

A AKALAKUNNAM VILLAGE SERVICE CO-OP. BANK LTD.
AND ANOTHER

v.

BINU N. AND OTHERS
(Civil Appeal No.7839 of 2014)

B

AUGUST 20, 2014

[**RANJAN GOGOI AND M.Y. EQBAL, JJ**]

SERVICE LAW:

C

Appointment - Appointments made to posts of Attender and Peon - Challenged - Held: Bank has failed to conduct written examination and interview as per the then existing guidelines issued by Registrar of Co-operative Societies - High Court rightly quashed the selection and appointments of selected candidates and directed the Bank to conduct a fresh selection in accordance with the Circular.

D

CONSTITUTION OF INDIA, 1950:

E

Art. 226 - Writ petition - Alternative remedy - Writ petition challenging selections made by Village Co-operative Bank - Held: Maintainable - The dispute between writ petitioners and Bank does not come within the provision of s.69 of Kerala Co-operative Societies Act - Therefore, it cannot be said that alternative remedy by way of arbitration was available to them.

F

A Village Service Co-operative Bank Ltd., by Notification dated 6.6.2009, invited applications to fill up the vacant posts of 1 Attender and 3 Peons and to reserve one vacancy of Peon for members belonging to SC/ST. Pursuant to this, among others, respondents nos.1 to 3 applied and a written test was held on 15.7.2009 and an interview was also conducted in the afternoon of that day. In the meanwhile, respondents 1 to 3 filed a writ petition challenging the Notification dated

H

**AKALAKUNNAM VILLAGE SERVICES CO-OP. BANK 415
LTD. v. BINU N.**

6.6.2009 on the ground that the said notification was not in conformity with the Kerala Co-operative Societies Rules and the circulars issued under r.182(5) thereof. The Single Judge of the High Court allowed the writ petition and quashed the Notification, selection and appointment of the selected candidates directing the Bank to conduct a fresh selection, in accordance with the Circular. Till then, the selected candidates were permitted to work on daily wage basis.

In the instant appeals, it was contended that the respondent-writ petitioners had effective alternative remedy by way of arbitration petition u/s 69 of the Kerala Co-operative Societies Act; and that since the writ petitioners participated in the selection process, they could not turn round and challenge the selection process itself is bad.

Dismissing the appeals, the Court

HELD: 1.1. There is no reason to interfere with the findings of the High Court. Rule 182(5) of the Kerala Co-operative Societies Rules stipulates that "In respect of societies and posts not covered by s.80(3)(A) and s.80B of the Kerala Co-operative Societies Act, the appointments shall be made by the Committee after conducting the written examination and interview as per the guidelines issued by the Registrar". The circulars issued by the Government and Registrar of the Co-operative Societies have statutory force and specifically stipulate the procedure for conducting the selection to the post of sub staff. In the instant case, the Bank has failed to conduct written examination and interview as per the then existing guidelines issued by the Registrar of Co-operative Societies. This Court concurs with the decision of the High Court. [para 11, 13 and 14] [419-E-F; 422-C-E]

A 1.2. Considering the provisions of s.69 of the Kerala
Co-operative Societies Act, the dispute between the writ
petitioners and the Bank does not come within the
provisions of this Section, and, therefore, it cannot be
said that alternate remedy by way of filing an arbitration
B case u/s 69 of the Act was available to them. [para 13]
[422-B, C]

C 1.3. Indisputably, the respondent writ petitioners
moved the High Court challenging the circulars
immediately after the notification and prior to the conduct
of examination. Therefore, it can also not be said that they
could not challenge the selection process. [para 13] [422-
D]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No.7839
of 2014.

From the Judgment and Order dated 12.02.2013 of the
High Court of Kerala in W.A. No. 364 of 2010.

WITH

E Civil Appeal No. 7840 of 2014.

F Shekhar Naphade, Praseena Elizabeth Joseph,
Madhurima Tatia, Gaurav Mitra and M.P. Shorawala for the
Appellant:

Liz Mathew, M.F. Philip for the Respondents.

The Judgment of the Court was delivered by

G **M.Y. EQBAL, J.** 1. Leave granted.

H 2. These two appeals are directed against the judgment
and order dated 12.2.2013 passed by the High Court of Kerala
dismissing the two writ appeals preferred by the appellants
herein challenging the judgment of the Single Judge whereby
the writ petition filed by Respondent Nos.1 to 3 was allowed

**AKALAKUNNAM VILLAGE SERVICES CO-OP. BANK 417
LTD. v. BINU N. [M.Y. EQBAL, J.]**

quashing Notification inviting applications for appointment to the post of Attender/Peon and the appointments made pursuant thereto.

3. The facts of the case lie in a narrow compass.

4. The Akalakunnam Village Service Co-op Bank Ltd. (for the sake of brevity hereinafter referred to as "the Bank") by Notification dated 6.6.2009 invited applications to fill up the vacant posts of 1 Attender and 3 Peons and to reserve one vacancy of Peon for members belonging to SC/ST. The last date stipulated for submission of applications was 22.6.2009. Pursuant to this, among others, respondent nos.1 to 3, who are writ petitioner nos.1 to 3 applied and a written test was held on 15.7.2009 and an interview was also conducted in the afternoon of that day.

5. In the meanwhile, respondents 1 to 3 (hereinafter referred to as "writ petitioners") filed writ petition challenging the aforesaid Notification on the ground that notification does not conform to the Kerala Co-operative Societies Rules (in short, "the Rules") and the circulars issued under Rule 182(5) thereof. They also alleged in the writ petition that steps are afoot to appoint four persons, namely, Kishore, Jomon K.J., Archana Binoy and Abhilash, who are appellants herein in appeal arising out of SLP(C) No.10809 of 2013 and respondent nos.6 to 9 in appeal arising out of SLP(C) No.9794 of 2013 [for the sake of brevity, they are hereinafter referred to as "selected candidates"]. The Bank and the selected candidates filed counter affidavit and contested the matter.

6. After hearing parties on either side, the learned Single Judge of the High Court came to the conclusion that the Notification and selection process were not issued in accordance with Circulars issued by the Registrar of Co-operative Societies and quashed the aforesaid Notification, selection and appointment of the selected candidates directing the Bank to conduct a fresh selection within six months in the

A

B

C

D

E

F

G

H

A manner directed after inviting applications in accordance with the Circular. Till then, the selected candidates were permitted to work on daily wage basis subject to the condition that their initial appointment of such continuance will not confer on them any preference for appointment.

B

7. The judgment of the learned Single Judge of the High Court was challenged by the Bank as well as selected candidates by way of two separate writ appeals, challenging maintainability of the writ petition against the appellant Co-operative Society. Appellants contended that the writ petitioners have effective alternative remedy under section 69 of the Kerala Co-operative Societies Act (in short, "the Act"). They further contended that since the writ petitioners participated in the selection process, they cannot turn round and take the contention that the selection process itself is bad. It has been further contended on behalf of the appellants that the directions in the circular are not mandatory in nature, but are only guidelines and unless the writ petitioners prove prejudice, the High Court should not interfere with the selection process.

C

D

E

8. It has been contended on behalf of the writ petitioners that a writ would lie against a Co-operative Society when the duty owned by it is of a public nature or when there is infringement of any statutory rules by a co-operative society. Their contention is that under Rule 182(5) of the Kerala Co-operative Societies Rules, in respect of societies and posts not covered by Section 80(3)(A) and Section 80B of the Act, the appointments shall be made by the committee after conducting the written examination and interview as per the guideline issued by the Registrar. The Government and the Registrar have issued Exts. P3 to P6 guidelines under Rule 182(5) regarding the conduct of examination and interview to the post of Attender/Peon. Ext. P1 Notification issued by the Bank is clearly in violation of the guidelines issued as per the circulars relied upon and there being statutory violation, the writ petition would certainly lie against the Bank. It has also been submitted on behalf of the writ petitioners that the written test must have

F

G

H

AKALAKUNNAM VILLAGE SERVICES CO-OP. BANK 419
LTD. v. BINU N. [M.Y. EQBAL, J.]

been conducted by an outside agency, whereas, in the present case, the committee authorized the President to find out a suitable person to conduct the written test. With regard to alternative remedy, it has been contended that the writ petitioners do not have any alternative remedy available insofar as Section 69 is not applicable to them. It has been further contended by them that the writ petition was filed even before the conduct of the written test and immediately after publication of the Notification.

9. Considering the rival contentions in detail and concerned provisions of the Act and Kerala Co-operative Societies Rules, the Division Bench of the High Court did not find any merit in the writ appeals and dismissed both the writ appeals preferred by the appellants herein. Hence, the present appeals by special leave.

10. We have heard learned counsel for the parties appearing on either side and have gone through the impugned order passed by the Division Bench of the High Court.

11. We do not find any reason to interfere with the findings of the High Court. Rule 182(5) of the Rules stipulates that "In respect of societies and posts not covered by section 80(3)(A) and Section 80B of the Act, the appointments shall be made by the Committee after conducting the written examination and interview as per the guidelines issued by the Registrar". The circulars issued by the Government and Registrar of the Co-operative Societies have statutory force and specifically stipulate the procedure for conducting the selection to the post of sub staff.

12. We would also like to quote Section 69 of the Act hereunder to analyze contention of alternate remedy:

"69. Disputes to be decided by Co-operative Arbitration Court and Registrar.—

A (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,—

(a) among members, past members and persons claiming through members, past members and deceased members; or

B

(b) between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

C

(c) between the society or its committee and any past committee any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

D

(d) between the society and any other society; or

E

(e) between a society and the members of a society affiliated to it; or

F

(f) between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

G

(g) between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or

H

(h) between the society and a creditor of the society, such dispute shall be referred to the Co-operative Arbitration Court constituted under section 70A in

AKALAKUNNAM VILLAGE SERVICES CO-OP. BANK 421 LTD. v. BINU N. [M.Y. EQBAL, J.]

the case of non-monetary disputes and to the Registrar, in the case of monetary disputes; and the Arbitration Court or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:—

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor, where the society has covered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation:—A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election, shall be deemed to be a dispute arising in connection with the election;

(d) any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of section 80, including their promotion and inter se seniority.

(3) No dispute arising in connection with the election of the

A Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election."

B 13. Considering aforesaid provisions of Section 69, we do not find any force in the contention of the appellants regarding availability of alternate remedy by way of filing an Arbitration case under section 69 of the Act since in our opinion dispute between the writ petitioners and the Bank does not come within the provisions of this Section. We are also of the view that the
C Bank has failed to conduct written examination and interview as per the then existing guidelines issued by the Registrar of Co-operative Societies. Indisputably, the respondent writ petitioners moved the High Court challenging the circulars immediately after the notification and prior to the conduct of
D examination.

14. In view of the aforesaid, we concur with the decision of the High Court and do not find any merit whatsoever, in both the appeals, which are accordingly dismissed with no order as
E to costs. Consequently, the interim order of stay granted by this Court stands vacated.

Rajendra Prasad

Appeals dismissed.