

(2023) 01 KL CK 0087
In the High Court Of Kerala
Case No : Writ Appeal No 598 Of 2021

V.R. Bhaskaran

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 10-01-2023

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 69, 80(b)(4), 80(10)

Citation : (2023) 01 KL CK 0087

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P., J

Bench : Division Bench

Advocate : M.Ramesh Chander, Balu Tom, M.Sasindran, B Unnikrishna Kaimal

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P., J.

1. This appeal is filed by the writ petitioner aggrieved by the judgment of the learned single Judge dismissing the writ petition by relegating him to avail the alternate remedy available under Section 69 of the Kerala Co-operative Societies Act, 1969.

2. The short facts leading to the writ appeal are as follows:-

The writ petitioner, a member and past President of the 4th respondent Bank challenged Ext.P3 order by which the third respondent -Joint Registrar deputed the 6th respondent, an employee working in the Co-operative Department as the Chief Executive of the Bank. It was the appellant's contention before the learned single Judge that a mere reading of Ext.P3 order shows that the appointment was being made to an existing post of Chief Executive when there was no such post and the said order is purportedly made under Rule 144 of the Part I of the Kerala Service Rules, which is not applicable to the Co-operative societies. In short, contending that the action of the 3rd respondent is without jurisdiction being against the provisions of the Kerala Co-operative Societies Act and Rules (in short' the Act & the Rules'), the writ petition was filed. As stated earlier, the

writ petition was dismissed with liberty to the petitioner to avail the alternate remedy and the said judgment is challenged before us.

3. The learned senior counsel for the appellant, Sri.M.Ramesh Chander, instructed by Sri.Balu Tom, submits before us that Ext.P3 is without jurisdiction and in violation of the Act and the Rules, and therefore, such a challenge should not have been relegated to the Joint Registrar functioning under the Act. The appointment of the 6th respondent being without jurisdiction, this Court ought to have entertained the writ petition and heard it on merits. The learned senior counsel also argues that such an appointment could have been made only under Section 80(b)(4) of the Act to depute a person with expertise and that the 6th respondent does not qualify to be appointed under the said section.

4. Per contra, the learned counsel Sri.M.Sasindran and Sri.Shyam supported the appointment of the 6th respondent by contending that Ext.P3 is one made under the provisions of Section 80(10) of the Act, which is a power vested in the Government. On a reading of Section 80(10) of the Act it is clear that it is a power vested with the Government to depute a person on mutually agreed terms. In the instant case the Society had taken a decision (Ext.R5(b) to request the services of a Senior Inspector in the Co-operative Department to function as the Chief executive to improve the functioning of the Bank and also for creating a post of Chief Executive. This request was made before the Registrar of Co-operative Societies through the Joint Registrar, Kannur. It is on the basis of the said request that Ext.P3 order was issued appointing the 6th respondent as the Chief Executive. This appointment has to be seen as one made under Section 80(10) of the Act and the Rules. The contention of the learned senior counsel is that the power under Section 80 (10) can only be invoked by the Government and not by the Registrar of the Co-operative Societies. It is to be seen that by Ext.R5(a) it is the Registrar of the Co-operative Societies, who considered the request of the 4th respondent Bank and permitted to depute the services of a Senior Inspector in the Co-operative Department as the Chief Executive of the 4th respondent. The said order refers to the order of the Government dated 31.10.2008, a copy of which is made available to us today by the Government Pleader, as per which the Government had delegated the power to sanction deputation posts up to the level of Assistant Registrar of Co-operative Societies to the Registrar of Co-operative Societies. Therefore, Ext.R4(a) has to be seen as valid and regular on account of the delegation granted to the Registrar by the Government. We are also given the copy of the order of the Registrar dated 12.7.2022 extending the period of the 6th respondent from 17.07.2022 for one more year. In the light of these orders we find that a challenge to Ext.P3 has necessarily to fail. We make it clear that we have only upheld the action of the respondents in deputing the 6th respondent under Section 80(10) of the Act and the Rules to the post of Chief Executive. All other contentions raised by the appellant are left open. We have not considered the legality of the other contentions raised by the appellant which he will be free to urge in case a cause of action arises.

The writ appeal is dismissed as above.