

B.Kairaly, vs Deepak. K

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Court : Kerala

Decided On : Jul-04-2023

Judge : Honourable Mr. Justice Alexander Thomas, Honourable Mr. Justice C. Jayachandran

Appeal No. : WA/2016/2022

Appellant : B.Kairaly,

Respondent : Deepak. K

Judgement :

(CR)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
& THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN TUESDAY,
THE 4TH DAY OF JULY 2023 / 13TH ASHADHA, 1945 WA NO.2016 OF
2022 AGAINST THE JUDGMENT DATED 02.12.2022 IN WP(C)
NO.8756/2021 OF HIGH COURT OF KERALA
APPELLANT/RESPONDENT 1: B.KAIRALY, AGED 49 YEARS
SECRETARY, UDUMA VANITHA SERVICE CO-OPERATIVE SOCIETY
LTD. NO.284, UDUMA P.O., KASARAGOD DISTRICT, PIN - BY ADVS.

K.S.MOHAMED HASHIM JAWAHAR JOSE
RESPONDENTS/PETITIONER AND RESPONDENTS 2, 3, 4 & 5:

1 DEEPAK. K GREESHMAM, P.O., VENGARA, KANNUR DISTRICT - 676304 2 UDUMA VANITHA SERVICE CO-OPERATIVE SOCIETY LTD.NO.284 REPRESENTED BY ITS SECRETARY UDUMA P.O., KASARAGOD DISTRICT - 671319 3 THE MANAGING COMMITTEE OF UDUMA VANITHA SERVICE CO- OPERATIVE SOCIETY LTD. NO.284, REPRESENTED BY ITS PRESIDENT UDUMA P.O., KASARAGOD - 4 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL) OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL) CIVIL STATION, VIDYA NAGAR POST OFFICE KASARAGOD DISTRICT - 671123 5 THE GOVERNMENT OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT CO-OPERATIVE DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001

BY ADVS. P.N.MOHANAN GOVERNMENT PLEADER (B/O) GOVERNMENT PLEADER (B/O) M.SASINDRAN C.P.SABARI(K/973/2010) AMRUTHA SURESH(K/000971/2016) THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.07.2023, ALONG WITH WA.2008/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS & THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN TUESDAY, THE 4TH DAY OF JULY 2023 / 13TH ASHADHA, 1945 WA NO.2008 OF 2022 AGAINST THE JUDGMENT DATED 02.12.2022 IN WP(C) NO.8756/2021 OF HIGH COURT OF KERALA APPELLANTS/RESPONDENTS 2 AND 3: 1 UDUMA VANITHA SERVICE CO-OPERATIVE SOCIETY LTD.NO.284, REPRESENTED BY ITS SECRETARY, UDUMA P.O., KASARAGOD DISTRICT, PIN-

671319 (REPRESENTED THROUGH PRESIDENT AS THE SECRETARY IS A PARTY RESPONDENT). 2 THE MANAGING COMMITTEE OF UDUMA VANITHA SERVICE CO-OPERATIVE SOCIETY LTD. NO.284, REPRESENTED BY ITS PRESIDENT, UDUMA P O, KASARAGOD, PIN - 671319 BY ADVS. M.SASINDRAN P.K.SUBHASH RESPONDENTS/PETITIONER AND RESPONDENTS 1,4 AND 5: 1 DEEPAK K., GREESHMAM, P.O.VENGARA, KANNUR, PIN - 676304 2 SMT.B.KAIRALY, SECRETARY,UDUMA VANITHA SERVICE CO-OPERATIVE SOCIETY,LTD. NO. 284, UDUMA P.O., KASARAGOD DISTRICT, PIN - 671319 3 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL) CIVIL STATION, VIDYA NAGAR POST OFFICE KASARAGOD DISTRICT,, PIN - 671123 4 THE GOVERNMENT OF KERALA, - REPRESENTED BY SECRETARY TO GOVERNMENT, CO-OPERATIVE DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001 BY ADVS. P.N.MOHANAN JAWAHAR JOSE GOVERNMENT PLEADER(B/O) GOVERNMENT PLEADER(B/O) THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.07.2023, ALONG WITH WA.2016/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR) ALEXANDER THOMAS & C.JAYACHANDRAN, JJ.
===== W.A No.2016 of 2022
[arising out of the impugned judgment dated 02.12.2022 in W.P(C) No.8756/2021] & W.A No.2008 of 2022 [arising out of the impugned judgment dated 02.12.2022 in W.P(C) No.8756/2021]
===== Dated this the 04th day of
July, 2023

JUDGMENT

Alexander Thomas, J.

The aforecaptioned writ appeals filed under Sec.5(i) of the Kerala High Court Act, are directed against the impugned judgment rendered on 02.12.2022 by the learned Single Judge, disposing of the instant Writ Petition (Civil), W.P(C)No.8756/2021.

2. The sole appellant in W.A No.2016/2022 is R-1 in the

W.P(C). Whereas, the two appellants in W.A No.2008/2022 are respondents 2 & 3 in the W.P(C). R-1 in the above writ appeals is the writ petitioner. The other official respondents in the W.P(C) are also arrayed as the other respondents in these writ appeals.

3. Heard Sri.Jawahar Jose, learned counsel appearing for the

sole appellant in W.A No.2016/2022, Sri.M.Sasindran, learned counsel appearing for the appellants in W.A No.2008/2022, Sri.P.N.Mohanan, learned counsel appearing for R-1 in these writ appeals (writ petitioner) and Sri.K.P.Harish, learned Senior Government Pleader appearing for the official respondents in these writ appeals.

4. Sri.M.Sasindran, learned Advocate, has appeared for R-2 and R-3 in W.A No.2016/2022. Sri.Jawahar Jose, learned Advocate, has appeared for R-2 in W.A No.2008/2022.

5. The learned Single Judge, after hearing both sides, has

rendered the impugned judgment on 02.12.2022, disposing of the instant W.P(C) No.8756/2021, with the finding that the matter in issue is covered by a Single Bench verdict in the case Pradeep Kumar.A v. The Wayanad District Co-operative Bank Ltd. [judgment dated 18.03.2019 in W.P(C) No.299/2018] and that therefore, there is no question of R-1 in the W.P(C) [appellant in W.A No.2016/2022], retaining lien in her original post of Secretary of the respondent (Co-operative Society), after her advice and appointment to the post of Clerk-cum-Cashier to the erstwhile Kasaragod District Co-operative Bank under Rule 187 of the KCS Rules, on the basis of advice by the Kerala Public Service Commission, etc. Further, it has also been ordered that the competent authority of the Government will re-

consider the matter adverting to the dictum laid down in Pradeep Kumar's case supra and then take decision in the matter, within four

months, etc. It is this verdict of the learned Single Judge in W.P(C) No.8756/2021, that is under challenge in these writ appeals.

6. A brief reference to the four facts of this case will be pertinent.

(a) R-1 in the W.P(C) (sole appellant in W.A No.2016/2022), was

an in-service employee of the respondent (Uduma Vanitha Service Co-operative Society Ltd.) and later, she was regularly promoted to the post of Secretary of the said respondent (Co-operative Society). While so, the Kerala Public Service Commission had issued selection notification, inviting applications from eligible candidates for selection to the post of Clerk-cum-Cashier in the Kasaragod District Co-operative Bank, under Rule 187 of the KCS Rules. R-1 in the W.P(C) participated in the selection process and she was found to be meritorious and she was selected in the said quota created under Rule 187 of the KCS Rules in the year 2017, as Clerk-cum-Cashier in the Kasaragod District Co-operative Bank. Pursuant to the said advice memo issued by the

Kerala Public Service Commission, she was offered appointment order

to the post of Clerk-cum-Cashier by the Kasaragod District Co-operative Bank. Thereupon, the respondent-Primary Society (Uduma Vanitha Service Co-operative Society Ltd.), had issued Ext.R-3(a) resolution, ordering that, in view of the PSC advice memo dated 02.02.2017, issued in favour of R-1 in the W.P(C), she will stand relieved from her post of Secretary of the Uduma Vanitha Service Co-operative Bank, in order to enable her to join duty in the selected post in the Kasaragod District Co-operative Bank. Ext.R-3(a) resolution dated 09.05.2017 of the respondent (Uduma Vanitha Service Co-operative Society Ltd.), reads as follows : " 9/5/2017 - . . # 7 . 04 Jr. PSC KG ON (2) 2271 / 06 dtd 2-2-17 / 11/05/2017 5 pm . . .

It is specifically ordered therein that the relief is only temporary in nature. It appears that, thereafter, R-1 in the W.P(C), had joined duty in the post of Clerk-cum-Cashier in the Kasaragod District Co-operative Bank. Later, the respondent-Primary Society has issued Ext.R-3(d) resolution dated 26.09.2017 and decision No.3 thereof, reads as follows :

3. . : A B . F A B

(b) As per the said Ext.R-3(d) resolution dated 26.09.2017, it

has been resolved by the respondent-Primary Society that, taking note of the meritorious role played by R-1 in the W.P(C) in the development of the respondent-Primary Co-operative Society, it is felt necessary and imperative that her services are required in the respondent-Primary Society as Secretary and that she should be allowed to join duty as

Secretary of the respondent-Primary Society, etc. There does not appear to be any serious dispute that Ext.R-3(d) resolution dated 26.09.2017, issued by the respondent-Primary Society, was also duly approved by the General Body of the Apex Society concerned, viz., Kasaragod District Co-operative Bank, as can be seen from Ext.R-3(e) proceedings dated 06.11.2017 issued by the General Manager of the Kasaragod District Co-operative Bank. Accordingly, R-1 in the W.P(C) was relieved from the post of Clerk-cum-Cashier in the Kasaragod District Co-operative Bank and she was allowed to join duty as Secretary of the respondent-Primary Society. Thereafter, it appears that the writ petitioner, without approaching the respondent-Primary Society or any statutory authority, like the notified Registrar, etc., has chosen to file the instant writ petition, W.P(C) No.8756/2021, with the

following prayers :

- i) Call for the records leading to issue Ext.P2 & P4 and quash the same by issuing a writ of certiorari or any other appropriate writ order or

direction. ii) issue a writ of mandamus or any other appropriate writ order or direction directing fourth respondent to recover the salary paid by the second respondent since 11.05.2017. iii) declare that the first respondent cannot continue in the service of the second respondent since 11.05.2017 in the light of Ext.P2 & P4. iv) Grant such other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(c) There does not appear to be any dispute, that the writ

petitioner is a complete outsider, as far as the respondent-Primary Co-operative Society and the Central Society (Kasaragod District Co-operative Bank) are concerned. The writ petitioner claims that he is an unemployed youth and that he is otherwise eligible for appointment as Secretary of the respondent-Primary Co-operative Society, etc. It is beyond any serious dispute that the post of Secretary of the respondent-Primary Society is to be filled up by promotion.

7. It is urged by the learned counsel for the writ petitioner that

if there is no qualified feeder category hand, then exemption can be obtained from the Government to provide for direct recruitment and that if that be so, the writ petitioner is eligible to participate in any selection process for direct recruitment to the post of Secretary of the respondent (Uduma Vanitha Service Co-operative Society Ltd.), etc.

8. It is trite that, ordinarily, in service litigation, there is no

scope for entertaining any public interest litigation. A rare exception in that regard would be in relation to corporate bodies, like a co-operative society registered and incorporated, as per the provisions of the Kerala Co-operative Societies Act or a company registered, as per

the Companies Act, etc. In such cases, probably, if a member or shareholder of the co-operative society or company, etc., can contend that the appointments in question are grossly illegal and ultra vires and it affects the financial affairs of the corporate body, etc., then they may have the locus to challenge any grossly illegal appointments made by the said corporate bodies. We need not delve deep into

such issues, for the simple reason that the writ petitioner is a complete outsider, as far as the respondent-Primary Society and the Kasaragod District

Co-operative Bank (Apex Society) are concerned. The method of appointment to the post of Secretary of the respondent-Primary Society is by promotion from among qualified feeder category hands. The writ petitioner has no case that even if R-1 in the W.P(C) is sent out from service, there is none else qualified in the feeder category for promotion to the post of Secretary. Further, the writ petitioner, who is a complete outsider, has directly approached this Court, for challenging the re-appointment of R-1 in the W.P(C), without approaching any of the statutory authorities. For all these reasons, we are of the considered view that the locus should not have been recognized in favour of the writ petitioner herein. Even if the prayers in the W.P(C) are to be allowed, the writ petitioner may not get any gain out of the same. Further, we note that R-1 in the W.P(C) is a highly meritorious candidate, who, through her sheer hardwork in the industry, has come up in the ladder and has become the Secretary of the respondent- Primary Society. Later, she proved her merit by participating in the highly competitive selection process conducted by the Kerala Public Service Commission, for the post of Clerk-cum-Cashier of the Kasaragod District Co-operative Bank, as envisaged in terms of Rule 187 of the KCS Rules, whereby a quota is reserved for in-service

employees of primary societies for such appointment. R-1 in the W.P(C) was found to be meritorious in the said selection process and the respondent-Primary Society had issued Ext.R-3(a) resolution dated 09.05.2017, specifically ordering that she will be relieved only temporarily for taking up the appointment in the Apex Society. After two months, the respondent-Primary Society found that the services of R-1 in the W.P(C) is highly necessary and imperative, as she has played

a highly meritorious role in the development of the respondent (Uduma Vanitha Service Co-operative Society Ltd.). Accordingly, it is on this basis that the respondent-Primary Society sought for re-joining of duty of R-1 in the W.P(C). The decision No.3, as per Ext.R-3(d) resolution dated 26.09.2017 of the respondent-Primary Society has been fully approved by the Apex Society concerned, viz., Kasaragod District Co-operative Bank, which can be seen from a reading of Ext.R-

3(e) proceedings dated 06.11.2017 issued by the General Manager of the Kasaragod District Co-operative Bank. Based on the considered stand of the respondent-Primary Society and the Apex Society concerned, R-1 in the W.P(C) has altered her position to her disadvantage, by choosing to re-join duty in the respondent-Primary Society and giving up the coveted post in the Apex Society. The re-joining of duty of R-1 in the W.P(C), in the respondent-Primary Society has been duly approved by the respondent (Registrar of Co-operative Society), as per Ext.P-2 dated 06.09.2019 as well as by the respondent (State Government), as per Ext.P-4 dated 16.02.2021, including the regularization of her period, when she had performed her duties in the Apex Society. It is based on the considered stand of the respondent-Primary Society, the Apex Society, the respondent-Registrar of Co-operative Societies and

the respondent-State Government, that the 1st respondent in the W.P(C) has altered her position to her disadvantage and had joined duty in the original post. Consequential orders have also been issued by the respondent (Assistant Registrar of co-operative societies), fixing her salary and pay, as per Ext.R-3(f) dated 24.03.2018. When that is the position, by allowing the plea of the writ petitioner, who is a complete outsider, will have the effect of throwing R-1 in the W.P(C), out of service, with the result that she will neither have the original post of Secretary of the respondent-Primary Society, nor the post of Clerk- cum-Cashier in the Kasaragod District Co-operative Bank. Even if this is ordered, there may not be any benefit to the writ petitioner.

9. In the light of all the above aspects, we are of the considered

view that, recognizing locus in favour of the writ petitioner and entertaining his plea, was not appropriate and proper. We have to bear in mind that essentially and substantially, the jurisdiction under Article 226 of the Constitution of India, is discretionary and equitable. In that view of the matter, we are of the firm view that the writ petition ought to have been dismissed. In that view of the matter, it is ordered that the impugned judgment dated 02.12.2022, rendered by the

learned Single Judge, disposing of W.P(C) No.8756/2021, will stand set aside and further, it is ordered that W.P(C) No.8756/2021, will stand dismissed. With these

observations and directions, the above Writ Appeals will stand finally disposed of.
Sd/- ALEXANDER THOMAS, JUDGE Sd/- C.JAYACHANDRAN, JUDGE vgd

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