

**(2017) 01 AHC CK 0260**  
**In the Allahabad High Court**  
**Case No : Writ C No. 31649 of 2016**

Rajendra Prasad Pandey

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

**Date of Decision :** 25-01-2017

**Acts Referred:**

Uttar Pradesh Co-operative Societies Act, 1965 — Section 121, Section 122A, Section 29A

**Citation :** (2017) 2 ADJ 561

**Hon'ble Judges :** Dilip B. Bhosale, CJ. and Yashwant Varma, J.

**Bench :** Division Bench

**Advocate :** Krishna Mohan Misra and H.R. Misra, Advocates, for the Petitioner in Writ C No. 31649 of 2016; C.S.C., for the Respondent in Writ C No. 31649 of 2016; Sujit Kumar Rai, Advocate, for the Petitioner in Writ C No. 44452 of 2016; C.S.C., Sushil Kumar Rao, Advocate, for the Respondents in Writ C No. 44452 of 2016; Sujit Kumar Rai, Advocate, for the Petitioners in Writ C No. 44468 of 2016; C.S.C., Kunwar Bahadur Srivastava, Advocate, for the Respondents in Writ C No. 44468 of 2016; Krishna Mohan Misra and H.R. Mishra, Advocates, for the Petitioners in Writ A No. 32658 of 2016; C.S.C., Shiv Nath Singh, Advocate, for the Respondents in Writ A No. 32658 of 2016; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 32660 of 2016; C.S.C., Ashok Kumar Lal, Advocate, for the Respondents in Writ A No. 32660 of 2016; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 32661 of 2016; C.S.C., Sujit Kumar Rai, Advocate, for the Respondents in Writ A No. 32661 of 2016; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 33354 of 2016; C. S.C., Sushil Kumar Rao, Advocate, for the Respondents in Writ A No. 33354 of 2016; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 39520 of 2016; C.S.C., Sushil Kumar Rao, Advocate, for the Respondents in Writ A No. 39520 of 2016; Krishna Mohan Misra and H.R. Misra, Advocates, for the Petitioners in Writ A No. 52519 of 2016; C.S.C., Sujit Kumar Rai, Advocate, for the Respondents in Writ A No. 52519 of 2016; Anil Kumar, Advocate, for the Petitioners in Writ C No. 44721 of 2016; C. S.C., Sujit Kumar Rai, Advocate, for the Respondents in Writ C No. 44721 of 2016; Vikram D. Chauhan, Advocate, for the Petitioners in Writ A No. 36259 of 2016; C.S.C., Ashok Kumar Lal, Advocate, for the Respondents in Writ A No. 36259 of 2016; Dharmendra Kumar, Advocate, for the Petitioners in Writ A No. 38386 of 2016; C.S.C., Sujit Kumar Rai, Advocate, for the Respondents in Writ A No. 38386 of 2016; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 33334 of 2016; C.S.C., Sushil Kumar Rao, Advocate,

for the Respondents in Writ A No. 33334 of 2016; Sunil Kumar Srivastava and Padmaker Pandey, Advocates, for the Petitioners in Writ C No. 47685 of 2016; C.S.C, for the Respondents in Writ C No. 47685 of 2016; Dharmendra Kumar, Advocate, for the Petitioners in Writ C No. 58322 of 2016; C.S.C., Sujit Kumar Rai, Advocate, for the Respondents in Writ C No. 58322 of 2016; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 65258 of 2015; C.S.C., Neeraj Kumar Pandey, Sujit Kumar Rai and Sushil Kumar Rao, Advocates, for the Respondents in Writ A No. 65258 of 2015; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 65273 of 2015; C.S.C., Neeraj Kumar Pandey and Shiv Nath Singh, Advocates, for the Respondents in Writ A No. 65273 of 2015; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 65275 of 2015; C.S.C., Neeraj Kumar Pandey, O.P.Singh and Sujit Kumar Rai, Advocates, for the Respondents in Writ A No. 65275 of 2015; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 65485 of 2015; C.S.C., Neeraj Kumar Pandey, Shiv Nath Singh and Sushil Kumar Rao, Advocate, for the Respondents in Writ A No. 65485 of 2015; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 66477 of 2015; C.S.C., Kunwar Bahadur Srivastava, Neeraj Kumar Pandey, Advocates, for the Respondent in Writ A No. 66477 of 2015; Krishna Mohan Misra, Advocate, for the Petitioners in Writ A No. 66474 of 2015; C.S.C., Ashok Kumar Lal and Neeraj Kumar Pandey, Advocates, for the Respondents in Writ A No. 66474 of 2015; Siddharth Khare, Advocate, for the Petitioners in Writ A No. 66188 of 2015; C.S.C., Sujeet Kumar Rai, Advocate, for the Respondents in Writ A No. 66188 of 2015; Krishna Mohan Misra, Advocate, for the Petitioner in Writ A No. 67077 of 2015; C.S.C., Kunwar Bahadur Srivastava and Neeraj Kumar Pandey, Advocates, for the Respondents in Writ A No. 67077 of 2015; Hari Nath Tripathi, Advocate, for the Petitioners in Writ A No. 64738 of 2015; C.S.C., Om Prakash Singh and Shiv Nath Singh, Advocates, for the Respondents in Writ A No. 64738 of 2015; Dharmendra Kumar, Advocate, for the Petitioners in Writ A No. 66872 of 2015; C.S.C., Sujit Kumar Rai, Advocate, for the Respondents in Writ A No. 66872 of 2015; Krishna Mohan Misra, H.R. Misra, Advocates, for the Petitioners in Writ C No. 52291 of 2016; C.S.C., Shiv Nath Singh, Advocate, for the Respondents in Writ C No. 52291 of 2016

**Final Decision :** Disposed Off

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## Judgement

Yashwant Varma, J.—This batch of writ petitions have laid challenge to the provisions of the U.P. Primary Agricultural Cooperative Credit Societies Centralised Service Rules, 19761 and more particularly, the amendments introduced therein by virtue of the U.P. Primary Agricultural Cooperative Credit Societies Centralised Service (14th Amendment) Rules, 20152 and the U.P. Primary Agricultural Cooperative Credit Societies Centralised Service (16th Amendment) Rules, 20163. The 14th Amendment came to be introduced vide notification dated 24 April 2015 whereas the 16th Amendment Rules came to be introduced vide notification dated 31 May 2016.

2. With the consent of parties, the petitions assailing the 14th Amendment and 16th Amendment to the 1976 Rules were tagged and heard together. As agreed by the learned counsels appearing for the contesting parties, Writ Petition No.

31649 of 2016 [Rajendra Prasad Pandey and 26 others v. State of U.P. and others] was treated as the lead petition. The challenge to the 14th and 16th Amendment is raised by employees of various cooperative societies who were at the time of their introduction functioning in the capacity of Officiating Secretaries. The post of Secretary stood included in the centralised services by virtue of the provisions of the 1976 Rules which themselves were framed in terms of the provisions of Section 122A of the U.P. Cooperative Societies Act, 1965. The primary challenge which came to be advanced against the 14th and 16th Amendments was on account of their operation adversely affecting the rights of persons who were working at the relevant time as Secretary in an officiating capacity and/or were seeking absorption on the post of Secretary by virtue of the provisions of the Bank ex cadre Regulations, 2012 framed in exercise of powers conferred by Section 121 of the 1965 Act.

3. Sri H. R. Mishra, learned Senior Counsel who led the submissions on behalf of the petitioners has contended that cooperative societies as a class were conferred constitutional status by virtue of the Constitution (Ninety-seventh Amendment) Act, 2016. He submitted that the 97th Amendment to the Constitution conferred a right on citizens to form cooperative societies and this right was granted the elevated status of a fundamental right in terms of the addition to sub-clause (c) in clause (1) of Article 19. Referring to the Statement of Objects and Reasons of the Constitution 97th Amendment, Sri Misra sought to highlight and underline the fact that the legislature recognised the need to confer autonomy in the sphere of operation and management of cooperative societies. He submitted that on account of various retrograde governmental interferences, cooperative societies throughout the country were left in shambles financially and that the said interventions had, in fact, a negative impact on the cooperative movement as a whole. He therefore, submitted that the right of a cooperative society to appoint officers and employees was desired to be made independent and freed from all governmental interferences. In his submission, the introduction of Section 29 A in the 1965 Act was a recognition of the legislative intent in conferring added autonomy and independence upon cooperative societies. Referring specifically to sub clauses (vii) and (viii) of clause (a) of Section 29A, Sri Misra contended that full freedom and autonomy stood vested in a cooperative society statutorily to assess its manpower resources and requirements and to appoint such officers and staff for the conduct of its business as it thought fit.

4. Sri Misra contended that on account of the precarious financial condition of cooperative societies in the State, the appointment of a person as a Secretary was liable to be viewed as an optional measure or choice inhering in a particular cooperative society. According to Sri Misra, the appointment of a Secretary necessarily had the effect of impacting the finances of a cooperative society and it was to obviate the additional financial burden attendant thereto that various cooperative societies had appointed its existing officers and employees to officiate as Secretaries. Sri Mishra stressed upon the provisions of subsection (2)

of Section 122 A to contend that such officiating Secretaries were liable to be absorbed in service and could not be subjected to the vagaries of a selection process. It was further contended that in terms of the provisions of the 2012 Regulations, various officiating Secretaries had participated in a selection process and had also undergone the requisite screening. He referred to the fact that in various districts of the State, screening had been completed while in some, the selection process had been initiated. It was his submission that the 14th and 16th Amendments interfered with and clearly eclipsed the vested right which had come to be acquired by these officers who were working as officiating Secretaries. Sri Misra submitted that the 14th and 16th Amendments were in direct conflict with the mandate of Section 29A and must therefore, necessarily be held to be ultra vires the said provision. He submitted that the centralization of the post of Secretary and take over of the function of appointment by the State Cadre Authority was in violation of the autonomy and freedom conferred upon cooperative societies by Section 29A (a)(viii). He accordingly submitted that these amendments were liable to be struck down on this score.

5. Dr. Y.K. Srivastava, the learned Additional Chief Standing Counsel, and Sri O.P. Singh, learned Senior Counsel appearing for the State Cadre Authority, have countered the contentions advanced by Sri Mishra by making the following submissions. Dr. Srivastava has submitted that the Constitution 97th Amendment cannot be read in a disjointed manner. According to him although conferment of autonomy was one of the features borne in mind by the legislature, the said constitutional amendment was also a recognition of the legislative intent to ensure that cooperative societies are run on sound, democratic, professional and economically sound principles. It was submitted that the Secretary of a cooperative society discharges a pivotal role in a society. Dr. Srivastava referred to the provisions of Section 31 of the 1965 Act to submit that the Secretary of a cooperative society discharges salient and important functions and in one sense represents the cooperative society as a whole and acts as an interface between the society and other statutory functionaries constituted under the 1965 Act. Viewed in this sense, Dr. Srivastava submits that it cannot be said that the appointment of a Secretary in a cooperative society is an optional matter. Dr. Srivastava referring to the provisions of the 14th and 15th Amendments in detail has contended that the rights of officiating Secretaries have neither been effaced nor completely erased. He submits that these amendments enable all existing officers and employees of a cooperative society to participate in a selection process for the purpose of being considered for appointment as a Secretary of a society. He submits that it is for this reason that the amendments provide for direct recruitment to the post of Secretary both by way of open competition as well as from amongst employees of a society. Dr. Srivastava further submitted that the mere fact that certain petitioners had participated in a screening process and/or had come to be included in a select list, the same would not amount to them having acquired a vested right to be appointed on the post of Secretary. He further drew our attention to the provisions of the Government Notification dated

2nd May 2015 by virtue of which the 2012 Regulations came to be repealed. Referring to the said notification, Dr. Srivastava submitted that this notification did not save or protect any rights howsoever inchoate they may have been. Even otherwise and in the alternative, Dr. Srivastava reiterated his submission that since a selectee did not acquire any vested right by virtue of inclusion in a select list, there was no occasion for the protection of the status of officers of a cooperative society who may have been working on the post of Secretary in an officiating capacity. It is these rival submissions which fall for consideration.

6. Before however, dealing with the submissions noted above, it would be relevant to notice the salient provisions of the 1965 Act as well as the Rules and amendments made thereto upon which would rest our consideration of and conclusions upon the contentions advanced on this batch of writ petitions.

Section 31 of the 1965 Act provides that except in the case of an apex society there shall be a Secretary of every cooperative society, to be appointed and removable by it subject to the provisions of the rules and regulations framed under Sections 121 and 122. The said provision reads as under:

31. The Secretary, is emoluments and functions.(1) Except in the case of an apex society there shall be a secretary of every cooperative society, to be appointed and removable by the society subject to the provisions of the rules and regulations framed under Section 121 and 122. The emoluments and other conditions of service of the Secretary shall be such as may be prescribed in the bye-laws of the society made in conformity with the rules and regulations made in this behalf.

Provided that where a service for the post of Secretaries common to any class of Cooperative societies has been created under Section 122A the recruitment, appointment, removal and other conditions of service of persons appointed to such posts, including persons appointed to such posts before the creation of such service shall be governed by the provisions of that section and the rules made thereunder.

(2) The Secretary shall be Chief Executive Officer of the society and subject to such control and supervision of the Chairman and the Committee of Management as may be provided in the rules or the bye-laws of the society shall

(a) be responsible for the sound management of the business of the society and its efficient administration;

(b) carry on the authorised and normal business of the society.

(c) subject to the provisions of the bye-laws of the society, operate its accounts and except where the society has a cashier or treasurer, handle and keep in his custody its cash balances:

(d) sign and authenticate all documents for and on behalf of the society;

(e) be responsible for the proper maintenance of various books and records of

the society and for the correct preparation and timely submission of periodical statement and statements and returns in accordance with this Act, the rules the bye-laws and the instructions of the Registrar or the State Government:

(f) convene meetings of the general body the Committee of Management and any subcommittee constituted by the Committee of Management and maintain proper records of such meetings : and

(g) perform such other duties and exercise such other powers as may be imposed or conferred on him under the rules or the byelaws of the society.

(3) A cooperative society may, subject to the provisions of the rules and the bye-laws and the regulations made under Section 121, Section 122 or Section 122A, appoint, if necessary, one or more person to assist the Secretary and to entrust him or them with such powers ad duties of the Secretary a the society may deem fit.

(4) After a cooperative society has been registered and till such time as its Secretary is appointed under subsection (1) or for six months, whichever is earlier, the functions and duties of the Secretary shall be performed by such member of the society as may be provided in the rules and the bye-laws of the society."

(emphasis supplied)

Section 122 A came to be introduced in the statute book by virtue of U.P. Act No. 12 of 1976. It was thereafter substituted by U.P. Act No. 17 of 1977. The provision as it stands today reads as follows:

"122A. Centralisation of certain services.(1) Notwithstanding anything contained in this Act, the State Government may by rules provide for the creation of one or more services of such employees of such cooperative societies or class of cooperative societies as the State Government may think fit, common to such Cooperative Societies and prescribe the method of recruitment, appointment, removal and other conditions of service of persons appointed to any such service.

(2) When any such service is created, all employees of such societies existing on the date of creation of such service on the posts included in such service, shall be deemed to have been provisionally absorbed in the service with effect from the date of creation of such service:

Provided that any such employee may, by notice in writing to the prescribed authority within the prescribed period, intimate his option of not becoming a member of such service, and in that event his services in the society shall stand determined with effect from the date of such notice and he shall be entitled to compensation from the society shall stand be-

a) in the case of a permanent employee, a sum equivalent to his salary (including all allowances) for a period of three months or for the remaining period of his service, whichever is less;

(b) in the case of a temporary employee, a sum equivalent to his salary (including all allowances) for a period of one month or for the remaining period of his service, whichever is less.

(3) An employee provisionally absorbed under subsection (2) may be absorbed finally in the service if found suitable after screening in accordance with the instructions issued by the Registrar; and the services of any such employee as is not found suitable for absorption in the service shall stand determined with effect from the date of issue of orders in that behalf by the prescribed authority and until such authority is prescribed, by the officer specified by the Registrar in that behalf in such instructions and he shall be entitled to compensation as laid down in clause (a) or clause (b) of subsection (2) accordingly as he was a permanent or a temporary employee."

7. The 1965 Rules owe their genesis to this statutory provision. It appears that upon introduction of Section 122A, it was thought desirable to centralize the post of Secretaries in all primary agricultural credit societies. It was in exercise of the powers conferred by this provision that the State Government framed the 1976 Rules. A perusal of Rule 3 shows that the post of Managing Directors in farmer's service cooperative societies and Secretaries of the Primary Agricultural Credit Societies 7 came within the fold of a centralised service. The supervision and control of the centralised service came to be vested in the State Cadre Authority, a Regional Administrative Committee and the District Administration Committee in terms of the provisions of Rule 7. Rules 23 and 24 as they existed in the 1976 Rules, prior to their substitution and deletion respectively, provided for the manner in which appointments on any post included in the centralised service were to be made. The 1976 Rules also contained Rules 20 to 22 which dealt with the subject of provisional and final absorption of employees working on posts which came to be centralised upon the promulgation of the 1976 Rules. These Rules essentially put in place the methodology and manner in which existing employees were to be absorbed in the centralised service and essentially implemented the statutory provisions contained in subsections (2) and (3) of Section 122A.

8. Rules 20 to 22 were subsequently deleted by the U.P. Primary Agricultural Cooperative Credit Societies Centralised (11th Amendment) Rules 2003 and the U.P. Primary Agricultural Cooperative Credit Societies Centralised (12th Amendment) Rules 2004 introduced Rule 23. This rule declared the U.P. Agricultural Cooperative Credit Society Service Cadre to be a "dead cadre". It further provided that no person shall be appointed in the centralised service cadre henceforth. Rule 23 which came to be inserted w.e.f. 30 June 2004 read as follows:

"23. The Uttar Pradesh Agricultural cooperative Credit Society Service Cadre, hereby declared a dead Cadre. No person shall be appointed in Centralised Service Cadre from now onwards."

As noted above, the 14th Amendment was introduced on 12 April 2015. Since however, the U.P. Agricultural Cooperative Credit Society Service Cadre had come to be declared as a dead cadre, the State Government in the interregnum promulgated the 2012 Regulations. These Regulations provided for the appointment of a Secretary in each PACS. These regulations were in the following terms:

"Bank Ex-Cadre Regulation, 2012

There shall be one Secretary of each PACs, who shall be the "Ex-Cadre" employee of the Bank. Ex-Cadre posts for the PACs Secretaries will be created equivalent to the number of PACS (Primary Agriculture Credit Cooperative Society) excluding the PACS under liquidation.

Selection Process (a) Each District shall have a screening/selection committee consisting of the following members:

1. District/Assistant Commissioner and Assistant Registrar, Cooperative

... Chairman

2. Secretary/General Manager, District Cooperative Bank

....Member/Convenor

3. Regional Officer of U.P. Cooperative Bank of the concerned Division

... Member

9. In the first phase after screening the working PACS cadre secretary/surplus staff of the bank will be included in the ex cadre. While making the selection of the Secretaries the selection committee will take into consideration that there should be no defalcation of fund or financial irregularity, F.I.R. and pending departmental proceeding against the said personnel. Those retired PACS cadre secretary shall not be considered who were reemployed by the PACS after their retirement or attaining the age of 58 years.

In second phase, the working employees of the PACS (including incharge Secretaries) shall be included in the ex cadre who have minimum educational qualification Intermediate from U.P. Madhyamic Shiksha Parishad or passed the equivalent examination recognised by the State Government and having 10 years of working experience. Candidates having the graduation degree in Commerce, Agriculture or Economics will be given preference. While making the selection of the Secretaries the selection committee will take into consideration that there should be no defalcation of fund or financial irregularity, F.I.R. and pending departmental proceeding against the said personnel. Only one opportunity will be given to the working employee of the PACS for the selection.

(b) Approval of the selected secretaries by the screening/selection committee shall be given by the following committee:



1. Additional Commissioner and Additional Registrar (Banking) Cooperative.
2. Managing Director, U.P. Cooperative Bank Ltd., Lucknow.
3. Concerned Regional Deputy Commissioner and Deputy Registrar, Cooperative ...Convenor

After completion of the proceedings of first and second phase, the District Assistant Registrar and Secretary District Cooperative Bank will appraise the position to the Registrar about rest vacant posts for selection and after getting the approval of the Registrar third phase selection shall be made in ex-cadre from direct recruitment (open market). Registrar will determine the educational qualification and selection process.

Management-The Administrative control of the secretaries posted in the ex-cadre shall be controlled by the following committee:

1. District Assistant Commissioner and Assistant Registrar Cooperative ...Chairman
2. Secretary/ General Manager, District Cooperative Bank ...Member/Convenor
3. Regional Officer of U.P. Cooperative bank of the concerned Division ...Member

Services of the Secretaries selected in ex-cadre shall be transferable within the operational area of concerned District Co-operative Bank.

Allocation of employee from ex-cadre to the PACS by the Bank shall be normally for three years, on gradual increase in overall performance of the PACS, the employee shall be considered to given opportunity to work for additional two years."

10. It appears that on the strength of these 2012 Regulations, a screening process was initiated in each district for absorption of Secretaries including "Incharge Secretaries". On 24 April 2015, the 14th Amendment was brought into force and one of the salient provisions introduced thereby was Rule 23, which revived the PACS Service Cadre. Rules 23 and 24 as introduced by this amendment read as under:

"23. The Uttar Pradesh Agricultural Cooperative Credit Society Service Cadre, is here by revived. No person shall be appointed on any post, included in the Centralised Service, unless he fulfils the required qualifications for the post. Cadre Secretaries and Ex Cadre Secretaries who are covered by Bank Ex Cadre rules 2012, shall also deemed to be Merged in Uttar Pradesh Agricultural Cooperative Credit Society Service Cadre.

24. Appointment on any post in the Centralised service shall be-

i) by taking on deputation from the cadres of Cooperative Supervisors of Uttar Pradesh Cooperative Union and Inspectors Group I and II of the Cooperative Departments as provided in rule 4;

(ii) by direct recruitment;

(iii) by the appointment of dependent of the member of the Centralised service who died during service period;

25. Direct recruitment- (1) Fifty percent of the Vacancies in any district shall be filled up from the open competition and the rest from amongst the employees of the District Cooperative Societies.

On the requisition of district committee for vacancies in the ordinary grade scale to be filled up by direct recruitment the selection committee shall invite the applications from the candidates in the following manner;

(i) Direct recruitment from the open competition the applications for direct recruitment from the open competition shall be invited by the selection committee by advertising in at least one leading newspaper widely circulated in the area;

(ii) Direct recruitment from the employees of the Society - For direct recruitment from amongst employees working in primary agricultural credit societies as mentioned in rule 5(b), the selection committee shall invite applications from the employees of the Society of the concerned district through District Assistant Registrar, Cooperative Society and by advertising the vacancies in at least one leading newspaper widely circulated in the district;

Provided that the employees of the society who fulfil the qualifications laid down in rule 5(b) shall submit their applications only through Cooperative Society.

(2) The selection committee shall make the recruitment from both the sources by holding written test and interview as may be prescribed by the Registrar, Cooperative Societies, Uttar Pradesh but in no case marks allotted for interview shall exceed more than ten percent of the total marks fixed for the test. Reservation for the candidates belonging to the Schedule Castes, Schedule Tribes and the other categories shall be in accordance with the Uttar Pradesh Public Service (Reservation for Physically Handicapped Dependents of Freedom fighters and Ex-Servicemen) Act, 1993, the Uttar Pradesh Public Service (Reservation for Schedule Castes, Schedule Tribes, and other Backward Castes) Act, 1994, as amended from time to time and the orders of the Government for the time being in force.

(3) The recruitment shall be made in the manner stated above by the selection committee consisting of;

(i) Deputy/Joint Registrar of the Region

Chairman

(ii) The officer nominated by Chief Development Officer/District Development Officer shall not be below the rank of class-2 Officer

Member

(iii) A nominee of the registrar, Cooperative Societies, Uttar Pradesh.

Member"

The 16th Amendment which came to be introduced on 31 May 2016 only amended the selection process as provisioned for in Rule 25 and substituted sub-rule (2) thereof in the following manner:

"(2) The selection committee shall make direct recruitment from the open competition by holding written examination and prepare the merit list on the basis of marks obtained by candidates. In the case of direct recruitment from the employees of the society by way of screening according to the rules prescribed by the Commissioner and Registrar. Reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes and the other categories shall be in accordance with the Uttar Pradesh Public Service (Reservation for Physically Handicapped Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993, the Uttar Pradesh Public Service (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994, as amended from time to time and the orders of the Government for the time being in force."

Having noticed the relevant provisions, we now proceed to deal with the rival submissions.

11. The first submission and which was urged with much vehemence on behalf of the petitioners was in respect of the non obstante clause occurring in Sections 29A and 122 A. It was sought to be contended that the introduction of Section 29A which itself was prefaced by a non obstante clause clearly evidenced the legislative intent to confer and preserve the power of appointment of officers and staff exclusively in cooperative societies without any interference or outside control. It was also urged that although Section 122A also stood prefaced by a non obstante clause, since Section 29A came to be introduced much later the same must prevail and therefore liable to be read in a manner so as to override the provisions of Section 122A. We find ourselves unable to accede to this submission. It must be borne in mind that Section 122A existed in the statute at the time of introduction of Section 29A. The legislative authors must therefore be presumed to have been aware of the non obstante clause existing in Section 122 A and thus preserving its overriding effect in respect of matters relating to centralised services. Merely because Section 29 A came to be introduced subsequently in point of time cannot lead us to hold that its provisions would override or subsume Section 122A. This would be further evident from what we notice hereinafter. Clause (viii) occurring in Section 29A is in the following terms:

"(viii) appoint officers or other staff to conduct the business of the society and define inter alia their duties, service conditions, leave concessions and disciplinary matters subject to the provisions of this Act, the rules and the bye-laws;"

(emphasis supplied)

12. As is evident from a bare perusal of the said provision, the section while conferring the power upon the cooperative society to appoint officers and other staff specifically made the said power "subject to the provisions of this Act, the rules and the bye-laws;". The employment of the above phrase in clause (viii) clearly goes against the submission advanced on behalf of the petitioners. It appears that at the time of introduction of Section 29 A the framers were clearly conscious of the existence of Section 122 A and the powers inhering in the State Government to frame rules for centralization of services and appointment to posts included in such centralised services. The usage of the aforesaid phrase therefore, clearly appears to be evidence of a deliberate and conscious intent to preserve the powers vested in the State Government by virtue of Section 122 A. If there had been any intent on the part of the legislature to confer an unfettered power in the cooperative society to appoint officers and staff of all classes without any administrative control or intervention of any other statutory provision overshadowing that right, clause (viii) would not have specifically made the power conferred upon the cooperative society subject to the provisions of the Act and the rules and the bye-laws framed thereunder.

13. Our conclusion, in our considered view, is further fortified by the proviso appended to Section 31. As is evident from a reading of the proviso, recruitment, appointment, removal and other conditions of service of persons appointed to such posts created under Section 122 A are in unambiguous terms provisioned to be governed by the provisions of that section and the rules made thereunder. Section 31 which stood on the statute book in the present form right from 1975 was left untouched. This action is clear and unambiguous evidence of the legislative intent being aimed at preserving the powers of the State Government conferred by Section 122 A. We therefore hold that the provisions of Section 29 A cannot be read so as to completely obliterate Section 122 A. Insofar as centralised services are concerned, they would continue to be governed by the said provision and the position does not stand altered by the introduction of Section 29 A. This conclusion is based not just upon a plain reading of the provisions of the 1965 Act but is also in accord with the principles of harmonious construction which bids us to confer equal consideration upon all provisions of the statute and to interpret its provisions in a manner so as to consider whether it is possible to ensure the preservation of all its provisions. We are of the considered view that there is no irreconcilable conflict between Sections 29 A and 122 A both of which are clearly compatible and operate in well demarcated spheres.

14. We may note that a challenge on similar lines was addressed before a Division Bench of the Court in *Committee of Management, District Cooperative Bank Ltd. v. Union of India and others*, 2013 (3) ADJ 301. Negating the submissions advanced by the petitioners there, the Division Bench observed as under:

"30. When Section 29A of subsection (viii) of the Act which gives power to the

Committee of Management to make such appointment expressly subject to the provisions of the Act, Rules and Bye-laws, the clear intention of the Act is that the other provisions of the Act is not to be disregarded rather they had to be given effect to despite the provisions of Section 29A of the Act. The clear meaning is that Section 122 of the Act which empowers the State Government to create the authority to control the administration of the society for the purposes of recruitment, disciplinary enquiry and control has to be given effect to and the Regulation which has been framed under Section 122 of the Act is still operative and is to be given effect to.

31. Thus, the submission of the learned counsel for the petitioner that after amendment of Section 29A of the Act, the Service Board has no authority to make recruitment, cannot be accepted."

Insofar as the Constitution 97th Amendment Act is concerned, in our considered view, far from advancing the contention of the petitioners, its provisions, in fact, seem to suggest and indicate the legislative intent to ensure the functioning of cooperative societies on democratic, professional and economic principles. The usage of the words "autonomy" or "autonomous" in the SOR cannot be read either in isolation or in a manner which may defeat the legislative aim to professionalize the working of cooperative societies and ensure their running on economically sound principles. In fact the constitutional amendments evidence the legislative intent to revamp and reenergise the cooperative movement as a whole and to ensure that the movement itself moves towards the achievement of the goals of securing social and economic justice and the equitable distribution of the fruits of developments. The insertion of sub-clause (c) in clause (1) of Article 19 has to be read along with the provisions of Article 43 B which also came to be introduced by this Constitutional amending Act. Article 43B is in the following terms:

"43B. Promotion of cooperative societies.

- The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies."

15. The appointment of a Secretary is therefore, aimed at ensuring that the cooperative society works in a professional manner. The constitutional amendment itself recognised the "need to initiate fundamental reforms to revitalize these institutions". The Secretary plays a seminal role in the hierarchy of a cooperative society. He is also, as is evident from the provisions of Section 31, responsible for the sound management of the business of a society and its efficient administration. The said provision places upon him the burden of carrying on the authorised and normal business of the society, operate its accounts , convening meetings of the committee of management as well as the general body and performs various other duties as entrusted and imposed upon him under the Act, Rules and Byelaws of the society. The appointment of a

competent person as a Secretary of a cooperative society is an essential facet for ensuring that the society functions in a professional manner and its business is carried out on economically sound principles ensuring the advancement of benefits to its members and bearing in mind the finances and fiscal condition of the society itself. The submission advanced on behalf of the petitioners that the appointment of a Secretary is optional in the above light does not commend acceptance and is misconceived.

16. As noticed above, although Rule 23 of the 1976 Rules stood deleted by the 12th Amendment, the provision was revived by the 14th Amendment. The re-energisation of the Centralised Service Cadre and formulation of principles which may guide and inform the process of appointment of a Secretary appear to be in consonance with the principles underlying the Constitution 97th Amendment. These provisions appear to reflect, mirror and implement the ethos underlying the said constitutional amendment.

17. The fallacy in the challenge to the validity of the 14th and 16th Amendments is itself evident when one takes into consideration the fact that these Rules themselves have been framed under Section 122 A. There is no challenge to Section 122 A in this batch of writ petitions. In the absence of any challenge to the source of these rules, we find no merit in the various contentions advanced in this behalf by the learned Senior Counsel appearing for the petitioners.

18. As noted above, there is no conflict between Sections 29 and 122A since both operate in their own distinct spheres. Although a power is conferred upon a cooperative society to appoint officers and other staff, insofar as posts comprised in the centralised service are concerned, they stand governed exclusively by Section 122 A. The recognition of this power conferred upon the State Government by virtue of Section 122A is starkly evident not just from the language employed by clause (viii) in Section 29 A but also from the proviso appended to Section 31. For all the aforesaid reasons, we do not find any merit in the challenge laid to the 14th and 16th Amendment Rules on the ground of they being ultra vires Section 29A.

19. This then takes us to submission of learned counsel that the 14th and 16th Amendment Rules interfered with the rights of Secretaries to seek absorption and be conferred permanence on the post of Secretary. While ruling upon this contention, we must necessarily bear in mind that none of the petitioners before us stood substantively appointed as Secretaries. They only participated in a screening test and in some cases came to be included, as alleged, in a select panel/list. This on settled principles did not create any vested or indefeasible right in the petitioners. A person working in an officiating capacity or occupying a post in such capacity does not earn or obtain a lien on the said post. Officiation on a post does not create any indelible rights. Selection also does not confer or clothe a person with any vested right or interest. Although the law on this particular aspect is well settled, we may usefully refer to the following decision of the Supreme Court to buttress our conclusions. In *State of M.P. and others v.*

Sanjay Kumar Pathak and others, (2008) 1 AIR 456, it was held as under:

"18. The Tribunal as also the High Court did not call for the documents pertaining to the selection process. No finding of fact has been arrived at that the respondents herein were bound to be selected and consequently appointed. Whether all of them had fared better than the other candidates who had not approached the Tribunal had not been found. As the selection process itself was not complete, there was nothing before the Tribunal as also the High Court to indicate that they had acquired legal right of any kind whatsoever. Even where, it is trite, the names of the persons appeared in the selection list, the same by itself would not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or mala fide. The State, thus, subject to acting bona fide as also complying with the principles laid down in Articles 14 and 16 of the Constitution of India, is entitled to take a decision not to employ any selected even from amongst the Select List. Furthermore, we have noticed hereinbefore, that selections were made in 4 phases. It is not the contention of the respondents that the State Government acted malafide. The dispute, as noticed hereinbefore related to appointment in Phase 3 and Phase 4 only.

21. In *K. Jayamohan v. State of Kerala* [(1997) 5 AIR 170], this court held:

"5. It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right for appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment. Equally, the Public Service Commission/recruitment agency shall prepare waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference."

[See also *Munna Roy v. Union of India and Others*, (2000) 9 AIR 283]

22. In *All India SC & ST Employees Association and Another v. A. Arthur Jeen and Others* [(2001) 6 AIR 380], it was opined:

"10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in *Shankarsan Dash v. Union of India*. Para 7 of the said judgment reads thus :

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not

acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*, *Neelima Shangla v. State of Haryana* or *Jatendra Kumar v. State of Punjab*."

23. The principles laid down in the aforementioned cases have been upheld by this Court in *Food Corporation of India and Others v. Bhanu Lodh and Others* [(2005) 3 AIR 618] stating:

"14. Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review"

24. In *Pitta Naveen Kumar and Others v. Raja Narasaiah Zangiti and Others* (2006) 10 AIR 261], this Court observed :

"32. The legal position obtaining in this behalf is not in dispute. A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise."

In a situation of this nature, no appointment could be made by the State in absence of the Select List. The State could not substitute itself for the Selection Committee."

20. We have already noticed that the 2012 Regulations have already been repealed. The notification repealing the 2012 Regulations did not save the functioning of officiating Secretaries. Their officiation also cannot be said to be saved by the provisions of the General Clauses Act. This plainly on account of the fact that the said Act itself protects upon repeal only such rights which may be characterised either as "vested" or "indefeasible". The concept of a "vested right" has been eloquently explained and reiterated by the Supreme Court in *P. Suseela v. University Grants Commission*, (2015) 8 AIR 129 as under:



"14. The other interesting argument made is that such regulations should not be given retrospective effect so as to prejudicially affect the interests of any person to whom such regulation may be applicable. In order to appreciate this contention, it is necessary to distinguish between an existing right and a vested right. This distinction was made with great felicity in *Trimbak Damodhar Rajpurkar v. Assaram Hiranman Patil*, 1962 Suppl. 1 SCR 700. In that case a question arose as to whether an amendment made to Section 5 of the Bombay Tenancy and Agricultural Lands Amendment Act could be said to be retrospective because its operation took within its sweep existing rights. A bench of five Hon<sup>ble</sup> Judges of this Court held that Section 5 had no retrospective operation.

15. This Court held: (*Trimbak* case [AIR 1966 SC 1758: 1962 Suppl. (1) SCR 700], AIR PP. 176061, PARAS 810: SCR PP. 70709)

"Besides, it is necessary to bear in mind that the right of the appellant to eject the respondents would arise only on the termination of the tenancy, and in the present case it would have been available to him on March 31, 1953 if the statutory provision had not in the meanwhile extended the life of the tenancy. It is true that the appellant gave notice to the respondents on March 11, 1952 as he was then no doubt entitled to do; but his right as a landlord to obtain possession did not accrue merely on the giving of the notice, it accrued in his favour on the date when the lease expired. It is only after the period specified in the notice is over and the tenancy has in fact expired that the landlord gets a right to eject the tenant and obtain possession of the land. Considered from this point of view, before the right accrued to the appellant to eject the respondents amending Act 33 of 1952 stepped in and deprived him of that right by requiring him to comply with the statutory requirement as to a valid notice which has to be given for ejecting tenants.

9. In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. As observed by Buckley, L.J. in *West v. Gwynne* [ (1911) 2 Ch 1 at pp 11, 12] retrospective operation is one matter and interference with existing rights is another.

"?.If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law."

These observations were made in dealing with the question as to the retrospective construction of Section 3 of the Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13). In substance Section 3 provided that in all leases

containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent. It was held that the provisions of the said section applied to all leases whether executed before or after the commencement of the Act; and, according to Buckley, L.J., this construction did not make the Act retrospective in operation; it merely affected in future existing rights under all leases whether executed before or after the date of the Act. The position in regard to the operation of Section 5(1) of the amending Act with which we are concerned appears to us to be substantially similar.

10. A similar question had been raised for the decision of this Court in *Jivabhai Purshottam v. Chhagan Karson* [AIR 1961 SC 1491] in regard to the retrospective operation of Section 34(2)(a) of the said amending Act 33 of 1952 and this Court has approved of the decision of the Full Bench of the Bombay High Court on that point in *Durlabbha Fakirbhai v. Jhaverbhai Bhikabhai* [(1955 AIR OnLine Bom 183: (1956) 58 BOM LR 85]. It was held in *Durlabbhai* case that the relevant provision of the amending Act would apply to all proceedings where the period of notice had expired after the amending Act had come into force and that the effect of the amending Act was no more than this that it imposed a new and additional limitation on the right of the landlord to obtain possession from his tenant. It was observed in that judgment that

"4....A notice under Section 34(1) is merely a declaration to the tenant of the intention of the landlord to terminate the tenancy; but it is always open to the landlord not to carry out his intention. Therefore, for the application of the restriction under subsection 2(a) on the right of the landlord to terminate the tenancy, the crucial date is not the date of notice but the date on which the right to terminate matures; that is the date on which the tenancy stands terminated.

16. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail."

21. More importantly and as has been rightly urged by the learned counsel appearing for the respondents, the petitioners continue to enjoy the right of being considered for appointment on the post of Secretary. Both the 14th as well as 16th Amendments do not take away this right of consideration. In fact they introduce provisions for direct recruitment from amongst existing officers and staff of cooperative societies.

22. For all the aforesaid reasons, we find no merit in these writ petitions. The challenge to the validity of the 14th and 16th Amendment Rules is hereby negated. All interim orders operating upon these petitions shall stand discharged.