(2006) 08 KL CK 0081

High Court Of Kerala

Case No: W.A. No. 7 of 2006

West Quilon Service Co-op. Bank Ltd. No. Q. 73		APPELLANT
	Vs	
The State of Kerala and others		RESPONDENT

Date of Decision: Aug. 4, 2006

Citation: (2006) 4 ILR (Ker) 244 : (2006) 3 KLJ 241 : (2006) 4 KLT 950

Hon'ble Judges: K.S. Abdul Gafoor, J; K.P. Balachandran, J

Bench: Division Bench

Advocate: P. Ravindran, for the Appellant; P. Santhalingam (G.P.), for the Respondent

Final Decision: Allowed

Judgement

K.S. Abdul Gafoor, J.

The appellant Co-operative society could not succeed in O.P. No. 21569/04, wherein it challenged Exts. P3 and P5 orders. Therefore, this writ appeal. The grievances of the appellant is that by Ext. P3 order, the Joint Registrar had granted exemption from the requisite qualification to the 3rd respondent, long after his retirement and directed the appellant to pay the benefits arising out of retrospective promotion, for which he became eligible after giving exemption from qualification. Further contention is that Government also, in appeal against Ext. P3, while passing Ext. P5 did not advert to this aspect. It is, while rejecting the challenge against Exts. P3 and P5, the incompetency of the Joint Registrar to grant exemption to an employee in terms of Rule 185(8) of the Kerala Co-operative Societies Rules, 1969.

2. The facts, in short, for disposal of this appeal are as follows:

3. The 3rd respondent was an Assistant Secretary in the service of the appellant. While he was in service, the appellant showed a consideration towards him and put him in charge of the Secretary. But he did not have the qualification to hold the said

post. Rule 185(8) of the Rules enables the appellant to exempt an incumbent from the requisite qualification, of course, with prior approval of the Registrar. Therefore, Annexure A1 resolution was made to the Registrar for appropriate orders granting prior approval, so that the appellant could exempt the 3rd respondent from the requisite qualification to hold the post of Secretary. But, it was not responded to by the Registrar. While so, the 3rd respondent retired from the post of Assistant Secretary on 28-2-2001. In the meantime, a writ petition, filed by a junior incumbent to the 3rd respondent with a rival claim and another junior official, was compromised, as is revealed by Ext. P1 and the said incumbent had been given the post of Secretary after the retirement of the 3rd respondent. Citing this, the 3rd respondent represented to the Joint Registrar to grant approval to the resolution taken on 07-06-1993 and to exempt him from the qualification. This resulted in Ext. P3 dated 23-08-2003, far later than the retirement of the 3rd respondent to the effect that the 3rd respondent is exempted from the qualification required to hold the post of Secretary and that he be granted the benefit of pay of the Secretary. The appellant objected to it before the Government in an appeal. The Government rejected the appeal as per Ext. P5 order. The challenge against Exts. P3 and P5 had been repelled in the impugned judgment.

4. It is contended that Rule 185(8) of the Rules enables the Registrar only to grant prior approval. The Registrar did not have power to grant exemption from the requisite qualification insisted by the employer, the appellant. The appellant had never granted any exemption. Further, if at all exemption is to be granted, that can be given only while the employee is in service. After retirement, there arises no question of exemption. The learned single Judge did not advert to this aspect.

5. On the other hand, it is contended by the counsel for the 3rd respondent that on the basis of the compromise in Ext. P1, his claim ought to have been considered by the Registrar. Therefore, there is nothing illegal in Exts. P3 or P5 or in the grant of such exemption.

6. Rule 185(8) of the Kerala Co-operative Societies Rules reads as follows:

It shall be competent for the committee of a society to relax the qualification, other than pass in the competitive examination, specified in sub-rule(5); of an employee, for the purpose of promotion, appointed before the commencement of these rules in deserving cases, with the prior approval of the Registrar, and for reasons to be recorded.

Annexure A1 resolution is one seeking prior approval, as mentioned in the said Rule. Even the said resolution does not grant exemption to the 3rd respondent. Sub-rule (8) enables the committee of the society like the appellant, to relax the qualification. The power to give relaxation is not given to the Registrar or Joint Registrar. In Ext. P3 order, it is the Joint Registrar, who has given relaxation to the 3rd respondent. Therefore, it was beyond his competence. The Registrar did only have the power to

grant prior approval. Only after such prior approval, the committee could have granted relaxation. Therefore, Ext. P3 was passed exercising the power in excess of that conferred on the Registrar.

7. The said Rule further reveals that relaxation shall be given to an employee. Ext. P3 is the order of relaxation in favour of the 3rd respondent. It is dated 23-08-2003. The 3rd respondent had retired as early as on 28-02-2001. From that day onwards, he is not an employee. Even if the Registrar is competent to grant relaxation, it could not have been granted to a retired hand, who is no longer an ''employee''.

8. The compromise, as contained in Ext. P1, does not, in any way, refer to the 3rd respondent. Therefore, the 3rd respondent does not derive any benefit out of the said compromise. In such circumstances, Ext. P3 is beyond the competence of the officer who issued it. Consequently, it was wrongly upheld by Ext. P5, without adverting to those aspects. When Exts. P3 is, thus, not in tune with the statute and it was passed by the statutory authority, exceeding the power conferred on it, it shall have to be quashed. Equally so is Ext. P5.

Accordingly, Exts. P3 and P5 are quashed and reversing the judgment impugned, appeal is allowed.