

AFR

Reserved on 09.04.2019

Delivered on 2.09.2019

**Court No. 34**

**Case :-** SPECIAL APPEAL No. - 435 of 2008

**Appellant :-** Pancham Ram Yadav

**Respondent :-** The U.P. Co-Operative Federation Ltd. through  
Managing Director and another

**Counsel for Appellant :-** Chandan Kumar

**Counsel for Respondent :-** Ram Gopal Tripathi, V.C. Tripathi

**Hon'ble Sudhir Agarwal, J.**

**Hon'ble Manoj Misra, J.**

**Hon'ble Rajendra Kumar-IV, J.**

*(Delivered by Hon'ble Sudhir Agarwal, J. )*

1. This Full Bench has been referred two questions for adjudication by a Division Bench of this Court vide order dated 27.10.2017 noticing some inconsistencies in Regulation 84 of U.P. Co-Operative Societies Employees Service Regulations, 1975 (hereinafter referred to as “Regulation, 1975”) and Rule 83 of U.P. Co-operative Federation Limited Karmchari Seva Niyamawali, 1980 (hereinafter referred to as “Rules, 1980”) and also expressing its disagreement with view taken by another Division Bench in **Virendra Kumar Gupta Vs. State of U.P. and others** in Service Bench No. 614 of 2009, decided on 28.07.2015.

2. The questions referred for adjudication are as under:

*“1. Whether **Regulation 84** of the U.P. Co-operative Societies Employees' Service **Regulation 1975** read with **Rule 83** of the U.P. Co-operative Federation Limited Karmchari Seva **Niyamawali, 1980** services can be harmonized so as to uphold the punishment by way of dismissal of an employee coupled with an order directing recovery of an amount on the charge of a financial embezzlement or misappropriation to be included within the fold of Regulation 84 ?*

*2. Whether the law laid down in the case of **Virendra Kumar Gupta Vs. State of U.P. and others (Supra)** in respect of the true import of Regulation 84 read with Rule 83 aforesaid does*

*not state the correct position of law as against the reasoning given by the learned Single Judge in paragraph no.13 in the case of **Satya Narain Mishra Vs. Praband Nideshak and another (Supra)** and alternatively as to whether the statement of law in that regard as explained in the judgment of **Satya Narain Mishra Vs. Praband Nideshak and another (Supra)** should be accepted as the correct position of law ?"*

(Emphasis added)

3. The facts giving rise to the present Reference may be stated as under.

4. That U.P. Co-operative Federation Limited (hereinafter to as 'PCF') is an Apex Level Co-operative Marketing Society, constituted and registered under the provisions of U.P. Co-operative Societies Act, 1965 (hereinafter referred to as 'U.P. Act, 1965'). Petitioner, Pancham Ram Yadav, was appointed as Storekeeper with the respondent-PCF on 09.03.1981. In 1988, he was working in a godown situated at Dandi, near Mama-Bhanja Talab in trans-yamuna area of Allahabad. In the night of 22/23 April, 1993, a theft was committed in the said godown in respect where to a First Information Report was lodged at Police Station, Naini, Allahabad on 23.04.1993 registered as Case Crime No. 297 of 1993, under Sections 409, 457 and 380 I.P.C. It was reported that 361 bags of sugar were stolen. During investigation, police arrested one Suraj Bhan Singh and also recovered 101 sugar bags. One of the facts noticed during investigation was that the locks of godown were not broken and bags of sugar were stolen. Considering the matter, in detail, Managing Director, PCF, passed an order of suspension on 18.05.1993 placing petitioner under suspension and appointing one S.P. Singh, General Manager, Head Quarter, as Enquiry Officer. A charge-sheet dated 22.01.1994 was served upon petitioner levelling four charges. During inquiry, upon being transferred, Enquiry Officer was changed and one Prateek Sanjar, General Manager, PCF was appointed as Enquiry Officer by order

dated 30.10.1994 who completed enquiry and submitted report holding charges proved against petitioner. Thereafter, a show-cause notice dated 29.05.1998 was issued to petitioner and ultimately punishment order dated 03.03.2000 was passed by Managing Director, PCF imposing punishment of dismissal from service with the approval of Institutional Service Board and also for recovery of Rs. 2,69,130.14. This punishment order dated 03.03.2000 was challenged by petitioner in Writ Petition No. 18891 of 2000. The ground on which punishment order was assailed before learned Single Judge is that two punishments could not have been awarded in view of Regulation 84 of Regulation, 1975 but learned Single Judge (Hon'ble D.P. Singh, J.) relying on an earlier Single Judge judgment in **Satya Narain Mishra Vs. Prabandh Nideshak and another : 2002 (1) AWC 582** rejected the submission and dismissed the writ petition vide judgment dated 12.11.2007.

5. Petitioner, Pancham Ram Yadav, then came up in Special Appeal No. 435 of 2008 (Earlier No. 238 (Def.) of 2008) and Division Bench, though agreed with the view taken by learned Single Judge, but finding another Division Bench judgment taking a different view in its way, made this reference to Larger Bench to answer the questions noticed hereinabove.

6. Section 121 of U.P. Act, 1965 confers power upon Registrar to frame Regulations to regulate emoluments and other conditions of service including disciplinary control of employees in a Co-operative Society or a class of Co-operative Societies and any Society to which such terms are applicable, shall comply with those Regulations and any orders of Registrar issued to secure such compliance. Regulations framed in sub-Section (1) of Section 121 of U.P. Act, 1965 are required to be published in the Gazette and take effect from the date of such publication.

7. Section 122 of U.P. Act, 1965 confers power upon State Government to constitute an Authority or Authorities, in such manner as may be prescribed for recruitment, training and disciplinary control of employees of Co-operative Societies, or a class of Co-operative Societies, and may require such Authority or Authorities to frame Regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and subject to the provisions contained in Section 70, settlement of dispute between an employee of a Co-operative Society and the Society.

8. Regulations framed under sub-section (1) of Section 122 of U.P. Act, 1965 are subject to approval of State Government and publication in the Gazette. After publication in Gazette the said Regulation would supersede any Regulations made under Section 121 of Act, 1965.

9. In exercise of powers under sub-section (1) of Section 122 of U.P. Act, 1965 (U.P. Act No. XI of 1966), read with Rule 389-A of Rules, 1968, Governor, vide Notification dated 04<sup>th</sup> March, 1972, as amended by Notification dated February 7, 1973, constituted an Authority, namely, U.P. Co-operative Institutional Service Board (hereinafter referred to as the 'Board'), for recruitment, training and disciplinary control of employees of Apex Level Societies, Central or Primary Societies (excluding Co-operative Cane Development Unions which include U.P. Co-operative Cane Unions Federations Ltd., Lucknow) whose area of operation extends to more than one District or State, District or Central Co-operative Banks, District Co-operative Federations, Co-operative Milk Unions including Kanpur Co-operative Milk Board, Co-operative Cane Sugar Factories, Co-operative Textile Mills and U.P. Co-operative Housing Federation. The constitution of Board and functions to be exercised by it are also provided in the said Notification and the same read as under:-

***“U.P. Co-operative Institutional Service Board***

1. *The Board shall consist of –*

(i) *A Chairman appointed by State Government from amongst a serving or retired Additional Registrar, who has put in at least ten years' service in the U.P. Co-operative Service Class I.*

(ii) *Two members appointed by the State Government from amongst serving or retired officers of the U.P. Co-operative Service Class I.*

2. *The Chairman or a member of the Board shall hold office for a term of two years from the date on which he enters upon his office and such term may be extended from time to time subject to the condition that the total period of such extended terms does not exceed four years or until he attains the age of 60 years, whichever is earlier.*

3. (i) *The Board shall have a secretary and such other staff as the State Government may from time to time sanction to enable the Board to carry out its business.*

(ii) *The Secretary and other staff of the Board shall be appointed by the Board and shall be under the administrative control of the Chairman, provided that the Chairman may delegate any of his powers relating to the administrative control to any member of the Board.*

(iii) *The Secretary of the Board shall be from amongst the officers of the U.P. Co-operative Service Class II.*

4. *The emoluments of the Chairman, Members and the staff of the Board shall be determined and paid by the State Government.*

5. *The Chairman or a Member shall cease to hold office from the date he ceases to hold the qualifications necessary for his being the Chairman or a Member, as the case may be.*

6. *The State Government may remove the Chairman or a Member where it is the opinion that he ---*

(a) *has been guilty of misconduct of gross negligence of duty as such Chairman or Member; or*

(b) *has become of unsound mind, or has become deaf*

*and dumb, or blind or suffers from leprosy; or*

*(c) has been convicted for any offence involving moral turpitude; or*

*(d) is in default (at least for a period of six months) to a co-operative society in respect of any loan taken by him or is a judgment-debtor, or*

*(e) has taken up any paid or honorary job in any Co-operative Society.*

*7. The Board shall undertake the job of training of the employees only after prior permission of the State Government is obtained in that respect.*

*8. The office of the Board shall be headquartered as Lucknow, but the Board may hold its sittings in any place or places within the State for performance of its duties and functions.*

*9. The Board shall frame its own rules of business and shall submit a copy thereof to the State Government.*

*10. The Board shall frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control within three months of its constitution:*

*Provided that the said period may be extended by the State Government from time to time.”*

10. In the Constitution of the Board and other aspects, as contained in paragraphs 1 and 2 of the Notification dated 04<sup>th</sup> March 1972, subsequently amendment was made and paragraphs 1 and 2 of Notification dated 04<sup>th</sup> March 1972 were substituted by Notification dated 31<sup>st</sup> August 1988, as under:-

#### **“AMENDMENTS**

*1. The Board shall consist of three members appointed by the State Government from amongst Serving Officers of category 'A' of the U.P. Co-operative Service, who have put in atleast 10 years of service in that category. The Seniormost members shall be appointed Chairman by State Government:*

*Provided that a person who is the Chairman or a member of the Board at the commencement of this para and is a Serving Additional Registrar shall be deemed to have been appointed under this para.*

2. *The State Government may, at any time transfer a member of the Board to his parent service.*

*A member of the Board or Chairman shall retire on attaining the age of his superannuation.”*

11. By certain subsequent Notifications, some other Authorities were notified under Section 122 (1) to govern specified types of Co-operative Societies inasmuch as by Notification dated 24<sup>th</sup> February 1974, Cane Commissioner was constituted as an Authority competent to perform functions under Sub-section 1 of Section 122 in respect of all the employees of Co-operative Cane Development Union including U.P. Co-operative Cane Union Federation Ltd., Lucknow. Similarly, by Notification dated 06<sup>th</sup> August 1977, Commissioner and Secretary, Sugar Industry and Cane Development Department, Uttar Pradesh was notified as competent authority for recruitment, training and disciplinary control of the employees of all Co-operative Sugar Mills in Uttar Pradesh and U.P. Co-operative Sugar Factories Federation Limited, Lucknow. The above reference is only to place the facts straight.

12. Section 130 of U.P. Act, 1965 confers power upon State Government to frame Regulations so as to carry out the purposes of U.P. Act, 1965 and some of the matters, without prejudice to the generality of the power under sub-section (1), are detailed in sub-section (2) of Section 130 of U.P. Act, 1965.

13. In exercise of powers under Section 130 of U.P. Act, 1965, U.P. Co-operative Societies Rules, 1968 (hereinafter referred to as Rules, 1968) were framed by State Government. Rule 389-A of Rules, 1968 provided as under:

*“389-A. The **authority or authorities** under Section 122 may be constituted by the State Government by Notification published in the Official Gazette.”* (Emphasis added)

14. For the purpose of present matter, we need not go into any Regulations alleged to have been framed under Section 121 for the reasons that in exercise of powers under Section 122 (2), Regulations, 1975 have been framed under Section 1 of Section 122 and published in the Gazette. They have superseded existing Regulation on the date of publication of Regulations, 1975 which was published in U.P. Gazette (Extraordinary) dated 06.01.1976.

15. Regulation 2 (ix) of Regulation, 1975 defines “Co-operative Societies” for the purposes of Regulation, 1975 and reference to Co-operative Societies placed under the purview of Board by Government Notification dated 04<sup>th</sup> March 1972. 'Employees' governed by Regulation, 1975 are defined in Regulation 2 (xi) and reads as under:

*“(xi) 'employee' means a person in whole-time service of a co-operative society, but does not include a casual worker employed on daily wages or a person in part-time service of a society.”*

16. Chapter-VI of Regulations, 1975 deals with conduct and discipline of the employees of Co-operative Societies governed by Regulations, 1975 and contains Regulations 62 to 83. Thereafter comes Chapter-VII which deals with penalties, disciplinary proceedings and appeals. Regulation 84(i) talks of penalties and reads as under:-

*“84. Penalties. - (i) Without prejudice to the provisions contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence under section 103 of the Act or does anything prohibited by these regulations shall be **liable to be punished by any one of the following penalties:** -*

*(a) censure,*

- (b) with holding of increment,*
- (c) fine on an employee of Category IV (peon, chaukidar, etc.).*
- (d) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the co-operative society by the employee's conduct,*
- (e) reduction in rank or grades held substantively by the employee,*
- (f) removal from service, or*
- (g) dismissal from service.”*

(Emphasis added)

17. The punishment contemplated under Regulation 84 can be imposed by competent authority in the manner and as per the procedure prescribed under Regulation 85 of Regulations, 1975. Regulations, 1975 are deemed to be operative to the extent of their inconsistency with any labour laws as provided by Regulation 103 which reads as under:-

*“103. The provisions of these regulations to the extent of their inconsistency, with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, shall be deemed to be inoperative.”*

18. Regulation 106 confers power upon State Government to pass such orders, not inconsistent with Regulations, 1975, as deemed necessary and to remove difficulty arising in relation to emoluments, terms and conditions of service, termination, dismissal or removal, adoption or merger.

19. Then comes Regulation 102 which contemplates framing of Service Rules by a Co-operative Societies with the approval of Board. It reads as under:-

*“102. (i) Subject to the provisions of these regulations, a co-*

***operative society shall*** within three months from the date of coming into force of the regulations (unless an extension of time is allowed by the Board in writing) ***frame service rules for its employees.***

(ii) The service rules framed under sub-clause (i) shall be submitted to the Board for approval and shall be operative only after the approval.

(iii) ***Notwithstanding, anything*** contained in these Regulations the ***existing employees shall have an option to continue to be governed by the existing service rules, if any,*** in the society only in respect of their emoluments and benefits or to opt the new services rules on these matters.

***Explanations.*** - (1) Provisions relating to pay, increments and allowance (other than travelling allowance), probation, confirmation, retirement, provident fund, and gratuity, shall be deemed as included in term "emoluments and benefits".

(2) In case of any doubt or dispute interpretation in respect of matter mentioned in (1) above, reference shall be made to the Board and its decision shall be final.

(3) Existing service rules means authentic service rules framed by and with the approval of the competent authority.”

(Emphasis added)

20. It is the admitted case of respondents that Rules, 1980 have been framed by PCF pursuant to resolution dated 18.11.1977 approving the said Rules which was approved by Board, vide letter dated 20.04.1979, proposing some amendments/corrections. Thereafter, matter was again examined and PCF passed a resolution dated 11.03.1980 and the same was approved by Board vide letter dated 04.12.1980.

21. In the present case, we are concerned with Rule 83 of Rules 1980, which reads as under:-

“किसी अन्य सेवा नियम में दिये गये उपबन्धों पर प्रतिकूल प्रभाव डाले बिना किसी कर्मचारी को जो अपने कर्तव्यों का कार्ई उल्लंघन करता है या दण्ड अपराध अधिनियम की धारा 103 के अधीन किसी अपराध के लिये सिद्ध दोष

हुआ है या सेवा नियमावली द्वारा प्रतिषिद्ध कोई कार्य करता है, तो उसे निम्न शास्तियों में से एक या अधिक शास्तियों द्वारा दण्डित किया जा सकेगा ।

(क) निन्दा,

(ख) वेतन वृद्धि पर रोक,

(ग) श्रेणी 4 के किसी कर्मचारी (चपरासी, चौकीदार आदि) पर जुर्माना,

(घ) कर्मचारी के आचरण द्वारा फेडरेशन को होने वाली किसी धन संबंधी क्षति को पूर्णतया अथवा आंशिक रूप से क्षतिपूर्ति करने के लिये वेतन या प्रतिभूति से वसूली,

(ङ.) कर्मचारी द्वारा मौलिक रूप में धृत पर या श्रेणी में अवनति,

(च) सेवा से हटाया जाना, तथा

(छ) सेवा से पदच्युत

(2) दण्ड के आदेश की प्रतिलिपि अनिवार्यतः सम्बद्ध कर्मचारी को दी जायेगी और कर्मचारी के सेवा अभिलेख में इस आशय की प्रविष्ट की जायेगी।

(3) निन्दा करने के अलावा कोई भी शास्ति तब तक आरोपित नहीं की जायेगी जब तक कि कर्मचारी के कारण बताने की नोटिस न दे दी गई हो और या तो वह विनिर्दिष्ट समय के भीतर उत्तर देने में असफल रहा हो अथवा उत्तर दण्ड देने वाले अधिकारी द्वारा असंतोषजनक पाया गया हो।

(4) (क) आरोपित कर्मचारी को समुपयुक्त प्राधिकारी द्वारा अपराध की गम्भीरता के अनुसार दण्ड किया जायेगा:

प्रतिबन्ध यह है कि खण्ड (1) के उपखण्ड (ङ.), (च) या (छ) के अधीन कोई शक्ति अनुशासनिक कार्यवाही किये बिना आरोपित नहीं की जायेगी।

(ख) कोई कर्मचारी उस प्राधिकारी से जिसके द्वारा वह नियुक्त किया गया था भिन्न किसी प्राधिकारी द्वारा तब तक हटाया या पदच्युत नहीं किया जायेगा जब तक कि नियुक्त प्राधिकारी ने ऐसे अप्राधिकार का प्रतिनिधायन ऐसे अन्य व्यक्ति या प्राधिकारी को लिखित रूप में पहले ही न कर दिया हो।

(5) नियुक्त प्राधिकारी या उसके द्वारा प्राधिकृत व्यक्ति वेतन वृद्धि रोकने का आदेश देते समय उस अवधि का जब तक के लिये वह रोकती गई है और इसका कि क्या उससे भविष्य की वेतन वृद्धियां अथवा पदोन्नति स्थगित होगी, उल्लेख करेगा।”

(Emphasis added)

22. The question up for our consideration is that Regulation 84 of Regulations, 1975 which confers power upon competent authority to impose anyone of the punishments prescribed in Regulation 84 while

Rule 83 of Rules, 1980 talks of anyone or more of the punishments prescribed in Rule 83 and therefore the first question is “whether to the extent only one punishment is permissible under Rule 83, is it inconsistent with Regulation 84; or, Rule 83 will have an independent operation without being affected in any manner by Regulation 84.

23. One of the earlier decision cited before us is that of a Single Judge (Hon'ble D.P.S. Chauhan, J.) in ***Vijay Bahadur Yadav, Firozabad Vs. Chairman, U.P. Co-operative Federation Ltd. Lucknow and others : (1992) 2 UPLBEC 1215***, wherein, after reproducing Regulation 84 in a short judgment, learned Single Judge has held that the punishment order providing three penalties cannot be sustained. After quoting Regulation 84 in paragraph 4 of the judgment, learned Single Judge has observed that under aforesaid Regulations, punishing authority is authorised to impose any one of the penalties provided thereunder, and not more than one.

24. This decision has been followed in ***Virendra Kumar Gupta Vs. State of U.P. and others 2015 (7) ADJ 19*** by a Division Bench comprising of Hon'ble S. N. Shukla and Akhtar Husain Khan, JJ. It has been held therein that Rules framed by a Co-operative Society under Regulation 102 are subject to the provisions of Regulations, 1975 in view of section 122 and for this purpose, reliance is placed on Supreme Court judgment in ***U.P. State Cooperative Land Development Bank Ltd. versus Chandra Bhan Dubey and others : (1999) 1 Supreme Court Cases 741***. Having said so, Court has said that Rule 84 of Rules, 1975 shall prevail over Regulation 83 of Regulations, 1980 and since superior statutory provision permits imposition of only one penalty, hence more than one penalty cannot be imposed.

25. In ***Satya Narain Mishra's case (supra)***, learned Single Judge was confronted with the decision of the earlier Single Judge in ***Vijay***

**Bahadur Yadav (supra)** which was followed in Writ Petition No. 6725 of 1989 (**Najeebullah Siddiqui Vs. Registrar, U.P. Co-operative Societies**), decided on 02.02.1996 but having noticed above two decisions, learned Single Judge (Hon'ble Sunil Ambwani, J.) proceeded to consider the issue of misappropriation of public money by an employee of bank and observed that such misconduct cannot be treated lightly, and if some amount has been misappropriated by a bank employee and he is imposed any other punishments and not recovery, that will proved to be an incentive to such an employee to siphon away huge public funds and thereafter get only one punishment, may be dismissal, but no recovery at all. The observations made by learned Single Judge in **Satya Narain Mishra's case (supra)**, in paragraph 13, reads as under:-

*“13. In case bank employee who is found to have embezzled the amount, the public policy demands that apart from the punishment given by departmental authority, he be held responsible for the recovery of the pecuniary loss caused by the employee to the Bank. If an employee is held to be liable to only one of the punishments, it may become an incentive to misappropriate or embezzle a large amount and escape liability of such misappropriation or embezzlement. The punishment of reversion or removal or dismissal on the ground of misconduct should be with direction of recovery to make good the loss caused due to such misconduct. Regulation 84, providing for penalties and stating that the employee is liable to be punished by any one of the penalty has thus to be interpreted to mean that in case of misappropriation or embezzlement which is the misconduct on account of which the employee has been penalised, the recovery of the amount of pecuniary loss caused to the bank is necessary to be coupled with the penalty effected upon delinquent employee. In **V.K. Bahadur u. State Bank of India. 2001 L&IC 935**, this Court following the judgment in **State Bank of India v. T.J. Paul, AIR 1999 SC 1994 ; Kailash Nath Gupta Vs. Enquiry Officer : 1997 (1) AWC 2.63 (NOC): 1997 ACJ 896**, held that where financial irregularities*

*of serious nature are found proved against the bank employee no lenient view should be taken. A bank runs on public confidence. A greater integrity and devotion is required from bank employee in comparison to employees of other organisations. If the allegation of embezzlement, misappropriation or gross negligence is found to be established causing pecuniary loss to the bank on account of delinquent employee, the amount of loss must be made good by him. In the present case, only half of the doubtful recoveries have been sought to be made good, and in the circumstances it is held that imposition of penalty of reversion along with recovery of the amount, does not violate Regulation 84 of the U. P. Co-operative Societies Service Regulation. 1975.”*

26. His Lordship (Hon'ble Sunil Ambwani, J.) has sought to interpret Regulation 84 in the manner that in case of misappropriation and embezzlement, if an employee is penalized, the order of recovery of the amount of pecuniary loss caused to the employer is necessary to be coupled with the penalty inflicted upon delinquent employee. His Lordship has referred to this Court's judgment in **V.K. Bahadur u. State Bank of India. 2001 L&IC 935**, wherein, it was held that financial irregularities of serious nature, if proved against a bank employee, no lenient view should be taken. A greater integrity and devotion is required from bank employees in comparison to employees of other organizations. If the allegations of embezzlement, misappropriation or gross negligence is found to be established causing loss to the bank, such employee may be required to make the loss good.

27. There is clear disagreement on the part of the learned Single Judge in *Satya Narain Mishra's case (supra)* and from earlier judgment in *Vijay Bahadur Yadav's case (supra)* as also *Najeebullah Siddiqui Vs. Registrar, U.P. Co-operative Societies (supra)* but instead of referring the matter to Larger Bench, his Lordship has taken a different interpretation, which, in our opinion,

was not appropriate and the proper course was to refer the matter to a Larger Bench.

28. The Division Bench making present reference has expressed its agreement with the learned Single Judge in *Satya Narain Mishra's case (supra)* and the reason is apparent that an employee who has caused loss to employer by embezzling public money etc. must be made liable to make the loss good and strict interpretation of statutory provision, if allows, such person would escape such liability, hence such interpretation would not be in public interest but would be the boom to the employee concerned.

29. Faced with these two views expressed in the above two sets of judgments, we have examined the scope and ambit of Regulation 84 of Regulation, 1975 vis-a-vis Rule 83 of Rules, 1980.

30. Rules, 1980, if would have been framed in an independent exercise of power under some provision of U.P. Act, 1965, things would have been much easier but, here, the real problem is that Rules, 1980 have been framed in exercise of power under Regulation 102 of Regulation, 1975. Such Rules have to be subordinate and subject to Regulation, 1975 and cannot be allowed to travel beyond specific provisions contained in Regulations, 1975. It is not a case where Regulations, 1975 is silent and, therefore, Rule, 1980 travels on a field which is unoccupied. On the contrary, here is a field covered by Regulation 84 of Regulations, 1975 which very specifically provides that only one of the punishments prescribed can be imposed. However Rule 83 of Rules, 1980 states that anyone or more punishment can be imposed. The words used in both the provisions are distinct. Regulation 84 while restrict power of punishing authority to the extent of imposing one punishment, there is no such restriction in Rule 83 of Rules, 1980. On the contrary Rule 83 permits imposition of more than one punishment.

31. Looking to the purpose and objective of the provisions dealing with disciplinary proceedings and the punishment to be imposed upon an employee, there cannot be any doubt that an employee, if found guilty of serious misconduct of embezzlement of public funds, he must be imposed major penalties of reduction in rank or dismissal or removal but, simultaneously, if such misconduct has also caused loss to the employer, one cannot have any doubt that punishment of recovery should also be imposed upon him so that such employee may not escape without making good the loss caused to the employer on account of misconduct. This object is very loud and must be given effect but, in our view, when Statute is specific, clear and categorical there is no reason that court must provide *casus omissus* and read something therein which legislating competent authority has chosen not to do.

32. It cannot be said that Board who actually drafted Regulations, 1975 and got it approved from State Government was not aware that several kinds of punishments have been prescribed in the Statutes and provision could be made to impose more than one punishments, still it has chosen not to do so and has chosen not to make any amendment in Regulation 84 till date. If we add the words “or more” after the word “anyone” in Regulation 84(1), it will amount to a judicial legislation and will change the scope and ambit of Regulation in its entirety. The law on the subject is that Court should not add anything in the Statute when otherwise Statute is clear.

33. Normally a *casus omissus* should not be read by Court in the statute and should not be easily supplied unless it is found by implication that it was the intention of legislature and hence in the scheme of the statute, it is necessary. This Court is aware that the rules of the interpretation are not rules of laws and are not to be followed like rules enacted by legislature in Act as observed in **Superintendent**

**and Remembrance of Legal Affairs, West Bengal Vs. Corporation of Calcutta, AIR 1967 SC 997.** The principles of interpretation serve only as a guide. A casus omissus cannot be supplied by Court. There is no presumption that a casus omissus exists and language permitting Court should avoid creating a casus Omissus where there is none. It would be appropriate to recollect the observations of **Devlin, L.J. in Gladstone Vs. Bower,(1960) 3 All ER 353 (CA):**

*"The Court will always allow the intention of a statute to override the defects of working but the Court's ability to do so is limited by recognized canons of interpretation. The Court may, for example, prefer an alternative construction, which is less well fitted to the words but better fitted to the intention of the Act. But here, there is no alternative construction; it is simply a case of something being overlooked. We cannot legislate for casus omissus."*

34. In **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others 1978 (36) FLR 266**, Court quoted with approval the following observation of Lord Simonds in **Magor & St. Mellons R.D.C. Vs. Newport Corporation, (1951) 2 All ER 839 (841):**

*"The duty of the Court is to interpret the words that the Legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited."*

35. It would be appropriate at this stage to remind another principle that though a Court cannot supply a real casus omissus, it is equally evident that it should not so interpret a statute as to create casus omissus when there is really none.

36. In **Vemareddy Kumaraswamy Reddy and another Vs. State of Andhra Pradesh 2006 (2) SCC 670** Court reiterated that while interpreting a provision, Court only interprets the law and cannot legislate. If a provision of law is misused and subject to the abuse of process of law, it is for the legislature to amend, modify or repeal it if

deemed necessary. The legislative casus omissus cannot be supplied by judicial interpretative process.

37. Recently, in **Star India Private Limited Vs. Department of Industrial Policy and Promotion and others (2019) 2 SCC 104**, Court referring to earlier judgment in **Petroleum and Natural Gas Regulatory Board Vs. Indraprastha Gas Ltd. (2015) 9 SCC 209** has held, where there is a casus omissus, such lacuna cannot be filled up by judicial interpretative process.

38. In this view of the matter, we find no reason to expand scope of Regulation 84 beyond what is stated specifically therein and/or to allow Rule 83 to operate beyond Regulation 84 which is part of principal legislation under which Rule 83 has been framed and has to be subordinate thereto.

39. We, therefore, hold that Regulation 84 shall prevail over Rule 83 and to the extent Rule 83 is inconsistent with Regulation 84, it is ultra vires and cannot be given effect to.

40. Having said so, we may also make it clear that it would not result in allowing an employee of a Co-operative Society to swallow funds of a Co-operative Society and go unburdened with the loss it has caused to the employer. By virtue of departmental enquiry, once it is established that an employee has caused some loss to the employer, in our view, it will become a civil liability of such an employee to make good the loss caused to the employer or employer can claim discharge of such liability by employee by paying such amount, failing which, to proceed for recovery in any other manner as provided in law. For example, since such loss/civil liability touches the business of Co-operative Society, its dispute can be resolved under Section 70 of U.P. Act, 1965 or the said amount can be recovered by bringing an action in civil law. Therefore, whatever we have said hereinabove is in the context of Regulation 84 of Regulations, 1975

vis-a-vis Rule 83 of Rules, 1980 but we make it clear that once siphoning off public funds or loss to the employer is proved and determined, such amount becomes civil liability of employee towards employer. Since it touched upon the business of employer, other remedies are also available to Co-operative Societies concerned to realize the said amount from employee.

41. We would also like to observe that the competent authority framing Regulations under Section 122 should look into the matter. It is advisable that Regulation 84 should be amended at the earliest so as to avoid any injurious situation occurring to Co-operative Societies governed by Regulations, 1975 on account of lacuna in the drafting of Regulation 84 of Regulations, 1975 with regard to imposing of punishment.

42. We, therefore, answer the questions referred to us as under:

(1) Since evident contradiction in the language of Regulation 84 of Regulations, 1975 and Rule 83 of Rules, 1980, the aforesaid provisions cannot be harmonized, hence Regulation 84 of Regulations, 1975 shall prevail over Rule 83 of Rules, 1980 and only one of the punishments prescribed can be imposed as specifically stated in Regulation 84 of Regulations, 1975.

(2) The Division Bench judgment in *Virendra Kumar Gupta's case (supra)* lays down correct law and otherwise view expressed by learned Single Judge in *Satya Narain Mishra's case (supra)* as also expressed in the Reference order is not correct position of law.

43. Let the matter be placed before Division Bench for deciding appeal on merits.

**Order Date :- 2.09.2019**

Sunil Kr Tiwari