

Rajam Vs. State of Kerala

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Court : Kerala

Decided On : Nov-21-2001

Reported in : 2003(3)KLT759

Judge : P.K. Balasubramanyan and; C.N. Ramachandran Nair, JJ.

Acts : Kerala Co-operative Societies Rules, 1969 - Rules 185, 186 and 200

Appeal No. : O.P. Nos. 11154, 12425 and 12750 of 1997

Appellant : Rajam

Respondent : State of Kerala

Advocate for Def. : P. Jayasankar, Govt. Pleader,; N. Nandakumara Menon,; Ge

Advocate for Pet/Ap. : D. Somasundaram,; K.P. Dandapani and; Sumathy Dandapani

Disposition : Petition dismissed

Judgement :

P.K. Balasubramanyan, J.

1. The petitioners in these Original Petitions are employees of the Thiruvananthapuram District Co-operative Bank. The petitioners entered service prior to 1.1.1974 on which date Chap.XV was introduced in the Kerala Co-

operative Societies Rules (hereinafter referred to as 'the Rules'). Thereunder by Rule 186 of the Rules qualifications were prescribed for appointing for the posts in Co-operative Societies. Rule 185 of the Rules dealt with promotion. Under Rule 186, all posts other than those requiring technical qualifications, the starting pay of which is Rs. 250.00 and above would be filled only by candidates who had a degree in Commerce or Masters degree in Arts of a recognised University, with Co-operation as special subject or a degree from any recognised University and a Higher Diploma in Co-operation or a Diploma in Rural Services with Co-operation as optional subject or B.Sc. (Co-operation & Banking) Degree of the Kerala Agricultural University. The petitioners in these Original Petitions did not have the educational qualification of graduation. The petitioners in O.P. No. 11154 of 1997 obtained promotion as Branch Managers in the light of the protection offered by Rule 200 of the Rules. The contesting respondents therein though juniors to the petitioners, are graduates and hence possessed qualification contemplated by Rule 186 of the Rules. The petitioners challenge the promotions given to the contesting respondents on the basis that the petitioners are not entitled to promotion since they had not possessed the requisite qualification. The petitioners rely upon Rule 200 of the Rules to put forward the claim that their right to promotion is protected notwithstanding the fact that they do not have the qualification as prescribed by Rule 186 of the Rules.

2. The petitioners in O.P. 11154 of 1997 were seeking promotions to the post of Branch Managers. They were not given that promotion on the basis that they did not have requisite qualification in terms of Rule 186 of the Rules.

3. The petitioners in O.P. No. 12750 of 1997 were also denied promotion to the posts higher than Branch Managers on the basis that they did not have the requisite qualification and on the basis that only graduates could be promoted in the light of the qualification prescribed in the Rules.

4. The petitioners made a representation before the Registrar claiming that they are entitled to be promoted to the next higher post even though they did not have graduation since they were entitled to protection under Rule 200 of the Rules as amended and the promotion given to the contesting respondents ignoring the

seniority of the petitioners was not justified. The Registrar of Co-operative Societies by order dated 23.2.1996 rejected the claim of the petitioners on the basis that going by the ratio of the decision of a Full Bench of this Court in *Bhaskaran v. Additional Secretary* (1987 (2) KLT 903 (FB)) the petitioners cannot aspire for further promotion since they did not have the requisite qualification prescribed under Rule 186 of the Rules. Feeling aggrieved, the petitioners filed appeals before the Government. By Ext.P10 order dated 13.6.1997, the Government dismissed those appeals again relying on the decision of the Full Bench.

5. According to the petitioners, subsequent to the decision of the Full Bench in *Bhaskaran's* case, Rule 200 itself was amended and in the light of the amendment, the promotion was not confined to one post as far as the petitioners are concerned and that they could have promotion on the basis of their seniority to any of the posts to which they become eligible for promotion as and when the vacancy arose. This plea of the petitioners is met by the contesting respondents and the State by submitting that the essential ratio of the decision of the Full Bench in *Bhaskaran v. Additional Secretary* (1987 (2) KLT 903 (FB)) was accepted by the Government and it amended Rule 200 of the Rules subsequent to the decision of the Full Bench and only on one aspect, the Rule was amended to get over the ratio of the Full Bench regarding the eligibility to promotion being confined only to one higher post. Hence, it is contended that the orders, Exts.P6 and P10 do not call for interference.

6. In *Krishnankutty Nair v. Joint Registrar* (1984 KLT 788) a Division Bench of this Court construing Rule 200 of the Rules as it stood, stated thus:

'Inasmuch as there was no qualification prescribed at the time of the coming into force of Rule 186 it could not be said that in terms of the qualification prescribed earlier, the appellant was entitled to promotion. The absence of qualification prescribed does not mean that for subsequent promotion, qualifications cannot be prescribed, as has been done by Rule 186. As a matter of fact, there was no rule that was in force, before the coming into force of Rule 186, which inter alia provided that a person in the position of the appellant-petitioner would be entitled

to further promotions without acquiring any of the qualifications whatsoever in that behalf. Had there been any such rule, it would have been a good defence against the order in the nature of Ext.P3.'

Earlier another Division Bench in *Narayanan Nair v. Kottayam District Cooperative Bank* (1984 KLT 248) had observed that on a combined reading of Rules 185, 186 and 200 of the Rules, it had to be held that the right to promotion to the higher posts of those already in service but not possessing the higher qualifications introduced under the Rules, is preserved and protected, the protection is not confined to the emoluments of the posts they held at the time of the coming into force of the Rules. There was no reason to restrict the right of such promotion to the immediately higher posts. The protection intended was for the incumbent post and in respect of promotions.

7. There was some apparent difference in approach in the two decisions and that led to the questions being referred to the Full Bench. It was in that context that the Full Bench decided in *Bhaskaran v. Additional Secretary* (1987 (2) KLT 903 (FB)), that Rule 200 was intended to preserve all the rights which the existing employees were entitled to before 1.1.1974 and also to the privilege of emoluments which they were so entitled under the earlier Bye-laws or Rules. The extent of the right preserved cannot be affected by limiting its application to emoluments and the contention that right to emoluments alone was saved under this rule could not be accepted. The Full Bench thereafter stated that whereas a right to promotion earned already before 1.1.1974 was protected under Rule 200 of the Rules, a chance of promotion had no such protection. It was further stated that where qualifications had been prescribed by the old Bye-laws or service rules for promotion, persons fulfilling those qualifications are entitled to promotion even after the new rules, notwithstanding the fact that a different or a higher qualification is insisted under the new rules. Lack of qualifications prescribed under the old rules, however, cannot be a passport for promotion unless specifically warranted or intended by Rule 200. The qualifications acquired under the old Bye-laws can enable the existing employees to earn promotion to one higher post and not to all the vacancies in the higher posts which arise after 1.1.1974. Their Lordships specifically disagreed with the observations in *Narayanan Nair v. Kottayam District*

Co-operative Bank (1984 KLT 248) to the effect that there was no reason to restrict the right of such promotion to the immediately higher post. Thereafter Their Lordships referred to the decision in Krishnankutty Nair v. Joint Registrar (1984 KLT 788). Their Lordships quoted the passage referred to earlier and recorded their conclusions as follows:

'We shall, therefore, summarise our conclusion on the interpretation and application of Rule 200 of the Kerala Co-operative Societies Rules, bearing in mind that the employees of the Co-operative Societies in service on 1.1.1974, 'the existing employee's are the beneficiaries under this provision:

(1) That all rights which the existing employee were entitled to or before 1.1.1974 are preserved.

(2) As for privileges pre-existing privileges of emoluments alone are saved under the rule.

(3) The existing employees are entitled to promotion to one higher post without reference to the qualification prescribed by the new rules, provided they were qualified under the old roles or Bye-laws.

(4) If no qualification was fixed prior to 1.1.1974, promotion can be effected only in accordance with the qualification and condition provided under the new rules, after 1.1.1974 and

(5) A plea for relaxation is only a claim of privilege and this privilege is not protected under Rule 200. This privilege ripens into a right only when it is granted. As this right is protected, relaxation granted before 1.1.1974 can be pressed into service relying on this rule. Relaxation of the qualification prescribed under the old bye-law thus cannot be made after the new rule has come into force.'

Their Lordships also dealt with the age of retirement and held that when the Bye-laws or Rules of any society did not fix the date of retirement, the employees of those societies even though appointed prior to 1.1.1974 will have to retire on attaining the age of 58 years as prescribed under the rules. But if the Bye-laws or Rules had provided the age of retirement as 60 years, such employee could

continue in service till they attain the age of 60 years in view of the protection of Rule 200.

8. The rule making authority in the light of the decision of the Full Bench referred to above, brought about an amendment to Rule 200. In that amendment, to the extent it is relevant for our purpose, it was provided that nothing in the rules as amended by the Kerala Co-operative Societies Rules, 1988 shall be interpreted as disqualification for promotion to any higher post or posts to the employees in service of a Co-operative Society as on 1st January, 1974 provided they possessed the qualifications if any prescribed in the Bye-laws or other service regulations of the society. According to learned counsel for the petitioners, by this amendment, it has been made clear that there is no restriction for promotion to more posts than one and that this indicated that the protection to promotion given to the employees by Rule 200 was absolute and the petitioners were entitled to be promoted based on their seniority to any higher post without limitation. This argument was sought to be met by counsel for the contesting respondents and the learned Government Pleader by pointing out that that part of the judgment of the Full Bench stating that if no qualification was fixed prior to 1.1.1974, promotion can be effected only in accordance with the qualification and condition provided under the new rules after 1.1.1974 and the approving of the concerned ratio in *Krishnankutty Nair v. Joint Registrar* (1984 KLT 788) was accepted by the rule making authority and the deviation is only regarding the number of posts to which promotion was permissible notwithstanding the absence of a qualification prescribed by Rule 186 of the Rules. In the order Ext.P6, the Registrar of Co-operative Societies after referring to the relevant regulations of the society which governed recruitment and promotion prior to 1.1.1974 found that no specified qualifications were prescribed for holding the post in the immediate cadre and higher service. The qualifications were prescribed for the entry cadre of clerks was graduation/N.D.C. and Diploma in Cooperation. Candidates holding S.S.L.C., Diploma in Subordinate Personnel Training and having five years experience in affiliated Co-operative Societies were also eligible for appointment of Clerks. The Registrar also referred to the Rules that were in force prior to 7.2.1990 and found that there was no qualification prescribed for the superior service as recognised by those Rules. Thereafter referring to Rule 200 as amended and the relevant ratio of

the decision of the Full Bench, the Registrar of Co-operative Societies took a view that if no qualifications were fixed for a particular post or if there was no Bye-laws or other approved service regulations in existence prior to 1.1.1974 in a society, promotions can be effected only if the employees are qualified in accordance with Rule 186 of the Rules. The Registrar further held that qualifications prescribed under Rule 186 was applicable for promotion to the post of Executive Officer which was the subject matter of issues before the Registrar. It is this view of the Registrar that was upheld by the Government after quoting the principles enunciated by the Full Bench in Bhaskaran's case.

9. On a proper understanding of the ratio of decisions in *Krishnankutty Nair v. Joint Registrar* (1984 KLT 788) and in *Bhaskaran v. Additional Secretary* (1987 (2) KLT 903 (FB)), we are inclined to the view that the Registrar of Co-operative Societies and the Government cannot be said to have committed any error apparent on the case of the records warranting interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Normally, appointments and promotions after 1.1.1974 could be made only on the basis of Chap.XV of the Kerala Co-operative Societies Rules. That would mean that persons who did not have the requisite qualifications as per the said rules could not be appointed or promoted. But there were employees of Co-operative Societies who had entered service prior to 1.1.1974 on the basis of the qualifications then required for entry into service. Regarding the higher service, no specific qualification as such as prescribed by the Rules that was in force prior to 1990 and that came into force subsequent to 1990. In that context, the Full Bench has clearly approved the position adopted in *Krishnankutty Nair v. Joint Registrar* (1984 KLT 788) that if no specific qualification was prescribed by the Bye-laws or the other service regulations adopted by the Bank or Society, Rule 200 could not be relied on for seeking further promotions even though one does not have the requisite qualification. The limitation placed on one promotion by the Full Bench in Bhaskaran's case alone was modified by the amendment brought to Rule 200. In our view, going by the decision of the Full Bench, the stand adopted by the Government is justified.,

10. Learned counsel for the petitioners relied on the decision in W.A. No. 588 of 1991 rendered by another Division Bench. Though that Division Bench referred to the decision in *Bhaskaran v. Additional Secretary* (1987 (2) KLT 903 (FB)), the Division Bench, in our view, did not consider this ratio of the Full Bench while deciding the question arising for decision in that case. This position adopted by the Full Bench that if there was no specific rule prescribing qualification prior to 1.1.1974, the promotions would be governed by Rule 186 of the Rules and the claims are not saved by Rule 200 of the Rules was not specifically considered or dealt with by the Division Bench. We are, therefore, not in a position to accept the decision in W.A. No. 588 of 1990 as an authority against the proposition clearly enunciated in *Bhaskaran v. Additional Secretary* (1987 (2) KLT 903 (FB)). We find that the decision in *Ramakrishna Pillai v. State of Kerala* (1988 (2) KLT 102) does not deal with this aspect. The learned Chief Justice and Justice Bhaskaran Nambiar were also parties to the earlier Full Bench. Bhaskaran's case was only concerned with the validity of Rule 200 as amended. Their Lordships held that the new Rule 200 now made did not have the effect of reversing or annulling the earlier judgment of this Court in Bhaskaran's case. Their Lordships further observed that the interpretation made by this Court in the earlier judgment in regard to Rule 200, as it then stood remains intact. If at all, this only supports the position that one of the aspects pronounced upon by the Full Bench remains intact even after the amendment of Rule 200, the position adopted by the Registrar and the Government in the orders sought to be challenged. In these circumstances, we decline to interfere with the orders of the Registrar and that of the Government challenged in these Original Petitions. Other reliefs prayed for depend upon the success of the challenge to the orders aforesaid and since the petitioners are found not entitled to the main relief, the petitioners are not entitled to any relief in these Original Petitions. These Original Petitions are, therefore, dismissed.