# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**CWP No.127 of 2016.**

**Judgment reserved on: 24.07.2017.**

**Date of decision: 31st July ,2017.**

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**Rajan Kumar** **.....Petitioner.**

**Versus**

**State of H.P. and others** **.....Respondents.**

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***Coram***

**The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.**

***Whether approved for reporting?[1] Yes***

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| **For the Petitioner :** | **Mr. Ajay Sharma, Advocate.** |
| **For the Respondents:** | **Mr.Shrawan Dogra, Advocate General with Ms. Meenakshi Sharma, Addl. A.G. and Mr.Neeraj K.Sharma, Dy. A.G., for respondents No.1 to 4.**<br><br>**Mr.Kishore Pundir, Advocate, for respondent No.5.**<br><br>**Mr.R.K.Gautam, Senior Advocate with Mr.Gaurav Gautam, Advocate, for respondent No.6.** |

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**Tarlok Singh Chauhan, Judge.**

This writ petition has been filed with the following prayer:-

"(i) *That impugned orders dated 6.1.2016 annexure P-5 may kindly be quashed and set aside thereby holding that appointment of the petitioner as Secretary/Manager in respondent No.5 society is rightly made in consonance with the rules."*

2. The facts, in brief, are that respondent No.5, 'The Marwari PBM Cooperative Agriculture Service Society Ltd.', invited applications for the post of Manager/Secretary by passing a resolution dated 10.02.2015. In the selection so conducted, it was the petitioner, who was

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***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

shown to be selected and thereafter such appointment came to be challenged by respondent No.6 by filing a revision petition before Registrar, Co-operative Societies, H.P., Shimla (respondent No.2), who not only entertained the petition, but thereafter issued notices to the petitioner, who appeared and filed his reply. Respondent No.2 thereafter allowed the revision vide order dated 06.01.2016 and the selection of the petitioner was quashed and set aside.

3. At the time of hearing of the petition, the parties in view of the language of Section 94 of the Himachal Pradesh Co-operative Societies Act (for short the "Act") were asked to assist the Court regarding the maintainability of the revision petition before respondent No.2 which admittedly was preferred against the appointment of the petitioner as a Manager/Secretary.

4. It is vehemently argued by Shri Ajay Sharma, learned counsel for the petitioner that the issue in question is no longer *res integra* in view of the learned Division Bench judgment of this Court in ***CWP No.533 of 2000,*** titled ***'Shri K.D.Sharma & Ors.*** *versus* ***Financial Commissioner-cum-Secretary (Co-operation) to Government of H.P. & Ors.'*** decided on 06.06.2001 and subsequent judgment of the learned Division Bench of this Court in ***CWP No.3148 of 2016***, titled '***The Tiara Co-operative Agriculture Service Society Ltd.*** *versus* ***State of Himachal Pradesh and others'***, decided on 20.12.2016.

5. On the other hand, the learned Advocate General as also Shri R.K.Gautam, Senior Advocate, assisted by Shri Gaurav Gautam, Advocate, would vehemently argue that the only remedy against an illegal selection is by way of revision petition to the Registrar/State as envisaged under Section 94 of the Act and, therefore, no exception can

be taken to recourse adopted by respondent No.6 in availing such remedy.

I have heard the learned counsel for the parties and gone through the records of the case.

6. Before proceeding any further, certain chapters and provisions of the Act need to be taken note of.

7. Chapter-VIII of the Act specifically deals with the audit, inquiry, inspection and surcharge. Section 65 therein deals with inspection of cooperative societies. Section 67 deals with inquiry by the Registrar. Whereas, Section 69 relates to surcharge proceedings, which are to be initiated in case during the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person who is or was entrusted with the organization or management of such society, or who is or has at any time been an officer or an employee of the society, has made any payment contrary to the provisions of the Act, the rules or the bye-law or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has misappropriated or fraudulently retained any money or other property belonging to the society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorized by him, by an order in writing in this behalf, to inquire into the conduct of such person.

8. Chapter-XII relates to the jurisdiction, appeal and review and the relevant provisions for the adjudication of this petition is contained in Section 94, which reads thus:

> ***"4. Review and Revision:— (1) The State Government except in a case in which an appeal is preferred under section 93 may call for an examine the record of any inquiry or***

***inspection held or made under this Act or any proceedings of the Registrar or of any person subordinate to him or acting on his authority, and may pass thereon such orders as it thinks fit.***

***(2) The Registrar may at any time,—***

***(a) review any order passed by himself; or***

***(b) call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of any person subordinate to him or acting on his authority and if it appears to him that any decision, order or award or any proceedings so called or should for any reason be modified, annulled or reversed, may pass such order thereon as he thinks fit;***

***Provided that, before any order is made under sub-section (1) and (2), the State Government or the Registrar as the case may be shall afford to any person likely to be affected adversely by such orders an opportunity or being heard.***

***"Provided further that every application under sub-section (1) and (2), to the State Government or the Registrar, as the case may be shall be made within ninety days from the date of the communication of the order sought to be reviewed or revised."***

9. A bare perusal of the aforesaid provisions clearly shows that this Section gives revisional powers to the State Government in a case where no appeal under section 93 of the Act has been preferred and similar powers have been conferred upon the Registrar to be exercised either *suo motu* or on an application of a party, provided the same is preferred within 90 days from the date of communication of the order sought to be reviewed or revised and further that the person(s) likely to be effected adversely by such order is afforded an opportunity of being heard. It is immaterial whether the revisional power is exercised, on action initiated at the instance of the interested party or *suo motu*, the order passed would be within jurisdiction.

10. This Section specifically deals with the power of the State Government/Registrar to call for and to examine the record of any inquiry or inspection held or made under this Act or any proceedings. The State Government can examine any proceedings of the Registrar or any person subordinate to him or acting on his authority, whereas the Registrar is empowered to call for and examine the proceedings of any person subordinate to him or acting on his authority and if it appears to him that any decision, order or award or any proceedings so called or should for any reason be modified, annulled or reversed, may pass such order thereon as he thinks fit.

11. However, it needs to be clarified that if revisional application is not maintainable, forti ori *suo motu* powers cannot also be exercised.

12. The power exercised by the State Government/Registrar under Section 94 of the Act is in the nature of supervisory jurisdiction conferred upon them over the orders passed by the authorities constituted under the Act and not the orders passed by the Society.

13. In terms of the first proviso, the State Government or the Registrar, as the case may be, is obliged to afford to any person likely to be effected adversely by such order an opportunity of being heard. In terms of the section proviso, every application under sub-section (1) and (2), to the State Government or the Registrar, as the case may be, has to be made within 90 days from the date of the communication of the order sought to be reviewed or revised.

14. A learned Division Bench of this Court in ***Tiara's case*** (supra) after examining all the provisions as have been noticed above, came to the following conclusions:-

> **13.** ***In view of what has been observed above, we can safely come to the following conclusions:***

> ***i) The State Government or the Registrar under Section 94 of the Act can exercise its suo motu revisonal jurisdiction or on an application made by an aggrieved party;***
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> ***ii) the remedy of revision before the State Government is barred only in the cases where an appeal has already been preferred under section 93 of the Act;***
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> ***iii) the remedy of revision either suo motu or otherwise can be exercised only against the decision or order passed by the authority under the Act or proceedings arising out of the Act or the Rules framed thereunder. However, this remedy cannot be invoked against an order passed by the society;***
>
> ***iv) the suo motu power of revision cannot be exercised by the State Government or the Registrar, as the case may be, if at the instance of an aggrieved party, the revision is not maintainable, fortiori suo motu power cannot also be exercised."***

15. It would, thus, be evidently clear that in terms of conclusion No.iii), the remedy of revision cannot be invoked against an order passed by the Society and can be exercised either suo motu. The judgment having been rendered by a learned Division Bench of this Court is obviously binding on this Court.

16. It is more than settled that when a Division Bench decides a case on specific question of law that decision is binding upon the Single Bench. There is no constitutional or statutory prescription in this issue and the point is governed entirely by the practice, procedure and propriety in the Indian Courts sanctified by repeated affirmations over a century of time. It is in order to guard against possibility of inconsistent decisions on points of law by different Benches that the rule has been evolved in order to promote consistency and certainty in the development of law and its contemporary status, that the statement of law by a Division Bench is considered binding on the same or lesser number of judges. Upsetting of the all principles laid down and introducing uncertainty is gross impropriety.

17. In ***Union of India and another*** *versus* ***Raghubir Singh (dead) by LRs. etc., AIR 1989 SC 1933***, the question arose with regard to pronouncements of law by the Division Bench in relation to a case relating to the same point subsequently before a Division Bench or a smaller number of Judges and it was ruled thus:-

> ***"28…….It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In John Martin v. The State of West Bengal, [1975] 3 SCR 211 a Division Bench of three Judges found it right to follow the law declared in Haradhan Saha v. State of West Bengal, [1975] 1 SCR 778 decided by a Division Bench of five Judges, in preference to Bhut Nath Mate v. State of West Bengal, AIR 1974 SC 806 decided by a Division Bench of two Judges. Again in Smt. India Nehru Gandhi v. Shri Raj Narain, [1976] 2 SCR 347 Beg, J. held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen***

***Judges in His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala, [1973] Suppl. 1 SCR. In Ganapati Sitaram Balvalkar & Anr. v. Waman Shripad Mage (Since Dead) Through Lrs., [1981] 4 SCC 143 this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in Mattulal v. Radhe Lal, [1975] 1 SCR 127 this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be, preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in Acharaya Maharajshri Narandraprasadji Anandprasadji Maharaj etc. etc. v. The State of Gujarat & Ors., [1975] 2 SCR 317 that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in Union of India & Ors. v. Godfrey Philips India Ltd., [1985] 4 SCC 369 which noted that a Division Bench of two Judges of this Court in Jit Ram v. State of Haryana, [1980] 3 SCR 689 had differed from the view taken by an earlier Division Bench of two Judges in Motilal Padampat Sugar Mills v. State of U.P., [1979] 2 SCR 641 on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.***

***29. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. We would, however, like to think that for the purpose of imparting certainty and endowing due***

> ***authority decisions of this Court in the future should be rendered by Division Benches of at least three Judges unless, for compelling reasons that is not conveniently possible."***

18. Even though the writ petition could have been allowed in view of the binding decision of this Court in ***Tiara's case*** (supra). However, to be fair to the learned counsel for the respondents, it would be necessary to advert to the other contentions raised by them in support of the revision being maintainable before respondent No.2.

19. The learned Advocate General for the State and Shri R.K.Gautam, Senior Advocate, representing the private respondent at this stage have raised two-fold submissions.

20. Firstly, that the appointment made by the Selection Committee is a "proceeding" of the Society and, therefore, can be revised and reviewed by the Registrar/Government, as the case may be. Secondly, the appointment being in derogation of the service rules which have been framed with the approval of the Registrar can always be quashed by him (Registrar).

21. A learned Single Judge of the Gujarat High Court while dealing with the expression 'proceedings' in case ***GSL (India) Limited*** *versus* ***Bayers ABS Limited 2000 (1) Gujarat Law Reporter 651*** observed as under:-

> ***"18. Contention raises on inquiry into the issue whether in the context of Sections. 442 and 446 word "proceedings" used in Section 442 or word "other proceedings" in Section 446(1) or phrase "the legal proceedings" under Section 446(2) has a different meaning than one assigned to it by this Court in the aforesaid decision in Harish C. Raskapoor & Ors. v. Jaferbhai Mahomedbhai Chhatpar [1989 (85) Comp. Cases 163] - In Re : Divya Vasundhara Finance (P.) Ltd. Ordinarily,***

***rule is that word used by the Legislature must be given its normal literal meaning if there is no ambiguity. If that rule is applied, undoubtedly, the word 'proceedings' unless context otherwise warrants is of a wide amplitude. Word "proceedings" has many shades of meaning. In its widest sense it may mean action of going onward or a particular action or course of action in furtherance of any transaction or business, of whatever nature, be it by administrative authority, legislature or any other authority including Courts. We are obviously not concerned with this wide expansive meaning of proceedings. In its popular sense, it refers to a legal action or process. In its sphere of legal activity it may embrace entire process from instituting or carrying on action at law beginning with the institution of an action to its culmination in judgment. Such legal action may constitute enforcement of private right, imposition of taxes, or for punishing a person for alleged commission of offences, as defined under various laws. It may be an action before ordinary Courts administering justice by determining private rights as well as enforcing laws, or may be before Administrative Tribunals, or may be by way of invoking extraordinary jurisdiction of superior Courts under Constitution for issue of writs and directions. Looking to context in which expression has been used it may mean all process in its entirety or relate to every step in an action as a separate proceedings. We are concerned with the expression "proceedings" in the context of legal proceedings that are taken in Courts.***

***19. The word proceedings in the context of the legal terminology as shown in New Shorter Oxford English Dictionary means "instituting or carrying on of an action at law, a legal action or process; any act done by authority of a Court at law; any step taken in a cause by either party."***

***20. The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one ambit of whose meaning will be governed by the statute. It does not confine***

***by itself departmentalising to civil, criminal or other administrative or miscellaneous proceedings.***

***21. Meaning assigned to the word proceedings in Black's Law Dictionary "proceedings" "in a general sense, the form and manner of conducting juridical business before a Court or judicial office. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before Agencies, Tribunals, Bureaus, or the like."***

***22. It is further said "the word may be used synonymously with action or suit to describe the entire course of an action at law or suit in equity from the issuance of the writ or filing of the complaint until the entry of a final judgment, or may be used to describe any act done by authority of a Court of law and every step required to be taken in any cause by either party. The proceedings of a suit embrace all matters that occur in its progress judicially."***

***23. In the same dictionary "proceedings" has also been defined to mean any action, hearing, investigation, inquest or inquiry, whether conducted by a Court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorised by law, in which, pursuant to law, testimony can be compelled to be given.***

***24. It will be seen that word proceedings by itself does not reflect any colour. The word "proceedings" by itself does not make any distinction between the civil proceedings and criminal proceedings pending in the Court. It embraces all actions at law whether relating to ventilation of civil or private rights, or determination of tax liability or enforcement of law by imposition of punishments. Further classification depends upon nature of action which is advancing or moves onwards. If it relates to determination of private right, and commences at the instance of an affected person as remedy for enforcement of his right, it may be termed as civil proceedings or proceedings of civil nature. If it relates to assessment and imposition of tax liability, it may be termed***

***as revenue proceedings and if the action is initiated to enforce law for prosecuting a person for alleged commission of an offence, it may be termed as criminal proceedings.***

***25. As stated in Bradlaugh v. Clarke, 52 LJ AB 505, civil proceeding is a process for the recovery of an individual right or redress of individual wrong, inclusive of suits by the crown. It is opposed to criminal proceedings.***

***26. In this context reference may also be made to ILR 16 Cal. 267, wherein a Full Bench of Calcutta High Court opined:***

> ***"The word 'proceedings' is a very general one; it is not limited to proceedings other than the civil proceedings and civil proceedings other than suits. When applied to suits, it may be used to mean suit as a whole or it may be used, and often is used, to express the separate steps taken in the course of suit the aggregate of which makes up the suit."***

22. What is the meaning of "proceedings" as used under Section 94 of the Act was the subject matter of decision in ***K.D.Sharma's*** **case** (supra) wherein the Court was dealing with a case where the H.P. State Co-operative Bank had sought approval of the Registrar as was required under Section 56(3) of the Himachal Pradesh Co-operative Societies Rules, 1971 (for short "Rules") to appoint 9 Mobile Guides in Grade III category in the Bank. The approval as sought for was granted by the Registrar, but the said order thereafter assailed by the Bank before the State Government by way of revision by invoking Section 94 of the Act. The Mobile Guides questioned the action of the State Government in entertaining the revision petition by filing the aforesaid writ petition. This Court after reproducing Section 94 proceeded to determine the meaning of proceedings in the following manner:-

> "***7. The perusal of Section 94 (1) of the Act makes it clear that State Government has the revisional powers in respect of any inquiry or inspection held or made under the Act and also any proceedings of the Registrar or of any person subordinate to him or acting on his authority. So far***

***the case in hand is concerned, it is to be examined whether the order dated 29.6.2000 passed by the Registrar can be considered 'the proceedings of the Registrar'. If the answer is in positive, the State Government has the revisional powers to examine the said order and pass such orders as it thinks fit. But if the answer is in negative, the revision against the order dated 29.6.2000 presently pending before respondent No.1 is without jurisdiction and not maintainable. The answer depends upon the interpretation of the word 'proceedings of the Registrar'.***

***8. In Black's Law Dictionary 6th Edition the word 'proceeding' means:***

> ***"In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like.***
>
> ***An act which is done by the authority or direction of the court, agency, or tribunal, express or implied; an act necessary to be done in order to obtain a given and a prescribed mode of action for carrying into effect a legal right……***
>
> ***'Proceeding means any action, hearing investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given."***

***9. In Babu Lal v. M/s Hazari Lal Kishori Lal and others, (1982) 1 SCC 525, learned Judges of Supreme Court while interpreting the words at any stage of the proceedings' occurring in proviso to sub section (2) of Section 22 of the Specific Relief Act which provides for the amendment of the plaint on such terms as may be just for including a claim for possession' at any stage of the proceedings have observed in para 17:***

> ***"The word 'proceeding' is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party". The term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with***

***a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word 'proceeding' in Section 22 includes execution proceedings also……..”***

***9. In M/s K.J. Lingan and A.V. Mahayalam and others v. Joint Commercial Tax Officer, AIR 1968 Madras 76, the learned Judge held the notice of compounding under Section 46 of the Madras General Sales Tax Act as proceedings under the said Act treating it a step in aid or action taken by the concerned authority in the whole process of assessing a dealer on his turnover. For coming to this conclusion the learned Judge has referred to the earlier judgments of his Court in re: Ramanathan Chettiar AIR 1942, Mad. 390; Ganga Naicken v. Sunderam Aiyar, AIR 1956 Mad. 597 and Kochadai Naidu v. Nagayasami Naidu, AIR 1961 Mad. 247.***

***10. Following the above quoted judgments of the Madras High Court, the learned Judges of the Calcutta High Court in Sm. Reba Sircar and others v. Bisweswar Lal Sharma alias B.L.Sharma, AIR 1980 Calcutta 328, have held that a proceeding is a prescribed course of action for the enforcement of a legal right.***

***11. Therefore, as per the dictionary meaning and the interpretation given by the Supreme Court and the High Courts the term 'proceedings' is comprehensive one. It does not have a definite meaning and its scope will depend upon the context in which it is used. If its meaning in the general sense is taken, it is a prescribed course of action for enforcing a legal right or the requisite steps by which judicial action is invoked. So far the case in hand is concerned, against 'proceedings of the Registrar' revisional powers have been given to the State. In other words, the 'proceedings of the Registrar' would be his prescribed course of action whereby the Registrar will exercise powers conferred on him under the various provisions of the Act and pass orders. The orders against which appeal lies are prescribed under Section 93 of the Act and the remaining orders are subjected to revision by the State; for example, appeal lies against the***

***order of the Registrar made under Section 8 (4) of the Act refusing to register a Society but if somebody is aggrieved by the order registering a Society or any other order passed during the course of passing the final order of the Registration, it may file revision against the said order. The perusal of Section 93 of the Act shows that number of the orders passed by the Registrar in exercise of his powers under various provisions of the Act are made appellable but we can easily comprehend many more orders passed or actions taken by the Registrar in discharge of his statutory functions which may entail decisions on the rights of parties, against which the remedy provide is the revision and review under Section 94 of the Act."***

***12. So far the impugned order under Rule 56(3) of the Rules is concerned, it cannot be held 'proceedings of the Registrar' under the Act. Rules are made under Section 109 of the Act. Section 109(2)(p) of the Act provides for prescribing the qualification of the employees of the Society in the Rules. Accordingly, Rule 56(1) provides that no Co-operative Society shall appoint any person in any category of service unless he possesses the qualification and furnishes the security as specified by the Registrar from time to time. This Rule further provides that the Registrar shall specify the conditions of the service of the employees of the Society. By adding Sub Rule (3) to Rule 56 on 8.7.1987 further restriction has been imposed on a Co-operative Society that it shall not employ a salaried officer or servant with total monthly emoluments exceeding rupees one thousand without the previous permission of the Registrar. The promotion of an employee to a higher post is also considered an appointment under this sub-rule. For passing order under this provision neither there is prescribed course of action which the Registrar is to follow nor the legal right of any party is enforced. As the provision of Rule 56 is not withstanding anything contained in bye laws, a Co-operative Society cannot claim that it has a legal right to employ any officer or servant with total monthly salary of more than Rs.1000/- without the permission of the Registrar. If a Co-operative Society does not have any such right how an individual***

***likely to be appointed or promoted may have such a right. Therefore, if there is no legal right in anyone there is no corresponding duty on the part of the Registrar to follow a course of action, such as, to give hearing to the parties before passing the order or to call for their comments etc. etc. The Registrar is to simply consider the recommendations made by a co-operative society and pass order in its interest.***

***13. In this view of the matter the order passed by the Registrar cannot be termed as quasi-judicial. It is purely administrative order. The tests for determining whether an order is administrative or quasi-judicial have been laid down in State of Andhra Pradesh v. S.M.K. Parasurama Gurukul, (1973) 2 SCC 232. These are:-***

> ***"(1) There must be a lis between the two parties;***
> ***(2) the opinion should be formed on the objective satisfaction and should not depend upon the subjective satisfaction of the tribunal; and***
> ***(3) there must be a duty to act judicially."***

***13. In Km. Neelima Misra v. Dr. Harinder Kaur Paintal and others, AIR 1990 SC 1402, the learned Judges of the Supreme Court have held that an administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called purely administrative and there is no third category. After quoting the judgment in Ridge v. Baldwin (1963) 2 All ER 66, and their earlier judgments the learned Judges have quoted the following paragraph from Administrative Law by H.W.R. Wade 6th Ed. Pp. 46-47 in paragraph 21 of the judgment:-***

> ***"A judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice."***

***It is further observed that an administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim 'audi alteram partem'. It is further observed that the shift is now to a broader notion of fairness and fair procedure in the administrative action and the administrative officer is supposed to act fairly if not judicially. After referring to their earlier judgments in Keshav Mills Co. Ltd. v. Union of India, AIR 1973 SC 389; Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851 and Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818, the learned Judges have observed that :-***

> ***".....For this concept of fairness, adjudicative setting are not necessary, nor it is necessary to have lites inter parties. There need not be any struggle between two opposing parties giving rise to a 'lis'. There need not be resolution of lis inter parties. The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But when even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistent with the rules of natural justice. We cannot discover any principle contrary to this concept."***

***Applying the ratio of above judgment we have no hesitation to hold that order under Rule 56(3) of the Rules does not adversely affect the personal right or property right of any one, which would involve the duty to act fairly consistent with the rules of natural justice.***

***14. Lastly in State of H.P. v. Raja Mahendra Pal and others, (1999) 4 SCC 43, the learned Judges of the Supreme Court approved the following principles laid down in Province of Bombay v. Khushaldas S. Advani (since deceased) and after him his legal representatives (a) Govindram Khushaldas and (b) Ramchand Khushaldas and others, AIR 1950 SC 222, to adjudge whether there is a duty to act judicially by the Administrative Authority:-***

> ***"(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statue which claim***

> ***is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and***
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> ***(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."***
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> ***Again, by applying the above principles, the order under Rule 56(3) of the Rules is purely administrative order. There is no duty imposed upon the Registrar to act judicially."***

23. Thus, the proceedings as find mention in sub-section (1) of Section 94 would essentially relate to the proceedings of the Registrar or any person subordinate to him or acting on his authority. As regards sub-section (2), the proceedings of any person subordinate to the Registrar or acting on his authority or could pertain to an order, award or any proceedings so called. The term "proceedings" will have to be interpreted in light of other words in the company of which it occurs by relying upon principle rule of *ejusdem generis.*

24. The principal rule of *ejusdem generis* is one of the species of wider rule *noscitur a sociis* and is an application of the maxim. According to Maxwell, this rule means that when two or more words which are susceptible of analogous meaning are coupled together; they are understood to be used in the cognate sense. They take as it were their colour from each other; that is the more general is restricted to a sense analogous to a less general.

25. In Words and Phrases maxim has been thus explained:

> ***"Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim ejusdem generis."***

26. The term "*ejusdem generis"* has been defined in Black's Law Dictionary, 9th Edn. as follows:-

> ***"A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."***

27. A Constitution Bench of the Hon'ble Supreme Court in ***Kavalappara Kottarathil Kochuni @ Moopil Nayar & others*** *versus* ***The States of Madras and Kerala and others AIR 1960 SC 1080*** construed the principle of *ejusdem generis* wherein it was observed as follows:-

> ***"……The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."***

28. Again the Hon'ble Supreme Court in another Constitution Bench decision in the case of ***Amar Chandra Chakraborty*** *versus* ***The Collector of Excise, Govt. of Tripura, Agartala and others AIR 1972 SC 1863*** observed as under:-

> **"……The *ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an***

> ***enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent."***

29. The rule of *ejusdem generis* as defined by the Hon'ble Supreme Court in ***Commissioner of Income Tax, Udaipur, Rajasthan*** *versus* ***McDowell and Co. Ltd. (2009) 10 SCC 755*** is as follows:-

> "***The principle of statutory interpretation is well known and well settled that when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule is known as the rule of ejusdem generis. It applies when:***
>
> ***(1) the statute contains an enumeration of specific words;***
>
> ***(2) the subjects of enumeration constitute a class or category;***
>
> ***(3) that class or category is not exhausted by the enumeration;***
>
> ***(4) the general terms follow the enumeration; and***
>
> ***(5) there is no indication of a different legislative intent."***

30. The meaning of the expression *ejusdem generis* was further considered by the Hon'ble Supreme Court on a number of occasions and has been reiterated in ***Maharashtra University of Health Sciences and others*** *versus* ***Satchikitsa Prasarak Mandal & others (2010) 3 SCC 786***. The principle is defined thus:-

> ***"The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which***

> ***arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation)are treated as reduced in scope by the verbal context". It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication (see Glanville Williams, The Origins and Logical Implications of the Ejusdem Generis Rule, 7 Conv (NS) 119."***

31. Even otherwise, I see no justification in moving away from the Latin maxim "*noscitur a sociis*", which contemplates that a statutory term is recognized by its associated words. The Latin word "*sociis"* means society. Applying the aforesaid principle, I am unable to stretch the meaning of term "proceedings" as was sought for by the respondents and the same would be construed as limited to the same kind as those specified vis-à-vis inquiry, inspection, decision, order or award of the authorities of a person or authority subordinate to the State Government or the Registrar, as the case may be.

32. It is thus evidently clear that the term "proceedings" used in Section 94 of the Act would essentially be those proceedings of the lower in hierarchy authorities to the State Government under the Act, but would not relate or include the proceedings of the "Society".

33. That apart, the Registrar or the State Government has not been conferred with unfettered adjudicatory powers but would derive their authority strictly in terms of the Act, Rules and Byelaws etc. As observed above, the jurisdiction conferred upon the State or the Registrar, as the case may be, is only available to them against the decision or order passed by the authority under the Act or proceedings arising out of the Act or Rules framed thereunder. However, this remedy cannot be invoked against an order passed by the Society. Merely because the

service rules are framed after approval from the Registrar, they will not be clothed with statutory flavour so as to equate them with the provisions of the statutory Rule or the Act thereby vest jurisdiction to the State or the Registrar, as the case may be, to interfere in the revision petition under Section 94 of the Act.

34. Even otherwise, the pronouncement of law by the learned Division Bench of this Court is binding on this Court and reference in this regard can conveniently be made to a Constitution Bench judgment of the Hon'ble Supreme Court in ***Union of India's case*** (supra).

35. The learned counsel for the private respondent would further vehemently argue that once the remedy of revision against an illegal selection/appointment is not available to an aggrieved party that would render the aggrieved party remedy less.

36. I am afraid that such submission cannot be accepted as it is always open for an aggrieved party to approach the Civil Court. Such dispute is not a matter touching the Constitution, management or business of the Society so as to be barred under the provisions of the Act. Reference in this regard can conveniently be made to a judgment rendered by this Court in ***Sumer Chand Katoch*** *versus* ***The Kangra Central Co-operative Bank Ltd., 1996 (2) Sim. L.C. 134*** wherein it was held as under:-

> ***"16. However, the vital question for the application of section 76 of the Act is whether the matter in respect of setting aside the termination order and grant of consequential relief is a matter touching the constitution, management or the business of the society, as stated in section 76 of the Act. This Court may hold without any fear of contradiction that it is not an act touching she constitution and the business of the society. In Deccan Merchants Co-operative Ltd v. Dalichand Jugraj Jain, AIR 1969 SC 1320 ; Co-operative***

***Central Bank Ltd v Additional Industrial Tribunal, Andhra Pradesh, AIR U70 SC 245 and The Allahabad District Co operative Ltd v Hanuman Butt Tewari, AIR 1982 SC !20, it is held by the learned Judges of the Supreme Court that since the word 'business' is Equated with the actual trading or commercial or other similar business activity of the society, the dispute relating to conditions of service of the workman employed by the society cannot be held to be a dispute touching the business of the society.***

***17. The words 'touching the constitution, management or the business of a co-operative society used in section 76 of the Act also occur in section 72 of the Act, which provides than any dispute touching the constitution, management, or the business of a co-operative society arising between the parties stated therein, shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. Undoubtedly, these words used in both these sections carry the identical meaning. Section 72 of the Act is para materia to section 96 of the Gujarat Co-operative Societies Act, 1961, which fell for consideration of learned Judges of the Supreme Court in The Gujarat State Co-operative Land Development Bank Ltd v, P. R. Mankad and another (supra). Interpreting the expression 'management of the society', it was held that :-***

> ***"35……Grammatically, one meaning of the terra 'management' is : 'the Board of Directors' or 'the apex body or Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society. In this sense, it may not include the individuals who under the overall control of that governing body or Committee, run the day-today business of the Society..... Another meaning of the term 'management' may be : 'the act or acts of managing or governing by direction, guidance, superintendence, regulation and control the affairs of a society'.***
>
> ***36. A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been convassed for by Mr. Dholakia The use of the term 'management' in such a wide sense in section 96 (1) appears to us, to be very doubtful.***
>
> ***37. Be that as it may, what has been directly bidden 'out-of-bounds for the Registrar by the very scheme and object of the Act, cannot be indirectly inducted by widening the***

> ***connotation of 'management', A construction free from contexual contraints, having the effect of smuggling into the circumscribed limits of the expression 'any dispute', a dispute which from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered, a dispute raised against the Society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a Civil Court is outside the scope of the expression 'touching the management of the Society* used in section 96 (I) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it Such a dispute squarely falls within the jurisdiction of the Labour Court under the B I. R. Act."***

***18. In view of these clear observations of the learned Judges of the Supreme Court, the District Judge was not right in relying upon the judgment of Rajasthan High Court in Sawai Madhopur Co-operative Marketing Society Ltd v. Rajasthan State Co-operative Tribunal, Jaipur and another (supra) The learned Judge of Rajasthan High Court took the view that having regard to the provisions of the Rajasthan Co operative Societies Act and the Rules, the dispute in question relating to validity of the suspension and termination is a dispute touching the management of the society and falls within the ambit of section 75 of the Rajasthan Co operative Societies Act. According to them, the ambit and import of word 'touching' are very wide and it includes any matter which relates to the management of the society, more particularly, when the Registrar deals with the matters relating to the officers and employees as provided in the Act and the Rules. Section 75 of the Rajasthan Co-operative Societies Act is para materia to section 72 of the Act and also section 96 of the Gujarat Co-operative Societies Act, which was under consideration of the learned Judges of the Supreme Court in The Gujarat State Co-operative Land Development Bank Ltd v. P R Mankad and another (supra). The learned Judges of the Rajasthan High Court have tried to distinguish the judgment of the Supreme Court by stating that, "it appears that attention of their Lordships of the Supreme Court was not drawn to the provision of section 76 under Chapter VII of the Gujarat Act and the Rules made thereunder". Section 76 of the Gujarat Cooperative Societies Act falls under Chapter VII, which deals with the management of societies and reads as under :-***

> ***"76. The qualifications for the appointment of a manager, secretary, accountant or any other officer or employee of a society and the conditions of service of such officers and employees shall be such as may, from time to time, be prescribed ;***
>
> ***Provided that no qualification shall be prescribed in respect of any officer not in receipt of any remuneration."***

37. As a last ditch effort, Shri R.K.Gautam, Senior Advocate would vehemently argue that respondent No.6 is not aggrieved against the appointment of the petitioner as given by the Society, but is aggrieved by the selection conducted by the Selection Committee which comprised of the nominee of the Registrar. If that really be the case, then nothing virtually survives for adjudication qua the claim of respondent No.6 as it is more than settled that mere selection or enlistment does not confer any right of appointment and the Employer is well within its right not to give appointment. (**Refer:** ***State of Haryana*** *versus* ***Subhash Chander Marwaha (1974) 1 SCR 165, Miss.Neelima Shangla*** *versus* ***State of Haryana and others (1986) 4 SCC 268, Jitendra Kumar and others*** *versus* ***State of Punjab and others (1985) 1 SCR 899, Shankarsan Dash*** *versus* ***Union of India AIR 1991 SC 1612).*** Therefore, a person can only be aggrieved by an order of appointment and mere selection will not furnish any cause of action.

38. In view of the aforesaid discussion, the order passed by respondent No.2 (Annexure P-5) is clearly without jurisdiction and is accordingly quashed and set aside.

39. The petition is allowed in the aforesaid terms, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.

40. However, before parting, it is made clear that since the petition has been allowed only on technical grounds, the same shall not

prevent respondent No.6 from availing such remedy as may be available to her under the law.

**(Tarlok Singh Chauhan),**
**Judge.**

**31st July, 2017.**
**(krt)**