
(2013) 01 KL CK 0081

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30230 of 2003 (W)

Poothady Service Co-Operative Bank Ltd.

APPELLANT

Vs

Government of Kerala

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Citation : (2013) 01 KL CK 0081

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P.N. Mohanan, for the Appellant; Muhammed Shafi M., Govt. Pleader for R1 and R2 and Sri. V.G. Arun and Sri. T.R. Harikumar for R3, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The above writ petition is filed by a Co-operative Bank against the appellate order, Exhibit P5, granting two higher grades to the 3rd respondent, who retired as an Assistant Secretary from the petitioner-Bank. The brief facts are that, the 3rd respondent was appointed as a Clerk-cum-Attender on 1.8.1965 and was promoted as Accountant on 8.2.1970 and then Assistant Secretary on 1.1.1974. He occupied the seat of Assistant Secretary till his superannuation on 30.6.2001. By Exhibit P1 order, purportedly on the basis of a decision of the Managing Committee of the Bank No. 11/1, he was granted two higher grades in the cadre of Assistant Secretary with effect from 1.7.1991 and then from 1.4.1994. Subsequently, on the basis of Exhibit P2, the same was withdrawn, against which an appeal was filed by the 3rd respondent, the order in which, is impugned herein.

2. The learned counsel for the petitioner would contend that what is contemplated in Exhibit P4 with respect to grant of higher grades is, the grant of the first higher grade on completion of ten years service in the entry post and the second higher grade on completion of either 10 years" service in the first promoted post or total service of 20 years in the entry post. The 3rd respondent

having obtained two promotions from the entry post, is not entitled to the higher grade.

Though under the Kerala Co-operative Societies Act, 1969 the Government has powers to exempt, it could not have been granted by the appellate authority unless such orders of exemption have been passed, is the contention of the counsel for the petitioner.

3. The learned counsel for the 3rd respondent, however, would raise a preliminary objection with regard to the locus standi of the President of the Co-operative Bank as shown in the cause title to continue the proceedings, since he is no longer holding that post. It is contended that the bye-laws of the society provide only for the Secretary to represent the society and in the affidavit also the President does not show the name of the society in the cause title. His further contention is that, admittedly the 3rd respondent had been continuing in the post of Assistant Secretary for almost 27 years and it was only considering the said fact that the appellate authority allowed the claim of higher grade. The 3rd respondent also alleges mala fides on the President of the Bank in approaching the Joint Registrar for cancellation of the earlier order by Exhibit P2; which allegedly was passed without notice to him.

4. The preliminary issue raised by the learned counsel for the 3rd respondent is that, the person who has signed the memorandum of writ petition as also the affidavit is not competent to prosecute the above case, since he is no longer in office. It is, however seen that, in the memorandum of writ petition as also the affidavit, the President of the Bank has filed the writ petition on behalf of the Bank and representing the Bank in the capacity of the President. The seal of the President as also the round seal of the Bank has been affixed, both in the writ petition and the affidavit.

Though the 3rd respondent would contend that only the Secretary is competent by the bye-laws, the bye-laws have not been made available before this Court. The petitioner-Bank having approached the Court, the fact that the President has vacated the office is not at all of relevance; since the writ petition itself was filed on behalf of the petitioner-Bank.

5. Exhibit P4 is the guidelines for the grant of time bound grade promotion benefit to the employees of the Co-operative Societies. Obviously the said guidelines have been issued taking into account stagnation in posts and to provide relief by way of higher grade to such employees who are stagnated. The said guidelines have been issued taking into consideration the continuance of a person beyond ten years in the entry post and then the subsequent 10 years in the entry post itself or in the first promoted post and the denial of any yearly increment to cover the rise in cost of living; by reason of stagnation in the pay scale. The 3rd respondent, obviously, is a person who enjoyed two promotions within the first nine years of his entry as a Clerk-cum-Attender; in the petitioner-Bank. The fact that he was stagnated in the post of Assistant Secretary, however,

is not a case in which the Government thought fit to grant higher grades.

6. The Joint Registrar having not specifically taken into account the fact of the 3rd respondent having obtained two promotions after his entry in service, Exhibit P1 order issued was directly in conflict with the guidelines. Exhibit P2 cancellation was perfectly in order. The appellate authority, Government, was exercising its appellate jurisdiction conferred under the Kerala Co-operative Societies Act, 1969 to look into the legality of Exhibit P2 order and was not concerned with an exemption or grant of higher grade which was not provided for in the guidelines. The Joint Registrar, in his reviewed order, notices the fact that the 3rd respondent is not entitled to the grant of any higher grade on account of the two promotions granted to him after entry. The appellate authority, on compassionate grounds considering the long period of service in the cadre of Assistant Secretary, granted two higher grades to the 3rd respondent, which, according to this court, is not within the powers or authority conferred on the appellate authority. The appellate authority exceeded its powers and authority and had absolutely no discretion in the matter. Ground of mala fides though urged by the learned counsel for the 3rd respondent, is not considered by this Court, since it has been found that Exhibit P2 has been issued in accordance with the guidelines for grant of higher grade and is perfectly legal and binding.

In the result, the order Exhibit P5 passed by the appellate authority is set aside and Exhibit P2 order of the Joint Registrar is confirmed. The writ petition is allowed. No costs.