

(2023) 02 KL CK 0070
In the High Court Of Kerala
Case No : Writ Petition (C) No.2575 Of 2023

Sobhana Kumari A.

APPELLANT

Vs

Aryankavu Service Co Operative Bank Ltd. No.2965

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Citation : (2023) 02 KL CK 0070

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : Arjun Raghavan, T.R.Harikumar, C.P.Sabari, M.Sasindran

Judgement

Sathish Ninan, J.

1. At the time of filing the writ petition, the petitioners were working as 'Salesman' in the Neethi stores run by the 1st respondent Society. 1st petitioner subsequently retired from service on 31/01/2023. 1st petitioner was employed on commission basis since the year 1997 and 2nd petitioner was employed on commission basis since 21/04/2012.

2. As per Ext.P5 Government Order dated 27/11/2010, the post of 'Salesman' was sanctioned and was included in Appendix III to the Co-operative Societies Rules ('the Rules' for short). Such sanction and inclusion in Appendix III was acknowledged by the Registrar, as is evident from Ext.P6 circular dated 28/06/2011 and Ext.P7 communication dated 04/02/2014.

3. Pursuant to Ext.P5 Government Order, the Committee adopted resolutions regularizing the appointment of the petitioners. 1st petitioner was regularized with effect from 31/05/2011 and 2nd petitioner with effect from 21/04/2012.

4. Noticing that the petitioners have crossed the upper age limit as fixed under Rule 183 of the Rules, the Society sought for exemption from the upper age limit by moving the Government in terms of Rule 181 of the Rules.

5. On such request, the Government passed Ext.P12 order granting exemption

from the provisions of sub rule (1) of Rule 183 of the Rules. It was indicated in Ext.P12 that, the exemption is being granted to enable regularization of the petitioners in service. When attempts were made to remit the pension contribution, the Pension Board, as per Ext.P17, required the petitioners to make available orders approving the appointment of the petitioners. Thereupon, the Society approached the Joint Registrar seeking issuance of an order in the said regard. To the said request, the Joint Registrar issued Ext.P13 communication to the effect that, the Rules does not permit regularization in service from a prior date. The said order is under challenge in this writ petition.

6. Heard Sri.Arjun Raghavan, the learned counsel appearing for the petitioner, Sri.C.P.Sabari, the learned Standing Counsel appearing for respondents 1 and 2 and also Smt.K.B.Sony, the learned Government Pleader.

7. In *Elampal Service Cooperative Bank Ltd. v. Government of Kerala* [2000 (3) KLT 389], this Court has declared the law that, for appointment of staff in accordance with the staff pattern fixed in Appendix III, no approval of the Registrar is necessary. Paragraph 3 of the judgment of this Court held thus:

"3. A reading of the above Rule and Appendix.3 makes it clear that staff pattern is fixed by the Rule itself. Therefore, normally society will be free to appoint staff as per the staff pattern fixed in Appendix.3. 1st proviso allows the society from not adopting the staff pattern due to financial position and allows the members of the committee to work in a honorary capacity. That is for the society to decide. Second proviso only makes it obligatory for the society to get prior approval from the Registrar only if there is a 'need of any change in the pattern of staff including the scale of pay under special circumstances.' The above wordings make it clear that for appointing staff as per the staff pattern fixed in Appendix.3 and the rules according to the type and class to which the society belongs, no prior approval is necessary. Only if a change in the pattern is necessary, approval is required. In this connection we refer to the decision reported in *Sherthallai Urban Cooperative Bank v. State of Kerala* (1984 KLT 971). A similar view was taken in O.P.No.8097/90 decided on 28.2.91 and O.P.No.10078/85 decided on 27.3.1987."

8. As noticed supra, as per Ext.P5, Government had sanctioned the post of 'Salesman' and included the same in Appendix III. In the light thereof, the appointment being to a sanctioned post, fresh approval from the Registrar was not necessary. Noticeably, the orders of regularization of the petitioners are subsequent to Ext.P5 order, viz.31/05/2011 and 21/04/2012. Ext.P12 order of exemption was necessary only because both the petitioners had crossed the upper age limit fixed.

9. The issue involved herein is not with regard to regularization with effect from a prior date. The appointments are evidently towards sanctioned posts. The society had adopted resolutions regularizing their services with effect from the dates subsequent to Ext.P5 Government Order.

10. In the light of the above, Ext.P13 order cannot be sustained. The Joint Registrar is to pass fresh orders, after affording an opportunity of hearing to the petitioners.

In the result, Ext.P13 order is quashed. The 4th respondent – Joint Registrar shall pass fresh orders in the light of the facts noticed supra, after affording an opportunity of hearing to the petitioners. Let orders be passed within a period of six weeks from the date of receipt of a copy of this judgment.