
(1992) 01 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil W.P. No's. 4088 of 1989 and 785 of 1990

Sikar Kendriya Sahkari Bank Ltd.

APPELLANT

Vs

Prescribed Authority and Others

RESPONDENT

Date of Decision : 21-01-1992

Acts Referred:

Rajasthan Co-operative Societies Rules, 1966 — Rule 41

Rajasthan Shops and Commercial Establishments Act, 1958 — Section 2(3), 28A, 3(2)

Citation : (1993) 2 LLJ 961

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : B.K. Pathak, for the Appellant; Praveen Balwada and Santosh Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—In both these writ petitions a common question of law about the applicability of the Rajasthan Shops and Commercial Establishment Act, 1958 to the employees of the petitioner Bank, is involved and, therefore, I have considered it proper to dispose them of by a common order.

2. Briefly stated the facts of Writ Petition No. 4088/89 are that the non-petitioner No. 2 filed an application before the Prescribed Authority, Rajasthan Shops and Commercial Establishments Act, 1958 for Sikar District on March 30, 1989 alleging that he was in the employment of the Sikar Central Co-operative Bank Ltd. (hereinafter referred to as the "Petitioner Bank"), w.e.f. January 1, 1979. He had remained posted as Manager and there was no complaint against his work. He was removed from service on March 8, 1989 without any notice and without payment of salary in lieu of notice. No enquiry was held against him before termination of service and no opportunity of hearing was afforded to him. He claimed that the provisions of "1958 Act" were applicable and, therefore, he was entitled to relief against the respondent Bank by way of reinstatement and consequential benefits. In his application non-petitioner No. 2 has stated that his

appointment was made by the respondent. Head Office of the respondent Bank was at Sikar and, therefore, the Prescribed Authority at Sikar had jurisdiction to decide the application u/s 28A of the 1958 Act. The petitioner filed a reply to this application and stated that he had remained posted in various Societies and he had not discharged his duties properly, He was given notices dated, February 27, 1987, March 21, 1987 and January 1, 1988. He was posted in the Head Office at Sikar, but, he did not give charge of the record despite notices dated, February 22, 1989 and February 27, 1989 and, therefore, by order dated March 7, 1989, he was removed from service. According to the petitioner the non-petitioner No. 2 had embezzled a sum of Rs. 1,42,389/- and a First Information Report was filed against him. He was placed under suspension and was removed from service in accordance with law. The petitioner claimed that the Prescribed Authority had no jurisdiction to hear the case of the non-petitioner No. 2 and non-petitioner No. 2 should have filed appeal before the Registrar, Co-operative Societies. After framing the issues the Prescribed Authority recorded evidence of the parties. According to the petitioner some of the documents which were filed by the parties were not taken on record. After hearing the parties, on June 30, 1989 the Prescribed Authority passed the order, which has been impugned in this writ petition, and directed reinstatement of non-petitioner No. 2 in service with consequential benefits.

3. The petitioner has challenged the order dated June 30, 1989 on the ground that the non-petitioner No. 2 was not an employee of the petitioner Bank. He was an employee of Rajasthan Credit Institution Cadre Authority Ltd., Jaipur and no claim of the non-petitioner No. 2 could have been entertained without the Cadre Authority being impleaded as a party. Moreover, under the provisions of Rule 41 of the Rajasthan Co-operative Societies Rules, 1966, the Registrar, Co-operative Societies, had framed Preliminary Agricultural Co-operative Credit Societies Managers Service Rules, 1977. These rules are statutory rules and, therefore, any dispute relating to the service conditions of the employees who are governed by the 1977 Rules should have been decided under the provisions of the Rules and no application could have been entertained by the Prescribed Authority. Although, in the writ petition the petitioner has made reference to number of documents in order to show that action had been taken against non-petitioner No. 2 in accordance with the provisions of 1977 Rules, it is not necessary to refer to these details in view of the fact that during the course of hearing only the question relating to jurisdiction of the Prescribed Authority was argued by the learned counsel for the petitioner.

4. The non-petitioner No. 2 has contested the writ petition by asserting that the Labour Department of the Government of Rajasthan, vide its notification dated, August 25, 1988, had exempted the nationalised Banks, State Bank of India, non-nationalised Banks and Regional Rural Banks from the application of the provisions of "1958 Act" and the Central Co-operative Banks were not so exempted. The Central Co-operative Banks were exempted from the application of this Act by virtue of the notification dated April 12, 1990, whereby earlier

notification dated August 25, 1988 has been amended. Therefore, the application filed by the non-petitioner No. 2 before non petitioner No. 1 in the year 1989 was very much maintainable. According to the non-petitioner No. 2, in the face of these notifications, the Prescribed Authority must be held to be possessed with the jurisdiction to decide the dispute raised by the petitioner.

5. In Writ Petition No. 785 of 1990, the case set out by the petitioner is that non-petitioner No. 2 has filed application before the Prescribed Authority u/s 28A of the 1958 Act on October 17, 1987, challenging the action of the Management of the Bank in removing him from service with retrospective effect from December 20, 1986 by an order dated, September 23, 1987. The action had been taken without any inquiry and in violation of the principles of natural justice. The petitioner contested the claim of the non-petitioner No. 2 and asserted that the action had been taken against the non-petitioner No. 2, in accordance with the provisions of Rules and principles of natural justice. After framing the issues the Prescribed Authority recorded the evidence and passed the order dated August 31, 1988 (Annex. 1) directing reinstatement of Non-petitioner No. 2. The grounds of challenge raised in this writ petition are more or less similar to those set out in Writ Petition No. 4088/89.

6. The reply filed by the respondent No. 1 in this writ petition is identical to the reply filed in Writ Petition No. 4088/89. The only additional plea which has been raised by the learned counsel for the non-petitioner No. 2 is that by virtue of 1977 Rules, the special provisions contained in 1958 Act are not ousted. The further case of the non-petitioner No. 2 is that no objection was raised by the petitioner before the Prescribed Authority about its jurisdiction and it is for the first time that in the writ petition the petitioner has chosen to challenge the order by asserting that the Prescribed Authority had no jurisdiction to decide the application of the non- petitioner No. 2, because, the provisions of 1958 Act are not applicable. Non-petitioner No. 2 has also asserted that the writ petition has been filed after a period of two years of the passing of the order by the Prescribed Authority and, on the ground of unexplained delay the writ petition is liable to be dismissed.

7. Shri B.K. Pathak, learned counsel for the petitioners, has referred to the several provisions of 1977 rules and argued that these rules have the force of law and, therefore, the provisions of "1958 Act" are displaced by virtue of 1977 Rules. 1977 Rules constitute a special law qua employees of the Co-operative Banks and a general law like Rajasthan Shops and Commercial Establishment Act, 1958 cannot be held applicable to such employees. Shri Pathak placed reliance on the decision of this Court in B.N.K. Sankari Wholesale Upbhokta Bhandar Ltd. v. Prescribed Authority under the Rajasthan Shops and Commercial Establishment Act, 1986 Rajasthan LT 302.

8. S/Shri Praveen Balwada and S.K. Kaushik, learned counsel for the non-petitioner No. 2, on the other hand, argued that no objection about the jurisdiction of the authority was raised on behalf of the petitioner while

contesting the applications filed by the workmen. Therefore, in this writ petition, the petitioner is not entitled to raise objection for the first time. Learned counsel for the non-petitioner No. 2 argued that an objection of this nature involves an investigation into a question of fact and, this Court while exercising extraordinary jurisdiction under Articles 226 and 227 should not allow raising of such an objection for the first time before this Court. The second submission of the learned counsel for the non-petitioner No. 2 is that the notifications dated August 25, 1988 and February 14, 1990 clearly establish that till 1990 provisions of "1958 Act" were applicable to the Co-operative Banks. Therefore, there is no justification in the argument of the learned counsel for the petitioner that the Prescribed Authority did not have jurisdiction to entertain the application filed by the non-petitioners. Lastly, they argued that the provisions of 1958 Act are special provisions vis-a-vis Rules of 1977 and, therefore, 1958 Act will prevail.

9. 1977 Rules have been enacted by the Registrar, Co-operative Societies, Rajasthan, in exercise of its powers under Rule 41 of the Rajasthan Co-operative Societies Rules, 1966. The Rajasthan Co-operative Societies Rules, 1966 have been framed by the State Government in exercise of its power u/s 148 of the Rajasthan Co-operative Societies Act, 1965. Since the Rules of 1966 have been framed by the State Government in exercise of its power conferred by the Rajasthan Co-operative Societies Act, they are in the nature of delegated legislation and the Rules of 1977 framed by the Registrar in exercise of the powers under the delegated legislation are in the nature of sub-delegated legislation. The Rules of 1977 have been framed for the purpose of recruitment, appointment and service conditions of the Managers of the Agriculture Credit Co-operative Societies. Rule 2 contains the definitions, Rule 3 specifies the pay scales. Rule-5 provides that the salary will be paid by the Cadre Authority through the Central Co-operative Bank of the District from the State Managerial Salary Fund. Rule 6 provides for the constitution of fund. Rule 7 specifies the academic qualifications and other eligibility conditions. Rule 8 contains provision for selection and appointments; as per Rule 8(5) selection is to be made by a Committee consisting of the departmental officers of the region of the concerned district, Chief Manager of the Central Co-operative Bank of the district and officer of the gazetted rank representing the Collector. The appointment is to be made by the Chief Manager of the Central Co-operative Bank on behalf of the cadre authority and confirmation is to be done by the Cadre Authority on the recommendations of the Chief Manager of the Bank. As per Rule 10, the seniority is to be determined on the basis of the merit and it is a District-wise seniority. The service record is to be kept by the Chief Manager of the Bank. Entries in the Annual Confidential Reports are required to be made by the Controlling Officer and Executive Officer of the Bank is designated as Reviewing Officer. The transfer within the district can be made by the Executive Officer. Transfer out side the district can be made by the Cadre Authority. Rule 17 relates to the disciplinary proceedings. Penalties like warning, censure and admonition, withholding of one or more annual increments without cumulative effect and with cumulative effect

can be imposed by the Executive Officer and Manager. Penalty of forfeiture of past services, removal from service or dismissal can be imposed by the Chief Manager of the Bank. Appeal in the former case lies to the Chief Manager and in the latter case to the Cadre Authority. The duties and responsibilities of the Manager have been specified in Rule 19. It is, thus, clear that although the appointment of Manager is made on behalf of the Cadre Authority and payment of salary is made from the fund created separately for this purpose, the Managers work under the control of the Bank. The service record of the Managers is required to be prepared under the rules by the Bank. The Annual Confidential Reports are required to be filled by the authorities of the Bank and disciplinary action can be initiated and punishment imposed by the authorities of the Bank. In view of these provisions in the rules it can certainly be said that the Manager is employed in connection with the work of the Bank and the Bank has control over the functioning of the Manager. The Rajasthan Shops and Commercial Establishment Act, 1958, defines the terms "commercial establishment", "employee" and the "employer" under Sections 2(3), 2(5) and 2(6). Section 3(1) exempts certain establishments from the application of 1958 Act and S.3(2) empowers the State Government to exempt any establishment or class of establishments or person or class of persons from all or any of the provisions of the Act. These provisions can appropriately be reproduced below for the purpose of proper appreciation of the controversy :-

"Section 2(3) "Commercial Establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, a hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement and includes every such establishment as a State Government may, by notification in the official Gazette, declare to be a commercial establishment for the purpose of this Act."

"2(5) "employee" means a person wholly or principally employed in, or in connection with any establishment and includes an apprentice, but does not include a member of the employer's family; it also includes any clerical or other staff or a factory or industrial establishment who falls outside the purview of the Factories Act, 1948 (Central Act LXIII of 1948)."

"2(6) "employer" means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes the manager, agent or other person acting in the general management or control of an establishment."

3. Exemptions-

(1) Nothing in this Act shall apply to

(a) offices of or under the Central or any State Government or local authorities;

(b) offices of the Reserve Bank of India.

(c) establishments for the treatment of the care of the infirm or the mentally

unfit;

(d) persons whose work is inherently intermittent such as travellers or care-takers;

(e) fairs or bazars for the sale of work for charitable or other purposes from which no private profit is derived; and

(f) libraries at which the business of lending books or periodicals is not carried on for purpose of gain other than that of making profit for charitable, philanthropic, religious or educational objects.

(2) The State Government may, by notification in the Official Gazette, exempt either permanently or for any specified period any establishment or class of establishments or person or class of persons, to which or to whom this Act applies, from all or any of its provisions, subject to such conditions as the State Government may deem fit."

A bare reading of the above provisions makes it clear that the petitioner Bank falls within the term of "commercial establishment" and since the non-petitioner No. 2 is employed in the Bank he is covered by the definition of the "employee". The State Government in exercise of its powers u/s 3(2) granted exemption to certain commercial banks by notification dated, 5 August 25, 1988. That notification did not include the Central Co-operative Banks. Exemption was extended to the Central Co-operative Banks, their branches and Apex Co-operative Bank by notification dated April 12, 1990.¹⁰ Clearly, therefore, on the date of filing of the applications by the two non-petitioners and on the date of orders passed by the Prescribed Authority in the two cases, the benefit of exemption from the application of the provisions of 15 1958 Act was not available to the petitioner.

10. The next question which I may now examine is as to whether the provisions of 1958 Act cannot be applied in the face of the provisions contained in 1977 Rules. The argument of the learned counsel for the petitioners is that the Rajasthan Co-operative Societies Act, 1965 and the Rules framed under it are special law, as against them Rajasthan Shops and Commercial 25 Establishment Act, 1958, is a general law and, therefore, the provisions of 1965 Act and the Rules framed thereunder will prevail.

11. The legal position on this question was examined by the apex Court in *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, In that case, the Supreme Court observed as under (p. 545).

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have

effect."

12. The same question was again examined in *U.P. State Electricity Board, v. H. S. Jain*. In that case, the question which arose was as to whether the standing orders under the Industrial Employment (Standing Orders) Act, 1946, prevail as against regulations regarding the age of superannuation made by the Electricity Board under the specific power vested by Section 79(c) of the Electricity (Supply) Act, 1948, which was contended to be a special law as against the Industrial Employment (Standing Orders) Act. Their Lordships of the Supreme Court considered the question and I then observed as under (p. 404):

"The maxim *"Generalia specialibus non-derogant"* is quite well known. The rule flowing from the maximum has been explained in *Mary Seward v. The Owner of the "Vera Cruza"* 10 (1884) ACC 59 at p. 68 as follows:

"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

13. After referring to the earlier decision in *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P.* (supra) their Lordships further observed; (p. 405):

"We have already shown that the Industrial Employment (Standing Orders) Act is a special Act, dealing with a specific subject, namely, with conditions of service, enumerated in the Schedule, of workmen in industrial establishment. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hard won and precious rights of workmen, and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies."

14. In *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, the problem that arose before the Supreme Court related to the alleged conflict between the provisions of the Life Insurance Corporation Act, 1956 and the Industrial Disputes Act, 1947. The question was as to whether the fresh settlement arrived at between the employer and the employee was in contravention of the provisions of Sections 11 and 49 of the Life Insurance Corporation Act and whether it was saved by the provisions of the Industrial Disputes Act of 1947. The argument which was advanced on behalf of the Life

Insurance Corporation before the High Court and the Supreme Court was that the Life Insurance Corporation Act contained provisions for recruitment and other service conditions of the employees of the Life Insurance Corporation and, therefore, these provisions constituted a special law as against the general provisions contained in the Industrial Disputes Act, 1947, which applies to all workmen. The argument was repelled by the High Court. The Supreme Court examined the scheme of the Life Insurance Corporation Act and the Industrial Disputes Act and observed that, so far as the nationalisation of insurance business is concerned, the L.I.C. Act is a special legislation, but equally indubitably is the inference, from a bare perusal of the subject, scheme and sections and understanding of the anatomy of the Act, that it has nothing to do with the particular problem of disputes between employer and employees, or investigation and adjudication of such disputes. The court further observed (pp. 23-25):

"In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity not absolute-so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infra- structure for investigation into solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission-the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID mechanism was resorted to."

What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows in the wake of the study I have made, is that vis-a-vis "industrial disputes" at the termination of the settlement as between the

workmen and the Corporation the ID Act is a special legislation and the LIC Act is a general legislation.

Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the *generalia maxim* as expounded by English text books and decision leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law."

"What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision not the broad rubric nor any rule of thumb. The peaceful co-existence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity, gives the flexible solution. It is difficult for me to think that when the entire industrial field, even covering municipalities, universities, research councils and the like, is regulated in the critical area of industrial disputes by the ID Act, Parliament would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the Corporation."

15. In the light of the above principles laid down by the Supreme Court in the three cases, I may now examine the scope and purpose of the Co-operative Societies Act. The Rajasthan Cooperative Societies Act, 1965 is an Act to consolidate and amend law relating to the Co-operative Societies in the State of Rajasthan. This Act deals with the registration of the Cooperative Societies (Chapter-II) Members of Co-operative Societies and their rights and liabilities (Chapter-III), Management of Co-operative Societies (Chapter-IV), Privileges of Co-operative Societies (Chapter-V), State Aid (Chapter-VI) Properties & Funds of Co-operative Societies (Chapter-VII), Audit Inquiry, Inspection and Surcharge (Chapter-VIII), Settlement of Disputes (Chapter- IX), Winding up and dissolution of Co-operative Societies (Chapter-X), Land Development Banks (Chapter XI), Execution of Awards, Decrees, Orders and Decisions (Chapter-XIII), Appeals, Revision and Review (Chapter-XIII), Offences and penalties (Chapter-XIV), Miscellaneous (Chapter-XV).

16. Section 148 of 1965 Act empowers the State Government to frame rules in order to carry out the purpose of the Act. Section 148(2) refers subject matter of the rules that may be framed by the State Government. This sub-section contains (1xxviii) clauses and these sub-clauses deal with the different facets of the constitution of the Co-operative Societies; its members elections, removal of members and Chairman, holding of meeting, funds of the Co-operative Societies, grant of loan, appointment of Ad-ministrator, investments of funds, custody of property, disposal of property, holding of inquiries in respect of irregularities etc. Clause (xxx) deals with the qualifications of the Manager, Secretary, Accountant or any other Officer or an employee of the society and the conditions of their

service including discipline and control. In exercise of the powers conferred u/s 148 of 1965 Act, the State Government has framed the Rules what are known as Rajasthan Co-operative Societies Rules, 1966. Chapter-I of these rules contains preliminary provisions, Chapter-II contains rules regarding registration of Co-operative Societies, Chapter-III contains the provisions regarding members of Co-operative Societies, their rights and liabilities. Chapter-IV contains rules regarding management of Societies. Chapter-V contains privileges of Cooperative Societies, Chapter-VI contains provisions regarding properties and funds of Co-operative Societies. Chapter-VII contains provision for audit, inquiry, inspection and surcharge. Chapter-VIII deals with settlement of disputes. Chapter-IX deals with winding up and dissolution of Societies. Chapter-X deals with Land Development Banks, Chapter-XI deals with execution of awards, decrees, orders and decisions. Chapter-XII deals with appeals, revision and review. Rule 41 which finds place in Chapter IV empowers the Registrar to specify conditions of service of employees of the Societies.

17. A survey of all these provisions unmistakably show that the main purpose of the Rajasthan Co-operative Societies Act, 1965 and Rajasthan Co-operative Societies Rules, 1966 is to deal with the establishment of Co-operative Societies, including Banks, their membership, elections, management and the various activities relating to cooperative movement. Appointment of Officers and servants of Co-operative Societies is necessary for the purpose of 1 giving effect to the various provisions contained in 1965 Act and the rules framed thereunder and for that purpose provision has been made in the form of Rule 41 read with Section 148(2xxx).

18. The Rajasthan Shops and Commercial Establishments Act has been enacted for the purpose of regulation of conditions of work and employment in shops and commercial establishment. Chapter-I of this Act contains definition clauses and exemptions, Chapter-II deals with the registration of establishment, Chapter-III deals with the working hours etc. Chapter-IV deals with leave; By virtue of Chapter-V the provisions of Payment of Wages Act has been made applicable. Chapter-VI contains certain restrictive provisions. Chapter VI-A provides that the employer must give a notice of dismissal or discharge to the employee. This provision puts a fetter on the right of the employer to dismiss or discharge an employee who has been in continuous employment for a period of six months, without giving one month's notice or wages in lieu thereof and without a reasonable cause. By virtue of proviso to Section 28A, notice; shall not be necessary where the services of such employee are dispensed with for such misconduct as may be defined in the rules made by the State Government in this behalf, and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner. Section 28(2) provides that a dismissed or discharged employee can make a complaint in writing in the prescribed manner to the Prescribed Authority. Such Prescribed Authority is empowered to pass an appropriate order after giving notice to the employer and after hearing the parties. The Prescribed Authority can order reinstatement of the employee or can

award monetary compensation or both. By virtue of Sub-section (5) of Section 28A, the order of the authority has been treated as final. Rule-24-B, deals with the procedure which is required to be followed in deciding the complaint filed by an employee u/s 28A (2) of the Act.

19. From the perusal of the provisions contained in the Rajasthan Co-operative Societies Act, 1965 and the rules framed thereunder and the Rajasthan Shops and Commercial Establishments Act, 1958, it is clear that the Rajasthan Co-operative Societies Act, 1965 contains various provisions regarding the Co-operative Societies and provisions regarding recruitment and conditions of service of the employees who are required to be appointed for the purpose of giving effect to the various provisions of the Act and the Rules are incidental. Rajasthan Shops and Commercial Establishment Act specifically deals with the various conditions of employment of the employees as defined in Section 2(5) who are employed under the employer as defined in 2(6), in a Shop and Commercial establishment as defined in Section 2(17) or 2(3) of the Act of 1958. Section 3 of the 1958 Act specifies certain establishments which are excluded from the applicability of 1958 Act. By virtue of Section 3(2), the State Government is empowered to exempt any establishment or class of establishments or person or class of persons to which or to whom the Act applies. The provisions contained in the Rajasthan Shops and Commercial Establishment Act, 1958 are clearly special provisions dealing with the employees qua the general provisions contained in Rajasthan Co-operative Societies Act, 1965 and the rules framed thereunder. There is no provision in the Rajasthan Co-operative Societies Act, 1965 like the one contained in Section 28-A of 1958 Act. It is important to notice that 1965 Act is a later piece of legislation and the Legislators must be deemed to have been aware of the provisions contained in 1958 Act. In the context of definitions of the terms, "commercial establishment", "employee", "employer" etc. it must be also deemed to have been aware of the power of the State Government u/s 3(2). If the Legislature intended to exclude the application of Rajasthan Shops and Commercial Establishment Act, 1958 on Co-operative Societies as defined in 1965 Act, a specific provision to that effect would have been made. The fact that the State Government has exercised its power u/s 3(2) by issuing the notifications referred to hereinbefore, further strengthens the conclusion that the provisions of Rajasthan Shops and Commercial Establishment Act, 1958 are applicable to the Co-operative Banks which fall within the scope of the terms "commercial establishment" qua the provisions of the Co-operative Societies Act, 1965. Thus, in my opinion, the provisions of 1958 Act must be treated as special provisions qua 1965 Act and the argument of the learned counsel for the petitioners that 1958 Act is not applicable in the face of the provisions contained in 1977 Rules, cannot be accepted.

20. The decision of this Court in *B.N.K. Sahkari Wholesale Upphokta Bhandar v. Prescribed Authority* (supra), to which reference has been made by Shri B.K. Pathak, learned counsel for the petitioners, has no; relevance to the controversy

involved in these writ petitions. That was a case in which an employee who had been retired from service on attaining the age of superannuation had challenged the retirement on the ground that there was a non-compliance of Section 28A of 1958 Act. S.C. Agrawal, J. (as he then was), accepted the contention advanced on behalf of the petitioner that Section 28A of 1958 Act does not apply to the cases of retirement. He held that notice is required to be given only in case of dismissal or discharge where the service is dispensed with for such misconduct as may be defined in the rules made by the State Government in that behalf and which is supported by satisfactory evidence recorded in an enquiry. In doing so, the learned Judge placed reliance on the decision of Orissa High Court in *Saroj Kumar Ghosh Vs. Chairman, Orissa State Electricity Board*, and the decision of the Supreme Court in *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, What has been held by Agrawal, J. in that case was in the context of challenge made to an order of superannuation of an employee and not to an order of dismissal or discharge from service. Obviously, therefore, the decision of that case has no bearing to the present cases. Moreover, the question about the applicability of the provisions of Rajasthan Shops and Commercial Establishment Act in the context of the Rajasthan Co-operative Societies Act, 1965 and the rules framed under it, being special provisions did not arise for consideration and no decision has been rendered by Agrawal, J. in the above case on that question.

21. The controversy between the parties can be looked into from yet another angle. Rule 41 of 1966 Rules read with the provisions of 1977 Rules or any other provision of the Rajasthan Co-operative Societies Act can at the best be said to be providing for a remedy to an employee who is dismissed or discharged from service. The provisions relating to discipline contained in 1977 Rules provide for appeal against all types of punishment and an aggrieved employee can file an appeal to the appellate authority. The appellate authority is fully empowered to interfere with the order of punishment. However, the provision relating to appeal by an aggrieved employee does not exclude the applicability of the provisions contained in Section 28A of 1958 Act. The employee has an option to avail either of the remedies. It is, of course, true that the Prescribed Authority under 1958 Act will entertain application of employee only if the conditions specified in Section 28A have not been fulfilled by the employer.

22. In *Poonam Talkies, Dausa v. Presiding Officer*, 1986 Rajasthan LR 1042, the question which arose for consideration before N.M. Kasliwal, J. (as he then was), related to alleged conflict between the provisions of the Industrial Disputes Act, 1947 and Rajasthan Shops and Commercial Establishments Act, 1958. After examining the Constitutional position Kasliwal, J. referred to the decision of the Supreme Court in *M. Karunanidhi Vs. Union of India and Another*, and then held:

"Applying the above test I am clearly of the view that there is no repugnancy in the above two enactments. It cannot be disputed that the Labour Court is competent to decide the question regarding termination of service referred to it

under the provisions of the Industrial Disputes Act. There can be no valid objection if the workmen covered by the Shops Act seek their relief under the Industrial Disputes Act by the mere fact of petitioner being registered under the Shops Act."

23. This decision has been affirmed by the Division Bench of this Court in Special Appeal ; No. 231/86 with the same title. Their Lordships of the Supreme Court have also referred to the decision of Poonam Talkies case, (supra) in National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, In that case the application filed u/s 28A of 1958 Act was dismissed as time barred. Thereafter, the employee moved the Government for making a reference of dispute under the Industrial Disputes Act, 1947. Rejecting the argument of inconsistency between two Acts their Lordships of the Supreme Court held as under (p. 368):

"It has to be borne in mind that Section 2A of the Act was amended to permit individual workman to ask for a reference in the case of individual dispute. This amendment was assented to by the President on December 1, 1965. The Rajasthan Act received the assent of the President on July 14, 1958. On March 8, 1972 Chapter 6A including S.28A was inserted in the Rajasthan Act. Therefore, the material provision of the Rajasthan Act is the subsequent law. Under Article 254(2) of the: Constitution if there was any law by the State which had been reserved for the assent of the President and has received the assent of the President, the State law would prevail in that State even if there is an earlier law by the Parliament on a subject in the concurrent list. It appears that both of these Acts tread the same field and if there was any conflict with each other, then Section 28A of the Rajasthan Act would apply being a later law. We find, however, that there is no conflict. The learned single Judge of the Rajasthan High Court in Poonam Talkies, Dausa v. Presiding Officer, (Labour Court, Jaipur (S.B. Civil Writ Petition No. 1206/85) decided on 9th June 1986 so. That decision has been upheld by the Division Bench of the Rajasthan High Court in the instant appeal relying on the said decision, held that there was no scope for any repugnancy. It appears to us that it cannot be said that these two Acts do not tread the same field. Both these Acts deal with the rights of the workman or employee to get redressal and damages in case of dismissal or discharge, but, there is no repugnancy because, there is no conflict between these two Acts, in pith and substance. There is no inconsistency between these two Acts. These two Acts, in our opinion, are supplemental to each other."

24. In the light of these decisions, I have no hesitation in holding that the workmen/employees were entitled to file application u/s 28A(2) of the Rajasthan Shops and Commercial Establishment Act and the prescribed authority has not erred in deciding the application filed by the two employees.

25. No other point was argued,

26. The net result of the above discussion is that neither of these writ petitions has got any merit and the same are, therefore, dismissed. The petitioners shall

pay costs of Rs. 1,000/- to the non-petitioners No. 2 in each of these writ petitions.