
(2014) 09 KL CK 0153
In the High Court Of Kerala
Case No : W.P. (C). No. 21607 of 2009 (U)

K.P.M. Pushpaja	Vs	APPELLANT
The State of Kerala		RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0153

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Santheep Ankarath and T.P. Ramachandran (Thacheth), Advocate for the Appellant; R. Ranjith, Government Pleader and Surin George Ipe, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is challenging Exhibits P2 and P3 order, which declined exemption of educational qualification.

2. The petitioner, admittedly, was appointed as an Attender on 28.06.1982. The petitioner had only the qualification of S.S.L.C. Though the petitioner had undergone the course of Junior Diploma in Co-operation [JDC], the petitioner had not qualified in the same. Despite the petitioner having no such qualification, it is stated that the petitioner was promoted to the post of Junior Cashier with effect from 01.12.1995 by an order, seen at Exhibit P1. Admittedly the said promotion was not permissible by the Rules, since the petitioner does not have the requisite qualification of JDC, which only would entitle the petitioner to hold the post of Junior Cashier. The petitioner was continued in the post of Junior Cashier on the ground that the Bank had applied for an exemption from qualification.

3. Subsequently, by Exhibit P2 order dated 04.06.2009, the petitioner was reverted back to the post of Attender with effect from 01.04.2009 on the ground that the request for exemption from qualification was rejected by the Government. Such rejection was made by Exhibit P3.

4. The petitioner's contention is that exemption sought for by the Managing

Committee by a valid resolution cannot be rejected by the Registrar. The petitioner also relies on the decisions reported in K.K. Dasan Vs. Registrar of Co-operative Societies and Another and C.K. Narayanan Vs. The Mathil Service Co-Op. Bank Ltd., .

5. It is to be specifically noticed that both the above decisions are instances where a resolution was passed under Rule 185(8)(b) of the Kerala Co-operative Societies Rules, 1969. Sub-clause (b) of sub-rule (8) provides for the method to be adopted when considering exemption from essential qualification, wherein the essential qualification prescribed is graduation and above. In such circumstance, while considering the same, the person who is sought to be exempted from the essential qualification of graduation and above, should have passed JDC, should have minimum service of five years in the feeder category and should not be less than forty-five years of age. In the context of such a case; if a resolution is passed by the Managing Committee of the Society, going by Rule 185(8) (b), the Registrar cannot tinker with it.

6. In the present case, the petitioner does not seek promotion to a post for which the essential qualification is graduation or above. She is in the sub-staff category and claims promotion to the clerical category. What would be applicable to employees under sub-staff category is sub-clause (c) of sub-rule (8) of Rule 185, wherein it is specifically prescribed so:

185(8)(c) "Employees of the sub-staff category shall not be exempted in any case from Co-operative training qualification for promotion to the clerical category".

Hence, there is no question of exemption to the petitioner, even if applied for under Rule 181 of the Rules. Rule 185(8)(c) extracted above specifically prohibits exemption of Co-operative training qualification for promotion to the clerical category. Hence, the aforesaid decisions would not be applicable in the case of the petitioner.

7. The petitioner also has a contention with respect to the classification of the society and qualification of employees as clarified by the Government in Circular No. 54/82 dated 26.11.1982. The Circular specifically deals with situations where there is a classification change as prescribed by the Government and indicates that if the employee had been appointed as per the qualification prescribed in the Rules, as available in Rule 186 at that point of time, despite the classification change the appointment shall be continued. Only a classification change would attract the provisions in the Circular cited. The above Circular only took note of the employees who were appointed or promoted prior to its issuance. Herein there is a prayer for promotion subsequent to that, only on the contention that the petitioner was appointed as an Attender before the Circular came into force. This cannot be sustained, by any stretch of imagination.

8. The next contention of the petitioner is that the order has been passed without notice to the petitioner. He also relies on the decision in Sathyan A.V. Vs.

Govt. of Kerala and Another, , wherein a learned Single Judge held that, reasons are to be stated while declining exemption from possessing qualifications. As was noticed above, the present case is not one where exemption under Rule 185(8) (b) is attracted; but, there is a clear prohibition under sub-clause (c) of sub-rule (8) of Rule 185. In such circumstance, what has been stated in Exhibits P3 and P4 would suffice.

9. The petitioner's contention for payment of the salary of Cashier, during the period in which she discharged duties, also, cannot be countenanced, since the promotion was irregular and clearly contrary to the statutory rules.

In the light of the aforesaid findings, the petitioner has absolutely no sustainable case and the writ petition would stand dismissed. Parties are left to suffer their respective costs.