

(2018) 09 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Writ No. 5016, 234, 2007, 5158, 5169, 8958, 8959, 13589 of 2016, 7442 of 2011, 12780 of 2015, 2657, 12984 of 2017, 3188, 5058 of 2018

Daluram Kumawat @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 14-09-2018

Acts Referred:

Rajasthan Cooperative Societies Act, 2001 — Section 7
Rajasthan Cooperative Societies Act, 1965 — Section 4(1)
Agriculture Credit Cooperative Societies Manager Rules, 1969 — Rule 2(ch), 5, 6

Citation : (2018) 09 RAJ CK 0054

Hon'ble Judges : Nirmaljit Kaur, J; Dinesh Mehta, J

Bench : Division Bench

Advocate : A.K.Choudhary, Dharendra Pandey, Rajesh Panwar, Kusum Rao, T.S.Champawat, B.S.Sandhu, S.S.Choudhary, Parvat Singh Rathore, Mahaveer Singh

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J

All the above mentioned writ petitions shall stand decided by this common order as the issue involved is identical.

The State Government constituted Rajasthan Credit Institution Cadre Authority Ltd. for the purpose of recruitment of Managers for the Primary

Agriculture Credit Cooperative Societies under the Rules of 1977. This Cadre Authority recruited Managers and those Managers were appointed by

the Managing Director of the Bank in the various Agriculture Credit Cooperative Societies. In fact, initially, Agriculture Credit Cooperative Societies

Manager Rules, 1969 (hereinafter referred to as "the Rules of 1969") were in force upto 29.09.1978. They were repealed by the Primary

Agriculture Credit Cooperative Societies Manager Rules, 1977. The Rules of 1977

were in operation till they were set aside by the Division Bench of the High Court declaring them as ultra vires in 1991. Accordingly, vide notification dated 12.11.1991, Rules of 1969 came into force once again. They remained in force upto 2003. The Rules of 2003 too were repealed and now, the Rules of 2008 are in force w.e.f. 23.08.2008.

All the petitioners however were appointed as Manager by Managing Director of Bhilwara Kendriya Sahakari Bank Ltd. under the then Service

Rules of Managers of Agriculture Credit Cooperative Societies Rules, 1977 (hereinafter referred to as "the Rules of 1977").

The present writ petitions are therefore preferred seeking the quashing of the said Rules of 2008 so far as they are said to have declared the

petitioners as employees of the Primary Agriculture Credit Cooperative Society (hereinafter referred to as "the PACS"). The petitioners herein

are also seeking a declaration that they be declared as the employees of the respondent District Level Central Cooperative Bank and be held entitled

to all service benefits as the employees of the Bank.

While praying for the said relief, learned counsel for the petitioners contended that the petitioners were appointed by the Bank, order of

transfer is passed by the Bank and disciplinary action is also initiated by the Bank. Their services are liable to be terminated by the Bank alone.

Therefore, the Service Conditions of 2008, which make the petitioners as employees of the PACS, are ultra vires and against the Constitution. The

Service Conditions of 2008 amount to altering the status of the petitioner from the Bank employee to the employee of the Society. The Registrar

cannot make such Service Conditions which deprive their status as employees of the Bank. Reliance was placed on the judgment rendered by the

Apex Court rendered in the case of Sahakari Samityan Vyavasthapk Union etc. Vs. State of Rajasthan & Ors., reported in JT 1996(3) Supreme

Court 292 wherein it was held by the Apex Court that the Managers cannot be treated as employee of PACS as they were not appointed by the

PACS.

Reply has been filed on behalf of the respondent-State as well as by the respondent-Bank. Learned counsel for the respondent-Bank while opposing

the stand of the petitioners submitted that all the petitioners are working as Vyavasthapak (Manager) at various Gram Sewa Sahakari Samiti Ltd. at

is one in the state and District Level Central Cooperative Bank exists in almost all Districts and there are more than 6000 PACS in the entire State of

Rajasthan. The PACS is a short term Cooperative credit structure Society which is made from the membership of agriculturists/villagers. It works for

collective developments of village economy. The loan is distributed by the PACS and land of villagers/agriculturist is mortgaged to PACS and the

distribution and recovery of loan is the responsibility of the PACS. A PACS is working in almost each Gram Panchayat of State. The loan is given by

NABARD (National Bank for Agriculture and Rural Development) to Apex Bank and thereafter this amount is Distributed to CCB which distributes

to PACS. The interest is charged on loan given to agriculturists. It is duty of Manager of PACS to recover loan and interest from members.Â

Under the Service Conditions of 1969 Rules, the definition of Vyavasthapak (Manager) has been given. No doubt, it provides that Manager shall mean

that Manager who shall be appointed under these Rules and he shall be chief executive paid employee of Society. Manager shall have no relation with

services of the Bank Employees, the Manager shall not be entitled for any other benefit except getting wages from Managerial Salary Fund at the

level of Bank and that the PACS will not be able to keep any other person on the post of Manager, however, the appointment to the various posts in

the PACS were made under condition 5 of the Rules of 1969 by selection committee. The selection committee was consisted of the Chairman of the

Central Cooperative Bank as the Chairman, the Chairman of the District Cooperative Union as member and the Assistant Registrar as member and

Executive Officer as Member Secretary of the Selection Committee. The advertisement was to be issued by the executive officer of central

cooperative Bank. The application forms were to be scrutinized by Executive Officer. The question papers were to be set by Assistant Registrar.

Interview was to be taken by selection committee. The Rules 6 of the Rules of 1969 provided that Executive Officer of the Central Cooperative Bank

shall issue appointment letter to the Managers as per merit and those Managers were to work with PACS. The Managers were to be appointed on

Probation and confirmation letter had to be issued by selection committee. It was made mandatory on every PACS to take in service the managers so

appointed by the appointed by the Bank. The salary had to be paid from the Managerial Salary Fund established at Bank level. The service record had

to be kept by Executive Officer. The Executive Officer was made as final authority for making adverse entry in service record. The transfer was to be made by Bank. Promotion was to be made by Bank. The resignation had to be given to Executive Officer. The punishment was also awarded by the Executive Officer. Thus, for all purposes of appointment, transfer and termination, the control vested in the Bank. No representative of PACS participated in the selection committee.

When the Rules of 1969 were repealed and substituted by the Recruitment and Service Conditions of the Managers of Agriculture Credit Cooperative

Society Rules, 1977, the State Government constituted Rajasthan Credit Cooperative Institutions Cadre Authority under Section 4(1) of the Act of

1965. Rules of 1969 were repealed and substituted by the Recruitment and Service Conditions of the Managers of Agriculture Credit Cooperative

Societies Rules, 1977. The State Government constituted Rajasthan Credit Cooperative Institutions Cadre Authority under Section 4(1) of the Act of

1965. This cadre authority has been registered as a Cooperative Society and the purpose of the cadre authority was to conduct examination and

recommend names of selected candidates to the Bank. Rule 5 provided for payment of salaries to the Managers of the PACS and it has been

provided therein that the salaries of the Managers would be paid from the Manager fund established at the level of the Cadre Authority through the

Central Cooperative Bank. The accounts of the Manager salary fund in the Central Cooperative Bank was to be operated by the General Manager of

the Central Cooperative Bank Ltd. Rule 6 of the said Rules provided for payment of salaries to the Managers from the said Manager Fund. The

PACS had to deposit its share amount in the Manager fund so that salary can be paid to the Managers appointed by the Bank. Thus, it was apparent

from the Rules of 1977 that Managers were selected by cadre authority and appointed by the Bank and posted with the PACS but burden of salary

has been fastened on the PACS. The PACS therefore challenged the constitution of Cadre Authority stating that since the Managers are not the

employees of PACS, therefore, the burden of the salary of the Managers cannot be fastened on the PACS. Some PACS filed writ petition before this

court at Jaipur Bench saying that the Registrar has framed the Rules of 1977 beyond the power given by the Rajasthan Cooperative Societies Act,

1965 and Rules of 1966. The PACS further said that it cannot be saddled with the responsibility of paying wages to the Managers appointed by the

cadre authority. The Division Bench of this Court accordingly examined the validity of the constitution of the Cadre Authority in the case of

K.R.G.S.S.S. Ltd. Vs. State of Rajasthan and Ors., reported in 1991 (2) RLR 371. The Division Bench held the Rules of 1977 as ultra vires on the

ground that Registrar had no power to constitute Cadre Authority. The effect of this judgment was that the Managers appointed by the Bank with the

PACS were held to be employee of the Bank and not of PACS.Â Â

The Managers (Vyasthapak), working with the PACS though appointed by Bank, treated judgment of this Court against their interest and therefore,

filed SLP before the Honâ??ble Supreme Court. In the SLP the union of Vyasthapak prayed that they may be treated as employees of PACS. One

of the question framed by the Apex Court was as to whether the paid Secretaries appointed by the District Cooperative Societies recruited and

controlled by the Cadre Authority Society are the officers or employees of the Society i.e. PACS. The Honâ??ble Supreme Court held that the paid

Secretaries are not officers appointed to the PACS and by the PACS. They are officers appointed by the District Cooperative Society by its Chief

Manager. The Apex Court considered the definition of Manager given under the Rules of 1969 and held that a paid Secretary appointed by the Bank

is not a Manager appointed by the PACS.

The relevant part of the said judgment rendered by the Apex Court in the case of Sahakari Samitiyan Vyavasthapak Union Vs. State of Rajasthan

(supra) reads as under:-

â??10. The question, therefore, emerges : whether the paid Secretaries appointed by the District Cooperative Societies, recruited and controlled by

the Cadre Authority Society are the officers or employees of the Society i.e., PACS? It is seen, that there is a dichotomy in the operational structure.

The Society is a unit by itself with its members managed by the committee elected under the provisions of the Act, the Rules and the bye-laws for

specified period. It is empowered to have control and to maintain discipline over its officers and employees. The paid Secretaries are admittedly not

the officers appointed to the Society and by the Society, They are officers appointed by the District Cooperative Society by its Manager. 'Manager' is

defined under the 1969 Rules to mean "the manager appointed under these rules and who shall be Chief Executive and paid employee of the society.

Manager shall have no relation with the services of the Bank employees. Due to getting salary from the Managerial fund at Bank level he shall not be

entitled for any benefits which are being given to bank employees. And Society shall not appoint any person as Manager". A paid Secretary is not,

therefore, a manager appointed by the PACS. It is seen that the structure of the employees is indicated in Section 148[2] (xxx) as Manager,

Secretary, Accountant or any other officer or employee of the society. Therefore, in addition to the said establishment, there cannot be any paid

Secretary to the Society, i.e., PACS. Obviously, therefore, the Societies have objected that they cannot be fastened with the liability to contribute fund

under Bank Rules for payment of the salary of Surveillance Officer appointed by the District Cooperative Society and to be controlled by the Cadre

Authority Society. It would, therefore, be clear that they are outside the scope of the Cadre of PACS.

11. The question, then is : whether the Registrar as a delegate of the Government, can make rules in that behalf or create a fund under the Bank

Rules? It is seen that the power under Rule 41 is limited only to prescribing the qualifications and conditions of service of the officers and employees

enumerated in Clause (xxx) of Sub-section [2] of Section 148. He, therefore, has no power to make rules governing appointment of paid Secretaries

and to create a fund under Bank Rules for payment of salaries to them and to fasten the liability on the PACS. The Registrar travelled beyond the

power delegated to him under the Act. We have come across Section 69A of the Maharashtra Cooperative Societies Act which, as amended by the

statute, gives such a power for creation of a Society as recruitment agency to make appointment of such recruited candidates to the Primary

Cooperative Societies and posting them to the primary societies. Statute also fastened the liability on the primary societies to contribute certain

percentage towards salary and allowances of such paid Secretaries. Making the Bank Rules or the creation of a fund would, therefore, be beyond the

powers of the Registrar under Rule 41 read with Section 148[2](xxx) of the Act. The High Court, therefore, was clearly right in its findings that Cadre

Authority Society is not a society registrable under Section 4[1] of the Act and that the Registrar has no power under Rule 41 to make Bank Rules.

12. The contention of Shri Jitendra Sharma that they are members of PACS under 1969 Rules cannot be given countenance for the reason that 1969

Rules stood superseded by 1977 Rules. Admittedly, they are not members nor are they appointed as officers or employees of the PACS. When we

called upon the counsel to produce any order of appointment given to the paid Secretaries by any of the PACS, he conceded that he did not have any

such letters. Therefore, they cannot be declared to be members or officers or employees of the PACS. Thus considered, we are of the firm opinion

that the view taken by the High Court is not vitiated by any error of law.â??

In the present case, appointment letters have been duly placed on record. The appointment letters show that appointment has been given to the

Manager/Vyavasthapak by the Managing Director of the Bank. The argument of the learned counsel for the respondents that the Apex Court did not

hold the Managers/paid Secretaries to be employees of the Bank cannot be sustained. The question before the Apex Court was as to whether the

Managers of the Agriculture Credit Cooperative Societies appointed by the Managing Director of the Bank be held as an employee of the Primary

Agriculture Credit Cooperative society. The answer was in the negative. The question before this Court is as to who is the employer of the

Managers/Vyavasthapak. Once, their SLP with a prayer that they should be held as employees of the PCS and not the Bank is dismissed, the same

leads to only one conclusion that they are deemed to be held as employees of the Bank. Besides, the appointment orders, even the transfer order has

been placed on record which show that Managers have been transferred by the concerned District Central Cooperative Bank from one PACS to

another PACS. In the writ petition No.13589/2016, some petitioners have also been transferred to the Bank itself. In fact, the learned Division Bench

of this Court in

D.B.Special Appeal (Writ) No.883/2016 (The Chairman, Chidabutter Village Service Cooperative Societies Vs. State of Rajasthan & Ors.), and

connected two special appeals, decided on 18.11.2017, while deciding the issue as to whether Chad Singh son of Shri Jeet Singh working on the post

of Vyavasthapak (Manager) was an employee of Bank or the Society, set aside the finding of the learned Single Judge, vide which, Chad Singh was

held an employee of the Society and recorded the finding that Chad Singh, the

Manager, was very much an employee of the Bank by taking into account that the appointment order and dismissal order of Chad Singh was issued by the Bank and the power of imposing punishment also vested with the appellant-Bank. The said finding is recorded in para 20 of the said judgment, which reads as under:-

20. In view of above, this Court is of the opinion that the respondent-petitioner-Chad Singh is employee of appellant-Bank because the appointment order dated 12.2.1974 had been passed by the appellant-Bank, Charge Sheet (Annex.1 of earlier writ petition) had been issued by the appellant-Bank, the enquiry was conducted by the appellant-Bank and thereafter the respondent-petitioner-Chad Singh was dismissed from service by the appellant Bank vide its order dated 30.1.1993 (Annex.6). The departmental appeal was also dismissed by the appellant-Bank vide order dated 3.1.1994 (Annex.8). After allowing the earlier writ petition again charge sheet was served by the appellant-Bank to the respondent-petitioner vide communication dated 19.1.2009 (Annex.4) and charges have been proved by the appellant Bank. Therefore, it is clear that he was working under the control of appellant-Bank and it is to be held that there is relation of employer and employee between the respondent-Chad Singh and appellant-Bank, therefore, the respondent-petitioner-Chad Singh is employee of appellant Bank.

Single Bench of this Court in Ajmer Central Cooperative Bank Ltd. Ajmer Vs. The Authorized Officer (S.B.Civil Writ Petition No.5113/1989, decided on 24.11.1992 too observed as under:-

The term 'employee' as defined in Section 2(5) of 1958 Act means a person wholly or principally employed in or in connection with any establishment and includes an apprentice-. As per Section 2(6) of 1958 Act, 'employer' means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes the Manager, Agent or other person acting in the general management or control of an establishment. In the light of these clear definitions and having regard to the fact that the respondent No. 3 was appointed and was working under the control of the petitioner Bank, it has to be held there existed relationship of employer and employee between the petitioner and the respondent No.

3.

Thereafter, another Single Bench of this Court in the case of Alward Central

Cooperative Bank Vs. The Regional Provident Funds, reported in (2007)2 LLJ 347 while relying on the judgment in the case of Ajmer Central Cooperative Bank Ltd. Vs. The Authorized Officer (supra) upheld the order of the of the Employees Provident Fund Appellate Tribunal, vide which the prayer of refund of the amount deducted from account of the Bank by way of attachment was rejected by discarding the argument of the Bank that the Managers are the employees of the particular Ram Sewa Sahakari Samiti and they are not employees of the particular Bank.

In almost similar set of circumstances, the learned Single Bench of this Court in the case of Rajas Sangh Karamchari Sangh, Udaipur Vs. State of Rajasthan & Ors. (S.B.Civil Writ Petition No.4511/2001), decided on 31.10.2013 allowed the writ petition filed by the Karamchari Sangh by holding the Assistant Managers-cum-Samiti Sahayak, Salesmen and Tularas-cum-Chowkidars working with the Large Agriculture Multi Purpose Societies to be treated as employees of the Rajasthan Tribal Area Development Cooperative Federation Ltd. on the ground that all powers regulating service conditions of such employees, including suspension, removal from service, dismissal from service, transfer etc. vested with the Federation. It was held that "such kind of powers can be retained with an employer only. Much emphasis is given by the counsel for the respondents that the federation was getting funds from the Central government and the State government for payment of salary to the employees and as such, the federation is nothing but a disbursing agency. The argument is also not tenable as the Central and State Government are funding source for federation as per its bylaws. The State and the Central Government, as the case may be, funded the federation for specific purpose to achieve the objects given in Clause 5 of the bylaws. The federation utilised the funds or part of it for payment of its employees placed at the disposal of LAMPS. Merely on the count that the federation was funded by State or Central Government, it cannot be presumed that the employees concerned were not in employment of the federation. The entire factual background noticed above clearly indicates existence of a definite relationship of master and servant between Assistant Manager-cum-Samiti Sahayaks, Salesmen and "Tularas"-cumChowkidars working with LAMPS and the respondent federation. The federation, thus, is required to discharge its all obligations qua

the employees holding the posts referred above posted with the affiliated LAMPS.â??

The respondent-Bank has placed heavy reliance on the Rules of 1969 to say that as per Rule 2(ch), Managers have no connection with the Bank

Service as they were from day one the employees of the Society and were appointed for the service of the Society. The same in itself is not sufficient

to hold the present petitioners as employees of the Society. They may have been employed for the Society but were employed by Bank which is

evident from the record and is also admitted position that appointment orders have been issued by the Bank. Off and on they have been transferred by

the Bank. The letters of resignation of the Managers are also required to be submitted to the Bank. The punishment authority is also the Bank. All

these factors establish the relationship of an employer and an employee. In fact, the question as to whether petitioners are employees of the

Cooperative Society or the Bank is no more res integra in view of the judgments pronounced in the cases of (i) Sahakari Samityan Vyavasthapk Union

etc. Vs. State of Rajasthan & Ors. (supra) (ii) The Chairman, Chidabutter Village Service Cooperative Societies Vs. State of Rajasthan & Ors.

(supra) and (iii) Alwar Central Cooperative Bank Vs. The Regional Provident Funds, as discussed in the earlier part of the judgment. Hence, they

are held to be employees of the Bank.

In view of the above discussion, the writ petitions filed by the petitioners deserve to be accepted to the extent they are seeking a declaration as the

employees of the District Level Central Cooperative Bank.

Since the petitioners are being declared as the employees of the Bank for all intents and purposes, we need not go into the second prayer for quashing

of the Rules of 2008 which are enacted for selection, appointment and service conditions of the employees of the Primary Agriculture Credit Societies

being not applicable to the petitioners who are employees of the Bank.

Allowed as above.