
(2010) 01 KL CK 0121
In the High Court Of Kerala
Case No : W.A. No. 1461 of 2008

Kodakara Farmers Service Co-op. Bank Ltd.

APPELLANT

Vs

Neena

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 1 KLT 541

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; P.N. Mohanan and T.K. Vipindas, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Writ Appeal is filed by the Appellant-Bank challenging the judgment of the learned single Judge vacating the order of the Government in appeal, restoring the order of the Joint Registrar and directing the appellant to appoint the first respondent in the Writ Appeal as Junior Clerk pursuant to her inclusion in the select list prepared by the Appellant based on the examination conducted by the Co-operative Service Examination Board in the year 2003. We have heard Sri. George Poonthottam, counsel appearing for the Appellant-Bank and Sri. P.N. Mohanan, counsel appearing for the first respondent.

2. The Co-operative Service Examination Board constituted u/s 80B of the Kerala Co-operative Societies Act, conducted examination for selection of Junior Clerks for appointment to various Banks including that of the appellant. Pursuant to list of candidates prepared by the Examination Board, the appellant-Bank prepared merit list wherein the first respondent figured as rank No. 6. Even though six vacancies were notified for appointment as Junior Clerk, on account of appointment by rotation, the first respondent was not appointed in the first round. However, during the currency of the select list which was valid upto 10.11.2005, several vacancies arose for the post of Junior Clerk in the appellant-Bank. However, the Bank took the stand that vacancies arose during the currency

of the merit list prepared on 11.11.2003 cannot be filled up with candidates therein and according to appellant-Bank, once notified vacancies, namely, six, were filled up no more vacancy could be filled up from out of the list prepared, no matter the list was valid during the period the vacancies arose. The claim of the first respondent is that since vacancies arose during the currency of the select list wherein she is next to be appointed, she is eligible to be appointed. Since the Bank did not take any action, the first respondent approached this Court with a Writ Petition for direction to the Bank to consider her claim for appointment, and this Court vide judgment in W.P.(C) No. 31511 of 2005 dated 6.1.2006 directed the Joint Registrar to consider first respondent's claim. The Joint Registrar vide Ext.P2 order directed the appellant-Bank to appoint first respondent. Against this order, the appellant approached the Government with an appeal u/s 83(1)(j) of the Act and the Government vide Ext.P4 order cancelled the direction issued by the Joint Registrar against which the first respondent filed the W.P.C. This Court though did not go into the Rules governing the validity of the list of selected candidates, cancelled the order of the Government stating that Government has not assigned any tenable reason for interfering with Ext.P2 order of the Joint Registrar. It is against this judgment this appeal is filed by the Bank.

3. Counsel for the appellant has referred to various decisions of this Court and that of the Supreme Court and contended that there is no provision to appoint more than the notified vacancies from the list prepared. The decisions cited are two Division Bench decisions of this Court in *Raja Mohan v. State of Kerala* ILR 1997 Ker. 199, and *Nazer v. State* 1996 (1) KLT 321. Further counsel also relied on the decision of the Supreme Court in *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, for the proposition that notified vacancies only could be filled up from the list prepared. The further contention of counsel based on the decisions of the Supreme Court in *State of U.P. and Others Vs. Rajkumar Sharma and Others*, , *S. Renuka and Others Vs. State of Andhra Pradesh and Another*, and *State of U.P. and Another Vs. Om Prakash and Others*, is that even if there is failure on the part of the appellant in not filling up the vacancies from the select list, still neither the Joint Registrar nor this Court has power to direct the appointment of the first respondent from the select list. Counsel appearing for the first respondent has relied on Rule 182(4)(vii) and (viii) and the decision of Division Bench of this Court in *Suresh v. M.G. University* 2009 (1) KLT 950 for the proposition that any vacancy arising during the currency of the validity of the list should be filled up from such list.

4. After hearing both sides and after going through the relevant rules, we are of the view that the action of the appellant in not filling up the vacancies that arose during the validity of the list prepared pursuant to examination conducted by the Examination Board is not justified and Joint Registrar has rightly directed the appellant to appoint the first respondent, who was next in the list of selected candidates prepared by the appellant pursuant to examination conducted by the Board. Rules 182(4)(vii) and 182(4)(viii) which are relevant in this regard are

extracted hereunder for easy reference:

182. Classification u/s 80(1):- (1) For the purpose of Sub-section (1) of Section 80, the societies in the State shall be classified as shown in Appendix III:

...

(4) In respect of recruitment to societies covered by Section 80B of the Act, the following procedure shall be followed:

...

(vii) On the basis of the consolidated list so received from the Examination Board, the committee shall prepare the rank list of candidates and publish the same in the notice board of the society. The society shall send one copy of the rank list so published to the Examination Board also. The board shall examine the correctness of such rank list and report to the Registrar, the irregularities, if any. The list shall be valid for a period of two years from the date of publication of the same by the society.

(viii) All appointments to the vacancies shall be made by the committee from the select list so published within one month from the date of such publication and shall be reported to the Examination Board.

...

We find that Sub-clause (viii) of Rule 182(4) requires the Society to fill up notified vacancies within one month from the date of publication of the list of candidates prepared by it from out of the list received from the Examination Board. It is pertinent to note that under Sub-clause (vii) of Rule 182(4), the validity of the list is retained for a period of two years from the date of publication of the same prepared by the society. In our view, the very purpose of keeping the select list valid for two years prepared by the society based on examination conducted by the Examination Board is to enable the society to fill up the vacancies arising during the currency of the validity of the list from out of such list. If the contention of the appellant-Bank that only notified vacancies can be filled up from the list prepared is accepted, then we see no reason why the Rule provides for validity of the list valid for two years from the date of publication after its preparation by the society under the Rules. Retention of validity of list is only for the purpose of enabling the society to fill up vacancies arising during the period of two years during which period, the list is kept valid by operation of the Rule. If the appellant's argument is accepted, each time when vacancy arises after filling up the notified number of vacancies from the prepared list, examination has to be conducted by the Board immediately after one round of selection, as and when vacancy arises. Therefore the argument of counsel for the appellant is defective of the very purpose of Sub-clause (vii) of Rule 182(4) by which the validity of list is retained for two years. All the decisions cited are for period prior to the introduction of rules above referred which are the only relevant rules for making appointment to the notified

vacancies and vacancies arising during the currency of the validity of the list prepared by the Bank. We therefore uphold the judgment of the learned single Judge vacating the order in appeal passed by the Government and by upholding the direction issued by the Joint Registrar for first respondent's appointment.

5. We are unable to agree with the contention of appellant's counsel that the Joint Registrar has no authority to issue direction to the appellant to appoint first respondent from out of the list prepared. Besides the specific powers u/s 66, it is pertinent to note that the Act was amended in 2000 incorporating Section 66A giving general powers to the Registrar which is as follows:

66A. Powers of Registrar to give directions. -- Subject to the provisions contained in the Act and the Rules made thereunder the Registrar may issue general directions and guidelines to the Co-operative Societies in furtherance of the purposes of this Act.

We are of the view that the purpose of Section 66A is to give supervisory power to Registrar to ensure that societies are functioning in accordance with the provisions of the Act and Rules. In our view, the direction issued by the Joint Registrar to the appellant to appoint the first respondent from the select list is only to ensure that Co-operative Societies Rules are followed by the appellant in regard to filling up of vacancies of Junior Clerk. We therefore hold that Joint Registrar was within his powers to issue direction to the appellant to appoint first respondent from the list of selected candidates because the list was valid when the vacancy arose.

6. The next contention raised by the appellant that direction could not have been issued by the Joint Registrar after expiry of the list is also not tenable because since the Bank failed to fill up the vacancy that arose during the currency of the list, what the Joint Registrar did was to correct the Bank which failed in their duty in terms of the Rule. The eligibility of the first respondent for appointment is to be considered only when the vacancy arises and not when the matter was considered by the Joint Registrar pursuant to the direction issued by this Court. Therefore the delay in passing orders for the first respondent's appointment does not affect the validity of the order issued by the Joint Registrar. We therefore reject this contention as well.

Consequently Writ Appeal is dismissed. Since the matter is already delayed, there will be direction to the appellant to appoint the first respondent within two weeks from the date of production of a copy of this judgment.