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W.P.(C). No.10885 of 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

THURSDAY, THE 17TH DAY OF JULY 2025 / 26TH ASHADHA, 1947

WP(C) NO. 10885 OF 2022

PETITIONER:

NEYYATTINKARA URBAN CO-OPERATIVE BANK LTD.NO.931,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, HEAD
OFFICE, NEYYATTINKARA, THIRUVANANTHAPURAM-695121.

BY ADVS. SRI.R.T.PRADEEP
SMT.M.BINDUDAS
SRI.K.C.HARISH

RESPONDENTS:

- 1 STATE COMMISSIONER FOR PERSONS WITH DISABILITIES
OFFICE OF STATE COMMISSIONER FOR PERSONS WITH
DISABILITIES, ANJANEYA, T.C.9/1023(1), GROUND FLOOR,
SASTHAMANGALAM, THIRUVANANTHAPURAM-695010.
- 2 KUMAR.A,
C/O SMT.LEKHA.P, PLANKALAVILA VEEDU, KIDARAKUZHI,
KIDARAKUZHI (P.O), THIRUVANANTHAPURAM-695523.

BY ADVS. SMT.ARSHA SATHEESAN
SHRI.JIJUMON H.

OTHER PRESENT:

GP- NIMA JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17.07.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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‘CR’

VIJU ABRAHAM, J.

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Dated this the 17th day of July, 2025

JUDGMENT

The above writ petition is filed seeking to quash Ext.P4, whereby a direction was issued by the 1st respondent to appoint the 2nd respondent as peon in a permanent vacancy, within 30 days on receipt of a copy of the order.

2. The petitioner is an Urban Co-operative Bank coming under the regulatory regime of Banking Regulation Act and Kerala Co-operative Societies Act, 1969. The 2nd respondent, who is a physically disabled person, was employed as a peon on a daily wage basis in the petitioner bank. Later, his service was terminated. Thereupon, Ext.P1 petition was filed by the 2nd respondent before the 1st respondent seeking a direction to the petitioner bank for reinstatement in service. The 1st respondent called upon the petitioner for a hearing, and the petitioner submitted Ext.P3 written



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submission before the 1st respondent. The 2nd respondent produced a letter issued by the Assistant Registrar of Co-operative Societies (General) addressed to the petitioner to consider the 2nd respondent in any vacancy arising in future on humanitarian grounds. Thereafter by Ext.P4 order the 1st respondent directed the petitioner to appoint the 2nd respondent as peon on regular basis in the service of the petitioner within 30 days from the date of receipt of copy of the order and in case the post of peon is absent in the petitioner bank, he shall be accommodated on supernumerary basis and the action taken report shall be filed as contemplated under Section 81 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act, 2016'). The petitioner would submit that as part of the installation of the core-banking solution, compilation of the data of existing customers of the bank was required, for which Data Entry Operators were engaged on a daily wage basis. The 2nd respondent made an application, and he was engaged as a Data Entry Operator on a daily wage basis. The entry of data of customers of the bank was completed in the year 2019, and the payment of daily wages to the tune of Rs.11,79,450/- was



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objected to in the audit. Thereupon, the Board of Directors of the bank, as per Ext.P8 resolution, decided to disengage the 10 daily rated employees from 31.08.2019. One of the daily wage employees, thus disengaged, approached this Court by filing W.P.(C) No.34670/2019 and this Court, as per Ext.P9 judgment, disposed of the writ petition relegating the petitioner therein to approach the Co-operative Arbitration Court under Section 69 of the Kerala Co-operative Societies Act 1969 for redressal of her grievance. The petitioner would submit that Ext.P4 is vitiated by total lack of jurisdiction and the Urban Co-operative Bank will not come under the definition of 'appropriate Government' as defined under Section 2(b) of the Act, 2016 and reliance was placed on the judgment in ***Thalappalam Service Co-operative Bank Ltd. v. State of Kerala [2013 (4) KLT 232(SC)]*** in support of the said contention. Therefore, the petitioner sought interference on Ext.P4 order passed by the 1st respondent.

3. The 2nd respondent has filed a detailed counter affidavit. The learned counsel for the 2nd respondent would submit that in Ext.P4 a direction was issued to the petitioner bank to submit an action taken



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report as contemplated under Section 81 of the Act, 2016 and going by Section 3 of the Act, 2016, no person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim. Going by Section 80 of the Act, 2016, which defines the functions of State Commissioner includes to identify, *suo motu* or otherwise, provision of any law or policy, programme and procedures, which are inconsistent with this Act, and recommend necessary corrective steps and also to enquire, *suo motu* or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action. Relying on the judgment of the Apex Court in ***Vikash Kumar v. UPSC and Ors., [2021 SCC Online SC 84]***, the learned counsel for the 2nd respondent would contend that the State, as also private parties, are mandated to provide reasonable accommodation to persons with disabilities and therefore the contention of the bank that they will not come under the purview of Act 2016 is without any basis. The



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learned counsel would further contend that after the termination from service, a representation was submitted before the Assistant Registrar (General), Neyyattinkara. As per Ext.R2(a), a direction was issued to the petitioner to consider regularisation of the 2nd respondent in the upcoming vacancy on humanitarian grounds. The Joint Registrar (General) Thiruvananthapuram has also, as per Ext.R2(b), issued similar directions. In defiance to Exts.R2(a) and R2(b) directions, no steps were taken to accommodate the 2nd respondent in a regular vacancy. It is further submitted by the learned counsel appearing for the 2nd respondent that the contention of the learned counsel for the petitioner that the Co-operative Bank will not come within the purview of the 'appropriate Government' obtaining in Section 2(b) of the Act, 2016 and the reliance placed by the learned counsel for the petitioner in ***Thalappalam Service Co-operative Bank Ltd.*** case cited supra is without any basis. The issue involved in that case is as to whether the bank comes within the definition of 'public authority' as defined in the provisions of the Right to Information Act, 2005, wherein the Court has held that the Co-operative Bank will not come within the definition of 'public



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authority'. But the learned counsel for the 2nd respondent would submit that the applicability of the Act, 2016 is not restricted to the Government establishment alone, and reliance was placed on Section 2(i), which defines 'establishment' as including a Government and a private establishment. Therefore, the learned counsel for the 2nd respondent would submit that the petitioner bank is also liable to implement the provisions of the Act, 2016. A reference was also made to the Rights of persons with Disabilities Rules, 2017(hereinafter referred to as 'the Rules, 2017') and contended that it is the duty of the head of the establishment to ensure that the provision of sub-section (3) of Section 3 of the Act 2016 are not misused to deny any right or benefit to persons with disabilities covered under the Act 2016 and if the head of the Government establishment or a private establishment employing twenty or more persons receives a complaint from an aggrieved person regarding discrimination on the ground of disability, he shall initiate action in accordance with the provisions of the Act and if a complaint is preferred by the aggrieved person before the State Commissioner for persons with disabilities, the complaint shall be



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disposed of within the time limit provided as per the Rules. The learned counsel, relying on Rule 8 of Rules, 2017, submits that every establishment shall publish an equal opportunity policy for persons with disabilities. Having not done so, the learned counsel appearing for the 2nd respondent would submit that the 1st respondent rightly interfered in the matter and issued Ext.P4 direction, and the same is not liable to be interfered with.

4. I have heard the rival contentions on both sides.

5. The only question to be considered is as to whether the 1st respondent is empowered as per the Act 2016 to pass an order in the nature of Ext P4 directing the petitioner bank to appoint the 2nd respondent in a regular vacancy as peon and the consequential direction to create a supernumerary post to accommodate the 1st respondent if vacancies are not available in the petitioner bank. Admittedly, the 2nd respondent was appointed on a daily wage basis. Later, by Ext.P8, the Director Board of the Bank decided to disengage 10 daily wage employees, and the 2nd respondent was disengaged along with others. I am of the view that the 1st respondent, invoking the power under the Act, 2016, has no



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authority to issue such a direction to the petitioner bank to appoint the 2nd respondent in a permanent post of peon in the petitioner bank. The 2nd respondent cannot be appointed in a permanent vacancy without undergoing the process of selection, especially when the petitioner bank is an Urban Co-operative Bank coming under the regime of the Banking Regulation Act 1949 and the Kerala Co-operative Societies Act, 1969. Similar issue as to the powers of the State Disability Commissioner, the 1st respondent to issue direction to give appointment was considered by this Court in **Kerala Public Service Commission, Tvm v. State Disability Commissioner, Tvm, [2023 (3) KHC 569]**. This Court, with specific reference to Section 80 dealing with functions of State Commissioner, held as follows:

"19. S.80 of the Act, 2016 lays down functions of State Commissions. S.80 reads as follows:

80. Functions of State Commissioner.-- The State Commissioner shall--
(a) identify, suo motu or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;
(b) inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;



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- (c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;*
- (d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;*
- (e) undertake and promote research in the field of the rights of persons with disabilities;*
- (f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;*
- (g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;*
- (h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and*
- (i) perform such other functions as the State Government may assign.*

20. S.81 provides that whenever the State Commissioner makes a recommendation to an authority in pursuance of S.80(b), that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of recommendation. The State Commission has been given certain powers under S.82 to summon and enforce the attendance of witnesses, to require discovery and production of documents, to requisition public records from any court or office, to receive evidence on affidavits and to issue Commissions for examination of witnesses. A reading of S.80 to 83 would show that the State Disability Commissioner has power only to advise and make recommendations to appropriate authorities. In Ext.P1, the 1st respondent - Disability Commissioner has exceeded its jurisdiction and has given mandatory directions to effect appointment of the 2nd respondent as Legal Assistant Grade - II in the Law Department. Ext.P1 therefore is not legally sustainable.”

This Court considered the said issue in **Kerala Public Service Commission, Tvm. v. State Commissionerate for Persons with Disabilities, Tvm, 2023 (1) KHC 429**. Paragraphs 7 and 8 of the



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said judgment read as follows:

“7. Therefore, on a reading of S.80 of the Act, 2016 it is clear that the powers of the Commissioner are confined to what is conferred under S.80. S.81 of the Act, 2016 further makes it clear that whenever the State Commissioner makes a recommendation to an authority in pursuance of Clause (b) of S.80 of the Act, 2016, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation. The case put forth by the KPSC is that no notice was issued to the KPSC. When the representation submitted by the second respondent was forwarded by the State Government to the Commissioner, the Commissioner has unilaterally passed the order and issued the directions. On a perusal of S.80, it is clear that the Commissioner under the Act, 2016 is not vested with any such powers. If the Commissioner wanted to consider the grievances highlighted in the representation submitted by the second respondent, it ought to have made a recommendation to the KPSC as empowered under S.80 of the Act, 2016. Therefore, it is clear that the Commissioner has over reached the powers conferred on it under the Act, 2016.

8. The deliberation of the facts, law and circumstances made above would make it clear that Ext.P1 order passed by the Commissioner is without any jurisdiction and power conferred on the Act, 2016. The Commissioner, in my view, is not a Civil Court, even though powers are conferred on the Commissioner to exercise the powers conferred on the Civil Court for summoning and enforcing the attendance of witnesses etc., and for other consequential aspects, in accordance with S.82 of the Act, 2016. In that view of the matter, I am of the considered opinion that Ext.P1 order suffers from vice of arbitrariness and illegality, liable to be interfered with under Art.226 of the Constitution of India.”

6. In light of the discussion as above, I am of the opinion that the 1st respondent exceeded its jurisdiction in issuing Ext.P4 order and therefore, the same is liable to be interfered with. I am not



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entering a finding to the effect that the 1st respondent has no power to examine a complaint regarding illegal termination of the 2nd respondent from service while working as a daily wage employee, but no such power is extended to the 1st respondent as per the Act, 2016 to issue a direction to the petitioner bank to appoint the 2nd respondent in a permanent post of peon. Further, if the 2nd respondent has a case that he had been illegally terminated, his remedy is to approach the Co-operative Arbitration Court, under Section 69 of the Kerala Co-operative Societies Act, 1969 as held by this Court in Ext.P9 judgment, or any other appropriate Forum.

In view of the above, Ext.P4 order is set aside, leaving open the right of the 2nd respondent to challenge the order of termination, in accordance with law. Granting such liberty, the writ petition is disposed of.

Sd/-

**VIJU ABRAHAM
JUDGE**

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APPENDIX OF WP(C) 10885/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF PETITION DATED 20.4.2021 BY 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.
Exhibit P2	TRUE COPY OF NOTICE DATED 22.4.2021 OF 1ST RESPONDENT.
Exhibit P3	TRUE COPY OF WRITTEN SUBMISSION DATED 27.1.2021 BY PETITIONER BEFORE THE 1ST RESPONDENT
Exhibit P4	TRUE COPY OF ORDER DATED 26.2.2022 IN O.P.NO. (R.PWD) NO.1593/S2/2021 BY 1ST RESPONDENT
Exhibit P5	TRUE COPY OF APPLICATION OF 2ND RESPONDENT DATED 2.7.2012 WITH THE ACCOMPANYING CERTIFICATES.
Exhibit P6	TRUE COPY OF PROFIT AND LOSS ACCOUNT FOR THE FINANCIAL YEAR 2017-2018.
Exhibit P7	TRUE COPY OF AUDIT CERTIFICATE FOR THE YEAR 2019-2020.
Exhibit P8	TRUE COPY OF RESOLUTION OF THE BOARD OF DIRECTORS OF THE BANK DATED 31.8.2019.
Exhibit P9	TRUE COPY OF JUDGMENT DATED 20.01.2020 IN W.P(C)NO.34670/2019.

RESPONDENT EXHIBITS

Exhibit R2 (a)	The true copy of the Letter No: Neyya. 2077/19 of the Assistant Registrar (General) Neyyattinkara dated 15.10.2019
Exhibit R2 (b)	The true copy of the Letter No.JRGTVM/1449/2021-CRB(1) of the Registrar (General) Thiruvananthapuram dated 10.02.2022