

(2009) 04 J&K CK 0042
In the Jammu And Kashmir High Court

N.K. Mehta and Others

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 04-04-2009

Acts Referred:

Jammu and Kashmir Cooperative Societies Act, 1960 — Section 124
Jammu and Kashmir Co-operative Societies Act, 1989 — Section 172(1)

Citation : (2009) 2 JKJ 1

Hon'ble Judges : Barin Ghosh, C.J;Jai Pal Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—In the writ petition, which has been dismissed by the judgment and order under appeal, the appellants contended that

they are entitled to serve their employer, namely, the State Cooperative Agriculture Rural Development Bank Limited until the age of 60 years and

not until the age of 58 years, as was being contended by their employer. The judgment under appeal has been rendered, principally, upon relying

on a Division Bench Judgment of this Court, which was rendered on April 30, 1999 in the case of Ved Pal Sharma v. Citizens Co-operative Bank

Ltd. reported in 2000 SLJ 117. The said Division Bench judgment followed the judgment earlier rendered by a Single Bench of this Court in CSA

No. 35/1994, reported as Kuldip Raj v. Citizen Co-operative Bank Ltd., in 1988 KLJ 83. The law which stood changed after April 30, 1999

was, therefore, not noticed in the said Division Bench and Single Bench judgments.

2. There appears to be no dispute that the employer-society was governed by the J&K Cooperative Societies Act, 1960. There appears to be

also no dispute that the employer society on July 3, 1971 made service rules in relation to its employees. The Learned Judge, while rendering the judgment and order under appeal, proceeded on the basis that the said service rules have not been registered with the Registrar of Co-operative Societies whereas the service rules upon which reliance has been placed clearly show that the same stand registered with the Registrar, Cooperative Societies. That the said rules were registered with the Registrar, Cooperative Societies too was not disputed by the parties. There is no dispute that Rule 25 of the said rules makes it clear that the employees of the employer society shall retire at 60 years of age.

3. Section 124 of the J&K Cooperative Societies Act, 1960 authorized the Government to make rules, including those pertaining to laying down service conditions of employees of Co-operative Societies. There is no dispute that on July 8, 1988, in exercise of powers conferred by Section 124 of the J&K Co-operative Societies Act, 1960, which applied to all societies, the Government made the rules called the J&K Co-operative Societies Services Rules, 1988; while, however, doing so, in Clause (o) of Section 2 thereof provided that 'society' means Co-operative District Wholesale-store Society/Co-operative Sale and Supply Society/Co-operative Multipurpose Societies/Co-operative Service Society registered under the Jammu and Kashmir Co-operative Societies Act, 1960, but did not include Co-operative Development Banks registered as cooperative societies under the said Act. However, in the note appended to Rule 24 of the said rules, which contained directions pertaining to service records, it was stated that the term 'other societies' means Co-operative Societies, Co-operative Industrial Societies, Co-operative Banks and the like. The term 'other societies' however, did not feature in Rule 24 of the said rules. The Division Bench referred to above, taking note of the said note as also applicability of the said rules to all societies, held that the said rules were also applicable in relation to Co-operative Development Banks registered under the said Act. Rule 13 of the said rules specifically mentions that the persons appointed to the service shall retire on attaining the age of 58 years or on the date the society in which he was initially appointed ceases to function. The object of the said rules was to make a cadre of the employees of all Co-operative Societies and to make them interchangeable by transfer and deputation. There is no dispute that the said

object was not fulfilled and no attempt was made to fulfill the said object.

4. At the same time, there cannot be any dispute that the rules made by the employer society in 1971, to the extent the same determined the age of

superannuation, stood altered by the rules of 1988 made by the State. Thus, on and from July 8, 1988, the employees of the employer society

became obliged to superannuate or retire upon attaining the age of 58 years.

5. On July 8, 1989, the J&K Co-operative Societies Act, 1989 (hereinafter referred to as 'the said Act') came into force, and by virtue of Section

172(1) of the said Act, the employer society, which was existing as on July 8, 1989, and which had been registered under the Co-operative

Societies Act, 1960, became deemed to be registered under the said Act and its bye-laws, so far as the same are not inconsistent with the express

provisions of the said Act, continued to remain in force until altered or rescinded. At this juncture, it is necessary to take note of Sub-section (2) of

Section 172 of the said Act which is as follows:

All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under the said Act (1960 Act)

shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

6. Section 177 of the said Act repealed the 1960 Act but, at the same time, provided that any rule made under the provisions of the repealed Act,

shall, in so far as the same are not inconsistent with the provisions of the repealing Act be deemed to have been done, taken, issued and made

under the corresponding provisions of the repealing Act.

7. Section 176 of the said Act authorizes the Government to make rules to carry out the purposes of the Act, including conditions of service of

officers and other employees of Co-operative Societies.

8. In exercise of such power granted by Section 176 of the said Act, the Government made the J&K Co-operative Societies Rules, 2001

(hereinafter referred to as 'the said rules'). While making the said rules, the Government provided in Sub-rule (1) of Rule 5 of the said rules the

subject-matters which are required to provide for in the bye-laws of the Co-operative Societies; and in Sub-rule (2) of Rule 5 provided that in the

bye-laws they may provide for the matters enumerated from Clauses (e) to (f) thereunder. Clause (e) of Sub-rule (2) of Rule 5 provided the

method of recruitment, the conditions of service and the authority competent to fix, revise or regulate the scales of pay and allowances of paid

officers and employees of the societies and the procedure to be followed in the disposal of disciplinary cases against them. The said rules did not

provide for the service conditions of the employees of Co-operative Societies, instead granted liberty to them to provide for the same. There

cannot be any dispute that by reason of continuation of the rules made under the 1960 Act by Section 177 of the said Act, the 1988 rules made by

the Government continued to remain in force until such time the said rules of 2001 came into effect.

9. The short question is whether by reason of coming into force of the 2001 rules, the 1988 rules became inconsistent with the provisions of the

Act, inasmuch as the said rules in no uncertain terms authorized the Societies to make bye-laws pertaining to conditions of service of their

employees and whether the rules governing the conditions of service framed by the respondent-employer in 1971 automatically stand revived?

10. Rule 26 of the 1988 rules repealed all the then existing rules, except the Common Cadre Rules of 1976. When the Government u/s 124 of the

J&K Co-operative Societies Act 1971 had power to frame rules to lay down conditions of service of the employees of Co-operative Societies, it

goes without saying that, such power included the power to repeal all rules, though not made by the Government, but laid down conditions of

service of employees of Co-operative Societies, including the 1971 Rules made by the respondent-employer.

11. In the circumstances, the 1971 Rules made by the respondent-employer having been repealed by the 1988 rules, by reason of the said rules,

which authorized Co-operative Societies to provide in their bye-laws the conditions of service of their employees, the 1971 Rules made by the

respondent Co-operative Society, there cannot be any dispute, did not revive since the said rules indicated no intention to revive the same or

similar, rules. Further, the Co-operative Societies by the said rules have been authorized to provide for in their bye-laws conditions of service of

their employees and there appears to be no dispute that as yet no such step has been taken by the employer society to provide for the same in their

bye-laws and, at the same time, the 1971 rules, it is nobody's case, were part of the bye-laws of the employer society, though the same was

registered with the Registrar, Co-operative Societies.

12. The conclusion, therefore, would be that the 1988 rules, framed by the Government, governing the service conditions of the employees of the

Co-operative Societies, including those of the employer society, still are in force and, as such, there is no scope of interference with the judgment

and order under appeal. This conclusion is based on Section 24 of the General Clauses Act, 1977 (1920 AD).

13. However, before we conclude, it would be appropriate on our part to state that the questions raised in the writ petition were, in fact, not

covered by the judgments referred to above and the same were required to be answered independently. We may further point out that the said

rules have made a great departure from what had been provided in the 1988 rules having granted power to the Co-operative Societies to frame

rules pertaining to service conditions of their employees as part of their bye-laws. The 1988 rules would become inconsistent with the rules

governing service conditions as and when framed by Co-operative Societies in their bye-laws, liberty for which has been granted by the said rules.

At the same time, there being no authoritative pronouncement that the rules governing the service conditions made by the societies prior to coming

into force of the 1988 rules were repealed by the 1988 rules, the petitioners did have reason to come to this Court to seek continuation of their

service until 60 years and, in the circumstances, though we dismiss the appeal, but make it clear that the petitioners having rendered service despite

having crossed the age of 58 years on the strength of the orders of this Court, should not be made to repay any part of their salaries drawn in

course thereof.

14. Because we have stated above that substantial questions of law had been raised in the writ petition, we award no cost against the appellants

and, accordingly, make it absolutely clear that on account of the present litigation, which includes the writ petition, the petitioners-appellants will not

be saddled with any litigation cost of any nature. We are disturbed to note that by an order dated July 11, 2008, an attempt had been made to

recover litigation costs alleged have been incurred by the employer society to defend the present litigation. (sic) made clear that no such litigation

cost shall be recovered from the appellants.

The appeals are, accordingly, dismissed.