SUPREME COURT OF INDIA

Shahabad Co-op. Sugar Mills Ltd.

Vs.

Spl. Secy. to Govt. of Haryana Corp.

C.A.No.4773 of 2006

(S. B. Sinha and Dalveer Bhandari, JJ.)

10.11.2006

JUDGEMENT

S. B. SINHA, J.:-

1. Leave granted.

2. Interpretation of Section 115 of the Haryana Co operative Societies Act, 1984 (for short, 'the Haryana Act') calls for consideration in this appeal which arises out of a judgment and order dated 12.9.2005 passed by the Punjab and Haryana High Court in Civil Writ Petition No.19569 of 2003.

3. Appellant is a co operative society registered under the Co operative Societies Act. Respondent was appointed as Chief Accounts Officer in the Appellant mill. On the ground that he has committed misconduct, two charge sheets were issued to him containing the following charges :

"(a) He failed to check and control the Mill accounts, which resulted into issuance of false receipts of cheques/cash/demand drafts thus putting the Mill into financial losses.

(b) Failing to control the Mills Funds resulting into crores of rupees lying in cash credit limit thus putting the Mill to huge financial losses.

(c) Removal of official records from the office for personal use.

(d) Approval of tour programme of Security Guards for the months of December, 1995, January, 1996 and February, 1996 without his signatures.

(e) Availing of leave from 23.3.95 to 25.3.96 on false pretexts.

(f) Verifying that Smt. Veena Sharma was an employee of the Mill entitling her to get benefits, whereas she has never been the employee of the Mill.

(g) Did not attend the hearing of Courts in criminal complaints filed on behalf of the Mill under S. 138 of Negotiable Instruments Act.

(h) In spite of rejection of his leave, still remained absent from duty w.e.f. 18.5.96 to 25.5.96."

4. An Enquiry Officer was appointed to enquire into the correctness or otherwise of the said charges. Before the said Enquiry Officer, Appellant herein examined two witnesses on 18.11.1996 and 23.12.1996, who were also cross examined by the respondent No.3 herein. Resignation was tendered by Respondent No.3 on 13.2.1997. Admittedly, the same had not been accepted on the ground that disciplinary proceedings had already been initiated against him. Non acceptance of the said resignation was communicated to him by a letter dated 1.3.1997. In his letter dated 4.3.1997 a contention was raised by him that he had already relinquished his charge. In view of termination of contract of employment, only one month's salary is required to be deducted from the amounts due to him. He, further, by a letter dated 1.7.1997, stated that after tendering resignation he had got another job of much higher status and salary and he was not interested in the job of the Mill anymore.

5. However, there existed a dispute as to whether the 3rd respondent had found an alternative job or

not.

6. It is not in dispute that the 3rd respondent did not attend the proceedings of enquiry on several days. He contends that no notice was served on him and furthermore as he was put under arrest and therefore, he could not attend. In his absence the Enquiry Officer proceeded to hold the enquiry ex parte. A report was submitted by the Enquiry Officer on 21.10.1997. The Board of Directors issued a notice requiring the 3rd respondent to show cause as to why he should not be dismissed from service. The contention of the 3rd respondent in this behalf was that despite request, neither a copy of the enquiry report nor the copies of the depositions of witnesses, who were examined as ex parte by the Enquiry Officer, had been supplied. He was dismissed from service by an order dated 26.12.1998. Relying on or on the basis of Section 114 of the Punjab Act, an appeal was filed before the Registrar, Co operative Societies, which was dismissed by an order dated 9.2.2001. A revision petition filed thereagainst before the State Government purported to be in terms of Section 115 of the said Act was allowed by an order dated 29.10.2003, holding :

"(a) The inquiry was fixed on 9.7.97, 12.7.97, 16.7.97 and 25.7.97. It is difficult to believe that notices would have been received by the Respondent herein by post in time.

(It is important to note here that 25.07.97 was fixed on the personal request of the Respondent himself. So far as 09.07.97, 12.07.97 and 19.07.97 the date of hearing is concerned, Respondent No.3 in his letter dated 13.8.97 has himself stated that he could not attend the hearing on 9.7.97, 12.7.97 and 16.7.97 as he was out of station.)

(b) The Inquiry Report is non speaking report and the entire evidence has not been considered.

(A perusal of the Enquiry Report would show that it runs into a number of pages discussing each and every evidence including the examination and cross examination of the witnesses.)

(c) Since F.I.R. has been quashed, as such one of the charges of the charge sheet stands dropped."

7. Aggrieved by and dissatisfied therewith, Appellant filed a writ petition before the High Court, which has been dismissed by reason of the impugned judgment.

8. The principal contention raised before the High Court as also before us is that the State

Government acted illegally and without jurisdiction in entertaining the revision application filed by the 3rd respondent herein.

9. Mr. Vinay Garg, learned counsel appearing on behalf of Appellant would submit that the State Government could not exercise its revisional jurisdiction in the facts and circumstances of the case and thus, the order impugned before the High Court, was a nullity, being wholly illegal and without jurisdiction, and thus, the High Court committed a manifest error in dismissing the writ petition.

10. Mr. Jawahar Lal Gupta, learned Senior Counsel appearing on behalf of the 3rd respondent, on the other hand, urged that as the power of the State Government to exercise its revisional power could have been exercised suo motu, it is immaterial as to whether the same was entertained at the instance of the 3rd respondent or otherwise. Reliance in this behalf has been placed on Gurnam Kaur vs. State of Punjab and Ors. [1992 PLJ 658] and The Punjab State Handloom Weavers Apex Society Ltd. vs. The State of Punjab and Ors. [1995 PLJ 546].

11. It was further urged that from a perusal of the orders passed by the State of Haryana as also by the High Court it would appear that the 3rd respondent was made a scapegoat in the entire matter as the First Information Report was lodged against the Managing Director of the Cooperative Society. Our attention was moreover drawn to the fact that the High Court had even quashed the First Information Report lodged as against the 3rd respondent and in that view of the matter, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

12. Haryana Act was enacted to consolidate and amend the law relating to the co operative societies. It is a self contained Code. It received the assent of the President of India on 20th September, 2004. Chapter XV of the Haryana Act provides for settlement of disputes.

13. Section 102 thereof contains a non obstante clause in terms whereof if any dispute touching the constitution, establishment management or the business of a co operative society between the society or its committee and any past committee, any officer, agent or employee or any past officer, agent or employee or the nominee, heirs or legal representatives of any deceased officer, agent of employee of the society arises, the same shall be referred to the arbitration of the Registrar for decision and no court shall have any jurisdiction to entertain any suit or other proceedings in respect of such dispute. In terms of Section 103 of the said Act, the Registrar is empowered to either decide the matter himself or transfer the same to any person who has been vested by the Government with the power in that behalf.

14. Chapter XVIII of the Act provides for appeals and revision. Section 114 provides for appeal in relation to a decision or award made under Section 103 of the Act. Admittedly, the appeal preferred

by the 3rd respondent was determined by an Additional Registrar. Clause (c) of Sub Section (2) of section 114 provides that an appeal against any decision or order made by the Additional Registrar or Registrar under Sub Section (1) shall lie to the Government.

15. Section 115 of the Act provides for a revisional power of the Government in the following terms :

"115. Revision The Government may suo motu or on an application of a party to a reference under Section 102, call for and examine the record of any proceedings in which no appeal lies to the government under Section 114 for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Government that any such decision or order should be modified, annulled or revised, the Government may, after giving the persons affected thereby an opportunity of being heard, pass such order thereon as it may deem fit."

16. We would hereafter notice the provisions of the Punjab Co operative Societies Act, 1961 (Punjab Act), which are said to be in pari materia to the Haryana Act. Section 68 of the Punjab Act provides for appeals. By reason of Clause (c) of Sub Section (2) of Section 68, however, against an order made by the Additional Registrar an appeal lies to the Registrar. Section 69 provides for a revisional jurisdiction both in the State Government as also the Registrar in the following terms :

"69. The State Government and the Registrar may, suo motu or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal under Section 68 lies to the Government or the Registrar, as the case may be, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and if in any case it appears to the Government or the Registrar that any such decision or order should be modified, annulled or revised, the Government or the Registrar, as the case may be, may, after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit."

17. Interpretation of Section 69 of the Punjab Act came up for consideration in some cases before the Punjab and Haryana High Court. The earliest one being a decision rendered by a Division Bench of the said Court on 24.12.1970 in Hardial Singh, Manager, the Shahabad Farmers Co operative Marketing cum Processing Society Ltd. vs. State of Haryana through Secretary, Co operative Societies, Haryana, Chandigarh and Ors. [1975 (1) SLR 55], wherein it was opined :

"This section gives revisional powers to the State Government in cases where no appeal lies under section 68 of the Act and the power is exercisable either suo motu or on the application of a party to a reference. There is no dispute that the State Government did not act suo motu but passed the impugned order on the application of the Manager. From the plain reading of this section, it is clear

that such an application could be filed only by a party to a reference. In the instant case, admittedly there was no question of the reference of any dispute for decision to any authority under the Act. The Society or the Manager were not parties to any such reference. It was a simple case where the petitioner Society took disciplinary action against the Manager (Petitioner) who filed an appeal under rule 36 of the Rules on which the Joint Registrar passed an order on 5th March, 1970."

18. A learned Single Judge followed the decision in Amritsar Central Co operative Bank Ltd., Amritsar and Anr. vs. State of Punjab and Ors. [1971 PLJ 572].

19. A different note, however, was struck in Jaswant Singh vs. The State of Punjab and Ors. [1986 Punjab Legal Reports and Statutes (Vol.1) 314], S.S. Sandhawalia, J., (as the learned Chief Justice, then was) opined that the State Government can exercise its jurisdiction suo motu even if an application is filed by a person aggrieved, stating :

"A bare reference to the above said provision would show that the revisional authority can among other things apart always act suo motu. Mr. Kaushal very fairly conceded that if the State Government so acts, there would be no defect of jurisdiction or objection to the same. I hence fail to see how the position would become diametrically different if the matter is brought to the notice of the revisional authority (which is clothed with wide powers) by one of the parties to the dispute. The State Government is not a natural person and has no personal knowledge of its own and matters are thus brought to its notice either directly by its employees or by others and no fatality can attach to an order on the hyper technical ground that if the State Government had acted suo motu, its action would have been unassailable but merely because the action is taken on proceedings brought to its notice by another the self same action would become totally vitiated."

20. A Full Bench of the Punjab and Haryana High Court in Gurnam Kaur v. State of Punjab etc. [1992 PLJ 658 : 1992 (102) PLR 746] overruled Hardial Singh (supra), stating :

".....The opening words of Section 69 reproduced above with respect to "suo motu" or "on application of the parties to the reference" are explanatory in nature. They are neither superfluous nor redundant. Even in the absence of phraseology used in the remaining context of the provision referred to above still would clothe the Revisional Authority to exercise the power as would be seen from such like provisions in different statutes, reference to which would be made later. It is immaterial when revisional power is exercised as to whether, the action was initiated at the instance of interested party or suo motu. The order passed would be within jurisdiction. This exercise of powers is not dependent on the action of the party concerned. This view expressed in Hardial Singh's case (supra) that since action was not initiated by the competent party concerned the same could not be treated valid exercise of jurisdiction under Section 69 of the Act, reproduced above, is not tenable in law. Even if the action was taken by a party who was not aggrieved, in other words not a person competent, the exercise of powers in modifying, annulling or revising the order of the

subordinate authority will not be without jurisdiction."

21. The said decision was followed by a Division Bench of the Punjab and Haryana High Court in Punjab State Handloom Weavers Apex Society Ltd. vs. State of Punjab and Ors. [1995 PLJ 546 : 1996 1 PLR (Vol.112) 83], stating :

"A perusal of the above provision shows that the State Government as well as the Registrar have been empowered to examine the legality or propriety of any decision or order passed by a Society. They can do so either suo motu or on the application of a party to a reference. The power is not subject to any provision of the rules or the bye laws. It is in the nature of a supervisory jurisdiction conferred on the government and the Registrar. In the very nature of things where an order has been passed by the Registrar, the power vests in the State Government."

22. The decision of the High Court rests on the latter category of the decisions, referred hereinbefore.

23. The revisional jurisdiction is akin to the appellate jurisdiction.

24. In Shankar Ramchandra Abhyankar vs. Krishnaji Datta traya Bapat [AIR 1970 SC 1], this Court held : Para 5 of AIR

"It would appear that their lordships of the Privy Council regarded the revisional jurisdiction to be a part and parcel of the appellate jurisdiction of the High Court. This is what was said in Nagendra Nath Dey v. Suresh Chandra Dey, 59 Ind App 283 at p.287 : (AIR 1932 PC 165 at p.167):

"There is no definition of appeal in the Code of Civil Procedure, but their Lordship have no doubt that any application by a party to an Appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term...."

Similarly in Raja of Ramnad v. Kamid Rowthen and Ors., 53 Ind App 74 : (AIR 1926 PC 22) a civil revision petition was considered to be an appropriate form of appeal from the judgment in a suit of small causes nature. A Full Bench of the Madras High Court in P.P.P. Chidambara Nadar v. C.P.A. Rama Nadar and Ors. A.I.R. 1937 Mad 385 had to decide whether with reference to Article 182(2) of the Limitation Act, 1908 the term "appeal" was used in a restrictive sense so as to exclude

revision petitions and the expression "appellate court" was to be confined to a court exercising appellate, as opposed to, revisional powers. After an exhaustive examination of the case law including the decisions of the Privy Council mentioned above the Full Bench expressed the view that Article 182(2) applied to civil revisions as well and not only to appeals in the narrow sense of that term as used in the Civil Procedure Code. In Secretary of State for India in Council v. British India Steam Navigation Company (1911) 13 Cal LJ 90 and order passed by the High Court in exercise of its revisional jurisdiction under Section 115, Code of Civil Procedure, was held to be an order made or passed in appeal within the meaning of Section 39 of the Letters Patent, Mookerji, J., who delivered the judgment of the Division Bench referred to the observations of Lord Westbury in Attorney General v. Sillem (1864) 10 HLC 704 and of Subramania Ayyar, J., in Chappan v. Moidin (1898) ILR 22 Mad 68 at p.80 (FB) on the true nature of the right of appeal. Such a right was one of entering a superior Court and invoking its aid and interposition to redress the error of the court below. Two things which were required to constitute appellate jurisdiction were the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter. In the well known work of Story on Constitution (of United States) Vol. 2, Article 1761, it is stated that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the legislature may choose to prescribe. According to Article 1762 the most usual modes of exercising appellate jurisdiction, at least those which are most known in the United States, are by a writ of error, or by an appeal, or by some process of removal of a suit from an inferior tribunal. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial. A writ of error is a process of common law origin, and it removes nothing for re examination but the law. The former mode is usually adopted in cases of equity and admiralty jurisdiction; the latter, in suits at common law tried by a jury."

25. Provisions for appeal or revision provide for statutory remedies. The Appellate Authority or the Revisional Authority can exercise its appellate or revisional jurisdiction provided it would be maintainable in law.

26. We have noticed hereinbefore the provisions of the Punjab Co operative Societies Act and Haryana Act. Relevant provisions of Haryana Act are somewhat different from the Punjab Act. Under the Haryana Act, an appeal and revision is maintainable from an Award made by an Arbitrator appointed in terms of Section 102 of the Act. The party to a reference under Section 102 would mean a party to arbitration for reference. Section 103 provides for an appeal from an award which may be passed by the Arbitrator appointed in terms of Section 103 of the Act. The party to reference under Section 102 would mean a party to arbitration for reference. Section 103 provides for an appeal from an Award, which may be passed by the Arbitrator appointed in terms of Section 103 of the Act. It does not appear that there exists a similar provision in the Punjab Act. Another difference of significance between the two Acts is that whereas an appeal against an order passed by the Additional Registrar under the Punjab Act is maintainable before the Registrar, under the Haryana Act it would be maintainable only before the State Government. Revisional power under the Punjab Act is vested both in the Registrar as also the State Government, whereas under the Haryana Act the revisional power is vested only in the State Government.

27. The State cannot exercise its revisional jurisdiction if an appeal lies before it. If an appeal lies, a revision would not lie. Admittedly, the 3rd respondent preferred an appeal before the Registrar. Such an appeal was purported to have been filed from an order passed by the Board. The 3rd respondent did not invoke the provision for arbitration. We have noticed hereinbefore that the disputes and differences between the Society and an employee is referable to arbitration in terms of Section 102 of the Haryana Act. An appeal is maintainable against an award of the Arbitrator before the State. On this ground alone the revision petition was not maintainable. Faced with such a situation, Mr. Gupta contended that no appeal was maintainable before the Registrar. The said contention of Mr. Gupta cannot be accepted for more than one reason. The 3rd respondent himself took recourse to the said remedy. Having taken recourse to the said remedy and having himself invoked Appellate jurisdiction before the Registrar, it does not lie in his mouth to contend that no appeal was maintainable. Before the revisional authority he primarily questioned the order passed by the disciplinary Authority, as also order passed by the Appellate Authority. It had never been the contention of the 3rd respondent that the revision application was filed by him directly against the order passed by the Board of Directors. No revision application would have even then been maintainable.Even if it would be so, the appellant herein was entitled to raise the contention that having regard to the provisions of Section 102 of the Haryana Act, an appeal or a revision was not maintainable. It is now well settled that if an appeal lies, the revisional jurisdiction could not be exercised. (See A.M. Chengalvaroya Chetty vs. The Collector of Madras and Ors. [AIR 1965 Mad 376].)

28. If the revision application was not maintainable, a' fortiori suo motu power could not also be exercised. Even otherwise if suo motu power is to be exercised, it has to be stated so. In M/s. D.N. Roy and Ors. vs. State of Bihar and Ors. [AIR 1971 SC 1045], this Court opined : Para 7 of AIR

"It is true that the order in question also refers to "all other powers enabling in this behalf". But in its return to the writ petition the Central Government did not plead that the impugned order was passed in exercise of its suo motu powers. We agree that if the exercise of a power can be traced to an existing power even though that power was not purported to have been exercised, under certain circumstances, the exercise of the power can be upheld on the strength of an undisclosed but undoubted power. But in this case the difficulty is that at no stage the Central Government intimated to the appellant that it was exercising its suo motu power. At all stages it purported to act under Rules 54 and 55 of the Mineral Concession Rules, 1960. If the Central Government wanted to exercise its suo motu power it should have intimated that fact as well as the grounds on which it proposed to exercise that power to the appellant given him an opportunity to show cause against the exercise of suo motu power as well as against the grounds on which it wanted to exercise its power. Quite clearly the Central Government had not given him that opportunity. The High Court thought that as the Central Government had not only intimated to the appellant the grounds mentioned in the application made by the 5th respondent but also the comments of the State Government, the appellant had adequate Opportunity to put forward his case. This conclusion in our judgment is untenable. At no stage the appellant was informed that the Central Government proposed to exercise its suo motu power and asked him to show cause against the exercise of such a power. Failure of the Central Government to do so, in our opinion, vitiates the impugned order."

(Emphasis supplied)

29. We, therefore, are of the opinion that the order of the State Government having been passed without jurisdiction was a coram non judice. (See MD, Army Welfare Housing Organisation vs. Sumangal Services (P) Ltd. [(2004) 9 SCC 619], Zahira Habibullah, Sheikh and Anr. vs. State of Gujarat and Ors. [(2004) 4 SCC 158], Harshad Chiman Lal Modi v. DLF Universal Ltd. and Anr. [(2005) 7 SCC 791] and Gyan mandir Mahavidhyalaya Samity vs. Udailal Jaroli and Anr. [(2005) 10 SCC 603].] 2004 AIR SCW 219

2004 AIR SCW 2325

2005 AIR SCW 5369

30. Applicability of doctrine of stare decisis, which Mr. Gupta persuades us to accept in view of the decisions of this Court in S. Brahmanand and Ors. vs. K.R. Muthugopal (Dead) and Ors. [(2005) 12 SCC 764] and Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. vs. State of Maharashtra and Ors. [(2001) 8 SCC 509], also is not applicable.

31. In those decisions it has been held that if the decisions which were operating for a long time should not be disturbed, unless shown palpably wrong. We have noticed hereinbefore that the Punjab Act and Haryana Act are not in pari materia. They contain different provisions. The purport and object of the revisional jurisdiction of the State Government under the Haryana Act is in effect and substance are different from those of the Punjab Act.

32. Furthermore, the doctrine of stare decisis does not contain an inflexible rule. In State of Maharashtra vs. Milind and Ors. [(2001) 1 SCC 4], a Constitution Bench of this Court opined : 2000 AIR SCW 4303, (Para 30)

".....The rule of stare decisis is not inflexible so as to preclude a departure therefrom in any case but its application depends on facts and circumstances of each case. It is good to proceed from precedent to precedent but it is earlier the better to give quietus to the incorrect one by annulling it to avoid repetition or perpetuation of injustice, hardship and anything ex facie illegal, more particularly when a precedent runs counter to the provisions of the Constitution. The first two decisions were rendered without having the benefit of the decisions of this Court, that too concerning the interpretation of the provisions of the Constitution. The remaining decisions were contrary to the law laid down by this Court. This Court in Maktul v. Manbhari adopting the statement of law found in Halsbury and Corpus Juris Secundum observed thus: AIR 1958 SC 918 at P. 923 Para 9)

"But the supreme appellate court will not shirk from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake."

(From Halsbury)

"Previous decisions should not be followed to the extent that grievous wrong may result; and, accordingly, the courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the court, and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result."

(From Corpus Juris Secundum)"

[See also State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and Others [(2005) 8 SCC 534] 2005 AIR SCW 5723

33. For the reasons aforementioned we are of the opinion that the High Court was not correct in holding that the State of Haryana was entitled to exercise its revisional jurisdiction in the facts of the present case.

34. The question which, however, arises is whether this Court shall mould the relief. We have been taken to the merit of the matter. We are satisfied that the High Court was right in opining :

"...The petitioner has been facing the departmental proceedings since 1996. Even otherwise, it is to be noticed that FIR registered against the petitioner has been quashed by this Court in Crl. Misc. 144 of 2001 in its order dated 11.05.2001. The petitioner has not cared to challenge the aforesaid order before the Supreme Court. In such circumstances, it would be wholly inequitable at this stage to remand the matter back to the enquiry officer. Mr. Malik, then submitted that even if enquiry proceedings are to be quashed, the Respondents could not have been directed to be re instated in service with full back wages. Respondent No.3 had himself stated that he had got a much better job with better emoluments, status and salary. Learned Counsel for Respondent No.3 has, however, pointed out that on getting the aforesaid job, he had submitted the resignation to the Managing Director of the petitioner. The same was rejected, as such Respondent No.3 was not able to accept

the job."

35. It was also held that the inquiry was not properly conducted.

36. The 3rd respondent has already joined his services pursuant to the judgment of the High Court. He, in the meanwhile, has also superannuated. The questions as to whether during the interregnum he had been gainfully employed or not; or his resignation was rightly refused to be accepted and despite submission of resignation, he did not, in fact, get a job and never joined anywhere else, should, in our opinion, be determined by an appropriate authority. We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution of India direct that the Registrar of Co operative Societies should arbitrate in the matter and exercise its jurisdiction under Section 102 of the Haryana Act, as if the 3rd respondent has invoked the said jurisdiction.The parties hereto shall file their respective documents before the Registrar within four weeks from the date. The Registrar shall fix a date of hearing and intimate the same to the parties, on which date they may produce their witnesses before him. The 3rd respondent will be entitled to examine himself as a witness.

37. The Registrar shall consider the matter afresh without in any way being influenced by the report of the Enquiry Officer, the appellate order passed by the Additional Registrar or the revisional order passed by the State. The Registrar, Co operative Societies is requested to make an Award within eight weeks from the date of entering into the reference. We furthermore direct that irrespective of the result of the dispute between the appellant and the 3rd respondent, no recovery shall be effected from the 3rd respondent in respect of any salary or emoluments paid to him during the period from 1.10.2005 to 30.6.2006 when he joined his services pursuant to the order of the High Court and date of his superannuation.

38. This appeal is allowed with the aforementioned observations and directions. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs.

Appeal allowed.