
(1998) 12 OHC CK 0035

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 8825 of 1994 and 2763 of 1995

Laxmidhar Roul

APPELLANT

Vs

Board of Management, R.C.M.S. and Others

RESPONDENT

Date of Decision : 04-12-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Citation : (1999) 87 CLT 22 : (1999) 1 OLR 17

Hon'ble Judges : S. Chatterji, J;R.K. Dash, J

Bench : Division Bench

Advocate : Abhiram Swain and R.K. Sahoo In OJC 8825/94, P. Palit, A. Swain, S. Palit, J. Katikia, B. Mohanty, S. Sen, D. Mohanta and P.K. Das in OJC 2763/95, for the Appellant; S.B. Nanda, B.K. Patnaik, A.K. Misra, S.K. Misra and P.K. Misra, for the Respondent

Final Decision : Allowed

Judgement

R.K. Dash, J.—The petitioner who had been holding the post of Accountant in the Regional Co-operative Marketing Society Limited, Dhenkanal (for short, "the Society") in both these writ applications filed under Articles 226 and 227 of the Constitution of India has, inter alia, prayed for a direction to the opposite parties to allow him to hold the post of Accountant in the Society and to pay him the salary and arrear dues as admissible to such post.

2. Shorn of all details, petitioner's case as set out in the writ petitions may be stated thus :

The Society is substantially financed by the State Government to the extent of 75 per cent and is fully controlled by the Registrar, Co- operative Societies, Orissa (hereinafter referred to as "the Registrar") and thus is a "State" within the meaning of Article 12 of the Constitution of India. The petitioner after having passed Matriculation Examination, appeared in the interview for the post of Assistant Accountant in the Society and on being selected, was appointed on 20.3.1978. He joined in the said post and continued to work till 1982. During his

incumbency he discharged his duties sincerely to the best satisfaction of his employer and appreciating his work, the employer sent him to undergo training in Accounts and Audit in the year 1988 and in Business Development Programme in 1991. He successfully completed the training and obtained certificates. The management of the Society by its resolution No. 2 dated 2.11.1982 resolved to promote him to the post of Accountant and since then he has been holding the said post and discharging the duties as such. For according approval of the said resolution he made several representations to the President of the Society, but no decision was taken in that regard. However, the Managing Committee of the Board by resolution dated 25.9.1992, Annexure-4 resolved that since the petitioner on being promoted to the post of Accountant has been discharging his duties, he should be given pay as an Accountant from 1.7.1986. Pursuant to the decision taken by the Managing Committee on 2.11.1982 and 25.9.1992, the President of the Society by his order No. 463 dated 19.12.1992, Annexure-4/2, promoted the petitioner to the rank of Accountant with effect from 1.7.1986 in the scale of pay of Rs. 400-750/- per month with usual D.A. and A.D.A. Consequently his pay was fixed under the Orissa Revised Pay Rules, 1981 as an Accountant vide Annexure-5. Thereafter the Secretary of the Society moved the Deputy Registrar, Co-operative Societies, Dhenkanal, vide his letter No. 531 dated 6.2.1993, Annexure-5/1 for administrative approval of the petitioner's post as Accountant. When the matter stood thus, the petitioner to his utter surprise could come to know from the Office Order of the Secretary of the Society dated 3.12.1994, Annexure-8 that in pursuance of the Resolution No. 6(a) dated 30.11.1994 of the Committee of Management of the Society, he has been demoted to the post of Assistant Accountant. Challenging this action of the Secretary he made a representation to the President of the Society (Annexure-9) ventilating his grievance that he having been lawfully promoted to hold the post of Accountant, has been discharging his duties in such capacity for long years and therefore, he should be confirmed in the said post. Instead of considering his representation, the President of the Society moved the Deputy Registrar, Co-operative Societies, Dhenkanal Division, to post one Senior Clerk to work as Accountant in the Society, vide Annexure-10. Finding no other alternative the petitioner has approached this Court by filing the present writ petition claiming relief as aforesaid.

3. The Board of Management of the Society, opposite party No. 1, on being noticed has filed the return denying the assertion made in the writ petition. It has urged that the present writ-petition is not maintainable since the Society is not a "State" within the meaning of Article 12 of the Constitution. As to the factual aspects of the case, the stand taken by the Society is that as per the staffing pattern prepared by the Registrar dated 26.3.1984, Annexure-6/1 which was adopted by the Society, with effect from 1.7.1986 the minimum educational qualification for Accountant is Bachelor of Commerce. The petitioner who is admittedly a Matriculate is not entitled to be appointed/promoted to the said post. Initially the petitioner was appointed as Accounts Assistant-cum-Typist on

20.3.1978. In between the posts of Accounts Assistant and Accountant there is another post, namely, Assistant Accountant. The minimum qualification for Assistant Accountant though is Graduation, but it can be relaxed for a Matriculate having 5 years experience. The next promotional post is Accountant and one would be eligible for promotion, to the said post provided he has the prescribed minimum educational qualification, i.e. B. Com. Since there has been no regular appointment to the post of Accountant of the Society, the petitioner was only allowed to remain in charge of Accounts. He had never been appointed/promoted to the next higher post of Assistant Accountant, much less the post of Accountant. The Managing Committee by its resolution dated 25.9.1990, Annexure- B/l resolved to promote him as Assistant Accountant by relaxing his educational qualification and on consideration of his experience. Such decision was taken basing on the staffing pattern issued by the Registrar vide his order under Annexure-6/l. When the matter stood thus, the Secretary of the Society addressed a letter to the Registrar on 10.4.1992 (Annexure-D/1) for appointment of the petitioner as Accountant by relaxing his educational qualification. In response, the Assistant Registrar intimated the Secretary of the Society under Annexure-E/1 that the criteria fixed by the Registrar for appointment/promotion to the post of Accountant (Annexure-6/l) should be adhered to. It is, however, admitted by opposite party No. 1 that pursuant to the resolution dated 2.11.1982 and 25.9.1992 of the Committee of Management of the Society, the President by order dated 19.12.1992, Annexure-4/2 promoted the petitioner to the post of Accountant with retrospective effect from 1.7.1986. It is contended that the resolution dated 2.11.1982 was merely a proposal which was never acted upon and the resolution dated 25.9.1992 being not in terms of Annexure-6/1 was not lawful. It is emphatically urged that the petitioner though was promoted to the post of Accountant as aforesaid, in fact he was holding the post of Assistant Accountant, since there was no regular Accountant in the Society. In the circumstances, it is contended that the petitioner having no requisite qualification for appointment/promotion to the post of Accountant, is not entitled to the relief as claimed.

4. Opposite parties 2 to 4 have filed a counter assailing the claim of the petitioner. As would be seen from their pleadings, the post of Accounts Assistant-cum-Typist against which the petitioner was appointed was subsequently re-designated as Assistant Accountant. This stand runs contrary to that of opposite party No. 1, inasmuch as opposite party No. 1 has taken the stand that the post of Assistant Accountant is higher than the post of Accounts Assistant-cum-Typist, As regards the petitioner's claim to hold the, post of Accountant, they would contend that since he lacks requisite educational qualification, he is not entitled to be appointed/promoted to the said post. Moreover the decision taken by the Managing Committee of the Society in promoting the petitioner to the post of Accountant has no sanction under law since, as provided under bye-law Nos. 20(2) and 20(4) of the Society., no approval from the Registrar was obtained in that regard. In that view of the matter, the decision taken by the Society

promoting the petitioner to the post of Accountant being contrary to the guidelines and the bye-laws as aforesaid, no relief can be granted to the petitioner in the present case.

5. From the pleadings of the parties, as narrated above, the questions for consideration are :

- (1) Whether the Society is an instrumentality or agency of the State, and if not,
- (2) Is the writ petition under Article 226 of the Constitution of India still maintainable ?

If these questions are answered in the affirmative, then -

- (3) Whether the action of the Society in not permitting the petitioner to hold the post of Accountant is legal and justified ?

6. On the question as to whether a particular authority is an agency or instrumentality of the Government and hence is "other authority" within the meaning of Articles 12 of the Constitution, there is a catena of decisions of the apex Court, but we do not like to burden the judgment by referring to all of them. We, therefore, propose to start with Airport Authority's case reported in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , where certain tests were evolved for determining whether a body is or is not other authority" within the meaning of Article 12 of the Constitution. In paragraph 14 of the judgment the Court observed :

"A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act 1956 or the Societies Registration Act, 1860. Where a Corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a Corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government ? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and; if so, what should be the nature of such control ? Should the functions which the Corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial ? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government. But, as is

quite often the case, a corporation established by statute may have no shares or share-holders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute/or incorporated under law is an instrumentality or agency of Government ? It is not possible to formulate an all- inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporation into those which are instrumentalities or agencies of Government and those which are not "

One of the determining factors which weighed in the mind of the Court is whether the corporation or agency performs important public functions. In their Lordship's opinion if the functions are of public importance and closely related to governmental functions it will be a relevant factor in classifying a corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J. in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, , where his Lordship said :

"Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function performed government agencies"

In paragraph 19, the Court summarised the factors for characterising a corporation as an agency or instrumentality of the State as under :

"xxx whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance, whether there is any other form of assistance given by the State and if so, whether it is of the usual kind or it is extraordinary, whether there is any control of the management and policies of the Corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the Corporation are public functions closely related to Governmental functions. xxx"

7. The criteria evolved in *Airport Authority's* case (supra) were applied by the Constitution Bench in the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , where the Court observed :

"While considering this question it is necessary to bear in mind that an authority falling within the expression "other authorities" is, by reason of its inclusion within the definition of "State" in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the Fundamental Rights enshrined in Part III

of the Constitution. We must therefore give such an interpretation to the expression "other authorities" as will stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the Fundamental Rights by settling up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. x x x It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. x x x "

The tests laid down in Airport Authority's case (supra) and Ajay Hasia (supra) were reiterated by a later Constitution Bench in M.C. Mehta and another Vs. Union of India and others, . In view of the above authoritative pronouncements of the Supreme Court, we would not have referred to the decisions of this Court reported in 67 (1989) CLT 5 (FB) : Satrughana Rout Vs. Managing Director, Tribal Development Co-operative Corporation of Orissa Ltd. and Others, : Satrughana Rout v. Managing Director, Tribal Development Co-operative Corporation of Orissa and others; and 77 (1994) CLT 799 : Dr. Bishnu Charan Swain v. Chairman, OMFED, as cited by Shri Nanda, learned counsel for opposite party No. 1, but since according to him, the facts of those cases are similar and the view taken therein applies in full force to the present case, we consider it appropriate to refer to the same.

9. In Banabihari (supra) the Full Bench, on a reference being made by a Division Bench held that a "co-operative society" registered under the Societies Registration Act would not come within the fold of Article 12 of the Constitution of India.

In Satrughana Rout (supra), another Full Bench having made an indepth study and by referring to a good number of decisions of the Supreme Court, including Airport Authority's case (supra) and Ajay Hasia's case (supra) came to hold that Tribal Development Co- operative Corporation is a "State" within the meaning of Article 12 of the Constitution.

In Dr. Bishnu Charan Swain (supra), a Division Bench of this Court relied upon

the view expressed in the above two Full Bench decisions and ruled that Orissa State Co-operative Milk Producers Federation Ltd., is not a "State" and therefore, no writ would lie against it.

10. Now we would examine whether in view of the well settled principle of law as decided by the Supreme Court and this Court, referred to above, the Society in the present case would come within the fold of "State" to enable the Court exercise extraordinary power under Article 226 of the Constitution.

11. For determining the question at hand, reference may be made to the pleadings of the parties. At the out-set we may point out that the pleading of the petitioner is not well drafted and it does not contain all material facts which are necessary for our scrutiny in the light of the decisions of the Supreme Court. We, however, find that the omissions have been supplied by opposite parties 2 to 4 in their counter affidavit. A cryptic averment has been made by the petitioner that the Society is a "State" since it is financed by the State Government to the extent of 75 per cent. On the other hand, opposite parties 2 to 4 in paragraph 7 of their counter have given the details of the functions of the Society, inasmuch as it carries on various businesses, such as, storage agency, transport and procurement of consumer goods. Needless to mention that the activities such as, procurement, transport and storage of essential commodities, etc. are the governmental functions which the society undertakes. Thus it owes an obligation to the people in general and performs public duties. That apart, another factor which has bearing on the issue is as to whether extensive financial assistance to the Society is a given by the State. It may be reiterated, the petitioner has asserted in the writ application that financial assistance to the extent of 75 per cent comes from the State Government. Opposite party No. 1 in paragraphs 5 and 9 of the counter though has made an evasive denial to the said fact, but has not specifically pleaded as to the extent of financial assistance the Society receives from the State, or not at all. In absence thereof, we accept the petitioner's case that financial assistance to the extent of 75 per cent is provided by the State. Besides, we find from the record that the Registrar of Co-operative Societies, an officer of the State Government has pervasive control over the Society. It is unequivocally stated by opposite party No. 1 in paragraph 4 (i) of the counter that the Registrar is the competent authority under the Orissa Co-operative Societies Act to specify the staffing pattern of various societies in the State with designation, qualification and remuneration, etc. of the employees. Taking all these aspects into consideration, we would hold that the Society is an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

12. Apart from what has been stated above, even if we accept the contention of the opposite parties that the Society is not an instrumentality of the State within the meaning of Article 12 of the Constitution, yet the writ petition under Article 226 of the Constitution would lie against it and writ can be issued for enforcement of any of the fundamental rights or for any other purpose. The term

"authority" used in Article 226 should receive a liberal meaning unlike the term in Article 12. In exercise of power conferred by Article 226, the High Court can issue writs for enforcement of both fundamental rights as well as non-fundamental rights. Therefore, the words "any person or authority" used in the said Article are not confined to only statutory authority or instrumentality of the State. For such conclusion we derive support from a decision of the apex Court reported in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , and *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, .

Considering the matter from all angles, we answer question Nos. 1 and 2 in the affirmative, and hold the writ petition to be maintainable.

13. The next question that falls for consideration is whether the action of the authorities of the Society in not permitting the petitioner to hold the post of Accountant is sustainable in law. To repeat with, the petitioner being a Matriculate was initially appointed as Accounts Assistant- cum-Typist on 18.3.1978 and while continuing in the said post, the Committee of the Society by its resolution dated 2.11.1982, Annexure-2 decided to promote him to the post of Accountant. Admittedly since then he has been performing the duties as Accountant as evident from the Committee's resolution dated 25.9.1992, Annexure-4, where it was decided to pay him the salaries as Accountant. Besides, the resolutions dated 2.11.1982, Annexure-2, and 25.9.1992, Annexure-4 were given effect to, consequent upon which the President of the Society by his order dated 19.12.1992, Annexure-4/2 promoted him to the post of Accountant from 1.7.1986. This being the factual position, surprisingly, the Secretary by order dated 4.3.1995, Annexure-M/1 reverted him to the rank of Assistant Accountant with retrospective effect from 1.7.1986 on the basis of the resolution said to have been passed by the Committee of Management of the Society. It is contended by the opposite parties 1 to 4 that since the petitioner lacks minimum educational qualification i.e. B. Com. for being promoted to the post of Accountant as per the staffing pattern prescribed by the Registrar under Annexure-6/1, he is not entitled to hold the said post. So also opposite parties 2 to 4 while challenging the petitioner's claim would urge that no approval of the Committee's resolution with regard to the petitioner's promotion having been accorded by the Registrar as required under bye-law No. 20, Annexure-F/4, the relief sought for in the writ petition cannot be granted. Sri Nanda, learned counsel for opp. party No. 1, contended that as provided u/s 33-A of the Orissa Co-operative Societies Act, it is the Registrar who is competent to classify the Societies into different classes and make rules for appointment of its officers. In view of such statutory provision, the staffing pattern was introduced in the Society as per Annexure-6/1, which provides that minimum educational qualification for appointment and/or promotion to the post of Accountant is B. Com. In that view of the matter, the petitioner's promotion being contrary to the said staffing pattern because of lack of educational qualification, no relief as sought for could be granted.

14. Staffing pattern for all the Societies in the State was for the first time introduced on 26.3.1984, under Annexure-6/1. It would appear from the said staffing pattern that minimum numbers of the staff in a Society are 14 and of them one is Accountant. In addition thereto, "A" class category of the Society will have one Store-Keeper, one clerk and one Assistant Accountant-cum-Cashier. There is no post of Accounts Assistant-cum-Typist against which post the petitioner was initially appointed. Qualifications for different categories of posts are prescribed in the Annexure to the said staffing pattern, Annexure-6/1. So far as Clerk- cum-Typist is concerned the minimum qualification is B. Com. or B.Sc. As regards Assistant Accountant/Assistant-cum-Cashier/Secretary and Mill Manager, the qualification prescribed is B.A., B. Sc, or B. Com. In the case of Accountant the qualification prescribed Clerk-cum-Typist, Store-Keeper (Mill) Assistant Accountant, Accountant/Mill Manager, Chief Accountant/Assistant Secretary/ and Secretary. It is provided therein that no promotion will be given to a person who does not possess minimum qualification and no one will be allowed to work as Accountant or Chief Accountant, unless he is a Graduate in Commerce. A proviso, however, has been added that promotion to the post of Store-Keeper or Assistant Accountant can be given to a person having matric qualification provided he has minimum five years" experience. It is not the case of the opposite parties that similar staffing pattern was in vogue at the time when the petitioner was appointed or at any time prior to 26.3.1984 Had there been such staffing pattern, the petitioner could not have been appointed as Assistant Accountant-cum-Typist or promoted to the post of Accountant in the year 1982. Since the petitioner's promotion was prior to the introduction of the staffing pattern, Annexure-6/1, the minimum qualification prescribed for Accountant cannot be applied retrospectively to deny him to hold the said post, particularly when on being promoted he had been working as such for quite a long time till he was reverted on 4,3.1995 vide Annexure-M/1. There being no material on record to show that he was inefficient or incompetent to work as Accountant, it would be unreasonable to deny him to hold the said post by giving retrospective effect to the staffing pattern, Annexure-6/1 solely on the ground of lack of educational qualification. In this context it is apposite to refer to the observation of the Supreme Court in the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, , where the Court observed :

".....The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications....."

15. Sec. 33-A of the Orissa Co-operative Societies Act has undergone amendment. For better appreciation, the section before and after amendment is extracted herein below :

Sec. 33-A before amendment :

"The Registrar may classify the societies in the State into different classes and may

(a) fix the number and designation of the employees to be employed by the different classes of societies; and

(b) make rules regulating the qualification, remuneration, allowances and other conditions of service of such employees."

Sec. 33-A after amendment :

"Power to appoint and determine conditions of service of employees of Society -

(1) The Committee of every Society shall, subject to the provisions of this Act, Rules and the Bye-laws, fix the number and designation of employees it may have under different categories, and determine the qualification criteria, recruitment procedure, remuneration payable, conditions of service and other related matters for such category.

(2) Appointment to all posts under a Society shall be made by the Society in the manner prescribed."

As would appear from the unamended section, power had been conferred on the Registrar to fix the number and designation of the employees of a Society and to make Rules relating the qualification, remuneration, allowance and other conditions of service. However, such power has been taken away by way of amendment by Act 29 of 1991 (w.e.f. 31.12.1991). Since the petitioner's initial appointment and subsequent promotion were prior to amendment of Sec. 33-A, the Registrar was competent to prescribe the minimum qualification for different posts including Accountant. But as has been stated earlier, staffing pattern prescribing the minimum qualification for different categories of employees for the first time was introduced on 26.3.1984, that is, subsequent to the petitioner's promotion. In that view of the matter, it cannot be said that petitioner's promotion to the post of Accountant was in contravention of Sec. 33-A.

16. After the amendment in 1991 power of appointment completely vests in the Committee of the Society. The petitioner's promotion in 1982 having been re-approved/reaffirmed in 1992, with retrospective effect from 1.7.1986, we would hold that the same is in consonance with the power conferred by amended Section 33-A. As to the bye-law No. 20 (Annexure-F/4) on which much reliance was placed by the opposite parties in support of their contention that the Registrar's approval is necessary in the matter of appointment and promotion, we would like to say that the same has been misread and misapplied. That part bye-law No. 20 relevant for the purpose reads as under :

"20. The power and duties of the Board of Director shall be -

(1) xxx xxx xxx xxx (2) To appoint, suspend, punish and dismiss salaried

servants other than the Managing Director who shall be appointed with the approval of the Registrar of Co-operative Societies, and whose dismissal will be subject to his approval. In case of Government servants deputed to the Society any delinquency on his part shall be reported by the management to the Registrar of Co-operative Societies who will be competent to deal with the matter.

(3) xxx xxx xxx xxx (4) To make rules with the approval of the Registrar of Co-operative Societies regarding the pay prospect, promotion, leave and provident funds for the salaried servants of the Society."

A reading of the aforesaid bye-law leaves no room for doubt that powers completely vest with the Board of Directors in the matter of appointment, suspension and punishment of the employees of the Society and so far as pay, promotion, leave, etc. of the employees are concerned it has, however, the power to make rules subject to the Registrar's approval. Since the said bye-law does not confer any power on the Registrar requiring his approval to the petitioner's promotion to the post of Accountant, the ultimate decision taken in demoting him to the post of Assistant Accountant is not sustainable.

17. Regard being had to the facts and circumstances of the case, we are inclined to allow both the writ petitions and direct the opposite parties to allow the petitioner to hold the post of Accountant and to pay him salaries and other emoluments as admissible from 1.7.1986 as per the resolution at Annexure-4. All the arrears to which the petitioner is entitled be paid within a period of six months hence. The petitioner is entitled to consolidated.

S. Chatterji, J.

18. I. agree.