

Ali Vs. State of Kerala

Ali Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/729732

Court : Kerala

Decided On : Dec-07-2005

Reported in : 2006(1)KLT205

Judge : Thottathil B. Radhakrishnan, J.

Acts : Kerala Co-operative Societies Act, 1969 - Sections 80, 80(2), 80(3), 109, 109(1) and 109(3); Kerala Co-operative Societies (Amendment) Act, 1996; Kerala Co-operative Societies Rules, 1969 - Rules 184, 185 and 186

Appeal No. : W.P. No. 31742 of 2005

Appellant : Ali

Respondent : State of Kerala

Advocate for Def. : P.C. Sasidharan, Adv. and; John Joseph Vettikad Sr. Government Pleader

Advocate for Pet/Ap. : George Poonthottam, Adv.

Disposition : Petition dismissed

Judgement :

Thottathil B. Radhakrishnan, J.

1. Petitioner is a graduate in Commerce. As per resolution dated 12-8-2005 he was promoted as General Manager of the third respondent Co-operative Bank and is due to retire on 31-7-2009.

2. Petitioner filed W.P.(C).No. 17020 of 2004 before this Court challenging the validity of the amendments made to Rules 185 and 186 as amended by Act 5 of 1996. That Writ Petition is admitted and pending with no interlocutory orders in favour of the petitioner.

3. By Ext.P3, the Public Service Commission issued notification on 15-6-2004 for recruitment to the post of General Manager in the District Co-operative Banks, including in the Wayanad District Co-operative Bank, the third respondent herein, the employer of the writ petitioner. The qualifications prescribed under Category No. 83/04 in Ext.PS for the post of General Manager, is the statutory qualification as per Rules 185 and 186 as amended by Act 5 of 1996.

4. Having noticed that the third respondent Bank had not resolved to incorporate the amended method of appointments, educational qualifications etc. as a whole as laid down in G.O.(P)No. 68/99/Co-op. dated 19-4-1999 for the posts of Branch Manager, Deputy General Manager and General Manager in the recruitment rules of the third respondent Bank, on 16-8-2004, the Secretary of the Kerala Public Service Commission addressed the third respondent Bank stating that though the other District Co-operative Banks have made the amendments, the third respondent has not, in spite of repeated requests and subsequent reminders, brought such amendment. This was followed by Ext.P2 proceedings of the Board of Management of the third respondent Bank whereby, as per Resolution No. 1 in its meeting held on 2-9-2004, the Board of the Bank resolved as follows:

Resolved to incorporate the amended method of appointment, educational qualifications, age limit and other service conditions as a whole as laid down in the G.O.(P)No. 68/99 Co.op. dated 19-4-1999 for the post of Branch Manager, Deputy General Manager, General Manager in the recruitment rules of the Bank approved with effect from 7-1-1999.

This means that the Board had resolved to make such amendment retrospectively with effect from 7-1-1999. The power of the Board to pass such resolution is beyond challenge.

5. Petitioner seeks to quash the aforesaid Ext.P3 notification of the PSC inviting applications for recruitment to the post of General Manager in the third respondent Bank from open market by contending that mere passing of a resolution as evidenced by Ext.P2 is not decisive and that the rules as required under Section 80(2) and (3) had not been formulated even on the date on which Ext.P3 notification was issued by the P.S.C.

6. Rules 185 and 186 occurring in Chapter XV of the KCS Rules, 1969 relate to establishment and Section 80 of the KCS Act occurring in Chapter XII of the Act relates to establishment. Section 109 confers on the Government power to make rules. Sub-section 2 provides specific power to frame rules regarding the qualifications of employees of societies. Rule 186 is referable to the said rule making power, which is statutory and such rule is among those which are required to be made in the manner prescribed in Sub-section of Section 109 followed by a rule of laying as provided in Sub-section 3 of Section 109. Rule 185 and 186 are therefore part of subordinate legislation while the existence of the rules provided for under Section 80(2) and (3) are essentially subservient to those provided for in Rule 184 and 186. There can be no room for any provision being made invoking Sub-section 2 or 3 of Section 80 in any manner contradicting the contents of Rule 185 and 186 of the Rules.

7. The qualifications prescribed in Ext.P3 notification by the P.S.C. are the statutory qualifications and the third respondent Co-operative Bank has in its wisdom and, in my view, rightly fallen in tune with the requirement of law and have resolved to adopt the qualifications and other particulars. It has done so as per Ext.P2. The same cannot be found fault with.

8. At any rate, the petitioner having obtained promotion to the post of General Manager on 12-8-2005 after Ext.P2 resolution was passed on 2-9-2004, is not entitled to challenge and attempt to torpedo the selection from open market notified by the P.S.C. on 15-6-2004.

This Writ Petition merits no admission. Hence dismissed in limine.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com