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**(2010) 08 MP CK 0099**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 2099 of 2009**

R.R. Nihare and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision : 20-08-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 30  
Madhya Pradesh Co-operative Societies Act, 1960 — Section 55  
Madhya Pradesh Lok Sewa (Anusuchit Jatiyon Anusuchit Jan Jatiyon Aur Any Pichhde Vargon Ke Liye Arakshan) Adhiniyam, 1994 — Section 2  
Madhya Pradesh Rajya Sahakari Bank Employees (Terms of Employment and Working Conditions) Rules, 1976 — Rule 15

**Citation : (2011) ILR (MP) 111**

**Hon'ble Judges : Sanjay Yadav, J; Rajendra Menon, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## Judgement

Sanjay Yadav, J.—This order shall lead to final disposal of W.P. No. 2099/2009(S) and W.P. No. 10017/2009.

2. The issue which crops up for consideration in both these writ petitions being similar, therefore were heard analogously and are decided by this common order.

3. In W.P. No. 2099/2009(S) the Petitioner seeks writ of mandamus directing the Respondents to grant the benefit of reservation in the matter of promotion in accordance with law and for writ of prohibition restraining the Respondents from taking any adverse action against the Petitioner.

4. In W.P. No. 10017/2009(s) the challenge is to respective orders passed on 26.5.2009; whereby the Respondents cancelled with immediate effect the orders dated 14.7.1998 and 11.12.2001 consequent whereof the Petitioners, who were respectively promoted as Divisional Accountant, Grade II, in Scale of Rs. 4600-160-5560-190-6510-220-7610-250-8110 and as Inspection Officer Grade III, in scale of Rs. 6000-225-7800-250-9300 were reverted to the substantive

post of Accountant.

5. Facts briefly are that, the Petitioners are employees of the Madhya Pradesh Rajya Sahakari Bank, a body Corporate constituted under Madhya Pradesh Co-operative Societies Act, 1960 (hereinafter referred to as Act of 1960),

6. Service conditions of the Petitioners are governed by the Rules, viz, M.P. Rajya Sahakari Bank Maryadit Employees (Terms of Employment and Working Conditions) Rules 1976 (hereinafter referred as Rules of 1976). These Rules of 1976 are framed by Registrar, Co-operative Societies in exercise of the powers conferred by Section 55 of the Act of 1960.

7. In the year 1997, Registrar Cooperative Societies on strength of the provisions in M.P. Lok Sewa (Anusuchit Jatiyon, Anusuchit Janjatiyon Aur Any a Picchade Vargon Ke Liye Arakshan) Adhiniyam, 1994 brought amendment in the Rules of 1976 by order dated 6.3.1997; whereby Rule 15(b)(2) in Chapter VI of the Rules of 1976 was amended by inserting following provisions:

The staff Sub-Committee shall decide the percentage of employee to be necessarily promoted from Scheduled Tribes and Scheduled Castes provided that a minimum percentage of the posts as may be ordered by the State Government from time to time shall be reserved for the candidates of Scheduled Tribes and Scheduled Castes.

8. Constitutional validity of aforesaid amendment was questioned in W.P. No. 1415/1997 Anand Beohar and others v. State of M.P and Ors. The said writ petition was decided on 11.3.2003; whereby, the order dated 6.3.1997 causing amendment in Rule 15(b)(2) of the Rules, 1976 was declared ultra vires.

9. The judgment in Anand Beohar (supra) was assailed before the Supreme Court in SLP (Civil (CC) 6768/2003: Civil Appeal No. 2661/2004. Wherein, by interim order dated 12.9.2003 the operation of order date 11.3.2003 was stayed. However, later on, the said SLP was dismissed on merit on 22.2.2007.

10. That during pendency of writ petition i.e., W.P. No. 1415/1997 two events took place, firstly, by order dated 29.9.1997 by way of interim relief it was directed that any promotion made during the pendency of the petition shall be subject to decision of petition. Consequent whereof, order dated 14.7.1998 was passed by the Respondent employer promoting the Petitioners as Divisional Accountant (Grade II) and thereafter by order dated 11.12.2001, the Petitioners were further promoted as Inspection Officer (Grade III).

11. Secondly, the legislature substituted Clause (b) Section 2 of Adhiniyam 1994 by M.P. Act 10 of 2002 w.e.f. 13.5.2002; whereby expression "establishment" took new definition as follows:

(b) "Establishment means any office of the State Government of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a Company, Corporation or a Cooperative Society in

which not less than fifty one percent of the paid up share capital is held by the State Government or the institutions receiving grant-in-aid or any cash grant from the State Government and includes a work charge or contingency paid establishments and such establishments in which casual appointments are made but does not include the establishments covered under Article 30 of the Constitution.

12. Prior the said amendment the expressions "establishment" was defined as"

(b) "Establishment " means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a Company, Corporation or a Cooperative Society in which not less than fifty one percent of the paid up share capital is held by the State Government and includes a work charged or contingency paid establishment.

13. Though the definition of "establishment" was substituted by M.P. Act 10 of 2002 w.e.f. 13.5.2002, it was prospective in its application and not retrospective and therefore, had no bearing on the issue regarding validity of the amendment in Rule 15(b)(2) of the Rules of 1976, which was tested on the anvil of the provision as it existed on 6.3.1997 in Anand Beohar and others (supra).

14. Though it is strenuously urged on behalf of the Petitioners that, Division Bench in the case of Anand Beohar (Supra) while deciding it on 11.3.2003, ignored the amendment brought into effect in the definition of the expression "establishment" from 13.5.2002 and thus committed an error and therefore the judgment be treated as per in curiam.

15. Given facts of present case however does not lend any support to the submissions of the Petitioner.

16. "Per in curiam", as has been observed in plethora of cases "are those decisions given in ignorance or forget fulness of some inconsistent statutory provision or of some authority binding on the court concerned so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong" (to note few please see A.R. Antulay Vs. R.S. Nayak and Another, paragraph 42; State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, paragraph 40; Government of Andhra Pradesh and Another Vs. B. Satyanarayana Rao (Dead) by Lrs. and Others, paragraph 8).

17. In Anand Beohar, the Court was called upon to examine the validity of the order dated 6.3.1997; whereby an amendment in Rule 15(b)(2) of the Rules of 1976 was effected, on the basis of the provisions of the Adhiniyam, 1994 as it exist when the said amendment was carried out. The definition of expression "establishment" which the Petitioner now press in service came into existence w.e.f. 13.5.2002 with no validating Act to protect the previous action which apparently was de hors the provisions then and rightly so. In other words with

amendment in Clause (b) of Section 2 of the Act of 1994, the legislature did not make it effective from a retrospective date nor did it protect the past act; therefore, the validity of the order dated 6.3.1997 was examined on the basis of unamended provision and subsequent amendment had no bearing thereupon. Thus when none of the orders viz, order dated 6.3.1997 and promotion orders dated 14.7.1998 and 11.12.2001 which admittedly were prior to the amended definition of the expression "establishment" (which was w.e.f. 13.5.2002) and were not protected, by subsequent amendment we are of the considered opinion that judgment in Alok Beohar cannot be termed as per in curiam. Therefore, the contention of the Petitioners that the said judgment deserves to be ignored is not sustainable and fails.

18. There is yet another way of looking at the issue. As observed, for a decision, to be per in curiam, it must first be established that the same is given in ignorance, forgetfulness or carelessness of some inconsistent statutory provisions or of some authority binding on the court. In Anand Beohar (Supra) the court was concerned with the order dated 6.3.1997 which ushered the amendment in Rule 15(b)(2) of the Rules of 1976 by introducing reservation by invoking provision of Adhiniyam, 1994. The validity of the amendment was required to and was in fact tested on the anvil of the definition of the expression "establishment" as it exist at the relevant point of time. The amendment of said expression w.e.f. 13.5.2002 was not pressed in service and rightly so because the same was not effected from a retrospective date. Moreover, the cause of action having accrued prior to amendment, we do not perceive that a subsequent amendment when not made effective from a retrospective date was at all relevant in Anand Beohar (Supra).

19. The Petitioners having thus failed to establish that the judgment in Anand Beohar (supra) being per incuriam and that their promotion which were by order dated 14.7.1998 and 11.12.2001 were subject to the decision in Anand Beohar (supra), are rightly been, in our considered opinion, set at naught by impugned order dated 26.5.2009.

20. However, we make it clear that since in the case of Anand Beohar (Supra) was confined to preamendment stage i.e. prior to 13.05.2002 and the orders which are subject matter of the impugned order dated 26.5.2009 were also pertaining to preamendment stage, the Registrar Cooperative Societies is at liberty to invoke his powers u/s 55 of the Act of 1960 for the post-amendment period.

21. With these observation, the petitions are dismissed being sans substance. However no costs.