

(2002) 03 AP CK 0127

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26961 of 1999

M.S. Prasad and Others

APPELLANT

Vs

Govt. of A.P., Co-operative Dept. and Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 116A, 116AA, 116B, 116C, 9

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 4 ALT 136

Hon'ble Judges : V. Eswaraiyah, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : A. Satya Prasad and Krovvidi Narasimham, for the Appellant; Govt. Pleader for Co-operation for Respondents 1 and 2, Posani Venkateswaralu, Badana Bhaskara Rao, T. Niranjana Reddy, C.V. Mohan Reddy, K. Chidambaram, B. Adinarayana Rao, K. Muralidhar Reddy and K. Sesharajyam, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—These writ petitions may be disposed of by a common order, since the issues requiring adjudication and the questions that arise for consideration are similar in all the cases.

2. What is otherwise an insignificant internal and routine correspondence between the Registrar of Co-operative Societies, Andhra Pradesh and the Managing Director, A.P. State Co-operative Bank Limited is blown out of proportion and sought to be impugned in this batch of writ petitions by the petitioners.

3. The Governmental anxiety to exercise unlimited control and supervise all and every activity of the Co-operative Societies in the State of Andhra Pradesh as elsewhere in India led to unnecessary and avoidable complications. In the process significant contribution is made to docket explosion in this Court.

4. The Government's attempt to shape the Co-operative structure into the

Integrated Rural Development Programme by providing liberal financial assistance during the initial stage when the cooperatives are formed in the Country yielded less results. Excessive Governmental control led to destruction of basic cooperative philosophy. No doubt some Governmental money particularly in the Rural Credit Sector came into the societies but followed by Government officials. The situation inevitably led to stifling the growth and development of co-operative as viable self-serving unit.

5. The Country witnessed a battery of amendments utterly repugnant to the basic concepts of co-operative philosophy. Such amendments came in quick succession all over the country including in the State of Andhra Pradesh virtually reducing the cooperative movement to that of State sponsored movement.

6. The State Government dictating recruitment policies and service conditions for co-operative employees resulted in serious damage to discipline on account of the over centralization of the societies at the primary level and were left with practically no control over its own employees. The institutions have come to subserve the interest of employees instead of the real constituents for whom they were created.

7. Justice P. Jaganmohan Reddy in his Fourth PLN Raju Memorial Lecture 1987 (Co-operatives and the Constitution) observed:

"The studies on co-operative movement have shown that the members lack awareness of cooperative spirit, sense of responsibility and vigilance. They do not realise the need for putting their deposits into their co-operatives. That makes them depend mostly on Government funds and cheap money pumped in by the Reserve Bank of India. This encourages unscrupulous persons to dominate the co-operatives, mismanage and misuse them for personal gain, manipulate elections, or misuse the organisation for their personal benefit. Even while the Government claims to have high financial stakes in the co-operatives, the contrary view which has been held by dedicated co-operators is that the Government funds have always been insignificant compared with the members' funds and that many cooperatives do not depend upon governmental help. The Government has been unjustifiably publicizing that its assistance has been sustaining the co-operatives.

The reaction of the State Governments should have been to identify the real factors hampering the growth of cooperatives and take steps to eliminate them. Instead the Governments have chosen to make the controls stricter and confer more power on the Registrar by making him the Brahma, Vishnu and Maheshwara of the co-operatives (Emphasis is supplied). With this kind of negative attitude, little remains of the principles of cooperation upon which co-operatives are supposed to rest for achieving economic and social well-being of their members?

8. We shall notice more of more about what this Brahma, Vishnu and Maheshwara all rolled into one did?

9. With these few observations we shall now revert to the facts and issues requiring adjudication by this Court.

10. The writ petitioners were initially appointed as Paid Secretaries in various Primary Agricultural Credit Societies under half-a-million job scheme. By the A.P. Cooperative Societies Amendment Act, 1970, Section 116-A was inserted in the A.P. Cooperative Societies Act, 1964 (for short "the Act") to provide for constitution of common cadre of employees for certain Societies. The Government accordingly issued G.O.Ms. No. 198 Planning and Co-operation (Co-op. IV) Department, dated 28-3-1978 followed by the proceedings of the Registrar of Co-operative Societies, dt. 29-4-1978 creating a common cadre of Paid Secretaries. A common cadre fund was also created to meet their salaries and allowances. All the Paid Secretaries appointed by all the individual Primary Agricultural Cooperative Credit Societies were accordingly brought under the common cadre.

11. We may have to notice that by A.P. Co-operative Societies Amendment Act 21 of 1985 Section 116-A has been substituted by Section 116-AA limiting the constitution of common cadre only to certain categories of employees and providing for abolition of all other common cadres. As a result the common cadre of Paid Secretaries stood abolished. The Registrar of Co-operative Societies was empowered to allot the decaderised, Paid Secretaries to the individual Primary Societies, subject to Rules as may be made in this behalf. The rule making authority made necessary amendments to the A.P. Co-operative Societies Rules and inserted Rule 72 and the decaderised Secretaries were allotted to the Primary Societies in accordance with the said Rule. Rule 72(3) declares that the Paid Secretaries, on allotment to a Society, shall be deemed to be the employee of that society and shall be entitled to receive pay and allowances as may be fixed from the funds of the said society. The service conditions of the Secretaries working in the societies shall be governed by such service regulations as may be framed by the Registrar for adoption by the societies. The disciplinary control over the Secretaries is vested in the societies.

12. The State Government in G.O.Rt. No. 273 F&A (Co-op.III) Department dt. 28-3-1986 issued instructions permitting the Registrar of Co-operative Societies to fill up the vacancies in the Category-V of the Co-operative Central Banks in the ratio of 9:1 between the Paid Secretaries and the eligible in-service employees of the Cooperative Central Banks. The Registrar of Co-operative Societies following the said instructions, issued proceedings dt. 1-4-1986 providing for appointment of the Paid Secretaries in Category-V of the District Cooperative Central Banks in the manner mentioned therein, as to the weightage to be given to the qualifications, seniority in making such appointments. The Government having examined the proposals of the Commissioner for Co-operation issued orders in G.O.Rt.No. 1271 dated 18-8-1986 accepting the guidelines proposed by the Commissioner of Co-operation and Registrar of Co-operative Societies.

13. However, as the Paid Secretaries were not selected and appointed in

accordance with the instructions issued in G.O.Rt. No. 1271 dt. 18-8-1986 they went on strike between 10-2-1988 and 7-6-1988 and 11-3-1991 to 24-4-1991 making certain demands including the implementation of the Governmental order. The State Government after prolonged discussion with the Union of the Paid Secretaries entered into a Memorandum of Understanding. The pay scales of the Paid Secretaries were revised on par with the Supervisors of the Category-V of the District Co-operative Central Banks with effect from 1-1-1991 to be paid by the societies concerned as per the norms prescribed by the Registrar of Co-operative Societies. The Government's decision is reflected in Memo No. 5661 dt. 14-10-1991.

14. In the affidavit filed in support of the writ petitions, it is stated that since the Paid Secretaries are allowed to have the Category-V scales, promotions to the post of Category-V became an empty formality. The petitioners have been enjoying the Category-V scales ever since 1-1-1991.

15. The petitioners herein have been selected and appointed as Staff Assistants in the respective Co-operative Central Banks and they have accordingly joined in their respective places where they were posted. The petitioners as on the date of their appointments as Staff Assistants have been receiving salaries as per Memo No. 5661 dt. 14-10-1991 as revised from time to time. It is the case of the petitioners that they were enjoying the pay scale of 1640-4595 even while working as the Paid Secretaries in the respective societies. On their selection and appointment as Staff Assistants in Category-V in the Co-operative Central Banks their pay was fixed as minimum pay scale at 1640-4595. The said action on the part of the Co-operative Central Banks, according to the petitioners, is totally illegal, arbitrary and violative of Article 14 of the Constitution of India.

16. The second respondent herein vide its letter dt. 25-1-1999 addressed to the Managing Director of A.P. State Co-op. Bank Ltd. Hyderabad in response to a clarification sought for by the A.P. State Co-operative Bank and District Co-operative Central Bank, Chittoor clarified that the pay protection to the Secretaries of PACS on their selection to the Cadre-V post in the DCCB does not arise. It is clarified that the question of pay protection does not arise, as the posts of Cadre-V are to be filled up in the ratio of 9:1 on selection basis and by duly observing the rule of reservation. That clarification is impugned by the petitioners in this batch of writ petitions.

17. The Paid Secretaries' Union filed W.P.No. 10527 of 1999 challenging the said clarification and obtained an interim direction from this Court directing the respondents to maintain status quo with regard to the payment of salaries. That order is in operation even as on to-day, since the Writ Appeal No. 11 of 2001 preferred by the Government has been dismissed by a Division Bench of this Court on 29-1-2001.

18. It is submitted that the action of the respondents in refusing to provide pay protection to the petitioners and all other Paid Secretaries who were "promoted"

and appointed into Category-V posts in the DCCB is arbitrary and violative of Article 14 of the Constitution of India. It is submitted that on "promotion" fixing the salary at the minimum pay of the same scale which had already been enjoyed by the petitioner as Paid Secretaries is totally irregular.

19. In the counter-affidavit, it is specifically stated that the recruitment to Category-V in the ratio of 9:1 is by way of selection so far as the Paid Secretaries are concerned. It is considered as promotion so far as the in-service candidates working in the Banks is concerned. On promotion of such of those employees who were already working in the Co-operative Central Bank, the pay protection was given on their promotion into Category-V. It is contended that the petitioners who were earlier working as Paid Secretaries are not entitled for any such pay protection. It is the case of the respondents that the selection and appointment of the Paid Secretaries working in the Primary Agricultural Co-operative Bank (sic. Society) into Category-V is a fresh recruitment, since the appointment to the Cadre-V post from the Paid Secretaries by selection is as per G.O.Rt.No. 1271 dated 18-8-1986. Prior to their selection and appointment in Category-V they were working under separate establishment. It is further submitted that on selection to Category-V in the District Co-operative Central Bank if there is any loss in emoluments, the Paid Secretaries have every option to work as Paid Secretaries of Primary Agricultural Co-operative Bank (sic. Society) instead of appearing for the selection process seeking recruitment into Category-V in the Central Banks.

20. It is further submitted that if the pay protection is allowed as prayed for by the petitioners and the Union, there will be an anomaly resulting in juniors drawing more pay than the seniors who are already working in the Central Bank and the same may lead to the seniors working in the Cooperative Central Bank claiming the difference benefit and the Banks are not in a position to meet any such financial burden.

21. In the additional counter-affidavit certain events that have taken place subsequent to filing of the writ petitions and which have got a definite bearing on the questions are stated for the perusal of this Court.

22. The Government in G.O.Ms.No. 314 dt. 26-12-2000 issued orders cancelling the Memo No. 5661/Co-op.II/2/91 dated 14-10-1991 whereunder the Paid Secretaries were allowed to draw pay scales on par with Category-V employees of the District Cooperative Central Bank. The said G.O. traced the entire history relating to the recruitment, appointment and the other allied issues of the paid Secretaries including their pay scales and the absorption of the services etc. The Four Men Committee appointed has examined the issue as to whether it will be possible to create proper scale between Category-V and Category-VI of the DCCB Employees because the paid secretaries of the societies become one of the feeder cadres for recruitments of the Category-V employees in DCCB in prescribed proportion. The same was found to be untenable on the ground that the increased pay has to be earned by the paid secretaries through their

additional efforts and results.

23. G.O.Ms.No. 314 dt. 26-12-2000 itself was challenged in W.P.No. 21488 of 2000 and Batch and the same was upheld by this Court in W.A.No. 424 of 2001 dt. 16-10-2001. This Court declared Memo dated 14-10-1991 as void and inoperative so far as the Cooperative Societies are concerned. The Judgment of this Court is confirmed in S.L.P.NO. 679 of 2002 by the Supreme Court vide its order dt. 21-1-2002. It is further submitted that the Paid Secretaries of the Co-operative Societies and the employees of the Co-operative Central Banks form part of two different organisations and the service conditions and pay structure is not the same. Once the Paid Secretaries working in the Societies are recruited in Category-V in the District Co-operative Central Banks they cannot seek shelter under Memo dated 14-10-1991 which is now cancelled and no longer in existence.

24. It is further explained that in terms of G.O.Ms.No. 314, dated 26-12-2000 each of the Co-operative Societies has to pay scales to its Paid Secretaries with prior approval of the Registrar which may vary from one society to another, whereas the employees of the District Co-operative Central Banks have a uniform pay structure and promotion avenues. There is a basic difference at every stage and they both cannot be equated at any time. No pay protection can be granted to the Paid Secretaries for their service rendered in the societies. Once Paid Secretaries joined as employees of the District Co-operative Central Banks they are governed by the service rules and regulations of the District Co-operative Central Banks and they ceased to be the employees of the Co-operative Societies.

25. Some of the employees working in category-V in Guntur District Co-operative Central Bank filed application to implead themselves as party respondents in W.P. No. 26961 of 1999. They claim to be the seniors to the writ petitioners in Category-V.

26. In the affidavit filed by them it is mainly contended that each society registered under the A.P. Co-operative Societies Act is a body corporate and is entitled to do all things necessary for the purpose for which it was constituted u/s 9 of the Act. Each society has power to fix the staffing pattern, qualifications, pay scales and other allowances of its employees with the prior approval of the Registrar of the Co-operative Societies u/s 116-C of the Act. It is stated that the matter relating to the staffing pattern and pay scales are concerned, it is exclusively within the competency and jurisdiction of the society concerned and the only requirement is prior approval of the Registrar shall be obtained. Service conditions under each society are separate and distinct. The power of the Government if any u/s 116-B is restricted to giving direction as to the provision of making reservation in favour of SC, ST, etc.

27. It is further stated that after the abolition of the common cadre of the Paid Secretaries each one of them was allotted to different societies in accordance with the statutory scheme and rules and upon such allotment each one of them

became employee of a particular primary society and it is the responsibility of the said society to pay the salary in accordance with the scales fixed by it. There is nothing like uniform pay structure or pay scales so far as the paid secretaries are concerned. In the affidavit so filed it is further stated that the Government has no authority to issue G.O.Rt.No. 273 dt. 28-3-1986 and the consequential memos including the memo dt. 14-10-1991 adopting the pay scales of Category-V Supervisors to be paid to the Paid Secretaries working in the Primary Agricultural Co-operative Societies. The eligibility conferred upon the Paid Secretaries for their recruitment and appointment in Category-V post of District Co-operative Central bank is without sanction of law. There is no enabling provision in the Act, Rules, Bye-laws of the District Co-operative Central Bank or the Bipartite settlement regulating the service conditions of employees working in the District Co-operative Central Banks providing for such appointments.

28. The affidavit filed is more or less is similar to that of the counter-affidavit filed by the respondents 1 and 2. It is stated that call letters issued by the District Cooperative Central Bank to such of the Paid Secretaries who applied for appointment into Category-V clearly and specifically indicated that pay protection will not be given in case of their selection and appointment into Category-V of the Bank's service. The starting pay of Cadre-V would apply irrespective of whatever the salaries drawn by them as at present. In their appointment order itself, it is clarified that services rendered by them as the employees of the Primary societies will not be taken into consideration for promotion or fixation of seniority or for fixation of the pay scales. None of the Paid Secretaries have questioned the said condition imposed by the Banks at the time of their recruitment and appointment into Category-V posts. They have joined the service of the Banks in Category-V without any demur.

29. The question that falls for consideration is as to whether the petitioners have any right to insist for their pay protection?

30. The whole genesis of the problem is on account of frequent and uncalled for interference on the part of the Government and the Registrar of Co-operative Societies from time to time in the management of affairs of the societies. The chronology of events and the developments that have taken place in unmistakable terms reveal that the Government as well as the Registrar subjected themselves to various pulls and pressures from time to time exerted upon them mainly from the employees representing their own interest. None of them even thought it fit to consider as to whether such interference would adversely effect the interest of the societies and the District Co-operative Central Banks. They have proceeded on the assumption and misconception as if the Primary Cooperative Societies and the District Cooperative Banks were part of the Cooperative Department. Basic issues were ignored. Norms were thrown to winds. In the process an ugly situation is created resulting a serious threat to the existence of very Institutions. The societies are made to bear the unbearable burden of expenditure towards payment of emoluments to its employees. In the

process many of them perished.

31. The District Co-operative Banks and each of the Primary Societies are separate legal entities. Each one of the Co-operative Societies is registered under the provisions of the A.P. Co-operative Societies Act, 1964 and has its own independent existence. Each of the Societies has its own bye-laws. They are meant to protect the interest of their members and cater their needs. The Government and the Registrar of Cooperative Societies made serious in-roads into the functioning of the societies without even adverting to the basic question as to whether they have any such authority in law to interfere in such manner. Societies after Societies crumbled and collapsed under the oppressive weight of repeated memos, circulars and the Governmental orders issued from time to time. Some of them have lost even their existence. Number of G.Os., were issued by the Government which are in conflict with each other. One Governmental order does not refer to the other and supplemented by various memorandums and circulars issued from time to time. None of those Governmental orders and the G.Os. are traceable to any provision of law under which they were issued.

32. Let us have a look as to how the whole process of recruitment of the Paid Secretaries working in the Primary Societies into Category-V personnel in District Cooperative Central Banks commenced: The Government in G.O.Ms.No. 391 F & A Department dt. 9-9-1981 issued orders enhancing the reservation of vacancies in Category-V (clerk/supervisor) of Cooperative Central Banks for Paid Secretaries from 60% to 100% and the recruitment to be on the selection basis. The decision has landed in some problems and it is not necessary to notice the details thereof.

33. The Government having re-examined the matter and the proposals of the Registrar of Co-operative Societies issued fresh orders in G.O.Rt.No. 773 dt. 28-6-1983 in supersession of the earlier G.O. and accordingly permitted the Registrar of Cooperative Societies to issue revised instructions under staffing pattern of the Cooperative Central Banks enabling recruitment of Category-V personnel in Cooperative Central Banks from among the Paid Secretaries in the ratio of 9:1 (the one being eligible in-service employee of the Cooperative Central Bank if any). It is not known under what authority the Government issued such instructions compelling the District Co-operative Central Banks in the State to recruit the Paid Secretaries working in the Primary Societies into the category-V. Thereafter another G.O. was issued in G.O.Rt.No. 273 dated 28-3-1986 permitting the Registrar of Cooperative Societies to fill up the vacancies in Category-V of the Co-operative Central Banks in the ratio of 9:1 between the Paid Secretaries and the eligible in-service employees of the Co-operative Central Banks through selection only. Thereafter considering the various representations, norms for selection for giving weightage to the seniority were approved in order to permit the Co-operative Central Bank to fill up the vacancies in the revised procedure indicated vide G.O.Rt.No. 1271 dt. 8-8-1986.

34. The Government of Andhra Pradesh pursuant to some understanding with the representatives of the Employees Union of the Paid Secretaries issued Memo No. 5661 dt. 14-10-1991 revising the pay scales of Paid Secretaries so as to bring them on par with Supervisors of Category-V of the Co-operative Central Banks with effect from 1-1-1991 to be paid by the society concerned as per the norms prescribed by the Registrar of Co-operative Societies. It is difficult to discern as to on what basis the Government imposed such burden upon the Societies concerned. Admittedly the interest of the Societies was never taken into consideration nor the Societies were represented when such an understanding was arrived at between the Government and the Union of the Paid Secretaries. Pay scales are fixed by the Government and money is to be paid by societies.

35. We have already noticed that for the first time all the Paid Secretaries appointed by the individual Primary Agricultural Cooperative Societies were brought into common cadre pursuant to the Governmental order issued vide G.O.Ms.No. 198 dt. 28-3-1978 creating a common cadre of Paid Secretaries. But by Act 21 of 1985 the Act was further amended and Section 116-AA was introduced into the provisions of the Act limiting the constitution of common cadre only to certain categories of employees and providing for abolition of all other common cadres. The Registrar was empowered to allot the decaderised Paid Secretaries to the individual Primary Societies in accordance with the Rules. Necessary amendments were made to the Rules in accordance with which the decaderised Paid Secretaries were allotted to individual societies. On such allotment, each Secretary shall be deemed to be the employee of that particular Primary Society only and entitled to receive pay and allowances as may be fixed from the funds of the said society. Even the disciplinary control over the Paid Secretaries stood vested in the Primary Society. The said Rules have come into force as early as on 13-9-1995.

36. It is not known as to on what basis and legal authority the Government or the Registrar of Co-operative Societies as the case may be went on issuing instructions after instructions directing the Co-operative Central Banks to recruit the Paid Secretaries of the Societies into Category-V posts in the Central Bank even after the said rules coming into force allotting decaderised Secretaries into the primary societies. The Memorandum issued in the year 1991 fixing the pay scales of the Paid Secretaries on par with Supervisors of Category-V of the Cooperative Central Banks with effect from 1-1-1991 itself has no legal basis. According to the said Memo pay scales so fixed are to be paid by the society concerned as per the norms prescribed by the Registrar of Cooperative Societies. The said memorandum is contrary to the statutory rules. The said memorandum does not confer any statutory right upon the Paid Secretaries whose service conditions shall be governed by such service conditions as may be framed by the Registrar for adoption by the Societies. They are entitled to receive pay and allowances as may be fixed from the funds of the Societies.

37. The Government perhaps having learnt its lesson re-examined the whole

issue relating to pay and service conditions of Paid Secretaries of Primary Co-operative Societies. The Government at last realised and has come to the view that the Paid Secretaries should be treated as employees of the concerned Co-operative Societies only and their pay and service conditions shall be determined by the Societies themselves after taking prior approval of the Registrar of Cooperative Societies as provided for in the A.P. Co-operative Societies Act and Rules.

38. The Government obviously appears to have paid its attention for the first time and adverted to Section 116-C of the Act which is mandatory in its nature. It would be apposite to have a look at the said provision:

116-C. Staffing pattern of societies:--

(1) A society shall have power to fix the staffing pattern, qualifications, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies subject to the condition that expenditure towards pay and allowances of the employees shall not exceed two per cent of the working capital or thirty per cent of the Gross profit, in terms of actuals in a year whichever is less.

(2) No appointment or removal of a Chief Executive by whatever name called of any society, or class of societies as may be prescribed which are in receipt of financial aid from the Government, shall be made without the prior approval of the Registrar of Co-operative Societies.

39. The Government also appears to have realised that the Paid Secretaries of Primary Co-operative Societies in some Districts have started their pay in revised higher scales of pay as applicable to Category-V of the District Co-operative Bank employees with arrears of pay by virtue of the interim orders passed by this Court. It is not necessary in detail to refer to various interim orders passed by this court under which the salaries were drawn by the Paid Secretaries of Primary Co-operative Societies in some Districts in the revised higher pay scales on par with Category-V employees of District Co-operative Bank.

40. The Government after careful consideration of the entire issue and having studied the report of the committee of the officials constituted to study the matter in pursuance of the order passed by this Court in W.P.No. 16558 of 1992 and Batch finally decided that the matter of fixing of strength of the establishment, staffing pattern and scales of pay and other allowances of employees should be left to be decided by the Primary Co-operative Societies for themselves. The Government further realised that with effect from 25-4-1995 the power to fix the staffing pattern, pay scales and other allowances for employees of the Societies vested with the Primary Cooperative Societies u/s 116-C of the Act, 1964. The Registrar comes into picture only for giving approval in respect of the proposals received from a Society and not on his own or suo motu.

41. The Government accordingly cancelled its memo No. 5661 dt. 14-10-1991 issued by the Government. This decision of the Government is reflected in G.O.Ms. No. 314 dt. 26-12-2000.

42. The Paid Secretaries challenged G.O.Ms.No. 314 dt. 26-12-2000 and accordingly prayed for appropriate directions directing the respondents to implement the instructions issued vide memo dated 14-10-1991 and pay their remuneration accordingly in W.P.No. 21488 of 2000 and batch. A Division Bench of this Court by its Judgment dated 21-1-2001 dismissed all the writ petitions upholding the validity of G.O.Ms.No. 314 dated 26-12-2000. In the said decision the Division Bench made a pertinent observation to the effect that "the Co-operative Societies are not run as Government organisations. They are not meant for carrying out welfare activities of the State. While promoting the thrift movement, it is supposed to earn the profit for its members."

43. While adverting to the very said memo upon which the entire case of the petitioners rests even in the instant case, the Court held that "the financial burden was thrust upon the societies and the Banks, although they did not want the same and thus the State could not have asked the society to pay the salaries at higher rates to the Paid Secretaries contrary to their financial state of affairs and contrary to the statutory regulations. Financial health of the society must be taken into consideration. Therefore, the financial burden cannot be imposed on it."

44. It is further held by the Court that "by reason of Section 116-AA and 116-C, the service conditions of all the Paid Secretaries are affected. Expressly or by necessary implication, the conditions of service of the existing Paid Secretaries are also affected. It will, therefore, not be correct to contend that the said provisions would only apply to the Paid Secretaries who were to be appointed in future. It is not that the societies cannot appoint the Paid Secretaries, but the matters relating fixation of staffing pattern of the society, prescription of qualifications and determination of pay scales and other allowances for its employees have to be left to the concerned society itself inasmuch as it is the society which keeping in view its size, volume of work and its resources, could pragmatically manage its affairs."

45. It is further observed that "the history of litigation, in the instant case, shows that payments to the Paid Secretaries at par with Supervisor Category-V of District Cooperative Central Bank, as also the revised pay scales, were being made only pursuant to the orders of this Court and not by reason of any policy decision, except the said purported understanding dated 14-10-1991. The writ petitioners, therefore, cannot be heard to say that there would be violation of principles of natural justice if they are deprived from the said benefit. The principles of natural justice cannot be applied in derogation to a statute. The State while enacting a statutory provision is not required to give an opportunity of hearing. The principles of natural justice are required to be complied with when there does not exist any statutory interdict."

46. It is thus clear that the very basis under which the pay scales of Paid Secretaries were brought on par with the Supervisors of Category-V of the District Co-operative Central Bank is not in existence. There is no other provision under which the petitioners are entitled for the said pay scales. Therefore, there is no question of any pay protection of such of those Paid Secretaries who were recruited and appointed into Category-V of the District Co-operative Central Banks.

47. There is one more reason as to why the petitioners are not entitled for any relief as prayed for by them. The Paid Secretaries working in the Primary Societies are selected to fill up the vacancies in the Category-V of the District Co-operative Central Banks in the ratio of 9:1 between the Paid Secretaries and the eligible in-service employees of Cooperative Central Banks through selection. Obviously a channel is merely provided to the Paid Secretaries facilitating their entry by way of selection into Category-V in the Cooperative Central Banks. It is not a promotion. The whole of the case in the writ petitions is based upon the misconception as if the Paid Secretaries working in the Primary Co-operative Societies are promoted and appointed into Category-V in the District Co-operative Central Banks. It is by way of selection. The Paid Secretaries accordingly entered into the service of the District Co-operative Central Banks in Category-V upon such selection and not on promotion. The District Co-operative Central Bank cannot be saddled with any burden whatsoever to give pay protection to such of those Paid Secretaries selected and appointed in Category-V posts in the District Co-operative Central Banks. So far as the Banks are concerned such of those Paid Secretaries selected and appointed into Category-V entered into the service of the Bank for the first time upon such selection. They are entitled only for such pay scales which are payable at the time of initial entry into Category-V of Bank's service. The petitioners cannot compare themselves with those employees of the Banks who are already working in the organisation in different categories.

48. Whether the impugned clarification issued by the Registrar of Co-operative Societies is violative of Articles 14 and 16 of the Constitution of India as is sought to be contended by the learned Counsel for the petitioners? We do not find any merit in this contention. In our considered opinion, no statutory right much less any fundamental right guaranteed by the Constitution of India has been violated by the action of the respondents. The petitioners in law have no right whatsoever for any pay protection as such. Their right to enter into Category-V service of the Co-operative Central Bank itself is based upon the governmental order which has no sanction of law.

49. The learned Counsel for the petitioners no doubt relied upon the following decisions of the Supreme Court in support of his submissions that every action of the State and its instrumentalities must be fair and reasonable. The State's action must be free from arbitrariness.

50. Comptroller and Auditor General of India and Others Vs. Farid Sattar, , State

of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, , State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, , Prem Chand Somchand Shah and Another Vs. Union of India (UOI) and Another, , Om Kumar v. Union of India, (2001) 2 SCC 386, H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc., , Union of India and Another Vs. Tulsiram Patel and Others, , Paradise Printers and Others Vs. Union Territory of Chandigarh and Others, , Neelima Misra v. Harinder Kaur Paintal, : [1990]2SCR84 , R.K. Garg and Others Vs. Union of India (UOI) and Others, , Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , E.P. Royappa Vs. State of Tamil Nadu and Another, , State of Kerala and Another Vs. N.M. Thomas and Others, , State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others, , Narendra Kumar Chandla Vs. State of Haryana and others, , Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, , Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others,

51. It is too elementary and needs no reiteration by us that any action of the State which is arbitrary and unreasonable is liable to be struck down by this Court as violative of fundamental right guaranteed by Article 14 of the Constitution of India. But the question is as to whether any of the fundamental rights of the petitioners as such is violated on account of the impugned clarification issued by the Registrar of the Co-operative Societies? In our opinion no existing right of the petitioners is sought to be taken away by the impugned clarification issued by the Registrar. Equal protection clause is in no manner infringed so far as the petitioners are concerned. In law the petitioners have no right for any pay protection as claimed by them. It is not brought to our notice as to under what provision of law they are entitled for such pay protection.

52. For the aforesaid reasons, we do not propose to make any detailed analysis to each one of the decisions cited by the learned Counsel for the petitioners and we have referred to those decisions in the Judgment for the simple reason that they were cited at the Bar.

53. In the circumstances, we are of the considered opinion that none of the decisions cited have any application to the fact situation on hand. The attempt on the part of the petitioners is nothing but to raise and re-agitate the very issues and contentions which were rejected by a Division Bench of this Court vide Judgment in W.A.Nos. 424 and 425 of 2001 dated 16-10-2001 referred to hereinabove.

54. In our considered opinion, G.O.Ms.No. 314 dated 26-12-2000 which is very comprehensive in its nature and which has put an end to the claim of the petitioners herein for any pay scales on par with Category-V employees working in the District Co-operative Central Bank has been upheld by this Court in the decision referred to hereinabove, and the same in our considered opinion, puts an end to the controversy.

55. For the aforesaid reasons, we do not find any merit whatsoever in these writ

petitions. The writ petitions shall stand accordingly dismissed. There shall be no order as to costs.