respondent is to be declared as illegal and against the Co-operative Societies Act and Rules made thereunder."

From the above averments it can be seen that from 01.01.2012 onwards there arose at least 8 vacancies upto 1.08.2014. The ninth vacancy was filled up by appointing the 5th respondent, when there arose 2 vacancies, on retirement of M/s. K.K. Remani and K.K. Rosy on 29.11.2014.

4. The petitioner approached this Court praying for a direction to report the

vacancies of Deputy General Manager to the Public Service Commission. The ranked list is due to expire on 25.9.2015 on completion of the normal period of validity of 3 years. The Writ Petition was later amended incorporating the challenge against the promotions made to the post of Deputy General Manager to the vacancies which arose on 1.12.2012 onwards including that of the 5th respondent, overlooking the candidates in the ranked list.

5. The 1st respondent bank has filed a statement, counter affidavit and several affidavits as directed by this Court from time to time. According to the bank there are only 3 posts of Deputy General Manager. Since the quota for appointment is 1:1 as provided in Rule 185(3) and the vacancy which arose on 01.09.2014 was already filled up by a direct recruit appointing the 1st rank holder, there is no other vacancy available in the quota for direct recruitment. The learned counsel for the bank argued that when the Rules provide for a ratio of 1:1, it is to be applied on the number of posts and not vacancies. The Government's intention is to apply the ratio on the posts only as otherwise the chances for promotion will be remote.

6. The 5th respondent has filed a counter affidavit stating that she was duly appointed as against the quota available for promotees and on the basis of the promotion granted she has been working as Deputy General Manager w.e.f. 1.12.2014. She has also stated that on appointment of the first rank holder the quota available for direct recruitment is already satisfied and no more appointment can be given to the directly recruited candidates. It is her further contention that petitioner is not entitled to get appointment since the qualification has been amended with effect from 26.11.2014 and he does not have the qualification as prescribed in the amended Rule 186(1)(ib) which requires 5 years' experience in Managerial supervisory cadre in Kerala State Co-operative Bank/Kerala State Co-operative Agricultural and Rural Development Bank/District Co-operative Bank/Nationalised Banks/Scheduled Banks, Government/Quasi Government Institutions/Limited Companies in public Sector.

7. In the additional affidavit filed by the bank in answer to the amended writ petition, the contention of the bank is that the ratio is already satisfied and appointment was made strictly following the provisions contained in Rule 185(3). According to the bank, there are only 3 posts and the third post would only go to the promotees, otherwise it would be violative of the principles of rotation. It is stated that in case the ratio is applied on vacancies as contended by the petitioner, it would lead to a situation where all the 3 posts are held by direct recruits, which violates Rule 185(3) in not appointing any promotee and hence such an interpretation is against public interest.

8. The petitioner has a further case that none of the promotees are having qualification of MBA and hence none of them are qualified for promotion. It is stated that there cannot be any exemption from the basic qualification prescribed under Rule 186(1)(ib). But the contention of the 5th respondent is that qualification as far as promotees are concerned is governed by Rule 186(1)(i),

according to which, qualifications for appointment to all posts other than those requiring technical qualifications, the starting pay of which is Rs. 250/- and above is a degree in Commerce or Masters Degree in Arts of a recognized University, with Co-operation as special subject. The qualifications prescribed under Rule 186(1)(i)(b) governs only the qualification for appointment by direct recruitment and therefore MBA is not required for appointment by promotion.

9. However, without going into the contentions as to qualification to the post by way of promotion, it can be seen that from 2012 onwards, i.e. subsequent to the publication of the rank list, the only method of appointment resorted to for filling up at least 8 vacancies which occurred from 2012 to September, 2014, is by promotion. It was only in September 2014, that the 1st rank holder was appointed by direct recruitment. Even on a consideration of the vacancies which arose after publication of the ranked list on 26.09.2011, it can be seen that the 1st vacancy which arose on 1.1.2012 which was filled up by promoting Smt. Susheela and the 3rd vacancy which arose on 1.6.2012 and filled up by promoting Varghese R. Alapat should have been reported to the PSC, for direct recruitment. Petitioner who is included in both the lists would have got advice and appointment against the vacancy which arose on 1.6.2012. But the Bank continued to fill up all the vacancies by promotion in total disregard of the rules. In this context it is necessary to have a look at Rule 185(3) of the Rules, which reads as follows:

"185. Promotion:-- (1) xxxxxx

(3) Substantive vacancies in the following posts shall be filled up by promotion and direct recruitment in the ratio 1:1 namely:--

(i) Deputy General Manager in the Kerala State Co-operative Bank and in the District Cooperative Banks;

(ii) Administrative Officer and Regional Manager and equivalent posts in Kerala State Cooperative Agricultural and Rural Development Bank Ltd.

Xxxxx xxxxxx xxxxxx xxxxx"

The 1: 1 ratio under Rule 185(3) of the rules between direct recruitment and promotion for filling up the vacancies in the post of Deputy General Manager was introduced only on 28.04.1999 by way of amendment as per SRO. 369/99. The ratio is provided on substantive vacancies in the post and not on cadre strength or post. Going by the above provision, the ratio is to be applied on the vacancies and not on posts as contended, either by the 1st respondent bank or the 5th respondent promotee. The contention of Bank relying on S. Prakash and Another Vs. K.M. Kurian and Others, AIR 1999 SC 2094 : (1999) 82 FLR 856 : (1999) 3 JT 607 : (1999) 3 SCALE 540 : (1999) 5 SCC 624 : (1999) SCC(L&S) 997 : (1999) 3 SCR 610 : (1999) AIRSCW 1822 : (1999) 5 Supreme 479 , interpreting Note 3 to Rule 5 of the Kerala State and Subordinate Service Rules cannot be accepted, firstly because the KS& SSR or Rule 5 are not made applicable to those

in cooperative societies; secondly because the direct recruitment as well as 1:1 ratio were introduced in 1999 subsequent to the introduction of the Note 3 to rule 5 of KS& SSR in 1992. Going by the apex court judgment in Maya Mathew Vs. State of Kerala and Others, AIR 2010 SC 1932 : (2010) 125 FLR 165 : (2010) 3 JT 60 : (2010) 2 SCALE 833 : (2010) 4 SCC 498 : (2010) 1 SCC(L&S) 1078 : (2010) 3 SCR 16 , when a ratio is introduced or modified with respect to source of appointment, by way of a legislation subsequent to introduction of Note 3 to Rule 5, and ratio is provided on vacancies, such ratio has to be applied on vacancies and not on posts as held in S. Prakash and Another Vs. K.M. Kurian and Others, AIR 1999 SC 2094 : (1999) 82 FLR 856 : (1999) 3 JT 607 : (1999) 3 SCALE 540 : (1999) 5 SCC 624 : (1999) SCC(L&S) 997 : (1999) 3 SCR 610 : (1999) AIRSCW 1822 : (1999) 5 Supreme 479 . Therefore every alternate vacancies should have been filled alternatively by direct recruitment and by promotion. Of course the 50% earmarked for direct recruitment should be again apportioned, between candidates from member societies and from open market i.e. in the ratio of 1:1 between those in Part I and Part II lists. Therefore it can be seen that the promotions were made in excess of their quota prescribed in Rule 185(3). The vacancies should have been reported to the P.S.C. immediately when the vacancies for direct recruitment arose in which event, petitioner would have been advised and appointed immediately on publication of the rank list. Therefore further appointments made to the 50% of the vacancies which arose in the post are illegal. The petitioner would have got appointment well before 01.09.2014 itself, in case vacancies were reported as per rules. The non reporting of the vacancies to the P.S.C. at the relevant time was contrary to Rule 185(3).

10. The 5th respondent has a contention that the petitioner has not challenged the promotions granted earlier till her appointment and they are not made parties and therefore as long as their appointments by promotion are not challenged and held illegal, those appointments are valid and the petitioner cannot have any claim against those vacancies.

11. I find it difficult to accept that proposition. If the right thing was done on the right time, the petitioner would have got appointment in one of the vacancies which arose during the period from 1.12.12 to 30.9.14. As the vacancies were filled up by promotion in clear violation of the quota rule, and every alternate vacancy was liable to be reported to PSC, the petitioner cannot be non - suited on the ground that those illegal promotions are not challenged or that they are not parties to this Writ Petition. All of them retired after enjoying promotion.

12. The learned Counsel for the 5th respondent relied on the Apex Court judgment in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, AIR 1983 SC 852 : (1983) 2 LLJ 23 : (1983) 1 SCALE 296 : (1983) 3 SCC 284 and the Full Bench judgment of this Court in Mohanan Vs. Director of Homeopathy, (2006) 3 ILR (Ker) 373 : (2006) 3 KLT 641 in support of his contention that petitioner is not entitled to be appointed because of the amendment to the rules

effected in November 2014 as he does not have the newly prescribed qualifications, i.e. as per the amendment one should have 5 years experience in Managerial supervisory cadre in State Cooperative Bank, scheduled Bank, etc, which petitioner does not have.

13. But both the judgments cited by the learned counsel lay down the proposition that qualification shall be as on the date of occurrence of vacancies. In this case the vacancies which were available for direct recruitment upto the date of amendment were filled up in gross violation of rules. The amendment effected on 26.11.2014 by way of G.O. (Rt) 142/2014/Co. Op. cannot in any way affect either the reporting of the vacancies to the P.S.C. or his advice or appointment, though subsequent to amendment, once it is found that the said vacancy was liable to be reported well before the amendment in which event petitioner would have got advised and appointed well before 24.11.2014-the date of amendment. By reason of the illegalities committed by the 1st respondent bank, petitioner cannot be deprived of his legitimate right to get advised and appointed in accordance with rules, which existed as on the date of occurrence of vacancy in the quota for direct recruitment. The respondent Bank should have reported the vacancy to the PSC at least when the 3rd vacancy arose on 1.12.2012. The qualification is to be reckoned as on date of occurrence of vacancy and in this case the qualification for direct recruitment has to be reckoned as on 1.12.2012, and at any rate before 24.11.2014, in accordance with the then existed rules.

14. The 1st respondent is therefore directed to see that the vacancies are filled up in accordance with rules applying 1:1 ratio on the substantive vacancies which arose at least from 1.1.2012 onwards and that the direct recruits are compensated for the loss caused to them by making sufficient appointments in their quota reporting every alternate vacancy to the PSC and making appointments in accordance with the rules which existed as on the date of occurrence of such vacancies, which were legally due in the quota for direct recruitment.

In the above circumstances, it is declared that the vacancies in the post of Deputy General Manager in the 1st respondent bank were liable to be filled up applying the ratio of 1:1 between promotion and direct recruitment, on the substantive vacancies and that the candidates in the ranked lists are entitled to be appointed at least against the 1st and third vacancies which arose after 1.1.2012. It is also declared that the appointment of the 5th respondent by promotion against the vacancy earmarked for direct recruits is illegal. The 1st respondent is therefore directed to report the vacancy of Deputy General Manager occupied by the 5th respondent to the Public Service Commission before 8th September 2015; PSC shall thereupon advise the candidate from the ranked list in accordance with law without any delay and on such advice, 1st respondent Bank shall appoint him without any further delay.

The Writ Petition is allowed accordingly.