

Neutral Citation No. 2025:KER:94890

APPELLATE CIVIL

Chief Justice Mr. Nitin Jamdar and Mr. Justice Basant Balaji

W.A. No. 608 of 2021 and Connected Cases

2025 December 8

Bincy S. and others

. . Appellants

v.

Alappuzha District Co-operative Bank and others . . Respondents

Appellants are petitioners in the writ petitions. The writ petitions were filed by the candidates included in the rank list to the post of Clerk/Cashier of the District Co-operative Banks. The case projected in the writ petition is that though appellants are included in the rank list, because of the illegal promotions in violation of the ratio provided under the statute, the appellants are not being appointed. The writ petitions were dismissed by the Learned Single Judge after holding that in view of the amalgamation of District Co-operative Banks with State Co-operative Bank, the claim of the appellants cannot be considered. Appellants challenged the judgement of learned Single Judge before the Division Bench by contending that it cannot be concluded that the claim of the appellants would extinguish with the amalgamation. It was also pointed out that the appellants were entitled to be considered for pre-existing vacancies before the factum of amalgamation. In another batch of writ petitions, Learned Single Judge disposed the writ petitions directing the Registrar of Co-operative Societies to ascertain the factual situation with respect to illegal promotions and to take further corrective actions. Challenging the directions therein, the Bank and State of Kerala preferred writ appeals. Allowing the appeals of the candidates, and dismissing appeals preferred by the Bank and State, the Court;

Issue for Consideration

Whether the amalgamation of District Co-operative Banks with the Kerala State Co-operative Bank, would extinguish the right of candidates, who were included in the rank list prepared by the Public Service Commission, to get appointed the posts of Clerk/Cashier of the District Co-operative Banks ?

Co-operative Societies Act, 1969 (Kerala Act 21 of 1969)—Sections 14A, 74H and 80 (3A)—Though candidates do not acquire an indefeasible right merely by being placed on the merit list, the recruiting authority cannot act arbitrarily, and once it proceeds to make appointments from the Ranked Lists, the remaining candidate on the list will have to be treated equally as per their placements – Amalgamation has no precise meaning and the true effect and character of amalgamation depend largely on terms of the scheme of merger and the legislation—Contention that pursuant to amalgamation of District Co-operative Banks with State Co-operative

Bank, everything comes to an end is too absolute a proposition to be accepted—By accepting advice of KPSC for appointments to a particular District Co-operative Bank even after the amendment, it is accepted that KPSC has the power and jurisdiction to render advice so long as the select list continues to be valid—Identical rank lists cannot exist and not exist at the same time— When two interpretations of the legal implications are possible, the one that supports continuing authority ought to be preferred—Once the existence of the earlier select list and power of the KPSC are recognised, no right will accrue to the candidates on the new list—Co-operative Societies (Amendment) Act, 2019 (Kerala Act 1 of 2019)—Public Service Commission (Additional Functions as Respects Certain Societies) Act, 1996 (Kerala Act 5 of 1996)—Constitution of India – Article 14.

JUDGMENT

The Judgment of the Court was delivered by **Nitin Jamdar, C.J.**—The subject matter of controversy in this group of appeals arising from the judgments of learned Single Judges of this Court relates to the post of Clerk/Cashier in the erstwhile District Co-operative Banks in Kerala. Ranked Lists were prepared by the Kerala Public Service Commission pursuant to the selection process; however, before any appointments could be made from the Ranked Lists, the District Co-operative Banks in the State were amalgamated with the Kerala State Co-operative Bank. Since the candidates included in the Ranked Lists were not appointed, they filed writ petitions seeking appropriate directions for their appointments. Several petitions were filed by individual candidates included in the Ranked Lists, and the dates and events would differ in each matter, but the legal issue being the same in all the appeals, they are dealt with by this common judgment.

2. In one set of writ petitions (Group 'A'), the learned Single Judge (Devan Ramachandran, J.) held in favour of the Petitioners/Candidates and issued certain directions. In the other set of writ petitions (Group 'B'), the learned Single Judge (Amit Rawal, J.) dismissed the petitions. From the judgment rendered in Group 'A' petitions, in favour of the Petitioners/ Candidates, two sets of appeals have been preferred – one by the Kerala State Co-operative Bank Limited (the State Bank) and in some cases by the District Co-operative Banks (District Banks), and the other by the Secretary, Department of Co-operation, as well as the Registrar and Joint Registrar of Co-operative Societies, State of Kerala. From Group 'B', the candidates whose petitions were dismissed have filed appeals challenging the dismissal.

3. (i) Group 'A' petitions consists of W.P.(C) Nos. 26338/2017, 26491/2017, 26956/2017, 11657/2018, 29805/2018, 38191/2018, 11109/2019, 22690/2019, 23087/2019, 27908/2019, 27938/2019, 29955/2019, 31456/2019, 33040/2019, 33724/2019, 33837/2019, 34299/2019, 34895/2019, 35177/2019, 260/2020, 742/2020, 4525/2021, and 22082/2021.

(ii) From Group 'A', the first set of appeals by the Banks are W.A. Nos. 1736/2022, 1794/2022, 1805/2022, 1806/2022, 1809/2022, 1815/2022, 1830/2022, 1840/2022, 1843/2022, 1850/2022, 1854/2022, 1859/2022, 1880/2022, 1889/2022, 1904/2022, 1938/2022, 1939/2022, 1943/2022, 1963/2022, 1968/2022, 1977/2022, 1979/2022, 2004/2022, 2019/2022, 764/2023, and 1124/2023.

(iii) The second set of appeals from Group 'A' by the State are, W.A. Nos. 969/2023, 1271/2023, 1461/2023, 1542/2023, 1551/2023, 1564/2023, 1565/2023, 1568/2023, 1580/2023, 1583/2023, 1585/2023, 1586/2023, 1589/2023, 1591/2023, 1594/2023, 1649/2023, 1652/2023, 1685/2023, 1689/2023, 1856/2023, 1901/2023, 1907/2023, 1993/2023, 2006/2023, 2009/2023, 2025/2023, and 2135/2023.

4. Group 'B' petitions consist of W.P.(C) Nos. 31786/2018 and 29057/2019, filed by fifteen candidates who were included in the Ranked Lists for appointment to the post of Clerk/Cashier. From Group 'B', the appeals filed by the Petitioners/Candidates are W.A. Nos. 608/2021, 622/2021 and 637/2021. There is another petition, that is, W.P.(C) No. 1866/2020, filed by the candidates included in the Ranked List, who belong to the Other Backward Class. This petition was disposed of by judgment dated 23 February 2021 (Amit Rawal, J.). From that judgment, W.A. No. 853/2021 is filed by the Petitioners/Candidates.

5. The Appellant – State and the Appellant – Kerala State Co-operative Bank Limited in the appeals arising from Group 'A' petitions are referred to as 'the Appellants'. The Respondents in the appeals from the Group 'A' petitions, as well as the Respondents/Petitioners in the appeals from the Group 'B' petitions, are referred to as 'the Petitioners/Candidates'. The Kerala Public Service Commission is referred to as 'KPSC'.

6. The Ranked List as per the Kerala Public Service Commission Rules of Procedure for the post of Clerk/Cashier in respect of Thiruvananthapuram District Co-operative Bank was published on 22 March 2017; for Kollam District Co-operative Bank, on 18 January 2017; for Pathanamthitta District Co-operative Bank, on 31 January 2017; for Alappuzha District Co-operative Bank, on 23 February 2017; for Kottayam District Co-operative Bank, on 22 December 2016; for Idukki District Co-operative Bank, on 10 January 2017; for Ernakulam District Co-operative Bank, on 6 January 2017; for Thrissur District Co-operative Bank, on 22 December 2016 and 30 December 2016; for Palakkad District Co-operative Bank, on 6 January 2017; for Malappuram District Co-operative Bank, on 31 January 2017; for Kozhikode District Co-operative Bank, on 7 February 2017; for Wayanad District Co-operative Bank, on 18 January 2017; for Kannur and Kasaragod District Co-operative Banks, on 23 January 2017. Act 1 of 2019 came into force on 14 February 2019, which amended Schedule I appended to the Act of 1969, consequently modifying the categories of societies for which the KPSC could carry out recruitment under Act 5 of 1996. All the Petitioners/Candidates were included in the said Ranked Lists after the selection process was concluded for appointment to the post of Clerk/Cashier in the District Banks.

7. For the purpose of brevity, we refer to the facts in one petition each from both Group 'A' and Group 'B', and the orders passed therein.

8. From Group 'A' (judgment in favour of the candidates), the facts in W.P.(C) No. 26491 of 2017 are as follows. The KPSC by notification dated 15 March 2014, invited applications for appointment to the post of Clerk/Cashier in various District Co-operative Banks in the State. On 15 March 2014, the KPSC issued another notification inviting applications from employees of various Primary Co-operative Societies affiliated to the concerned District Co-operative Banks, in the quota earmarked for them, as provided under Rule 187 of the Kerala Co-operative Societies Rules, 1969 (Rules of 1969). Petitioner Nos. 1, 2, 3, and 7 applied for the post in the general category and Petitioner No. 4, 5, 6 and 8

applied in the quota earmarked for employees of Primary Co-operative Societies. The test was conducted, and the Ranked List came into force with effect from 7 February 2017. However, the Ranked List was not given effect to. The grievance raised by the Petitioners therein is that though 23 posts were reported to the KPSC, not even a single appointment has been made. If the Petitioners are appointed against the existing vacancies, even if the State Bank comes into existence, they will be absorbed along with the existing employees. Accordingly, by this petition, the Petitioners prayed for the issuance of a writ of mandamus directing the Bank to report all vacancies in the cadre of Clerk/Cashier to the KPSC.

9. The learned Single Judge (Devan Ramachandran, J.) disposed of W.P.(C) No. 26491 of 2017 along with other petitions by judgment dated 12 July 2022 (Ground 'A'), observing that going by Section 74H of the Act 1 of 2019 which was introduced through amendment in the year 2019, all proceedings suits, decrees, recovery certificates, appeals and other legal proceedings, pending or existing immediately before such amalgamation, shall continue against the transferee Bank. The learned Single Judge also observed that it was relevant to verify the number of vacancies available at the time when the Ranked Lists in question came into force, when the District Banks were in existence. It was also observed that directions were issued in respect of the Kannur District Co-operative Bank, which were required to be issued in all these cases, and proceeded to dispose of the writ petitions by the following directions:

"In the afore circumstances, these writ petitions are ordered with the following directions:

- a) The Registrar of the Co-operative Societies – either himself or through a constituted Authority or team of experts – will evaluate the financial status of each of the erstwhile District Co-operative Banks and the Malappuram District Co-operative Bank at the time when the judgment in W.P.(C) Nos.201/2018 and 11228/2019 were issued and then decide notionally what posts would be available to each of them at that time, strictly in terms of the directions in the said judgment. For this purpose, I order the petitioners to make available a copy of the said judgment before the Registrar within a period of two weeks from the date of receipt of a copy of this judgment.
- b) On the Registrar thus evaluating the staff position of the various erstwhile District Co-operative Banks and the Malappuram District Co-operative Bank, necessary orders consequent to their merger with the Kerala Bank – save in the case of the Malappuram District Co-operative Bank, will also be issued; in which event, the claims of the petitioners and similarly situated persons, as also of all other persons in the Rank Lists, will be evaluated and effectively modulated.
- c) While doing so, the Registrar will consider the contentions of the petitioners in these cases that, during the pendency of the Rank Lists and when interim orders of this Court were holding the field with respect to the notification of vacancies to the PSC, unqualified and unauthorized persons have been appointed by each of the erstwhile District Co-operative Banks and the Malappuram District Co-operative Bank and that too in violation of the statutory ratio for such purpose between promotions and direct recruitments. For this

purpose, I allow the petitioners to file their written objections in this regard before the Registrar within a period of one month from the date of receipt of a copy of this judgment, so that said Authority can then consider each of such contentions, based on the factual circumstances relating to the individual erstwhile District Co-operative Banks and the Malappuram District Co-operative Bank; thus leading to a decision as to how many vacancies should be earmarked for direct recruitment, after cancellation of the earlier appointments made or after setting aside the same, in terms of law. In this process of course, every person effected will also be given an opportunity of being heard. In other words, while the afore exercise is undertaken and completed, the Registrar will verify whether the promotions pointed out by the petitioners in these cases, as also appointments made during the time when the Rank Lists was in force, were in order and if not, issue appropriate orders with respect to it within the statutory Scheme and the provisions of the by-laws of the individual Societies, as the case may be. A consideration of these aspects shall be reflected in the resultant order.

(d) Needless to say, except in the case of the Malappuram District Co-operative Bank, the afore exercises shall be completed only after hearing the competent official of the Kerala Bank also because, even if vacancies are available, it would be within their prerogative to choose not to fill it up; however, taking care that no unauthorized promotion or unauthorized appointment had been effected in the erstwhile District Co-operative Bank prior to such amalgamation.

(e) Finally, it does not require this Court to say specifically but, as regards the vacancies that have already been reported on the orders of this Court, the sole factum of the expiry of the Rank List will not stand in the way of the petitioners being granted benefits; provided they are found eligible based on the ranking in the said List, as also other criteria and qualifications as are imperative.

(f) As a corollary to the afore directions, I further clarify that if the enquiry with respect to the impugned promotions or appointments during the pendency of the Rank Lists would require more time, then the Registrar would be free to evaluate the vacancies as directed in (a) above and to allow the PSC to make advices against the same at the first instance.

(g) As far as the impugned promotions and appointments made during the period of the Rank Lists is concerned, if any of them are found to be illegal, then corresponding orders will be issued to the PSC to issue advice from the Rank List which has now expired; however, within the limits of the vacancies that have been ordered and reported consequent to the directions of this Court.

(h) The afore exercises shall be completed as expeditiously as is possible but not later than a period of six months from the date of receipt of a copy of this judgment; however, leaving liberty to the Registrar to act earlier in terms of the aforesaid directions in the case of vacancies in which the question of promotion or unauthorized appointments do not come into play.

(i) Qua claims of some of the petitioners in these cases with respect to vacancies in the Community Quotas and others are concerned, they will also be assessed by the Registrar in terms of the statutory mechanisms and resultant orders issued. For this purpose, I direct the petitioners, who are so interested, to impel such contentions before the Registrar through a written petition, which may either be in addition to the ones mentioned in the aforementioned directions or independently.”

These were the directions issued while disposing of Group ‘A’ petitions.

10. In Group ‘B’, we refer to the facts in W.P.(C) No. 29057 of 2019, filed by fifteen candidates who were included in the Ranked List for appointment to the post of Clerk/Cashier. W.P.(C) No. 29057 of 2019 was filed by fifteen Petitioners concerning the Alappuzha District Co-operative Bank Ltd. The case and grievance of these Petitioners are: as on the date on which the Ranked List was brought into force, that is 23 February 2017, a large number of vacancies in the post of Clerk/Cashier were lying vacant in various branches of the Bank, but, ignoring the ratio stipulated in the Model Recruitment Rules for the District Co-operative Banks, 1998, all these vacancies were being filled up by promoting persons who are working in the feeder post. From 23 February 2017 to 22 December 2020, the vacancies arisen in various branches of the Respondent Bank are as follows. From 23 February 2017 to 22 February 2020, 46 retirement vacancies; from 31 March 2020 to 22 December 2020, 21 retirement vacancies; and from 2 June 2017 to 2 March 2018, 39 promotion vacancies. From the Ranked List, only 25 candidates were advised for appointment to the post of Clerk/Cashier, and during the period between 4 March 2017 and 6 July 2019, eight posts of Clerk/Cashier were filled up by promoting persons working as Peons. The Respondent Bank did not report the vacancies to the KPSC only with the intention of filling up those vacancies by departmental hands. The Government, by letter dated 19 October 2017, issued specific directions to the Managers to promptly report all vacancies arising in the Banks to the KPSC. By circular dated 9 August 2016, the Registrar also directed the Managers of all District Co-operative Banks not to fill up any vacancies arising in the Banks otherwise than in accordance with the provisions of the Kerala Co-operative Societies Act, 1969, and the Rules framed thereunder. Apart from that, specific orders were issued by the Registrar of Co-operative Societies, in continuation of the general orders issued by the State Government since 1971, which also mandate that the Respondent Bank is bound to report all vacancies to the KPSC well in advance. The Government further issued another circular dated 20 September 2019, directing all appointing authorities to report, every year, all vacancies likely to arise during the succeeding year.

11. The facts in Group ‘B’ petitions are broadly identical for the purpose of deciding the legal questions involved. The learned Single Judge (Amit Rawal, J.), who heard this petition along with W.P.(C) No. 31786 of 2018, observed that the factum of amalgamation could not be ignored so as to issue directions to a Bank that was no longer in existence, and accordingly, dismissed the petition by judgment dated 25 January 2021.

12. Before the validity of the Ranked Lists expired, interim orders were passed in favour of the Petitioners/Candidates in all the writ petitions, directing the reporting of vacancies, keeping the question as regards the availability of vacancies to be decided at an appropriate stage. This is a position common to all the petitions.

13. We have heard the learned counsel for the parties. The learned Advocate General Mr. K. Gopalakrishna Kurup along with Mr. Imam Gregorios Karat, learned Government Pleader, appeared for the State. Mr. P. C. Sasidharan, learned Advocate appeared for the Appellant – Kerala Bank. Dr. K. P. Satheesan, learned Senior Advocate, assisted by Mr. P. Mohandas, and Mr. George Poonthottam, learned Senior Advocate, along with Mr. O. V. Maniprasad, Mr. B. S. Swathi Kumar, Mr. M. R. Anison, and Mr. T. R. Harikumar, learned counsel, represent the Petitioners/Candidates.

14. The appeals from Group 'A' petitions have been filed by the District Banks and the State Government. Therefore, we had queried the learned Advocate General regarding the reason why the State Government has chosen to file these appeals when the dispute essentially concerns the Co-operative Societies and the employees. According to the learned Advocate General, the State Government has preferred the appeals as it has certain statutory functions to discharge under various enactments. Merely because the statutory provisions enable the State Government to regulate the affairs of the Co-operative Societies to a certain extent, the State does not become a party to the lis between the society and its employees. As to the contention of the learned Advocate General that the State has filed the appeals because directions were issued to the Registrar of Co-operative Societies, the Petitioners pointed out that it is the statutory duty of the Registrar, and that the learned Single Judge, in exercise of writ jurisdiction in a lis between the society and its employees, merely issued directions to the statutory authorities. The learned counsel for the Petitioners also submitted that this group of appeals was filed by the State because this litigation is a result of political interference. Be that as it may, since the challenge to the impugned judgment is already before us through the appeals filed by the Banks, we have heard the learned Advocate General for the State and Banks on their respective contentions.

15. For the Appellant – State, the learned Advocate General Mr. K. Gopalakrishna Kurup, and for the Appellant – Kerala Bank, the learned counsel Mr. P. C. Sasidharan, in short, submitted as follows. The action of the Appellants is related to Section 74H of the Act of 1969. Though the validity of Section 74H was challenged, the challenge was negated by the Division Bench of this Court in the case of **Saidalavi Master M. v. State of Kerala** 2024 (3) K.L.T. 469, affirming the decision of the learned Single Judge in the case of **Lathif U.A., MLA v. State of Kerala** 2023 (6) K.L.T. 183. Section 80(3A) was inserted by Act 6 of 1995. Under Section 80(3A), the candidates are to be recruited to the Co-operative Societies by the KPSC. The Kerala Co-operative Societies (Amendment) Act, 1996 (the Act of 1996) was enacted to grant special powers. As per the definition of "society" in the Act of 1996, it would mean to be a "society" in Schedule I of the Act of 1969. Schedule I to Section 80(3A) was amended and the reference to the District Banks in Schedule I was taken away. Consequently, the KPSC cannot issue advice for candidates to the District Level Co-operative Societies. Under Section 74H(13), a specific provision has been made for employees whereby only permanent employees are eligible to be absorbed on

Amalgamation and the obligation of the State Bank extends only to the absorption of such permanent employees. Pursuant to Rule 28A(5), the Government of Kerala, in exercise of its powers under Section 74H, has framed the Kerala State Co-operative Bank Recruitment Rules, 2023, under which the post of Clerk/Cashier is now regulated. These Rules came into effect on 2 August 2021, and any appointment to the State Bank made thereafter has to be in accordance with the selection process prescribed under the said Recruitment Rules. Therefore, the impugned direction to give effect to this Ranked List for advice on non-existent entities is erroneous and needs to be set aside.

16. For the Petitioners/Candidates, Mr. K. P. Satheesan and Mr. George Poonthottam, the learned Senior Advocates, Mr. O. V. Maniprasad and Mr. B. S. Swathi Kumar, the other learned counsel submitted, in brief, as follows. Interim orders have been passed to report vacancies and challenge to the said interim orders have been dismissed. Thus, the Ranked Lists remain valid. There are other provisions in the Act of 1969 which govern Amalgamation than Section 74H. Section 14A(6) is indicative of the fact that there is no complete extinction of the District Banks. Section 74H(12) states that all writ petitions filed before the Amalgamation will continue and the Court has the power to issue directions to the Bank. The contention of the Appellants that no appointment can be made to the District Banks in view of the amalgamation and amendment to Section 80(3A) of the Act of 1969 is incorrect. The KPSC is statutorily bound to advise candidates to the vacancies reported under the said Act, and the overriding effect of Section 74H(18) extends over Section 80(3A). Under Section 74H(12), all legal proceedings or obligations existing before the amalgamation continue to bind the transferee bank. Hence, the obligation to report vacancies and the corresponding power of the KPSC to advise candidates subsist even after the merger. The order of amalgamation was issued on 29 November 2019, and Section 74H came into force only from that date. Therefore, till 29 November 2019, appointments were governed by Section 80(3A). The vacancies that arose prior to the date of amalgamation are liable to be reported to the KPSC, which, in turn, was bound to advise candidates from the Ranked Lists that remained valid. The material on record show that 130 vacancies existed in the Kozhikode District Co-operative Bank, though only 40 appointments were made from Exhibits-P3 and P4 Ranked Lists, in violation of the prescribed 1:5 ratio between promotion and direct recruitment. The order of the Registrar of Co-operative Societies and the Vigilance reports further support the contention of the Petitioners that appointments should have been made from the said Ranked Lists, as several posts were filled from the list of 2006, which is stated to have expired on 30 July 2014. The Petitioners are meritorious candidates duly selected through the statutory process, and they cannot be deprived of appointment for reasons beyond their control. The KPSC has not challenged the impugned judgments and thus has accepted that it is not divested of the powers to render advice even after amalgamation, which fact is clear from the appointments made from such Ranked Lists to some District Banks, such as the Idukki District Co-operative Bank. The Appellants are acting arbitrarily under political considerations, picking and choosing candidates from the Ranked Lists, and the manner in which the State has prosecuted the litigation is indicative of political interference in the appointment process. The proposal of the employer Banks for the regularisation of temporary employees also demonstrates the continued requirement of personnel, reinforcing the claim for advice and appointment through KPSC from the valid Ranked Lists. The Petitioners/Candidates placed on record the order passed by the Registrar of Co-

operative Societies on 8 June 2023, giving effect to the impugned judgment, which was subsequently withdrawn by the Registrar only on the ground that an appeal had been filed by the Bank and stay had been granted, but the fact that the vacancies existed and were duly identified remains on record. Thus, the Appellants are taking divergent stands in respect of the Ranked Lists and their conduct shows that the candidates are being subjected to illegal discrimination.

17. We have considered the rival contentions.

18. Though the issue involved in these groups of appeals is narrow, the debate centres around the rights of the candidates in the select list for appointment to the post in the District Banks after their merger with the State Bank. The basic position is that the Kerala Public Service Commission (KPSC) had invited applications from eligible candidates for appointment to the post of Clerk/Cashier in the erstwhile District Banks. Pursuant to the selection process, Ranked Lists were duly published. However, before appointments could be made, the Kerala Co-operative Societies (Amendment) Act, 2019 (Act 1 of 2019), which came into force on 14 February 2019, resulted in the amalgamation of the District Banks with the State Bank. The question that arises in these appeals is the status and rights of these Petitioners/Candidates on the Ranked Lists for appointments in the District Banks.

19. The statutory provisions in the subject matter cover two sets of legislation and rules. One governing the Co-operative Societies, and the second governing the Public Service Commission. A brief overview would be necessary.

20. The Co-operative Societies in Kerala, such as the District Banks, are governed by the provisions of the Kerala Co-operative Societies Act, 1969 (Act of 1969). The Act of 1969 provides for the registration, regulation, and other regulatory provisions relating to the Co-operative Societies. As regards the recruitment and service conditions of officers and servants of the Co-operative Societies, Section 80(3A) of the Act of 1969 provides that, except for the Chief Executive Officer of the Society, all appointments to the posts of officers and servants of the Society specified in Schedule I, for which direct recruitment is resorted to, shall be made from the select list of candidates furnished by the KPSC after following the prescribed rules. Schedule I of the Act of 1969 included fourteen District Banks, in addition to the Apex Societies.

21. Section 14 of the Act of 1969 provides that Co-operative Societies may, with the prior approval of the Registrar, amalgamate or merge, transfer their assets and liabilities, and also effect division of the Societies. In the Act 1 of 2019, new Section 14A was also introduced which provides for provisions regarding transfer of assets and liabilities of the District Banks to the State Bank.

22. By notification dated 14 February 2019, the Government of Kerala enacted the Kerala Co-operative Societies (Amendment) Act, 2019 (Act 1 of 2019), which amended Section 2 of the Act of 1969 by substituting clause (ia) and inserting clause (ka) regarding the Kerala State Co-operative Bank. The consequence of Act 1 of 2019 led to the amalgamation of District Banks to the State Bank.

23. The Kerala Public Service Commission (Additional Functions as Respects Certain Societies) Act, 1996 (Act 5 of 1996), the other set, is in respect of recruitment (at the relevant time) of officers and servants of the Co-operative Societies. Section 2(b) of the Act 5 of 1996 defines “society” to mean a Co-operative Society mentioned in the Schedule to the Act of 1969. Act 1 of 2019 amended Schedule I of the Act of 1969, whereby Serial Nos. 16 to 29 and the entries against them were omitted. The entries at Serial Nos. 16 to 19 pertained to various District Banks in the State. They included Thiruvananthapuram, Kollam, Pathanamthitta, Alappuzha, Kottayam, Idukki, Ernakulam, Thrissur, Palakkad, Malappuram, Kozhikode, Wayanad, Kannur, and Kasaragod District Co-operative Banks Limited. Consequently, with effect from 14 February 2019, the District Banks mentioned from Serial Nos. 16 to 29 in the Schedule stood excluded from the definition of “society” under Section 2(b) of the Act 5 of 1996.

24. Chapter XC of the Act of 1969 provides for special provisions relating to amalgamation through transfer of assets and liabilities of the District Banks to the State Bank. It would be fruitful to reproduce Section 74H, which is relevant to the present controversy and sets out the consequences of such amalgamation. Section 74H reads thus:

“74H – Amalgamation of District Co-operative Banks to the Kerala State Co-operative Bank.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Registrar shall order the amalgamation of District Co-operative Banks in Kerala with the Kerala State Co-operative Bank on the basis of the resolution passed by the general body as provided under Section 14A of this Act.

XX XXX XXXX

1A) On and from the date of the passing of the order of the merger by the Registrar under sub section (1) (a), all the assets and liabilities of the District Co-operative Bank as it should immediately before the order of merger shall, without any further act, instrument or deed, stand transferred to and vested in the Kerala State Co-operative Bank.

2) With the prior approval of the Government the Registrar shall bring into effect the scheme of amalgamation, proposed by the Kerala State Co-operative Bank which is to be presented to the transferor banks.

3) On and from the date of amalgamation, the shares held by the members of the transferor banks shall be deemed to be the shares of the transferee bank as such:

Provided that the value of shares shall be on the basis of face value of shares held by the members of the transferor banks.

(4) Notwithstanding anything contained in section 15 of this Act, on and from the date of amalgamation of the transferor Banks and the transferee Bank, the transferor banks cease to exist and its registration stands cancelled:

Provided further that no new Registration Certificate is required for the transferee bank.

(5) xx xxxx

(6) xx xxxx

(7) xx xxxx

(8) xx xxxx

(9) xx xxxx

(10) xx xxxx

(11) xx xxxx

(12) Any proceedings, suits, decrees, recovery certificates, appeals, and all other legal proceedings pending or existing immediately before the date of amalgamation before any Court or Tribunal or any other authority, by or against the transferor banks may, as from the date of amalgamation be continued and enforced by or against the transferee bank.

(13) Every permanent and regular employee of the transferor bank or employees on probation, serving in the employment of the transferor bank immediately before the date of amalgamation, shall become, on and from the date of amalgamation, an employee of the transferee bank and shall hold office therein or serve the transferee bank, as the case may be, and shall continue to work in accordance therewith:

Provided that the Government shall make a scheme for cadre integration, seniority, promotion and transfer and such other matters related to employees of the transferor bank and the transferee bank in the service of the transferee bank.

(14) Notwithstanding anything contained in the staff regulation or recruitment rules of the transferor and transferee bank, the service conditions of the employees on amalgamation shall be as prescribed by the Government.

(15) The employees who have retired before the date of amalgamation from the service of the transferor bank or opted not to join in the service of the transferee bank on and from the date of amalgamation, are entitled to benefits, rights or privileges, if any, from transferor bank, shall receive such benefits, rights or privileges from the transferee bank.

(16) The Provident Fund/Gratuity Fund/Pension Fund or any other funds of the transferor bank and any other bodies created, established or constituted as the case may be, for the employees of the transferor banks shall continue with the transferee bank.

(17) xx xxxx

Section 74H thus also deals with the effect of amalgamation on the employees.

25. As per Government Order dated 24 March 2023, issued by the Secretary of the Co-operation Department, Government of Kerala, in exercise of the powers conferred under sub-section (14) of Section 74H of the Act 1 of 2019, read with sub-rule (5) of Rule 28A in Chapter IIIA of the Co-operative Societies Amendment Rules, the Government have notified the Kerala State Co-operative Bank Recruitment Rules, 2023 (Recruitment Rules of 2023), which had come into force on 2 August 2021. The Government Order shows that the State Bank would take steps to fill up the vacancies strictly in line with the modified Recruitment Rules against the existing vacancies. Rule II of the Recruitment Rules of 2023 provides for the categorisation of service. Under Rule II, the post of Clerk/ Cashier falls under Category No. 11. Rule III provides for appointment. As per Rule III, appointments to the post of Clerk/Cashier shall be made by Direct Recruitment through the KPSC and by transfer appointment on the basis of combined seniority from among the persons holding lower posts, who possess the required qualification and three years service in the respective posts. It is also stated that the ratio for the direct recruitment and promotion shall be 3:1. This, in brief, is the statutory scheme.

26. As stated earlier, the common factor is that all the Petitioners were included in the Ranked Lists prior to the amalgamation on 14 February 2019. All the Petitioners, on varying dates, secured interim orders in their favour, by which their placement in the Ranked Lists was protected subject to the outcome of the writ petitions, and by virtue of these interim orders, the life of the Ranked Lists is not deemed to have lapsed. It is pertinent to note, which we will elaborate on later, that no appeal is filed by the KPSC even though the KPSC was a party to the writ petitions.

27. The first question, therefore, arises is regarding the right of candidates who are placed on the Ranked Lists. The Constitution Bench in the case of **Shankarsan Dash v. Union of India** [(1991) 3 S.C.C. 47], considered a reference made to it for examining whether a candidate whose name appears on the merit list on the basis of a competitive examination acquires an indefeasible right for appointment when a vacancy exists. At paragraph 7, the Hon’ble Supreme Court observed that even where a number of vacancies are notified for appointment and an adequate number of candidates are found fit, the successful candidates do not thereby acquire an indefeasible right to be appointed, as ordinarily, the notification merely amounts to an invitation to the qualified candidates to apply for recruitment, and on their selection, they do not acquire any right to the post also. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. The Hon’ble Supreme Court, however, cautioned that this does not mean that the State instrumentality has the licence to act in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons, and if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates as reflected at the recruitment test, and no discrimination can be permitted. This position has been consistently followed, as noted in the decisions in **State of Haryana v. Subhash Chander Marwaha** [A.I.R. 1973 S.C. 2216], **Miss Neelima**

Shangla v. State of Haryana A.I.R. 1987 S.C. 169, or **Jitendra Kumar v. State of Punjab** [A.I.R. 1984 S.C. 1850]. In the case of **Asha Kaul (Mrs.) and Another v. State of Jammu and Kashmir** [(1993) 2 S.C.C. 573], a two-Judge Bench of the Hon'ble Supreme Court took a review of the legal position on the subject and observed as follows:

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (*State of Haryana v. Subhash Chander Marwaha* [(1974) 3 S.C.C. 220: A.I.R. 1973 S.C. 2216]; *Mani Subrat Jain v. State of Haryana* [(1977) 1 S.C.C. 486: A.I.R. 1977 S.C. 276]; *State of Kerala v. A. Lakshmikutty* [(1986) 4 S.C.C. .632: A.I.R. 1987 S.C. 331]) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, — in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government — the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in *Shankarsan Dash v. Union of India* [(1991) 3 S.C.C. 47: (1991) 17 A.T.C. 95] where the earlier decisions of this Court are also noted. The following observations of the Court are apposite: (SCC pp. 50-51, para 7)

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha* [(1974) 3 S.C.C. 220: A.I.R. 1973 S.C. 2216], *Neelima Shangla v. State of Haryana* [(1986) 4 S.C.C. .268] or *Jatendra Kumar v. State of Punjab* [(1985) 1 S.C.C. 122: 1985 S.C.C. (L&S) 174]."

(emphasis supplied)

Therefore, the legal position is that, though the candidates do not acquire an indefeasible right merely by being placed on the merit list, the recruiting authority cannot act arbitrarily, and once it proceeds to make appointments from the Ranked Lists, the remaining candidates on the list will have to be treated equally as per their placements.

28. The learned counsel for the Petitioners also have not advanced any extreme proposition that candidates on the select list have an absolute right to be appointed. Instead, they relied upon the above legal position to contend that the Appellants have acted arbitrarily in breach of the rights of the Petitioners enshrined under Article 14 of the Constitution of India. It is their contention that the amalgamation of the Banks is not an absolute extinction of the District Banks, and that, therefore, out of extraneous considerations, appointments have been made for some selected District Banks, for which no explanation has been coming forth. When the selection process was conducted by the KPSC by notification dated 15 March 2014, the statutory mandate required that the process under the Rules of 1969 had to be followed.

29. The main contention of the Appellants is the factum of amalgamation and the legal and factual consequences. Section 14 of the Act of 1969 provides for amalgamation, merger, transfer of assets and liabilities. Section 14A provides for transfer of assets and liabilities of the District Banks to the State Bank. The Appellants have also relied upon sub-section (13) of Section 74H to contend that only permanent and regular employees of the transferee bank, or employees on probation serving in the employment of the transferor bank, are protected, and that none of the Petitioners fall within Section 74H(13). The Petitioners have relied upon Section 14A(6) of the Act of 1969 which states that on and from the date of approval of the transfer of assets and liabilities of each District Bank by the Registrar, all pending suits or legal proceedings by or against such Banks shall be continued by the State Bank. The Petitioners pointed out that, though this provision is not directly applicable to the issue at hand, it nevertheless indicates the legislative intent that there is no complete extinction of all positions prevailing on the date of amalgamation. The Petitioners have also relied upon sub-sections (12) and (13) of Section 74H of the Act of 1969. Sub-section (12) of Section 74H states that any proceedings, suits, decrees, recovery certificates, appeals, and all other legal proceedings pending or existing immediately before the date of amalgamation before any Court or Tribunal or any other authority, by or against the transferor banks may, as from the date of amalgamation be continued and enforced by or against the transferee bank. Sub-section (13) states that every permanent and regular employee of the transferor bank or employees on probation, serving in the employment of the transferor bank immediately before the date of amalgamation, shall become, on and from the date of amalgamation, an employee of the transferee bank.

30. We make reference to these provisions in the context of the broader principle that there can be various types and consequences of amalgamation, and that no absolute test can be applied uniformly for all forms of amalgamation under different statutes. This aspect is elaborated by the Supreme Court in the case of **Principal Commissioner of Income Tax (Central) – 2 v. M/s. Mahagun Realtors (P) Ltd.** [A.I.R. 2022 S.C. 1672], where the Hon'ble Supreme Court analysed the concept of amalgamation of two or more entities and observed that amalgamation is unlike the winding up of an entity. It was

observed that in the case of amalgamation, the enterprises lives on, but within a new residence. The Hon'ble Supreme Court emphasised that it is, therefore, essential to look beyond the mere concept of destruction of entity. In the said decision, reference was made to the decision in the case of **Saraswati Industrial Syndicate v. Commissioner of Income Tax Haryana, Himachal Pradesh** [1990 Supp. (1) S.C.R. 332]. The basic legal principle emerging from the analysis of law by the Hon'ble Supreme Court is that amalgamation has no precise meaning, and that the true effect and character of amalgamation depend largely on the terms of the scheme of merger and the legislation. Thus, the broader principle is that there is no fixed connotation of amalgamation and, in the given set of statutory regulation, it need not amount to a complete extinction. Therefore, the contention of the Appellants that, pursuant to the amalgamation, everything comes to an end is too absolute a proposition to be accepted. The issue has to be examined in the backdrop of the facts of the case and the manner in which the Appellants themselves have understood and proceeded on the legal position of amalgamation.

31. This brings us to the contention of the Petitioners that the Appellants have adopted contrary stands after the amalgamation in respect of the identical Ranked List, acting in a most arbitrary manner. By the interlocutory application in these appeals, it has been placed on record that long after amalgamation, the Petitioners have given advices and appointments from the very same Ranked Lists in various District Banks across the State between 30 March 2023 and 23 May 2024. The Respondents have furnished these details in the form of a chart. In some appeals, the Petitioners have placed on record the appointments made in respect of the other co-operative banks such as Wayanad and Thiruvananthapuram. It is also stated that a candidate was advised by the KPSC for appointment to the post of Branch Manager in the District Co-operative Bank, Kasaragod, from the Ranked List of 25 August 2023. Thereafter, certain other appointments such as the posts of Peon/Watchman and Driver, were also made. According to the Appellants, these appointments were made pursuant to the directions issued by the Hon'ble Supreme Court, and no capital can be made out of the same. However, as the Petitioners point out, the appointments made under the orders of the Hon'ble Supreme Court are different, and as regards the appointment made to the post of Clerk/Cashier – Part III in respect of the District Co-operative Bank, Idukki, nine fresh vacancies were reported on 29 May 2019, 12 June 2019, 20 August 2019, 3 October 2019, and for Clerk/Cashier – Part I, nine vacancies were reported on 29 May 2019, 12 June 2019, 20 August 2019, and 3 October 2019, and the advices were issued by the KPSC on 29 January 2020, which is beyond the amalgamation. No explanation whatsoever is coming forth from the Appellants in respect of this, except to argue that the Petitioners/ Candidates had no legal right and the KPSC cannot issue advices in respect of the Banks which are no longer in existence.

32. This position highlights the arbitrariness with which the Appellants have acted. From the very same Ranked Lists which, according to the Appellants, do not have any legal force for the KPSC to issue advice, appointments have nevertheless been made to certain District Banks. The Appellants have simply sidestepped this glaring discrimination. This conduct has to be viewed in the backdrop of the allegation of Petitioners/Candidates that there is political interference in the recruitment process of officers and staff of the Co-operative Banks, and that the appointments are being given to a selected few for extraneous reasons. In light of the appointments of candidates from identical select lists to

various District Banks and the manner in which the State has filed the appeals and prosecuted the litigation, it cannot be said that the contention of the Petitioners/Candidates is without merit.

33. Next contention is regarding the power of the KPSC in view of the amendment to Schedule I to the Act of 1969 by Act 1 of 2019. According to the Appellants, the KPSC has no jurisdiction to issue advice to the District Banks. For the sake of reiteration, it is to be noted that as against the direction of the learned Single Judge which would entail the KPSC to issue advices from the concerned Ranked Lists, the KPSC has not filed an appeal. Not only it has not filed an appeal but the KPSC has proceeded to issue advices in respect of Idukki District Co-operative Bank post merger to which no exception is taken by the Appellants. Therefore, this is the understanding of the KPSC, which we must take note of.

34. It is quite obvious that the KPSC is a distinct entity, separate from the Co-operative Banks or the State. Prior to the Act 1 of 2019, appointments were required to be made through the KPSC. When the notification was issued on 15 March 2014 and thereafter, the District Co-operative Societies were under a statutory mandate to follow the procedure prescribed under the Rules, which involved reporting of vacancies and the issuance of advices by the KPSC in respect of those vacancies.

35. The procedure to be followed for recruitment to the Co-operative Societies (as applicable) is set out in Rule 182(4) of the Rules of 1969. The KPSC has issued the Rules of Procedure in which Section 2(g) defines "ranked list" to mean, list of candidates arranged in the order of merit, either on the basis of the interview or examination. "Examination" is defined under Rule 2(c) to include written, practical, physical efficiency, interview, and such other examinations which the Commission may deem fit to hold. The Rule 2(a) defines "Advice list" to mean, the list of candidates drawn from the ranked list and arranged on the basis of rules of recruitment relating to the post in respect of vacancies reported from time to time. Under Rule 14, the Commission shall advise candidates for all the vacancies reported and pending before them and the vacancies which may be reported to them for the period during which the ranked lists are kept alive in the order of priority. Accordingly, after a due selection process, ranked lists were prepared, and they were in existence on the date when the Act 1 of 2019 was brought into force.

36. The issue is whether the KPSC would lose its jurisdiction to render advice after the Act 1 of 2019. The Appellants contend that after the amendment, the powers of the KPSC do not extend to the District Banks. The question, however, is whether the KPSC ceases to have the power to advise appointments from the Ranked Lists which were already and validly prepared before the amending Act 1 of 2019, during the period when the KPSC admittedly had jurisdiction and power to do so. The legal impact of the amendment brought into effect by the Act 1 of 2019 to definition of the "society" under Act 5 of 1996 insofar as the power and jurisdiction of the KPSC are concerned, the matter can be interpreted in two ways. One approach can be that after the Act 1 of 2019, the Ranked Lists stood cancelled and the power of the KPSC was effaced, and second, that the power and jurisdiction of the KPSC in respect of the District Banks post-amendment would apply only to fresh selection processes and would not affect the existing power of the KPSC in respect of Ranked Lists already and validly prepared prior to the Amendment. This interpretation will sustain the power of the KPSC for the list already validly prepared. The interpretation

must also be viewed broadly keeping in mind the object and status of the KPSC. A narrow interpretation that would diminish the role of the KPSC as an independent entity is to be avoided. When two interpretations of the legal implications are possible, the one that supports the continuing authority ought to be preferred.

37. Further, the conduct of the Appellants and KPSC would show that the second interpretation (that is maintaining the power of KPSC in respect of the existing list) is a valid one. The KPSC has not filed any appeal challenging the judgment of the learned Single Judge which would require it to issue advice from the Ranked Lists post the amendment, but on the other hand, the KPSC has, in fact, issued advices in respect of some candidates as referred to earlier. The Appellants themselves, by accepting the advice issued by the KPSC from the identical Ranked Lists, which were validly prepared, have already interpreted the legal implications in this manner. The question, therefore, is whether the Appellants can now take a contrary position. By accepting the advice of the KPSC for appointments to the Idukki District Co-operative Bank even after the amendment, the Appellants have accepted the legal proposition that the KPSC has the power and jurisdiction to render advice so long as the select list continues to be valid. Having accepted this legal implication in respect of one set of candidates, the Appellants cannot now be heard to argue that a different legal proposition applies to the Petitioners/Candidates. Identical ranked lists cannot exist and not exist at the same time. This attempt of the Appellants smacks of complete arbitrariness. Therefore, when Ranked Lists were duly and validly prepared prior to the Act 1 of 2019, the jurisdiction of the KPSC did not cease upon the amendment but continues till the validity of the Ranked Lists expired.

38. This takes us to the judgment of the learned Single Judge disposing of Group 'A' petitions. The learned Single Judge directed that the Registrar of Co-operative Societies shall assess the financial position of each erstwhile District Co-operative Bank, determine the posts notionally available at that time, and thereafter, issue necessary orders relating to their merger with the State Bank, while considering the claims of the Petitioners, similarly situated persons, and all others in the Ranked Lists. The Petitioners were permitted to file written objections within one month regarding the alleged unauthorised appointments and promotions made during the subsistence of the Ranked Lists, in violation of the statutory ratio. The Registrar of Co-operative Societies was required to examine these contentions, verify the legality of such appointments, cancel those found irregular, and identify the vacancies to be earmarked for direct recruitment after hearing all affected parties. The learned Single Judge also directed that the competent officer of the State Bank shall also be heard, recognising that the Bank may choose not to fill even available vacancies while ensuring that no irregular appointments had been made prior to the amalgamation. It was clarified that the expiry of the Ranked Lists would not prejudice the eligible Petitioners with respect to the vacancies already reported pursuant to the earlier orders, and that if the enquiry into appointments required more time, the Registrar could first determine vacancies and allow the KPSC to issue advice. If any promotions or appointments during the currency of the Ranked Lists were found illegal, corresponding advice would be issued from the expired Ranked Lists within the limits of the vacancies ordered and reported. The entire exercise was directed to be completed within six months, with liberty to act earlier, where issues of promotion or irregular appointments did not arise, and the Registrar was also instructed to consider claims regarding Community Quota vacancies upon receipt of written

submissions from the interested Petitioners.

39. Another challenge of the Appellants to these directions in the judgment in Group 'A' petitions is that the District Banks ceased to exist upon amalgamation, and the directions issued by the learned Single Judge in Group 'A' are not practicable. As referred to earlier, the legal implications of amalgamation do not necessarily result in the complete extinction of the amalgamated entity, but certain positions may continue depending on the governing statutory enactments. Even on facts, the contentions of the Appellants cannot be accepted. The Petitioners/Candidates have pointed out that pursuant to the impugned judgment in Group 'A' dated 12 July 2022, the Registrar of Co-operative Societies carried out a detailed exercise and passed the following order dated 8 June 2023:

"xx xxxx

To comply with the order, as per reference No. 5, the Registrar had given notice to the petitioners and Kerala Bank, for hearing them on 2/6/2023 11 am. On the said hearing, representing the candidates, Bindhu P.K, Lenimol, Santhi Krishna, Thriveni.P, Sajosh.K, Sobha.M.K, Rajeev.P.K, Deepak, Manju Jose, Anila.K.N, Anto.P.Davis, Prasanna.V.P, Renjini Jose, Divya.V, Soumya.V, Sanjeev Kumar.R, A.P.Gireesh Kumar, Manju, Reshmi.M.B, Husna.M.A, Suhara.V, Sheeba.T, Thanuja, Akhil.S, Ambili.K.K, Lekha.P.Nair, Jayakumari Amma.S, Meera.R, Minimol.G, Rajalekshmi, Deepa.R, Minimol.M.V, Manju.S, Sandhya.S.Nair, Dhanya.G.R, Sunil Kumar, Bindhu.S.M, Baiju.P, Adv. V.G.Prasad and Jisha.K.C were present and the representatives of Kerala Bank produced the written arguments.

The arguments of Kerala Bank

On 29.11.2019, the 13 district Co-operative Bank amalgamated in State Co-operative Bank and formed Kerala Bank. The Malappuram District Co-operative Bank on 12.1.2023 amalgamated in Kerala State Co-operative Bank also. So there is no standing for the District Co-operative Bank and also recruitments to the said bank. Prior to the formation of Kerala Bank, the direct recruitments except to the post of part time sweeper, were done as per Sec. 80(3A) of the Co-operative Societies Act, but when the Kerala Bank came in to existence on 29.11.2019, the recruitment rules as per the Co-operative law amendment became null. So the inclusion of candidate in the list will not entitle him an assurance for the post, and since the State Co-operative Bank is a statutory body, all the appointments to it come under the purview of its powers, as the Bank stated. Moreover, the Kerala Bank, filed appeal against the order in 26 writ petitions, and obtained stay order on it. They further stated that, the Registrar, Co-operative Societies could not appoint any person, as per Sec.66A of Co-operative Societies Act, even though they have such an authority to do so.

The cited references 1 to 4 in different petitions, the High Court in its order directed as such.

(English)

a)

b)

c)

Since this being the situation, as per references 1 to 4 orders, and on hearing the different parties in the writ petition and the Kerala Bank, and also on perusing their petition, the data produced by the Kerala Bank before the commencement of Kerala Bank, the following are the post for clerks/cashier which was allotted to them in 14 District Co-operative Banks.

1	2	3	4	5	6	7	8
Sl. No.	District	Post given before the Kerala Bank came into existence	No. of employees as per 5:1 ratio as per the PSC	No. of person appointed through PSC as on 29/11/ 2019	No. of employees appointed after 29/11/ 19	No. of DA /NCA posts report-ed by PSC as per Kerala Bank state-ment	The posts reported to the PSC as per the direction of the Kerala High Court (4-5-6=8)
1	Thiruvananthapuram	168	140	131	2	3	4
2	Kollam	137	114	83	—	6	25
3	Alappuzha	127	106	99	—	10	—
4	Pathanamthitta	137	114	86	—	25	3
5	Kottayam	134	112	95	—	12	5
6	Idukki	115	96	61	—	25	10

7	Ernakulam	141	118	96	3	9	10
8	Thrissur	135	112	94	—	7	11
9	Palakkad	106	88	17	—	9	9
10	Malappur-am	126	105	96	—	4	5
11	Kozhikode	126	105	122	—	14	—
12	Wayanad	76	63	44	3	14	2
13	Kannur	137	114	111	—	6	—
14	Kasaragod	97	81	77	—	10	—
	Total	1762	1468	1265	8	154	84

The number of posts for Clerk/Cashier allotted to 14 District Co-operative Banks prior to the formation of Kerala Banks was 1762. From this, 1468 posts are appointed through PSC as per 5:1 ratio. During the Kerala Bank, formed the number of employees appointed through PSC was 1265 and after its formation the number of appointees was 8 and also DA/NCA category, 154 vacancies were reported to PSC.

Hence, it is hereby ordered that, the Kerala Bank is directed to follow 5:1 ratio in the appointment of Clerk/Cashier posts, as given by the Co-operative Registrar, before the formation of Kerala Bank and also as per the direction of the High Court of Kerala and to report 84 vacancies from the reported 154 vacancies of DA/NCA.

Hence, the orders in writ petitions, WP(C) 23087/2019, WP(C) 32055/2019, WP(C) 6469/2020, WP(C) 8722/2022, WP(C) 38088/2017, WP(C) 7596/2019, WP(C) 33062/2019, WP(C) 28009/2022, WP(C) 18589/2019, WP(C) 28699/2019, WP(C) 26652/2020, WP(C) 26916/2020, WP(C) 20446/2020, WP(C) 28081/2022, WP(C) 23361/2022 and contempt of court petition 767/2023 and 907/2023 are implemented.

Sd/-

Registrar, Co-operative Societies”

Thereafter, on 7 September 2023, the Additional Registrar of Co-operative Societies took a different stand and issued a letter, which reads as follows:

“Sir,

Subject: Co-operative – Appointment from the Rank List of Clerk / Cashier post in old Malappuram District, Co-operative Bank.

Ref: Application submitted by Sri. Akhil S. before the Chief Minister of Kerala (G 2230600162)

Turn attention to the reference candidates included in the Rank Lists of Clerk/Cashier of Malappuram District Co-operative Banks have filed writ petitions before Hon'ble Kerala High Court [WP(C) 29938/2019, WP(C) 23089/2019 & Connt. Cases] and in compliance with the orders/decrees in the above cases, Registrar has issued order dated 08.06.2023 [No. (1) 7321/2022]. And a contempt Case (No. 1429/23) has been filed in writ petition No. 29955/19.

Hence, steps have been taken to file appeal in all cases in clerk/cashier post in Co-operative Bank. Stay order has been obtained in Writ Appeal No. 1291/23 which was filed against the order in Writ Petition No. 22690/19. Stay order has obtained and writ appeals are pending before Hon'ble High Court of Kerala and hence the temporary order issued by Co-operative Registrar is withdrawn as per the order in the Writ Appeal filed by the Bank and Government and this order is numbered as EM (1) 7321/2022 and this order is issued.

Yours Faithfully

Additional Registrar (Consumer)

(On behalf of Co-operative Registrar)”

The order of 7 September 2023 was not withdrawn on the ground of impracticability or on the ground that it was incorrect, but on the ground that the State Government has decided to file an appeal. We do not refer to these documents to hold that the Appellants are estopped from filing the appeals, but they show that it is clearly possible to give effect to the judgment of the learned Single Judge in Group 'A' petitions, and that it was, in fact, sought to be implemented without recording any practical or legal difficulty. The Registrar of Co-operative Societies had initially given effect to the direction issued by the learned Single Judge in Group 'A' petitions, and only thereafter, decided to file an appeal. This indicates that it is both possible and practicable to identify the vacancies. Therefore, the argument of impracticability in implementing the judgment of the learned Single Judge advanced by the Appellants, cannot be accepted.

40. Further, it is not the case of the Appellants that the qualifications for the post are different. Indeed, some of the candidates have been appointed after the amalgamation in the District Banks. The Petitioners/Candidates assert that even the Recruitment Rules of 2023 have not brought about a change in the qualifications. It is also evident from the order passed by the Registrar of Co-operative Societies on 8 June 2023 that the vacancies can be identified. Therefore, the selection of the Petitioners/Candidates was validly carried out by the KPSC even after the amalgamation and the framing of the Rules.

41. It is to be noted that during the pendency of the appeals, the Appellants initiated the process of recruitment and preparation of select list under the new Rules without obtaining leave of this Court. Though there is an interim order in the appeals staying the judgment of the learned Single Judge, since the issue was being heard in appeals, this leave ought to have been taken. Therefore, when this was brought to the notice of the Court, a direction was issued not to give effect to the new list during the pendency of the appeals. Once the existence of the earlier select list and the power of the KPSC are recognised, no right will flow to the candidates on the new list, as the list itself was made subject to the outcome of the appeals.

42. Therefore, the learned Single Judge in the judgment dated 12 July 2022 in Group 'A' petitions, issued directions to give effect to the rights of the Petitioners on the Ranked Lists. The learned Single Judge has issued these directions in the exercise of writ jurisdiction. The Petitioners in Group 'A' petitions have accepted these directions as they have not filed any appeal. Though the Appellants contend that these directions are not preceded by cogent reasoning, in view of the above mentioned legal and factual position, we do not deem it appropriate to interfere with the ultimate directions which have sought to remedy the situation considering the practicalities. As regards the appeals filed by the Petitioners / Candidates from Group 'B' petitions, the learned Single Judge has not considered the various legal and factual issues discussed above, and has summarily dismissed those petitions. The Appellants in the said appeals are, therefore, entitled to the directions similar to those issued in the Group 'A' petitions.

43. As a result, W.A. Nos. 1736, 1794, 1805, 1806, 1809, 1815, 1830, 1840, 1843, 1850, 1854, 1859, 1880, 1889, 1904, 1938, 1939, 1943, 1963, 1968, 1977, 1979, 2004 and 2019 of 2022, and 764 and 1124 of 2023 filed by the Appellant – Banks, and W.A. Nos. 969, 1271, 1461, 1542, 1551, 1564, 1565, 1568, 1580, 1583, 1585, 1586, 1589, 1591, 1594, 1649, 1652, 1685, 1689, 1856, 1901, 1907, 1993, 2006, 2009, 2025, and 2135 of 2023 filed by the State (Group A) are dismissed.

44. W.A. Nos. 608, 622, 637 and 853 of 2021 filed by the Petitioners (Group B) are allowed, in terms of the directions issued in the judgment of the learned Single Judge in Group 'A' petitions dated 12 July 2022, and the same methodology shall be followed in the appeals filed by the Petitioners with suitable modification as the facts of each case will require.

45. The time limits given in the judgment of the learned Single Judge in Group 'A' petitions dated 12 July 2022 (as now applicable to Group 'B') shall come into effect from the date of this judgment.

46. All pending interlocutory applications are closed.

Result of the Case

One set of appeals allowed and the other set dismissed.

Headnote prepared by A.R.
