

K. A. Annamma vs The Secretary, Cochin Co-Operative ... on 12 January, 2018

Equivalent citations: AIR 2018 SUPREME COURT 422, 2018 LAB. I. C. 1039, AIR 2018 SC (CIVIL) 819, (2018) 1 SCT 382, (2018) 4 SERVLR 284, (2018) 1 KER LT 414, (2018) 1 CURCC 27, (2018) 1 ALL WC 896, (2018) 1 GUJ LH 196, (2018) 3 JCR 67 (SC), 2018 (2) KCCR SN 120 (SC), AIRONLINE 2018 SC 1

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Bench: Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 197 OF 2018
(Arising out of S.L.P.(C) No.29765 of 2016)

Smt. K.A. Annamma

...Appellant(s)

VERSUS

The Secretary, Cochin
Co-operative Hospital Society Ltd. ...Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 21.12.2015 passed by the High Court of Kerala at Ernakulam in W.P.(C) Reason: the writ petition filed by the respondent herein and set aside the award dated 23.09.2009 of the Labour Court, Ernakulam in I.D.No.32 of 2006.

3. In order to appreciate the controversy involved in the appeal, which is essentially legal in nature, mentioning of few undisputed facts would suffice. Facts in brief

4. The respondent is the Cooperative Society registered under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the KCS Act"). The appellant was an employee of the respondent-Society. By order dated 22.03.2005, the respondent-Society dismissed the appellant from service.

5. The appellant, felt aggrieved of her dismissal order, filed a complaint with the State Government against the respondent-Society under the Industrial Dispute Act, 1947 (hereinafter referred to as "the ID Act"). The conciliation having failed, the appropriate Government made an industrial reference to the Labour Court, Ernakulum under Section 10 of the ID Act for deciding the legality and correctness of the appellant's dismissal and to pass appropriate consequential orders, if any.

6. The Labour Court, by award dated 23.09.2009 answered the reference in appellant's favour. It was held that the dismissal order is bad in law and was accordingly set aside. It was held that during the pendency of the reference, the appellant has attained the age of superannuation on 31.05.2007, therefore, she was entitled to get all monetary and other service benefits as are permissible in law.

7. The respondent, felt aggrieved of the award of the Labour Court, filed Writ Petition (Civil) No.18354 of 2010 in the High Court of Kerala and questioned its legality and correctness.

8. At this stage, it is necessary to state as to how the question involved in the writ petition, which eventually reached to this Court was decided by the different Benches of the Kerala High Court prior to respondent's filing the writ petition and during its pendency.

9. The question, which frequently came up for consideration before the different Benches of the High Court of Kerala since 1978, was "when a service dispute arises between an Employee of any Co-operative Society and his Employer (Co-operative Society), whether such dispute is triable by the forum prescribed under the ID Act or under the KCS Act or under both the Acts as per the choice of an aggrieved person to select the forum under any of the two Acts for deciding such service dispute".

10. In other words, the question was "whether a service dispute arising between the Cooperative Society's Employee and his Employer is capable of being tried by the forum prescribed under the KCS Act or by the machinery provided under the ID Act or it is capable of being tried under both the Acts leaving the aggrieved person to select one forum under any of the Acts of his choice out of the two for getting his/her service dispute decided by such forum."

11. The aforesaid question was first decided by two Full Benches of the Kerala High Court in K. Balachandran vs. The Dy. Registrar, Co-operative Societies & Ors., AIR 1978 Kerala 126 = 1978 KLT 249 and Sherly M.U. vs. The President, Parappuram Milk Producers Co-op. Society Ltd. & Ors., 2007(1)KLT 809 wherein it was held on the facts involved in both the cases that the dispute, which had arisen between the Co-operative Society's Employee and his/her Employer, was not capable of being decided under Section 69 of the KCS Act as it stood then.

12. This question again came up for consideration before a Single Judge of the High Court in Board of Directors, Edava Service Co-operative Bank vs. The Co-operative Arbitration Court & Ors.,

2008(3) KLT 780 wherein it was held that a service dispute between a Co-operative Society's employee and his/her employer is capable of being tried under both the Acts inasmuch as both the Acts enjoy concurrent jurisdiction to try and decide such service dispute.

13. In other words, according to the Single Judge, one Act does not exclude the other and, therefore, both the Acts possess concurrent jurisdiction to decide such dispute leaving the aggrieved person to choose the forum of his/her choice under any Act out of the two Acts.

14. This question was again considered by the Division Bench in Thodupuzha Taluk General Marketing Co-operative Society vs. Michael Sebastian, 2010 (1) KLT 938 wherein the Division Bench concurred with the view of the Single Judge taken in Board of Directors, Edava Service Co-operative Bank (supra). It was accordingly reiterated.

15. Lastly, this question was considered by another Single Bench in W.P.(C) No.30854/2007 entitled Chirayinkeezhu Service Co-operative Bank Ltd. No.115 vs. K. Santosh & Anr. and then by the Division Bench in Writ Appeal No.2516/2009, arising out of the said writ petition. While hearing the writ appeal, a doubt was raised before the Division Bench about the correctness of the earlier decision rendered in the case of Thodupuzha Taluk General Marketing Co-operative Society(supra) contending that the said decision requires reconsideration for various reasons.

16. Acceding to this prayer, the case was referred to the larger Bench to reconsider the law laid down in Thodupuzha Taluk General Marketing Co-operative Society(supra). This is how the case was placed before the larger Bench comprising of three learned Judges.

17. While the larger Bench was hearing the case, it was noticed that the earlier two decisions of the Full Bench also need reconsideration because the Single Judge and the Division Bench, subsequent to the decisions of the Full Bench, have taken a slightly different view, which appears to be in conflict with the two Full Bench decisions, resulting in cleavage of opinions amongst the various Benches of the same High Court on one question. It is for this reason, there arose a need to constitute a larger Bench comprising of five Judges to examine the question afresh to settle the controversy.

18. The Bench of three Judges then formulated as many as 9 questions to enable the Bench of five Judges to answer the questions referred by the Three-Judge Bench.

19. By order dated 14.09.2015, the Five-Judge Bench answered the questions referred in the case of Chirayinkeezhu Services Cooperative Bank Ltd. vs. Santosh, 2015(4) KLT 163(LB). However, there was a difference of opinion amongst the five Judges (3:2) on the questions referred.

20. So far as the majority view of three Judges is concerned, it held that the service dispute arising between the Co-operative Society's Employee and the Employer (Co-operative Society) is triable only by the forum prescribed under the KCS Act, 1969 and the jurisdiction of the ID Act is excluded and barred to try such service dispute.

21. So far as the minority view of two Judges is concerned, it held that such service dispute is triable under both the Acts, i.e., the KCS Act and the ID Act. In other words, it held that both the Acts possess and enjoy concurrent jurisdiction to decide such service dispute and it is for the aggrieved person to choose the forum of his/her choice out of the two Acts to get the service dispute settled subject to proving the ingredients of the definition of "Workman", "Industrial Dispute" and the cooperative Society to be the "Industry" as defined under the ID Act, if he/she desires to invoke the jurisdiction of the ID Act for deciding the service dispute.

22. Relying upon the majority view, the writ petition filed by the respondent(employer) in the case at hand was allowed by the learned Single Judge, resulting in setting aside of the award of the Labour Court, giving rise to filing of this appeal by way of special leave before this Court by the employee.

23. Heard Mr. P.V. Surendranath, learned senior counsel for the appellant and Mr. Ramesh Babu, learned counsel for the respondent.

24. Learned counsel for the appellant (employee) while assailing the legality, correctness and the reasoning of the majority Judges (3) contended that the majority view does not appear to be in conformity with the law laid down by this Court in Dharappa vs. Bijapur Coop. Milk Producers Societies Union Ltd. (2007) 9 SCC 109 whereas the view taken by the minority Judges (2) appears to be in conformity with the law laid down in the case of Dharappa(supra) and, therefore, the minority view, according to learned counsel, deserves to be upheld by this Court.

25. Placing strong reliance on the ratio laid down in the case of Dharappa(supra), learned counsel contended that if the ratio of Dharappa's case is applied in its correct perspective to the facts of the case at hand, the question involved in the appeal has to be answered in appellant's favour by upholding the view of the minority Judges which rightly held that both the Acts, i.e., the KCS Act and the ID Act, possess and enjoy concurrent jurisdiction to decide the service disputes arising between the Co-operative Society's Employee and his/her Employer-Cooperative Society.

26. Learned counsel urged that the award of the Labour Court impugned in the writ petition by the respondent, therefore, deserves to be upheld and the case needs to be remanded to the writ court (Single Judge) for deciding the writ petition on merits.

27. It is this submission, which the learned counsel elaborated by placing reliance on the decision of Dharappa(supra), the relevant provisions of the KCS Act, 1969 and the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "Karnataka CS Act").

28. In reply, learned counsel for the respondent-Society (Employer) contended that the view taken by the majority of the Judges (3) being in accordance with law, it does not call for any interference.

29. Learned counsel elaborated his submission by referring to the ratio of Dharappa's case, relevant provisions of KCS Act and Karnataka CS Act in support of his submission.

30. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submission of learned counsel for the appellant (Employee).

31. In our considered view, we are inclined to uphold the minority view for the reasons given infra.

32. At the outset, it is considered necessary to set out the relevant Sections of the KCS Act, which have bearing over the controversy:

“Section 2(i) 2(i) “dispute” means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not”.

Un-amended Section 69 “69. Disputes to be referred to Registrar-(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past members or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society; or

(e) between a society and the members of a society affiliated to it; or

(f) between the society and a person other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member or employee or a person other than a member, who has been granted a loan by the society whether such a society is or is not a member of the society; or

(h) between the society and a creditor of the society, such dispute, shall be referred to the Registrar for decision, and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

Explanation:- In this section and in Section 70, the term “Registrar” means the Registrar of Co-operative Societies appointed under sub-section (1) of Section 3 and includes any person on whom the powers of the Registrar under this Section and Section 70 are conferred.

(2) For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation:- A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election. (3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Registrar unless it is referred to him within one month from the date of the election.

(4) If any, question arises whether a dispute referred to the Registrar under the section is a dispute as defined in clause (i) of Section 2 the decision thereon of the Registrar shall be final.” Amended Section 69 by Amending Act 1/2000 w.e.f. 02.01.2003 “69. Disputes to be decided by Co-operative Arbitration Court and Registrar-

(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises-

(a) Among members, past members and persons claiming through members, past members and deceased members; or

(b) Between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) Between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) Between the society and any other society; or

(e) Between a society and the members of a society affiliated to it; or

(f) Between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) Between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or

(h) Between the society and a creditor of the society, such dispute shall be referred to the Co-operative Arbitration Court constituted under Section 70A in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute; and no other Court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. (2) For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor, where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation- A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election, shall be deemed to be a dispute arising in connection with the election;

(d) Any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section(1) of S.80, including their promotion and inter se seniority.

(3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election.” Unamended Section 70

70. Decision and award on disputes:-

(1) The Registrar may, on receipt of the reference of a dispute under Section 69:-

(a) elect to decide the dispute himself; or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or

(c) refer it for disposal to an arbitrator appointed by the Registrar.

Provided that a transfer under clause (b) or a reference under clause (c) shall not be made to a person equal or superior to him in rank.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and he may elect to decide the dispute himself or transfer it to any other person under clause (b) of sub-section (1) or refer it to any other arbitrator under clause

(c) of that sub-section.

(3) The Registrar or such person shall decide the dispute, or the arbitrator shall pass an award, in accordance with the provisions of this Act and the rules and the bye-laws and such decision or award shall, subject to the provisions of S.82, be final. Pending decision or award, the Registrar, such person or arbitrator as the case may be, may make such interlocutory orders as he may deem necessary in the interest of justice.

(a) the nature of the allegations showing that the elections were vitiated.

(b) the existence of prima facie case which means whether respondents have a chance of success and

(c) whether the interest of justice require that an interlocutory order must be made. Amended Section 70 by Amending Act

70. Award on disputes:- (1) the Co-operative Arbitration Court, on receipt of reference of a dispute under sub-section (1) of Sec. 69, shall pass an award within one year in accordance with the provisions of this Act and the rules and the bye-laws made thereunder and such award shall, subject to the provisions of Sec. 82, be final.

(2) The Co-operative Arbitration Court may, pending award of a dispute referred to it under Section 69, make such interlocutory orders as it may deem necessary in the interests of justice.

(3) The Co-operative Arbitration Court shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), while trying a suit in respect of the following matters, namely:-

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) issuing of any commission for the examination of any witness; and

(v) any other matter which may be prescribed.

(4) The Registrar may, on receipt of the reference of a dispute under sub-section(1) of Sec. 69-

(a) elect to decide the dispute himself; or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or

(c) refer it for disposal to an arbitrator appointed by the Registrar:

Provided that a transfer under clause (b) or a reference under clause (c) shall not be made to a person equal or superior to him in rank.

(5) The Registrar may withdraw any reference transferred under clause (b) of sub-section (4) or referred under clause (c) of that sub-section and he may elect to decide the dispute himself or transfer it to any other person under clause (b) of sub-section (4) or refer it to any other arbitrator under clause

(c) of that sub-section.

(6) The Registrar or the person invested with powers in this behalf shall, decide the dispute or the arbitrator shall pass an award in accordance with the provisions of this Act and the rules and the bye-laws and such decision or award shall, subject to the provisions of Sec. 82, be final. Pending decision or award, the Registrar, such person or the Arbitrator, as the case may be, may make such interlocutory orders as he may deem necessary in the interests of justice.

100. Bar of jurisdiction of courts:- No civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act.” (Emphasis supplied)

33. Before we examine the question, it is apposite to take note of the findings of the majority as well as minority Judges on the question.

34. We find that both majority and minority Judges examined the questions largely in the light of the ratio laid down by this Court in Dharappa’s case (supra). Indeed, the learned counsel, in their

submissions before us, did not make any attempt to contend that the law laid down in the case of Dharappa (supra) needs reconsideration on any issue. On the other hand, both sides proceeded to make their submissions that, firstly, Dharappa's case has laid down the correct principle of law on facts involved therein and secondly, what needs to be examined is whether its ratio applies to the facts of this case and, if so, how and to what extent.

35. In our opinion also, it may not be necessary to examine the issue involved in this case in the light of any other decision except confining its examination to the ratio laid down in Dharappa's case because Dharappa's case has discussed all earlier decisions of this Court on the subject in extenso.

36. So far as the view of majority (3) Judges, one concurring with two, is concerned, though they discussed several issues in detail in their concurring opinion but in substance, in our view, their findings on material issues are as under:

37. First, the language of Section 69 of the KCS Act as it originally stood is materially different from the language used in its counter part Sections of two earlier repealed Kerala Co-operative Societies Acts of 1932 and 1951. This departure made in the language employed in Section 69 of the KCS Act qua language of earlier two repealed Acts is significant and has a material bearing while answering the questions. (Para 17/18)

38. Second, since the KCS Act, 1969 has received the Assent of the President on 11.04.1969, it was not necessary for the State to have obtained another Assent of the President for enacting Amending Act (1/2000) by which some provisions of the KCS Act, 1969 were amended w.e.f. 02.01.2003.

39. In other words, once the KCS Act of 1969 has received the Assent of the President, it is not necessary for the State to obtain another Assent of the President for passing the Amendment Act 1/2000. It is more so when it has received the Assent of the Governor (Para 45).

40. Third, on interpreting the relevant provisions of the KCS Act, whether independently or/and in juxtaposition, it is clear that the KCS Act, 1969 as originally stood and as amended by Act (1/2000) overrides any other law for the time being in force including the ID Act, 1947 insofar as it deals with the service disputes arising between the Co-operative Society's Employee and his/her Employer.

41. In other words, the KCS Act, 1969 has an overriding effect on the ID Act 1947 since its inception insofar as it deals with the service disputes arising between a Co-operative Society's Employee and his/her Employer and thus excludes the applicability of the ID Act.

42. Any service dispute arising between a Co-operative Society's Employee and his/her Employer (Co-operative Society) is, therefore, triable only by the authorities and the forum specified under the KCS Act 1969, whether prior to or after the amendments made by the Amendment Act No.1 of 2000 and not by any authority/Court/Tribunal under any law for the time being in force.

43. A fortiori, the jurisdiction of the Labour Court and Industrial Tribunal under the ID Act is, excluded and barred to decide any such service dispute.

44. Fourth, the language of Section 69 of the KCS Act, 1969 as it originally stood including the amended one and that of Section 70 of the Karnataka CS Act which fell for interpretation in Dharappa's case is not in pari materia with each other and not being identical, the ratio of Dharappa's case may not apply to that extent while interpreting Section 69 of the KCS Act.

45. Fifth, the Amendment Act (1 of 2000), which amended Section 69(2)(d) of the KCS Act, is only by way of an abundant caution and it has no effect on Section 69 of the KCS Act.

46. So far as the view of minority Judges (2) is concerned, in substance, it held:

47. First, the question involved in the case is squarely covered by the ratio laid down in Dharappa's case.

48. Second, Section 69 of the KCS Act and Section 70 as it originally stood and as amended by first Amendment Act (19 of 1976) of the Karnataka CS Act, are identically worded and, therefore, the ratio of Dharappa's case would apply while interpreting Section 69 of the KCS Act.

49. Third, the Assent of the President was required for passing the Amendment Act No.1 of 2000 of the KCS Act.

50. Fourth, since no Assent of the President was obtained, the Amendment Act (1 of 2000) did not make any effect on the exclusion of the jurisdiction of the forum under the ID Act. That apart, Section 69 or Section 100 of the KCS Act also does not have a clause akin to Section 70 of the Karnataka CS Act as amended by Amendment Act (2 of 2000) providing therein a clause for express exclusion of the jurisdiction of the Civil Court, the Labour Court and the Industrial Tribunal from deciding the service dispute.

51. Fifth, the jurisdiction of Section 69 under the KCS Act before and after the amendment of the KCS Act by Amendment Act (1 of 2000) remains intact.

52. Sixth, the jurisdiction of both the Acts, i.e., the KCS Act and the ID Act is concurrent.

53. A fortiori, any service dispute arising between a Co-operative Society's Employee and his/her Employer (Co-operative Society) is triable under both the Acts and it is for the aggrieved person to select one forum of his/her choice out of the two to get his/her dispute settled subject to proving that he/she is a workman, the dispute is an industrial dispute and the Cooperative Society is an industry as defined in the ID Act.

54. Seventh, notwithstanding the amendment brought about in Section 69 of the KCS Act by Amendment Act (1 of 2000), the jurisdiction of the Labour Court under the ID Act is not excluded and thus not barred.

55. And lastly, in the light of these findings, all decided cases taking this view are held correctly decided and, therefore, do not need any reconsideration.

56. In our opinion, the fate of this appeal depends upon the question as to what extent the ratio of Dharappa's case applies to the issues involved in the case at hand.

57. It is, therefore, necessary to first examine the facts and the ratio of Dharappa's case.

58. Dharappa was a daily wager working in the Karnataka Milk Federation Unit Bijapur (hereinafter referred to as "the Federation"), which is a Co-operative Society registered under the Karnataka CS Act. The Federation on 01.03.1980 terminated Dharappa's services.

59. Dharappa felt aggrieved of his termination, filed an application to the Labour Court, Hubli under the ID Act. The application was later transferred to the Labour Court, Bijapur. According to Dharappa, his termination order was bad and illegal inasmuch as the Federation failed to ensure compliance of mandatory requirements of Section 25-F of the ID Act prior to passing his termination order. According to Dharappa, he had continuously worked for more than 240 days in one calendar year, hence he was entitled to enjoy the protection available to a workman under the ID Act before terminating his services.

60. The respondent-Federation denied Dharappa's claim. Parties adduced their evidence. The Labour Court, by award dated 15.10.1996, allowed Dharappa's application and set aside the termination order. The Labour Court held that the termination order was bad because Dharappa had worked for more than 240 days continuously in one calendar year and yet the Federation prior to his termination did not pay him any retrenchment compensation as provided in the ID Act. The Labour Court, however, awarded 50% back wages to Dharappa because it was noticed that he approached the Labour Court almost after 10 years from the date of his termination.

61. The Federation, felt aggrieved of the award of the Labour Court, filed a writ petition in the Karnataka High Court questioning therein the legality and correctness of the award. During the pendency of the writ petition, the Division Bench of the same High Court in another case (Veerashaiva Co-op. Bank Ltd. vs. Presiding Officer, Labour Court, (2001) 3 Kar.LJ 519) held that since the remedy and the procedure prescribed under the Karnataka CS Act was comprehensive, the service disputes arising between a Co-operative Society's Employee and his Employer (Co-operative Society) has to be tried under the Karnataka CS Act and the jurisdiction of the Labour Court under the ID Act to decide such disputes is barred.

62. The Full Bench of the same High Court in another case in Karnataka Sugar Workers Federation vs. State of Karnataka, (AIR 2003 Kar HCR 1802) later approved this view of the Division Bench.

63. Relying upon the aforesaid view of the Division Bench and the Full Bench, the learned Single Judge allowed the Federation's writ petition and quashed the award of the Labour Court. It was held that the provisions of the ID Act are not applicable to a service dispute raised by an Employee of a Co-operative Society against his Employer. A liberty was granted to Dharappa to take recourse to the appropriate remedy under the Karnataka CS Act to challenge his termination order.

64. Dharappa felt aggrieved and filed a writ appeal before the Division Bench. The Appellate Court placing reliance on the view of the Full Bench in Karnataka Sugar Workers Federation's case (supra) dismissed the appeal. It was inter alia held that the appropriate remedy of Dharappa lies in invoking Section 70 of the Karnataka CS Act by filing a dispute before the specified authority for its adjudication. It is against this decision, Dharappa felt aggrieved and filed appeal by special leave in this Court.

65. Before this Court, Dharappa raised two points, out of which we are concerned only with one point, viz., whether jurisdiction of the Labour Court under the ID Act for deciding the service dispute arising between a Co-operative Society's Employee and his Employer is barred by virtue of Section 70 of the Karnataka CS Act and, if so, from which date.

66. It is this question, which was examined by this Court extensively in the light of the relevant provisions including Section 70 of the Karnataka CS Act as it stood originally and later amended twice coupled with a question as to what is the effect of the grant of the Assent of the President given to the second amendment of Section 70 made in the Karnataka CS Act by Amendment Act (2/2000) and the previous case law on the subject.

67. It was noticed that the Karnataka CS Act was enacted by the State of Karnataka after obtaining the Assent of the President on 11.08.1959. Section 70 of the Act as it originally stood deals with the disputes arising between the parties named therein and provides a forum for the adjudication of such disputes, which also includes service disputes.

68. Section 70 was first amended by the State of Karnataka by the Amendment Act (19/1976). It received the Assent of the Governor on 07.03.1976. The Amending Act came into force on 21.01.1976. By this Amending Act, two clauses, namely, clauses

(d) and (e) were added to Section 70.

69. Section 70 was then amended second time by the State in 1997 by Amendment Act (2 of 2000). This Amending Act, however, received the Assent of the President on 18.03.2000 and was thereafter brought in force with effect from 20.06.2000. This Amending Act specifically provided therein for the first time "no Civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute specified in Section 70".

70. The learned Judge Raveendran, J. speaking for the two Judge Bench succinctly dealt with the issue in question in Paras 13, 14, 16 and 17 and held as under:

"13. The effect of the amendments to Section 70 of the KCS Act, by Act 2 of 2000 is that if any dispute (including any dispute relating to the terms of employment, working conditions and disciplinary action), arose between a cooperative society and its employees or past employees or heirs/legal representatives of a deceased employee, on and from 20-6-2000, such dispute had to be referred to the Registrar for decision and no civil court or Labour Court or Industrial Tribunal would have

jurisdiction to entertain any suit or proceeding in respect of such dispute.

14. Even prior to 20-6-2000, having regard to the amendment to Section 70 of the KCS Act by Act 19 of 1976 with effect from 20-1-1976, any dispute between a cooperative society and its employees or past employees or heirs/legal representatives of a deceased employee including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a cooperative society, was deemed to be a dispute touching the constitution, management, or business of a cooperative society which had to be referred to the Registrar for adjudication. But prior to 20-6-2000, there was no express exclusion of the jurisdiction of the Labour Court and Industrial Tribunal. As a result, if an employee of a cooperative society answered the definition of “workman” and the dispute between the cooperative society and its employee fell within the definition of an “industrial dispute”, then the employee had the choice of two alternative forums — either to raise a dispute before the Registrar under Section 70 of the KCS Act or seek a reference to the Labour Court/Industrial Tribunal under Section 10(1)(c) of the ID Act [or approach the Labour Court by an application under Section 10(4-A) of the ID Act].

16. Though the Karnataka Cooperative Societies Act, 1959 was reserved for the assent of the President and received his assent on 11-8-1959, the Amendment Act 19 of 1976 which added Clause (d) to sub-section (2) of Section 70 (whereby a dispute between a cooperative society and its present or past employee(s) in regard to any disciplinary action or working conditions was deemed to be a dispute touching the constitution, management, or the business of a cooperative society), was neither reserved for, nor received the assent of the President. In the absence of the assent of the President, Clause (d) of Section 70(2) could not be called in aid to contend that Section 70(1)(c) of the KCS Act would prevail over the provisions of the Industrial Disputes Act. Consequently, even after the 1976 Amendment to the KCS Act, the Labour Courts and Industrial Tribunals functioning under the ID Act continued to have jurisdiction in regard to disputes between a society and its workmen if the cooperative society answered the definition of an “industry” and the dispute was an “industrial dispute”. But when sub-section (1) of Section 70 of the KCS Act was further amended by Act 2 of 2000 by specifically excluding the jurisdiction of Labour Courts and Industrial Tribunals with the simultaneous addition of the words “notwithstanding anything contrary contained in the Industrial Disputes Act, 1947” in Clause (d) of Section 70(2) of the KCS Act, the said Amendment Act (Act 2 of 2000) was reserved for the assent of the President and received such assent on 18-3-2000. The amended provisions were given effect from 20-6-2000. Therefore, only with effect from 20-6-2000, was the jurisdiction of Labour Courts and Industrial Tribunals excluded in regard to disputes between a cooperative society and its employees (or past employees) relating to terms of employment, service conditions or disciplinary action. It follows therefore that in the year 1996, the Labour Court had the jurisdiction to make an award in regard to such a dispute. The High Court could not have interfered with it on the

ground that Section 70 of the KCS Act was a bar to the jurisdiction of the Labour Court to decide the dispute.

17. The 1976 Amendment to the KCS Act did not bring about any inconsistency with the provisions of the ID Act nor did it purport to prevail over the provisions of the ID Act. Its effect was merely to provide an additional or alternative forum for adjudication of the disputes between cooperative societies and its employees, relating to employment, working conditions and disciplinary action. The 1976 Amendment Act, therefore, was valid, even in the absence of the assent of the President. On the other hand, the 2000 Amendment specifically excluded the jurisdiction of Industrial Tribunals and Labour Courts under the ID Act, and intended to prevail over the provisions of the ID Act in regard to adjudication of disputes. The said Amendment required the assent of the President and was, in fact, reserved for the assent of the President and obtained his assent. If the 1976 Amendment was to be read as excluding the jurisdiction of the Industrial Tribunals and Labour Courts, then it was necessary to read the provisions of Section 70, as amended by the 1976 Act, as prevailing over the provisions of the ID Act. In which event, it would have required the President's assent, and in the absence of such assent, the amendment to the extent it purported to prevail over the Central enactment, would have been void.

Therefore, the only way to read the 1976 Amendment is to read it in a literal and normal manner, that is, as not excluding the jurisdiction of the Industrial Tribunals and Labour Courts but as merely conferring a concurrent jurisdiction on the Registrar under Section 70 of the KCS Act."

71. The learned Judge then in concluding Paras 24 and 25 held as under :

"24. The resultant position can be summarised thus:

(a) Even though Clause (d) was added in Section 70(2) with effect from 20-1-1976, Section 70(1) did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the ID Act to decide an industrial dispute between the society and its employees. Consequently, even after insertion of Clause (d) in Section 70(2) with effect from 20-1-1976, the Labour Courts and Industrial Tribunals under the ID Act, continued to have jurisdiction to decide disputes between societies and their employees.

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between cooperative societies and their employees was taken away only when sub-section (1) and sub-section (2)(d) of Section 70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18-3-2000 and was brought into effect on 20-6-2000.

(c) The jurisdiction to decide any dispute of the nature mentioned in Section 70(2)

(d) of the KCS Act, if it answered the definition of industrial dispute, vested thus:

(i) exclusively with Labour Courts and Industrial Tribunals till 20-1-1976;

(ii) concurrently with Labour Courts/Industrial Tribunals under the ID Act and with Registrar under Section 70 of the KCS Act between 20-1-1976 and 20-6-2000; and

(iii) exclusively with the Registrar under Section 70 of the KCS Act with effect from 20-6-2000.

25. We therefore hold that the award of the Labour Court was not without jurisdiction. We, however, make it clear that this decision shall not be applied to reopen matters decided relying on Veerashaiva Coop. Bank¹ and Karnataka Sugar Workers Federation² which have attained finality.”

72. In our considered opinion, the ratio of Dharappa’s case is that firstly, Section 70 of the Karnataka CS Act as it originally stood and amended by first Amendment Act 19 of 1976 adding therein two clauses (d) and (e) to Section 70, whether one reads it independently or/and in juxtaposition with other Sections would find that it did not provide for express ouster or exclusion of the jurisdiction of the Labour Court/Industrial Tribunal under the ID Act.

73. In other words, it did not create any express bar for the Labour Court/Industrial Tribunal from deciding the service disputes arising between a Cooperative Society’s Employee and his/her Employer (Co-operative Society).

74. Second, any Co-operative Society’s Employee satisfying the definition of the expression "Workman", "Industrial Dispute" and the Co-operative Society to be an "Industry" as defined under the ID Act has the choice to select one forum out of the two forums for filing a case in relation to his service dispute, i.e., either to file a case under the Karnataka CS Act or to seek an industrial reference under Section 10 of the ID Act or to file an application under Section 10(4-A) of the ID Act.(Para

14).

75. Third, both the Acts, namely, Karnataka CS Act and the ID Act possessed and enjoyed concurrent jurisdiction over such service disputes till 20.06.2000.

76. Fourth, consequent upon the second amendment made by the State of Karnataka in Section 70 by Amendment Act 2/2000, which received the Assent of the President on 18.03.2000 and was brought into force on 20.06.2000, the State legislature, for the first time, provided an express provision for exclusion of the jurisdiction of the Civil Court or Labour Court or Industrial Tribunal to decide any service dispute arising between a Co-operative Society’s Employee and his/her Employer (Co-operative Society).

77. The effect of introducing such amended provision was that the provisions of the ID Act were held no longer applicable for deciding such service disputes. In other words, jurisdiction of the ID Act then stood excluded from deciding such service disputes from 20.06.2000 onwards. A fortiori, only the authorities specified under the Karnataka CS Act were held competent and possessed jurisdiction to try such disputes from 20.06.2000 onwards.

78. Fifth, by way of rule of caution, the question of such nature should be decided by the Courts primarily keeping in view the language employed in the concerned State Act.

79. Sixth, Article 254 of the Constitution is attracted when there is a repugnancy between any provision(s) of the State Act such as Karnataka CS Act and the provision(s) of any existing law enacted by the Parliament on the subject falling in concurrent list such as the ID Act.

80. The inconsistency should be so irreconcilable that it must come in direct head on collision with any provision of the Central Act in the field thereby creating a situation that obeying one Act would result in disobeying the other.

81. Seventh, if such a situation arises in any case, the State law (Karnataka CS Act) which is reserved for President's Assent and on receiving the President's Assent, will prevail over the Central law (ID Act) in that State by virtue of Article 254 (2) of the Constitution.

82. Now coming to the facts of the case at hand, when we examine the question in the light of the ratio of Dharappa's case, culled out above, on comparison, we find substantial similarity between the language of Section 69 of the KCS Act as it originally stood and later amended by the Amendment Act 1 of 2000 with that of the language employed in Section 70 of the Karnataka CS Act as it originally stood along with amended one by first Amendment Act 19/ 1976.

83. In other words, we notice that the phraseology and language of both unamended and amended Section 69 of KCS Act and Section 70 of the Karnataka CS Act as amended by first amendment by Act 1/2000 are in pari materia with each other.

84. First, the KCS Act and the Karnataka CS Act have received the Assent of the President at the time of their respective enactment.

85. Second, the KCS Act-Amendment Act 1/2000 received the Assent of the Governor so also Amendment Act 19/76 of Karnataka CS Act received the Assent of the Governor.

86. Third, Section 69 and Section 70 start with a non-obstante clause, viz., "Notwithstanding anything contained in any law for the time being in force, if a dispute arises"

87. Fourth, Section 69 and Section 70 end with the words "such dispute shall be referred to the Registrar and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute".

88. Fifth, (the KCS Act and the Karnataka CS Act) had no provision expressly providing for ouster of the jurisdiction of Civil Court, Labour Court and the Industrial Tribunal from deciding service disputes alike the one introduced by Karnataka State for the first time in Section 70 by the Amendment Act of 2 of 2000 with effect from 20.06.2000 with the Assent of the President.

89. This, in our view, indicates that till 20.06.2000, there was similarity between the KCS Act and Karnataka CS Act. However, after Section 70 was amended by Act No.2/2000 w.e.f. 20.06.2000 providing therein a specific clause expressly excluding the jurisdiction of the Civil, Labour and Revenue Court and Industrial Tribunal to decide the service disputes, the scheme of the two Acts no longer remained similar.

90. Similarly, we find that the identical wording occurring in the beginning and the end of Section 69 and Section 70 was interpreted in Dharappa's case wherein it was held that such provisions cannot be construed as providing an express exclusion of the jurisdiction of other Courts including that of the Labour Court and the Industrial Tribunal under the ID Act. On the other hand, it was held that the Karnataka CS Act possesses concurrent jurisdiction for deciding the services disputes upto 20.06.2000. (see para 14/16 of Dharappa)

91. This interpretation of Dharappa's case, in our view, would squarely apply to the provisions of the KCS Act if Section 69 is also suitably amended by the State of Kerala by making Section 69 at par with amended Section 70 of Karnataka CS Act. As on date, it is not so.

92. Though the KCS Act was amended by Amendment Act 1 of 2000 (w.e.f. 02.01.2003) but it did not bring about any kind of inconsistency or repugnancy in the KCS Act qua any provision of the ID Act, 1947. Had the KCS Act including the amending one by Act 1/2000 brought about any kind of inconsistency or repugnancy between the provisions of the KCS Act and the ID Act such as the one brought about by the second Amendment Act (2/2000) in Section 70 of Karnataka CS Act w.e.f. 20.06.2000 qua the ID Act and had such amended provisions of the KCS Act received the Assent of the President, the provisions of the KCS Act too would have prevailed over the ID Act in the State by virtue of Article 254 (2) of the Constitution.

93. Such is not the case here because though the KCS Act received the Assent of the President at the time of its enactment so also the Karnataka CS Act received, this Court while interpreting Section 70 as amended by Act No.19/1976 of the Karnataka CS Act with the Assent of the Governor, has held in Dharappa's case that Section 70 did not create any inconsistency or/and repugnancy with any provisions of the ID Act and possessed concurrent jurisdiction over such service dispute. This ratio of Dharappa's case would apply to Section 69 of the KCS Act because we have held that Section 69 is in pari materia with Section 70 of the Karnataka CS Act.

94. That apart, the amending KCS Act (1 of 2000) having received the Assent of the Governor did not bring about any inconsistency or repugnancy with the provisions of the ID Act. In any event, in the absence of the Assent of the President to the amending KCS Act 1/2000, even if any inconsistency or repugnancy exists between the provisions of the KCS Act and the ID Act, it is the ID Act which will prevail over the KCS Act by virtue of Article 254 (1) of the Constitution but not

vice-a-versa.

95. The law in relation to Article 254 of the Constitution and how it is applied in a particular case is fairly well settled by the series of decisions of this Court. This Article is attracted in cases where the law is enacted by the Parliament and the State Legislature on the same subject, which falls in List III - Concurrent list.

96. In such a situation arising in any case, if any inconsistency or/and repugnancy is noticed between the provisions of the Central and the State Act, which has resulted in their direct head on collusion with each other which made it impossible to reconcile both the provisions to remain in operation inasmuch as if one provision is obeyed, the other would be disobeyed, the State Act, if it has received the Assent of the President will prevail over the Central Act in the concerned State by virtue of Article 254 (2) of the Constitution.

97. A fortiori, in such a situation, if the State Act has received the Assent of the Governor then the Central Act would prevail over the State Act by virtue of Article 254 (1) of the Constitution.

98. It is this principle, which was applied by this Court in the case of Dharappa while comparing the provisions of the Karnataka CS Act including its two amendments with that of the provisions of the ID Act.

99. This takes us to examine another question. The majority Judges, as we find, proceeded to examine the questions by attempting to compare the language employed in the relevant Sections of the two repealed KCS Acts of 1932 and 1951 with that of the language of Section 69 of the KCS Act 1969 and noticing some departure in the language employed in Section 69, came to a conclusion that the language of Section 69 is comprehensive enough to exclude the jurisdiction of the Labour Court under the ID Act. The majority Judges also took note of some more Sections of the KCS Act and noticing some dis-similarity in the scheme of the KCS Act and Karnataka CS Act held that Section 69 of the KCS Act overrides the provisions of the ID Act since inception. We find ourselves unable to agree with the approach of the majority.

100. In our view, when this Court in Dharappa's case has interpreted the language of Section 70 of the Karnataka CS Act, the questions involved herein should have been examined by comparing the language employed in Section 69 of the KCS Act with the language employed in Section 70 of the Karnataka CS Act rather than to compare with the repealed provisions.

101. In other words, once on comparing the language of Section 69 and that of Section 70 as amended by the first amendment, a conclusion is reached that both Sections are akin to each other till 20.06.2000, a fortiori, the law laid down in Dharappa's case insofar as it interprets Section 70 as it originally stood and amended by Amendment Act 19/1976 would apply to Section 69 of the KCS Act. On the other hand, the ratio will not apply after 20.06.2000 because from that date, there was a change in the language of Section 70 which provided a clause to exclude the Jurisdiction of other Courts in express terms by Amendment Act of 2/2000.

102. In the light of foregoing discussion, we are of the considered opinion that the view of majority Judges cannot be upheld whereas the view of the minority Judges deserves to be upheld and is accordingly upheld.

103. We accordingly hold that the KCS Act and the ID Act both possess and enjoy the concurrent jurisdiction to decide any service dispute arising between the Co-operative Society's Employee and his/her Employer (Co-operative Society).

104. We also hold that it is the choice of the Employee concerned to choose any one forum out of the two forums available to him/her under the two Acts (the KCS Act and the I.D. Act) to get his/her service dispute decided. It is, however, subject to satisfying the test laid down under the ID Act that the employee concerned is a "workman", the dispute raised by him/her is an "industrial dispute" and the Co-operative Society (Employer) is an "Industry" as defined under the ID Act.

105. In the light of the aforesaid finding, all those cases, which have taken contrary view, stand overruled.

106. As a result of our conclusion, in our view, the Labour Court in this case was competent to decide the service dispute raised by the Employee (appellant herein) under the ID Act. The case is accordingly remanded to the writ Court to decide the respondent's writ petition for examining the legality and correctness of the award of the Labour Court on merits in accordance with law.

107. In view of foregoing discussion, the appeal succeeds and is, accordingly, allowed. The impugned judgment is set aside.

.....J. [R.K. AGRAWAL]J. [ABHAY MANOHAR
SAPRE] New Delhi;

January 12, 2018