

(2011) 02 KL CK 0155

In the High Court Of Kerala

Case No : W.A. No's. 1314 and 1331 of 2008

Sharafudeen Kunju, S. and Others

APPELLANT

Vs

Manoharan Pillai and Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 129 FLR 784 : (2011) 2 ILR (Ker) 221 : (2011) 2 KLJ 218

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : P.V. Surendranath, Aysha Youseff and B. Vinod, S.Cs., Kollam D.C.B, for the Appellant; M.R. Rajendran Nair M.R. Sudneendran and M.R. Hariraj for Respondents 1 to 3 and Anu Sivaraman, Special Government Pleader for Respondents 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Connected appeals are filed against common judgment of the learned Single Judge holding that seniority of Junior Clerks/ Cashiers belonging to forward community and Other Backward Community appointed through the same selection process and from the common rank list prepared thereunder should be in accordance with the order of rank in the rank list prepared for selection. We have heard counsel appearing for the Appellants in both the Writ Appeals, counsel for appearing for contesting Respondents and the Government Pleader for the State. The documents referred to herein are those produced in W.A. No. 1331 of 2008.

2. The Kollam District Co-operative Bank, the Appellant in WA No. 1331/2008, invited application for appointment of Junior Clerks/Cashiers in the Bank vide Ext.P-1 dated 18-6-1989. There was no provision in the Kerala State Co-operative Societies Act or in the Rules providing for reservation for Backward Communities in appointments. Reservation is limited only to members of Scheduled Caste and Scheduled Tribe Communities which is 10% of the available posts. Another category of reservation provided is employees of member

Societies of the District Co-operative Bank, which is 50%. Even though the Co-operative Societies Act and the Rules did not provide for reservation for Backward Communities, the Registrar of Co-operative Societies vide Ext.R-1 (a) Circular issued in 1986 instructed the Societies to provide reservation to Backward Communities also. Even though the Bank has a case that it had passed a resolution pursuant to Ext.R-1 (a) Circular and it was giving reservation to Backward Communities in the appointments, it is the admitted position that no such reservation for Backward Communities was provided when Ext.P-1 notification was issued for selection for appointment. When appointments were started from the rank list, the Bank introduced communal rotation for appointment by providing reservation to Backward Communities. This was questioned by some of the selected candidates who got included in the rank list, by filing O.P. No. 10095/1992 and Division Bench of this Court vide Ext.P-6 order issued on 17-12-1999 directed appointment of some of the candidates who claimed posting based on rank list. However, in the course of time all those who claimed appointment based on merit got appointed and, therefore, O.P. was closed by this Court without deciding anything on merits.

3. Issues cropped up when the Bank prepared a seniority list of employees selected under Ext.P-1 wherein those who came higher in rank were placed below some others belonging to the Backward Communities who were lower in rank. The seniority list was questioned by the affected employees before the Registrar of Co-operative Societies and the Registrar vide Ext.P-4 order found that there is no justification for providing reservation in appointment or to give seniority in rank list for members of Backward Communities for whom no reservation was provided by the Bank in Ext.P-1 notification based on which selection was made. Even though Bank referred to the Circular issued by the Registrar of Co-operative Societies in 1986 instructing Banks to follow communal rotation for appointment covering Backward Communities also, the Registrar vide Ext.P-4 held that the Bank had not adopted communal rotation by getting exemption from the Government from the operation of the provisions of the Co-operative Societies Act and Rules which did not provide for reservation for appointment for Backward Communities. In fact, the provision for reservation for Backward Communities is introduced in the Co-operative Societies Act and Rules much after selection in this case. Since the Registrar vide Ext.P-4 held that seniority of the appointed employees has to be based on rank list and the rank list should not be prepared based on communal rotation that was not provided in ExtP-1 notification published for appointment, the same was challenged by some of the affected employees before the Government. Government vide ExtP-5 order vacated the order of the Registrar and held that even though reservation for Backward Communities was not provided in ExtP-1 notification published by the Bank based on which appointments were made, still by virtue of the Circular issued by the Registrar in 1986 the action of the Bank was correct. It is this order of the Government that was challenged before the learned Single Judge who held that in the absence of any provision in the Co-operative Societies Act

and Rules for reservation and in the absence of any provision in Ext.P-1 notification inviting application for appointment, the seniority list of the persons appointed from the same rank list should be based on their position in the rank list prepared by the Bank in the selection process. The learned Single Judge accordingly vacated Ext.P-5 order issued by the Bank and restored the order of the Registrar of Co-operative Societies who upheld the claim of the Respondents who are Petitioners in the W.P.(C).

4. Counsel appearing for the Appellant submitted that instruction issued by the Registrar in 1986 was followed by the Bank and they have passed even a resolution as Annexure R-15(b). However, counsel for the Respondents contended that the correctness of the claim of the Bank itself is doubtful because if such a resolution was adopted by the Bank and the norms for communal reservation for Backward Communities was introduced, then the Bank would have incorporated it in Ext.P-1 notification itself. He has also pointed out that in Ext.P-4 the Registrar of Co-operative Societies has clearly found that the instruction issued by the Registrar in 1986 was only suggestive and not mandatory and the same was not implemented by the Bank by getting exemption from the Government as such reservation was not provided in the Co-operative Societies Act and Rules. We find force in the contention of counsel for the Respondents and the finding of the Registrar in Ext.P-4 because ExtP-1 is a detailed notification which specifies every type of reservation provided by the Bank in the selection process wherein 50% was reserved for employees of the member Societies and 10% for persons belonging to Scheduled Caste and Scheduled Tribe communities and obviously balance 40% was for merit quota. Even though relaxation of age is provided for members of the Backward Communities to apply and participate in the selection process, conspicuously reservation for Backward Communities is absent in Ext.P-1 notification. Therefore, we do not find any merit in the contention of the Bank or the other Applicants that reservation for Backward Communities is already followed by the Bank in the selection process. In fact, it is to be noted that reservation in the matter of appointment from the list was questioned before this Court and in the interim order this Court allowed the prayer of the Petitioners and ultimately that O.P. was also closed as further orders were not pressed by the Petitioners therein. The interim order of the Division Bench in the said O.P. clearly shows that they have passed the order on being prima facie convinced that reservation for Backward Communities was not provided in Ext.P-1 notification and so much so, the Bank cannot introduce it after selection process and after preparation of rank list.

5. It is a settled position that selection has to be based on the terms and conditions covered by the notification inviting application for selection. Any subsequent decision by the Bank should not alter the terms of appointment. Further, if the Appellant's contention that the instruction issued by the Registrar in 1986 was binding on the Bank and Bank had in fact adopted it is correct, then it would have incorporated it in Ext.P-1 notification. In the absence of any such

provision for reservation for Backward Communities in Ext.P-1, in our view, the subsequent decision of the Bank to prepare seniority list of the employees based on communal rotation is not justified. Even though Appellant has raised a contention that Respondents have not chosen to challenge the appointment made from the rank list based on communal rotation and they cannot be permitted to challenge the appointments after 8 years, we do not think this technicality will stand in the way of the Respondents claiming seniority based on rank list because as and when rank list was published, they approached the Registrar with a complaint who allowed it. Further, as stated above, appointment by following communal rotation from the rank list prepared based on Ext.P-1 notification itself was challenged before this Court and this Court had issued interim orders in favour of the Petitioners seeking appointment based on their position in rank list i.e. by overlooking those claiming under communal rotation. We, therefore, do not find any ground to interfere with the finding of the learned Single Judge. Writ Appeals are accordingly dismissed.