
(2016) 03 KL CK 0060
In the High Court Of Kerala
Case No : WP(C) No. 7807 of 2016 (A)

Usha Kumari N.	Vs	APPELLANT
The Kasargode District Co-Operative Bank Limited and Others		RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

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

Citation : (2016) 03 KL CK 0060

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : P. Narayanan, Advocate, for the Appellant; Jawahar Jose, SC and V. Vijulal, Sr. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J.—1. The respondent Bank issued Exhibit P1 notification calling for applications from eligible candidates to fill up the posts of Part Time Sweeper. The petitioner, working as a Part Time Sweeper in a Service Co-operative Bank, which is a member society of the first respondent Bank, has assailed Exhibit P1 notification on various grounds.

2. The learned counsel for the petitioner has submitted that Exhibit P1 notification is laconic, being devoid of any details. According to him, it suffers on four counts: (1) in violation of Rule 187 of Co-operative Societies Rules, the notification specifies no reservation for the in-service candidates, i.e. the candidates from the member Society; (2) in violation of Section 80 of the Co-operative Societies Act, it has failed to mention the pattern of reservation; (3) the notification prescribes the qualification in terms of Rule 186(2) (vi) of the Rules, though the said provision prescribes no qualification; and (4) it has not mentioned the number of vacancies.

3. In response, the learned counsel for the first respondent Bank has submitted that the bank issued Exhibit P1 notification on 09.02.2016 calling for the

application to the post of part-time sweepers. As per Rule 187, it is mandatory that the bank should fill up 50% of the vacancies from among the employees of the member society. Since Exhibit P1 notification does not specify the said reservation of 50% from among the employees of the member societies, the respondent bank is proposing to issue a fresh corrigendum notification.

4. The learned counsel for the respondent Bank has further submitted that the applications to be received, based on the corrigendum notification, will be considered along with the application already received pursuant to Exhibit P1 notification. The bank, according to her, has so far received about 390 applications in response to Exhibit P1 notification. She has also stated that the corrigendum notification will clearly specify the qualifications and other details strictly in accordance with the judgment in W.P. (C) No. 20561 of 2015.

5. The learned counsel for the respondent bank is emphatic in her submissions that the bank will make appointments strictly in accordance with the reservation quota specified in the Act and the Rules. As on today, the total number of employees is 302. So, as per section 80(4) of the Kerala Co-operative Societies Act, the bank will appoint 30 persons from among the Scheduled Caste/Scheduled tribe community.

6. According to the learned counsel, as on today, the number of "scheduled caste/scheduled tribe employees" in the bank is 22. The Kerala Public Service Commission (PSC) could not recruit the balance eight candidates. It has marked those vacancies as unfilled since the required candidates were not available from the rank list. She has also submitted that PSC will separately notify the said eight posts as those posts have already been identified as NCA category posts (i.e. No Candidate Available category).

7. Of course, the respondent Bank has also attacked the petitioner's standing. It has contended that the petitioner is not a person who belongs to scheduled caste/scheduled tribe community. As such, the petitioner could not challenge the alleged violation of the reservation norms.

8. Head the learned counsel for the petitioner and the learned Standing Counsel for the respondent Bank, as well as the learned Government Pleader, apart from perusing the record.

9. Indeed, Exhibit P1 notification is laconic. This Court in its judgment dated 07.08.2015 in W.P. (C) No. 20561/2015 has elaborately dealt with the issue. A perusal of Exhibit P1 amply demonstrates that it suffers from the same vices as have been pointed out in the judgment under reference.

10. To begin with, it is difficult to appreciate the respondent's defence that the recruitment will anyway take place in accordance with law. The said submission, apart from being vague, fails to resolve the complication the notification has presented: a candidate applying for the post of part-time sweeper with minimal education qualification cannot be expected to understand what the statutory

stipulation concerning the recruitment conditions is.

11. Strange is the practice adopted by most societies in their recruitment notifications; they usually avoid mentioning most details by employing a cryptic expression that the recruitment is as per the statutory provisions, rather than spelling out what those provisions mean.

12. The case on hand is that the qualification is said to be as per Rule 186(2)(vi) of the Rules. First, the very provision prescribes no qualification. Second, in the manner stated above, it is well nigh impossible for a candidate applying for the post of part-time sweeper to refer to the statutory provision, if it has been correctly described, and then ascertain what qualification he must possess. I hope, in this context, that the Co-operative Societies will desist from this vague practice of mentioning the statutory provisions in the notifications even concerning the lowest post, instead of spelling out the details regarding eligibility, experience, reservation, etc.

13. There is sufficient force in the petitioner's submissions that the notification mentions neither the reservation for the in-service candidates nor the number of posts to be filled up.

14. The learned counsel for the respondent Bank has strenuously contended that since the petitioner does not belong to any reserved community, he cannot be heard saying that the notification does not specify the reservation particulars of SC/ST and OBC. Attractive as the submission may be, I am afraid it fails to pass the judicial muster.

15. A candidate aggrieved need not necessarily concern himself with every lacuna in the notification. If the logic of the submission made by the learned counsel for the respondent Bank is extended further, this notification could be set aside only to the extent it affects the petitioner. Thereafter, the respondent Bank, we may assume, will issue another notification. Some other person who finds other grounds that affect him may file another application.

16. Once again, the Court, continuing in the same vein, will have to interfere with the recruitment process. In the third round, yet another person may still come up with his own grievance. The rigmarole goes on, endlessly. Thus, the approach that a person should be heard concerning only regarding the issues that affect him, but not beyond, leads to multiplicity, to say the least. The upshot of the discussion is that once a person has a ground to attack the recruitment, he may as well, at least incidentally, expose the other shortcomings in the process adopted by the employer. At any rate, the Court will undertake a comprehensive, rather than a compartmentalised, adjudication.

17. I am therefore of the opinion that the petitioner, too, may raise the issues that concern the statutory shortcomings in the recruitment notification, though he may not have been directly affected, so long as he has the locus, having been affected in some measure.

18. Finally, I may have to address the issue of the respondents willingness to come up with a corrigendum notification supplying the details thereby covering the lapses. The defence set up by the respondent is that already 390 applications have been received in response to Exhibit P1 notification. It shall be presumed, according to the learned counsel, that all those persons have understood Exhibit P1 notification, correctly. Once again I regret my inability to agree with the respondent Bank.

19. The very willingness by the respondent Bank that it is contemplating the issuance of a corrigendum notification speaks volumes about the statutory shortcomings in Exhibit P1 notification. The piecemeal approach of issuing corrigendum notification may not solve the problem. There is no guarantee that every prospective candidate will have access to that notification. And, further, the said candidate will have to correlate both the notifications, separated by considerable period of time, to understand the true import and apply thereafter.

20. Indeed, the respondent may have already received 390 applications. This Court will ensure that their chances are not affected.

21. In the facts and circumstances, Exhibit P1 notification is set aside for it suffers from incurable statutory shortcomings. Remedially, the Court directs the respondent Bank to issue a fresh notification at the earliest incorporating all the details as have been mentioned above and as required to be noted in statutory terms.

22. It is clarified that the applications already received shall be processed along with those that are to be received in response to the notification yet to be issued. In other words, those 390 candidates need not apply afresh in response to the notification to be issued. With the efflux of time, if any of those 390 applicants are to suffer any prejudice-for example, getting barred by age in the meanwhile- it is further clarified that their eligibility shall be determined only as on the date of Exhibit P1 notification.

With the above observations, the writ petition stands allowed. No order on costs.