(2014) 11 KL CK 0195

In the High Court Of Kerala

Case No : WP(C). No. 6711 of 2013 (L)

Ramesh V. APPELLANT

Vs

The Registrar of Co-operative Societies (General) RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 KL CK 0195

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : V. Varghese, Advocate for the Appellant; Abhijit Leslie, Government Pleader, V.G. Arun, T.R. Harikumar and Prasad Chandran, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved with Ext.P7 order of the respondent Bank which declined him promotion with effect from 20.8.2010, the date on which exemption was granted from educational qualification under rule 185(8)(b) of the Kerala Cooperative Societies Rules, 1969. Admittedly the petitioner was continuing as an Internal Auditor in the respondent Bank when the Secretary retired and he was put in charge of the post of Secretary, which is evident by the resolution DBR No. 218 dated 20.8.2010 evidenced at Ext.P1. The earlier incumbent had retired on 31.5.2010 and that the petitioner was given charge of the post of the Secretary.

2. While so, on 20.8.2010, a resolution was taken by the Bank, exempting the petitioner from the educational qualification of graduation. The petitioner had by then crossed 48 years of age and had also service in the feeder category for 5 years. The petitioner at that point of time, was occupying the post of an Internal Auditor, having been so promoted on 1.3.2002. The exemption granted was for promotion to the post of Assistant Secretary.

3. It is without dispute that, as on 31.5.2005 when the petitioner was granted charge of the post of Secretary, no exemption could have been granted under section 185(8)(b) since the conditions laid down therein would not have been

satisfied. The resolution having been passed on 20.8.2010, the same was sent for approval. Approval was obtained by Ext.P3 on 18.8.2012.

4. The petitioner was aggrieved with the rider in Ext.P3, in so far as giving effect to the exemption from the date of Ext.P3 order. The petitioner moved this Court with W.P.(C) No. 21017/2012 which stood allowed. This Court by following binding precedents directed that the order shall take effect from 20.8.2010. However the Bank refused to give effect to such order and issued Ext.P7 on the premise that the petitioner would be entitled to such benefits only from 18.8.2012 since the petitioner was actually promoted to the post of Assistant Secretary only from that date. That order of the Bank is challenged here.

5. It is trite that when exemptions are granted; then promotions are also made provisionally. This Court normally grants effect to such exemption order, from the date of resolution itself. In the present case, the learned counsel appearing for the respondent Bank however draws a distinction between the exemption granted and promotion as such. Normally there would be no such distinction, but in this case, on facts, there arise such a distinction due to the voluntary act of the petitioner himself. The learned counsel appearing for the respondent Bank would refer to Ext.R4(a) by which, the petitioner had requested the Bank to relieve him of the duties of the Secretary and permit him to continue in the post of Internal Auditor. Ext.R4(a) is dated 11.9.2010.

6. The petitioner does not dispute Ext.R4(a) but however points out that the petitioner had been continued in the post of Secretary, for 5 years without any attendant benefits and he was not willing to shoulder the additional responsibility without additional remuneration and as such. Hence, what assumes relevance herein, is that the petitioner never was promoted to the post of Assistant Secretary, as had been resolved by the Bank on 20.8.2010. The petitioner was occupying the post of Internal Auditor, when he was admittedly granted charge of the post of Secretary and not the Assistant Secretary. It is true that the petitioner continued therein for 5 years and it was only in consideration of such service that the respondent Bank passed resolution on 20.8.2010 deciding to exempt the petitioner from the educational qualification of graduation. However immediately thereafter the petitioner voluntarily sought for permission to occupy the post in the feeder category. Evidently the petitioner was thus continued as an Internal Auditor from 30.9.2010 and another employee was promoted to the post of Assistant Secretary who superannuated on 30.11.2011. The petitioner was promoted admittedly with effect from 18.8.2012 as per the Registrar''s communication. Hence the normal incidence of an approval by the Registrar, relating back to the date of resolution, cannot be found in the present case; on facts.

7. The learned counsel appearing for the petitioner however would argue that the aforesaid contention was not taken in the earlier proceedings. The learned counsel for the respondent Bank would specifically contend that in the earlier writ petition the petitioner had sought for two prayers. One for relating the exemption

back to the date of resolution and the second for promotion to the post of Assistant Secretary. This Court had confined the directions to relating back the exemption to the date of resolution and the petitioner could hence claim promotion only from the date of actual promotion. A contempt case filed against Ext.P4 judgment on issuance of Ext.P7, was also closed in view of the pendency of this writ petition. There being no positive direction to consider the petitioner as having been promoted from 20.8.2010 and the facts clearly having disclosed the petitioner as having been promoted to the post of Assistant Secretary, only on 18.8.2012, the writ petition would stand dismissed. Parties left to suffer their respective costs.

