

KERALA PUBLIC SERVICE COMMISSION

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v.

K.N. RADHAMANI & ORS. ETC.ETC.

(Civil Appeal Nos.1802-1806 of 2010)

SEPTEMBER 06, 2021

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[L. NAGESWARA RAO AND ANIRUDDHA BOSE, JJ.]

Kerala Cooperative Societies Act, 1969 – ss. 80(3) and 109 – Kerala Cooperative Societies Rules, 1969 – rr.186 and 187 – Qualification criteria for appointment for the posts of clerk/cashier in different cooperative banks from in-service category – Employment notifications 1999 and 2006 for the posts of clerk/cashier in different cooperative banks – Whether an applicant from in-service category for the said posts, which carry starting pay beyond Rs.250/- per month, was required to have minimum educational qualification of graduation or not – Contention of in-service candidates that for them SSLC or equivalent qualification would be sufficient which essentially means school clearance certificate – The KPSC had taken the stand that since the starting pay to the subject-posts was beyond Rs.250/-, they ought to have cleared graduation – This stand of KPSC was sustained in the case of Valsala Devi v. Leela Bhai by the Kerala High Court – Appeal by the unsuccessful candidates was dismissed by the Coordinate Bench of the Supreme Court – However, matter referred to the Full Bench of the High Court from an another matter upheld the contention of the in-service candidates (who were not graduates) to be considered for recruitment to the posts of clerk/cashier – On appeal, held: The decision of the Full Bench was not brought to the notice of the Coordinate Bench of the Supreme Court, when the appeal in the case of Valsala Devi was dismissed – The case of Vasala Devi was in relation to promotion whereas in the instant case, the vacancies are to be filled by direct recruitment – The in-service candidates primarily had relied on regulations (GOs) dated 15.06.1982, 30.09.1986 and 23.03.1988 before the Full Bench of the High Court – The impact of these GOs was not brought before the Coordinate Bench of the Supreme Court – Decision of the Coordinate Bench of the Supreme Court would not constitute a binding precedent so far

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- A *as the present set of proceedings are concerned – According to KPSC, the source of power of making these regulations (GOs) was s. 80 of the Act – The GO of 1988 establishes that the State Government had intended to keep in abeyance the benchmark pay provision as specified in Rule 186 – For determining the educational qualification of the in-service candidates the State Government has*
- B *proceeded by issuing various GOs without the benchmark pay stipulation for recruitment to the posts of clerk/cashier from in-service category and made SSLC qualification to be acceptable eligibility criteria – This practice developed under 1969 Act is indicative of the fact that for in-service candidates applying for*
- C *direct recruitment to the posts of clerk/cashier in District co-operative Banks, the minimum eligibility criteria so far as eligibility is concerned is SSLC or equivalent and floor-level pay stipulation would not apply – If an advertisement is made providing for eligibility criteria different from that statutorily prescribed, it would be open to the candidates to challenge the legality of such eligibility*
- D *criteria – It was not permissible on the part of KPSC to prescribe qualification as minimum eligibility criteria which is beyond that prescribed by the statute.*

Dismissing the appeals, the Court

- E **HELD: 1. The judicial exercise this Court has to undertake is to examine the applicability of the provisions of Rule 186 made under Section 109 of the 1969 Act and the scope of operation of the Regulations made under Section 80 thereof. This Court does not accept the argument that because these Regulations were made without prior consultation with the State Co-operative**
- F **Unions, the Rules would not be implementable. KPSC itself relied on the said provisions to justify making of the GO of 1986. Moreover, following the Constitution Bench judgment in the case of *Manbodhan Lal Srivastava*, this Court hold that lack of consultation as specified in Section 80(3) of the Act by itself would**
- G **not render any Rule made thereunder a stillborn statutory instrument. KPSC's own stand before the Full Bench appeared to be that rules made under Section 109 as also under Section 80 can co-exist. By issuing the 1982 order, the Registrar of the Co-operative Societies had in substance suspended the applicability of the floor-level pay stipulation, directing that pending**
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amendment of the rules the qualification under Rule 186 for different categories of posts have to be decided based on pre-revision scales of pay. On this count, the Commission's position is that it was not within the power of jurisdiction of the Registrar of Co- operative Societies to keep on hold the provisions of statutory rules. But this factor read with the GO of 23rd March, 1988 establishes that the State Government had intended to keep in abeyance the benchmark pay provision as specified in Rule 186 thereof. KPSC cannot ignore existence of these provisions giving their own interpretation to law and statutory instruments made under it. [Para 22][979-F-H; 980-A-C]

2. The 1982 circular read with the Service Regulation for employees of the Co-operative Banks reflected that there was no requirement of having a benchmark pay level for the posts of clerk/cashier under applicable rules for non-graduate in-service candidates to apply for the subject- posts. Section 109 of the 1969 Act empowers the State to make rules for any class of societies. The 1988 Service Regulations, however, has been made specifically for employees of Districts/Central Co-operative Banks of Kerala. So, this is a special class for Co-operative Societies. The circular of 1982 also refers to certain categories of co- operative institutions such as Kerala State Co-operative Bank, Primary Land Mortgage Bank and Primary Agricultural Credit Societies etc. The Commission has accepted the Rule making power under Section 80(3) under the Act before the Full Bench while defending their action on the basis of the GO dated 30th September, 1986. The GO dated 23rd March, 1988 ought to be attributed to the same Rule making power which does not stipulate a floor-level pay for the advertised posts to enable non-graduate candidates' participation in the recruitment process thereof. For determining the educational qualification of the in-service candidates the State Government has proceeded by issuing various GOs without the benchmark pay stipulation for recruitment to the posts of clerk/cashier from in-service category and made SSLC qualification to be acceptable eligibility criteria. This practice developed under the 1969 Act is indicative of the fact that for in-service candidates applying for direct recruitment to the posts of clerk/cashier in District Co-operative Banks, the

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- A minimum eligibility criteria so far as qualification is concerned is SSLC or equivalent and the floor-level pay stipulation would not apply. This practise can be sustained applying principle akin to contemporaneous expositio. The provisions of Rule 186 relate to Co-operative Societies in general whereas the GO of 1988 relates to service Regulations of a sub-species- District/Central Co-operative Banks. [Para 23][1980-C-H; 981-A-B]

3. Now turning to the Coordinate Bench decision delivered in the case of *Valsala Devi*. On behalf of KPSC it has been argued that it is a binding precedent and our attention has been particularly drawn to the last paragraph of this judgment in which opinion of the Bench is reflected. There are, however three factors which we have to consider before we come to a conclusion as to whether the finding of the Coordinate Bench could be treated to be a binding precedent for us or not in this set of proceedings. First is that *Valsala Devi* considered the issue of promotion from feeder posts and was not a contest in relation to direct recruitment to the subject post. The second factor is that the circular of 1982 and the Service Regulation of 1988 were not considered in that decision. This Court has gone through the Bench decision from which the appeal arose and this Court does not find any discussion on these circulars and regulations. Thirdly, the Coordinate Bench did not have the advantage of considering the reasoning contained in the Full Bench decision, which is under appeal before us. The impact of statutory instruments in the form of GOs were not brought to the notice of the Coordinate Bench and hence not considered in the case of *Valsala Devi*. The legality of the 1982 circular and the 1988 GO has not been questioned by KPSC. There is overlapping effect of the 1969 Rules and the GOs issued in exercise of power under Section 80 of the Act in the field of laying down qualification criteria for the subject-posts. But in such a situation, in our opinion it would be imprudent on our part to treat such overlapping zone as collision point to determine which provision carries greater legislative strength. In such circumstances, the Court has to take a harmonious approach and in extreme cases apply the “reading down” principle to reconcile inconsistent provisions flowing from different provisions having same statutory origin. The Kerala Co-operative Societies Rules

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empower the Government to make rules to provide for, inter-alia, qualifications for employment in certain classes of societies. Sub-clause (3) of Section 80 of the same statute permits the Government to make rules for regulating the qualifications, remuneration and other conditions of service. The Rules made under Section 80(3) are thus to address the detailed stipulations pertaining to conditions of service of the officers and servants of different classes of societies specified in Section 80(1). [Para 24][981-B-H; 982-A]

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4. Moreover, the authorities have been dealing with the qualification criteria at specific level for a particular class of society by issuing circulars and GOs over a period of time and in our opinion such implementation criteria has acquired enforceability status on the basis of usage at the administrative level. The 1982 Instruction has not been invalidated by any subsequent Government action or judicial order. Nothing on that count has been brought to our notice. The authorities appear to have carved out the posts of clerk/cashier in Co-operative Banks to subject them to the instruments made in various forms under Section 80(3) of the Act, whereas Rule 186 has general application. The 1988 Regulations relate to Co-operative Banks only, and source of power for making such Regulations appear to be Section 80(3) of the 1969 Act. Thus, in respect of such special category, Regulations made under Section 80(3) of the Act ought to prevail. [Para 25][982-B-D]

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5. In these circumstances, in opinion of this Court, if an advertisement is made providing for eligibility criteria different from that statutorily prescribed, it would be open to the candidates to challenge the legality of such eligibility criteria. This Court does not think in the peculiar circumstances of this case it was permissible on the part of KPSC to prescribe qualification as minimum eligibility criteria which is beyond that prescribed by the statute. While it is true that none of the candidates have had challenged the legality of the qualification condition stipulated in the advertisement, majority have come to this Court at a time in close proximity to the publication of the employment notification. The judgment of the Coordinate Bench has not been decided on the points argued before us. Nor the Coordinate Bench had the

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- A advantage of going through the reasoning contained in the Full Bench decision though before the said judgment was delivered by the Coordinate Bench, the Full Bench decision was rendered. For these reasons, in opinion of this Court, the Coordinate Bench decision would not constitute a binding precedent so far as the present set of proceedings is concerned. In these circumstances,
- B the five appeals of the Commission are dismissed. [Para 25] [26-982-D-G]

State Of U. P. v. Manbodhan Lal Srivastava AIR 1957 SC 912 : [1958] SCR 533 – referred to.

- C *Valsala Devi v. Leela Bhai* (2002) 3 KLT SN 18; *Public Service Commission v. Ramesan* (2005) SCC Online Ker 297 – referred to.

Case Law Reference

- [1958] SCR 533 referred to Para 21
- D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.1802-1806 of 2010.
- From the Judgment and Order dated 24.10.2007 of the High Court of Kerala at Ernakulam in W.P.(C).Nos.13921, 20776, 22072, 22211 and 23157 of 2006.
- E With
- Transferred Case (Civil) No.60 Of 2014, Civil Appeal Nos.2822 And 2823 of 2010.
- F Mrs. V.P. Seemanthini, Sidharth Dave, Sr. Advs., Vipin Nair, P. B. Suresh, Karthik Jayashankar, Arindam Ghosh, Anshuman Bahadur, Sanal C. Nambiar, Ms. Usha Nandini V., Biju P. Raman, Nishe Rajen Shonker, Mrs. Anu K. Joy, Alim Anvar, Mohammed Sadique T.A., Sriram Parakkat, A. Lakshminarayanan, G. Prakash, V. K. Sidharthan, C. K. Sasi, Vipin Nair, Advs. for the appearing parties.
- G The Judgment of the Court was delivered by
- ANIRUDDHA BOSE, J.**

- H These five appeals and the connected matters relate to controversy over the qualification criteria for appointment to the posts of clerk/cashier in different cooperative banks in the State of Kerala

from in-service category. The dispute is as to whether an applicant from that category for the said posts, which carry starting pay beyond Rs. 250/- per month, was required to have minimum educational qualification of graduation or not. As per Rule 187 of the Kerala Co-operative Societies Rules, 1969 framed by the State Government in exercise of power conferred on it by Section 109 of the Kerala Co-operative Societies Act, 1969 (the 1969 Act) for appointments to apex societies or central societies, 50% of the vacancies are required to be reserved for the employees of the member societies of the respective apex society or central society. The incumbents from such in-service categories, however require minimum regular service of three years in any of the cadre of such society. It is not in dispute that the posts advertised came within the fold of the classes of societies to which the said Rules apply. Rule 186 thereof, however stipulates that for appointment to posts carrying monthly pay of Rs.250/- and above, the applicants are required to be graduates, i.e. have bachelor degree. There are certain other eligibility criteria prescribed, but in these proceedings the lis is on the point as to whether the in-service candidates required graduation or not. Contention of the in-service candidates is that for them, SSLC or equivalent qualification would be sufficient- which essentially means school clearance certificates. The said 50% reservation rule was applicable to the advertised posts. A Full Bench of the Kerala High Court comprising of three Hon'ble Judges, on reference, inter-alia, held that Rule 186 of the Kerala Co-operative Societies Rules (the said Rules) which prescribe the floor-level pegging of pay to Rs. 250/- in respect of the posts to which recruitment was to be made was not workable as there was no employee with basic pay of Rs. 250/- . The Full Bench referred to another set of notifications and Regulations in holding that such stipulation on graduation for the subject-posts was unsustainable in law. The Kerala Public Service Commission (KPSC), being the recruiting body, is contesting this finding in these proceedings. There are two employment notifications involved inviting applications for the subject- posts, one dated 26th October, 1999 and the other of 25th April, 2006. The aspirants for the said posts, who are the parties to these proceedings were mostly applicants in relation to the 2006 employment notification. The 1999 notification specified the following qualification criteria contained in clause 7 of the employment notification:-

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A “7. Qualification :-

1. B.A./B.Sc./B.Com with HDC or JDC or B.Com with Co-operation or B.Sc. (Co-operation and Banking) of the Kerala Agricultural University.

B 2. Must have three years regular service in the respective cadre in the Primary Co-operative Society as experience.”

So far as the notification dated 25th April, 2006 is concerned, the qualification criteria was contained also in Clause 7 thereof:-

“7. Qualifications:-

C 1. B.A/B.Sc./B.Com with HDC or JDC OR B.Com with Co-operation OR B.Sc (Co-operation and Banking) of the Kerala Agricultural University.

D 2. Must be a regular employee who has completed not less than three years regular service in any cadre and continuing in service in a Member Society/Primary cooperative Society affiliated, to the respective District Co- operative Bank.

(The employee should be in the service of the society not only on the date of application but also on the date of appointment.)”

E 2. We are concerned in these proceedings with two provisions of the 1969 Act, both conferring power on the State Government to make rules and these provisions are Section 80 and Section 109 of the said Act. Section 109 (1) and sub-clause (2) (xv) of the Kerala Co-operative Societies Act lays down:-

F “109. Power to make rules:- (1) The Government may, for the whole or any part of the State and for any class of societies, after previous publication, by notification in the Gazette, make rules (either prospectively or retrospectively) to carry out the purpose of this Act.

G (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

xxx xxx xxx

(xv) the qualifications of employees of societies

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Section 80(3) also empowers the State Government to classify the societies according to their type and financial position. Section 80(3) at the material point of time stood as:- A

“80(3) The Government shall, in consultation with the State Co-operative Union, make rules (either prospectively or retrospectively) regulating the qualification, remuneration, allowances and other conditions of service of the officers and servants of the different classes of societies specified in Sub-S. (1).” B

3. Rule 186(1) of the 1969 Rules, inter-alia,specifies:-

“186. Qualifications: (1) No person shall be eligible for appointment in any post unless he possesses the qualifications prescribed for the post as shownbelow:- C

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(ii) Other supervisory and Ministerial other than those requiring Technical Qualifications, the Starting pay which is below Rs.250.		S.S.L.C. or its posts equivalent and successful completion of the Sub Personal Co- operative Training Course (Junior Diploma in Co- operation)	D
xxx	xxx	xxx	E

4. Rule 187 thereof deals with reservation of in-service candidates, substance of which we have already referred to. This Rule as quoted in the judgment under appealreads:-

“187. Vacancies in Apex Society or Central Societies.- F

Notwithstanding anything contained in Rule 186, in appointments to apex societies or central societies, 50% of the vacancies shall be reserved to the employees of the member societies, of the respective apex society or central society as the case may be, having a minimum regular service of 3 years in any of the cadre and having the required qualification for the notified posts in the apex society or central society.” G

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A At the material point of time, when the employment notifications for the posts of clerk or cashier were published, they carried starting pay beyond Rs. 250/- per month. This fact is not in dispute.

5. The applications of the respondents in the first set of appeals as in-service candidates for the said posts were rejected. Such
B rejection orders were assailed in the High Court and those proceedings give rise to Civil Appeal Nos. 1802-1806 of 2010. The applicants did not possess graduation in those cases. In Civil Appeal No. 2822 of 2010, the candidates are appellants and come from the same category i.e. in-service non-graduates and their candidature was rejected on
C the ground of laches. The plea of the appellants (in-service non-graduate candidates) in Civil Appeal No. 2823 of 2010 also stood rejected mainly on the same ground, i.e. laches. There is also a transferred matter, registered as Transferred Case (C) No. 60 of 2014, in which the writ appeal by the Commission was transferred to this Court. The respondent-writ petitioner therein, who was not a
D graduate, was successful before the Single Judge. In the Transferred Case, however, the writ petitioner had a provisional degree of graduation when he applied for the said post.

6. Apart from these Civil Appeals, there are three Interlocutory Applications. I.A. No. 2 of 2012 has been taken out in connection
E with Civil Appeal No. 1802 of 2010, and this application has been filed by a set of candidates belonging to scheduled castes/scheduled tribes. They claim to have had high positions in the rank list and are aggrieved as they were not appointed as clerks in the District Co-operative Banks because of pendency of Civil Appeal Nos. 1802-1806 of 2010. These applicants want to intervene in the said Civil
F Appeal. In I.A. No. 82851 of 2021, also taken out in connection with the first set of five appeals, the applicants are in-service candidates who are not graduates. They seek to intervene in these appeals. The third Interlocutory Application (registered as I.A. No. 84340 of 2021) is by respondent no. 2 in Civil Appeal No. 1805 of 2010. It has been
G pleaded that he was included in the select list by KPSC but the appointment process was frozen in his case. Subsequently, he had participated in a different selection procedure and was appointed as a Class IV employee in District Co-operative Bank, Alappuzha. He has been promoted to the post of clerk in the year 2017. He wants his selection to be treated as per his earlier selection so that his
H seniority is fixed on that basis with consequential financial benefits.

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7. The scale of pay of different categories of posts have been shown in Appendix III to the 1969 Rules, which were framed under Section 109 of the Act. The said appendix reads:-

Sl. No.	Classification of the Society according to type	Classification according to financial position	Staff Designation	Pattern No. of Posts	Scale of pay Rs.
(1)	(2)	(3)	(4)	(5)	(6)
1.	Co-operative Banks		Cashier/ Custodian	2	210-15-285-20-385-25-510-30-720
	(b) State Co-operative Bank				160-10-200-15-290-20-450
			Clerk Grade I	25	150-10-200-15-290-20-410
			Clerk Grade II		
				3	
	A Class (b) Central Co-operative Banks (District Co-operative Banks)		Head Office (Common to all branches)		As fixed by Government from time to time
	B Class		Staff in Section		
			Clerks-	1 (Accounts & Billing) 3 (Personnel & General)	As fixed by Government from time to time
				1 (Planning &)	

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A				Developme nt	
				2 Loan and Advances	
B				1 Inspectio n	
	C Class			3 Industrial &Housing	As fixed by Government from time to
C			Staff for Branches	11(Total)	time
	GradeA		4. Clerk 5. Cashier		As fixed by Government from time to
D			4. Clerk 5. Cashier		time
	GradeB				As fixed by Government from time to
E			3. Clerk		time
	GradeC				As fixed by Government from time to
F					time

8. Several writ petitions were filed in the High Court of Kerala by the SSLC qualified in-service candidates over rejection of their candidature. The KPSC had taken the stand, which is also recorded in the Full Bench judgment, that since the starting pay to the subject-posts was beyond Rs.250/-, they ought to have had cleared graduation to be eligible for consideration to such posts. In the case of **Valsala Devi v. Leela Bhai** [(2002) 3 KLT SN 18], a Division Bench of the Kerala High Court had sustained the stand of the KPSC that the scale of pay as on the date of recruitment should be the criteria for the purpose of determination of the qualification in terms of Rule 186 (1). This case

dealt with the question of promotion and it was not a case of direct recruitment of in-service candidates. The same view was followed by the Division Bench in the case of **Public Service Commission v. Ramesan** [(2005) SCC Online Ker 297]. In this case, plea of in-service candidates for direct recruitment was rejected. The correctness of the view of the Division Bench in the case of **Ramesan** (supra), however, was doubted in Writ Petition Nos. 13921, 20776, 22072, 22211 and 23157 of 2006 filed before the High Court and these matters were referred to the Full Bench. In the judgment delivered on 24th October, 2007, which is under appeal, the Full Bench of the Kerala High Court upheld the contention of the in-service candidates (who were not graduates) to be considered for recruitment to the posts of clerk/cashier in different District Co-Operative Banks. Referring to various administrative orders and notifications which were relied on by the respective parties, the Full Bench held:-

“7. As held by this court in *Abdul Rasheed v. Kerala Public Service Commission* (2002 (3) KLT 405) & *Public Service Commission v. Abdul Rasheed* (2007 (3) KLT 881) P.S.C has no power to go beyond qualification prescribed by the rule. Hence, considering Rule 186, Appendix III to KCS Rules, Ext.P2 and Ext.P5 regulation as amended by Ext.P6, we were of the opinion that petitioners who had qualification of S.S.L.C with JDC and three years continuous experience are entitled to write the test under the 50% quota reserved for in-service candidates if they are otherwise eligible and rejection of their candidature for lack of qualification cannot be sustained. In *Ramesan’s* case (supra) Ext.P5 regulation was relied on as a rule made under Section 80(3), but it was not pointed out that Ext.P5 was amended by Ext.P6. Since Ext.P5 was amended by Ext.P6, *Ramesan’s* case is more applicable. Ext.P6 is still valid. We also note that by interim order of this court dated 3/10/2007 we have allowed the petitioners to participate in the test provisionally if test is conducted subject to the result of the writ petitions. It is submitted that the test is yet to be conducted. So, petitioners herein also shall be allowed to write the test, if they are not otherwise ineligible. Ext. P1 notification was published in the gazette dated 25.4.2006. More than one and a half years have passed. We make it clear that W.P.(C)13921/2006 & Connection those who have not approached this court will not get the benefit as they are guilty of laches”

A 9. There were certain parallel developments in the litigation course, which also we have to address in this judgment. The judgment in the case of **Valsala Devi** (supra) was carried up in appeal before this Court by the unsuccessful candidates. By an order passed on 29th January, 2008, the said appeal (Civil Appeal No. 6734 of 2003) was dismissed by a Coordinate Bench of this Court. The text of the order of this Court

B dismissing the said appeal is reproduced below:-

C “Having heard the learned counsel for the appellants at great length, we see no reason to interfere. The appeals being devoid of merit are accordingly dismissed. Civil Appeal Nos.917, 916 and 915 of 2008, SLP(C)Nos.25202/2005, 5723/2006 and 2703/2007.

Leave granted.

D Heard the learned counsel for the appellants at great length. The appellant has challenged the advertisement dated 26.10.1999 before the High Court. The learned Single Judge dismissed the petition on the ground of laches. The appeal before the Division Bench of the High Court met with the same fate. Hence these appeals.

E In the advertisement the qualification prescribed for the post of Cashier-cum-Clerk in the District Co-operative Societies is B.A./B.Sc./B.Com with HDC or JDC or B.Com with Co-operation or B.Sc. (Co-operation and Banking) of the Kerala Agricultural University. It is the contention of the counsel that in the relevant service rules the qualification prescribed is S.S.L.C. with J.D.C. and three years experience in the affiliated Primary

F Co-operative Society. According to the counsel the qualification prescribed in the Advertisement is contrary to the qualification prescribed in the service rules and discriminatory.

G We see no substance in the contention. Since, the advertisement has been issued for all the candidates, we do not see any substance in the contention of the appellant that he has been thereby discriminated. We see nothing wrong in prescribing higher qualification in the advertisement.

H These appeals being devoid of merit are accordingly dismissed.”

10. As we have already indicated, the Full Bench judgment was delivered on 24th October 2007. It, however, does not appear that the Full Bench decision was brought to the notice of the Coordinate Bench, when the appeal was heard and ultimately dismissed. There is no discussion on the Full Bench judgment of the Kerala High Court in the decision of the Coordinate Bench. We are referring to the said proceedings as on behalf of the KPSC, it has been contended that the decision of the Coordinate Bench would be a binding precedent so far as these appeals are concerned as the question that arose in the case of **Valsala Devi** (supra) was identical to the question of law involved in the case of **Ramesan** (supra) before the High Court. The Division Bench in the case of **Ramesan** had followed the decision of a Bench of equal strength in the case of **Valsala Devi** (supra).

11. Learned Counsel for the candidates have referred to a communication made by the Registrar of Co-operative Societies Trivandrum on 15th June, 1982, bearing no. E(M) 1.1062/82. This communication is quoted below:-

“The Scale of pay of various categories of posts in Appendix III to KCS Rules 1969 have been revised as per different executive orders of Government in respect of certain categories of Co-op. institutions such as Kerala state Co-op. Bank, Kerala Co-operative Central and Mortgage Bank Central Co-operative Bank, Primary Land Mortgage Banks and Primary Agricultural Credit Societies etc. The different Govt. orders as per which the scale of pay have been thus revised have no effect of amending the relevant rules (appendix III to KCS Rules). Steps are being taken to get the rules suitably amended.

It is therefore clarified that, pending amendment of the Rules, the qualification under Rules 186 of K.C.S. Rules for different categories of posts, have to be decided based on the pre-revision scales of pay which is prescribed in appendix III to the KCS Rules 1969.

Sd/-

For Registrar to Co-op.
Societies”

12. This was followed by a Regulation brought into effect by GO(MS)79/86/Coop. dated 30th September, 1986. The substance of this

- A GO(1986) would appear from para 13 judgment of the Division Bench of the High Court in the case of **Ramesan** (supra). It reads:-

B “When we go through G.O. No. 79/86/Co-op. dated 30-9-1986, we see that the Government have approved the rules appended to the said Government Order and has prescribed in R. 8 thereof separate qualifications for different categories of posts including that of Clerks/Cashiers notified in Ext. P-1. Qualifications are prescribed differently for direct recruitment and for promotion. The said Rules provide that “for Direct Recruitment the qualification for the post of Clerks/Cashiers will be BA, B. Sc. or B. Com. with H.D.C/J.D.C. or B. Com. with Cooperation or B. Sc. (Co-operation and Banking) of Kerala Agricultural University.”

C 13. Another service Regulation came into effect by G.O.(MS) 9/88/Co-op. dated 23rd March, 1988 and clause 8 of the 1986 Regulation dealing with qualification criteria was substituted. The Regulation has been annexed as “R1” to the counter-affidavit (at page 95 of composite paperbook) filed on behalf of the respondents in the first set of Civil Appeals. The first clause thereof specifies that these Regulations cover employees of District/Central Co- operative Banks of Kerala. In this annexure, however, the source of power under which the Regulation has been framed has not been disclosed. This clause reads:-

E “8. Qualifications.

“No person shall be eligible for appointment in any post noted below unless they possess the qualification prescribed for the post.

“(i) **Clerks/Cashier**

F “(a) For direct recruitment the qualification for the post of Clerks/Cashiers will be B.A., B.Sc., or B.com with H.D.C./J.D.C. or B.Com with Co- operation or B.Sc. (Co-operation and Banking) of Kerala Agricultural University.

G “(b) **In the case of the post reserved for employees of the affiliated Primary Co- operative Societies the qualification will be S.S.L.C. with J.D.C. and three years experience in affiliated Primary Co-operative Society.**

H “(c) The sub-staff of the Bank will be eligible for promotion as Clerk, if they possess S.S.L.C. with J.D.C. and minimum three years experience.” (emphasis added).

The in-service candidates primarily relied on these Regulations before the Full Bench. A

14. The State has filed a counter-affidavit to the special leave petition, which transformed into civil appeal on leave being granted. This counter affidavit has been affirmed by one B. R. Mohan Kumar, Law Officer to the Government of Kerala on 17th February, 2010. The State has prayed for dismissal of the special leave petition in this counter-affidavit. Referring to Rule 186, it has been stated therein that the same has to be decided based on the scale of pay as on 01.01.1974 which is prescribed in Appendix III to the said Rules. It is also the State's stand, as outlined in this affidavit, that qualification for the posts of clerk/cashier in the District Co-operative Banks has not been specifically prescribed in the said Rules. The GO of 1988 has also been referred to and basic stand of the State appears to be that there is no separate qualification prescribed in the recruitment rules for the District Co-operative Banks. B C

15. In this factual background we are to examine the rival cases. We shall first address the question as to whether the point of law raised in these appeals stands already concluded or not in view of the Coordinate judgment in the case of **Valsala Devi** (supra). D

16. The proceedings out of which that appeal arose related to an earlier advertisement dated 26th October, 1999. In these cases, however, we are primarily concerned with the advertisement of 2006. Moreover, the case of **Valsala Devi** (supra) was in relation to promotion whereas in the present set of proceedings, the vacancies are to be filled up by direct recruitment from in-service candidates. Thirdly, the reasoning on which the High Court had rejected the plea of the candidates was laches, as recorded in the Coordinate Bench judgment. Only in Civil Appeal No. 2822 of 2010, the appellants had applied for the posts in question both under the 1999 and 2006 advertisements. They were not successful before the High Court on the ground of having filed a belated writ petition, after delivery of the Full Bench decision. E F

17. The Coordinate Bench in the case of **Valsala Devi** (supra) had sustained the stand of the Commission on two grounds. The first was that the advertisement had been issued for all the candidates. The rationale appears to be that the appellant had not been discriminated against. Secondly, the Court found nothing wrong in prescribing higher qualification in the advertisement by the KPSC. G

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- A 18. So far as Civil Appeal Nos. 2822 and 2823 of 2010 are concerned, we do not find any error in the judgment of the High Court in rejecting the writ petition on the ground of delay. In disputes related to service, particularly in the field of recruitment, fate of a large number of candidates are involved. An aspirant for the posts advertised has to demonstrate promptitude in approaching the Court if in his perception,
- B the eligibility criteria is fixed beyond that stipulated by law. Delayed arrival of a candidate in the judicial forum can have chaotic consequences if decisions taken on the basis of the disputed eligibility criteria are required to be upset much after the selection process is over. The High Court has rightly exercised its discretion in dismissing the said two writ petitions.
- C We dismiss both the appeals.

19. So far as rest of the appeals are concerned, these arise out of the 2006 advertisement. The rejected candidates had instituted the proceedings immediately after their applications were rejected. Though the candidates did not challenge legality of the notified eligibility criteria,
- D there was no inordinate delay in questioning the Commission's action. So far as decision of the Coordinate Bench in **Valsala Devi** (supra) is concerned, there is no doubt that the said judgment was delivered in respect of a different advertisement, but the eligibility criteria remained substantially same. A plain reading of clause 186 of the 1969 Rules shows
- E that those from in-service category with base education of SSLC or equivalent are eligible for participation in recruitment process for those posts which have starting pay below Rs.250/-.

20. Before the Full Bench, main argument of the Commission was anchored on Rule 186 as well as to the GO of 1986 which has been referred to in the judgment as Exhibit P5. Submission of KPSC is that
- F the said Exhibit P5 was Rule made under Section 80 of the 1969 Act and this was not required to be published. But the said Rule was again altered by a GO dated 23rd March, 1988, and for in- service candidates, only three years experience in affiliated primary co-operative society with minimum qualification of SSLC with JDC was prescribed under revised
- G Rule 8(i)(b) of the Service Regulation.

21. As regards, source of power of making these regulations under respective GOs, KPSC had taken stand before the Full Bench that these were made under Section 80 of the said Act. Question has been raised about implementation of the said Rules as there was no consultation
- H with the State Co-operative Union for making these Rules. The

Constitution Bench decision in the case of **State Of U. P. v. Manbodhan Lal Srivastava** [(AIR) 1957 SC 912] has been referred to before us. In this case, the question of lack of consultation with Public Service Commission and the effect thereof in the light of the provisions of Article 320 of the Constitution of India was examined by the Constitution Bench. It was, inter-alia, held in this judgment:-

“We have already indicated that Article 320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a court of law, or entitle him to relief under the special powers of a High Court under Article 226 of the Constitution or of this Court under Article 32. It is not a right which could be recognized and enforced by a writ. On the other hand, Article 311 of the Constitution has been construed as conferring a right on a civil servant of the Union or a State, which he can enforce in a court of law. Hence, if the provisions of Article 311, have been complied with in this case — and it has not been contended at any stage that they had not been complied with — he has no remedy against any irregularity that the State Government may have committed. Unless, it can be held, and we are not prepared to hold, that Article 320(3)(c) is in the nature of a rider or proviso to Article 311, it is not possible to construe Article 320(3)(c) in the sense of affording a cause of action to a public servant against whom some action has been taken by his employer.”

22. The judicial exercise we have to undertake is to examine the applicability of the provisions of Rule 186 made under Section 109 of the 1969 Act and the scope of operation of the Regulations made under Section 80 thereof. We do not accept the argument that because these Regulations were made without prior consultation with the State Co-operative Unions, the Rules would not be implementable. KPSC itself relied on the said provisions to justify making of the GO of 1986. Moreover, following the Constitution Bench judgment in the case of **Manbodhan Lal Srivastava** (supra), we hold that lack of consultation as specified in Section 80(3) of the Act by itself would not render any Rule made thereunder a stillborn statutory instrument. KPSC’s own stand before the Full Bench appeared to be that rules made under Section 109 as also under Section 80 can co-exist. By issuing the 1982 order, the

- A Registrar of the Co-operative Societies had in substance suspended the applicability of the floor-level pay stipulation, directing that pending amendment of the rules the qualification under Rule 186 for different categories of posts have to be decided based on pre-revision scales of pay. On this count, the Commission's position is that it was not within the power of jurisdiction of the Registrar of Co-operative Societies to keep on hold the provisions of statutory rules. But this factor read with the GO of 23rd March, 1988 establishes that the State Government had intended to keep in abeyance the benchmark pay provision as specified in Rule 186 thereof. KPSC cannot ignore existence of these provisions giving their own interpretation to law and statutory instruments made under it.

23. The 1982 circular read with the Service Regulation for employees of the Co-operative Banks reflected that there was no requirement of having a benchmark pay level for the posts of clerk/cashier under applicable rules for non-graduate in-service candidates to apply for the subject- posts. Section 109 of the 1969 Act empowers the State to make rules for any class of societies. The 1988 Service Regulations, however, has been made specifically for employees of Districts/Central Co-operative Banks of Kerala. So, this is a special class for Co-operative Societies. The circular of 1982 also refers to certain categories of co-operative institutions such as Kerala State Co-operative Bank, Primary Land Mortgage Bank and Primary Agricultural Credit Societies etc. The Commission has accepted the Rule making power under Section 80(3) under the Act before the Full Bench while defending their action on the basis of the GO dated 30th September, 1986. The GO dated 23rd March, 1988 ought to be attributed to the same Rule making power which does not stipulate a floor-level pay for the advertised posts to enable non-graduate candidates' participation in the recruitment process thereof. For determining the educational qualification of the in-service candidates the State Government has proceeded by issuing various GOs without the benchmark pay stipulation for recruitment to the posts of clerk/cashier from in-service category and made SSLC qualification to be acceptable eligibility criteria. This practice developed under the 1969 Act is indicative of the fact that for in-service candidates applying for direct recruitment to the posts of clerk/cashier in District Co-operative Banks, the minimum eligibility criteria so far as qualification is concerned is SSLC or equivalent and the floor-

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level pay stipulation would not apply. This practise can be sustained applying principle akin to contemporaneous expositio. The provisions of Rule 186 relate to Co-operative Societies in general whereas the GO of 1988 relates to service Regulations of a sub-species- District/Central Co-operative Banks.

24. Now we shall turn to the Coordinate Bench decision delivered in the case of **Valsala Devi** (supra). On behalf of KPSC it has been argued that it is a binding precedent and our attention has been particularly drawn to the last paragraph of this judgment in which opinion of the Bench is reflected. There are, however three factors which we have to consider before we come to a conclusion as to whether the finding of the Coordinate Bench could be treated to be a binding precedent for us or not in this set of proceedings. First is that **Valsala Devi** (supra) considered the issue of promotion from feeder posts and was not a contest in relation to direct recruitment to the subject post. The second factor is that the circular of 1982 and the Service Regulation of 1988 were not considered in that decision. We have gone through the Bench decision from which the appeal arose and we did not find any discussion on these circulars and regulations. Thirdly, the Coordinate Bench did not have the advantage of considering the reasoning contained in the Full Bench decision, which is under appeal before us. The impact of statutory instruments in the form of GOs were not brought to the notice of the Coordinate Bench and hence not considered in the case of **Valsala Devi** (supra). The legality of the 1982 circular and the 1988 GO has not been questioned by KPSC. There is overlapping effect of the 1969 Rules and the GOs issued in exercise of power under Section 80 of the Act in the field of laying down qualification criteria for the subject-posts. But in such a situation, in our opinion it would be imprudent on our part to treat such overlapping zone as collision point to determine which provision carries greater legislative strength. In such circumstances, the Court has to take a harmonious approach and in extreme cases apply the “reading down” principle to reconcile inconsistent provisions flowing from different provisions having same statutory origin. The Kerala Co-operative Societies Rules empower the Government to make rules to provide for, inter-alia, qualifications for employment in certain classes of societies. Sub-clause (3) of Section 80 of the same statute permits the Government to make rules for regulating the qualifications, remuneration and other conditions of service. The Rules made under Section 80(3) are thus to

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- A address the detailed stipulations pertaining to conditions of service of the officers and servants of different classes of societies specified in Section 80(1).

25. Moreover, the authorities have been dealing with the qualification criteria at specific level for a particular class of society by issuing circulars and GOs over a period of time and in our opinion such implementation criteria has acquired enforceability status on the basis of usage at the administrative level. The 1982 Instruction has not been invalidated by any subsequent Government action or judicial order. Nothing on that count has been brought to our notice. The authorities appear to have carved out the posts of clerk/cashier in Co-operative Banks to subject them to the instruments made in various forms under Section 80(3) of the Act, whereas Rule 186 has general application. The 1988 Regulations relate to Co-operative Banks only, and source of power for making such Regulations appear to be Section 80(3) of the 1969 Act. Thus, in respect of such special category, Regulations made under Section 80(3) of the Act ought to prevail.
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26. In these circumstances, in our opinion, if an advertisement is made providing for eligibility criteria different from that statutorily prescribed, it would be open to the candidates to challenge the legality of such eligibility criteria. We do not think in the peculiar circumstances of this case it was permissible on the part of KPSC to prescribe qualification as minimum eligibility criteria which is beyond that prescribed by the statute. While it is true that none of the candidates have had challenged the legality of the qualification condition stipulated in the advertisement, majority have come to this Court at a time in close proximity to the publication of the employment notification. The judgment of the Coordinate Bench has not been decided on the points argued before us. Nor the Coordinate Bench had the advantage of going through the reasoning contained in the Full Bench decision though before the said judgment was delivered by the Coordinate Bench, the Full Bench decision was rendered. For these reasons, in our opinion, the Coordinate Bench decision would not constitute a binding precedent so far as the present set of proceedings is concerned. In these circumstances, we dismiss the five appeals of the Commission. The Writ Appeal No. 865 of 2013 which was filed by the Commission before the Kerala High Court against the judgment in WP (C) No. 21073 of 2011 dated 22nd February, 2013 being Transferred Case (Civil) No. 60 of 2014 - **Kerala Public Service**
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Commission v. Yesudas and Ors. is also dismissed. Notices were not issued in the two Interlocutory Applications, I.A. No. 2 of 2012 and I.A. No. 82851 of 2021. A

27. From Annexures “B” to I.A. No. 2 of 2012, we find that for taking further steps in the matter of appointment of the applicants thereof, the Commission was waiting for the position of SLP....(CC) No. 17182 of 2008 (now Civil Appeal No.1802 of 2010). In I.A. No.82851 of 2021 also, intending intervenors seek to support the respondent candidates’ stand in the main set of appeals. We did not consider it necessary to issue notice at this stage as the applicants in these interlocutory applications are mainly supporting the respondents/writ petitioners in the main set of five appeals. As we have upheld the stand of the respondent candidates, we do not think their intervention is necessary. Appropriate steps shall be taken by the Public Service Commission on the basis of performance or position in the selection process of these applicants for intervention. So far as the I.A. brought by Respondent No. 2 (i.e. No.84340 of 2021) in Civil Appeal No.1805 of 2010 is concerned, we find that he has participated in a different selection process and had been appointed as a class IV employee in a District Co-operative Bank on the basis of the Commission’s advice dated 6th October, 2012. He has been further promoted to the post of clerk by an order dated 5th June, 2017. It is pleaded in his I.A. that he is continuing to work in that capacity. As he has chosen a career path different from that which is subject matter of the present set of appeals of connected matters, no relief can be granted to him by antedating his promotion. This application is rejected. B C D E

28. All other connected applications shall stand disposed of. F

29. There shall be no order as to costs.