

SURESH

v.

YEOTMAL DIST. CENTRAL CO-OP. BANK LTD. & ANR.  
(Civil Appeal No. 1728 of 2008)

MARCH 4, 2008

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

*Service Law:*

*Seniority list – Name of appellant figured at Sl.No.4 in seniority list whereas name of respondent No.2 figured at Sl.No.1 – Seniority list challenged by appellant before cooperative Court – Maintainability of – Held: Not maintainable – Candidates whose names appeared at Sl.Nos.2 and 3 were not impleaded as parties in the said proceedings – In their absence, dispute could not be effectively adjudicated upon.*

*Promotion – Post of High Grade Manager – Coöperative society – Circular issued by Registrar in exercise of its power under s.74 of 1960 Act, stating that change in service conditions to be preceded by a notice as envisaged in 1946 Act – Legality of promotion made in 1998 challenged on the ground that notice was issued only in 2001 – Held: The Registrar exercises jurisdiction for laying down qualification for the post of Manager by virtue of s.74 of 1960 Act – While exercising such statutory power, requirement to comply with provisions of another statute was not necessary – Therefore, issuance of notice of change in service conditions as advised by Registrar in terms of 1946 Act was not required – 1946 Act was meant for industrial workers and not for those who exercise supervisory jurisdiction in cooperative society – On facts, successful candidate fulfilled the prescribed qualifications – Hence, no case made out for interfering with the appointment – Bombay Industrial Relations Act, 1946 – S.42 – Maharashtra Cooperative Societies Act, 1960 – S.74.*

A        The appellant was appointed as clerk in 1974 and confirmed in 1994. Respondent no.2 was appointed as Development Officer in 1979 as a direct recruit. He was brought up on the select list for the purpose of promotion to the post of Manager in 1994. The name of the appellant  
B did not figure therein. A seniority list was published in 1995 wherein the name of appellant figured at serial no.4 whereas the name of the respondent no.2 figured at serial no.1. Respondent No.2 was promoted to the post of Senior Manager in 1998.

C        The appellant raised a dispute before the Cooperative Court questioning the said seniority list as also the promotion of the respondent no.2. The Cooperative Court allowed the application of appellant holding that the respondent no.2 did not possess the requisite qualification. The Cooperative Appellate Court allowed the appeal filed by respondent no.2 holding that he had  
D Master's degree with subject of Economics and a diploma in cooperative banking and his appointment itself was in select grade and so it could not be said that he does not  
E possess a qualification for being appointed to the post of Manager. Appellant filed writ petition before the High Court which was dismissed.

F        In appeal to this Court, the appellant contended that the promotion of the respondent no. 2 to the post of Manager was illegal as the post of Agricultural Development Officer was not the feeder post; and that having regard to the provisions contained in Sub-section (1) of s.42 of the Bombay Industrial Relations Act, 1946,  
G any change in the service conditions was required to be preceded by a proper notice as was advised by the Registrar of Cooperative Societies in his order dated 6.08.1996 and as such a notice was issued only on 24.09.2001, the promotion of the respondent no. 2 must  
H be held to be illegal.

Dismissing the appeal, the Court

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HELD: 1.1 Respondent No. 1 is a cooperative society. It has its own rules and bye-laws. The service rules framed by the respondent no. 1 stand approved by the Registrar. In the seniority list published in the year 1995, the position of the appellant was at Sl. No. 4. Those candidates whose names appeared at Sl. Nos. 2 and 3 were not impleaded as parties in the said proceeding. In their absence, the dispute could not have been effectively adjudicated upon. The dispute raised by the appellant before the Cooperative Appellate Court, therefore, was not maintainable. [Para 12] [1032-A, B; 1033-A]

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*Rashmi Mishra v. M.P. Public Service Commission and Ors.* (2006) 12 SCC 724 – relied on.

1.2. Even otherwise, there is nothing on record to show that the provisions of the Bombay Industrial Relations Act, 1946 would be attracted in the matter of laying down qualification for the post of Manager of a Bank. If the provisions of the said Act are not applicable, the same ipso facto cannot apply only because the Registrar of the Cooperative Societies thought so. It is one thing to say that the respondent no. 2 did not possess essential qualification for holding the post but it is another thing to say that the Registrar had exercised its jurisdiction under s.74 of the Maharashtra Co-operative Societies Act, 1960. In terms of the said provision, indisputably, the Registrar could exercise its jurisdiction for laying down the qualification for the post of manager. When such qualifications are laid down by the Registrar, he exercises a statutory power. While exercising such a statutory power, requirement to comply with the provisions of another statute, viz., issuance of notice of change in terms of the Bombay Industrial Relations Act, 1946 was not necessary. They were meant to be done for the industrial workers and not for those who exercise

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A **supervisory jurisdiction in a cooperative society.**  
[Paras 15-17] [1033-C, D, G; 1034-A, B]

B 1.3. The Registrar of Cooperative Societies in its order dated 6.08.1996 merely said that for technical posts, the prescribed qualification would not be applicable and the concerned societies can make changes in their service rules regarding qualification of appointment and promotion. Only when changes in the service rules were required to be made, the respective societies were not given a free hand to do so. It is only from that angle  
C notice of change was, if at all, required to be issued.  
[Para 18] [1034-B, C, D]

D 2. Respondent No. 2 fulfills the prescribed educational qualification. It was found by the appellate court. It is not the case of the appellant that the post of Manager could be filled up only by way of promotion. Such a post could be filled up also by direct recruitment. Assumingly, for the said purpose, the post of Agricultural Development Officer is not the feeder post for promotion  
E to the post of Senior Manager, although no rule in that behalf was placed on record. No case has been made out for interfering with the impugned judgments of the Cooperative Appellate Court as also the High Court.  
[Paras 19, 20] [1034-D, E, F]

F **CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1728 of 2008.**

G From the Judgment and final Order dated 12/3/2007 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in W.P. No. 3286/2006.

I. Venkatnarayan, Satyajit A. Desai, Amol N. Suryawanshi and Anagha S. Desai for the Appellant.

H R.S. Kurekar, Venkateswara Rao Anumolu, Sudhanshu S. Choudhari and Sunil Kumar Verma for the Respondents.

The Judgment of the Court was delivered by

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**S.B. SINHA, J.** 1. Leave granted.

2. Application of a purported circular letter dated 6.08.1996 issued by the Registrar of the Cooperative Societies, State of Maharashtra is in question in this appeal.

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3. Respondent No. 1 is a cooperative society registered under the Maharashtra Co-operative Societies Act, 1960 (for short "the Act"). The Society framed rules prescribing terms and conditions of service of its employees. Service Rules framed by the respondent no. 1 Cooperative Society were approved by the Registrar.

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4. We are concerned with the post of Higher Grade: Manager; the qualification wherefor is laid down as under:

"The candidate should be a postgraduate and should be graduate in Economics or Law also he should have experience in the field of Banking and Co-operative Sector. Preference will be given if he has passed G.D.C. & A exam or has obtained Diploma in Banking."

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5. The controversy between the parties hereto arose in the following fact situation:

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Appellant was appointed in the post of a clerk on 14.12.1974. He was confirmed in his service on or about 21.04.1994. Respondent No. 2, however, was appointed as Agricultural Development Officer on 26.02.1979 as a direct recruit. He was brought on the Select List for the purpose of promotion to the post of Manager in 1994. The name of the appellant did not figure therein. A seniority list was published on 1.04.1995 wherein the name of the appellant figured at Sl. No. 4; whereas the name of the respondent no. 2 figured at Sl. No. 1.

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6. Respondent No. 2 was promoted to the post of Senior Manager on or about 3.10.1998.

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A Questioning the said seniority list as also the promotion of the respondent no. 2, the appellant raised a dispute before the Cooperative Court, Amravati. Issues were framed having regard to the rival contentions of the parties.

B The following findings were recorded by the Cooperative Court in respect of Issue Nos. (5), (5A) and (6):

C “(5) Whether the disputant is entitled to declaration that the name of opponent No. 2 is to be removed from the seniority list of the Select Grade Officers, in compliance with the Service Rules. No

D (5A) Whether the disputant is entitled to declaration that promotion order issued on dt. 3.10.1998 of opponent No. 2 is liable to be quashed? Yes

(6) Whether the disputant is entitled to promotion on the post of Manager from deemed date? Yes”

E As regards, Issue No. 6, the learned Cooperative Court opined:

F “48. As far as concern about the seniority list published by the opponent No. 1 Bank Exh.37 in which the name of the disputant is at serial No. 4, and it is already held that the opponent No. 2 who stood at serial No. 1 is not eligible or qualified for the post of Manager. As far as about the persons who stood at Serial No. 2 and 3 is concern, at serial No. 2 one M.R. Kadam is there who is having the qualification of B.Com, H.D.C. and as per the service Rules for the post of Manager the employee should be post graduate and having the graduation degree in Economics or in Law. Therefore, those persons are also not having the qualification for the post of Manager, and the next person is the disputant who is having the qualification as per the service Rules who is M.A.

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Economics, B.Com. LL.B. and G.D.C. & A., D.C.B. A  
Therefore, the disputant is entitled for the promotion on  
the post of Manager from the deemed date. Hence, I answer  
issue No. 6 in the affirmative.”

The Cooperative Court allowed the said application of B  
the appellant by a judgment and order dated 16.08.2005 opining  
that the respondent No. 2 did not possess the requisite  
qualification.

7. Respondent No. 1 preferred an appeal thereagainst C  
before the Cooperative Appellate Court, which by reason of an  
order dated 21.06.2006 was allowed, stating:

“15. Moreover, it is pertinent to note that the right of the D  
opponent No. 2 to be in the select grade candidates has  
been maintained by the learned Trial Judge by recording  
negative finding on Issue No. 5 in his judgment. When the  
Issue No. 5 is recorded in the negative by the Trial Judge  
indirectly he has accepted the right of the opponent No. 2  
to be in the select grade, who has already placed on Sr.  
No. 1 in the list published in the year 1997 and which E  
remain undisturbed in the proceeding before the Industrial  
Court filed by the Union long back earlier to the present  
dispute.

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18. As per the Government Circular dated 29<sup>th</sup> February F  
1988 for the post of Manager, the requisite qualification is  
laid down Degree of recognized University in Economics/  
Commerce/ Chartered Accountant and Diploma in  
Cooperation and Accountancy/ Diploma, in Cooperative G  
Business Management. If, the above mentioned  
qualification as laid down in the Government Circular for  
the post of Manager is considered, I find it is rightly  
submitted by the Advocate Shri Parakhi that opponent  
No. 2 is having Master's degree with subject of Economics  
i.e. M.Sc (Agril) having Economics subject and he was H

A also having Diploma in cooperative Banking. As per the  
said Circular dated 29<sup>th</sup> February, 1988, the educational  
B qualification as are laid down with several Degrees, if one  
of those is possessed, the person can be posted to the  
post of Manager. Here, the opponent No. 2 is having  
Degree/ Master's Degree i.e. M.Sc. (Agri.) having  
Economics subject therein and in addition to it he is also  
C having independent educational qualification as Diploma  
in Cooperative Banking. His appointment itself is in select  
grade. So, it cannot be said that he does not possess a  
qualification to bring him within the select list candidate  
and also to be appointed to the post of Manager. The  
D another letter dated 6.8.1996 issued by the Commissioner  
for Cooperation, Pune also is referred by Advocate Parakhi  
from record (Record Page No. 395). As per the said  
Circular, a person in the post of officer is required to  
E possess any one of the qualification as laid down in  
Paragraph – 2 thereto amongst which D.C.B. is one of the  
educational qualification and it is possessed by the  
opponent No. 2. So though the disputant is having Law  
F Degree and other several Diploma's in addition to his  
Commerce Degree and M.A. Degree, it cannot be said  
that the educational qualification possessed by the  
opponent No. 2 is not adequate which is required for the  
G post of Manager. Having excess educational Diploma and  
Degrees to particular person or in our case to the disputant,  
cannot debar the opponent No. 2 from the category of the  
select list candidates and cannot debar the opponent No.  
H 2 on the post of Manager. As such the Notification issued  
by the Commissioner under Section 74 of the M.C.S. Act,  
1960 has to be accepted. In view of the said notification,  
I hold that the opponent No. 2 is having requisite  
educational qualification for the post of Manager. So,  
submission made by the disputant cannot be accepted  
that he is not having educational qualification for the post  
of Manager so, I hold that the learned Trial Judge has  
erroneously held that the opponent No. 2 is not eligible for

promotion to the post of Manager as per the service rules of the bank.” A

8. A writ petition preferred thereagainst by the appellant has been dismissed by reason of the impugned judgment.

9. At the outset, we may notice that on or about 6.08.1996, the Registrar Cooperative Societies issued a circular letter purported to be in exercise of its power conferred upon it under Section 74(1) of the Act, inter alia stating: B

“1. For technical post & above-mentioned post the prescribed qualification will not be applicable. For the technical post the concerned Societies can make changes in their service rules regarding the qualifications of the appointment & promotion of the Officers. C

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7. As there are changes in the basic Service Rules, the concern Societies shall take action as per provisions under the Bombay Industrial Relation Act to give notice regarding the said change.” D

Indisputably such a notice was issued only on 24.09.2001. E

10. Mr. I. Venkatnarayan, learned senior counsel appearing on behalf of the appellant, submitted that the promotion of the respondent no. 2 to the post of Manager was illegal as the post of Agricultural Development Officer was not the feeder post therefor. In any view of the matter, it was urged, having regard to the provisions contained in Sub-section (1) of Section 42 of the Bombay Industrial Relations Act, 1946, any change in the service conditions was required to be preceded by a proper notice as was advised by the Registrar of Cooperative Societies in his order dated 6.08.1996 and as such a notice was issued only on 24.09.2001, the promotion of the respondent no. 2 must be held to be illegal. F

11. The learned counsel appearing on behalf of the respondents, however, would support the impugned judgment. H

A 12. Respondent No. 1 is a cooperative society. It has its  
own rules and bye-laws. The service rules framed by the  
respondent no. 1 stand approved by the Registrar. We have  
noticed hereinbefore that in the seniority list published in the  
year 1995, the position of the appellant was at Sl. No. 4. Those  
B candidates whose names appeared at Sl. Nos. 2 and 3 were  
not impleaded as parties in the said proceeding. In their  
absence, the dispute could not have been effectively adjudicated  
upon.

C This Court in *Rashmi Mishra v. M.P. Public Service  
Commission and others* [(2006) 12 SCC 724], observed:

“16. In Prabodh Verma this Court held: (SCC pp. 273-  
74, para 28)

D “The first defect was that of non-joinder of necessary  
parties. The only respondents to the Sangh’s petition were  
the State of Uttar Pradesh and its officers concerned. Those  
who were vitally concerned, namely, the reserve pool  
E teachers, were not made parties — not even by joining  
some of them in a representative capacity, considering  
that their number was too large for all of them to be joined  
individually as respondents. The matter, therefore, came  
to be decided in their absence. A High Court ought not to  
decide a writ petition under Article 226 of the Constitution  
F without the persons who would be vitally affected by its  
judgment being before it as respondents or at least by  
some of them being before it as respondents in a  
representative capacity if their number is too large, and,  
therefore, the Allahabad High Court ought not to have  
G proceeded to hear and dispose of the Sangh’s writ petition  
without insisting upon the reserve pool teachers being  
made respondents to that writ petition, or at least some of  
them being made respondents in a representative  
capacity, and had the petitioners refused to do so, ought  
to have dismissed that petition for non-joinder of  
H necessary parties.”

(See also All India SC & ST Employees' Assn. v. A. Arthur Jeen and Indu Shekhar Singh v. State of U.P.)” A

The dispute raised by the appellant before the Cooperative Appellate Court, therefore, was not maintainable. It was so held also by the High Court.

13. On that ground alone, this appeal must fail. B

14. However, as the parties have addressed us at some length on the merit of the matter, we may as well deal with the contentions raised at the bar.

15. There is nothing on record to show that the provisions of the Bombay Industrial Relations Act, 1946 would be attracted in the matter of laying down qualification for the post of Manager of a Bank. If the provisions of the said Act are not applicable, the same ipso facto cannot apply only because the Registrar of the Cooperative Societies thought so. C D

16. It is one thing to say that the respondent no. 2 did not possess essential qualification for holding the post but it is another thing to say that the Registrar had exercised its jurisdiction under Section 74 of the Act. E

Section 74 (1) of the Act reads as under:

“74. Qualification and appointment of Manager, Secretary and other officers of societies and Chief Officer and Financial Officer for certain societies. F

(1) The qualifications for appointment of the Chief Executive Officer, Finance Officer, Manager, Secretary, Accountant or any other officer of a society or a class of societies and his emoluments and perquisites shall be such as may be determined by the Registrar, from time to time.” G

17. In terms of the said provision, indisputably, the Registrar could exercise its jurisdiction for laying down the qualification inter alia for the post of manager. When such qualifications are H

A laid down by the Registrar, he exercises a statutory power. While  
exercising such a statutory power, requirement to comply with  
the provisions of another statute, viz., issuance of notice of  
change in terms of the Bombay Industrial Relations Act, 1946  
was not necessary. They were meant to be done for the industrial  
B workers and not for those who exercise supervisory jurisdiction  
in a cooperative society.

18. We have noticed hereinbefore that the Registrar of  
Cooperative Societies in its order dated 6.08.1996 merely said  
that for technical posts, the prescribed qualification would not  
C be applicable and the concerned societies can make changes  
in their service rules regarding qualification of appointment and  
promotion. Only when changes in the service rules were required  
to be made, the respective societies were not given a free hand  
to do so. It is only from that angle notice of change was, if at all,  
D required to be issued.

19. Respondent No. 2 fulfills the prescribed educational  
qualification. It was found by the appellate court. It is not the  
case of the appellant that the post of Manager could be filled up  
only by way of promotion. Such a post could be filled up also by  
E direct recruitment. For the said purpose, we may assume that  
the post of Agricultural Development Officer is not the feeder  
post for promotion to the post of Senior Manager, although no  
rule in that behalf has been placed before us.

F 20. We, therefore, are of the opinion that no case has been  
made out for interfering with the impugned judgments of the  
Cooperative Appellate Court as also the High Court. The appeal  
is dismissed accordingly. No costs.

G D.G.

Appeal dismissed.