

**(1984) 01 RAJ CK 0051**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 1554 of 1983 and 29 Ors.

Ismail Khan and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

**Date of Decision :** 16-01-1984

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 16, 19, 21  
Industrial Disputes Act, 1947 — Section 10, 25F, 25G

**Citation :** (1984) WLN 585

**Hon'ble Judges :** G.M. Lodha, J

**Bench :** Single Bench

## Judgement

G.M. Lodha, J.—All the petitioners mentioned above claim to be the Managers of the Primary Agriculture Credit Co-operative Societies in Bharatpur District holding substantive posts and alleged that they are permanent employees. They have now received the orders which are impugned orders issued by the Managing Director, Central Co-operative Bank Ltd. Bharatpur directing their compulsory retirement under Rule 17 of the Krishi Rin Datri Sahkari Samitiyon ke Vyavasthapakon ke Chayan, Niyukti and Seva Niyam, 1977 thereafter referred to as, 'the Rules, 1977) in pursuance of the decision of the Committee. A specimen copy of the order passed in Ismail Khan's case is reproduced hereunder for ready reference:

dk;kZy; nh Hkjriqj lsUV?y dksvksijsfVo cSd fy0] Hkjriqj

dzekad@\_.k@293 fnukad 8&1&83 14&2&83

Jh blekbZy [kak O;oLFkkid xzke lgdkjh lfefr fy0 }kjk

lgk;d vf/k"kk"kh vf/kdkjh i0 lfefr uxj

fo"k; & vfuok;Z lsok fuo`fRr ckcr A

fnukad 8&7&83 dks desVh dh cSBd gqbZ A ftl cSBd es vkidk ekeyk izLrqr gqv k A desVh es ;g fu.kZ; fy;k x;k fd O;oLFkkid lsok fu;e 1977 ds fu;e 17 ds vUrZxr

vkidks vfuok;Z Isok fuo`fRr dj nh tk;s A

vr% desVh ds fu.kZ; fnukad 8&7&83 ds e;/kUr Ik"pkr Isok fuo`Rr dj fn;k x;k gS  
A

g0 izca/kd lapkyd]

2. The service condition of these Managers are governed by the Rules 1977. The Registrar Cooperative Societies Rajasthan, Jaipur framed these rules, 1977 under Rule 41 of the Rajasthan Co-operative Societies Rules, 1966 (hereinafter referred to as the "Rules"). Clause (1) of Rule 41 of the Rules, 1966 may be noticed here which, in terms, provides as under:

41(1) Notwithstanding anything contained in the bye laws of society, no Cooperative Society shall appoint any person as its paid officer or employee in any category of service unless he possess the qualifications and furnishes the security if so specified by the Registrar from time to time, for such category of service in the society, or for the class of Society to which it belongs. The conditions of service of the employees of the societies shall be as specified by the Registrar

Rule 41 has been enacted among other Rules by the State Government in exercise of the powers conferred u/s 148 Sub-section (2) (Clause xxx) of the Rajasthan Co-operative Societies Act, 1965 (hereinafter referred to as "the Act, 1965") which in terms provides as under:

148(2)(xxx):

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

(xxx) the qualifications of a Manager, Secretary, Accountant or any other officer or an employee of the society and the conditions of their service including discipline and control.

3. All the petitioners in their writ petitions have alleged that though they have been designated as "Manager but their duties are not more than of a Lower Division Clerks. Their salary is still less as most of them are getting Rs. 351/- including the dearness allowance. They further asserted that they are the workmen as defined in Industrial Disputes Act, 1947 and they have been declared to be so in an award known as "Chaudhary Award" passed on 22-4-80 in the case No. IT/34/78 whereby it was decided as follows:

From the above pay scales payable to different employees to the different authorities it is apparent that the Managers of the P.A.C.S. are paid less wages than the wages of a lower Division Clerk of the State Government and a Clerk of the Central Cooperative Bank and the clerk of Primary Land Mortgage Banks. They are also paid less than the total wages of Class IV employees of the State Government and of the above said Banks.

4. In this Chaudhary ward, according to the petitioners, the employment of Managers of P.A.C.S. was adjudicated as that of the Cadre Authority and this authority was declared as an "Industry". The case of the petitioners is that, though the Manager of P.A.C.S. is in the employment of the aforesaid authority, but he is lent to the Central Cooperative Bank which posted him as Manager in the Gram Sewa Sehkari Samiti. After completion of (sic) years services as Manager, the Manager becomes eligible for selection as loan Supervisor in the Central Cooperative Bank. Thus, according to the petitioners, they are employees of the Cadre Authority though their services have been lent to the Central Co-operative Bank, Bharatpur.

5. The impugned orders have been passed under Rule 17 of the Rules, 1977 which reads as under:

vug"kklukRed dk;Zokgh

O;oLFkkid }kjk vuq"kklu Hkax djus] vkKk dk mYya?ku djus larks"kizn dk;Z u djus ij vFkok ;Fks"B dkj.k gksus ij fuEu izkdj n.M fn;k tk ldsxk A

?1? rkM+uk] fuUnk] psrkokuh nsuk ]

?2? okf"kZd osru o`f) ,d ;k ,d ls vf/kd fcuk lafpr izHkko ls jksduk]

?3? ,d ls ,d ls vf/kd okf"kZd osru o`f) lafpr izHkko ls jksduk]

?4? fiNyh Isok;s QksjfQV djuk] Isok eqDr djuk vFkok c[kZkLr djuk A

mijksDr of.kZr n.M+ cSd ds izcU/kd lapkyd egksn; }kjk fn;s tk ldsxs] ijUrq dzeKad 1]2o 3ij of.kZr n.M cSd ds vf/k"kk"kh vf/kdkjh }kjk Hkh fn;k tk ldsxk An.M nsus ls iwoZ nks"kh O;fDr ls fyf[kr es mRrj eakxk tkosxk A vkjksiks dh lquokbZ ds le; nLrkost vFkok vU; xokg izek.k izLrqr djus O;fDrx lquokbZ ds volj fn;s tkosxs ,sls volj nsus ds i"pkr gh fu.kZ; fy;k tkosxk A dzeKad 1 ls 3 rd n.M+ nsus ds fy, mijksDr iz.kkyh viukbZ tkuk vko";d ugh gksxk fdUrq nks"kh O;fDr ls fyf[kr es nks"kks ds lEcU/k es mRrj izkIr djds gh fu.kZ; fy;k tkosxk A

vf/k"kk"kh vf/kdkjh ds vkns"k dh vihy izcU/k lapkyd dks nh tk ldsxh rFkk izcU/kd lapkyd ds fu.kZ; ds fo:) vihy [k.Mh; la;qDr jkftLV?kj dks nh tk ldsxh A vihy vkns"k tkjh djus ds 60 fnol ds vUnj fd;k tkuk vfuok;Z gksxk A

[k.Mh; la;qDr jftLV?kj ds fu.kZ; ds fo:) /kqujh{k.k ?fjohtu? jftLV?kj vFkok muds } kjk vf/kd`r vf/kdkjh ds le{k izLrqr dh tk ldsxh A

mijksDr fu;e es vU; dqN ckrs gksrs gq, Hkh ;fn O;oLFkkid dk dk;Zxr rhu o"kksZ es yxkrkj fu/kkZfjr y{;ks ds 60 izfr"kr ls de jgsxk A rks ,sls O;oLFkkid dh Isok;s cSd dk izcU/kd lapkyd fuEu vfuok;Z Isok fuo`Rr lfefr dh flQkfj"k ij fcuk uksfVI ds lekIr dj ldsxk A

?1? izcU/kd lapkyd ?2? vf/k"kk"kh vf/kdkjh

?4? lEcU/kRr lgk;d jftLV?kj

Last proviso to Rule 17 of the Rules, 1977, permitting the termination of services of the employees who have failed to achieve the target to the extent of at least 80% during, last 3 years becoming eligible to compulsory retire without any notice, is the subject matter of constitutional scrutiny and bedrock of the legal controversy in these writ petitions.

6. The petitioners have challenged this impugned Rule 17 of the Rules, 1977 on the ground, that since there is no inquiry or opportunity of Shearing and it is included in the disciplinary proceedings, therefore, it is against the principles of natural justice, as compulsory retirement has been based on the charge that the Manager has failed to achieve upto 80% of the target, it is in the nature of the punishment and, therefore, without an opportunity of hearing such an order cannot be passed.

7. It was then argued that the achievement of 80% target is impossible because the Rajasthan State is perennially famine affected and in one crop areas members are not generally in the position to repay the loan amount. It was also pointed out that the Managers have got no authorities to recover the loan. The recovery is to be done under Sections 117, 74 and 7(sic) of the Act, 1965 and those powers to recover the amount of loan vest in the Registrar. The powers of Registrar are delegated to the Executive Officer of the Bank and he Assistant Registrar and Manager nowhere comes into the picture(sic). The execution is to be done by the Recovery Officer and not by the Manager. The Managers thus can only issue a demand notice and cannot recover the amount.

8. Further, the case of the petitioners is that in co-operative sector there are huge bung(sic)s by the high-ups among the officials and non-officials and in large number of cases, the loans are actually not disbursed and are devoured up by high placed officials and non-officials and, therefore, the question of repayment of loan amounts would not arise.

9. Articles 14, 19, and 21 of the Constitution are also invoked by the petitioners whose cases are that the impugned orders and Rule 17 of the Rules, 1977 frustrates the basic principle of tenure of service of confirmed employees. It was also argued that such an order tantamounts to 'retrenchment' and, therefore, the provisions of Section 25F of the Industrial Disputes Act, 1947 are to be complied with which have not been done so far in the present cases. It was also submitted that the petitioners have given discriminatory treatment.

10. The respondents have contested these writ petitions and certain preliminary objections have been raised by the learned Advocate General also.

11. It is contended that Bharatpur/Central Co-operative Bank Ltd, is neither "State" nor is covered by the term, "other cadre authorities" for the purpose of Article 12 and 226 of the Constitution of India. Second preliminary objection is that the petitioners have got alternative remedy u/s 128 of the Act, 1965 and also under Rule 17 of the Rules, 1977. It is then contended the Rule 17 of the Rules, 1977 is not statutory rule.

12. So far as the merits of the case are concerned, the respondents have admitted that the petitioners have been retired under Rule 17 Rules, 1977, because of their failure to achieve 80% of the target in three years. The Bank has produced a chart of performance of the petitioners and alleged that it will show that the retirement is wholly justified.

13. In the reply, the respondent Bank denied the averments made in the writ petition and submitted that the correct position of law is that the Registrar has not delegated any power but has only laid down the conditions of service of employees of the Society in terms of powers vested in him under Rule 4(1) of Rules, 1966. The rules, 1966 are statutory in nature and they have got force of law. The rules, 1977 have been framed by the Registrar in terms of the provisions made under Rule 41(1) of the Rules, 1966.

14. The respondents have also contested the claim of the petitioner that they are workmen and the respondent's case is that the petitioners are officers as defined in Section 2-J of the Act, 1965 and further as per Sub-clause (8), of Rule 2 of Rules, 19(sic)7 which makes the petitioners as "the Chief Executive Officer of the Society.

15. It was then argued that the allegation that it was impossible for the petitioners to achieve the target for every reasons given in the writ petitions are not correct. In each case, the specific funds have been given by the respondents. It has also been pointed out that the orders of termination have been passed in public interest and the procedure prescribed has been fully followed.

16. The challenge to the Rules and orders, under Articles 14, 21 and 19 of the Constitution have also, been controverted and rebutted both on facts and in law by the respondents.

17. At the joint request of the learned Counsel for the parties, all these writ petitions have, been heard together and they are being decided by this one common consolidated judgment.

18. The first question to be considered is, whether the respondents-Co-operative Bank is an Authority or instrumentality which comes within the terms "State" as per Article 12 of the Constitution of India.

19. The affidavit filed by the petitioner shows that from the Administrator upto the lowest cadre of the officers of the Bank are Government Officers who are administering and managing the affairs, of the Bank. It further shows that the finance advanced or guaranteed are provided by the "State" and the activities of the Bank are controverted by the Bank and its officers. The Officers of the State exercises statutory powers and notification dt. 8-2-1974 issued by the State Government in exercise of its powers u/s 3 read with Section 147, of the Act, 1965, gives these statutory powers to those officers. They have been given powers under different Section of the Act, 1965, This notification dated 8-2-74 read as under:

Government of Rajasthan

(Co-operative Department)

Notification No. 4 (7) Coop/I/65: Dated 8th Feb. 1974

In supersession of all previous notifications in exercise of powers conferred by Section 3 read with, Section 147 of the Rajasthan Co-operative Societies Act, 1965 (Rajasthan Act 13 of 1965), the State Government hereby appoints:

i) Officers specified in-Column I of the Schedule here to annexed to assist the Registrar, and

ii) confers on them the powers of the Registrar respectively specified against them in Column 2 of the said Schedule.

SCHEDULE Officers Powers XXX XX XXX 9. General Managers/ All powers of the Registrar Managers Executive under Sections 30, 31, 32, 37, Officers of all the Central 70, 71, 117, 118, 135 of the Co-operative Banks in Act in so far as they relate Rajasthan to the Primary Societies affiliated to their Central Co-operative Banks"

20. The learned Advocate General made the statement that the institutions where these Managers are serving and from where they have been compulsorily retired are financial institutions. All their viability and effective functioning are dependent on the programme of integrated rural development and on the effective implementation of the Prime Minister's 20 point programme. On the contrary, Shri Sharma, the learned Counsel for the petitioners submitted that where the petitioners are serving are instrumentalities and agencies of the State for implementation of its most prestigious and Nation building economic programme of fundamental importance. According to Shri Sharma, the said 20 Point programme is a National programme sponsored by the Union Government and adopted by the State Government. It is not a private individual's programme.

21. The learned Advocate General raised a preliminary objection that u/s 128 of the Act, the Government and the Registrar have got powers to call for proceedings of subordinate officers and examine their legality or propriety of any order passed by the subordinate officers. According to Shri Sharma, the compulsory retirement orders passed by the Managing Director are revisable by the State Government and the Registrar, Cooperative Societies u/s 128 of the Act, because the Managing Director of the Bharatpur Central Cooperative Bank is an officer subordinate to them.

22. In *Hiralal v. Rly. Sharma's Sahakari Bank* (1983 R.L.W. 29), this Court has laid down the following criteria:

Under the Act, the position of the Registrar is not like an ordinary officer of the State, but he has to exercise the powers vested in him under the provisions of Act of 1965 and Rules of 1966 like a Tribunal or statutory authority. Even the

orders passed by the Registrar are appealable as well as revisable under the provisions of the Act by the different authorities. Unless the Registrar exercises the powers in a way which may lead to the control of the Government it cannot be said that the Registrar is acting as an instrumentality or an agency of the State. In fact, Registrar cannot act on the directions of the State Government but he has to act within the ambit of the powers and duties vested upon him under the Act of 1965 and the Rules of 1966.

If the society is registered under the Cooperative Societies Act and it is financed mainly or wholly by the State Government, it is controlled by the Officers of the State Government in their administrative capacity or by the persons nominated by the State Government in their capacities, then definitely the case may be made out that the society is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. As I have said earlier that the society is neither financed nor is under the administrative control of the Government. It is neither instrumentality of the "State" nor agency of State. I hold that the respondent Society does not fall under the definition of the "State" or "other authorities" under Article 12 of the Constitution and as such it is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

23. Again, in *Raj. Coop. Dairy Fed Ltd. Jaipur v. Manohar Lal Sharma* AIR 1983 558 certain tests were laid down. The authoritative decisions of the Apex Court in *Romana v. International Airport Authority* AIR 1979 SC 1626 *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, *Som Prakash Rekhi v. Union of India* AIR 1981 SC 292 further laid down the criteria for considering, whether a particular organisation can be included under the term, "State", under Article 12 of the Constitution. In view of the above factual position I am of the opinion that the Cooperative Bank is under the control of the Government and its financial resources are also controlled and contributed mostly by the Government and the officers are the Government officers who all are amenable to the subordinate jurisdiction of the Government or the Registrar Cooperative Societies which is statutory functionary.

24. In view of the above, as per the dictum of law laid down in *Ajay Hasia*, *Som Prakash Rekhi* and *Romana's* cases (*supra*) and followed in the above decisions of this Court. I have got no hesitation in holding that the Bank of Bharatpur Cooperative Society is instrumentality of the State for the purpose of Article 12 of the Constitution and a writ petition can be entertained against them.

25. The second objection raised by the respondent and the learned Advocate General is that there are alternative remedies available u/s 128 of Act and under Rule 17 of the *Prathamik Krishi Dyandatri Samitiyon Ke Vyasthapako Ke Chayan, Niyukti Avam Seva Niyam, 1977* (hereinafter referred to as the *Vyasthapak Seva Rules of 1977*). I would have dealt with the question of alternative remedy a little later but, since the validity of the relevant rule has been challenged and the Registrar or the Government is not competent to decide the constitutionality of rule, I am of the opinion that the plea of the alternative remedy cannot be

sustained-these bunch of cases. Consequently, the second objection is also dismissed.

26. Now coming to the merits of the case, Shri Sharma who argued the writ petitions at length, contended that the Rules are not statutory in character. It would be important to notice here that the relevant rule of 1977 has been framed by the Registrar Cooperative Societies under the exercise of powers conferred by the Rules of 1966 and its rule 41 takes its origin from the rule making authority, the "State" authorised u/s 148(1) of the Act which in terms provides as under;

148. Power to make rules. (1)The State Government may, for the whole or any part of the State and for any class of cooperative societies after previous publication, make rules to carry out the purpose of this Act.

Provided that any rule may be made under this Section without previous publication if the State Government considers that it should be brought into force at once.

27. Therefore, it cannot be doubted that the powers were given to the State Government u/s 146(1) of the Act and the State Government framed Rule 41 of the Rules, 1966 conferring the Registrar to prescribe service conditions. The Rules of 1966 are statutory in nature and the conditions of service contained in the Vyasthapak Rules of 1977 have been prescribed by the Registrar under the powers derived from the rulemaking authority who expressly stated that these service conditions would be regulated by the Registrar. In my opinion, it is not correct to say rule is void on the ground of excessive delegation.

28. The learned Advocate General correctly pointed out the decision of Apex Court in *The Railway Board v. P.R. Sundranariyan* 1978) (1) SLR 276 in which rule 157 of the Indian Railways Establishment Code, Vol- was in question. Undoubtedly, there is similarity between 157 of the Railway Code and Rule 41 of Rules, (sic)66, as in both of them, the rule making authority has been given delegated power to other persons or authorities. In my view, the present one is a case of delegation of powers which is permissible in law. Shri Sharma could not support his contention with any authoritative decision to show that such rulemaking authority given to Registrar under the Rules would be violative of any provision of the Constitution or an Act. In the absence of that, I have not been able to appreciate the objection. The contentions raised on behalf of the petitioners that Rules of 1977 are invalid and ultra vires is not tenable and is consequently rejected.

29. The next limb of the submissions of Shri Sharma was that the petitioners are workmen, it was pointed out that they are paid lesser than Class IV employees and their job is purely clerical. Shri Jain the learned Advocate General, on the contrary, submitted that the functions and job of the petitioners are of supervisory nature and they are officers and not clerks.

30. Shri Sharma further argued that there was earlier an Industrial dispute and Choudhary Award According to this Award, the managers of the Cooperative Bank and societies have been held to be workmen. I am unable to generalise the obiter dictum of the Industrial Tribunal order in as much as that particular Award/ Order was passed on the peculiar facts and circumstances proved before it and cannot be res judicata in these proceedings The question whether a particular person is workman is a blunt question in the present Industrial labour jurisprudence.

31. It will have to be examined in each case, whether these functions and duties which construed the workmen are being performed or not by the petitioners and which of the rival contentions of the parties is correct. Paras 11, 12, and 13 of the writ petition gave detailed facts and the respondents have controverted them. The terms and conditions of services of the Managers required a detailed adjudication being hi dispute and, therefore, the question whether the petitioners are workmen or not, is an involved question relating to the disputed question of facts. I, would, therefore, hold that these questions cannot be decided properly by this Court under Article 226 of the Constitution in its extra ordinary jurisdiction and, therefore, the petitioners would be at liberty to move for a reference and then get it adjudicated by the competent forum either Labour Court or Industrial Tribunal as the case may be.

32. I have already held that Choudhary award of the Labour Court of Rajasthan is neither res judicata and nor hindng on this Court, therefore, it would not be proper to discuss the correctness or otherwise of this particular award. Rule 19 of the Vyasthapak Rules of 1977 mentions the duties of the Managers which are reproduced for ready reference:

19- O;LFkkid ds drZO; ,oa mRrjnkf;Ro%

?1? O;oLFkkid lfefr dh eq[; dk;Zdkjh vf/kdkjh gksxk ,oa lfefr ds leLr fdz;kdykiks dks lqpk: :i ls pykus ggrq mRrjnk;h gksxk Aog laLFkk ds lapkyd e.M+y dk insu lnL; gksxk ,oa lfpo dk dk;Z Hkh djsxk AlaLFkk dh lk[k dks cMkus gsrq lHkh ,sls dk;Z Hkh djsxk ftlls lnL;ks dh vkLFkk laLFkk es cM+s ,oa laLFkk ds xkSjo dh vfHko`f) gks A bl gsrq laLFkk ds dk;Zky; ds vkfFkZd fodkl dh rhu lky dh ;sktuk cukuk ,oa lapkyd e.M+y@vkelHkk ds lEeq[k izLrqr djuk ,oa ;kstuk es fu/kkZfjr y{;ks dks le; ij izkIr djuk gS A

?2? laLFkk ds dk;kZy; dks lqO;ofLFkr j[kuk] dk;Zky; le; ij [kskyuk o iw.kZ le; leLr lnL;ks dks laLFkk dh lasok, miyC/k djuk] muds vkfFkZd ekeyks es iw.kZ lgk;rk ,oa ekxZ n"kJu djuk] leLr fjdkMZ dsk lqjf{kr o iw.kZ j[kuk] lEifRr o jksdM+ jkf"K dh lqj{kk j[kuk A

?3? laLFkk dh vksj rFkk lapkyd e.My ds fu.kZ; ds vuqlkj cSd o vU; fofRr; laLFkkvks es /kujkf"K izkIr djuk] [kkrks es ysu&nsu djuk] izkIr jkf"K dks lqjf{kr :i rRdky izfof"V djuk] le; ij lnL;ks es \_\_.k jkf"K dh izkfIr ls 3 fnu dh vof/k es fu/kkZfjr fooj.k&izi= ,oa "ks"K vforfjr jkf"K dks cSd es tek djuk ,oa laLFkk dh izfrfnu "ks"K jksdM+ iksFks ckdH ij gLrk{kj dj mldks lqjf{kr j[kuk] vf/kd`r vf/

kdkjhx.k dks muds pkgus ij jksdM+ jkf" k dk HkSkfrd IR;kiu djokuk lapkyd e.M+y }kjk le;= ij fu/kkZfjr jksdM iksFks dh jkf" k ls vf/kd jkf" k ,oa olwyh dh leLr jkf" k fofRr; cSd es RkRdky tek djokuk ,oa dksbZ jkf" k vko;"drk ls vf/kd gks rks jksdM iksFks es ugh j[kuk A

?4? laLFkk ds mn~ns";ks ds vuqlkj miHkskDrk lkexzh] bEiksVZI o vU; lkt leku lEcU/kr mPp laLFkk ds ek/;e ls izkIr djuk] mldk lkef;d fodz; djuk] LVkWd jftLVj es izfrfnu izfof"V djuk] "ks" k LVkWd dk lqjf{kr j[kuk ,oa l{ke vf/kdkjh }kjk pkgs vuqlj LVkWd dk HkkSfrd IR;kiu djokuk A

?5? vf/kd`r foHkkxh;@foRrh;@mPp laLFkk ds vf/kdkjh }kjk vUos" k.k@fujh{k.k ds le; iw.kZ lg;ksx nsuk A muds }kjk ekax fd;s x;s leLr jsdkM+Z dks izLrqr djuk] leLr okaf{kr lwpuk miyC/k djuk ,oa izkIr vUos" k.k@fujh" k.k i=ks dks lkef;d iwfrZ djuk ,oa iwfrZ izfrosnu lEcU/kr vf/kdkjh.k dks le; ij iVkuk ,oa rRIEcU/kr funsZ"kks dk ikyu djuk A

?6? laLFkk ds IHkh lnL;ks dsk ikl cqd nsuk] mles ysu&nsu djrs gh rRdky okaf{kr izfof"V dj ikl cqdks dh rkjh[k iw.kZ j[kuk] olwyh gsrq ekWx dk uksfVI le; ij rS;kj dj IHkh lnL;ks dks fu/kkZfjr frfFk;ks ls iwoZ gh iVkuk] lnL;ks dh vksj vof/kdkj \_.kks dh olwyh ds fofo/k ekeys rS;kj dj l{ke vf/kdkjh dks izLrqr djuk ,oa ikfjr vkns" kks d fu"iknu dh lfefr dh vksj ls leLr iSjoh@dk;Zokgh djukA

?7? vke lHkk o lapkyd e.M+y dh cSBds cqykuk o mues mifLFkr jguk AcSBdks dh dk;Zokgh le; ij fy[kuk rFkk cSBd ds v/;{k ds lFk fdrkc dk;Zokgh es gLrk{kj djuk A

?8? laLFkk dh izlFkfr;ks] fgLls izek.k&i= vkfn izkIr djuk] fjdkM+Z es ntZ djuk rFkk iw.kZ lqj{kk ls j[kus dh O;oLFkk djuk A

?9? \_.k Lohdkj djuk] fofRr; cSd dks M?kcy izLrqr djuk] jkf" k izkIr dj forfjr djuk rFkk \_.kks dks le; ij olwy djuk A

?10? lapkyd e.My dh Lohd`fr izkIr dj laLFkk dk [kkrk cSd es [kksyuk rFkk [kkrk dks vkijSV djuk A

?11? laLFkk dh vksj ls nkos djuk] iSjoh djuk] le>kSrk djuk vFkok okil ysuk A

?12? lapkyd e.M+y dh Lohd`fr ctV ds vUrZxr O;; djuk A

?13? lfefr dh vk;&O;; rS;kj djuk o lapkyd e.M+y es le{k izLrqr djuk A

?14? o" kZ dh lekfiR ij okf" kZd fglckr] uD"ks vkfn rS;kj djuk o vf/kdkjh;ks dk izLrqr djukA

?15? laLFkk dh vksj ls i= O;ogkj djuk A

?16? u;s lnL; cukus gsrq dk;Z djuk] fo"ks"kdj dk;kZy; ds leLr detksj oxZ ds O;fDrks dks lfefr ds lnL; cukuk ,oa funsZ"kkuqlj lfefr ds fy, fu/kkZfjr leLr y{; o dk;Ziw.kZ djuk A

?17? laLFkk ds leLr lnL;ks dh Hkwfe ds lgh forj.k dks Hkwfe fooj.k jftLVj vafdr

djuk] mldks jktLo iVokjh ls rLnhd djkokuk] lnL;ks dh Hkwfe es gksus okys ifjorZu] ifjo)Zu ,oa deh dh lwpuk;s vafdr djuk ,oa ;g lwfpr dji ,oa ;g lwfpr djuk fd mDr fooj.k gsrq fu/kZkfjr jftLVj rkokfj[k iw.kZ og lgh gSA

?18? vU; ,sls leLr dk;Z djuk tks lapkyd e.M+y] jftLV?kj vFkok fofRr; cSd }kjk lkSis tkosA

33. Since I have not been able to persuade myself to enter into the controversy about the facts which are expressly of complexed and disputed nature, I cannot decide whether the petitioners are workmen and unless it is decided, the question of application of S, 25F and 25G of the Industrial Disputes Act 1947 would not apply to the present bunch of cases. Now it would be open to the petitioners to move the Government for making reference u/s 10 of the Industrial Disputes Act, 1947 and, it is expected that if the Government is approached, it would refer this dispute to the Labour Court or Industrial Tribunal or any other competent forum, as the case may be.

34. Now coming to the next limb of the submissions. Proviso to Rule 17 of the Vyasthapak Seva Rules of 1977 expressly directs and prescribes that if during the period of 3 years, the Manager has not been able to achieve the target of 80% then, his services would be liable to be terminated by way of compulsory retirement. The question now arises for consideration is that such provision can be declared ultra vires on the ground that in it opportunity to show cause or inquiry has not been given. In other words, the question is, whether it is by way of punishment.

35. In Municipal Committee, Amritsar Vs. Hazara Singh, the provisions of Rule 544(2) of the Rajasthan Civil Service Rules precisely provided for compulsory retirement, were challenged. While repelling the challenge, their Lordships of the Supreme Court observed as under:

The right to be in public employment is a right to hold it according to rules. The right to hold is denfeasible according to rules. The rules speak of compulsory retirement. There is guidance in the rules as to when such compulsory retirement is made. When persons complete 25 years of service and the efficiency of such persons is impaired and yet, it is desirable not to bring any charge of inefficiency or incompetency, the Government passes orders of such compulsory retirement. The Government Servant in such a case does not lose the benefits which a Government servant has already earned. These orders of compulsory retirement are made in public interest. This is the safety value of making such orders so that no arbitrariness or bad faith creeps in.

The validity of such provision was also upheld in T.G. Shivacharana Singh and Others Vs. The State of Mysore, Similar view was taken in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), In Union of India (UOI) Vs. Col. J.N. Sinha and Another, , their Lordship of the Supreme Court reiterated that an order of retirement it passed, on bonafide opinion, cannot be challenged. In R.L. Butial v. Union of India (1971 (sic)12) SCR 55) their Lordships of the Court

held that there are two exceptions to the protection afforded by Article 311(2). First, where a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which is reasonably fixed. Second, where he is compulsorily retired under rules which prescribe the normal age of superannuation and provide a reasonably long period of qualifying service after which alone compulsory retirement can be ordered. Article 311 deals with termination of service by of punishment.

36. Similarly in Shivecharana Singh's case (supra), the view was expressed, where Rule 285 of the Mysore Civil Service Rules 1958 which in powers on the government to retire a government servant in public interest was held to be valid. It would thus be seen that similar provision in several statutes have been upheld as valid and, that have not been held to be violative of Article 311, 14 or 16 of the Constitution.

37. In the instant cases, the present rule 17 of the Vyasthapak Rules 1977 is a rule which is in the form of compulsory retirement on account of Impairing the efficiency by non-fulfilment of even 80% of the quota of last three years.

38. It has been argued that, since this rule is in the chapter of the disciplinary proceedings, it is in consensus of disciplinary proceedings where principles of natural justice for learning and an opportunity of hearing and inquiry should be invoked. I am of the opinion that merely by putting these provision under the caption, "disciplinary proceedings" they would not become disciplinary proceedings as such, warranting any stigma, of course impairing of the efficiency is for suspicion behind and, therefore, no exceptions can be taken in the present cases.

39. So long as the efficiency is not impaired, a person would certainly complete of a target and since average is to be taken of three years, there is sufficient time to provide for contingencies.

40. It would be useful to mention here that a Division Bench of this Court in L.I.C. of India and Ors. v. H.S. Chauhan etc. etc. 1983 RLR 600 held a similar provision in the Life Insurance of Corporation of India Regulations as valid and not violative of Articles 14, 16 and 19(1)(g) of the Constitution of India. The observations made in L.I.C. H.S. Chauhan (supra) at paras 26, 27, 29 and 31 are pointed out hereunder which are relevant for the above proposition of law:

Let us now turn to the Amended Staff Regulations with a view to adjudging their validity or otherwise u/s 49 of the Act. Section 49, as it stood at the time of the making of the Amended Staff Regulations, empowered the Corporation, with the previous approval of the Central Government, to make regulations, not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. In particular, the Corporation was empowered under Clauses (b) and (bb) of subsection of Section 49 to make rules regulating the terms and conditions of service of fresh recruits as well as of the transferred

employees. It was in the exercise of this power and with the previous approval of the Central Government that the Corporation made the Amended Staff Regulations regulating the terms and conditions of service of all development officers on the lines of the Annexure to the Order of 1978 and thus it brought about uniformity in such terms and conditions as applicable to both categories of development officers. The allegation that the Corporation acted mechanically in carrying out the directions of the Central Government as contained in paragraph 4(2) of the Order of 1978 sound pure and void for after all the Corporation could not have issued the Amended Staff Regulations without the previous approval of the Central Government and if it carried out the directions of the Central Government in adopting *mutatis mutandis* the Annexure as its Regulations and while doing so it expressly stated that it had already obtained the approval of the Central Government, to the making of the Amended Staff Regulations, it is difficult to see how those Regulations can be challenged on the ground that the Corporation did not apply its mind to them. When the Act itself makes the previous approval of the Central Government as a *sine qua non* to the making of regulations by the Corporation u/s 49, the Corporation made judicious exercise of its discretion in carrying out the directions for if it were to deviate there from the Central Government would not have accorded its previous approval to the making of those regulations.

27. We may also mention here that the validity of the Order of 1978 and the Amended Staff Regulations has also been challenged on the ground of the alleged violation of the petitioners' fundamental rights guaranteed by Articles 14, 16 and 19 of the Constitution. This argument is wholly devoid of force. The petitioners have not given any particulars in their writ petitions from which one may spell out a plea showing that between persons similarly situated and circumstances, discrimination has been made which is founded on the intelligible differential. In the absence of such a plea and its proof, we are not prepared to entertain the argument regarding the so-called discrimination. It is obvious that the development officers are a class by themselves and therefore, the Central Government and the Corporation were legally justified in treating them as such for the purpose of prescribing work norms, incentives and disincentives for them. We agree with their Lordships of the Gujarat High Court (See *Harivadan v. L.I.C. of India* 1977 Lab IC 1072) that the minimum output of work prescribed by the Order of 1978 and the Amended Staff Regulations for a development officer cannot by any means amount to denial of equal opportunity in employment. Provision of incentives for good performance and disincentives for bad performance is perfectly consonant with the nature of work of a development officer in the organisational set up of the Corporation.

(29) We may now refer to the Life Insurance Corporation (Amendment) Act, 1981 (No. 1 of 1981(sic)) which has *inter alia* inserted Clause (cc) after Clause (c) of Sub-section (2) of Section 48 of the Act with effect from June 20, 1979. The Central Government is empowered by the amendment to make rules providing for the terms and conditions of service of the employees and agents of

Corporation including those who become employees and agents of the Corporation on the appointed day under this Act". Sub-section (2A) added after Sub-section (2) of Section 48 by the same amendment provides that regulations and other provisions in force immediately before Act No. 1 of 1981 came into force regarding the terms and conditions of service of employees and agents of the Corporation including these who become employees and agents of the Corporation on the appointed day shall be deemed to be Rules Under Clause (cc) as newly inserted and shall have effect accordingly. This means that the Amended Staff Regulations which were in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act, 1981 shall be deemed to be rules under Clause (cc) of Sub-section (2) of Section 48 and shall have effect as statutory rules framed and promulgated by the Central Government. The Supreme Court has already upheld the validity of the Life Insurance Corporation (Amendment) Act, 1981 including Section 48, as amended thereby in its recent judgment reported as A.V. Nachane and Others Vs. Union of India (UOI) and Another, The Amended Staff Regulations have thus already passed muster as rules deemed to have been framed by the Central Govt. u/s 48(2)(cc) of the Act.

(31) For these reasons, we upheld the validity of the Order of 1978 and the Amended Staff Regulations. The Special appeals are therefore, allowed and consequently the judgment of the learned Single Judge is set aside. In the net result, all the writ petitions giving rise to these appeals are dismissed with costs throughout. Counsel fee Rs. 250/- in each writ petition."

41. It may further be mentioned that the Division Bench in the above judgment has also held that the development Officers of Life Insurance Corporation of India are not workmen and for that, there is a detailed discussion in paras 15, 16 and 7 of the above judgment. Since I have kept the controversy regarding the workmen, open for adjudication by the Industrial forum of Tribunal or Labour Court, I would not discuss in more details the principles laid down in paras 15, 16 and 17 and how much they survive after the later judgment of the Supreme Court as pointed out by Shri Sharma, the learned Counsel for the petitioners, but a copy of that judgment has not been produced.

42. Again, the principles laid down in paras 21 and 22 of the above judgment in LIC v. H.S. Chauhan (supra) and 'heading of Chapters of an Act also needs attention in the present controversy of inclusion of the impugned provision in the 'disciplinary proceedings' chapter.

43. The relevant observations are as under:

Mr. Garg, learned Counsel for the respondents in some of these appeals referred to the heading of chapter IV of the Act in which Section 11(2) occurs and also to the marginal note of the Section 11(2). A part of his argument that Section 11(2) is intended to apply to transferred employees alone and that it has no application to fresh recruits like Chauhan. Chapter IV carries the heading "Transfer of

Existing Life Insurance Business to the Corporation" and Section (sic) is given the marginal note to the effect "Transfer of Service of existing employee of Insurers to the Corporation". If we were to be guided by the aforementioned heading and marginal note alone in preference to the plain language of the enacted Section, we could have perhaps found some merit in the argument of Mr. Garg. But the law is well settled that marginal notes of Sections and headings of chapters of an Act passed by the Parliament cannot be said to be enacted in the same sense as any part of the body of the Act. (See *Maxwell on the Interpretation of Statutes* (twelfth edition Pp. 9-10). In *Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay*, the Supreme Court referred with approval to the observations of the Privy Council in *Balraj Kunwar. (Thakurain) v. Jagpalsingh* 31 IA 132, and held that the marginal notes of a Section and the title of a chapter cannot be legitimately used to restrict the plain terms of an enactment. In *Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others*, and *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, the Supreme Court again held that the marginal note cannot control the meaning of the body of the Section if the language employed therein is clear and unambiguous.

22. As for the Parliamentary Debate and the Ministers statement agreeing to delete the words, "from time to time" from the body of Section 11 of the Bill which was enacted as law without these words, we may rest content by quoting here some of the observations of the Supreme Court in *Anandji Haridas and Co. Pvt. Ltd. Vs. Engineering Mazdoor Sangh and Another*. This is what the Supreme Court said about the Parliament debates:

"As a general principle of interpretation, where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence such the Parliamentary Debates, Reports of the Committees of the legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe these words. It is only where a statute is not exhaustive or where its language is ambiguous uncertain, clouded or susceptible of more than one meaning or shades of meaning, that external evidence as to the evils, if any which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the Legislature had in view in using the words in question.

44. On the analogy of the principles laid down in *CIT v. Ahmedbhai Umarbhai & Co.*(supra), *Balraj Kunwar (Thakurain) v. Jagpalsingh* (supra), *Nalinkhya v. Shyamsunder* (supra) and *Western Indian Theatres Ltd. v. Municipal Corporation of the City of Poona* (supra), it can safely be deducted that merely because the provisions are ins the Chapter under the heading, "Disciplinary proceedings", it cannot be interpreted to mean that each one of the provisions is necessary in disciplinary nature of punishment for misconduct by the "head-note" or "caption"

or "heading" of the Chapter.

45. Shri Sharma dealt at length that 89 per cent of the target could not be achieved by most of the Managers and it is physical handicap to achieve it. The learned Counsel for the respondents repudiated and submitted that most of the Managers have achieved it and there was no difficulty. In my considered opinion, these again are complicated, involved disputed questions of fact which requires evidence and such controversy cannot be resolved in writ jurisdiction.

46. Since the petitioners are claiming to be "workmen", they should prefer industrial forum under the Industrial Disputes Act by getting reference made u/s 10 or any other provisions of the Industrial Disputes Act so that all the above questions which require prolonged and involved inquiry by recording evidence, can be adjudicated conveniently.

47. The result of the above discussion is that the petitioners have not been able to satisfy this Court that any of the contentions raised by them is tenable and can succeed. Consequently, all the writ petitions mentioned above are dismissed. The stay orders passed therein are hereby vacated. In the facts and circumstances of the case, the parties are left to bear their own costs.