IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARAYANA AT CHANDIGARH

Date of Decision: October 21, 2015

LPA No.216 of 2015 (O&M)

Balbir Singh

...Appellant

Versus

The Moga Central Cooperative Bank Ltd., Moga & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. D.V.Sharma, Senior Advocate, with
Ms. Shivani Sharma, Advocate, for the appellant.

HEMANT GUPTA, J.

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The present appeal under Clause X of the Letters Patent is directed against an order passed by the learned Single Judge on 19.11.2014, whereby the writ petition filed by the present appellant challenging the Award dated 21.12.1993 was dismissed.

The appellant was appointed as a *Daftri* by the Board of Directors of Moga Central Cooperative Bank Ltd. (for short 'the Bank') on 04.12.1956. However, he was dismissed from services on 22.05.1988 after conducting the departmental proceedings. The appellant filed a statutory appeal before the Managing Director, which was not decided. Thereafter, the appellant raised an Industrial Dispute by serving a demand notice. The dispute was referred to Labour Court for adjudication. The Labour Court vide award dated 21.12.1993 held that the appellant is not entitled either to reinstatement or compensation. It was found that Bye-law 41(B) of the Bank unambiguously recites that Manager, in addition, would have power to appoint, suspend, reinstate, punish Class IV employees including Peons, Chowkidars, Gunman, Malies and Daftries etc. The writ petition against the said Award stands dismissed.

Before this Court, learned counsel for the appellant has vehemently argued that it is Punjab Cooperative Financing Institutions Service Rules, which are applicable to the Bank. Such Rules are statutory Rules framed in terms of Rule 28 of the Punjab Cooperative Societies Rules, 1963 (for short 'the Rules') by the Registrar, Cooperative Societies. Rule 9 of the Punjab Cooperative Financing Institutions Service Rules provides the Authorities empowered to impose penalty. The Board of Directors of a Central Cooperative Bank is competent to suspend, remove and dismiss the employees. Since the order of punishment has been passed by a Manager, therefore, such order is passed by an incompetent authority.

Learned counsel for the appellant further submits that the Bye-laws permitting the Manager to pass an order of punishment runs counter to the statutory Rules so framed. Therefore, it is the statutory Rule, which will prevail and not the Bye-laws, which do not have the force of law. Thus, the order of punishment has been passed by an incompetent authority. Mr. Sharma has relied upon a Single Bench judgment reported as <u>Ujjal Singh Vs. The Financial Commissioner, Cooperation Punjab, Chandigarh & others 2010 (5) RCR (Civil) 692</u> to contend that the Byelaws of the Society cannot prevail over the statutory Rules framed under the Cooperative Societies Act, as such Byelaws have no force of law.

Having heard learned counsel for the appellant at length, we do not find any merit in the present appeal. Before considering the arguments raised, certain statutory provisions need to be extracted. The same are as under:

<u>The Punjab Cooperative Societies Act, 1961</u>

"8. Registration – (1) If the Registrar is satisfied –

(a) that the application complies with the provisions of this Act and the rules,

(b) that the objects of the proposed society are in accordance with section 4,

(c) that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and

(d) that the proposed society has reasonable chances of success, the Registrar may register the society and its bye-laws.

(2) When the Registrar refuses to register a society, he shall communicate the order of refusal together with the reasons therefor, to such of the applicants as may be prescribed.

(3) The application for registration shall be disposed of by the Registrar within a period of two months from the date of receipt thereof by him.

85. Rules – (1) The Government may, for any co-operative society or class of such societies, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

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(xxxviii) qualifications for members of the committee and employee of a society or class of societies and the conditions of service subject to which persons may be employed by societies;

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The Punjab Cooperative Societies Rules, 1963

"**28. Qualifications and conditions of service of employees** – (1) The qualifications and conditions of service subject to which any person may be employed by a co-operative society or a class of co-operative societies shall be such as may be determined by the Registrar from time to time.

(2) Where the Registrar is of the opinion that it is necessary or expedient so to do, he may be order, for reasons to be recorded in writing relax the provisions of this rule with respect to any co-operative society or class of co-operative societies to such extent as he may consider proper."

The primary argument of learned counsel for the appellant is that Punjab Cooperative Financing Institutions Service Rules are the statutory Rules and will have preference over the Byelaws. Such contention is misconceived. The Punjab Cooperative Financing Institutions Service Rules have been framed in exercise of the rule making power conferred on the Registrar under Rule 28 of the Rules. A Division Bench of this Court in Mohie Janta Cooperative Agricultural

Service Society Limited, Mohie Vs. State of Punjab & others 2011 (3) SCT 157 has held that Rule 28 confers power upon the Registrar to frame Rules with regard to the qualifications and conditions of service of its employees. The Registrar Cooperative Societies also empowered to conduct the business in connection with the service conditions of the employees as per Rules 45 and 81 of the Rules. In view of the said judgment, the Rules have been framed by the Registrar in pursuance of the authority given to frame such Rules regarding service condition of the employees of the Cooperative Societies.

The argument that the Byelaws do not have force of statute is based upon the Hon'ble Supreme Court judgment reported as The Cooperative Central Bank Ltd. & others Vs. The Additional Industrial Tribunal, Andhra Pradesh & others 1969 (2) SCC 43. In the said case, the Court 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. However, such principle was not extended to byelaws, which govern the internal management, business or administration of a society. The Court held to the following effect:

> "10. We are unable to accept the submission that the bye-laws of a cooperative 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 byelaws of the nature that a cooperative society is empowered by the Act to make. The byelaws 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 byelaws laying down conditions of service of the employees of a society, the byelaws 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 byelaws 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…………"

We find that the arguments raised by learned counsel for the appellant are not tenable. In a later Constitution Bench judgment reported as <u>Sukhdev Singh & others Vs. Bhagatram Sardar Singh Raghuvanshi & another (1975) 1 SCC 421</u>, the majority opinion held that the regulations and/or byelaws framed under the statutory powers in terms of a statute have a statutory force. It was a minority view which supports the arguments raised by learned Counsel for the Appellant. Since the majority view is contrary to the judgment referred to by the learned counsel for the appellant, we find that the said judgment holding that the byelaws do not have statutory force is not a correct enunciation of principle of law. The Supreme Court inter-alia held as under:

> "11. The contentions on behalf of the employees are these. Regulations are made under the statute. The origin and source of the power to make regulations is statutory. Regulations are self-binding in character. Regulations have the force of law inasmuch as the statutory authorities have no right to make any departure from the regulations.
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> 12. Rules, regulations, schemes, bye-laws, orders made under statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules is after the coming into force of the Act in a better position to adapt the Act to special circumstances. Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes.
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> 14. Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute. Bye-laws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the

exercise of the statutory power by any such authority constitutes the making of statutory rules.

15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the, restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.

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17. Subordinate legislation has, if validily made, the, full force, and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing the result of a breach thereof is, in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute. Re. Langlois and Biden, (1891) 1 Q.B.349 and Kruse v. Johnson, (1898) 2 Q.B. 91.

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24. Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power. Second, the executive power of a State is not authorised to frame rules under Article 162. This Court held that the Public Works Department Code was not a subordinate legislation (See *G.J. Fernandez* v. *State of Mysore AIR 1967 SC 1753*). The rules under Article 309 on the other hand constitute not only the constitutional rights of relationship between the State and the government servants but also establish that there must be specific power to frame rules and regulations.

25. The Additional Solicitor General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under the Companies Act.

> The fallacy lies in equating rules and regulations of a company with rules and regulations framed by a statutory body. A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body on the other hand makes rules and regulations by and under the powers conferred by the statutes creating such bodies. Regulations in Table-A of the Companies Act are to be adopted by a company. Such adoption is a statutory requirement. A company cannot come into existence unless it is incorporated in accordance with the provisions of the Companies Act. A company cannot exercise powers unless the company follows the statutory provisions. The provision in the Registration Act requires registration of instruments. The provisions in the Stamp Act contain provisions for stamping of documents. The non-compliance with statutory provisions will render a document to be of no effect. The source of the power for making rules and regulations in the case of corporation created by a statute is the statute itself. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.
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> 33. There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. …….”

Even a Full Bench of this Court in a judgment reported as <u>Parkash Singh Bawa Vs. The Punjab State Agricultural Marketing Board, Chandigarh & another 1977(1) ILR (Punjab & Haryana) 712</u> dealt with the adoption of Punjab Civil Services Rules by the Punjab State Agricultural Marketing Board for its employees. The argument raised was that an employee does not enjoy any statutory status, the relationship being contractual in nature. Though the issue, whether the status is contractual or not, is no longer arising for consideration, but what has been held is that the service laws, byelaws or regulations framed by statutory authority have the force of law. The question framed in this regard is: "(1) whether the Service Rules (or by-laws or regulations by whatever name called) framed by a statutory authority within the meaning of Article 12 of the Constitution under an enactment empowering it to do so have themselves the force of law ?" Referring to the Constitutional Bench judgment in Sukhdev Singh's case (supra), it was held that the ratio *deci dendi* in U.P. State Warehousing Corporation, Lucknow Vs. Chandra Kiran Tyagi AIR 1970 SC 1244 stands impliedly overruled. It is the said judgment, which has been quoted in extenso in the earlier part of the judgment, wherein it has been held that regulations framed under a statute applies uniform treatment to everyone or to all members of same group or class and is a subordinate legislation conferred by a statute. The Court held to the following effect:

> "25. Mr. Sodhi on behalf of the respondent-Board forcefully contends that the mere passing of the resolution (Annexure A) would not and cannot raise the adopted provisions of the Punjab Civil Service Rules to the pedestal of formal bye-laws framed by the Board. Counsel contends that before a provision can be raised to be status of having the force of law, it must in all strictness comply with the provisions of the Act conferring the power to frame such subordinate legislation. He highlights the fact that under section 3(14), one of the pre-conditions for the framing of the bye-laws is that these shall have the approval of the State Government. He reiterates firmly that in the present case not only no such approval of the State Government has ever been given but, in fact, the writ petitioner does not even allege any such approval in the pleadings.
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> 26. There is patent merit in the objection raised on behalf of the respondent-Board. The conflict of authority which stands noticed in the earlier part of the judgment would show that the statutory status of the employees of a statutory authority is not to be easily inferred. An analysis of the authoritative pronouncement in Sukhdev Singh's case (supra) would show that it has to be in express terms established that the rules, regulations or bye-laws framed by a statutory authority have in strictness the force of law which would bind the same. It is a matter which has to be firmly established and cannot be merely implied. Obviously, the burden of establishing that the provisions on which he lays reliance have the force of law, is on the writ petitioner."

In Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti & others (11988) 4 SCC 734, the question examined was; whether the regulations framed pursuant to the statute can be said to have statutory force. Considering the said question, the Hon'ble Supreme Court held as under:

> "9. The question whether a regulation framed under power conferred by the provisions of a statute has got statutory power and whether an order made in breach of the said regulation will be rendered illegal and invalid, came up for consideration before the Constitution Bench in the case of Sukhdev Singh Vs. Bhagatram Sardar Singh Raghuvanshi (1975) 1 SCC 421. In this case it was held that:
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> 10. There is, therefore, no escape from the conclusion that regulations have force of law. The order of the High Court must, therefore, be reversed on this point unhesitatingly."

The issue, whether the regulations or the byelaws will have statutory force, has been again examined by the Hon'ble Supreme Court in a judgment reported as St. Johns Teachers Training Institute Vs. Regional Director, NCTE & another, (2003) 3 SCC 321, wherein it was held as under:

> "10. A Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the Rule, after coming in to force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.

Rules and Regulations made by reason of the specific power conferred by the Statutes to make Rules and Regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the Statute. The process of legislation by departmental Regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of Rules and Regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being over burdened and the needs of the modern day society being complex it cannot possibly foresee every administrative difficulty that may arise after the Statute has begun to operate. Delegated legislation fills those needs. The Regulations made under power conferred by the Statute are supporting legislation and have the force and affect, if validly made, as the Act passed by the competent legislature. (See Sukhdev Singh v. Bhagatram (1975) 1 SCC 421."

The power to approve Byelaws is conferred on the Registrar Cooperative Societies. He is to ensure that the Byelaws are not contrary to the provisions of this Act and the Rules made thereunder. If in exercise of such power, the Byelaws have been framed conferring disciplinary power on the Manager of the Society, the Rules would be deemed to be amended to that extent. Since the Registrar has approved the Byelaws, the Rules framed by him will stand modified to that extent.

Even though the Punjab Cooperative Financing Institutions Service Rules are applicable to State Cooperative Bank or a Central Cooperative Bank, but the Rules are generic in nature applicable to all State Cooperative Banks or Central Cooperative Banks, whereas the byelaws approved by the Registrar are specifically applicable to the respondent-Bank. It is well-settled that special law will prevail over the general law. Even on the said basis, the byelaws framed in exercise of the statutory powers will have preference over the generic rules framed by the Registrar.

The byelaws framed with the approval of the Government or by any authority in terms of the statute under Section 8 of the Act have the force of a statute. Therefore, the conditions in the byelaws that the Manager of the Society can pass an order of punishment are binding on the employees. The employee cannot be permitted to dispute the order of punishment passed by an authority specified under the byelaws.

We also find that the decision referred to by learned counsel was rendered for want of proper assistance. Some of the judgments of this Court have followed the judgment reported as The Cooperative Central Bank Ltd.'s case (supra). All judgments rendered on the basis of this judgment cannot be said to be good law.

Thus, we find that the Byelaws conferring power on the Manager of a Cooperative Society to impose punishment cannot be said to be illegal. Since the power has been exercised by the Manager in a particular manner, we do not find that such exercise of power warrants any interference in the present intra Court appeal.

In view of the above, we do not find that there is any illegality or irregularity in the order passed by the learned Single Judge, which may warrant interference in appeal before this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

21.10.2015
Vimal

(RAJ RAHUL GARG)
JUDGE