2026 INSC 769

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C.) No. 8726 of 2024)

S. P. CHANDRAKAR ….. APPELLANT(S)

VERSUS

STATE OF CHHATTISGARH & ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave Granted.

2. The appellant is aggrieved by the judgment and final order dated 02.02.2024 passed by the learned Division Bench of the High Court of Chhattisgarh, Bilaspur in Writ Appeal No. 338 of 2023, which affirmed the judgment of the learned Single Judge dated 31.07.2023 in WPS No. 1799 of 2011 setting aside his promotion order 30.12.2010 to the post of Additional Manager, and one Kishor Bagh, the original writ petitioner (respondent No. 5), being promoted on a notional basis vice him.

3. The appellant and the original writ petitioner, who is respondent no. 5 before us, are both employees of the District Central Cooperative Bank Ltd, Raipur[1] . Service in the Bank is governed by the *Chhattishgarh Ke Jila Sahkari Kendriya Bank Karmachari Seva (Niyojan, Nibandhan, Tatha Unki Karya Sthiti) Niyam, 1982/* Chhattisgarh District Cooperative Central Bank Employee Service (Employment, Terms and their Working Conditions) Rules, 1982[2] that have been brought in by virtue of Section 55 of the Chhattisgarh Cooperative Societies Act, 1960[3].

4. The dispute concerns promotion lists prepared after the Registrar, Cooperative Societies, Chhattisgarh substituted rule 5 (3) (a, b and c) with effect from 4th July 2005. In the year 2005-06, a gradation list had been prepared of the Class-I officers of the Bank, but the appellant (S.P. Chandrakar) was left out. In the subsequent year, he was included after making an application for correction, but respondent no. 5 (Kishor Bagh) was aggrieved by the placement of the appellant in the gradation list. In the seniority list published on 06.11.2008 for the year 2007-08, the appellant was mentioned at Serial No. 1 and respondent no. 5 was mentioned at Serial No. 2. Aggrieved, respondent no. 5 challenged the placement of the appellant in the gradation list. Then, when it came to the post of Additional Manager, the appellant was placed on that list so was respondent no. 5. The objection of respondent no. 5 qua the appellant is that the appellant's original appointment was on a technical post (Assistant Engineer) and the post of Additional Manager is a non-technical/administrative post and as such, in view of Niyam 5(3)(a) of the Rules 1982, the appellant could not have been promoted. When the list of eligible candidates was published on 01.12.2010, the appellant was at serial no. 1 and respondent no. 5 was at serial no. 2. A further representation was made on 6th May 2010 by respondent no. 5 making the case as above. Another representation was made by technical employees, including the appellant, seeking to delete the bar in Rule 5(3)(a), and on 13.08.2010, the

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[1] DCCBL
[2] Rules 1982
[3] Act, 1960

Additional Registrar issued a circular stating the rule was deleted. Despite respondent no. 5's objections, the Registrar Cooperative Societies issued directions to the Chief Executive Officer of DCCBL to proceed as per the amendment. The appellant was promoted to the position of Additional Manager, pursuant to the Departmental Promotion Committee recommendation dated 20th December 2010 vide promotion order dated 30th December 2010.

Challenging the promotion of the appellant, respondent no.5 filed the writ petition. The learned Single Judge quashed the promotion of the appellant, thirteen years after he was placed on the said post. The Division Bench, in terms of the impugned judgment found no fault with the findings of the learned Single Judge and as such confirmed the same. The reasoning thereof is given in Para 14 and two judgments of this Court (***Punjab Water Supply & Sewerage Board v. Ranjodh Singh***[4], ***Union of India v. Ashok Kumar Aggarwal***[5], have been referred to in Para 15 & 16, to the effect that executive instructions cannot prevail over statutory rules and constitutional provisions. Para 14 is reproduced as under:

> "14. From perusal of the letter dated 13-08-2010 by which the Niyam, 1982 is said to have been amended, it appears that in the bottom of the said letter the word "पंजीयक द्वारा आदेशित" is mentioned and from bare perusal of the letter It further appears that It is not an order of amendment, but only a correspondence to all the cooperative societies of Chhattisgarh intimating that the rule 5(3)(a) has been amended, whereas, there is no order of amendment is placed on record so that it can safely be held that Niyam 5(3)(a) of the Niyam, 1982 was amended after following the due procedure by exercising the powers under Section 55(1) of the Act, 1960. Although Niyam 2(12) of the Niyam, 1982 provides the definition of Registrar including Additional Registrar and Joint Registrar of the cooperative societies, but in the instant case the Additional Registrar has not issued any order for amendment in Niyam 5(3)(a) of the Niyam, 1982, but it is only a communication to all the branches of District Cooperative Central Banks of the State. The note sheets submitted along with the writ petition as well as in the writ appeal only talks about the necessity and requirement of amendment in Niyam 5(3)(a), but there is no any proceeding drawn in pursuant to the said note sheet to amend Niyam 5(3)(a) of the Niyam, 1982. There is no such document placed on record to show that the competent authority has exercised its power conferred under Section 55(1) of the

[4] (2007) 2 SCC 491
[5] (2013) 16 SCC 147)

Act,1960. Since the Niyam, 1982 is having statutory force and is legislative in character, it cannot be amended by an executive order."

5. We are thus called upon by the appellant, to examine the correctness of these concurrent findings.

6. We have heard learned counsel for the appellant and the Additional Advocate General for the State, as also the counsel appearing for other parties.

In effect, what we have been asked to decide is whether the amendment as apparently communicated by the Registrar, has been so made in accordance with law or not. The unamended position in Rules 1982 is as follows:

> "5. Terms and Conditions of Employment and Procedure-
> (One) No person shall be eligible for appointment to any post in the Bank unless he possesses the qualifications prescribed under Rule 49 A of the Chhattisgarh Co-operative Society Rules, 1962 or under any other rules for the time being in force –
> Qualifications
> (Two) If the minimum qualifications are not prescribed in the Chhattisgarh Cooperative Society Rules for the time being in force, then no person shall be eligible for appointment to the following posts, unless he possesses the qualifications shown against the posts –
> (Three)
> (a) – <u>Such employees who have been appointed in the service of the Bank for any special technical work or service shall not be appointed or absorbed in posts with work different from the work of the original post.</u>
> (b) If the technical work/service, for which purpose the employee has been appointed, is discontinued or the post created for such special work in the Bank is no longer required, then the employee working on such post may be separated from service.
> (c) – Notwithstanding anything contained in this service rule or the by-laws of the Bank, such an employee shall not be regularized in the service of the Bank, whose appointment has not been made in accordance with the service rules of the Bank or the procedures prescribed in the service rules have not been followed.
> …"
>
> (emphasis supplied)

7. The Notification of the Registrar is as follows:

"OFFICE OF REGISTRAR COOPERATIVE SOCIETIES,
CHATTISGARH

No./Credit-1/C.B/05/3260, Raipur Dt. 4.7.05 ::

ORDER::

It has come to the notice of this Office that works are being taken from the employees appointed for executing works of District Cooperative Central Banks by posting them to the posts of duties other than their original works, which is affecting their original objectives of appointment, resultantly, it is causing adverse effect on the interest of employees and work effectiveness of the Bank.

Therefore, in exercise of powers conferred by Section 55 (1) of Chhatisgarh Cooperative Society Act, 1960, I Subrat Sahu, Registrar Cooperative Societies, C.G, do hereby delete Rule 5 (Three) (A), (B) and (C) of Service Rules framed for the Employees of the District Cooperative Central Bank. This amendment order shall come into force from the date of issuance.

Sd/-
illegible

(Subrat Sahu)
Registrar, Cooperative Societies,
Chhatisgarh

End. No./Credit-l/C.B/05/3260, Raipur Dt 4.7.05
Copy to:
1. Joint/Dy./Assistant Registrar, Cooperative Societies (All), Chhatisgarh.
2. Managing Director, C.G State Cooperative Banks Maryadit, Raipur.
3. Chief Executive Officer, District Cooperative Central Bank Maryadit (All) C.G
4. In-charge Auditor, District Cooperative Central Bank, Maryadit (All), C.G) Raipur.

Sd/-illegible
(Subrat Sahu)
Registrar, Cooperative Societies,
Chhatisgarh"

"

8. The position after the Notification of the Additional Registrar is as follows:

"OFFICE OF REGISTRAR, COOPERATIVE SOCIETIES, CHHATISGARH

No./Credit/10/3672/ Raipur Dt. 13th August, 2010

To,

The Chief Executive Officer
District Cooperative Central Bank, Maiyadit
All (Chhatisgarh)

Sub; Regarding amendment in Service Rules for Technical Employees.

000

The technical staffs working in District Co-operative Central Banks despite being qualified personnel are not receiving the benefit of promotion even after many years of services. In this regard attention of this Office was drawn and upon serious consideration, Clause No. 5 (3) (a) of the prevailing service rules for the employees of the Co-operative

Central Bank is hereby deleted.

In this way, the technical employees working in the Bank shall also be eligible for promotion to the post and pay scale higher than their post and pay scale as per rules.

Therefore, appropriate proceedings be carried out as per the rules.

<u>(Ordered by Registrar)</u>

Sd/-illegible
Addl. Registrar
Co-operative Societies,
Chhattisgarh

”

(emphasis supplied)

9. At this stage, Section 55(1) and 95(3) of the Act, 1960 become important, and the same are as under:

“**55. Registrar’s power to determine conditions of employment in societies**. (1) The Registrar may, from time to time, <u>frame rules</u> 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 <u>Registrar in this behalf</u>.

95. Power to make rules-

…

<u>(3) All rules made under this Act shall be laid on the table of Legislative Assembly</u>.”

(emphasis supplied)

10. The stand of the Registrar, as can be understood, is that, by virtue of Section 55 (1) of the Chhattisgarh Cooperative Societies Act, 1960, he had the requisite power, as is evidenced by the above extract of the notification. The appellant, on the other hand, contends that the Registrar had no such power. We accept the stand of the Registrar as it appears. He had the requisite power. Section 55 reproduced above clearly stipulates that he has the power to frame rules to regulate service conditions. To our mind, it is quite clear that a person authorised to frame rules also carries with him the requisite authorisation to amend, alter or delete. We are supported in this view by Section 21 of the General Clauses Act, 1897 which provides that when a statute grants the power to issue notifications, orders, rules or bye-laws, or in the instant case, frame, the same would include within itself the power to amend, vary or rescind. The Section reads as follows:

> "21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.—Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Another argument that is raised is that the Act provides for the Registrar to exercise the power under Section 55, but in the present case the deletion of the rule has been done by the Additional Registrar. The Act also provides for the appointment of Additional Registrars, Joint Registrars, etc for the assistance of the Registrar. There is no bar on the delegation of functions which are provided under the Act. In that view of the matter, the communication by the Additional Registrar that is purported to be done in furtherance of the order of the Registrar cannot be said to be an incorrect exercise of power since it explicitly states, 'ordered by Registrar'. Still further, it is a matter of record that the State has not disputed the position that the purported amendment to the rules was done under the orders of the Registrar. The Courts below have not accepted this for the reason that although documents had been placed on record before the learned Single Judge demonstrating the necessity of the amendment, no formal order by the competent authority showing such exercise of power, was appended to the record, but in view of the position being uncontroverted by the State that the order had been passed under the powers of the Registrar, we have no hesitation in accepting the same.

11. It is clear from Section 95(3) that all rules made under this Act have to be tabled before the legislative assembly. The word used is '*shall*'. However, the Section does not provide any consequence of non-tabling of such rules. This latter part cannot be disputed.

12. In the ordinary sense, '*shall*' is obligatory and '*may*' is directory, but that is not a universal rule. In certain contexts, '*shall*' can also be directory. In such a situation, the interpretation of the word '*shall*' is what will determine the validity of these Rules.

12.1 A Constitution Bench in ***State of U.P. v. Manbodhan Lal Srivastava***[6] while interpreting the word '*shall*' as used in Article 320 of the Constitution of India speaking through B.P. Sinha J. as he then was, held thus:

> "12.… Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from *Crawford on Statutory Construction*—Article 261 at p. 516, is pertinent:
>
> > "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must

[6] (1957) 2 SCC 759

govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.…""

12.2 In ***State of U.P. v. Babu Ram Upadhya***[7], a Constitution Bench was concerned with the nature of para 486 of the Police Regulations in connection with chapter XIV CrPC. K. Subba Rao J. in para 28 referred to various authorities and concluded in para 29 as follows:

> "**29.** The relevant rules of interpretation may be briefly stated thus: When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

12.3 A Constitution Bench in ***Bhikraj Jaipuria v. Union of India***[8] while referring to Maxwell on Interpretation of Statutes, observed as follows:

> **"16.** … Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity : if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good. As observed in *Maxwell on Interpretation of Statutes*, 10th Edn., p. 376:
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> > "It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an

[7] 1960 SCC OnLine SC 5
[8] 1961 SCC OnLine SC 34

> implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may perhaps be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope and purpose of the statute under consideration must be regarded."
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> Lord Campbell in *Liverpool Borough Bank* v. *Turner* [(1861) 30 LJ Ch 379] observed:
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> "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.""

13. In order to determine whether '*shall*' as used in Section 95(3) of the 1960 Act is obligatory or otherwise, the fact that there is no consequence of non-compliance of the laying procedure, acquires importance. This meets one half of the requirements to be considered in order to conclude that a provision is directory. The other half is whether there will be '*serious general inconvenience and prejudice*' to the public or to the Government.

13.1 In ***Atlas Cycle Industries Ltd. v. State of Haryana***[9], a three-judge Bench while considering the issue of the non-laying of a control order before the Houses of Parliament observed as under:

> "**21.** Now, the policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament being to keep supervision and control over the aforesaid authorities and instrumentalities, the "laying clauses" assume different forms depending on the degree of control which the Legislature may like to exercise. As evident from the observations made at pp. 305 to

[9] (1979) 2 SCC 196

307 of the 7th Edn. of *Craies on Statute Law* and noticed with approval in *Hukam Chand* v. *Union of India* [(1972) 2 SCC 601 : AIR 1972 SC 2427 : (1973) 1 SCR 896] there are three kinds of laying which are generally used by the Legislature. These three kinds of laying are described and dealt with in Craies on Statute Law as under:

"(*i*) Laying without further procedure,
(*ii*) Laying subject to negative resolution,
(*iii*) Laying subject to affirmative resolution.

(*i*) *Simple laying*.—The most obvious example is in Section 10(2) of the 1946 Act. In earlier days, before the idea of laying in draft had been introduced, there was a provision for laying rules etc. for a period during which time they were not in operation and could be thrown out without ever having come into operation (compare Merchant Shipping Act, 1894, Section 417; Inebriates Act, 1898, Section 21) but this is not used now.

(*ii*) *Negative resolution*.—Instruments so laid have immediate operative effect but are subject to annulment within forty days without prejudice to a new instrument being made. The phraseology generally used is "subject to annulment in pursuance of a resolution of either House of Parliament". This is by far the commonest form of laying. It acts mostly as a deterrent and sometimes forces a Minister (in Sir Cecil Carr's phrase) to "buy off opposition" by promising some modification.

(*iii*) *Affirmative resolution*.—The phraseology here is normally no order shall be made unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament..... The affirmative resolution procedure necessitates a debate in every case. This means that one object of delegation of legislation (viz. saving the time of Parliament) is to some extent defeated. The procedure therefore is sparingly used and is more or less reserved to cases where the order almost amounts to an Act, by effecting changes which approximate to true legislation (e.g. where the order is the meat of the matter, the enabling Act merely outlining the general purpose) or where the order replaces local Acts or provisional orders and, most important of all, where the spending, etc. of public money is affected…."

13.2 A five-judge Bench in ***K.T. Plantation (P) Ltd. v. State of Karnataka***,[10] affirmed ***Atlas Cycle supra*** and observed that the three different kinds of laying clauses display the level of control that the Legislature desires to exercise in a given case.

[10] (2011) 9 SCC 1

14. The conclusion is that in the absence of consequence, the laying procedure given in Section 95(3) is clearly directory. Non-compliance thereof cannot defeat the exercise of power by the Registrar. We also notice that the State of Madhya Pradesh in its Madhya Pradesh Co-operative Societies Act, 1960, from which the Chhattisgarh Act was adopted, has an identically worded provision which has been interpreted by this Court as clearly being directory and only for the purposes of information in view of ***Atlas Cycle supra*** and ***State of M.P. v. Hukum Chand Mills Karamchari***[11]

15. Here, briefly we may address another argument. It is trite in law that executive instructions cannot override statutory requirements. The original writ petitioner (Respondent No. 5, Kishor Bagh) alleges that the order of the Registrar sidesteps the statute. We don't accept this argument because the Act itself provides the Registrar with the power to regulate service conditions. Once the power exists and it is clear that this particular power has been exercised, the style under which it was exercised would not denude or weaken the authority enabling it to exercise such power. Reference can be made to ***Kiran Devi v. Bihar State Sunni Wakf Board***[12] wherein the Court, relied on the earlier decision in ***Municipal Corpn. of Ahmedabad v. Ben Hiraben Manilal***[13] including a judgment of the Constitution Bench in ***Hukumchand Mills Ltd. v. State of M.P.***[14] to hold as under:

> "**23.** We find merit in the argument raised by Mr Sanyal that the nomenclature of the title of the petition filed before the High Court is immaterial. In *Municipal Corpn. of Ahmedabad* v. *Ben Hiraben Manilal* [*Municipal Corpn. of Ahmedabad* v. *Ben Hiraben Manilal*, (1983) 2 SCC 422] , this Court held that wrong reference to the power under which an action was taken by the Government would not per se vitiate the action, if the same could be justified under some other power whereby the Government could lawfully do that act. The Court held as under : (SCC p. 427, para 5)

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[11] (1996) 7 SCC 81.
[12] (2021) 15 SCC 15
[13] (1983) 2 SCC 422
[14] 1964 SCC OnLine SC 89

> "*5.* … It is well settled that the exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provisions was mentioned. (See in this connection the observations in *Pitamber Vajirshet* v. *Dhondu Navlapa* [*Pitamber Vajirshet* v. *Dhondu Navlapa*, 1887 SCC OnLine Bom 2 : ILR (1888) 12 Bom 486 at p. 489] . See in this connection also the observations of this Court in *L. Hazari Mal Kuthiala* v. *CIT* [*L. Hazari Mal Kuthiala* v. *CIT*, (1961) 11 SCR 892 : AIR 1961 SC 200 : (1961) 41 ITR 12 at p. 16] .) This point has again been reiterated by this Court in *Hukumchand Mills Ltd.* v. *State of M.P.* [*Hukumchand Mills Ltd.* v. *State of M.P.*, (1964) 6 SCR 857 : AIR 1964 SC 1329 : (1964) 52 ITR 583] wherein it was observed that it was well settled that a wrong reference to the power under which action was taken by the Government would not per se vitiate that action if it could be justified under some other power under which Government could lawfully do that act. (See also the observations of the Supreme Court in *Nani Gopal Biswas* v. *Municipality of Howrah* [*Nani Gopal Biswas* v. *Municipality of Howrah*, 1958 SCR 774 at p. 779 :
> AIR 1958 SC 141] .)"

As such, given the statutory power of the Registrar, the notification being termed as '*circular*' or something else, would not affect the sanctity thereof.

16. The reasoning of the Courts below, in view of the above discussion, is erroneous and the judgments are accordingly set aside. There was no basis for the promotion of the appellant to be set aside, given that it was granted based on a valid exercise of power. It is a position of law that a person should be entitled to sit back, considering that his promotion, effected a long time ago, would not be disturbed after passage of considerable time. In this case, although the challenge had been filed by Kishor Bagh right after the promotion was granted, on account of judicial pendency, it was thirteen years before the learned Single Judge finally decided the question. It appears from the record that for this time, he had continued to function on said post. The necessary consequence of the conclusion recorded by us is that the appellant shall ***(a)*** be placed on the said position and status from which he was removed; ***(b)*** his seniority shall be protected; ***(c)*** entitled to all benefits of promotion that may have fallen due as per law; and ***(d)*** he shall also be entitled to 50% back wages payable within two months from the date of this judgment, failing which an interest @6% per annum shall be paid.

17. The appeal is allowed in the aforesaid terms. Pending application(s), if any, shall stand disposed of. No costs.

…………………………………….J
(SANJAY KAROL)

…………………………………….J
(AUGUSTINE GEORGE MASIH)

New Delhi;
July 30, 2026