
(1993) 02 MAD CK 0063

In the Madras High Court

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

M.D. Repatriate Co-operative Finance and Development Bank
Ltd.

APPELLANT

Vs

Deputy Commr. of Labour and another

RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 41, 6

Citation : (1993) 2 LLJ 438 : (1993) 1 LW 560 : (1993) 1 MLJ 553

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

Bench : Division Bench

Judgement

Somsundaram, J.—This writ appeal has been filed against the order allowing W.P. No. 5192 of 1982 filed by the second respondent herein praying for the issue of a writ of certiorari to quash the order of the 1st respondent dated June 30, 1981 in T.S.E. Case No. 43 of 1976.

2. The second respondent was working as a Junior Assistant /Cashier/Recovery Assistant in the Repatriate Co-operative Finance and Development Bank, the appellant, 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 August 14, 1973 to August 30, 1973 by submitting a letter dated August 16, 1973 to the appellant bank. Thereafter he sent a medical certificate dated August 22, 1973. However, the appellant bank treated the period from August 14, 1973 as absence without leave, suspended him from service and thereafter issued a charge memo dated May 22, 1974 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 March 10, 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 favour of Saibudeen is a grave irregularity. The statement of allegation in respect of charge No. 3 is that 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 May 5, 1974 and September 2, 1974 denying all the charges. On December 11, 1974, the second respondent was called upon to give specimen writing in words and figures the value of cheque viz., Rs. 3,000 so as to compare with the writings in the cheque bearing No. 942472 dated March 10, 1972. The second respondent gave his specimen writings and the same were sent to the handwriting expert. The hand writing expert gave a report stating that the writings in the cheque dated March 10, 1972 are those of the second respondent. The handwriting expert was thereafter produced as a witness and the second respondent cross-examined him. The handwriting expert in his evidence stated that the handwriting 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 handwriting expert, a show cause notice dated May 12, 1975 was issued by the appellant bank to the 2nd respondent asking him to show cause against he proposed punishment of dismissal from service. The second respondent offered his explanation stating that the never admitted that he wrote the cheque dated March 10, 1972 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 report of charge No. 3 the second respondent stated that the submitted a leave application supported by a medical certificate issued by a qualified doctor and the 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 July 21, 1975 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 January 9, 1976,. Thereafter the second respondent preferred an appeal in T.S.E. Case No. 43 of 1976 under Sec. 41(2) of the Tamil Nadu Shops and Establishments Act, hereinafter referred to as the Act before the first respondent. By the order dated June 30, 1981 the Shop Act authority the first respondent

herein dismissed the appeal T.S.E. Case No. 43. of 1976. Aggrieved by the order of the first respondent dated June 30, 1981 dismissing the appeal T.S.E. No. 43 of 1976 the second respondent filed W.P. No. 5192 of 1982 to quash the said order dated June 30, 1981 made in T.S.E. No. 43 of 1976.

3. The learned single Judge who heard the writ petition took the view that the enquiry officer Sadanand 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 opportunity 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 loanee. 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 duty from August 16, 1973 to August 23, 1973 was unauthorised 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 levelled 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.

4. 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 Sec. 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 Government 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 Sec. 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 Sec. 4(1)(c) of the Act was not raised on behalf of the appellant bank in the appeal T.S.E. Case No. 43 of 1976, 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 counter affidavit filed by the appellant bank in W.P. No. 5192 of 1982 nor it was raised during the arguments before the

learned single Judge, who heard the said writ petition. Again the plea based on Sec. 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 Sec. 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 represented by its Assistant General Manager v. R. S. Thiruvengadam*, 1991 W.L.R. 699, a Division Bench of this Court has held that the plea of want of jurisdiction of the appellate authority under Sec. 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.

5. The second contention of the learned counsel for the appellant is that Sec. 6 of the Act provides that the State Government may by notification exempt any establishment 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 Sec. 6, the State Government issued notification in G. O. Ms. No. 5780. Industries Labour and Co-operation, dated December 11, 1963 exempting the co-operative societies from the provisions for the Act from the date on which the model bye-laws were incorporated in the registered bye-laws of these societies. The learned counsel further contended that in the present case, the model bye-laws were incorporated in the registered bye-laws were incorporated in the registered bye-laws of the appellant bank and they were registered under Sec. 11 of the Co-operative Societies Act, 1961 on April 12, 1978 and therefore the appellant bank is permanently exempted from the provisions of Sec. 41 of the Act from April 12, 1978 and consequently on the date when the first respondent heard and disposed of the appeal in T.S.E. Case No. 43 of 1976 such appeal filed under Sec. 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 Sec. 41 of the Act would be incompetent after April 12, 1978. The learned counsel also contended that the learned single Judge ought to have confirmed the order of the first respondent dismissing the appeal in T.S.E. Case No. 43 of 1976 holding that the said appeal is not maintainable under Sec. 41 of the Act after April 12, 1978 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. Venkataraman, the learned counsel for the 2nd respondent contended that the right of appeal available to the second respondent under Sec. 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. No. 5780 referred to above and the special bye-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 Pollachi Co-operative Marketing Societies by its Secretary and another, 1974 T. L.N.J. 31. The learned counsel also contended that the appellant bank has not raised the above plea based on Sec. 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 Sec. 60 the Act and G.O. Ms. No. 5780, Industries, labour and Co-operation, dated December 12, 1963 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 of 1976 before the first respondent the appellant bank has specifically raised the plea that it is exempted from the provisions of the Act 12, 1978 in the following terms :

"This respondent states that the special bye-laws relating to service conditions of the employee of the bank was registered before the Registrar of Co-operative Societies on April 12, 1978 under Sec. 11 of the Co-operative Societies Act, 1961. This respondent further submits that he said special bye-laws constitute a statutory contract governing the jural relationship between this respondent and the appellant.

This respondent submits that this respondent is exempted under the Tamil Nadu Shops and Establishments Act, 1947 from April 12, 1978 the date of Registration of Special bye-laws) by virtue of Notification dated December 11, 1963 in G. O. Ms. 5780, Industries, Labour and Co-operation (Labour) published in Part II, Section I of the Fort St. George Gazette, dated December 25, 1963 at page 2999 issued under Sec. 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 Sec. 6 of the Act at the earliest point of time in the supplemental counter affidavit filed in T.S.E. No. 43 to 1976 before the 1st respondent as well as in the grounds of writ appeal and inasmuch 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.

6. Sec. 6 of the Act provides that the State Government may by notification exempt either permanently or for any specified period any establishment or class of establishments or person 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 Sec. 6 of the Act, the Government issued a notification in G.O. Ms. No. 5780, Industries, Labour and Co-operation, dated December 11, 1963 hereinafter referred to as the G.O. which reads thus :

"In exercise of the powers conferred by Sec. 6 of the Madras Shops and Establishments Act, 1947 (Madras Act XXXVI of 1947), (hereinafter in this referred to as "the 1947 Act") the Governor of Madras hereby exempts permanently every society registered or deemed to be registered under the Madras Co-operative Societies Act, 1961 (Madras Act 53 of 1961) hereinafter in this notification referred to as the "the 1961 Act") from - -

(i) the provisions of clause (a) of sub-sections (2) of Sec. 34, Sec 35 and Sec. 41 of the 1947 Act.

(a) on and from the January 1, 1964, if the registered bye-laws for the time being in force or the registered amendment of the bye-laws of such society contain the model of bye-laws appended to his notification and

(b) on and from the date on which the model bye-laws aforesaid are incorporated in the registered bye-laws of the society and registered under Sec. 11 of the 1961 Act if the registered lay-laws of the society do not contain the model bye-laws aforesaid and

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

In the present case, it is not in dispute that the special bye-laws relating to service conditions of the employees of the appellant bank was registered before the Registrar of Co-operative Societies on April 12, 1978 under Sec. 11 of the Co-operative Societies Act, 1961. It is also admitted that the 2nd respondent was dismissed from service on July 21, 1975 with effect from July 16, 1975 and that the second respondent filed an appeal before the 1st respondent against the order of the appellant bank dismissing the second respondent from services on August 24, 1975 and that the first respondent dismissed the appeal on June 30, 1981. Clause 6(c) of the special bye-laws relating to the service conditions of the employees of the appellant bank (hereinafter referred to as "the special bye-laws") provides that the service of any member of the bank who is employed continuously for a period of not less than 6 months shall not be dispensed with except for a 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 bye-laws says that such notice shall not be necessary where the services of such member are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose. Clause 6(d) of the special bye-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 Sec. 41 of the Act on and from the date on which the model bye-laws are incorporated in the registered bye-laws of the Co-operative Societies. After the special bye-laws

were registered before the Registrar of Co-operative Societies under Sec. 11 of the 1961 Act on April 12, 1978 by virtue of clause 6(d) of the special bye-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 bye-laws are incorporated in the registered bye-laws of the society and registered bye-laws of the society and registered under Sec. 11 of the 1961 Act, the Co-operative Societies will be exempted from the provisions of sec. 41 of the Act. From the plain meaning of G.O. Ms. No. 5780, it is clear that the operation of Sec. 41 of the Act ceased to apply to the appellant bank when the model bye-laws were incorporated in the registered bye-laws of the appellant bank on April 12, 1978. The first respondent herein, the appellate authority under Sec. 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 bye-laws are incorporated in the registered bye-laws and registered under Sec. 11 of the 1961 Act on April 12, 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 bye-laws on April 12, 1978 the exemption had come into force and Sec. 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 bye-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 June 30, 1981, when the first respondent passed orders in T.S.E. Case No. 43 of 1976 he was not competent to hear and dispose of the said appeal.

7. In *Ittavira Mathai Vs. Varkey Varkey and Another*, 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 Sec. 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. 5,000 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 Sec. 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 came into being viz., the High Court of Travancore Cochin. The Supreme Court further pointed out 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."

8. In *P. Mohammed Meera Lebbai Vs. Thirumalaya Gounder Ramaswamy Gounder and Others*, the appellants' suit for recovery of possession of property and mesne 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 this 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 *Garikapati Veerayua'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 *Radhakrishna v. Shridhar*, ILR 1950 Nag. 532 and *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, 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 with by several High Courts under the Letters Patent.

9. In *Maria Cristina De Souza Sodder and Others Vs. Amria Zurana Pereira Pinto and Others*, , 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 conferring such right unless the repealing enactment either expressly or by necessary implication takes away such right or remedy in respect thereof. The Supreme Court after pointing out that the above position has also been settled by the decisions of the Privy Council in *The Colonial Sugar Refining Company Limited v. Irving*, 1905 A.C. 369 and *Garikapatti Veeraya v. N. Subbaiah Choudhury* (supra) 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 the repealing Act provides new forum where the remedy or the legal proceedings in respect of such vested right can be pursued after the repeal, the forum must be as provided in the repealing Act,"

10. The position of law which emerges from the decisions of the Supreme Court referred to above is that the right of appeal is 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 thereof 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 if 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 of 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 bye-laws were registered before the Registrar under Sec. 11 of the 1961 Act on April 12, 1978 by virtue of G.O. Ms. No. 5780, the appellant bank is exempted from the provisions of Sec. 41 of the Act and only the new forum provided under the special bye-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 July 21, 1975 and on that date, the second respondent had filed an appeal before the first respondent on August 25, 1975 and the appeal was pending before the first respondent when the special bye-laws were registered under Sec. 11 of the 1961 Act on April 12, 1978. Therefore, from April 12, 1978 the appellant bank gets an exemption from the provisions of Sec. 41 of the Act and thereafter, only the provisions of the special bye-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 Sec. 41 of the Act. Again clause 6(d) of the special bye-laws provides the forum before which an appeal can be filed against the order 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 of prefer appeals against the orders of the appellant Bank dispensing with their services is not taken away by the incorporation of the model bye-laws in the registered bye-laws of the appellant Bank and by the registration of such bye-laws under Sec. 11 of the 1961 Act, but such right of appeal is preserved and kept in tact under Clause 6(d) of the special bye-laws. On April 12, 1978 when the special bye-laws were registered, they have repealed Sec. 41 of the Act and the clause 6(d) of the

Special bye-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 bye-laws only before the new forum viz., the Central Registrar. After the registration of the Special bye-laws under Sec. 11 of the 1961 Act on April 12, 1978, 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 bye-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 April 12, 1978, the first respondent had no jurisdiction to hear and dispose of the appeal filed by the second respondent under Sec. 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 June 30, 1981 dismissing the appeal T.S.E. Case no. 43 of 1976 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 Sec. 41 of the Act would be respondent under Sec. 41 of the Act would be incompetent after April 12, 1978.

11. In view of the principles laid down by the Supreme Court in *Ittyavira Mathia v. Varkey* (supra) in *Mohammed Meera v. Thirumalaya* (supra), and in *Maria Christine v. Maria Zurna* (supra) 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* (supra) that no retrospective effect can be give to G.O. Ms. No. 5780 and that the said G.O. will not apply to the appeals pending before the appellate authority under Sec. 41 of the Act, viz the first respondent on the date when model bye-laws were incorporated in the registered bye-laws and registered under Sec. 11 of the 1961 Act. It must be remembered that the special bye-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 the Supreme Court referred to above it has to be held that where the special bye-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 bye-laws and not the forum provided under Sec. 41 of the Act, the operation of which ceased to apply to the appellant bank when the special bye-laws were registered on April 12, 1978. We are also not inclined to follow the decision in *A. K. Appaswamy v. The Pollachi Co-operative Marketing Societies by its Secretary* (supra) as the ratio of that decision runs counter to the principles laid down by the Supreme Court in *Ittyavira Mathia v. Varkey* (supra) *Mohammed Meera v. Thirumalaya*, (supra) and *Maria Christine v. Maria Zurna*, (supra) which we are bound to follow.

12. 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 of 1976 filed by the second respondent which was pending when the special bye-laws were registered under Sec. 11 of 1961 Act on April 12, 1978 and therefore, the order of the 1st respondent dated June 30, 1981 dismissing the appeal T.S.E. Case No. 43 of 1976 is correct though not for the reasons given in the order of the first respondent dated June 30, 1981, but, for the reason given by us in this judgment viz. after April 12, 1978 the first respondent is not competent to hear and dispose of the T.S.E. Case No. 43 of 1976. As we are upholding the order of the first respondent dismissing the appeal in T.S.E. Case No. 43 of 1976 on the ground that it would be incompetent after April 12, 1978, the order of the learned single Judge in W.P. No. 5192 of 1982 interfering with the order of the first respondent on merits cannot be sustained and therefore the order in W.P. No. 5192 of 1982 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 of 1982 for the reasons stated above, it is not necessary to deal with the other contentions urged by the learned counsel for the appellant.

13. In the result, we allow the writ appeal, set aside the order of the learned single Judge in W.P. No. 5192 of 1982 and restore the order of the first respondent dated June 30, 1981 dismissing the appeal in T.S.E. Case No. 43 of 1976. No costs.