
(2013) 01 KL CK 0065

In the High Court Of Kerala

Case No : WA. No. 658 of 2009 in WPC/21592 of 2005

The Melur Service Co-Operative Bank Ltd.

APPELLANT

Vs

Unnikrishnan. T. and Others

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Kerala Co-operative Societies Act, 1969 — Section 80(4)

Citation : (2013) 01 KL CK 0065

Hon'ble Judges : S. Siri Jagan, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : V.V. Surendran and Sri. P.A. Harish, for the Appellant; D. Somasundaram, Government Pleader R2, R3, R4 and R6, Sri. Kaleeswaram Raj Advocate in R1 and Sri. B. Krishnan, for the Respondent

Judgement

S. Siri Jagan, J.—The appellant herein is the 4th respondent in W.P.(C) No. 21592/2005, the Melur Service Co-operatives Bank Ltd. They are challenging the judgment passed by a learned single Judge in that writ petition. The Bank invited applications for appointment to one post of peon in the bank. That post was in the general category and not in the reservation category. The 1st respondent herein as well as the 5th respondent, along with others, applied. The bank prepared a rank list. Since there was only one vacancy, the 1st rank holder was appointed to the said vacancy. He was so appointed on 25.8.2003. But he resigned on 16.10.2003. Thereafter, the appellant-bank, appointed the 5th respondent herein and he joined duty on 11.2.2005. On 19.7.2005, the 1st respondent filed the writ petition staking a claim for appointment to the vacancy on the ground of reservation. The 1st respondent herein is a member of a scheduled caste. According to him, the appointment could only have been by communal rotation in view of Section 80 (4) of the Kerala Co-operative Societies Act. The learned single Judge was not inclined to set aside the appointment of the 5th respondent in view of the fact that the 1st respondent did not choose to approach this Court immediately after the 1st rank holder was appointed. But on

the ground that the bank ought to have followed communal rotation, the learned single Judge directed the appellant bank to appoint the 1st respondent in the next arising vacancy. The bank is challenging that direction in the judgment of the learned single Judge. According to the counsel for the appellant, even assuming that the direction is valid, that direction cannot hold good beyond the period of currency of the rank list. The rank list had already expired on 11.04.2006, even at the time of the judgment of the learned single Judge and therefore no direction could have been issued to appoint the 1st respondent in the next arising vacancy, is the contention raised. The learned counsel for the 1st respondent would submit that his right for appointment by communal rotation having been recognised by the learned single Judge, the direction to appoint him in the next arising vacancy cannot be faulted. He would submit that, in fact, the appointment of 1st respondent ought to have been set aside and it was only to avoid termination of service of the 5th respondent that such an equitable relief has been granted. Therefore, the bank cannot now challenge that direction on the ground that the validity of the rank list has expired long ago, is the contention raised.

2. We have considered the rival contentions in detail. Admittedly, there was only one vacancy notified. It is settled law that in the absence of any rule providing for preparation of a rank list and appointment from the rank list to future vacancies during the currency of the rank list, or the purpose of appointment to the post of Sub Staff in Co-operative Societies, no appointment could have been made from a rank list in excess of the notified vacancies. Admittedly, in this case, the notified vacancy was only one. As such, only one person could have been appointed from the list prepared. The 1st rank holder was so appointed but he later resigned from service. That is a fresh vacancy, to which, fresh selection should have been made going by the law applicable. Only when there are more than one notified vacancy, the question of applying communal rotation would arise. Therefore, basically all what the 1st respondent could have sought for is to quash the appointment of the 5th respondent and to direct fresh selection by the bank. The 1st respondent did not choose to do so. Even when the learned single Judge refused to interfere with the appointment of the 5th respondent, the 1st respondent did not choose to challenge that direction. In any event, we are of opinion that no appointment could have been made from the same rank list especially when admittedly even the period of validity of the rank list fixed by the bank had long expired. It is also not clear that even applying communal rotation, the 1st respondent would be entitled to appointment, by communal rotation which would depend on the communities of the other persons in the rank list. Further, fresh vacancies have to be notified failing which the same would violate the fundamental rights of others who are entitled to compete for such selection, under Articles 14 and 16 of the Constitution of India. In the above circumstances, in the absence of any challenge to the retention of the 5th respondent in the post in which he is appointed, we do not think that we should interfere with that part of the judgment. At the same time, we are of opinion that

the learned single Judge was not correct in directing that the petitioner should be appointed in the next arising vacancy for the reasons stated above. Accordingly, the direction in the impugned judgment of the learned single Judge to appoint the 1st respondent in the next arising vacancy is set aside. The judgment would stand modified accordingly.

The writ appeal is disposed of as above.