

Oonnoony Vs. State of Kerala

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Court : Kerala

Decided On : Jan-20-2006

Reported in : 2006(1)KLT899

Judge : K.M. Joseph, J.

Acts : Kerala Co-operative Societies Act - Sections 185, 185(8) and 186; Kerala Co-operative Societies Rules, 1969 - Rules 135(8), 185, 185(1), 185(2), 185(3), 185(4) 185(5), 185(8), 185(9) and 186; Kerala Co-operative Societies (Amendment) Rules, 2005

Appeal No. : W.P. (Civil) No. 20855 of 2005

Appellant : Oonnoony

Respondent : State of Kerala

Advocate for Def. : T.R. Ramachandran Nair, Adv. and Lalitha Nair, Government Pleader

Advocate for Pet/Ap. : B. Subhash Chand, Adv.

Judgement :

K.M. Joseph, J.

1. Petitioner entered service in the fourth respondent Bank on 14.12.1964. He allegedly has 40 years of service in the Bank, By Ext.P2 the Committee decided to relax the qualifications in relation to the post of Manager in regard to the petitioner. The feeder categories and the posts which are relevant to resolve this dispute are as stated in Ext. (a).

1) General Dy.General By B.A., B.Sc., or B.Com degree of a recognized Manager Promotion University with Higher Diploma in Co-operation or successful completion of JuniorDiploma in Co-operation or diploma in Ruralservice with co-operation as optionalsubjects. Candidates have CAIIB Certifi-cates will be given preference in directrecruitment2) Dy.Gen. Manager By The same as in the case of Gen. Manager,Manager Promotion 3) Manager Accountant By The same as in the case of Gen. Manager. Promotion 4) Accountant Senior By B.A., B.Sc. or B.Com. degree with HDCclerks Promotion or JDC, SSLC or its equivalent and successful completion of subordinate personal training (Junior Diploma in co-operation.

2. Petitioner is not a graduate. Graduation is an essential qualification in regard to the post of Manager as much as it is necessary in regard to the post of Deputy General Manager as also the post of General Manager. The contention of the petitioner in this writ petition is that vide Ext.P2 on the strength of the relaxation granted to him, the petitioner was rendered eligible for promotion and having regard to the fact that qualifications prescribed for the post of Manager, Deputy General Manager and General Manager are the same, the petitioner is eligible without any further exemption to be promoted to the post of Deputy General Manager as also to the post of General Manager. Ext.P3 was issued by the Government of Kerala purporting to be guidelines for exemption from qualifications, which inter alia provided as follows:

1. Exemption from Academic Qualification --.Minimum qualification for ministerial and supervisory posts other than those requiring technical qualifications shall be S.S.L.C. Exemption from passing S.S.L.C. shall not be granted under any circumstances, provided that in the case of employees who were appointed directly to the ministerial posts before 1.1.1974, S.S.L.C. need not be insisted.

3(v). Exemption, being given to an individual, should be for promotion to a specified post i.e. exemption from qualifications should be obtained at the time of each promotion.

This came to be successfully challenged before this Court. Vide Ext.P4 judgment a learned Single Judge of this Court found support in the view taken from the decision of the Division Bench of this Court in Trivandrum District Co-operative Bank Ltd. v. State of Kerala 1992 (1) KLT 381. The court proceeded to hold that only the Registrar can issue direction to Co-operative Societies. Learned Single Judge further reasoned on the basis of the dictum in Kesavan v. State of Kerala AIR 1961 Kerala 23 that the Government cannot fetter its own discretion or that of the lower authorities by notifying certain guidelines in advance. Ext.P5 dated 12.4.1989 is Circular No. 22/ 89 issued by the Registrar of Co-operative Societies purporting to be guidelines issued to regulate the grant of exemption from educational qualifications for the purpose of promotion under Rule 185(1) of the Co-operative Societies Rules. It appears to be on the lines of Ext.P3 in material particulars which has already been adverted to by me. The post of Deputy General Manager arose consequent upon the retirement of one Sri. V.T. Varghese on 31.3.2005. The petitioner considering himself to be eligible for promotion to the post of Deputy General Manager apparently on the strength of Ext.P2 addressed Ext.P6 representation to the Joint Registrar of Co-operative Societies as also the General Manager of the respondent Bank. That came to be repelled by Ext.P3 order issued by the Joint Registrar (General). Petitioner challenges Exts.P3, P5 and P7. He seeks a mandamus directing the respondents to promote him to the post of Deputy General Manager taking into account the relaxation of qualification of graduation and approval of the same as per Ext.P2 order. He seeks a declaration also to the effect that he is entitled to be promoted on the basis of Ext.P2.

3. Counter affidavit has been filed, wherein it is stated as follows:

The prayer in the I.A. to promote the petitioner as Deputy General Manager is not sustainable. The petitioner is having only SSLC-JDC whereas the qualification prescribed for the post in question is one prescribed for the post of General

Manager and Manager. Hence the petitioner lacks academic qualification for the promotion as Deputy General Manager. The relaxation of qualification already granted has enabled him to be promoted as Manager only. The Board has not taken any resolution relaxing his academic qualification to promote him as Deputy General Manager.

The contention of the petitioner that the approval for relaxation of qualification obtained for promoting him in the Manager post will enable him to get automatic promotion is not correct.

The Staff pattern existing with three posts of Deputy General Managers is under scrutiny for revision, a sub committee of the Board has been constituted for the purpose and all the posts may require change in number either by reduction or addition.

4. Learned Counsel for the petitioner invited my attention to Rule 185(8) and (9). He would contend that what is contemplated under Rule 135(8) is relaxation of qualification for the purpose of promotion. There is no reference to any particular post, it is contended. As regards Rule 185(9) is concerned, learned Counsel Sri. Subhash Chand would point out that it cannot clothe the Registrar with any power to issue guidelines as Ext.P5 as it relates to guidelines to be adopted by the Societies with regard to the fixing of seniority/infer se seniority of employees of different categories and assessment of merit and ability of employees, for promotion, to different categories of posts. Learned Counsel also relied on the decision of the Supreme Court reported in Sandeep Kumar Sharma v. State of Punjab : [1997]2SCR405 and Ashok Kumar Uppal v. State of Jammu and Kashmir : [1998]1SCR164 . He would submit that the question of grant of relaxation should be addressed in a pragmatic manner and having regard to the totality of facts the case of the petitioner is one richly deserving of a favourable consideration and he is eligible to be appointed as Deputy General Manager. Having been granted with the relaxation as evidenced by Ext.P2 and the post of Deputy General Manager being one to be filled by persons possessing the same qualifications on the strength of seniority, it was illegal on the part of the Registrar to insist for exemption in relation to the post of Deputy General Manager. Exemption at

several stage is not contemplated, contends the learned Counsel for the petitioner.

5. Per contra, Sri. T.R. Ramachandran Nair, learned Counsel appearing on behalf of the Bank would contend that a mere perusal of Ext.P2 would show that relaxation from qualification was granted to the petitioner specifically in relation to the post of Manager. He would rely on the provision of Sub-rule (1) of Rule 185 to contend that Rule 185(8) has to be understood harmoniously with Rule 185(1) as also the provisions of Rule 186. Rule 185(1) is extracted hereunder :

185. Promotion.-- (1) Subject to the provisions of Sub-rules (2), (3) and (4), appointments to the categories of posts in a society, other than those mentioned in Sub-rule (2), (3) and (4) shall be made by promotion, on the basis of seniority in the feeder category. The feeder categories for this purpose shall be specified by the society by framing suitable regulations, with the approval of the Registrar.

He would therefore contend that unless an employee possesses the qualification mentioned in Rule 186, he cannot have a claim for promotion and it is not open to the Society or for that matter even for the Registrar to provide for a promotion contrary to the statutory inhibition that the employees should be in possession of the requisite qualification. He would contend that the post of Deputy General Manager can be filled up only by a person possessing the qualification of graduation, which the petitioner does not admittedly possess and the relaxation of qualification already granted enabled him to promotion to the post of Manager only.

6. It is to be noted that the qualifications of various posts are mentioned in Rule 185(1). Going by Ext.P1(a) it cannot be in the region of dispute that in order to be eligible to be promoted as Deputy General Manager, an employee should be a graduate. No doubt a person can be promoted as Manager also only if he is a graduate. In fact the qualification for the post of General Manager downwards till the post of Manager is the same. Therefore the contention of the learned Counsel for the petitioner that having exempted the petitioner, that exemption should enure to his benefit even when a vacancy arise in the post of Deputy General Manager and he is otherwise eligible in terms of seniority to aspire for the same. He also points out that the petitioner has an blemishless record to his credit.

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. 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.

8. In such circumstances I do not think that the view taken by the Joint Registrar, no doubt relied upon Ext.P5 Circular, can be said to be illegal. No doubt a contention is raised that the Circular is unauthorised. Even without going into the validity of the Circular, I am inclined to agree with the reasoning adopted by the Joint Registrar in Ext.P7, It may not be necessary for me to pronounce on the validity of Exts.P8 and P5. So that if Ext.P7 order cannot seek support from Ext.P5, I feel that it can be supported on the reasoning which I feel is in tune with the provisions of statutory rules as also requirement in Ext.P1 (a) in relation to the possession of the qualification.

9. It is to be noted that the result of a combined reading of Sections 185, 186 and Ext.P1(a) is that for promotion to the post of Deputy General Manager, the

aspirant must possess the qualification of graduation. I also find support in the view which I have taken from the judgment of this Court in P.V. Parameswaran v. State of Kerala 1972 KLT 849. It is to be noted also that under Section 185(8) the primary decision is to be taken by the Committee no doubt with the prior approval of the Registrar in deserving cases for exemption from qualification. In view of my conclusion that Ext.P2 is to be understood as only an exemption from possession of qualification of graduation in regard to the post of Manager and in view of my conclusion also that the petitioner has to get further exemption from possession of qualification of graduation in regard to the post of Deputy General Manager, it is clear that nothing much turns on the validity of the impugned orders on the score that it is issued without authority. It is to be noted that it is for the Committee to take a decision whether in the facts of a particular case a particular candidate is deserving for being granted an exemption from the possession of qualification, no doubt with the prior approval of the Registrar.

10. After the Judgment was pronounced, Shri. Subhash Chand made a request that the matter may be posted for to be spoken to, pointing out that Rule 185(8) is amended with effect from 3.9.2005. The rule as amended in so far as it is material stands as follows:

1. Short title and commencement--

(1) These rules may be called the Kerala Co-operative Societies (Amendment) Rules, 2005.

(2) They shall come into force at once,

2. Amendment of the rules-- In the Kerala Co-operative Societies Rules, 1969, in Rule 185 -

xxx xxx xxxxxx xxx xxx(8) It shall be competent for the Registrar of Co-operative Societies to relax the qualification, other than basic qualification and pass the competitive examination specified in Sub-rule (5), of an employee, for the purpose of promotion in deserving cases, on the request of a society by passing a resolution subject to the following conditions:

(g) Exemption from qualifications other than Co-operative Training qualification should be obtained at the time of each promotion to each cadre which means ministerial cadre, supervisory cadre and chief executive.

11. I heard Shri T.R. Ramachandran Nair also. Shri Subhash Chand, learned Counsel for the petitioner would submit that Clause (g) of Section 185(8), clearly contemplates that even if exemption has been granted in respect of Manager, it is a supervisory post, as is the post of Deputy General Manager. Therefore, under the said rule, the exemption even if it is understood as an exemption limited to the post of Manager, in the light of this rule as it stood from 3.9.2005, there is nothing for further exemption when the question arises in regard to the filling up of the vacancy in the post of Deputy General Manager which, according to him, is a supervisory post. Shri T.R. Ramachandran Nair on the other hand submits that exemption is limited to the post of Manager going by Ext.P2 and the amendment can have only prospective operation and the vacancy arose much prior to the date of the amendment. Learned Counsel for the petitioner submits that the petitioner will file an application before the Bank. Accordingly, Shri. T.R. Ramachandran Nair submits that if such an application is made, the Bank will consider the same. Accordingly, if the petitioner files a representation seeking the benefit of the rule as amended, the respondent Bank will take a decision in the matter in accordance with law without any undue delay and, at any rate, before 31.1.2006. It will also be open to the petitioner to move the Joint Registrar in the matter. In the light of the stand taken by the Committee as things stand now also it is not necessary for me to pronounce on the validity of the Circular and I am not pronouncing on the challenge against Ext.P5.