

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

Writ Petition No. 9716/2016

District Cooperative Central Bank Employees
and Officers Federation, ChhindwaraPETITIONER

Versus

State of Madhya Pradesh & others RESPONDENTS

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Appearance:

Shri Sanjay Kumar Agrawal and Shri Siddharth Kumar Sharma,
Advocate for the petitioner.

Shri Amit Seth, Government Advocate for the respondents/State.

Shri P.K. Kaurav, Senior Advocate with Shri Kapil Duggal, Advocate
for the respondent No.3/Apex Bank.

Whether Approved for Reporting : Yes

Law Laid Down:

* The amendment in M.P. District Cooperative Central Bank Employees (Terms of Employment and Working Conditions) Service Rules ("the Rules") ordered by the Registrar on 6.4.2016 in exercise of powers under Section 55 of the M.P. Cooperative Societies Act, 1960 is a case of Legislation by incorporation.

* In Amended Rule 6.2.4 of the Rules what is incorporated is rule of reservation i.e. Section 4 of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 and not the other provisions of the 1994 Act. Since the reservation is limited to direct recruitment and the rule of reservation alone has been made applicable, it is legislation by incorporation.

* Part-III of the Constitution of India provides for reservation for socially and economically backward class category as well as women. If such reservation is permitted by a State to which Part-III of the Constitution of India is applicable, such Rule will not become discriminatory if it is extended to non-State Authorities as well.

* All forms of delegated legislation and conditional legislation amount to law. All orders and notifications made and issued under statutory powers and which are legislative in nature amount to law. A statutory order or notification will be legislative in nature if in substance it adds or supplements or modifies or amends a statute.

Significant Paragraph Nos. : 3, 6, 7, 9, 14, 16 to 27

Reserved On : 08.02.2018

ORDER **(23-02-2018)**

Per : Hemant Gupta, Chief Justice:

This order shall also decide bunch of writ petitions raising similar questions of law and fact. The detailed reasons are recorded in the present petition but this order would decide all other writ petitions as well.

2. The challenge in the present petition is to an order dated 6th April, 2016 passed by the Registrar, Cooperative Societies, Madhya Pradesh amending the Madhya Pradesh District Cooperative Central Bank Employees (Terms of Employment and Working Conditions) Service Rules (for short "**the Rules**"). Such Rules were initially framed on 03.01.2014 in exercise of the powers conferred under Section 55(1) of Madhya Pradesh Cooperative Societies Adhiniyam, 1960 (for short "**the Act**").

3. The specific challenge in the writ petition is to Rule 6.2.4 of the Rules pertaining to reservation for filling of 1634 posts of Clerk/Computer Operator in 37 Districts of Madhya Pradesh advertised by M.P. Rajya Sahkari Bank Maryadit, T.T. Nagar, Bhopal. Rule 6.2.4 of the Rules, which is in Hindi, on being translated into English read as under:-

Rule	Provision before Amendment	Amended Provision	Reason for Amendment/ Remark
6.2.4	The vacant posts meant for direct recruitment can be filled on acquiring the eligibility criteria as per Rules 6.3 and 6.2.1 of the Service Rules and in case of applicability of Reservation Rules to the Bank, the Reservation Rules shall be followed.	The vacant posts meant for direct recruitment can be filled on acquiring the eligibility criteria as per Rules 6.3 and 6.2.1 of the Service Rules and the Reservation Rules to the Bank shall be as per M.P. Reservation Act, 1994. The reservation for Female/Handicapped/Ex-servicemen shall be according to the rules of Government of M.P.	Partly amended

4. At this stage, the provisions of Section 55 of the Act need to be extracted to appreciate the arguments raised by the counsel for the parties.

The relevant provisions are as under:-

"55. Registrar's power to determine conditions of employment in societies. - (1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

Provided that in the case of co-operative credit structure, the Registrar may frame rules governing the terms and conditions of employment on the basis of the guidelines specified by the National Bank.

(2) Where a dispute, including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees:

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned:

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded.

Provided also that the Registrar or the officer referred to above may admit dispute after the expiry of thirty days, if the applicant satisfy

the Registrar or officer referred to above that he had sufficient cause for not referring the dispute within the stipulated time.”

5. The challenge of the petitioners on such clause is based upon the Supreme Court judgment reported as 2007 (12) SCC 529 (**Madhya Pradesh Rajya Sahakari Bank Maryadit vs. State of M.P. and others**) wherein the amendment carried out by the Registrar of Cooperative Societies on 6th March, 1997 in Rule 5 of the Madhya Pradesh Rajya Sahakari Bank Employees' (Terms of Employment and Working Conditions) Rules, 1976 (for short “**Rules of 1976**”) was declared illegal.

6. A Division Bench of this Court in **Writ Petition No. 1415/1997 (Anand Beohar and others vs. State of M.P. and others)** vide order dated 11th March, 2003 has set aside the reservation in promotion contained in Chapter-5 of the Rules of 1976. The challenge in the writ petition was that the writ petitioners had a legitimate expectation that they would be selected to the higher post by the Departmental Promotion Committee. Rule 5 in Chapter-4 of the Rules of 1976 provides that the Managing Committee of the Bank shall decide the percentage of employees to be necessarily recruited from the Scheduled Tribes, Scheduled Castes and Handicapped persons provided that a minimum percentage of the posts, as may be advised by the Registrar, Cooperative Societies from time to time. Chapter-5 of the Rules of 1976 deals with the promotion. The State contended that power of reservation in promotion is not being exercised with reference to Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (for short “**the 1994 Act**”). Some of the relevant provisions of the said Act read as under:-

"2. Definitions. - In this Act, unless the context otherwise, requires.-

(b) "Establishment" means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a company, corporation or a co-operative society in which not less than fifty-one percent of the paid up share capital is held by the State Government or the institutions receiving grant-in-aid or any cash grant from the State Government and includes a work charge or contingency paid establishments and such establishments in which casual appointments are made but does not include the establishments covered under Article 30 of the Constitution.

(c) "Reservation" means reservation of posts in the services for the members of Scheduled Castes, the Scheduled Tribes and other Backward Classes;

4. Fixation of percentage for reservation of posts and standard of evaluation. - (1) Unless otherwise provided by or under this Act, the posts reserved for the members of Scheduled Castes or Scheduled Tribes or other Backward Classes shall not be filled by the members who do not belong to such castes or tribes or classes, as the case may be.

(2) Subject to other provisions of this Act there shall be reserved for the persons belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes, at the stage of direct recruitment in public services and posts.

(i) at the State level, the following percentage of vacancies arising in a recruitment year, in Classes I, II, III and IV posts-

(a)	in class I and class II posts-	
	Scheduled Castes	16 percent
	Scheduled Tribes	20 percent
	Other Backward Classes	14 percent
(b)	Class III and Class IV posts-	
	Scheduled Castes	16 percent
	Scheduled Tribes	20 percent
	Other Backward classes	14 percent

ii) in an establishment at the Divisional or District level the percentage of vacancies arising in a Recruitment Year in such categories of Class

