

Sumathi Vs. Calicut North Service Co-operative Bank

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Court : Kerala

Decided On : Feb-18-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Sumathi

Respondent : Calicut North Service Co-operative Bank

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN TUESDAY, THE18H DAY OF FEBRUARY201429TH MAGHA, 1935 WA.No. 1445 of 2013 () IN WP(C).21570/2008 ----- AGAINST THE

JUDGMENT

IN WP(C) 21570/2008 of HIGH COURT OF KERALA DATED1107-2013
APPELLANT/PETITIONER IN W.P.(C)21570/2008:-
----- SUMATHI, BRANCH
MANAGER CALICUT NORTH SERVICE CO-OPERATIVE BANK
LTD.NO.LL37KARUVISSERY, KOZHIKODE. BY ADV. SRI.P.P.JACOB
RESPONDENTS/RESPONDENTS IN W.P.(C) 21570/2008:-
----- 1. CALICUT NORTH
SERVICE CO-OPERATIVE BANK LTD.NO.LL37 KARUVASSERY, KOZHIKODE,
PIN - 673 010 REPRESENTED BY ITS SECRETARY.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), KOZHIKODE, PUTHIYARA, KOZHIKODE PIN - 673 004.

3. ANITHAKUMARI P., ACCOUNTANT CALICUT NORTH SERVICE CO-OPERATIVE BANK LTD.NO.LL37KARUVASSERY, KOZHIKODE, PIN - 673 010.
R1 BY SRI.T.A.SHAJI (SR.) R2 BY SR.GOVERNMENT PLEADER SRI K.K.SAIDALAVI R3 BY ADV. SRI.M.SASINDRAN THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ANTONY DOMINIC & ANIL K.NARENDRA, JJ.

----- Writ Appeal No.1445 of 2013
----- DATED THIS THE 18th DAY OF
FEBRUARY, 2014

JUDGMENT

ANTONY DOMINIC, J.

The petitioner in W.P.(C)No.21570/2008 is the appellant. The controversy in the Writ Petition is regarding Exhibit P5 order passed by the Joint Registrar directing that the promotion granted to the appellant as Branch Manager without obtaining exemption from educational qualification be cancelled and the monetary benefits paid be recovered. The Writ Petition having been dismissed, this appeal is filed.

2. We heard the learned counsel for the appellant, learned Senior Counsel for the 1st respondent-Bank, learned Government Pleader appearing for the 2nd respondent and also the learned counsel appearing for the 3rd respondent.

3. The appellant commenced her service in the Bank as a Junior Clerk and was finally promoted to the post of Accountant, after obtaining exemption from the educational qualification of degree, relying on the provisions contained in Section 185(8)(g) of W.A.No.1445/13 -2- the Co-operative Societies Rules. Subsequently, she was promoted as Branch Manager by Exhibit P3 order dated 23.1.2008. Thereupon, the 3rd respondent who was appointed as an Accountant as early as on 1.6.2002 made a complaint to the Joint Registrar, that the appellant is unqualified and has been promoted without obtaining exemption. It is acting upon

that complaint, Exhibit P5 order was passed by the Joint Registrar. It is this order, which is under challenge.

4. The learned counsel for the appellant contended that as per Rule 185(8)(g) of the Rules, exemption need be obtained only for a promotion to the cadres and not to the posts within the cadre. According to him, both the posts of Accountant and Branch Manager fall within the Supervisory Cadre and therefore the appellant having been exempted from educational qualification, for getting her promotion to the post of Accountant, the benefit of exemption will enure to her to the promoted post of Branch Manager also. However, a reading of Exhibit P5 order passed by the Joint Registrar would show that according to him, for the post of Accountant, degree was not a prescribed W.A.No.1445/13 -3- qualification and therefore, it was unnecessary to have obtained exemption for promotion of the appellant to that post. On that basis, he further says that the promotion to the post of Branch Manager, for which post degree is the prescribed qualification, was without obtaining exemption and that therefore the promotion given is irregular.

5. The 3rd respondent has produced Exhibit R3(a), the Feeder Category Rules, which shows that for the post of Accountant, the prescribed educational qualification is SSLC and that for the post of Branch Manager, degree is the prescribed qualification. The qualification so prescribed is consistent with Rule 186(ii) of the Rules also. If that be the position, the Joint Registrar was justified in stating in Exhibit P5 that when the appellant was promoted as Accountant, it was not necessary to have obtain exemption as done by the Bank. If so, the exemption so unnecessarily obtained cannot enure to the benefit of the appellant for any purposes, much less for her promotion to the post of Branch Manager. Consequently, we must uphold the view taken by the Joint Registrar that the promotion of the W.A.No.1445/13 -4- appellant to the post of Branch Manager was without obtaining exemption as contemplated under the Rules. That apart, in the judgment in *Oonnoony v. State of Kerala* (2006 (1) KLT899, interpreting Rule 185(8)(g), this Court has also held that exemption should be obtained at each stage and that a person who has obtained exemption for a lower post cannot stake his claim for higher post relying on the exemption already granted. See in this connection paragraph 7 of the judgment, where it is held thus: "7. I am unable to

accept the contentions of the petitioner. The qualifications for the post of Manager as also the post of Deputy General Manager and General Manager are the same. A perusal of Ext.P2 would show that exemption from qualification was granted to the petitioner specifically in regard to the post of Manager. Therefore it is not as the learned counsel for the petitioner contended that Ext.P2 is to be treated as an exemption from qualification for the purpose of promotion without any condition attached to it. In other words, Ext.P2 can only be seen as an exemption from possession of qualification of graduation in regard to the post of Manager. The impugned orders proceeded on the basis that exemption is to be obtained at each stage. In other words, exemption has to be obtained for each post. I find it difficult to say that this view is not correct or that it is illegal. W.A.No.1445/13 -5- It is not as if that the post of Deputy General Manager has to be filled up without reference to any qualification by the person holding the post of Manager. Qualifications are specifically provided admittedly for the post of Deputy General Manager as including the qualification of graduation. In such circumstances, I am of the view that the person by mere exemption from the qualification in regard to the lower post of manager cannot automatically stake a claim for promotion on the basis of the exemption so granted in relation to the lower post. This will be in the teeth of the provision relating to the possession of qualification of graduation being insisted upon in relation to the post of Deputy General Manager and General Manager." If this be the position, the conclusion of the learned Single Judge that Exhibit P5 issued by the 2nd respondent deserves to be upheld cannot be interfered with. Consequently, we do not find any reason to interfere with the judgment. However, we are unable to sustain the order of the Joint Registrar that the amounts paid to the appellant should be recovered from her because, nobody has a case that the appellant has played any fraud or misrepresentation for obtaining her promotion as Branch Manager. Further, it is also a fact that she, on her appointment as Branch Manager, has worked in that W.A.No.1445/13 -6- post. If that be so, she cannot be called upon to refund the amount already paid to her. Therefore, the direction in Exhibit P5 to recover the amounts already paid to the appellant will stand vacated.

6. The learned Senior Counsel for the 1st respondent contended that the Board of Directors cannot be saddled with the liability to refund the amount paid to the appellant. In the absence of any appeal filed by the Board, we are not inclined to

entertain this contention and we clarify that it would be open to the 1st respondent to agitate this grievance in R.P.No.768/2013 filed by them before the learned Single Judge himself. Subject to the above, the appeal is dismissed. Sd/- ANTONY DOMINIC, JUDGE Sd/- ANIL K.NARENDRAN, JUDGE dsn

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