
(2016) 03 BOM CK 0121

In the Bombay High Court

Case No : Writ Petition Nos. 2381, 2390 of 1994, Civil Application No. 1474 of 2007, Writ Petition Nos. 2391, 2523 of 1994 and Civil Application No. 1354 of 2003

The Maharashtra State Co-operative Agricultural and Rural Development Bank Ltd.

APPELLANT

Vs

Gangaram Jairam Jamdar and Others

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 61, Section 62, Section 62 (4), Section 62(4)

Bombay Co-operative Societies Act, 1925 — Section 54, Section 54 (1)

Bombay Industrial Relations Act, 1946 — Section 2(4), Section

Citation : (2016) 3 AIRBomR 351 : (2016) AIRCC 1630 : (2016) MCR 1140

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : A.S. Shelke, Advocate holding for S.K. Shelke, Advocate, for the Appellant; S.S. Chaudhari and A.A. Shelke, Advocates holding for D.N. Suryawanshi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

R.V. Ghuge, J.—1. All these petitions have been admitted by this Court. Considering the nature of the dispute and taking into account that the respondent-employees had given an undertaking before the Co-operative Court, interim relief was not granted in these matters.

2. The petitioner in all these petitions is the State Co-operative Agricultural and Rural Development Bank. The deceased Respondent No. 1 in the first petition and the respondents in the other three petitions are identically placed. Considering the common issues involved in these matters, all these matters have been taken up together for hearing, by consent of the parties.

3. The petitioner is aggrieved by the identical judgment delivered by the Co-operative Court, Nanded dated 07.05.1990 and the judgment delivered by the

Co-operative Appellate Tribunal, Mumbai dated 15.10.1993.

4. Mr. Shelke, learned Counsel for the petitioner-management submits as under:--

"(a) The respondents were working with the petitioner since around 1963.

(b) On 01.01.1975, the petitioner issued initial orders of absorption of the respondents.

(c) On 01.07.1975, the petitioner formulated various categories of employees with their pay scales and it marked Category Nos. 1 to 12 alongwith the pay scales.

(d) Category Nos. 1 to 4 covered the managerial, administrative and personal staff.

(e) Category Nos. 5 and 6 covered supervisory staff.

(f) Category Nos. 7 to 9 covered the clerical staff.

(g) Category Nos. 10 to 12 covered the Ministerial and Technical attendants/staff.

(h) Considering the emergent situation, the petitioner issued temporary promotional orders on 07.04.1978 to all the respondents as a temporary arrangement till the petitioner finalised the seniority list, determined the promotional policy and effected promotions as per the policy.

(i) The respondents were therefore promoted purely on temporary basis on 07.04.1976.

(j) On 26.02.1978, the staff pattern of the Nanded Branch was approved by the Divisional Committee.

(k) On 28.10.1982, the District Loan Committee finalised and approved the seniority list for the Nanded District after inviting objections and after considering them.

(l) On 05.05.1983, the Head Office at Bombay finally approved and published the seniority list of the Nanded Branch. Nobody has challenged the seniority list.

(m) Prior to the above, the Head Office at Bombay determined a promotional policy by issuing the circular dated 15.02.1983 and provided for marked promotions to 75% of the posts and filling up 25% of the posts by nomination.

(n) The Bombay Industrial Relations Act, 1946 (presently known as "The Maharashtra Industrial Relations Act") was made applicable to the petitioner-bank with effect from 15.11.1973 vide notification dated 02.11.1973.

(o) The deceased respondent in the first petition was appointed as a clerk on 30.09.1963 and was temporarily promoted to Category No. 6 on 07.04.1978. Having not been found suitable, he was not placed in Category No. 6 and was

returned to Category No. 7 on 14.10.1983.

(p) The respondent in the second petition joined on 21.09.1959. He was absorbed in Category No. 8 on 01.07.1975 and was temporarily promoted to Category No. 7 on 19.04.1978. Since he was not found suitable, he was not placed in Category No. 7 and was returned to Category No. 8 on 14.10.1983.

(q) The respondent in the third petition joined on 18.07.1966 and was absorbed in Category No. 7 on 01.01.1975. He was given temporary promotion on 07.04.1978 to Category No. 6 and having not been found suitable, was returned to Category No. 7 on 14.10.1983.

(r) The respondent in the forth petition was appointed on 01.09.1967 as a clerk. He was initially absorbed in Category No. 7 on 01.01.1975. He was given temporary promotion to Category No. 6 on 07.04.1978 and upon having not found suitable, he was returned to his Category No. 7 on 14.10.1983.

(s) All these respondents after they were returned to their original category due to their unsuitability, filed individual appeals before the Cooperative Court, Nanded.

(t) By the impugned judgment dated 07.05.1990, the Co- operative Court allowed their dispute.

(u) The petitioner-bank preferred appeals before the Co-operative Appellate Tribunal, Bombay and the said appeals were dismissed by the impugned judgment dated 15.10.1993."

5. Besides the above aspect, Mr. Shelke has canvassed a host of factors. Considering the order that I would be passing, I am not required to advert to the entire submissions. Suffice it to say, the Co-operative Court granted ad-interim protection to the respondents on 21.11.1983 and continued the said protection after obtaining an undertaking from the respondents that they would not claim the promotional posts and would return the monetary benefits in the event they fail in these proceedings.

6. Mr. Shelke has relied upon the following judgments:--

"(i) Rambhau Jairam Dhamange and Others v. The President, Vinkar Co-operative Society Ltd. Chanda and Others, , AIR 1966 Bombay 187.

(ii) Co-operative Central Bank Ltd. and Others v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and Others, , AIR 1970 SC 245.

(iii) Pralhad Vithalrao Pawar v. Managing Director and Another, , 1999(1) Bom.C.R. 840.

(iv) Morinda Co-operative Sugar Mills Ltd. v. Morinda Co- operative Sugar Mills Workers Union, 2006 AIR SCW 3849.

(v) Chandrashekhar Chintaman Vaidya v. National Organic Chemical Industries

Ltd., Akola, , 2010(3) Mh.L.J. 434."

7. Mr. S.S. Chaudhari, learned Counsel alongwith Mr. D.N. Suryawanshi, learned Counsel appearing on behalf of the respondents- employees has strenuously supported the impugned judgment. The reference is made to the impugned judgment delivered by the Appellate Co-operative Court. The submission is that the Appellate Court has concluded that the conditions of services between the employees and the bank is outside the scope of Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as Section 91 of the 1960 Act). However, since the respondents-employees are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, the Industrial Tribunal would have no jurisdiction to consider the dispute raised by the respondents-employees.

8. It is further submitted that though the Co-operative Court did not go into the aspect of the status of the respondent, the Appellate Cooperative Court has concluded in paragraph No. 9 that considering the salary drawn by the respondents and the definition of workman under Section 2(s), the dispute was maintainable under Section 91 before the Co-operative Court and the machinery under the Industrial Disputes Act, 1947 had no jurisdiction, as all those employees concerned are not workman.

9. It is further submitted that the Appellate Court has considered only the salary of the respondents and held that they are no required to approach the Industrial Tribunal. Issue was with regard to seniority and the promotion and hence the said issue could be dealt with by the Cooperative Court.

10. Mr. Chaudhari then draws the attention of this Court to the conclusion of the Co-operative Court, Nanded. His contention is that the matter is with regard to the promotion of the respondents. Same is a result of the circulars applicable to the bank. Hence the aspect would not come within the jurisdiction of the Industrial Tribunal and hence the Cooperative Court has rightly exercised his jurisdiction.

11. It is further submitted by Mr. Chaudhari that though the respondents were protected by various orders of this Court, notwithstanding the undertaking executed by them, they were kept in Category No. 7 and not taken into Category No. 6. They have retired from service in Category No. 7 more than 15 years ago. One employee has passed away. The remaining three employees are in their mid 70s or late 70s and are also unable to come to the Court due to health reasons. He therefore prays that these petitions be dismissed and the judgment of the Co-operative Court and the Appellate Co-operative Court be stayed.

12. Mr. Chaudhari then relied upon the judgment of the learned Apex Court in the matter of Prabhu Dayal v. Sadhan Sahakari Samiti Mujuri Vikas Khand Paniyara and Others, , AIR 2008 SC 1681 in support of his case. He contends that since a circular was issued by which the service conditions of the employees were revised, the dispute raised by the respondents before the Co-operative

Court, has rightly been raised and the same is maintainable.

13. I have considered the submissions of the learned Counsels.

14. The petitioner has contended that the respondents were temporarily promoted. The respondents have also claimed that they were temporarily promoted because they were eligible, competent and entitled to the promotional posts. It is however not the case of the respondents that they were permanently promoted for the first time in 1978. It is submitted that they worked on promotional posts under whatever circumstances as is claimed by the petitioner, from April 1978 till 14th October 1983. The returning back of these respondents from Category No. 6 and Category No. 7 to their original categories, has been termed to be an act of reversion of the respondents at the hand of the petitioner.

15. It is undisputed that the petitioner had raised the issue of jurisdiction contending that the Co-operative Court did not have the jurisdiction to deal with a matter in between the employer and the employees with regard to violation of service conditions and reversion. It was therefore contended that the Co-operative Court would not have the jurisdiction and the same would vest in the Industrial Court/Tribunal.

16. The Co-operative Court by granting ad-interim protection to the respondents and after taking individual undertaking from the said respondents, granted protection to the respondents. The order of status-quo dated 21.11.1983 was carried by the petitioner before the Appellate Co-operative Court. The protection was continued on the condition that the employees would give an undertaking of refunding the amount which they would receive during the pendency of the cases on the basis of the promotions which had been protected.

17. It therefore clearly emerges that the core issue in these matters is as to whether the Industrial Tribunal under the Industrial Disputes Act, 1947 or the appropriate authority under the Bombay Industrial Relations Act, would have jurisdiction and whether the jurisdiction of the Co-operative Court was ousted.

18. Section 91 of the 1960 Act reads as under:--

"91. Disputes.--(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the co-operative Court if both the parties thereto are one or other of the following:--

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the official Assignee of a de-

registered society.

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;

(e) any other society, or the Liquidator of such a society or-de-registered society or the official Assignee of such a de-registered society.

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society under section 73 - 1 C or a society specified by or under section 73 -G, or refusal of admission to membership by a society to any person qualified therefore or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under Sub-section (1) or (2) of section 101 or Sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under Sub-section (J) of section 156, or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided shall not be deemed to be a dispute for the purposes of this section.

(2) Sub-section (2) was deleted by Mah. 27 of 1969, s. 16(b).

(3) Save as otherwise provided under sub-section (2) to section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in Sub-section (1).

Explanation 1.--A dispute between the Liquidator of a society or an official Assignee of a de-registered society and the members (including past members, or nominees, heirs or legal representative or deceased members) of the same society shall not be referred to the co-operative Court under the provisions of sub-section (1).

Explanation 2.--For the purposes of this sub-section, a dispute shall include-

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a

debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment."

(Emphasis supplied)

19. Considering the judgments cited by Mr. Shelke, it would be appropriate to reproduce Section 61 of the Andhra Pradesh Co-operative Societies Act (7 of 1964) as under:--

"61. Disputes which may be referred to the Registrar:--

(1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

between the society or its committee, and any past committee, any officer, agent or employee, or any past officer, past agent, or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society, such dispute shall be referred to the Registrar for decision.

Explanation:-- For the purposes of this sub-section a dispute shall include-

(i) a claim by a society for any debt or other amount due to it from a member, past member, the nominee, heir or legal representative of a deceased member, whether such debt or other amount be admitted or not;

(ii) a claim by surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or other amount due to be admitted or not;

(iii) a claim by a society against a member, past member, or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property;

[xxx]

(2) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a society, such question shall be decided by the Registrar.

[(3) Every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final.]

(4) Every dispute relating to, or in connection with any election 2[shall be referred under sub-section (3) only after the date of declaration of the result of such election.]"

20. The proviso below Section 91 which is an amendment made by the Maharashtra Act XX of 1986, specifically carves out an exception to the scope and ambit to Section 91. An Industrial Dispute as defined in Clause 2(k) of the Industrial Disputes Act is therefore held not covered by Section 91. In the light of the ratio which I would be referring to in this judgment, the industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947 in as much as other industrial disputes protecting the service conditions of the employees will also be an exception to the applicability to Section 91.

21. The litigating sides as well as both the lower Courts have dealt with this matter considering the 1960 Act and the Industrial Disputes Act, 1947. The Bombay Industrial Relations Act, 1946 also provides for an independent machinery/mechanism for the redressal of grievances of the employees in relation to their terms and conditions of employment and dispute protecting to their non-employment. In the instant case, it is undisputed that the issue is with regard to the service conditions of the employees and is with regard to the purported order of reversion issued by the petitioner.

22. The Co-operative Court concluded that the issue of maintainability of the dispute and the jurisdiction of the Co-operative Court was already decided earlier. It is informed that the said issue was not decided earlier. Though, the Co-operative Court initially had held that the dispute is maintainable, the petitioner had carried the temporary injunctory order to the Appellate Co-operative Court and had contended that such a relief could not have been granted by the Co-

operative Court when the issue of jurisdiction was involved. While considering the miscellaneous appeal before the Appellate Co-operative Court, it was held that the respondent shall give an undertaking as referred to above and the Co-operative Court shall decide the issue of jurisdiction afresh. Inadvertently, while deciding the dispute finally by the impugned judgment dated 07.05.1990, the Co-operative Court has erroneously presumed that the issue of jurisdiction had already been decided.

23. When the petitioner challenged the final judgment of the Cooperative Court dated 07.05.1990 in their appeals before the Appellate Co-operative Court, the Appellate Court therefore took upon itself the exercise of deciding whether the dispute was maintainable before the Cooperative Court.

24. It emerges from the impugned judgment of the Appellate Cooperative Court that it had concluded that every dispute pertaining to the service conditions of the employees as against the employer was in the nature of an industrial dispute and the same could not have been within the jurisdiction of the Co-operative Court to be adjudicated upon under Section 91 of the Act of 1960. However, the Appellate Court considered the definition of a workman under Section 2(s) of the Industrial Disputes Act, 1947 and only on the basis of the salary drawn, has concluded that the dispute was maintainable before the Co-operative Court as the wages earned by the respondents were more than the limit of Rs. 1600/-.

25. Though the Appellate Court did not consider the definition of employee under Section 3(13) of the Bombay Industrial Relations Act, 1946, the definition of employee under the Bombay Industrial Relations Act and the definition of workman under the Industrial Disputes Act are almost identical.

26. For the sake of clarity, the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947 and the definition of employee under Section 3(13) of the Bombay Industrial Relations Act are reproduced herein below :--

Sec. 2(s), Industrial Disputes Act, 1947.

"[(s) "workman" means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.]"

Sec. 3(13) Bombay Industrial Relations Act, 1946.

"(13) "employee" means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes -

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14);

(b) a person who has been, [dismissed, discharged or retrenched or whose services have been terminated,] from employment on account of any dispute relating to change in respect of which a notice is given or an application made under section 42 whether before or after his [dismissal, [dismissal, discharge, retrenchment or, as the case may be, termination from employment];

[but does not include -

(i) a person employed primarily in a managerial, administrative, supervisory or technical capacity [drawing basic pay (excluding allowances) exceeding [six thousand five hundred rupees per month;]

(ii) any other person or class of persons employed in the same capacity as those specified in clause (i) above irrespective of the amount of the pay drawn by such persons which the State Government may, by notification in the Official Gazette, specify in this behalf;]"

27. It is trite law that the status of an employee as to whether he is a workman under the Industrial Disputes Act or an employee under the Bombay Industrial Relations Act is no longer to be decided merely on the basis of his designation or his salary structure. The whole issue turns upon the job profile and the nature of duties performed by the employee solely on the basis of which the Court has to decide whether the employee would be a workman/employee or would not be covered by the said definitions under the Industrial Disputes Act or Bombay Industrial Relations Act.

28. The learned Division Bench of this Court in the matter of Chandrashekhar Chintaman Vaidya (supra) has considered the entire law on the status of an employee and has finally concluded that it would be purely on the basis of the nature of duties performed by an employee by virtue of which his status would be decided. It would be apposite to reproduce paragraph Nos. 33, 34, 35 and 36 of the Chandrashekhar Chintaman Vaidya judgment (supra) as under :--

"33. At the cost of repetition, it needs to be referred that in the evidence led by the complainant, he has deposed in specific terms that:--

[a] He was doing the clerical work.

[b] He was not entrusted or invested with managerial and administrative powers.

[c] He has never supervised the work of any other worker or subordinate to him.

[d] He used to do the work of scrutinizing the purchase orders and make entries thereof into the register.

[e] He used to follow up purchases ordered by his controlling officer.

[f] Except the nomenclature as a supervisor, he had no supervisory duties.

34. It is apparent that the cross-examination does not aim at "predominance of duties." The cross-examination also does not aim at isolating any ministerial, menial or clerical portion of the work of complainant to be marginally available or extremely low in volume or magnitude and main work to be that of supervisor or Manager.

35. As it is noted earlier, the employer's thrust of bringing the complainant outside the purview of status of workman and fitting him within the cadre of manager or supervisor is based on:--

[i] Pleading that complainant was appointed as a Supervisor, and performed managerial duty.

[ii] That, since he was not part of the persons who were beneficiaries of benefits gained by the workmen being party to the settlement entered between the Management and the workmen.

[iii] The complainant did not perform any work which was clerical in nature and was actually a supervisor and performed managerial powers and functions.

36. The law as to basic test as to facts to be proved for holding a person to be a workman under Section 2 (s) of the Industrial Disputes Act can be said to be settled, and can be summarized as follows:--

[a] The person does menial, ministerial or clerical work.

[b] If any of the parts of his duties involves any sort of supervision, which is on the material and not on the men.

[c] The predominant nature of duties discharged by the person, i.e., the part of supervisory duties, if any, is not predominant.

[d] What is seen to be is not the designation and/or nomenclature, but performance of duties."

29. It is not in dispute that the job profile of the respondent was not before the Co-operative Court as well as the Appellate Court. It is also not in dispute that the Co-operative Court as well as the Appellate Court have not considered the nature of duties of the respondent before deciding whether they are workmen or

not. It is equally undisputed that the clerical staff was included in Category Nos. 7 and 9 and technical attendants were included in Category Nos. 10 to 12 by the petitioner vide the policy formulated on 01.01.1975.

30. The petitioner had considered the nature of duties of these respondents and three out of four were posted in the Category No. 7 and one was posted in Category No. 8, by virtue of which they would fall within the definition of an employee under 3(13) of the Bombay Industrial Relations Act, 1946 and workman under Section 2(s) of the Industrial Disputes Act, 1947. This issue has not been dealt with by the lower Courts and since the Appellate Court has concluded that the respondents are not workmen merely since their salary was more than Rs. 1600/-, that the conclusions of the Appellate Court call for an interference.

31. In the light of the above, the much debated issue before this Court is with regard to whether the Co-operative Court would have jurisdiction or not. Mr. Chaudhari has placed reliance upon the judgment of the learned Apex Court in the case of Prabhu Dayal (supra) wherein it has been observed that the appellant society had taken a stand that the Act was not applicable to the society in the light of the notification dated 30.06.1988. The High Court had considered the plea in the light of the provisions of the Uttar Pradesh Industrial Disputes Act and the Uttar Pradesh Co-operative Societies Act. It was concluded that the entire service condition of the employees under the Uttar Pradesh Co-operative Societies Act were covered by the statutory rules and hence the employees with regard to their grievances in connection with their service conditions would not be covered by the Industrial Disputes Act and were entitled to raise a dispute under the Co-operative Societies Act.

32. In my view, the ratio laid down by the Hon'ble Supreme Court in the case of Prabhu Dayal (supra) would not be applicable to the cases in hand, for reasons more than one. Firstly, that these employees working in co-operative banks are covered by the Bombay Industrial Relations Act. By the notification dated 02.11.1973, the Government of Maharashtra exercised its powers under Section 2(4) of the Bombay Industrial Relations Act, 1946 and made the said Act applicable to the Nanded District from 15.11.1973 thereby covering the business of banking companies and co-operative banks. It is for this reason that I am turning down the submissions of Mr. Chaudhari that the employees are covered by certain circulars issued by the State Government and hence the ratio in the Prabhu Dayal case would become applicable.

33. Secondly, this Court has held in various judgments that the dispute with regard to the service conditions of employees falling within the definition of Section 3(13) of the Bombay Industrial Relations Act, 1946 or Section 2(s) of the Industrial Disputes Act, 1947 will have to be referred to the Labour Court or Industrial Court as the case may be and therefore their disputes would not fall within the ambit of Section 91 of the Maharashtra Co-operative Societies Act, 1968.

34. The learned Full Bench of this Court in Rambhau Jairam case (supra) has observed in paragraph Nos. 9, 15, 16 and 22 as under:--

"(9) The words "Touching the business of the a society" are very to wide and include any matter which relates to concerns, or affects the business of the society, see *Farkhundali Nannhay v. V.B. Potdar*, , 63 Bom LR 985: (AIR 1962 Bom 162). A dispute in which the employees of a Co-operative Society demand a change in the their conditions of service or ask for reinstatement of the employees whose services have been terminated, therefore, touches the business of the society. It would therefore, in the absences of anything more, fall within sub-section (1) of S. 91. It has been contended on behalf of the workers that the Registrar or his nominee functions like a Civil Court, that like a Civil Court he is bound by the contract between the parties, that he cannot travel outside the contract and that an industrial dispute is, therefore, not within his jurisdiction. In support of this argument, the decision of this Court in *Majoor Sahakari Bank v. N.M. Majumdar*, , 57 Bom LR 1097: (AIR 1957 Bom 36) has been cited. In that case, a workman, who was employed as a watchman by a co-operative society registered under the Cooperatives Societies Act, 1925, and doing banking business, had been discharged from service. He then made an application to the Labor Court seeking reinstatement and compensation. A preliminary objection was raised that the provisions of the Bombay Industrial Relations Act 1947, did not apply and that the dispute could not be decided by the Registrar under S. 54 of the Co-Operatives societies Act, 1925 This contention was negated. At p. 1099, [of Bombay LR] [at p. 37 of AIR] Chagla C.J. observed.

"It is further pointed out that S. 54 provides for compulsory arbitration when there is a dispute between a society and its employee,..... Mr. Rane has very rightly pointed out that the disputes contemplated by S. 54 are disputes of a civil nature which could have been decided by Civil Courts but for the provisions with regard to compulsory arbitration provided in S. 54 Mr. Rane has also rightly pointed out that the present dispute between respondents No. 2 and the petitioners could not have been the subject-matter of a reference to arbitration under S. 54. Respondents No. 2 is not claiming to assert any civil rights against the petitioners. What he is claiming is certain rights which are now conferred upon workmen and employees as result of principles of social justice which are now almost universally acknowledged all the world over. There is no right of re-instatement under civil law which can be enforced by an employee against his employer. No contract of personal service can be specifically enforced by a Civil Court determine whether the wages paid to an employee are proper wages or not Civil Courts are bound down by the law of contract and it is under the law of contract that the Civil Courts decide disputes between a master and his servant."

(15) It has been argued that as a dispute between Co-operative Society and its employees touches the business of the society and, therefore, falls under Section

91(1), every such dispute must first be referred to the Registrar and decision obtained under sub - section (2) of section 91 and that it is only if the Registrar decides that it is not a dispute within section 91, that any other Tribunal will have jurisdiction to decide it. Sub - section (2) of section 91 however, only empowers the Registrar to determine a jurisdictional issue. It does not enlarge the jurisdiction conferred on the Registrar by Sub-section [1]. If therefore the other provisions of the act indicate that some industrial disputes do not come within the ambit of Sub-section (1) of Section 91, such matters need not be referred to the Registrar, either under sub-section 1 or Sub-section (2). In any case this provision does not furnish any assistance in deciding the question whether an industrial dispute arising out of a demand made by employees outside the terms of their employment can be tried by the Registrar.

(16) An indication of the nature of disputes which the Registrar can determine is furnished by sub - section (3) of S. 93 of the act. This sub - section empowers the Registrar to stay the proceedings before him and to ask the parties to approach a Civil Court by a regular suit for deciding the dispute between them. A party can be asked to go to a Civil Court only if the dispute is one which can be decided by a Civil Court. The matter referred to the Registrar must therefore be necessarily such in which a civil suit can lie, but for the special provision contained in section 91. It is therefore clear that the dispute of covered by section 91 must be one which is capable of being tried by a Civil Court. This conclusion also finds support in clause (b) of the sub-section (1) of section 163 which ousts the jurisdiction of the Civil Court in respect of any dispute which is required to be referred to the Registrar. A Civil Court cannot try an industrial dispute, in which a relief is claimed outside the terms of employment. It follows, therefore, that the Registrar cannot also try such a dispute.

(22) The Punjab and Kerala High Courts have taken the same view. In Jullundur T.C. Society v. Punjab State, , AIR 1959 Punj 34 it was held that an industrial dispute between a co-operative society registered under the Punjab Co-operative Societies Act, and its workmen can be referred to an Industrial Tribunal set up under the Industrial Disputes Act. Section 60(1) of the Punjab Co-operative Societies Act was substantially in the same terms as section 54 (1) of the Bombay Act of 1925. It contained a proviso almost in the same terms of sub - section (3) of Section 93 of the present Maharashtra Co-operative Societies Act. At page 35, the learned Judges observed that the dispute contemplated by Section 50 were not intended by the Legislature to cover all kinds of disputes and this provision was not meant to be all embracing as was contended by the learned Counsel. It was further observed that a reading of sub-section (1) of Section 50 clearly showed that though the words "touching the constitution or business of the society" were unqualified and extremely wide and comprehensive, still the Legislature did not intend to include in this expression "industrial disputes" for the adjudication of which the Parliament had enacted the Industrial Disputes Act. The learned Judges then referred to the proviso and observed:

"Indeed this proviso supplied a key to the intention of Legislature and it almost conclusively suggests that it is only such disputes as are capable of being tried by a regular suit which are covered by the provisions of section 50.

It has not been suggested by the learned Counsel for petitioner [and it could not be suggested] that an industrial dispute as defined in the Industrial Disputes Act is capable of being tried by a regular suit."

In *Kerala state Handloom Weaver's Co-operative Society v. State of Kerala*, [1954] 1 Lab LJ 559 [Ker] the Kerala High Court has held that the provisions of section 60 (1) of the Travancore-Cochin Co-operative Societies Act, 1951, did not preclude a reference to adjudication under section 10 of the Industrial Disputes Act of the industrial disputes between a cooperative society and its workmen. At page 561 was observed:

"The question in cases like this is not whether the dispute referred for adjudication touches the business of a Cooperative Society; the question really is whether that dispute comes within the category of disputes covered by section 60 (1) of the Travancore-Cochin Co-operative Societies Act, 1951. The purpose of Chapter XIII of the Travancore-Cochin Co-operative Societies Act 1951 - the chapter in which section 60 (1) occurs - is not to resolve all controversies touching the business of co-operatives societies under the provisions of that chapter; but resolve only such controversies as can be resolved in an ordinary Court of law. In other words, the arbitration provided by Chapter XIII is an alternative to the normal processes of the ordinary Courts and not to the extraordinary process of adjudication under the Industrial Disputes Act, 1947, which has been designed to deal with controversies which by their very nature are outside the purview of ordinary litigation."

The position therefore, is that the dispute referred to the Registrar under sub-section (1) of section 91 must be such as a Civil Court can take cognizance of and try. Like a Civil Court, the Registrar cannot grant any relief outside the contract of employment. He cannot, therefore, try any matter in which a demand is made for a change in the conditions of service or for reinstatement of an employee whose services had been terminated. By and large, the Co-operatives Societies Act and the Industrial Disputes Act provides for the settlement of different classes of disputes. Even though therefore, the words "any dispute" in Sub-section (1) of Section 91 are very wide, they will have to be given a limited meaning, for the reasons which I have given above. These words mean any dispute which the Registrar is competent to try and decide."

35. It was thus concluded by the learned Full Bench that any demand or dispute with regard to change in service conditions or with regard to reinstatement of an employee would fall within the jurisdiction of the Labour/Industrial Court or Tribunal.

36. In the *Co-operative Central Bank Ltd. case* (supra), the Hon'ble Supreme Court considered the effect of Section 61 of the Andhra Pradesh Co-operative

Societies Act, which has been reproduced hereinabove. The Hon'ble Supreme Court has considered Section 91 of the Maharashtra Act, 1960 in comparison to Section 61 of the Andhra Pradesh Act, 1964. The facts in the dispute that was under consideration, have been referred to in paragraph No. 1 of the Co-operative Central Bank judgment (supra) which reads as under:--

"1. An industrial dispute arose between 25 Cooperative Central Banks in the State of Andhra Pradesh and their workmen represented by the Andhra Pradesh Bank Employees Federation, Hyderabad, which was referred by the Government of Andhra Pradesh to the Industrial Tribunal, Hyderabad, under section 10(1) (d) of the Industrial Disputes Act No. 14 of 1947. The subject-matter of the dispute was divided into three issues. The first issue comprised a number of service conditions, viz., (1) Salary, Scales and Adjustments, (2) Dearness Allowance, (3) Special Allowances, (4) other Allowances, (5) Uniforms and Washing Allowances for subordinate staff, (6) Conveyance Charges, (7) Provident Fund and Gratuity, (8) Leave Rules, (9) Joining Time on Transfer, (10) Rules relating to departmental enquiry against employees for misconduct, (11) Probationary Period and Confirmation, (12) Working Hours and Overtime Allowance, (13) Age of Retirement,, (14) Security, (15) Common Good Fund, (16) Service Conditions and (17) Promotions. The second and the third issues both related to the question whether the transfers of some employees of two of the Banks, The Vijayawada Co-operative Central Bank, Ltd., Vijayawada, and The Vizianagaram Co-operative Central Bank Ltd., Vizianagaram, were justified and, if not, to what reliefs were the employees entitled. Before the Industrial Tribunal, one of the grounds raised on behalf of the Banks was that the reference of the disputes to the Tribunal was invalid, because such disputes were required to be referred for decision to the Registrar of the Co-operative Societies under section 61 of the Andhra Pradesh Co-operative Societies Act No. 7 of 1964 (hereinafter referred to as "the Act"), and the effect of the provisions of the Act was to exclude the jurisdiction of the Industrial Tribunals to deal with the same disputes under the Industrial Disputes Act. Various other pleas were also taken by the Banks in resisting the claims of the workmen, but, in these appeals, we are not concerned with them, because the Tribunal dealt with the point, mentioned by us above, as a preliminary issue and rejected the contention of the Banks. Twenty-four of the Banks thereupon challenged the preliminary decision of the Tribunal on this question, treating it as a preliminary award, by filing two Writ Petitions Nos. 2339 and 2742 of 1968 under Art. 226 of the Constitution in the High Court of Andhra Pradesh. The High Court also rejected the plea of the Banks. These two appeals have been brought up before us by certificate against the orders of the High Court dismissing the two writ petitions. In Civil Appeal No. 2093/1968, the appellants are 10 Banks who 208 were petitioners before the High Court in Writ petition No. 2339 of 1968, while 2 of the petitioner-Banks in that writ petition have been impleaded as respondents. In Civil Appeal No. 2094 of 1968, the appellants are also 10 Banks who had joined in filing the other Writ Petition No. 2742/1968 in the High Court, while one of the petitioner- Banks in that writ

petition has been impleaded as respondent, and another has not joined the appeal as a party. In these appeals, therefore, we are only concerned with one single question as to whether the jurisdiction -of the Industrial Tribunal to adjudicate on the industrial dispute referred to it under s. 10(1) (d) of the Industrial Disputes Act was barred by the provisions of s. 61 of the Act."

37. The Full Bench judgment of this Court in the matter of Farkhundali Nannhay v. V.B. Potdar and Another, , AIR 1962 Bombay 162 was considered by the Hon"ble Supreme Court. Similarly, Section 52 of the Madras Co-operative Societies Act, 1932 was also considered and the learned Apex Court concluded in paragraph No. 8 of the judgment that it was similar in terms of Section 61 of the Andhra Pradesh Co-operative Societies Act. Finally, by considering the entire provisions referred to above and the by-laws of the co-operative societies framed in pursuance of the provisions of the Act, it was concluded that the jurisdiction of the Industrial Tribunal is not limited merely for administering existing laws and for enforcing existing contracts, but can have the jurisdiction to even vary contract of service between the employer and the employees. It was thus concluded that the dispute relating to alterations of service conditions would not be a dispute touching the business of the society and hence such disputes cannot be dealt with and are out of the scope of Section 61 and they could only be dealt with by the Industrial Tribunal under the Industrial Disputes Act, 1947.

38. It would be apposite to reproduce the observations of the learned Supreme Court from paragraph Nos. 7 to 10 of the Co-operative Central Bank case (supra) as under:--

"7. Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under S. 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself, It is true that S. 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees if a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proportion that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of Service of the workmen employed by the society cannot be held to

be a dispute touching the business of the society. Further, the position is clarified by the provisions of sub-s. (4) of S. 62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under s. 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws. On the face of it, the provisions of the Act, the rules and the bye-laws could not possibly permit the Registrar to change conditions of service of the workmen employed by the society. For the purpose of bringing facts to our notice in the present appeals, the Rules framed by the Andhra Pradesh Government under the Act, and the bye-laws of one of the appellant Banks have been placed on the Paper-books of the appeals before us. It appears from them that the conditions of service of the employees of the Bank have all been laid down by framing special bye-laws. Most of the conditions of service, which the workmen want to be altered to their benefit, have thus been laid down by the bye-laws, so that any alteration in those conditions, of service will necessarily require a change in the bye-laws. Such a change could not possibly be directed by the Registrar when, under S. 62(4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar under S. 61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator by the Registrar. Such person or arbitrator, when deciding the dispute, will also be governed by the mandate in S. 62 (4) of the Act, so that he will also be bound to reject the claim of the workmen which is nothing else than a request for alteration of conditions of service contained in the bye-laws. It is thus clear that, in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it under S. 62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in the case of the Deccan Merchants Cooperative Bank Ltd.(1), therefore, it must be held that this dispute is not a dispute covered by the provisions of S. 61 of the Act. Such a dispute is not contemplated to be dealt with under s. 62 of the Act and must, therefore, be held to be outside the scope of section 61.

8. In this connection, we may take notice of the view expressed by a learned single Judge of the Madras High, Court in *South Arcot Co-operative Motor Transport Society, Ltd. (for ex- servicemen) v. Syed Batcha and others*(2) where dealing with an industrial claim, the learned Judge held:

"Therefore, in regard to an industrial claim, like the retrenchment compensation, the remedy for the worker would be only to enforce it by the machinery created by the Industrial Disputes Act, namely, by s. 10 and 33C(2). The Madras Co-operative Societies Act being itself a special statute, the authority, acting under it, would have no jurisdiction beyond what the enactment itself conferred on him. It could not, therefore, have jurisdiction to decide a dispute under the Industrial Disputes Act."

That decision also related to s. 51 of the Madras Co- operative Societies Act, 1932, which was similar in terms to S. 61 of the Act.

9. Learned counsel appearing on behalf of the appellant Banks, however, urged a new point to challenge the jurisdiction of "the Industrial Tribunal to deal with the dispute relating to conditions of service to the effect that the conditions of service having been made the subject -matter of bye-laws, an Industrial Tribunal will not be competent to alter them, because even an Industrial Tribunal has no jurisdiction to make orders contrary to law. For this purpose, he referred us to a number of decisions of this Court in *Dalmia Cement (Bharat), Ltd., New Delhi v. Their Workmen and Another*(1); *The Management of Marina Hotel v. The Workmen* (2); *Cinema Theatres v. Their Workmen*(3); and *The Hindustan Times Ltd., New Delhi v. Their Workmen & Vice Versa*(4). In all these cases, it was held that an Industrial Tribunal acted illegally in prescribing leave in excess of the number of days laid down by the Delhi Shops and Establishments Act, 1954. In S. 22 of that Act there was a specific prohibition that leave for sickness or casual leave with full wages shall not exceed 12 days; and it was held that a direction made by the Tribunal granting to the workmen more than 12 days" sickness or casual leave was illegal. The principle of the decisions in those cases does not, however, appear to us to be applicable to the cases before us, because, in the present cases, there is no prohibition contained in the Act that the conditions of service prescribed are not to be altered. The argument on behalf of the Bank, however, was that the bye-laws, which contained the conditions of service, are themselves law, so that any direction made by an Industrial Tribunal altering a condition of service contained in a bye-law would be an order contrary to law and, hence, illegal.

10. We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye- laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in, the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of

Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by those Standing Orders, they do not have such force of law as to be binding on industrial Tribunals adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunals by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the Co-operative Societies Act, so that the circumstance that, in granting relief on issue No. 1, the Tribunal will have to vary the special bye-laws framed by the Cooperative Bank does not lead to the inference that the Tribunal would be incompetent to grant the reliefs sought in this reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the powers of the Registrar dealing with a dispute under s. 61 of the Act."

39. The learned Division Bench of this Court, in the matter of Pralhad Vitthalrao Pawar (supra) considered a similar controversy and concluded that matters of service conditions including the issue of termination of an employee from service will lie before the Labour Court and not before the Co-operative Court under Section 91 of the Act of 1960. It was held that if the employee is covered by the definition of workman, the dispute will have to go before the Labour Court and only if the employee is not covered by the definition of workman, his dispute will lie before the Co-operative Court. Paragraph Nos. 8, 11 and 13 of the Pralhad Vitthalrao Pawar judgment (supra) read as under:--

"8. In the case of Rambhau Jairam Dhamange v. The President, Vinkar Co-operative Society Ltd., Chanda,, a Full Bench of this Court, while interpreting the provisions of section 91(1) as it stood at the relevant time, held that though the words "touching the constitution or business of the society" were unqualified and extremely wide and comprehensive, still the legislature did not intend to include in this expression "industrial dispute", as defined in the Industrial Disputes Act or the Bombay Industrial Relations Act. It was further held as under :

"The dispute referred to the Registrar under sub-section (1) of section 91 must be such as a Civil Court can take cognizance of and try. Like a Civil Court, the Registrar cannot grant any relief outside the contract of employment. He cannot, therefore, try any matter in which a demand is made for a change in the conditions of service or for reinstatement of an employee whose services had been terminated."

11. In appeal, this Court held that the Civil Judge acted without jurisdiction in entertaining the suit, ignoring the mandatory provisions of section 91 of the Act

and it was held that the dispute was certainly within the ambit of section 91(1) (a) in as much as it was a dispute "touching the business of the society" between the society and its employee. This Court further held that when no other statutory or labour law entitles the plaintiff to claim the above reliefs, in any other special Court or tribunal and there are no rules governing the plaintiff's reinstatement in the employment, as contended by him, ordinary law of Master and Servant would apply and termination would, at the worst, be only a breach of the contract of employment, which would certainly fall within the scope of the words "touching the management or business of the society", contained in section 91(1) of the said Act.

13. Thus, the Supreme Court in the case of Gujarat State Cooperative Land Development Bank Ltd. v. P.R. Mankad (supra) and the Division Bench of this Court in the case of Maharashtra Co-operative Housing Finance Society Ltd. (supra) concluded that a claim which is not entertainable by Civil Court under section 9 of the Civil Procedure Code cannot be allowed to be entertained under section 91 of the Cooperative Societies Act. This is a restraint on the exercise of jurisdiction by the Co-operative Court under section 91. It really deals with the reliefs which can be granted. It does not lay down the proposal that the dispute between a terminated employee of a Cooperative Society and the Society or a dispute about any of the service condition of such an employee is not entertainable under section 91. If the employee is covered by the definition of "Workman", dispute will have to go before the Labour Court and if the employee is not covered by the term "Workman", then the dispute will have to go before the Cooperative Court. If the parties are Co-operative Society and its employee, Co-operative Court will have all the jurisdiction but will not grant a relief that the Civil Court would not have granted. The Supreme Court in the case of Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Hyderabad, and in the case of Gujarat State Co-operative Land Development Bank Ltd. (supra) came to the conclusion that a claim based upon contracts between the employees of the Co-operative Society and the society or the claim for damages arising out of the breach of such contracts can be a part of a dispute touching the "Management" of the Cooperative Society within the meaning of section 91 of the Cooperative Societies Act and such a claim would be entertained and decided by the machinery provided under the said Act. This view is strengthened after the amendment of section 91(1)(a) by incorporating the proviso, referred to hereinabove."

40. The Hon'ble Supreme Court in the case of Morinda Co-operative Sugar Mills (supra) considered Section 79 of the Punjab Cooperative Societies Act, 1961. Section 55 and 79 have been reproduced in paragraph No. 7 of the said judgment which reads as under:--

"7. Sections 55 and 79 of the Act read as follows :

"55. Disputes which may be referred to arbitration (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the

constitution, management or the business of a cooperative society arises

- (a) among members, past members and persons claiming through members, past members and deceased members; or
- (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or
- (c) between the society or its committee and past committee, any officer, agent or employee, or any past officer, agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or
- (d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society:

Such disputes shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

2. For the purposes of sub-section (1), the following be deemed to be disputes touching the constitution, management or the business of co-operative society, namely

- (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not:
- (b) a claim by a society against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not:
- (c) any dispute arising in connection with the election of any officer of the society.

3. If any question arises whether a dispute referred to the Registrar under this Section is or not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

79. Notice necessary in suits No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint, shall contain a statement that such notice has been so delivered or left."

41. The learned Apex Court therefore considered its earlier judgment (Three

Judges" Bench) in the case of Co-operative Central Bank Ltd. (supra) and concluded that the expression "business of society" used in Section 79 of the Punjab Co-operative Societies Act would not cover the disputes regarding service conditions of employees of the society.

42. In the light of the above, it is apparent that both the lower Courts in this case have not considered vital issues with regard to the maintainability of the dispute before the Co-operative Court. Merely by relying upon the amount of wages earned by the respondents, the Appellate Court has brushed aside the contentions of the petitioner as regards the jurisdiction of the Co-operative Court and has concluded that the Co-operative Court had jurisdiction to deal with the said disputes. In my view, the said conclusion is rendered unsustainable and deserves to be set aside.

43. Mr. Chaudhari, learned Counsel appearing on behalf of four employees, one of whom is deceased and represented by his legal heirs, submits that the three employees who had joined duties way back in between 1963-66, are in their late 70s. Some of them are so ill that they were not in a position to come to the Court. He therefore submits that it would be too harsh to remand the matters to the Industrial Court or the Tribunal for considering the dispute afresh. He further submits that though the respondents have given individual undertakings to the Appellate Co-operative Court, it would be very harsh to cause a recovery of the said amounts from the persons who are about 80 years old or from the legal heirs of the deceased-respondent who can neither be blamed, nor be faulted.

44. Considering the above situation, these petitions are allowed. The impugned judgments of the Co-operative Court and the Appellate Co-operative Court are quashed and set aside. Taking into account the fact that these respondents were placed in Category Nos. 7 and 9 which were the categories for the clerical staff, their disputes would not be maintained under Section 91 of the Maharashtra Co-operative Societies Act, 1960 before the Co-operative Court. The said Dispute Nos. CCN/266/83, ACR/N/267/83, ACR/N/603/83 and CCN/N/265/83 are dismissed.

45. After considering the submissions of Mr. Chaudhari and taking into account the physical and financial status of the respondent-employees, I am restraining the petitioner from causing any recovery of the salaries/wages that have been paid to the respondents after placing them in Category No. 6, in the light of the ratio laid down by the Hon'ble Supreme Court in the case of State of Punjab and Others v. Rafiq Masih (White Washer), , (2015) 4 SCC 334.

46. It may however be noted that in the event the respondents decide to raise an industrial dispute and approach the redressal machinery either under the Industrial Disputes Act, 1947 or under the Bombay Industrial Relations Act, 1946 for seeking status and benefits of promotional posts falling in Category No. 6, in that case, the petitioner shall be at liberty to seek recovery of the excess payments made to these respondents.

47. Rule is made absolute in the above terms.

48. In the light of the above, pending civil applications do not survive and are therefore disposed off.