(1998) 11 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : CSA No. 35/94

Kuldip Raj APPELLANT

Vs

Citizen Co-operative Bank Ltd. RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Section 9
Jammu and Kashmir Cooperative Societies Act, 1960 — Section 124(2), 63

Citation : (1998) KashLJ 83 : (1998) 3 SCT 543 : (1998) SriLJ 377

Hon'ble Judges : G.D.Sharma, J

Bench : Single Bench

Advocate : S.R.Sharma, Anil Sethi, Advocates appearing for the Parties

Judgement

G.D.Sharma.J.

1. In this 2nd appeal substantial question of law which has been formulated is whether the jurisdiction of the civil court is ousted when the dispute

revolves around the termination of the services of an employee of a Cooperative Bank by virture of the provisions of Sec. 63 of the Cooperative

Societies Act, 1960 (hereinafter to be referred as Act). The learned counsel for the respondents has raised a preliminary objection for the

maintainability of this appeal by asserting that the jurisdiction of the civil court is ousted by virtue of SRO 233 dated 08.07.1988. The said rule,

according to him, is the statutory rule framed by the Govt. by virtue of the provisions of Sec. 134 (2) of the Act.

2. In order to buttress his arguments, the learned counsel has referred to Rule11(2) which provides that ""they shall be applicable to all societies

which are at present functioning or which will be created.

3. That Rule 24 deals with service record. SubRule (2) of Rule24 envisages that

when an employee is transferred to another society, his Service

Book shall be sent to that society to which the employee is transferred and not made over to him nor shall it be given to him when proceeding on

leave. There is an explanation append to this rule which states that the terms ""other societies"" means Cooperative Societies, Cooperative Industrial

Societies, Cooperative Bank and the like."" Under rule 19, various punishments are provided which can be imposed on an employee of a

Cooperative Society which includes termination of services and rule 21 lays down that an appeal against such an order imposing penalty shall lie

before the Joint Registrar or the Registrar within 30 days from the date of the passing of the order. Thus under Rule 21, the appeal in this case

could lie before the Joint Registrar or the Registrar within the period specified therein and when the suit was filed before the civil court, it had no

jurisdiction.

4. The learned counsel appearing for the appellant has controverted these arguments by stating that Cooperative Bank is a distinct entity and

cannot be termed as a cooperative society. He has derived support to his arguments from subrule (o) of Rule2 of the said rules wherein word

society"" has been defined which means Cooperative District Whole store Society/ Cooperative Marketing Society/Cooperative Sale and Supply

Society/Cooperative Multipurpose Societies/Cooperative Service Society. The counsel has contended that these rules are applicable to only

societies which have been mentioned in subrule (o) of Rule2 and as the Cooperative Bank has not figured anywhere so the rules have no

application to govern the service conditions of the employees. Similarly, the note appended to Rule24 has application to the maintenance of service

record of the transferred employees and an employee of Cooperative society can avail himself the benefit of getting the service record maintained

in terms of that rule, but service conditions are governed by the Citizens Cooperative Bank Ltd. Employees Service Rules of 1981. It is lastly

contended that Cooperative Bank is a creature of the Cooperative Banks Act and it is also registered under the same Act.

5. After considering the respective contentions of the learned counsel for the parties, it has to be seen at the threshold as to what is legal

significance of the rules made under SRO 233 as well as the Citizens Cooperative

Bank Ltd. Employees Services Rules of 1981, Rules under

SRO 233 are the outcome of delegated legislation and were framed on July 8, 1998 whereas the rules which are called ""Citizens Cooperative

Bank Ltd. Employees Services Rules of 1981"" do not have their source in any delegated legislation. In this view of the matter, rules framed under

SRO 233 of 1998, which are later in time, have preference over the former.

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

creature of Cooperative Bank Ltd. Employees Services Rules of 1981 incorporate that those rules were to he registered with the Registrar of

Cooperative Societies, J and K. It has been vehemently contended by the counsel for respondents that the bank is a Cooperative Society and

registered with the Registrar of Cooperative Societies. This contentions finds support from Rule24 and the note appended there under which

shows that its employees are transferable to other cooperative bank societies and viceversa. The explanation to the terms ""other societies"" have

been given in the note which includes Cooperative ""Society, Cooperative Industrial Cooperative Societies, Cooperative Bank and the like. Under

section 2 subclause(e) of the J and K Act, the Cooperative society has been defined which means a society registered under the Act, so it is a

Cooperative Society. In the definition part of rule2 of the said rules (made under SRO 233) under clause (o), the word ""Society"" has been defined

which does not include Cooperative Bank, but this omission has not to be read in isolation, but in conjunction to the import of other rules framed

under the said SRO Rules 1 envisages that the rules apply to all the societies and Cooperative bank is also admittedly a society. Rules24 alongwith

note appended there under lends support to this view that it is society. While interpreting the provisions of laws it has to be borne in mind that

provisions are in harmony and supplement each other. They are not deemed to be contradicting each other and creating confusing and chaos.

7. From the above said discussion, it can thus be safely stated that the service conditions of the employees of the respondentBank are governed by

the rules framed under SRO 233 and these rules provide the forum where the appeal or review lies. The civil court has no jurisdiction either to hear

the appeal or review and in this view of the matter, it is held that the view taken by the learned District judge that Civil courts have no jurisdiction is sound in law. There is found no force in this appeal which is dismissed.

