

(5) The learned counsel for the Punjab Waqf Board supports the learned counsel for the petitioner in his argument that the mosque has no market value, but he submits that the value of the property in suit having been stated in the plaint and having been accepted by the petitioner as defendant to that suit, in appeal it cannot be urged on its behalf that the property has no market value. What was stated in the plaint was the value of the property for the purposes of jurisdiction since a fixed Court fee of Rs. 15.00 was payable under the notification of the Punjab Government. The petitioner admitted the value of the property as Rs. 15,000.00, which did not mean the market value. The plaintiff nowhere stated its market value nor did the defendant, the present petitioner, admit it as such. The petitioner is, therefore, not bound by the value of Rs. 15,000.00 as it never accepted it as the market value of the property in suit and, therefore, cannot be required to pay the Court fee on that value. Similar arguments were advanced by the learned counsel appearing for the Advocates-General for the two States. I, however, find no merit in their submission. The result is that this petition is accepted and the order of the Taxing Officer is set aside. It is further held that the memorandum of appeal requires Court fee under Article 17(vi) of Schedule II to the Act and if the Court fee, as prescribed therein, has been paid, the memorandum of appeal is to be considered as properly stamped. In the circumstances of the case, I leave the parties to bear their own costs.

B.S.G.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

RAMPURA GUJRAN CO-OPERATIVE AGRICULTURAL SERVICE SOCIETY
LTD., RAMPURA ETC.,—*Petitioners.*

versus

THE STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ No. 1701 of 1970.

July 29, 1971.

Punjab Co-operative Societies Rules (1963) —Rule 28—Primary Co-operative Service Societies Employees Service Rules (1970)—Rules 2.3 and 2.11—Whether ultra vires Rules 28.

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Held, that Rule 28 of Punjab Cooperative Societies Rules, 1963, prior to its amendment in 1969, gave no power to the Registrar to constitute a body for making any appointments but merely authorised him to lay down the qualifications of the employees appointed by the cooperative societies functioning under his control. The amendment of the Rule in 1969 gives him the power of not only laying down the qualifications of such employees but also of regulating their conditions of service and further gives him the option to classify societies for the purpose of this Rule. It goes no further and does not enact that he has the power to declare that such employees would be "deemed to be in service" not of those societies but of a Cooperative Bank. The rule does not envisage its application to persons employed not by the societies functioning under the control of Registrar but by an Administrative Committee constituted by himself. It also does not empower him to thrust men of the choice of such a Committee on those societies. Rule 28, therefore, leaves intact the ordinary power of every cooperative society to choose and appoint its employees subject to the limitation that such employees must possess the qualifications and be governed by the conditions of service which the Registrar lays down in that behalf. Rules 2.3 and 2.11 of the Service Rules which divest a cooperative society of that power are *ultra vires* of Rule 28 of the Rules. (Paras 5 and 6)

Petition under Articles 226/227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the impugned Rules (Primary Co-operative Service Societies Employees Service Rules, 1970) as Annexure 'A' which is beyond the scope of the Act and 1963 rules and further praying that during the pendency of the writ petition, the operation of the impugned Rules and also of (Annexure 'B') be stayed.

KULDIP SINGH, ADVOCATE WITH SH. J. S. NARANG, ADVOCATE, for the petitioners.

L. S. WASU, ADVOCATE, FOR ADVOCATE- GENERAL, (PB.) FOR Respondents Nos. 1 to 3.

SH. B. S. KHOJI, ADVOCATE, for Respondent No. 4.

JUDGMENT

KOSHAL, J.—(1) The only question which arises for determination in this petition under Articles 226 and 227 of the Constitution of India is as to whether the Primary Co-operative Service Societies Employees Service Rules, 1970 (hereinafter referred to as the Service Rules), are *ultra vires* of rule 28 of the Punjab Co-operative Societies Rules, 1963 (hereinafter called the Rules).

(2) The circumstances leading to the institution of these proceedings are these. The three petitioners are corporate bodies, being co-operative societies registered under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act), the relevant part of section 85 of which is reproduced below:—

“85. The Government may, for any co-operative society or class of such societies, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

* * * * *

(xxxviii) qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by societies;

* * * * *

The Rules were framed by the Government in exercise of the powers conferred on it under section 85 of the Act and rules 28 and 45 of the Rules make provision as follows:—

“28. (1) The qualifications and conditions of service subject to which any person may be employed by a co-operative society or a class of co-operative societies shall be such as may be determined by the Registrar from time to time.

(2) Where the Registrar is of the opinion that it is necessary or expedient so to do, he may by order, for reasons to be recorded in writing, relax the provisions of this rule with respect to any co-operative society or class of co-operative societies to such extent as he may consider proper.”

“45. The Registrar may from time to time, issue such directives as he considers necessary for the successful conduct of the business of a co-operative society or class of co-operative societies.”

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(4) Purporting to act under rule 45 of the Rules, the Registrar, Co-operative Societies, Punjab (respondent No. 2 and hereinafter referred to as the Registrar) framed the Service Rules, rule 2.1 whereof makes provision for the constitution of an "Administrative Committee" consisting of the Managing Director of the Central Co-operative Bank, the Assistant Registrar, Co-operative Societies, and the Chief Executive Officer of the Central Co-operative Bank, and states that the Service Rules shall be administered by the Administrative Committee. The Service Rules lay down the conditions of service of the employees covered by it, namely, Secretaries, Managers, Secretaries-cum-Salesmen, Managers-cum-Salesmen and Salesmen who are employees of the Co-operative Agricultural Service Societies (such as the petitioners are) and the Co-operative Thrift and Credit Societies. Rules 2.3 and 2.11 of the Service Rules are in the following terms:

"2.3. All the employees covered by these rules shall be deemed to be in service of the Sangrur Central Co-operative Bank Ltd., Sangrur. Provisions of these rules may be made applicable by the Registrar, Co-operative Societies, Punjab to areas of operation of other Central Co-operative Banks."

"2.11. The Administrative Committee or the Chief Executive Officer, if the powers are so delegated to him by the Administrative Committee, shall be competent to make postings and transfers of the employees taken in the service as and when so required. A Secretary may be posted or transferred to the post of Secretary-cum-Salesmen or vice-versa."

(5) The vires of the Service Rules were challenged in the petition mainly on the ground that they could not be framed under rule 45 of the Rules which did not authorise the Registrar to lay down the qualifications and conditions of service of the employees of any co-operative society, and the point is conceded on behalf of the respondents whose learned counsel, however, vehemently urges that the Service Rules are *intra vires* of rule 28 of the Rules. Mr. Kuldip Singh, learned counsel for the petitioner, does not deny that the Service Rules are *intra vires* to the extent to which they are covered by the provisions of rule 28 of the Rules, i.e., to the extent to which they lay down the qualifications and the conditions of service of the persons employed by the co-operative societies mentioned therein but

he raises the contention that rules 2.3 and 2.11 of the Service Rules are *ultra vires* of rule 28 of the Rules inasmuch as that rule authorises the Registrar to lay down the qualifications and conditions of service subject to which any persons may be employed by a co-operative society and does not authorise him to switch over their services to any other institution as envisaged in rule 2.3 above-quoted or to divest the Society of the power to employ them and to invest the Administrative Committee therewith as contemplated by rule 2.11 of the Service Rules. This contention appears to me to be unexceptionable and the interpretation sought to be placed on the words "may be employed by" occurring in rule 28 of the Rules by learned counsel for the respondents, according to whom those words mean "working with", is not acceptable to me. Rule 28 as it stood before it was amended into its present form in 1969 ran thus:

"28. (1) No co-operative society shall appoint any person as its employee unless he possesses such qualifications and furnishes such security as may be specified by the Registrar from time to time.

(2) The Registrar may, in any case, for special reasons, relax the provisions of this rule to such extent as he may consider proper.

* * * * *

(6) It is clear that this rule gave no power to the Registrar to constitute a body for making any appointments but merely authorised him to lay down the qualifications of the employees appointed by the co-operative societies functioning under his control. The amendment gave him the power of not only laying down the qualifications of such employees but also of regulating their conditions of service and further gave him the option to classify societies for the purposes of the rule. It went no further and did not enact that he had the power to declare that such employees would be "deemed to be in the service" not of those societies but of a Co-operative Bank. Nor did it envisage the application of the rule to persons employed not by the societies functioning under his control but by a Committee constituted by himself. It also did not empower him to thrust men of the choice of such a Committee on those societies.

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(7) It is contended for the respondents that the expression "employed by" occurring in rule 28 of the Rules carries a restricted meaning and that all persons working with a co-operative society whether or not they have been appointed by it should be deemed to be governed by the provisions of sub-rule (1) of rule 28 aforesaid. With this contention I do not find myself in agreement. It is true that in a sense the expression "employed by" may mean "working with" but in the context in which the expression appears in rule 28 it cannot, in my opinion, be interpreted to mean anything different from "appointed by" or "hired by" or "commissioned and entrusted with the management of affairs" (see 30 Corpus Juris Secundum-Employ). Rule 28, therefore, must be held to leave intact the ordinary power of every co-operative society to choose and appoint its employees subject to the limitation that such employees must possess the qualifications and be governed by the conditions of service which the Registrar lays down in that behalf. Rules 2.3 and 2.11 of the Service Rules, which divest it of that power, must, therefore, be struck down as being *ultra vires* of rule 28 of the Rules.

(8) Learned counsel for the respondents contend that no relief can be given to the petitioners as they have failed to implead the employees affected by rules 2.3 and 2.11 of the Service Rules. Such employees, however, are not necessary parties inasmuch as what the petitioners seek is nothing more than a declaration which can be effectively given to them in the absence of the said employees vide *T. Devadasan v. Union of India and another* (1).

(9) In the result rules 2.3 and 2.11 of the Service Rules are declared to be *ultra vires* of rule 28 of the Rules and, therefore, to be inoperative in law. The petitioners shall have their costs of the proceedings. Counsel's fee Rs. 100.

B.S.G.

(1) A.I.R. 1964 S.C. 179.