

**SUPREME COURT OF INDIA**

Hassan Dist.Cen.Co-Op.Bank Ltd.

Vs.

Jt.Regr.of Cooperative Societies

C.A.No.563 of 2011

(R.V.Raveendran,J.,)

14.01.2011

**ORDER**

1. Leave granted.

2. The second respondent was an employee of the appellant Bank. Rule 153 of the Staff Service Rules of the employees of the Hassan District Co-operative Central Bank Ltd., provides for compulsory retirement and relevant portion thereof is extracted below:

"153. COMPULSORY RETIREMENT The Board has the right to compulsorily retire an employee after completion of ten years of service or on attainment of the age of 45 years whichever is earlier, if the Board decides that his/her services are not satisfactory as could be found from the service records and personal files. The grounds on which such compulsory retirement of an employee may be effected are indicated in rules governing compulsory retirement.

**RULES GOVERNING COMPULSORY RETIREMENT: xxx xxx xxx xxx"**

Exercising the power under the said Rules, the Board of Directors passed a resolution dated 13.8.2002 to compulsorily retire the second respondent from the service of the appellant in terms of Rule 153. In pursuance of it, an office order dated 30.9.2002 was issued compulsorily retiring the second respondent from services with effect from 1.10.2002 by paying three months salary in lieu of notice."

3. The second respondent raised a dispute under Section 70(2) of the Karnataka Co-operative Societies Act, 1959 ('Act' for short). The Joint Registrar, by Award dated 5.11.2005, allowed the dispute holding that the appellant- bank had not followed the procedure contemplated under Rule 153 in passing the order of compulsory retirement. Consequently, he set aside the order of compulsory retirement reserving liberty to the appellant to impose any other appropriate punishment in accordance with the service rules.

4. As the said order was not implemented for more than a year, the second respondent filed W.P. No.8823/2007 seeking a direction to the appellant to reinstate him in service as ordered by the Joint Registrar and for a further direction to pay him the salary dues from 30.9.2002 with all consequential benefits. A learned single Judge of the High Court, by order dated 20.9.2007, disposed of the said writ petition with a direction to the appellant to comply with the order passed by the Joint Registrar. He also directed the appellant to dispose of the representation submitted by the second respondent herein seeking certain reliefs. Learned single Judge passed the said order as the Bank had not challenged the order of the Joint Registrar.

5. The Bank filed a writ appeal challenging the order of the learned single Judge on 19.11.2007. On the same day, the Bank also filed an appeal before the Karnataka Appellate Tribunal challenging the Award of the Joint Registrar dated 5.11.2005 (which is stated to be still pending). A Division Bench of the High Court dismissed the writ appeal by the impugned order dated 19.2.2008. While doing so, the High Court has held that Rule 153 of the appellant's Staff Services Rules was contrary to Rule 18 of the Karnataka Co-operative Societies Rules, and, therefore, "unenforceable". The said order is challenged in this appeal by special leave.

6. The first contention raised by the appellant was that in an appeal filed by the appellant Bank against the order of learned single Judge disposing of employee's writ petition for implementation of the Award of Joint Registrar, the Division Bench could not have held that Rule 153 of the Staff Services Rules was ineffective or unenforceable, as such a prayer was not made by any one. Learned counsel for the contesting respondent (second respondent) very fairly conceded that the Division Bench could not have pronounced upon the validity of Rule 153 of the Staff Services Rules when that was not under challenge and that too in an appeal by the Bank challenging the order directing implementation of the Award of the Joint Registrar. Therefore, the order of the Division Bench, to the extent it invalidates Rule 153, is liable to be set aside.

7. Insofar as the order of the Division Bench affirming the direction of the learned single Judge for implementation of the Award of the Joint Registrar, all that is to be observed is that if the appellant succeeds in the appeal filed before the Karnataka Appellate Tribunal against the award dated 5.11.2005 of the Joint Registrar, it need not implement the said Award dated 5.11.2005. This is so because the learned single Judge directed implementation of the said order only on the ground that it had not been challenged. If the appellant loses the said appeal pending before the Karnataka Appellate Tribunal, obviously it has to implement the Award dated 5.11.2005.

8. Therefore, we dispose of this appeal as follows:

“(i) The order of the High Court declaring/observing that Rule 153 of the Appellant's Staff Service Rules is invalid and unenforceable is set aside.

(ii) The direction of the learned single Judge affirmed by the Division Bench that the award dated 5.11.2005 has to be implemented is subject to the outcome of the pending appeal of the appellant against the said award, before the Karnataka Appellate Tribunal.

(iii) We request the Karnataka Appellate Tribunal to dispose of the pending appeal expeditiously.

(iv) If the award of the Joint Registrar is not stayed by the Karnataka Appellate Tribunal, the appellant is bound to implement the order, unless it is set aside.