(2014) 09 KL CK 0165

In the High Court Of Kerala

Case No : WP(C). No. 8429 of 2010 and 1809 of 2012

P. Santhamma APPELLANT

Vs

The Elavoor Service Co-operative Bank Ltd. RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0165

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : V.G. Arun and T.R. Harikumar, Advocate for the Appellant; P.N. Mohanan, Advocate and Noushad Thottathil, Addl. Govt. Pleader, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—These two writ petitions relate to the promotion of the petitioner to the post of Chief Accountant in the Elavoor Service Co-operative Bank Ltd., the 1st respondent.

2. In WP(C) No. 8429/2010, the petitioner is challenging the rejection of the request for relaxation from educational qualification and approval of promotion. In WP(C) No. 1809/2012, she is challenging the refusal of the auditor to approve revision of her pay and allowances in accordance with the pay revision order.

3. The petitioner joined the service of the 1st respondent bank as Junior Clerk on 01.06.1977. After completion of 24 years of service in various posts and 14 years of service in the post of Accountant, the Director Board of 1st respondent, by its resolution no. 152(1) dated 17.08.2001, decided to promote the petitioner to the post of Chief Accountant. As the educational qualification of the petitioner was SSLC and Junior Diploma in Co-operation, the 1st respondent has decided to move the Joint Registrar of Co-operative Societies, Ernakulam for exempting the petitioner from educational qualification for the purpose of promotion. The petitioner alleges that she was promoted to the post of Chief Accountant in accordance with Ext. P2 Feeder Category Rules. Thereafter, the 1st respondent served on the petitioner a copy of letter dated 12.05.2009 issued by the Joint

Registrar of Co-operative Societies, Ernakulam, rejecting the request for exemption from educational qualification. The petitioner alleges that the said order was passed without affording her an opportunity of hearing and after an inordinate delay of nine years after promotion. The petitioner challenged the order by filing an appeal before the Government. However, the Government proceeded to pass an order rejecting the appeal. WP(C) No. 8429/2010 was filed when the bank was compelled to take action for reverting the petitioner on the basis of the aforesaid orders. This Court granted an interim order staying further proceedings for reverting the petitioner from the post of Chief Accountant.

4. In WP(C) No. 1809/2012, the petitioner further points out that the Government, by GO(P) No. 36/11/Co-op dated 25.02.2011 (Ext. P6), has introduced the pay revision order to be made applicable to all employees of co-operative societies in the State with effect from 01.04.2009. As per the scheme, the Chief Executive of the society has to make a recommendation based on which the executive committee of the society has to re-fix salary in accordance with revised pay scale. Before implementing the same, the auditor should certify that the fixation of pay is proper. The petitioner alleges that the pay scale of the petitioner and other employees of the 1st respondent was re-fixed in accordance with Ext. P6 and the same was submitted before the 3rd respondent. In WP(C) No. 1809/2012, the grievance projected is that the said respondent has approved the re-fixation of salary of all employees except that of the petitioner. Coming to know about the non-approval of the petitioner''s pay scale, the petitioner approached the 1st respondent requesting to grant the benefits under Ext. P6 G.O. Thereafter, the Board of Directors of the respondent bank passed a resolution to bring the issue to the notice of the Assistant Registrar (Audit) of Co-operative Societies, Aluva, Ernakulam and for further action in accordance with the direction issued by the said respondent. The petitioner also filed a representation before the Assistant Registrar (Audit) of Co-operative Societies requesting the said authority to re-fix her pay and allowances in accordance with the revised pay scale. The petitioner alleges that no action has been taken on the said representation. It is with this background, the petitioner has filed the second writ petition.

5. In the counter affidavit filed by the State in the first writ petition, they would contend that as per Order No. CRP(2) 9168/81/K. dis. dated 01.05.1981, the following posts have been sanctioned to the bank according to the prevailing staff pattern;

Therefore, it was contended that there existed a post of Branch Manager in the bank when the bank resolved to promote the petitioner w.e.f. 17.08.2001. They maintained the stand that the bank ought to have sought the approval of the Registrar before giving such a promotion.

6. Arguments have been heard.

7. The learned Standing Counsel for the respondent bank would submit that the

petitioner was promoted along with other employees in the bank vide Board resolution dated 28.08.2001. As per the said resolution, the employee working as Senior Clerk was promoted as Bank Manager in anticipation of the new branch being sanctioned at Puliyanam. Another employee working as Senior Clerk was promoted as Internal Auditor. Yet another Senior Clerk, by name V.R. Haridas, was promoted as Assistant Secretary. Further, it was pointed out that there was no vacant post of Branch Manager available in the bank since an employee, junior to the petitioner, was promoted to the post of Branch Manager in anticipation of a new branch being sanctioned. A copy of relevant pages of the minute of the committee meeting held on 28.08.2001 is produced by the petitioner in WP(C) No. 8429/2010 as Ext. P6. The learned counsel for the petitioner would submit that other employees, who were given promotion by two or three steps, have retired from service and their pensionary benefits have been disbursed. It was pointed out that Sri. V.R. Haridas, who was promoted as Assistant Secretary directly from the post of Senior Clerk, applied for voluntary retirement on 16.04.2012 and was allowed to retire on 31.05.2012, on which day itself, all retirement benefits due to him were paid. Therefore, it was pointed that having failed to raise any objection against the promotion of other employees, who were given three promotions at a time overlooking the seniority of the petitioner, the official respondents are estopped from singling out the petitioner for discriminatory treatment.

8. In the counter affidavit filed by the State, they have placed reliance on certain Government Orders issued by the Registrar of Co-operative Societies to contend that prior approval of the Registrar of Co-operative Societies is necessary to grant relaxation from educational qualification. However, the said stand has no legal validity in view of the decision of this Court in Kuttipuram Service Co-op. Bank Vs. State of Kerala, .

9. It is crucial to note that though the petitioner has raised specific contentions regarding the delay in taking decision on the request of relaxation, the counter affidavit is silent on those aspects. It is also crucial to note that after the petitioner''s promotion as Accountant on 01.12.1986, she was promoted as Chief Accountant only on 17.08.2001, i.e., after a period of 14 years. Now, the petitioner is no longer in service as she demitted her office on superannuation. Ext. P2 would reveal that there are four categories of permanent employees in the society; (a) Officers, (b) Clerical, (c) Technical and (d) Subordinate. An officer/supervisory employee will include the Secretary, Asst. Secretary, Chief Accountant and Manager. A clerical employee will include Cashier, Asst. Accountant, Senior and Junior Clerks. A technical employee will include Purchasing Officer, Typist etc. A subordinate employee will include Attenders, Peons, Watchman, Office Boy or any other person employed by the society below the rank of clerical employee. Here, the promotion of the petitioner was from the category of a clerical employee to the category of an officer of the respondent bank. It is specifically averred in the writ petition that when the petitioner was promoted as Chief Accountant, the 1st respondent bank was classified as Class II

and the Feeder Category Rules submitted by the 1st respondent bank had been approved by the Assistant Registrar (Audit) of Co-operative Societies, Aluva, Ernakulam. Ext. P2 is the copy of the Feeder Category Rules. It can be seen that the petitioner was promoted to the post of Chief Accountant in accordance with Ext. P2 Feeder Category Rules. It is specifically averred that though under Appendix III, the next promotion post of Accountant is Branch Manager and from that to the post of Chief Accountant, the petitioner could not be promoted to the post of Branch Manager since at the time of her promotion as Chief Accountant, the 1st respondent bank did not have any branch. In spite of being promoted to the post of Chief Accountant, there was no dual fixation of pay in the petitioner''s case. The petitioner was continuing in the said post without objection from any quarter. Neither in the periodical inspections nor in the annual audit reports, objections were raised or defect is noted against the promotion of the petitioner as Chief Accountant. Therefore, presumably, the petitioner was under the bonafide impression that the application for exemption from educational qualification and consequent promotion has been approved by the Department. Ext. P3 was issued in the year 2009. Evidently, the same has been passed without affording the petitioner an opportunity of being heard. It was taking into consideration the fact that the respondent bank did not have any branch at the time of promotion of the petitioner, who was senior most to be promoted, the petitioner''s pay was fixed only once though she was promoted to the post of Chief Accountant. Therefore, it cannot be said that there is any illegality in the promotion given to the petitioner to the post of Chief Accountant. The finding in Ext. P5 that there existed a post of Branch Manager in the bank when the bank resolved to promote the petitioner, is factually incorrect. As already pointed out, the order rejecting the request for approval was passed after a period of nine years. As rightly pointed out by the learned counsel for the petitioner, applying the ''sit back theory'' by efflux of time, the petitioner has acquired a vested right to continue in the promoted post. On a consideration of the entire materials now placed on board, this Court is of the definite view that the petitioner is entitled to succeed.

In the result, the writ petitions are allowed.

Exts. P3 and P5 in WP(C) No. 8429/2010 are quashed. The respondents are directed to grant relaxation from educational qualification and to approve the promotion of the petitioner to the post of Chief Accountant with effect from the date of Ext. P1 resolution.

Consequentially, respondents 1 to 4 in WP(C) No. 1809/2012 are directed to re-fix pay and allowances of the petitioner in accordance with Ext. P6 in that writ petition.

The entire exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this judgment.

