(2003) 12 KL CK 0021

In the High Court Of Kerala

Case No : O.P. No. 1423 of 1998

Kuttipuram Service Co-op. Bank APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Citation : (2004) 2 KLT 73

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : P.K. Kumar, for the Appellant; M.A. Thomaskutty, Government Pleader, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The petitioner is a Co-operative Bank. It granted exemption from the prescribed qualifications to two employees working as Peons for promotion to the post of Junior Clerk. The resolution taken in this regard was forwarded to the 3rd respondent for approval. That was rejected by Ext.P1 order. The matter was carried in appeal and the Government, by Ext.P2 order, dismissed the appeal. The order of the Joint Registrar was upheld by the Government, relying on Ext.P3 G.O. It is an order issued on 23.3.1989, prescribing the conditions, subject to which exemption from the prescribed qualifications to the employees of Co-operative Societies under Rule 185 of the Rules " will be granted. Based on Ext.P2 decision of the Government in appeal, the Joint Registrar issued Ext.P6 order dated 12.11.1997, directing the Bank to revert those two employees within two weeks. In the said order, there was also a direction to show cause, why action should not be taken against the Bank for suppressing the fact that those two employees were already promoted regularly.

2. Exts.P1 to P3 and P6 are challenged in this Original Petition. According to the petitioner, Rule 185(2) empowers the Bank to decide on the question of exemption from qualification. The Government is not competent to issue any order in the nature of Ext.P3 fettering the discretion of the Bank conferred by the provisions of the statutory Rules.

3. I heard the learned Government Pleader appearing for the respondents also. The learned Government Pleader submitted that Ext.P3 has been, issued in the light of the recommendations of the Sub-committee of the Legislative Assembly.

4. A Division Bench of this Court, in Trivandrum District Co-operative Bank Ltd. v. State of Kerala 1992 (1) KLT 381 held that the Government have no power to interfere with the administration of a Co-operative Society. Only the Registrar can issue directions to Co-operative Societies.

5. The grant of exemption from the prescribed qualification is governed by Rule 185. The Government cannot issue a circular in the nature of Ext.P3, prescribing how the power under Rule 185 should be exercised. None of the statutory provisions also enable the Government to issue such a direction. Therefore Ext.P5 cannot be relied on to reject the application submitted by the petitioner Bank to grant exemption from the operation of the Rules regarding qualification to the concerned employees. The Bank is authorised to take the decision and the Joint Registrar is authorised to grant approval to the said decision. These authorities are entitled to exercise these powers uninfluenced by any direction issued by the Government. Of course, the Government can amend the Rules, providing guidelines for grant of exemption.

6. Ext.P1 order is a non-speaking order, which does not give any reason for the rejection of the motion made by the Bank. Accordingly, Ext. P1 is quashed. Ext.P2 order has been passed by the Government, relying on Ext.P5 order. The Government cannot fetter its own discretion by norms fixed in advance. The power to grant exemption or the power to hear an appeal from an order declining the exemption has to be exercised, having regard to the facts of each individual case. In other words, the Government cannot fetter its own discretion or that of the lower authorities, by notifying certain guidelines in advance. A Full Bench of this Court, in Kesavan Bhaskaran Vs. State of Kerala, , has held that the Director cannot fix the norms in advance and deny discretion to himself in a particular matter. The relevant Rule provided that no Secondary School Leaving Certificate will be granted to any person, unless he completes fifteen years of age. The Director was, however, empowered to grant exemption from this Rule in deserving cases. But, the Director has made it an invariable Rule, not to grant exemption unless the deficiency in age was less than two years. This Court held that the said policy of the Director is contrary to law. The said principle will apply here. Accordingly, Exts. P1, P2 and P6 are quashed. The matter is remitted to the 3rd respondent for a fresh decision in accordance with law in the light of the observations contained hereinabove, uninfluenced by the directions contained in Ext.P3. The Original Petition is disposed of as above.