

(2012) 04 SC CK 0077
In the Supreme Court Of India
Case No : C.A. No. 3981 of 2012

Kodakara Farmers Service Co-operative Bank Ltd.	APPELLANT
Vs	
Neena	RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Citation : (2013) 1 KLJ 604 : (2013) 1 KLT 344

Hon'ble Judges : K.S. Panicker Radhakrishnan, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Leave granted.

1. This appeal has been preferred by the Kodakara Farmers Service Co-operative Bank Limited (for short, 'the Bank') challenging the judgment of the Kerala High Court dated 25.1.2010 directing the Bank to give appointment to the First Respondent. The First Respondent had earlier approached Registrar Co-operative Society seeking a direction to the Bank to appoint her in the post of Junior Clerk. Joint Registrar, Co-operative Societies vide order dated 1.4.2006 passed the following order:

If the ratio of the 10 junior/senior posts in Kodakara Farmers Service Co-operative Bank R 761 is maintained as 1:1 as approved and promotions made accordingly, the complainant Smt. K.K. Neena, Rank No. 6 in the list, could have been appointed in the resultant vacancy before the rank list 3 expired on 10.11.05. On that basis the Managing Committee of the Bank is hereby directed to make promotions to the posts of senior clerks and appoint Smt. K.K. Neena in the resultant vacancy of junior clerk. The direction of the Hon'ble Court is accordingly complied with.

Aggrieved by the order of the Joint Registrar, Co-operative Societies, the Bank approached the State Government by way of an appeal. The Government elaborately considered the contention of the Bank as well as the Respondent-

candidate and came to the following conclusion:

On examination of the case it is seen that as per rules, even if the society framed feeder category rules and got it approved from the Joint Registrar, there is absolutely no rule or law compelling the Board of Directors of the society to make appointments or promotion even in respect of any post that had been prescribed in the feeder category rule. Even if posts are permanent, it is not obligatory for the Board of Directors of a society to fill up all posts; It is an absolute prerogative right of the Board of Directors not to fill up any particular post even though the feeder category rules had sanctioned the post and enable the Board of Directors to effect appointment to the post, but they cannot be compelled to do so under any of the provisions of the Act or Rules.

In the above circumstances, the direction of the Joint Registrar of Co-operative Societies (General), Thissur issued in the order No. C.R.P. 6003/05 dated 1.4.2006 is not in order and hence the same is set aside. The appeal petition is therefore allowed.

2. The Government, therefore, set aside the direction of the Joint Registrar, Co-operative Societies for appointing the First Respondent as Junior Clerk in the Bank. Aggrieved by the order of the State Government the First Respondent approached the Kerala High Court and filed Writ Petition (C) No. 14072 of 2007. The learned Single Judge of the Kerala High Court vide judgment dated 25.6.2008 set aside the Government order and upheld the order of the Joint Registrar, Co-operative Societies. Aggrieved by the order of the Learned Single Judge, the Bank approached the Division Bench of the Kerala High Court by way of a Writ Appeal No. 1461 of 2008, which was dismissed on 25th January, 2010*. Aggrieved by the same this appeal was preferred. Heard learned Counsel on the either side. Facts clearly indicate that the Bank had published a rank list dated 11.11.2003, in which the First Respondent figured at Rank No. 6. Six vacancies were notified by the Bank and all those six vacancies were filled up (five vacancies for General Category and one for Scheduled Caste). Learned Counsel for the First Respondent fairly stated that no junior to her in the rank list was appointed in the Bank as Junior Clerk. Learned Counsel appearing for the Bank on the other hand stated that due to computerization there was no dearth of staff in the Bank and financial constraints also deter the Bank in making further appointments. The Government, in our opinion, has clearly held that a Corporate Bank cannot be compelled to fill up the posts even if posts are permanent. There is nothing to show that the Bank has acted arbitrarily in not filling up the posts. On the other hand, as per the select list, six candidates were already appointed. That being the factual and legal position, we are of the view that the High Court was not justified in upsetting the order passed by the Government. The appeal is, accordingly, allowed and the order of the learned Single Judge as well as of the Division Bench are set aside, with no order as to costs.

*Ed. Note: See Kodakara Farmers Service Co-op. Bank Ltd. Vs. Neena,