
(2003) 02 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 380 of 2003

Janardhanan Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Citation : (2003) 97 FLR 508 : (2003) 1 KLT 867

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : N. Nandakumara Menon, K. Vindokumar, P.K. Manojkumar and Lakshmi N. Menon, for the Appellant; George Poonthottam and John Joseph Vettikkad, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

R. Rajendra Babu, J.—Petitioner, who was working as the Inspector of Branches with the 3rd respondent Bank viz. The Thiruvananthapuram Co-operative Urban Bank Limited No. 1959, filed this Original Petition for quashing Ext.P2 order passed by the Registrar of Co-operative Societies permitting the 3rd respondent to make appointment to the post of General Manager on deputation for a period of one year and also Ext. P6 order passed by the first respondent upholding the order passed by the Registrar.

2. Heard the learned counsel for petitioner, the 3rd respondent and also the learned Government Pleader on behalf Of respondents 1 and 2.

3. Petitioner joined in the service of the 3rd respondent on 17.11.1975 as Appraiser. He was promoted to the post of U.D. Appraiser (Senior Clerk) on 1.9.1978 and as Accountant on 1.5.1982. Later he was promoted as Inspector of Branches with effect from 1.5.1994 and continued to be so. The 3rd respondent Bank had framed Ext. P1 Feeder Category Rules for the purpose of promotion to the various posts in the Bank in accordance with Rule 185(1) of the Co-operative Societies Rules with the prior approval of the Registrar of Co-operative

Societies. According to the petitioner, the appointment to the post of General Manager has to be made either by promotion from the category No. 11 viz., Assistant Secretary/Manager/Branch Inspector or Chief Accountant or by direct recruitment and the rules do not contemplate the appointment on deputation and hence Exts. P2 and P6 orders allowing the appointment to the post of General Manager on deputation invoking Rule 144 of K.S.R. was not in accordance with Feeder Category Rules or under the Co-operative Societies Act or Rules and hence the above orders are liable to be quashed. It was further argued that the petitioner being the senior most qualified and eligible person to be appointed as General Manager, direction has to be issued to appoint him as General Manager.

4. Ext. P1 Feeder Category Rules envisages 12 categories of employees. Category 12 is General Manager and the appointment to the above category is "by selection from Category 11 or in the absence of suitable candidate for selection by direct recruitment". Category 11 includes "Assistant Secretary/Manager/Branch Inspector/ Chief Accountant (Inter Changeable)" and the appointment to category 11 is "by promotion from category 10". The main contention put forward by the 3rd respondent was that the 3rd respondent Bank was classified as a Special Grade Urban Bank as per the rules as amended on 1.1.2000 and the staff pattern of the special grade bank would include the posts in order of hierarchy, viz.

a) Secretary

b) Assistant Secretary

c) Inspector of Branches/Chief Accountant/Branch Manager/Internal Auditor/Development Officer.

It was further submitted that the petitioner being an Inspector of Branches could be promoted only as Assistant Secretary and then only he could be promoted or appointed as Secretary (General Manager) and in the present case, there was no eligible persons for being appointed as General Manager and the petitioner, an Inspector of Branches could not be appointed directly as General Manager before promoting him as Assistant Secretary. The above contention was accepted by the Registrar of Co-operative Societies and the State and accordingly Ext. P2 and P6 orders were passed respectively. The Society had taken a decision and sought for an amendment to the feeder category rules by creating an additional category of the post of Assistant Secretary/Deputy Secretary in between Category 12, the post of General Manager and the Category No. 11 in Ext. P1, but the above amendment was not approved on the other hand was but rejected by the Registrar of Co-operative Societies by Ext. R3(b) order dt. 22.4.1998. Hence it could not be held that the feeder category rules of the 3rd respondent society would stand modified in accordance with the classification of the above society as a special grade Bank. Without making an amendment to the feeder category rules, an appointment cannot be made to a post which is not in existence. Even if the Government directed the creation of a new post just below the post of

General Manager as Assistant Secretary, appointment to such a post could be made only if the feeder category rules also had been amended creating a post of Assistant Secretary/Deputy Secretary. In the present case, the Registrar refused to accept the proposed amendment made by the Society by Ext. R3(b) order, and hence, it cannot be said that a post of Deputy Secretary/Assistant Secretary has been created and there exist such a post. As per the existing feeder category rules appointment to the post of General Manager by promotion has to be made from the existing category 11, which takes in the Inspector of Branches also as eligible for promotion to the post of General Manager.

5. Rule 185 of the Kerala Co-operative Societies Rules deals with promotion of the employees of the Co-operative Societies. Sub-rule (1) says that subject to the provisions of Sub-rules (2), (3) and (4) appointments to the category of posts in a society, other than those mentioned in Sub-rules (2)(3) and (4) shall be made by promotion, on the basis of the seniority in the feeder category. The feeder for the above purpose has to be specified by the Society by framing suitable regulations with the approval of the Registrar. Sub-rules (2), (3) and (4) relate to the promotions to the categories of Accounts Officer/Branch Manager in the District Co-operative Banks, Deputy Manager in the State Co-operative Agricultural and Rural Development Bank and Assistant Secretary/ Manager and equivalent posts in the primary co-operative Societies and Urban Banks having deposit of more than 10 crores. Sub-rule (2) says that the substantive vacancies in the above categories shall be filled by the promotion and direct recruitment in the ratio 3:1 and with certain other restrictions. Sub-rule (5) further stipulate that the selection of candidates to the posts to be filled up by promotion under Sub-rule (2) shall be made from the category in accordance with merit and ability to be assessed through a competitive examination. It was submitted that the authority for conducting competitive examination has not been so far constituted and as such the Sub-rule 5 has no relevance at the present. Promotion to the post of General Manager is not at all governed by the provisions of Sub-rules (2), (3), (4) and (5) and it has to be filled up in the accordance with the feeder category rules framed by the society. Thus, the appointment to the post of General Manager shall be by promotion from the feeder category viz., from category No. 11 or by direct recruitment. When there is specific provision governing the promotion and appointment to posts in the categories specified in Ext. P1 feeder category rules the promotion to such posts are to be made in accordance with the feeder category rules and the provision of the Co-operative Societies Act and Rules.

6. Rule 185A deals with the appointment to the post on deputation. 185A reads:

"" 185A. Notwithstanding anything contained in these rules the committee of a society may, with the prior approval of the Registrar, appoint persons who are technically or professionally qualified or persons with experience and expertise, by way of deputation or on a contract basis for a specified period not exceeding five years"

(Provided that no such contract appointment shall be made to the posts mentioned in Sub-rule (2), (3) and (4) of Rule 185 or to any other post in any Society, which is engaged in banking business)

Rule 185A authorises the Society to make appointments of technically or professionally qualified persons on deputation for a specified period. But the proviso to Rule 185A imposes a bar or ban on appointment of persons on deputation to any society engaged in banking business. The 3rd respondent being a society doing banking business, in view of the proviso to Rule 185A, no one can be appointed on deputation to any post. When the appointments to the Societies are governed by the Co-operative Societies Act and the Rules made thereunder, and when the above Rules prohibit the appointment of persons on deputation in Societies doing banking business, the 3rd respondent cannot be permitted to make appointment on deputation invoking Rule 144 of K.S.R. When a Spl. Statute had been framed regulating the constitution and functioning of the Co-operative Societies and the method and procedure of appointments of its employees, everything has to be done in accordance with the provisions of the special statute and the provisions of K.S.R. cannot be imported for violating a specific provision in the special statute. Rule 144 of the K.S.R. cannot be invoked when there is a bar for appointing one on deputation as per the Co-operative Societies Rules, and hence the 3rd respondent cannot be allowed to make an appointment to the post of General Manager on deputation in violation of Rule 185A. Hence Exts. P2 and P6 orders passed by the Joint Registrar and the State respectively, granting sanction for appointment to the post of General Manager on deputation cannot be justified or sustained and are liable to be set aside.

7. The post of General Manager had fallen vacant from 1.1.200 onwards Ext. P2 order says that the post of General Manager will have to be filled up on deputation for a period of one year. After the arising of the above vacancy, three years elapsed by this time and even now 3rd respondent could not fill up the post by direct recruitment or by promoting an employee on the basis of the feeder category rules. The learned counsel for the petitioner further submitted that though the petitioner was fully qualified to be posted or promoted as General Manager, an unqualified person had been put in charge of General Manager. Whether the petitioner is the most qualified or not is not a matter to be considered by this Court at this stage. We are concerned only with the propriety and legality of Exts. 2 and 6 orders passed by the Joint Registrar and the State respectively. In view of the specific provisions in the Kerala Co-operative Societies Rules, the above orders cannot be sustained and are liable to be quashed. Appointment to the post of General Manager shall be done in accordance with Ext. P1 feeder category rules and the competent and eligible person from the service will have to be promoted; if appointment is to be made on promotion.

8. In the result the Original Petition is allowed. Exts. P2 and P6 orders passed by the respondents 2 and 1 respectively are set aside. The 3rd respondent shall

take immediate steps to make appointment to the post of General Manager by promotion in accordance with Ext. P1 feeder category rules if the above post is to be filled by promotion or by direct recruitment. The appointment shall be made as expeditiously as possible at any event within 3 months from today.