

(1998) 11 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 1752 of 1996 (A.S.) with Civil Application No. 6341 of 1997, Civil Application No. 6548 of 1998 Writ Petition No. 1953 of 1997 (O.S.) and Writ Petition No. 495 of 1998 (O.S.)

Madhav Karmarkar

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 234, 236

Citation : (1999) 1 BomCR 379

Hon'ble Judges : M.B. Shah, C.J.; S. Radhakrishnan, J

Bench : Division Bench

Advocate : A.V. Anturkar, G.N. Salunke and A.S. Desai, for the Appellant; B.P. Apte, A.A.G., R.V. Govilkar, G.P., V.V. D'gama, A.G.P., S.G. Aney, A.A. Kumbhakoni, P.S. Dane, C.U. Singh, Sanjay Udeshi and K.J. Hakani, for the Respondent

Judgement

M.B. Shah, C.J.—Heard the learned Counsel for the parties extensively.

2. In our detailed Order dated 7th March, 1998 with regard to an unfortunate and painful situation which has arisen regarding administration of justice in Co-operative Courts and appointment of Judges of Co-operative Courts and Co-operative Appellate Courts in the State of Maharashtra, we have directed the State of Maharashtra to take appropriate steps for appointment, posting, promotion, transfer, continuation or extension of Co-operative Court Judges so that the situation of lobbying the Executive and currying favour with the Government would not arise. The said order was required to be passed, because, despite the directions issued by this Court in the cases of Maharashtra Co-operative Courts" Bar Association and Others Vs. State of Maharashtra and Others, , the State Government has not taken any steps in accordance with the said directions. Hence, following directions were issued:-

"(a) The State Government should finalise, within two months from today, Rules

for Recruitment of Judges of the Co-operative Courts and Co-operative Appellate Court in accordance with the constitutional mandate.

(b) Till then, the State Government should not make any ad-hoc appointment of Judges to the Co-operative Courts or Co-operative Appellate Court and if the question of appointment, posting, promotion, transfer, continuation and extension arises, it shall refer the said question to the High Court and the High Court's recommendation thereon would be final.

(c) With regard to the framing of Rules, the State Government should take care to make provisions for appointee's promotion, transfer and disciplinary action in conformity with the constitutional provisions and not to give power to the Executive or Executive Wing of the State Government, or Co-operative sections of the State.

(d) The Rules should not provide for appointment of executive officers as Members of the Co-operative Courts or Co-operative Appellate Courts.

(e) With regard to persons who are already appointed, appropriate orders would be passed hereafter.

(f) With regard to other such Tribunals, what type of directions are required to be issued would also be considered hereafter."

3. The other discussion of the order is not required to be narrated at this stage. Thereafter, the State of Maharashtra, by its Notification dated 31st August, 1998, promulgated the Rules called the Maharashtra Judicial Officers of the Co-operative Courts and Co-operative Appellate Court (Recruitment) Rules, 1998.

4. Subsequently, the learned Counsel for the Judges of the Co-operative courts were heard extensively on 11th September, 1988 and the Division Bench of this Court found that the Orders passed appointing Judges of Cooperative Courts were on ad-hoc basis and they were continued without issuing any appointment orders but salary was paid by issuing pay slips. Extension orders were not passed, probably because of the directions issued by this Court in the case of Maharashtra Co-operative Courts' Bar Association, Bombay, & others (supra) Appropriate directions were issued with regard to some Judges by directing the Maharashtra Public Service Commission to consider their cases for being appointed as Judges after relaxation of the age limit prescribed under the new Rules.

5. Today, when the matters are called out, with regard to Judges of Cooperative Appellate Courts, the learned Counsel, Mr. Anturkar, for the petitioner submitted that-

(a) The State Government be directed to delete the Rules in the Maharashtra Co-operative Societies Rules, 1961 relating to appointment of Judges of Co-operative courts and Co-operative Appellate Courts.

(b) The State Government be directed to make appointment in the post of

Judges of Co-operative courts and Co-operative Appellate Courts in accordance with the Rules framed and after taking into consideration the workload with various Co-operative Courts in the State of Maharashtra.

(c) The State Government may be directed to make appointment of the President in Maharashtra Co-operative Appellate Court on permanent basis strictly in accordance with the recommendation of the High Court and in accordance with the Maharashtra Judicial Officers of the Co-operative Courts and Co-operative Appellate Court (Recruitment) Rules, 1998.

(d) The State Government may be directed not to continue those Members of the Co-operative Appellate Courts, who, at the time of their initial appointment, were not having qualifications to be appointed to the post of Members of the Co-operative Appellate Courts as per Rules existing at the relevant time.

(e) The temporary appointment of Mr. T. A. Hare as the President of the Maharashtra Co-operative Appellate Court be quashed and set aside, as it is contrary to the recommendation made by the High Court.

(f) The State Government may be directed to consider the case of Mr. R.Y. Patil and other Members of the Co-operative Appellate Courts, who have completed more than 58 years of age as to whether they should be continued in service after the age of 58 years, strictly in accordance with the assessment of performance by following the law laid down by the Supreme Court in the case of All India Judges' Association and Others Vs. Union of India and Others, .

(g) Appropriate directions be issued for discontinuing the Members of the Co-operative Appellate Courts, who have completed 60 years of age.

6. Regarding the contention that the State Government be directed to delete the Rules in the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as "the 1961 Rules"), relating to appointment of Judges of Co-operative Courts and Co-operative Appellate Courts, the learned Government Pleader has made it clear that, after coming into force of the new Rules, those Rules are not to be operated for appointment of Judges of Co-operative Courts and Co-operative Appellate Courts. This is also clear from the Preamble to the Notification, as the said Rules are enacted in supersession of all the existing rules, orders or instruments made in that behalf. In our view, no further directions are required to be issued to the State Government, as submitted by the learned Counsel for the Petitioner, because the State Government is bound to make appointment by following the new Rules promulgated in the year 1998.

7. Regarding the age of retirement, it is clear that the Judges of Co-operative Courts and Co-operative Appellate Courts were considered to be Government, employees and their age of superannuation was 58 years. However, as per Rule 104 of the 1961 Rules, the State Government had power to continue the President of the Maharashtra Co-operative Appellate Court till the age of 65 years and any other Member of the Appellate Court till he attains the age of 62 years.

For the Judges of the Co-operative Courts, Rule 77-B of the 1961 Rules empowered the Government to continue them till the age of 62 years. In most of the cases, the order which is passed by the State Government is only extending the term "till further orders", giving absolute discretion to continue or not to continue them at the sweet will of the Government. Their services could be discontinued from any date, resulting in a situation of lobbying the Executive and currying favour with the Government for extension or continuation of their terms. This situation was visualised in the Judgment rendered by this Court in the case of Maharashtra Co-operative Courts" Bar Association, Bombay, & others (supra), and this Court has issued directions, so that in future such situation could be avoided.

8. The Court, by order dated 24th July, 1990, after considering the various illegalities committed by the State Government in making appointments of the Judges and other directions issued by the Commissioner for Co-operation with regard to judicial matters, restrained the Commissioner and the State Government from issuing any further circulars or taking any steps which would affect the independence of Co-operative Courts and Co-operative Appellate Courts. This Court further directed as under:-

"The State Government is further directed to make appointments to the post of the Judge of the Co-operative Court by following the requirement of Article 234 of the Constitution of India. The State Government shall frame appropriate rules forthwith in respect of appointment to the Judges of the Co-operative Court and also in regard to the appointments to the post of Judges of the Appellate Court."

9. Against the aforesaid Judgement and Order, even though Appeal was filed by the State Government, the Appellate Bench has not granted any stay order. The Appeal was withdrawn in 1996.

10. Before the aforesaid directions were given, by Order dated 7th April, 1988, the State of Maharashtra appointed-

- (1) Mr. T.A. Hare,
- (2) Mr. R.S. Dargode,
- (3) Mr. R.Y. Patil, and
- (4) Mr. M.N. Mujawar (Retired)

as Members of the Maharashtra State Co-operative Appellate Court, Bombay, for a period of three years or till they attain the age of 62 years, whichever is earlier. Subsequently, by Notification dated 23rd April, 1991, three months" extension was given to Mr. Dargode, Mr. Hare and Mr. Patil. Lastly, on 17th July, 1991, the State Government extended the term of appointment of all the aforesaid incumbents until further orders. From the orders, it is apparent that their appointments are "until further orders", which would mean that their services could be terminated at any point of time. The period is not extended upto 62

years or 65 years or fixed period of three years as contemplated under Rule 104.

11. From the aforesaid facts, the following emerges:-

(i) The appointment of Mr. T. A. Hare, Mr. R.S. Dargode and Mr. R.Y. Patil are only until further orders. They are not appointed for a fixed period, as provided in Rule 104(6) of the Maharashtra Cooperative Societies Rules, 1961.

(ii) They are appointed in clear violation of the direction issued by this Court.

(iii) The Order dated 17th July, 1991 appointing the aforesaid three persons until further orders is also in contravention and in apparent breach of the aforesaid mandatory directions issued by this Court as quoted above.

12. With regard to Mr. T. A. Hare and Mr. R.Y. Patil, various submissions are made to point out that they were not qualified to be appointed as a Cooperative Court Judge or as an Appellate Court Judge even in accordance with the 1961 Rules. Rule 77-A of the said Rules provides the qualifications of Judges of Co-operative Courts and Rule 104 provides the qualifications for the appointment of the President and Members of the Maharashtra Cooperative Appellate Court. It has been pointed out that Mr. Hare was working as an Assistant Registrar, Co-operative Societies, while he was appointed as a Judge of the Co-operative Court on 27th September, 1979. Thereafter, he was appointed as a Member of the Co-operative Appellate Court on 7th April, 1988, as stated above. Similarly, R.Y. Patil was working as an Inspector in the Weights and Measures Department. He was appointed as a Judge of the Co-operative Court with effect from 1st September, 1979 and thereafter he was appointed as a Member of the Co-operative Appellate Court for a period of three years from 7th April, 1988 and is continued till further orders.

13. It has been vehemently contended by the learned Counsel for the petitioner that Mr. Patil and Mr. Hare were appointed as Judges of the Co-operative Court in violation of Rule 77-A, which prescribes the qualification of Judges of Co-operative Courts. It is submitted that the aforesaid two persons were not practising Advocates nor they held any judicial office not lower in rank than that of a Civil Judge (Junior Division). As against this, it has been contended by the learned Counsel, Mr. Aney and Mr. Singh, appearing for Mr. Patil and Mr. Hare, that the said persons were qualified to be appointed as Judges of Co-operative Court under Rule 77A(4)(b) as they were holding degree in law and possessed good knowledge and experience of Co-operative law and practice. Prima facie, it is difficult to accept this contention, because Mr. Patil was working as an Inspector in Weights and Measures Department and Mr. Hare was working as an Assistant Registrar, Co-operative Societies. However, this question is not required to be decided at this belated stage and hence we are not dealing with the same.

14. The next question which is required to be decided is whether they were qualified to be appointed as Members of the Co-operative Appellate Court.

15. Rule 104 of the Maharashtra Co-operative Societies Rules, 1961 is as under:-

104. Qualifications of President and other members of the Maharashtra State Co-operative Appellate Court, and their appointment.

(1) The State Government shall appoint a person who is qualified to be appointed as a Judge of a High Court, or is holding or has held a judicial office not lower in rank than that of District Judge, to be the President of the Maharashtra State Co-operative Appellate Court.

(2) Each of the other members of the Appellate Court to be appointed by the State Government shall be a person,-

(a) who possesses any qualification laid down in sub-rule (1), or

(b) who has held office not lower in rank than that of Joint Registrar of Co-operative Societies for not less than one year;

(c) who is enrolled as an Advocate, or holds a degree or other qualification in law of any University established by law or of any other authority which entitles him to be enrolled as an Advocate, and either (i) has held office not lower in rank than that of Deputy Secretary to Government for not less than three years or (ii) in the opinion of the State Government, possesses good knowledge and experience of Co-operative law and practice or is closely associated with the Co-operative movement. So far as practicable, at least one of the other members of the Appellate Court shall be a person who is holding or has held an office not lower in rank than that of Joint Registrar as aforesaid.

(3) Appointments of persons who possess qualifications other than those of holding or having held a judicial or other qualifying office under Government as President or other members of the Appellate Court shall be made by the State Government, after consultation with the Advocate General of the State.

(4) No person shall hold or continue to hold the office of the President after he attains the age of sixty-five years and of any other member of the Appellate Court after he attains the age of sixty-two years.

(5) If the President or any other member of the Appellate Court is in Government service at the time of his appointment, his pay, allowances and other conditions of service shall continue to be governed by the service conditions/rules applicable to him before such appointment, and if he is a direct recruit, his pay, allowances and other conditions of service shall be governed by the Bombay Civil Services Rules and other rules made by the State Government from time to time.

(6) Subject to sub-rule (4) and save as otherwise specified by the State Government in any case, the President and any other member of the Appellate Court shall hold office for a period of three years in the first instance, and thereafter his term of office may be extended by the State Government, from time to time, for such period as it may deem fit.

(7) In the event of the occurrence of any vacancy in the office of the President of the Appellate Court, the senior-most member having judicial experience shall act

as President.

(8) The Headquarters of the Appellate Court shall be at such place as may be notified by the State Government in the Official Gazette.

16. As quoted above, Rule 104(1) specifically provides that the State Government has to appoint a person who is qualified to be appointed as a Judge of the High Court or is holding or has held a judicial office not lower in rank than that of a District Judge as President of the Maharashtra Co-operative Appellate Court. Sub-rule (2) of Rule 104 provides that for appointment as Member of the Co-operative Appellate Court, the person (a) should be qualified to be appointed as a Judge of a High Court, or is holding or has held a judicial office not lower in rank than that of District Judge or (b) who has held office not lower in rank than that of Joint Registrar of Co-operative Societies for not less than one year. Admittedly, both these persons were not possessing the said qualification for being appointed as Member of the Cooperative Appellate Court.

17. However, heavy reliance is placed on Clause (c) of sub-rule (2) of Rule 104 by the learned Counsel for Mr. Patil and Mr. Hare that these persons are qualified to be appointed as Members of the Co-operative Appellate Court, as, under the said Rule, the State Government was entitled to appoint a person possessing good knowledge and experience of Co-operative law and practice. It is submitted that they were having good knowledge and experience of Co-operative law and practice because they were Judges of the Co-operative Court since the year 1979. In our view, this submission has to be tested along with sub-rule (3), which, inter alia, provides that, if such appointments under Clause (c) are to be made by the State Government, it shall be made after consultation with the Advocate-General for the State. As pointed out in the Committee's Report appointed by this Court, no such consultation with the Advocate-General took place. Learned Counsel further submitted that, as they are working as Judges of Co-operative Court, it should be held that they are holding the judicial office not lower in rank than that of a District Judge. This contention also is without any substance, because it cannot be said that a Judge of the Co-operative Court is holding the post equivalent to that of a District Judge. As per Rule 77-A of the 1961 Rules, a Civil Judge, Junior Division, is entitled to be appointed as a Judge of the Co-operative Court. Obviously, therefore, a Judge of the Cooperative Court cannot be equated with a District Judge. Hence, it is difficult to accept the contention that Mr. R.Y. Patil and Mr. T.A. Hare were eligible to be appointed as members of the Co-operative Appellate Court as per Rule 104 of the 1961 Rules. Similarly, the contention of the learned Counsel that Mr. Hare and Mr. Patil should be considered to be holding post equivalent or higher in rank than that of a Joint Registrar of Co-operative Society also requires to be rejected. No such equation can be made by adding something in the statutory Rules.

Further, assuming that they were eligible to be appointed, yet, after the mandatory directions issued by this Court on 24th July 1990, the order dated 17th July 1991 extending their term "till further orders" is, on the face of it,

illegal as it is against the said directions. In any case, their appointment is "till further orders" and hence whether they are required to be continued or appointed as member of the Appellate Court requires to be decided on the basis of the new Rules as they were not appointed for a fixed period.

18. The next question is with regard to the appointment of Mr. T.A. Hare as the President of the Maharashtra Co-operative Appellate Court. It is contended that, firstly, Mr. Hare was appointed by the State Government as incharge President of the Co-operative Appellate Court with effect from 28th September, 1995. Thereafter, he was appointed as the President on a temporary basis by order dated 4th December, 1996 (Exhibit "H" to the Affidavit-in-reply filed by Mr. Hare). The said order recites that he was appointed in exercise of the power conferred by section 149 of the Maharashtra Co-operative Societies Act, 1960 read with Rule 104 of the 1961 Rules.

19. Again, at this stage, we would reiterate that the aforesaid appointment is in violation and in utter contempt of the order passed by this Court in the case of Maharashtra Co-operative Courts" Bar Association, Bombay, & others, (supra). The Government has also not framed the rules as directed by this Court.

20. At this stage, it would be worthwhile to quote the following observations (paragraph 10) made By this Court in the aforesaid case :-

"Article 236 of the Constitution defines the expression "District Judge" and the Division Bench held, that the expression is inclusive and not exhaustive and the ambit of Article 236(3) of the Constitution of India being very wide would cover every principal Civil Court and wilt not restrict only to the hierarchy of the Civil Court. The Division Bench, thereupon, held that the President of the Industrial Court would fall within the definition of expression "District Judge" under Article 236 of the Constitution and the Judge of the Labour Court being subordinate Judges are required to be appointed in accordance with Article 234 of the Constitution of India. The decision was referred with approval by another Division Bench in judgment reported in Chapadgaon Vividh Karyakari Seva Sahakari Society and Others Vs. Collector of Amhednagar and Others, , while dealing with the provisions of section 91-A of the Co-operative Societies Act, The Division Bench observed :

"It is no doubt true that section 91-A of the Act provides for constitution of Co-operative courts, etc. Qualifications for appointment to the said Court or Appellate Court are also prescribed by Rules. u/s 91 powers have been conferred upon the Co-operative Court which are normally exercised by the Civil Court. The said courts exercise unlimited pecuniary jurisdiction. It is true that it is obligatory on the part of the State Government to make appointment to the said courts in consultation with the High Court. This position is very clear from the decisions of this Court in State of Maharashtra v. Labour Law Practitioners Association, Bombay and others 1988(2) Bom.C.R. 17 : 1987 M.L.J. 191 and Krishna Chandra Sharma Vs. Sind Hyderabad National Collegiate Board and Others, .

"It is, therefore, obvious that the Judges of the Co-operative Court form cadre of subordinate courts as understood by Article 234 of the Constitution of India and the State Government will have to take action to make appointment of the Judges in accordance with the directions contained in Article 234 of the Constitution. In other words, the Judges of the Co-operative Court can be selected only by Maharashtra Public Service Commission in consultation with the High Court. The Government of Maharashtra has not carried out the mandate of Article 234, but, on the other hand is treating the Judges of the Co-operative Court as employees of the Co-operative department. Such attitude is wholly incorrect and the State Government must immediately take steps to implement the mandatory provisions of the Constitution of India."

Firstly, it should be noted that the appointment of Mr. Hare is not made by consulting the Maharashtra Public Service Commission; it is also not made on the basis of consultation with the High Court. It appears that, in view of the aforesaid decision, the State Government wrote letter to the High Court for recommending the name of the President of the Co-operative Appellate Court. As early as on 27th September, 1995, the High Court recommended the name of Mr. P.M. Dhakephalkar, the Senior Judicial Officer from the cadre of District Judges, who was working as a Judge of the City Civil and Sessions Court, for appointment as the President, Maharashtra State Cooperative Appellate Court, Bombay. However, instead of appointing him as the President, by letter dated 17th May, 1996, the State Government suggested that Mr. T.A. Hare be appointed as the President of the Co-operative Appellate Court, Bombay, as a temporary measure, in the interest of work in the Co-operative Court till the Recruitment Rules for the said post are finalised. For this proposal, the High Court wrote back letter dated 18th June, 1996 stating that the name of Mr. Dhakephalkar for being appointed to the post of the President was already recommended, as he was found to be an honest and intelligent officer. With regard to Mr. T.A. Hare, his confidential records were sent back and no comments were offered. It appears that, as no comments were offered, instead of appointing Mr. Dhakephalkar, Mr. Hare was appointed as the President of the Co-operative Appellate Court, as a temporary measure or on a temporary basis. The Appointment Order is produced on record by Mr. Hare, along with his Affidavit-in-reply at Exhibit "H" dated 4th December, 1996. Along with the affidavit filed by him, he has produced on record a letter dated 28th November, 1995 (Exhibit "F") written by him to the Secretary, Co-operation and Textile Department, Government of Maharashtra, wherein he has stated that he was thankful to the Government for giving him an opportunity to work as Acting President of the Maharashtra State Co-operative Appellate Court, with effect from 28th September, 1995. Along with other details, he has stated that he was having requisite qualifications for being appointed to the post of the President and when an officer from the regular cadre is available for appointment to the post, it would be unjust to appoint an officer, who had retired on superannuation, which is against public policy. He has also produced the other correspondence with the letter written to the Registrar, High Court, Appellate

Side. Xerox copies of the letters dated 27th September, 1995 and 18th June, 1996 written by the Registrar to the Government of Maharashtra are taken on record.

21. However, a point is made out by the learned Counsel appearing for Mr. T.A. Hare, that, with regard to Mr. Hare, as this Court has not offered any comments, the State Government was entitled to appoint him as President of the Appellate Court. It appears that this contention is without considering the letter written by the Registrar of this Court to the State Government. In that letter, it was specifically made clear that Mr. P.M. Dhakephalkar, a senior judicial officer from the cadre of District Judges and presently working as the Judge of City Civil and Sessions Court, be appointed as the President of the Appellate Court, as he was found to be an honest intelligent officer. Confidential Reports of Mr. Hare were sent back without offering any comments. That does not mean that there was no objection to the appointment of Mr. T.A. Hare and, therefore, the State Government was entitled to appoint Mr. Hare as the President.

22. Further, it appears from the letter dated 18th June, 1996 written by the Registrar of this Court to the Secretary to the Government of Maharashtra, Co-operation and Textile Department, that the Government has recommended his name for appointment as President of the Co-operative Appellate Court, Bombay, as a temporary measure in the interest of work in Co-operative Court till the Recruitment Rules for the said post are finalised. In this view of the matter, it is apparent that appointment of Mr. Hare as President of the Co-operative Appellate Court is purely on temporary basis till the rules are finalized.

23. It is also apparent that even as per the 1961 Rules, Mr. Hare was not eligible to be appointed as President of the Co-operative Appellate Court; he was not qualified to be appointed as a Judge of the High Court; he was not holding any judicial office not lower in rank than that of a District Judge; the post of Co-operative Court Judge, as discussed above, cannot be equated with that of a District Judge, as a Civil Judge, Junior Division, was eligible to be appointed as Judge, Co-operative Court. Hence, the contention of the learned Counsel, Mr. Singh, that as Mr. Hare was working as a Judge of the Co-operative Court he was holding a judicial office and therefore was eligible to be appointed as President of the Co-operative Appellate Court is requires to be rejected.

24. In this view of the matter, Mr. T.A. Hare's appointment as the President is -

(i) against the mandatory directions issued in Maharashtra Co-operative Court's Bar Association (*supra*).

(ii) without framing the Recruitment Rules as directed by this Court.

(iii) in utter disregard to the recommendation made by this Court to appoint Mr. Dhakephalkar as the President, Maharashtra State Co-operative Appellate Court.

(iv) He was not eligible to be appointed as President of the Co-operative Appellate Court as per Rule 104(1).

(v) His appointment is temporary and is continued from December, 1996 onwards. His appointment was not for fixed period of three years as provided in Rule 104(8) of the 1961 Rules.

(iv) It is apparent that, after the Recruitment Rules are finalised, he is not entitled to continue to hold the said post.

25. In view of the aforesaid discussions, the appointment of Mr. T.A. Hare as the President of the Maharashtra Co-operative Appellate Court is required to be and is hereby quashed and set aside.

26. The State Government is, therefore, directed to appoint President and Members by following the produce prescribed for appointment of President and Members of the Co-operative Appellate Court as provided in Rules 3 and 4 of the Maharashtra Judicial Officers of the Co-operative Courts and Co-operative Appellate Court (Recruitment) Rules, 1998, on or before 21st January, 1999.

27. The learned Counsel for Mr. Hare submitted that the order with regard to Mr. Hare be stayed. In our view, there is no question of staying operation of the order, because Mr. Hare was appointed as President of the Co-operative Appellate Court only as a temporary measure till the Rules were finalised and his appointment was in contravention of the direction issued by this Court as well as in contravention of Rule 104. In any case, there is no question of continuing him on temporary basis as eligible persons are required to be appointed as per the Recruitment Rules of 1998.

28. The next question would be with regard to the appointment of other Members of the Co-operative Appellate Court, including Mr. R.Y. Patil. As stated above, four persons were appointed by order dated 7th April, 1988 for a period of three years. Their term was extended for a period of three months by Notification dated 23rd April, 1991. On 17th July, 1991, the Government extended the terms of the four incumbents until further orders. In the affidavit-in-reply filed by Mr. R.Y. Patil and also Mr. Hare, a copy of order dated 17th July, 1991 extending the term till further orders is produced. Mr. Patil has further produced on record a copy of the order dated 28th October, 1997 (Exhibit 3 to the affidavit-in-reply dated 22nd June, 1998) stating that his period of appointment as a Member of the Maharashtra State Cooperative Appellate Court was extended upto 31st October, 1999, Prima facie, this order appears to be in contravention of the direction issued by this Court. However, no final order with regard to his appointment as a Member of the Co-operative Appellate Court is required to be passed as we are inclined to issue directions to the State Government and the Selection Committee as per the Maharashtra Judicial Officers of the Co-operative Courts and Co-operative Appellate Court (Recruitment) Rules, 1998 to examine, each case and reconsider whether the Members were eligible to be appointed as Members of the Co-operative Appellate Court on the basis of the 1961 Rules and whether they are entitled to be continued as such Members as per the Recruitment Rules framed in the year

1998. The Committee shall consider confidential records, other past records and their overall reputation. Further, if they are required to be continued, they should be appointed for a fixed tenure in accordance with the 1998, Recruitment Rules. For this purpose also, the State Government and the Registrar of this Court are directed to take immediate action as per the 1998 Rules and complete the exercise on or before 31st January 1999. The State Government is directed to act accordingly.

29. Lastly, it was contended by the learned Counsel for the petitioners that at present number of matters are pending and present strength of Judges of Co-operative Courts and Co-operative Appellate Court are totally inadequate for disposal of pending matters. He further submitted that because of non-increase in the number of posts, matters linger on and there is large pendency in these courts. Considering the aforesaid submissions, a Committee consisting of -

(1) Principal Secretary & R.L.A. Law & Judiciary Department, Government of Maharashtra, Mantralaya, Mumbai;

(2) Registrar, High Court, Appellate Side, Bombay;

(3) Member, Co-operative Appellate Court, to be nominated by the Registrar; is constituted to find out (1) the pendency of cases in Co-operative Courts and Co-operative Appellate Court in the State of Maharashtra and (2) the required increase in the number of posts of Judges/Members in these courts. The State Government to consider the report of the Committee and to increase the strength, if required.

30. In the result, petitions with regard to President and Members of the Co-operative Appellate Court are disposed of. However, we make it clear that issues with regard to Consumer Courts, Industrial courts Labour Courts, Motor Accident Claims Tribunal are not dealt with and are kept pending.

31. Accordingly, Writ Petition No. 1752 of 1996 (of Appellate Side) stands disposed of accordingly, with no order as to costs. Rule is made absolute to the aforesaid extent. Writ Petition No. 1953 of 1997 and Writ Petition No. 495 of 1998 (of Original Side) also stand disposed of accordingly.

32. In view of the disposal of Writ Petition No. 1752 of 1996 (A.S.), the Civil Applications Nos. 6341 of 1997 and 6548 of 1998 do not survive; and the same stand disposed of accordingly.

33. Issuance of Certified Copy of this order is expedited.

34. Rule made absolute.