

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No.: LPAOW No. 25/2012

Date of pronouncement: 09.10.2025

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Jammu Central Cooperative Bank Ltd.

..... Petitioner(s)/Appellant (s)

Through :- Mr. Pranav Kohli, Sr. Advocate with
Ms. Avantika Sharma, Advocate
Ms. Chaitley Sharma, Advocate

v/s

State and Ors.

.....Respondent(s)

Through :- Mr. Pawan Dev Singh, Dy.AG for R-1&3

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT (ORAL)
09.10.2025

(Sanjeev Kumar-J)

1. This is an intra-Court appeal by the Jammu and Kashmir Central Cooperative Bank Limited directed against an order and judgment dated 26th December, 2011 passed by the learned Single Judge of this Court [**‘the Writ Court’**] in OWP No. 64/20002, titled as “*Jammu and Kashmir Central Cooperative Bank Limited versus State of Jammu and Kashmir and Others*” whereby, the writ Court has dismissed the writ petition filed by the appellant-herein, challenging an order of J&K Special Tribunal, Jammu [**‘the Tribunal’**] as also an order passed by the Registrar Cooperative Societies.

2. Before we advert to the grounds of challenge urged by Mr. Pranav Kohli, learned senior counsel appearing for the appellant, we deem it appropriate to take note of the factual antecedents leading to the filing of this appeal.
3. The respondent No. 4, who at the relevant point of time, was working as incharge of the Jammu & Kashmir Central Cooperative Bank, Branch Banihal was allegedly found involved in embezzlement and misappropriation of public money. There were allegations that after committing the embezzlement and misappropriation of public money, respondent No. 4 set the Bank branch on fire. Case FIR was registered against him at the Police Station Banihal, which upon investigation culminated into filing of a Final Report before the Competent Court of Criminal jurisdiction. While the trial against the respondent No. 4 was going on, the appellant Bank initiated disciplinary proceedings against the respondent No. 4 by serving upon him a charge-sheet dated 14th January, 1985.
4. The respondent No. 4 participated in the disciplinary proceedings which ultimately culminated into recommending of his termination from services of the Bank and recovery of embezzlement amount along with interest. Acting upon the recommendations made by the Disciplinary Committee, which conducted the enquiry against the respondent No. 4, the appellant-Bank dismissed the respondent No. 4 from the services of the Bank vide its order dated 30th April, 1986. The appellant also ordered that the dues payable to respondent No. 4 be utilised towards part payment of the embezzled amount and steps be taken for recovery of the remaining amount along with interest. The order dated 30th April, 1986 passed by the appellant-

Bank was assailed by respondent No. 4 in an appeal before the Registrar Cooperative Societies, J&K on 12th May, 1986.

5. The appellant-Bank took a specific objection to the maintainability of the appeal before the Registrar by raising the plea that under the J&K Cooperative Societies Act, 1960 [**‘the Act of 1960’**], the order dismissing an employee of the Cooperative Society was neither amenable to challenge in appeal or revision before any authority under the Act of 1960 nor was arbitrable in arbitration proceedings before the Registrar. The Registrar did not accept the objection raised by the appellant Bank and vide its order dated 21st February, 2000, set-aside the order of imposing the penalty of dismissal from service passed against the respondent No. 4.
6. The Registrar took note of the fact that during the pendency of appeal, respondent No. 4 who was facing trial before the criminal Court had been discharged by the trial Court vide order dated 21st December, 1987 though in the order passed by Registrar, the ‘discharge’ has been referred to as ‘acquittal’.
7. Be that as it may, feeling aggrieved and dissatisfied with the order passed by the Registrar dated 21st February, 2000, the appellant-Bank filed a revision petition before the Tribunal and the Tribunal vide its judgment dated 31st January, 2002, dismissed the revision petition and upheld the order passed by the Registrar in appeal. This is how, the appellant-Bank approached this Court by way of OWP No. 64 of 2002 to challenge both the orders one passed by the Registrar dated 21st February, 2000 and the other passed by the Tribunal on 31st January, 2002.

8. The writ Court did not accept the contention of the appellant-Bank with regard to non-maintainability of appeal before the Registrar and consequently, dismissed the petition in terms of the order and judgment impugned in this petition.
9. It is in these circumstances, the appellant-Bank has instituted this intra-Court appeal, challenging the sustainability of the judgment impugned passed by the writ Court.
10. The impugned judgment is called in question by the appellant, primarily, on the grounds that the writ Court as also the two Fora below i.e., Tribunal and the Registrar have failed to appreciate that the remedy of appeal which came to be provided for first-time under SRO 233 dated 8th July, 1988 was only in respect of the penalties imposed under the SRO and, obviously, after the commencement of the said SRO. It is submitted that the two Fora below, as also the writ Court erroneously held that SRO 233 of 1988 was retrospective in operation and, therefore, the pending appeals, if any, challenging the orders of penalty imposed under the Act of 1960 were governed and saved by Rule 21 of the SRO.
11. Having heard learned counsel for the appellant and also perused the material on record including all the three judgments referred to hereinabove, we are of the considered opinion that judgment passed by the Writ Court impugned in this appeal does not reflect correct position of law and, therefore, cannot be sustained. Indisputably, when the alleged act of embezzlement and misappropriation of public money was committed, the Act of 1960 was in operation. The said Act remained in force till it was repealed by J&K Cooperative Societies Act, 1989 with effect from 11th July, 1989.

12. The respondent No. 4, as is clear from factual narration given hereinabove, was subjected to disciplinary proceedings which culminated into issuance of order of his dismissal from service passed by appellant-Bank on 30th April, 1986. Obviously, the right to file appeal, if any, which had vested in him on the date of initiation of disciplinary proceedings against him, became exercisable on or after 30th April, 1986. SRO 233 of 1988, vide which the Government issued the Jammu and Kashmir Cooperative Societies Services Rules, 1988 [**‘the Rules of 1988’**], however, came into force on 8th July, 1988. If that be the clear position emerging in the matter, the remedy of the respondent No. 4 against the order of appellant-Bank dated 30th April, 1986 was to be traced to the provisions of the Act of 1960 and the Rules framed thereunder. The Act of 1960 broadly provides four types of remedies to a person aggrieved of an order passed by a Cooperative Society. Section 63 of the Act creates Forum for arbitration of disputes which touch the Constitution, management or the business of a Cooperative Society and which have arisen, amongst others, between the society or its committee and any past committee, any officer, agent or employee.

13. With a view to finding out as to whether against an order of dismissal from service passed by appellant-Bank, a Cooperative society, the respondent No. 4, could have approached the Registrar for seeking arbitration. We have to determine whether the dispute with regard to the penalty of dismissal raised by respondent No. 4, an Employee, against the appellant, a Cooperative Society is one which touches the Constitution, management or the business of a Cooperative Society. The determination of this issue may not pose much difficulty in view of the issue having been set at rest by the Supreme Court in the case of ***“Gujarat State Cooperative Land Development Bank***

Limited versus P R Mankad and Others “ AIR 1979 Supreme Court 1203.

14. In the aforesaid case, the Apex Court was confronted with the interpretation of Section 54 of Bombay Cooperative Societies Act, 1925 [**‘the Act of 1925’**] and somewhat *pari materia* provision i.e., Section 96 of the Gujarat Cooperative Societies Act, 1961 [**‘the Act of 1961’**]. In both the aforesaid sections, the expression “any dispute touching the Constitution or business of societies” was common. However, in Section 96 the word “management” also appeared before the “Constitution” and/or “business”. The expression “touches Constitution, business, or management” also appears in Section 63 of Act of 1960.

15. Negating the arguments of learned counsel appearing for the appellant-Cooperative Bank that a service dispute raised by an employee of the Bank was one touching the business of the society. The Supreme Court in Para 30, 31 and 32, elaborately explained the expression ‘touching the business of society’ and held thus:

“30. Coming now to the second test, it may be observed that to a part of it, the pronouncement of this Court in *Cooperative Central Bank Ltd. v. Addl. Industrial Tribunal, Hyderabad* (AIR 1970 SC 245) (*ibid*), furnishes a complete answer, wherein the interpretation of this very phrase ‘touching the business of the Society’ occurring in Section 61 of Andhra Pradesh Cooperative Societies Act, 1964, which largely corresponds to Section 96 of the Gujarat Act, 1961, came up for interpretation. The subject-matter of the dispute was divided into three issues. The first issue comprised a number of service conditions including *inter alia* salary, scales and adjustment or dearness allowance, conveyance charges, provident fund and gratuity, etc.

31. It was contended on behalf of the Bank that the effect of Section 61 and other provisions of Andhra Pradesh Cooperative Societies Act was to exclude the jurisdiction of the Industrial Tribunal to deal with such disputes under the Industrial Disputes Act. After noticing a number of decisions and after referring to the previous decision of this Court in Deccan Cooperative Bank, (AIR 1969 SC 1320) the Court negated the contention with these observations (at pp. 251-52):

*“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.... 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 proposition 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 employee, 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.... Thus it is clear that in respect of the dispute regarding the alteration of various conditions of service, the Registrar or other person dealing with it u/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 Deccan Merchants Cooperative Bank Ltd., Civil Appeal No. 358 of 1967 dated 29-8-68, AIR 1969 SC 1320 (supra) therefore, it must be held that this dispute is not a dispute covered by the provisions of Section 61 of the Act. Such a dispute is not contemplated to be dealt with u/s 62 of the Act and must therefore, be held to be outside the scope of Section 61. **(Underlined to lay emphasis)***

32. The observation quoted above, negate contention (ii) advanced by Mr. Dholakia.”

16. Explaining the true import of expression 'touching the management of the society' the Supreme Court in Para 35, 36 and 37 has held thus:

"35. We will now, focus attention on the expression 'management of the society' used in Section 96(1) of the Act of 1961. Grammatically, one meaning of the term, 'management' is: 'the Board of Directors' or 'the apex body' or executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society. In this sense, it may not include the individuals who under the overall control of that governing body or committee, run the day-to-day business of the society. (see Words and Phrases by West Publishing Co., Permanent Edition, Vol. 26, page 357, citing Warner & Swasey Co. v. Rusterholz D. C Minn 41 F. Supp 398, 505). Another meaning of the term 'management', may be 'the act or acts of managing or governing by direction, guidance, superintendence, regulation and control the affairs of a Society'.

36. A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been canvassed for by Mr. Dholkia. The use of the term 'management' in such a wide sense in Section 96 (1) appears to us, to be very doubtful.

37. Be that as it may, what has been directly bidden 'out-of-bounds' for the Registrar by the very scheme and object of the Act, cannot be indirectly inducted by widening the connotation of 'management'. A construction free from contextual constraints, having the effect of smuggling into the circumscribed limits of the expression 'any dispute', a dispute which from its very nature is incapable of being resolved by the Registrar has to be eschewed. Thus considered, a dispute raised against the society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a Civil Court is outside the scope of the expression 'touching the management of the Society' used in the Registrar has no justification to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R. Act."

(Underlined to supply emphasis)

17.From reading of the judgment of the Supreme Court in the case of Gujarat State Cooperation Land Development Bank (*supra*), it is beyond any shadow of doubt that a service dispute between a Cooperative Society and an outgoing employee, who has been terminated from service, is not a dispute touching upon either the business or the management of the society. Obviously, by no stretch of reasoning, such disputes can be said to be the one ‘touching the Constitution of the cooperative society. Indisputably, the service dispute between the appellant-Bank and the respondent employee does not even remotely touch upon the aspects of Constitution of the cooperative society.

18.The business of the appellant-Bank is a banking business and, therefore, the disputes raised by respondent with the appellant-Bank with regard to his termination from service has no relation with the banking business undertaken by the appellant-Bank. In that view of the matter, the arbitration under Section 63 of the Act of 1960 was completely ruled out. This brings us to Sections 101 and 102 of the Act of 1960.

19.Section 101 of the Act of 1960 deals with Constitution of a Cooperative Tribunal as an Appellate Authority. Although, the Government has failed to constitute Cooperative Tribunal in terms of Section 101 (*supra*) yet, the J&K Special Tribunal has been vested the powers of the Government to be exercised by it while hearing revisions under Section 104 of the Act of 1960.

20.Section 102 does not provide for an Appeal by an employee, aggrieved by his dismissal from the service or imposition of any other penalty. A decision or award by the Registrar made under Section 64(1)(a) and a decision of the person invested by the Government with powers in that behalf under Section

64(1)(b) or an award of Arbitrator made under Section 64(1)(c) or any decision of the Registrar under Section 63(3), are appealable before the Tribunal. It is evident from reading of Section 102 that appeals against various awards or decisions made by Registrar and other authorities are appealable before the Tribunal, only if it is provided specifically by the government by a notification in Government Gazette. Section 103 enumerates different types of orders which can be appealed before the Registrar if such award or order is made by any person or cooperative society and to the government, if such award is made by the Registrar. The dispute of the nature raised before us is not comprehended either by Section 102 or by Section 103 of the Act of 1960.

21. Similarly, the power of revision in terms of Section 104 can be exercised by the Government in respect of proceedings of any officer subordinate to it for the purpose of satisfying itself as to the legality or propriety of any order passed or as to the regularity of the proceedings of such officer. In the case on hand, the disciplinary proceedings resulting into the issuance of order of dismissal against the respondent have been conducted by the Bank and not by any officer subordinate to the Government. In that view of the matter, the applicability of Section 104 too stands completely ruled out.

22. Viewed thus, we have no hesitation to conclude that the dispute resolution mechanism provided under the Act of 1960 does not provide any remedy to an employee aggrieved of any matter in relation to conditions of his service like suspension, removal or dismissal from service or imposition of any other penalty. Does that mean an aggrieved employee confronted with an order of his removal or dismissal from service is left with no remedy? The answer has to be 'no', for the remedy of such aggrieved person lies either

before the Civil Court or the Labour Court under Industrial Disputes Act and other applicable laws as the case may be.

23. Having said so, we now proceed to deal with the impact of issuance of Rules of 1988 by the government in exercise of powers conferred by Section 124 of the Act of 1960. Undoubtedly, by virtue of the Rules of 1988 of Jammu and Kashmir Cooperative Societies Service consisting of cooperative district whole-store society, cooperative marketing society/cooperative sale and supply society, cooperative multi-purpose society, cooperative services society registered under the Act of 1960 was constituted. We are, therefore, in serious doubt as to whether the Rules of 1988 would be applicable to cooperative banking societies. In terms of Section 1(ii), the Rules of 1988 are applicable to all societies which were existing at the time of issuance of the rules and also which would be created in future. The terms “society” has been defined in Section 2(o) and means cooperative district whole-store society, cooperative marketing society/cooperative sale and supply society, cooperative multi-purpose society cooperative services society registered under the Act of 1960.

24. Obviously, and as is apparent from reading of Section 2(o), the banking Cooperative Societies are not brought within the purview of Rule of 1988. Since this issue has not been raised before us and therefore, we refrain from giving our final opinion thereon. Suffice it to say that right to file appeal against the order of penalty came to be created for the first time on coming into force of the Rules of 1988. Rule 21 reads thus:

“21. An appeal against an order imposing a penalty shall lie to the Divisional Joint Registrar/Registrar Cooperative Societies.”

The remedy of an appeal is provided only against the order imposing penalties which are imposable upon a member of service under Section 19, which reads as under:

“19. Penalties

(1) The following penalties may for good and sufficient reasons and as hereinafter provided be imposed upon members of the service namely: -

- i. Censure;*
- ii. Fine not exceeding one month's pay;*
- iii. With-holding of increments and/or promotion;*
- iv. Reduction to a lower post and/or a lower time scale and/or to a lower stage in time scale;*
- v. Recovery from pay of the whole or part of any pecuniary loss caused to Society by negligence or breach of orders/trust;*
- vi. Dismissal from the service of the Society which ordinarily disqualified from future employment.*

(2) No penalty shall be imposed on any member of the service unless proper inquiry has been held giving reasonable opportunity to the employee to be heard and thereafter he has been properly charge-sheeted and his reply thereto considered:

Provided that in case where the Committee/Authority Proposes to impose any of the penalties order than those specified in clause (i) and (ii) a show cause, indicating the penalty proposed to be imposed, shall be served to the employee and thereafter on due consideration of the reply thereto and with the approval of the Section Board any penalty as may be deemed proper may be imposed.”

25. From the conjoint reading of Section 19 and 21, it becomes abundantly clear that an order imposing one or more of the penalties enumerated in Clause 1 of Rule 19 is/are appealable before the Divisional Joint Registrar/Registrar Cooperative Societies under Rule 21 of the Rules of 1988. In the instant

case, the penalty of dismissal from service imposed upon the respondent by the appellant-Bank is not under Section 19 but, is under the Act of 1960. That apart, the Rules of 1988 are prospective in operation and do not either confer or take away any right in respect of actions that have taken place prior to their commencement. It is trite law that right of an appeal is not a natural or inherent right. An appeal is a creation of statute and there is no right of appeal unless it is granted clearly and explicitly by a statute. The appeal being vested right accrues to the litigant as on and from the date the *lis* commences, though, it may be actually exercised when an adverse judgment is pronounced.

In short, the right of appeal is to be governed by the law prevailing on the date of institution of the suit or proceedings and not by the law that prevails at the time of its decision or even on the date of filing of the appeal. (See “**Garikapati Veerayya versus Subbiah Choudhary**” AIR 1957 Supreme Court 540.) Needless to say that vested right of an appeal can only be taken away by a subsequent enactment provided it is done so expressly or by necessary implication and not otherwise. When we examine the case before us, in the light of this settled legal position, we find that Rules of 1988 do create a right of appeal before the Registrar, Cooperative Societies against an order of penalty passed by a Cooperative Society in respect of its employee. However, there is no provision in the entire rules which could even remotely suggest that this right created under Rule 21 would be applicable to the pending actions. The Rules of 1988 do not create right of appeal retrospectively either expressly or by necessary implication. Rather, Rule 21, creates right of appeal in the context of Rule 19 which provides for imposition of different penalties including the major penalty of

dismissal/removal of an employee of Cooperative Society from service. The Rule further provides that major penalty could only be imposed by the Cooperative Society with the approval of the Selection Board constituted under Rule 6 of the Rules of 1988.

- 26.** It is thus a foregone conclusion that if right to file appeal accrues after coming into operation of the Rules of 1988, the appeal against the order of penalty would be maintainable before the Registrar Cooperative Societies under Rule 21. At the cost of repetition, it may be stated that in the instant case, the right to sue against the order of imposing penalty against the respondent accrued to him on 30th April, 1986 when the Bank dismissed respondent No. 4 from its services and at that point of time, the remedy of appeal was not available under the Act of 1960 or any rules framed thereunder. Had respondent No.4 been advised properly, he ought to have either availed the remedy of going to the labour Court under the applicable labour laws or to the civil Court for enforcement of his civil right. In the absence of right of appeal provided under the statute i.e., Act of 1960, the appeal filed by the respondent before the Registrar Cooperative Societies was not maintainable. The matter has not been approached either by the Registrar Cooperative Society, the Tribunal or by the learned Single Judge in correct perspective. All the three forums have faulted in arriving at the conclusion that the right of appeal created by virtue of Rule 21 of the Rules of 1988 vested a right of appeal in the respondent retrospectively i.e., with effect from 30th April, 1986 which conclusion is de hors the settled legal position we have explained hereinabove.

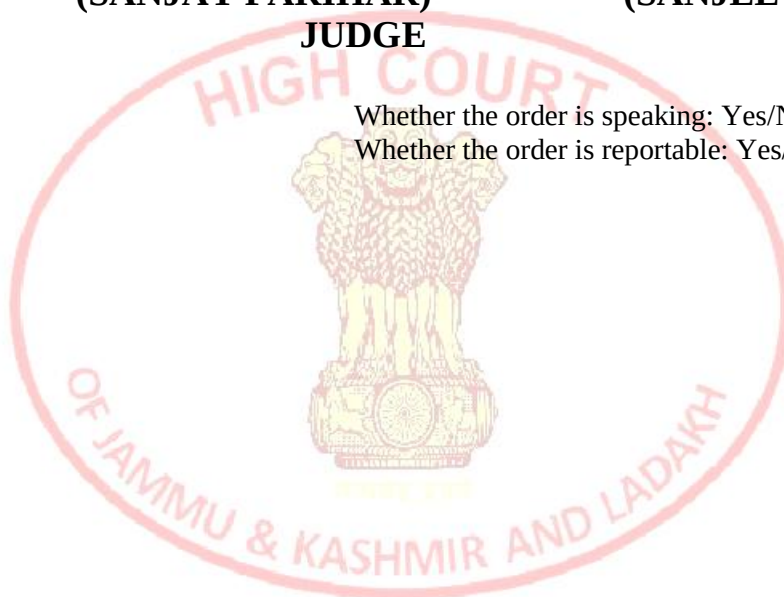
27. Viewed thus, we find merit in this appeal and the same is, accordingly, **allowed**. The impugned order passed by the Writ Court dated 26th December, 2011, the order of J&K Special Tribunal dated 31st January, 2002 as also the order passed by the Registrar Cooperative Societies dated 21st February, 2000 are **quashed**. The respondent is, however, left free to explore the remedies as may be available to him under law to assail his dismissal from service from the Bank.

28. *Disposed of.*

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
09.10.2025
AKHILESH



Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No