
(2014) 10 KL CK 0352
In the High Court Of Kerala
Case No : W.P.(C). No. 6483 of 2010 (I)

P. Anoop

APPELLANT

Vs

Tikkoti Service Co-Operative Bank Ltd.

RESPONDENT

Date of Decision : 23-10-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 66, 69

Citation : (2014) 10 KL CK 0352

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : P.P. Jacob and T.P. Gopakumar, Advocate for the Appellant; K. Mohanakannan, A.R. Pravitha, D.S. Thushara, Binoy Vasudevan and P.G. Babitha, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner responded to a notification calling for candidates for the post of Attender in the 1st respondent Bank. In Ext.P1 rank list that was drawn up as part of the selection process, the petitioner was ranked No. 2. The first rank holder in the list was offered appointment and she joined the post to the vacancy that was notified. The validity of Ext.P1 rank list expired only by 27.2.2012, that is, after three years from its publication. It would appear that the first rank holder, who joined the post, subsequently vacated the post for taking up the post of Junior Clerk in the same Bank. This resulted in a fresh vacancy arising to the post of Attender. On coming to know of the fresh vacancy to the post, the petitioner preferred Exts.P2 and P3 representations before the respondents, staking a claim to the said vacancy on the ground that he was ranked No. 2 in the rank list which was in force till 27.2.2012. When nothing was heard from the respondent Bank in the matter, the petitioner preferred the writ petition seeking a direction to the respondents to appoint him to the vacancy that arose to the post of Attender. In a counter affidavit that was filed by the 1st respondent Bank, it was pointed out that, to the vacancy that resulted consequent to the first rank holder vacating the post, the 1st respondent Bank had appointed the 3rd respondent as Attender with

effect from 10.2.2010. This led the petitioner to amend the writ petition to implead the 3rd respondent and mount a challenge against the appointment of the 3rd respondent to the post of Attender, to the vacancy that arose with effect from 10.2.2010.

2. The 1st respondent as well as the 3rd respondent have filed counter affidavits to the amended writ petition. In the counter affidavit filed by the 1st respondent, apart from stating that the 3rd respondent was appointed to the vacancy that arose on 10.2.2010, it is also pointed out that the 3rd respondent was initially appointed as a Sweeper with effect from 20.11.1990 and that there was subsequently a change in her designation as Sweeper - cum - Peon. It is pointed out that she was appointed regularly as Sweeper - cum - Peon with effect from 30.11.2005 and thereafter as a Peon with additional function as Sweeper with effect for 3.5.2007. Her appointment as an Attender was on 25.1.2010 as evidenced by Ext.R3(f) order of the 1st respondent Bank. In the counter affidavit, the 1st respondent also clarifies the discrepancy in the dates shown in Exts.P5 and P7 documents by stating that it was only an inadvertent mistake that had crept in while preparing the said documents. In the counter affidavit filed by the 3rd respondent, the stand taken is that she was qualified to be appointed as Attender to the vacancy that arose with effect from 10.2.2010. It is stated that she was initially appointed on compassionate basis and thereafter promoted to the post of Peon from where she could aspire to the post of Attender in accordance with the Feeder Category Rules prevailing in the 1st respondent Bank. It is also pointed out that the writ petition filed by the petitioner was itself not maintainable in that the petitioner had an alternate remedy under Section 69 of the Kerala Co-operative Societies Act, 1969, if he was aggrieved by the actions of the 1st respondent Bank in appointing the 3rd respondent.

3. I have heard Sri. P.P. Jacob, the learned counsel appearing on behalf of the petitioner, Sri. K. Mohanakannan, the learned counsel appearing on behalf of the 1st respondent Bank as also Sri. Binoy Vasudevan, the learned counsel appearing on behalf of the 3rd respondent.

4. On a consideration of the facts and circumstances of the case as also the submission made across the Bar, I find that this is a case where the vacancy to the post of Attender was initially sought to be filled by recourse to direct recruitment. In Ext.P1 rank list that was prepared for the purpose, the petitioner was ranked as No. 2 in the said list. The person ranked as No. 1 was offered the appointment but she left the same to take up appointment to the post of Junior Clerk in the 1st respondent Bank. Thereupon a fresh vacancy arose to the post of Attender. The 1st respondent Bank appointed the 3rd respondent to the said vacancy by promoting her from the post of Sweeper - cum - Peon. The legality of the said action of the 1st respondent is what is under consideration in the present writ petition. Counsel for the petitioner would vehemently contend that, when direct recruitment was resorted to by the 1st respondent Bank to fill up vacancies to the post of Attender, then all the vacancies that arose during the

pendency of the rank list would necessarily have to be filled up from among persons who are in the rank list prepared for the purposes of direct recruitment. This had necessarily to apply in respect of all vacancies that arose to the post in question in the 1st respondent Bank during the pendency of the rank list. Reliance is sought to be placed on Ext.P4 Circular issued by the Registrar of Co-operative Societies in exercise of its powers under Section 66 of the Kerala Co-operative Societies Act. Ext.P4 circular, while dealing with the procedure to be followed for appointment of employees in Co-operative Societies through direct recruitment, makes it clear that the rank list will be for a period of two years from the date of publication and that the period of validity of the rank list may be extended by the Committee for a further period not exceeding one year. It is then provided that vacancies arising during the currency of the rank list are to be filled up by appointing candidates included in the rank list, unless the Society desires not to fill up any vacancies due to administrative or financial reasons. It is not in dispute in the instant case that the 1st respondent Bank has decided to go ahead with the filling up of the vacancies to the post of Attender. In fact, their action in appointing the 3rd respondent, to the vacancy that arose with effect from 10.2.2010, would amply demonstrate that fact. In such a scenario, the vacancy that arose consequent to the post being vacated by the first rank holder, had necessarily to be filled up by appointing the next person in the rank list, namely, the petitioner. The decision of a Division Bench of this Court in Kodakara Farmers Service Co-op. Bank Ltd. Vs. Neena, clearly holds that the retention of validity of the rank list is only for the purpose of enabling the Society to fill up vacancies arising during the period of two years during which period, the list is kept valid by operation of the Rule. Following the above judgment of the Division Bench of this Court, I am of the view that the appointment of the 3rd respondent to the vacancy that arose with effect from 10.2.2010 in the post of Attender was illegal, and, accordingly, I quash Ext.P7 order of the 1st respondent Bank that appoints the 3rd respondent as Attender to the vacancy that arose with effect from 10.2.2010. The 1st respondent Bank shall take steps to forthwith appoint the petitioner, who is admittedly the second rank holder in Ext.P1 rank list, to the said post.

The writ petition is allowed as above.