
(2010) 06 KL CK 0042
In the High Court Of Kerala
Case No : Writ Petition (C) No. 8334 of 2010

Shibi	Vs	APPELLANT
State of Kerala		RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Citation : (2010) 3 ILR (Ker) 732 : (2010) 3 KLT 662

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : Manoj Ramaswamy, K.T. Thomas, S. Sreekumar and P. Martin Jose, for the Appellant; Alexander Thomas, P.V. Surendranath and K.C. Santhosh Kumar, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The petitioner had applied for selection and appointment to the post of clerk/cashier in the District Co-operative Bank, Ernakulam pursuant to Ext.P2 notification issued by the Kerala Public Service Commission. The applications were invited for appointment to the 50% vacancies earmarked for employees of primary co-operative societies affiliated to the Ernakulam District Co-operative Bank. The petitioner's application was received, a written test was conducted and the petitioner's name was included in the list of probable candidates notified for selection. Thereafter, the petitioner was asked to produce her original certificates for verification as per Ext.P3. After verification of her certificates, by Ext.P4 the petitioner's application was rejected for the reason that the Ernakulam Co-operative Agricultural Rural Development Bank of which the petitioner is an employee was not affiliated to the Ernakulam District Co-operative Bank. Thereafter, the Public Service Commission has published Ext.P5 rank list which does not include the name of the petitioner. Aggrieved by the above action, the petitioner has filed this Writ Petition seeking a declaration that she is entitled to get appointment as clerk/cashier in the Ernakulam District Co-operative Bank. The petitioner also challenges the stipulation in Ext.P2

notification to the effect that the employee should be in the service of the society not only on the date of application but also on the date of appointment.

2. According to the counsel for the petitioner, the petitioner possesses all the necessary qualifications for being appointed to the post that was notified as per Ext.P2. As on the date of her application, the petitioner was an employee of a society that was duly affiliated to the Ernakulam District Co-operative Bank. The last date for submission of applications as per Ext.P2 was 24.5.2006. At that time, the petitioner was working as an employee of the Nadamel Service Co-operative Society, which is-an affiliated member society of the Ernakulam District Co-operative Bank. She was working in the said society on the date on which the written test was conducted by the P.S.C. also. Thereafter, she left the service of the said bank and joined the Ernakulam Government Servant's Co-operative Society for a brief period. She has later on joined the Ernakulam Co-operative Agricultural Rural Development Bank, Aluva on 21.11.2008. The said bank is not an affiliated member society of the Ernakulam District Co-operative Bank.

3. It is the contention of the petitioner that as on the date of submitting her application, the petitioner had completed three years service as an employee of a society that was affiliated to the Ernakulam District Co-operative Bank. Since she satisfied all the requirements stipulated by Ext.P2 notification as on the last date for submission of her application, she cannot be disqualified on the ground that her status has undergone a change on some subsequent date thereafter. According to the petitioner, Rule 187 that prescribes the requirements to be satisfied for appointment under the quota reserved for the employees of the member societies, does not insist that a person should continue to be an employee of the member society even after the date of submission of application. It is pointed out that the stipulation regarding minimum regular service of three years in a member society is to be fulfilled as on the date of submission of the application. It is therefore contended that the PSC had no authority to take into account the subsequent change in circumstances and to disqualify the petitioner. It is the further ? contention of the petitioner that the PSC had no authority to stipulate additional conditions over and above those prescribed by the relevant rule. Therefore, it is pointed out that the conditions stipulated in Ext.P2 to the effect that the employee should not only be in the service of the society on the date of the application but should continue to be so as on the date of appointment also is liable to be set aside.

4. The counsel for the PSC on the other hand contends that the stipulation in Ext.P2 is in conformity with Rule 187 of the Co-operative Societies Rules, 1969 ("Rules" for short). The appointment being reserved only for employees of the affiliated member societies, it is necessary that a person should continue to be an employee of a member society even on the date of his appointment. Therefore, it is pointed out that it is not sufficient that the candidate should possess the qualification as on the date of submission of his application but the requirement should subsist as on the date of appointment also. In the present

case, the petitioner was included only in the probable list of candidates. Thereafter, on verification of her certificates, it was found that she did not satisfy the prescribed qualifications and therefore her application was rejected. It is submitted that the action of the PSC is in order and strictly in accordance with the Rules.

5. I have heard Shri. S. Sreekumar who appears for the petitioner, Mr. Alexander Thomas, counsel for the PSC as well as Mr. K.C. Santhosh Kumar who appears for the first respondent. An affidavit has been filed on behalf of respondents 2 and 3 placing on record the "instructions received by the counsel. I have gone through the records of the case and have considered the rival contentions of the counsel on both sides.

6. As per Ext.P2 notification, the applications invited are for appointment to the post of clerk/cashier from "qualified regular employees of the member societies/ primary societies affiliated to the 14 (fourteen) District Co-operative Banks in Kerala for appointment...". A note which forms part of Ext.P1 says that 50% of the vacancies reported from each District Co-operative Bank for direct recruitment would be filled up by selection from eligible employees of affiliated member societies of the respective banks. The qualifications prescribed by clause 7 of Ext.P2 first stipulates the requirement of a degree and provides in item 2 as follows:

2. Must be a regular employee who has completed not less than three years regular service in any cadre and continuing in service in a Member Society/ Primary Co-operative society affiliated, to the respective District Co-operative Bank (the employee should be in the service of the society not only on the date of application but also on the date of appointment).

7. A reading of the above shows that applications were invited by the PSC from "qualified regular employees of the member societies". It is also stipulated in Ext.P2 that the candidates should have completed three years regular service in any cadre and should be continuing in the service of the member society. It is further made clear that the employee should not only be in the services of the society on the date of the application but should continue to be so on the date of appointment as well. Therefore, there is no doubt that the petitioner had submitted her application for the post, knowing fully well that only an employee of the member society or an affiliated primary cooperative society would be eligible for being appointed pursuant to Ext.P2.

8. The contention of the counsel for the petitioner is that Rule 187 of the Rules does not stipulate that a person should continue to be an employee both on the date of the application as well as on the date of appointment. Therefore, it is contended that the PSC has incorporated an additional condition in Ext.P2 that is not stipulated by the relevant rule. Stipulation of an additional condition that is not prescribed by law is impermissible according to the counsel for the petitioner. Therefore, it is contended that the stipulation extracted above is liable to be set

aside.

9. Rule 187 reads as follows:

187. Vacancies in Apex Society or Central Societies : -Not with standing anything contained in Rule 186, in appointments to apex societies or central societies, 50% of the vacancies shall be reserved to the employees of the member societies, of the respective apex society or central society as the case may be, having a minimum regular service of 3 years in any of the cadre and having the required qualification for the notified posts in the apex society or central society.

As per the above Rule 50% of the vacancies are to be reserved for the "employees of the member societies" of the respective apex society or the central society as the case may be, having a minimum regular service of three years in any cadre and having the required qualification for the notified post. The above rule stipulates three requirements:

- i) The candidate should be an employee of the member society of the respective apex society or the central society as the case may be
- ii) He must have a minimum regular service of three years in any cadre and
- iii) He should have the required qualification for the notified post in the apex society or the central society.

It is clear from the above provision that all the above qualifications are to be satisfied by an applicant. Therefore, it is only persons who are employees of the member societies, having a minimum regular service of three years in any cadre and having the requisite educational qualifications who alone are entitled for appointment as per the above rule. The stipulation that the candidate should be an employee of a member society shows that the said status should continue not only on the date of submitting the application but also on the date of appointment. It is worth noticing that no reservation is made in the rule for former employees of member societies. The petitioner as on the date of verification of her certificates is admittedly not an employee of a member society but is only a former employee of a member society. Since no reservation is contemplated for former employees of member societies, the petitioner is not entitled to claim the benefit of the 50% quota that is reserved exclusively for the employees of member societies.

10. Though the counsel for the petitioner has relied on the decision of this Court in *Ravidas v. Public Service Commission* 2009 (2) KLT 295 (F.B.) in support of his contention that the PSC does not have the authority to lay down any criteria for selection unless it is specifically authorised in that regard by the rules governing the selection, I do not think that the said decision has any application to the facts of the present case. This is for the reason that in the present case the PSC has not laid down any additional criteria for the purpose of making the selection. As found above, the criteria stipulated by the PSC are the very same criteria that are stipulated by Rule 187 of the rules.

11. The counsel for the petitioner has placed reliance on a Division Bench decision of this Court in *Muhammed Raees v. High Court of Kerala* 2008 (4) KLT 916. In the said decision, where applications were called for by the PSC for selection and appointment as District Judges, the petitioner's application was rejected for the reason that he had ceased to be an Advocate on the date of the selection, having by then been appointed as a Munsiff/Magistrate. Finding that the rejection of his application was wrong, this Court has held that the applicant was expected to be an Advocate only as on the last date fixed for submitting the application and that it is not necessary for the said status to continue as on the date of the selection. It has also been found that since the petitioner had been appointed as a Munsiff/Magistrate the said status was equivalent if not better to that of an Advocate and therefore, cannot be considered as a bar for appointment to the post.

12. In the present case, the situation is different. The petitioner has submitted her application claiming appointment in the 50% quota that is reserved for employees of member societies by the rule. As distinct from a professional qualification, where employment in a member society is stipulated as the eligibility criterion loss of such employment would disqualify the candidate. As noticed above, the petitioner was included only in the list of probable candidates and on verification of her certificates, it was found that she was not qualified to be appointed and therefore, she has not been ranked. It is only when the certificates are produced for verification that the PSC gets an opportunity to consider the eligibility of a candidate to claim appointment. For appointment in a quota that is reserved for employees of member societies, it is the date of appointment that is crucial and therefore, the candidate has to be an employee of a member society as on the date of his appointment.

For the foregoing reasons, there are no grounds to interfere with the impugned proceedings. The Writ Petition fails and is accordingly dismissed.