

(1986) 01 KAR CK 0028

In the Karnataka High Court

Case No : Writ Petition No. 18576 of 1979 etc. and W.A. No's. 174 and 175 of 1984

Basavaraj Nagappa Mailwar

APPELLANT

Vs

Common Cadre Authority

RESPONDENT

Date of Decision : 28-01-1986

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 128 A, 30 B, 30 B (i)

Citation : (1986) ILR (Kar) 701 : (1986) 2 LLJ 36

Hon'ble Judges : R.S. Mahendra, J;K.S. Puttaswamy, J

Bench : Division Bench

Judgement

Puttaswamy, J.—As the questions that arise for determination in these cases are either common or inter-connected, we propose to dispose of them by a common order.

2. Prior to 23rd September, 1975, the Agricultural and Rural Development Banks (ARD Banks) formerly called as "Primary Land Development Banks" (PLD Banks) established and functioning under Chapter XI of the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) ("the Act") were competent to recruit their personnel subject to the Rules made under the Act. S. 128A incorporated to the Act by the Karnataka Co-operative Societies (Amendment) Act of 1975 (Karnataka Act 39 of 1975) on and from 23rd September, 1975 that stood further amended by the Karnataka Co-operative Societies (Amendment) Act of 1976 (Karnataka Act 19 of 1976) (Amending Acts) empowered Government to establish Common Cadre Authority (CCA) to uniformly regulate the recruitment, training and disciplinary control of such class of societies as are to be stipulated in the Rules and the orders to be made thereunder by Government. As pointed out by us in Primary Co-operative Land Development Bank Ltd. Vs. State of Karnataka, wherein we have upheld the validity of this provision, Rules 17A, 17B and the Constitution of a CCA for ARD Banks for the State, the CCA would become the appointing authority in the place of the

management of the respective Banks.

3. But, before framing Rules and constituting CCAs under the aforesaid provision, which would naturally occupy considerable time and exercise. Government in exercise of the powers conferred on it by S. 30-B(i) of the Act made an order on 2nd September, 1976 published in the Karnataka Gazette dated 9th September, 1976 (Exhibit-O in Writ Petitions Nos. 19838 and 19839 of 1979) directing the various classes of societies stipulated therein not to make any recruitment in those societies for a period of three months from the date of that order. That order reads thus :

"RURAL DEVELOPMENT AND CO-OPERATION SECRETARIAT Order No. RDC 16 CIM 76 Bangalore, dated 2nd September, 1976

S.O. 2333 - Whereas S. 128A of the Karnataka Co-operative Societies Act, 1959, empowers the State Government to constitute authorities for the recruitment, training and disciplinary control over the prescribed class of employees of the prescribed co-operative societies which the State Government has given financial aid :

Whereas the prescription of such class of employees and the co-operative societies and the constitution of authorities are under active consideration of the State Government.

Whereas pending such prescription, the State Government is satisfied that in public interest and to secure the proper management of the business of such co-operative societies, it is necessary to issue directions to certain class of co-operative societies not to make recruitments.

Now, therefore, in exercise of the power conferred by S. 30B of the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) the Government of Karnataka hereby directs that the co-operative societies specified below shall not make any recruitment for a period of three months from the date of this order, namely -

- (1) All Co-operative Societies/Banks the Jurisdiction of which extends upto or beyond a taluk.
- (2) All Co-operative Sugar Factories.
- (3) All Co-operative Textile mills.
- (4) All other Co-operative Processing Societies.

By Order and in the name of the Governor of Karnataka Sd/- (S. V. Torke)
Under Secretary to Govt. Rural Development and Co-operation Department."

On 28th December, 1976 Government extended the period stipulated therein till 28th February, 1977 and as to further extensions, if any, cannot be gathered and stated by us.

4. With the object of effectuating S. 128A of the Act, Government framed Rules 17A, 17B and 17C and on 24th August, 1978 constituted a CCA for ARD Banks. The Regulations framed by the CCA with the prior approval of Government came into force from 1st October, 1978 from which day, at any rate, that authority to make appointments, and regulate the conditions of service of all the employees of ARD Banks in the State.

5. But, notwithstanding the ban imposed by Government in its order dated 2nd September, 1976, extended from time to time and in defiance of them several ARD Banks made recruitments in their banks either by direct recruitment or promotions and allowing them various higher scales of pay also. On taking stock of all those and other situations, the CCA for ARD Banks apparently with the object of introducing uniform conditions of services, pay scales and others in the various cadres made and issued diverse orders and directions to the ARD Banks two of them touching on the promotions made during the ban period and their pay scales. We may at this stage with advantage notice the facts in Writ Appeals Nos. 174 and 175 of 1984 to better appreciate this controversy before us.

6. In the ARD Bank, Gowribidanur, K. S. Shrikantaraju and P. Shivanna arrayed as Respondent No. 1 in Writ Appeals Nos. 174 and 175 of 1984 respectively, who were the petitioners in Writ Petitions Nos. 17815 and 17816 of 1979 respectively to be hereafter to be described as respondents, were initially working in a lower cadre or a lower scale of pay. On 30th November, 1976 the said Bank sanctioned a higher scale of pay to Shrikantaraju (Annexure-A in W.A. No. 174 of 1975). On 7th January, 1977 the same Bank promoted Shivanna as a Second Division Clerk from the post of an attender. But, the CCA declined to recognise them, made appropriate orders against them and directed the ARD Bank, Gowribidanur to give effect to them. Aggrieved by the same the respondents moved this Court in Writ Petitions Nos. 17815 and 17816 of 1979 inter alia contending that the ban imposed by Government operated against direct recruitments only and not to promotions which was resisted by the CCA which was respondent No. 1 in those Writ Petitions. On 4th November, 1983 Rama Jois, J. accepting the said contention of the respondents, allowed those Writ Petitions and had issued appropriate directions to the CCA. Aggrieved by the same, the CCA has filed Writ Appeals Nos. 174 and 175 of 1984 before us.

7. In a number of Writ Petitions, various employees of different ARD Banks that had been accorded higher promotions or higher scales of pay as the respondents in the aforesaid Writ Appeals and have suffered similar orders at the hands of the CCA have also challenged the validity of the notification dated 2nd September, 1976 of Government set out earlier. In the very nature of things, it is necessary to examine this challenge first.

8. Sriyuths M. C. Narasimhan and Ravivarma Kumar, learned counsel for the petitioners strenuously contend that the order made by Government on 2nd September, 1976 was not for the purposes authorised by S. 30B of the Act and was ultra vires of the Act.

9. Sriyuths Chandrasekharaiah, Learned Government advocate appearing for the state Government and S. S. Ujjannavar, S. W. Arabatti, R. C. Kulkarni, O. Mahesh, L. Govindaraj, C. M. Desai and Smt. Sona G. Vakkund, learned counsel appearing for the CCAs in all these cases sought to support the impugned order of Government.

10. We have earlier set out the order of Government made on 2nd September, 1976 in its entirety. The order made by Government on 28th December, 1976 only extends the period. If the first order made by Government is valid, then the second and subsequent orders, if any, made by Government merely extending the ban would also be valid. We must, therefore examine whether the first order made by Government on 2nd September, 1976 is valid or not, for which purpose it is necessary to read S. 30B of the Act and the same reads thus :

"30B. Powers to give direction in public interest.... (1) Whereas the State Government is satisfied that in public interest or for the purpose of securing proper implementation of co-operative and other development programmes approved or undertaken by the State Government or to secure the proper management of the co-operative society management of the co-operative society generally or for preventing the affairs of the co-operative society being conducted in a manner detrimental to the interests of the member or of the depositors or of the creditors thereof, it is necessary to issue directions to any class of co-operative societies generally or to a co-operative society in particular, it may issue directions from time to time and all such co-operative societies or the co-operative society concerned shall be bound to comply with such directions.

(2) The State Government may modify or cancel any directions issued under sub-s. (1) and in modifying or cancelling, such directions may impose conditions as State Government may deem fit.

(3) The State Government may by notification delegate its power under this Section to Registrar subject to such restrictions and conditions as may be specified in the notification."

This Section, the validity of which is not in challenge empowers Government to issue directions under the Act to co-operative societies, generally or even to a particular co-operative society established and functioning under the Act. The Section empowers Government to issue directions either in the public interest or for the purposes enumerated thereto. Both are separate and distinct though both may co-exist in given case as in the present case itself. While the term "public interest" occurring in the first part is somewhat general, the other purposes following the same are specific and particular. The satisfaction in either case is that of Government and that satisfaction cannot be examined by this Court as if this Court is an appellate authority under the Act. Every one of the purposes set out in that Section like "for securing proper implementation of co-operative and other development programmes approved or undertaken by the State Government, the proper management of co-operative societies generally,

preventing the affairs of co-operative societies being conducted in a manner detrimental to the interests of members, depositors, or creditors, thereof are separate and distinct.

11. In its order made on 2nd September, 1976 Government had stated that it was making the same in the public interest and also to secure the proper management of the co-operative societies in the State. The circumstances in which Government had to issue directions are also set out in the order. When we read the order and S. 30B together, there is hardly any ground on which this Court can take exception to the former at all.

12. When Government had expressly stated that is necessary to issue directions in the public interest, this Court cannot sit in judgment over its satisfaction as if it is an appeal and hold that it was not so and hold otherwise. On this short ground alone this Court cannot but reject the challenge of the petitioners to the same. Even otherwise we are of the view that power had been exercised by Government for the proper management of co-operative societies generally. We are, therefore, of the view that the order made by Government on 2nd September, 1976 was within its power and had been exercised for the purposes conferred on it by S. 30B of the Act.

13. On the foregoing discussion, we reject the challenge of the petitioners to the order made by Government on 2nd September, 1976 and all the later orders made thereto extending its operation from time to time. With this we pass on to examine W.A. Nos. 174 and 175 of 1984.

14. Sri Ujjannavar strenuously contends that the term "recruitment" occurring in the Notification dated 2nd September, 1976 comprehends both by "direct recruitment" and "promotions" and the construction placed by the learned Judge to the contrary was unsound.

15. Sri S. G. Bhat, learned counsel appearing for the respondents sought to support the order of the learned Judge.

16. Before the learned Judge the respondents, at the threshold, urged that the term "recruitment" occurring in the Notification dated 2nd September, 1976 applies to cases of direct recruitment only not to cases of promotions, which had found favour with the learned Judge.

17. In the notification dated 2nd September, 1976 Government had not defined that term "recruitment". We must, therefore, ascertain its meaning in the context in which it occurs.

18. The term "recruitment" which is not a term of art but is a general term, has different meanings in different contexts. In a given situation recruitment may mean recruitment by direct recruitment only but in another situation it may mean both by direct recruitment and promotion and may even include by transfer also.

19. When Government imposed the ban on recruitments it apprehended that ARD Banks would make indiscriminate appointments by direct recruitment or by promotion and even accord higher scales of pay and thus make the working of the CCA to be constituted for introducing uniform conditions of service and scales of pay extremely difficult. The object of Government was to preserve the position existing prior to its order. If that object of Government is kept in view; as that should be, we have no doubt whatsoever, that Government had employed the term "recruitment" as comprehending recruitment by direct recruitment, recruitment by promotion, transfer or other method that can and may be resorted to. If such a construction is not placed, then the very object with which Government made its order would be defeated. Unfortunately, in reaching the contrary conclusion these aspects have been overlooked by the learned Judge.

20. Even Rule 3 of the Karnataka State Civil Services (General Recruitment) Rules, 1957 and the meaning ascribed to the term "recruitment" in that Rule also supports our above conclusion only and does not support the restricted meaning sought to be placed by the respondents which is naturally supported by the other petitioners. Rule 17 of the Rules on which Sri Narasimhan places strong reliance does not in any way help to sustain the case of the respondent or the conclusions of the Learned Judge.

21. On the foregoing discussion, with great respect, we find it difficult to subscribe to the views expressed by the Learned Judge that the term "recruitment" comprehends only recruitment by direct recruitment and not promotion.

22. In their Writ Petitions, the respondents, which is also the case of the other petitioners before us, had challenged the action of the CCA on three other grounds viz., (1) that the promotions made by the ARD Banks prior to the promulgation of the Rules and the constitution of the CCA thereunder were within their jurisdiction, power and were, therefore, valid; (ii) that the CCA cannot annul the earlier promotions and pay scales sanctioned by the previous employers; and (iii) that the CCA which had regularised the services of direct recruitment made during the ban period was bound to extend that treatment to promotes also. Sri Bhat urges for examining these contentions left open by the learned Judge which is also supported by the learned counsel appearing for all other petitioners before us relying on orders of regularisation in the case of direct recruits and the pay scales granted to one J. N. Nanjegowda. In projecting all these contentions learned counsel also contend that it was not open to the CCA to make adverse orders in contravention of the principles of natural justice as ruled by Malimath, J. (as His Lordship then was) in *M. K. Kumaraswamy v. State of Mysore* (1974 (1) S.L.R. 264).

23. Sriyuths Ujjannavar and Arabatti appearing for the CCA in our opinion, very rightly did not dispute that the CCA before making its adverse orders against the petitioners or the respondents in W.A. Nos. 174 and 175 of 1984 the CCA had not notified them, considered their representations and had not made them in

conformity with the requirement of natural justice and that the CCA would now do so whenever it proposes to make an adverse order. We need hardly say that that is the correct legal position also. In this view itself, we consider it unnecessary to examine the rival contentions urged before us. Even otherwise, we are of the view that it would be proper to leave open all these questions and allow the CCA to examine and decide them first with liberty reserved to both sides to agitate their respective claims. We, therefore, refrain to examine and decide all other questions urged by both sides.

24. In the light of our above discussion, we make the following orders and directions :

(i) We dismiss these Writ Petitions in so far as they challenge the validity of the orders made by Government on 2nd September, 1976 and extending its validity from time to time.

(ii) We allow Writ Appeals Nos. 174 and 175 of 1984, set aside the order dated 4th November, 1983 of Rama Jois, J. in Writ Petitions Nos. 17815 and 17816 of 1979.

(iii) We quash the orders impugned in all the Writ Petitions including W.Ps. Nos. 17815 and 17816 of 1979 in so far as they pertain to the fixation of pay scales made by the CCA. But, this does not prevent the CCA from re-examining, re-determining and making appropriate orders in accordance with law and the observations made in this order considering all such representations as may be made by the petitioners before it.

25. Writ Petitions and Writ Appeals are disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.