

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 31ST DAY OF OCTOBER 2012/9TH KARTHIKA 1934

WP(C).No. 17249 of 2012 (E)

PETITIONER:

JOSE VARGHESE,
AGED 49 YEARS, SENIOR CLERK
KOTTIYOOR SERVICE CO-OPERATIVE BANK
KOTTIYOOR - 670 651.

BY ADV. SRI.M.B. PRAJITH

RESPONDENTS:

1. THE KOTTIYOOR SERVICE CO-OPERATIVE BANK LTD.NO.C.304
KOTTIYOOR, KANNUR - 670 651
REPRESENTED BY ITS SECRETARY.
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
KOOHUPARAMBA, KOOHUPARAMBA,
KANNUR DISTRICT- 670 001.
3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,
(GENERAL), KOOHUPARAMBA, KOOHUPARAMBA,
KANNUR DISTRICT - 673 001.

R1 BY ADV. SRI.M.SASINDRAN
R2& R3 BY GOVERNMENT PLEADER SRI. P.P.PADMALAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-10-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P-1 TRUE COPY OF THE FEEDER CATEGORY RULES DATED 18.8.1999.

EXT.P1(a) TRUE COPY OF THE FEEDER CATEGORY RULES DATED 13.9.2006.

EXT.P-2 A TRUE COPY OF THE SENIORITY LIST OF EMPLOYEES AS ON
30-11-2011.

EXT.P-3 A TRUE COPY OF THE STAFF PATTERN OF THE FIRST
RESPONDENT.

EXT.P-4 A TRUE COPY OF THE RELINQUISHMENT LETTER DATED
29-11-2011 SUBMITTED BY V.A.JAMES INTERNAL AUDITOR.

EXT.P-5 A TRUE COPY OF THE RESOLUTION DATED 10.5.2012 OF THE
1ST RESPONDENT BANK.

EXT.P-6 A TRUE COPY OF THE REQUEST MADE BY THE SOCIETY TO THE
JOINT REGISTRAR OF GRANTING PERMISSION TO CREATE
SUPERNUMERARY POST IN THE CADRE INTERNAL AUDITOR.

EXT. P7 A TRUE COPY OF THE COMMUNICATION ISSUED BY THE
ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIEITES
(GENERAL) , KOOTHUPARAMBA.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

kvr/

HARUN-UL-RASHID,J.

W.P.(C) No. 17249 of 2012

Dated this the 31st day of November 2012

JUDGMENT

The writ petition is filed mainly seeking the following reliefs:

(i) issue a writ of mandamus or any other writ, order direction to the first respondent to promote the petitioner to the post of Assistant Secretary as decided in Ext.P5 resolution, without waiting for the prior permission of the Joint Registrar to create supernumerary post as per the 2nd proviso to Rule 185.

(ii) to declare that prior permission of the Joint Registrar is not required for promoting an employee as provided in the proviso to Rule 185, by creating supernumerary vacancy in the feeder category.

2. Petitioner is presently working as Senior Clerk in the service of the first respondent. The post of Assistant Secretary fell vacant due to retirement. The feeder category of the post of Assistant Secretary is internal Auditor. The person holding the post of Internal Auditor relinquished his right to be promoted as Assistant Secretary. Ext.P4 is the copy of the relinquishment letter dated 29.11.2011 submitted by the

internal auditor.

3. Petitioner submits that as per 2nd proviso to Rule 185 if the incumbent in the feeder category post relinquish his right to be promoted to the higher post, the person in the immediate lower post should be promoted to the said post by first promoting him to the feeder category post by creating a supernumerary post in the feeder category. It is pointed out that first respondent society has decided to promote the petitioner to the post of Assistant Secretary by Ext.P5 and sought permission of the Joint Registrar. Petitioner submits that permission of the joint Registrar is not required for promoting the petitioner by creating a supernumerary post. It is submitted that the authority competent to create supernumerary post is the authority competent to make promotion that is the Committee of the society and hence seeking of permission is unnecessary and it delays the promotion of the petitioner. In the circumstance the writ petition is filed seeking the aforesaid reliefs.

4. In the counter affidavit filed by the first respondent Society, the facts stated above are more or less admitted. In

the counter it is admitted that Sri. V.J.James who is holding the post of Internal Auditor has relinquished his right to get promotion to the post of Assistant Secretary. That the Society thereafter considered the question of filling up of the post of Assistant Secretary and has decided to grant promotion to the petitioner who is holding the post of Senior Clerk invoking Rule 185 of the Rules. It is admitted that since the creation of supernumerary post is only for the purpose of granting promotion to the incumbent in the next lower post, the creation of the post is not a permanent one and it was not necessary for getting sanction of the Registrar, for creating supernumerary post for granting promotion.

5. Rule 185 governs the promotion of employees which is to be done by the appointing authority. Since the power to create supernumerary post is only for the purpose of making further promotion and actual creation of a post in the service of the bank is not envisaged and especially when there is no provision requiring sanction for such supernumerary post creation, it is not disputed that it is unnecessary to seek approval of the Registrar.

6. It is also not disputed that the power to promote an employee is within the competency of the Committee and when there is a sanctioned post in the post to which promotion is to be made, the Committee is competent to grant promotion and to exercise all powers incidental to the same.

7. Since the permission of the Joint Registrar is not required, the reasons stated in Ext.P7 order cannot stand. Accordingly, Ext.P7 is quashed. In the said facts and circumstance, the writ petition is disposed of, directing the first respondent Society to pass appropriate orders in the matter of promotion of the petitioner in accordance with Rule 185 of the Co-operative Societies Rules within a period of three weeks from the date of receipt of a copy of the judgment.

Sd/-
HARUN-UL-RASHID
JUDGE

al/-