

Before D. V. Sehgal, J.

MALIK SINGH AND OTHERS,—*Petitioners.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 8607 of 1987

September 1, 1988.

*Constitution of India, 1950—Arts. 12 and 226—Industrial Disputes Act (IV of 1947)—Ss. 2(j), 2(s), 25B and 25 F—Haryana State Central Co-operative Bank Staff Service (Common Cadre) Rules, 1975—Rls. 9.3 and 9.4—Kurukshetra Central Co-operative Bank Ltd.—Whether an ‘authority’ and State under Art. 12—Termination of ad hoc employees serving more than 240 days without complying with S. 25 F—Effect of, stated—Selection to various posts in bank—Administrative Committee interviewing over 1,000 candidates in a day and awarding weightage of 75 per cent marks for interview—Selection—Whether vitiated.*

*Held*, that more than 75 per cent of the share capital of the Bank vests in the Government. Its Managing Director who controls its day-to-day working is appointed by the Government. The Registrar, Co-operative Societies, who is a functionary under the Act, has manifold powers for conducting the business of the Bank. He has powers to issue directions to annul its resolutions, to suspend the Committee of the Board of Directors, and to appoint Government nominees as Directors. There are as many as six Government nominees on the Board of Directors of the Bank. The powers of the nominated members are very vast. Even a dissenting note by them can annul a unanimous decision of the elected Directors in case the dissenting note is accepted by the Government on reference to it. It is thus clear that the State Government has an all pervasive control over the Bank. It is established with the vast funds invested by the Government and it is managed and administered on the directions of the Government. It is, therefore, an authority within the meaning of Art. 12 of the Constitution of India, 1950.

(Para 17)

*Held* that it cannot be disputed that the Bank is an industry within the meaning of S. 2(j) of the Industrial Disputes Act, 1947, and the petitioners herein were employed as workmen with it as defined in S. 2(s) of the Act. These workmen are, therefore, entitled to the security of service and protection against unfair labour practices as provided by the Act. The termination of their services without complying with the provisions of S. 25-F of the Act is held to be illegal. They are entitled to reinstatement in service and back wages.

(Paras 15 and 19).

*Held*, that as many as 30 marks out of the total of 40 marks were to be awarded by the members of the Administrative Committee while interviewing a candidate. It boggles imagination how the Administrative Committee consisting of 5 to 7 members could have interviewed more than 1,000 candidates in a day and awarded to each one of the candidates marks for general awareness and personality and their attributes for which as many as 20 marks had been allocated. This fact alone shows that the interviews held by the Administrative Committee were simply a farce. The criterion adopted by the Administrative Committee is impermissible. It was apt to lead to arbitrary and distorted results. By no stretch of imagination can it be said to be genuine and reasonable.

(Para 13).

*Constitution of India, 1950—Art. 226—Industrial Disputes Act (IV of 1947)—S. 10—Facts patent on record—No elaborate enquiry necessary—Alternative remedy available—Writ jurisdiction—Whether barred.*

*Held*, that it would neither be just nor proper to relegate these petitioners at this stage to the alternative remedy of approaching the labour Court for seeking relief. The facts are patent on the record and no elaborate enquiry is necessary to afford relief to them.

(Para 18).

*Petition under Articles 226/227 of the Constitution of India praying that the Hon'ble Court may issue a writ of certiorari, mandamus or any other suitable writ, order or direction directing the respondents:*

- (i) to produce the complete records of the case;
- (ii) a writ of certiorari be issued quashing the impugned orders, Annexure P. 4 and P. 6.
- (iii) a writ of mandamus be issued directing the respondent-authorities to uphold the selections made by the petitioners;
- (iv) the Hon'ble Court may issue any other suitable, Writs or order which is deemed fit and just in the circumstances of the present case;
- (v) the condition of serving advance notices on the respondents be dispensed with;
- (vi) the condition of filing the certified copies of the annexures with the writ petition be also dispensed with;
- (vii) the Hon'ble Court may grant any other relief which is deemed fit and just in the peculiar circumstances of the present case;

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(viii) costs of the writ petition be also awarded to the petitioners.

J. L. Gupta, Sr. Advocate with T. S. Dhindsa, Pawan Mutneja and Subhash Ahuja Advocates, for the Petitioners.

Harish Rathi, Advocate for Respondents 1 to 3.

B. S. Malik, Advocate with S. V. Rathee, Mr. P. K. Malik, Advocates also, for Respondent No. 4.

B. S. Chauhan, Advocate, for Respondent No. 2.

#### ORDER

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This judgment shall dispose of a bench of writ petitions which can be divided into two categories. The first category consists of C.W.Ps. Nos. 8583 and 8607 of 1987. The second category consists of 5176, 5177, 5494, 5844, 5845, 6103, 6140, 6881, 7101, 7132, 7133, 7247, 7275, 7951, 7960, 7991, 8140 and 9386 of 1987 and C.W.Ps. Nos. 4594 and 4595 of 1988.

(2) The petitioners in the first category impugn the order dated 6th November, 1987 Annexure P.6 of the State of Haryana, respondent No. 1, whereby the selections made by the Administrative Committee of the Board of Directors of the Kurukshetra Central Co-operative Bank Limited, (for short 'the Bank'), respondent No. 4 have been annulled. On the other hand, the second category of petitions is by the employees of the Bank who were appointed on *ad hoc* basis and were continuing in service with notional breaks. Most of them claim that they were selected by the Administrative Committee of the Bank for regular appointment to the service but these selections have been annulled by the State Government,—*vide* the aforesaid order, in spite of the fact that they had put in service of more than 240 days, without following the provisions of the Industrial Disputes Act, 1947 (for short 'the I.D. Act') their services have been terminated. They pray for their reinstatement in service and claim that they should be treated as regular employees of the Bank.

(3) Before I deal with the questions in controversy involved in these petitions, I find it necessary to note in brief a few facts.

The Petitioners in C.W.P. No. 8607 of 1987 are the elected members/Directors of the Board of Directors of the Bank. The business of the Bank is regulated by its bye-laws registered under section 8 of the Punjab Co-operative Societies Act, 1961, which was later on replaced by the Haryana Co-operative Societies Act, 1984 (for short 'the Act'). To govern the conditions of appointment and service of the employees of the Bank. The Haryana State Central Co-operative Banks' Staff Service (Common Cadre) Rules, 1975 (for short 'the Common Cadre Rules'), framed under the provisions of the Act are in force. The Common Cadre Rules are statutory in character and can be enforced as these are framed by the Government under section 131 of the Act. The selections and appointments of the employees working in the Bank are made by the Administrative Committee constituted under bye law 42 read with the Common Cadre Rules. It consists of the President of the Board of Directors, three Government nominees five elected Directors of the Bank and one nominee of the Registrar, Co-operative Societies, Haryana, respondent No. 3. All the petitioners besides one Pritam Singh, the then Managing Director of the Bank, and one nominee of respondent No. 3. were appointed members of the Administrative Committee of the Bank.

(4) The powers of the Administrative Committee are defined under bye-law 43, which reads as under :—

43 : *Powers of the Administrative Committee :—*

Subject to the control of the Board of Directors the Administrative Committee shall exercise all or any of the following powers in respect of the staff of the Bank :—

- (i) to determine the strength of staff to be appointed on various categories in the Bank.
- (ii) to approve scales of pay of various categories of staff appointed/to be appointed in the Bank.
- (iii) to appoint staff in the Bank;
- (iv) to sanction increments to all members of staff of the status of Branch Manager and above;
- (v) to sanction earned leave to staff beyond 15 days;
- (vi) to approve admission of new members;
- (vii) to exercise any other power specifically delegated by the Board of Directors".

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The Administrative Committee in its meeting held on 30th January, 1987 decided to fill in the following posts :—

1. Sr. Accountant.	1 post.
2. Jr. Accountant/E.O	12 posts.
3. Clerks	62 posts.
4. Typists	3 posts.
5. Guards	12 posts.
6. Peons	15 posts.
7. App. Secretary	21 posts.

This decision in the form of a proposal was placed before the Board of Directors of the Bank which approved it. Accordingly, all these posts were advertised in the newspapers,—*vide* advertisement dated 10th January, 1987 Annexure P.I. As many as 1400 candidates submitted their applications for these posts along with postal orders in favour of the Bank as required by the advertisement Annexure P.1. An amount of Rs. 1,40,000 (Approximately) was thus paid by the candidates.

(5) Rule 9(1) of the Common Cadre Rules provides that the authority to make appointments to various posts in each category shall vest in the Board, which may delegate all or some of its powers to the Administrative Committee/Manager. It is averred that the Administrative Committee enjoys all the powers envisaged by rule 9 *ibid*. The Administrative Committee prepared a criteria Annexure P.2 for selection of candidates to different posts. Interview of the candidates for different posts were continued from 16th February, 1987 to 2nd March, 1987. It is admitted that some of the candidates happened to be a somehow related to one or the other member of the Committee. These members did not associate themselves while interviewing the candidates. The marks were allotted according to the criteria adopted by it. The proceedings with regard to the selections of the candidates made for different posts were kept strictly confidential and were then placed for consideration before the Board of Directors of the Bank. The Managing Director, however, did not call for the meeting of the Board of Directors for a considerable time in spite of repeated requests. Some of the candidates who were interviewed and were expecting

appointments feeling aggrieved against the inaction of the Bank filed C.W.Ps Nos. 5337 and 5516 of 1987 in this Court seeking a *mandamus* against the Bank to finalise the selections and appointments. After notice to the respondents, when these petitions came up for motion hearing before a Division Bench on 1st October, 1987 the counsel for the Bank made a statement at the Bar that a meeting of the Board of Directors shall be held on 30th October, 1987 for taking a decision in the matter.

(6) A meeting of the Board of Directors was accordingly called on 30th October, 1987 to finalise the selections to the various posts on the basis of the recommendations of the Administrative Committee. All the elected Directors of the Bank except one Mr. Jasmer Singh endorsed the decision of the Administrative Committee thus confirming the Selections of various candidates for different posts made by it. It is alleged that Mr. Jasmer Singh was appointed by the new Government, which had come into power, as Chairman of the Federation of the Central Co-operative Consumers' Stores Limited, Haryana. He, therefore, did not support the selections made by the Administrative Committee. It is pointed out that the Board of Directors consisted of the Directors who had been elected during the regime of previous Government headed by the Congress (I) party, while the new Government is headed by the Lok Dal (B) party. It is further alleged that the new Government is bent upon ousting the elected Directors including the petitioners by one method or the other. The said Jasmer Singh being close to the present Chief Minister of Haryana intentionally did not endorse the decision of the Administrative Committee.

(7) During the course of the meeting of the Board of Directors mentioned above, the nominees of the Government also dissented from the decision of the elected members/Directors. Their dissenting note is Annexure P.4 which is *inter alia* to the following effect :—

“Sarvshri Malik Singh Kang, Chairman and Seven other Directors, Namely Sarvshri Ram Singh, Singh Ram, Pawan Kumar Sharma, Bhim Singh, Sube Singh, Dharam Pal and Ranjit Singh have intimated that they have already made selection and they produced the list of selected candidates which has been noted in the proceeding book. The Manager was asked to produce the

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proceeding book of the Administrative Committee carrying its decision of selection of Candidates. The proceeding book reveals that only interviews have been conducted and selections were never finalised. Further in view of financial constraint due to the revision of pay scales of the employees and revised staffing pattern fixed by the Registrar, Co-operative Societies, Haryana, the issue needs reconsideration. In view of these facts, we are of the view that list of selected candidates reproduced above carries only private selection made by the concerned directors and purely based on favouritism. Merit does not find any place in this list as capable candidates have been ignored and only chosen few have been selected. Moreover, while making selection, the quota reserved for different categories has not been maintained and in certain categories, Selection has been made in excess of the posts advertised. Hence we give dissenting note that this selection has neither been made by the competent authority nor it is based on merit and nor financial position of the Bank taken into view.

Hence we do not approve these selections and observe that the selections based on merit be made afresh by holding written test by the competent authority so that merit holders alone could aspire for selection.

Sd/- (Pritam Singh)  
Assistant Registrar,  
Co-op-Societies, Guhla.

Sd/- (Sudershan Mohan)  
Managing Director  
The Kurukshetra Central  
Co-op. Bank Ltd.  
Kurukshetra.

We also agree with this noted dissent.

Sd/- Jasmer Singh, Director.

Sd/- (Inder Dev Sharma)  
Deputy Registrar, Co-op.  
Societies, Kurukshetra.

Sd/- (C. D. Singhal),  
Assistant Registrar,  
Co-op-Societies  
Kurukshetra.

Sd/- Asstt. Registrar (Fert)  
Office of RCS, Haryana  
Chandigarh (R. C. Goyal)  
30th October, 1987.

Sd/- (J. C. Kanwar)  
Managing Director,  
The Haryana State Co-op. Bank  
Ltd.,  
Chandigarh.

It is alleged that the above dissenting note Annexure P.4 given by the Government nominees, which was also agreed to by Shri Jasmer Singh and the Managing Director of the Bank appointed by the Government, was baseless, illegal and contrary to the facts and it smacked of Mala fides. The Administrative Committee had finalised the selections and the proceedings of the Committee had been placed before the Board of Directors alongwith the entire record. There was no financial constraint on the Bank due to revision of scales of pay of the employees and the staffing pattern fixed by respondent No. 3. In fact, the Bank had not adopted the revised pay-scale rules for its employees as yet. The staffing pattern is based on the total out-put and income of the Bank. The Bank had made profit of about Rs. 30,00,000 on 30th June, 1986 and Rs. 17,00,000 on 30th June, 1987 in spite of the fact that the recovery of loans from the people had been stayed by the Government. Had the recoveries not been stayed, the profit figure on 30th June, 1987 would have been more than Rs. 50,00,000. It is asserted that more than 100 employees were already working on *ad hoc* basis in the Bank against the advertised posts. Selections to certain posts like Secretaries, Guards, Branch Manager, Executive Officers etc. could not be avoided according to the staffing pattern. This objection even otherwise stands falsified by the fact that the Government nominees have recommended that selections based on merit be made afresh by holding written test by the competent authority. Thus, the plan for recruitment to these posts had not been given up on the ground of financial constraints or change in the staffing pattern. The allegation that the selections were based on the favouritism and the meritorious candidates were ignored and the less meritorious had been selected as made in the dissenting note has also been seriously challenged. As regards the objection that selection of candidates against posts reserved for scheduled castes and other reserve categories had not been made in adequate number is also denied. It is stated that the Administrative Committee tried its level best to select the maximum number of reserve category candidates but only some of them were found suitable. Therefore, the remaining posts were thrown open to the general category candidates. The quota of posts meant for the reserve categories can be filled in later on. It is further stated that the aspersion that selection of candidates had been made in excess of the posts advertised is also wrong. In the advertisement Annexure P.I it is specifically provided that the number of posts could increase or decrease but selected candidates were to be appointed to the existing posts on the basis of their merit and if no more posts were available the



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Bank was not bound to offer posts to the remaining selected candidates.

(8) The resolution of the Board of Directors including the dissenting note Annexure P.4 was referred to the Government under Section 29(3) of the Act which, *inter alia*, provides that where a difference of opinion in respect of any matter arises between any members nominated by the Government or the Managing Director appointed under section 31 of the Act or other members thereof, the matter shall be referred by the Society to the Government, whose decision thereon shall be final and deemed to be a decision taken by the Committee. The Deputy Secretary, Co-operative Department, Haryana, respondent No. 2, passed the order dated 6th November, 1987 Annexure P.6 purporting to be the order of the Government whereby he upheld the dissenting note of the Government nominees and it was ordered that this decision should be deemed to be the decision taken in the meeting of the Board of Directors of the Bank on 30th October, 1987.

(9) The impugned order Annexure P.6 passed by respondent No. 2 has been challenged by the counsel for the petitioners primarily on the following grounds :—

1. That the impugned order is not based on facts. The allegation that the selection of candidates was the result of favouritism is not based on any material. There were no financial constraints as the Bank had made profits. Even otherwise, direction had been issued,— *vide* the impugned order to hold fresh interviews for fresh selections. This means that the vacancies were proposed to be filled up. Moreover, the selected candidates were to be appointed against the posts borne on the sanctioned strength which could vary. No particulars have been given as to which of the meritorious candidates had been rejected. Candidates belonging to the reserve categories were selected on the basis of merit. The remaining posts were to be filled in later on in a subsequent selection. Thus, there was no good reasons to upset the selections made by the Administrative Committee.
2. The State Government did not provide any opportunity to show cause why the dissenting note of the Government nominees be not adopted. Had an opportunity

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been afforded, the petitioners would have satisfied the Government that the dissenting note of its nominees was without any basis. The failure to provide an opportunity violates the impugned order Annexure P.6 in its entirety.

C.W.P. No. 8583 of 1987; which is also included in the first category, impugns the above order on the State Government almost on the same lines. This petition has been filed by 28 candidates who had appeared for the interview before the Administrative Committee and who had reasonable expectation of being selected for the posts. Written statements to both these petitions have been filed by the Bank alone. The State of Haryana has not opted to file any reply. Besides countering the above contentions raised on behalf of the petitioners, a preliminary objection has been raised that they have no *locus standi* to maintain these petitions.

(10) I have heard the learned counsel for the parties. I find that it is necessary first to decide the question whether the petitioners in the aforesaid two petitions have the *locus standi* to maintain the same, and impugn the order of the Government Annexure P.6. Learned counsel for the Bank has contended that section 29(3) of the Act makes no express provision that before passing the impugned order a notice had to be issued to the members of the Administrative Committee or other elected members of the Board of Directors of the Bank whose decision had been dissented from by the Government nominees before the dissenting note was accepted by the Government. Therefore, the petitioners in either of the two writ petitions have no *locus standi* to maintain the present petitions as they had no right to be heard before the impugned order was passed. In support of this plea, he placed reliance on *Shri Baldev Raj Sharma v. The State of Punjab and another* (1).

(11) Learned counsel for the petitioners, on the other hand, contended that the members of the Administrative Committee who happened to be the Directors of the Bank had been accused of being unfair and partial and it has been held in the impugned order that the selections made by them were not based on merits and they had exceeded their authority. All these aspersions cast a slur on their character. Therefore, they have the *locus standi* to maintain the petition and they can make a grievance that the impugned

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(1) 1972 P.L.R. 144.

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order had been passed without hearing them. In his support, he relied on *D. S. Nakara and others v. Union of India* (2), and a Division Bench Judgment of this Court in *Nathu Ram v. Shri S. N. Goyal, The Director, Panchayats, Haryana Chandigarh, and others* (3). In *D. S. Nakara's* case (supra), the final Court has held that the rule that any member of the public having sufficient interest can maintain an action for Judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. In *Nathu Ram's* case (supra), it has been held that *locus standi* as a question is no longer very vital in the case of a writ petition under Article 226 of the Constitution. 'Public Interest Litigation' has come to stay. If the petitioner can make out a case of any *mala fide* action on the part of the respondents for which Court's interference is called, for the writ petition shall not be dismissed on the ground that the petitioner has no *locus standi*.

(12) In view of this latest trend in law, I reject the preliminary objection raised on behalf of the Bank and hold that the petitioners can maintain the present writ petition.

(13) Now it is necessary to take up the first contention raised on behalf of the petitioners. It has been admitted before me that as many as 13798 candidates were interviewed by the Administrative Committee in a period of 11 days from 16th February, 1987 to 2nd March, 1987. This means that on the average the Committee interviewed more than 1000 candidates daily. The criteria Annexure P.2 adopted by the Administrative Committee shows that for class III posts, i.e. those of Secretaries, Senior and Junior Accountants, Clerk and Typists, out of the total maximum 40 marks 5 marks were allotted for educational qualifications and another 5 marks for experience, training etc. Out of the remaining 30 marks, 10 marks were for personality and general awareness of the candidate and 20 marks for interview. Personality and general awareness of a candidate could be ascertained only during the course of his interview. So, as many as 30 marks out of the total 40 marks were to be awarded by the members of the Administrative Committee while interviewing a candidate. It boggles imagination how the

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(2) A.I.R. 1983 S.C. 130.

(3) 1988 P.C.J. I.

Administrative Committee consisting of 5 to 7 members could have interviewed more than 1000 candidates in a day and awarded to each one of the candidates marks for general awareness and personality and their other attributes, for which as many as 20 marks had been allocated. This fact alone shows that the interviews held by the Administrative Committee were simply a farce. I have no hesitation to uphold the decision Annexure P.6 made by the Government to the effect that merit was ignored. The criteria Annexure P.2 adopted by the Administrative Committee is impermissible. It was apt to lead to arbitrary and distorted results. By no stretch of imagination can it be said to be genuine and reasonable. It is not at all necessary for me to refer to the other factors which have weighed with the Government while passing the impugned order Annexure P.6. The selections based on the criteria Annexure P.2 were in all circumstances required to be quashed and were rightly annulled by the Government. In view of this, the second limb of the argument of the learned counsel for the petitioners that had members of the Administrative Committee been provided an opportunity of hearing they would have satisfied the Government that the selections were made *bona fide* is rendered devoid of any force and is thus rejected. Both these petitions have to fail.

(14) Now, I take up the petitions of the second category. It is not in dispute that the petitioners in all these writ petitions were appointed on different posts by the Bank on *ad hoc* basis and later their services have been terminated either before or after the impugned selection took place. Rule 9.3 of the Common Cadre Rules provides **the nature and manner of appointment subject to the prescribed qualifications for the posts.** Clause (a) provides for *ad hoc* appointments which may be terminated within a period of three months after notice. Rule 9.4 *ibid* lays down that except in the case of *ad hoc* appointments where the period shall not exceed six months and where the number of such appointments shall not exceed 5 per cent of the sanctioned strength of that category of posts, all appointments shall be made after proper advertisement in at least one leading daily newspaper mentioning the qualifications required and the grade of pay and other allowances of the post and/or by notifying the Employment Exchange. When these two provisions of the Common Cadre Rules are read together it is clear that *ad hoc* appointments are normally terminated within a period of three months without notice and the period of such appointments shall not exceed six months. In the petitions before me, however, I find

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that the *ad hoc* appointments continued for a much longer period, no doubt, with notional breaks. For example, in C.W.P. No. 6103 of 1987 petitioner No. 1 was appointed on *ad hoc* basis for 89 days on 30th June, 1986. Then with a notional break he was again appointed for the same duration on 19th September, 1986, 19th December, 1986, 19th March, 1987 and 20th June, 1987. In such cases, it is clear that the notional break of one day or a few days before fresh appointments were given on *ad hoc* basis for another 89 days, literal compliance with the aforesaid rules was sought to be made. Yet another effort was that the *ad hoc* appointee should not claim that he has continued in service for a period exceeding six months.

(15) It cannot be disputed that the Bank is an industry within the meaning of section 2(j) of the Industrial Disputes Act, and the petitioners herein were employed as workmen with it as defined in section 2(s) *ibid*. These workmen are therefore entitled to the security of service and protection against unfair labour practices as provided by the Industrial Disputes Act. Section 25-B (2) of this Act, *inter-alia*, lays down that a workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. Section 25-F of the Industrial Disputes Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice, the workman has been paid at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay for a completed year of continuous service or any part thereof in excess of six months; and notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette. Section 2(00) defines 'retrenchment' to mean the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. It has, therefore, to be taken that those petitioners herein who were deemed to be in continuous service for a period of one year, i.e. having worked for 240 days in the proceeding 12 calendar months before termination of their services, were entitled to the protection

under section 25-F of the Industrial Disputes Act. None of these petitioners was afforded either the benefits provided therein or one month's notice in writing, a condition precedent to retrenchment of such a workman.

(16) Another aspect which requires consideration is as to how the period of one day or a few days intervening between the two durations of *ad hoc* appointments is to be treated: *In the Kapurthala Central Co-operative Bank Ltd. Kapurthala. v. The Presiding Officer, Labour Court, Jullundur, and others* (4), a Division Bench of this Court held that where the services of the workmen were terminated on their rendering 230 days service with notional breaks, when the work of the workmen was satisfactory, and others had been recruited in their place, it was an instance of unfair labour practice and, in this view when the workmen were held entitled to reinstatement then the logical consequence was that they should get their full back wages. It was that the inbuilt policy in the Industrial Disputes Act for drawing observed/the dividing line at 240 days service is that if a workman has satisfactorily continued for a period of 240 days, as envisaged in the aforesaid permanently in he is as good as having been accepted permanently in employment. The employer by thwarting that process on no fault of the employee would be indulging in unfair labour practice and obviously on that ground the termination of the services of the workman would be treated as violative of the provisions of the Industrial Disputes Act. Similar view has been taken by a Single Judge of this Court in *M. R. Khosla deceased through his L.R. v. The Chief Executive Officer, The Punjab State Federation of Consumers Co-operative Wholesales Stores Ltd. Chandigarh, and another* (5), and *The Ferozepore Central Co-operative Bank Ltd. Ferozepore v. The Presiding Officer, Labour Court and another* (6). I am, therefore, of the considered view that the period of notional break of a few days falling in between the two *ad hoc* appointments of all these petitioners shall be treated as the period spent by them in service and on doing so those petitioners who have worked in the Bank for not less than 240 days during the period of 12 calendar months preceding the date of termination of their services shall be treated to have been employed on regular basis and the termination of their services in such a situation is illegal and *ultra vires* the Common Cadre Rules and the Industrial Disputes Act.

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(4) 1984 Lab. I.C. 974

(5) 1983 (2) S.L.R. 87

(6) 1985 (2) S.L.R. 437

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(17) To be fair to the learned counsel of the Bank, it is necessary to notice **two contentions which have been raised** by him to resist the claim of these petitioners. In the first instance, he submitted that the writ petition against the Bank is not maintainable as it is not an instrumentality of the State and does not come within the ambit of the words "other authority" in Article 12 of the Constitution. He relied on a Full Bench Judgment of this Court in *Pritam Singh Gill v. State of Punjab and others* (7). I do not agree with this submission. It has been averred by the petitioners that more than 75 per cent of the share capital of the Bank vests in the Government. Its Managing Director who controls its day-to-day working is appointed by the Government. The Registrar, Co-operative Societies, who is a functionary under the Act, has manifold powers for conducting the business of the Bank. He has powers to issue directions to annual resolutions, to suspend the Committee of the Board of Directors, and to appoint Government nominees as Directors. There are as many as six Government nominees on the Board of Directors of the Bank. The powers of the nominated members are very vast. Even a dissenting note by them can annul a unanimous decision of the elected Directors in case the dissenting note is accepted by the Government on reference to it. It is thus clear that the State Government has an all pervasive control over the Bank. It is established with the vast funds invested by the Government and it is managed and administered on the directions of the Government. It is, therefore, an authority within the meaning of Article 12 of the Constitution. The position of law on this aspect has been settled by the final Court in *Ramana Dayaram Shetty v. The International Airport Authority of India and others* (8), *Ajay Hasia etc. v. Khalid Majid Sehravardi and others etc.* (9), and a number of other judgments. Besides, the conditions of service of the petitioners herein as *ad hoc* employees were governed by the Common Cadre Rules which are statutory in character. They complain that their services have been terminated in breach of those rules in as much as they had put in more than six months' service and could not be treated as *ad hoc* employees. It is well settled that where breach of statutory rules is complained against, this Court has the jurisdiction to entertain a writ petition.

(18) The second submission made by the learned counsel for the Bank is that the petitioners had the alternative remedy to

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(7) A.I.R. 1982 Punjab and Haryana 228

(8) A.I.R. 1979 S.C. 1628.

(9) A.I.R. 1981 S.C. 487.

approach the Labour Court and complain against violation of the provisions of the Industrial Disputes Act and seek relief against termination of their services. This effective alternative remedy being available, these petitions need not be entertained. It has also been pointed out that some of the petitioners have already approached the Labour Court and are thus availing of this alternative remedy. It is not a case of pure and simple termination of services. Those writ petitions were entertained along with the first category of petitions where the selections of a number of *ad hoc* employees by the Administrative Committee also stand annulled by the decision of the Government under section 29(3) of the Act. This order of the Government led to termination of services of most of these petitioners. They have a right to seek protection under the Industrial Disputes Act and also complain of violation of the Common Cadre Rules when the Government order nullifying the selections made by the Administrative Committee is upheld. It would neither be just nor proper to relegate these petitioners at this stage to the alternative remedy of approaching the Labour Court for seeking relief. The facts are patent on the record and no elaborate enquiry is necessary to afford relief to them. I, therefore, reject this contention also.

(19) As a result of the above discussion, I dismiss C.W.Ps. Nos. 8607 and 8583 of 1987 leaving the parties to bear their own costs. All the remaining writ petitions falling in the second category mentioned above which have been filed by the *ad hoc* employees, whose services have been terminated, are disposed of with the direction that those petitioners who are deemed to be in continuous service of the Bank for a period of one year under section 25-B(2) of the Industrial Disputes Act in that they, during a period of 12 calendar months preceding the date of termination of their services had actually worked with the Bank for not less than 240 days, shall be treated to have been in the regular employment of the Bank. The termination of their services without complying with the provisions of section 25-F of the Industrial Disputes Act is held to be illegal. They are entitled to reinstatement in service from the date they were removed from service. They shall get salary from the said date till the date they are taken back in service. The Bank shall comply with this order within one month from today. It is, however, made clear that the remaining petitioners are not entitled to any relief and their claims are, therefore, rejected. There shall, however, be no order as to costs.

R.N.R.