THE HIGH COURT OF MADHYA PRADESH

Writ Petition Nos. 2788/2015, 9716/2016, 10288/2016, 10711/2016, 12225/2016, 12792/2016, 18662/2016, 19700/2016, 834/2017, 1172/2017, 1379/2017, 1404/2017, 1657/2017, 1809/2017, 1828/2017, 3122/2017, 3686/2017, 3728/2017, 3754/2017, 3829/2017, 3863/2017, 4186/2017, 4195/2017, 4202/2017, 4280/2017, 4287/2017, 4300/2017, 4420/2017, 4521/2017, 4658/2017, 4665/2017, 4802/2017, 4930/2017, 5000/2017, 5255/2017, 5398/2017, 5686/2017, 5694/2017, 5755/2017, 5863/2017, 5886/2017, 5954/2017, 6112/2017, 6313/2017, 7141/2017, 7143/2017, 7145/2017, 7146/2017, 7148/2017, 7149/2017, 7153/2017, 7875/2017, 8989/2017, 9096/2017, 10948/2017, 11021/2017, 12949/2017, 13508/2017, 15693/2017, 16320/2017 & 19023/2017

Jabalpur, Dated: 27.01.2018

Shri Sanjay Kumar Agrawal, Shri Shrikant Shrivastava, Shri Anil Lala, Shri Manoj Kumar Patel, Shri Shiv Kumar Shrivastava, Shri Rakesh Dwivedi, Shri Ashok Kumar Tiwari, Shri Sanjay Sharma, Shri R.B. Tiwari, Shri R.K. Tripathi, Shri Sanjeev Kushwaha, Shri Girish Patwardhan, Shri Ajay Gupta, Shri Gaurav Panchal, Shri Piyush Bhatnagar, Ms. Ankita Khare, Advocates for the petitioners in their respective petitions.

Shri P.K. Kaurav, Advocate General with Shri Amit Seth, Government Advocate and Shri Kapil Duggal, Advocate for the State and Apex Bank.

Ms. Mini Ravindran and Shri Rahul Hardiya, Advocates for the District Cooperative Central Banks.

The questions of fact and law involved in the present bunch of writ petitions are identical and therefore, they were heard analogously on 16.01.2018. However, for the sake of convenience of this order, the facts are taken from Writ Petition No.9716/2016 (*District Cooperative Central Bank*

Employees and Officers Federation Chhindwara vs. State of M.P. and others).

2. The challenge in the present petition being W.P. No.9716/2016 is to an order dated 6th April, 2016 passed by the Registrar, Cooperative Societies, Madhya Pradesh amending the Rules 3.3, 3.5, 6.2.4, 6.3.3., 6.5.4, 6.7.1, 7.2.3(2), 47.1.42, 48.1.1, 48.2.3, 49.5, 49.6, 52.6 and 74.2 of Madhya Pradesh District Cooperative Central Bank Employees (Terms of Employment and Working Conditions) Service Rules (for short "the Rules"). Such Rules were initially issued on 03.01.2014. Such order has been passed 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 extended to 1634 posts of Clerk/Computer Operator advertised by M.P. Rajya Sahkari Bank Maryadit, T.T. Nagar, Bhopal for filling such posts in 37 Districts of Madhya Pradesh. Rule 6.2.4 of the Rules, which is in Hindi language, on being translated into English read as under:-

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 the reservation rules shall be followed in case they are applied to the Bank.	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 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. 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.

5. 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 employee 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") but falls within the competence of the Registrar in terms of Section 55 of the Act. In the light of such assertions, this Court examined the following question:-

> "**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."

6. The Division Bench in **Anand Beohar's case (supra)** after considering the arguments, held as under:-

> "**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. ……
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> **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
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> (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."

7. 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).**

8. We find that the judgment in **Madhya Pradesh Rajya Sahkari Bank Maryadit (supra)** was a case arising out of Rule of reservation applied 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. 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.

9. *Prima facie* we find that by virtue of the amendment, the reservation as provided in the 1994 Act has been incorporated. The Registrar has directed that the reservation rules as per 1994 Act will be applicable. Such clause appears to be based upon the doctrine of Legislation by incorporation. The provision for reservation for women, disabled candidates and ex-

servicemen will be as per Government Rules, seems to be a Legislation by reference.

10. The Legislation by incorporation or by reference is a device to which the Legislatures often take resort for the sake of convenience. In a 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:
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> > "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.:
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> > '… 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'.
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> > 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."
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> 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."

11. The directions issued by the Registrar are in terms of Section 55(1) of the Act; therefore, they have the force of statute. Reference can be made 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."

12. We have heard the arguments on 16.01.2018 and reserved the order but no argument was addressed in respect of the principle of legislation by incorporation or by reference. Since such issue is important and going to the root of the case, therefore, in the interest of justice, we deem it appropriate to post the writ petitions for rehearing.

List on **29.01.2018**.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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