
(2014) 04 KL CK 0033
In the High Court Of Kerala
Case No : W.A. No. 174 of 2014

Jaya Kumaran Nair

APPELLANT

Vs

Mudavanmugal Service Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 ILR 855 : (2014) 2 KHC 476 : (2014) 2 KLT 844

Hon'ble Judges : Antony Dominic, J; Anil K. Narendran, J

Bench : Division Bench

Advocate : Thomas Abraham, Merciamma Mathew and V. Renjith Kumar, Advocate for the Appellant; George Poonthottam and K.K. Saidalavi, Government Pleader, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Anil K. Narendran, J.—This Writ Appeal is filed by the 1st respondent in W.P. (C) No. 24513/2011. The said Writ Petition has been filed by the 1st respondent herein (hereinafter referred to as the respondent--Bank only) seeking a writ of certiorari to call for the records leading to Exhibit P-3 award of the Co-operative Arbitration Court and Exhibit P-4 common judgment of the Kerala Co-operative Tribunal and for a declaration that the appellant is not liable to be appointed to the post of Appraiser in the respondent--Bank.

2. The respondent--Bank is a Primary Agricultural Credit Co-operative Service Bank carrying on its activities in accordance with the provisions of the Kerala Co-operative Societies Act, 1969 and the Rules made thereunder. As part of its business activities, the respondent--Bank which has been classified as Class II Primary Agricultural Credit Co-operative Bank advances gold loans. The Joint Registrar of Co-operative Societies vide Exhibit P-2 order granted approval for creation of one post of Appraiser in the respondent--Bank and included the said post in the Feeder Category Rules of Bank.

3. On 29-1-1996, the appellant entered service of the respondent--Bank as Peon on a consolidated pay of Rs. 500 per month. As borne out from Exhibit P-1 service book, his educational qualification is a pass in 8th standard. On 29-5-1999, vide Exhibit R-1(a) order, he was transferred to Neethi Store run by the respondent--Bank in its Head Office building and given the additional duty of Appraiser. Later, he was promoted as Attender vide Exhibit R-1(b) order with effect from 1-2-2003. While continuing as such, the appellant was attempted to be transferred to Neethi Store at Mudavanmugal, vide Exhibit R-1(c) circular, which proposal for transfer was later cancelled based on Exhibit R-1(d) request made by him.

4. The appellant has approached the Co-operative Arbitration Court in ARC No. 21/2008 seeking an award declaring that he is entitled to be promoted to the post of Appraiser in the respondent--Bank and also for other consequential relief"s. The appellant contended that, the posts of Junior Clerk and Appraiser are different in the matter of appointment and nature of work. Going by the Feeder Category Rules of the respondent--Bank, an Attender with three years" continuous service is eligible to be promoted to the post of Appraiser without insisting the qualification of SSLC and JDC. The Co-operative Arbitration Court vide Exhibit P-3 Award rejected the contention of the respondent--Bank that for the post of Appraiser, a candidate should have passed SSLC and JDC. Taking note of the fact that the appellant was given additional duty of Appraiser from 29-5-1999 onwards and that the respondent-- Bank is in need of an Appraiser, the Co-operative Arbitration Court vide Exhibit P-3 Award directed the Bank to promote the appellant to the post of Appraiser from the post of Attender with immediate effect Aggrieved by the said Award, the respondent--Bank filed Appeal No. 47/2010 before the Kerala Co-operative Tribunal. One Subramaniadas, who is a member of the respondent--Bank, filed Appeal No. 50/2010 challenging Exhibit P-3 award. By Exhibit P-4 common judgment, the Kerala Co-operative Tribunal dismissed both the appeals confirming Exhibit P-3 Award passed by the Co-operative Arbitration Court. It was aggrieved by Exhibit P-3 award and Exhibit P-4 judgment, the respondent--Bank approached this Court in W.P. (C) No. 24513/2011.

5. The appellant filed counter-affidavit contending, inter alia, that going by Exhibit R-1(e) order of the Joint Registrar of Co-operative Societies (same as Exhibit P-2 in the writ petition), an employee holding the post of Attender with a continuous service of three years is eligible for promotion to the post of Appraiser without insisting on the qualification of SSLC and JDC. As borne out from Exhibit R-1(f) certificate, the appellant has also undergone Appraiser training at the Agricultural Co-operative Staff Training Institute, Thiruvananthapuram. Aggrieved by non-consideration of claim for promotion to the post of Appraiser, the appellant submitted Exhibit R-1(g) representation before the President of the respondent--Bank. When the Bank took a stand that he is not eligible for promotion as Appraiser, he has approached the Co-operative Arbitration Court, which resulted in Exhibit P-3 Award, which was later confirmed

by the Kerala Co-operative Tribunal in Exhibit P-4 judgment.

6. The learned Single Judge by his judgment dated 27-11-2013 allowed the Writ Petition setting aside Exhibit P-3 award and Exhibit P-4 judgment holding that going by Rule 186 of the Kerala Co-operative Societies Rules, the essential qualification for appointment to the post of Junior Clerk and Appraiser is SSLC and JDC and the appellant having no such qualifications cannot seek promotion to the post of Junior Clerk/Appraiser. It is challenging the said judgment of the learned Single Judge, the appellant filed the present Writ Appeal.

7. We heard the learned counsel for the appellant, the learned Standing Counsel for the respondent--Bank and also the learned Government Pleader for respondents 2 and 3.

8. The learned counsel for the appellant contended that the prescribed educational qualification for an Attender having continuous service of three years for being promoted as Appraiser, is only a pass in 7th standard, in terms of Rule 186(1)(v) of the Kerala Co-operative Societies Rules. Circular No. 57/03 of the Registrar of Co-operative Societies, referred to as Exhibit A-7 in Exhibit P-3 award passed by the Co-operative Arbitration Court, indicates that only those Appraisers with three years" continuous service and having SSLC and JDC are eligible to be included in the seniority list Junior Clerk as junior most in the list for being considered for promotion as Senior Clerk. Going by the Feeder Category Rules of the respondent--Bank contained in Exhibit P-2/R-1(e), an Attender having 7th standard and continuous service of three years is eligible to be promoted to the post of Appraiser. Therefore, the appellant who studied upto 8th standard with five years" continuous service in the post of Attender has the required qualification for being promoted as Appraiser. The learned counsel for the appellant further contended that Exhibit P-2/R-1(e) Feeder Category Rules would show that the Joint Registrar of Co-operative Societies sanctioned one post of Appraiser based on the request made by the respondent--Bank and Exhibit R-1(a) would further show that the appellant was given additional duty of Appraiser from the year 1999 onwards. In such circumstances, according to the learned counsel, the respondent--Bank is in dire need of an Appraiser and therefore there is absolutely no illegality in Exhibit P-3 award and Exhibit P-4 judgment and hence the learned Single Judge went wrong in interfering with Exhibits P-3 and P-4.

9. Per contra, the learned Standing Counsel for the respondent--Bank contended that, going by Rule 186(1)(ii) of the Kerala Co-operative Societies Rules read with Circular No. 57/03 of the Registrar of Co-operative Societies and Exhibit P-2 Feeder Category Rules, SSLC and JDC are the essential qualifications required for promotion to the post of Appraiser, as the said post was equated to that of Junior Clerk. Since the appellant is not having that qualification, he is not eligible for being promoted as Appraiser. The learned Standing Counsel further contended that, as the respondent--Bank has decided not to fill up the post of Appraiser the Arbitration Court as well as the Co-operative Tribunal ought not to have directed

the Bank to promote the appellant to the post of Appraiser.

10. We have considered the rival submissions made at the Bar.

11. The first question to be decided is as to the qualification required for an Attender for being promoted as an Appraiser, in terms of Rules 185 and 186, and also taking note of Circular No. 57/03 of the Registrar of Co-operative Societies. Rule 185 of the Kerala Co-operative Societies Rules deals with promotion. As per Sub-rule (1) of Rule 185, subject to the provisions of Sub-rules (2), (3) and (4), appointments to the categories 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 seniority in the feeder category. The feeder category for this purpose shall be specified by the Society by framing suitable regulations, with the approval of the Registrar. Going by the third proviso to Sub-rule (1) of Rule 185, the promotion from sub staff category to the post of Junior Clerks shall be made only if such employees are having the required qualification and minimum three years' service in the feeder category.

12. Qualifications for appointment to various posts are prescribed under Rule 186. Going by Clause (ii) of Sub-rule (1) of Rule 186, no person shall be eligible for appointment to any posts classified under the said clause, i.e., "other supervisory and ministerial other than those requiring technical qualifications, the starting pay of which is below Rs. 250", unless he possesses the prescribed qualification of SSLC or its equivalent and successful completion of Subordinate Personal Co-operative Training Course (JDC). As per Clause (v) of Sub-rule (1) of Rule 186, the qualification prescribed for "all other posts with starting pay below Rs. 100", is only 7th standard. Therefore, going by Rule 186, the qualification SSLC and JDC is the requisite qualification for appointment to supervisory and ministerial posts classified under Clause (ii), whereas, the requisite qualification for appointment to all other posts falling under Clause (v) is only 7th standard.

13. The contention of the respondent--Bank that the qualification prescribed for the post of Appraiser is SSLC and JDC is mainly relying on Circular No. 57/03 issued by the Registrar of Co-operative Societies, which has been referred to as Exhibit A-7 in Exhibit P-3 award and also relying on Exhibit P-2/R-1(e) Feeder Category Rules. Circular No. 57/03 dated 7-11-2003 deals with promotion of subordinate staff in the Primary Co-operative Societies to the post of Junior Clerk. The other two circulars governing the field are Circular No. 37A/84 dated 13-9-1984 (referred to in Circular No. 57/03) and Circular No. 37/84 dated 25-8-1984 (referred to in Circular No. 37A/84).

14. As borne out from the Circulars referred to above, based on Circular No. 44/82 dated 28-9-1982 (referred to in Circular No. 37/84) Peons/Attendees working in Primary Co-operative Societies have been made eligible to be included in the feeder category for promotion as Junior Clerks, if they possess educational qualifications stipulated under Rule 186 and have got three years' continuous service in the Society. This benefit was extended to them because these

categories of employees have no promotional avenues. But the benefit extended to them has not been given to other similar categories of employees in the Primary Co-operative Societies such as Salesman, Storekeeper, Bill Collector, Depot Manager, Typists, Appraiser, etc., who also have no promotional avenues even if they possess the prescribed qualifications. The question of extending the benefit to the above categories of subordinate staff was examined and it was found that those categories of employees, viz. Salesman, Storekeeper, Bill Collector, Depot Manager, Typists, Appraiser, etc., working in the Primary Co-operative Societies should also be made eligible for promotion to higher post of Junior Clerk, if they possess all the required qualifications. It was in such circumstances, by Circular No. 37/84 it was ordered that, the above-mentioned categories of employees working on regular basis in the Primary Co-operative Societies are to be included in the feeder category for promotion as Junior Clerks subject to the condition that they have (a) SSLC or higher educational qualification, (b) have successfully undergone JDC or HDC, and (c) have completed three years full time regular and continuous service in the same Primary Co-operative Societies.

15. Later, the Registrar of Co-operative Societies issued an erratum, vide Circular No. 37A/84, by which "Typists" mentioned in Circular No. 37/84 was deleted, since the posts of Typists and Junior Clerks are equivalent in scale. Therefore, paragraph 3 of Circular No. 37/84 was substituted as follows; In the circumstances the employees belonging to other categories lower than Junior Clerk like Salesman, Depot Manager, Storekeeper, Bill Collector, Appraiser, etc., working on regular basis in Primary Co-operative Societies may also be included in the feeder category for promotion as Junior Clerk, subject to the condition that they should (a) hold SSLC or higher educational qualification, (b) have successfully undergone JDC or HDC, and (c) have completed three years" full time regular and continuous service in the same Primary Co-operative Society.

16. Later, the Registrar of Co-operative Societies issued Circular No. 57/03, in view of the direction in Government letter dated 18-8-2003 (referred to in Circular No. 57/03) to treat Appraisers also as equivalent to the post of Junior Clerk, since Appraisers and Junior Clerks falls under equivalent scale of pay as per the existing pay revision orders, and to promote them as Senior Clerks. In such circumstances, vide Circular No. 57/03, it was ordered that, Appraisers possessing SSLC or higher educational qualification and have completed three years of service with successful completion of Co-operative Training Course shall be placed, on acquiring such qualifications, in the seniority list of Junior Clerks as the next junior and promoted to the post of Senior Clerk in the vacancies arising in future.

17. Going by Circular No. 57/03, Appraisers possessing SSLC or higher educational qualification and have completed three years of service with successful completion of Co-operative Training Course shall be placed in the seniority list of Junior Clerks as the next junior and will be promoted to the post

of Senior Clerk in the vacancies arising in future. On the other hand, Appraisers who do not have the aforesaid qualifications find no place in the seniority list of Junior Clerks and such Appraisers will not be considered for promotion to the post of Senior Clerk. Therefore, the qualifications for the post of Appraiser are still governed by Clause (v) of Sub-rule (1) of Rule 186 and not by Clause (ii) of the said sub rule.

18. In the circulars referred to above certain benefits were extended to Appraisers and other subordinate staff, because these categories of employees have no promotional avenues. That by itself will not bring the post of Appraiser or other subordinate staff outside the purview of Clause (v) of Sub-rule (1) of Rule 186. Similarly, the fact that Appraisers and Junior Clerks fall under equivalent scale of pay as per the existing pay revision orders will not in any way bring the post of Appraiser within the purview of Clause (ii) of Sub-rule (1) of Rule 186. As per the third proviso to Sub-rule (1) of Rule 185, the promotion from sub staff category to the post of Junior Clerks shall be made if such employees are having the required qualification and minimum three years" service in the feeder category. The Feeder Category Rules of the respondent--Bank contained in Exhibit P-2/R-1(e) cannot go against the provisions under the Act and the Rules made thereunder. Therefore, the "required educational qualifications" under Exhibit P-2/R-1(e) Feeder Category Rules, for being promoted as Junior Clerk would be SSLC or its equivalent and successful completion of Subordinate Personal Co-operative Training Course (JDC) as prescribed under Clause (ii) of Sub-rule (1) of Rule 186, and that for being promoted as Appraiser would be only 7th standard as prescribed under Clause (v) of Sub-rule (1) of Rule 186. Otherwise, the Feeder Category Rules would be contrary to the provisions under Rules 185 and 186 of the Rules and unenforceable.

19. By inserting Section 80B to the Kerala Co-operative Societies Act, the Government has constituted Co-operative Service Examination Board for the conduct of written examination for direct recruitment to posts of and above the category of Junior Clerks in the Primary Agricultural Credit Societies, Primary Credit Societies, Urban Co-operative Banks and Primary Agricultural and Rural Development Banks in the State. Going by sub-section (1) of Section 80B, notwithstanding anything contained in the Act or the Rules or in the bye-laws of any society relating to the recruitment of officers and servants thereof, written examination for direct recruitment to posts of and above the category of Junior Clerks in societies referred to above are to be conducted by the Co-operative Service Examination Board. In the letter of the Co-operative Service Examination Board, referred to as Exhibit A-1 in Exhibit P-3 award passed by the Co-operative Arbitration Court, the Examination Board has clarified that it does not conduct examination for the post of Appraiser and that the qualification for that post falls outside the scope of the Board. This would also indicate that the qualification for the post of Appraiser is that prescribed in Clause (v) of Sub-rule (1) of Rule 186. In such circumstances, the finding of the learned Single Judge that for holding

the post of Appraiser one should have possessed the essential qualification of SSLC and JDC cannot be sustained.

20. The next contention raised by the respondent--Bank is that there is no need of an Appraiser in their Bank and in such circumstances, they cannot be compelled, to promote the appellant as Appraiser. As rightly found by the Co-operative Tribunal in Exhibit P-4 judgment, no-where in the written statement filed before the Arbitration Court, the respondent--Bank has a case that an Appraiser is not required for the time being. It is also not disputed before us that the appellant was given additional duty of Appraiser, with effect from 29-5-1999 onwards. Two fact finding authorities, namely the Arbitration Court and the Co-operative Tribunal found that the post of Appraiser is essential for the functioning of the respondent--Bank and that it was based on the request made by the Bank that the Registrar of Co-operative Societies amended the Feeder Category Rules including the post of Appraiser. The said finding in Exhibit P-3 award and Exhibit P-4 judgment cannot be termed either perverse or patently illegal warranting interference of this Court under Article 226 of the Constitution of India. Hence the challenge against the same has to be rejected and we do so.

21. The learned Standing Counsel for the respondent--Bank raised a further contention that the promotion sought for was not granted to the appellant, inter alia, taking into account the misconduct committed in the year 2000. Per contra, the learned counsel for the appellant would contend that the fact that by Exhibit R-1(d) order, the appellant was promoted to the post of Attender with effect from 1-2-2003, evidences that the Management did not consider him actually guilty for the shortage noticed. Regarding the above contention raised on behalf of the respondent--Bank, the Co-operative Tribunal in Exhibit P-4 judgment rightly found that the respondent--Bank has not raised any such contention regarding the misconduct alleged to have been committed by the appellant in its written statement filed before the Co-operative Arbitration Court and not even a scrap of paper was produced either before the Arbitration Court or the Appellate Tribunal to show that the appellant was found guilty of any misconduct during his service either as a Peon or as an Attender. That being the position, the contention now raised by the learned Standing Counsel for the respondent--Bank based on the misconduct alleged to have been committed by the appellant is only to be rejected and we do so.

In these circumstances, the judgment of the learned Single Judge is set aside and the finding of the Co-operative Arbitration Court in Exhibit P-3 order and that of the Kerala Co-operative Tribunal in Exhibit P-4 judgment are upheld. The Writ Appeal is allowed as above. No order as to costs.