(1993) 02 MAD CK 0004

In the Madras High Court

Case No : W.A. No. 1008 of 1989

Managing Director, Repatriate Co-operative Finance and Development Bank Ltd., Madras-6 — APPELLANT

Vs

Deputy Commissioner of Labour-II Labour Welfare Board Building DMS Compound, Teynampet, Madras-6. 2. B. Narayanan — RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:
Tamil Nadu Shops and Establishments Act, 1947 — Section 1, 24, 34, 4(1)(c), 41

Citation : (1993) 02 MAD CK 0004

Hon'ble Judges : V. Ratnam, Acting C.J.;Somasundaram, J

Bench : Division Bench

Advocate : B. Kumar and R. Loganatnan, for the Appellant; Government Pleader and Mr. G. Venkataraman of M/s. Aiyar and Dolia, for the Respondent

Final Decision : Allowed

Judgement

Somasundaram, J.—This Writ Appeal has been filed against the order allowing W.P. No. 5192/82 filed by the second respondent herein

praying for the issue of a writ of certiorari to quash the order of the 1st respondent dated 30.6.1981 in T.S.E. Case No. 43/76. The second

respondent was working as a Junior Assistant/Cashier/Recovery Assistant in the Repatriate Co-operative Finance and Development Bank the

appellant herein, hereinafter referred to as the appellant bank. According to the second respondent, he was sick in the month of August 1973 and

he applied for 15 days leave from 14.8.1973 to 30.8.1973 by submitting a letter dated 16.8.73 to the appellant bank. Thereafter, he sent a

medical certificate dated 22.8.1973. However, the appellant bank treated the period from 14.8.73 as absence without leave, suspended him from service and thereafter issued a charge memo dated 22.5.74 containing the following three charges:

1. He was careless and negligent in the performance of his duty and this has caused financial loss to the Bank.

2. He was responsible for damaging the reputation of the Bank.

3. He stayed away from duty without any intimation.

The statement of allegation in respect of charge No. 1 is that a cheque bearing No. 942472 dated 10.3.1972 for Rs. 3,000/- was issued by the

appellant bank to one Saibudeen of Indian Bank Madras-28 and that the 2nd respondent had not ensured to obtain acknowledgment for the

receipt of the said cheque from Saibudeen and the disbursement of the amount was also not entered in the loan ledger. It is further alleged that

there are no records viz., loan application, loan sanction order etc., available in the office. It was also alleged that the issue of a cheque in favor of

Saibudeen is a grave irregularity. The statement of allegation in respect of charge No. 3 is that the 2nd respondent stayed away from duty without

giving prior intimation to the appellant bank and thus deserted duty. On receipt of the charge memo referred to above, the second respondent

submitted his representations dated 5.6.74 and 2.9.74 denying all the charges. On 11.12.74, the second respondent was called upon to give

specimen writing in words and figures the value of the cheque viz., Rs. 3000/- so as to compare with the writings in the cheque bearing No.

942472 dated 10.3.1972. The second respondent gave his specimen writings and the same were sent to the hand-writing expert. The hand writing

expert gave a report staling that the writings in the cheque dated 10.3.1972 are those of the second respondent. The hand-writing expert was

thereafter produced as a witness and the second respondent cross-examined him. The hand- writing expert in his evidence stated that the

handwritings of the name Saibudeen and the words and figures Rs. 3,000/- were made in the hand of the second respondent, both in the cheque

and in the counter foil Thiru Sadanandam who was appointed as enquiry Officer for the purpose of conducting an enquiry into the charges framed

against the second respondent submitted a report to the appellant bank holding that the second respondent was guilty of the charges framed against

him. On the basis of the report of the enquiry conducted by Mr. Sadanandam and on the basis of the evidence of the hand-writing expert, a show

cause notice dated 12.5.75 was issued by the appellant bank to the 2nd respondent asking him to show cause against the proposed punishment of

dismissal from service. The second respondent offered his explanation stating that he never admitted that he wrote the cheque dated 10.3.72 and

that since the release order issued by the Managing Director was not available it cannot be concluded that the cheque was issued without the

release order. In respect of charge No. 3, the second respondent stated that he submitted a leave application supported by a medical certificate

issued by a qualified doctor and therefore there was no deliberate or willful absence by the second respondent from duty. The Managing Director

of the appellant bank by his order dated 21.7.75 dismissed the second respondent from service holding that he is guilty of charges 1 to 3. The

second respondent preferred an appeal to the Chairman of the appellant bank and the Chairman rejected the appeal petition by his order dated

9.1.76. Thereafter, the second respondent preferred an appeal in T.S.E. Case No. 43/76 under S. 41(2) of the Tamil Nadu Shops and

Establishments Act hereinafter referred to as the Act before the first respondent. By the order dated 30.6.1981, the Shops Act Authority, the first

respondent herein dismissed the appeal T.S.E. Case No. 43/76. Aggrieved by the order of the first respondent dated 30.6.81 dismissing the

appeal TSE 43/76, the second respondent filed W.P.No. 5192/82 to quash the said order dated 30.6.1981 made in TSE Case No. 43/76.

2. The learned single Judge who heard the Writ Petition took the view that the Enquiry Officer Sadanandam had conducted the domestic enquiry

and submitted a report holding that the second respondent is guilty of all the charges leveled against him without giving an opportunely to the

second respondent to participate in the domestic enquiry and therefore, the domestic enquiry conducted against the second respondent was

vitiated by non-observance of the principles of natural justice. The learned single Judge further held that on the basis of the evidence available on

record, no findings could be rendered that it is the responsibility of the 2nd respondent as cashier to issue cheque and obtain acknowledgment from

the loaned. The learned single Judge also found that there was no evidence on the aspect of causing loss to the bank and the authorities have also not rendered any findings on that aspect. Consequently the learned single Judge came to the conclusion that the charge No. 1 had not been proved

against the 2nd respondent. With regard to the charge No.3, the learned single Judge found that the conclusion of the first respondent that the

absence of the 2nd respondent from duly from 16.8.1973 to 23.8.73 was unauthorized can be sustained. However, the learned single judge took

the view that the punishment of dismissal from service on charge No. 3 alone cannot be sustained, as it is disproportionate to the gravity of the

allegations leveled against the second respondent. Ultimately, the learned single judge allowed the Writ Petition. This Writ Appeal is directed

against the order of the learned single judge,

3. Mr. B. Kumar, the learned counsel appearing for the appellant in the first place contended that the appellant bank is an establishment under the

Central/State Government and therefore, by reason of the S. 4(1)(c) of the Act, the provisions of the said Act will not apply to the appellant bank.

The learned counsel submitted that the appellant bank was set up by the Government of India and initial contribution as well as 90% of funds are

brought by the Government of India and the Southern States, that the management of the appellant bank is wholly under the Government, that the

functions of the appellant bank are Governmental in every sense, that the appellant bank is an instrumentality of the State, and therefore, the

appellant bank is exempted from the provisions of the Act under S. 4(1)(c) of the Act. We are unable to accept the above contention of the

learned counsel for the appellant. The said contention of the learned counsel for the appellant based on S. 4(1)(c) of the Act was not raised on

behalf of the appellant Bank in the appeal T.S.E. Case No. 43/76, filed by the second respondent against the order of the appellant bank

dismissing the second respondent from service, before the first respondent. Such a plea was also not raised in the curter affidavit filed by the

appellant bank in W.P. No. 5192/82 nor it was raised during the arguments before the learned single judge, who heard the said Writ Petition.

Again, the plea based on S. 4(1)(c) of the Act was not even raised in the grounds of the Writ Appeal. In those circumstances, we are not inclined

to permit the learned counsel for the appellant to raise the contention that by reason of S. 4(1)(c) of the Act, the provisions of the Act will not apply to the appellant bank, for the first time, at this stage of the proceedings 17 years after the commencement of the proceedings before the first

respondent. In Indian Bank reptd. by its Assistant General Manager v. R S. Thiruvengadam 1991 Writ L.R. 699 a Division Bench of this Court

has held that the plea of want of jurisdiction of the appellant authority under S. 41 of the Act to entertain the appeal against the order dismissing the

employee from service cannot be allowed to be raised for the first time after 17 years in the Writ Appeal. In view of the above legal and factual

position, we have no hesitation in rejecting the first contention of the learned counsel for the appellant.

4. The second contention of the learned counsel for the appellant is that S. 6 of the Act provides that the State Government may by a notification

exempt any establishment or class of establishments from all or any of the provisions of the Act subject to such conditions as the State Government

may deem fit. By virtue of powers conferred by S. 6, the State Government issued a notification in G.O.Ms. No. 5780 Industries, Labour and

Cooperation dated 11.12.63 exempting the co-operative societies from the provisions of the Act from the date on which the Model by-laws were

incorporated in the registered by laws of these societies. The learned counsel further contended that in the present case, the Model by-laws were

incorporated in the registered by laws of the appellant bank and they were registered under S. 11 of the Co-operative Societies Act, 1961 on

12.4.78, and therefore, the appellant bank is permanently exempted from the provisions of S. 41 of the Act from 12.4.78, and consequently, on

the date when the first respondent heard and disposed of the appeal TSE. Case No. 43/76, such appeal filed under S. 41 of the Act would be

incompetent and the order of the first respondent dismissing the appeal is liable to be confirmed on the ground that the appeal filed by the second

respondent before the first respondent under S. 41 of the Act would be incompetent after 12.4.78. The learned counsel also contended that the

learned single judge ought to have confirmed the order of the first respondent dismissing the appeal T.S.E. case No. 43/76 holding that the said

appeal is not maintainable under S. 41 of the Act, after 12.4.78 and that the order of the single judge interfering with the order of the first

respondent on merits cannot be sustained. Per contra, Mr. G. Venkatraman, the learned counsel for the 2nd respondent contended that the right of appeal available to the second respondent under S. 41 of the Act is a vested right and such right is determined as on the date of the cause of action

and this vested right cannot be taken away unless there are express words to that effect. The learned counsel for the 2nd respondent further

contended that G.O. 5780 referred to above and the special by laws of the appellant bank relating to dispensing with the service of an employee of

the appellant bank and filing of appeal against such order dispensing with the service of an employee are prospective in operation and not

retrospective. In support of the above contention the learned counsel relied on the decision in A.K. Appaswamy v. The Policlinic Co-operative

Marketing Societies by its Secretary and another 1974 T.L.N.J. 37. The learned counsel also contended that the appellant bank has not raised the

above plea based on S. 6 of the Act in the Writ Petition before the learned single judge and therefore, the appellant should not be permitted to

raise such plea in the writ appeal. No doubt, the plea based on the exemption granted under S. 6 of the Act and G.O.Ms. No. 5780 Industries,

Labour and Co-operation dated 11.12.63 was not raised on behalf of the appellant bank in the counter filed in the Writ Petition and before the

learned single judge at the time of the hearing of the writ petition. However, in the supplemental counter affidavit filed by the appellant bank in

T.S.E Case No. 43/76 before the first respondent, the appellant bank has specifically raised the plea that it is exempted from the provisions of the

Act from 32.4.78 in the following terms:

This respondent states that the special by laws relating to service conditions of the employees of the bank was registered before the Registrar of

Co-operative Societies on 12.4.1978 under S. 11 of the Co-operative Societies Act, 1961. This respondent further submits that the said special

bye-laws constitute a statutory contract governing the jurally relationship between this respondent and the appellant. This respondent states that this

respondent is exempted under the Tamil Nadu Shops and Establishment Act. 1947 from 12.4.1978 (the date of Registration of Special by-laws)

by virtue of Notification dt 11.12..963 in G.O.Ms. No. 5780, Industries, Labour and Co-operation (Labour) published in part-II, S. 1 of the Fort

St. George Gazette dated 25.12.1963 at page 2999 issued under S. 6 of the Tamil Nadu Shops and Establishments Act, 1961.

This respondent, therefore prays that the above appeal may be dismissed.

As the appellant bank has raised the plea based on the exemption granted under S. 6 of the Act at the earliest point of time in the supplemental

counter affidavit filed in T.S.E. case No. 43/76 before the 1st respondent as well as in the grounds of writ appeal and in as much as the plea relates

to the jurisdiction of the first respondent to hear and dispose of the appeal we are inclined to consider the second contention of the learned counsel

for the appellant on merits.

5. S. 6 of (he Act provides that the State Government may by notification exempt either permanently or for any specified period any establishment

or class of establishments or persons or persons from all or any of the provisions of the Act subject to such conditions as the State Government

may deem fit. By virtue of powers conferred by S. 6 of the Act, the Government issued a notification in G.O.Ms. No. 5780, Industries, Labour

and Cooperation dated 11.12.1963 hereinafter referred to as the G.O. which reads thus:

In exercise or the powers conferred by 86 of the Madras Shops and Establishments Act, 1947 Madras Act. of 1947), (hereinafter in this referred

to as the ""the 1947 Act the Governor of Madras here by exempts permanently every society registered or deemed to be registered under the

Madras Co- operative Societies Act, 1961 (Madras Act to 1961), (hereinafter in this notification referred to as the ""the 1961 Act"") from

(i) the provisions of clause (a) of Sub-s (2) of S. 34 (sic) and S. 41 of the 1947 Act

(a) on and from the 1st January 1964, if the registration by- laws for the time being in force or the registered amendment of the by-laws of'' such

society contain the model by-have appended to this notification; and

(b) on and from the date on which the model by (sic) aforesaid are incorporated in the registered by-law of the society and registered under S. 11

of the 1961 Act if the registered by-laws of the society do not contain the Modul by-laws aforesaid; and

(ii) all the other provisions of the 1947 Act on and from the 1st January 1964.

In the present case, it is not in dispute that the Special by-laws relating to service conditions of the employees of the appellant hank was registered

before the Registrar of Co-operative Societies on 12.4.1978 under S. 11 of the

Co-operative live Societies Act, 1961. It is also admitted that the

2nd respondent was dismissed from. Service on 21.7.75 with effect from 16.7.1975 and that the. second respondent filed an appeal before the...

respondent against the order of the appellant bank dismissing second respondent from service 124.8.75 and that the first respondent dismissed the

appeal on 30.6.1981. Clause 6(c) of the Special by-laws relating to the service condition of the employees of the appellant bank (hereinafter

referred to as the Special by-laws) provides that the service of any member of the bank who as employed continuously for a period of not has than

6 months shall not be dispensed expectation reasonable cause and without giving such member at least one month''s notice or wages in lieu of such

notice. The proviso to clause 6(c) of the special by-laws says that such notice shall not be necessary where the services of such member are

dispensed with on a charge on misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose. Clause 6(d) of the

Special by-laws provides that any member of the bank who has completed a continuous service of not less than 6 months in the establishment and

whose services have been dispensed with may appeal to the Central Registrar either on the ground that there was no reasonable cause for

dispensing with his services or on the ground that he had not been guilty of misconduct as held by the authority who imposed the penalty. By virtue

of G.O.Ms. No.5780, the Co-operative Societies are permanently exempted from the provisions of S. 41 of the Act on and from the date on

which the Model by-laws are incorporated in the registered by-laws of the Cooperative Societies. After the Special by-laws were registered

before the Registrar of Co-operative Societies under S. 11 of the 1961 Act on 12.4.1978, by virtue of clause 6(d) of the Special by-laws, only the

Central Registrar is competent to hear and dispose of the appeal filed by the second respondent against the order of the appellant bank dismissing

him from service. G.O.Ms. No. 5780 clearly states that on and from the date on which the model by-laws are incorporated in the registered by-

laws of the society and registered under S. 11 of the 1961 Act. the Co-operative Societies will be exempted from the provisions of S. 41 of the

Act. From the plain meaning of G.O.Ms. No. 5780, it is clear that the operation of S. 41 of the Act ceased to apply to the appellant bank when the model by-laws were incorporated in the registered by-laws of the appellant bank on 12.4.78. The first respondent herein, the appellate

authority under S. 41 of the Act, though competent to entertain the appeal filed by the 2nd respondent against the order of the appellant bank

dismissing him from service, after the model by-laws are incorporated in the registered by-laws and registered under S. 11 of the 1961 Act on

12.4.1978, the first respondent, ceased to have jurisdiction to hear and dispose of the appeal pending before it, because by virtue of G.O.Ms. No.

5780, after the registration of the special by-laws on 12.4.78, the exemption had come into force and S. 41 of the Act ceased to apply to the case

of the appellant bank. Again, it must be remembered that by virtue of clause 6(d) of the special by-laws an alternative forum is provided before

whom appeals against the orders dispensing with the services of employees of the appellant bank, can be preferred. Therefore, it has to be held

that on 30.6.81, when the first respondent passed orders in TSE Case No. 43/76 he was not competent to hear and dispose of the said appeal.

6. In Ittyavira Mathia v. Varkcy Varkey AIR 19 W S.C. 907 in a suit instituted before the repeal of Travancore High Court Act 4 of 1099 an

appeal was filed after the repeal of that Act by Act 5 of 1125. At the time of filing the appeal even S. 24 of the latter Act, which provided that a

Full Bench will hear and decide the appeal from the decrees of the District Courts in which the amount or value of the subject matter is in excess of

Rs. 5000/- stood repealed. The appellants contended before the Supreme Court that their appeal could be heard only by a bench of three Judges

as provided by S.11(1) of the travancore High Court Act 4 of 1099. The Supreme Court repelling the above contention of the appellants pointed

out that the High Court of Travancore was itself abolished as the result of the merger and a new High Court came into being, viz., the High Court

of Travancore-Cochin. The Supreme Court further pointed out that the rights of the parties to prefer appeals to that High Court were governed

initially by Ordinance II of 1124, and later, by Act V of 1125. These provisions came into being subsequent to the institution of the suit, and

therefore, the rights of a person aggrieved by the decision of a suit instituted prior to the coming into force of Act V of 1125 were only those which

were conferred by that Act. In the above decision, the Supreme Court has further held as follows:-

A litigant has no right to contend that a tribunal before whom he should have taken an appeal when he instituted the suit should not be abolished.

The Legislature has full power to enact a law of that kind and it is not contended before us that the repeal of the Travancore High Court Act was

unconstitutional. It would, therefore, follow that whatever rights may have vested in the party in the matter of filing an appeal were abrogated by

competent legislature. New rights were conferred in place of those which were taken away, and it is only the new rights which could be availed of

7. In Mohammed Meera v. Thirumalaya'' 1966 (I) S.C.R. 574 the appellants suit for recovery of possession of property and menses profits filed in

1950 was substantially decreed by the trial court. The appellant however filed an appeal before the Kerala High Court against the decree in so far

as it went against him. The appeal was heard in 1960 after the Kerala High Court Act 5 of 1959 had been passed and under its provisions the

appeal was heard by a single judge. When the appellant had filed his suit, and later on his appeal, the Travancore-Cochin High Court Act of 1949

was in force and under that Act the appeal would have been heard by a Division Bench. On the judgment of the High Court going against him the

appellant went to the Supreme Court by Special Leave. Before the Supreme Court it was contended on his behalf on the basis of Radhakrishna''s

case (ILR 1950 Nag 532) that the Kerala High Court Act 5 of 1959 could not retrospectively take away his right to be heard by a Division

Bench, which he had under the law as it stood when he filed his suit and appeal. Reliance was also placed on Grikapati Veeraya''s case for the

proposition that the institution of a suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the

rest of the career of the suit. The Supreme Court rejected the above contention raised on behalf of the appellant based on Radhakrishnan v.

Sridhar ILR 1950 Nag 532 and Maria Cristina De Souza Sodder and Others Vs. Amria Zurana Pereira Pinto and Others, and held that no party

has a vested right to be heard by a specified number of judges, that the Travancore-Cochin High Court Act of 1949 did not confer any right of

appeal on the appellant which has been taken away by the later Act and that it only provided for procedural matters which are dealt within several

High Courts under the Letters Patent.

8. In Maria Christine v. Maria Zurna, the Supreme Court has held that it is well-settled that the right of appeal is a substantive right and it gets

vested in a litigant no sooner the lis is commenced in the Court of the first instance, and such right or any remedy in respect thereof will not be

affected by any repeal of the enactment conforming such right unless the repealing enactment either expressly or by necessary implication fakes

away such right or remedy in respect thereof. the Supreme Court after pointing out that the above position has also been settled by the decision of

the Privy Council in The Colonial Sugar Refining Co., Ltd., v. V. Irving 1905 A.C. 369 and Garikapatti Veeraya Vs. N. Subbiah Choudhury, held

that the forum where such appeal can be lodged is indubitably a procedural matter and, therefore, the appeal, the right to which has arisen under a

repealed Act, will have to be lodged in a forum provided for by the repealing Act. In the above decision, the Supreme Court has observed as

follows:-

If repealing Act provides new in rum where the re(sic) or the legal proceedings in respect of such vested right can be pursued after the repeal, the

forum must be as provided to the repealing Act.

9. The position of law which emerges from the decisions of the Supreme Court referred to above is that the right of appeal is a substantive right

and gets vested in a litigant no sooner the lis is commenced in a suit in a court of first instance and such right or any remedy in respect there of will

not be affected by any repeal of the enactment conferring such right unless the repealing enactment either expressly or by necessary implication

takes away such right or remedy in respect thereof. However, the forum where such an appeal can be lodged is a procedural matter and therefore

the repealing Act provides a new forum where the remedy by way of appeal or legal proceedings, in respect of such vested right can be pursued

after the repeal, the forum must be as provided in the repealing Act. The above ratio of the decisions of the Supreme Court can be applied to the

facts the present case. If we so apply the ratio of the decisions of the Supreme Court referred above to the facts of the present case, it follows that

when the Special by-laws were registered before the Registrar under S. 11 of 1961 Act on 12.4.78 by virtue of G.O.Ms. No. 5780, the appellant

bank is exempted from the provisions of S. 41 of the Act and only the new forum provided under the Special by-laws namely, the Central

Registrar can hear and dispose of the appeal filed by the second respondent against the order of the appellant bank dismissing him from service.

As already pointed out, the second respondent was dismissed from service on 21.7.75 and on that date the second respondent had the right of

appeal under S. 41 of the Act and as a matter of fact the second respondent had filed an appeal before the first respondent on 25.8.75 and the

appeal was pending before the first respondent when the Special by-laws were registered under S. 11 of 1961 Act on 12.4.1978. Therefore from

12.4.78, the appellant bank gets an exemption from the provisions of S. 41 of the Act, and thereafter, only the provisions of the Special by-laws

dealing with the dispensing with the services of the employees of the appellant bank, the right of appeal available to such employees whose services

has been dispensed with and the forum of appeal, will apply in the place of S. 41 of the Act. Again, clause 6(d) of the Special by-laws provides

the forum before which an appeal can be filed against the orders of the appellant bank dispensing with the services of any employee of the bank.

The vested right of appeal available to the employees of the appellant bank to prefer appeals against the orders of appellant bank dispensing with

their services is not taken away by the incorporation of Model By laws in the registered by-laws of the appellant Bank and by the registration of

such by-laws under S. 11 of the 1961 Act, but such right of appeal is preserved and kept in tact under clause 6(d) of the special by-laws. On

12.4.78, when the special by-laws were registered, they have replaced S. 41 of the Act and the clause 6(d) of the Special by-laws provides a new

forum of appeal before which an appeal can be filed against the order dispensing with the services of the employee of the appellant bank. The

appeal filed by the second respondent and which was pending before the first respondent could be pursued after the registration of the special by-

laws only before a new forum viz., the Central Registrar. After the registration of the Special by-laws under S. 11 of the 1961 Act on 12.4.78, the

second respondent ought to have asked for the transfer of the appeal to the new forum provided under clause 6(d) of the Special by-laws or the

first respondent himself should have transferred the appeal to the Central Registrar. In these circumstances, it has to be held that after 12.4.78, the first respondent had no jurisdiction to hear and dispose of the appeal filed by the respondent under S. 41 of the Act and which was pending on that

day. Therefore, we are inclined to hold that the order of the first respondent dated 30.6.81 dismissing the appeal TSE Case No. 43/76 filed by the

2nd respondent is correct, not for the reasons stated in the order of the 1st respondent, but on the ground that the appeal filed by the second

respondent before the first respondent under S. 41 of the Act would be incompetent after 12.4.1978.

10. In view of the principles laid down by the Supreme Court in Ittavira Mathai Vs. Varkey Varkey and Another, and in Maria Cristina De Souza

Sodder and Others Vs. Amria Zurana Pereira Pinto and Others, referred above we are unable to accept the contention of the learned counsel for

the second respondent based on the decision in A.K. Appaswamy v. The Pollachi Co-operative Marketing Societies by its Secretary and another

1974 T.L.N.J. 37 that no retrospective effect can be given to G.O.Ms. No. 5730 and that the said G.O. will not apply to the appeals pending

before the appellate authority under S. 41 of the Act viz. the first respondent on the date when Model by laws were incorporated in the registered

by laws and registered under S. 11 of the 1961 Act. It must be remembered that the Special by-laws specifically provided for a forum for filing

appeals against the order dispensing with the services of the employees of the appellant bank. In view of the decisions of the Supreme Court

referred to above it has to be held that where the Special by-laws provided a new forum, where the vested rights of appeal against the order

dispensing with the services of an employee can be pursued by him, the forum of appeal must be as provided under the Special by-laws and not

the forum provided under S. 41 of the Act, the operation of which ceased to apply to the appellant bank when the Special by laws were registered

on 12.4.78. We are also not inclined to follow the decision in A.K. Appaswamy v. The Pollachi Co-operative Marketing Societies, by its

Secretary and another 1974 T.L.NJ. 37 as the ratio of that decision runs counter to the principles laid down by the Supreme Court in Ittavira

Mathai Vs. Varkey Varkey and Another, and Maria Cristina De Souza Sodder and Others Vs. Amria Zurana Pereira Pinto and Others, which we

are bound to follow.

11. For all the reasons stated above, we are inclined to hold that the first respondent had no jurisdiction to hear and dispose of the appeal T. S. E.

case No. 43/76 filed by the second respondent which was pending when the Special by-laws were registered under S. 11 of 1961 Act on 12.4.78

and therefore, the order of the 1st respondent dated 30.6.81 dismissing the appeal T. S. E. case No. 43/76 is correct, though not for the reasons

given in the order of the first respondent dated 30.6.81 but, for the reasons given by us in this judgment, viz. after 12.4.78 the first respondent is

not competent to hear and dispose of the T. S. E. Case No. 43/76. As we are upholding the order of the first respondent dismissing the appeal in

T. S. E. Case No. 43/76 on the ground that it would be incompetent after 12-4-78, the order of the learned single judge in W.P. 5192/82

interfering with the order of the first respondent on merits cannot be sustained and therefore, the order in W.P. No. 5192/82 is liable to be set

aside. As we are inclined to allow the Writ Appeal and set aside the order of the learned single judge in W.P. No. 5192/82 for the reasons stated

above, it is not necessary to deal with the other contentions urged by the learned counsel for the appellant. In the result, we allow the Writ Appeal,

set aside the order of the learned single judge in W.P. No. 5192/82 and restore the order of the first respondent dated 30.6.1981 dismissing the

appeal in T. S. E. Case No. 43/76. No costs.