

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 11TH DAY OF FEBRUARY 2022 / 22ND MAGHA, 1943

WP(C) NO. 3517 OF 2022

PETITIONER/S:

MAHIN K.E.
AGED 37 YEARS
S/O. EBRAHIM K M, RESIDING AT KANJIRATHINGAL HOUSE,
MOOLEPADAM, KALAMASSERY P.O, , ERNAKULAM 683104

BY ADV K.V.RASHMI

RESPONDENTS :

- 1 KALAMASSERY SERVICE CO-OPERATIVE BANK NO.3046
NATIONAL HIGHWAY 47, KALAMASSERY, KOCHI,
KERALA 683104 REPRESENTED BY ITS SECRETARY
- 2 SECRETARY
KALAMASSERY SERVICE CO-OPERATIVE BANK NO. 3046,
NATIONAL HIGHWAY 47, KALAMASSERY, KOCHI, KERALA 683104
- 3 JOINT REGISTRAR (GENERAL)
CO-OPERATIVE SOCIETIES BUILDING, 5TH FLOOR, B-2 BLOCK,
CIVIL STATION, KAKKANAD, ERNAKULAM 682 030

BY ADVS.
AMEER.K.M.
M.J.JESNA
RAHMATHULLAH.M
AISWARYA RAVIKUMAR

SMT. SURYA BINOY, SR. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Challenge in this petition is directed against Ext.P4 order issued by the 3rd respondent as per which, the process of appointment to the post of Peon in the 1st respondent bank has been ordered to be kept in abeyance pending further orders. The petitioner has also sought for a direction to keep alive Ext.P1 rank list and also to direct the 1st respondent to appoint the petitioner to the post of Peon lying vacant in the 1st respondent bank.

2. Brief facts are as under:

A vacancy to the post of one Peon occurred in the 1st respondent bank. The 1st respondent invited applications for filling up the solitary post of Peon. The petitioner also took part in the examination held on 18.01.2020 and a rank list was prepared of 11 persons who scored the maximum marks. Ext.P1 rank list was to be in force for a period of one year. The same was extended for a period of one year more. The 1st rank holder was appointed to the post. Later, when three more vacancies arose, appointments were made on its merits. The persons who were ranked as 1 to 3 have already been appointed. While so, complaints were received by the 3rd respondent

about certain malpractices. Later, the complaint was withdrawn as is evidenced by Ext.P2. The petitioner contends that there exists two vacancies of Peon in the 1st respondent bank and one vacancy in the newly merged Puthu Pallipuram Branch. The petitioner would be the person who is entitled to secure an appointment to the post of Peon, as he is the 4th rank holder. While the 1st respondent was deliberating the same, the 3rd respondent has issued Ext.P4 order stalling the further proceedings. The petitioner contends that Ext.P4 order is illegal as the complaint which was earlier lodged before the 3rd respondent has been withdrawn. It is further contended that the petitioner had a legitimate expectation of getting appointment to the post and as the rank list is due to expire on 10.02.2022, the petitioner would be subjected to grave hardships. It is on these contentions that the petitioner is before this Court with this writ petition.

3. The learned Government Pleader, on instructions, submitted that the enquiry conducted by the Joint Registrar in exercise of his powers has revealed that the notification was issued to fill up only one post. The advertisement was made to fill up the said post. According to the learned Government Pleader, vacancies cannot be filled up over and above the number of vacancies advertised as the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the

constitutional right under Article 14 read with Article 16(1) of the Constitution. It is further submitted that with the appointment of the candidate for the only post in respect of which, the consideration came to be made and select list prepared, the panel ceased to exist and has outlived its utility. It is further submitted that a person whose name appears in the select list does not acquire any indefeasible right for appointment. The learned Government Pleader would rely on the judgment of the Apex Court in **State of Orissa and another V. Rajkishore Nanda and Others** [2010 KHC 4401], **State of Punjab V. Raghbir Chand Sharma and another** [2002 (1) SCC 113], **Mukul Saikia and others V. State of Assam and Others** [2009 (1) SCC 386] and that of a learned Single Judge of this Court in **Sreejith A and Others v Mukkom Service Co-operative Bank Ltd. and Others** [2018 (5) KHC 571] to substantiate her contention.

4. I have considered the submissions and perused the entire records. Exhibit-P4 is the order passed by the 3rd respondent staying the process of recruitment in the 1st respondent Bank. A reading of Exhibit-P4 would reveal that notification was invited on 28.12.2019 for recruiting one Peon. It is stated that thereafter, a rank list was prepared illegally and two more persons were appointed. Thereafter, a complaint was received by the Joint Registrar that the Managing Committee would be meeting on 29.01.2022 to

carry out appointments of three more Peons from the rank list. Reports were called for from the Assistant Registrar and it was after perusing the entire documents that Exhibit-P4 order was passed staying all further proceedings. Having gone through the order, in the light of the precedents cited by the learned Government Pleader, I am of the considered opinion that no interference is warranted.

5. In **State of Orissa v. Rajkishore Nanda** [2010 (6) SCC 777] the Apex Court had held that vacancies cannot be filled up over and above the number of vacancies advertised as recruitment of candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution of those persons, who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of the vacancies. Filling up of vacancies over and above the notified vacancies amount to filling up of future vacancies and thus, not permissible in law. It was held in paragraph 11 to 13 as follows:

"11. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Art.14 read with Art.16(1) of the Constitution", of those persons who acquired

eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide State of Bihar v. Secretariat Assistant Successful Examinees Union 1986, (1994) 1 SCC 126; Prem Singh v. Haryana State Electricity Board, (1996) 4 SCC 319; Ashok Kumar v. Banking Service Recruitment Board, (1996) 1 SCC 283; Surinder Singh v. State of Punjab, (1997) 8 SCC 488 and Rakhi Ray v. High Court of Delhi, (2010) 2 SCC 637

12. In State of Punjab v. Raghbir Chand Sharma, (2002) 1 SCC 113, this Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that post can be filled up offering the appointment to the next candidate in the select list observing as under:

"With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select list prepared, the panel ceased to exist and has outlived its utility and at any rate, no one else in the panel can legitimately contend that he

should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

13. In *Mukul Saikia v. State of Assam*, (2009) 1 SCC 386, this Court dealt with a similar issue and held that "if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised". The Select List "got exhausted when all the 27 posts were filled". Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The "currency of Select List had expired as soon as the number of posts advertised are filled up, therefore, the appointments beyond the number of posts advertised would amount to filling up future vacancies" and said course is impermissible in law."

6. Admittedly, in the instant case, the advertisement was only for one post. The candidate who secured the first rank joined the post and in that view of the matter, the 1st respondent could not have appointed any further person by preparing a rank list. The select list would get exhausted when the post is filled and the rest of the candidates will have no right to claim appointment to any vacancy in regard to which selection was not held. The appointment beyond the number of posts advertised would amount to filling up of future vacancies, which is impermissible under law.

7. In that view of the matter, I am not inclined to interfere with

Exhibit-P4 order or to grant the relief sought for by the petitioner.

This writ petition will stand dismissed.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

NS

APPENDIX OF WP (C) 3517/2022

PETITIONER (S) EXHIBITS :

Exhibit P1 A TRUE COPY OF THE RANK LIST PUBLISHED BY
THE 1ST RESPONDENT SHOWING THE NAMES OF
11 PERSONS, DATED 10-02-2020

Exhibit P2 A TRUE COPY OF THE WITHDRAWAL PETITION
FILED BEFORE THE 3RD RESPONDENT BY THE
COMPLAINANTS

Exhibit P3 A TRUE COPY OF THE STATEMENT DATED NIL
SUBMITTED ON 16-09-2021 BEFORE THE 3RD
RESPONDENT WITH ENCLOSURES

Exhibit P4 A TRUE COPY OF THE ORDER DATED 28-01-2022
ISSUED BY THE 3RD RESPONDENT.

RESPONDENT (S) EXHIBITS : NIL