
(2003) 05 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 29665 of 2002-F

K.P. Pauly

APPELLANT

Vs

Trichur Dist. Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 185(8)

Citation : (2003) 2 KLJ 443 : (2003) 2 KLT 871

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : P.K. Behanan and Stephen Mathew, for the Appellant; M.A. Fayaz (GP), C.K. Radhakrishnan and Sarvothaman, for the Respondent

Final Decision : Dismissed

Judgement

R. Rajendra Babu, J.—K.P. Pauly who was presently working as Executive Officer/ Senior Manager of the Head Office, Trichur District co-operative Bank, Thrissur, filed this O.P. mainly for quashing Ext. P6 order passed by the 2nd respondent, the Registrar of Co-operative Societies rescinding the resolution of the 1st respondent, Trichur District Co-operative Bank, granting exemption to the petitioner from the minimum educational qualification for the promotion to the post of Executive Officer and also to quash Rules 185 and 186 of the Kerala Co-operative Societies Rules prescribing new qualifications. The petitioner entered in the service of the 1st respondent as a Clerk on 7.10.1977. He was an undergraduate, but had completed the B.Sc. Course and passed Junior Diploma in Co-operation, He was promoted as Senior Accountant and later as Branch Manager. At the time of promoting him as the Branch Manager, the 1st respondent had resolved for granting exemption from the educational qualification and the 2nd respondent granted exemption by Ext. P1 order dt. 21.2.1998. Later the 1st respondent promoted the petitioner as Executive Officer as per Ext. P2 order dt. 21.8.2001. But by Ext. P6 order 2nd respondent rescinded the above resolution. The above order is under challenge. Heard the

learned counsel for the petitioner, respondents 4 to 10 and the learned Govt. pleader.

2. The question for consideration was whether the 1st respondent had authority to grant exemption from educational qualification to the petitioner who was appointed subsequent to the coming into force of the Co-operative Societies Rules (for short, the Rules).

3. Admittedly the petitioner had joined the service of the 1st respondent on 7.10.1977. Rule 185 of the Rules deals with the promotions of the employees of the societies. Relaxation from the educational qualification is dealt with in sub-rule (8) of Rule 185. It reads:

It shall be competent for the committee of a society to relax the qualification, other than pass in the competitive examination, specified in sub-rule (5), of an employee, for the purpose of promotion, appointed before the commencement of these rules, in deserving cases, with the prior approval of the Registrar, and for reasons to be recorded.

The above rule would indicate that the society can relax educational qualification for the purpose of promotion only in respect of those persons who had appointed before the commencement of these Rules. A Division Bench of this Court while considering a somewhat identical matter in W.A. 141/02 held that the above rules had come into effect from 1.1.1974. The relevant portion of the judgment reads:

In the ordinary course ""these rules" can only mean the Kerala Co-operative Societies Rules which came into force in 1969. However, considering that Chapter 15 containing Rule 185 was introduced in the Kerala Co-operative Societies Rules only with effect from 1.1.1974, even if it is assumed that "these rules" mean the rules contained in Chapter 15, the appellant was appointed only after the commencement of the Rules, i.e. after 1.1.1974.

Thus sub-sec.(8) would apply only to the employees who had been appointed prior to 1.1.1974. Rule 185 had been amended periodically and the latest amendment had come into effect as per SRO 369/99 published in the gazette dated 28.4.1999. Prior to the above amendment the society had the right to relax the educational qualification in respect of all employees irrespective of the date of appointment. The relevant provisions was in sub-rule(4) of Rule 185 the earlier Rule. It reads as follows:

It shall be competent for the committee of a society to relax the qualifications other than the competitive examination specified in sub-rule (3) of an employee for the purpose of promotion, in deserving cases, whether appointed before or after the commencement of these rules, with prior approval of the Registrar and for reasons to be recorded.

The above provision "whether appointed before or after the commencement of these rules" empowered the society to relax the educational qualification even in

respect of appointments made subsequent to 1.1.1974. By amending Rule 185 as per SRO 369/ 99 which has come into effect from 28.4.1999, the right of the society to relax educational qualification for further promotions in respect of appointments made subsequent to 1.1.1974 had been taken away and the right was limited only to those persons who had been appointed prior to 1.1.1974. Thus the society, in fact, had lost the right to relax the educational qualification in respect of persons appointed subsequent to 1.1.1974. As the petitioner was appointed only in 1977, the society had no right for exempting the petitioner from the educational qualification for further promotions.

4. Rule 185(1) says that subject to the provisions of sub-rule 2,3 and 4 appointments to the categories of posts in a society other than those mentioned in sub-rule 2, 3 and 4 shall be made by promotion on the basis of seniority in the feeder category. Sub-rule (2) says that substantive vacancies in the following posts shall be filled up by promotion and direct recruitment in the ratio of 3:1 namely:-

- (i) Accounts Officer in the Kerala State Co-operative Bank Ltd.;
- (ii) Branch Manager and equivalent posts in the District Co-operative Banks;
- (iii) Deputy Manager in the Kerala State Co-operative Agricultural and Rural Development Bank;
- (iv) Assistant Secretary/Manager and equivalent posts in Primary Co-operative Societies and Urban Banks having a deposit of more than 10 crores:

Provided that at no point of time the number of direct recruits shall exceed twenty five per cent of the total strength at the respective posts mentioned above.

Sub-rule (3) says that substantive vacancies in the following posts shall be filled up by promotion and direct recruitment in the ratio 1:1 namely:-

- (ii) Deputy General Manager in the Kerala State Co-operative Bank and in the District Co-operative Banks:
- (ii) Administrative Officer and Regional Manager and equivalent posts in Kerala State Co-operative Agricultural and Rural Development Bank Ltd.

Sub-rule (4) says that substantive vacancies in the following posts shall be filled up only by direct recruitment-

- (i) General Manager in the Kerala State Co-operative Bank and in the District Co-operative Banks:
- (ii) Secretary in the Kerala State Co-operative Agricultural and Rural Development Bank.

Sub-rule (5) Stipulate that the selection of candidates to the posts to be filled up by promotion under sub-rule (2) shall be made from the feeder category in

accordance with merit and ability to be assessed through a competitive examination. But the last proviso to sub-rule (5) says:

Provided also that appointment to 10% of vacancies to be filled up by promotion under sub-rule (2) shall be made in accordance with seniority in the feeder category from among those who have attained the age of 52 years, without insisting on merit and ability to be assessed through competitive examination.

Branch Manager and equivalent posts in the District Co-operative Banks come within category (ii) of sub-rule (2) and the promotion to the post of Branch Manager of the District Co-operative Banks should have been procedure contemplated under sub-rule (5)

under sub-rule (5). Sub-rule (6) deals with the further promotions which reads:

Selection of candidates to the posts to be filled up by promotion under sub-rule (3) and to all the higher posts, if any, in between to the posts mentioned under sub-rule (2) and sub-rule (3) shall be made from among those who have passed the qualifying examination in accordance with the seniority in the feeder category.

Sub-rule (6) would indicate that further promotions from the posts of Branch Manager also should be on the basis of a qualifying examination in accordance with the seniority in the feeder category. Sub-rule (7) says that the examination mentioned in sub-rule (5) and (6) shall be conducted by an authority appointed by the Government for the above purpose. Thus in fact the appointment to the post of Branch Manager of a District Cooperative Bank should be following the procedure under sub-rule (5) by conducting a competitive test. The further promotions are to be made on the basis of a qualifying examination to be conducted by the same authority appointed by the Government. But the operation of the above provisions has been stayed by this court in a number of original petitions filed by different employees and as such the competitive and qualifying examinations could not be conducted by the societies. The above provisions had come into effect from 28.4.1999 and the promotions made prior to the above date were in accordance with the rules prior to the above amendment and as such the promotion granted to the petitioner by Ext. P1 order was in accordance with the rules. But the subsequent appointments by promotion to the post of Branch Manager can only be in accordance with the procedure contemplated under sub-rules (5) and (6). As the right of the society for granting exemption from educational qualification to further promotions in respect of employees appointed subsequent to 1.1.1974 had been taken away by the amendment to Rule 185(8), the further promotion granted to the petitioner by Ext. P2 order cannot be said to be proper or in accordance with the Rules. As the society did not have the authority to grant exemption to the employees who were appointed subsequent to 1.1.1974, the above resolution taken by the society was not in accordance with the rules and as such the same was liable to be rescinded.

5. The eligibility of the petitioner for promotion to the post has to be decided on

the basis of the rule prevailing at the time of promotion. A Division Bench of this Court in Rajappan, M.M. Vs. Idukki District Co-operative Bank Ltd. and Others

held:

Service conditions are liable to alteration by subsequent changes and may be introduced by rules except to the extent of protecting promotions that have already been earned under the previous rules. On amendment, the revised rules would govern the future promotions of all persons in the concerned service. Right to promotion is a condition of service, which means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it. We are of the view it is fully within the competence of the rule making authority to decide as a matter of policy the sources from which the requirement of manning a particular post be drawn up. The General Manager of a District Co-operative Bank, in the instant case is one of such posts.

At the time of the promotion of the petitioner to the post of Executive Officer, the society was not having the right to relax the educational qualification in respect of an employee who got appointment after 1.1.1974 and as such the decision of the society was liable to be rescinded and I find no reasons for interfering with Ext. P6 order passed by the Registrar. Though a prayer was made in the O.P. for quashing Rules 185 and 186 of the Rules, no tenable grounds had been alleged in the petition. The above cited decisions would clearly indicate that the service conditions are liable to alteration by subsequent changes for improving the efficiency of the service and also for regulating the conditions of service. Prescribing minimum educational qualification for a particular post cannot be said to be arbitrary or against public policy. For avoiding arbitrary appointments and for providing efficient and competent person, it is necessary to prescribe educational qualification. When educational qualifications are prescribed, that can be relaxed only if the rules permit. Rule 185(8) prescribes when the educational qualifications also can be relaxed. Only in such cases, relaxation of educational qualification can be made. As the rules do not permit the relaxation of educational qualifications in respect of an employee appointed subsequent to 1.1.1974. Ext. P2 order was not in accordance with law and it was liable to be rescinded and as such Ext. P6 order passed by the Registrar was not liable to be interfered.

In the result this O.P. is dismissed.