(1994) 03 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1007 of 1985

Mohan Lal APPELLANT

Vs

Jodhpur Central Cooperative Batik and Others RESPONDENT

Date of Decision : 01-03-1994

Acts Referred:

All India Services Act, 1951 — Section 3, 4
Constitution of India, 1950 — Article 12, 14, 16, 245, 246
Co-operative Societies Act, 1912 — Section 3

Citation : (1994) 1 RLW 384 : (1994) 2 WLC 204 : (1994) 1 WLN 175

Hon'ble Judges : N.K. Jain, J;Jasraj Chopra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jasraj Chopra, J.—These two writ petitions raise common questions of law although they are based on different facts and, therefore, they were heard together and are being disposed of by a common Order/Judgment.

2. The facts necessary for the disposal of these two writ petitions briefly stated are as follows:

FACTS OF BIRMA RAM CHOUDHARY''S CASE:

3. Petitioner Birmaram was initially appointed as a Class IV employee in the Jodhpur Central Cooperative Bank Ltd., Jodhpur in the year 1971 and is still continuing on the said post working in its Phalodi Branch. He was confirmed on the post of Class IV employee vide Order Annexure-1 dated 15.2.1974. This confirmation order was made in pursuance of the decisions of the Board of Direction of the respondent Bank in their meeting held on 14.1.1974. Thereafter, it is alleged that the petitioner applied for leave on medical grounds from 5.6.1989 to 13.6.1989. Alongwith his application for grant of medical leave, he also filed a medical certificate issued from a Medical Officer and inspite of this, he was treated to be will fully absent from duty and a chargesheet (Annexure -2)

dated 28.7.1989 was served upon him. He was also suspended from service vide order Annexure-3 dated 18.7.1989. The petitioner has contended that his suspension order (Annexure-3) as also the Chargesheet Annexure-2) have been issued by an incompetent authority. This chargesheet has been issued to the petitioner under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short ''the Rules of 1958''). Certain averments nave been made as regards the genuineness of the medical leave but the main ground of attack is that the suspension order as also the chargesheet have been issued by an incompetent authority.

4. It has been further contended that the charge sheet is arbitrary and void. It has been issued to the petitioner without following the principles of natural justice. According to the petitioner, the Rules of 1958 cannot be made applicable to his case and, therefore, the disciplinary actions taken against him are abinitio voide.

5. According to the petitioner, the Resolution passed in the year 1958 by the Board of Directors of the Bank shows that the Bank has its own rules as regards the conducting of disciplinary enquiries against the employees of the respondent Bank. The petitioner has further submitted that the Class IV employees of the respondents Bank and entered into a settlement with the respondent Bank and on that basis, a Award was passed by the Labour Court in the year 1965. That Award and Settlement have got legal force and they will override all the Rules framed by the respondents Bank. It was submitted that by this Award, the conditions of Service of Class IV employees have been laid down but while suspending the petitioner, the respondents have not followed the procedure prescribed under this Award.

6. It was submitted that in view of the decision of their lordships of the Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , such Awards have legal force. It was further submitted that the Rules of 1958 have been made applicable to the employees of the respondent Bank vide Notification No. F. 15(22) CDR/Bank/88/76 dated 3.1.1980 issued by the Registrar, Cooperative Societies, Jaipur, purporting to act in exercise of the powers conferred upon him under Rule 41 of the Rajasthan Cooperative Societies Rules, 1966 (herein after to be referred as ''the Rules of 1966''). Rule 41 of the Rules of 1966 provides that the conditions of service of the employees of the Society shall be specified by the Registrar. Rule 8(2a) of the Rules of 1966 further lays down that the Society may make bye- laws for laying down the procedure to be followed in the disposal of the disciplinary cases against the employees.

7. The petitioner has further contended that it is trite law that the specific provisions shall override the general provisions. According to him, in view of Rule 8(2a) of the Rules of 1966, Rule 41 of the Rules of 1966, which is general in application, cannot be applied. He has submitted that Rule 41 of the Rules of 1966 only provides for the conditions of the service of the employees of the Society. It does not relate to disciplinary proceedings and therefore, under Rule

41 of the Rules of 1966, the significant ommission regarding the procedure for disposal of disciplinary cases leads to an irresistible conclusion that the rules making authority only wanted to confer the powers regarding laying down the conditions of service of the employees of the Society and not with regard to the procedure regulating the disciplinary proceedings against them. ?

8. The contention of the petitioner is that the Rules of 1966 have been framed u/s 148(2)(xxx) of the Act and in this clause also, the expressions ''conditions of service'' and ''disciplinary control'' has been specifically omitted and, therefore, the Notification dated 3.1.1980 is ultra vires of the provisions of Rule 41 of the Rules of 1966. He has submitted that the disciplinary proceedings against the employees of the respondent Bank will have to be regulated as per the Resolution No. 3 dated 8.8.1958 passed by the Board of Directors of the respondent Bank and, therefore, the Rules of 1958 cannot be made applicable.

9. The petitioner has also challenged the validity of Rule 41 of the Rules of 1966 on the ground that the power to frame the Rules have been conferred on the State Govt. u/s 148 of the Rajasthan Cooperative Societies Act, 1965 (for short ''the Act'') and, therefore, the Registrar, Cooperative Societies could not have framed these Rules. A delegate cannot delegate further its powers. According to the petitioner, the provisions of Rule 41 of the Rules of 1966 confer unbriddled powers on the Registrar, Cooperative societies without laying down the guidelines for the Registrar to specify the conditions of service and, therefore, these provisions are contrary to Articles 14 and 16 of the Constitution. They also suffer from the vice of excessive delegation.

10. According to the petitioner, Section 147(2) of the Act authorised the State Govt. to delegate all or any of the powers exercised by it under the Act or the Rules to the Registrar of the Cooperative Societies. Sub-section (2) of Section 147 of the Act was added by Section 11 of the Rajasthan Cooperative Societies (Amendment) Act, 1976 whereas Rule 41 was incorporated in the Rules of 1966 in the year 1966 and, therefore, the provisions of Section 147(2) of the Act will not save that amendment. It was contended that assuming though not admitting that the Registrar has power to frame the Rules by virute of some supposed delegation then too the Rules have to be framed after following the procedure prescribed u/s 148 of the Act, which is a condition precedent for framing the Rules i.e. such Rules can only be framed after previous publication and if previous publication is to be dispensed with by the State Govt. then alone, it should. be brought in to force at once. According to the petitioner, the Notification dated 3.1.1980 has not been issued after previous publication and therefore, it is honest.

11. It has been contended that the provisions of Section 149 of the Act, which provide that the Rules framed u/s 148 of the Act will have to be laid on the table of the House of the State Legislature while it is in session for a period not less than 14 days, have also not been complied with. Even if the provisions of Section 147(2) of the Act are pressed into service, then too Rule 41 of the Rules suffers

from the vice of excessive delegation being contrary to Articles 245 and 246 of the Constitution. It was further submitted that even if it is assumed that the Rules of 1958 have been validly made applicable by virtue of Notification dated 3.1.1980, then too the provisions of Rule 13 of the Rules of 1958 cannot be made applicable as they are contrary to the provisions of Rule 41(4) of the Rules of 1966.

12. The petitioner has also contended that his past services have been forfeited under Rule 86 of the Rajasthan Service Rules by the Managing Director of the Bank but the provisions of Rajasthan Service Rules are not applicable to the affairs of the respondent Bank employees. According to the petitioner, the respondents have passed the order dated 13.4.1988 and have awarded the punishment of stoppage of one grade increment and that order is void because that has been passed contrary to the principles of natural justice. The petitioner has, therefore, prayed for the issuance of a writ, order or direction in the nature of certiorari for quashing the Memorandum of Charges (Annexure-2) dated 28.7.1989, the suspension order (Annexure-3) dated 18.7.1989, the chargesheet (Annexure-4) dated 28.6.1989 and the order (Annexure-5) dated 13.4.1988.

FACTS OF MOHANLAL''S CASE:

13. Petitioner Mohanlal has initially filed his writ petition no 4.6.1985 but later on, that writ petition was amended and the amended writ petition was filed on 3.8.1989 and again, that writ petition was allowed to be amended and the amended writ petition has been filed on 11.8.1991, whereby the provisions of Rule 41 of the Rules of 1966 and the aforesaid Notification dated 3.1.1980 whereby the Rules of 1958 have been made applicable to the employees of the respondent Bank and the Notification No. F. 15 (22) CDR/Bank/II/76 dated 14.10.1976 have been sought to be held ultra vires and to be quashed. The petitions has further prayed for quashing of the aforesaid order (Annexure-4) dated 28.6.1989, the memorandum and charge sheet (Annexure-5). He has also prayed that the respondents be directed to take him back on duty and the notice Annexure-A dated 21.5.1988 be quashed and the respondents be directed to grant increments, promotions and all other consequential reliefs to the petitioner with retrospective effect, as have been given to his juniors.

14. The contention of the petitioner is that he was initially appointed as Clerk on 1.3.1960 in the respondent Bank and was subsequently confirmed vide Resolution No. 5 of the Board of Directors passed on 21.3.1961. Later on, he was promoted as Branch Manager vide Resolution No. 8 dated 6.2.1970 passed by the Board of Directors of the respondent Bank. It was submitted that the management affairs of the Bank are entrusted to a Committee constituted by the General Body of the respondent Bank as per Section 33 of the Act and the State Govt. has been empowered to nominate the Committee in case the elected Committee is removed and the removal order is confirmed by the State of Rajasthan and in such circumstances, an Administrator can be appointed u/s 36 (1-A) (c) of the Act.

15. The petitioner has raised a controversy with regard to the supersession of the Board of Directors by the Govt. and appointment of Collector, Jodhpur as Administrator of the respondent Bank. Actually, Administrator was appointed under the orders of the Court and not by the State Govt.

16. Be that as it may, it is alleged that when the Board was functioning, the Chairman of the Board Shri Narpat Ram Barbar become annoyed with him because he defended one of his colleague Shri Madanlal in his departmental enquiry and, therefore, Shri Narpatram Barbar tried to take revenge and started harassing him and levelled charges against him. It is further alleged that on account of certain allegations, the petitioner was placed under suspension vide Order dated 4/6th September, 1982 on very vague and unfounded allegations, against which, he filed writ petition bearing No. 1780 of 1982, Mohanlal v. State of Raj. and Ors. That suspension order was ultimately withdrawn and, therefore, that writ petition became infructuous. According to the petitioner, during the period of his suspension, he was harassed too much and, therefore, this Court passed an interim order on 18.5.1983 directing the respondents to pay full emoluments to the petitioner. However, the respondents were kept free to take or not to take the work from the petitioner. Although, on account of certain enquiries, nothing was found against the petitioner but still on account of harassing attitude adopted by Shri Narpat Ram Barbar, Shri H.M. Bhandari was again appointed as Enquiry Officer and a false chargesheet containing filmsy charges was served upon him by. the Managing Director, which was issued under the influence of Shri Narpatram Barbar. Thereafter, for ten months, nothing was done but abruptly, on 15.10.1984, a notice was served to the petitioner by registered post, whereby he was informed that the respondent Bank is proposing to dismiss him from service and, therefore, the petitioner filed a writ petitition against that order bearing No. 3236 of 1984 Mohanlal v. Jodhpur Central Cooperative Bank and Ors. During the pendency of that writ petition, the respondent Bank vide its order dated 2.4.1988 has withdrawn the chargesheet as also the suspension order. Copy of that order dated 2.4.1985 has been filed alongwith the writ petition marked as Annexure-2. The writ petition was therefore, dismissed as having become infructuous vide order Annexure-3 dated 23.4.1989.

17. However, the matter did not rest there and the petitioner was placed under suspension by the Administrator of the respondent Bank vide his order Annexure-4 dated 28.5.1985 and a chargesheet and statement of allegations (Annexure-5) dated 28.5.1985 were also served on him under the Rules of 1958 by the Administrator of the respondent Bank. According to the petitioner, his service conditions are not subject to the Rajasthan Service Rules and the Rules of 1958 cannot be made applicable to the employees of the respondent Bank in view of the Resolution of the Board of Directors (Annexure-6) dated 6.8.1958. It was submitted that though the Cadre Committee Rules were published in the year 1976, but they have not been made applicable as yet and, therefore, the suspension order and the chargesheet are completely without jurisdiction. They

are against the provisions of Section 74 of the Act.

18. As regards the validity of these proceedings, almost same grounds which have been taken in Birma Ram''s case have been taken. The validity of Rule 41 of the Rules of 1966 has also been challenged. The Notification dated 3.1.1980 whereby the Rules of 1958 have been made applicable to the employees of the respondent Bank has also been challenged. Although, a request has been made to quash the notice Annexure-A dated 21.5.1988 but that notice has not been filed alongwith the writ petition and therefore, nothing turns upon it.

19. The validity of Rajasthan Cooperative Bank Service (Special Selection and Conditions of Service of General Manager/ Deputy Manager/Executive Officer/ Assistant Executive Officer/Chief Accountants/Branch Manager and Accountants) Rules, 1976 has also been challenged.

20. On behalf of the respondents, separate replies have been filed in both these cases, in which, it has been claimed that Rule 8(2) of the Rules of 1966 is only a permissible legislation, which provides that the Bank may make bye-laws about the procedure to the followed in the disposal of disciplinary cases against its employees. According to the respondents, Rule 41(1) of the Rules of 1966 starts with this non-obstiante clause that notwithstanding anything contained in the bye-laws of Society, no coperative society shall appoint any person as its paid Officer or employee in any category of service, unless he possesses the qualifications and furnished the security, if so specified by the Registrar from time to time, for such category of service in the Society or for the class of society to which it. belongs and the conditions of service of the employees of the societies shall be as specified by the Registrar. Thus, Rule 41 of the Rules of 1966 has overriding effect and it is a valid peace of legislation. Its validity has already been upheld. The respondents have submitted that the Notification dated 3.1.1980, which provides that in the disciplinary proceedings, in absence of any approved service Rules of the Institution, the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 shall be applicable, has been issued under Rule 41 of the Rules of 1966 and, therefore, the chargesheet which has been issued to the petitioner by the Managing Director of the respondent Bank cannot be quashed.

21. In reply to the writ petition filed by petitioner Mohanlal, it has been contended that the earlier chargesheet which was given to the petitioner was ordered to be withdrawn without prejudice to the right of the respondent Bank to hold a fresh enquiry and making a fresh suspension order pending enquiry. The respondents have further submitted that the Administrator has been appointed under the orders of the Court and not under the orders of the State Govt. The Rules of 1966 are absolutely valid. Certain preliminary objections have been raised as regards suppression of material facts. According to the respondents, the respondent Bank is not a State and therefore, the writ petition deserves to be dismissed.

22. We have heard Mr. M.L. Shreemali, the learned Counsel appearing for the petitioners, Mr. L.S. Udawal, learned Addl. Advocate General for the State assisted by Mr. U.C.S. Singhvi, the learned Addl. Govt. Advocate and Mr. M. Mridul, Senior Advocate with Shri P.P. Choudhary and Shri R.N. Upadhayaya for respondents No. 2 and 3 and have carefully gone through the record of the case.

23. It was contended by Mr. M.L. Shreemali, the learned Counsel appearing for the petitioners that in the case of petitioner Mohanlal, when notice Annexure-1 dated 15.10.1984 was served assigning the intention of the respondent Bank to dismiss him from service, he filed a writ petitioner pleading therein that the notice Annexure-1 has not been issued by a competent authority. The respondent Bank vide its order Annexure-2 dated 2.4.1985 has withdrawn that chargesheet as also suspension order of the petitioner but it was made clear in the Order Annexure-2 that this is, however, without prejudice to the rights of the respondent Bank to hold a fresh enquiry and to make a fresh suspension order pending enquiry. It was further made clear that the competent authority will be free to make a fresh suspension order and to intiate a fresh enquiry against the petitioner on the charges which were set out in the chargesheet and the statement of allegations dated 7.4.1983. Consequently, that writ petition was dismissed vide order Annexure-3 dated 23.4.1985. Mr. Shreemali has argued that after the withdrawal of the first enquiry, second enquiry cannot be held against the petitioner. In support of his submission, he has placed reliance on a decision of their lordships of the Supreme Court in K.R. Deb Vs. The Collector of Central Excise, Shillong, wherein their lordships of the Supreme Court have observed that if there is some defect in the enquiry conducted by the Enquiry Officer, the Disciplinary Authority can direct the Enquiry Officer to conduct further enquiries in respect of that matter but it cannot direct a fresh enquiry to be conducted by some other Officer. This was a case relating to Central Civil Services (Classification, Control and Appeal) Rules, 1957 wherein Rule 15 does not contemplate successive inquiries.

24. We are afraid, we cannot accept this submission in view of the decision of this Court in Fatehsingh Lodha v. State of Rajasthan RLW 1977 Raj 354 , wherein while dealing with the decision of their lordships of the Supreme Court in Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, it was observed as under:

Thus, it is clearly established that unless an order is based Upon an enquiry against a public servant imposing a penalty on him or exonerating him of the charge levelled against him, it cannot be said that further proceedings could not be commenced against such a public servant. Even in a case where the earlier disciplinary proceedings in which an order imposing penalty was passed are subsequently quashed, fresh disciplinary proceedings against the concerned employee would not be barred unless the order quashing the earlier disciplinary proceedings contained any direction in that respect or the employee concerned was exonerated of the charge.

It was further observed as under:

In this view of the matter, a denovo enquiry on the basis of the same facts and substantially the same charge-sheet and allegations was not barred in the present case, and the competent authority was legally empowered to initiate a fresh enquiry against the petitioner after serving a fresh notice upon him under Rule 16 of the Rules.

Thus, so far as the cases relating to the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 are concerned, Fatehsingh Lodha''s case (supra) which is an authoritative pronouncement of this Court, which is based on a decision of their lordship''s of the Supreme Court in Devendra Pratap''s case (supra) and, therefore, in view of this decision, we are unable to agree with the submission of Mr. Shreemali that once a chargesheet and suspension order have been withdrawn neither fresh chargesheet nor fresh suspension order on the same facts could/have been passed and, therefore, his submission cannot be sustained.

25. Mr. Shreemali has next challenged validity of Rule 41 of the Rules of 1966 as also the Rajasthan Cooperative Bank Service (Special Selection and Conditions of Service of General Manager/Deputy Manager/Executive Officer/Assistant Executive Officer/Chief Accountant/Branch Manager and Accountants) Rules, 1976, which were promulgated vide Notification No. F.15(22) CDR/Bank-II/76 dated 14.10.1976 (for short ''the Rules of 1976). These Rules of 1976 have also been framed in exercise of the powers conferred upon the Registrar under Rule 41 of the Rules of 1966.

26. Rule 41 of the Rules reads as under:

Rule 41. Officers and employees of co-operative Societies:(1) Notwithstanding anything contained in the bye-laws of society, no Cooperative Society shall appoint any person as its paid Officer or employee in any category of service, unless he possesses the qualifications and furnishes the security if so specified by the Registrar from time to time for such category of service in the society, or for class of society to which it belongs. The conditions of service of the employees of the societies shall be as specified by the Registrar.

(2) No. co-operative society shall retain in service any paid Officer or employees, if he does not acquire the qualifications or furnish the security as is referred to in Sub-rule (1) within such time as the Registrar may direct.

(3) The Registrar may for special reasons, relax in respect of any paid Officer or employee, the provisions of this rule in regard to the qualifications he should possess or the security he should furnish.

(4) Where in the course of an audit u/s 68 or an inquiry u/s 70 or an inspection u/s 71 or Section 72 it is brought to the notice of the Registrar that a paid Officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the

Registrar may, if in his opinion, there is prima facie evidence against such paid Officer or servant and the suspension of such paid Officer or servant is necessary on the interest of the society direct the committee of the society pending the investigation and disposal of the matter, to place or cause to be placed such paid Officer or servant under suspension from such date and for such period as may be specified by him.

(5) On receipt of a direction from the Registrar under Sub-rule (4), the Committee of the Society shall notwithstanding any provision to the contrary in the bye-laws place or cause to be placed the paid Officer or servant under suspension forthwith.

(6)The Registrar may direct the committee to extend from time to time the period of suspension and the paid Officer or servant suspended shall not be reinstated except with the previous sanction of the Registrar whose decision thereon shall be final.

(7) If the committee fails to comply with the directions issued under Sub-rule (4), the Registrar may make an order placing such paid Officer or servant under suspension from such date and for such period as he may specify in the order and thereupon, the paid Officer or servant as the case may be shall be Under suspension.

It was contended by Mr. Shreemali that these Rules have been framed by the State Govt. in exercise of its powers conferred u/s 148(2) (xxx) of the Act. Section 148(1) of the Act provides that the State Govt. may, for the whole or any part; of the State and for any class of co-operative societies after previous publication make rules to carry out the purposes of this Act provided that any rule may be made under this Section without previous publication if the State govt. considers that it should be brought into force at once. Section 148(2) of the Act provides that in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters mentioned therein and Clause (xxx) of Section 148(2) of the Act reads as under:

Section 148(2) (xxx). the qualifications of a Manager, Secretary, Accountant or any other officer or an employee of the Society and the conditions of their service including discipline and control.

Mr. Shreemali has submitted that such Rules could have been framed by the State Govt. as regards the qualifications and conditions of service including discipline and control of the Manager, Secretary, Accountant or any other Office or an employee of the Society or for that matter, the Cooperative Bank.

27. It was also submitted by Mr. Shreemali that Rule 41 of the Rules of 1966 authorises the Registrar to prescribe the qualifications, conditions of service and Rules for disciplinary proceedings. Thus, it has been left entirely to the discretion of the Registrar as per Rule 41 of the Rules of f966 on the Registrar whereas this power u/s 148(1) and (2) (xxx) of the Act to frame the Rules about it stands

conferred on the State Govt. and not on the Registrar. He has, therefore, argued that when the State Govt. itself was a delegate of the legislature, it could not have further delegated those powers on the Registrar and therefore, it is a case of excessive delegation. Of course, it was admitted by Mr. Shreemali that Sub-section (2) of Section 147 of the Act was added by Section 11 of the Rajasthan Cooperative Societies (Amendment) Act, 1976, whereby the State Govt. was authorised to delegate its powers under the Act to the Registrar by notification in the Official Gazette but he has submitted that that provision was added in the year 1976 whereas Rule 41 of the Rules of 1966 was framed in the year 1966 and, therefore, it is a case of excessive delegation and so, it cannot be sustained.

28. It was submitted by Mr. Shreemali that the validity of a provision has to be judged from the date of the legislation and not on the basis of the subsequent amendments in that Act or the Rules. In this respect, he has drawn our attention to a decision of their lordships of the Supreme Court in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, . In that case, on behalf of the respondents, it was contended that constitutionality of the Transfer Act must be judged on the basis of the constitution as it stood on the date of the present petition and not as it stood on the date of the Transfer Act. Their lordships observed that constitutionality of an Act must be judged on the basis of the Constitution as it was on the date, the Act was passed, subject to any retrospective amendment of the Constitution and, therefore, the argument that the constitutionality of the Transfer Act must be judged on the basis of the Constitution as it stood on the date of the present writ petition has no force and must be rejected. This authority has no application to the facts of the present case. Here, it is not the constitutionality of the provision which is under challenge but it is the vires of the rule i.e. Rule 41 of the Rules of 1966 and Rules of 1976 framed in exercise of Rule 41 of the Rules is under challenge. It has to be judged on the basis of the fact whether such a sub-delegation is permissible as per law.

29. In his treatise ''Principles of Statutory Interpretation'', Justice G.P. Singh, Former Chief Justice of M.P. High Court, while dealing with ''Sub-delegation'' at pages 596- 597 has observed that normally, the delegate on whom power to make subordinate legislation is conferred cannot further delegate that power but it is, however, competent for the legislature to authorise the delegate, on whom power to make subordinate legislation is conferred, to further delegate that power on some other authority. As stated above, in this case, the validity of Rule 41 of the Rules of 1966 has been challenged on the ground that it is a case of excessive delegation. A some what similar contentions were raised before a Division Bench of this Court in Phoolchand v. State of Rajasthan and Ors. 1985 RLR 365. In that case, the validity of Krishi Rin Datri Sahakari Samitiyon Ke Vyawasthapakon Ke Chayan, Nitykti Avam Sewa Niyam, 1977 were under challenge. The Rules of 1976, which have been challenged in this case were not challenged. In that case, it was contended that under Sub-rule (1) of Rule 41 of the Rules of 1966, it has been provided that the conditions of service of the employees of the societies shall be specified by the Registrar. It was further

contended that the Rules of 1977 have been framed by the Registrar, who according to the learned Counsel for the petitioner was not competent to do so under the above provision of Sub-rule (1) of Rule 41 of the Rules of 1966. It was submitted that u/s 148 of the Act, only State Govt. was empowered to make the Rules and the power could not be further delegated to the Registrar by the State Govt. It was argued that the State Govt. itself was a delegated funtionary and it could not further sub-delegate its powers to the Registrar for laying down the conditions of service of the employees of the societies. The Division Bench after making a reference to Section l47(2) of the Act, felt that such Rules could be framed in exercise of the powers u/s 148 (read with Section 147(2) of the Act and no separate notification authorising the Registrar to frame the Rules is necessary as provided by Section 147(2) of the Act because Rule 41 of the Rules of 1966 already provided that the conditions of service of the employees of the societies shall be as specified by the Registrar and as such it was a sufficient notice to all concerned that the Govt. had delegated its powers to the Registrar in the matter of laying down the conditions of service of the employees of the societies. It was held that it is no doubt true that Sub-sections (2) of Section 147 was inserted by the Amendment Act on February 13, 1976 and, therefore, no notification was issued empowering the Registrar to exercise the powers conferred u/s 148 of the Act and having already laid before the Legislature, the Registrar was competent to frame the Rules of 1977 laying down the conditions of service of the employees of the societies and such Rules cannot be held to be invalid simply on the ground that no fresh notification was issued after the insertion of Sub-section (2) of Section 147 of the Act and prior to the framing of the Rules of 1977. Thus, the validity of the Rules of 1977 on that account was upheld and not he same premises, the validity of the Rules of 1976 also has to be upheld.

30. Mr. Shreemali next drew our attention to a Division Bench decision of this Court in Kheda Rasulpur Gram Sewa Sahakari Samiti Ltd v. State of Raj. 1991 (2) RLR 371. In that case also, Phool Chand''s case (supra) was noticed but it was felt that the Cadre Authority could not have been registered u/s 4 of the Act as a Cooperative Society. Such a Cooperative Society cannot be registered u/s 4 of the Act, whose objects are simply to create, maintain and supervise the cadre of key personnel of Banks like PACS etc. and, therefore, the Recruitment and Service conditions of the Managers of Agriculture Cooperative Societies Rules, 1977 which have been framed by the Registrar in exercise of the powers u/s 148 of the Act and Rule 41 of the Rules of 1966 were held to be beyond the powers of the rule making authority of the Registrar because under the scheme of the Act and the General Rules, no centralised service or common cadre could have been provided and so, the Rules were held to be ultravires. This authority has no application to the facts of the present case. In this case, the Rules of 1976 have been framed by the Registrar in exercise of the powers conferred on him under Rule 41 of the Rules of 1966 and they do not provide for any cadre authority but they only provide for the formation of a cadre committee for making selections.

Cadre Committee is totally different from the cadre Authority and, therefore, Phool Chand''s case (supra) governs the validity of the Rules of 1976.

31. It may be stated here that Rule 41 of the Rules of 1966 was on the Statute Book as a Subordinate legislation, which was framed in accordance with the provisions of Section 149 of the Act. Of course, an argument could have been developed before 13.2.1975 when Sub-section (2) of Section 147 of the Act was added by Section 11 of the Rajasthan Cooperative Societies (Amendment) Act, 1976 vide Notification No. F.2(38) Vidhi/75 dated 13.2.1975 that it is a case of excessive delegation but once the legislature has added the Sub-section (2) to Section 147 of the Act and we are required to judge the validity of a legislation on the basis of excessive delegation, such a legislation cannot be held to be ultravires because Section 147(2) of the Act provides for sub-delegation. Normally, a statutory rule although subordinate to the parent statute is otherwise to be treated as a part of the Statute and as effective as the Statute itself. Rules made under the Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction of obligation. (See State of Tamil Nadu Vs. Hind Stone and Others,

32. Of course, guidelines and bye-laws etc. can be struck down of the basis of unreasonableness but if the Rules are framed in exercise of the powers granted by a Statute, they have to be treated as a part of the Statute and be treated as effective as the Statute itself as per the aforesaid decision of their lordships of the Supreme Court in State of T.N.''s case (supra) as also The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya, What is required is that the Rules must be consistent with the provisions of the Statute. A bare reading of the provisions of Section 147(2) and Rule 41 of the Rules of 1966 shows that these provisions cannot be said to be inconsistent with the provisions of Section 148(2) (xxx) of the Act. Thus, the decision of their lordships of the Supreme court in AIR 1972 1935 (SC) has no application to the facts of the present case. In that case, it has been has been held that if the Act does not provide for prescription of period of limitation, such a period of limitation cannot be provided by the Rules framed by the State Govt. Here, Section 148(2) (xxx) of the Act authorises the Govt. to frame Rules about Conditions of service and discipline etc. of its employees. Section 147(2) of the Act further authorises the State Govt. to delegate its powers to the Registrar and Rule 41 of the Rules of 1966 also authorises the Registrar to prescribe the, Rules relating to the Conditions of service and disciplinary enquiries against the employees of the cooperative societies and, therefore, this authority has no application to the facts of the present case.

33. Likewise, the decision of their lordships of the Supreme Court in The State of West Bengal Vs. Anwar Ali Sarkar, also has no application to the facts of the present case because in that case also, the Act itself provided certain procedure which was less advantageous to the accused than the ordinary procedure and,

therefore, to that extent, the Special Courts Act was held to be ultravires to the provisions of Article 14 of the Constitution. This authority can of course, be availed by the petitioner in support of their contention that the rules of 1958 are less advantageous to them as against the Resolution Annexure-6 dated 6.8.1958 filed alongwith the writ petition of petitioner Mohanlal. Actually, the Resolution Annexure-6 dated 6.8.1958 is very vague resolution which shows that the Rajasthan Cooperative Bank Ltd., Jaipur which has framed its Service Rules on 2.3.1957 will be applicable to its employees. A copy of these Rules have been produced before me and Rule 12 of these Rules provided that an employee who commits a breach of any of these rules or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interests of the Bank or in conflict with its instructions shall be liable for such disciplinary action as the management of the Bank may think fit. The Management of the Bank has not framed any bye-laws. The Rules of 1976 do not prescribe any procedure whereas the Rules of 1958 provide for a particular procedure to be adopted in disciplinary proceedings incorporating in that procedure rules of natural justice and audi alterem partem and therefore, we can safely hold that the Rules of 1958, which provides for a detailed procedure to be adopted in disciplinary proceedings are not disadvantageous to the petitioners. Moreover, if any instructions are issued by the management of the Bank, they will be at the best bye-laws and naturally, they will be less efficacious than the Rules that are framed by a competent authority under Rule 41 read with Section 147(2) of the Act. They supersede the bye-laws as envisaged by Rule 41(1) of the Rules and, therefore, any rules that are framed or any powers that are exercised by the Registrar under Rule 41 of the Rules of 1966, making the Rules of 1985 applicable to the employees of the respondent Bank in dealing disciplinary proceedings cannot be held to be less advantageous to the employees of the respondent Bank and, therefore, to this extent, this authority helps the case of the respondents rather than the petitioners.

34. It may be stated here that Section 139 of the Act empowers the State Govt. by general or special order to exempt any cooperative society or any class of societies from any of the provisions of this Act. Thus, the Govt. u/s 139 of the Act has such powers by which even any provision of the Act may be dispensed with in case of certain societies or class of societies than what to talk of the Rules made in pursuance of the powers conferred on the State Govt. Such a delegation cannot be held to be excessive or void as held by their lordships of the Supreme Court in The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, . In that case, their lordships of the Supreme court were dealing with a case wherein Section 60 of the Madras Cooperative Societies Act, 1932 authorised the State Govt. to exempt any registered society from any of the provisions of the Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order. It was held that Section 60 is not void on the ground of excessive delegation of legislative power. Thus, when Section 60 of the Madras Cooperative Societies Act, 1932 which is

almost similar to Section 139 of the Act, has not been held to be void, then the framing of the Rules in pursuance of Section 148(2) (xxx) of the Act which have been laid on the table of the House of the State Legislature as provided by Section 149 of the Act cannot be said to be ultra vires of the provisions of the Act. When the Legislature itself has not objected to the framing of this Rule 41 as being beyond the legislative competence of the Rule Making Authority then the Govt. which has framed this Rules will be deemed to have waived all impediments coming in its way in framing these Rules by exercising powers of relaxation u/s 139 of the Act.

35. On the basis of a decision of the learned single Judge of the Andhra Pradesh High Court in R. Veerayya and M. Siddalingaiah and Others Vs. State of Andhra Pradesh and Others, , it was submitted by Mr. M.L. Shreemali, the learned Counsel for the petitioners that further delegation of delegated authority is unauthorised unless the delegate expressly or by inference permitted further delegation. Here, we are examining the validity of Rule 41 of the Rules of 1966. If we examine the validity of Rule 41 of the Rules of 1966 keeping in view the provisions of Section 148 read with Section 147(2) of the Act and Rule 41 of the Rules of 1966, it cannot be said to be a case of ''Delegatus non Potest delegare''. In R. Veerayya''s case (supra), the Andhra Pradesh High Court has held that in each case, the nature of the terms of the power must be looked into in order to determine whether any sub-delegation was conferred or intended. The general rule of sub-delegation of statutory power has to be looked from the point of view whether the Legislature has conferred a mere administrative power which generally is exercised, by officials subordinate to it, in its name or whether it is legislative or a quasi-judicial power. It was further observed that it is obvious that the person to whom the power is delegated can only act within the power granted to him and cannot authorise another or confer on another the powers conferred on him, because to do so would be acting beyond the ambit of the authority conferred on him.

36. Mr. L.S. Udawat, the learned Additional Advocate General has argued that in this case, Rule 41 of the Rules of ''1966 has been framed by the State Govt. and it actually provides the procedures in which the powers will be exercised by the State Govt. which have been delegated to it by the Legislature and Section 147(2) of the Act further authorises the State Govt. to sub-delegate its powers to the Registrar. He has submitted that it is true that Sub-section (2) was added to Section 147 of the Act in the year 1976 and that provision is there on the Statute Book and when we examine the validity of Rule 41 of the Rules of 1966 keeping in view the provisions of Section 148 (2) (xxx) read with Section 147(2) of the Act and Rule 41 of the Rules of 1966, it cannot be declared to be ultravires of the provisions of the Act.

37. The Division Bench decision of the Madhya Pradesh High Court in Dukhuram Gupta Vs. Co-operative Agricultural Association Ltd. and Others, also has no application to the facts of the present case. In that case, Section 3 of the Co-

operative Societies Act of 1912 provided for appointment of a Joint Registrar to assist the Registrar and to confer powers of Registrar on him. Thus, it was held that the conferment of powers could take place under the Act. If bye-laws did not provide for delegation of powers of Registrar as regards appointment and dismissal of Manager then approval of Registrar alone was necessary because bye-laws did not provide for delegation of these powers of approval to the Joint Registrar. Such is not the case here before us and thus, this authority has no application.

38. Mr. Udawat has placed reliance on a Division Bench decision of the Bombay High Court in Mulchand v. Mukund AIR 1962 Bom 296, wherein it has been observed that the power where Courts have consider the validity of statutory rules is a very limited power. If a rule is within the ambit of the Statute, then it cannot be successfully challenged on the ground that it is an unreasonable rule. There is a clear distinction between statutory rules and buy-laws. Bye-laws are usually framed by Corporations under their inherent powers in order to carry out the purposes of the Corporations or they are framed by public authorities set up by Parliament and as it is left to the corporations or the public authorities to frame these bye-laws and carry out their purposes, the Courts have retained certain amount of control over the bye-laws by considering their reasonableness. But statutory rules stand on an entirely different footing. Parliament or Legislature instead of imcorporating the rules into the statute itself, ordinarily authorises Govt. to carry out the details of the policy laid down by the Legislature by framing the rules under the Statute, and once the Rules are framed, they are incorporated in the Statute itself and become part of the Statute and the rules must be governed by the same principles as the statute itself. Thus, framing of the Rules has a grater sanctity and they are treated as part of the Statute and they are to be attached greater sanctity than the bye-laws.

39. Mr. Udawat has further placed reliance on a decision of their lordships of the Supreme Court in D.S. Garewal v. State of Punjab AIR 1956 SC 512 wherein it has been observed that it is competent for the Legislature to delegate to other authorities the power to frame the Rules to carry out the purposes of the law made by it. Delegation of legislative functions can be made to executive authorities within certain limits. Section 3, All India Services Act lays down that the Central Govt. may, after consultation with the Governments of the States concerned, make rules for the regulation of recruitment and conditions of service of persons appointed to an All India Service. It also lays down that all rules made under this section shall be laid for not less than fourteen days before Parliament as soon as possible after they are made and shall be subject to such modifications, whether by way of repeal or amendment, as Parliament may make on a motion made during the session in which they are so laid. Their lordships further observed that a close reading of Section 4, All India Services Act and its scope, purpose and effect will show that this is not a case where the Legislature has failed to lay down the legislative policy and formally to enact that policy into a binding rule of conduct. The Rules would govern the All India Services common

to the Central Govt. and the State Govt. and a provision was made in Section 3 that rules should be framed only after consulting the State Governments and at the same time, the Parliament took care to see that these rules were laid on the table of Parliament for fourteen days before they were to come into force and they were subject to modification, whether by way of repeal or amendment on a motion made by Parliament during the session in which they are so laid. This makes it perfectly clear that the Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate. Therefore, reading Section 4 along with Section 3(2) of the Act, it cannot be said in the special circumstances that there was excessive delegation to the Central Govt. by Section 3(1). As stated above, a somewhat similar provision has been made in Section 149 of the Act and the Rules of 1966 have been framed accordingly. They have been put on the table of the house of the State Legislature for fourteen days and, therefore, to this extent, it cannot be said that it is a case of excessive delegation.

40. In this respect, Mr. Shreemali drew our attention to a decision of their lordships of the Supreme Court in Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., wherein it has been held that notwithstanding the subordinate legislation being laid on the table of the House of Parliament or the State Legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the rule making power provided in the Statute. In this case, the rule making power has been specified in Section 148 (2) (xxx) read with Section 139 of the Act and so, Rule 41 of the Rules of 1966 is not beyond the legislative competence of the State Govt. and, therefore, to this extent, this authority has little application to the facts of the present case.

41. As stated above, here we are not dealing with a case where constitutional validity of the Rules has been challenged but only the vires of the Rules has been challenged on the ground that it is a case of excessive delegation or a sub-delegation. The constitutional validity has to be judged on the touch stone of the constitutional provisions as they existed on the date when the Act came into force. However, in a case where the vires of the Rules have been challenged, those Rules will have to be considered on the basis of the provisions of the law as they exist at the time when such a challenge is made.

42. The validity of the Rules has also been challenged on the basis of Article 14 of the Constitution of the ground that the procedure provided by Rules of 1958 is less advantageous to them than the Resolution of the Board of Directors of the Bank. That validity has to be judged on the basis of the Rules as they are applicable when the challenge is made. It has not to relate back to the date of promulgation of the Constitution. Moreover, these Rules were made applicable in 1980 when Section 147(2) of the Act of 1965 was already in force. This aspect will be specifically dealt with separately later on. However, it has to be admitted that there is difference between challenge to the constitutional validity of a

provision of law and the challenge to the vires of a provision of law.

43. A somewhat similar matter arose in Ismail Khan and Ors. v. State of Rajasthan and Ors. 1984 WLN 585, wherein while relying on a decision of the Apex Court in Railway Board v. P.R. Sundranariyan 1978 (1) SLR 276, a learned single Judge of this Court has held that Rule 41 of the Rules of 1966 is akin to Rule 157 of the Indian Railways Establishment Code and in both of them, the rule making authority has been given delegated power to other persons or authorities. The learned single Judge has further held that he present one is a case of delegation of powers which is permissible in law.

44. Mr. Shreemali also drew our attention to a decision of their lordships of the Supreme Court in Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, That was a case wherein their lordships of the Supreme court have held that as the registered dealer and the unregistered dealer belong to different classes and as the circumstances in which the Sales Tax Officer can take action against the unregistered dealer are different from the circumstances in which he takes action against the registered dealer, the Sale Tax Officer does not contravene Article 14 of the Constitution, if he takes action against a registered dealer under Sub-sections (2) or (4) of Section 11 even after the expiry of three years from the period whose turnover is to be assessed. We are unable to know how this authority helps the case of the petitioner.

45. Taking an over all view of the entire matter we are firmly of the view that Rule 41 of the Rules of 1966 is not ultra vires of the Act or Sections 147 and 148 of the Act. It does not violate Articles 14 & 16 of the Constitution. It has general application whereby the Registrar has been authorised to frame the Rules relating to the Conditions of the service of the employees of the cooperative societies, which is a permissible sphere of the legislative activity on the basis of the delegation conferred by the legislature on the Slate Govt. u/s 148 (2) (xxx) read with Section 147 (2) of the Act. The Rules of 1976 are totally intra vires of the powers conferred on the Registrar under Rule 41 of the Rules of 1966.

46. It was contended by Mr. Udawat that the respondent Bank is not a State within the meaning of Article 12 of the Constitution and, therefore, this writ petition is not maintainable. We are afraid, we cannot accept this submission in view of the authoritative pronouncement of this Court in Phoolchand''s case (supra), where it has been observed the Central Cooperative Bank, Ltd., Bharatpur is a State within the meaning of Article 12 of the Constitution.

47. It was next argued by Mr. Shreemali that Rule 8(2)(a) of the Rules of 1966 authorises the Cooperative Society to frame its bye-laws about the method of recruitment, the conditions of service and the authority competent to fix, revise or regulate the scale of pay and allowances of paid Officers and employees of the society and the procedure to be followed in the disposal of disciplinary case against them. He has contended that this is a specific provision and, therefore, it overrides the general provisions contained in Rule 41 of the Rules of 1966. Rule

8 is only an enabling provision which provides that a cooperative society may make bye-laws about the matters which are enumerated in Rule 8(1) and 8(2) of the Rules. Thus, it is permissible for a Cooperative Society or a Cooperative Bank to frame its bye-laws and if it so frames, they can certainly be looked into provided they have been approved by the Registrar. Thus it is clear that provisions of Rule 8 and Rule 41 operate in different spheres. Rule 41 of the Rules of 1966 authorises the Registrar to frame the Rules as regards the conditions of service of the employees of the society whereas an authority has been conferred on the Co-operative Society or the Co-operative Bank to frame its bye-laws under Rule 8 of the Rules of 1966.-Thus, both of these provisions operate in different fields and they are not antagonistic to each other.

48. However, it was contended that although in Section 148 (2) (xxx) of the Act, it has been provided that the State Govt. can frame the Rules about the conditions of the service of the employees of a co-operative society including discipline and control. Discipline and control are the parts of the conditions of the service and, therefore, if Rule 41 only provides that conditions of the surfice of the employees of the society shall be specified by the Registrar, that certainly includes discipline and control also. Thus, the omission of the use of the words ''discipline and control does not mean that the Registrar is not empowered to frame Rules regarding discipline and control also.

49. It was contended by Mr. Shreemali that the Registrar in exercise of his powers under Rule 41 of the Rules of 1966 has issued a Notification dated 3.1.1980 whereby it has been notified that in disciplinary proceedings, in absence of any approved service Rules of the Institution, the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 shall be applicable for the time being in force. It was submitted that these Rules have not been published as required by Section 149 of the Act. Section 149 of the Act provides for the publication of the Rules, which are framed and the provisions of the Act. Actually, this Notification dated 3.1.1980 has not been issued under the provisions of the Act. This Notification has been issued in exercise of the powers conferred upon the Registrar under Rule 41 of the Rules of 1966 and Rule 41 of the Rules of 1966 has been framed and published as required by Section 149 of the Act. Thus, it is not essential that this Notification should be published as required by Section 149 of the Act.

50. It was further contended by Mr. Shreemali that the issuance of the Notification dated 3.1.1980 by the Registrar in exercise of his powers conferred under Rule 41 of the Rules of 1966 will be in derogation of Rule 41(4) of the Rules of 1966 as also the powers which are exerciseable by the Registrar under Sections 70 to 74 of the Act. Section 70 of the Act provides that the Registrar may of his own motion, by himself or by ''a person authorised by him by order in writing hold an enquiry into the constitution, working and financial condition of a cooperative society. Section 71 of the Act authorises the Registrar as regards inspection of books of a coperative society. Section 72 of the Act deals with

inspection of books by financing Bank and Section 73 pertains to apportionment of the costs of enquiry by the Registrar. Section 74 authorises the Registrar to inquire himself or from any person authorised by him by an order in writing in this behalf, if in the course of an audit, inquiry, inspection or winding up of a cooperative society, it is found that any person or/employee of the society has made any payment contrary to this Act, the Rules or the bye- laws or has caused any deficiency in the assets of the society by breach of trust or willful negligence or like or has misappropriated or fraudulently retained any money or other property belonging to such society. Thus, it is clear that the provisions of Sections 70 to 74 of the Act operate absolutely in different field authorising Registrar to order enquiries and inspection in given circumstances, it has nothing to do with disciplinary proceedings and procedure to be adopted therein where departmental proceedings are contemplated against an employee or they are initiated against him.

51. Rule 41(4) of the Rules provides that where in the course of an audit u/s 68 or an inquiry u/s 70 or an inspection under Sections 71 or 72, it is brought to the notice of the Registrar that a paid Officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of truch or other offence in relation to the society, the Registrar may, if in his opinion, there is prima facie evidence against such paid Officer or servant and the suspension of such paid Officer or servant is necessary on the interest of the society direct the Committee of the Society pending the investigation and disposal of the matter, to place or cause to be placed such paid Officer or servant under suspension from such date and for such period as may be specified by him. Thus. Rule 41(4) of the Rules of 1966 also operates in different field, which is covered by Sections 68,70,71 and 72 of the Act.

52. The Rules of 1958 totally operate in different sphere. A person who is prima facie found guilty of any misconduct or of an unbecoming conduct, disciplinary proceedings can be initiated against him without taking recourse to the provisions of Sections 68, 70, 71, 72 read with Rule 41(4) of the Rules, under the provisions of the Rules of 1958. As stated above, vide notification date 3.1.1980, the Rules of 1958 have been made applicable in absence of any approved service Rules. The petitioner have made reference to a Resolution of the Board of Directors of the respondent Bank dated 6.8.1958, which has been filed as Annexure-6 in the writ petition filed by petitioner Mohanlal, which says that a per the opinion expressed by the Registrar, Cooperative Societies, the Board of Directors of the respondent Bank adopts the Rajasthan State Cooperative Bank Limited Jaipur''s service Rules framed on 2.3.1957 with effect from 1.7.1958. So far as the Jodhpur Central Cooperative Bank Ltd. is concerned, it has only passed a resolution adopting certain Rules which have been framed by the Rajasthan State Cooperative Bank Ltd., Jaipur. Those Rules have not been got approved from the Registrar, Cooperative Societies. Moreover, as stated above, Rule 12 of those Rules provides that an employee who commits a breach of any of these Rules or who displays negligence, inefficiency or

indolence or who knowingly does anything detrimental to the interests of the Bank or in conflict with ,its instructions shall be liable for such disciplinary action as the Management of the Bank may think fit: It may be stated here that no specific rule has been framed laying down as to how disciplinary proceedings shall be initiated and disciplinary actions shall be taken. Thus, in absence of any specific rules laying down the procedure regarding disciplinary proceedings and actions, the Registrar was competent to issue the notification dated 3.1.1980 and that notification will hold good because they are approved Rules providing for disciplinary actions.

53. Rule 14 of the Rules of 1976, the vires of which have been upheld categorically provides that so far as the scale of pay, initial pay etc. are concerned, the officers appointed against various posts covered under these Rules shall be as provided by these Rules and as laid down in Schedule-II. It further provides that except as provided under these Rules, other service Conditions of the Officers shall be regulated by the Rules applicable to the Officers of the State Govt. under the Rajasthan Service Rules for the time being in force. Thus, Rule 14 of the Rules of 1976 categorically makes the Rajasthan Service Rules applicable to the employees of the respondent Bank, who are covered by the Rules of 1976, which includes the cadre of Branch Managers. Sub-rule (3) of Schedule-II further provides that every condition of service unless otherwise prescribed would be same as are applicable under Rajasthan Service Rules. Thus, the provisions of the Rajasthan Service Rules have been specifically made applicable to the employees of the respondent Bank and, therefore, it cannot be countenanced that the petitioners are not governed by the provisions of the Rajasthan Service Rules.

54. Be that as it may, the Rules of 1958 have been made applicable to the disciplinary proceedings. These are very detailed Rules and follow the principles of natural justice. These Rules provide for an opportunity to the delinquent to submit his reply to the charges framed and further provide for an opportunity of being heard, if the enquiry is conducted under Rule 17 of the Rules of 1958. These Rules also provide for an opportunity to produce any oral or documentary evidence in defence and the delinquent is being provided an opportunity to cross-examine the witnesses by himself or with the help of his next friend, if the enquiry is conducted under Rule 16 of the Rules. Thus, it cannot be said that the Rules of 1958 are in any way prejudicial to the interest of the employees of the respondent Bank. They, therefore, cannot be held as ultra vires of Articles 14 and 16 of the Constitution.

55. The submission made in the Writ petitions about the applicability of the Award of Industrial Tribunal dated 11.12.1964 is of little avail as neither that point was pressed during arguments nor the Award has been filed with the Writ petition and hence, to that extent, this contention cannot be sustained.

56. Rule 13 of the Rules of 1958 relates to the suspension and it provides that Appointing Authority or any Authority to which it is subordinate empowered by

the Govt. in, that behalf may place a Govt. servant under suspension. Thus, it is not necessary that the appointing authority alone may place an employee under suspension. Suspension can be made by any other Authority also, who may be subordinate to the appointing authority, if disciplinary proceedings are contemplated of are pending or where a case against him in respect of any criminal offence is under investigation or trial. Thus, when departmental proceedings are contemplated against the petitioners and they have been served with a charge sheet, they have rightly been placed under suspension.

57. Rule 15 of the Rules of ,1958 provides that in respect of the subordinate and Ministerial services, the Head of Department or the authority specially empowered by the Head of Department with the approval of the Govt. and in respect of Class IV Services, the Head of Office shall be the disciplinary authority, who is authorised to inflict all penalties under Rule 16 of the Rules of 1958. Thus, so far as petitioner Birmaram is concerned, he being a Class IV employee, the Managing Director of the respondent Bank who is Head of the Office and Chief Executive Officer of the respondent Bank is the concerning Disciplinary Authority for him and he can hold disciplinary proceedings against him and can serve a charge sheet upon him.

58. So far as petitioner Mohanlal is concerned, he being a Branch Manager, the Board of Directors of the respondent Bank is his appointing authority and the powers of the Board of Director vests in the Administrator, who has placed him under suspension and has initiated disciplinary proceedings against him under Rule 16 of the Rules of 1958 and, therefore, neither charge sheet nor suspension order can be called in question as being issued or made by an unauthorised person or authority.

59. So far as the order Annexure-4 dated 28.6.1989 filed in the writ petition filed by petitioner Birmaram is concerned, the petitioner Birma Ram has been treated to be absent from duty from 1.5.1989 to 13.5.1989. Treating a person willful absent from duty is not a punishment. However, forfeiting his earlier services is a very severe penalty and as per Rule 12 of the Rules of 1976, such a severe penalty should have been got approved from the Board of Directors of the respondent Bank and that has not been done and, therefore, to that extent, the order forfeiting his earlier services vide Annexure-4 dated 28.6.1989 deserves to be quashed.

60. So far as the order Annexure-5 dated 8/13.4.1988 is concerned, that is an order passed by the Managing Director of the respondent Bank and that is a reasoned order and it does not deserves to be quashed.

61. It was, also contended by Mr. Udawat that alternative remedy was available to the petitioner and they have not availed such remedies. This submission too is of little force because in this case, the vires of Rule 41 of the Rules as also the Rules of 1976 were under challenge and they could not have been raised and decided before the Departmental Authorities and therefore, this submission has

no force.

62. Much does not turn upon the allegation about the suppression of material facts. The material facts have been explained by the petitioner in the rejoinder to the reply to the writ petition.

63. The upshot of the above discussion is that Rule 41 of the Rules of 1966 as also the Rules of 1976 are totally valid and intra vires and they cannot be declared to be void. The chargesheets as also suspension orders of the petitioners cannot be quashed. However, the order Annexure-4 dated 28.6.1989 filed in the writ petition of petitioner Birmaram forfeiting his earlier services cannot be sustained.

64. In the result, the writ petition filed by petitioner Mohanlal is hereby dismissed in toto and the writ petition filed by petitioner Birma Ram partially succeeds to this extent that the order forfeiting his earlier services vide Annexure-4 is set aside. Rest of the order deserves on interference. There will be no order as to costs.