

Shibi.M.V. Vs. State of Kerala

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Court : Kerala

Decided On : Jan-05-2011

Reported in : ILR2011(1)Ker8

Judge : C.N.Ramachandran Nair; M.L.Joseph Francis, Jj.

Acts : The Kerala Co-operative Societies Rules - Rule 187

Appeal No. : W.A.No.2128 of 2010

Appellant : Shibi.M.V.

Respondent : State of Kerala

Advocate for Pet/Ap. : SRI.S.SREEKUMAR, Adv.

Judgement :

1. This Writ Appeal is filed against the judgment of the learned Single Judge rejecting appellant's claim for appointment to the post of Clerk in the 4th respondent Bank in the 50% quota reserved for employees of member societies under Rule 187 of the Kerala Co- operative Societies Rules.

2. We have heard learned counsel for the appellant, learned Government Pleader appearing for the 1st respondent and learned Standing Counsel appearing for the PSC and learned Standing Counsel appearing for the 4th respondent Bank.

3. The appellant, while working as Secretary of a member Society of the 4th respondent Bank, applied for the post of Clerk in the quota reserved for employees of member societies in the 4th respondent Bank. The PSC, being the selection agency, invited applications for the post, and the last date for submission of applications was 24/05/2006. As on the date of submitting the application, the appellant had 9 years' service as Secretary of a member Society of the 4th respondent Bank.

Written test was conducted by the PSC on 10/05/2008, but result was published only on 11/12/2009. However, in between the appellant applied for the post of Junior Clerk in the Ernakulam Co-operative Agricultural Rural Development Bank and she got employment in that Bank and joined there on 21/11/2008. Pursuant to the selection made by the PSC for appointments in the 4th respondent Bank, the appellant was called on 21/12/2009 for verification of her certificates. However, on being informed about the change in employment of the appellant from a member Society of the 4th respondent Bank to another Bank, the PSC intimated the appellant vide Ext.P4 dated 29/12/2009 that her candidature is rejected though she was in the select list, for the reason that since she has ceased to be in employment of the member Society of the 4th respondent Bank, she is ineligible to be considered for appointment in the quota reserved under Rule 187.

Challenge against Ext.P4 was turned down by the learned Single Judge, against which this Writ Appeal is filed praying for a declaration that the appellant is eligible to be appointed in the quota reserved for employees of member societies of the 4th respondent Bank, under Rule 187.

4. The case of the appellant is that as on the date of submitting application, she had 9 years service in the member Society, and until 21/11/2008 she was in the service of the member society. According to the appellant, at the time of making the application and as on the date of writing the examination, she was an employee of the member society and so much so, she continues to be eligible to be considered for employment in the 4th respondent Bank under the quota reserved for employees of member Societies.

In other words, contention of the appellant is that Rule 187 does not require that an employee of a member society should continuously be employed in such Society until appointment in the apex / central society for the purpose of claiming reservation in the quota reserved thereunder.

5. However, learned Standing Counsel for the PSC and learned Standing Counsel for the 4th respondent Bank submitted that requirement of Rule 187 is that until appointment in the apex / central society, an applicant has to be an employee of its member society to make such person eligible for claiming appointment under the quota reserved for employees of member societies under Rule 187. The respondents have also relied on two judgments of this Court in W.A.No.2048/2005 & W.A.No.532/2002, wherein this Court held that if an employee left the service of the member society before getting employment under the quota reserved for employees of member societies in the apex / central society, such person ceases to be eligible to maintain his/her candidature for the post.

6. Learned counsel for the appellant has also pointed out that inordinate delay was caused in the selection process by the PSC, which led to her ineligibility for getting employment in the 4th respondent Bank, though she got selection in the selection process. Rule 187 of the Co-operative Societies Rules is extracted below for easy reference.

"187. Vacancies in Apex Society or Central Societies :- Notwithstanding anything contained in Rule 186, in appointments to apex societies or central societies, 50% of the vacancies shall be reserved to the employees of the member societies, of the respective apex society or central society as the case may be, having a minimum regular service of 3 years in any of the cadre and having the required qualification for the notified posts in the apex society or central society."

7. The question to be considered is whether in order to claim appointment under the quota reserved in the apex /central societies for employees of member societies, an applicant has to be continuously in employment in the member

society until appointment in the apex / central society or whether a minimum three years' service in the member society will entitle such person to apply for the post reserved under Rule 187. What is clear from the Rule is that reservation is for appointment in various posts in the apex / central societies and reservation provided is for employees of member societies. Obviously, minimum service required for an employee of a member society to be eligible to apply for a post in the apex / central society is 3 years' service in the member society. However, since the post in the apex / central society is reserved for employees of member societies, necessarily the status of the applicant as an employee of the member society is the requirement not only to apply for the post but such employment should continue until that person gets appointment in the apex / central society.

In other words, those who leave the service of member societies during selection process will cease to be employees of member society, and consequently the same make them ineligible for appointment in the quota. In other words, we are of the view that status of an employee i.e. continuous employment during the whole selection process i.e. from the date of making application till date of appointment in the apex / central society, is the requirement to qualify for appointment under the quota reserved for employees of member societies in the apex / central society. Since the appellant left the service of the member society and joined another employer, which is a co-operative agricultural rural Bank, on 21/11/2008, she has become ineligible to be considered for appointment under the quota reserved for employees of member societies. We, therefore, uphold the order of the learned Single Judge and reject the Writ Appeal.

Even though we find the appellant is ineligible to be considered for employment in the quota reserved for employees of member societies under Rule 187, we notice that the appellant did not get the opportunity only because of inordinate delay caused in publishing the results of the examination by the PSC. Though the written test was conducted on 10/05/2008, the result was published only on 11/12/2009 i.e. nearly 1 = years' after the date of the examination. If the result was published within a reasonable time of six months, then the appellant would have certainly been able to get employment in the 4th

respondent Bank as she is in the merit list. We, therefore, feel that the appellant is prejudiced on account of inordinate delay caused by the PSC in their selection process. We, therefore direct the 4th respondent Bank to consider whether there are enough candidates in the select list to be appointed in the quota reserved for the post under Rule 187 for which selection was held by the PSC, in which the appellant also participated, and if it is found that there are not enough candidates to be appointed under Rule 187 in the list, there will be a direction to the 4th respondent Bank to appoint the appellant based on her selection made by the PSC in the quota reserved for employees of member societies.

8. However appointment will be made only if there is vacancy in the employees' quota and if there is no other candidate in the select list prepared by the PSC.

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