

CASE NO.:
Appeal (civil) 31 of 2005

PETITIONER:
Ishwar Singh

RESPONDENT:
State of Rajasthan and Ors.

DATE OF JUDGMENT: 05/01/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (Civil) No. 22556 of 2003)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Rajasthan High Court at Jaipur, affirming the view of the learned Single Judge that the pre-mature retirement of appellant as directed by the respondents was in order.

A bird's eye view of the factual position would suffice.

Sadul Shahar Kray Vikray Sahakari Samiti (hereinafter referred to as the 'employer') is a society registered under the Rajasthan Cooperative Societies Act, 1965 (in short the 'Act'). The appellant was serving as its manager. On consideration of service records of the appellant the employer concluded that there was continuous fall in his work performance and as such it was in the public interest to pre-maturely retire him. He had attained the age of 56 years and served for more than 27 years. The Chief Executive officer issued an office order dated 1.4.1988 compulsorily retiring him from service under the provisions of Rule 244(2)(i) of the Rajasthan Service Rules, 1951 (in short 'Service Rules'). The appellant challenged the said order by way of a revision petition before the Additional Registrar-II, Cooperative Societies, Rajasthan Jaipur (in short 'Additional Registrar'). By order dated 9.5.1996, the revision was allowed on the ground that Rule 244(2) of the Service Rules was not applicable to the employer-society and on the other hand his service conditions were governed by Rule 41 of the Rajasthan Cooperative Societies Rules, 1966 (in short the 'Rules'). Under the said Rule approval of the Registrar is a condition precedent for pre-mature retirement. Employees-society challenged the decision of the Additional Registrar by way of revision before the State Government under Section 128 of the Act. The Secretary, Cooperative Department, Government of Rajasthan, Jaipur (in short 'Secretary') found that the revision before the Additional Registrar was not competent as the order was passed by the Administrator who was not an officer subordinate to the Registrar. He was, therefore, of the view that the Additional Registrar had no jurisdiction to hear the revision in terms of Section 128 of the Act. Accordingly, he set aside the order of the Additional Registrar. The order was challenged by the

appellant under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') before the High Court.

Before the learned Single Judge, who heard the matter it was contended that the power of revision under Section 128 of the Act stood exhausted by order of the Additional Registrar and as such the Secretary could not have exercised the revisional power in respect of the same order. Learned Single Judge rejected the contention holding that Additional Registrar had exercised the delegated power of the Registrar and not of the State Government and, therefore, the revision before the State Government was maintainable and the Secretary had jurisdiction to deal with the matter. In any event, Additional Registrar could not have entertained the revision. The judgment of learned Single Judge was questioned by Letters Patent Appeal. Stand of the appellant before the Division Bench was that once the delegate exercised the power of revision, it stands exhausted and such power cannot be exercised again by original authority. Reference was made to certain decisions of this Court in this context. The Division Bench of the High Court was of the view that the factual position was entirely different. Under Section 128 the revisional power can be exercised by two authorities i.e. Government and the Registrar. In the cases to which reference was made by the appellant there was a single authority who had delegated the power. It was further noted that under the Act revisional power is vested with two authorities. The Registrar who was the delegator of power to the Additional Registrar could not have entertained the revision. But there was no embargo on the State Government to entertain the revision application. Further the Secretary had clearly observed that the Additional Registrar had no power to entertain the revision as the Administrator was not an officer subordinate to him. Accordingly, LPA was dismissed.

In support of the appeal Mr. Mahabir Singh, learned counsel submitted that the High Court erred in holding that Section 128 of the Act related to two authorities i.e. the State Government and the Registrar. In fact the two authorities are interchangeable. If one authority has exercised the revisional power other authority logically could not have exercised such power. In any event, second revision was not maintainable. Strong reliance was placed on *Roop Chand v. State of Punjab and Anr.* (AIR 1963 SC 1503) for supporting the plea. It was further contended that the service rules had no application as the employer had never decided to adopt the service rules. Before the Additional Registrar a plea was taken that Administrator had no power to direct compulsory retirement as he was not the appointing authority. This plea was given up stating that the Administrator having taken over the management had authority to pass the order of pre-mature retirement subject of course to fulfilment of requirements of Rule 41 of the Rules, and not under Rule 244 of the Service Rules.

Per contra, learned counsel for the respondents submitted that the factual scenario as presented by the appellant is not correct. In fact, the employer society had decided to adopt the service rules long before the order directing pre-mature retirement was passed. Further the State Government was competent to entertain the revision application as the Registrar was one of the two authorities indicated in Section 128 to exercise revisional power. The impugned orders of the learned Single Judge and Division Bench of the High Court did not suffer from any infirmity to warrant any interference.

It is an accepted position in law that to 'delegate' to another is not to denude yourself. As was observed by Wills, J. in *Huth v. Clarke* (25 Q.B.D. 391, "In my opinion the word, in its general sense and as generally used, does not imply, or point to, a giving up of authority, but rather the conferring of authority upon someone else". As observed by Lord Coleridge, C.J. in 25 Q.B.D. 304, the word 'delegation' implies that powers are committed to another person or

body which are as a rule, always subject to resumption by the power delegating. The person delegating does not denude himself. (Per Wharton's Law Lexicon, 1976 Reprint Ed. at page 316). Delegation implies also the power to withdraw delegation. As indicated in Wharton's Law Lexicon, delegation is a sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a general power to act for the good of those who depute him. The word 'delegate' means little more than an agent. An agent exercises no power of his own but only the powers of his principal. The observation in Huth's case (supra) was referred to in Roop Chand's case (supra). In general, a delegation of power does not imply parting with authority. The delegating body will retain not only power to revoke the grant, but also power to act concurrently on matters within the area of delegated authority except in so far as it may already have become bound by an act of its delegate. (See *Battelley v. Finsbury Borough Council* (1958 LGR 165)).

In *Corpus Juris Secundum*, Volume 26, 'delegate' has been described as follows:

"As a noun, a person sent and empowered to act for another, one deputed to represent another in a more popular but less accurate sense, a regularly selected member of a regular party convention.

As a verb, in its general sense and as generally used, the term does not imply, or point to, a giving up of authority, but rather the conferring authority upon someone else.

At common law, it is the transfer of authority by one person to another, the act of making or commissioning a delegate.

Expression 'delegation of authority of power' is a term which like the word 'delegate' does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

In *Collins English Dictionary* the word 'delegate' has been stated to be a person who is chosen to vote or make decisions on behalf of a group of other people. If you delegate duties, responsibilities or power to someone, you give them those duties, those responsibilities, or that power so that they can act on your behalf. If you are delegated to do something you are given the duty of acting on someone else's behalf by making decisions, voting, or doing some particular work.

In *Black's Law Dictionary*, 6th Edition, the word 'delegate' has been stated to mean a person who is appointed, authorized, delegated or commissioned to act in the stead of another. Transfer of authority from one to another. A person to whom affairs are committed by another. 'Delegation' according to said dictionary means, instructing another with a general power to act for the good of those who depute him; transfer of authority by one person to another.

According to *Venkataramaiya's Law Lexicon*, 'delegation' as the word generally used does not imply a parting with powers by the person who grants the delegation, but points rather to a conferring of an authority to do things which otherwise the person would have to do himself.

As was observed by this Court in *State of Orissa and Ors. v. Commissioner of Land Records & Settlement, Cuttack and Ors.* (1998 (7)

SCC 162) and in OCL India Ltd. v. State of Orissa and Ors. (2003 (2) SCC 101), if an authority delegates the power to act it shall be deemed to be an act of the delegator. In such a situation there is no scope for revision of the order of the delegate by the delegator. In Commissioner of Land Records & Settlement's case (supra) it was noted that the delegator (also described as the principal) cannot review an order of the delegate. It was, inter alia, observed by this Court as follows:

"It may be argued that if the order of the delegate is tantamount to the order of the principal, then the principal can review such an order of the delegate. This appears to be plausible at first blush but is, in our opinion, not correct because of the intervention of another fundamental principle relating to "review" of orders. The important principle that has to be kept in mind here is that a review application is to be made only to the same Judge or if he is not physically available, to his successor.

The decision of the Privy Council in Maharajah Moheshur Sing v. Bengal Govt. 3 WR 45 (PC)) to which reference was made by learned Senior Counsel, Shri T. L. Vishwanath Iyer, is very apt in this connection.

Adverting to the basic concept of review, it was observed by the Privy Council: (p.47)

"It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear from all these Regulations that the primary intention of granting a review was a reconsideration of the same subject by the same Judge, as contradistinguished to an appeal which is a hearing before another Tribunal."

Their Lordships added:

"We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only ex necessitate. We do say that in all practicable cases the same Judge ought to review;"

It is, therefore, clear that the same Judge who disposes of a matter, if available, must "review" the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the face of his own order. Again, he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle is equally applicable in respect of orders of review passed by quasi-judicial authorities.

However, these principles about which there is no dispute have no application to the facts of the present case. It was in reality not revision by a delegator. The State Government had nowhere delegated revisional power to the Additional Registrar. Rule 244 of the Service rules which is noted above, is applicable to the appellant clearly provides that an employee may be compulsorily retired after completion of 25 years of service.

Bare reading of the aforesaid provision makes the position clear that the appointing authority has the absolute right to retire in public interest any employee by giving him a previous notice in

writing. The compulsory retirement can be effected on the date on which he completes 25 years of service or he attains 50 years of age, whichever is earlier or, on any date thereafter. As noted at the threshold, the age and service period are applicable in this case.

It is to be noted that the learned Single Judge categorically held that the Board of Director on 4.5.1977 adopted resolution making service rules applicable in respect of employees of the society and a notification dated 3.8.1980 was issued by the Registrar Cooperative Societies, Jaipur by which the Civil Services (Classification, Control and Appeal) Rules, 1958 (in short the 'CCA Rules') were made applicable to the employee also. Therefore service Rules were clearly applicable to the appellant.

Coming to the basic issue as to whether the State Government could have exercised revisional power, a few provisions need to be noted:-

Section 128 of the Act reads as follows:

"128. Power of the Government and Registrar to call for proceeding of subordinate officers and to pass orders thereon \026 (1) The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter, of any officer subordinate to them, except those referred to in section 125, for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government or the Registrar, that any decision or order or proceeding so called for should be modified, annulled or reversed, the State 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 thinks just:

Provided that every application to the Registrar or the Government for the exercise of the powers under this section all be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.

Provided further that the Registrar shall not exercise the powers under this section in case in which an appeal lies to him under this Act.

Explanation:- For the purpose of this sub-section the Assistant Registrar, Deputy Registrar and Joint Registrar exercising all or any of the powers of the Registrar under this Act shall be deemed to be subordinate to the Registrar.

(2) pending the hearing under sub-section (1), the government or the Registrar may pass such interlocutory order as it or he thinks fit to prevent the ends of justice from being defeated."

In addition, Sections 123, 124 and 125 are also relevant. Section 124 deals with "Appeals to other authorities". Chapter XIII deals with "Appeal, Revision and Review". Section 123 deals with "Constitution of and appeals to the Tribunal". Sub-section (6) of Section 123 provides

for appeal to the Tribunal against the decision of the Registrar under certain provisions. Section 124 reads as follows:

"124. Appeals to the other authorities: (1) An appeal shall lie under this section against, \026

- (a) an order of the Registrar made under sub-section (2) of Section 8 refusing to register a Co-operative Society;
- (b) an order of the Registrar made under sub-section (4) of Section 13 refusing to register an amendment of the bye-laws of a co-operative society;
- (c) an order of the Registrar made under sub-section (2) of Section 14;
- (d) an order of the Registrar made under sub-section (1) of Section 17;
- (e) a decision of the co-operative society other than that of a Farming and Producers' Society, as classified under the rules, refusing to admit any person as a member of the society or expelling any member of the society;
- (f) an order of the Registrar rescinding in whole or in part any resolution under Section 32;
- (g) a decision under sub-section (5) of Section 34;
- (h) an order declaring an officer or member of a committee as disqualified from being elected or being an officer or a member of the committee or of imposing a penalty on a servant of the society under sub-section (5) of Section 30;
- (i) an order made by the Registrar made under Section 73 apportioning the costs of an enquiry held under Section 70 or an inspection made under Section 71;
- (j) an order of surcharge made by the Registrar under Section 74;
- (k) an order made by the Registrar under Section 78 directing the winding up of a co-operative society;
- (l) any order made by liquidator of a co-operative society in exercise of the powers conferred on him by Section 80, with respect to matters specified in the rules; or
- (m) an order made by the Registrar under Section 118.

(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of the decision or order:-

- (a) if the decision or order was made by the Registrar, to the Government; or
- (b) if the decision or order was made by any other person, or a co-operative society, to the Registrar.

Explanation: - For the purpose of this sub-section, Registrar shall not include any other person except Additional Registrar exercising all or any of the powers of the Registrar.

(3) No appeal shall lie under this Section from any decision or order made in appeal."

Sub-section (2) of Section 124 provides that if the decision or

order is made by the Registrar, appeal lies to the Government and if the decision or order is made by any other person, or a co-operative society, the appeal lies to the Registrar. Therefore, under Chapter XIII a clear distinction is made between the State Government and the Registrar. The test is whether the two authorities with concurrent revisional jurisdiction are equal in rank. It is, therefore, not correct as contended by learned counsel for the appellant that the two authorities i.e. the State Government and the Registrar are interchangeable. The power of the Government and the Registrar in terms of Section 128 excludes matters which are covered by Section 125 i.e. revision by the Tribunal.

In view of the aforesaid position, we find no merit in this appeal which is accordingly dismissed without any order as to costs.

JUDIS