

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. D.B.Civil Contempt Petition No.156/2011  
Dairy Karamchari Union, Jodhpur V/s R.K.Trashal & ors.
2. D.B.Civil Contempt Petition No.162/2011  
Chandra Ram Faroda V/s R.K.Trashal & ors.
3. D.B.Civil Contempt Petition No.165/2011  
Bhagirath Ram Bishnoi V/s R.K.Trashal & ors.
4. D.B.Civil Contempt Petition No.192/2011  
Amra Ram V/s R.K.Trashal & ors.
5. D.B.Civil Contempt Petition No.202/2011  
L.D.Gupta & anr. V/s O.P.Meena & anr.
6. D.B.Civil Contempt Petition No.203/2011  
C.P.Mittal V/s O.P.Meena & ors.
7. D.B.Civil Contempt Petition No.207/2011  
Gopal Das Sharma & anr. V/s O.P.Meena & ors.
8. D.B.Civil Contempt Petition No.208/2011  
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9. D.B.Civil Contempt Petition No.209/2011  
Ramesh Chand Sharma V/s O.P.Meena & ors.
10. D.B.Civil Contempt Petition No.210/2011  
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11. D.B.Civil Contempt Petition No.211/2011  
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12. D.B.Civil Contempt Petition No.212/2011  
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13. D.B.Civil Contempt Petition No.213/2011  
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14. D.B.Civil Contempt Petition No.214/2011  
Om Prakash Verma V/s O.P.Meena & ors.
15. D.B.Civil Contempt Petition No.215/2011  
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16. D.B.Civil Contempt Petition No.216/2011  
Kanti Chand Sharma V/s O.P.Meena & ors.

17. D.B.Civil Contempt Petition No.217/2011  
Jagdish Prasad Sharma V/s O.P.Meena & ors.
18. D.B.Civil Contempt Petition No.221/2011  
Bharat Bhushan Pareek V/s O.P.Meena & ors.
19. D.B.Civil Contempt Petition No.233/2011  
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20. D.B.Civil Contempt Petition No.234/2011  
Anil Kumar Mathur V/s O.P.Meena & ors.
21. D.B.Civil Contempt Petition No.237/2011  
Sudish Kumar Arya V/s O.P.Meena & ors.
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Ramesh Chand Sen V/s O.P.Meena & ors.
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Mohan Lal Sharma V/s O.P.Meena & ors.
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Purshottam Dutt Joshi & ors. V/s O.P.Meena & ors.
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36. D.B.Civil Special Appeal (Writ) No.1038/11  
Harikishan Soni V/s State (Animal Husbandry) & ors.
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Hanuman Das Joshi V/s State (Animal Husbandry) & ors.
38. S.B.Civil Writ Petition No.3658/2011  
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40. S.B.Civil Writ Petition No.4603/2011  
Amar Singh Jodha V/s State (Co-op.) & ors.
41. S.B.Civil Writ Petition No.6762/2011  
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42. S.B.Civil Writ Petition No.8484/2011  
Dr.J.P.Kaswan V/s State (Co-op.) & ors.
43. S.B.Civil Writ Petition No.8502/2011  
Shanker Ram V/s State (Co-op.) & ors.
44. S.B.Civil Writ Petition No.9435/2011  
Ami Chand V/s State(Animal Husbandry) & ors.
45. S.B.Civil Writ Petition No.9814/2011  
D.C.Gupta V/s State (Animal Husbandry) & ors.
46. S.B.Civil Writ Petition No.9815/2011  
Buddharam Rawat V/s State(Animal Husbandry) & ors.
47. S.B.Civil Writ Petition No.9816/2011  
Sumer Singh & anr. V/s State (Animal Husbandry) & ors.
48. S.B.Civil Writ Petition No.9817/2011  
L.N.Garg V/s State (Animal Husbandry) & ors.
49. S.B.Civil Writ Petition No.9818/2011  
Ajmer Zila Dairy Employees Union V/s State(Animal Husbandry) & ors.
50. S.B.Civil Writ Petition No.9819/2011  
Harveer Sharan Sharma V/s State (Animal Husbandry) & ors.

51. S.B.Civil Writ Petition No.9821/2011  
Moti Lal V/s State (Animal Husbandry) & ors.
52. S.B.Civil Writ Petition No.9822/2011  
Raj.Rajya Dairy Karm.Mahasangh V/s State (Animal Husbandry) & ors.
53. S.B.Civil Writ Petition No.9824/2011  
Dr.R.S.Godara V/s State (Animal Husbandry)& ors.
54. S.B.Civil Writ Petition No.9825/2011  
Gom Singh Rawat & anr. V/s State (Animal Husbandry) & ors.
55. S.B.Civil Writ Petition No.9826/2011  
Jagnnath Yogi & anr. V/s State (Co-op.) & ors.
56. S.B.Civil Writ Petition No.9827/2011  
Narayan Lal Sharma & anr. V/s State (Animal Husbandry) & ors.
57. S.B.Civil Writ Petition No.9828/2011  
R.C.Jain & anr. V/s State (Animal Husbandry) & ors.
58. S.B.Civil Writ Petition No.9829/2011  
Bhanwar Singh Rathore V/s State (Animal Husbandry)& ors.
59. S.B.Civil Writ Petition No.9830/2011  
Rajendra Singh Rathore V/s State (Animal Husbandry)& ors.
60. S.B.Civil Writ Petition No.9831/2011  
Kailash Singh Shekhawat V/s State (Animal Husbandry)& ors.
61. S.B.Civil Writ Petition No.9832/2011  
Dairy Karamchari Sangh Kota & ors. V/s State (Animal Husbandry) & ors.
62. S.B.Civil Writ Petition No.9833/2011  
Narayan Das & ors.. V/s State (Animal Husbandry)& ors.
63. S.B.Civil Writ Petition No.9834/2011  
Kunj Bihari Agarwal V/s State (Co-op.) & ors.
64. S.B.Civil Writ Petition No.11558/2011  
Sudhindra Mohan Gautam V/s State (Co-op.) & ors.
65. S.B.Civil Writ Petition No.11561/2011  
Kanti Chand Bhati V/s State (Animal Husbandry) & ors.
66. S.B.Civil Writ Petition No.11864/2011  
Dr.Vikram Vyas V/s State (Animal Husbandry)& ors.
67. S.B.Civil Writ Petition No.12514/2011  
Dairy Singh. V/s State (Co-op.) & ors.

68. S.B.Civil Writ Petition No.12862/2011  
Swedesh Kumar Bhatt V/s State (Animal Husbandry)& ors.

Date of Order:- 23.12.2011

**PRESENT**

**Hon'ble the Chief Justice Mr.Arun Mishra**  
**Hon'ble Mr.Justice Kailash Chandra Joshi**

Mr.M.R.Singhvi, Sr.Advocate with)

Mr.Manish Parihar )  
Mr.Kuldeep Mathur )  
Mr.I.R.Choudhary )  
Mr.A.K.Rajvanshi )  
Mr.Rajendra Soni )- for the petitioners-appellants.  
Mr.Mohit Soni )  
Mr.Man Mohan Mathur )  
Mr.S.D. Vyas )  
Mr.M.S.Purohit )  
Mr.C.P.Sharma )  
Mr.Himat S.Bikarwar )  
Mr.A.S.Rathore )  
Mr.Vijay Kumar Vyas )  
Mr.Kuldeep Verma )

Mr.G.K.Garg,Sr.Advocate with )

Ms.Anita Agarwal )  
Mr.P.P.Choudhary, Sr.Advocate with)  
Mr.Amit Dave )  
Mr.Rajesh Joshi )  
Mr.C.S.Sharma )  
Mr.B.P.Mathur )  
Mr.D.K.Parihar )- for the respondents.  
Mr.Rupin K. Kala )  
Mr.Ashvini Gehlot )  
Mr.B.S.Sandhu )

**ORDER**

**BY THE COURT (Per Hon'ble Shri Arun Mishra, CJ)**

This is second round of lis in the matter of enhancement of age of superannuation of employees of the Rajasthan Cooperative Dairy Federation Limited (for short “RCDF”) and various units working under it at different places in the State of Rajasthan.

The cases have chequered history. Earlier several writ applications have been filed before the Single Bench of this Court being S.B.Civil Writ Petition No.8626/09 Dairy Karamchari Union & ors. Vs The State & ors. and 19 other writ applications which were decided by the Single Bench vide common order dated 25<sup>th</sup> February, 2010. In S.B.Civil Writ Petition No.6581/09 which pertained to Paschimi Rajasthan Dugadh Utpadak Sahakari Sang Limited, Jodhpur, the petitioners have challenged the resolution of the Society dated 30.6.2009 keeping the age of superannuation of the employees as 58 years, after noticing the fact that the Managing Director of RCDF has already increased the age of superannuation from 58 to 60 years. The employees of Uttari Rajasthan Sahakari Dugdh Utpadak Sarsh Ltd., Bikaner have filed S.B.Civil Writ Petition No.9000/09 and other writ applications questioning the order dated 1.9.2009 issued by the Society in pursuance of the withdrawal of the order of the Managing Director of RCDF by which the age of superannuation was increased.

It is not disputed that RCDF is the Apex Society as defined in Section 2(a) of the Rajasthan Cooperative Societies Act, 2001 (hereinafter referred to as “the Act of 2001”) and other Societies of various districts of Alwar, Ajmer, Barmer, Kota, Nagaur, Bikaner, Jaipur, Jodhpur, Churu, Hanumangarh etc., whose employees and unions have preferred writ petitions, are the Cooperative Societies as defined in Section 2(i) of the Act of 2001. It was the case set up that the employees working in all the Societies are under the direct supervision and control of RCDF and the RCDF is empowered to frame Service Regulations and in exercise of that power, the RCDF framed the Service Regulations known

as "Rajasthan Cooperative Dairy Federation Employees (Non-Workmen) Service Regulations, 1980" (hereinafter referred to as "the Regulations of 1980"). These Regulations have been adopted by various Societies from time to time. It was also submitted that the State Government has also the power to issue appropriate directions to the RCDF and other Cooperative Societies under the provisions of the Act of 2001 and in pursuance thereof, the Government issued an order on 16.6.1990 to the effect that all the Unions (Cooperative Societies) shall adopt Model Service Rules, Cadre and Recruitment Rules, Standing Orders as suggested by RCDF. Clause 12 of the order dated 16.6.1990 is being quoted below:-

*"12. That the Milk Producers Cooperative Unions shall adopt Model Service Rules, Cadre and Recruitment Rules, Standing Orders as suggested by RCDF from time to time and shall not rescind/alter or modify these rules without the prior approval of the Federation."*

Clause (3) of the Model Agreement entered into was to the aforesaid effect meaning thereby all the Dairies (Co-operative Societies) agreed to follow all Service Rules and conditions prescribed by RCDF for the employees of the Societies signing the agreement.

It was also submitted that there was demand to increase age of superannuation of the employees of various Organizations, Corporations, Board, Companies etc. from 58 years to 60 years. The State Government, in pursuance of demand raised by several Organizations, issued circular dated 26.8.2008 enhancing the age of superannuation of the employees of the Corporations, Board, Companies etc. from 58 years to 60 years

with immediate effect. The enhancement was made applicable to all those employees who were due to retire in the month of August, 2008. Thereafter, a representation was submitted to the State Government for enhancement of age of retirement of employees of the Cooperative Societies also. As the matter was pending before the State Government, the RCDF passed the order on 15.9.2008 to the effect that no employee shall be retired in the month of August, 2008 and they shall continue till 30.9.2008 at their respective places as it was likely that age would be enhanced from 58 to 60 years. In view of the said order, the employees of RCDF and other Societies continued in service even after attaining the age of 58 years. Ultimately, on 17.9.2008, the Registrar, Cooperative Societies, in exercise of power conferred by Rule 39 of the Rajasthan Cooperative Societies Rules, 2003 (hereinafter referred to as "the Rules of 2003") issued order permitting Cooperative Societies to increase age of superannuation of employees of the Societies and in the case where there is no share capital of Government and the Government was not providing any aid to the Cooperative Societies, the Board of Directors were given liberty to enhance age of superannuation of their employees from 58 to 60 years. With respect to the Societies wherein the Government interest is involved by way of capital investment or contribution, the Board of Directors were directed to take decision for enhancement of age of superannuation of employees considering that the Society concerned is running into profit for the past three years and there was no loss in the past three years and the number of persons working is not beyond the sanctioned staffing strength. Even those Societies could have enhanced the age of superannuation of employees,

which are not running into profit for the past three years and the employees are more than sanctioned strength, however, in such matters, cases were required to be forwarded after resolution is passed for enhancement of age, to the Registrar, Cooperative Societies to pass appropriate order. Thus, enhancement of age of superannuation is made permissible in those cases also where Societies are running into losses and number of employees exceeds staffing pattern.

Thereafter, a meeting of the Board of Directors of RCDF was convened on 15.9.2009 and in that meeting resolution No.109(13) was passed and it was resolved that the employees shall continue to work on the same conditions as mentioned in the order dated 30.8.2008 till 30.9.2008. The Managing Director of RCDF was authorized to pass requisite order for enhancing the age of retirement upon receipt of the information from the Government. Thereafter, the Managing Director issued order on 19.9.2008 enhancing the age of superannuation from 58 to 60 years, which was acted upon and the employees of the Cooperative Societies were not retired on attaining age of 58 years. One Ram Chandra Choudhary challenged the orders passed by the Managing Director of the RCDF, Deputy Secretary, Animal Husbandry, Government of Rajasthan and Managing Director, Ajmer Zila Dugdh Utpadak Saharkari Sangh Ltd. by way of filing revision petition under section 107 of the Act of 2001 and the Minister, Cooperative Societies passed interim order dated 29.9.2008 staying operation of the impugned orders. Passing of resolution no.109(13) was also disputed. The State Government ultimately set aside the orders. Then, the matters travelled to this Court

at the instance of employees & union of the Societies. Validity of the order passed on 29.7.2009 was also questioned.

The Single Bench of this Court held that the Managing Director of RCDF had power and authority to issue orders dated 30.8.2008, 15.9.2008 and 19.9.2008 to increase the age of superannuation by virtue of the Notification dated 10-11.6.2003 and further by virtue of resolution No.109 (13) of the Board of Directors passed in the meeting dated 15.9.2008, It was further held by the Single Bench that Resolution no.109 (13) was passed by the Board of Directors of RCDF in the meeting held on 15.9.2008 and the Board of Directors in the meeting dated 23.10.2008, did not resolve to withdraw any of the decisions made, either by the Managing Director, RCDF in relation to the increase in the age of superannuation nor the Minutes of resolution No.109(13) were rescinded or altered or modified or cancelled by the Board of Directors of the RCDF. The Managing Director of RCDF has been authorized by the State Government by exercising powers under the Act of 2001 to exercise powers of the Registrar which is in addition to the powers vested with the Registrar. Thus, he could have exercised the powers under the Act of 2001 except under sections 6, 10 to 14, 54,57,58, 61,65,66, 104 and 107. The order of the Deputy Secretary, Government of Rajasthan, Animal Husbandry, Jaipur dated 31.8.2009 was declared illegal and consequent orders were also declared illegal. The decision taken by Cooperative Societies in conflict with the decision of the RCDF and resolution No.109 (13) dated 15.9.2008 was declared to be illegal. The superannuation of employees on attaining the age of 58 years was declared to be illegal and

it was directed that they be allowed to continue in service upto the age of 60 years with all consequential benefits.

The order of the Single Bench was questioned before the Division Bench of this Court by way of filing intra-court appeals, which were disposed of by common judgment dated 8.3.2011 passed in D.B.Civil Special Appeal No.165/2010 Pashimi Raj.Dugadh Ut.S.S.Ltd. V/s Kantilal Ojha and ors. & 93 other matters. It was submitted that there was tripartite agreement between the parties, according to which, decision taken by RCDF has to be adopted by various Societies. However, it was not disputed before the Division Bench that various aspects specified by the Registrar, Cooperative Societies were not taken into consideration by RCDF. The Division Bench observed that the decision was taken by the State Government for enhancing the age of superannuation from 58 to 60 years for its employees and initially the intention of the RCDF and Societies was to enhance the age, that was wholesome. It was further observed by the Division Bench that enhancement of age of superannuation would have been in accordance with the current realities and when age of superannuation has been enhanced by the State Government for its employees, but at the same time it was necessary to take into consideration the directions issued by the Registrar, Cooperatives Societies on 17.9.2008 and since directions were not considered, it was agreed by the parties that the matter be reconsidered by RCDF and the Societies. Earlier otherwise there were allegations whether the resolution was passed or not. The said dispute shall not influence the decision to be taken by the RCDF etc. It was also emphasized by the Division Bench that they have to take decision fully

considering the current realities and also the fact that the State Government has enhanced the age of superannuation of its employees and various other bodies, Corporations, Board, Companies etc. It was further emphasized that decision cannot be taken arbitrarily or capriciously or in whimsical manner, but it has to be taken in accordance with law and it should be so reflected in the action so taken.

Thereafter, RCDF has taken the decision on 31.3.2011 not to enhance the age of superannuation on the ground that Dairy Federation has remained in accumulated losses from the years 1999-2000 to 2007-2008. The net profit for the years in question was to be taken into consideration and that too for the past three years. This aspect has been totally ignored though mentioned in the tabular form. What has impressed upon RCDF is accumulated losses from the years 1999-2000 to 2007-08 which was not the relevant consideration even in the directives issued by the Registrar, Cooperative Societies on 17.9.2008. It has also been mentioned that the benefit of Sixth Pay Commission has been given by RCDF to its employees, as such, it is necessary to reduce the expenses. It has also been considered that in case the age is enhanced, it would cause financial burden. Though RCDF was in accumulated profit of Rs.21.46 lacs in the year 2008-09 and of Rs.837.86 lacs in the year 2009-10, decision has been taken not to enhance the age of superannuation. Several contempt petitions have also been filed alleging violation of the order passed by the Division Bench of this Court. It has been contended that inspite of the categorical order passed by this Court to take into consideration the relevant aspects, they have not been considered and various resolutions have been passed in violation thereof. The resolutions

so passed are against the spirit of the order passed by this Court. Thus, violation of the order passed by this Court has been committed, as such, respondents are liable to be punished under the Contempt of Court Act. Certain intra-court appeals have also been preferred in which dismissal of the writ application has been questioned.

It was submitted by Mr.M.R.Singhvi, Sr.Advocate with Mr.Manish Parihar, Mr.Kuldeep Mathur, Mr.I.R.Choudhary, Mr.A.K.Rajvanshi, Mr.Rajendra Soni, Mr. Mohit Soni, Mr.Man Mohan Mathur, Mr.S.D. Vyas, Mr.M.S.Purohit, Mr.C.P.Sharma, Mr.Himat S.Bikarwar, Mr.A.S.Rathore, Mr.Vijay Kumar Vyas and Mr.Kuldeep Verma appearing on behalf of the petitioners/appellants that decision taken by the RCDF and various Societies is not in tune with the directions issued by this Court and even they are violative of the order of the Registrar, Cooperatives Societies dated 17.9.2008 issued under Rule 39 of the Rules of 2003. It was also submitted that RCDF has framed Model Rules which have been adopted by various Societies, thus, it was for the RCDF to take decision and as per tripartite agreement clause 12, it was for the various Societies to adopt the same. Earlier the RCDF has taken the decision and thereafter, Societies have adopted the same. It was also submitted that the age of superannuation was required to be enhanced as RCDF is earning net profit. It was also submitted that several Societies are running into profit but accumulated losses have been taken into consideration and not the net profit. The fact of enhancement of age of superannuation by the State Government for its employees and various bodies, Corporations, Board, Companies etc. and there should be parity amongst employees, has not been taken into consideration. It was also submitted that

Registrar could not have made the financial condition to be final determinative factor for deciding whether age of superannuation should be enhanced or not. Mere fact that some of the Societies are running into some losses, cannot be a ground not to enhance age of superannuation. It was also submitted that staffing pattern has also not been taken into consideration by various Societies. There is no uniformity in the decision which has been taken and even where the Societies are running into profit, decision was taken not to enhance the age of superannuation on the ground that there were accumulated losses whereas net profit was appropriate consideration. It was further submitted that for consistency of decision, RCDF may be directed to take afresh decision as RCDF is competent to frame bye-laws and services rules have been framed by it from time to time which have been adopted by various Societies.

The learned counsel for the petitioners-appellants have also submitted that RCDF was running into profit in the years 2008-09 and 2009-10, but the same was not considered and the accumulated losses in the years 1999-2000 to 2007-08 were taken into consideration to keep the superannuation age as 58 years. Hence, the decision is illegal. In the case of Alwar Society, it was submitted that pursuant to the directions issued by this Court, decision was taken by the Board of Directors on 22.3.2011 to enhance the age of superannuation from 58 to 60 years considering the fact that it was running into net profit in the years 2005-06, 2006-07 and 2007-08 and number of employees working was below the sanctioned staffing pattern. However, the Registrar, Cooperative Societies vide order dated 15.6.2011 illegally set aside the said decision on the ground of accumulated losses, though Society is running into net

profit. It was also submitted that in the cases where the Societies were running into profit and number of staff was within the sanctioned staffing pattern, there was no further power with the Registrar in view of his order dated 17.9.2008 to pass order and disapprove the resolution of the Societies. It was further submitted that Kota Society was also running into profit, but accumulated loss has been taken into consideration inspite of the fact that by now the accumulated loss which was caused earlier has also been nullified and there is no accumulated loss as on today and the number of staff working is also as per the sanctioned strength. Thus, the decision taken by Kota Society to keep the age of superannuation as 58 years was without due application of mind and without mentioning any reasons whatsoever. In the case of Barmer Society, it was submitted that though it remained in net profit in the years 2007-08, 2008-09 and 2009-10 and number of employees working was 37 as against the sanctioned strength of 78 and thus, only 48% employees were working, the same were not considered and accumulated loss has been taken into consideration for denying the enhancement of age of superannuation from 58 to 60 years. Later on, when contempt petitions were filed, matter was reconsidered and loss of Jodhpur Society for the years 2005-06 has been taken into consideration and reasons have been supplemented by passing subsequent resolution on 1.6.2011. Hence, the decision taken is illegal. With respect to Nagaur Society, it was submitted that various aspects have not been taken into consideration and decision to keep the age of superannuation as 58 years was taken in a mechanical manner. With respect to Ajmer Society, it was submitted that for the last 20 years, no recruitment has been made, as

such, as against the sanctioned strength, 215 workers were working through contractors on contract basis. The accumulated loss in the last three years has been taken into consideration and not the net profit and loss. Besides, it was considered that in case age of superannuation was increased, it would put financial burden. The decision is based on irrelevant considerations and hence, the same is liable to be set aside. With respect to Hanumangarh Society, it was submitted that though it was running into profit and its financial condition was good, but only to keep competition with other Societies, it has been decided not to enhance the age of superannuation. It was also taken into consideration that if new incumbents are inducted, that may be beneficial to the Society. Counsel submitted that it could not be said to be relevant factor to be considered in accordance with law; on the one hand, experienced persons are available, they are being discontinued and in order to induct novice, decision has been taken not to enhance the age of superannuation as if new incumbents were to provide employment market. Intention is to induct new incumbents of their choice. It has been ignored that the persons, who are being discontinued, are experienced hands and they have spent whole of their life in the services of Societies and they are not being provided their just dues of enhancement of age of superannuation from 58 to 60 years. Hence, the decision cannot be said to be appropriate or based on legally sound basis. With respect to Bikaner Society, it was submitted that while passing the resolution dated 24.3.2011, opinion of Legal Advisor has been referred to and thereafter, without applying mind to any of the factors and without mentioning any reasons whatsoever, the decision has been taken not to

enhance the age of superannuation. Thus, the decision is bereft of reasons and consideration of the relevant factors required to be considered in view of the observations made in the order passed by this Court. With respect to Jaipur Society, it was submitted that though the Society was running into profit in the years 2005-06, 2006-07 and 2007-08, decision has been taken not to enhance the age of superannuation. The accumulated loss has been worked out so as to deny the enhancement of age of superannuation, which was not the relevant consideration. It was also submitted that the decision has been influenced by Shri O.P.Meena, who was bent upon in all cases to ensure that resolution enhancing age from 58 to 60 years was not carried out as when he was appointed as Managing Director of RCDF, he has questioned the resolution which was passed by the Board of Directors on 15.9.2008 and also the resolution which was passed by the predecessor Managing Director. The Registrar has also been influenced by Shri O.P.Meena as Shri O.P.Meena has also contended that the employees were not entitled for enhancement of age of superannuation and since he was Managing Director of RCDF and was also Principal Secretary of Animal Husbandry and Dairy, the Registrar being subordinate in rank felt bound by the dictates of Shri O.P.Meena. Thus, the observations made by the Division Bench and the Single Bench of this Court have been deliberately flouted by the respondents. Hence, it is a suitable case where appropriate punishment be inflicted upon the concerned individuals including Shri O.P.Meena, who is one of the respondents in the contempt applications. With respect to Jodhpur Society, it was contended that the decision taken on 22.3.2011 is illegal as accumulated loss has been taken into

consideration. The number of regular staff working is 176 as against sanctioned strength of 178 and 5 persons are on deputation. The workers working on contract basis have been considered, who are not within the sanctioned staffing pattern. Besides, the financial condition could not be said to be the sole criteria to deny the benefit of enhancement of age of superannuation. Hence, the decision taken is illegal. Earlier age was increased by the Society pursuant to the resolution of RCDF and now illegal decision has been taken. With respect to Churu Society, it was submitted that though earlier age of superannuation was enhanced, accumulated losses are being taken into consideration including the burden to be imposed in case age of superannuation is enhanced. Thus, the decision not to enhance the age of superannuation has been taken in a mechanical manner and on irrelevant consideration and hence, it is bad in law.

Mr.G.K.Garg, Sr.Advocate with Ms.Anita Agarwal, Mr.P.P.Choudhary, Sr.Advocate with Mr.Amit Dave, Mr.Rajesh Joshi, Mr.C.S.Sharma, Mr.B.P.Mathur, Mr.D.K.Parihar, Mr.Rupin K.Kala, Mr.Ashvini Gehlot & Mr.B.S.Sandhu appearing on behalf of the respondents have submitted that the decision so taken is in accordance with law and no case is made out so as to interfere in the writ applications, special appeals & contempt applications. It is open to the employer whether to enhance the age of superannuation. There is no illegality in the decision not to enhance the age of superannuation. The directions issued by this Court have been duly complied with and the order has not been violated. It was also submitted that the writ petitions filed by the petitioners against the Cooperative Societies & Diary

Federation are not maintainable as they do not fall within the definition of “State” under Article 12 of the Constitution of India.

Shri P.P.Choudhary, Sr.Advocate has also submitted that it was not appropriate for the Registrar to put financial rider in the order dated 17.9.2008. The Registrar ought to have specified conditions of Service in his order and the State Government is also having the power to issue directions under section 123 of the Act of 2001 to enhance the age of superannuation, which should not have been left at the discretion of the individual Society to take a decision in the matter. Appropriate course was that State Government ought to have issued mandate or the Registrar should have specified what should be the age of superannuation whether it should be 58 or 60 years. It was also submitted that tripartite agreement cannot be said to be binding upon the Societies. When they have adopted the Rules framed by RCDF, it could not be said that the Rules framed by RCDF are binding upon them and it is open to take a decision whether to adopt them or not. Mere adoption of Rules framed by RCDF could not be said to be denuding the Societies of their power to take independent decision. Considering overall circumstances and interest of the Societies, which is supreme, decision has been taken not to enhance the age of superannuation which does not call for any interference by this Court in the writ applications, special appeals & contempt applications.

We find that inspite of the fact that RCDF and some other Societies are in-fact running into profit and the number of employees working in the Societies are as per the sanctioned staffing pattern, the decision has been taken not to enhance the age of superannuation. In several cases,

we find that accumulated losses have been taken into consideration, which could not have been taken into consideration and it cannot be sole criteria to deny benefit of enhancement of age of superannuation, in view of the directives issued by the Registrar of the Cooperative Societies under Rule 39 of the Rules of 2003 vide order dated 17.9.2008. The said order dated 17.9.2008 is being quoted below:-

“विभाग द्वारा एतद्संबंध में पूर्व में जारी समस्त आदेशों को अतिलंघित करते हए राजस्थान सहकारी सोसाइटी नियम, 2003 के नियम 39(4) के अन्तर्गत राज्य की विभिन्न सहकारी सोसाइटियों के कार्मिकों (अधिकारियों/कर्मचारियों) की अधिवार्षिकी आयु के सम्बन्ध में निम्नांकित निर्देश जारी किये जाते हैं:-

1 राज्य की ऐसी सहकारी सोसाइटियाँ जिनमें राज्य सरकार की हिस्सा पूँजी अथवा अनुदान आदि के रूप में राजकीय हित निहित नहीं हैं, उनमें संस्था का संचालक मण्डल संस्था के हितों को दृष्टिगत रखते हए अपने स्तर से अपने कार्मिकों की अधिवार्षिकी आयु 58 वर्ष से बढ़ाकर अधिकतम 60 वर्ष तक करने के संबंध में निर्णय ले सकेगा।

2 राज्य की ऐसी सहकारी सोसाइटियाँ, जिनमें राज्य सरकार की हिस्सा पूँजी अथवा अनुदान आदि के रूप में राजकीय हित निहित हैं, उनमें कार्मिकों की अधिवार्षिकी आयु के संबंध में निम्नानुसार प्रक्रिया अपनायी जानी अपेक्षित हैं:-

(क) ऐसी सहकारी सोसाइटियाँ, जिनमें विगत तीन वित्तीय वर्षों में हानि नहीं रही है अर्थात् उनमें विगत तीन वित्तीय वर्षों में निरन्तर शुद्ध लाभ रहा है तथा साथ ही जिनमें कार्यरत कार्मिकों की संख्या उनके स्वीकृत स्टॉफ स्ट्रेन्थ से अधिक नहीं है, उनका संचालक मण्डल संस्था के हितों को दृष्टिगत रखते हए अपने स्तर से अपने कार्मिकों की अधिवार्षिकी आयु 58 वर्ष से बढ़ाकर अधिकतम 60 वर्ष तक करने के संबंध में निर्णय ले सकेगा।

(ख) ऐसी सहकारी सोसाइटियाँ, जिनमें विगत तीन वित्तीय वर्षों में से किसी भी वर्ष हानि की स्थिति रही हो, अथवा जिनमें कार्यरत कार्मिकों की संख्या संस्था की स्वीकृत स्टॉफ स्ट्रेन्थ से अधिक है, उनका संचालक मण्डल यदि संस्था के कार्राबार आदि व्यापक हितों को दृष्टिगत रखते हए अपने कार्मिकों की अधिवार्षिकी आय 58 वर्ष से बढ़ाकर अधिकतम 60 वर्ष तक करने की अनुशंसा करता है, तो संचालक मण्डल के इस आशय के प्रस्ताव को संस्था का मुख्य कार्यकारी निर्धारित प्रारूप में अधोहस्ताक्षरकर्ता द्वारा प्राधिकृत अधिकारी को प्रेषित करेगा।

प्राधिकृत अधिकारी प्राप्त प्रस्तावों के संबंध में विभागीय निर्देशों का पालन करते हए अग्रिम आवश्यक कार्यवाही करेंगे। ऐसी संस्थाओं के लिये संस्था की ओर से प्रेषित किये जाने वाले प्रस्ताव का प्रारूप एवं प्राधिकृत अधिकारी द्वारा की जाने वाली कार्यवाही के संबंध में पृथक से निर्देश जारी किये जा रहे हैं।”

It is apparent from the aforesaid order issued by the Registrar under Rule 39 that with respect to Cooperative Societies in which the

Government interest is involved by way of capital investment or contribution and there was no loss in the past three years and there was net profit in the past three years and the number of persons working was not exceeding the sanctioned staffing strength, the Board of Directors were directed to take a decision for enhancement of age of superannuation of employees from 58 to 60 years as provided in para 2 (ka). Thus, the decision not to enhance the age of superannuation in the cases where Societies are running into profit and there was no loss and number of employees working was within the sanctioned staffing pattern, could not be said to be in accordance with law. It is clearly arbitrary decision. Irrelevant factors have been taken into consideration such as grant of benefit of Sixth Pay Commission and that it would have been appropriate to induct new incumbents and continuation of employees would cause financial burden, though they are experienced hands and spent whole of their life in the services of Society. The decision has been taken by the State Government to enhance age of superannuation of its employees and Corporations, Board, Companies and other bodies and thereafter, in pursuance thereof, the Registrar, Cooperative Societies has issued order dated 17.9.2008, which has a statutory force having been issued under Rule 39 of the Rules of 2003. Even the Registrar was bound by the same and he could not depart arbitrarily as done in the case of Alwar Society. It appears that decision has not been taken bonafide. When the Society of Alwar was running into profit for the past several years and its Board of Directors has passed resolution to enhance age of superannuation from 58 to 60 years and the number of employees working was below sanctioned strength, there was no rhyme or reason

for the Registrar to consider the accumulated loss which in fact appears to have been adopted to make a devise to deny just benefit of enhancement of age of superannuation. There was no justification for the Registrar to set aside the resolution of Board of Directors of Alwar Society. Even as per order dated 17.9.2008, the Board of Directors were authorized to take decision at their own level as mentioned in para 2 (ka) and only those cases were to be forwarded to the Registrar where there was loss in any of the past three years and number of staff working was more than the sanctioned strength and in such cases also, it was permissible to enhance the age of superannuation but with the approval of the competent authority.

In the case of Jaipur Society, we find that the said Society was running into profit in the years 2005-06, 2006-07 and 2007-08. As regards staffing pattern, the sanctioned strength was 488, against which 397 persons were working and 21 persons were on deputation and thus, total employees working were 418. However, the contract workers have been taken into consideration, which was not relevant consideration. The regular employees were not exceeding the sanctioned strength and inspite of running into profit, by adopting one reason or the other, it has been mentioned that there is loss which is incorrect as Society was running into profit of Rs.75.59 lacs in the year 2005-06, Rs.82.26 lacs in the year 2006-07 and Rs.106.54 in the year 2007-08. Thus, decision not to enhance the age of superannuation was illegal.

With respect to RCDF, we find that it was running into profit with effect from 2000-01 till 2009-10. The yearly profit/loss and

accumulated profit/loss of RCDF from 1999-2000 to 2009-10 is quoted below:-

Financial Year	Yearly profit/loss	Accumulated profit/loss
1999-00	-389.16	-6100.72
2000-01	599.33	-5501.40
2001-02	750.50	-4750.90
2002-03	546.65	-4204.25
2003-04	646.65	-3557.60
2004-05	755.76	-2801.84
2005-06	376.67	-2425.17
2006-07	699.76	-1725.40
2007-08	842.51	-882.90
2008-09	904.35	21.46
2009-10	816.40	837.86

Though RCDF was running into profit from 2000-01 till 2009-10 and in the years 2008-09 and 2009-10, there was accumulated profit, but it has been considered that from 1999-2000 to 2007-08, there were accumulated losses, which was not the relevant consideration. The net profit was to be considered for the past three years. Besides, consideration has also been made to the expenditure being incurred in TA and DA. Obviously when the employees are serving, these expenses are to be incurred. By mentioning these expenditure and grant of benefit of Sixth Pay Commission, enhancement of age of superannuation could not have been denied. Inspite of accumulated profit of 21.46 lacs in 2008-09 and 837.86 lacs in 2009-10, decision has been taken as if respondents were bent upon not to enhance the age of superannuation, that too in violation of the spirit of the order passed by this Court and the directives

issued by the Registrar, Cooperative Societies. The decision thus cannot be said to be in accordance with law.

When we come to the resolution passed by the Bikaner Society, we find that inspite of clear directions issued by this Court to consider the relevant factors, nothing has been taken into consideration and a laconic resolution has been passed on 24.3.2011 without consideration of the relevant aspects. There is a reference in the resolution only to the legal opinion sent by the counsel and the contents of the order of Registrar dated 17.9.2008 and thereafter, without considering relevant factors and aspects, the decision in few line has been taken not to enhance the age of superannuation. There is clear violation of the order passed by this Court. It was not open to the respondents to take such decision in a cavalier manner and fashion. They are supposed to apply their mind to the factors mentioned by this Court in the order which was passed and reasons cannot be supplemented later on as held by the Apex Court in *Mohinder Singh Gill & anr. V/s The Chief Election Commission and ors.* ( AIR 1978 SC 851) . The Apex Court in that case has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. The Apex Court laid down thus:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the

time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18):

“Public orders publicly made, in exercise of a statutory authority, cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in this mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older. A caveat.”

Thus, decision has been taken by the Society of Bikaner in a mechanical manner, without due consideration of the relevant factors and hence, it is in violation of the order passed by this Court.

With respect to Ajmer Society, resolution has been passed again without taking into consideration the net profit; accumulated loss in 2005-06 has been taken into consideration, which was not relevant consideration. For the last 20 years, no recruitment has been made in the Society and the work was being taken from contract employees. It has also been considered that it would be appropriate to induct new incumbents and there would be financial burden in case superannuation age is enhanced. It is not relevant consideration. It appears that the Society was running into profit which has not been taken into consideration and accumulated loss has been taken into consideration. It has been considered that more payment of retiral dues including gratuity etc. will be required to be made in case age is enhanced. It

could not be made the basis to deny the benefit of enhancement of age of superannuation. The relevant factors and considerations which have been pointed out, have not been taken into consideration. Thus, it is apparent that the said Society has also acted arbitrarily and has not complied with the order passed by this Court in pith and substance.

With respect to Nagaur Society, it appears that without mentioning relevant factors and considerations as directed by this Court, decision has been taken not to enhance the age of superannuation. Accumulated loss alone could not be a ground to deprive the benefit of enhancement of age of superannuation, which fact was also mentioned in the directives issued by the Registrar vide order dated 17.9.2008. Even the years in which loss has been incurred have not been mentioned. Thus, decision was taken without due application of mind to the relevant factors and staffing pattern etc. and hence, it cannot be said to be appropriate and passed on due consideration of factors in the light of the order passed by this Court.

With respect to Churu Society, the decision dated 23.2.2011 is also taken on the consideration of accumulated loss upto the year 2009-10. It has also been considered that in case the age of superannuation is enhanced, it would put financial burden. It is not a ground to deny enhancement of age of superannuation. Other relevant factors, which were directed to be considered in the order passed by this Court, have not been taken into consideration. There was deficiency in sanctioned strength of staff, as per staffing pattern, still decision has been taken arbitrarily. Accumulated loss alone could not have been a ground not to enhance the age of superannuation. Thus, decision cannot be said to

have been taken on due consideration of relevant factors and considerations as directed by this Court.

In the case of Hanumangarh Society, it is apparent that the Society is running into profit both in the case of net profit as well as accumulated profit. The net profit and accumulated profit from 2005-06 to 2007-08 are as follows:-

Year	Net Profit	Accumulated profit
2005-06	48.04 lacs	44.11 lacs
2006-07	63.31 lacs	107.73 lacs
2007-08	122.75 lacs	230.48 lacs

Though in the resolution it has been mentioned that at present financial condition of the Society is very good, but only on the ground that it was to compete with other Societies, decision has been taken not to enhance the age of superannuation. This can be considered to be a totally arbitrary decision. When it is running into profit, denial of enhancement of age of superannuation on the ground that it was to compete with other societies, was not justified and such decision is contrary to the statutory directives as well as the order passed by this Court.

With respect to Barmer Society, it is shocking and surprising that the respondents have tried to inter-mingle with relevant data while passing second resolution on 1.6.2011 to justify their illegal action taken vide resolution dated 22.3.2011. Though it remained in profit of Rs.31.42 lacs in the year 2007-08, Rs.1.52 lacs in the year 2008-09 and Rs.7.44

lacs in the year 2009-10 and number of employees working was 37 as against the sanctioned strength of 78 and thus, only 48% employees were occupying the posts and rests posts were vacant, the same were not considered and surprisingly and shockingly only accumulated loss has been taken into consideration which cannot be said to be criteria to deny the benefit of enhancement of age of superannuation from 58 to 60 years, in view of the statutory directives which were issued pursuant to the decision taken by the State Government enhancing the age of superannuation of its employees, Corporations, Board, Companies and other bodies owned and controlled by the State. The decision is in total violation of the order passed by this Court. When contempt petitions were filed, matter has been considered afresh and figure of Jodhpur Society has been taken into consideration when it was running into loss in 2005-06. It could not have been done by them. Various other aspects emphasized by this Court have not been adhered to. Thus, decision so taken not to enhance the age of superannuation is illegal and arbitrary.

With respect to Jodhpur Society, though it was running into profit in the years 2006-07 and 2007-08, but while passing the resolution, accumulated loss of 120.25 lacs has been taken into consideration. The number of regular staff working is 176 as against sanctioned strength of 178 and 5 persons are on deputation and thus, total figure was of 181. Besides, the workers have been taken on contract basis which shows that the work has increased and the contract workers have been taken into consideration, which could not have been made a ground to deny the benefit of enhancement of age of superannuation as regular employees are more or less as per the sanctioned strength. The decision has not

been taken in a pragmatic manner. Grant of benefit of sixth pay commission could not have been made a ground to deny enhancement of age of superannuation. Hence, the decision cannot be said to be appropriate and based on relevant consideration and factors as directed by this Court.

With respect to Kota Society, it was also running into profit and the staff working is also as per the sanctioned strength, but accumulated loss has been taken into consideration, which cannot be said to be sole criteria to deny the benefit of enhancement of age of superannuation. Thus, the decision has been taken in an arbitrary manner and without due application of mind to the relevant factors, aspects and considerations as directed by this Court.

It also appears that the decision not to enhance the age of superannuation appears to have been influenced by Shri O.P.Meena, who has made prestige issue as earlier the Single Bench of this Court has not accepted his submission that resolutions were forged or fabricated one. In fact, they were upheld by the Single Bench. As relevant aspects were not taken into consideration by the Managing Director, this Court directed reconsideration of the matter. It cannot be ruled out that Shri O.P.Meena, who was Managing Director of RCDF, has influenced the decision taken by various Societies and since he was at the helm of the affairs also being Principal Secretary of Animal Husbandry and Dairy, decision has been taken otherwise than the order issued by the Registrar.

We deem it appropriate to place on record the decision of the Apex Court cited on behalf of the petitioners-appellants in Haryana State Minor Irrigation Tubewells Corporation & Ors. V/s G.S.Uppal &

ors. (AIR 2008 SC 2152) wherein it was observed that revised pay scale was given to Engineers of State Government as also to Engineers of Govt. Corporation and anomaly in pay scale of Govt. Engineers rectified subsequently and said rectification would also be applicable to Corporation Engineers to maintain parity and moreso when said benefit was extended to all other employees of Corporation, the fact that Corporation was running under losses is immaterial. The Apex Court has laid down thus:-

*“24. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in M.M.R. Khan v. Union of India [1990 Supp. SCC 191] and Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union [(2000) 4 SCC 245]. However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events, discussed above, clearly shows that the employees of the Corporation have been treated at par with those in Government at the time of revision of scales of pay on every occasion. It is an admitted position that the scales of pay were initially revised w.e.f. April 1, 1979 and thereafter on January 1, 1986. On both these occasions, the pay scales of the employees of the Corporation were treated and equated at par with those in Government. It is thus an established fact that both were similarly situated. Thereafter, nothing appears to have happened which may justify the differential treatment. Thus, the Corporation cannot put forth financial loss as a ground only with regard to a limited category of employees. It cannot be said that the Corporation is financially sound insofar granting of revised pay scales to other employees, but finds financial constraints only when it comes to dealing with the respondents, who are similarly*

*placed in the same category. Having regard to the well reasoned judgment of the Division Bench upholding the judgment and order of the learned Single Judge, we are of the view that the impugned judgment warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us."*

Coming to the submission raised by Shri P.P.Choudhary, Sr.Advocate that Registrar should not have made rider of financial condition while enhancing age of superannuation, as the said direction has not been questioned by the petitioners, suffice it to observe that mere financial loss for one or other year cannot be the basis to deprive the just benefit. When the business is running and increasing and it is not likely to be closed, denial of benefit of enhancement of age of superannuation was not justified, especially when the age of superannuation has been increased in various other Departments of the State and statutory directions have been issued under Rule 39 of the Rules of 2003.

Coming to the submission of the respondents that the writ petitions filed by the petitioners against the Cooperative Societies & Diary Federation are not maintainable as they do not fall within the definition of "State" under Article 12 of the Constitution of India, they have placed reliance on the decision of Single Bench of this Court in Gopal Krishna Sharma V/s The Rajasthan Cooperative Dairy Federation Jaipur & ors. (S.B.Civil Writ Petition No.1973/2002 decided on 5.9.2008) wherein the matter pertained to grant of first selection grade and it was held that the Rajasthan Cooperative Dairy Federation and Jaipur Zila Dugdh Utpadak Sahakari Sangh could not be said to be

State within the meaning of Article 12 of the Constitution of India and thus, writ petition filed by the petitioner against them was not maintainable. However, it was not taken into consideration whether any statutory provision or direction was involved in the matter. The decision of Single Bench of this Court has also been placed on record in Abrar Khan and ors. V/s The State of Rajasthan & Ors. (S.B.Civil Writ Petition No.2205/04 decided on 18.3.2008) wherein the dispute was with respect to tender notice and the Single Bench of this Court opined that Cooperative Society could not be termed to be “State” within the meaning of Article 12 of the Constitution and hence, writ petition filed against it was dismissed as not maintainable. Reliance has also been placed on the decision of the Single Bench of this Court in Ramgopal & Ors. V/s State of Rajasthan & Ors. (S.B.Civil Writ Petition No.2816/94 decided on September 15, 2006) wherein dispute was with respect to pay scale and without much discussion, it was held that Society is not “State” within the meaning of Article 12 of the Constitution and thus, writ petition filed against it, could not be said to be maintainable. Reliance has also been placed on the decision of Single Bench of this Court in Ajmer Zila Dairy Employees Union V/s Registrar, Rajasthan Cooperative Societies & ors. (S.B.Civil Writ Petition No.631/93 decided on 11<sup>th</sup> February, 1993) in which it was opined that Society is not “State” within the meaning of Article 12 of the Constitution and thus, not amenable to writ jurisdiction and the dispute, which the petitioner-Union was raising that the rule could not be framed and the terms of employment could not be changed, was held to be an industrial dispute. We are unable to subscribe the aforesaid view of the Single Bench that

the Dairy Federation and Cooperative Societies are not "State" within the meaning of Article 12 of the Constitution of India. The aforesaid decisions are of no help to the respondents. The decision of the Apex Court in Madhya Pradesh State Cooperative Dairy Federation Ltd. & anr. V/s Rajesh Kumar Jamindar & Ors. (2009 (15) SCC 221) is attracted in the instant case. In that case, the Apex Court considered the provisions of the Madhya Pradesh Cooperative Societies Act, 1960, which are pari materia to the provisions in the State of Rajasthan and considering the history of the Federation, it was held that appellant-M.P. State Co-operative Dairy Federation Ltd. was a part of the Department of the Government. It not only carries on commercial activities, it works for achieving the better economic development of a section of the people. It seeks to achieve the principles laid down in Article 47 of the Constitution of India, viz., nutritional value and health. It undertakes a training and research work. Guidelines issued by it are binding on the societies. It monitors the functioning of the societies under it. It is an apex body. It must, therefore, be held that the appellant would come within the purview of the definition of 'State' as contained in Article 12 of the Constitution of India. The Apex Court has laid down thus:-

"12. The question as to whether the Federation is 'State' within the meaning of Article 12 of the Constitution of India or not came up for consideration before a Full Bench of the Madhya Pradesh High Court in Dinesh Kumar Sharma v. M.P. Dugdh Mahasangh Sahakari Maryadit [1993 MPLJ 786].

13. Inter alia relying on or on the basis of the decisions of this Court in Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722], Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] and Chander Mohan Khanna v. National Council of Educational Research and Training [(1991) 4 SCC 578 : AIR 1992 SC 76], it was held in Dinesh Kumar Sharma case that the Federation is not 'State', opining:

- (i) The entire share capital is not held by the State Government.
- (ii) The entire expenditure of the cooperative societies is not met by the State Government.
- (iii) It does not enjoy a monopoly status.
- (iv) The State Government does not have any deep and pervasive control over the societies.

It was, however, noticed that the Managing Director is appointed by the State Government but the Chairman of the Federation has a right to contest election; its functions *inter alia* being to encourage the villagers, the persons engaged in the sale of milk and milk products, to give them employment, primarily resting on the cooperative principles which are not carried out pursuant to the State requirements in discharge of State's obligations for health, safety or general welfare of public generally.

14. The matter, however, was referred to a Special Bench in M.P. State Co-operative Dairy Federation and Others v. Madan Lal Chourasia [2007 (2) M.P.L.J. 594] for reconsideration of the said decision. Speaking for the Special Bench, consisting of five Hon'ble Judges, the Chief Justice of the High Court noticed that the six authoritative tests culled out in Ajay Hasia (*supra*) having been reconsidered in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology [(2002) 5 SCC 111], the tests laid down therein only were required to be considered, holding: (Madan Lal Case (2007) 2 MPLJ 594 pp.601-602 para 15)

“15. ...The Federation was registered as a Co-operative Society under the M.P. Co-operative Societies Act, 1960 on or about 13-5-1980. Bye- law 3.1 of the Bye-laws of the Federation states that the main object of the Federation comprised of conducting various programmes of manufacture, collection, processing, distribution and sale of milk and milk products for the economic development of the farmers and for developing and safeguarding the milk business, milk producing animals and for the economic development of the groups engaged in milk production and spreading and developing other joint activities...the main object of the Federation discussed above clearly show that the work of the Federation relates to economic development of farmers, who are engaged in production and sale of milk in the State of Madhya Pradesh and this work has been taken up by the State Government through the agency of the Federation because development of milk and milk products and economic development of farmers carrying the business of sale of milk and milk products are part of the functions of a welfare State.”

15. It was found that the State Government and the Central Government were having more than 91% of shares in terms of Bye-laws 4.0, 4.9 and 4.9.1. It was noticed: (Madan Lal case (2007) 2 MPLJ 594 p.603 para 17)

"17. Bye-law 2.2 of the bye-laws of the Federation defines the Board of Directors of the Federation to mean the Board constituted, elected and nominated under the bye-laws. Bye-law 22 provides for composition of the Board of Directors and the Council for Federation."

It noticed the composition of the Board of Directors of the Federation to hold: (Madan Lal case (2007) 2 MPLJ 594 pp.603-604 17-19)

"17..... It will be clear from the aforesaid composition of the Board of Directors of the Federation that out of 13 members of the Board of Directors as many as 8 members are the nominees of the State Government, Central Government and their agencies.

18. Under bye-law 27 of the bye-laws of the Federation, vast powers have been vested in the Board of Directors of the Federation including the power to appoint, dismiss, suspend and regularize the services of the employees of the Federation such as Managers, Secretaries, Officers, Clerks and to fix their powers, duties, wages and allowances. The Board of Directors of the Federation appear to have under the bye-laws of the Federation over all administrative powers and since the majority of the Board of Directors are nominees of the State Government and the Central Government as representatives of their respective departments and not as experts as contended by Mr. Singh, we hold that the administrative control of the Federation is with the Government.

19. Bye law 30 of the bye-laws of the Federation is titled 'Managing Director' and bye-law 30.1 states that for managing the business of the Federation, Managing Director shall be appointed by the State Government. Bye law 30.2 states that the Managing Director of the Federation shall be a Chief Executive and will work under the control, direction and guidance of the Board of Directors. Bye law 30.3 of the bye-laws states that the Managing Director shall execute the business and work as per powers given to him, from time to time, by the Board of Directors and he can delegate his powers given by the Board of Directors to his subordinate officers and he will place the information of delegation of his powers to subordinate officers in the next meeting of the Board of Directors. It will thus be clear that the Managing Director is not only appointed by the State Government but is also under the control, direction and guidance of the Board of Directors, which is dominated by the Government nominee.

Hence, day to day functioning of the Federation is also controlled by the Government through the Managing Director and the Board of Directors of the Federation..."

16. It was furthermore noticed:(Madan Lal Case, MPLJ p.605 para 20)

"20. Bye law 17 of the bye-laws is titled 'General Assembly' and bye law 17.1 states that the General Assembly of the Federation will have the supremacy under the Act, Rules and Bye-laws. Bye law 17.2 deals with the composition of the General Assembly and says that it will comprise of elected members of the Milk Union and all the nominated members of Board of Directors. Bye law 17.3 states that the Federation will call a General Assembly every year, which will be before three months of the end of financial year and bye law 17.4 states that the Federation can at any time call a General Assembly to discuss emergency work. Bye law 18 states that the General Assembly will consider the subjects mentioned therein and these are mainly the budget and programme presented by the Board of Directors, the annual financial report placed by the Board of Directors of the Federation, the distribution of profits and decision on the audit application and audit removal report of the Board of Directors. These provisions relating to the General Assembly of the Federation show that the General Assembly was also dominated by the Board of Directors. As the Board of Directors is dominated by the nominees of the Government, the General Assembly will also take decisions in its meeting in the manner as desired by the Government. Hence, the Federation is also dominated and controlled by the Government administratively and functionally as in the cases of Pradeep Kumar Biswas ((2002) 3 SCC 111) and Virendra Kumar Srivastava ((2005) 1 SCC 149)."

17. On the aforementioned findings, the decision of the Full Bench in Dinesh Kumar Sharma (supra) was overruled.

18. Mr. C.N. Sreekumar, learned counsel appearing on behalf of the Federation, in support of the appeals, would contend:

(i) The Special Bench of the High Court committed a serious error in refusing to consider the authoritative pronouncement of this Court in Ajay Hasia (supra) as also its earlier decision in Dinesh Kumar Sharma (supra) to hold that the Federation is a 'State' within the meaning of Article 12 of the Constitution of India.

(ii) The Federation having been running into huge losses, the conditions precedent for retirement of the employees of the Federation as contained in Regulation 13 of the Regulations having been satisfied, the impugned judgment cannot be sustained.

19. Mr. Vivek K. Tankha, learned senior counsel appearing on behalf of contesting respondents and Mr. Pragati Neekhra, learned counsel appearing on behalf of the appellant in Civil Appeal arising out of SLP (C) No. 17705 of 2008, on the other hand, would urge:

- (i) The share capital, functional control and the administrative control being completely in the hands of the Government of the State, the Federation is 'State' within the meaning of Article 12 of the Constitution of India.
- (ii) As the decision of this Court in Pradeep Kumar Biswas (*supra*) governs the field and the criteria laid down therein being satisfied, no exception can be taken to the impugned judgment.
- (iii) The Regulations governing the conditions of service being statutory in character and the Federation, having adopted the government circulars and rules for the purpose of implementation of its policy to retire compulsorily a large number of employees, were bound to follow the same.
- (iv) The Scrutiny Committee and the Review Committee having not only consisted of the officers of the State but also the Registrar of the Cooperative Societies, it was futile to move to the Registrar of the Cooperative Societies for setting aside the impugned circulars issued with regard to compulsory retirement.
- (v) Having regard to the Regulations governing payment of back wages, as contained in Regulation 49(2) of the Regulations, the entire back wages should be directed to be paid.

20. An additional contention has been raised in the Civil Appeal arising out of SLP (C) No. 17705 of 2008 that the appellant therein having been suffering from disability within the meaning of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the 1995 Act"), Section 47 thereof would be attracted and, thus, the appellant was entitled to entire back wages.

21. Article 12 of the Constitution of India reads as under:

"12. Definition.--In this part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

The development of law in this regard in view of the decisions rendered by this Court beginning from *Rajasthan State Electricity Board v. Mohan Lal* [(1967) 3 SCR 377], *Ajay Hasia* (*supra*) and other decisions including a Seven - Judge Bench decision of this Court in *Pradeep Kumar Biswas* (*supra*), is to say the least phenomenal.

22. We may also notice that P.K. Ramachandra Iyer and Others v. Union of India and Others [(1984) 2 SCC 141] wherein Indian Council for Agricultural Research (ICAR) was held to be a 'State' within the meaning of Article 12 of the Constitution of India, was distinguished in Chander Mohan Khanna ((1991) 4 SCC 578)). However, Chander Mohan Khanna (supra) was overruled in Pradeep Kumar Biswas (supra) to the extent it followed the decision in Sabhajit Tewary v. Union of India [(1975) 1 SCC 485].

32. We have noticed the history of the Federation. It was a part of the Department of the Government. It not only carries on commercial activities, it works for achieving the better economic development of a section of the people. It seeks to achieve the principles laid down in Article 47 of the Constitution of India, viz., nutritional value and health. It undertakes training and research work. Guidelines issued by it are binding on the societies. It monitors the functioning of the societies under it. It is an apex body. We, therefore, are of the opinion that the appellant herein would come within the purview of the definition of 'State' as contained in Article 12 of the Constitution of India."

In view of the aforesaid dictum of the Apex Court and considering the activities of the Dairy Federation and Societies, the submission that writ petitions filed by the petitioners against them are not maintainable as they are not "State" within the meaning of Article 12 of the Constitution of India is liable to be rejected and it is hereby rejected.

Coming to the question whether RCDF should consider the question of enhancement of age of superannuation or the respective Society, the RCDF is the Apex Society and the various Societies are signatories to the registration of the Apex Society under the Act of 2001. The "Member" has been defined in Section 2(p) of the Act of 2001, which means a person joining in the application for the registration of a Cooperative Society and a person admitted to membership after such registration in accordance with the Act of 2001 and the Rules and the bye laws and includes a nominal and an associate member. Representatives of the

Cooperative Societies were the signatories in the application for registration of Apex Society-RCDF. It is not disputed that RCDF has framed Regulations of 1980 and they have been adopted by various Societies. The State Government has power under section 123 of the Act of 2001 to prescribe by framing the Rules, service conditions of employees of the Society. In the absence of issuing statutory directions, the orders, which have been issued by the State Government, are also enforceable and they have the force of the law. The Government has issued order on 16.6.1990 to the effect that all the Unions (Cooperative Societies) shall adopt Model Service Rules, Cadre and Recruitment Rules, Standing Orders as suggested by RCDF. The order of the State Government was complied with by RCDF and other constituent Cooperative Societies and all Unions/Cooperative Societies had executed agreement with RCDF. The Model Agreement contains clause (3) which is similar to clause (12) of the order of State Government, which is quoted above. Thus, the Cooperatives Societies have agreed to follow all Service Rules and Conditions prescribed by the RCDF for the employees of the Societies signing the agreement.

In view of the aforesaid directions of the State Government and the provisions contained in the Model Agreement signed by various Cooperative Societies and considering the fact that Service Regulations of 1980 framed by RCDF have been adopted by various Cooperative Societies and considering the fact that there should be uniformity with respect to the age of superannuation, it would be appropriate that RCDF be directed to consider the question of enhancement of age of superannuation from 58 to 60 years.

Resultantly, the impugned resolutions passed by the RCDF and Societies are hereby quashed and the RCDF is directed to consider the question of enhancement of age of superannuation from 58 to 60 years in accordance with the discussion made in the order and thereafter, the decision be sent for adoption to the Cooperative Societies and at that time, they can have say to the extent permissible under the law. It is made clear that the RCDF cannot act arbitrarily and has to act in accordance with law and discussion made in the order and if it is found that RCDF or Societies have acted in arbitrary manner, stern action would be taken by this Court. In the contempt petitions, we have noted that appropriate considerations and factors have not been taken into consideration inspite of clear and categorical directions issued by this Court and irrelevant aspects have been taken into consideration. However, we accept the unconditional apology which has been tendered by the counsel appearing on behalf of the erring respondents, however, we warn them to be careful in future and not to act on irrelevant consideration and in violation of the observations/directions of this Court. The notices of contempt are discharged and contempt proceedings are dropped. Let the matter be reconsidered afresh within a period of two months from today.

It was also submitted that certain incumbents, who were allowed to continue in service under the orders of this Court and Federation, have not been paid salary and they have been removed retrospectively. We direct that they cannot be deprived of their salary for the period for which they have rendered services. The respondents are bound to make payment of salary for the period for which they have rendered services.

With the aforesaid observations and directions, the contempt petitions, special appeals and writ petitions are disposed of.

**(Kailash Chandra Joshi)J.**

**(Arun Mishra)C.J.**

Parmar