(2020) 10 SHI CK 0145

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2001 Of 2015, 972, 977, 2068 Of 2017

Kehar Singh & Others APPELLANT

Vs

State Of Himachal Pradesh & Others RESPONDENT

Date of Decision : 15-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 15, 16, 32, 136, 226
Himachal Pradesh Co-Operative Societies Rules, 1971 — Rule 9, 9(j), 56, 56(1)
Himachal Pradesh Co-Operative Societies Act, 1968 — Section 10A, 61, 65, 66, 67

Citation : (2020) 10 SHI CK 0145

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : B.C. Negi, Nitin Thakur, Deepak Kaushal, Ashok Sharma, Desh Raj Thakur, Shiv Pal Manhans, Raju Ram Rahi, Sunil Mohan Goel, J.S. Bhagga, Dr. Lalit K. Shamra

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. For appreciation of common questions of law and facts, all these four Writ Petitions are being decided by this common judgment.

2. These petitions have been preferred by employees of respondent - H.P. State Cooperative Bank Ltd. (hereinafter referred to as Cooperative Bank) for omission and commission on the part of Registrar, Cooperative Societies, Himachal Pradesh (hereinafter referred to as Registrar), with respect to his statutory duty, assigned under Rule 56 of Himachal Pradesh Co-operative Societies Rules, 1971 (hereinafter referred to as Rules 1971), framed by the Government of Himachal Pradesh under the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter referred to as the Act), with respect to Conditions of Service of employees to be specified by the Registrar.

3. A common preliminary objection has been raised in all these petitions that in

view of judgments passed by Division Benches of this court in C.K. Malhotra v. H.P. State Coop. Bank and others, and other connected matters, decided on 5.3.1993, reported in 1993(2) Sim.L.C. 243; and Sanjeev Kumar & others v. State of H.P. & others, decided on 4.8.2014, reported in Latest HLJ 2014 (HP) 1061, these petitions are not maintainable being filed against Cooperative Bank.

4. In C.K. Malhotra's case, petitioners therein had assailed the order passed by the Societies, i.e. Cooperative Bank, Kangra Central Cooperative Bank Ltd. (hereinafter referred to as KCC Bank) and Himachal Pradesh State Cooperative Marketing and Development Federation (HIMFED), under their respective service regulations, against its employees, which were decided, approved or upheld by the Registrar, exercising the powers vested in him under those service regulations framed by concerned Societies.

5. Division Bench of this Court, in C.K. Malhotra's case, had adjudicated and decided the preliminary objection by holding that the three Societies, including the Cooperative Bank, registered under the Act, cannot be chacacterised as 'other authority' within the ambit of 'State' within the meaning of Article 12 of the Constitution of India and, thus, for nature of non-statutory function performed by the Registrar with respect to order passed by these societies in relation to service matters of its employees, which was not public function performed by the society(ies), these societies, in those cases, were not considered amenable to the jurisdiction of High Court under Article 226 of the Constitution of India. After considering numerous judgments passed by the Apex Court and various High Courts, it was concluded by the Division Bench as under:

"94. After having applied the tests and finding that none of the tests are satisfied the natural corollary which follows is that the three Societies cannot be characterised as the 'other authority', so as to bring them within the ambit of a 'State' within the meaning of Article 12 of the Constitution.

95. It was contended by the learned Counsel for the Petitioners that since in some of the cases orders, which have been passed, in accordance with the provisions of the Service Rules have been either upheld or varied by the Registrar, and such order also being under challenge in the writ petition, the writ petition would be maintainable and this Court will be competent to issue suitable directions interfering with the orders so passed by the statutory authority. This submission also has no force. The power which has been exercised by the Registrar is under various service regulations framed by the Societies under their respective Bye-laws by virtue of Rule 9(j) of the Rules and is not a statutory power exercised by the Registrar under the provisions of the Act and Rules. The power exercised is under service regulation framed by the Societies by virtue of powers contained in the Bye laws. Since the bye-law have no force of law as held in Co-operative Central Bank Ltd. and Ors. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad, AIR 1970 SC 245 and affirmed in Babaji Kondaji Garad and Ors. v. Nasik Merchanrs Co-operative Bank Ltd, Nasik and Ors, AIR 1984 SC 192, the service regulations also have no force of law. No doubt, the

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orders under challenge are passed by the Registrar, but the Registrar has exercised his powers under the service Regulations and not under the Statute or the Rules.

96. In Nayagarh Cooperative Central Bank Ltd. & Anr. vs. Narayan Rath & Anr., (1977) 3 SCC 576, the Supreme Court did not actually decide the question as to whether a writ petition could be maintained against a Cooperative Society but after having reversed the decision of Orissa High Court that the writ petition would lie, the Apex Court observed that such a decision was not strictly in accordance with the other decision of the Court and proceeded to hold that since in that case order which had been passed by the Registrar was also challenged, therefore, the writ petition was maintainable. The order, which the Registrar had passed in the said case was in exercise of his statutory authority in the purported exercise of powers conferred on him. In the instant case, as noticed above, the Registrar has not passed the impugned orders acting as a statutory authority in the purported exercise of powers conferred on him by the Act or the Rules framed there under but such order has been passed by virtue of his having been named an authority to hear and decide appeals in the Service Regulations framed under the Bye-laws which have no force of law. It will not be a statutory exercise of power but on exercise of power under the Bye-laws.

97. The other submission made on behalf of the learned Counsel for the Petitioners that the HIMFED and Banks are discharging public duties stands already answered while dealing with the 5th test, and the consequential submission that writ of Mandamus can be issued also cannot be upheld, since in order that Mandamus may issue, to compel an authority to do something, it must be shown that the Statute imposes a legal duty on that authority and the aggrieved party has a legal right under the Statute to enforce its performance. The rights which the Petitioners are claiming are not the rights under the Statutes, but the same are claimed under the Bye-laws of Society which have no force The Societies are also not discharging any public duty or any public functions and, as such, the writ of Mandamus would not lie.

98. Consequently, we have no hesitation in holding that the three Societies, namely, The Himachal Pradesh State Co-operative Bank Ltd. The Kangra Central Co-operative Bank Ltd., and the Himachal Pradesh State Co-operative Marketing and Development Federation Ltd., are not 'other authorities' and, as such, cannot be characterised as 'State' within the meaning of Article 12 of the Constitution and the same are also not authority within the meaning and for the purpose of Article 226 of the Constitution. Order passed by the Societies under their respective service regulations against its employees, as such, or in connection with employment cannot be corrected by way of writ petitions. The petitions also would not be maintainable in order to challenge the action of the Registrar since the same is not an exercise of statutory power conferred upon him under the provisions of the Act or the Rules but an exercise of powers by him under service regulations framed under Bye-laws having no force of law. The writ petition also

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will not be maintainable since none of the three Societies are discharging any public functions.

99. In view of our having upheld the preliminary objection all the writ petitions are dismissed as not maintainable in this Court for the reliefs claimed. We leave the parties to bear their respective Costs."

6. In another case, S.S. Rana v. Registrar, Coop. Societies & another, reported in (2006) 11 SCC 634, between KCC Bank and its employee, the employee had approached the Apex Court against dismissal of his petition by this High Court on the ground that writ petition was not maintainable. In that case, the Managing Director of KCC Bank had terminated the services of the employee, which was affirmed by the Board of Directors of KCC Bank by dismissing the appeal preferred by the employee. In this case also, the Supreme Court had concluded as under:

"14. Respondent 1 does not satisfy any of the tests laid down in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111, we are of the opinion that the High Court cannot be said to have committed any error in arriving at a finding that the respondent-Bank is not State within the meaning of Article 12 of the Constitution of India."

However, the Supreme Court has also observed as under:

"15. We are, however, not oblivious of the three judge Bench decision in Gayatri De vs. Mousumi Cooperative Housing Society Ltd., (2004) 5 SCC 90, wherein this Court held a writ petition to be maintainable against the cooperative society only stating:

"55. We have, in paragraphs supra, considered the judgments for and against on the question of maintainability of writ petition. The judgments cited by the learned Senior Counsel appearing for the respondents are distinguishable on facts and on law. Those cases are not cases covered by the appointment of a Special Officer to manage the administration of the Society and its affairs. In the instant case, the Special Officer was appointed by the High Court to discharge the functions of the Society, therefore, he should be regarded as a public authority and hence, the writ petition is maintainable."

....

16. Our attention has also been drawn to U.P. State Cooperative Land Development Bank Ltd. vs. Chandra Bhan Dubey & Ors., (1999) 1 SCC 741, wherein the writ petition was held to be maintainable principally on the ground that it had been created under an Act. Reliance has also been placed upon Ram Sahan Rai vs. Sachiv Samanaya Prabandhak & Anr., (2001) 3 SCC 323, wherein again the appellant thus was recruited in a Society constituted under the U.P. Cooperative Land Development Bank Act, 1964 and this Court, having examined different provisions of rules, bye-laws and regulations, was of the firm opinion that the State Government exercised all-pervasive control over the Bank and

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moreover its employees were governed by statutory rules, prescribing an entire gamut of procedure of initiation of disciplinary proceedings by framing a set of charges culminating in inflicting of appropriate punishment, after complying with the requirements of giving a show-cause and an opportunity of hearing to the delinquent.

17. It is, therefore, evident that in Ram Sahan Rai (supra) also the cooperative society was held to be established under a statute. We may notice that in Nayagarh Cooperative Central Bank Ltd. & Anr. vs. Narayan Rath & Anr., (1977) 3 SCC 576, this Court was of the opinion that:

"5. The High Court has dealt with the question whether a writ petition can be maintained against a cooperative society, but we are inclined to the view that the observations made by the High Court and its decision that such a writ petition is maintainable are not strictly in accordance with the decisions of this Court. We would have liked to go into the question for ourselves, but it is unnecessary to do so as Respondent 1 by his writ petition, was asking for relief not really against a cooperative society but in regard to the order which was passed by the Registrar, who was acting as a statutory authority in the purported exercise of powers conferred on him by the Cooperative Societies Act. The writ petition was in that view maintainable."

18. We may notice in some decisions, some High Courts have held wherein that a writ petition would be maintainable against a society if it is demonstrated that any mandatory provision of the Act or the rules framed thereunder, have been violated by it. [See Bholanath Roy & Ors. vs. State of West Bengal & Ors., (1996) Vol.1 Calcutta Law Journal 502]."

7. A Full Bench of this Court had an occasion to decide a reference made by a Division Bench, vide order dated 20.7.2012, in CWP No.3634 of 2012, titled as Vikram Chauhan v. Managing Director, Kangra Central Cooperative Bank Ltd., which reads as under:

"Whether the Kangra Central Co-operative Bank, the Himachal Pradesh State Co-operative Bank Ltd. and the Jogindra Central Co-operative Bank, are 'State' within the meaning of Article 12 of the Constitution of India and whether a writ would lie against them?"

8. Vide judgment dated 14.5.2013, the Full Bench of this Court in Vikram Chauhan's case, reported in Latest HLJ 2013(HP) 742(FB), had answered this question as under:

"15. For the view taken by us on both facets of the referred questions, we proceed to answer the Reference as under:

(1) The question as to whether Kangra Bank is a State within the meaning of Article 12 of the Constitution of India, is no more res integra. It has been authoritatively answered by the Apex Court in S.S. Rana v. Registrar, Coop. Societies & another, reported in (2006) 11 SCC 634.

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(2) Even in the case of H.P. State Cooperative Bank Ltd., the question has been answered by the Division Bench of our High Court in C.K. Malhotra v. H.P. State Coop. Bank and others, 1993(2) SLC 243. There is no conflicting decision of coordinate Bench of this Court necessitating pronouncement on that question by the Full Bench.

(3) In the case of Jogindra Central Cooperative Bank, the decision in Mehar Chand & another vs. Jogindera Central Cooperative Bank, CWP No.641/2002, decided on 26.9.2007, is rendered by the learned Single Judge of this Court and no conflicting decision of the co-ordinate Bench muchless of the Division Bench or Larger Bench of our High Court with regard to the stated Bank has been brought to our notice. In any case, the said question can be conveniently answered by the Division Bench in appropriate proceedings whether in the form of writ petition or Reference made by the learned Single Judge of this Court, as the case may be. As and when such occasion arises, the issue can be answered on the basis of settled legal principles and including keeping in mind the exposition of S.S. Rana's case (supra) of the Apex Court concerning another Cooperative Bank constituted under the Himachal Pradesh State Cooperative Act.

(4) As regards the second part of the question as to whether a writ would lie against the stated Cooperative Banks, we hold that it is not appropriate to give a definite answer to this question. For, it would depend on several attending factors. Further, even if the said Banks were held to be not a State within the meaning of Article 12, the High Court in exercise of powers under Article 226 of the Constitution of India, can certainly issue a writ or order in the nature of writ even against any person or Authority, if the fact situation of the case so warrants. In other words, writ can lie even against a Corporative Society. Whether the same should be issued by the High Court would depend on the facts of each case."

9. In response to the second part of the question, discussion made by the Full Bench is as under:

"12. That takes us to the second part of the question formulated by the Division Bench, as to whether a writ would lie against the stated Cooperative Banks? This question, essentially, touches upon the scope of power of the High Courts to issue certain writs as predicated in Article 226 of the Constitution of India. This is completely independent issue. In a given case, in spite of the opinion recorded by the Court that the respondent concerned in a writ petition, filed under Article 226 of the Constitution of India, is not a State within the meaning of Article 12 of the Constitution of India. Even then, the High Court can exercise jurisdiction over such respondent in view of the expansive width of Article 226 of the Constitution of India. It is well established position that the power of the High Courts under Article 226 is as wide as the amplitude of the language used therein, which can affect any person - even a private individual - and be available for any other purpose - even one for which another remedy may exist (Rohtas Industries Ltd. and another vs. Rohtas Industries Staff Union and others, (1976) 2 SCC 82). In

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the case of Engineering Mazdoor Sabha and another vs. Hind Cycles Ltd., AIR 1963 SC 874, the Court opined that even if the Arbitrator appointed under Section 10-A is not a Tribunal for the purpose of Article 136 of the Constitution in a proper case, a writ may lie against his Award under Article 226 of the Constitution. In the case of Praga Tools Corporation vs. C.A. Imanual and others, (1969) 1 SCC 585, the Apex Court held that it was not necessary that the person or the Authority on whom the statutory duty is imposed need be a public official or an official body. That a mandamus can be issued even to an official or a Society to compel him to carry out the terms of the statute under or by which the Society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. Further, a mandamus would lie against a Company constituted by a statute for the purposes of fulfilling public responsibilities. In the same decision, the Apex Court examined the amplitude of the term "Authority" used in Article 226 of the Constitution. The Court opined that it must receive liberal meaning unlike the term in Article 12 of the Constitution. It went to observe that the words "any person or authority" used in Article 226 cannot be confined only to statutory authorities and instrumentalities of the State. It may cover any other person or body performing public duty irrespective of the form of the body concerned. It is emphasized that what is relevant for exercising power is the nature of the duty imposed on the body which must be a positive obligation owned by the person or Authority. Depending on that finding, the Court may invoke its authority to issue writ of mandamus. In the case of Life Insurance Corporation of India vs. Escorts Ltd. and others, (1986) 1 SCC 264, the Constitution Bench opined that the question must be "decided in each case" with reference to particular action, the activity in which the State or the instrumentality of the State is enacted when performing the action, the public law or private law, character of the Constitution and most of the other relevant circumstances. In a given case, it may be possible to issue writ of mandamus for enforcement of public duty which need not necessarily to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract, as noted by Professor de Smith, which exposition has found favour with the Apex Court.

13. The Apex Court after referring to catena of decisions and authorities in the case of UP State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and others, (1999) 1 SCC 741, has succinctly delineated the scope of authority under Article 226 of the Constitution. In para 27 of this decision, the Court opined that Article 226 while empowering the High Court for issue of orders or direction to any Authority or person does not make any difference between public functions or private functions, but did not go to elaborate that question in the fact situation of that case. It is unnecessary to multiply the authorities on the point except to observe that a writ would lie against even a Cooperative Society or Company. But that does not mean that the Court is bound to issue such a writ. It is the prerogative of the High Court to issue writ to any person or authority, which is not a State or an instrumentality of the State. The

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Court would do so with circumspection and keeping in mind the well defined parameters. Whether in the fact situation of a given case, the Court ought to exercise its authority to issue writ or order in the nature of writ under Article 226 of the Constitution, will have to be answered on the basis of the settled principles, on case to case basis. Thus, it will be inapposite to put it in a straight jacket manner that every writ petition filed against the Cooperative Banks must be dismissed as not maintainable or otherwise."

10. A Division Bench of this Court in Sanjeev Kumar's case, after considering the case law, including C.K. Malhotra's and Vikram Chauhan's cases, had held that since the relief in the petition was primarily claimed against the Cooperative Bank, therefore, petition itself is not maintainable and accordingly the petition was dismissed.

11. In C.K. Malhotra's case, it has been categorically held in Para-95 that the power, which was exercised by the Registrar, was under various service regulations framed by the Societies under the respective bye-laws by virtue of Rule 9(j) of Rules 1971 and was not a statutory power exercised by the Registrar under the provisions of the Act and Rules. By relying upon judgments of the Apex Court, it was observed that since the bye-laws had no force of law, the service regulations had also no force of law and it was categorically observed that no doubt the orders under challenge were passed by the Registrar, exercising his power under the service regulations but not under any Statute or Rules.

12. Judgment passed by the Apex Court in Nayagarh Co-operative Central Bank v. Narayan Rath & another, (1977) 3 SCC 576, whereby maintainability of writ petition against Cooperative Society was upheld by the Apex Court, was distinguished in C.K. Malhotra's case, on the ground that the order under challenge in that case, which had been passed by the Registrar in Nayagarh Co-operative Central Bank's case, was passed in exercise of his statutory authority, in the purported exercise of powers conferred on him, whereas in C.K. Malhotra's case and other connected matters, Registrar had not passed the impugned orders acting as statutory authority in the purported exercise of power conferred upon him by the Act or the rules framed thereunder, but by virtue of having been named as an authority to hear and decide appeals under service regulations framed under the bye-laws, which were having no force of law and, therefore, exercise of power by the Registrar was not statutory in nature but an exercise of power under the bye-laws.

13. In S.S. Rana's case also, the Supreme Court has quoted instances when Courts, including Supreme Court, have upheld the maintainability of a writ petition against Cooperative Society, by referring the decisions of Supreme Court in cases (i) Gayatri De vs. Mousumi Cooperative Housing Society Ltd. & Ors., (2004) 5 SCC 90 , wherein the Supreme Court had upheld the maintainability of the writ petition against a society, as its administration and affairs were being managed by a Special Officer appointed by the High Court to discharge the

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functions of the society and, thus, he was regarded as a public authority; and (ii) in Nayagarh Cooperative Central Bank Ltd. & Anr. vs. Narayan Rath & Anr., (1977) 3 SCC 576, wherein the Court had held the writ to be maintainable for the reason that the order, under challenge, was passed by the Registrar, acting as a statutory authority in the purported exercise of power conferred upon him by the Act; and (iiii) and also in decisions of High Courts, like Bholanath Roy & Ors. vs. State of West Bengal & Ors., (1996) Vol.1 Calcutta Law Journal 502, wherein writ petitions have been held to be maintainable against a society if it is demonstrated that any mandatory provisions of the Act or the Rules framed therein have been violated by it.

14. In A. Umarani v. Ragistrar, Cooperative Societies and others, (2004) 7 SCC 112 also, the Apex Court has held that where an action of Cooperative Society is violative of mandatory provisions, writ petition would be maintainable.

15. In Vikram Chauhan's case also, Full Bench of this Court has held that in the given facts and circumstances of the case, if the fact situation of the case so warrants, writ can lie even against a Cooperative Society and it would depend upon the facts of each case.

16. In Sanjeev Kumar's case, in the given facts and circumstances, it was not considered appropriate by the Division Bench to entertain the writ petition against Cooperative Bank. Maintainability of present writ petitions is to be considered on the basis of given facts of these cases.

17. As also reiterated by the Division Bench in Sanjeev Kumar's case, after referring pronouncements of the Apex Court, it is settled law that it is neither desirable nor permissible to pick out a word or sentence from the judgment, divorced from the question under consideration and treat it to be a complete law declared by the Court and the judgment must be read as a whole and the observations from the judgment have to be considered in the light of questions which were before the Court and a decision takes its colour from the question involved in the case in which it is rendered and while applying the decision to a later case, the Court must carefully try to ascertain true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, divorced from the context of the question under consideration by the Court to support their reasoning and likewise it is also to be born in mind that observations in the judgment cannot be read like a text of a statute nor out of context.

18. Learned counsel for the Cooperative Bank, referring judgment in Thalappalam Service Cooperative Bank Limited and others v. State of Kerala and others, (2013) 16 SCC 82, has contended that Cooperative Bank is neither State nor instrumentality of the State, within the meaning of Article 12 of the Constitution of India and Cooperative Society has also not been found public authority by the Apex Court for the purpose of Right to Information Act and, therefore, also these petitions are not maintainable.

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19. As discussed hereinafter, even if an institution does not fall within the expression "State" or "instrumentality of State", within the meaning of Article 12 of the Constitution of India, then also for appropriate given facts and circumstances such institution can be subjected to the jurisdiction of the High Court under Article 226 of the Constitution. An institution, which is not covered under public authority for the purpose of Right to Information Act, can be subjected to jurisdiction of High Court under Article 226 of the Constitution in an appropriate case.

20. Article 226 of the Constitution empowers the High Court to issue direction, orders or writs or any of it, for enforcing of rights conferred by Part-III and for any other purpose not only to the State or its functionaries but to any other person also. Therefore, in given facts and circumstances, power under Article 226 can be exercised against a private person also, including natural as well as juristic person. Needless to refer to an example of Writ of Habeas Corpus, which, so many times, may warrant issuance of writ against a private person to produce or to let free a person from illegal detention.

21. In present case, admittedly, Cooperative Bank is not an authority or instrumentality of the State under Article 12 of the Constitution. Its status is like a private person.

22. In Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others versus V.R. Rudani and others, (1989) 2 SCC 691, discussing the scope of Article 226 of the Constitution, the Supreme Court has held as under:

"19. The scope of this Article has been explained by Subba Rao, J. in Dwarkanath v. I.T.O., (1965) 3 SCR 536:

"This Article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders, or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Art. 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

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20. The term "authority" used in Article 226, in the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

21. In Praga Tools Corporation v. C. A. Imanual, (1969) 3 SCR 773 : (1969) 1 SCC 585, this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed:

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also, to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities (Cf. Halsbury's Laws of England, 3rd Edn., Vol. II. p. 52 and onwards.)"

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states (Judicial Review of Administrative Action, 4th Edn, page : 540) : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Art. 226. We, therefore reject the contention urged for the appellants on the maintainability of the writ petition."

23. Earlier also, this Court vide judgment dated 20.3.2017, passed in CWP No.8724 of 2018, titled Surjeet Kaur v. State of Himachal Pradesh and others, after considering judgments of the Supreme Court, passed in Binny Limited and another v. V. Sadasivan and others with D.S. Veer Ranji v. Ciba Specialty Chemcial (I) and another, reported in (2005) 6 SCC 657; K.K. Saksena v.

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International Commission on Irrigation & Drainage and others, reported in (2015) 4 SCC 670; and that of Kerala High Court in Mrs. Sobha George Adolfus V.State of Kerala, AIR 2016 Kerala 175, has held that in view of ratio of law laid down by Apex court, it is clear that writ of mandamus can be issue against a private person/institution in the given facts and circumstances of the case where the said person/Institution is discharging public duty or positive obligation of public nature or is under liability to discharge any function under any statute; to compel it to perform such statutory function.

24. Registrar, with respect to Cooperative Society, performs two types of functions, acting in dual capacity. Some powers are conferred upon him by the statute and rules framed thereunder, whereas others by nominating him as an Authority or Officer to perform the functions under the regulations/bye-laws as framed by the Society.

25. Exercise of statutory power and performing a statutory function by Registrar is definitely amenable to writ jurisdiction of this Court. But as held in C.K. Malhotra's case and judgments passed by the Apex Court and other subsequent judgments passed by this High Court, referred supra, exercise of power by the Registrar, under bye-laws and regulations framed thereunder by the Society itself, but not having statutory force, is not amenable to writ jurisdiction.

26. In view of the above discussion, I am of the considered view that mandate of C.K. Malhotra's, S.S. Rana's, Vikram Chauhan's and Sanjeev Kumar's cases is not that High Court has no jurisdiction to exercise power under Article 226 of the Constitution of India against a Society or Registrar while dealing with the matters pertaining to the Society. Even in the judgments of the Apex Court, referred supra, there is clear mandate that in given facts and circumstances, writ is maintainable not only against the State of its functionaries within meaning of Article 12 of Constitution but even against private person, including natural as well as juristic person and thus a writ petition against a Society may or may not be maintainable, depending upon facts and circumstances of the case, however, undoubtedly a writ petition is maintainable against the orders passed by the Registrar with respect to functioning of the Society, exercising statutory powers under the Act or Rules framed thereunder.

27. It would be apt to reiterate that the Courts have been established to do substantial justice and it is cardinal principle of jurisprudence that being justice imparting institutions, Courts should adopt approach oriented to do justice instead of to be too technical for rejecting the case on the basis of faulty, incomplete or imperfect pleading and wherever possible it should go beyond that to understand the grievance of the litigant and should try to redress the same within the framework of law and Constitutional mandate, because style and manner of elaborating and explaining the cause or grievance of a litigant, as understood by the Advocate, always vary from person to person and also for lapse on the part of litigant to describe his grievance in proper manner, indicating appropriate cause of grievance. The Courts should not behave like an artificial

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intelligence machine but should adopt justice oriented approach.

28. To substantiate aforesaid view, I draw support from the judgment cited by the Mr. B.C. Negi, Senior Advocate, passed by the Supreme Court in Prabodh Verma and others v. State of Uttar Pradesh and others, (1984) 4 SCC 251, relevant paras whereof read as under:

"50 To summarize our conclusions:

....

(5) Though a High Court ought not to dismiss a writ petition on a mere technicality or because a proper relief has not been asked for, it should not, therefore, condone every kind of laxity, particularly where the petitioner is representated by an advocate.

....

51. For the reasons mentioned above, we allow these appeals. reverse the judgments appealed against and set aside the orders under appeal, and allow these writ petitions and make the rule issued in each of them absolute. We overrule the judgment of the Allahabad High Court in the case, of Uttar Pradesh Madhyamik Shikshak Sangh v. State of Uttar Pradesh, 1979 All LJ 178 and in these appeals and writ petitions we pass further orders as follows':

....

4. This direction will apply to those reserve pool teachers whose services were, terminated and who had not filed any Writ petition or who, had filed a writ petition but had not succeeded in obtaining a stay order, and to those reserve pool teachers who had not been appointed in view of the interim orders passed by the High Court and thereafter by reason of the judgment of the High Court in the Sangh's case and who have not filed any writ petition.

52. Before we part with these appeals and writ petitions we would like to mention that in some of these writ petitions the only relief claimed is in general and vague terms. We reproduce that prayer., retaining its errors of grammar and syntax. That prayer is as follows :

"It is, therefore, prayed that this Hon'ble Court be pleased, to issue such writ, order or directions for the enforcement of the fundamental rights of the petitioner as are deemed fit and reasonable by this Hon'ble Court and to grant such other relief to the petitioner as is deemed fit and reasonable for the redress of their grievance".

In the light of what we have said above about the defective prayer in the writ petition filed by the Sangh in the Allahabad High Court, we ought to insist upon these petitioners setting their house in order by amending the prayer clause and asking for proper reliefs. These petitions are drafted by advocates. It is true that these petitioners are poor and it must not have been possible for them to pay

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substantial fees to their advocates but that cannot be a reason for an advocate who undertakes a client's case not to give of his best to his client. An advocate should not measure the quality of work he will put into a case by the quantum of fees he receives. Our insisting upon these petitions being so amended would, however, involve delay and as some of these petitioners are reserve pool teachers who were not appointed by reason of the interim orders passed by the Allahabad High Court and the judgment of that High Court in the Sangh's case, it would result in further hardship to them by delaying their employment. We have therefore, not insisted upon these writ petitions being so amended but passed in these writ petitions also, the order set out above."

29. Facts emerged on surface, on consideration of material placed before me and submissions made by learned counsel for the parties, are that in Himachal Pradesh, there are three Cooperative Banks, registered as Cooperative Societies, under the Act, namely H.P. State Cooperative Bank (HPSCB), KCCB and JCCB. These banks are having area of jurisdiction in different and distinct Districts, without overlapping the jurisdiction of each other. HPSC Bank is having jurisdiction in Districts Shimla, Mandi, Bilaspur, Sirmour, Kinnaur and Chamba; whereas KCCB has jurisdiction in Districts Kangra, Lauhal & Spiti, Hamirpur, Una and Kullu; and JCC Bank has its jurisdiction in District Solan only. These banks are performing identical functions and to avoid overlapping they have been permitted to function in different and distinct areas.

30. Rules 1971 framed, under the Act, by the State of Himachal Pradesh, applicable to all societies registered under the Act, are statutory in nature and Rule 56 thereof reads as under:

"56. Officers and employees of Co-operative Societies-

(1) Notwithstanding anything contained in the bye-laws of a society, no Co-operative Society shall appoint any person as its paid officer or employee in any category of service unless he possesses 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 specified by the Registrar.

(2) No Co-operative Society shall retain in service any paid officer or employee, if he does not acquire the qualifications or furnish the security as is referred to in sub-rule (1) within such time as the Registrar may direct.

(3) No Primary society shall employ a salaried officer or servant with total monthly emolument exceeding rupees five thousand and no secondary or apex society shall employ a salaried officer or servant with total monthly emoluments exceeding rupees eight thousand without the prior permission of the Registrar.

Provided that promotion of any employee to a higher post shall be construed as appointment under this sub-rule:

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Provided further that if operating expenses of a co-operative society, excluding the amount of depreciation exceeds its income in a financial year, such society shall not employ any salaried officer or servant in the next succeeding financial year without the prior permission of the Registrar;

Provided further that no co-operative society shall employ salaried officer or servant exceeding the cadre strength, if any, fixed by the Registrar by a special or general order, and shall not fill more than ten vacancies in a financial year under this sub-rule without prior permission of the Registrar.

(4) The Registrar may for special reasons to be recorded in writing relax in respect of any paid officer or employee, the provisions of this rule in regard to the qualifications he should possess or the security he should furnish.

(5) Where, in the course of an audit under section 61, or an inspection under section 65 or inspection under section 66, or inquiry under section 67, it is brought to the notice of the Registrar that the paid officer or servant of a society had committed, or has been otherwise responsible for mis-appropriation, breach of trust or other offence, in relation to the society, or has willfully neglected or failed to discharge his duties and functions as enjoined on him under the Act, rules or bye-laws or is otherwise responsible for any act or omission thereby adversely affecting the interest of the society, the Registrar may if in his opinion, there is prima facie evidence against such paid officer, or servant, and suspension of such paid officer or servant is necessary in the interest of the society, direct the committee of the society, pending the investigation and disposal of the matter, as the case may be, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him."

"Provided that an officer/servant of the society shall be deemed to have been placed under suspension by an order of the competent Authority or the Registrar in the following circumstances :-

(a) If he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) If in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours.

If a servant of the society who has been detained for a period exceeding forty-eight hours is later on released on bail, such release will not affect the deemed suspension which will continue to be in force until revoked by the competent authority or the Registrar."

(6) On receipt of a direction from the Registrar under sub-rule (5), the committee of society shall, notwithstanding any provision to the contrary in the bye-laws, place or cause to be placed the paid officer or servant under suspension forthwith.

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(7) If the committee fails to comply with the direction issued under sub-rule (5), the Registrar may make an order placing such paid officer or servant under suspension from such date and for such period as he may specify in the order and thereupon the paid officer or servant, as the case may be, shall be under suspension.

(8) The officer or servant suspended under this rule shall be reinstated only after the previous approval of the Registrar."

31. Rule 56(1) not only confers power but also enjoins duty upon the Registrar to specify conditions of service of the employees of the Societies and this Rule, starting with non-abstante clause, provides that notwithstanding anything contained in bye-laws of a society, no Co-operative Society shall appoint any person as its paid officer or employee in any category of service unless he possesses 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. Last portion of it makes it clear that it is mandatory for the Registrar to specify the conditions of service by using the term "conditions of service of employees of the societies 'shall' be specified by the Registrar".

32. Conferment of power upon the Society to make bye-laws in respect of appointment, suspension and removal of the members of Society under Rule 9(j) of Rules 1971 does not affect statutory duty, statutory power and duty of Registrar devolved upon him under Rule 56 of Rules 1971. Proceedings under the Rules/Bye-laws framed by the Society and nomination of Registrar as a appellate/ appropriate Authority therein, for a class of employees or all employees, is altogether different than the duty cast upon the Registrar under Rule 56 of Rules 1971. Therefore, decision of the Registrar, performing his duty as an appellate Authority or in any other capacity, for his nomination as such, under the Rules/Bye-laws framed by the Society, may not be a statutory function performed by him, but so far as the duty to prescribe conditions of service is concerned, it is a statutory duty conferred upon him under Rule 56 of Rules 1971. Any rule or clause framed by the Society under Rule 9, reasserting the duty conferred upon the Registrar under statutory Rules shall not change the nature of the statutory functions to be performed by him under the Act and/or the Rules, rather it would be supplementing provision of power conferred or duty cast upon the Registrar under the Statute and/or statutory Rules.

33. Registrar, being a statutory authority and functionary of the State, performing his statutory function under Rule 56 of Rules 1971, is expected to specify conditions of service of employees of the societies in consonance with provisions of Articles 14, 15 & 16 of the Constitution of India and for this reason only for recruitment and promotion of employees of the Cooperative Bank, reservation roster notified by the State under Articles 15 and 16 has also been made applicable. Any decision on the part of the Registrar with respect to specifying conditions of service of the employees must pass the test of Articles

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14, 15 and 16, contained in Part-III of the Constitution of India.

34. Fundamental Rights, contained in Part-III of the Constitution of India, are legally enforceable. Therefore, it is a legal right of employees of the Societies to have service conditions specified by the Registrar, exercising the power under rule 56 of Rules 1971, in consonance with the provisions of aforesaid Articles and to have similar treatment, like the similarly situated employees of, if not identical but similar, societies, under Equality clause of Article 14. Any arbitrary decision or specification of service conditions would definitely be in violation of Article 14, as arbitrariness is anti-thesis of Equality clause contained therein and in such an eventuality the employee(s) of a society, for omission or commission on the part of Registrar, would have a legal right to enforce against the action or inaction of the Registrar, as the Registrar is legally bound to perform the duty of specifying the conditions of service of employees of the societies, by framing such rules where 'equals are treated equally'.

35. Petitioners herein are undergraduates, who are serving as Grade-IV Officers. None of them, except petitioners in CWPs No.972 & 977 of 2017, fulfills the existing eligibility criteria for promotion and appointment as Grade-III. However, petitioners in CWPs No.972 & 977 of 2017 have also been denied promotion for acquiring requisite qualification, i.e. Diploma in Cooperation without permission of competent authority. Eligibility criteria for appointment as Grade-III Officer is as under:

For Direct Recruitment

For Promotion

Grade-III

(i) A second class degree of a recognized University in case of candidates possessing banking experience of 3 years simple graduate may also apply

(ii) Also a pass in shorthand and type writing from a recognized institute (in case of PA to MD)

(i) A degree of a recognised University or Part-I of CAIIB or JAIIB or Diploma in Cooperation/ Banking

(ii) Minimum 3 years service as an Office Asstt. or 5 years experience as Cashier/Field Asstt./Stenotypist/ Typist/ Godown Keepers.

36. Grade-IV Officers/officials having a degree from recognized University, with three years service as Office Assistant or five years experience as Cashier/ Assistant/ Steno -typist/Typist/Godown Keeper, are entitled for promotion to Grade-III. Those who are not having a degree would be eligible for promotion, for having Part-I of CAIIB or JAIIB or Diploma in Cooperation/Banking, apart from the minimum length of service prescribed under Clause (ii) of Rule reproduced supra.

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37. Private respondents herein are respondents No.4 to 26, who are graduate Grade-III Officers, but were not eligible to be promoted at the time of filing of the wit petitions, but have acquired such qualification on completion of prescribed length of service in March, 2020, had been arrayed as respondents, on their application, in CWP No.2068 of 2017. Proposed respondents No.23 to 39 (CWP No.2001 of 2015) are also similarly situated persons.

38. Till 2008, the Cooperative Bank was also permitting its Officers/officials to undergo Higher Diploma in Cooperative Management (C) from RICM, Chandigarh, but for sponsoring names for the said Higher Diploma no proper mechanism was being adopted by the Bank and by ignoring the seniority, junior Officers/officials were also being permitted to undergo said diploma as evident from Annexure P-4 (CWP No.2068 of 2017), Annexure P-7 (CWP No.2001 of 2015), whereby juniors to petitioners herein have been permitted to undergo RICM Diploma; and Annexure P-10 (CWP No.972 of 2017) and Annexure P-8 (CWP No.977 of 2017), whereby juniors of the petitioners were promoted to Grade-III. Sponsorship of juniors was objected by the petitioners and others by submitting a representation, Annexure P-5 (CWP No.2068 of 2017), to the Managing Director of Cooperative Bank.

39. It is an admitted fact that some Officers/officials of Cooperative Bank, without seeking permission, had acquired Higher Diploma at their own but prior to their seniors, and such Officers/officials were also considered by the Cooperative Bank to be eligible for further promotion and were promoted as such. However, vide General Circular No.137/2015-16, dated 28.12.2015, Annexure P-5 (CWPs No.972 & 977 of 2017), the Cooperative Bank had notified Resolution of Board of Directors of the Bank, whereby it was resolved that henceforth the Bank shall not sponsor any undergraduate to acquire HDC/HDCM and, therefore, request of such employees of the Bank for doing Higher Diploma in Cooperation (HDC/HDCM) course would not be entertained. However, as a matter of fact, thereafter also some undergraduate Officers/officials had acquired above referred Diploma of their own and were considered for promotion, as evident from Head Office Order No.48/2014, dated 13.2.2014, Annexure P-3 (CWPs No.972 and 977 of 2017), whereby two such persons, namely Dharam Dass and Subhash Chand, who had completed HDC/HDCM, without sponsorship of the Bank, were promoted as Grade-III Officers/Assistant Managers.

Thereafter also, the Cooperative Bank had made promotions of such persons who had acquired Higher Diploma without permission, as evident from Head Office Order No.400/2016-17, dated 24.3.2017, Annexure P-10 (CWP No.972 of 2017), wherein at least one such person, namely Rajinder Singh, who had acquired higher qualification without permission, was promoted from the post of Assistant Manager (Grade -III) to the post of Manager (Grade-II).

40. Such Officers, who had acquired aforesaid Diploma at their own were not considered in like manner as in case of petitioners in CWPs No.972 and 977 of 2017, they had applied for permission for higher status, i.e. Higher Diploma, vide

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applications dated 8.7.2014 and 10.7.2014 Annexure P-6 (CWPs No.972 & 977 of 2017), which were forwarded to General Manager, Head Office, through proper channel, but neither permission was granted nor refused and in the meanwhile they had acquired Higher Diploma, but instead of extending benefit to them of the said qualification, like other similarly situated persons, referred supra, particularly in Annexure P-3 (CWPs No.972 & 977 of 2017), they were issued Show Cause Notice dated 17.11.2015 (Annexure P-2 in CWP No.972 of 2017) and 11.12.2015 (Annexure P-2 in CWP No.977 of 2017), to show cause as to why disciplinary action be not initiated against them.

41. It is also an admitted fact that as of now Cooperative Bank is not sponsoring its employees for acquiring Higher Diploma/qualification, which is an essential qualification for undergraduates to become eligible for promotion to the higher post.

42. In the aforesaid circumstances, petitioners in CWPs No.972 and 977 of 2017 have approached this Court, seeking direction to the respondent, i.e. State of Himachal Pradesh through Secretary (Cooperation), and Registrar of the Cooperative Societies to consider their case for promotion to the post of Assistant Manager (Grade-III) from the post of Executive Assistant, from the date of acquiring diploma, i.e. Higher Diploma Programme in Cooperative Management.

43. Petitioners in CWP No.2001 of 2015 have also approached this Court in March, 2015, on the ground that as per practice prevalent in the Cooperative Bank, candidates belonging to Grade-IV category were promoted to the next higher Grade, on the basis of educational qualification of Matriculation and thereafter it was made a condition precedent for undergraduates to have qualification of Higher Diploma subsequent thereto for being considered for regular promotion for next higher category. But, earlier the Cooperative Bank was sending candidates for training on the basis of seniority in Grade-IV cadre, however, in the meanwhile, the Bank started sending candidates to training without following criteria of seniority against which the petitioners had represented but no reply to that representation was given. Thereafter, petitioners had represented to the competent authority to sponsor their names for training for Higher Diploma to make them eligible for promotion, but neither permission was granted to the petitioners nor any method was adopted by the Bank to regulate the training for Higher Diploma, despite issuance of General Circular No.83/2006, dated 24.8.2006 Annexure P-3, whereby it was circulated that the Officers/officials of the Bank, doing Higher Diploma from RICM, Chandigarh, at their own, without seeking permission, shall not be considered for further promotion, but the fact remains that a number of such persons were considered for promotion and promoted accordingly. Therefore, petitioners have approached the Court for declaring them entitled for promotion to Grade-III category and to consider them for promotion to the next higher post and thereafter permit them to undergo Higher Diploma course.

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44. In aforesaid circumstances, on 3.6.2016, Board of Directors of Cooperative Bank has proposed suitable amendment in Bank Service Rules providing promotion to undergraduate Grade-IV Officers/officials to Grade-III post on the basis of length of service only but with Diploma. The said proposal was not accepted by the Registrar.

45. Thereafter, the Bank's Employees Union had again represented to the Management that about 100 posts of Assistant Managers were vacant in the Bank and available graduate incumbents in the feeder cadre were not possessing three years required service experience on feeder post and, therefore, request was made to fill these posts on ad hoc basis by promoting undergraduates conditionally and sponsoring them to acquire Diploma in Cooperation Management from Cooperative Training Centre, Mashobra, District Shimla or Garli, District Kangra, Himachal Pradesh subsequently and in case they failed to qualify the said Diploma revert them back and it was noticed by the Bank that there were 39 Executive Assistants (Grade-IV), who had served for 20 years or more than that; 38 Executive Assistants were having length of service of 15-20 years: and 47 were having length of service of 10-15 years.

46. In this backdrop, Board of Directors of the Cooperative Bank, vide Resolution dated 17.4.2017 Annexure P-7 (CWP No.2068 of 2017), had again referred the case for amendment/ addition in the Bank Service Rules for allowing one time promotion to undergraduates stagnated on the posts of Executive Assistants (erstwhile Grade -IV) for years together and it was proposed as under:

"Appendix-I(g) Gr.III (Assistant Manager, changed nomenclature of post) of Rule No.5 of HPSCB Employees Terms of Employment and Working Conditions) Rules, 1979:

Existing provisions for promotion

Amendment/addition proposed for promotin

i) A degree of a recognized University or Part-1 of CAIIB or Diploma on Cooperation/ Banking.

ii) Minimum 3 years service as an Office Assistant or 5 years experience as Cashier/Field Assistant/Steno Typist/Typist/ Godown Keeper.

i) A degree of a recognized University or Part of CAIIB or Diploma on Cooperation/Banking.

ii) Minimum 3 years service as an Office Assistant or 5 years experience as cashier/Field Assistant/Steno-Typist/ Typist O Matriculation with 20 years regular service in feeder category i.e. as Jr. Clerk/Office Assistant/ Steno-Typist/Typist

Note: - promotion of Matriculates shall be subject to availability of vacancies on the date of routine DPC subsequent to completion of 20 years of service in the feeder category.

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47. In view of the aforesaid proposal, this Court, vide order dated 30.5.2017, pending consideration of CWP No.2001 of 2015, had directed the Registrar to decide the issue, which was referred to him by Cooperative Bank, after hearing one of the representation of the petitioners as also representations of respondents No.4 to 22, on or before the next date of hearing.

48. In response to the proposal of the Cooperative Bank and in compliance of the order dated 30.5.2017, passed by this Court, Registrar had considered the issue and, after giving opportunity of hearing, had rejected the proposal of the Cooperative Bank, vide order dated 15.6.2017, which led to amendment in CWP No.2001 of 2015 and filing of CWP No.2068 of 2017, assailing the order passed by the Registrar.

49. During hearing, on some dates, learned Advocate General has submitted that the petitioners are not having any legal right to seek relaxation in Rules as relaxation cannot be claimed as a matter of right and there is no corresponding legal duty assigned to the Registrar to grant relaxation to the petitioners as a matter of their right and, therefore, for absence of any legal right and corresponding legal duty, this Court is precluded from issuance of Mandamus to the concerned authority to accept the prayer of the petitioners as well as Bank.

50. In support of his contention, learned Advocate General has cited State of U.P. and others v. Harish Chandra and others, (1996) 9 SCC 309 (referred Para-10); Oriental Bank of Commerce v. Sunder Lal Jain and another, (2008) 2 SCC 280 (referred Para-11); and Union of India and others v. Muralidhara Menon and another, (2009) 9 SCC 304 (referred Paras 13 & 15).

51. The Apex Court in Harish Chandra's case, in Para-10, has held as under:

"10. ....Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law........."

52. In Sunder Lal Jain's case, the Supreme Court has held as under:

"11. The principles on which a writ of mandamus can be issued have been stated as under in "The Law of Extraordinary Legal Remedies" by F.G. Ferris and F.G. Ferris, Jr. :

"Note 187-- Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that

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mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duly to which the party applying for the writ is entitled of legal right to have performed.

Note 192 -- Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and Tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196 -- Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court, subject always to the well-settled principles which have been established by the Courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and Judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the Court may, and should, look to the larger public interest which may be concerned - an interest which private litigants are apt to over-look when striving for private ends. The Court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.--.......... The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.""

53. In Muralidhara Menon's case, the Apex Court has held as under:

"13. Article 14 of the Constitution of India providing for the equality clause is a positive concept in terms whereof, the equals, subject to certain exceptions, are to be treated equally and unequals cannot be treated equally. If a relaxation has been granted in case of one employee on the basis of the materials available before the Board, the same by itself may not be treated to be a binding precedent so as to enable the Tribunal or High Court to issue a writ of or in the nature of mandamus."

....

"15. A writ of mandamus can be issued, provided there exists a legal right in the applicant and a corresponding legal duty in the respondent. Even otherwise a Superior Court having a limited jurisdiction in this behalf would not interfere with

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the discretionary jurisdiction exercised by the statutory authorities unless a clear case for interference is made out subject of course to just exceptions."

54. Learned counsel for the Cooperative Bank has referred pronouncements of the Apex Court in Keshav Chandra Joshi and others v. Union of India and others, 1992 Supp (1) SCC 272; J&K Public Service Commission and others v. Dr. Narinder Mohan and others, (1994) 2 SCC 630; and State of Gujarat and others v. Arvindkumar T. Tiwari and another, (2012) 9 SCC 545, to advance the arguments that relaxation for appointment or promotion cannot be claimed as a matter of right and further that relaxation of essential eligibility criteria is not permissible under law and in absence of any power to relax the relevant rules, the competent authority is not having power to relax as is being sought on behalf of the petitioners.

55. Learned Advocate General has also referred to Muralidhara Menon's case, wherein it has been observed that relaxation granted in case of one employee, on the basis of material available before the authority, by itself is not to be treated a binding precedent so as to enable the Court to issue Mandamus extending the same to others.

56. Dr. Lalit Kumar Sharma, learned counsel for the private respondents as well as proposed respondents, by referring to Dr. Narinder Mohan's and Arvindkumar T. Tiwari's cases, has endorsed the aforesaid plea raised by learned Advocate General as well as learned counsel for Cooperative Bank. By citing R.R. Verm and others v. Union of India and others, AIR 1980 SC 146 : (1980) 3 SCC 402, he has submitted that the provisions of relaxation in rules are aimed at the public welfare and interest, and the interest to be served is always the public interest and not the individual interest and the public interest, in the matter of conditions of service of civil servant, is best served by rules, which are directed towards efficiency and integrity. The learned counsel has further submitted that relaxation sought by the petitioners would definitely hamper the efficiency as none of them is a graduate.

57. So far as the case law cited by learned Advocate General, learned counsel for Cooperative Bank and learned counsel for private respondents/proposed respondents, and exposition of law therein is concerned, there is no doubt about it. There is no doubt about the ratio of law laid down by the Supreme Court in aforesaid judgments, with respect to right of relaxation in rules and power as well as object of granting relaxation in rules relating to conditions of service. However, arguments raised in this regard are misconceived and misdirected as, in present case, the proposal is not for 'relaxation of provisions in rules' but it is a proposal for amendment of rules and similar amendment has already been permitted by the Registrar in case of JCC Bank. The proposal is for not 'one time relaxation' but for providing 'one time opportunity' of promotion to the Matriculates and undergraduates to the post of Assistant Manager. Therefore, the case law in respect of issue of relaxation raised supra, is not relevant in present case.

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58. In present case, as discussed supra, the Registrar is performing statutory duty devolved upon him under Rule 56 of statutory Rules with respect to specifying condition of service of employees of the Cooperative Bank. Therefore, he is under legal obligation to act in accordance with the constitutional mandate and the petitioners have a right to be treated alike with similarly situated persons who are equal to them and, therefore, as held in Harish Chandra's case, the duty may be enjoined by Mandamus which is imposed upon the concerned authority by the Constitution or Statute or by Rules or orders having the force of law.

59. Judgment in Muralidhara Menon's case is also of no help to the Registrar, rather it is favourable to the petitioners as they are asking for the treatment as has been given to their equivalents serving in identical cooperative Bank and further the petitioners herein are not asking for 'relaxation' but praying for according approval to the proposal of the Cooperative Bank for amendment in the Rules providing 'one time promotion' in their service career, that too, not to them only but all such similarly situated employees. Petitioners are not praying for personal relaxation for their promotion but seeking approval of amendment of Bank Rules by giving similar treatment as has been given to their counterparts serving in JCC Bank. Though Registrar has discretion to accept or reject the proposal of the Bank but he has a duty to act in accordance with the constitutional mandate and for reasons explained herein after and before he has failed to act accordingly.

60. In given facts of present cases, ingredients for issuance of mandamus, as reiterated by the Apex Court in Sunder Lal Jain's case supra are existing in present case.

61. During pendency of the petitions, it was also pointed out on behalf of the petitioners that the Registrar, exercising the power under Rule 56(1) of Rules 1971, vide communication dated 26.6.2007, had accorded approval to the amendment in the Rules framed by JCC Bank, under Rule 9(j) of Rules 1971, subscribing promotional avenues to the undergraduate Grade-IV Officers to the post of Grade-III on the basis of length of service and further that staffing pattern/organizational structure of Cooperative Bank and JCC Bank is identical in nature. Therefore, Registrar was directed to file affidavit in this regard, whereupon an affidavit dated 16.10.2019 has been filed by the Registrar wherein in Para-2, it is stated that an employee with graduation from recognized University, with five years experience in Grade-IV or Matriculate with ten years experience in Grade-IV, is eligible for promotion to Grade-III post.

62. With regard to staffing pattern of Cooperative Bank and JCC Bank, instructions dated September, 2019 have been placed on record on behalf of Registrar, which reflect that the pattern of staff working in the Banks is identical. It is also evident from explanation given by the Registrar in his affidavit dated 16.10.2019, wherein it is stated that as per Service Rules of the JCC Bank, post of Senior Manager/Senior Manager (IT) falls under the category of Grade-I; post of Manager/Manager(IT) in category of Grade-II; post of Assistant Manager/

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Assistant Manager(IT)/Legal Assistant falls under category of Grade-III; and post of Executive Assistant/Steno-Typist/Assistant/IT Assistant falls under category of Grade-IV and I find that in the staffing pattern of Cooperative Bank identical classification is there. The only difference is with respect to staff appointed by Cooperative Bank for running its Training Institute. As the JCC Bank is having the area of operation only in one District and is not having its own training Institute, such staff would not have been necessary to be appointed by the Bank, otherwise the organizational structure of the Cooperative Bank, with respect to Banking staff, apart from the number of posts, is identical to JCC Bank.

63. It has also been informed on behalf of the Cooperative Bank that at present against 345 sanctioned strength of Grade-III Officers, only 133 have been appointed and, as on 1.10.2019, 212 posts of Grade-III Officers were lying vacant. At that time, none of the Grade-IV Officers/ officials, graduate as well as undergraduate, was eligible to be appointed. As of now, private respondents are stated to have acquired eligibility for consideration for promotion, on completion of three years service as graduate Grade-IV official, in March, 2020. Even if all of them are promoted, then also considerable large number of posts shall remain vacant.

64. At the time of making prayer for vacation of stay order granted by the Court, it has also been submitted on behalf of the Cooperative Bank that in exigency of service and for smooth functioning of the Cooperative Bank, appointment/ promotion to these posts is required to be made on urgent basis.

65. The Registrar, vide order dated 15.6.2017, has rejected the proposal of the Cooperative Bank for amendment in the Rules proposed to provide one time promotional avenue to the undergraduate Grade-IV officials working in the Bank since long, on the grounds (i) that no justification qua an administrative exigency or shortage of staff in Grade-III cadre has been apprised by the Cooperative Bank and after rejection of earlier proposal, the Bank Management had again reconsidered the matter on the request of representatives of Bank's Employees Union and taken a decision to again take up the matter with the Registrar to approve the amendments in Rules; (ii) the argument to accord approval to the proposal of the Cooperative Bank, keeping in view the precedent of JCC Bank, was turned down, on the ground that staffing pattern and cadre strength of both Banks are different and further the Registrar had turned down such proposal of KCC Bank to relax Grade-IV officials of the Bank to exempt them from appearing in the test for further promotion to Grade-III post; (iii) and that proposal of the Bank was considered by him a vague proposal as it is a proposal to amend the Rules to afford one time opportunity of promotion to the matriculate Executive Assistants who are working in the Bank in the same cadre for the last 20 or more years due to lack of requisite educational qualification prescribed for promotion to the post of Assistant Manager and according to him, the proposal is vague as no such amendment in Rules can be carried out only to afford one time opportunity of promotion; and (iv) further that reasoning of stagnation on one

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post is also not genuine for the reason that three stagnation increments are available to the employees in lieu of promotion, after completion of 4-9-14 years of service in the same cadre.

66. It is true that after rejection of earlier proposal of the Bank, proposal, second time, was made after receiving representation from Bank's Employees Union but in the representation of the Union also reason for making such proposal was not only that undergraduate Grade-IV officials are not getting any chance of promotion but also, as evident from document placed on record (Annexure P-1), that at the time of making such demand/proposal, around 100 posts of Assistant Managers were lying vacant in the Bank and available graduate Grade-IV officials, i.e. in the feeder category of Grade-III, were not having three years required service experience, on the feeder post, and, thus, it was represented that undergraduate Grade-IV officials be promoted, on ad hoc basis, with condition to acquire the Diploma in Cooperation and Management from the concerned Cooperative Training Centre. Therefore, plea of the Registrar for rejecting the representation is contrary to the factual position. Even as of now, sufficient number of graduate Grade-IV officials, in the feeder category of Grade-III, are not available to be promoted to fill-up all posts available to be filled on promotion.

67. It has been informed that there are 345 posts in Cadre of Assistant Manager (Grade-III) and 259 of these posts are filled by promotion and remaining 86 posts are filled through direct recruitment. At present out of 345 posts, only 129 posts are filled, whereas remaining 216 posts are lying vacant. Serving 129 Grade-III Officers belong to two categories, i.e. 57 direct recruits and 72 promotees. Therefore, out of total 216 vacant posts, 187 posts are available to be filled by promotion from Grade-IV Officers and remaining 29 posts are to be filled through direct recruitment. It is also informed that at present as per existing Bank Service Rules, only 94 persons are eligible, for completing three years service as Grade-IV Officers, however, DPC has been held for 93 persons/ candidates only and one post has been kept for the candidate against whom disciplinary action is pending. After promotion of these employees, 93 posts would still remain vacant, which are to be filled by promotion. It is also informed that at present there are 23 Grade-IV Officers who have completed 20 years service as such.

68. During pendency of writ petitions also, entire factual matrix has come in the knowledge of the parties and Registrar is also one of the parties in the petitions. Despite that, the Registrar has not bothered to consider the entire factual matrix when he was granted an opportunity by the Division Bench of this Court, vide order dated 4.12.2018, passed in CWP No.2068 of 2017 to impart instructions, particularly in view of judgment of the Apex Court in Hukum Chand Gupta v. Director General, Indian Council of Agricultural Research and others, (2012) 12 SCC 666. After reconsideration, he was having opportunity to rectify his mistake by taking note of all facts which have come to his notice during personal hearing.

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But instead of doing so, may be for ego, or any other reason best known to him, he had opted to stick with his earlier decision.

69. The Registrar has also assigned a reason that Grade-IV officials are having benefit of three stagnation increments, on completion of 4-9-14 years of service. Without taking note of verdict of the Apex Court, as indicated by the Division Bench in its order dated 4.12.2018, that grant of stagnation increments, under Assured Career Progression Scheme, is no substitute to the avenue of promotion to be provided to the employee, wherever it is possible. Therefore, rejection of the claim on this ground was also on misconceived notion of Registrar that promotional avenue can be denied, for availability of benefits of three stagnation increments.

70. Registrar has failed to visualize that even after providing a promotional avenue, by amending the Rules, as proposed, all undergraduate Grade-IV officials shall not be promoted and many of them, for various reasons, including availability of promotional post, may retire without any promotion and the benefit of stagnation increments, in fact, is for such employees, but not for denial of promotional avenue to a class of employees on this pretext.

71. Plea of Registrar that staffing pattern and cadre of Cooperative Bank and JCC Bank are different is also not a valid ground for rejection of proposal of the Cooperative Bank, for the reason that, as evident from the documents and information placed on record on affidavit and otherwise, on behalf of Registrar itself, during pendency of petitions, the staffing pattern of JCC Bank and Cooperative Bank, except teaching and training staff of Cooperative Bank, is identical in nature and so far as cadre strength is concerned, it is no ground for holding that corresponding employees of JCC Bank are not equivalent to such employees of Cooperative Bank. Therefore, notion of Registrar on this count is misconceived.

72. Another ground taken for rejection of proposal is rejection of proposal of KCC Bank, whereby exemption from appearing in the test was being sought. This plea is absurd, as Registrar itself, in his order, has stated that the proposal of KCC Bank was to relax Grade-IV officials of the Bank to exempt them from appearing in test for promotion to be conducted for further promotion to Grade-III post, which is not a proposal identical to the proposal in present case. Like Registrar, learned Advocate General as well as Dr. Lalit Sharma also seem to have misconceived that it is a proposal for 'one time relaxation', without noticing the fact that the proposal was for providing 'one time opportunity of promotion' by allowing the amendment in the Rules in the same fashion as has been done in JCC Bank's case.

73. Proposal for amendment in Rules is not for one time relaxation in the educational qualification as undergraduate Grade-IV officials were and are already eligible to be appointed/promoted as Grade-III Officers, but with Diploma in Cooperation Management provided under the Rules. But, the Registrar had

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failed to specify the procedure to regulate sponsorship of the Officers/officials of the Bank to acquire such qualification from a recognized institute which led to sponsorship of juniors prior to seniors resulting into promotion of juniors, causing prejudice to the rights of seniors and, as discussed supra, as of now the Cooperative Bank has stopped sponsoring the names and has also decided not to consider its employees to be eligible for promotion who acquired such Diploma without permission of the Cooperative Bank and, in such a situation, it has not only been made difficult but impossible for an undergraduate employee to acquire the qualification, making him eligible for consideration for promotion to Grade-III post, as provided in Rules, and thus, rendering the provision in Rules providing avenue for promotion to Grade-II as redundant.

74. I fail to understand for what reason the Registrar had termed the proposal of the Cooperative Bank to be vague, particularly when Registrar itself has subscribed by according approval to the identical Rule pertaining to JCC Bank. The reason for citing the proposal as 'one time opportunity of promotion' by the Cooperative Bank is apparent on the face of record, as for further promotion from Grade-III to Grade-II, a degree of recognized University or certificate or diploma, i.e. CAIIB/HDC is mandatory and, therefore, an undergraduate Grade-III officer, without degree or certificate or diploma but permitted to be promoted from Grade IV on the basis of proposed Rules, would not be eligible for further promotion for want of requisite qualification. I do not find any reason to term such proposal as a vague proposal. Reasoning of the Registrar that no such amendment in the Rules can be carried out to afford only one time opportunity of promotion only is not baseless but absurd, particularly in view of subscription by approval of identical Rules of JCC Bank by Registrar itself.

75. In normal course, petitioners would have been relegated to the concerned authority, i.e. Registrar, for consideration and decision afresh but, in present case, earlier also the matter was referred by the Division Bench to the Registrar by giving him opportunity to reconsider the case, but second time also the Registrar had opted to stick with the decision. Therefore, I am of the considered view that relegating the matter for deciding afresh by the Registrar would be a futile exercise, resulting into wastage of time and energy of all stakeholders, including the State and Cooperative Bank.

76. At this stage, it would be apt to consider judgment cited by Mr. B.C. Negi, Senior Advocate, passed by the Supreme Court in Rameshwar and others v. Jot Ram and another, (1976) 1 SCC 194, whereby it has been reiterated that it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Relevant Paras are as under:

"6. The philosophy of the approach which commends itself to us is that a litigant who seeks justice in a perfect legal system gets it when he asks for it. But because human institutions of legal justice function slowly, and in quest of perfection, appeals and reviews at higher levels are provided for, the end product

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comes considerably late. But these higher Courts pronounce upon the rights of parties as the facts stood when the first Court was first approached. The delay of years flows from the infirmity of the judicial institution and this protraction of the Court machinery shall prejudice no one. Actus curiae neminem gravabit. Presidential support invoked by the appellant's counsel also lets him down provided we scan the fact situation in each of those cases and the legal propositions therein laid down.

7. The realism of our processual justice bends our jurisprudence to mould, negate or regulate reliefs in the light of exceptional developments having a material and equitable import, occurring during the pendency of the litigation so that the Court may not stultify itself by granting what has become meaningless or does not, by a myopic view, miss decisive alterations in fact-situations or legal positions and drive parties to fresh litigation whereas relief can be given right here. The broad principle, so stated, strikes a chord of sympathy in a court of good conscience. But a seeming virtue may prove a treacherous vice unless judicial perspicacity, founded on well-grounded rules, studies the plan of the statute, its provisions regarding subsequent changes and the possible damage to the social programme of the measure if later events are allowed to unsettle speedy accomplishment of a re-structuring of the land system, which is the soul of the whole enactment. No processual equity can be permitted to sabotage a cherished reform, nor individual hardship thwart social justice. This wider perspective explains the rulings cited on both sides and the law of subsequent events on pending actions.

8. In P. Venkateswarlu v. Motor and General Traders, AIR 1975 SC 1409, 1410, this Court dealt with the adjectival activism relating to post-institution circumstances. Two propositions were laid down. Firstly, it was held that 'it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding.'

This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because, as explained earlier, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or rights crystallised in the initial cause of action. This position finds support in Bhajan Lal v. State of Punjab, (1971) 1 SCC 34."

77. Learned counsel for the petitioners has also referred to Para-11 of judgment of the Apex Court in Shangrila Food Products Ltd. and another v. Life Insurance Corporation of India and another, (1996) 5 SCC 54, which reads as under:

"11. It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties

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complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.........."

78. In view of the above discussion, Writ Petitions are allowed in the following terms:

(i) Order dated 15.6.2017, passed by the Registrar, is arbitrary, irrational, unreasonable and violative of Article 14 of the Constitution of India and accordingly the same is quashed and set aside.

(ii) Omission on the part of Registrar, to subscribe just and fair procedure to regulate sponsorship of employees of the Bank for Diploma/Certificate course in order of seniority, is a failure to perform statutory duty cast upon him under Statutory Rules 1971.

(iii) The Registrar is directed to subscribe just and fair procedure, in Service Conditions, in order to regulate sponsorship of employees of the Bank for Diploma/ Certificate course, in order of seniority, on or before 31st December, 2020.

(iv) Registrar is directed to accord approval to the proposal of Cooperative Bank to amend the Rules, submitted vide letter dated 17.4.2017, on or before 30th October, 2020, failing which approval shall be deemed to have been accorded by him.

(v) Approval/deemed approval shall be considered to have been granted on 15.6.2017.

(vi) On approval/deemed approval, the Cooperative Bank shall consider the case of the petitioners and others for promotion, within 15 days thereafter, who become eligible after giving effect to proposed amendment and who are already eligible, and to finalize the same latest by 30.11.2020.

(vii) Without Diploma undergraduate Grade-IV Officers/officials who had completed 20 years as on 15.6.2017 shall be considered eligible on that date and other such undergraduate Grade-IV Officers/officials shall acquire eligibility on completion of 20 years service. They shall be considered for promotion from 15.6.2017 or from later date on completion of 20 years of service, as the case may be, but subject to availability of post on that day or later.

(viii) Promotion from the date of acquiring eligibility by virtue of amendment shall be subject to availability of post at relevant point and it shall be on notional basis, and the same shall be counted as service in Grade-III for all intents and purposes, like other employees, except actual monetary benefits, which shall be granted to them on notional basis from said date till their date of actual

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promotion.

(ix) Petitioners in CWPs No.972 and 977 of 2017, for acquisition of mandatory qualification, are held to be eligible for promotion, even in absence of proposed amendment and they shall be considered accordingly and, if otherwise found eligible, they shall be considered for promotion from 15.6.2017, but subject to availability of post on that day or later, with all consequential benefits, and the same shall be counted as service in Grade- III for all intents and purposes, like other employees, except actual monetary benefits, which shall be granted to them on notional basis from said date till their date of actual promotion.

(x) Grade-IV Officers/officials of the Cooperative Bank, become eligible on account of aforesaid amendment in Bank Service Rules, shall be entitled for actual monetary benefits with prospective effect from the date of issuance of order of promotion by the competent authority.

(xi) Seniority, amongst all promotees, in Grade-IV, shall be redrawn immediately after including all employees acquiring eligibility.

All the petitions stand disposed of, so also pending application, if any.

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