

*Before Satish Kumar Mittal, M. Jeyapaul & Gurdev Singh, JJJ.*

**JASBIR SINGH AND OTHERS,—Petitioners**

*versus*

**COMMISSIONER (APPEALS) JALANDHAR DIVISION  
AND OTHERS,—Respondents**

**C.W.P. No.4922 of 1989**

14th July, 2011

- (i) *Punjab Co-operative Societies Act, 1961 - S.69 Haryana Co-operative Societies Act, 1984 -S.115 - Scope of Revision \_ whether Government or the Registrar under Section 69 of the Punjab Act and the State Government under Section 115 of the Haryana Act can exercise its suo motu revisional jurisdiction on the application made by an aggrieved person, whether he is or not a party to the reference - held that Government or the Registrar can suo moto exercise revisional jurisdiction.*
- (ii) *Punjab Co-operative Societies Act, 1961 - S. 69 -Haryana Co-operative Societies Act, 1984 -S.115 - Bar to revision-Remedy of revision is barred only in case where appeal against the impugned order lies under Section 68 of the Punjab Act or under Section 114 of the Haryana Act.*
- (iii) *Haryana Co-operative Societies Act, 1984 -S.115 - Haryana State Central Co-operative Staff Service (Common Cadre ) Rules, 1975-Punjab Co-operative Societies Act, 1961 - S. 69 - Markfed Common Cadre Rules - Remedy of revision is not barred in those cases where aggrieved person has a right of appeal under the Statutory Service Rules or Common Cadre Rules - An aggrieved party can challenge the order of Registrar or Deputy Registrar passed as an Appellate Authority under the Statutory Rules or under Section 115 of the Haryana Act as no remedy of appeal has been provided under Section 68 of the Punjab Act or under Section 114 of the*

*Haryana Act against such order - But if the appellate order is passed by the official of the Society and not by the Registrar or Deputy Registrar of the Co-operative Society, no revision is maintainable against such an order - The revision is maintainable only against the order passed by the authority under the Act or a proceeding arising out of the Act and the Rules framed thereunder .*

- (iv) *Punjab Co-operative Societies Act, 1961 - S.69 - Haryana Co-operative Societies Act, 1984 -S.115 - Revision against order passed by the society - Remedy of revision either suo motu or otherwise cannot be invoked against an order passed by the society - The said power can be exercised only against the decision or order passed by the authority under the Act or a proceeding arising out of the Act or the Rules framed thereunder.*
- (v) *Punjab Co-operative Societies Act, 1961 - S.69 - Haryana Co-operative Societies Act, 1984 -S.115 -Revision- The suo motu power of revision cannot be exercised by the State Government or the Registrar, as the case may be, where a revision under Section 69 of the Punjab Act or under Section 115 of the Haryana Act itself is not maintainable either on the ground that against the impugned order an appeal has been provided for under Section 68 of the Punjab Act or under Section 114 of the Haryana Act or on any other ground - In case the Government or the Registrar, as the case may be, exercise suo motu power of revision on the application of an aggrieved party or otherwise, it must be specifically so stated in the order itself.*

*Held*, That in view of the above discussion, we reach to the following conclusion :-

- (i) The State Government or the Registrar under Section 69 of the Punjab Act and the State Government under Section 115 of the Haryana Act can exercise its suo motu revisional jurisdiction on the application made by an aggrieved person, whether he is or not a party to the reference.

- (ii) The remedy of revision is barred only in case where appeal against the impugned order lies under Section 68 of the Punjab Act or under Section 114 of the Haryana Act.
- (iii) The remedy of revision is not barred in those cases where aggrieved person has a right of appeal under the Statutory Service Rules or Common Cadre Rules. An aggrieved party can challenge the order of Registrar or Deputy Registrar passed as an Appellate Authority under the Statutory Rules or Common Cadre Rules by filing a revision under Section 69 of the Punjab Act or under Section 115 of the Haryana Act as no remedy of appeal has been provided under Section 68 of the Punjab Act or under Section 114 of the Haryana Act against such order. But, if the appellate order is passed by the official of the Society and not by the Registrar or Deputy Registrar of the Co-operative Society, no revision is maintainable against such an order. The revision is maintainable only against the order passed by the authority under the Act or a proceeding arising out of the Act and the Rules framed thereunder.
- (iv) The remedy of revision either suo motu or otherwise cannot be invoked against an order passed by the Society. The said power can be exercised against the decision or order passed by the authority under the Act or a proceeding arising out of the Act or the Rules framed there-under.
- (v) The suo motu power of revision cannot be exercised by the State Government or the Registrar, as the case may be, where a revision under Section 69 of the Punjab Act or under Section 115 of the Haryana Act itself is not maintainable either on the ground that against the impugned order an appeal has been provided under Section 68 of the Punjab Act or under Section 114 of the Haryana Act or on any other ground. In case the Government or the Registrar, as the case may be, exercise suo motu power of revision on the application of an aggrieved party or otherwise, it must be specifically so stated in the order itself.

(Para 57)

*Further Held,* That in light of the above legal position, now each of the writ petitions is to be dealt with separately.

- (i) In CWP No.4922 of 1989, some of the members belonging to village Bhagupura challenged the order dated 24.8.1988 passed by the Commissioner (Appeals), Jalandhar Division (exercising the powers of the State Government), whereby the order dated 30.10.1987 passed by the Assistant Registrar, Co-operative Societies, exercising the powers of the Registrar bifurcating the Cheema Co-operative Agricultural Service Society Limited into two Societies, namely, Cheema Co-operative Agricultural Service Society Ltd. and Bhagupur Co-operative Agricultural Service Society Ltd., has been set aside on the ground that the Registrar passed the order of bifurcation of the parent Cheema Society without calling and holding the general body meeting of the members of the Society and considering the objections filed by some of the members. The petitioners challenged the said order on the ground that against the order dated 30.10.1987 passed by the Assistant Registrar no revision was maintainable under Section 69 of the Punjab Act and also on the ground that before passing the order of compulsory bifurcation the general body meeting of the parent society was duly called in which the matter of bifurcation of the society was considered and the objections filed by the members of the society were also duly considered by the Registrar.

(Para 58)

M.S. Bedi, Advocate, *for the petitioners.*

Parveen Goyal, Addl. Advocate General, Punjab.

D.V. Sharma, Sr. Advocate with Ms. Shivani Sharma, Advocate and Harit Sharma, Advocate, *for the respondents.*

Surinder Singh, Advocate, for Gobinder Singh Sandhu, Advocate, *for the petitioner.*

D. Khanna, Addl. Advocate General, Haryana.

S.S. Dalal, Advocate, *for respondent No.3.*

Jagdeep Bains, Advocate, *for the petitioner.*

Parveen Goyal, Addl. Advocate General, Punjab.

**SATISH KUMAR MITTAL, J.**

This judgment shall dispose of CWP Nos. 4922 of 1989, 14997 of 1989 and 3985 of 2011.

**CWP NO.4922 OF 1989**

(1) This writ petition has been filed by 86 petitioners, who are residents of village Bhagupura, Tehsil Patti, District Amritsar, challenging the order dated 24.8.1988, whereby the revision petition filed by some of the members of the Cheema Co-operative Agricultural Service Society Limited, who are residents of villages Cheema, Bhagupura and Barwala, against the order dated 30.10.1987 passed by the Assistant Registrar, Cooperative Societies, ordering the bifurcation of the Cheema Co-operative Agricultural Service Society Limited, was allowed by the Commissioner (Appeals), Jalandhar Division (exercising the powers of the State Government), setting aside the said order.

(2) In this case, the Assistant Registrar, Co-operative Societies, while exercising the powers of the Registrar, and in view of the Circular dated 19.8.1987 issued by the Registrar, Co-operative Societies, Punjab, for reconstruction of Primary Co-operative Agricultural Service Society, passed the order of bifurcation of the Cheema Co-operative Agricultural Service Society Limited under Section 13(8) of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as 'the Punjab Act') into two Societies, i.e., Cheema Co-operative Agricultural Service Society Limited, the area of operation of which shall be in villages Cheema and Barwala; and the Bhagupur Co-operative Agricultural Service Society Limited, Bhagupur, the area of which shall be in villages Bhagupur, Assol and Sangwan.

(3) Some of the members of the parent Cheema Co-operative Agricultural Service Society Limited, who were having grouse against the above-said bifurcation order, challenged the said order by filing revision under Section 69 of the Punjab Act, before the State Government. The Commissioner, Appeals (exercising the powers of the State Government), allowed the said revision petition and set aside the order dated 30.10.1987 passed by the Assistant Registrar while coming to the conclusion that without calling and holding the General Body meeting of the parent Society and

considering the objections filed by some of the members, the order of bifurcation could not have been passed. The said order was challenged in the aforesaid writ petition by some of the members, who are residents of village Bhagupur.

(4) At the time of motion hearing, while relying upon a Division Bench decision of this Court in **Hardial Singh, Manager the Shahabad Farmers Co-operative Marketing-cum-Processing Society Ltd. versus State of Haryana through Secretary, Co-operative Societies, Haryana, Chandigarh and others (1)**, a contention was raised that against the order of the Assistant Registrar, Co-operative Societies bifurcating the Society under Section 13(8) of the Punjab Act, no revision under Section 69 of the said Act was maintainable because under that Section, the revision is maintainable only on the application made by a person, who is party to a reference under Section 55 of the Punjab Act, and the Government cannot *suo motu* exercise the revisional power on a revision filed by the persons, who are not party to the reference. The learned Division Bench, while considering some of the observations made by the Hon'ble Supreme Court in **The Everest Apartments Co-operative Housing Society Ltd. Bombay versus State of Maharashtra and others (2)**, doubted the correctness of the view taken by the Division Bench in Hardial Singh's case (supra) and admitted the writ petition to the Full Bench, and passed the following order:-

*“The revisional power contained in Section 69 of the Punjab Cooperative Societies Act, 1961, appears to be very wide as per terms of the statute but that power has been restricted in Hardyal Singh vs State of Haryana, 1975 (1) S.L.R. 55, by a Divisional Bench of this Court. It is undisputed that if State Government exercises suo moto powers of revision then it can do so but if the aggrieved party brings the matter to the notice of the State Government by way of revision and the State Government acts on that without mentioning in the order that it is taking suo moto action, according to the aforesaid Division Bench judgment, the order would be without jurisdiction.*

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(1) 1975 (1) S.L.R. 55

(2) AIR 1966 S.C. 1449

*Similar provision in the Maharashtra Cooperative Societies Act came up for consideration before the Supreme Court in AIR 1966 S.C. 1449. Therein, it was observed that the Government should welcome an application because an aggrieved party can draw the attention of the Government to the acts in some of which Government may be interested to entertain. Even if the aggrieved party labelled his application as a revision under Section 69 of the Act, prima facie if the Government were to interfere, it would be exercising the revisional jurisdiction under Section 69 of the Act, on the basis of information given by the aggrieved party, through the application labelled as a revision, and such an exercise of revisional jurisdiction would amount to taking suo moto action.*

*Since prima facie, the decision of the Division Bench seems to run counter to the statutory provision and the Supreme Court decision, we admit this writ petition to Full Bench.*

*Since matter is of importance and is likely to arise in large number of cases, we direct that papers of this case be placed before Hon'ble the Chief Justice for constituting a Full Bench as early as possible. No stay."*

**CWP NO.14997 OF 1989**

(5) This writ petition was filed by one Mehar Singh (since deceased) challenging the order dated 21.8.1989 passed by the Commissioner & Secretary to Government, Haryana (exercising the powers of the State Government), whereby the revision petition filed by the petitioner under Section 115 of the Haryana Co-operative Societies Act, 1984 (hereinafter referred to as 'the Haryana Act') against the order dated 23.1.1989 passed by the Registrar, Co-operative Societies, was dismissed being not maintainable. In this case, petitioner Mehar Singh was working in the Karnal Central Co-operative Bank Limited. He was charge-sheeted on certain allegations regarding submission of false certificate of Matriculation examination while taking employment, and embezzlement of funds of Israna Co-operative Credit and Service Society Limited, Karnal. On the basis of the report of the Enquiry Officer, a show-cause notice was served on him

for dismissal of his services. After giving personal hearing, the Managing Director of the Central Co-operative Bank dismissed him from the services vide order dated 10.3.1988. The petitioner challenged the said order by filing an appeal before the Registrar, Co-operative Societies under the Common Cadre Rules i.e. Haryana State Central Co-operative bank's Staff Service (Common Cadre) Rules, 1975. The Registrar vide order dated 23.1.1989 dismissed the said appeal. Against the said order, the petitioner filed a revision petition under Section 115 of the Haryana Act before the State Government which was dismissed by the impugned order dated 21.8.1989 being not maintainable. The said order was challenged by the petitioner in the instant writ petition which was admitted to be heard with CWP No.4922 of 1989.

#### **CWP NO.3985 OF 2011**

(6) This writ petition has been filed by Avtar Singh challenging the order dated 31.3.2010 passed by the Additional Registrar (Admn.), Cooperative Societies, Punjab (exercising the powers of the Registrar), whereby the revision petition filed by the petitioner under Section 69 of the Punjab Act, against the inaction of the Punjab State Co-operative Supply and Marketing Federation Limited, to consider and decide his representation for assignment of his seniority in accordance with the MARKFED Common Cadre Rules, and consequently for promotion to the Technical Officer, has been dismissed being not maintainable. The said writ petition was also admitted to be heard with CWP No.4922 of 1989. While admitting this writ petition, the learned Single Judge passed the following order:-

*“ The petitioner is aggrieved by an order dated 31st March, 2010(Annexure 11)passed by the Additional Registrar (Admn.), Co-operative Societies, Punjab, rejecting his revision petition under Section 69 of the Punjab Co-operative Societies Act, 1961 (for short the ‘1961 Act’) being not maintainable in the light of a Division Bench judgment of this Court dated 3.9.2009 passed in **CWP NO.18007 of 2008 (Dr.S.P.Gupta versus State of Punjab and others, 2010(1) RCR (Civil) 548.***



*It is urged that one of the Division Bench decisions of this Court restricting the revisional powers contained in Section 69 of the 1961 Act, was doubted by a Coordinate Bench way back vide order dated July 20, 1989 passed in Civil Writ Petition No.4922 of 1989 referring the matter to a Full Bench. Learned counsel for the petitioner states that pursuant thereto, the matter is being heard by a Full Bench comprising Hon'ble Mr.Justices S.K.Mittal, Jeyapaul and Gurdev Singh and the said case is now listed for hearing on 11.3.2011.*

*It would be expedient if this matter be also listed before the Hon'ble Full Bench along with the aforesaid matter on the date fixed to enable learned counsel for the petitioner to assist the Full Bench.*

*Admit.*

*To be heard along with Writ Petition No.4922 of 1989 on 11.3.2011.”*

(7) In these writ petitions, learned counsel for the parties made detailed submissions with regard to the scope of the revision under Section 69 of the Punjab Act as well as under Section 115 of the Haryana Act while referring to various judgments rendered by the Hon'ble Supreme Court, this Court as well as other High Courts. Before we refer to and deal with those judgments and the various contentions raised by the learned counsel, it will be appropriate to quote the aforesaid provisions and the amendments made therein from time to time. Section 69 of the Punjab Act is reproduced below:-

**“69. Revision-** *The State Government and the Registrar may, suo motu or on the application of a party to a reference call for and examine the record of any proceedings in which no appeal under Section 68 lies to the Government or the Registrar, as the case may be, for the purpose of satisfying itself or himself as the legality or propriety of any decision or order passed and if in any case it appears to the*

*Government or the Registrar that any such decision or order should be modified annulled or revised, the Government or the Registrar as the case may be, may after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit [(Substituted by Punjab Act No.26 of 1969 Section 15 w.e.f. 10.9.1969).” (Emphasis supplied)*

(8) It is submitted that prior to the Punjab Act No.26 of 1969, the words “or the Registrar” were not existing in this provision and these words were added by the said Amending Act while amending the provisions w.e.f. 10.9.1969. After this amendment, the State Government and the Registrar, exercise the revisional powers concurrently. According to these provisions, the State Government or the Registrar may, suo motu or on the application of a party to a reference call for and examine the record of any proceedings in which no appeal under Section 68 lies to the Government or the Registrar. Section 68 of the Punjab Act specifically provides against which order of the Registrar/Deputy Registrar or a Co-operative Society or the Liquidator an appeal lies.

(9) Section 115 of the Haryana Act, which confers the revisional power on the State Government before its amendment made by the Haryana Co-operative Societies (Amendment ) Act, 2006, is reproduced below:-

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

(10) After the amendment in 2006, in place of words and figures, “a party to a reference under Section 102” the words “an aggrieved party” have been substituted and after the words “of any proceedings”, the words “under this Act and the rules framed thereunder” have been inserted. After the amendment, this provision reads as under:-

**“115. Revision-***The Government may suo motu or on an application of an aggrieved party, call for and examine the record of any proceedings under this Act and the rules framed thereunder in which no appeal lies to the Government under Section 114 for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Government that any such decision or order should be modified, annulled or revised, the Government may, after giving the persons affected hereby an opportunity of being heard, pass such order thereon as it may deem fit.” (Emphasis supplied)*

(11) This Section also provides that the Government may suo motu or on an application of aggrieved party can call for the record of any proceedings under the Act and the Rules framed thereunder in which no appeal lies to the Government under Section 114 of the Haryana Act. Section 114 of the Haryana Act again specifies the order passed by the Assistant Registrar/Additional Registrar/Registrar, decision taken by the Co-operative Society, against which an appeal lies to the authority as provided under Section 114(2)(c) or if the order is passed by the Registrar, then to the Government.

(12) In Hardial Singh’s case (*supra*), a question came up for consideration before a Division Bench of this Court, whether a revision petition filed by the Society, which is not a party to a reference, challenging the order of the Registrar, Co-operative Societies passed under Rule 36 of the Service Rules, partly accepting the appeal of Hardial Singh, whereby he was reinstated, however, a penalty of stoppage of four increments with cumulative effect was imposed and the suspension period of Hardial Singh was ordered to be treated as duty period, which made him entitled to 50% of the pay, was maintainable or not. On the revision filed by the Society under Section 69 of the Punjab Act, the said order was set aside. In the

writ petition, Hardial Singh raised the issue that the order passed by the Government under Section 69 of the Punjab Act was without jurisdiction as no revision under the said Section by the Society was maintainable. On behalf of Hardial Singh, it was argued that from the plain reading of Section 69, it is clear that a revision could only be filed by a party to a reference. The Society or the Manager, who filed the revision, was not party to any such reference, therefore, the State Government in exercise of the suo motu power should not have set aside the order of the Appellate Authority on the revision filed by the Society. The Division Bench, after making reference to the provisions of Section 69 of the Punjab Act, has held as under:-

*“ .....After giving our thoughtful consideration to the entire matter, we are of the view that there is considerable force in this contention of the learned counsel. Section 69 of the Act, under which revision was filed is in the following terms:-*

*“ 69. Revision “ - The Government may suo motu or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal lies to the Government under Section 68 for the purpose of satisfying itself as to the legality and propriety of any decision or order passed and if in any case it shall appear to the Government that any such decision or order should be modified, annulled or revised, the Government may pass such order thereon as it may deem fit.”*

*This section gives revision powers to the State Government in cases where no appeal lies under Section 68 of the Act and the power is exercisable either suo motu or on the application of a party to a reference. There is no dispute that the State Government did not act suo motu but passed the impugned order on the application of the Manager. From the plain reading of this section, it is clear that such an application could be filed only by a party to a reference. In the instant case, admittedly there was no question of the reference of any dispute for decision to any authority under the Act. The Society or the Manager were not parties to*

*any such reference. It was a simple case where the petitioner-Society took disciplinary action against the Manager (Petitioner) who filed an appeal under rule 36 of the Rules on which the Joint Registrar passed an order on 5th March, 1970 (copy Annexure 'B' to the petition).*

6. *In an effort to support the impugned order, it was contended by Mr. Mittal, learned counsel for the State that the impugned order was not liable to be quashed as it should be deemed to have been passed in exercise of the suo motu powers of the State. We are unable to agree with the learned counsel as admittedly the impugned order has been passed on the revision filed by the Society under section 69 of the Act. The proceedings were started at the instance of an aggrieved party as is evident from the opening part of the order wherein it is stated thus :-*

*“ This is a revision petition under section 69 of the Punjab Co-operative Societies Act, 1961, filed by Shri Kanwarjit Singh, President of the Sahabad Farmers Cooperative Marketing Cum Processing Society Ltd. Sahabad Markanda against the order dated 5-3-70 of Joint Registrar, Co-operative Societies, Haryana, Chandigarh.”*

*In the impugned order it is nowhere said that the action was being taken suo motu. If we accept the contention of the learned counsel for the State, then no difference would remain in the action taken by an appropriate authority suo motu and the one taken on the application of an aggrieved party. It could never be the intention of the legislature to treat both on the same footing. Thus we are of the considered view that no revision lay under section 69 of the Act to the State Government against the order of the Joint Registrar dated 5th March, 1970 and that the impugned order of the Minister is obviously without jurisdiction.”*

(13) There are other decisions of this Court which are on the similar lines. These are **The Amritsar Central Co-operative Bank Ltd., Amritsar and another versus The State of Punjab and others (3)**, **The Gurdaspur Central Co-operative Bank Ltd. versus Under Secretary to Government, Punjab, Cooperation Department, and another (4)**, and **Dharam Singh Rao alias D.S. Rao versus The State of Haryana and others (5)**. In **Gurnam Kaur versus State of Punjab and others (6)**, a Division Bench of this Court doubted the correctness of the view taken by the Division Bench in Hardial Singh's case (supra) and referred the matter to the Full Bench while observing as under:-

*“.....It is rare that the revisional authority would come to know of the orders passed by the lower authority of its own. The occasion to exercise the suo motu power can, therefore, arise only when an aggrieved person brings the order to the notice of the authorities. Also, there is nothing in the statute which debars an aggrieved person from moving the revisional authority to invoke its suo motu powers. The moment it is accepted that an aggrieved person can move for invoking the suo motu powers of the revisional authority, it would not matter whether it is stated in the order or not that suo motu powers are invoked for passing the order because it is well established that if there is power with the authority, the order passed can always be ascribed to it even though there is no mention that the same is being passed in exercise of that power.”*

(15) The Full Bench of this Court reported as 1992 PLJ 658, after considering the aforesaid issue and in view of the observations made by the Supreme Court in Everest Apartments' case (supra) and the decision of the Privy Council in **The Commissioner of Income Tax, West Punjab versus The Tribune Trust, Lahore (7)**, has held that the view taken by the Division Bench in Hardial Singh's case (supra) does not lay down the

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- (3) 1971 PLJ 572  
(4) 1973 PLJ 232  
(5) 1974 PLJ 278  
(6) 1992(2) PLR 746  
(7) 1948 (16) ITR 214 (P.C.)

correct position of law with regard to interpretation of Section 69 of the Punjab Act, and has held as under:-

“ 6. The revisional power as contemplated under Section 69 of the Co-operative Societies Act or any other statute generally is to send for the records of the case pending or decided by the Subordinate authorities to examine the same and to pass appropriate orders modifying, annulling or reversing the same. Such power can be exercised when the Revising Authority comes to know about the legality or propriety of passing such orders. Further, this knowledge can be acquired either at the instance of the Revising Authority itself or at the instance of aggrieved or interested party. The opening words of Section 69 reproduced above with respect to “suo motu” or “on application of the parties to the reference” are explanatory in nature. They are neither superfluous nor redundant. Even in the absence of phraseology used the remaining context of the provision referred to above still would clothe the Revisional Authority to exercise the power as would be seen from such like provisions in different statutes, reference to which would be made later. It is immaterial when revisional power is exercised is to whether, the action was initiated at the instance of interested party or suo motu. The order passed would be within jurisdiction. This exercise of powers is not dependent on the action of the party concerned. The view expressed in Hardial Singh’s case (supra) that since action was not initiated by the competent party concerned the same could not be treated valid exercise of jurisdiction under Section 69 of the Act, reproduced above, is not tenable in law. Even if the action was taken by a party who was not aggrieved, in other words not a person competent, the exercise of powers in modifying, annulling or revising the order of the subordinate authority will not be without jurisdiction.”

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8. *From perusal of the judgments referred to above; one of the Supreme Court in Everest Apartments' case (supra) and that of the Privy Council in The Tribune Trust's case (supra), it is quite clear that action to exercise revisional jurisdiction could be initiated either by the party concerned or by the authority of his own. Even if the party concerned moves the revisional authority, it is left to the revisional authority to examine the records and then to pass the appropriate order. Similar course could be adopted even if the matter had come to the notice of the revisional authority otherwise. The aforesaid two cases were noticed subsequently in The Amritsar Central Co-operative Bank Ltd., Amritsar v. The State of Punjab, 1971 PLJ 572, by the Single Judge of this Court and the Judge found himself bound by the ratio of the decision in Hardial Singh's case (supra)."*

(16) Thus, in the aforesaid Full Bench decision, the law laid down by the Division Bench in Hardial Singh's case (supra) was held to be not tenable in law. The said decision has virtually made the questions of law referred in CWP No.4922 of 1989 as infructuous. In Gurnam Kaur's case (supra), the Full Bench has laid down firstly that the action to exercise revisional jurisdiction could be initiated either by an aggrieved party or by the authority of its own. It is not necessary that only a party to the reference can invoke the revisional jurisdiction. Secondly, it has been laid down that the *suo motu* power can be exercised by the revisional authority either of its own or on the application moved by the aggrieved party if the said authority is satisfied that any such decision or order is required to be modified, annulled or revised. However, the revisional power could have been exercised if against the impugned order no appeal lies to the Government under Section 68 of the Punjab Act.

(17) In Hardial Singh's case (supra), the Society filed a revision under Section 69 of the Punjab Act against the order passed by the Registrar, Co-operative Societies as an Appellate Authority under the Statutory Service Rules whereby Hardial Singh was reinstated in service with modification in the order of punishment. A restricted view was taken on the ground that in that case neither the reference for arbitration was made nor Society was party to such a reference, therefore, the Society could not have invoked the revisional jurisdiction under Section 69 of the Punjab Act.



(18) In the aforesaid Full Bench it was held that it is not necessary that only a party to the reference can invoke the revisional jurisdiction, but the said jurisdiction could have also been invoked by the State Government by exercising its *suo motu* power even on an application filed by the aggrieved party.

(19) Subsequently, in **Punjab State Handloom Weavers Apex Society Ltd. versus State of Punjab and others (8)**, again the issue pertaining to the scope of Section 69 came up for consideration before a Division Bench of this Court. In that case, the question before the Division Bench was as to whether a revision under Section 69 of the Punjab Act is maintainable against the order passed by the Registrar, Co-operative Society as an Appellate Authority under the Statutory Service Rules of the Society against the order of the Disciplinary Authority. In that case, the respondent was the employee of the Punjab State Handloom Weavers Apex Society Limited. His services were terminated on the charge of wilful absence from duty and creating indiscipline in the office. He filed an appeal before the Additional Registrar (General) under the Statutory Service Rules of the Society, which was dismissed. Feeling aggrieved against the said order, he filed a revision under Section 69 of the Punjab Act before the Commissioner (Appeals). The said revision was dismissed in limine. The respondent challenged the said order in writ petition which was allowed on the ground that the order of the revisional authority was not a speaking order, and thereafter, the matter was remanded to the revisional authority to take a fresh decision on merits, in accordance with law, after hearing the parties. On remand before the revisional authority, the Society raised the issue of maintainability of the revision petition but while rejecting the said plea the order of punishment was set aside while holding that the same was disproportionate to the charge proved against the employee. Accordingly, the punishment was reduced to stoppage of three annual increments with cumulative effect. The said order was challenged by the Society in the writ petition on the ground that the revision was not maintainable. While dismissing the writ petition, the Division Bench of this Court had observed as under:-

*“5. A perusal of the above provision shows that the State Government as well as the Registrar have been empowered to examine the legality or propriety of any decision or order*

*passed by a Society. They can do so either suo moto or on the application of a party to a reference. The power is not subject to any provision of the rules or the bye-laws. It is in the nature of a supervisory jurisdiction conferred on the Government and the Registrar. In the very nature of things where an order has been passed by the Registrar, the power vests in the State Government.*

6. *Mr. D.V. Sharma, learned counsel for the petitioner has contended that the bye-laws of a Society are not law. They are not a part of the Act. Consequently, any order passed in exercise of the power under a bye-law can't be subjected to the revisional jurisdiction of the Government under the Act. We are unable to accept this contention.*
7. *It is true that the bye-laws of a Society are not a part of the Act. However, it is equally clear that the jurisdiction conferred by the Legislature on the State Government or the Registrar cannot be taken away by a society by framing the bye-laws. If that were permitted, it would become possible for a society to make the provisions of the Act which provide for an Appeal and a Revision totally otiose. Such cannot be the state of law.” (Emphasis added)*

(20) In a subsequent judgment, the Division Bench of this Court in **Deepak Kumar Kalia versus Punjab State Handloom Weavers Apex Co-op.Soc. and ors. (9)**, took the similar view and held that under Section 69 of the Punjab Act the State Government as well as the Registrar have been empowered to examine the legality or propriety of any decision or order passed by a Society. In that case, an employee of the Society was removed from services by the Managing Director of the Society. Against the said order, he filed a statutory appeal under the Statutory Service Rules. The Appellate Authority (Assistant Registrar) set aside the order of removal, however, with liberty to the Punishing Authority to impose minor penalty. Aggrieved against the said order, the Society filed a revision under Section 69 of the Punjab Act. The said revision was allowed and the order passed by the Appellate Authority was set aside. The said order was challenged

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(9) 2007(1) R.C.R. (Civil) 805

by the employee in the writ petition on the ground that the revision filed by the Society under Section 69 was not maintainable. The Division Bench of this Court, by following the earlier Division Bench decision of this Court in Punjab State Handloom Weavers' case (*supra*), dismissed the said writ petition while observing that :

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

(21) In the aforesaid two cases, it has been held that under Section 69 of the Punjab Act the State Government as well as the Registrar have been empowered to examine the legality or propriety of any decision or order passed by the Society. They can do so either *suo motu* or on the application of a party to a reference.

(22) The ratio of law laid down in the above two cases to the effect that under Section 69 of the Punjab Act the State Government as well as the Registrar have been empowered to examine the legality or propriety of any decision or order passed by the Society further leads to other questions of law and goes contrary to the earlier decisions given by this Court. The question that arises for consideration is whether the legality or propriety of any decision or order passed by the Society can be examined by the State Government or the Registrar under the revisional jurisdiction or such power can be exercised by the State Government only pertaining to the order passed by the authority under the Act or an order arising out of the proceedings under the Act.

(23) In Punjab State Handloom Weavers' case (*supra*) and Deepak Kumar Kalia's case (*supra*), the orders, which were questioned before the revisional authority, were the orders passed by the Registrar or the Deputy Registrar as an Appellate Authority under the Statutory Service Rules

against the disciplinary action, and those orders were not the orders of the Society itself. But the learned Division Bench while deciding that against the order of the Appellate Authority the revision was maintainable, has observed that under Section 69 of the Punjab Act the Government as well as the Registrar have been empowered to examine the legality or propriety of any decision or order passed by the Society.

(24) It is pertinent to mention here that in those cases the order under challenge before the revisional authority was not an order passed by the Society but was an order passed by the Appellate Authority under the Statutory Service Rules. This difference was not noticed in the aforesaid two cases.

(25) This Court in an earlier occasion has recognized the difference between the order of the Society and the order of the authority passed under the Punjab Act. The Division Bench of this Court in **Binpalka Co-operative Agricultural Service Society Ltd. versus Commissioner (Appeals), Jalandhar Division (10)**, has considered this issue. In that case, after obtaining prior approval of the Registrar, Co-operative Societies and passing a resolution, the Binpalka Co-operative Agricultural Service Society Ltd. was bifurcated into two Societies under Section 13(1)(b) of the Punjab Act. In the Resolution passed by the Society it was also mentioned that the Secretary of the Society who was under suspension will be reinstated and given employment in one of the Societies. The said order was challenged by the Secretary by filing a revision under Section 69 of the Punjab Act before the State Government. The said revision petition was allowed and the Secretary was allocated to the parent Society. The parent Society, i.e., Binpalka Co-operative Agricultural Service Society Ltd. challenged the said order by filing the writ petition on the ground that no revision petition against the order of the Society was maintainable. The Division Bench formulated a question of law whether the State Government can entertain a revision petition against the order of the Society voluntarily bifurcating the Society into two Societies and further transferring one of the employees to a particular Society. The Division Bench answered the said question in negative and held that the revision petition filed by the Secretary against the order

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(10) 1993(2) R.R.R. 1 (P&H)

of voluntary bifurcation of the Society by passing the resolution even after taking prior approval of the Registrar is not maintainable and has observed as under:-

“5. *From perusal of the aforesaid provision, it is clear that a society could be bifurcated in two manners; firstly under orders of the Registrar and secondly after obtaining prior approval of the Registrar by passing resolution by the society concerned itself. Present is a case which falls under section 13 (1)(b) of the Act as aforesaid. The bifurcation of the society was made after obtaining prior approval of the Registrar and by passing the resolution. If that is so, such bifurcation is not under any order of the Registrar which could be revised. Further reference was made to sub-clause (i) sub-section (8) of section 13 of the Act that the order of the Registrar could fall thereunder. We are afraid, this contention again cannot be accepted. This section contemplates an order to be passed by the Registrar on his satisfaction that any co-operative society be divided into two or more such co-operative societies. As already stated above, no order under sub-section (8) of Section 13 of the Act was passed. What has been shown during argument is an order of the Registrar dated November 2, 1987 which has been passed after noticing the fact that the society was bifurcated by passing resolution by the society itself after obtaining prior approval of the Registrar and hence the registration of the society was cancelled and on splitting the two new societies were ordered to be registered under the provisions of the Act, which is entirely different from bifurcating the registered societies as contemplated under Section 13 of the Act, by the Registrar. The State Government had no jurisdiction to pass order dated January 12, 1989- Annexure P.2 and same is void.*”

(26) In the aforesaid decision, a distinction has been made between two types of bifurcation of the societies, i.e., voluntary bifurcation by the society by passing a resolution after obtaining prior approval of the Registrar, as contemplated under Section 13(1)(b), and a compulsory bifurcation by

order of the Registrar, as contemplated under Section 13(8) of the Punjab Act. It has been held that if a society has been compulsorily bifurcated by an order of the Registrar, in that case, the aggrieved person can challenge the said order before the State Government by invoking the revisional jurisdiction under Section 69 of the Punjab Act because the said act was the act of the Registrar and not the act of the Society. This decision is the complete answer to the controversy raised in CWP No.4922 of 1989. In the said case the order passed by the Assistant Registrar, Co-operative Society, exercising the powers of the Registrar, compulsorily bifurcating the Cheema Co-operative Agricultural Society Limited under Section 13(8) of the Punjab Act was rightly challenged by the aggrieved person by filing a revision under Section 69 of the Punjab Act because the order of compulsory bifurcation was passed by the Registrar under the Act. That was not an action of the Society, whereas in Binpalka's case (supra), which was a case of voluntary bifurcation, the action of voluntary bifurcation was an action of the Society. Therefore, in that case it was held that against the said action of the Society no revision is maintainable.

(27) A similar issue again came up for consideration before a Division Bench of this Court in **Rajinder Singh versus The Registrar, Cooperative Societies, Punjab and others (11)**. In that case, petitioner Rajinder Singh was elected as Director of the respondent-Bank from Zone No.3. One of the unsuccessful candidates challenged the election programme by filing a revision petition under Section 69 of the Punjab Act. The Registrar, Cooperative Societies entertained the said revision petition and passed the interim order restraining the petitioner from performing his duties as Director. The petitioner challenged the said order by filing the writ petition. This Court questioned the maintainability of the revision petition against the election programme issued by the Society while observing that :

*“the revision petition itself was not maintainable under Section 69 of the Act. A petition can be entertained by the State Government or the Registrar as the case may be for the purpose of examining legality or propriety of any decision or the order passed in any proceedings under the Act. There*

*was no order passed by any authority which was challenged before the Registrar nor were any proceedings pending, the propriety of which could be examined by him. What was sought to be challenged in the revision petition was the election programme approved by the Deputy Registrar exercising the powers of the Registrar and not the election of the petitioner as a Director. In this view of the matter, the order of the Registrar restraining the petitioner from performing his duties as an elected Director of the Bank is without jurisdiction.” (Emphasis added)*

(28) Thus, in the aforesaid case a distinction was made between a decision, action or order passed by the Society or a decision or an order passed by the authority in any proceedings under the Act.

(29) A similar question again came up for consideration before a Single Bench of this Court in **The Amritsar Central Co-operative Bank Ltd., Amritsar versus Deputy Registrar(E) Cooperative Societies, Punjab and another (12)**, in which one of us (Satish Kumar Mittal, J.) was a member. In that case, the question which came up for consideration was whether the disciplinary proceedings initiated against the employee of the Co-operative Bank for committing various embezzlement and fraud and the issuance of the charge-sheet and order of suspension by the supervisory committee of the petitioner bank, could be questioned by the suspended employee before the State Government by invoking the revisional jurisdiction under Section 69 of the Punjab Act. In that case, the State Government under the revisional jurisdiction set aside the order of suspension on the ground that the employee could not have been placed under suspension for a period exceeding six months without the prior approval of the Registrar. The Co-operative Bank challenged the said order by filing the writ petition. The respondent employee while relying upon aforesaid two Division Bench decisions of this Court in Punjab State Handloom Weavers Apex Society Ltd.’s case (supra) and Deepak Kumar Kalia’s case (supra), argued that the State Government as well as the Registrar have been empowered to examine the legality or propriety of any decision or order passed by the Society. The said contention of the counsel for the employee was not accepted and it was held that the order passed by the Government setting

aside the order of suspension of the employee in revision under Section 69 of the Punjab Act was wholly without jurisdiction. As against the order of suspension and issuing the charge-sheet passed by the society, no revision under Section 69 of the Punjab Act was maintainable. It was held that the revision under Section 69 of the Act lies against the order passed by the Subordinate Authorities under the Act, and since the order of suspension and issuance of charge-sheet was not passed by an authority or in any proceedings under the Act, such order passed by the society under the Service Rules cannot be challenged in revision under Section 69 of the Act. Regarding the aforesaid two decisions of the Division Bench, it was observed that the two judgments relied upon by the learned counsel for the respondent do not support the case of respondent No.2, particularly in the facts and circumstances of the case as in both the cases the revision petition was filed against the order passed by the Registrar/Deputy Registrar, exercising the powers of the Appellate Authority under the Statutory Rules and not by the Society.

(30) In **Dr.S.P. Gupta versus State of Punjab and others (13)**, again a similar question was raised before the Single Bench of this Court. In that case, petitioner Dr.S.P.Gupta was working as General Manager in the Punjab State Federation of Co-operative Milk Producers Union Limited (Milkfed). At the fag end of his retirement he was served with a charge-sheet on account of certain irregularities committed by him which resulted in loss to Milkfed. The said charge-sheet was inquired into and he was found guilty of the charges by the Enquiry Officer. On the basis of the said report an order of punishment was passed by the Disciplinary Authority. Feeling aggrieved against the said order, the petitioner filed an appeal under the Service Rules before the Board of Directors of the Milkfed which was dismissed. The said order was challenged by the petitioner by filing a revision under Section 69 of the Punjab Act before the Registrar, Co-operative Societies, Punjab. Vide order dated 13.6.2008, the said revision was dismissed by the Registrar while observing that the same was not maintainable because the revision lies against the order passed by an authority subordinate to the Registrar, Co-operative Societies, Punjab, whereas the Board of Directors of the Milkfed are not the authorities subordinate to the Registrar. The said order was challenged by the petitioner



by filing the writ petition. The Single Judge, in which one of us (Satish Kumar Mittal, J.) was a member, dismissed the said petition while holding that the Registrar, Co-operative Societies, Punjab had rightly dismissed the revision filed by the petitioner being not maintainable, while following his earlier decision in Amritsar Central Cooperative Bank's case (supra).

(31) Learned counsel for the petitioner in CWP No.3985 of 2011 argued that the decision rendered in Dr. S.P. Gupta's case (supra) does not lay down the correct law as the words "any direction or order" mentioned in Section 69 of the Punjab Act includes the decision and order taken by a Cooperative Society under the Statutory Rules. The revisional powers of the State Government or the Registrar are wide enough and include the decision and order passed by the Society. According to the learned counsel, it is not necessary that only the decision and orders which have been passed by an authority under the Act are amenable to the revisional jurisdiction. But in view of the aforesaid discussion, the contention raised by the learned counsel for the petitioner is not acceptable. In Binpalka Co-operative Agricultural Service Society's case (supra) and Rajinder Singh's case (supra), the Division Benches of this Court have clearly made distinction between a decision or order passed by the Society and decision or order passed by an authority in a proceeding under the Act. In our considered view, against every decision or order of the Society, even though no appeal has been provided under Section 68 of the Punjab Act or under Section 114 of the Haryana Act, an aggrieved party to such an order or the Government of its own in exercise of its *suo motu* power cannot entertain a revision petition. To that extent, the observation made in Punjab State Handloom Weavers' case (supra) and Deepak Kumar Kalia's case (supra) does not lay down the correct law.

(32) The aforesaid decision in Amritsar Central Cooperative Bank's case (supra) was questioned by the employee in LPA No.1230 of 2009 (Sukhwant Singh Vs. Deputy Registrar, Co-op. Societies, Punjab, Chandigarh and others) decided on January 22, 2010. A Division Bench of this Court dismissed the appeal and upheld the said decision while observing that only disciplinary proceedings had been initiated by the society and there were no proceedings under the Act, therefore, the revision was not competent. The learned Division Bench, after considering a Division Bench decision of this Court in Punjab State Handloom Weavers'

case (supra), **Rajinder Singh versus The Registrar, Cooperative Societies, Punjab and others (14)**, a Full Bench decision of this Court in Gurnam Kaur's case (supra), a Division Bench decision of this Court in Dharam Singh Rao's case (supra), a Single Bench decision of this Court in Gurdaspur Central Co-operative Bank's case (supra) and a decision of the Hon'ble Supreme Court in **Shahabad Cooperative Sugar Mills Limited versus Special Secretary to Government of Haryana Corporation and Others (15)**, has summed up the position of law as under:-

- “(i) Width of suo motu power under section 69 is limited to cases where revision is otherwise maintainable, as held by the Hon'ble Supreme Court in Shahabad Cooperative Sugar Mills (supra). Contrary view in decisions of this Court in Gurnam Kaur and Punjab Handloom(supra) cannot be followed;*
- (ii) In view of (i), revisional jurisdiction can be only against order passed in proceedings under the Act, particularly in a reference under section 55 of the Act;*
- (iii) In the present case, there are no proceedings under the Act and only disciplinary proceedings have been initiated against which no revision petition was competent.”*

(33) In order to understand and appreciate the ratio of law laid down by the aforesaid Division Bench decision, it is necessary to notice the facts and ratio of law laid down in the Single Bench decision of this Court in Gurdaspur Central Co-operative Bank's case (supra), the Division Bench decision in Dharam Singh Rao's case (supra) and the decision rendered by the Supreme Court in Shahabad Cooperative Sugar Mills case (supra).

(34) In Gurdaspur Central Co-operative Bank's case (supra), a question that arises for consideration is whether an order passed by the Appellate Authority on an appeal filed by an aggrieved employee under the bye-laws of the Co-operative Society, can be said to be an order having been made under the provisions of the Punjab Act; and whether against

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(14) 2001(1) PLJ 81

(15) AIR 2007 SC 340

such an order a revision under Section 69 of the Punjab Act is maintainable. In that case, the respondent was the employee of the Cooperative Bank. He was charge-sheeted by the Manager of the bank on certain allegations. His reply to the charge-sheet was considered by a Sub Committee formed by the Board of Directors of the bank and in its opinion the respondent had embezzled two amounts of the Society. The Board of Directors, while accepting the report of the Sub Committee, dismissed the respondent from service by passing a resolution. Against that order, the respondent filed an appeal under the bye-laws of the petitioner-Bank to the Registrar. The Deputy Registrar, exercising the powers of the Registrar, dismissed the appeal and upheld the order of the Board of directors while coming to the conclusion that the charge regarding embezzlement of one amount, i.e., '400/- had not been established, but the charge with regard to embezzlement of '1700/- had been established. The respondent employee challenged the said order by filing a revision under Section 69 of the Punjab Act. The State Government accepted the said revision and set aside the order of the Deputy Registrar and ordered to re-instate the respondent in service of the petitioner-Bank from the date of his dismissal. The petitioner-Bank challenged the said order in the writ petition on the ground that the State Government was having no jurisdiction to entertain the revision filed by the employee under Section 69 of the Punjab Act. While allowing the writ petition, the Single Bench of this Court has held as under:-

*“3. An appeal under section 68(1)(b) of the Act lies against any decision or award made under section 56 of the Act. Admittedly, in the instant case, no reference to arbitration was made to decide the dispute between the petitioner and respondent No.2. Respondent No.2 was dismissed from service by the petitioner-Bank under by-law 37, and an appeal provided by that by-law was dismissed by the Deputy Registrar, Cooperative Societies. No further remedy was open to respondent 2 under the by-laws and that order cannot be said to have been made under the provisions of the Act nor on a reference to arbitration so that neither an appeal lay under section 68 nor a revision under section 69 of the Act. The order passed by the State Government is wholly without jurisdiction and is liable to be quashed.”*

This judgment was prior to the judgment given in Hardial Singh's case (supra). The restricted view taken in this judgment was subsequently reiterated by Hardial Singh's case (supra). The notable ratio of the judgment is that if an appeal provided under the bye-laws is dismissed, then no further remedy was open to respondent No.2 under the bye-laws and that order cannot be said to have been made under the provisions of the Punjab Act or on a reference to arbitration. The correctness of this decision was doubted by the learned Single Judge in Dharam Singh Rao's case (supra). In that case, the petitioner Dharam Singh was working as Manager of the Panipat Primary Co-operative Land Mortgage Bank Limited. He was charge-sheeted by the Mortgage Bank. After inquiry in the charges he was dismissed from service. He filed an appeal before the Registrar under the Service Rules of the Bank, which was dismissed. The petitioner challenged the said order by filing a revision petition before the State Government under Section 69 of the Punjab Act. The State Government dismissed the said revision on the ground that under Rule 10 of the Service Rules of the Bank, the decision of the appellate authority shall be final and binding on the parties and as such no revision petition lay before the Government. The petitioner challenged the said order by filing the writ petition. The respondent-Bank prayed for dismissal of the writ petition in light of the decision in Gurdaspur Central Co-operative Bank's case (supra). The learned Single Judge doubted the correctness of the said decision and referred the matter to the larger Bench while making the following observations:-

*“It appears that certain statutory provisions were not brought to the notice of the learned Judge who decided this case. Section 85 of the Punjab Co-operative Societies Act, 1961 as applicable to Haryana and hereinafter referred to as the Act, laws down that the Government may make rules to carry out the purposes of this Act. Sub-section (2)(xxviii) empowers the Government to make rules regarding the qualifications for the 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. Under this provision, the Government has framed rule 8 which enjoins upon a Cooperative Society to make bye-laws in respect of appointment, suspension*

*and removal of the officers of the co-operative society and members of the committee. The bye-laws made by a Co-operative Society under this provision, if properly made, would be regarded as a part of the rule itself. In that sense, if an employee of the Co-operative Society is dismissed from service, it could be said that the action has been taken against him under the provisions of the statute. It is not disputed that no appeal lies before the Government under section 68 of the Act at the instance of an employee of a Co-operative Society. In this situation, section 69 would be attracted and the Government would be competent to call for the record of the case in exercise of its revisional powers.*

3. *In the instant case, the officer empowered to act as State Government has relied upon rule 10 framed by the Bank which shows that the order passed by the Registrar in appeal shall be final and binding.*
4. *Now, it is settled law that subordinate rule-making authority must act within the ambit of the provisions of the statute which confers a jurisdiction upon it to make rules. The Legislature has invested the State Government with jurisdiction to exercise revisional powers under section 69 of the Act. The Bank which draws its strength from rule 8 of the Rules framed under the Act cannot frame a rule which whittles down jurisdiction of the Government to entertain a revision petition under section 69 of the Act. The order passed by the Joint Secretary to Government does not appear to be in accordance with law.*
5. *Had the Government declined to exercise revisional powers on merits, then perhaps there would have been no case for interference under Article 226 of the Constitution of India. But in this case, power to exercise revisional jurisdiction has been exercised on the basis that no revision petition is competent before the State Government. In this situation, the order dated 8th January, 1971 (Annexure 'C') deserves*

*to be set aside and the case deserves to be remanded back to the Officer for decision in accordance with law, but sitting in Single Bench I cannot take a contrary view than the one taken by the learned Judge of this Court in Gurdaspur Central Co-operative Bank case (supra)."*

(35) But when the matter was placed before the Division Bench, the Division Bench dismissed the writ petition in view of the decision given in Hardial Singh's case (supra), while observing as under:-

*"The interpretation of section 69 of the Act given in Hardial Singh's case (supra) could not have escaped the attention of the Legislature. The Act was amended on at least five occasions and yet the Legislature did not deem it proper to amend section 69 of the Act. Even otherwise, the decision rendered by a Division Bench in Hardial Singh's case (supra) is binding on us. Under these circumstances, it must be held that it was not open to the State Government to revise the order of the Registrar on an application made by the petitioner."*

(36) It appears that the Division Bench has not gone into the question raised in the reference order, whether the bye-laws made by the Co-operative Society under Rule 8 of the Punjab Co-operative Society Rules framed by the Government under Sub-section (2)(xxxviii) empowering the Government to frame rules regarding the conditions of service subject to which persons may be employed by the Societies, would be regarded as a part of the rule itself. If that is so, in case an employee of the Co-operative Society is dismissed from service, it could be said that the action has been taken against him under the provisions of the statute. In that situation, where no appeal lies before the Government, a revision under Section 69 would be maintainable against the order of the Assistant Registrar dismissing the appeal of an employee.

(37) There are three categories of Service Rules which can be framed to regulate the conditions of service of the employees of the Society. In first category, a registered Society under the Societies Act can frame its own Service Rules to regulate the service conditions of its employees.

The Rules may be binding between the Society and its employees. The second category of the Rules is those rules which are formulated under Section 85(2) (xxxviii), which empower the Government to frame Service Rules for any Co-operative Society or for class of societies with regard to qualifications for employees of a Society or class of society and the conditions of service subject to which persons may be employed by Societies. Such Rules so framed have the force of Statute and are deemed to be incorporated as a part of the Statute, whereas this principle does not apply to the first category of Rules framed by the Society because those Rules merely govern the internal management, business or administration of a society. They are of the nature of the Articles of Association of a Company incorporated under the Companies Act. They may be binding between the persons affected by them, but they do not have the force of a statute. But the second category of Rules is the Statutory Rules and they have the force of the statute. Similarly, there is third category of Rules known as Common Cadre Rules. These rules could have been framed under Section 84-A of the Punjab Act which provide that an apex society may *suo motu* and when required to do so by the Registrar shall constitute a common cadre of all, or specified class of employee in the service of that society or in the service of the central societies which are members of the apex society or in the service of the primary societies which are members of the apex society. Sub-section (2) further provides that when a common cadre of employee is constituted under sub-section (1), the Registrar shall notwithstanding anything contained in any law for the time being in force or any agreement, settlement or award determine the pay scales and allowances admissible to such employees and Apex Society shall make rules for the regulation of recruitment and conditions of service of such employees with the prior approval of the Registrar. Therefore, the Common Cadre Rules framed under sub-section (2) by the Registrar are also having the statutory colour and stand on the same footing as that of the Statutory Rules.

(38) In Co-operative Central Bank's case (*supra*), the Hon'ble Supreme Court has held that if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. Thus, in case an employee of the Co-operative Society is dismissed from service and he is governed by the Statutory Rules and Common Cadre Rules which

provide him a remedy to challenge the said order in appeal before the Registrar as an Appellate Authority, and if the said appeal is decided by the Appellate Authority, the aggrieved party, may be the employee or the society, can challenge that order by filing a revision under Section 69 of the Punjab Act as against such an order no remedy of appeal has been provided under Section 68 of the Punjab Act. Thus, the Division Bench in Gurdaspur Central Co-operative Bank's case (supra) dismissed the writ petition filed by the Society by following the restricted view taken in Hardial Singh's case (supra) without properly appreciating the issue raised by the learned Single Judge in a reference made to the Division Bench.

(39) In Shahabad Cooperative Sugar Mills case (supra), which is a decision under the provisions of the Haryana Act, the employee was working as Chief Accounts Officer in the Shahabad Cooperative Sugar Mills. He was charge-sheeted for certain charges. During the pendency of the departmental enquiry, the employee tendered his resignation. But the same was not accepted on the ground that the disciplinary proceedings had already been initiated against him. The said decision was communicated to the employee. Thereupon he replied that he had already relinquished the charge, and in view of termination of contract of employment, only one month's salary was required to be deducted from the amounts due to him. He had also stated that after tendering his resignation he had joined another job. In view of these facts, the employee did not attend the departmental proceedings. In his absence, the Enquiry Officer proceeded against him *ex parte*. On the basis of the *ex parte* enquiry report, he was dismissed from service. He filed an appeal before the Registrar of the Cooperative Societies appears to be under the Common Cadre Rules and not under Section 114. The Registrar dismissed his appeal. Against the said order, he filed a revision before the State Government under Section 115 of the Haryana Act. The said revision petition was allowed and it was held that the enquiry against the employee was held to be illegal and his dismissal order was set aside. The Society challenged the said order by filing the writ petition which was dismissed. The Society further challenged the said order before the Supreme Court. Before the Supreme Court the Society raised the issue that the State Government had acted illegally and without jurisdiction while entertaining the revision petition filed by the employee. The Hon'ble Supreme Court took note of the fact that the provisions of the Punjab Act and the Haryana



Act are *pari materia* except certain minor variations, i.e., in the place of the phrase “to a reference under Section 102” found in the Haryana Act, the word “to a reference” is noticed in the Punjab Act; in Punjab Act, the State Government or the Registrar may exercise the revisional power *suo motu* or on the application of a party to the reference; in Haryana Act, only Government may *suo motu* or on an application of a party under Section 102 can call for and examine the record of any proceedings in which no appeal lies to the Government under Section 114. Further taking into consideration the Division Bench decision of this Court in Hardial Singh’s case (*supra*), which was followed by Single Bench in Amritsar Central Cooperative Bank’s case (*supra*) and slightly different view taken in **Jaswant Singh versus The State of Punjab (16)**, and the Full Bench decision of this Court in Gurnam Kaur’s case (*supra*) as well as the subsequent decision of this Court in Punjab State Handloom Weavers case (*supra*), the Hon’ble Supreme Court has observed that under the Haryana Act an appeal and revision are maintainable from an award made by the Arbitrator appointed under Section 102 of the Act. The party to a reference under Section 102 would mean a party to arbitration for reference. Section 103 provides for an appeal from an award which may be passed by the Arbitrator appointed in terms of Section 102 of the Act. It does not appear that there exists a similar provision in the Punjab Act. The second difference which was noticed in the two Acts is that under the Punjab Act an appeal against the order passed by the Additional Registrar is maintainable before the Registrar, whereas under the Haryana Act it would be maintainable only before the State Government. Revisional power under the Punjab Act is vested both in the Registrar as also the State Government, whereas under the Haryana Act the revisional power is vested only in the State Government. While noticing all these, it was held that (1) the State Government cannot exercise its revisional jurisdiction if an appeal lies before it. (2) If an appeal lies, a revision would not lie; and (3) if the revision application was not maintainable, a *fortiori suo motu* power could not also be exercised. Even otherwise, if *suo motu* power is to be exercised, it has to be stated so. In light of these findings, it was held that the order passed by the State Government in revision, having been passed without jurisdiction, was a *coram non judice* and the High Court was not correct in holding that the State of Haryana was entitled to exercise revisional jurisdiction in the facts of the present case.

It was noticed in that case that since the employee against his termination order had preferred an appeal before the Registrar no revision against the order passed by the Appellate Authority was maintainable because if an appeal lies, the revisional jurisdiction could not be exercised. It has been further observed by the Hon'ble Supreme Court that the dispute and differences between the society and an employee is referable to an Arbitrator under Section 102 of the Haryana Act and since the third respondent in that case did not invoke the arbitration proceedings an appeal is maintainable against the award of an Arbitrator before the State. Therefore, on that ground the revision petition filed by him was held to be not maintainable.

(40) It appears that in the aforesaid case, the correct factual and legal position was not brought to the notice of the Hon'ble Supreme Court. In para 6 of the judgment, it has been noticed that against the order of dismissal from service vide order dated 26.12.1998, the 3rd respondent filed an appeal before the Registrar, Co-operative Societies under Section 114 of the Haryana Act, which was dismissed on 9.2.2001. Against the said order of the Appellate Authority, the 3rd respondent filed a revision before the State Government which was allowed. This is not the correct factual position. Against the order passed by the Disciplinary Authority dismissing the 3rd respondent no appeal lies under Section 114 of the Haryana Act. The remedy of appeal was provided to the employee under the Common Cadre Rules before the Registrar and the order of the Registrar is final between the parties. On the basis of the said incorrect factual position in para 27 of the judgment, the Hon'ble Supreme Court has observed that admittedly the 3rd respondent preferred an appeal before the Registrar. Such an appeal was purported to have been filed from an order passed by the Board. Having taken recourse to the said remedy and having himself invoked appellate jurisdiction before the Registrar, it does not lie in his mouth to contend that no appeal was maintainable and in view of Section 115 of the Haryana Act, the revision does not lie when the remedy of appeal is available to the aggrieved party under Section 114 of the Haryana Act. Further, the Hon'ble Supreme Court has observed that under the Haryana Act an appeal or revision is maintainable from an award made by the Arbitrator appointed in terms of Section 102 of the Haryana Act. The party

to a reference under Section 102 would mean a party to arbitration for reference. It has been further observed that it does not appear that there exists a similar provision in the Punjab Act. It has been also observed that the dispute and differences between the society and an employee are preferable to arbitration in terms of Section 102 of the Haryana Act and an appeal is maintainable against an award of the Arbitrator before the State Government. On this ground alone, the revision petition filed by the 3rd respondent was not maintainable. It appears that the amendments made in Sections 102 and 115 of the Haryana Act vide Haryana Co-operative Societies (Amendment) Act, 2006 were not brought to the notice of the Hon'ble Supreme Court which clearly indicates that the dispute relating to service matters in respect of the paid servant of the society cannot be referred to arbitration.

(41) Section 102 of the Haryana Act is reproduced below for ready reference:-

***“102. Disputes for arbitration-*** (1) *Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises:-*

- (a) *among members, past members and persons claiming through a member or deceased members; or*
- (b) *between a member, past member or persons claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or*
- (c) *between the society or its committee and any past committee, any officer, agent or employee or any past officer, agent or employee or the nominee, heirs or legal representatives of any deceased officer, agent or employee of the society; or*

- (d) *between the society and any other society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society;*

*such disputes shall be referred to the arbitration of the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.*

- (2) *For the purpose of sub-section (1) the following shall be deemed to be dispute touching the constitution, management or the business of a co-operative society, namely:-*
- (a) *a claim by the society for any debt or demand due to it from a member, or nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;*
- (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, whether such debt or demand is admitted or not;*
- (c) *any dispute arising in connection with the election of any officer of the society.*
- (3) *If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of cooperative society, the decision thereon of the Registrar shall be final and shall not be called in any court.*
- (4) *No dispute arising in connection with the election of committee member or officer of the society shall be entertained by the Registrar unless it is referred to him within thirty day from the date of the declaration of the result of election.”*

By Haryana Co-operative Societies (Amendment) Act, 2006, in Section 102 of the principal Act, the following insertion was made:-

*“(i) in sub-section (1), after the words “ of a co-operative society”, words “other than a dispute of disciplinary action or dispute relating of to service matters in respect of a paid servant of a society” shall be inserted;*

*(ii) for sign “ .” existing at the end, the sign “.” shall be substituted; and*

*(iii) to sub-section (1), the following proviso shall be added, namely :*

*“Provided that any proceedings pending or concluded under section 101 shall not constitute a dispute touching the constitution, management or the business of the society.”*

(42) In view of the aforesaid amendment, a dispute between the employee and the society pertaining to his service conditions cannot be referred to arbitration in terms of Section 102 of the Haryana Act.

(43) It is further pertinent to mention that in para 13 of the judgment, Section 102 has been referred to contain the word “establishment” which was omitted in the year 1990. In Haryana, when the Haryana Co-operative Societies Act, 1984 was enacted by the State Legislature, the word “establishment” was also added along with the phrase “constitution, management or the business of the co-operative society”. If any dispute touching those subjects arises, such dispute shall be referred to the arbitration of the Registrar for decision and no Court shall have the jurisdiction to entertain any suit or other proceeding in respect of such dispute. But immediately after the enforcement of the said Act, a question that came up for consideration before the Full Bench of this Court in **Sonepat Co-operative Sugar Mills Ltd., versus Presiding Officer, Labour Court, Rohtak and another (17)**, was whether the dispute pertaining to termination of an employee of the society is covered under Section 102 of the Haryana Act and the jurisdiction of the Labour Court, to whom such dispute has

been referred under Section 10 of the Industrial Disputes Act, 1947 for its adjudication, has been debarred under this Section. The Full Bench after considering the earlier provisions of the Punjab Act and the previous decision of this Court has held as under:-

- “(1) For the detailed discussion in our judgment of the even date in Income-tax Reference No.219 of 1980, it is held that the Labour Court would not be divested of the references which have been made or are pending before it qua the employees of the Co-operative Societies by the later amendment in the Haryana Co-operative Societies Act whereby such disputes are purported to have been taken out of its jurisdiction;*
- (2) that the legislature did not intend to include in the expression ‘establishment’ industrial disputes for the adjudication of which the Parliament has enacted the Industrial Disputes Act’*
- (3) that the Industrial Disputes Act is a special enactment dealing with a special subject of industrial disputes and special provisions have been made in the statute for setting up Tribunal qualified for adjudicating upon them. Therefore, an industrial dispute between a Co-operative Society under the Co-operative Societies Act and its workmen under the law has to be referred to an Industrial Tribunal set up under the Industrial Disputes Act; and*
- (4) that the provisions made in Section 128 of the Co-operative Societies Act, 1984, to the extent they exclude the jurisdiction of the Industrial Tribunal and Labour Court are unconstitutional and hit by the provisions of Article 14 of the Constitution.”*

(44) After the aforesaid pronouncement, Haryana Act was amended and the word ‘establishment’ was omitted by Act 15 of 1990. After this amendment, the provisions of Punjab and Haryana Act with regard to referring the dispute to arbitration are the same.

(45) It is pertinent to mention here that equivalent to Sections 102 and 103 of the Haryana Act are Sections 55 and 56 of the Punjab Act. Section 55 of the Punjab Act reads as under:-

**“55. Disputes which may be referred to arbitration:- (1)**

*Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises:-*

- (a) among members, past members and persons claiming through members, past members and deceased members, or*
- (b) between a member, past member or person claiming through a member past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or*
- (c) between the society or its committee, any officer, agent or employee, or any past officer, agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or*
- (d) between the society and any other co-operative society between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society;*

*such disputes shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.*

**(2) For the purpose of sub-section (1), the following be deemed to the disputes touching the constitution, management or the business of co-operative society, namely:-**

- (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;*

- (b) *a claim by a society 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, whether such debt or demand is admitted or not;*
- (c) *any dispute arising in connection with the election of any Officer of the society;*
- (3) *If any question arises whether a dispute referred to the Registrar under this section is or not a dispute touching the constitution, management or the business of a cooperative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.”*

Section 56 of the Punjab Act reads as under:-

**“56. Reference of disputes to arbitration (1) The Registrar may, on receipt of the reference dispute under Section 55:-**

- (a) *decide the dispute himself; or*
- (b) *transfer it for disposal to any person who has been invested by the Government with powers in that behalf; of*
- (c) *refer it for disposal of one arbitrator;*
- (2) *The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.*
- (3) *The Registrar or any other person to whom a dispute is referred for decision under this Section may, pending the decision of the dispute make such interlocutory orders as he may deem necessary in the interest of justice.”*



(46) A perusal of Section 55 of the Punjab Act would show that any dispute touching the constitution, management and business of a cooperative society arising amongst the members (including past members), between a member and the society or its office bearers, committee or its officers, agents or employees or liquidators between the society or its committee, any officer, agent or employee between the society or any other co-operative society or liquidator of any other society, shall be referred to the Registrar for decision and no other Court shall have the jurisdiction to entertain any suit or other proceeding in respect of such dispute. Under this section, the dispute relating to the termination or any other service dispute of an employee of the co-operative society is not referable to the arbitration because such disputes have nothing to do either with the constitution, management or business of the co-operative society.

(47) In **Dharam Pal Singh Panwar versus B.S. Ojha and another (18)**, this Court while relying upon the decision of the Hon'ble Supreme Court in **Co-operative Central Bank Ltd. and others versus Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others (19)**, a Division Bench decision of this Court in **The Jullundur Transport Cooperative Society, Jullundur versus The Punjab State and another (20)**, and another Division Bench decision of this Court in **Mustafabad Cane Co-operative Society Ltd., Mustafabad v. Suraj Bhan Tayagi and others (LPA No.250 of 1970)** decided on December 17, 1970 laid down that the matter pertaining to termination of services of the petitioner by the Cooperative Society is not referable to the arbitration under Section 55 of the Punjab Act. The judgment of the Supreme Court in **Co-operative Central Bank Ltd. and others v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others (supra)** was further followed in **U.P. Co-operative Cane Union Federation Ltd. and another versus Liladhar and others (21)**.

(48) The aforesaid provisions and the judgments were not brought to the notice of the Hon'ble Supreme Court at the time of hearing of **Shahabad Cooperative Sugar Mills case (supra)**. It was purely on account

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(18) 1972 PLJ 74

(19) AIR 1970 SC 245

(20) AIR 1959 Pb. 34

(21) AIR 1981 SC 152

of that an observation was made that the dispute and differences between the society and the employee are referable to an arbitrator under the Haryana Act as well as under the Punjab Act and since the employee did not invoke the arbitration proceedings, he could not have maintained a revision, particularly when against the award an appeal lies before the State Government. It was held that if an appeal lies, a revision would not lie and the State Government cannot exercise its revisional jurisdiction. It means the revision does not lie if an appeal lies before the Government under Section 68 of the Punjab Act or Section 114 of the Haryana Act. It is pertinent to mention here that in these two provisions no appeal has been provided against the order passed by the Registrar or the Deputy Registrar, exercising the powers of the Appellate Authority under the Statutory Service Rules. Therefore, against such an order it cannot be said that an appeal lies under Section 68 of the Punjab Act or under Section 114 of the Haryana Act. In our opinion, an aggrieved party cannot maintain a revision under Section 69 of the Punjab Act or under Section 115 of the Haryana Act, if against the impugned order an appeal is maintainable under Section 68 of the Punjab Act or under Section 114 of the Haryana Act. Even the State Government or the Registrar cannot exercise its *suo motu* power to modify an order against which an appeal lies under Section 68 of the Punjab Act or under Section 114 of the Haryana Act. Section 69 of the Punjab Act clearly stipulates that the State Government and the Registrar may *suo motu* or on an application of a party to a reference can exercise the revisional jurisdiction to call for the record of any proceeding to examine the legality and propriety of any decision or order against which no appeal lies under Section 68 of the Punjab Act to the Government. Similarly under Section 115 of the Haryana Act, it has been provided that the Government can exercise the revisional jurisdiction only in a case where against the impugned action no appeal under Section 114 lies to the Government. Both the provisions specifically provide for the appeals under Section 68 of the Punjab Act and under Section 114 of the Haryana Act. These provisions do not refer to any appeal provided under the Service Rules or under any other rules. A perusal of Section 68 of the Punjab Act and Section 114 of the Haryana Act reveals that against various orders passed by the Registrar, Deputy Registrar, Additional Registrar, Arbitrator or the Society, the remedy of appeal has been provided, but in none of the sub-clauses, the remedy of appeal against the order of termination of services by the

Society or against the order passed by the Appellate Authority under the Service Rules, has been provided. Therefore, it is the correct legal position that if an appeal lies under Section 68 of the Punjab Act and under Section 114 of the Haryana Act, the revision under Section 69 of the Punjab Act and under Section 115 of the Haryana Act would not lie, and if the revision is not maintainable, *suo motu* power could not also be exercised by the State Government.

(49) Now the question that arises for consideration is whether the revision under Section 69 of the Punjab Act can be filed only by a party to the reference or by any other person aggrieved by the order passed or recorded in any proceeding in which no appeal lies under Section 68 of the Punjab Act to the Government or the Registrar. Section 102 of the Haryana Act which provides for revision is slightly different. Initially in that provision, a party to the reference under Section 102 has been mentioned, whereas in Punjab Act under Section 55 the same has not been mentioned, but the word ‘reference’ used in the said section only refers to Section 55 of the Punjab Act. In Haryana Act, by an amendment made in Section 115 of the Haryana Act by the Haryana Co-operative Societies (Amendment) Act, 2006, the words “a party to a reference under Section 102” have been substituted with words “an aggrieved party” and after the words “of any proceedings”, the words “under this Act and the rules framed there-under” have been inserted. Actually the amendment made in the Haryana Act is explanatory. Now in Haryana any aggrieved party can challenge an order in revision passed by an authority under the Act and the Rules framed thereunder provided against that order no appeal lies under Section 114 of the Haryana Act. The Government either *suo motu* or on the application of an aggrieved party can call for and examine the record of any proceeding under the Act and the Rules framed thereunder for the purpose of satisfying itself as to the legality, propriety or any decision and order passed and to modify, annul or revise the said order, though after providing opportunity of hearing to the aggrieved person. Now in Haryana, it is not restricted that the revision could be initiated at the instance of a person who is party to the reference under Section 102 of the Haryana Act. After the amendment any aggrieved person against the order passed in any proceeding under the Act and the Rules framed thereunder can challenge the said order, provided no appeal lies against the said order under Section 114 of the Haryana Act.

Thus after the amendment made in Haryana in the year 2006, the restricted view taken by Hardial Singh's case (supra) is not applicable at all. Under Section 69 of the Punjab Act the Government or the Registrar may either *suo motu* or on the application of a party to a reference call for and examine the record of any proceedings in which no appeal under Section 68 lies to the Government or the Registrar who after hearing the other side, may modify, annul or revise the said decision or the order passed in those proceeding.

(50) In our view, the State Government can exercise its *suo motu* power of revision if any aggrieved party brings the matter to the notice of the State Government by way of revision. In *Everest Apartments' case* (supra) while taking into consideration Section 154 of the Maharashtra Cooperative Societies Act, 1960, which was *pari materia* to Section 69 of the Punjab Act, it was held as under:-

*“It is, of course, true that the words “on an application of a party” which occur in S. 150 of the Act and in similar enactments in other Acts, are also not to be found. But that does not mean that a party is prohibited from moving Government. As Government is not compelled to take action, unless it thinks fit, the party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of which, Government may be interested to intervene. In many statutes, as for example the two major procedural Codes, such language has not only not inhibited the making of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done, it is for the Court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceeding.*

*Government may act or may not act; the choice is of Government. There is no right to relief as in an appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matter is to err, and that is what Government did in this case.”*

(51) When in Gurnam Kaur’s case (supra) an argument was raised on the basis of decision rendered in Hardial Singh’s case (supra) that a revision which was not filed by the competent persons could not be entertained even by invoking *suo motu* revisional power for setting aside the order. The Division Bench doubted the correctness of the decision in Hardial Singh’s case (supra) and referred the matter to the Full Bench while observing as under:-

*“.....It is rare that the revisional authority would come to know of the orders passed by the lower authority of its own. The occasion to the suo motu power can, therefore, arise only when an aggrieved person brings the order to the notice of the authorities. Also, there is nothing in the statute which debars an aggrieved person from moving the revisional authority to invoke its suo motu powers. the moment it is accepted that an aggrieved person can move for invoking the suo motu powers of the revisional authority, it would not matter whether it is stated in the order or not that suo motu powers are invoked for passing the order because it is well established that if there is power with the authority, the order passed can always be ascribed to it even though there is no mention that the same is being passed in exercise of that power.”*

(52) The Full Bench of this Court in Gurnam Kaur’s case (supra) after due consideration to the respective arguments raised by the counsel for the parties has held that the decision rendered in Hardial Singh’s case (supra) does not lay down the correct position of law with respect to interpretation of Section 69 of the Punjab Act. It was held that the revisional power as contemplated in Section 69 of the Punjab Act is to send for the records of the case pending or decided by the Subordinate Authorities to

examine the same and to pass appropriate orders modifying, annulling or reversing the same. Such power can be exercised when the Revisional Authority comes to know about the legality or propriety of passing such orders. This knowledge can be acquired either at the instance of the Revisional Authority itself or at the instance of aggrieved or interested party. The opening words of Section 69 with respect to “suo motu” or “on the application of a party to a reference” are explanatory in nature. They are neither superfluous nor redundant. Even in the absence of specific phraseology, the material context of the provision referred to above still would clothe the Revisional Authority to exercise the power as would be seen from such like provisions in different statutes. It is immaterial whether the revisional power is exercised at the instance of interested party or *suo motu*. This exercise of powers is not dependent on the action of the party concerned. Even if the action was initiated by a party, who was not aggrieved, in other words, not a person competent, the exercise of powers in modifying, annulling or revising the order of the subordinate authority will not be without jurisdiction. From the perusal of the judgments in Everest Apartments Co-operative Housing Society’s case (supra) and that of the Privy Council in The Tribune Trust’s case (supra), it is quite clear that action to exercise the revisional jurisdiction could be initiated either by the party concerned or by the authority of its own. Even if the party concerned moves the revisional authority, it is left to the revisional authority to examine the records and then to pass the appropriate order. Similar course could be adopted even if the matter had come to the notice of the revisional authority otherwise. The aforesaid two cases were noticed subsequently in The Amritsar Central Co-operative Bank’s case (supra) by the learned Single Bench of this Court, but found himself bound by the ratio of the decision in Hardial Singh’s case (supra). In the light of the ratio laid down by the aforesaid two judgments the view expressed in Hardial Singh’s case (supra) does not lay down the correct position of law.

(53) We fully concur with the aforesaid reasoning given by the Full Bench in Gurnam Kaur’s case (supra). In our view, the Government or the Registrar, as the case may be, can exercise its revisional jurisdiction on the application made by an aggrieved person whether he is or not a party to a reference.

(54) In light of the above discussion, the legal position summed up by the Division Bench of this Court in LPA No.1230 of 2009 (Sukhwant Singh Vs. Deputy Registrar, Coop. Societies, Punjab, Chandigarh and others) decided on January 22, 2010, requires some clarification. In para 13 of the said judgment, the Division Bench has summed up the legal position as under:-

- “(i) Width of suo motu power under section 69 is limited to cases where revision is otherwise maintainable, as held by the Hon’ble Supreme Court in Shahabad Cooperative Sugar Mills (supra). Contrary view in decisions of this Court in Gurnam Kaur and Punjab Handloom(supra) cannot be followed;*
- (ii) In view of (i), revisional jurisdiction can be only against order passed in proceedings under the Act, particularly in a reference under section 55 of the Act;*
- (iii) In the present case, there are no proceedings under the Act and only disciplinary proceedings have been initiated against which no revision petition was competent.”*

(55) The observation under clause (i) that ‘the width of suo motu power under Section 69 is limited to cases where revision is otherwise maintainable’, is correct because in a case where an appeal under Section 68 lies against the impugned order, then no revision is maintainable under Section 69 of the Punjab Act and in that situation the revision cannot be entertained, but these observations should not be understood that no revision is maintainable at the instance of an aggrieved party who is not a party to the reference under Section 55 of the Punjab Act or under Section 102 of the Haryana Act. It has been further observed therein that contrary view taken in *Gurnam Kaur’s case* and *Punjab Handloom’s case* cannot be followed. In our view, those two judgments do not contain any contrary view as explained in the aforesaid discussion. Therefore, the view expressed by the Division Bench that the ‘contrary view in decisions of this Court in *Gurnam Kaur* and *Punjab Handloom(supra)* cannot be followed’, does not reflect the correct position of law.

(56) Regarding the observation made under clause (ii) that the revisional jurisdiction can be invoked only against an order passed in a proceeding under the Act, particularly in a reference under Section 55 of the Act, also requires some clarification. The words “particularly in a reference under Section 55 of the Act” may not be taken to restrict the earlier observation that the revisional jurisdiction can be invoked only against an order passed in a proceeding under the Act as it has already been made clear that the State Government or the Registrar, as the case may be, can exercise its revisional jurisdiction on the application made by any aggrieved party whether he is or not a party to the reference. Therefore, an order passed in a proceeding under the Act, though not an order passed in a reference under Section 55 of the Act, can be challenged by invoking the revisional jurisdiction. Even in Sukhwant Singh’s case (supra) the order under challenge was an order of the Society and not an order made in a reference under Section 55 of the Act. Therefore, the phrase “particularly in a reference under Section 55 of the Act” found in clause (ii) is superfluous. As far as the observation under clause (iii) is concerned, the legal position has been correctly summed up. It is pertinent to mention here that in this case only the issue, which has been summed up in clause (iii) was involved and the other issues, which have been summed up in clause (i) and (ii) were not the subject matter of the controversy in the said case.

(57) In view of the above discussion, we reach to the following conclusion:-

- (i) The State Government or the Registrar under Section 69 of the Punjab Act and the State Government under Section 115 of the Haryana Act can exercise its *suo motu* revisional jurisdiction on the application made by an aggrieved person, whether he is or not a party to the reference.
- (ii) The remedy of revision is barred only in case where appeal against the impugned order lies under Section 68 of the Punjab Act or under Section 114 of the Haryana Act.
- (iii) The remedy of revision is not barred in those cases where aggrieved person has a right of appeal under the Statutory Service Rules or Common Cadre Rules. An aggrieved party



can challenge the order of Registrar or Deputy Registrar passed as an Appellate Authority under the Statutory Rules or Common Cadre Rules by filing a revision under Section 69 of the Punjab Act or under Section 115 of the Haryana Act as no remedy of appeal has been provided under Section 68 of the Punjab Act or under Section 114 of the Haryana Act against such order. But, if the appellate order is passed by the official of the Society and not by the Registrar or Deputy Registrar of the Co-operative Society, no revision is maintainable against such an order. The revision is maintainable only against the order passed by the authority under the Act or a proceeding arising out of the Act and the Rules framed thereunder.

- (iv) The remedy of revision either *suo motu* or otherwise cannot be invoked against an order passed by the Society. The said power can be exercised against the decision or order passed by the authority under the Act or a proceeding arising out of the Act or the Rules framed there-under.
- (v) The *suo motu* power of revision cannot be exercised by the State Government or the Registrar, as the case may be, where a revision under Section 69 of the Punjab Act or under Section 115 of the Haryana Act itself is not maintainable either on the ground that against the impugned order an appeal has been provided under Section 68 of the Punjab Act or under Section 114 of the Haryana Act or on any other ground. In case the Government or the Registrar, as the case may be, exercise *suo motu* power of revision on the application of an aggrieved party or otherwise, it must be specifically so stated in the order itself.

(58) In light of the above legal position, now each of the writ petitions is to be dealt with separately.

- (i) In CWP No.4922 of 1989, some of the members belonging to village Bhagupura challenged the order dated 24.8.1988 passed by the Commissioner (Appeals), Jalandhar Division (exercising the powers of the State Government), whereby the order dated 30.10.1987 passed by the Assistant Registrar, Co-operative Societies, exercising the powers of the Registrar bifurcating the

Cheema Co-operative Agricultural Service Society Limited into two Societies, namely, Cheema Co-operative Agricultural Service Society Ltd. and Bhagupur Co-operative Agricultural Service Society Ltd., has been set aside on the ground that the Registrar passed the order of bifurcation of the parent Cheema Society without calling and holding the general body meeting of the members of the Society and considering the objections filed by some of the members. The petitioners challenged the said order on the ground that against the order dated 30.10.1987 passed by the Assistant Registrar no revision was maintainable under Section 69 of the Punjab Act and also on the ground that before passing the order of compulsory bifurcation the general body meeting of the parent society was duly called in which the matter of bifurcation of the society was considered and the objections filed by the members of the society were also duly considered by the Registrar.

(59) After hearing the learned counsel for the parties and going through the impugned order, we find that the revisional authority has rightly entertained the revision petition against the order dated 30.10.1987 passed by the Registrar, Co-operative Societies, whereby the Cheema Co-operative Agricultural Service Society Limited was compulsory bifurcated in exercise of the powers under Section 13(8) of the Act. It has already been held by us that an order of compulsory bifurcation passed by the Registrar under Section 13(8) of the Act, against which no appeal has been provided under Section 68 of the Punjab Act, is revisable on an application filed by the aggrieved party under Section 69 of the Punjab Act. Therefore, there is no force in the submission of the learned counsel for the petitioners that the order dated 24.8.1988 passed by the Government was without jurisdiction. Secondly, on the merits of the case, the revisional authority had called for the records of the case and after perusing the same, recorded a finding of fact that no meeting of the general body was called to consider the notice given by the Registrar for compulsory bifurcation of the Society. It was further recorded as a finding of fact that the objections which were forwarded to the Assistant Registrar by some of the members, were not considered and decided, though it was wrongly recorded in the impugned order that such objections were duly considered. It has not been disputed that under

Section 13(8) of the Act when the Registrar proposed to bifurcate a Co-operative Society into two or more societies, he is required to send a copy of the proposed order to the society and its creditors concerned, and then after receiving the objections from the society or any member or the creditors of such society, within the specified time, pass the order. He can modify the proposed order after considering the objections invited under sub-section (9) of Section 13 of the Punjab Act.

(60) In the present case, the general body meeting of the Society was not called but the Assistant Registrar, exercising the powers of the Registrar, asked the Secretary of the parent Society to convene the general body meeting and to file the objections, if any, against the proposed bifurcation within thirty days. But the general body meeting was not convened. No material has been placed to establish that such finding of fact recorded by the revisional authority is perverse or contrary to the record. In absence of any such material, this Court in writ jurisdiction cannot interfere in the finding of fact recorded by the Revisional Authority. Thus, we are not inclined to interfere in this petition either on merits of the case or on the issue of maintainability of the revision petition and the same is hereby dismissed.

(ii) CWP No.14997 of 1989 has been filed against the order dated 21.8.1989 passed by the Government, whereby the revision petition filed by the petitioner under Section 115 of the Haryana Act against the order dated 23.1.1989 passed by the Registrar, Co-operative Societies, was dismissed being not maintainable. Against his dismissal order, the petitioner filed an appeal before the Registrar, Co-operative Societies under the Common Cadre Rules. As already held, if an order has been passed by the Registrar, exercising the powers of the Appellate Authority under the Statutory Rules or Common Cadre Rules, a revision against such an order is maintainable. In the present case, the revision filed by the petitioner against the said order was dismissed by the Government being not maintainable. Therefore, the writ petition is allowed and the impugned order dated 21.8.1989 is set aside and the Government is directed to decide the revision petition filed by the petitioner on merits after hearing both the parties, in accordance with law.

(iii) CWP No. 3985 of 2011 has been filed by Avtar Singh challenging the order dated 31.03.2010 passed by the Registrar, whereby the revision petition filed by him under Section 69 of the Punjab Act against the inaction of the Punjab State Co-operative Supply and Marketing Federation Limited, to consider and decide his representation for assignment of his seniority in accordance with the MARKFED Common Cadre Rules, and consequently for promotion to the Technical Officer, has been dismissed being not maintainable. In the present case, admittedly, no order was passed by an authority in a proceeding arising under the Act. The petitioner is challenging the inaction of the society by not deciding his representation. As already held, no revision against the action or inaction of the society is maintainable under Section 69 of the Punjab Act. Hence, this writ petition is liable to be dismissed and the same is hereby dismissed as the Registrar has rightly dismissed the revision petition filed by the petitioner being not maintainable.

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*J. Thakur*

*Before M.M. Kumar, Rajan Gupta & Rajiv Narain Raina, JJJ.*

**KRISHNA KUMARI,—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

**C.W.P. No.4303 of 2009**

20th April, 2012

*Constitution of India, 1950 - Art. 14, 16 & 226 -  
Compassionate appointment- Applicability of rules/policy for  
appointment - The Policy that is in force at the time of death of  
employee is an important factor - Rules applicable on date of death/  
incapacitation of employee need to be followed - Application to be  
decided without inordinate delay.*