(2002) 12 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : SWP 80 of 2002

Bachan Dass and Others	APPELLANT
Vs	
State and Others	RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Citation : (2003) 1 JKJ 769

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : V.R. Wazir and S.K. Shukla, for the Appellant; A. Parihar, Addl. A.G., MK Bhardwaj, TK Raina, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Doabia, J.—An order issued by the Registrar, Cooperative Societies, Jammu and Kashmir, Jammu on 16th Jan' 2002,

Whereby the age of retirement of the employees working with the Cooperative Societies and more particularly the employees of the Kashmir

Cooperative Mercantile Bank Ltd, District Central Cooperative Bank, Baramulla, District Central Cooperative Bank Ltd, Anantnag, Jammu and

Kashmir State Cooperative Bank Ltd, Srinagar and Jammu Central Cooperative Bank Ltd, Jammu, has been reduced from 60 to 58 years, is the

subject matter of challenge in this petition. The above notification makes mention of the fact that the banks whose description is given in para 9 of

the order have conveyed their consent to the reduction in the retirement age from 60 to 58 years and whereas some banks have not given their

consent. It is precisely for this reason, order dt 16th Jan' 2002 is passed.

2. Before noticing the arguments which have been raised, it would be apt to

notice some basic facts.

3. The Cooperative Societies were initially governed by the Jammu and Kashmir Cooperative Societies Act of 1960 (here-in-after referred to as

the Act). It is in the exercise of power conferred by Section 124 of the Act of 1960, the Rules known as Jammu and Kashmir Cooperative

Societies Service Rules of 1988, were framed. These are also known SRO 233. A perusal of Rule 13 of these Rules would make it apparent that

the age of retirement has been fixed as 58 years. As this Rule has some relevance for this litigation, this is being reproduced below:-

13. Retirements and resignation: (1) Persons appointed to the service shall retire on attaining the age of 58 years or on the date the Society in

which he was initially appointed, ceases to function. In the event of the society being wound up, the services of the employee of that Society may,

as far as practicable be utilised in any other Society by the Selection Board.........

4. The further fact which is required to be taken note of is that various Cooperative Banking institutions have framed their own services rules. So

far as the Jammu Central Cooperative Bank Ltd, is concerned, it has framed the Rules known as the Jammu Central Cooperative Bank Ltd.

Jammu's Employees service Rules, 1997. It is stated that under these Rules, the age of retirement has been fixed at 60 years. Reliance is being

placed on Rule 39. For facility of reference, this Rule is being reproduced below:-

Age of Retirement:

All employees shall compulsorily retire from the services of the Bank at their attaining the age of 60 years. Extension in the retirement age however

may be granted by the Board in individual cases subject to a maximum of two years, where it feels that the continuation the officer shall be in the

larger interest of the Bank"".

5. Thus, so far as the Rule position is concerned, under SRO 233, the age of retirement of employees of Cooperative Societies has been fixed at

58 years but some of the Banking Cooperative Societies have their own Rules and they have fixed the retirement age at 60 years.

6. It is stated by the that in order to bring uniformity, the Registrar Cooperative Societies, issued notice to various Cooperative Societies. This is

Annexure D with writ petition filed by Bachan Dass and others. The Societies were called upon to make changes in the Services Rules and bring the age of retirements to 58. Some of the Banking Cooperative Societies as noticed above have made the amendment, the others have not done

so. It was precisely this reason which led the Registrar, Cooperative Societies to issue order dt. 16th Jan' 2002. This order has been issued in the

exercise of power, which is said to be conferred upon the said Officer under the Jammu and Kashmir Cooperative Societies Act of 1989. Though,

the section under which the power has been exercised has not been mentioned but apparently, this has been done u/s 176. It is because it is this

section which confers power on the Competent Authority to make amendment in the Rules. It is thus the reduction in the age of retirement which is

subject matter of challenge in these petition and the challenge is being made interalia on the following grounds:-

i/ That once the age of retirement has been fixed at 60 years then a right comes to vest in the employees and the age of retirements cannot be

reduced to 58;

ii/ That if the age of retirement was to be reduced, then what was required to be done was to see that the Rules framed by the Banking

Cooperative Societies which according to the petitioner are in the shape of Bye-laws are also required to be amended or ordered to be amended

in terms of Section 10 of the Act of 1989. As this section has not been resorted to, therefore, the corresponding amendment made at the instance

of Registrar, Cooperative Societies, would not be valid;

iii/ That so far the exercise of power by the Registrar, Cooperative Societies, if it is sought to be brought within the purview of Section 176 is

concerned, then according to the counsel for petitioners, there has to be a prior publication. It is urged that what is required to be done at the time

of initial framing of Rules would apply when amendments are made in the Rules. Thus it is urged that as this has not been done, the power so

exercised would not be a valid power.

7. In addition to the above legal arguments, it is urged that even if the order dt. 16th Jan' 2002 is taken note of and it is taken as amendment of

SRO 233, that will not affect the Banking Cooperative Societies. For this, it is urged that SRO 233 is not applicable to Banking Cooperative

Societies. For this purpose, the definition of term ""Society"" as occuring in SRO 233 is being relied upon. It is urged that under Rule 2 (4), there is no mention to Banking Cooperative Societies, and therefore, the Rule in question would not be applicable to a Banking Institution. It is submitted

that this argument would get a support on the perusal of Rule 6 which deals with the method and manner in which selection is to be made. It is

submitted that the District Selection Board, which is referred in Rule 6 has got nothing to do with the appointment of Banking employees. It is in

these circumstances urged that SRO 233 is not applicable to the Banking Cooperative Societies and that even if some amendment is made in the

Rules, that would not apply to Banking Cooperative Societies.

8. It is further stated that so far as the Banking Cooperative Societies are concerned, the State Government was aware of what is being urged to

support the argument raised in these petition. It is precisely for this reason, the Government was contemplating to have a common cadre so far as

the key posts of the Cooperative Bank of the State are concerned. For this, reliance is being placed on two Orders dt. 6th Dec' 88 and 9th Jan'

90. These are being retained on the file as Annexure C.1 and C.2.

9. It is further submitted that so far as SRO 233 is concerned, the employees serving in connection with the affairs of the Banking Cooperative

Societies never became the members of the service which came to be constituted in pursuance of SRO 233. For this reliance is being placed on

definition of ""Service"" as contained in Rules. The second limb of this argument is that the appointment to the service is to be made in terms of Rule

4. This Rule having not been applicable to the Banking Cooperative Societies, and therefore, question of applying SRO 233 to the Banking

Cooperative Societies would not arise. It is further submitted that the respondents were well aware of the fact that SRO in question is not

applicable to the Banking Cooperative Societies and it was precisely for this reason, for almost 14 years, this SRO was never made applicable to

the employees of the Cooperative Societies. In addition to this, it is submitted that another SRO 404 of 2001 has been promulgated. It is

submitted that under the Rules referred to above, the societies have been empowered to frame bye- laws vis-a-vis method of recruitment and the

conditions of service. It is submitted that as these Rules have come in-force on 20th Sept' 2001, therefore, the SRO 233 would not be applicable.

It is submitted that the age of superannaution is a condition of service. For this reliance is being placed on the decision of the supreme Court on

AIR SC 116. It is also submitted that the Registrar Cooperative Societies having approved the Service Rules which fix the age of retirement at 60,

therefore, those Rules would continue to operate notwithstanding the order which has been passed. It is submitted that u/s 10, the only power

which is vested in the Registrar. Cooperative Societies is to call upon a society to amend the bye- laws and in case, the Society fails to do so, then

the power can be exercised by the Registrar, Cooperative Societies. It is submitted that the power cannot be exercised as an employer and he

cannot give directions that a particular employee be retired. It is also urged that the power to regulate the affairs of a Cooperative Society including

the Banking Cooperative Society vests in the Board of Directors and this power cannot be exercised by issuing the directions of the nature as have

been issued by the Registrar Cooperative Societies. For this reliance is placed on bye-law 21 of the Bye-laws. In addition to this, it is urged that

the age of retirement could not be changed from 60 to 58. It is submitted that when the age was fixed at 60, the fact that employees of the

Cooperative Banks do not enjoy pensionary benefits was taken not of. It is submitted that those employees who are already in service cannot be

thrown out. According to the petitioners, this would amount to amending the Rules giving retrospective effect and change in service conditions on

the basis of which the employees have been appointed.

10. The learned counsel for the respondents submits that so far as SRO 233 is concerned, that has been held to be applicable to the Banking

Cooperative Societies. Forthis reliance is being placed on a Division Bench of this Court in LPA (SW) 557/99 titled Ved Paul v. Citizen's

Cooperative Bank and Ors. It is submitted that once a view has been expressed by the Division Bench of this Court that SRO 233 is attracted and

governs the service conditions of the employees of Banking Cooperative Societies, then that decision would be binding. It is stated that this

situation was duly taken note of. Reference is being made to para 4 of the order passed by the Registrar Cooperative Societies. It is stated that the

power has been rightly exercised.

11. Before examining the arguments put across by the parties, it would be apt to notice that an employee has no vested right to content that the age

of retirement should be fixed at a particular point i.e whether it should be 58 years or 60 years. This is a matter on which a decision has to be taken

by the appointing authority and if the concerned authority which is to fix a particular age of retirement or chooses to alter the same, then no

exception can be taken to the power so exercised. This aspect of the matter has been considered by the Supreme Court of India in the case

reported as K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, . What is said in this regard is being quoted below:-

The power to issue an ordinance is not an executive power but is the power of the executive to legislate. The power of the Government to

promulgate an ordinance is contained in Article 213 which Occurs in Chapter IV of part VI of the Constitutions. The heading of that Chapter is

Legislative Power of the Governor"". This power is plenary within its field like the power of the State Legislature to pass laws and there are no

limitations upon that power except those to which the legislative power of the sate legislature is subject. Therefore, though an ordinance can be

invalidated for contravention of the constitutional limitations which exist upon the power of the State legislature to pass laws it cannot be declared

invalid for the reason of non application of mind, any more than any other law can be. An executive act is liable to be struck down on the ground of

non application of mind. Not the act of Legislature........

The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reason for passing a law are those that are

stated in the Objects and Reasons and if, none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a

given case, has an ulterior motive in moving a legislature, that motive cannot render the passing of the law malafide........

12. An argument was raised before the Supreme Court that reduction in age would amount to removal from service and would be hit by the

provisions of Article 311 of the Constitution of India.

13. This argument was rejected by making following observations:-

This argument has to be rejected because our conclusion that the reduction of the age of retirement form 58 to 55 in the instant case is not hit by

Article 14 or 16, since it is not arbitrary or unreasonable in the circumstances of the case, But, apart from this position, we find it difficult to appreciate how the retirement of an employee in accordance with a law or rules regulating his conditions of service can amount to his ""removal

from service. It is well settled that Article 311(2) is attracted only when a civil servant is reduced in rank, dismissed or removed from service by

way of penalty, that is to say, when the effect of the order passed against him in this behalf is to visit him with evil consequences.

14. After taking note of several decisions, it was further observed as under:-

It was held by this Court that the terminaton of service of an employee on account of his reaching the age of superannuation does not amount to

his removal from service with in the meaning of Article 311(2)......

In para 35 it was further observed:

.... There is no substance in the latter argument because, if a rule of retirement can be deemed to deprive a person of his right to livelihood, it will

be impermissible to provide for an age of retirement at all. That will be contrary to public interest because the State cannot afford the luxury of

allowing its employees to continue in service after they have passed the point of peak performance Rules of retirement do not take away the right

of a person to his livelihood; they limit his right to hold office to a stated number of years.....

15. In view of the above, to say that the action of respondent authorities in reducting the age of retirement was not justified is an argument which

cannot be accepted.

16. The only question which would be required to be gone into is as to whether the age of retirement in the Rules is to prevail or its is the age

which has been fixed in the bye-laws which shall have precedence.

17. The argument which requires serious consideration is as to whether Rule 13 of the Rules contained in the Jammu and Kashmir Cooperative

Societies Service Rules of 1988, which fixes the age of retirement at 58 years and which rule standes noticed above, would have over-riding effect

on the bye-laws. In this regard, it would be apt to notice the status which a bye-law enjoys. The bye-laws provide a method and manner in which

the affairs of a Society or an Association or a Corporation or the like is to govern the internal governance. If these bye- laws run counter to the

Statute, then these cannot be given effect to. To term Bye- law has been defined both under the Jammu and Kashmir Cooperative Societies Act

1960 and also under the Act of 1989. The terms means bye-laws for the time being in force which have been registered under this Act and

includes amendments thereto which have been duly registered under this Act. A bye- law is an ordinance made by a local authority affecting the

public or some portion of the public imposed by some authority clothed with some statutory power ordering something to be done or not to be

done and accompained by some sanction or penality for its on-observance. A bye-law even though made by and applicable to a particular body is

still a law and differsin nature from a provision made on or limited to particular occasions. It is a rule made prospectively to be applied whenever

the circumstances arise for which it is intended to provide see Kurse v. Johnson 1808 QB 91. If a committee has the power to frame bye-laws

then these are valid even if the section under which is framed is wrongly mentioned. See Afzal Ullah Vs. The State of Uttar Pradesh, .

18. A bye-law may be enforced if it is legally valid for determing the validity of bye-law, following criteria may be seen:-

i/ Whether it is reasonable or fair.

ii/ Whether it is issued in accordance with the procedure laid down in the Act.

iii/ Whether it is in consonance with the spirit of the Act.

iv/ Whether it is valid and is not repugnant to the fundamental rights.

19. The Bye laws framed under the act have to be consistent with the Act and these must be published in accordance with the law. See Raja Sugar

Co. v. Municipal Board, Sampur AIR 1965 SCC 895.

The status of a bye-law was examined by the Supreme Court in the case reported as Co-operative Central Bank Ltd. and Others Vs. Additional

Industrial Tribunal and Others, . It was observed as under:-

We are unable to accept the submission that the bye-laws of a Cooperative Society framed in pursuance of the provisions of the Act can be held

to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to makes rules,

the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the Statute. That principle, however, does not

apply to bye-laws of the nature that a Cooperative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected

by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the

bye-laws would be binding between the society and the employees just in the same manner as conditions of service laid down by contract between

the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society those

conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind like conditions of

service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the

Articles of Associations of a Company incorporated under the companies Act and such Articles of Association have never been held to have the

force of law.

20. Again the rules or bye-laws cannot run counter to statute. See Ziley Singh, etc. Vs. Registrar, Cane Co-Operative Societies and Others, . The

bye-laws occupy a position inferior to a rule and bye-law cannot travel beyond the domestic sphere of a Society. Such was the view expressed by

the Allahabad High Court in the case reported as Sobhnath Vs. Raj Kishore and Others, . It is in the light of above position of law, Rule 13

contained in SRO 233 and the bye-laws or for that matter the bye-law framed by the Jammu Central Cooperative Bank is required to be

examined.

21. An argument has been put across that SRO 233 is not applicable to the Banking Cooperative Societies. So far as this aspect of the matter is

concerned, this is no-longer res-integra. The fact that SRO 233 is applicable to the Banking Cooperative Societies is supported by the view

expressed by a Division Bench of this Court in the case of Ved Paul Sharma v. Citizen's Cooperative Bank and Ors. 2000 SLJ 117. In the above

case, reference was made to another decision of this Court reported as 1998 KLH 83, Kuldip Raj v. Citizen Cooperative Bank Ltd. Against this

decision, an appeal was prefferred before the Supreme Court of India. That appeal was dismissed. As the decision given in Ved Paul Sharma's

case (Supra) has some bearing, it is being taken note of. para 8 of the judgement is relevant and is reproduced below :-

One of the argument raised in this appeal is that on the same point this court in Civil Second Appeal preferred by an employee has observed that

it is SRO 233 i.e Rules of 1998 would apply

This opinion has been expressed by this court in CSA 35/94 since reported as 1998 KLJ 83. Thus two question arise:

i/ As to whether SRO 233 would be applicable to the Bank Employees; and

ii/ Even if it be presumed that SRO 233 is not applicable even then the Bank is required to hold inquiry before terminating the services of its

employees....

22. Before dealing with the question as to whether SRO 233 would be applicable to the Banking Cooperative Societies, what is said in paras

12,13,14 and 15 of the judgment in Ved Paul Sharma's case (Supra) is being reproduced below:-

Further question would arise that is it possible to grant the aforementioned relief when the action is taken by the Bank which is a Cooperative

Society and which is normally not amenable to writ jurisdiction. It is here the question arises as to which of the rules would be applicable to the

case of the appellant. If the statutory rules of 1988 are applicable and if some action is taken in breach of these rules then it is definitely within the

competence of this court to issue a writ asking the authorities to proceed and remain within the para-meters of the rules referred to above. If this is

not done and if the rule is violated then a writ can always be issued. Therefore, the question as to whether the rules of 1988 are applicable or not is

now being examined. The rules namely, the J&K Cooperative Societies Rules of 1988 lays down in categorical terms that these rules shall be

applicable to all societies which are at present functioning or which would be created in future. This is so said in Rule I (ii) of the rules. If this rule is

taken note of then it is apparent that the rule in question would apply to all the societies in question and also to those societies which are to be

created..

13. Learned counsel appearing for the writ petitioner bank, submits that the rules of 1988 would apply to that service which is defined in Rule 2

(m) of the Rules. This rule lays down:

(m) 'service' means the Jammu and Kashmir Cooperative Societies Service.

14. It is urged that this service has not been created and therefore, the rules in question would not be attracted to the facts of this case.

It be seen that the findings recorded in the order under appeal is that these rules would be applicable to such societies which are directly controlled

by the Government and these rules would have no applicability to the employees of the petitioner Bank. This observation is not correct. Rule 24

contain a note. This note reads as under:-

Note:- The term other societies means Cooperative Societies, Cooperative Industrial Societies, Cooperative Bank and the like.

15. In view of the above note as appended to Rule 24, it can safely be said that the Cooperative Bank would normally fall within the purview of

the rules in question and therefore under Rule 19 the manner and method in which the punishments are to be imposed would be applicable to the

Bank in question. As a matter of fact this question was precisely considered by this Court in Civil Second Appeal No. 35 of 1994.

23. The question as to whether the service conditions of the appellant would be governed by the Citizen Cooperative Bank Employees Service

Rules 1981 or by the Rules brought on the statute book vide SRO 233 was gone into......... Taking note of what is contained in Rule 24 of 1988

rules, it was observed that service conditions of the employees of the Bank would be governed by the Rules framed under SRO 233. The

operative portion of the judgment is being noticed as under:-

Now the question which remains is whether a Cooperative bank is a Cooperative Society or not and in support of the contention that it is a

creature of Cooperative Bank Act and registered under the said Act no law has been produced. Rather, the Citizen's Cooperative bank Ltd.

Employees Service Rules of 1981 incorporated those rules were to be registered with the Registrar of Cooperative Societies, J&K. It has been

vehemently contended by the counsel for respondents that the Bank is a Cooperative Society and registered with the Registrar of Cooperative

Societies. This contention find support from Rule 24 and the note appended there under which shows that its employees are transferable to other

Cooperative Societies and vice versa .... Rule 1 envisages that the rules apply to all the societies and cooperative Bank is also admittedly a society. Rule 24 alongwith note appended thereunder lends support to this view that it is society. While interpreting the provisions of law it has to

be borne in mind that provisions are in harmnly and supplement each other. They are not deemed to be contradicting each other and creating

confusion and chaos. From the above said discussion, it can thus be safely stated that the service conditions of the employees of the respondents

Bank are governed by the rules framed under SRO 233 and these rules provide the forum where the appeal or review lies.

24. As indicated above, against the above decision, an appeal was preffered before the Supreme Court of India and this fact was noticed by the

Division Bench in Ved Paul's case in para 16 of the Judgment, Ultimately in para 17 of the judgement in Ved Paul's case, it was observed that

services of Ved Paul Sharma i.e the appellant in the aforesaid case who was an employees of the Citizen Cooperative Bank would be governed by

the service conditions as enumerated in SRO 233. para 17 in-so-far-as relevant is also being reproduced below:-

17/ In view of the above factual and legal position, it can safely be concluded that the appellant's case is to be dealt with the term of SRO 223,

therefore, it is held:

(i) that the appellant is governed by the service conditions as enumerated in SRO 233 i.e the Rules of 1988;..

25. In view of the above, to say that SRO 233 which applies to Banking Cooperative Societies would not govern the age of retirement of the

employees is an argument which cannot be accepted. Once the Division bench in the aforesaid case expressed an opinion that SRO 233 is

applicable to the Banking Cooperative Societies, then that decision is binding on me. As indicated above, the Division Bench in the aforesaid case

took note to another decision of this court which stands already noticed above, against which decision, an appeal preferred before the Supreme

Court of India was also dismissed. Thus the argument put across that the age of retirement as fixed in the rules or bye-laws framed by the

Cooperative Societies fixing the age of retirement as 60 years should prevails and not the age of 58 years as fixed in SRO 233 is an arguments

which cannot be accepted. The prayed of the petitioners that the age of retirements should be taken as 60 years and not 58 years, therefore, cannot be accepted.

26. This petition as such is found to be without merit and is dismissed.