

(1991) 01 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 14075 of 1983

L.M. Shenvy

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 129, 129 (1)

Citation : (1991) ILR (Kar) 1209 : (1991) 1 KarLJ 289

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : Ravivarma Kumar, for the Appellant; A. Nimmiswamy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna, J.—The learned Counsel appearing for the petitioner raised a legal plea at the time of hearing that it is not open to the State Government to prescribe service conditions of employees of Co-operative Societies without adherence to the mandate of Section 129 of the Karnataka Co-operative Societies Act, 1959. Since this is a substantive question of law, it is necessary to give a finding on this before going into other points in controversy.

2. According to Section 129(1) of the Karnataka Co-operative Societies Act, 1959:-

"The State Government may, for the whole or any part of the State and for any class of Co-operative Societies, after previous publication, by notification in the Official Gazette, make rules to carry out the purpose of this Act.

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

(c) The recruitment and conditions of service of employees of Co- operative Societies.

(This provision was inserted by Act 40 of 1964, on 26-6-1965).

3. Rule 19 of the Karnataka Co-operative Societies Rules 1960, is the only provision, which relates to the conditions of service of Officers and employees of Co-operative Societies, to be found in the said Rules. Rule 18(a)(1) deals with the age limit for entry into service. Sub-rule (2) refers to age of retirement; Sub-rule (3) refers to leave; Sub-rule (4) refers to Gratuity; Sub-rule (5) relates to service register; Sub-rule (6) relates to use of official information; Sub-rule (7) relates to pecuniary relation; Sub-rule (8) deals with employees and Elections and Sub-rule (9) pertains to punishments. Rule 18(b) refers to appointment of Secretary by certain class of societies and it reads thus:-

"Every Co-operative Society whose area of operation extends beyond a district, every district co-operative central Bank, every marketing society, every consumers' society, every processing society and every land mortgage bank shall appoint a paid secretary approved by the Registrar. The services of such a Secretary shall not be dispensed with without the previous sanction of the Registrar."

4. It is pointed out by the learned Counsel for the petitioner that Rule 17, 17A, 17B, 17C and 17D, respectively relates to the qualifications, authority for recruitment of certain class of employees of Co-operative Societies, authority for recruitment, training etc., of employees of the Primary Co-operative Land Development Bank, the authority for recruitment, training etc., of employees of the Primary Agricultural Credit Co-operative Societies and authority for recruitment of employees of the State Level Co-operative Institutions. However, my attention is drawn by the Learned Government Pleader to the omission of these provisions, namely, Rules 17A and 17D by Government Notification GSR 85 dated 28-3-1987. Thus we are left with Rule 17 apart from Rule 18. So far as service conditions are concerned, the former relates to Officers and employees of Co-operative Societies and their qualifications.

5. A reading of these provisions discloses that no Rules have been framed in regard to the conditions of service of employees of Co-operative Societies to support the Government Notification under Annexure-A by which the petitioner is aggrieved. The requirement of Section 129 is that the State Government should first publish by Notification in the Official Gazette, specific Rules to carry out the purpose of this Act, if it chooses to apply the Rules for the whole or any part of the State. Nothing prevented the State Government from framing necessary Rules in order to exercise the power relating to the recruitment and conditions of service of employees of co-operative societies, which would be applicable to the petitioner and similarly situate persons. In the absence of such Rules which have the force of law, it is not open to the State Government to proceed to exercise power arbitrarily, disregarding the statutory requirement of issuing the Government Notification vide Annexure-A dated 23-6-1983, providing among other things that the staff employed in violation of the cadre strength approved by the Registrar of Co-operative Societies shall be examined by the authorities

concerned with reference to the cadre strength of the institutions. Clearly State action is without the authority of law, since power is not exercised in due compliance with the requirements of Section 129(1) of the Act. I am therefore, of the opinion that Annexure-A, so far as it affects the petitioner is not enforceable in law. The learned Counsel for the petitioner submitted that every Society which is governed by the Karnataka Co-operative Societies Act, 1959, has its own self contained service conditions which are applicable to its employees and the control which the State Government could exercise has not been exercised in accordance with law by due compliance with the requirements of Section 129(1) of the Act and that if Annexure-A is quashed, the Societies concerned will not be left without any rational basis to regulate the service conditions of the employees. It was therefore, submitted that Annexure-A deserves to be quashed.

6. There appears to be considerable force in the contention of the learned Counsel for the petitioner, because adequate provision is made in the Bye-laws of the Societies to prescribe service conditions in order to regulate the services of the employees of the Societies concerned. In view of this position as well as in view of the fact that the action of the State Government under Annexure-A is contrary to the requirements of Section 129(1) of the Karnataka Co-operative Societies Act, 1959, Annexure-A deserves to be quashed.

7. The other points which are raised in this Writ Petition are left open and it is sufficient for the purpose of this case to quash the impugned Notification under Annexure-A. Hence the following order.

8. The Writ Petition is allowed and Annexure-A dated 23-6-1983 is quashed Until Rules are framed in accordance with law in regard to the service conditions of the employees of the Co-operative Societies by the State Government, it is made clear that the service conditions laid down by the concerned Co-operative Societies in accordance with their Bye-laws shall hold the field.