A

GWALIOR DISTRICT CO-OPERATIVE CENTRAL BANK LTD. GWALIOR

B

v.

RAMESH CHANDRA MANGAL AND ORS.

September 26, 1984

C

[Y. V. CHANDRACHUD, C. J., D. A. DESAI AND M. P. THAKKAR, JJ.]

Administrative Law—Madhya Pradesh Cooperative Societies Act, 1960, s. 53 (4)—Delegation of power—Power conferred upon Apex Bank by Registrar of Cooperative Societies—Whether Apex Bank could re-delegate such power in some other authority—Held : No. The Apex Bank had no power to redelegate its authority.

D

The Board of Directors of the appellant bank was superseded by the Registrar of the Cooperative Societies and its powers were vested in the M.P. State Cooperative Bank which is an Apex Bank as "officer-in-charge" of the superseded bank. The Apex Bank appointed one S.P. Jain as the Chief Executive Officer of the appellant bank.

E

Respondent No. 1, an employee of the appellant bank, was dismissed from service by S.P. Jain on the ground that he had overstayed the leave granted to him. The Dy. Registrar of Cooperative Societies set aside the said order of dismissal and directed reinstatement of respondent No. 1, but it was reversed by the Addl. Registrar in appeal by the appellant Bank. In further appeal by Respondent No. 1 the Board of Revenue set aside the order of termination. The High Court in the Writ Petition filed by appellant-Bank agreed with the Board of Revenue and also ordered reinstatement of Respondent No. 1.

F

Dismissing the appeal by the appellant-Bank and modifying the order of the High Court,

G

HELD : The Apex Bank had no authority or power so to appoint S.P. Jain for two reasons : In the first place, the Apex Bank, being an appointee of the Registrar, had no authority to divest itself of the power conferred upon it by the Registrar and to invest S.P. Jain with that power. The only authority which could have conferred the necessary power on S.P. Jain was the Registrar. The Registrar did not confer that power upon S.P. Jain under section 53 (4) of the Act. Therefore, the said order had no existence in the eye of law. [858D-E]

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 996 of 1979

From the Judgment and Order dated 26.10.78 of the Madhya Pradesh High Court in Misc. Petition No. 176/74.

S.N. Kacker, S.K. Ghambir and *Ashok Mahajan* for the appellant.

T.U. Mehta, S.S. Khanduja, R.D. Jain, Mehfooz Khan and *Yashpal Dhingra* for the respondents.

The Judgment of the Court was delivered by

CHANDRACHUD, C: J. Respondent 1 was appointed as an Agent of the appellant-Bank, which is a co-operative society registered under and governed by the provisions of the Madhya Pradesh Co-operative Societies Act. 1970. By an order dated June 5, 1968 passed by one S.P. Jain, the services of respondent 1 were terminated on the ground that he had over-stayed the leave granted to him.

Aggrieved by that order, respondent 1 raised a dispute under section 55(2) of the Act, before the Registrar of the Co-operative Societies. The Registar referred the matter to the Deputy Register, who by an order dated February 27, 1972, allowed the claim of respondent 1 on the ground that the order terminating the services was not in accordance with Rules 44 and 45 of Co-operative Bank Employees Service Rules. He also ordered the reinstatment of respondent 1 with full back salary and allowances. In an appeal filed by the Bank, the Addl. Registrar took the view that the only remedy which was open to respondent 1 was to claim damages for wrongful termination of his services and that, therefore, he could not be reinstated in service Respondent 1 than filed an appeal before the Board of Revenue which held by an order dated August 28, 1974, that, S.P. Jain who held the enquiry against respondent 1 and passed the order terminating his services had no power to do so. The Board of Revenue set aside the order of termination and remanded the matter to the Bank for disposal in accordance with law. The writ petition filed by the Bank in the High Court of Madhya Pradesh was dismissed on October 26, 1973. According to the High Court, since S.P. Jain had no authority to hold the enquiry or to pass the impugned order of dismissal, the said order had no existence in the eye of law and,

A therefore, respondent 1 should be deemed to be in service and be reinstated. Aggrieved by the judgment of the High Court the Bank has filed this appeal.

We are in agreement with the conclusion to which the High B Court has come, though for somewhat different reasons which are as follows :—

> "The Board of Directors of the appellant-Bank was supersed ed by the Registrar of the Co-operative Societies by an order dated July 25, 1967 and its powers were vested in Madhya C Pradesh State Cooperative Bank, Jabalpur, which is an Apex Bank, as "officer-in-charge" of the superseded Bank. By Resolution No. 23 dated May 19, 1968, the Apex Bank confirmed the action of its Chairman/Vice Chairman in deputing, amongst others S.P. Jain as the Chief Executive Officer of the superseded Bank. The Appex Bank had no authority or power so to appoint S.P. Jain for two reasons : D In the first place, the Apex Bank, being an appointee of the Registrar, had no authority to divest itself of the power conferred upon it by the Registrar and to invest S.P. Jain with that power. The only authority which could have conferred the necessary power on S.P. Jain was the Registrar. The Registrar did not confer that power upon E S.P. Jain under Section 53(4) of the Act".

In the result, this appeal is dismissed with costs.

We would like to add that as long as 16 years have passed since the impugned order was passed and that too by a perspn who had no authority to pass it. Secondly, the consensus of opinion of F the various authorities which have dealt with this matter is that, in overstaying the leave granted to him, respondent 1 was not guilty of "misconduct". It is desirable and prudent that no further proceedings be taken against respondent 1 for the alleged default on his part, which is the subject-matter of the present proceedings.

G We modify the order of the High Court by directing that respondent 1 will be entitled to fifty per cent of the back wages and allowances only from June 5, 1968 until September 30, 1984. The appellant will take back respondent 1 in its service with effect from October 1, 1984.

H M.L.A. *Appeal dismissed.*