

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

TUESDAY, THE 31ST MAY 2011 / 10TH JYAISHTA 1933

WP(C).No. 14645 of 2011(E)

PETITIONER(S):

SHAILAJA.L.PURUSHOTHAMAN,
SHAILA NIVAS, NADEKATTUVELI
S.L.PURAM, P.O. CHERTHALA
ALAPPUZHA DISTRICT.

BY ADV. SRI.K.KARTHIKEYA PANICKER
SMT.DAYA K. PANICKER

RESPONDENT(S):

1. STATE OF KERALA REPRESENTED BY THE SECRETARY
DEPARTMENT OF INDUSTRIES (E), SECRETARIATE,
THIRUVANANTHAPURAM 695 001.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
COIR DEVELOPMENT DIRECTORATE,
THIRUVANANTHAPURAM - 695 001.
3. KERALA STATE CO-OPERATIVE COIR MARKETING FEDERATION
LTD., ALAPPUZHA REPRESENTED BY ITS MANAGING DIRECTOR
COIRFED, ALAPPUZHA - 12.

BY ADV. SRI.K.S.HARIHARAPUTHRAN (SC FOR R3)
BY GOVT. PLEADER SRI. BASANT BALAJI (R1 AND R2)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31/05/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.N. RAVINDRAN, J.

W.P.(C) No.14645 of 2011

Dated this the 31st day of May, 2011

J U D G M E N T

The petitioner, an unemployed woman, who has registered her name with the Town Employment Exchange, Cherthala way back in the year 1986 and is presently aged 40 years, has filed this writ petition challenging Ext.P7 order dated 18.5.2011 issued by the Managing Director of the Kerala State Co-operative Coir Marketing Federation (otherwise known as "Coirfed") and seeking other reliefs.

2. By Ext.P4 resolution passed on 13.5.2010, the Board of Directors of the Coirfed resolved to regularise employees who have been working for a long period on contract/daily wages, after obtaining the permission of the Government. The Board of Directors also authorised the President/Managing Director of the Coirfed to take steps in that regard. Shortly thereafter, Smt.N.A.Naseema filed W.P. (C) No.31584 of 2010 in this Court challenging that resolution. In that writ petition, it was contended that the resolution offends Circular No.31 of 1996 dated 23.12.1996 issued by the Registrar of Co-operative Societies (Ext.P1 in the instant writ petition) and Exts. P2 and P2 interim orders passed by this Court. It was also contended that after the introduction of section 80(3A) in the Kerala Co-operative Societies Act, recruitment to posts in the Coirfed can be effected only

through the Kerala Public Service Commission and temporary appointments can be made only through the Employment Exchanges. A learned single Judge of this Court disposed of the said writ petition by judgment delivered on 15.10.2010 with the observation that as the grievance voiced by the petitioner in that writ petition is against the resolution adopted by the managing committee of the Coirfed, she has to work out her remedies under the Kerala Co-operative Societies Act and the Rules framed therein. Liberty was accordingly granted to the petitioner in that writ petition to move the competent authority for rescinding the resolution. The writ petition was dismissed subject to that observation.

4. Thereafter, the petitioner herein filed W.P.(C) No.2787 of 2011 in this Court challenging the very same resolution. On noticing that W.P.(C) No.31584 of 2010 raising a similar challenge was disposed of by directing the petitioner therein to move the competent authority, I disposed of W.P.(C) No.2787 of 2011 by Ext.P5 judgment delivered on 1.3.2011 with the direction that in the event of the petitioner filing an appropriate petition before the competent authority under the Kerala Co-operative Societies Act and the rules framed thereunder seeking rescission of the resolution, which led to Ext.P4, the competent authority shall consider the same and take an

appropriate decision thereon expeditiously and in any event within three months from the date of receipt of the petition. The pleadings disclose that the petitioner did not immediately thereafter file a representation before the competent authority. Nearly two months later, she filed Ext.P6 representation dated 13.5.2006 before the Registrar of Co-operative Societies invoking the power under rule 176 of the Kerala Co-operative Societies Act and requesting him to rescind Ext.P4 resolution and to direct the Coirfed to notify temporary vacancies to the Employment Exchanges and permanent vacancies to the Kerala Public Service Commission. A week thereafter, the Managing Director of Coirfed issued Ext.P7 proceedings dated 18.5.2011 whereby in implementation of the resolutions adopted by the Board of Directors and the general body of the Coirfed on 7.1.2011 and the decision of the Board of Directors at its meeting held on 11.5.2011, the Managing Director of Coirfed resolved to regularise the services of 49 employees who had a service of more than 5 years in the Coirfed with effect from 1.6.2011. The instant writ petition was thereupon filed on 30.5.2011 challenging Ext.P7 order and seeking the following reliefs:-

- a) *to issue a writ in the nature of certiorari or any other writ, order or direction to call for the records leading to Ext.P7 and quash the same.*

- b) *to declare that Ext.P7 order is violative of Section 80 (3A) of the Co-operative Societies Act, the judicial declaration on this subject and Clause 27(2) of the Bye-laws and thereby illegal and unsustainable.*
- c) *to issue a writ in the nature of mandamus or any other writ, order or direction to the respondents to notify the regular vacancies to the Public Service Commission, terminate the services of temporary employees forthwith and fill up such posts through Employment Exchange on temporary basis till candidates advised by the Kerala Public Service Commission join the posts.*
- d) *to issue any other writ, order or direction as this Honourable Court deems fit and proper in the case with cost of the proceedings.*

5. The main contention raised by the petitioner is that in view of Ext.P1 circular issued by the Registrar of Co-operative Societies and Exts.P2 and P3 interim orders passed by this Court, the persons whose services are sought to regularised by Ext.P7 could not have been appointed either on contract basis or on daily wage basis and therefore their appointments being illegal, they have no right to be regularised. Relying on clause 27(1) of bye-laws of Coirfed, it is contended that all officers and members of the staff of the society can be appointed only with prior approval of the Registrar, that Ext.P7 has not been issued with the prior approval of the Registrar and on that ground also it is liable to be quashed.

6. The petitioner had earlier moved this Court complaining about Ext.P4 resolution adopted by the Board of Directors

of the Coirfed on 13.5.2010 by filing W.P.(C) No.2787 of 2011. The resolution adopted by the Board of Directors of the Coirfed on 13.5.2010 was to regularise those employees who have been working on contract/daily wage basis after obtaining the approval of the Government. The President/Managing Director of the Coirfed were also authorised to implement the said decision. It was the said decision which was the subject matter of challenge in W.P.(C) No.2787 of 2011. By Ext.P5 judgment delivered on 1.3.2011, the said writ petition was disposed of with the direction that in the event of the petitioner filing an appropriate petition before the competent authority under the Kerala Co-operative Societies Act and the rules framed thereunder seeking rescission of Ext.P4 resolution, the competent authority shall consider the same and take an appropriate decision thereon expeditiously and in any event within three months from the date of receipt of the petition. The petitioner did not move the Registrar of Co-operative Societies immediately thereafter. She waited till the second week of May, 2011 to submit Ext.P6 representation dated 13.5.2011. A reading of Ext.P7 indicates that it was not pursuant to the Ext.P4 resolution that the Managing Director has issued orders to regularise the services of 49 persons. Ext.P7 refers to the resolutions adopted by the Board of Directors and the

general body of the Coirfed on 7.1.2011, the decision of the Board of Directors at its meeting held on 11.5.2011 and the decision taken at a meeting held on 30.4.2011 under the Chairmanship of the Honourable Minister for Co-operation. Ext.P7 order indicates that the persons named therein are regularised against posts, appointments to which are not within the purview of the Kerala Public Service Commission. The petitioner has admittedly not chosen to question the resolutions adopted by the Board of Directors of the Coirfed on 7.1.2011 and 11.5.2011 and by the general body on 7.1.2011. Further, the 49 employees whose services are sought to be regularised with effect from 1.6.2011 and are named in Ext.P6 are also not in the party array. Any order staying the operation of Ext.P7 order or a decision quashing Ext.P7, if grounds exist for quashing Ext.P7, can in my opinion be made only with notice to the employees whose services are sought to be regularised by Ext.P7. Ext.P7 contains the names of the 49 persons whose services are sought to be regularised and the stations where they are now working. The petitioner could have therefore joined all of them as parties to this writ petition. In such circumstances, as the rights of the petitioner stand concluded by Ext.P5 judgment and the petitioner has not joined the persons who would be affected by the reliefs prayed for being granted, as parties

to this writ petition, I am of the opinion that the reliefs sought for by the petitioner cannot be granted. The writ petition fails and is accordingly dismissed in limine.

**P.N. RAVINDRAN,
JUDGE.**

nj.