HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

Writ Petition No. 9716/2016

District Cooperative Central Bank Employees and Officers Federation, Chhindwara …..... ..PETITIONER

Versus

State of Madhya Pradesh & others …..... RESPONDENTS

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Appearance:

Shri Sanjay Kumar Agrawal and Shri Siddharth Kumar Sharma, Advocate for the petitioner.

Shri Amit Seth, Government Advocate for the respondents/State.

Shri P.K. Kaurav, Senior Advocate with Shri Kapil Duggal, Advocate for the respondent No.3/Apex Bank.

Whether Approved for Reporting : **Yes**

Law Laid Down:

* The amendment in M.P. District Cooperative Central Bank Employees (Terms of Employment and Working Conditions) Service Rules ("*the Rules*") ordered by the Registrar on 6.4.2016 in exercise of powers under Section 55 of the M.P. Cooperative Societies Act, 1960 is a case of Legislation by incorporation.

* In Amended Rule 6.2.4 of the Rules what is incorporated is rule of reservation i.e. Section 4 of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 and not the other provisions of the 1994 Act. Since the reservation is limited to direct recruitment and the rule of reservation alone has been made applicable, it is legislation by incorporation.

* Part-III of the Constitution of India provides for reservation for socially and economically backward class category as well as women. If such reservation is permitted by a State to which Part-III of the Constitution of India is applicable, such Rule will not become discriminatory if it is extended to non-State Authorities as well.

* All forms of delegated legislation and conditional legislation amount to law. All orders and notifications made and issued under statutory powers and which are legislative in nature amount to law. A statutory order or notification will be legislative in nature if in substance it adds or supplements or modifies or amends a statute.

Significant Paragraph Nos. : 3, 6, 7, 9, 14, 16 to 27

Reserved On : 08.02.2018

O R D E R

(23-02-2018)

Per : Hemant Gupta, Chief Justice:

This order shall also decide bunch of writ petitions raising similar questions of law and fact. The detailed reasons are recorded in the present petition but this order would decide all other writ petitions as well.

2. The challenge in the present petition is to an order dated 6th April, 2016 passed by the Registrar, Cooperative Societies, Madhya Pradesh amending the Madhya Pradesh District Cooperative Central Bank Employees (Terms of Employment and Working Conditions) Service Rules (for short "**the Rules**"). Such Rules were initially framed on 03.01.2014 in exercise of the powers conferred under Section 55(1) of Madhya Pradesh Cooperative Societies Adhiniyam, 1960 (for short "**the Act**").

3. The specific challenge in the writ petition is to Rule 6.2.4 of the Rules pertaining to reservation for filling of 1634 posts of Clerk/Computer Operator in 37 Districts of Madhya Pradesh advertised by M.P. Rajya Sahkari Bank Maryadit, T.T. Nagar, Bhopal. Rule 6.2.4 of the Rules, which is in Hindi, on being translated into English read as under:-

Rule	Provision before Amendment	Amended Provision	Reason for Amendment/ Remark
6.2.4	The vacant posts meant for direct recruitment can be filled on acquiring the eligibility criteria as per Rules 6.3 and 6.2.1 of the Service Rules and in case of applicability of Reservation Rules to the Bank, the Reservation Rules shall be followed.	The vacant posts meant for direct recruitment can be filled on acquiring the eligibility criteria as per Rules 6.3 and 6.2.1 of the Service Rules and the Reservation Rules to the Bank shall be as per M.P. Reservation Act, 1994. The reservation for Female/ Handicapped/Ex-servicemen shall be according to the rules of Government of M.P.	Partly amended

4. At this stage, the provisions of Section 55 of the Act need to be extracted to appreciate the arguments raised by the counsel for the parties. The relevant provisions are as under:-

> "**55**. **Registrar's power to determine conditions of employment in societies.** - **(1)** The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.
>
> Provided that in the case of co-operative credit structure, the Registrar may frame rules governing the terms and conditions of employment on the basis of the guidelines specified by the National Bank.
>
> **(2)** Where a dispute, including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees:
>
> Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned:
>
> Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded.
>
> Provided also that the Registrar or the officer referred to above may admit dispute after the expiry of thirty days, if the applicant satisfy

> the Registrar or officer referred to above that he had sufficient cause for not referring the dispute within the stipulated time."

5. The challenge of the petitioners on such clause is based upon the Supreme Court judgment reported as **2007 (12) SCC 529 (Madhya Pradesh Rajya Sahakari Bank Maryadit vs. State of M.P. and others)** wherein the amendment carried out by the Registrar of Cooperative Societies on 6th March, 1997 in Rule 5 of the Madhya Pradesh Rajya Sahakari Bank Employees' (Terms of Employment and Working Conditions) Rules, 1976 (for short "**Rules of 1976**") was declared illegal.

6. A Division Bench of this Court in **Writ Petition No. 1415/1997 (Anand Beohar and others vs. State of M.P. and others**) vide order dated 11th March, 2003 has set aside the reservation in promotion contained in Chapter-5 of the Rules of 1976. The challenge in the writ petition was that the writ petitioners had a legitimate expectation that they would be selected to the higher post by the Departmental Promotion Committee. Rule 5 in Chapter-4 of the Rules of 1976 provides that the Managing Committee of the Bank shall decide the percentage of employees to be necessarily recruited from the Scheduled Tribes, Scheduled Castes and Handicapped persons provided that a minimum percentage of the posts, as may be advised by the Registrar, Cooperative Societies from time to time. Chapter-5 of the Rules of 1976 deals with the promotion. The State contended that power of reservation in promotion is not being exercised with reference to Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (for short "**the 1994 Act**"). Some of the relevant provisions of the said Act read as under:-

"**2**. **Definitions**. - In this Act, unless the context otherwise, requires.-

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(b) "Establishment" means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a company, corporation or a co-operative society in which not less than fifty-one percent of the paid up share capital is held by the State Government or the institutions receiving grant-in-aid or any cash grant from the State Government and includes a work charge or contingency paid establishments and such establishments in which casual appointments are made but does not include the establishments covered under Article 30 of the Constitution.

(c) "Reservation" means reservation of posts in the services for the members of Scheduled Castes, the Scheduled Tribes and other Backward Classes;

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4. Fixation of percentage for reservation of posts and standard of evaluation. - **(1)** Unless otherwise provided by or under this Act, the posts reserved for the members of Scheduled Castes or Scheduled Tribes or other Backward Classes shall not be filled by the members who do not belong to such castes or tribes or classes, as the case may be.

(2) Subject to other provisions of this Act there shall be reserved for the persons belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes, at the stage of direct recruitment in public services and posts.

(i) at the State level, the following percentage of vacancies arising in a recruitment year, in Classes I, II, III and IV posts-

(a)	in class I and class II posts-	
	Scheduled Castes	16 percent
	Scheduled Tribes	20 percent
	Other Backward Classes	14 percent
(b)	Class III and Class IV posts-	
	Scheduled Castes	16 percent
	Scheduled Tribes	20 percent
	Other Backward classes	14 percent

ii) in an establishment at the Divisional or District level the percentage of vacancies arising in a Recruitment Year in such categories of Class

III and Class IV posts, as may be notified by the State Government in this behalf.

(iii) the appointments to vacancies as aforesaid in (i) and (ii), shall be made in accordance with a roster as may be prescribed :

Provided that the aforesaid reservation shall not apply to such categories of persons belonging to the other Backward Classes as are notified by the State Government as belonging to the creamy layer from time to time."

7. In the light of the 1994 Act and the Rules as then existed, the Division Bench of this Court in **Anand Beohar**'s case **(supra)** examined the following question and held as under:-

"**9**. At the very outset, we must make it clear that we are only dealing with the vires of the Rule qua the society in question and not adverting with regard to various aspects which are relatable to the factum of promotion as has been put forth at length in the pleadings by the parties.

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12. On a bare perusal of the aforesaid provision, it is quite vivid that the Registrar has been conferred the authority to frame rules governing the terms and conditions of employment in a society or class of societies. Thus, the power that has been bestowed on the Registrar is relatable to terms and conditions of employment in a society. It is urged by Mr. Hemant Shrivastava that the 1994 Act pertains to a different sphere whereas 1960 Act is relatable to a different realm and in the absence of non obstante clause in 1994 Act, the 1960 Act must be allowed full play and the Registrar must be allowed to make rules for reservation. …...

13. We are conscious there has been some amendments during the pendency of the writ petition but emphasis has been laid by the State counsel on Article 16(4A). Submission of Mr. Sharma is that sub-article 1 of Article 16 postulates that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. There has been carving of an exception under Article 16(4) which enables the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented

in the services under the State. Needless to emphasize that both these sub-articles deal with equality of opportunity in matters of public employment and they are to be read conjointly. This has been so stated in the case of Ajit Singh and others (II) Vs. State of Punjab and others, (1999) 7 SCC 209. The question that falls for consideration in the present case whether the respondent No.4 Society is a State as understood in the context of Article 12 of the Constitution or any other statutory Corporation or a local body in respect of which a reservation can be made. It is not disputed before us that the respondent No.4 is an apex Cooperative Society and the State Government does not have fifty one percent of paid up share capital in it. The concept of a Cooperative Society has a different connotation. A Full Bench of this Court in the case Dinesh Kumar Sharma Vs. M.P. Dugdha Mahasangh Sahkari Maryadit and another, 1993 MPLJ 786 has unequivocally expressed the view that a Cooperative Society registered under Section 9 of M.P. Cooperative Societies Act is not an instrumentality of State or an agency under Article 12 of the Constitution of India. The Full Bench has also held it is immaterial whether a society is brought by a statute or is under a statute. Thus, in view of the aforesaid, respondent No.4 is not an instrumentality of State nor it by the concept of 'establishment' as defined under the 1994 Act. That apart the present society does not come under the definition 'establishment' under 1994 Act. When a query was made whether the service conditions would include reservation, Mr. Hemant Shrivastava could not bring any citation to our notice that terms and conditions of the employment would engulf or encompass the conception of reservation. This Court in a decision rendered in the case of Sevaram Vs. Board of Revenue, 1986 MPLJ 645 has held that when the statute authorises the authority to frame rules, it will have the statutory force but in the present case the issue is not whether the rules have statutory force or not. We are really concerned with regard to the competence of the authority to make such a rule. To understand the aforesaid facet, it is proper to have a look on the amendment which has come into force. The amendment has been brought on record as Annexure P/6. The same reads as under:-

"AMENDMENT

(b) -2 The Staff Sub-Committee shall decide the percentage of employee to be necessarily promoted from Scheduled Tribes and Scheduled Castes provided that a minimum percentage of the posts as

> may be ordered by the State Government from time to time shall be reserved for the candidate of Scheduled Tribes and Scheduled Castes."
>
> **14**. On a perusal of the aforesaid amendment, it is graphically clear that a mandate has been given to the Staff Sub-Committee to decide the percentage of employee to be necessarily promoted from Scheduled Tribes and Scheduled Castes, provided that a minimum percentage of the posts as may be ordered by the State Government from time to time shall be reserved for the candidate of Scheduled Tribes and Scheduled Castes. It is worth bearing in mind that a cooperative society is not a statutory body despite the fact that it is created under a statute."

8. It is the said order passed in **Anand Beohar**'s case **(supra**), which was affirmed by the Supreme Court in its judgment in **Madhya Pradesh Rajya Sahkari Bank Maryadit (supra).**

9. We find that the judgment in **Madhya Pradesh Rajya Sahkari Bank Maryadit (supra)** was a case arising out of Rule of reservation for promotion. This Court found that such reservation was sought to be supported in view of Article 16(4-A) of the Constitution of India, which enables the State to provide for reservation in the matter of promotion. It was in these circumstances, it was held that the Cooperative Societies in which the State does not have more than 51% share, is not an establishment to which the 1994 Act applies. But, in the present case the impugned amendment does not provide for reservation in promotion but at the stage of recruitment. The Rule 6.2.4 so amended provides for reservation at the stage of recruitment as per the provisions of 1994 Act. Rule 6.2.1 of the Rules contemplates that if the establishment expenses are 2% of the working capital or 60% of the total income, whichever is less, the Rule of reservation would be applicable as reproduced above. Rule 6.3 contemplates

appointment through an outside agency i.e. Institute of Banking Personnel Selection (IBPS), Mumbai.

10. We heard arguments on these writ petitions on 16.1.2018 and reserved the orders. But on 27.01.2018, while finalizing the judgment, *prima facie,* the Court found that by virtue of the amendment of Rule 6.2.4, the reservation as is provided in 1994 Act has been incorporated whereas the provision for reservation of women, disabled candidates and ex-servicemen *prima facie* appears to be legislation by reference. Since such question was not argued at the time of arguments on 16.01.2018, the matter was posted for further hearing. We have heard Learned Counsel for the parties on the said question.

11. Shri Sanjay K. Agrawal, learned counsel for the petitioner submitted that the reservation rules as per 1994 Act are not legislation by incorporation but are legislation by reference as the complete Act has been incorporated in amended Rule 6.2.4. It is only when specific provisions of an Act are made applicable; it would be called as legislation by incorporation. Reference has been made to Supreme Court judgment reported as **(2011) 3 SCC 1 (Girnar Traders (3) vs. State of Maharashtra and others**). The particular reliance was placed upon the following paragraph of the said judgment, which read as under:-

> **"87**. However, since this aspect was argued by the learned counsel appearing for the parties at great length, we will proceed to discuss the merit or otherwise of this contention without prejudice to the above findings and as an alternative plea. These principles have been applied by the courts for a considerable period now. *When there is general reference in the Act in question to some earlier Act but there is no*

specific mention of the provisions of the former Act, then it is clearly considered as legislation by reference. In the case of legislation by reference, the amending laws of the former Act would normally become applicable to the later Act; but, when the provisions of an Act are specifically referred and incorporated in the later statute, then those provisions alone are applicable and the amending provisions of the former Act would not become part of the later Act. This principle is generally called legislation by incorporation. General reference, ordinarily, will imply exclusion of specific reference and this is precisely the fine line of distinction between these two doctrines. Both are referential legislations, one merely by way of reference and the other by incorporation. It, normally, will depend on the language used in the later law and other relevant considerations. While the principle of legislation by incorporation has well-defined exceptions, the law enunciated as of now provides for no exceptions to the principle of legislation by reference. Furthermore, despite strict application of doctrine of incorporation, it may still not operate in certain legislations and such legislation may fall within one of the stated exceptions.

88. In this regard, the judgment of this Court in *State of M.P. v. M.V. Narasimhan (1975) 2 SCC 377* can be usefully noticed where the Court after analysing various judgments, summed up the exceptions to this rule as follows: (SCC p. 385, para 15)

"(*a*) where the subsequent Act and the previous Act are supplemental to each other;

(*b*) where the two Acts are in pari materia;

(*c*) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and

(*d*) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

89. With the development of law, the legislature has adopted the common practice of referring to the provisions of the existing statute while enacting new laws. Reference to an earlier law in the later law could be a simple reference of provisions of earlier statute or a specific reference where the earlier law is made an integral part of the new law i.e. by incorporation. In the case of legislation by reference, it is

fictionally made a part of the later law. We have already noticed that all amendments to the former law, though made subsequent to the enactment of the later law, would ipso facto apply and one finds mention of this particular aspect in Section 8 of the General Clauses Act, 1897. In contrast to such simple reference, legal incidents of legislation by incorporation is that it becomes part of the existing law which implies bodily lifting provisions of one enactment and making them part of another and in such cases subsequent amendments in the incorporated Act could not be treated as part of the incorporating Act.

90. Ultimately, it is the expression and/or the language used in the new law with reference to the existing law that would determine as to under what class of referential legislation it falls. In some of the statutes, expressions like "shall for that purpose be deemed to form part of this Act in the same manner as if they were enacted in the body thereof" (*In Section 20 of 53 Vict. Ch 70, Housing of the Working Classes Act, 180)* or "the provisions of section of the said Act (set out in the Schedule) shall apply as if they were herein re-enacted" *(Section 1(3) of 54 and 55 Vict. Ch 19* are typical examples of legislation by incorporation. Another glaring example of incorporation one finds in the provision of the Bombay Municipal Provincial Corporations Act, 1949 where Section 284-N uses the expression "the LA Act … shall for that purpose be deemed to form part of this chapter in the same manner as if enacted in the body hereof".

91. Another feature of legislation by incorporation is that the language is explicit and positive. This demonstrates the desire of the legislature for legislation by incorporation. Self-contained enactment should be clearly distinguished from supplemental law. When the later law depends on the former law for procedural/substantive provisions or is to draw its strength from the provisions of the former Act, the later Act is termed as supplemental to the former law. The statement of object and reasons of both the Acts i.e. the MRTP Act and the Land Acquisition Act as well as the scheme of these Acts, we have already discussed at length. They are Acts which operate in different fields. One is a Central Act while the other is a State Act. They derive their source from different entries in the constitutional Lists."

12. The argument of the learned counsel for the petitioner is that even if 1994 Act is deemed to be incorporated by virtue of an amendment in the

Rules by the Registrar under Section 55 of the Act, still such Act would be applicable only to a cooperative society, which is State within the meaning of establishment under the 1994 Act. It is also argued that the amendment incorporated by the Registrar under Section 55 of the Act is discriminatory and arbitrary and therefore, if an action of a functionary under the statute is arbitrary and discriminatory, this Court will not permit the same. It is argued that the reservation for scheduled castes and scheduled tribes, women and ex-servicemen etc. negates the principle of equality; therefore, such reservation cannot be sustained.

13. On the other hand, learned counsel for the respondents submitted that the entire 1994 Act has not been either incorporated or referred to when Rule 6.2.4 was amended. The amended Rule only makes the provision of reservation contained in 1994 Act, as applicable for recruitment in the District Cooperative Central Banks that too only to the appointments to be made by direct recruitment. Therefore, since the reservation is limited to direct recruitment and the rule of reservation alone has been made applicable, it is legislation by incorporation. It is also argued that every provision of 1994 Act i.e. including the definition of “establishment” has not been incorporated as such provision has not been incorporated or referred to by the Registrar while amending Rule 6.2.4. It is also contended that Article 14 of the Constitution of India contemplates equality before law but such equality before law is extended to the State or its agency or instrumentality. The amendment in the Rules is not in respect of the service conditions in a State or an agency or instrumentality of the State. Part-III of the Constitution of India will not be applicable in respect of appointments in a cooperative

society, which is not a State. Still further, the amendment in the Rules made in exercise of powers conferred under Section 55 of the Act are reasonable so as to give an opportunity to the deprived sections of the society to seek appointment in the co-operative societies. Thus, such reservation will be a step in aid to improve the quality of life to the deprived sections of the society. Such reservation is permissible reservation in terms of the provisions of Articles 15 and 16 of the Constitution though Part-III of the Constitution is not strictly applicable to the Cooperative Banks, which are not State within the meaning of Article 12 of the Constitution of India.

14. At an earlier stage of the hearing, the argument of the State was that the Cooperative Banks sustain only on account of grant and on account of subvention of interest granted by the State to such co-operative societies. Therefore, such cooperative societies are State within the meaning of Article 12 of the Constitution and would be an “establishment” within the meaning of Section 2(b) of the 1994 Act. However, subsequently, the line of argument has changed to say that amendment in Rule 6.2.4 is legislation by incorporation of the rule of reservation as provided by 1994 Act for the purpose of direct recruitment. Therefore, at this stage, we need to examine as to what is the nature of amendment and whether such amendment can be said to be arbitrary or discriminatory. The other argument need to be examined is as to whether the District Co-Operative Societies, which are not State within meaning of Article 12 of the Constitution but are bound by the Rules framed by the Registrar in terms of Section 55 of the Act, still reservation can be provided for in the Rules.

15. The legislation by incorporation or by reference is a device to which the Legislation often takes recourse to for the convenience. In this context, it would be relevant to refer to the judgment of the Privy Council reported as **AIR 1931 PC 259 (Secretary of State for India in Council vs. Hindustan Cooperative Insurance Society, Limited**) wherein it is held as under:-

> ".....It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition. So Lord Westbury says in *Ex parte St. Sepulchre's (I*): "If the particular Act gives in itself a complete rule on the subject-matter, the expression of that rule would undoubtedly amount to an exception of the subject-matter of the rule out of the general Act": see also *London, Chatham and Dover Ry. Co. v. Wandsworth Board of Works. (1873) L.R. 8 C.P. 185* ."

16. The catena of judgments of Supreme Court have considered as to when a particular provision can be said to be legislation by incorporation or by reference but the Constitution Bench judgment in **Girnar Traders (3)** has dealt with the principle of legislation by incorporation and legislation by reference elaborately. The judgment of the Supreme Court in **State of Maharashtra vs. Sant Joginder Singh Kishan Singh (1995 Supp (2) SCC 475)** was doubted in a judgment reported as **(2004) 8 SCC 505 (Girnar Traders (1) vs. State of Maharashtra**). The matter was referred to a Constitution Bench. The Constitution Bench in **Girnar Traders (3) (supra)** approved the judgment rendered in **Sant Joginder Singh Kishan Singh (supra**). The relevant excerpts from the said judgment read as under:-

"**96**. Section 113-A of the MRTP Act provides that where any company or corporation has been declared to be the new town development authority under sub-section (3-A) of Section 113, then the State Government shall acquire either by agreement or under the Land Acquisition Act any land within the area designated under this Act. Similarly, Section 116 of the MRTP Act gives power to the development authority constituted under sub-section (2) of Section 113 as having all powers of a planning authority under this Act as provided in Chapter VII for the purpose of acquisition either by agreement or under the Land Acquisition Act. This clearly shows that these provisions make reference to a specific aspect of the acquisition, i.e. for exercise of powers by the authority concerned for the purposes of Chapter VII of the State Act.

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107. The specific reference to the provisions of Land Acquisition Act and purpose to be achieved is clear from the language of the above-referred provisions of the State Act. In other words, wherever the State Legislature considered it appropriate, it has made specific reference to a particular provision of the Land Acquisition Act and for attainment of a particular purpose. There is no general reference to the Land Acquisition Act in any of the provisions of the MRTP Act to say that the provisions of the former Act, in their entirety, will be applicable to all kind of proceedings and purposes under the later Act. Another aspect which would support the view that it is legislation by incorporation and there is every legislative intent to exclude legislation by reference is that wherever there was a general reference to the provisions of the Land Acquisition Act like Section 127 of the MRTP Act, the same stands excluded/deleted by amendment of 2009.

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116. The distinction between these doctrines received a new dimension founded upon a distinction between procedural and substantive provisions of the statute. In *Sant Joginder Singh (supra)* the Court was concerned with the provisions of the MRTP Act amended by Maharashtra Act 14 of 1971, specially failure to publish declaration within three years, as was then prescribed under proviso to Section 126(2) of the said Act, and the application of provisions of Section 11-A of the Land Acquisition Act which provided limitation of two years for making award. Applying the principle of distinction between

procedural and substantive provisions of the statute, the Court came to the conclusion that Section 11-A cannot be read into the provisions of the MRTP Act and rejected the argument as the provisions of Section 23 of the Central Act have to be applied for determining compensation, Section 11-A would also automatically apply. The Court found that Section 11-A was a procedural provision while Section 23 was a substantive provision and held: (*Sant Joginder Singh case*, SCC p. 480, para 13)

> "***13.*** … So, merely because Section 23 of the Central Act would apply to acquisition under the [State] Act, it is not enough to hold that what is contained in Section 11-A would also apply."
>
> Even, the earlier judgments of this Court have taken the view that as the statutes like the present one do not contain specific procedure for determination of compensation payable for acquisition, the provisions of Section 23 of the Land Acquisition Act may be attracted. In *Land Acquisition Officer* v. *H. Narayanaiah (1976) 4 SCC 9,* wherein Section 27 of the Bangalore City Improvement Trust Act, 1945 referred to the provisions of the Land Acquisition Act insofar as they are applicable, in absence of there being a specific provision for computation of compensation, provisions of Section 23 of the Land Acquisition Act were held to be applicable by a Bench of three Judges of this Court.
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120. The principle of legislation by incorporation as stated in *Hindusthan Co-operative Insurance Society Ltd. (supra*) had been followed in subsequent cases as well. It was clearly stated that in the case of legislation by incorporation, it is a statute existing at that time which stands incorporated in the later law to the extent it is adopted by the legislature and subsequent amendments are inconsequential for implementation of the law contained in the subsequent Act. Even in *Bolani Ores Ltd. vs. State of Orissa* (1974) 2 SCC 777, the Court while dealing with the definition of "motor vehicle" in Section 2(18) of the Motor Vehicles Act, 1939 and Section 2(c) of the Bihar and Orissa Motor Vehicles Tax Acts, 1930 held that the amendment to Section 2(18) of the Motor Vehicles Act by Act 100 of 1956 could not be read

into the Bihar Act, as the legislature had intended to incorporate the provisions of the Motor Vehicles Act as it stood in 1939.

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121. These are the few examples and principles stated by this Court dealing with both the doctrines of legislation by incorporation as well as by reference. Normally, when it is by reference or citation, the amendment to the earlier law is accepted to be applicable to the later law while in the case of incorporation, the subsequent amendments to the earlier law are irrelevant for application to the subsequent law unless it falls in the exceptions stated by this Court in *State of M.P. v. M.V. Narasimhan (1975) 2 SCC 377*. It could well be said that even where there is legislation by reference, the Court needs to apply its mind as to what effect the subsequent amendments to the earlier law would have on the application of the later law. The objective of all these principles of interpretation and their application is to ensure that both the Acts operate in harmony and the object of the principal statute is not defeated by such incorporation. Courts have made attempts to clarify this distinction by reference to various established canons. But still there are certain grey areas which may require the court to consider other angles of interpretation."

17. In another judgment reported as **(2013) 9 SCC 460 (C.N. Paramasivam and another vs. Sunrise Plaza Through Partner and others**), the Court has held as under:-

"**17**. Legislation by incorporation is a device to which legislatures often take resort for the sake of convenience. The phenomenon is widely prevalent and has been the subject-matter of judicial pronouncements by courts in this country as much as courts abroad. Justice G.P. Singh in his celebrated work on Principles of Statutory Interpretation has explained the concept in the following words:

> "Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had

been 'bodily transposed into it'. The effect of incorporation is admirably stated by Lord Esher, M.R.:

> '… If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it….' Wood's Estate, In re., ex. p. Works and Buildings Commissioners, (1886) 31 Ch D 607 (CA) at p. 615'.

Even though only particular sections of an earlier Act are incorporated into later, in construing the incorporated sections it may be at times necessary and permissible to refer to other parts of the earlier statute which are not incorporated. As was stated by Lord Blackburn:

> 'When a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense which it bore in the original Act from which it was taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act. Portsmouth Corpn. v. Smith, (1885) 10 AC 364 (HL) at p. 371."

18. In *Ram Kirpal Bhagat* v. *State of Bihar (1969) 3 SCC 471* this Court examined the effect of bringing into an Act the provisions of an earlier Act and held that the legislation by incorporation of the provisions of an earlier Act into a subsequent Act is that the provisions so incorporated are treated to have been incorporated in the subsequent legislation for the first time. This Court observed: (SCC p. 478, para 18)

> "*18.* … The effect of bringing into an Act the provisions of an earlier Act is to introduce the incorporated sections of the earlier Act into the subsequent Act as if those provisions have been enacted in it for the first time. The nature of such a piece of legislation was explained by Lord Esher, M.R. in *Wood's Estate, In re* that: (Ch D p. 615)
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> > 'if some clauses of a former Act were brought into the subsequent Act the legal effect was to write those sections into the new Act just as if they had been written in it with the pen'."

> **19.** To the same effect is the decision of this Court in *Mahindra and Mahindra Ltd.* v. *Union of India, (1979) 2 SCC 529* wherein this Court held that once the incorporation is made, the provisions incorporated become an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. The following passage is in this regard apposite: (SCC p. 548, para 8)
>
> > "*8.* … The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute."
>
> **20**. We may also refer to the decisions of this Court in *Onkarlal Nandlal* v. *State of Rajasthan (1985) 4 SCC 404*, *Mary Roy* v. *State of Kerala (1986) 2 SCC 209*, *Nagpur Improvement Trust* v. *Vasantrao (2002) 7 SCC 657* and *Surana Steels (P) Ltd.* v. *CIT (1999) 4 SCC 306* which have reiterated the above proposition of law."

18. We do not find any merit in the argument raised by learned counsel for the petitioner that when there is general reference in the Act in question to some earlier Act and that there is no specific mention of the provisions of the former Act, then it is to be considered as legislation by reference. Firstly, there is specific reference to the provisions of reservation only under the 1994 to Rules in question. Secondly the Rule of Reservation is applicable only for the purpose of direct recruitment. The principle is that when an earlier Act or certain of its provisions are incorporated by reference into a

later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it.

19. Keeping in view the principle of law enunciated in the above said judgments, we find that the amendment in the Rules ordered by the Registrar in exercise of powers under Section 55 of the Act is a case of legislation by incorporation. The entire provisions of the Act have not been referred to in the Rule. The 1994 Act provides for fixation of percentage for reservation of post, the selection/screening or promotion committee, the grant of concession in respect of fees for any competitive examination or interview and relaxation in age, caste certificate etc. However, it is only Rule of reservation contained in Section 4 of the 1994 Act which is incorporated in view of the language of the Rule which talks about reservation as per the 1994 Act, therefore, it is the percentage of the reservation for the purpose of direct recruitment alone which has been incorporated in Rule 6.2.4.

20. A question may arise that the orders issued by the Registrar under Section 55 of the Act is a law or not. Such question has come up for hearing before a Full Bench of this Court in a judgment reported as **AIR 1977 MP 68 (State of Madhya Pradesh vs. Ramcharan**) wherein it has been held that the legal order and jurisprudence based on the Constitution, is not limited to legislative enactments. All forms of delegated legislation and conditional legislation amount to law. All orders and notifications made and issued under statutory powers and which are legislative in nature amount to law. A statutory order or notification will be legislative in nature if in

substance it adds or supplements or modifies or amends a statute. The relevant extract from the decision of the Full Bench reads as under:-

> "**6**. …..These definitions go to confirm that under our legal order "law" does not include only legislative enactments but it also includes rules, orders, notifications etc. made or issued by the Government or any subordinate authority in the exercise of delegated legislative power. In Edward Mills Co. v. State of Ajmer, AIR 1955 SC 25 = 1955 SCR 735, the question before the Supreme Court was whether an order made by the Governor-General under Section 94(3) of the Government of India Act, 1935, investing the Chief Commissioner with the authority to administer a Province was continued by Article 372 of the Constitution being a "law in force" at the commencement thereof. The Supreme Court adverted to the definitions of "existing law" and "Indian law" mentioned earlier and observed that there was no material difference between "existing law", "Indian law" and "law in force" and that these expressions were wide enough to include not merely a legislative enactment but also any regulation or order which had the force of law. But it was pointed out that an order must be a legislative and not an executive order before it can come within the definition of law.....
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> *** *** ***
>
> **8**. As a result of the above discussion, it is clear that under our legal order and jurisprudence based on the Constitution, "law" is not limited to legislative enactments. All forms of delegated legislation and conditional legislation amount to law. All orders and notifications made and issued under statutory powers and which are legislative in nature amount to law. A statutory order or notification will be legislative in nature if in substance it adds to, supplements, modifies or amends a statute or exempts certain matters from its operation."

21. The aforesaid judgment has been quoted with approval by the Supreme Court in its judgment reported as **(2009) 8 SCC 1 (Sudhir Shantilal Mehta vs. Central Bureau of Investigation**) wherein the Supreme Court examined the nature of circulars issued under the Banking Regulation Act, 1949 by the Reserve Bank of India. It was held that such

circulars have a statutory force and can be termed as law in force. The relevant extract of the said judgment is reproduced as under;-

> "**58**. Whether a circular letter issued by a statutory authority would be binding or not or whether the same has a statutory force, would depend upon the nature of the statute. For the said purpose, the intention of the legislature must be considered. Having regard to the fact that the Reserve Bank of India exercises control over the Banking Companies, we are of the opinion that the said Circular letter was binding on the Banking Companies. The officials of UCO Bank were, therefore, bound by the said circular letter."

22. Later a Full Bench of this Court in a judgment reported as **1983 MPLJ 645** (**Sevaram Totaram Pargir vs. Board of Revenue, M.P. Gwalior and another**) held that the Rules framed under Section 55 of the M.P. Cooperative Societies Act (17 of 1961) are statutory rules. The relevant portions of the judgment read as under:-

> "**3**. Section 55 of the Madhya Pradesh Co-operative Societies Act, 1960, before its amendment by Ordinance 22 of 1975, published in Madhya Pradesh Gazette dated 20th November, 1975 and confirmed by Act No.14 of 1976 was as follows :
>
> > "**55.** Registrar's power to determine terms of employment in societies. - (1) The Registrar may from time to time frame rules governing the terms of employment and working conditions in a society or a class of societies and the society or the class of societies to which such terms of employment and of working conditions are applicable shall comply with the order that may be issued by the Registrar in this behalf.
> >
> > (2) Where a dispute including a dispute regarding terms of employment, working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him, not below the rank of Assistant Registrar, shall decide the dispute and his decision shall be binding on the society and its employees."
>
> By the amendment, vide Act No.14 of 1976, in sub-section (2) the words "terms of employment, working conditions and" have been

deleted. In exercise of powers under Section 55 (1) of the Act, Rules have been framed relating to the terms of employment and working conditions of employees of the Co-operative Central Bank of Madhya Pradesh. It is well settled that where a statute authorises either the Government or any other authority to frame rules and the rules are so farmed, the rules would have the force of statute. They will be deemed to have been incorporated as part of the statute. The rules framed under Section 55 (1) of the Act would, therefore, be statutory.

*** *** ***

7. *** *** ***

The Division Bench, after referring to these observations of the Supreme Court, rightly proceeded to say the Rules framed under section 55 (1) of the Act have statutory force and yet equated them with the kind of the bye-laws, considered by the Supreme Court in its decision in Co-Operative Central Bank v. Additional Industrial Tribunal, A.P. (supra). In our opinion, it is here that the Division Bench deciding Ramesh Chandra Mangal's case (supra) fell into an error. Once it was held that the Rules have statutory force, it was not correct to equate them with the kind of bye-laws framed only for internal management and working of the Society and thus not having the force of law. In our opinion, the action of removal or dismissal of the employee of a Co-operative Society in contravention of the statutory Rules does entitle the employee to continue in service and the Registrar or his nominee hearing a dispute under section 55 (2) must be held to have jurisdiction to direct reinstatement on a finding that the removal or dismissal is in breach of statutory rules. Even in Ramesh Chandra Mangal's case (supra), the ultimate decision is that the dismissal of the employee being wholly unauthorised and illegal would be nullity and could be ignored. The Division Bench found it difficult, in these circumstances, to hold otherwise than to reinstate the employee."

23. Thus, the directions issued by the Registrar are in terms of Section 55(1) of the Act; therefore, they have the force of statute. It would be advantageous to make reference to a Constitutional Bench judgment

reported as **(2002) 1 SCC 367 (Central Bank of India vs. Ravindra and others)** wherein the Court has held as under:-

> "**51**. The Banking Regulation Act, 1949 empowers the Reserve Bank, on it being satisfied that it is necessary or expedient in the public interest or in the interest of depositors or banking policy so to do, to determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular and when the policy has been so determined it has a binding effect. In particular, the Reserve Bank of India may give directions as to the rate of interest and other terms and conditions on which advances or other financial accommodation may be made. Such directions are also binding on every banking company. Section 35-A also empowers the Reserve Bank of India in the public interest or in the interest of banking policy or in the interests of depositors (and so on) to issue directions generally or in particular which shall be binding. With effect from 15-2-1984 Section 21-A has been inserted in the Act which takes away power of the court to reopen a transaction between a banking company and its debtor on the ground that the rate of interest charged is excessive. The provision has been given an overriding effect over the Usury Loans Act, 1918 and any other provincial law in force relating to indebtedness.
>
> **52.** This Court held in *D.S. Gowda case (1994) 5 SCC 213* that the directions issued by the Reserve Bank of India have statutory flavour. The Court noted that agricultural finance stands on a different footing for the reason that agriculturists do not have any regular source of income other than the sale proceeds of their crops and therefore agricultural loans have to be treated differently from other loans and borrowings. The Reserve Bank of India has also shown its concern towards agriculturist loanees by devising separate policy to govern them and not permitting capitalisation of accrued interest on agricultural loans except on annual rests or when the loan/instalment has become overdue."

24. The other argument raised by learned counsel for the petitioners need to be examined is whether the amended Rule 6.2.4 of the Rules is

discriminatory. We find the said argument to be wholly untenable. Even in respect of a State or an instrumentality or agency of the State, Part-III provides for reservation for socially and economically backward class category as well as women. If such reservation is permitted by a State to which Part-III of the Constitution of India is applicable, it is beyond comprehension that such Rule will become discriminatory if it is extended to non-State Authorities as well. Therefore, we do not find any merit in the argument raised by the learned counsel for the petitioner.

25. The argument that even if the 1994 Act is deemed to be incorporated, the provisions of 1994 Act relating to an establishment needs to be satisfied before the rule of reservation can be made applicable to any institution has no merit. What is incorporated is rule of reservation i.e. Section 4 of the 1994 Act and not the other provisions of the 1994 Act and that too only for the purpose of direct recruitment. The import and purport of amendment of the Rules is in exercise of the powers conferred under Section 55 of the Act.

26. Another prayer made by the petitioners is that the cases of daily rated employees, who are working since long, be considered for regularization of their services. There cannot be any direction to regularize the services of the daily rated employees when the steps are being taken by the employer to fill the posts on substantive basis. The daily rated employees, if eligible, may compete for appointment but they cannot claim regularization of their services in the light of the judgment of the Supreme Court reported as **(2006) 4 SCC 1 (Secretary, State of Karnataka and others vs. Uma Devi and others**).

27. At this stage another issue required to be examined is as to whether, an advertisement issued to fill up all 1634 posts with reservation applied to all the posts in all the Co-operative societies is legally sustainable. In terms of the Rule 6.2.4, the unit of appointment is the District Co-operative Society. The reservation has to be at that unit level. Therefore, the clubbing of all posts and then to apply Rule of reservation cannot be sustained as it does not relate to posts under the State Cadre.

28. In view of the aforesaid reasons, we do not find any merit in the writ petitions except that the advertisement Annexure P-9 is quashed. It shall be open to the District Co-operative Society or Societies to publish fresh advertisement giving effect to the policy of reservation in each of the District Co-operative Society. Resultantly, the writ petitions are **disposed of** on the above terms.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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