

BENNY T.D. AND ORS. ETC. ETC. A
v.
REGISTRAR CO-OPERATIVE SOCIETIES AND ANR. ETC. ETC.

MAY 4, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAİK, JJ.] B

Service Law :

Kerala Co-operative Societies Act, 1969/Kerala Co-operative Societies Rules, 1969. C

S.80 (4)/Rules 176, 186 and 187—Trissur Bank. Kerala and District Co-operative Bank Kottayam—Clerks—Appointment of—Appointment rescinded by Registrar, Co-operative Societies holding that the same were made in violation of s.80(4) and R.187—Held, Order of Registrar is unsustainable—In view of fresh advertisement issued to fill up remaining vacancies reserved for SC/ST candidates, s.80(4) was not violated—Nor was there any provision for providing lower cut-off marks for SC/ST candidates—Rules do not provide for reserving 50% posts for in-service candidates—Non-supply of copy of Report of Commission regarding alleged irregularities in appointment to the Bank and affected parties would tantamount to violation of principles of natural justice—Orders of Registrar, Co-operative Societies rescinding the appointments quashed—Administrative Law—Principles of natural justice. D E

Resolutions passed by Trissur Bank, Kerala and District Co-operative Bank, Kottayam, appointing clerks in the respective Banks were rescinded by the Registrar, Co-operative Societies in exercise of power under s.176 of the Kerala Co-operative Societies Rules, 1969, on the grounds, *inter alia*, of violation of the provisions of s.80(4) of the Kerala Co-operative Societies Act, 1969 and Rule 187 of the Rules. F

The Registrar held that Trissur Bank appointed staff in excess of the strength approved inasmuch as 85 vacancies were advertised whereas resolution was passed for appointment of 116 persons; that since the Bank had not specified in the advertisement that 50% of the vacancies would be reserved for candidates from the employees for the affiliated primary societies, the same amounted to violation of statutory provisions; that the Bank appointed G H

- A** only 5 persons from Scheduled Caste/Scheduled Tribes Category whereas keeping in view the total appointed being 116, 11 such candidates ought to have been appointed that the Bank committed error in not giving lower cut-off marks for the reserved category candidates to ensure their representation as contemplated under s.80(4) of the Act, and that appointments were in violation of Rule 187 inasmuch as 50% of the vacancies were to be reserved for in-service candidates serving in different primary societies but only 24 of them got appointed as against 87 general category candidates.

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C In the writ petitions challenging the order of Registrar, Co-operative Societies Single Judge held that non-providing of lesser cut-off marks for Scheduled Castes/Scheduled Tribes candidates was arbitrary; and that under Rule 187, 50% of the vacancies had to be filled up by candidates possessing the additional qualification i.e., experience of having worked in primary societies which were members of the Apex Society, and therefore, 50% of the vacancies was the quota meant for candidates working in the primary societies. On appeal, the Division Bench of the High Court affirmed findings of the Registrar, Co-operative Societies and of the Learned Single Judge of Question of High Court on the infraction of s.80(4) of the Act and Rule 187 of the Rules but held that since the selection was not tainted with any illegality, the first 24 candidates in the general quota, 24 candidates from the member societies and 5 candidates from the list of Scheduled Castes/Scheduled Tribes candidates be retained in service. The order of the Registrar annulling the appointment of rest of the candidates was affirmed. Aggrieved, the general category candidates, whose appointments stood annulled filed C. As No. 2554-2556 of 1998 and The State of Kerala filed C. As No. 2559-2563 of 1998.

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F As regards the appointments made by the District Co-operative Bank, Kottayam, the Registrar held that there was, like the Trissur Bank, violation of Section 80 (4) of the Act and Rule 187 of the Rules. In addition, he also held that the entire selection of candidates was vitiated by non-compliance of statutory provisions and large scale tampering of answer papers and marks list in the written test as was apparent from the report of Kerala Public Men's (Corruption, Investigation and Enquiries) Commission. In the writ petitions, the Single Judge of the High Court held that the Registrar could not rely upon the report of the Commission since it was not put to notice of the affected persons. However, he affirmed the order of the Registrar rescinding the resolution of the Bank making the appointments because of

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H the infraction of s.80(4) and Rule 187. On appeal, the Division Bench relied

upon the report of the Commission and upheld the order of the Registrar holding that even if the candidates might not have been guilty of mal-practices, but the entire process of selection was vitiated. Aggrieved, the direct recruits, whose appointments stood annulled, and the employees belonging to the primary societies filed C.As No. 2557-2558 of 1998 and C.A. No. 2564 of 1998 respectively.

It was contended for the appellants in Appeals No. 2554-56/98 that there had been no violation of s.80(4) as out of the 11 posts required to be filled up by Scheduled Castes/Scheduled Tribes candidates, 5 were filled by such candidates and for remaining 6 posts fresh advertisement was issued; that in view of Rule 187 the experience of in-service candidates was to be construed as an additional qualification to the extent of 50% of the vacancies but the Registrar as well as the High Court misconstrued Rule 187 by interpreting that there should be a reservation to the extent of 50% of vacancies for people belonging to primary societies; that the Registrar erred in holding that the Bank appointed excess staff inasmuch as though 85 vacancies were advertised initially, but by the time the selection was made the number of vacancies increased to 116.

For the Registrar, Co-operative Societies it was contended that a conjoint reading of Rules 186 and 187 would mean that 50% of the vacancies have to be filled by direct recruits and other 50% by in-service candidates serving in different primary societies and since only 24 in-service candidates were appointed whereas 87 direct recruits were appointed, the Bank authorities contravened Rule 187 and the Registrar was justified in cancelling the appointments.

For the appellants in Kottayam Bank case it was additionally contended that even if Rule 187 be treated as part of Rule 186, then the entire selection process could not be set aside as Rule 187 could be held to be mere directory and not mandatory; and that the Division Bench of the High Court erred in concluding that selection was vitiated by illegality and mal-practice like tampering of marks, as neither the allegation was put to the Bank with notice nor was the report of Public Enquiry Commission supplied to the Bank or to affected parties.

Allowing the appeals filed by the appointees and dismissing the appeal of the State of Kerala, this Court

HELD : 1.1. It cannot be said that there has been any violation of sub-

A section (4) of s.80 of the Kerala Co-operative Societies Act, 1969. The provision says that 10 percent of the posts which are to be filled up by direct recruitment must be kept reserved for the Scheduled Castes and Scheduled Tribes people. When the total number of posts to be filled up were 116, 10 percent of the said posts would work out to 11. Admittedly 5 Scheduled Caste/Scheduled Tribe candidates were appointed and for the remaining six posts a fresh advertisement had been issued to hold a special recruitment so as to fill up the quota of 11. There is neither any allegation nor any finding that the quota meant for Scheduled Castes/Scheduled Tribes candidates has been usurped either by general category candidates or by candidates belonging to primary societies. [161-A-D]

C 1.2. From the impugned judgment of the High Court, it appears that since the Bank did not give any relaxation in favour of Scheduled Castes/Scheduled Tribes candidates by fixing a lower marks for passing, the court has come to the conclusion that there has been a violation of sub-section (4) of Section 80 of the Act. The conclusion of the High Court on the aforesaid basis is wholly erroneous. Neither the Act nor the Rules made thereunder nor even the guidelines issued by the Registrar prescribing procedure for appointment to the post in the apex society anywhere even whisper that there should be a lesser standard of scrutiny for the Scheduled Castes/Scheduled Tribes candidates. In this view of the matter, the conclusion of the High Court with regard to alleged infraction of sub-section (4) of Section 80 of the Act is wholly unsustainable and the same must be quashed. [161-D-H]

F 2.1. The High Court committed serious error of law by holding that there has been violation of Rule 187 since 50% of the vacancies have not been filled up by the candidates serving in different primary societies. A combined reading of Rules 186 and 187 would lead to the only conclusion that though the qualification for the posts of "Clerk" had been enumerated in Rule 186 but in respect of 50% of vacancies arising in the apex society, the in-service candidates serving in the primary societies will get the advantage as their experience would be treated as an additional qualification. G In this view of the matter it cannot be said that under Rule 187, 50% of the vacancies in the apex society is kept reserved for the in-service candidates serving in the primary societies. [165-C-D; 164-B-D]

H 2.2. Under the Rules as well as the guidelines issued by the Registrar providing the procedure for making recruitment the power of the employer to adjudge suitability has not been taken away in any manner. While, therefore,

Rule 187 gives a leverage in favour of in-service candidates serving in the primary societies for being considered for the posts of "Clerk" in the apex society by taking their experience as an additional qualification but such additional qualification, even after being taken into account if a person is adjudged unsuitable there is no compulsion on the employer to appoint such unsuitable person. [165-B-D]

3. Merely because in the advertisement issued by the Bank probable number of vacancies had been indicated to be lesser than the number of persons finally appointed, it cannot be said that there have been excess appointments beyond the staff strength approved by the Registrar. It is well known that during the time when an advertisement is issued and by the time when process of selection starts and ultimately appointment orders are issued on account of several factors the numbers of posts may be increased. There is neither any allegation nor any material to sustain the finding of the Registrar that in fact appointment has been made in excess of the posts approved by the Registrar. The said conclusion, therefore, must be held to be based on no evidence and accordingly cannot be sustained.

[165-G-H; 166-A-C]

4. The Registrar erred in coming to the conclusion that in the case of both the banks, appointments had been made contrary to circular No. 18 dated 7.6. 1991. Clauses 4(e) of the circular stipulates that the condition with regard to age-limit, qualifications, mode of appointment as laid down in the rules framed under Section 80 such as rules 183, 186, 187 of the Kerala Co-operative Society Rules shall be strictly followed. Since there has been no violation of Rule 187 of the Rules, the conclusion of the Registrar that appointments have been made in contravention of the aforesaid circular No. 18 of 1991 also falls through and the said conclusion cannot be sustained.

[166-C-E]

5. The Division Bench patently committed an error in relying upon the report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission and in recording a finding that irregularities have been committed in the selection notwithstanding the fact that the said report had not been made available to the Bank or to the affected parties. It would tantamount to gross violation of the principle of natural justice which cannot be brushed aside on the ground that public interest demands annulment of the selection. That apart, in the notice issued under Rule 176 of the Rules by the Registrar to the Kottayam District Co-operative Bank no particulars were given and, therefore, on mere vague assertions it was not permissible to record a conclusion that there has been any irregularity in the process

A of selection. The said conclusion of the Division Bench must accordingly be set aside. [167-A-F]

Pritpal Pal Singh & Ors., v. State of Haryana & Ors., [1994] 5 SCC 695, held inapplicable.

B 6.1. The appointments made to the post of clerks by Resolution No. 2 dated 5.2.1995 and Resolution No. 10 dated 17.5.1995 passed by the Board of Directors of Trissur District Co-operative Bank and those made by the Board of Directors of District Co-operative Bank, Kottayam by Resolution Nos. 3 and 4 dated 13.4.1995 are valid. The orders of the Registrar in annulling the said resolutions of the two Banks are vitiated with manifest error and are, therefore, quashed. [168-G-H; 169-A-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2554-56 of 1998 Etc.

D From the Judgment and Order dated 9.4.97 of Kerala High Court in W.P. No. 37, 50-51 of 1997.

E K.N. Bhat, V.R. Reddy, Additional Solicitor Generals, F.S. Nariman, T.L. Viswanatha Iyer, N. Santosh Hegde, P.S. Poti, P. Krishnamurthy, C.S. Vaidyanathan, K. Sukumaran, Santosh R. Hegde, K.R. Nambiar, P.R. Ramalingam, E.M.S. Anam, Fazlian Anam, M.P. Vinod, G.Prakash, Ms. Beena Praskash, Ms. Malini Poduval, Roy Abraham and Ms. Baby Krishnan for the appearing parties.

The Judgment of the Court was delivered by

F **PATTANAİK, J.** Leave granted in all the SLPs.

G These 12 appeals are directed against the judgment dated 9th April, 1997 of the Division Bench of Kerala High Court in Writ Appeal No. 37 of 1997. The appeals titled as Benny T.D. & Ors. Etc. vs. The Registrar of Co-operative Societies & Anr and State of Kerala and ors. vs. K.O. Sherly & others; relate to recruitment to the post of Clerk in Thrissur Bank, Kerala. Appeals titled as P.J. Jose & Ors. vs. The Registrar of Co-operative Societies & Ors. and Binu I & Ors. etc. vs. The Registrar of Co-operative Societies & Ors. etc. relate to recruitment to the post of Clerk in the District Co-operative Bank Kottayam. Apart from these appeals Trichur District Co-operative Bank also had preferred special leave petition against the same judgment of the **H** Kerala High Court but withdrew the same at the time of hearing.

In case of Thrissur Bank an advertisement was issued on 9.11.1995 indicating the probable vacancies in the grade of Clerk as 85 and inviting applications for filling up of the said posts. The advertisement indicated the qualification for being eligible to apply and also indicated that the 10% of the vacancies is reserved for Scheduled Castes/Scheduled Tribes. Pursuance to the said advertisement 2466 General Category candidates, 432 in-service candidates, who are already serving in different primary societies and 87 Scheduled Castes/Scheduled Tribes candidates applied. The Bank conducted a written test to adjudge the suitability of the applicants for being appointed as Clerks and on the basis of the result in the written test, those of the candidates, who secured the prescribed minimum marks were called for interview. It may be stated that 221 General Category candidates, 75 in-service candidates and 6 Scheduled Castes/Scheduled Tribes candidates were called for the interview. On the basis of their performance in the interview the Bank authorities prepared a panel of 154 candidates and out of the said panel decided to appoint 116 persons by Resolution of the Bank dated 5.2.1995. It is to be noticed that though the probable vacancies as per the advertisement was 85 but before the selection process started the vacancies came to 116 and as such resolution was passed to appoint 116 persons. Out of the said 116 persons 87 persons belong to the General Category, 24 belong to the in-service category, who are the existing employees of different primary societies and 5 belong to the Scheduled Castes/Scheduled Tribes reserved category. Some of the applicants who could not qualify in the test held by the Bank made a grievance before the Registrar Co-operative Societies alleging irregularities in the selection process. In fact, initially, they filed a writ petition before the Kerala High Court but the High Court being of the opinion that a writ will not be maintainable against a Co-operative Society and that statutory remedies are available under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act') did not entertain the writ petition. Against the decision of the learned single Judge holding a writ petition to be not maintainable, a writ appeal was preferred and the said writ appeal is still pending in the Kerala High Court. But pursuance to the representations received by the Registrar alleging serious irregularities in the selection process, the Registrar invoked his jurisdiction and enquired into the matter. In course of inquiry by the Registrar the Joint Registrar, Co-operative Societies, had informed that the selection made by the Thrissur District Co-operative Bank has been fairly made and there was no foul play in the selection process as alleged. The Registrar Co-operative Societies, however, came to hold that the action of the Board of Directors of Thrissur District Co-operative Bank in appointing 116 Clerks by Resolution No. 2 dated 5.2.1995 and Resolution No.

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- A 10 dated 17.5.1995 is against the provisions of the Kerala Co-operative Societies Act, Rules, Bye-laws and directions and instructions issued by the department and it amounted to disturb the peaceful and orderly working of the Bank and it is contrary to its better interest. On the aforesaid conclusion the Registrar in exercise of his power under Rule 176 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as 'the Rules') rescinded the aforesaid two Resolutions of the Thrissur District Co-operative Bank.

- In the case of District Co-operative Bank Kottayam, the Registrar also invoked his power under Rule 176 of the Rules and issued a notice to the Board of Directors of the Bank indicating the allegations of irregularities committed by the Bank in selecting and appointing people to the post of Clerk and called upon the Bank to show cause as to why the Resolution Nos. 3 and 4 dated 13.4.1995 making appointments to the post of Clerk should not be rescinded. The Bank, in its turn, refuted the allegations made in the notice. But the Registrar finally by his order dated 24th of October, 1996 came to hold that the entire selection of candidates and appointments made by the Kottayam Co-operative Bank by Resolution Nos. 3 and 4 dated 13.4.1995 are vitiated by non-compliance of the statutory provisions and large scale tampering of answer papers and marks list in the written test and consequently rescinded the said Resolutions dated 13.4.1995. The aforesaid two orders of the Registrar were challenged before the Kerala High Court by 9 Original Petitions, 5 of which are in respect of Thrissur District Co-operative Bank and 4 of which are in respect of Kottayam District Co-operative Bank. All these 9 original applications were disposed of by the learned single Judge of Kerala High Court by judgment dated 18th December, 1996 and the learned single Judge dismissed all the original petitions. Against the aforesaid judgment of the learned single Judge 9 appeals were carried to the Division Bench and the Division Bench disposed of those appeals by the impugned judgment dated 9.4.1997. In case of Kottayam Bank the Division Bench confirmed the judgment of the learned single Judge upholding the order of the Registrar and rescinding the Resolution of the Bank. But in the case of Thrissur Bank the Division Bench modified the order of the Single Judge as well as that of the Registrar and directed that the first 24 candidates in the General Category as well as 24 in-service candidates and 5 candidates from the Scheduled Castes/Scheduled Tribes category may be retained in service and the appointment of rest of the persons under the two Resolutions of the Bank, referred to earlier, must be held to be invalid. Against the aforesaid judgment of the Division Bench of the Kerala High Court the first 3 appeals arising out of SLP (c) Nos.9350-9352 of 1997 are by the General Category candidates, who had been appointed by

the Resolution of the Bank but whose appointments now stand annulled by the order of the Registrar and affirmed by the Division Bench of High Court. The appeals filed by the State of Kerala are against the modified decision of the Division Bench allowing 53 persons to be retained in service in Thrissur Bank. The appeal arising out of SLP (c) No. 9728 of 1997 is by the employees belonging to the Primary Society, who had been appointed as Clerks in the Kottayam Bank and whose appointments stood annulled by virtue of the decision of the Registrar and affirmed by the learned single Judge and Division Bench of Kerala High Court. The appeals arising out of SLP (c) Nos. 10149 - 10150 of 1997 are by the direct recruits who had been appointed as Clerks in the Kottayam Bank and whose appointments stood annulled by the aforesaid decisions of the Registrar and the High Court.

In the Thrissur Bank case, the Registrar formulated following four issues:

1. Whether the Bank appointed staff in excess of the approved strength?
 2. Whether the advertisement was in accordance with the circular instructions of the Registrar of Co-operative Societies (No. 18/91).

3. Whether the Bank followed the provisions of Section 80(4) of the Kerala Co-operative Societies Act and Circular Instructions Nos. 28/86 and 18/91.

4. Whether the Bank complied with Rule 187 of the Kerala Co-operative Societies Rules, 1969 in the selection of staff from the employees of affiliated Primary Societies and came to hold that material irregularities had taken place in the appointment and the Bank appointed staff in excess of the staff strength approved by the Registrar of Co-operative Societies on issue No. 1. On Issue No. 2, the Registrar came to hold that since the bank had not specified in the advertisement that 50% of the vacancies shall be reserved for candidates from the employees of the affiliated Primary Societies the same amounts to violation of the statutory provisions and is against the better interest of the Bank. On Issue No. 3, the Registrar came to hold the Bank committed error in not giving lower cut off marks for the reserved category candidates to ensure their representation as contemplated under Section 80(4) of the Act and the decision of the bank avoiding selection of candidates from Scheduled Castes/Scheduled Tribes category is against the provisions of Section 80(4) of the Act, which in turn, contrary to the better interest of the Bank. On Issue No. 4 the Registrar came to hold that there has been a violation of Rule 187 of the Rules and the said Rule has not been strictly

A complied with inasmuch as while 50% of the vacancies was to be reserved for the in-service candidates serving in different Primary Societies but only 24 of them got appointed as against 87 General Category candidates.

B In the case of Kottayam Bank, the Registrar also came to hold that there has been an infraction of Rule 187 of the Rules and sub-section (4) of Section 80 of the Act, as in the case of Thrissur Bank. In addition, to the said infirmity the Registrar also came to hold that there has been a large scale tampering of the answer papers and the marks list and glaring instances of tampering in the marks have been given as is apparent from the report of Kerala Public men's (Corruption, Investigation and Enquiries) Commission, who has directed
C for a detailed enquiry.

The learned Single Judge came to hold that the Bank has not given full effect to the provisions contained in Section 80(4) of the Act while making appointments and non-providing of lesser cut off marks for the Scheduled Castes/Scheduled Tribes candidates is arbitrary and the subsequent attempt
D of the Bank to make recruitment by way of special recruitment for the reserved category candidates cannot cure the illegality as well as the mandate of sub-section (4) of Section 80. So far as infraction of Rule 187 is concerned, the learned single Judge came to hold that under the Rule 50% of the vacancies arising in an apex society has to be filled up by candidates possessing the
E additional qualification meant in the Rule, and therefore, it must be held that 50% of the vacancies is the quota meant for candidates who are working in the primary society. Consequently, there has been an infraction of Rule 187 of the Rules. With the aforesaid conclusion the learned single Judge did not interfere with the order of the Registrar rescinding the Resolution of the Thrissur Bank appointing 116 persons to the post of the Clerk. In Kottayam
F Bank case the learned single Judge also came to hold that there has been a violation of sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules, and therefore, the Registrar was justified in rescinding the Resolution of the Bank making the appointments and Registrar cannot be said to have exceeded his jurisdiction in interfering with the decisions of the Bank. So far
G as the finding of the Registrar on the alleged mal-practices on the basis of the report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission is concerned the learned single Judge came to hold that the above report should not be relied upon by the Registrar since it was not put to the notice of the affected persons in the show cause notice that has been issued under Rule 176 of the Rules. But yet the order of the Registrar
H rescinding the Resolution of the Bank making the appointments cannot be

interfered with because of the infraction of sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules. A

The Division Bench in the impugned judgment affirmed the interpretation given by the learned single Judge to sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules and further held that in the matter of appointments to the post of Clerk there has been violation of sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules by both the Banks. In case of Kottayam Bank the Division Bench relied upon the report prepared by the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission and further held that even if the said report had not been indicated in the notice that was issued under Rule 176 of the Rules and even if the said report had not been put to the employees, whose appointments have been annulled by the Registrar but the High Court would be justified in relying upon the same in not exercising its extra-ordinary jurisdiction under Article 226 of the Constitution. The Division Bench, therefore, ultimately came to hold that in case of Kottayam Bank even if the appellant may not have been guilty to any such mal-practices but the entire process of selection was vitiated, and therefore, there was no other remedy than to cancel the appointments made. In case of Thrissur Bank while it affirmed the views of the Registrar as well as that of the learned single Judge that there has been an infraction of sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules but it held "In view of the peculiar circumstances of the case and having regard to the fact that the selection was not tainted with any illegality, we direct that the first 24 candidates in the general merit quota be allowed to be retained and 24 candidates who have been selected under the member society also be allowed to be retained and 5 candidates from the list of Scheduled Castes/Scheduled Tribes candidates may be retained in service". The order of the Registrar annulling the appointment of rest of the candidates, however, was affirmed. B
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Mr. F.S. Nariman, learned senior counsel appearing for the appellants Benny T.D. & others contended, that under Sub-Section (4) of Section 80 of the Act 10% of the posts of employees are required to be reserved for persons belonging to Scheduled Castes and Scheduled Tribes where the method of recruitment is by direct recruitment. Consequently in case of Thrissur Bank 11 posts were required to be filled up by the Scheduled Castes and Scheduled Tribes, but the said provision cannot be interpreted to mean that the employer-Bank is bound to recruit from amongst the applicants belonging to the said category, 11 persons irrespective of their suitability. The G
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- A** Bank having found only 5 persons belonging to the said category suitable and having appointed them and further having made a fresh advertisement for 6 more persons belonging to the said category as a special recruitment there has been no violation of Sub-Section (4) of Section 80. The Registrar as well as the High Court in the Single Judge Bench and Division Bench committed gross error in interpreting Sub-Section (4) of Section 80 and in holding that the provisions of Sub-Section (4) of Section 80 has been infringed as the Bank did not take steps for having a lesser cut off mark for the reserved category and in not filling up all the 11 posts meant for the reserved category people. The aforesaid erroneous construction of the provisions of Sub-Section (4) of Section 80 vitiates of the ultimate conclusion. The learned senior counsel further urged that the Registrar as well as the learned single Judge and the Division Bench in appeal have misconstrued the provisions of Rule 187 of the Rules by interpreting the said provisions to mean that there should be a reservation to the extent of 50% of vacancies for the people belonging to the Primary Society. According to Mr. Nariman, the learned senior counsel, the only logical conclusion that can be made of Rule 187 is that the experience of the in-service candidates serving in different primary societies has to be construed as an additional qualification to the extent of 50% of the vacancies. In other words, this can be treated to be an additional weightage for the in-service candidates serving in the primary society and by no stretch of imagination it can be construed to be a reservation to the extent of 50% in favour of in-service candidates serving in the primary societies. In this view of the matter the Registrar as well as the learned Single Judge and the Division Bench of the High Court committed error in coming to the conclusion that Rule 187 tantamounts to reservation of 50% of the vacancies in favour of candidates serving in the primary societies and since only 24 of this category were appointed as against 56 belonging to the general category there has been an infraction of Rule 187 and ultimately the entire process of selection gets vitiated. Mr. Nariman, learned senior counsel also urged that the Registrar committed serious error of record in holding that the Bank appointed staff in excess of the staff strength approved by the Registrar, inasmuch as it was nobody's case that there did not exist 116 vacancies in the Bank of the date when the Resolution was passed for appointment of 116 persons and the aforesaid conclusion of the Registrar is based upon no materials at all. According to learned senior counsel if the aforesaid conclusion of the Registrar is based on the ground that the advertisement having indicated probable number of vacancies to be 85 the recruitment could not have been made beyond the said advertisement then it cannot be held that there was appointment of staff in excess of the staff strength. The advertisement merely

indicates the probable vacancies but by the time selection is made and recruitment is made all subsequent vacancies have to be taken into account and that is why appointments had been made in favour of 116 persons. The conclusion of the Registrar, therefore, on that score is wholly erroneous. Mr. Nariman, learned senior counsel also urged that the fact that 5 Scheduled Caste persons were recruited is not disputed and merely because the register of candidates did not show against the names to be Scheduled Castes/ Scheduled Tribes it cannot be said to be an infraction of Sub-Section (4) of Section 80. In the context of interpretation of Rule 187 Mr. Nariman urged that Circular No. 18 of 1991 on which the Registrar relied upon and the High Court has also relied upon nowhere indicates that there should be reservation to the extent of 50% of the vacancies in favour of the members of the primary societies for being recruited as clerks in the Apex Bank and in that view of the matter by relying upon a wrong circular the ultimate conclusion is vitiated.

Mr. V.R. Reddy, learned Additional Solicitor General appearing for the Registrar of Co-operative Societies, however, strenuously urged that Rule 187 being an additional qualification for the purpose of appointment to the post of clerk in the Apex Society the said additional qualification should be treated as a part of Rule 186. According to Mr. Reddy both these Rules should be read together and if Rule 187 is treated as a part of Rule 186, the conclusion becomes irresistible that no person can be appointed to the extent of 50% of the vacancies excepting those possessing additional qualification mentioned in Rule 187. In other words, according to Mr. Reddy a conjoint reading of Rules 186 and 187 would mean that the 50% of the vacancies have to be filled up by open candidates and other 50% of the vacancies have to be filled up by in-service candidates serving in different primary societies who possess the additional qualification. On such an interpretation being applied to the facts in hands there cannot be any doubt that the Bank Authorities contravened Rule 187 in appointing only 24 in-service candidates whereas 87 open candidates were appointed and in this view of the matter the Registrar and the High Court was justified in cancelling the Resolution of the Bank making the appointments.

Mr. K.N. Bhat, learned Additional Solicitor General appearing for the State of Kerala further contended that the Division Bench was wholly in error in finding out a via media after coming to the conclusion that in the matter of appointments there has been a violation of Sub-Section (4) of Section 80 as well as Rule 187. According to the learned Additional Solicitor General the recruitment to the post of clerk in the Bank having been governed by statutory

A provisions and the Bank Authorities having contravened those statutory provisions the entire selection process gets vitiated and, therefore, Division Bench was not justified in sustaining the appointments of some in the aforesaid selection process.

B Mr. Vaidyanathan, learned senior counsel appearing for appellants in Kottayam Bank case reiterated the contentions raised by Mr. Nariman so far as the interpretation of Sub-Section (4) of Section 80 of the Act and Rule 187. He further urged that even if Rule 187 to be treated as part of Rule 186 then entire selection process cannot be set aside. According to learned senior counsel said Rule 187 can be held to be mere directory and not mandatory.

C On the conclusion of the Division Bench that the selection has been vitiated by illegality and mal-practices like tampering of marks Mr. Vaidyanathan contended that the said allegation neither was put to the Bank in the notice issued under Rule 176 nor the report of the Public Enquiry Commission had been supplied to the Bank or the affected party. Consequently, the Division Bench committed gross error of law in holding that the entire selection process gets vitiated on account of irregularities and mal practices adopted.

Mr. Sukumaran, learned senior counsel appearing for the Registrar in the said Kottayam Bank case contended, that when the selection made was not objective and fair and even the Public Enquiry Commission found tampering of marks in respect of several candidates the dispute cannot be treated as purely adversarial as it involve public interest, and judged from that stand point the entire selection process must be held to have been vitiated and the High Court did not commit any error in annulling the Resolution making appointments to the posts of clerks. In support of this contention the learned senior counsel placed reliance on a decision of this Court in *Pritpal Pal Singh & ors., v. State of Haryana & Ors.*, [1994] 5 Supreme Court Cases 695.

E In view of the rival submission at the Bar, the first question that arises for consideration is whether : the conclusion of the High Court that there has been an infraction of sub-section (4) of Section 80 of the Act is at all correct? For a better appreciation of the point in issue, sub-section (4) of Section 80 of the Act is quoted hereinbelow in extenso:

H “Notwithstanding anything contained in sub-section (1) or sub-section (2), ten per cent of the posts of employees of every society shall be reserved for appointment from persons belonging to the Scheduled Castes and Scheduled Tribes were the method of appointment to such posts is by direct recruitment.”

A plain meaning of the aforesaid provision is that 10 per cent of the posts which are to be filled up by direct recruitment must be kept reserved for the Scheduled Castes and Scheduled Tribes people. In the case in hand, when the total number of posts to be filled up were 116, 10 per cent of the said posts would work out at 11. As has been stated earlier, pursuant to the advertisement issued in case of Trissur Bank 87 Scheduled Castes and Scheduled Tribes candidates had applied and after the written test only six of them passed the minimum prescribed standard fixed by the employer. But one of them was disqualified for having filed a wrong declaration and five were appointed. It is an admitted case that for six posts meant for the aforesaid reserved category of Scheduled Castes/Scheduled Tribes persons a fresh advertisement had been issued to hold a special recruitment so as to fill up the quota of 11, there is neither any allegation nor any finding that the quota meant for Scheduled Castes/Scheduled Tribes candidates has been usurped either by General category candidates or by candidates belonging to Primary Societies. In this view of the matter, we fail to understand how can it be held that there has been a violation of sub-section (4) of Section 80 of the Act. From the impugned judgment of the High Court, it appears that since the Bank did not give any relaxation in favour of Scheduled Castes/Scheduled Tribes candidates by fixing a lower marks for passing, the court has come to the conclusion that there has been a violation of sub-section (4) of Section 80 of the Act. In our considered opinion, the conclusion of the High Court on the aforesaid basis is wholly erroneous. Neither the Act nor the Rules made thereunder nor even the guidelines issued by the Registrar prescribing procedure for appointment to the post in the apex society anywhere even whisper that there should be a lesser standard of scrutiny for the Scheduled Castes/Scheduled Tribes candidates. It is well settled that when recruitment to posts is governed by statutory rules framed in exercise of power under proviso to Article 309 of the Constitution, said Rules must be strictly adhered to or else the appointments would be struck down for not being in conformity with such statutory Rules. Since the statutory rules of recruitment in the present case did not provide for a lower standard of scrutiny for the reserved Scheduled Castes/Scheduled Tribes category of candidates and even the Registrar had not issued any such direction, the Bank cannot be held liable for not having prescribed a lesser standard of scrutiny for reserved candidates nor on that ground it can be said that there has been a violation of sub-section (4) of Section 80 of the Act. In this view of the matter, the conclusion of the High Court with regard to alleged infraction of sub-section (4) of Section 80 of the Act is wholly unsustainable and the same must be quashed. It may be stated in this connection that though five of the candidates belonging

A to Scheduled Castes/Scheduled Tribes were appointed and this fact has not been denied but yet the High Court erroneously came to the conclusion that such appointments were made on the merit quota. This conclusion is based on the fact that against these candidates there has been no mentioning of Scheduled Castes or Scheduled Tribes. As it appears from the relevant materials produced, that the General category candidates in whose favour appointments had been issued up to the 86th position and the Scheduled Castes/Scheduled Tribes candidates who were appointed had secured the ranks much below namely 92, 93, 95 onwards. The conclusion of the High Court that they got the appointment from the merit quota is on the face of it erroneous.

C The next question that arises for consideration is : whether the High Court was justified in coming to the conclusion that both the Banks, namely, Trissur Bank as well as Kottayam Bank has violated the provisions of Rule 187 of the Rules? In view of the contentions raised by Mr. Reddy, the learned Additional Solicitor General, appearing for the Registrar in this connection and the reasoning on which the High Court came to hold that there has been a violation of Rule 187, it would be appropriate to extract Rules 186 and 187 in extenso:

“Rule 186. Qualifications :-

E (1) No person shall be eligible for appointment in any post unless he possesses the qualifications prescribed for the post as shown below:

(i) All posts other than those requiring technical qualifications, the starting pay of which is Rs. 250/- and above:-

F A. A Degree in Commerce or Masters Degree in Arts of a recognised University, with Co-operation as special subject

OR

G B. (i) B.A., B.Sc., or B.Com. degree of a recognised University and

H (ii) Higher Diploma in Co-operation (HDC of State Co-operative Union of Kerala or HDC, and HDCM of the National Council for Co-operative Training) or successful

completion of the Subordinate (Junior) Personnel Co-operative Training Course (Junior Diploma in Co-operation). A

C. Diploma in Rural Services with Co-operation as optional subject.

OR B

D. B.Sc. (Co-operation & Banking) Degree of the Kerala Agricultural University.

(ii) Other supervisory and Ministerial posts other than those requiring Technical qualifications, the starting pay of which is below Rs. 250. C

S.S.L.C. or its equivalent and successful completion of Subordinate Personnel Co-operative Training Course (Junior Diploma in Co-operation).

(iii) Typist: D

S.S.L.C. or its equivalent with Type-writing (Lower).

(iv) Stenographer:

S.S.L.C. or its equivalent with Type-writing (Lower) E

(v) All other posts with starting pay below Rs. 100:

Seventh Standard.

Note:- (1) Nothing in this Rule shall apply to the present incumbents for the present post they hold. F

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187. *Vacancies in Apex Society:* Notwithstanding anything contained in Rule 186 for appointments to the 50% of the vacancies arising in the Apex Society or (other Federal type Society having other societies as its members) experience in the Societies which are members of the respective Apex Society or Federal type society, as the case may be, (shall be a necessary additional qualification).” G

In the impugned judgment the High Court, interpreting Rule 187 of the Rules recorded its conclusion that 50% of the vacancies in an apex society must be filled up with persons having the additional qualification mentioned H

A in Rule 187, which in turn, would mean that the quota for such candidates who are working in the member society is fixed at 50% of the vacancies. On a plain reading of Rule 187, by itself, it is difficult for us to accept the conclusion arrived at by the High Court to the effect that 50% of the vacancies are reserved for employees of Primary Co-operative Societies affiliated to the Bank. A combined reading of Rules 186 and 187 would lead the only conclusion that though the qualification for the posts of "Clerk" had been enumerated in Rule 186 but in respect of 50% of vacancies arising in the apex society, the in-service candidates serving in the Primary Societies will get the advantages as their experience would be treated as an additional qualification. In this view of the matter, it is difficult for us to hold that under Rule 187, 50% of the vacancies in the apex society is kept reserved for the in-service candidates serving in the Primary Societies. Mr. Reddy the learned Additional Solicitor General appearing for the Registrar faced with this position urged that though under Rule 187 apparently there has been no reservation for in-service candidates but the said Rule should be read as a part of Rule 186, both the Rules being operative in the same field, namely, prescribing qualification for appointment to the post of "Clerk" and on such a construction being given it would be logical to hold that no person would be eligible for appointment to the 50% of the vacancies arising in the apex society unless he possesses the necessary additional qualification as provided in Rule 187. Such a construction cannot be given to Rule 187 in view of the opening words of the said Rule starting with a non-obstante clause. When a particular provision in a statute begins with a non-obstante to the effect "notwithstanding anything contained" the idea is obvious that the provision embraced in the non-obstante clause will not be an impediment for the operation of the enactment. It would, thus, be impermissible to construe Rule 187 in the manner as contended by Mr. Reddy, the learned Additional Solicitor General, nor is it possible for us to agree with the construction made by the High Court in coming to the conclusion that under Rule 187, 50% of the vacancies arising in the apex society has to be kept reserved for persons belonging to the Primary Societies. The construction put to the Rule 187 by the High Court is wholly erroneous and the same cannot be sustained and consequently the ultimate conclusion that there has been an infraction of Rule 187 is unsustainable in law. From the assertions made by the Bank in the special leave petition which they had filed, it appears that the Bank had fixed 52 as the cut off marks in the written test for the direct recruits both General and Scheduled Castes/Scheduled Tribes candidates and 44 for employees belonging to the Primary Societies and those of the candidates who secured more than 44 from amongst applications belonging to the Primary Society they had been

called for interview and on the basis of the marks secured in interview the same being added to their marks in the written test, final selection was made. In case of Trissur Bank, 432 candidates belonging to the Primary Society had applied for and only 75 of them secured marks above 44 and were called for interview and finally 24 of them were found suitable and were appointed. Under the Rules as well as the guidelines issued by the Registrar providing the procedure for making recruitment the power of the employer to adjudge suitability has not been taken away in any manner. While, therefore, Rule 187 gives a leverage in favour of in-service candidates serving in the primary society for being considered for the posts of "Clerk" in the apex society by taking their experience as an additional qualification but such additional qualification even after being taken into account if a person is adjudged unsuitable there is no compulsion on the employer to appoint such unsuitable person. In the aforesaid premises, we are of the considered opinion that the High Court committed serious error of law by holding that there has been a violation of Rule 187 since 50% of the vacancies have not been filled up by the candidates serving in different primary societies.

Though the High Court dismissed the writ petition as well as the writ appeals preferred against the judgment of the learned single Judge by coming to the conclusion that there has been violation of sub-section (4) of Section 80 of the Act and Rule 187 of the Rules but the Registrar had annulled the resolutions of the Bank appointing persons to the post of Clerk on other grounds also and since the legality of the order of the Registrar invalidating the appointment made was challenged in the High Court by filing writ petitions, it is necessary to examine the other grounds also. From a perusal of the order of the Registrar and the issues framed for consideration would indicate that the Registrar had also struck down the appointment on two other grounds, namely, the Bank had appointed staff in excess of the approved strength and secondly the advertisement was not in accordance with the Circular-instructions of the Registrar of Co-operative Societies No. 18 of 1991. Coming to the question as to whether appointment had been made in excess of the staff strength approved by the Registrar, it appears that apart from the above statement made by the Registrar in his order no material has been brought on to the record to support the aforesaid conclusion of the Registrar. Merely because in the advertisement issued by the bank probable number of vacancies had been indicated to be lesser than the number of persons finally appointed, one cannot jump to the conclusion that there has been an excess appointment beyond the staff strength approved by the Registrar. It is well known that during the time when an advertisement is issued and by the time when

A process of selection starts and ultimately appointment orders are issued on account of several factors the number of posts may be increased, the factors being retirement of persons on attaining superannuation, death of several employees, promotion of the employees to higher posts and for variety other grounds. In such contingencies, when appointments are made depending upon the vacancies available and in excess of the vacancies advertised it cannot be said that the appointment has been made in excess of the strength of the cadre approved. There is neither any allegation nor any material to sustain the finding of the Registrar that in fact appointment has been made in excess of the posts approved by the Registrar. The said conclusion, therefore, must be held to be a conclusion based on no evidence and accordingly cannot be sustained.

The next question relates to the Circular - instruction of the Registrar of Co-operative Societies No. 18 of 1991. The said circular is dated 7th of June, 1991. It provides the procedure relating to recruitment for appointment of employees in Co-operative institutions. We have carefully considered the aforesaid circular and we fail to understand how the Registrar could come to the conclusion that in the case of the two banks, namely, the Trissur District Co-operative Bank as well as the Kottayam Bank appointments had been made contrary to the aforesaid circular. Clause 4(e) of the circular stipulates that the conditions with regard to age-limit, qualifications, mode of appointment as laid down in the rules framed under Section 80 such as rules 183, 186, 187 of the Kerala Co-operative Society Rules shall be strictly followed. In view of our earlier conclusion that there has been no violation of Rule 187 of the Rules, the conclusion of the Registrar that appointment has been made in contravention of the aforesaid circular No. 18 of 1991 also falls through and the said conclusion cannot be sustained.

Apart from the aforesaid question which are common in respect of recruitment in both the Banks, in case of Kottayam Bank the Division Bench of the High Court had categorically found that the recruitment itself is vitiated on account of large scale mal-practice. It may be stated that the Registrar while issuing notice under Rule 176 of the Rules to the Board of Directors of Kottayam District Co-operative Bank by letter dated 24th of July, 1986 did not indicate about any large scale mal-practice adopted in the test conducted by the bank excepting to the effect: "The marks awarded and the consolidated marks recorded are corrected and manipulated." Some of the candidates were given less marks and some others were given higher marks. But while considering the legality of the resolutions passed by the bank appointing

several persons the Registrar took into consideration the so-called report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission who had directed for a detailed enquiry and on that basis came to the ultimate conclusion that the appointment of candidates made by the Kottayam District Co-operative Bank is vitiated. The learned Single Judge came to the conclusion, and in our opinion rightly, that in the absence of any detailed particulars of the alleged irregularities in the notice issued to the bank under Rule 176 and in the absence of report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission being made available to the bank or the persons appointed, it is not open to the Registrar to come to the conclusion about the irregularity and said conclusion is vitiated on account of gross violation of the principle of natural justice. The Division Bench, however, disagreed with the conclusion of the learned Single Judge on this score and relied upon the report of the Commission and came to hold that the entire selection process was vitiated by illegality and irregularity and therefore there is no other option than to cancel the appointments of all the candidates. The Division Bench was conscious of the fact that the persons to be adversely affected by the impugned decision had not been given an opportunity inasmuch as the relevant documents had not been put to them nor even to the bank who made recruitment but yet brushed aside the principle of natural justice and did not focus its attention to the same and on the other hand came to the conclusion that the process of selection got vitiated on account of alleged irregularity and illegality. In our considered opinion the Division Bench patently committed an error in relying upon the report of the Commission and in recording a finding that irregularities have been committed in the selection notwithstanding the fact that the said report had not been made available to the Bank or to the affected parties. That apart, as stated earlier in the notice that was issued by the Registrar there was no particulars given and on such vague assertions made, it was not permissible to record a conclusion that there has been any irregularity in the process of selection. The said conclusion of the Division Bench much accordingly be set aside.

Mr. Sukumaran the learned senior counsel relied upon the decision of this Court in *Pritpal Pal Singh & Ors. v. State of Haryana & Ors.*, (1994) 5 Supreme Court Cases 696 and urged that in view of the findings of the Public Inquiry Commission that there has been tampering of marks in respect of several candidates and as such there has been no fair and objective selection, the public interest demands annulment of the entire selection and a court should not shirk its responsibility by directing annulment of selection on the mere technicality that the Report of the said Public Inquiry Commission

A had not been given to the Bank or any of the persons to be affected. In the aforesaid case, selection made by the Haryana Subordinate Services Selection Board for appointment to the post of Assistant sub-Inspectors of Police was annulled by this Court on coming to a conclusion that the selection made by the Board was not objective and fair. This Court held that the matter which involved the public interest could not be treated as purely adversarial. But

B in the course of hearing the Court being of the opinion that the problem to be resolved was much too serious to be dealt with on adversarial contentions and in view of glaring infirmities in the process of selection which the court noticed, all the persons including those who had been selected and appointed were directed to be duly notified, so that, the court could decide as to whether

C the entire selection process was infirm and quash the selection. To achieve the aforesaid objective, the court had called upon the Chief Secretary to the State Government to furnish upon affidavit particulars regarding constitution of the Board, the names and qualification of its members and to produce the record and minutes of the Board's meeting. In other words, the Court complied with the principles of natural justice by giving notice to the affected parties

D of all the relevant materials and then on receiving explanations from those persons by way of affidavit in this Court and taking into account the contentions raised by those persons, ultimately decided the matter. The ratio of the aforesaid case will have no application to the present case inasmuch as neither the Bank nor any of the affected parties have been given a copy

E of the Report of Public Inquiry Commission on which Report the Registrar had relied upon as well as the Division Bench of the High Court had relied upon and came to a conclusion by relying upon such Report without giving any opportunity to the parties concerned to have their submission. It would tantamount to gross violation of the principle of natural justice which cannot be brushed aside on the ground that public interest demands annulment of

F the selection. In our opinion, the ratio of the aforesaid decision cannot be applied to the case in hand.

In view of our conclusions as aforesaid, we hold that the order of the Registrar in annulling the resolutions of the Trissur District Co-operative Bank Limited as well as the resolution of the District Co-operative Bank, Kottayam is vitiated with manifest error and as such the said order of the Registrar cannot be sustained and we accordingly quash the same. The

G judgments of the High Court passed by the learned Single Judge as well as the Division Bench in writ appeal are also erroneous and the same are therefore set aside and the writ petitions filed by the respective petitioners

H stand allowed. Necessarily, therefore, the appointments made to the post of

Clerk by Resolution No. 2 dated 5.2.1995 and Resolution No. 10 dated 17.5.1995 passed by the Board of Directors of Trissur District Co-operative Bank is held to be valid and similarly appointment made to the post of Clerk by Resolution Nos. 3 and 4 dated 13.4.1995 passed by the Board of Directors of District Co-operative Bank, Kottayam must be held to be valid. Civil Appeals arising out of S.L.P. (c) Nos. 9350-9352 of 1997, Civil Appeal arising out of S.L.P. (c) No. 9728 of 1997, Civil Appeals arising out of S.L.P. (c) Nos. 10149-10150 of 1997, stand allowed and Civil Appeals arising out of S.L.P. (c) Nos. 15444-15448 of 1997 filed by the State of Kerala stand dismissed but in the circumstances there will be no order as to costs.

R.P.

Appeals allowed/dismissed.