
(2016) 06 KL CK 0005

In the High Court Of Kerala

Case No : W.P. (C) . No. 8698 of 2013 (J)

Malappuram Spinning Mills Employees Union

APPELLANT

Vs

The Malappuram Co-Operative Spinning Mills Ltd.

RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Citation : (2016) 3 KHC 852 : (2016) 3 KLT 29 : (2016) LIC 4141

Hon'ble Judges : Shaji P. Chaly, J.

Bench : Single Bench

Advocate : P.V. Baby and A.N. Santhosh, Advocates, for the Appellant; K. Anand, Senior Advocate and Smt. Latha Krishnan, Advocate, T.R. Rajesh, Govt. Pleader, M.P. Ashok Kumar, Smt. Bindu Sreedhar and Smt. R.S. Manjula, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.—This writ petition is filed by the petitioners seeking to quash Exts.P1 and P2 and thereby set aside the promotion given to 3rd and 4th respondents by the 1st respondent, since the promotions were effected violative of Ext.P3 memorandum of settlement and Exts.P4 rules and P5 qualifications prescribed as per the settlement.

2. Material facts for the disposal of the writ petition are thus:

3. The 1st respondent is a Spinning Mill working in the Co-operative sector under the Registrar of Co-operative Societies. 1st and 2nd petitioners are the approved recognised unions in the 1st respondent establishment and the 3rd petitioner is working as Assistant Executive (Accounts) in the 1st respondent establishment. The 3rd and 4th respondents were working as Junior Assistant and Senior Assistant (Raw Materials) and has been promoted as Assistant (Raw Materials and General) and Executive Officer (Accounts) respectively, as per the orders of the 1st respondent dated 09.03.2013, evident from Exts.P1 and P2.

4. In the 1st respondent establishment, a memorandum of settlement dated

13.06.2011 is in existence, which was drawn after discussions and negotiations between the Management representatives and various unions with the juncture of the 2nd respondent District Labour Officer, evident from Ext.P3 memorandum of settlement. As per Ext.P3 settlement, promotion to higher grade can be made subject to availability of vacancy, qualifications, efficiency, suitability and seniority of the person for the higher post. As per Ext.P3, non-graduates working in the same department will be considered for promotion, provided they have got five years additional experience than prescribed for graduates.

5. Thereupon, Special Rules have been formulated and the same has been approved by the Director of Handlooms and Textiles, is the contention put forth by the petitioners. The said Special Rules prevailing in the 1st respondent establishment is produced as Ext.P4. By issuing Ext.P5, the method of recruitment and the qualifications and experience for appointment by direct recruitment and by promotion is formulated. As per Ext.P5, the 3rd and 4th respondents are not eligible for promotion to the posts to which they are promoted as per Exts.P1 and P2 for want of qualification and experience. A chart showing the educational qualification of the 3rd and 4th respondents along with administrative staff of the employees of the 1st respondent is produced as Ext.P6. As per Ext.P6, the 3rd respondent is having only S.S.L.C qualification and the 4th respondent is having Xth Standard "O" level qualification. As per Ext.P5, the method of appointment to the post of Assistant (Raw Material and General) is by promotion from the feeder category of Junior Assistant and in the absence of qualified candidates by direct recruitment. The qualification prescribed for promotion to the post of Assistant (Raw Material and General) is 8th standard with 15 years experience in feeder category. But however, the 3rd respondent is having only one year experience in the feeder category of Junior Assistant. Hence, he is not eligible to be promoted to the post of Assistant (Raw Material and General).

6. Similarly, the 4th respondent who was promoted as per Ext.P2 has already been promoted without sufficient qualification and experience. The qualification prescribed in Ext.P5 for promotion to the post of Executive Assistant (Accounts) is three years experience in the feeder category; whereas for direct recruitment, the qualification prescribed is Commerce graduation with 5 years experience in Accounts, preferably in Textile Industry. Therefore, going by Exts.P3 and P5, the promotion given to the 3rd and 4th respondents are illegal.

7. Circumstances being so, petitioners have submitted various representations before the 1st and 2nd respondents, to which, replies were given as per Exts.P7 to P9, basically stating that no promotion is grant to 3rd and 4th respondents, but the same is only re-deployment. Anyhow, after issuance of Exts.P1 and P2, petitioners 1 and 2 and employees of the 1st respondent establishment have submitted representations complaining that Exts.P1 and P2 were issued and 3rd and 4th respondents were promoted absolutely in violation of Ext.P3 settlement. That apart, it is contended by the petitioners that no action was initiated by the

respondents in order to cancel Exts.P1 and P2, which necessitated the petitioners to approach this Court by filing this writ petition.

8. 1st respondent has filed a counter affidavit refuting the allegations, contentions and claims and demands made by the petitioners in the writ petition. That apart, it is contended that the claim made by the petitioners is with respect to a settlement arrived by the unions and the Management under the Industrial Disputes Act, and there is an effective alternative remedy available to the petitioners under the Industrial Disputes Act, and therefore the writ petition is not maintainable. It is also contended that the petitioners have no locus standi to challenge the promotions. That apart, it is the contention of the 1st respondent that, 3rd petitioner is senior to respondents 4 and 5 in service and in designation and the seniority of the 3rd petitioner is not affected by granting promotion to respondents 3 and 4. Thereby it is contended that, under the service jurisprudence, a person aggrieved alone can challenge the action of the employer in the matter of appointment, promotion etc. Therefore, the predominant contention is that the petitioners are not aggrieved by Exts.P1 and P2 and therefore the cause espoused by the petitioners has the characteristic of a Public Interest Litigation, which is also not maintainable in service jurisprudence.

9. That apart, it is contended by the 1st respondent that as per the agreement entered into by and between the Management and Trade Unions, a staff strength at 15 is maintained. At the time of settlement, there were 4 excess staff and it was specified in the settlement itself that they will continue and no further recruitment from outside will be taken unless and until the strength falls below 15. It is also the contention of the 1st respondent that the 3rd and 4th respondents were working as Junior Assistant and Senior Assistant respectively from 2011 onwards. Due to long leave, deputation, dismissal and retirement, the staff strength was reduced to 15. Though there are seniors in the category of Junior Assistant, they had no claim for any further promotion as they were not interested. Thus, there are no claimants from any Junior Assistants for further promotions. Likewise, it is contended that, 4th respondent was promoted as Executive Assistant and 3rd respondent has been promoted as Assistant (Raw Material and General). The post of Executive Assistant in the accounts department is known as cashier and since the 4th respondent has been looking after the cash in the accounts department, it was highly necessary and urgent that there shall be a full time cashier to look after the cash transactions and also allied matters, such as VAT and other statutory requirements.

10. In view of the exigencies of work that was undertaken by the 1st respondent, the post of Assistant (Raw Material and General) was also very important as far as the 1st respondent is concerned, likewise, it is contended that to the post of 3rd respondent also, there is no rival claimant. It is also contended that, since the staff strength is fixed at 15, there cannot be any recruitment from outside also. Therefore, in order to cope up with the exigencies of administration, the possible way was to regularize those persons who were working in the respective

sections. It is also the contention of the 1st respondent that no prejudice is caused to anybody consequent on the appointment of respondents 3 and 4. That apart, a material contention is raised by the 1st respondent that, Ext.P4 rules have not so far been approved by the Registrar, which is a mandatory requirement according to the 1st respondent, and therefore Ext.P5 has not come into effect. In such circumstances, it is contended that the petitioners are not entitled to act upon Ext.P5 Rules and to attack Exts.P1 and P2 orders of appointment. Therefore, the 1st respondent sought for dismissal of the writ petition.

11. Respondents 3 and 4 also have filed a common counter affidavit refuting the allegations and statements made in the writ petition and canvassed similar proposition canvassed by the 1st respondent. Petitioners have filed a reply affidavit reiterating the contentions and also producing certain additional documents to substantiate the contentions put forth by the petitioners. Petitioners have also produced certain additional documents subsequent to the filing of the writ petition in order to prove that there was undertaking from the side of the Textile Directorate as well as other authorities that no appointment will be made in violation of the settlement entered into and the Rules framed thereunder.

12. Heard learned counsel for the petitioner and the respective counsel appearing for the respondents and the learned Government Pleader also.

13. The main contention advanced by learned counsel for the petitioner is that, Ext.P3 settlement entered into by and between the Unions and the 1st respondent establishment and countersigned by the 2nd respondent, District Labour Officer, is binding on the employees of the entire establishment. That apart, learned counsel has argued that the Rules and qualifications prescribed as per Exts.P4 and P5 are based on Ext.P3 settlement, and therefore the stipulations contained under the Rules and qualifications prescribed are binding on the 1st respondent while making appointments and promotions. By contending so, learned counsel has pointed out that the appointments of 3rd and 4th respondents are in violation of Exts.P4 and P5, since the said respondents did not have sufficient qualification as prescribed under Exts.P4 and P5. It is in this context, learned counsel has contended that Exts.P1 and P2 orders issued by the 1st respondent is in absolute violation of the Special Rules made in accordance with Ext.P3 settlement.

14. On the other hand, learned counsel for the 1st respondent submitted that petitioners have no manner of locus standi to file the writ petition. Learned counsel has reiterated the contentions raised in the counter affidavit that in service jurisprudence, third persons have no manner of role in the matter of appointment and promotion. That apart, it is also contended by the learned counsel that there is no claimant against the appointments made in favour of 3rd and 4th respondents. The 3rd petitioner even though is an employee of the 1st respondent, he is occupying a higher post and therefore he is not affected or

aggrieved consequent to the appointment of the 3rd and 4th respondents. Learned counsel for respondents 3 and 4 contended that, 3rd petitioner is not a claimant to the post to which respondents 3 and 4 are appointed. Moreover, the locus standi principle canvassed by the 1st respondent is reiterated by learned counsel in a more elaborative manner, apart from contending that, if at all the petitioners had any claim, they ought to have resorted to Sec.69 of the Kerala Co-operative Societies Act and the allied Rules.

15. Learned counsel for 3rd and 4th respondents has invited my attention to the judgments of the Apex Court in "Hari Bansh Lal v. Sahodar Prasad Mahto and others" [(2010) 9 SCC 655] and "Girjesh Shrivastava and others v. State of Madhya Pradesh and others" [(2010) 10 SCC 707], to canvass the proposition that no third party can interfere with respect to an appointment or promotion made in an establishment. Learned counsel has taken me through various paragraphs of the said judgments. So also, the said judgments are relied on by the learned counsel in order to establish that no Public Interest Litigation can be resorted to in service jurisprudence except seeking a writ of quo warranto. In paragraph 12 of "Harish Bansh Lal" (supra), it is held as follows:

"12. We have already pointed out that the person who approached the High Court by way of a public interest litigation is not a competitor or eligible to be considered as a member or Chairman of the Board but according to him, he is a Vidyut Shramik leader. Either before the High Court or in this Court, he has not placed any material or highlighted in what way he is suitable and eligible for that post."

16. Relying on the said judgment, a further contention is advanced by learned counsel that, in the absence of violation of any statutory Rules, they cannot go into the suitability or otherwise of a candidate for a particular appointment, because choosing a suitable candidate is an administrative function.

17. I have considered the rival submissions put forth by respective counsel, perused the pleadings and the entire records. Taking into account the arguments put forth based on the respective pleadings, I am of the considered opinion that, the primary question to be considered in this writ petition is with respect to the locus standi of the petitioners to file this writ petition, challenging Exts.P1 and P2 orders. So far as petitioners 1 and 2 are concerned, they cannot be termed as aggrieved persons affected by Exts.P1 and P2 appointment orders. Petitioners 1 and 2 are not having a case that any of the members of the said Union have raised claims for appointment/promotion against the appointment of respondents 3 and 4. So far as the 3rd petitioner is concerned, 3rd petitioner is already occupying a higher post and he has no manner of claim against respondents 3 and 4 or the 3rd petitioner is affected by Exts.P1 and P2 orders. Matters being so, the petitioners did not have locus standi or power or authority to file a writ petition before this Court contending that they are affected by Exts.P1 and P2 orders passed by the 1st respondent. That apart, it is well-settled proposition of law in service jurisprudence that a third party cannot interfere with any orders of

appointment or promotion issued by an authority.

18. However, if any appointment or promotion is made violative of any statutory provisions or by practising fraud or in gross violation of the Constitutional guarantees, there may be circumstances enabling a third person for invoking the jurisdiction of a writ court under exceptional circumstances. But however, in this case, violation alleged by the petitioners is not at all statutory in nature. The contention of the petitioners is that the appointments of respondents 3 and 4 are made in violation of a Special Rule constituted and the qualification prescribed as per Ext.P3 settlement arrived at by the Unions and the Management of the 1st respondent establishment. Therefore, it can be seen that, not only that any statutory law or Rule is violated, and if at all there is any violation, the same is with respect to Ext.P3 settlement arrived at by and between the 1st respondent and the Unions. Therefore, the remedy available in such circumstances, especially due to the fact that, Ext.P3 settlement is countersigned by the 2nd respondent, Labour Officer, is under the Industrial Disputes Act by invoking Sec.17(3) of the said Act. Petitioners have not chosen to make any recourse to such a remedy available to them. Moreover, it is a very settled principle in law that a Public Interest Litigation in a service jurisprudence is not possible. A reference to the decisions *supra* will establish that such a course of action by any third person is interdicted by the Apex court. Therefore, *prima facie*, I am satisfied that petitioners have no manner of locus standi to challenge Exts.P1 and P2 orders. That apart, if at all the petitioners had any remedy, the same was under the Industrial Disputes Act, since the allegation is that the appointments are made in violation of Ext.P3 settlement arrived at the instance of the 2nd respondent, Labour Officer.

19. Moreover, petitioners have sought a writ against a Co-operative Society for violation of the settlement conditions. The Co-operative Society in that view of the matter did not exercise any statutory function under the Co-operative Societies Act or Rules. There is no case for the petitioners that the appointments are made by the 1st respondent in violation of any statutory provisions of law. That is also a contributory factor to non-suit the petitioners from challenging Exts.P1 and P2 orders passed by the 1st respondent. That apart, I find force in the contention of the learned counsel for the respondents that if at all the petitioners were aggrieved, they could have resorted to the provisions of the Kerala Cooperative Societies Act, especially, Sec.69, by which the petitioners may have been treated as aggrieved persons.

20. I also find that, even though the petitioners have a contention that Ext.P4 is approved by the Director of Handlooms and Textiles, the same was stoutly denied by the 1st respondent, and therefore a duty was cast upon the petitioners to substantiate before this Court that Ext.P4 Rule was an approved one. No such endeavour was made by the petitioners, and therefore it can only be presumed that even though a rule was formulated, the same was not approved by any competent authority under the Co-operative Societies Act, enabling the

petitioners to drive home the contentions advanced by them. Therefore, the said contention advanced by the petitioners also cannot be sustained under law. That apart, it is contended by learned counsel for 3rd and 4th respondents that the 4th respondent retired from service on 31.10.2015. Petitioners were also not able to, even prima facie establish, that any of the respondents have indulged in fraudulent practise, committed gross injustice or patently violated any fundamental guarantees extended under the Constitution of India by issuing the orders impugned so as to maintain a writ petition before this Court. The cumulative circumstances discussed above lead me to the conclusion that, the petitioners have failed to establish that they are entitled to succeed by resorting to the writ jurisdiction conferred on this Court under Article 226 of the Constitution of India.

21. Taking into account all these factors, I am of the considered opinion that, the petitioners have failed to establish that they are entitled as of right to attack and challenge Exts.P1 and P2 orders and therefore I have no other option than to arrive at an irresistible conclusion that the writ petition fails and resultantly, same is dismissed.