

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 13TH DAY OF JUNE 2018 / 23RD JYAISHTA, 1940

WP(C).No. 19141 of 2015

PETITIONER:

M.RAJESH,
PROCUREMENT ASSISTANT,
KUTHANOR KSHEEROLPADAKA SAHAKARANA SANGHAM,
P 14(D), APCOS, KUTHANOR.

BY ADV.SRI.U.BALAGANGADHARAN

RESPONDENT(S):

1. THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT,
CIVIL STATION, PALAKKAD -678 001.
2. THE SECRETARY,
KUTHANOR KSHEEROLPADAKA SAHAKARANA SANGHAM,
P 14(D), APCOS, KUTHANOR, PALAKKAD - 678 721.
3. THE KOTHANOR KSHEEROLPADAKA SAHAKARANA SANGHAM,
P 14(D), APCOS, KUTHANOR, PALAKKAD - 678 721,
REPRESENTED BY ITS SECRETARY.
4. SHRI.S.JAYAN, S/O.SUNDARAN,
KUNİYAMPARA, KUTHANOR POST,
PALAKKAD - 678 721.

*ADDL.R5 IMPLEADED

*R5: THE ADMINISTRATOR,
KSHEEROLPADAKA SAHAKARANA SANGHOM,
KUTHANUR, PALAKKAD-678 721.

*ADDL.R5 IS IMPLEADED AS PER ORDER DATED 11/10/17 IN
IA.NO.15756/2017.

R1 BY SR GOVERNMENT PLEADER SRI.BIMAL K. NATH
R2 & R3 BY ADVS. SRI.T.C.SURESH MENON
SRI.P.S.APPU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-06-2018, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT.P1: A TRUE COPY OF THE ORDER DATED 24/5/1994 ISSUED BY SECOND RESPONDENT
- EXT.P1 (A) : TRUE TRANSLATION OF RELEVANT PORTION EXT.P1
- EXT.P2: A TRUE COPY OF THE ORDER DATED 14-6-2008 ISSUED BY SECOND RESPONDENT
- EXT.P2 (A) : TRUE TRANSLATION OF RELEVANT PORTION EXT.P2
- EXT.P3: A TRUE COPY OF THE ORDER DATED 26/3/2013 ISSUED BY THE SECOND RESPONDENT
- EXT.P3 (A) : TRUE TRANSLATION OF RELEVANT PORTION EXT.P3
- EXT.P4: A TRUE COPY OF THE LETTER OF SECOND RESPONDENT DATED 11/1/2011 ISSUED 4TH RESPONDENT
- EXT.P4 (A) : TRUE TRANSLATION OF RELEVANT PORTION OF EXT.P4
- EXT.P5: A TRUE COPY OF LETTER OF 4TH RESPONDENT DATED 26/7/1998
- EXT.P5 (A) : TRUE TRANSLATION OF RELEVANT PORTION OF EXT.P5
- EXT.P6: A TRUE COPY OF LETTER OF THE FIRST RESPONDENT DATED 27/5/2014 ISSUED TO SECOND RESPONDENT
- EXT.P6 (A) TRUE TRANSLATION OF EXT.6
- EXT.P7: A TRUE COPY OF LETTER OF THE 2ND RESPONDENT DATED 9/6/2014 ISSUED TO THE PETITIONER
- EXT.P7 (A) : A TRUE TRANSLATION OF EXT.P7
- EXT.P8: A TRUE COPY OF JUDGMENT IN WPC 15360/14 DATED 20/3/2015
- EXT.P9: A TRUE COPY OF STATEMENT FILED BY THE BOARD OF DIRECTORS OF THIRD RESPONDENT SOCIETY DATED 5/5/2015
- EXT.P10: A TRUE COPY OF COMMUNICATION OF FIRST RESPONDENT DATED 25/4/2016 ISSUED SECOND RESPONDENT
- EXT.P11: A TRUE COPY OF THE REPRESENTATION DATED 06/03/2017 SUBMITTED BY THE PETITIONER TO THE ADMINISTRATOR, KSHEEROLPADAKA SAHAKARANA SANGHOM, KUTHANUR, PALAKKAD

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EXT.P12: A TRUE COPY OF THE REPRESENTATION DATED 16/03/2017 SUBMITTED BY THE PETITIONER TO THE ADMINISTRATOR, KSHEEROLPADAKA SAHAKARANA SANGHOM, KUTHANUR, PALAKKAD

EXT.P13: A TRUE COPY OF THE REPRESENTATION DATED 21/02/2017 SUBMITTED BY THE PETITIONER TO THE ADMINISTRATOR, KSHEEROLPADAKA SAHAKARANA SANGHOM, KUTHANUR, PALAKKAD.

RESPONDENT'S EXHIBITS :

NIL

/TRUE COPY/

P . A . TO . JUDGE

sts
23/6/2018

ANU SIVARAMAN, J.

.....
W.P.(C).No.19141 of 2015

.....
Dated this the 13th day of June, 2018

J U D G M E N T

The petitioner has approached this Court with the following prayers:

- 1. Issue Writ in the nature of certiorari and set aside Ext.P10 as illegal, without jurisdiction, arbitrary and a typical misuse of powers vested on the first respondent.*
- 2. Issue Writ in the nature of mandamus commanding the first respondent to refrain from interfering from the disputes relating to employment of officers of society as it goes beyond the powers invested on him.*
- 3. Declare that the petitioner is not liable to be removed/reverted or moved out from the post of Procurement Assistant and he has indefeasible right to continue in the post with all benefits.*

2. Heard learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner's promotion to the post of Procurement Assistant in a regular vacancy is sought to be cancelled on the orders of the first respondent herein. It is stated that the petitioner had been appointed as Procurement Assistant by the third respondent Society. On a complaint preferred by the fourth respondent, the first respondent has passed orders directing the reversion of the petitioner and the appointment of the fourth respondent to the said post on the contention that the fourth respondent is senior to the petitioner in the service of the Society. The learned counsel for the petitioner contends that the first respondent has no power to issue orders in the nature of Exts.P6 and P10 in view of the specific provisions contained in Section 69(2) (d) of the Kerala Co-operative Societies Act (for short 'the Act'). It is contended that service dispute including *inter se* seniority between employees of the Co-operative Society is one which has to be considered by the Co-

operative Arbitration Court in terms of Section 69 and that the direction in the nature of Ext.P10 cannot be issued. The learned counsel appearing for the third respondent Society would also support this contention raised by the petitioner.

4. The learned Government Pleader would contend that since it was found that the fourth respondent had entered service of the Society earlier and that he had the qualifications required for appointment to the post in question. The first respondent had passed the orders after hearing all parties. It is contended that the said orders are legal and valid.

5. I have considered the contentions advanced. This Court has considered the issue of the power of the Registrar of Co-operative Societies to issue orders in the nature under Rule 176 of the Co-operative Societies Rules. In the decision in **Prakasini v. Joint Registrar [2006 (1) KLT 199]**, it is specifically held that Rule 176 cannot be invoked to resolve an *inter se* seniority dispute

between employees of the Co-operative Societies. The Division Bench of this Court in the decision in **Raveendran v. State of Kerala [2007 (3) KLT 558]** further held that, even in cases where this Court directs the consideration of a dispute in connection with employment of officers in service of a Co-operative Society, the Joint Registrar would not have the power to decide the issue in view of the fact that the jurisdiction of all other authorities and Courts in such matters has been excluded in terms of Section 69 of the Act.

6. In the above view of the matter, I am of the opinion that the orders passed by the Deputy Director of Diary Development, directing the reversion of the petitioner and the appointment of the fourth respondent is not sustainable. The impugned orders are set aside. The petitioner shall be permitted to continue in the post subject to the rights of the fourth respondent to raise a dispute in accordance with law before the appropriate authority. All benefits due to the petitioner on account of

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his continuance to the post shall be released to him without delay.

The writ petition is ordered accordingly.

Sd/-

**ANU SIVARAMAN
JUDGE**

Bb/14/6/2018

[True copy]

P.A to Judge