

B.Mithran Vs. State of Kerala

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Court : Kerala

Decided On : Jan-10-2013

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : B.Mithran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE THURSDAY, THE 10TH DAY OF JANUARY 2013 20TH POUSHA 193 WP(C).No. 12283 of 2012 (I) ----- PETITIONER(S): ----- B.MITHRAN AGED 5 YEARS S/O.T.C.DAMODARAN,SENIOR MANAGER,HR DEPARTMENT KANNUR DISTRICT CO-OPERATIVE BANK LTD BHARATHI VILAS,KANNOOKKARA POST MADAPALLY COLLEGE (VIA),BADAKARA-2,PIN-673102. BY ADVS.SMT.ANU SIVARAMAN SMT.A.RAJESWARI RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY ITS SECRETARY DEPARTMENT OF CO-OPERATION,GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM.

2. REGISTRAR OF CO-OPERATIVE SOCIETIES THIRUVANANTHAPURAM-695001.

3. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL) KANNUR 69 001.

4. THE KANNUR DISTRICT CO-OPERATIVE BANK REPRESENTED BY ITS SECRETARY,KANNUR-670001.

5. THE KERALA PUBLIC SERVICE COMMISSION REPRESENTED BY ITS SECRETARY OFFICE OF THE KERALA PUBLIC SERVICE COMMISSION PATTOM,THIRUVANANTHAPURAM-695004. *Addl.

6. A.P.SUSHAMA D/O.A.K.RAMAN,AGED 5 YEARS,SENIOR MANAGER KANNUR DISTRICT CO-OPERATIVE BANK LTD. RESIDING AT SAYOOJYAM,PARAKKADAVU,P.O. ANCHAMPEEDIKA,KANNUR DISTRICT,PIN:

670. 331. * ADDL. R6 IS IMPEADED AS PER ORDER DATED 28 06/2012 IN IA 8596/2012. R3 BY ADV. GOVERNMENT PLEADER R4 BY ADV. SRI.GEORGE POONTHOTTAM R4 BY ADV. SMT.M.MEENA JOHN R5 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC R6 BY ADV. SRI.P.U.SHAILAJAN THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-11-2012, THE COURT ON 10.01.2013 DELIVERED THE FOLLOWING: WP(C).No. 12283 of 2012 (I) APPENDIX PETITIONER(S) EXHIBITS EXHIBIT-P1. TRUE COPY OF THE RANK LIST PUBLISHED BY THE KERALA PUBLIC SERVICE COMMISSION. EXHIBIT-P2. TRUE COPY OF THE LIST OF PROMOTEES TO THE POST OF DEPUTY GENERAL MANAGER. EXHIBIT-P3. TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT. EXHIBIT-P4. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND AND 3RD RESPONDENTS DATED 22 5.2002. EXHIBIT-P5. TRUE COPY OF THE NOTIFICATION DATED 13 11.2009 PUBLISHED BY KERALA PUBLIC SERVICE COMMISSION. RESPONDENTS' EXHIBITS : EXHIBIT-R6(a) - TRUE COPY OF THE PROCEEDINGS DATED 22 7.2011 OF THE GENERAL MANAGER-IN CHARGE, KANNUR DISTRICT CO-OPERATIVE BANK. EXHIBIT-R6(b) - TRUE COPY OF THE PROCEEDINGS DATED 20 9.2011 OF THE GENERAL MANAGER-IN CHARGE, KANNUR DISTRICT CO-OPERATIVE BANK. // TRUE

JUDGMENT

The writ petition is filed seeking a direction to respondents to appoint the petitioner as Deputy General Manager in the 4th respondent bank in a vacancy arising on 01/06/2012 and also to consider and pass orders on Ext.P3 and P4 representations before filling up the said vacancy.

2. The facts as disclosed in the writ petition would show that petitioner is presently working as Senior Manager (Human Resources) in the 4th respondent Bank. Kerala Public Service Commission (KPSC) invited applications for selection to the post of Deputy General Manager in the 4th respondent bank by direct recruitment. Petitioner is included in Ext.P1 rank list dated 22/07/2011 as serial No.2.

3. The main contention of the petitioner is that as per Rule 185(3) of the Kerala Co-operative Societies Rules W.P.C.No.12283/2012 2 (hereinafter referred to as the Rules), substantive vacancies in the post of Deputy General Manager in the District Co- operative Banks shall be filled up by promotion and direct recruitment in the ratio 1:1. This provision had come into effect in 1999, but the contention of the petitioner is that until 2011, no action was taken by the 4th respondent Bank to appoint persons to the said post by way of direct recruitment and about 17 persons were appointed by giving promotion. It is therefore contended that though the 1st rank holder in Ext.P1 rank list was appointed as Deputy General Manager on 23/09/2011, since the 4th respondent did not appoint any person by way of direct recruitment between 1999-2011, instead of appointing another person to the next available post that had arisen on 01/06/2012 by way of promotion, the direct recruitment process is to be complied with by appointing the petitioner from Ext.P1 rank list. For this purpose the petitioner had submitted Ext.P3 W.P.C.No.12283/2012 3 and P4 representations which remains unconsidered. Hence the writ petition is filed seeking for directions as indicated.

4. The 3rd respondent Joint Registrar of Co-operative Societies (General) has filed a counter affidavit inter alia contending that since the first rank holder in the rank list had already been appointed, the next appointment to the post of Deputy

General Manager which had arisen on 01/06/2012 is to be filled up by way of promotion and not by way of direct recruitment. The 4th respondent has filed counter affidavit inter alia contending that petitioner cannot claim any right on the basis of Ext.P1 rank list as the notification was issued only for filling up one post and once the said post had been filled up the petitioner cannot claim any vested right to claim appointment on the basis of the said rank list. It is also contended that once the first rank holder from the list has been appointed, the next appointment to the said post has to be filled up by W.P.C.No.12283/2012 4 promotion as per feeder category rules. It is also submitted that the last vacancy had fell vacant in the year 2003 was filled up in the year 2011 by way of direct recruitment in which Mr.K.C.Sahadevan was appointed. There is a further contention that there are only three posts of Deputy General Managers in the respondent bank and the 1st post is occupied by a promotee, the 2nd post is occupied by a direct appointee and the 3rd post which fell vacant on 01/06/2012 has to be filled up by a promotee.

5. The additional 6th respondent who claims to be the senior most person who is entitled for getting appointment by way of promotion to the post of Deputy General Manager has filed a counter affidavit on similar lines as that of the 4th respondent. The 6th respondent also contends that the petitioner has to approach the arbitration court under Section 69 of the Co-operative Societies Act. She claims right to get an appointment by way of promotion as she is W.P.C.No.12283/2012 5 the senior most. She further contends that Ext.P1 rank list had already expired on appointing Sri.Sahadevan from the list in the notified vacancy.

6. KPSC, the 5th respondent has filed a counter affidavit. They did not join issue as far as the claim for appointment by direct recruitment is concerned. They have only stated regarding the factual matters relating to the publication of the rank list and existence of Ext.P1 rank list.

7. Reply affidavit is filed by the petitioner relying upon Ext.P5 notification issued by KPSC which would show that the rank list shall remain in force for a minimum period of one year subject to the condition that the said list would continue to be in force till the publication of a new list after the expiry of the minimum period of one

year or till the expiry of three years whichever is earlier. Therefore according to the petitioner, until a new list is published in respect of direct recruitment, the list will remain in force for W.P.C.No.12283/2012 6 a period of three years. It is further contended that the 6th respondent cannot claim any right to be promoted as she has not passed the qualifying examination which is an essential qualification for promotion to the said post.

8. The question to be considered in the writ petition is whether the petitioner has a valid legal right to claim appointment to the vacancy of Deputy General Manager which had arisen on 01/06/2012. The undisputed facts would show that as per Ext.P1 rank list one Mr. K.C Sahadevan, the 1st rank holder had already been appointed to the post of Deputy General Manager and another vacancy had arisen on 01/06/2012. The question is whether that vacancy has to be filled up from the rank list Ext.P1 or should it go by way of promotion on the basis of 1:1 ratio as stipulated under Rule 185(3) of the Rules.

9. The legal right claimed by the petitioner is on the basis that despite the coming into force of the rule 185(3), W.P.C.No.12283/2012 7 from 1999-2011 all vacancies of Deputy General Manager post were being filled up by promotees. Therefore the contention is that until the opportunity of direct recruits are totally filled up, there cannot be any appointment by way of promotion. This argument, I do not think, is sustainable. From 1999-2011, no person had challenged the validity of the appointments made by way of promotion. At this point of time, it may not be possible for this Court to interfere with the promotions which had been already made. That apart, petitioner had applied for the post of Deputy General Manager for a vacancy that had arisen in 2003 and through a selection process undertaken by KPSC. Petitioner's right can be limited only to the rank list prepared by KPSC. Though a contention had been raised on behalf of the respondents that the rank list was prepared only for a vacancy that is notified by the bank, on a reading of Ext.P5 and the Rules of KPSC, it is clear that the rank list will W.P.C.No.12283/2012 8 remain in force for a period of three years or until another list comes into operation whichever is earlier. In so far as the said period is not over nor any other list been published by KPSC, the rank list will remain in force. Therefore the petitioner is definitely entitled for an appointment if the rank list is in

force as indicated in Ext.P5.

10. But the question that remains is whether the petitioner can get a priority over a person who comes in the feeder category being the senior most to be promoted applying the 1:1 ratio. Despite the fact that the principle of 1:1 ratio were not being applied and the direct recruitment did not take place in the bank since 1999, as matters stand today the same principle of 1:1 has to be applied since no one else had challenged the earlier appointments by seeking intervention of the Court. Therefore, as matters stand today petitioner cannot claim a right to get appointment for a vacancy which has arisen on 01/06/2012. In that view of W.P.C.No.12283/2012 9 the matter, I am of the view that the petitioner has no legal right to seek a direction as prayed for. However the appointment of the petitioner has to be considered in the next arising vacancy and that too from Ext.P1 list prepared in terms of Ext.P5.

11. In regard to the contentions urged by the respondent regarding maintainability of the writ petition, I do not think that the writ petition can be thrown out on the ground that there is an alternate remedy. Petitioner seeks intervention of this court to consider the question as to whether the promotee should be given appointment in the light of the fact that from 1999 onwards no action was taken by the bank to appoint direct recruits and her contention is that in order to overcome the said mistake or inaction necessary orders are to be passed to appoint direct recruits in order to see that the mistake committed by the bank is substantially rectified. That being the situation, I do not W.P.C.No.12283/2012 10 think that it will be possible for this Court to relegate the matter to the appellate authority or the arbitration court as the case may be.

12. Another contention raised by the learned counsel for the bank is relying upon the judgment of the Supreme Court in State of Punjab v. Raghbir Chand Sharma and another [2002(1) SCC 113. I do not think that the said judgment has any application to the factual circumstances of the above case especially in view of the fact that in the said case there was only one post notified that of the Assistant Advocate General Punjab which is already filled up and in that case the notification issued inviting application was in respect of one post and the first candidate in the

select panel was not only offered but on his acceptance of offer he came to be appointed and after that he resigned. When he resigned the question was whether the second man should get an appointment. The Supreme Court opined that he W.P.C.No.12283/2012 11 cannot claim appointment as a matter of right. That is not the situation here. Here is a case where Ext.P5 notification itself would indicate that future vacancies would be filled up from the very same rank list provided the vacancy arises until the next list is published or within 3 years whichever is earlier. According to the learned counsel for the petitioner, a vacancy had arisen in November 2011 and therefore he can be appointed in the said vacancy.

13. Still further another argument has been raised on the basis of Rule 187 of the Rules and relying upon the judgment of this Court in Vijayan vs. State of Kerala [1996(2) KLT 980]. The said judgment also does not apply to the factual circumstances involved in the above case as I do not find any contradiction between Rules 187 and 185 (3). Rule 185(3) is very specific in regard to filling up of a substantive vacancy to the post of Deputy General Manager in the Co-operative Bank and District co-operative banks. W.P.C.No.12283/2012 12 Whereas Rule 187 is a general provision for appointments to 50% of the vacancies arising in an apex society or other federal type society having other societies as its members. Therefore 50% vacancies of the Bank are to be filled up from the society quota. This provision does not in any way contradict the 1:1 ratio that had been fixed up in Rule 185 (3) since two channels of appointment to the post of Deputy General Manager has been clearly spelt out in the Rule. That being the situation, existence of Rule 187 cannot negate the right of the selected candidate as per Ext.P1 rank list.

14. Having found that as matters stand today, the petitioner has no legal right to claim the appointment for the vacancy which had arisen on 01/06/2012, I can only say that the petitioner has a valid right being ranked in Ext.P1 rank list to make a claim if a substantive vacancy to the said post of Deputy General Manager had arisen within the W.P.C.No.12283/2012 13 period prescribed as per Ext.P5 notification.

15. With these observations, this writ petition is disposed of. It is made clear that if a vacancy arises or had arisen after appointment of the next senior most member under the promotion category, petitioner has a right to get appointment on the basis of Ext.P1 if the rank list is still in force in terms of what is stated above. (sd/-)
(A.M.SHAFIQUE, JUDGE) jsr W.P.C.No.12283/2012 14 W.P.C.No.12283/2012
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