

SUPREME COURT OF INDIA

Ghaziabad Zila Sahkari Bank Limited

Vs

Additional Labour Commissioner and Others

(Dr.Ar.Lakshmanan and Tarun Chatterjee,JJ.,)

17.01.2007

JUDGMENT

Dr.Ar.Lakshmanan, J.

1. The present appeals were filed challenging the final judgment and order dated 04.04.2003 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 12890 of 2003 whereby the High Court dismissed the writ petition.

2. The consequence of the dismissal of the writ petition is that the High Court has affirmed the order dated 15.03.2003 passed by the Addl. Labour Commissioner, Ghaziabad, U.P., who according to the appellant has got no power to pass such an order explaining the scope of the powers of the Registrar under Section 128 of the U.P. Cooperative Societies Act.

3. According to the appellant under the U.P. Cooperative Societies Act, 1965 (hereinafter called 'the Act') read with U.P. Cooperative Societies Employees Service Regulation, 1975 framed by U.P. Cooperative Industrial Service Board and which has also been approved by the Governor and published in the official gazette under Section 122 of the U.P. Cooperative Societies Act, 1965, a full fledged remedy and mechanism to agitate the grievances of the employees of Cooperative Societies are already contained. According to the appellant, the U.P. Cooperative Societies Act, 1965 being a special enactment will prevail over the U.P. Industrial Disputes Act and in any view of the matter application made by the employees of the Bank under Section 6H(1) of the U.P. I.D. Act on the basis of an agreement improperly entered into is not maintainable. Therefore, it is submitted that the Addl. Labour Commissioner U.P. Ghaziabad exceeded his jurisdiction in passing the order dated 15.03.2003.

4. By the said order, the Addl. Labour Commissioner allowed the payment of Rs.11, 10, 398/- as an ex-gratia payment to the employees of the appellant-Bank for the year 1999-2000 from the public fund. According to the Bank, if such a payment is allowed, then there are 50 more such banks and employees of said Banks who will claim same relief on the ground of parity and discrimination which will erode the public money running in several crores as similar payments made were the reasons for liquidation of District Cooperative Bank, Gonda. It was further contended that if the above payment is allowed, then all credit Cooperative

Societies will crumble down and the cooperative movement shall vanish in the entire State of U.P.BACKGROUND FACTS:

5. The U.P. Cooperative Societies Employees Service Regulations, 1975 were framed by the U.P. Cooperative Institutional Service Board constituted by the State Government. The Government issued a circular prohibiting ex-gratia payment (over and above pay) by Cooperative Societies. In September, 1989, the Registrar, Cooperative Societies issued circulars prohibiting payment of ex-gratia amounts on 11.09.1987, 10.05.1995, 29.10.1997 and 17.02.2000 since the same was contrary to Rules. Accordingly, ex-gratia payments to employees were suspended. However, on 13.01.2001, the Board of Directors passed a resolution for grant of ex-gratia to employees on 13.01.2001. Agreement for ex-gratia payment for 1999-2000 was entered by the Chairman of the Union without Registrar's permission under Regulation 42.

Agreement reads thus:

"AGREEMENT

Keeping in view, the position likely to ensue on resorting to total strike, talks were held, as per programme fixed prior to 24.01.2001, in the interest of bank, between Sarvashri Mukesh Gaud, Nirdosh Singh, Ghandharva, Satyendra Singh, and K.P. Singh, on behalf of the Cooperative Bank Employees Union Ghaziabad as well as Sarvashri S.S. Bhatia, Rakesh Sharma, Vinod Kumar and Narendra Prasad Sharma on behalf of the Cooperative Bank Staff Association Union, Ghaziabad both being the organization of Bank employees on one side, and Shri Krishna Veer Singh Sirohi, the Chairman of the Bank on behalf of the District Cooperative Bank Ltd. Ghaziabad (The Soil Sahkari Bank Ltd. Ghaziabad) on the other side, on the subject of the Joint Notice No. C-1 dated 26.12.2000.

After the talks, a consensus was arrived at to the effect that the following two demands will be met by the Chairman by the 20th of February, 2001.

1. The payment of the ex-gratia amounts pertaining to the year 1999-2000 to the Bank employees on basis of their character rolls.

2. Payment of one special increment to employees on completion, by them of ten years, continuous service in accordance with the circular letter of the Registrar. On the above-mentioned assurance, both the organizations, keeping in view the interest of the bank, decided that the resorting to the total strike proposed prior to 24.1.2001 in accordance with the programme fixed after sending the notice No. C-I dated 26.12.2000 by both the organizations is deferred to 20.02.2001. This consensus also was arrived at that if on account of any circumstances, the demands are not met satisfactorily within the said fixed period, the programme proposed on 24.01.2001 under the Notice referred to above, will be commenced with effect from 21.2.2001, to the legality whereof the Chairman agreed.

Both the sides, after going through this agreement and after having agreed to the agreement, signed the same this 23rd day of January, 2001 at 5.00 p.m. at the Bank Head Quarters R-2/100, Raj Nagar, Ghaziabad.

[Table To Be Clarified With The Original Court Document]

6. According to the Bank, this agreement is not a settlement under Section 2(t) of the U.P. Industrial Disputes Act, 1947 read with Rule 5(1) and 2 of the U.P. Industrial Dispute Rules, 1967. On 03.02.2001, the Board of Directors ratified the said agreement and also resolved that Registrar's concurrence was not required:

RESOLUTION No. 1 passed on the meeting of the Board of Directors of Bank held on 3.2.2001.

Resolution

Decision

Consideration of the proceedings of last meeting. The Secretary, Bank read over the proceedings of the last meeting, which are confirmed unanimously with this decision that the norms prescribed towards the fulfillment of 40 per cent target of deposit enhancement in respect of the payment of the ex-gratia amounts vide Resolution No.14 passed on 13.1.2001 and condition of obtaining Registrar's concurrence thereto are not confirmed. Accordingly, the payment of ex-gratia amounts be made to the Bank employees.Sd/- Illegible

Secretary/General Manager"

7. On 14/17.02.2001, Secretary wrote to the Chairman to refer to the Board of Directors resolutions dated 13.01.2001 and 3.2.2001 to the Registrar. The Chairman failed to do so. Hence, the Secretary himself referred the matter to the Registrar under Rule 130.

"A true translated copy of the order dated 7.3.2001 passed by the Deputy Registrar Cooperative Societies, U.P. Meerut Division, Meerut.

ORDER

Whereas "The Ghaziabad Zila Sahkari Bank Ltd." {The Ghaziabad District Cooperative Bank Ltd.) which is called hereinafter as Bank, is a Cooperative Society registered under the U.P. Cooperative Societies Act and rules.

Whereas it has been decided, by the Board of Directors of the Bank, vide Resolution No. 14 dated 13.1.2001 and in this continuation vide Resolution No. 1 dated 3.2.2001, on the demand of the Bank employees Organisation (Union), to make the payment of

the ex-gratia amount in accordance with the prescribed norms like the previous year, whereon the Secretary, District Cooperative Bank Ltd., Ghaziabad has vide his letter No. 18980 dated 17.2.2001, recommended to annul both the aforesaid Resolutions under Section 128 of the U.P. Cooperative Societies Act, 1985.

Whereas in the aforesaid context, a divisional meeting was held, vide Registrar's circular letter No. C-74 dated 29.10.1997 and dated 22.1.2001, in district Ghaziabad under the Chairmanship of the Hon'ble Minister of Corporation in which the Registrar and other employees/higher officers as well as all the Secretaries, Distt. Cooperative Banks Ltd. Of the division participated and when the Secretary Distt. Cooperative Bank Ltd. Ghaziabad sought for the directions on the aforesaid payment referred to above, the Registrar clearly directed that the payment of ex-gratia amount be not made contrary to the circular letters issued by the Department.

Now, therefore, I Naval Kishore, Deputy Registrar, Cooperative Societies, U.P. Meerut Division, Meerut, in exercise of powers of the Registrar conferred by the Government Order No. 3328-C/12. CA 25(1)/67 dated 24.6.1969, do hereby require the Chairman/Board of Directors, District Cooperative Bank Ltd. Ghaziabad under Section 128(1) of the U.P. Cooperative Societies Act, 1965, to re-consider the Resolution No. 14 dated 13.1.2001 and Resolution No..... dated 3.2.2001, which are in respect of the payment of ex-gratia amounts to bank employees. The said exercise may please be completed within 15 days. Please ensure the action under reference, within the ambit of the circular letter issued by the Registrar, Cooperative Societies, U.P. Lucknow.Sd/- Naval Kishore

Deputy Registrar

Cooperative Societies, U.P. Meerut Division

Meerut."

8. On 25.02.2001, Board of Directors noted the ban on ex- gratia and still decided to pay the same for 1999-2000 onwards.

"The Ghaziabad District Cooperative Bank Ltd.

Head Office: R-2/100, Raj Nagar, Ghaziabad

RESOLUTION NO. 9: passed under "other Items (1) at the Seventh Annual General Body Meeting held on 25.2.2001.

Resolution

Decision the consideration of the payment of ex-gratia amount to the bank employees and officers.

The Chairman of the Bank intimated that the the payment of the ex-gratia amounts to the bank employees and officers for the year 1999-2000 has not been made as yet, while sanction has already been accorded by the Board of Directors to the payment of the ex-gratia amounts. The payment of ex-gratia amounts has been banned at the level of Registrar, Cooperative Societies.

After deliberation, in view of the continuously Enhancing position of the bank's profitability, this is unanimously decided that the ex-gratia payments for the year 1999-2000 be made to the bank's Employees/officers.

Sd/- Illegible

General Manager"

9. The Secretary again wrote to the Chairman to refer BOD Resolution dated 25.02.2001 to the Registrar. The Chairman failed to do so. Hence, the Secretary himself referred the matter to the Registrar under Rule 130.

10. On 07.03.2001/19.03.2001, the Registrar acting under Section 128(1) referred to Secretary's letters to the Chairman under Rule 130 and granted time to the Bank to reconsider its resolutions dated 13.01.2001, 03.02.2001 and 25.02.2001.

11. On 08.05.2001, 161 employees of the Union moved an application under Section 6H(1) of the U.P.I.D. Act purporting to be on the basis of rights under the Agreement dated 23.01.2001. On the same day, the Deputy Labour Commissioner issued notice to the Bank.

Section 6H(1) reads thus:

"6H. Recovery of money due from an employer- (1) Where any money is due to a workman from an employer under the provisions of section 6J to 6R or under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery make an application to the State Government for the recovery of the money due to him, and if the State Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as if it were an arrear of land revenue....."12. An application was filed under Section 6H(1) of the Act which reads as follows:-

To

The Deputy Labour Commissioner U.P.

Lohiya Nagar, Ghaziabad.

Dated: 8.5.2001

12. We, the undersigned applicants, are entitled to receive a sum of Rs.11, 05, 333/- (Rupees Eleven Lacs Five thousand three hundred thirty three only) from M/s. Ghaziabad Zila Sahakari Bank Ltd., R-2/100, Raj Nagar, Ghaziabad as per the settlement dated 23.01.2001 between the management and their workmen which was affirmed subsequently by the Board of Directors in its meeting held on 03.02.2001. But even after making the repeated requests by the workmen through their union namely Co-operative Bank employees Association and Co-operative Bank Association have not paid one months wages (Basic pay plus Dearness Allowance) to the employees as ex-gratia for the financial year 1999-2000 so far the photocopy of the resolution passed by the Board of Directors related to the aforesaid settlement dated 3.2.2001 are attached only to the original copy of the application for ready reference and marked respectively as Annexure 'A' & 'B'.

Xxx xxxx"

13. The bank filed objections before the Additional Labour Commissioner (hereinafter called 'the ALC;) referring to the ban on ex-gratia and Registrar's directions dated 07.03.2001 and 19.03.2001 to reconsider. On 15.05.2001, the ALC allowed the application under Section 6H and issued recovery certificate on the ground that the employer (Bank) has no objection. The said order reads thus:

"ORDER

Dated 15.5.2001:

The parties are present. On behalf of the employers, written statement has been filed. The workman-side has to file no records. Hence the proceedings relating hearing are closed. On behalf of the workmen, a demand has been raised towards payment of sum of money on the basis of agreement, which has been denied by the employers. No objection about the amount of money mentioned in the application has been raised on behalf of the employers. Hence, the recovery certificate for the ordered sum of money be issued.Sd/- Illegible Endt. Bank's letter No. Mu.Ka/01-02/Prasha/1137 dated 14.5.2001 has been sent by the undersigned. Sd/- Illegible

15.5.2001”

14. On 26.05.2001, Board of Directors approved ex-gratia payments again. On 30.05.2001, the Secretary again referred the resolution. On 22.06.2001, the Registrar annulled all Board of Directors resolutions dated 13.01.2001, 03.02.2001, 25.02.2001 and 26.05.2001 in exercise of powers under Section 128 of the U.P.C.S. Act, which reads thus:

"128. Registrar's power to annual resolution of a co-operative society or cancel order passed by an officer of a co-operative society in certain cases- The Registrar may-

(i) annul any resolution passed by the Committee of Management, or the general body of any co-operative society;or

(ii) Cancel any order passed by an officer of a co-operative society; if he is of the opinion that the resolution or the order, as the case may be, is not covered by the objects of the society, or is in contravention of the provisions of this Act, the rules or the bye-laws of the society, whereupon every such resolution or order shall become void and inoperative and be deleted from the records of the society:

Provided that, the Registrar shall, before making any order, require the Committee of Management, general body or officer of the co-operative society to reconsider the resolution, or as the case may be, the order, within such period as he may fix but which shall not be less than fifteen days, and if he deems fit may stay the operation of that resolution or the order during such period."

15. It is to be noted that no appeal was filed against the Registrar's Order under Section 98 (1)(h) before the State Government nor any step was taken for arbitration under Section 70 and the same became final and conclusive under Section 102.

16. The Bank filed Writ Petition being No. 22573 of 2001 against the order passed by the ALC dated 15.05.2001 which was allowed and the matter was remanded by the High Court for re-decision by the ALC in view of the fact that (a) the Bank had filed an objection and (b) the Registrar had now passed the annulment order dated 22.06.2001.17. On remand, the ALC held Registrar's annulment order was not proper and directed that ex-gratia amount be paid as per BOD's resolutions. According to the Bank, the ALC performed adjudication of disputed claims under Section 6H which provides in a legitimate case only execution of pre-adjudicated rights i.e. a determined sum to be paid. Writ Petition No. 12890 of 2003 was filed by the Bank against the above order passed by the ALC dated 15.03.2003 was also dismissed by the impugned order dated 04.04.2003.

18. We heard Mr. Sunil Gupta, learned senior counsel for the appellant and Mr. Ratnakar Das, learned senior counsel in C.A. No. 5231 of 2004 and Mr. Sandeep Singh, learned counsel for R1 and Ms. Indira Jaisingh, learned senior counsel ably assisted by Mr. Bharat Sangal, learned counsel for R2 to R4.

LACK OF JURISDICTION:

19. Mr. Sunil Gupta, learned senior counsel for the appellant submitted that the ALC's jurisdiction was wrongly invoked and his order dated 15.03.2002 under Section 6H of the U.P. I.D. Act was without jurisdiction, null and void. According to Mr. Sunil Gupta, the general legal principle is that, general act should yield to the subject act. Upon this general principle of law, the intention of the U.P. Legislature is clear, namely, that the special

enactment, U.P.CS Act, 1965 alone should apply in the matter of employment of cooperative societies to the exclusion of all labour laws.

20. For this proposition, Mr. Sunil Gupta relied on the following judgments of this Court:

- 1) *The Co-operative Central Bank Ltd. & Ors. v. The Additional Industrial Tribunal¹, Andhra Pradesh & Ors.* Â (paras 2, 6, 7)
- 2) *R.C.Tiwari v. M.P. State Co-operative Marketing Federation Ltd. & Ors².* (para 3)
- 3) *Belsund Sugar Co. Ltd. v. State of Bihar & Ors³.* (paras 16, 17, 48, 49)
- 4) *Allahabad Bank v. Canara Bank & Anr⁴.* (paras 38-41, 50)
- 5) *State of Punjab v. Labour Court, Jullunder & Ors⁵.* Â (paras 7-10)
- 6) *U.P.State Electricity Board v. Shiv Mohan Singh & Anr⁶.* Â 2004 (8) SCC 402 (paras 56, 87-91)The question of Section 135

21. In view of the general legal principle, Mr. Gupta submitted that it is immaterial whether or not the Government has enforced Section 135 UPCS Act because in any case the said provision had been included in the Act only by way of clarification and abundant caution.

22. He further submitted that the enforcement of the entire intent of the legislature in the form of enforcement of the entire scheme and provisions of the Act having taken place, is wholly immaterial and that the clarificatory and cautionary provision of Section 135 has not been given by the Government and an appointed date for enforcement under Section 1(3) and that such non-appointment of date makes no difference to the legal consequences of the aforesaid general principle of law which, in any case, results in exclusion and implied repeal of the U.P.I.D. Act on first legal principles.

23. Mr. Gupta also submitted that the ingredients of Section 6H are not satisfied. According to learned senior counsel, there is no money due and no settlement in the eyes of law. Indeed, there is no adjudicated claim but only a highly disputed claim of the workmen.

24. In regard to his contention that no money is due, Mr. Gupta relied on *Central Inland Water Transport Corpn. Vs. The Workmen & Anr⁷.*, Â (paras 11 to 16) and *Town Municipal Council, Athani vs. The Presiding Officer⁸,* Labour Courts, Hubli & Ors. Â (para 8).

25. With regard to his contention that there is no settlement in the eyes of law, learned senior counsel submitted that the agreement dated 23.01.2001 between the Chairman of the Bank and the workmen is not a settlement in the eyes of law and is not valid or enforceable or binding on the Bank. He relied on *Triveni Glass Ltd. vs. State of U.P⁹.*, in support of this contention made.

26. In The Alternative, Mr. Gupta Contended That ALC, In Law Is Not Competent To Declare The Statutory Order Of The Registrar Under Section 128 Of The Act To Be Not Proper and Thereby The Same Has To Be Disregarded. An Order Under Section 128 Is Final and Binding and Cannot Be Questioned In Any Court In View Of Section 102.FINALITY CLAUSE:

27. According to Mr.Gupta, the Registrar's directions and order dated 07.03.2001, 19.03.2001 and 22.06.2001 requiring the Board of Directors to reconsider its offending resolutions and finally annulling the same in exercise of his powers under Section 128 are statutory in nature and have become finally binding under Section 102 as no appeal was filed under Section 98 of the Cooperative Societies Act.

28. Mr.Gupta then made further submissions with regard to Section 128, Rule 130 and 131. According to the learned senior counsel the ALC and the High Court wrongly treat the Secretary's functions and procedure under Rule 130 as substituting rather than merely supplementing the Chairman's power and procedure, including suo motu power and procedure under Section 128 of the Act, read with Rule 131. It was further submitted that the Secretary as well as the Registrar fully complied with the procedure under Section 128 and 130.Res Judicata:

29. Mr. Gupta submitted that the High Court had by its earlier judgment dated 04.07.2002 already directed the ALC to reconsider the matter keeping in view the Registrar's order under Section 128. No objection to the propriety or illegality of that order was taken by the workmen at that time, therefore, he submitted that the workman are thereafter barred by res judicata from doing so.

C.A. No. 5231 of 2004

30. This appeal was filed by the State of U.P. through its Secretary, Department of Cooperative Civil Secretariat, Lucknow against the final judgment and order dated 04.04.2003 passed by the High Court in Writ Petition No. 12890 of 2003 whereby the High Court has been pleased to dismiss the writ petition filed by the Bank.

31. According to Mr. Ratnakar Das, learned senior counsel the consequences of the dismissal of the writ petition is that the High Court has virtually affirmed the order dated 15.03.2003 passed by the ALC. By the said order, the ALC allowed the payment of 11, 10, 398/- as ex gratia payment to the employees of the Cooperative Bank for the year 1999-2000 from the public fund.32. Learned senior counsel for the State - Mr. Ratnakar Das majorly adopted the arguments of Mr. Sunil Gupta and submitted that the States argument is in tune with the banks case. He invited our attention to Rules 37, 40, 42, and 98 and also Sections 64 and 65 of the U.P. Cooperative Societies Act.

33. He also submitted that no ex gratia payment is being made by any other bank.

34. Ms. Indira Jaisingh, learned senior counsel appearing for respondents 2-4, submitted as follows before us.

U.P. Cooperative Societies Act

35. It was submitted by learned senior counsel that, The U.P. Cooperative Societies Act, 1965 has been enacted to further the Cooperative movement in the State of U.P. and for providing for functions and responsibilities of Cooperative Societies and the authorities invested with their supervision, guidance and control. Thus the objects and reasons for the enactment of the said Act is not to regulate the service conditions of the employees of the cooperative societies and the Act only incidentally provides Sections 121 & 122 to regulate the terms and conditions of all employees of the Cooperative Societies, Officers, Supervisors and other employees. It was submitted that only those employees who are not covered by the provisions of the U.P. I.D. Act would fall within the ambit of Sections 121-122 of the U.P. Cooperative Societies Act. On the other hand, the U.P. Industrial Disputes Act, 1947 has been held to be a special statute in matters of settlement of Industrial disputes arising out of the terms and conditions of service of employees who fall within the definition of workmen, provided they are employed in establishments covered by the said Act. In regard to various establishments which have their own services rules, the U.P.I.D. Act will still apply to workmen employed therein. Learned senior counsel cited various decisions of this court in the case of *U.P. State Electricity Board & Anr. vs. Hari Shankar Jain & Ors.*¹⁰ *Life Insurance Corpn. of India vs. D.J. Bahadur & Ors.*¹¹, *Allahabad District Cooperative Ltd. vs. Hanuman Dutt Tiwari*¹¹, and *The Premier Automobiles Ltd. vs. Kamlekar Shantaram Wadke of Bombay & Ors.*¹², in support of this contention.³⁶ It was then submitted that the U.P. I.D. Act is a special statute dealing with Industrial Disputes and therefore will exclude the application of U.P. Cooperative Societies Act which is a general statute.

U.P. Cooperative Societies Act v/s U.P.I.D. Act

37. It was submitted that it has been placed beyond any doubt that the U.P. Cooperative Societies Act is an Act dealing with Cooperative Societies and not industrial disputes and the provisions therein are themselves unambiguous about the applicability of the various Labour Laws including U.P.I.D. Act.

(i) Section 135 of the Act is as under:

"135. Certain Acts not to apply to co-operative societies - The provisions contained in the Industrial Disputes Act, 1947 (Act XIV of 1947) and the U.P. Industrial Disputes Act, 1947 (U.P. Act XVIII of 1947) shall not apply to Cooperative Societies."

(ii) Regulation 103 of the U.P. Cooperative societies Employees Regulation, 1975 is as under:

"103. The provisions of these Regulations to the extent of their inconsistency, with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya

Adhithan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, shall be deemed to inoperative."

38. In the above Act, Section 70 provides for disputes which can be referred to Arbitration of the Registrar. Clause (1) thereof provides that Section 70 applies to "any dispute relating to the Constitution, management or the business of a cooperative society." Clause (2) thereof provides for including in the above disputes any "claims for amounts due" but this is also for the purposes of sub-Section(1) and therefore would have to be read along with clause (1). This Court has specifically held that disputes arising out of terms and conditions of employment of the Society's employees do not fall within the phrase "any dispute relating to the Constitution, management or the business of a cooperative society." Thus Registrar cannot decide such disputes regarding terms and conditions of employment. A number of decisions of this court were cited on this point by learned senior counsel, *Deccan Merchants Cooperative Bank Ltd. vs. M/s Dalichand Jugraj Jan & Ors*¹³, *Cooperative Central Bank Ltd. & Ors. vs. The Addl. Industrial Tribunal*¹⁴, *A.P. & Ors., Allahabad District Cooperative Ltd. vs. Hanuman Dutt Tiwari*¹⁵, and *Morinda Cooperative Sugar Mills Ltd. vs. Morinda Cooperative Sugar Mills Workers Union*¹⁶. Learned senior counsel submitted that Section 128 also does not assist the Appellant in this regard. The said section clearly provides that the powers of the Registrar to annul any resolution only applies if the said resolution "is not covered by the objects of the society or is in contravention of the provisions of the Act, the Rules or the bye-laws of the society" as held by this Court terms and conditions of service of employment do not fall within the expression "objects of the society". The said Section 128 does not grant powers to the Registrar to annul such resolutions if deemed contrary to the "Regulations", which are excluded by their explicit absence from Section 128. Hence, the Registrar has no power to annul resolution dealing with the terms and conditions of employment of the employees of the Society. In any event there is nothing in the resolutions contrary to the regulation.

40. This is further strengthened by Rule 130(2) which provides that if the Resolution is not covered by Section 128 then it becomes operative immediately.

Application of Labour Laws

41. The learned senior counsel submitted that the legislature has specifically provided in the provisions of the U.P. Cooperative Societies Act itself that the Labour Laws will apply to the employees of the cooperative societies, in Regulation 103 and in non-enforcement of Section 135. The fact that Section 135 has not been brought into force indicates clearly that (a) in order to exclude Labour laws there must be statutory exclusion (b) failing such an exclusion Labour Law will apply. In this case, there is a fact exclusion however under Section 135 has not been brought into force.

42. Regulation 103 specifically provides that any provision of 1975 Regulations which is inconsistent with any of the Labour Laws shall be deemed inoperative to the extent of such inconsistency.

43. Regulation 42 of 1975 provides that a cooperative society, subject to the provisions of the Regulations and general or special orders of the Registrar give other allowances to its employees, but this does not require any permission or approval from the Registrar, unlike other provisions of Regulations 37, 40, 41 etc.⁴⁴. However, if the said Regulation 42 read with Orders of the Registrar comes in conflict with the enforcement of a settlement between the Cooperative Bank and its employees under the provisions of the U.P.I.D. Act, then in terms of Regulation 103, the said Regulation 42 along with the concerned orders of the Registrar would be inoperative. The decision in the case of Mathura Zila Sahakari Bank Ltd. Â 1999 AILLJ 628, was referred to in this regard.

45. These Regulations also make it clear that under all circumstances industrial relations are governed by the U.P. Industrial Disputes Act and not by the U.P. Cooperative Societies Act.

46. It was submitted that the Orders of the Registrar in any case have been admitted by the Registrar himself not to be binding on the Cooperative societies but being merely advisory. Thus the above orders of the Registrar would not come in the way of enforcement of the settlement dated 23.1.2001 under Section 6-H. Implied Repeal

47. The learned counsel for the respondent submitted that the argument of the appellants is based on implied repeal of the U.P. Industrial Disputes Act by the U.P. Cooperative Societies Act. According to the learned counsel, when the statutes themselves are very clear on the question of applicability, the question of implied repeal does not arise. In this case, the existence of but not having been enforced, Section 135 in the U.P. Cooperative Societies Act makes it clear that Labour Laws apply unless specifically excluded by the U.P. Cooperative Societies Act. Hence the argument of implied repeal is misplaced. A reading of Regulation 103 also makes it clear that Labour Laws will prevail over the Regulations framed under the U.P. Cooperative Societies Act. In this case, the intention of the legislature is clearly expressed in Section 135 i.e. unless excluded by statutes the Labour Laws will apply. The Section actually exclude the application of Labour Laws but the legislation actually has not brought it into force.

48. In any event, there is a presumption against a repeal by implication; and the reason of this Rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. The doctrine of implied repeal is based on the theory that the Legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the Court applies the doctrine, it does not more than give effect to the intention of the Legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. This principle was made clear by this court in the case of *Municipal Council Palai vs. T.J. Joseph & Ors*¹⁷. The presumption is, however, rebutted and repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act "that the two cannot stand together". But, if the two may be read together and some application may

be made of the words in the earlier Act, repeal will not be inferred. In this context learned senior counsel referred to the decisions of this court in the case of *R.S. Raghunath vs. State of Karnataka & Anr*⁸, *Â* and *Municipal Council Palai* (supra).

50. It was submitted that the U.P.I.D. Act and the U.P. Cooperative Societies Act are not inconsistent and hence there is no question of implied repeal.

51. If the later statute by itself provides that the earlier statute will still be applicable then no reference is required to be made to be General Principle of Implied Repeal which is applicable only when the statute does not so provide and further when there is a conflict between the provisions of the two statutes.

Settlement

52. The learned senior counsel appearing for the respondent submitted that the settlement dated 23.1.2001 is fully capable of enforcement under Section 6-H of the U.P.I.D. Act as it falls squarely within the definition of Section 2(t) and 6-B. The said settlement has been arrived at outside the Conciliation Proceedings and has been signed by the Chairman who under Section 30 of the U.P. Cooperative Societies Act is responsible for the control, supervision and guidance of the affairs and business of the Society. Section 31 does not bar the Chairman from signing the settlement though it grants certain powers to the Secretary of the Society.

53. Under Section 6-B, the Settlement arrived at outside the Conciliation Proceedings is binding on the parties to it but need not be registered under Section 6-B. The registration of such a settlement is optional. Thus the present settlement cannot be said to be 'not a settlement' as alleged.

54. The present appeal has arisen out of proceedings under the U.P.I.D. Act and not the U.P. Cooperative Societies Act. The Union on behalf of 167 workmen and for enforcing a right to receive ex gratia payment, whose payment has, admittedly continued for more than 23 years and agreed to by the Bank in terms of the settlement dated 23.1.2001 filed an application under Section 6-H which provides that where any money is due to a workman from an employer under a settlement, the workman may make an application to the State Government for the recovery of the money due to him.55. The present dispute is not "any dispute relating to the Constitution, management or the business of a cooperative society" and, therefore, the machinery provided in Section 70 or 128 of the U.P. Cooperative Societies Act would not be available to the employees of the Bank to enforce the settlement.

56. The employees are constrained to approach the Additional Labour Commissioner under Section 6-H(1) of the Act to enforce the payment. It is the Bank which has sought to introduce the provisions of the Cooperative Societies Act in 6-H proceedings and not the ALC or the employees as alleged.

57. It is also noteworthy that the respondents are seeking to enforce the settlement and not any resolution of the Board of Directors of the Bank and the Registrar Cooperative Societies, UP does not have any power to annul the settlement even under Regulation 42 of the 1975 Regulations. It was, therefore, submitted that even if it is accepted for the sake of arguments, without admitting, that the Registrar had the power under Section 128 to annul a Resolution of the Board of Directors relating to the terms and conditions of service of the employees, even on such annulment, the employees would be entitled to enforce the terms of the settlement, notwithstanding such annulment as the Resolutions of the Board of Directors are not the subject matter of the provisions of the U.P. Industrial Disputes Act.

58. With regard to Res Judicata it was argued that, the Additional Labour Commissioner had allowed the application under Section 6-H (1) of the respondents on 15.5.2001. The Registrar thereafter by his order dated 22.6.2001 during the pendency of Writ Petition No. 22537 of 2001 of the Bank challenging the said order of the ALC, annulled the Resolutions of the Board of Directors. Therefore, the order dated 22.6.2001 was not before the ALC at the time of issuance of his order dated 15.5.2001. It was for this reason the High Court by its judgment dated 4.7.2002 had merely directed the Additional Labour Commissioner to reconsider its decision dated 15.5.2001 "in view of this annulment of the Resolution of the Board of Directors". Thus there is no question of any res judicata in regard to the order dated 22.6.2001 of the Registrar and the ALC was fully competent to reject the operation of the said order on the proceedings before it.⁵⁹ We have heard all the parties in detail and have carefully perused through all records placed before us. In our opinion, the arguments of the appellants deserve favorable consideration for the reasons stated infra.

60. The general legal principle in interpretation of statutes is that 'the general Act should lead to the special Act'. Upon this general principle of law, the intention of the U.P legislature is clear, that the special enactment UP Co-operative Societies Act, 1965 alone should apply in the matter of employment of Co-operative Societies to the exclusion of all other Labour Laws. It is a complete code in itself as regards employment in co-operative societies and its machinery and provisions. The general Act the UPID Act, 1947 as a whole has and can have no applicability and stands excluded after the enforcement of the UPCS Act. This is also clear from necessary implication that the legislature could not have intended 'head-on-conflict and collision' between authorities under different Acts. In this regard reference can be made to decisions of this court in the case of *The Co-operative Central Bank Ltd. & Ors. v. The Additional Industrial Tribunal, Andhra Pradesh & Ors*¹⁹, where this court observed that:

Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under Section 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that Section 61 by

itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of Sub-section (4) of Section 62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under Section 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws. On the face of it, the provisions of the Act, the rules and the bye-laws could not possibly permit the Registrar to change conditions of service of the workmen employed by the society. For the purpose of bringing facts to our notice in the present appeals, the Rules framed by the Andhra Pradesh Government under the Act, and the bye-laws of one of the appellant Banks have been placed on the Paper-books of the appeals before us. It appears from them that the conditions of service of the employees of the Bank have all been laid down by framing special bye-laws. Most of the conditions of service, which the workmen want to be altered to their benefit, have thus been laid down by the bye-laws, so that any alteration in those conditions of service will necessarily require a change in the bye-laws. Such a change could not possibly be directed by the Registrar when, under Section 62(4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar under Section 61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator by the Registrar. Such person or arbitrator, when deciding the dispute, will also be governed by the mandate in Section 62(4) of the Act, so that he will also be bound to reject the claim of the workmen which is nothing else than a request for alteration of conditions of service contained in the bye-laws. It is thus clear that, in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it under Section 62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in the case of the Deccan Merchants Co-operative Bank Ltd., therefore, it must be held that this dispute is not a dispute covered by the provisions of Section 61 of the Act. Such a dispute is not contemplated to be dealt with under Section 62 of the Act and must, therefore, be held to be outside the scope of Section 61. Further this court observed in *R.C.Tiwari v. M.P. State Co-operative Marketing Federation Ltd. & Ors.* that:-

"...He also places reliance on Section 93 of the Societies Act which states that nothing contained in the Madhya Pradesh Shops and Establishments Act 1958, the M.P. Industrial Workmen (Standing Orders) Act, 1959 and the M.P. Industrial Relations Act, 1960 shall apply to a Society registered under this Act. By necessary implication,

application of the Act has not been excluded and that, therefore, the Labour Court has jurisdiction to decide the matter. We find no force in the contention. Section 55 of the Societies Act gives power to the Registrar to deal with disciplinary matters relating to the employees in the Society or a class of Societies including the terms and conditions of employment of the employees. Where a dispute relates to the terms of employment, working conditions, disciplinary action taken by a Society, or arises between a Society and its employees, the Registrar or any officer appointed by him, not below the rank of Assistant Registrar, shall decide the dispute and his decision shall be binding on the society and its employees. As regards power under Section 64, the language is very wide, viz., "Notwithstanding anything contained in any other law for the time being in force any dispute touching the constitution, a management or business of a Society or the liquidation of a Society shall be referred to the Registry by any of the parties to the dispute." Therefore, the dispute relating to the management or business of the Society is very comprehensive as repeatedly held by this Court. As a consequence, special procedure has been provided under this Act. Necessarily, reference under Section 10 of the Societies Act stands excluded. The judgment of this Court arising under Andhra Pradesh Act has no application to the facts for the reason that under that Act the dispute did not cover the dismissal of the servants of the society which the Act therein was amended."Similar view was taken by this court in the case of *Belsund Sugar Co. Ltd. v. State of Bihar & Ors. (supra)*, *Allahabad Bank v. Canara Bank & Anr.(supra)*, *State of Punjab v. Labour Court, Jullunder & Ors. (supra)* and *U.P.State Electricity Board v. Shiv Mohan Singh & Anr. (supra)*.

61. Also if we refer to the general principles of Statutory Interpretation as discussed by G.P.Singh, in his treatise on 'Principles of Statutory Interpretation', we can observe that, a prior general Act may be affected by a subsequent particular or special Act if the subject-matter of the particular Act prior to its enforcement was being governed by the general provisions of the earlier Act. In such a case the operation of the particular Act may have the effect of partially repealing the general Act, or curtailing its operation, or adding conditions to its operation for the particular cases. The distinction may be important at times for determining the applicability of those provisions of the General Clauses Act, 1897, (Interpretation Act, 1889 of U.K. now Interpretation Act, 1978) which apply only in case of repeals.

62. A general Act's operation may be curtailed by a later Special Act even if the general Act will be more readily inferred when the later Special Act also contains an overriding non-obstante provision. Section 446(1) of the Companies Act 1956 (Act 1 of 1956) provides that when the winding up order is passed or the official liquidator is appointed as a provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of winding up order shall be proceeded with against the company except by leave of the Court. Under Section 446(2), the company Court, notwithstanding anything contained in any other law for the time being in force is given jurisdiction to entertain any suit, proceeding or claim by or against the company and decide any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding

up. The Life Insurance Corporation Act, 1956 (Act 31 of 1956) constituted a Tribunal and section 15 of the Act enabled the Life Insurance Corporation to file a case before the tribunal for recovery of various amounts from the erstwhile Life Insurance Companies in certain respects. Section 41 of the LIC Act conferred exclusive jurisdiction on the tribunal in these matters. On examination of these Acts, it was held that the provisions conferring exclusive jurisdiction on the tribunal being provisions of the Special Act i.e. the LIC Act prevailed over the aforesaid provisions of the general Act, viz., the Companies Act which is an Act relating to Companies in general and, therefore, the tribunal had jurisdiction to entertain and proceed with a claim of the Life Insurance Corporation against a former insurer which had been ordered to be wound up by the Company Court. This case was followed in giving to the provisions of the Recovery of Debts due to Banks and Financial Institutions Act 1993 (RDB Act) overriding effect over the provisions of the Companies Act, 1956. The RDB Act constitutes a tribunal and by sections 17 and 18 confers upon the tribunal exclusive jurisdiction to entertain and decide applications from the banks and financial institutions for recovery of debts (defined to mean any liability which is claimed as due). The Act also lays down the procedure for recovery of the debt as per the certificate issued by the tribunal. The provisions of the RDB Act, which is a special Act, were held to prevail over sections 442, 446, 537 and other sections of the Companies Act which is a general Act, more so because Section 34 of the RDB Act gives over-riding effect to that Act by providing that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.⁶³ We are therefore of the view that the Asst. Labour Commissioner (ALC)'s jurisdiction was wrongly invoked and his order dated 15.03.2003 under section 6H, U.P. Industrial Disputes Act, 1947 is without jurisdiction and hence null and void and it can be observed that, in view of the said general legal principle, it is immaterial whether or not the government has enforced section 135 (UPCS Act) because, in any case the said provision (S.135) had been included in the Act only by way of clarification and abundant caution.

64. In the alternative if we are to presume that the ingredients of S.6H are not satisfied then also there is no adjudicated claim but only a highly disputed claim of the workman. In this connection, one can refer to the decision of this court in the case of Central Inland Water Transport Corporation vs. The Workmen and Another (supra) wherein this court opined that:

"11. The only question which arises for determination in this Court is whether the Labour Court has jurisdiction to adjudicate on the issues referred to it under Section 33(C)(2) of the Industrial Disputes Act. Sub-section (2), which is part of Section 33C dealing with "the recovery of money due from an employer" reads as follows:

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government.

12. It is now well-settled that a proceeding under Section 33(C)(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In *Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar and Ors.* it was reiterated that proceedings under Section 33(C)(2) are analogous to execution proceedings and the Labour Court called Upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.¹³ In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The Working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33(C)(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33(C)(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental'. To call determinations (i) and (ii) 'Incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33(C)(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions--say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases determinations (i) and (ii) are not 'Incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R.L. Khandelwal*, that a workman cannot put forward a claim in an application under Section 33(C)(2) in

respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under Section 10 of the Act.14. The scope of Section 33(C)(2) was illustrated by this Court in *The Central Bank of India Ltd. v. P.S. Rajagopalan etc.*. Under the Shastri Award, Bank clerks operating the adding machine were declared to be entitled to a special allowance of Rs. 10/- per month. Four clerks made a claim for computation before the Labour Court. The Bank denied the claim that the clerks came within the category referred to in the award and further contended that the Labour Court under Section 33(C)(2) had no jurisdiction to determine whether the clerks came within that category or not. Rejecting the contention, this Court held that the enquiry as to whether the 4 clerks came within that category was purely 'incidental' and necessary to enable the Labour Court to give the relief asked for and, therefore, the Court had jurisdiction to enquire whether the clerks answered the description of the category mentioned in the Shastri Award, which not only declared the right but also the corresponding liability of the employer bank. This was purely a case of establishing the identity of the claimants as coming within a distinct category of clerks in default of which it would have been impossible to give relief to anybody falling in the category. When the Award mentioned the category it, as good as, named every one who was covered by the category and hence the enquiry, which was necessary, became limited only to the clerks' identity and did not extend either to a new investigation as to their rights or the Bank's liability to them. Both the latter had been declared and provided for in the Award and the Labour Court did not have to investigate the same. Essentially, therefore, the assay of the Labour Court was in the nature of a function of a court in execution proceedings and hence it was held that the Labour Court had jurisdiction to determine, by an incidental enquiry, whether the 4 clerks came in the category which was entitled to the special allowance.

15. It is, however, interesting to note that in the same case the court at page 156 gave illustrations as to what kinds of claim of a workman would fall outside the scope of Section 33(C)(2). It was pointed out that a workman who is dismissed by his employer would not be entitled to seek relief under Section 32(C)(2) by merely alleging that, his dismissal being wrongful, benefit should be computed on the basis that he had continued in service. It was observed "His ... dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed ... him, a claim that the dismissal ... is unlawful and, therefore, the employee continues to be the Workman of the employer and is entitled to the benefits due to him under a preexisting contract, cannot be made under Section 33(C)(2)". By merely making a claim in a loaded form the workmen cannot give the Labour Court jurisdiction under Section 33(C)(2). The workman who has been dismissed would no longer be in the employment of the employer. It may be that an industrial tribunal may find on an investigation into the circumstances of the dismissal that the dismissal was unjustified. But when he comes before the Labour Court with his claim for computation of his wages under Section 33(C)(2) he cannot ask the Labour Court to disregard his dismissal as wrongful and on that basis compute his wages. In such cases, a determination as to whether the dismissal was unjustified

would be the principal matter for adjudication, and computation of wages just consequential upon such adjudication. It would be wrong to consider the principal adjudication as 'incidental' to the computation. Moreover, if we assume that the Labour Court had jurisdiction to make the investigation into the circumstances of the dismissal, a very anomalous situation would arise. The Labour Court after holding that the dismissal was wrongful would have no jurisdiction to direct reinstatement under Section 33(C)(2). and yet if the jurisdiction to compute the benefit is conceded it will be like conceding it authority to pass orders awarding wages as many times as the workman comes before it without being reinstated. Therefore, the Labour Court exercising jurisdiction under Section 33(C)(2) has got to be circumspect before it undertakes an investigation, reminding itself that any investigation it undertakes is, in a real sense, incidental to its computation of a benefit under an existing right, which is its principal concern.¹⁶ Bearing in mind these limitations of a Labour Court functioning under Section 33(C)(2) we have to approach the question before us. The old Company closed its business on May 3, 1967. The Corporation, in due course, appointed a large number of the Company's employees by fresh letters of appointments, but it could not absorb all of them. The reference was made on behalf of the employees mentioned in Lists I and II. They were in all 512. Out of these, it appears, 24 were re-employed by the Corporation later on. The rest of them virtually claimed re-employment or at least some benefits on the basis of their alleged right to be re-employed. In actual fact, however, the Corporation did not employ these workmen after the Company's undertaking was transferred to it. The scheme of transfer did not compel the Corporation to employ the workmen. Nor is there any term in the transfer agreement or scheme which passed over to the Corporation any responsibility in respect of the workmen. Section 25FF of the Industrial Disputes Act declares what are the rights of the workmen of an undertaking which is transferred. The right is to receive compensation as if the workmen are retrenched under Section 25F and is available only against the owners of the undertaking, that is to say, the transferor of the undertaking. The liability of the transferor to pay compensation does not arise only when (i) there has been a change of employers by reason of the transfer and (ii) the 3 Sub-clauses (a), (b) and (c) of the proviso of that section come into play. It is pointed out in *South Arcot Electricity Distribution Co. v. N.K. Mohd. Khan* that each one of the 3 conditions in Clauses (a), (b) and (c) is to be satisfied before it can be held that the right conferred by the principal clause does not accrue to the workmen. In the present case there is no actual change of employers by reason of the transfer, nor do the 3 sub-clauses apply. Therefore, prima facie, the claim of the workmen, would be for compensation under Section 25FF, directed, not against the Corporation, but against the Company of which they were formerly the employees. As a matter of fact the scheme itself shows that the employees of the Company who were not taken over by the Corporation were to be paid by the Company all money due to them under the law. The scheme further shows that the Company was to be put in possession of funds by the Government of India for satisfying the liabilities to the workers."Similarly in the case of *Town Municipal Council, Athani vs. The Presiding Officer Labour Courts, Hubli and Ors, etc.*, (supra), this court held:

"8. We have examined the application which were presented before the Labour Court under section 33-C(2) of the Act in these appeals and have also taken into account the pleadings which were put forward on behalf of the appellant in contesting those applications and we are unable to find that there was any dispute relating to the rates. It is true that, in their applications, the workmen did plead the rates at which the claims had to be computed; but it was nowhere stated that those rates were being disputed by the appellant. Even in the pleadings put forward on behalf of the appellant as incorporated in the order of the Labour Court, there was no pleading that the claims of the workmen were payable at a rate different from rates claimed by them. It does not appear that, in one case there was a pleading on behalf of the appellant that no rates at all had been prescribed by the Mysore Government. That pleading did not mean that it became dispute as to the rates at which payments were to be made by the appellant. The only question that arose was whether there were any rates at all fixed under the Minimum Wages Act for overtime and for payment for work done on days of rest. Such a question does not relate to a dispute as to the rates enforceable between the parties, so that the remedy under section 20(1) of the Minimum Wages Act could not have been sought by the applicants in any of the applications. No question can, therefore, arise of the jurisdiction of the Labour Court to entertain these applications under section 33-C (2) of the Act being barred because of the provisions of the Minimum Wages Act. The first point raised on behalf of the appellant thus fails."

Also on a perusal of the agreement dated 23.01.2001 between the Chairman of the Bank and the workmen it can be seen that, there was no settlement in the eyes of law and is not valid or enforceable or binding for the reason that: It was not signed by the Secretary (CEO) of the CS under S.31 (2)(d), CS Act. It was not in accordance even with the requirements of S.2(t) of ID Act or Rules 9(1) and (2) of the UP ID Rules (e.g. Prescribed Form I, signature of Conciliation Officer, signature of authorized principal officer viz. Secretary of the society/Bank, copy to C.O. and/or State government etc.) It was not in accordance with S.6 B (e.g. lack of registration, lack of scrutiny of collusion, fraud misrepresentation etc. by the Conciliation Officer/State Government.) It is contrary to the repeated orders of the Registrar under S.128 disapproving and disallowing ex-gratia payment and in breach of the provisions of UPCS Employees Service Regulation, 1975 framed under Ss. 121-122 of the UPCS Act, in particular, Regulation 42.

65. The ALC, in law is not competent to declare the statutory order of the Registrar, CS, under section 128 of the CS Act to be 'not proper' and thereby to disregard the same. An order under S.128 is final and binding and cannot be questioned in any of law in view of S. 102 and even otherwise on general principles of law, an authority under the UPID Act cannot ignore or wish away the statutory consequences of the statutory order passed by the Registrar under sections. 128, 102 etc of the UP Co-operative Societies Act.

66. Also the Registrar's directions and order dated 07.03.2001, 19.03.2001 and 22.06.2001

requiring the BOD to reconsider its (offending) resolutions and finally annulling the same in exercise of his powers under S.128 are statutory in nature. They are still valid and occupy the field. They become final and binding under s102 in because, no appeal was filed under S.98 of the CS Act and no arbitration reference was made under S.70 and 71 of the CS Act.

67. The ALC and the High Court wrongly appreciated the Secretary's functions and procedure under Rule 130 as subsisting rather than merely supplementing the Chairman's power and procedure, including suo moto power and procedure, under S.128 of the Act r/w Rule 131. This court in this regard has observed in the case of Nedurimilli Janardhana Reddy vs. Progress of Democratic Students Union & Ors., ⁴ that: "4. We have referred to the powers and functions of the competent authority under the Act in extenso, to bring out the important position which it occupies in the scheme of the Act. It is clear from the said provisions of the Act, that the scheme of the Act cannot be carried out without the constitution of the competent authority and in particular, no educational institution can be established without its formation. In considering the applications made for establishing educational institutions the prescribed authority has to have due regard that there is adequate financial provision for continued and efficient maintenance of the educational institutions as prescribed by the competent authority under Section 20(3)(b). It is further the competent authority alone which can grant recognition to the educational institutions under Section 21 of the Act. Even if under Section 20(1) a private educational institution is established in accordance with the rules made under the Act, the said rules cannot displace the competent authority or entrust the powers and functions of the competent authority to any other authority. It is true that Section 20(1) of the Act states that no private educational institution shall be established except in accordance with the provisions of the Act or the rules made thereunder. However, the rules made under the Act can only appoint an authority to accept the application for establishment of the educational institution and to grant permission therefor. But while granting permission, the prescribed authority has, among other things, to take into consideration under Section 20(3)(b) as stated above, the requirement of adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority. The power granted to the State Government under clauses (xi) and (xii) of Section 99 to make rules with regard to the establishment or maintenance and administration of educational institutions and the grant of recognition to educational institutions and the conditions therefor cannot again be utilised for displacing the competent authority and its functions and powers under the Act. Any exercise of such power will be a fraud upon the statute apart from rendering such rules as ultra vires the Act. It is against this backdrop of the legal status of the competent authority and its functions and powers that we have to examine whether the reliance placed by the State Government on the Andhra Pradesh Unaided Private Medical and Dental Colleges (Establishment, Management and Admission) Rules, 1992 (hereinafter referred to as the "Rules") for defending its action in establishing an Expert Committee under the Rules to grant sanction for medical and dental colleges, is correct or not." Further in the case of Life Insurance Corporation of India vs. Escorts Ltd. & Ors. ⁵, this court observed that,

69. One of the submissions very strenuously urged before us was that the very authority which was primarily entrusted with the task of administering the Foreign Exchange

Regulation Act, namely, the Reserve Bank of India was, itself, of the view that the 'permission' contemplated by section 29 (1) (b) of the Foreign Exchange Regulation Act was 'prior permission'. Our attention was invited to paragraph 24-A.1 of the Exchange Control Manual where the first three sentences read as follows:

In the terms of section 29 (1) (b) of Foreign Exchange Regulation Act, 1973, no person resident outside India whether an individual, firm or company (nor being a banking company) incorporated outside India can acquire shares of any company carrying on trading, commerce or industrial activity in India without prior permission of Reserve Bank. Also under section 19 (1) (b) and 19 (1) (d) of the Act, the transfer and issue of any security (which includes shares) in favour of or to any person outside India require prior permission of the Reserve Bank of India. When permission has been granted for transfer or issue of shares to non resident investors under section 19 (1) (b) or 19 (1) (d), it is automatically deemed to be permission under section 29 (1) (b) for purchase of shares by him."

The submission of Shri Nariman was two-fold. He urged that paragraph 24-A.1 was a statutory direction issued under Section 73(3) of the Foreign Exchange Regulation Act and, therefore, had the force of law and required to be obeyed. Alternately he urged that it was the official and contemporary interpretation of the provision of the Act and was, therefore, entitled to our acceptance. The basis for the first part of the submission was the statement in the preface to the Exchange Control Manual to the effect:

The present edition of the Manual incorporates all the directions of a standing nature issued to authorised dealers in the form of circulars upto 31st May, 1978. The directions have been issued under Section 73(3) of the Foreign Exchange Regulation Act which empowers the Reserve Bank of India to issue directions necessary or expedient for the administration of exchange control. Authorised dealers should hereafter be guided by the provisions contained in this Manual. There is no force whatever in this part of the submission. A perusal of the Manual shows that it is a sort of guide book for authorised dealers, money changers etc. and is a compendium or collection of various statutory directions, administrative instructions, advisory opinions, comments, notes, explanations suggestions, etc. For example, paragraph 24-A.1 is styled as Introduction to Foreign Investment in India. There is nothing in the whole of the paragraph which even remotely is suggestive of a direction under Section 73(3). Paragraph 24-A.1 itself appears to be in the nature of a comment on Section 29(1) (b), rather than a direction under Section 73(3). Directions under Section 73(3), we notice, are separately issued as circulars on various dates. No Circular has been placed before us which corresponds to any part of paragraph 24-A.1. We do not have the slightest doubt that paragraph 24-A.1 is an explanatory Statement of guideline for the benefit of the authorised dealers. It is neither a statutory direction nor is it a mandatory instruction. It reads as if it is in the nature of and, indeed it is, advice given to authorised dealers that they should obtain prior permission of the Reserve Bank of India, so that there may be no later complications. It is a helpful

suggestion, rather than a mandate. The expression 'prior permission' used in paragraph 24-A.1 is not meant to restrict the range of the expression 'general and special permission found in Sections 29(1)(b) and 19(1)(b). It is meant to indicate the ordinary procedure which may be followed. Shri Nariman argued that none of the prescribed forms provided for the application and grant of subsequent permission. That may be so for the obvious reason that ordinarily one would expect permission to be sought and given before the act. Surely, the Form cannot control the Act, the Rules or the directions. As one learned judge of the Madras High Court was fond of saying 'it is the dog that wags the tail and not the tail that wags the dog.' We may add what this Court had occasion to say in *Vasudev Ranchandra Shelat v. Pranal Jayanand Thakkar*: The subservience of substance of a transaction to some rigidly prescribed form required to be meticulously observed, savours of archaic and outmoded jurisprudence.

70. According to Shri Nariman even if as found by us, the permission to purchase shares of an Indian company by a non-resident investor of Indian origin or nationality under Section 29(1)(b) of the FERA could be obtained after the purchase, the Reserve Bank ceased to have such power after the formulation of the Portfolio Investment Scheme since it did not reserve to itself any such power under the Portfolio Investment Scheme promulgated in exercise of its powers under Section 73(3) of the Foreign Exchange Regulation Act. We do not see any foundation for this argument in the scheme itself. The scheme does not talk of any prior or previous permission, nor are we able to understand how a power possessed by the Reserve Bank under a Parliamentary legislation can be so cut down as to prevent its exercise altogether. It may be open to a subordinate legislating body to make appropriate rules and regulations to regulate the exercise of a power which the Parliament has vested in it, so as to carry out the purposes of the legislation, but it cannot divest itself of the power. We are, therefore, unable to appreciate how the Reserve Bank, if it has the power under the FERA to grant ex-post-facto permission, can divest itself of that power under the scheme. The argument was advanced with particular reference to the forms prescribed under the scheme. We have already pointed out that the forms under the scheme cannot abridge the legislation itself.

68. In any case, the Secretary as well as the Registrar fully complied with the procedure under S.128 and Rule 130 on facts and the High Court has evidently misread the records.

Ex-gratia payment

69. In the instant case, the Additional Labour Commissioner allowed the payment as an ex-gratia payment to the employees of the Cooperative Bank from the public fund. The meaning of the word 'Bonus' according to the new English dictionary is a boon or gift, over and above, what is normally due as remuneration to be received. This imports the concept of some ex-gratia payment. It was ex-gratia payment on account of which it is not possible to employ a term of service on the basis of employed contract. In our view, the payment made as ex-gratia payment would not constitute any precedent for future years. The ex-gratia payment made in the instant case was neither in the nature of production bonus nor incentive bonus

nor customary nor any statutory bonus. It cannot be regarded as part of the contract 'employment'. Therefore, the ex-gratia payment made by the bank cannot be regarded as remuneration paid or payable to the employees in fulfillment of the terms of the contract of employment within the meaning of definition under Section 2(22) of the I.D. Act, 1947.70. We have already noticed the powers of the Registrar to determine the terms of the employment of the Society from time to time, frame regulations to regulate the emoluments and other conditions of service etc. under Section 121 of the U.P. Cooperative Societies Act, 1965 (hereinafter called 'the Societies Act, 1965'). We have also noticed the Registrar's power to annul the Resolution of the Cooperative Societies or cancel the orders passed by an officer of the Society in certain cases under Section 128. The Registrar under the above Section can cancel any order passed by an officer of a Cooperative Society, if he is of the opinion that the Resolution or the order, as the case may be, is not covered by the objects of the society or is in contravention of the provisions of the Act, the Rules or the bye-laws of the Society. Rule 130 gives the power to the Secretary of the Cooperative Society to move the Chairman of the Society in writing to refer the matter to the Registrar for his decision. We have already noticed in Section 135, the provisions contained in the Industrial Disputes Act, 1947 (Act, 1947) and the U.P. Industrial Disputes Act, 1947 (U.P. Act, 1947) shall not apply to Cooperative Societies. The Appellants viz. Ghaziabad Zila Sehkari Bank Ltd. is a Cooperative Societies registered under the provisions of the U.P. Cooperative Societies Act, 1965 (Societies Act, 1965). The services of the employees of the Bank are governed by the provisions of the U.P. Cooperative Societies Employees Service Regulation, 1975 (Service Regulations, 1975) framed by the U.P. Cooperative Institutional Service Board. The emoluments and other kinds of allowances payable to the employees of the Bank are also governed by the provisions contained in the Service Regulations, 1975. In the instant case, it is relevant to mention that no agreement or settlement between the bank and its employees have above been arrived at before the Conciliation Officer nor any money is due to the employees under the provisions of Section 6-J(2) of the U.P Act, 1947 or under any settlement or any award given under the provisions of this Act. Therefore, the application under Section 6-H(1) is an illegal settlement arrived at between the Chairman and the Employees' Association viz. Respondent No. 3 and 4.Regulation 42

71. It is relevant to mention here that the Regulation 42 of the Regulations, 1975, which is relevant for the purposes of the controversy involved in the present case is as under:

"42. Other Allowances (i) A cooperative society may, subject to the provisions of these regulations and general or special orders issued by the Registrar, give any other allowances or pecuniary concessions to its employees.

(ii) A cooperative society may also grant, with the permission of the Registrar, pecuniary incentive to an employee or class of employees for outstanding performance;

provided that the payment of travelling and daily allowance shall be governed by the provisions contained in Regulation 43".

72. In view of the aforesaid provision, it is crystal clear that for giving pecuniary benefits or allowances to the employees governed by the aforesaid Regulations, 1975, the Registrar's general or special order is necessary and if the particular Cooperative Society wants to grant the benefit, then it can be given only with the permission of the Registrar. Admittedly, in the present case, no permission was ever sought from the Registrar, rather on the contrary, action was taken contrary to the circulars issued by the Registrar, Cooperative Societies, U.P. issued from time to time, prohibiting payment of ex-gratia in this regard.

73. In view of the aforesaid legal provisions and the reply furnished by the petitioner, the Respondent No. 1 had no jurisdiction to adjudicate the matter of employees with regard to the payment of ex-gratia amount which runs contrary to the Regulation 42 of the Service Regulations, 1975 as well as the Circulars issued by the Registrar, Cooperative Societies, U.P. and the Additional Registrar (Banking), Cooperative Societies U.P. and the only forum for adjudication for sake of arguments and without admitting that the matter ought to have been referred to the Labour Court for adjudicating the aforesaid matter, and that too, if the Industrial Laws are made applicable to the provisions of U.P. Cooperative Societies Act, 1965.⁷⁴ In our opinion, the impugned judgment suffers from complete non-application of mind on the merits of the case in as much as whole pleadings even before the Labour Commissioner or before the High Court was that the payment of ex-gratia to the employees are against the objects of the society and it is in contravention of Regulation 42 of the Service Regulations, 1975 and contrary to the provisions of the Act, 1965 and contrary to the provisions of the Rules 1968, Government orders/circulars of Ld. Registrar and other laws applicable, the Chairman of the bank suo motu, without there being any power or legal authority unilaterally entered into a private settlement with the employees of the bank on 23.1.2001. It is relevant to mention here that to avoid such a situation of illegal agreements by the Chairman who is an elected representative and to protect misuse of public fund by the employees amongst themselves, the cooperative Act Rules and Regulations framed thereunder requires prior permission of the Registrar Co-operative Societies for grant of any pecuniary benefits because Regulation 42 of the U.P. Cooperative Societies Employees Service Regulations 1975 provides that any allowance or pecuniary benefits to employees shall be given only by the special order of the Registrar Cooperative Societies, U.P. which order was missing throughout.

75. The present dispute does not relate to said Act, 1947 but it is related to the provisions contained under the Societies Act, 1965 as well as where a circular issued by the Registrar of Cooperative Societies and more specifically Regulation 42 of Service Rules, 1975. Therefore, in our opinion, the private settlement made on 21.03.2001 does not fall under 6-H(I) of the U.P. Act, 1947. In other words, the payment of ex-gratia is an incentive for an employee for his good work. Therefore, it is governed by Regulation 42 (2) that any cooperative society may also grant pecuniary incentive only with the prior permission of the Registrar to any employee or a class of employees for outstanding performance. It clearly provides that for payment of ex-gratia, permission of the Registrar is must. Regulation 42 is itself very clear and is not in conflict with any of the provisions of the U.P. Act, 1947. The respondents themselves admitted in their counter affidavit that the settlement was not entered

into during conciliation proceeding. Therefore, the said private settlement could not have been legally enforced being an invalid settlement. No private settlement can give a legal enforceable right. It is wrong to suggest that payment of ex-gratia amount to the employees over and above their salary is the matter of U.P. Act, 1947. It is very clear and there is special provision in Rule 42 to the Service Rules, 1975. The cooperative society is a State Government subject and every State Government has right to make laws in their respective States and there are different cooperative societies acts in different States.⁷⁶ It was argued by senior counsel for the respondents that ex-gratia is being paid for several years and therefore the ex-gratia payment should be continued. Records placed before us reveal that ex-gratia payment was conditionally paid upto 1999-2000 and in every resolution, the Board of Directors has been clearly mentioning that if there is any objection from the Department, audit etc., the amount of ex-gratia will be recovered from the employees. In the audit reports for several years, the auditors as well as the department have objected for such payments. We make it clear that the payments which have already been made even though there is audit objection need not be recovered from the employees. We make it clear that the employees will not be entitled for any ex-gratia payment from now onwards.

77. Alongwith the appeal, some appointment orders have been filed as annexures. The appointment order clearly says that the services were governed by the Service Regulations, 1975 and the bye-laws of the bank. It is relevant to mention here that the services of the employees of the Bank are governed by service regulations 1975 framed under the Act of 1965, which provides complete machinery and adjudication. Moreover, the provisions under Section 70 of the U.P. Cooperative Societies Act, 1965 is elaborate in this regard, which provides complete machinery that if there is any dispute between the employers and the employees of the Cooperative Society, the matter shall be referred to the Arbitrator as provided under Section 70 of the U.P. Cooperative Societies Act, 1965. Section 70 of the U.P. Cooperative Societies Act and Section 64 of the M.P. Cooperative Societies Act are pari materia and this Court in the matter of R.C. Tewari vs. M.P. State Cooperative Marketing Federation Ltd. ⁷⁷ held that Labour Court and Industrial Laws are not applicable where complete machinery has been provided under the provisions of the Cooperative Societies Act and in such view of the matter the Ld. Additional Labour Commissioner U.P. has no jurisdiction to pass orders in the nature it has been passed.⁷⁸ The relevant legal provisions requiring consideration of this Court are quoted below:

"Section 70. Disputes which may be referred to arbitration.- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises-

(a) among members, past members and person claiming through members, past members and deceased members; or

(b) between a member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any

officer, agent or employee of the society, including any past officer, agent or employee; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or xxx xxxx xxxx

[Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election.]

(2) For the purpose of sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a co-operative society, namely-

(a) claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor or whether such debt or demand is admitted or not;

(c) a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member, officer, agent, or employee, whether individually or collectively and whether such loss be admitted or not; and(d) all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court. Section 71. Reference of dispute to arbitration. - On receipt of a reference under sub-section (1) of Section 70, the Registrar may, subject to the provisions of the rules, if any-

(a) Decide the dispute himself, or

(b) Refer it for decision to an arbitrator appointed by him, or

(c) Refer it, if the parties so request in writing, for decision to a board of arbitrators consisting of the three persons to be appointed in the prescribed manner.

(2) The Registrar may, for reasons to be recorded, withdraw any reference made

under clause (b) or (c) of sub-section (1) and refer it to another arbitrator or board of arbitrators or decide it himself.

(3) The Registrar, the arbitrator or the board of arbitrators, to whom a dispute is referred for decision under this section may, pending the decision of the dispute make such interlocutory orders including attachment of property as he or they may deem necessary in the interest of justice.

(4) The decision given by the Registrar, the arbitrator or the board of arbitrators under this section shall hereinafter be termed as award.

(5) The procedure to be followed by the Registrar, the arbitrator or the board of arbitrators in deciding a dispute and making an award under this section shall be as may be prescribed."

79. Since payment of ex-gratia amount of the employees of the bank is a policy matter, the State Government of U.P. has filed Special Leave Petition before this Court questioning the correctness of the orders passed by the High Court for the leave of this Court. The impugned judgment of the High Court suffers from the error of complete non-application of mind on the merits of the case in as much as whole pleadings either before the Commissioner and before the High Court was that the payment of ex-gratia to the employees are against the objects of the society and it is in contravention of the provisions of the U.P. Act, 1947, rules and regulations, we have no other option to set aside the same and allow both the appeals filed by the bank as well as the State of U.P. as already indicated in the paragraphs above. The payments already made need not be recovered at this distance of time from the employees of the bank. However we make it clear that the employees are not entitled to ex-gratia payment from now onwards. In the facts and circumstances, we order no costs.

Judgment Referred.

¹(1969) 2 SCC 0043

²(1997) 5 SCC 125

³(1999) 9 SCC 620

⁴(2000) 4 SCC 406

⁵(1980) 1 SCC 4

⁶(2004) 8 SCC 402

⁷(1974) 4 SCC 696

⁸(1969) 1 SCC 873

⁹(2005) Labour and Industrial Cases 494

¹⁰(1978) 4 SCC 0016

¹¹(1981) 1 SCC 0315

¹²(1981) 4 SCC 0431

¹³(1976) 1 SCC 0496

¹⁴(1969) 1 SCR 0887

¹⁵(1969) 2 SCC 0043

¹⁶JT 2006(6) SC 0374

¹⁷(1964) 2 SCR 0087

¹⁸1992(1) SCC 0335

¹⁹(1969) 2 SCC 0043
²⁰(1997) 5 SCC 0125