

CHAIRMAN ADMINISTRATIVE COMMITTEE U.P.  
MILK UNION & DAIRY FEDERATION CENTRALIZED  
SERVICES

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v.

JAGPAL SINGH

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(Civil Appeal No. 49 of 2021)

MARCH 23, 2021

**[UDAY UMESH LALIT, CJI, HEMANT GUPTA  
AND S. RAVINDRA BHAT, JJ.]**

*Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975: Regn. 87 – Prior approval – Administrative Committee in exercise of powers conferred under r.10 r/w proviso to r.15 passed office order on 8.8.2016 that prior to imposing of penalty, the approval of Dairy Milk Commissioner/Registrar would be mandatory – In terms of the said Circular, the order of punishment was passed against respondent-employee after approval from the Dairy Milk Commissioner discharging functions as the Registrar – Challenge against – Held: The exercise of the powers under the Act are conferred by designation – The prior approval of the punishment is by the Registrar – If, incidentally, the person holding the post of Registrar is also Chairman of the Administrative Committee, it cannot be said to be illegal as he is exercising the powers of Registrar as well as of the Chairman of the Administrative Committee in terms of the Act or the Rules – The Chairman is the Disciplinary Authority in terms of proviso to r.15 of the Dairy Service Rules – Though, the Administrative Committee has resolved that the approval of the Dairy Milk Commissioner/Registrar would be mandatory, but such Resolution has to be read in the context of proviso to r.15 which confers jurisdiction on Chairman of the Administrative Committee to be a Disciplinary Authority – Since the Chairman of the Administrative Committee happens to be the Registrar, the decision to impose punishment may not require prior approval – However, if prior approval has been sought from the office of Registrar, that will not vitiate the proceedings – There is nothing wrong in the exercise of power by the Chairman of the Committee – Thus, there is no error in the order of punishment passed by the Administrative*

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- A *Committee – Uttar Pradesh Co-operative Dairy Federation and Milk Union Centralised Service Rules, 1984 – ss.10, 15.*

**Allowing the appeal, the Court**

- B **HELD : 1. The Uttar Pradesh Co-operative Dairy Federation and Milk Union Centralised Service Rules, 1984 came to be published in the U.P. Government Gazette on 29.8.1984. As per the said Rules, the Administrative Committee was to consist of a Managing Director of the Federation, a nominee of the Registrar not below the rank of Class I Officer, a nominee of the Managing Director of the Federation and a Member Secretary. Rule 15 of the Dairy Service Rules contemplates that the Appointing Authority and the authority exercising disciplinary control over the members of the service shall be such as may be laid down in the regulations. However, the proviso contemplated that till the enforcement of such regulations, the Chairman of the Administrative Committee shall be the Appointing Authority and would act as the authority exercising disciplinary control as well. [Paras 11, 13][740-C-D; 743-E-F]**

- E **2. The Administrative Committee in exercise of the powers conferred under Rule 10 read with proviso to Rule 15 passed an office order on 8.8.2016 that prior to imposing of penalty, the approval of Dairy Milk Commissioner/Registrar would be mandatory. It is in terms of the said Circular that the order of punishment was passed against the employee after approval from the Commissioner (Dairy Milk), discharging functions as the Registrar. [Paras 14, 15][743-G; 744-C]**

- F **3. Section 122 of the Act and Rule 389-A of the 1968 Rules empower the State Government to constitute an authority for recruitment, training and disciplinary control of the employees of Co-operative Societies. By virtue of notification dated 4.3.1972, Uttar Pradesh Co-operative Institutional Service Board was constituted for the purpose of recruiting, training and exercising disciplinary control of the employees of Apex Level Societies, Central or Primary Societies. Later, Regulation 87 of the Service Regulations mandated that no order of punishment could be passed without prior concurrence of the Board. However, by notification dated 17.11.1979 issued again in terms of the powers**

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conferred on the State Government under Section 122 of the Act and Rule 389-A of the 1968 Rules, the Apex Level Society i.e. Pradeshik Co-operative Dairy Federation, Central or Primary Milk Societies, whose area of operation extends to more than one district or State and Co-operative Milk Unions, including Kanpur Co-operative Milk Board, were taken out of the control of Uttar Pradesh Co-operative Institutional Service Board. A Selection Committee was constituted in respect of Category I and II employees. Thereafter, it was the Selection Committee who was empowered for the purpose of recruitment, training and disciplinary control of the employees of Dairy Co-operative Societies until the Dairy Service Rules came into force upon publication of the Gazette on 29.8.1984 and not the Service Regulations since it ceased to apply vide notification 17.11.1979 issued by the State. The Resolution dated 20.09.1984 by the Cadre Authority which provided that the service conditions of the members of the Centralised Service shall be governed by the 1975 Regulations will not revive the applicability of Regulation 87 of the Service Regulations as Rule 15 of the Dairy Service Rules contemplate the Appointing and Disciplinary Authority. [Para 18][745-G-H; 746-A-D]

4. The Administrative Committee exercises overall control and supervision over the members of the Service in terms of Rule 10(i) of the Dairy Service Rules. Such Administrative Committee constituted under Rule 5 of the Dairy Service Rules is the Appointing Authority till the time Regulations are framed in terms of Rule 15 of the said Rules. Therefore, the Resolution dated 20.9.1984 will not determine the Appointing or Disciplinary Authority, the same being covered the Statutory Rule namely the Dairy Service Rules. The Dairy Service Rules have been framed in exercise of the jurisdiction conferred under Section 122A of the Act. The Regulations can be framed by the Registrar or the State either under Section 121 or 122 of the Act or in terms of Rule 9 of the Dairy Service Rules. Such Rules would have precedence over the Regulations, which are framed or are required to be framed either by the Registrar or by the Authority entrusted with the task of recruitment, training and disciplinary control. Therefore, in terms of proviso to Rule 15, the Chairman of the Administrative Committee is the Appointing and

A **Disciplinary Authority. Hence, the Service Regulations would be inapplicable to determine the Appointing Authority and/or the Disciplinary Authority in respect of the employees of Co-operative Milk Societies. [Paras 19, 20][746-E-H; 747-A]**

B **5. Regulation 106 of the Service Regulations empowers the State Government or the Registrar to pass such orders not inconsistent with the Regulations in respect of termination, dismissal or removal. The punishment imposed is of reversion and not of either termination, dismissal or removal. Therefore, Regulation 106 will not be applicable. There is also no inconsistency or difficulty which the State Government or Registrar is empowered to remove in exercise of powers conferred under Regulation 106. The Administrative Committee however passed an office order on 8.8.2016 that the Chairman shall seek prior approval of Dairy Milk Commissioner/Registrar prior to imposing penalty. Such decision of the Administrative Committee is self-regulatory and has been applied by the Administrative Committee in the present case as well while seeking prior approval of the Milk Commissioner/Registrar. [Paras 22, 24][747-C-D; 747-F-G]**

E **6. The 1975 Regulations were framed in exercise of power conferred under Section 122 of the 1965 Act. Till the time 1975 Regulations were framed, the entire statutory regime, in terms of which service conditions including disciplinary control of employees in a co-operative society or class of co-operative societies could be regulated, was in terms of Sections 121 and 122 of the 1965 Act. Regulation 87 of 1975 Regulations, therefore, has to be seen as part of such general statutory regime. [Para 25][747-G-H; 748-A]**

G **7. On 16.04.1976, Section 122-A was inserted in the 1965 Act which now provided for centralization of services. This Section opens with a non-obstante clause and thus, the intent is to give an overriding effect over the general regime contemplated by Sections 121 and 122 of the 1965 Act. Section 122-A of the 1965 Act empowers the Government, by rules, to provide for creation of one or more services of employees of such co-operative society or class of co-operative societies as the Government may think fit and prescribe *inter alia* conditions of service including**

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appointment and removal of persons appointed to such service. A  
[Para 26][748-B-C]

8. It was in exercise of power conferred under Section 122-A of the 1965 Act that 1984 Rules were framed. Rule 15 of the 1984 Rules stipulates that the appointing authority and the authority exercising disciplinary control over the members of the service shall be such as may be laid down in the Regulations and till such Regulations are brought in force, *'the Chairman of the Committee shall be the appointing authority and the authority exercising disciplinary control over them'*. [Para 27][748-C-D] B

9. In terms of the specific statutory regime referable to Section 122-A of the 1965 Act, Rule 15 thus, would be the governing principle rather than Regulation 87 framed in exercise of regulation making power referable to the general dispensation under Sections 121 and 122 of the 1965 Act. Rule 15 does not contemplate that the Chairman of the Committee is required to have any prior concurrence of any authority. It would, therefore, be incorrect to rely upon or import the principles of Rule 87 in substitution of clear intent and mandate of Rule 15 of 1984 Rules. [Paras 28 and 29][748-E-F] C D

10. The Resolution dated 20.09.1984 or for that matter the Office Order dated 08.08.2016 which are pure departmental executive instructions cannot displace statutory Rule 15 and the process contemplated therein and import a requirement which would be in the teeth of Rule 15. [Para 30][748-G] E

11. The Milk Commissioner has been appointed as Registrar in exercise of the powers conferred on the State Government by the Act. The approval from the Registrar is in terms of the resolution of the Administrative Committee constituted in terms of Dairy Service Rules. The exercise of the powers under the Act are conferred by designation. The prior approval of the punishment is by the Registrar. If, incidentally, the person holding the post of Registrar is also Chairman of the Administrative Committee, it cannot be said to be illegal as he is exercising the powers of Registrar as well as of the Chairman of the Administrative Committee in terms of the Act or the Rules. [Para 32][749-E-F] F G

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Bench dated 26.8.2019, affirming the order passed by the learned Single Bench on 17.5.2019. A

2. The writ petition filed before the High Court was to assail an order of punishment dated 26.10.2018, whereby the respondent<sup>1</sup> was ordered to be reverted to the minimum pay scale and the period of suspension was to be considered as a period spent by the employee in service. However, for the said suspension period, the employee was not found to be entitled to any other pay or allowance except subsistence allowance and dearness allowance. The order of punishment was passed after the prior approval of the Commissioner (Dairy Milk), Lucknow, designated as Registrar by the State Government on the same day. B C

3. The employee was appointed as Executive Trainee in the Centralised Services on 11.8.1984. After completion of the training period, he was appointed as Manager Grade-III. The employee was served with a charge sheet dated 21.4.2015, *inter-alia*, on the ground that in addition to two chambers of milk in tankers, one more additional third hidden chamber having capacity of 310 liters was created by partition. Water was filled in the said additional chamber to maintain total weight of the vehicle. After weight measurement at the time of unloading of milk from the two chambers, water from the additional hidden chamber was discharged. On account of manipulation in the weight measurement, the Federation suffered financial losses. The employee controverted the said allegations and thus an Inquiry Officer was appointed. In the Inquiry Report dated 13.6.2018, charges nos. 1 and 3 were found to be partially proved against the employee. The Inquiry Report was then forwarded to the employee along with a show cause notice on 25.6.2018. An opportunity of personal hearing was also afforded to him. It is thereafter that the Managing Director/ Chairman (Administrative Committee) passed an order on 26.10.2018 holding the employee guilty of all the three charges and passed an order of punishment, as mentioned above, after obtaining approval from the Commissioner (Dairy Milk)/ Registrar, Dairy Milk Co-operatives, U.P. on 26.10.2018. It is the said order which was challenged by the employee by way of a writ petition before the High Court. D E F G

4. The learned Single Bench while deciding the Writ Petition held that the order of punishment was passed without following the due

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<sup>1</sup> hereinafter referred to as 'employee'

- A procedure of law, four days prior to the retirement of the employee. There was an undue and unexplained haste in passing the impugned order without taking prior approval under Regulation 87 of the Service Regulations from the competent authority i.e., the Uttar Pradesh Co-operative Institutional Service Board. It was further held that the punishment order has been passed by the Chairman of the Administrative Committee and the approval for the punishment has also been granted by the same person. Therefore, the present case was found to be an example of inappropriate approval given by an incompetent authority.

5. In the intra-court appeal, the Division Bench of the High Court referred to the inquiry reports dated 9.5.2014 and 15.10.2014 to hold that the employee has not been given any disagreement note, rather he was exonerated in those reports. However, it is to be noted that the Division Bench overlooked the fact that they were preliminary inquiries. The Division Bench considering the Regulations 87 and 106 of the Service Regulations held as under:

- D “15. On due consideration of the aforesaid, it is clear that basic requirement is that the order should not be inconsistent to the Regulations of 1975 and the order dated 08.08.2016 is in direct conflict to the provisions as contained under Regulation 87 of the Regulations of 1975. The respondent-petitioner was a member of Centralized Services, which were promulgated by the U.P. Dairy Federation & Milk Union Centralized Services Rules, 1984, which came into existence after a period of more than five years and, therefore, the notification dated 17.11.1979 cannot be applicable to the members of Centralized Services and, as such, the analogy given by the Milk Commissioner/Registrar while passing the order dated 08.08.2016 is incorrect.”

6. Before we consider the respective arguments and the findings of the High Court, some of the statutory provisions are reproduced hereunder for appreciation of the contentions raised:

- G “UTTAR PRADESH CO-OPERATIVE SOCIETIES ACT, 1965<sup>2</sup>  
**121. Power of Registrar to determine terms of employment of society.** - (1) The Registrar may, from time to time, frame regulation to regulate the emoluments and other conditions of service including the disciplinary control of employees in a co-

H <sup>2</sup> for short, the ‘Act’



operative society or a class of co-operative societies and any society to which such terms are applicable, shall comply with those regulations and with any orders of the Registrar, issued to secure such compliance. A

(2) The regulations framed under sub-section (1) shall be published in the Gazette and take effect from the date of such publication. B

**122. Authority to control employees of co-operative societies.** - (1) The State Government may constitute any authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the 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 disputes between an employee of a co-operative society and the society. C

(2) The regulations framed under sub-section (1) shall be subject to the approval of the State Government and shall after such approval, be published in the Gazette, and take effect from the date of such publication and shall supersede any regulations made under Section 121. D

<sup>3</sup>**122-A. Centralisation of certain services.**- (1) Notwithstanding anything contained in this Act, the State Government may by rules provide for the creation of one there services of such employees of such co-operative societies or class of co-operative societies as the State Government may think fit, common to such co-operative societies and prescribe the method of recruitment, appointment, removal and other conditions of service of persons appointed to any such service. E F

(2) When any such service is created, all employees of such societies existing on the date of creation of such service on the posts included in such service, shall be deemed to have been provisionally absorbed in the service. with effect from the date of creation of such service: G

Provided that any such employee may, by notice in writing to the prescribed authority within the prescribed period, intimate his option

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<sup>3</sup> subs.by U.P. Act 17 of 1977 (w.e.f.3-10-1975)

A of not becoming a member of such service, and in that event his services in the society shall stand determined with effect from the date of such notice and he shall be entitled to compensation from the society which shall be-

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B **Section 130. Power to make rules.—**

(1) the State Government may, make rules to carry out the purposes of this Act.

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**THE UTTAR PRADESH CO-OPERATIVE SOCIETIES RULES, 1968<sup>4</sup>**

2. Definitions- In these rules, unless the context otherwise requires

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(a) \*\*\* \*\*

(b) “Apex Society”, “Apex Level Society” or “State Level Co-operative Society” means-

(1) to (3) \*\*\* \*\*

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(4) Pradeshik Co-operative Dairy Federation Ltd., Lucknow;

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\*[389-A. The authority or authorities under Section 122 may be constituted by the State Government by notification published in the Official Gazette]

\* substituted by Notification No. 3885-C/XII-CA-5(1)-69-B, dt. Aug. 31, 1971, published in the U.P. Gaz., Extra., dt. 31<sup>st</sup> Aug., 1971, p.2.”

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7. In terms of Section 122 of the Act and Rule 389-A of the 1968 Rules, a notification was issued on 4.3.1972 constituting Uttar Pradesh Co-operative Institutional Service Board for the purposes of recruitment, training and disciplinary control of the employees of apex level, central

H <sup>4</sup> for short, ‘1968 Rules’

or primary societies. Later, the Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975<sup>5</sup> were published in the U.P. Gazette, Extraordinary on 6.1.1976 in exercise of the powers conferred under Section 121 of the Act. Some of the relevant provisions read thus:

“2(iii) ‘appointing authority’ means “Committee of Management” or any other authority which is empowered under these regulations or the bye-laws of the society concerned to make appointment;

(iv) ‘Board’ means the U.P. Co-operative Institutional Service Board;

(v) to (viii)                      \*\*\*                      \*\*\*

(ix) ‘Co-operative Society’ means a Co-operative Society placed under the purview of the Board by Government Notification No. 366-C/XII-C-3-36-71, dated March 4, 1972, as amended from time to time by notifications issued under Section 122 of the Act read with Rule 389(a) of the Rules.

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87. Order imposing penalty under sub-clauses (e) to (g) of clause (1) of Regulation No. 84 shall not be passed except with the prior concurrence of the Board.”

8. Regulation 84 of the Service Regulations provides for penalties such as reduction in rank or grades held substantively by the employee (clause e), removal from service (Clause f), or dismissal from service (Clause g). As per Regulation 87 of the Service Regulations, the aforesaid punishment could not be passed except with the prior concurrence of the Board.

9. It may be stated that all the powers of Registrar in respect of all Co-operative Milk Societies were conferred on the Milk Commissioner Uttar Pradesh by the State Government vide notification dated 19<sup>th</sup> May, 1976 in exercise of powers conferred under sub-section 2 of Section 3 of the Act.

10. The Uttar Pradesh Co-operative Institutional Service Board ceased to have jurisdiction to operate regarding recruitment, training and disciplinary control of the employees of the Apex Level Milk Society i.e. Pradeshik Co-operative Dairy Federation, Central or Primary Milk

<sup>5</sup> for short, the ‘Service Regulations’

- A Societies vide notification dated 17.11.1979 issued under Section 122 read with Rule 389-A of the 1968 Rules. Instead, a Selection Committee for recruitment of Category I and II employees, as specified by the Registrar from time to time, was constituted. Such Selection Committee consisted of an officer nominated by the State Government as Chairman; a representative of the National Milk Dairy Development Board, Principal
- B Agricultural Institute, Naini, Allahabad and one Chairman of a Co-operative Milk Union or Central Milk Society in the State nominated by the State Government as Members; and Managing Director, Pradeshik Co-operative Dairy Federation as Member Secretary.

- C 11. The Uttar Pradesh Co-operative Dairy Federation and Milk Union Centralised Service Rules, 1984<sup>6</sup> came to be published in the U.P. Government Gazette on 29.8.1984. As per the said Rules, the Administrative Committee was to consist of a Managing Director of the Federation, a nominee of the Registrar not below the rank of Class I Officer, a nominee of the Managing Director of the Federation and a
- D Member Secretary. Some of the relevant provisions of the Dairy Service Rules read as under:

“2(a) “Act” means the Uttar Pradesh Co-operative Societies Act, 1965.

- E (b) “Authority” means the Cadre Authority as constituted in accordance with rule 4 of these rules;

(c) “Board” means the Committee of Management of the Pradeshik Co-operative Dairy Federation Ltd., Lucknow (and includes the Administrator or the Committee of Administrators of the Federation);

- F (d) “Committee” means the Administrative Committee constituted in accordance with rule 5 of these rules;

(e) “Federation” means the Pradeshik Co-operative Dairy Federation Ltd., Lucknow;

- G (f) to (l) \*\*\* \*\*

**3. Creation of Service.** – (1) Uttar Pradesh Co-operative Dairy Federation and Milk Unions Centralised Service shall consist of all the managerial posts of the Federation and the Unions except

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H <sup>6</sup> for short, the ‘Dairy Service Rules’

the post of Managing Director, Chief Commercial Manager and Chief General Manager of the Federation. A

(2) No appointment shall be made to any of the posts falling within the purview of the service by the Federation or Union from the date of enforcement of these rules:

Provided that the Government may place on deputation any officer of the Government on any managerial post of the federation or Union: B

Provided further that the services of the persons already in the employment of another, Co-operative Society, or a corporation or undertaking owned or controlled by the central or State Government or a body corporate administering a local fund or National Dairy Development Board may also be taken on deputation. C

**4. Constitution of Cadre Authority.** - The Cadre Authority shall be constituted as under: D

(i) The Registrar ...Chairman

(ii) to (viii) \*\*\* \*\*\*

(ix) Managing Director of the Federation ...Member-Secretary

*Note.* - In case the post of the Registrar and the Managing Director of the Federation is held by the same officer, the Chairman may nominate any member as Member-Secretary and the vacancy of member so caused shall be filled by nomination of any other officer or the Federation by the Managing Director. E

**5. Constitution of Administrative Committee.** - The Administrative Committee shall be constituted as under: F

(i) Managing Director of the Federation - Chairman

(ii) A nominee of the Registrar not below the rank of Class I Officer – Member G

(iii) A nominee of the Managing Director of the Federation – Member-Secretary.

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“1. Short title, commencement and application - (1) These regulations may be called the Uttar Pradesh Co-operative Societies Employees’ Service (Tenth Amendment) Regulations, 2002. A

(2) They shall take effect from the date of their publication in the U.P. Gazette.

(3) They shall apply to all the Employees of Co-operative Societies in Uttar Pradesh. B

2. Insertion of new Regulation. – In the Uttar Pradesh Co-operative Societies Employees’ Service Regulations, 1975 after Regulation 105 the following regulation shall be *inserted*, namely:- C

“106. The State Government or the Registrar may pass such orders not inconsistent with these Regulations as it or he deems necessary just and proper to remove any difficulty arising in relation to emoluments, terms and conditions of service, appointment or re-appointment, termination, dismissal or removal, deputation or merger.” D

13. The Cadre Authority was required to frame regulations in terms of Rule 9 of the Dairy Service Rules with the prior approval of the State Government relating to recruitment, training, emoluments, disciplinary control and other conditions of service of the members; whereas, the Administrative Committee under Rule 10 was to exercise overall control and supervision over the members of the service. Rule 15 of the Dairy Service Rules contemplated that the Appointing Authority and the authority exercising disciplinary control over the members of the service shall be such as may be laid down in the regulations. However, the proviso contemplated that till the enforcement of such regulations, the Chairman of the Administrative Committee shall be the Appointing Authority and would act as the authority exercising disciplinary control as well. E F

14. The Administrative Committee in exercise of the powers conferred under Rule 10 read with proviso to Rule 15 passed an office order on 8.8.2016 that prior to imposing of penalty, the approval of Dairy Milk Commissioner/Registrar would be mandatory. The relevant extract from the said Circular reads as under: G

“... Therefore, in the matter of employees of Centralised Service Cadre, until the provisions of Uttar Pradesh Cooperative Society H

A Employees Service Rules, 1975 are applicable, till then prior to imposing of penalty the approval of Dairy Milk Commissioner/Registrar is mandatory.

B Therefore, the Chairman, Administrative Committee, Uttar Pradesh Cooperative Dairy Federation and Dairy Milk Federation Centralised Service Cadre, PCDF Hqrs., Lucknow is hereby directed that prior to imposing penalty against the members of aforesaid cadre the prior approval of Dairy Milk Commissioner/Registrar under the provisions of Regulation 87 of Uttar Pradesh Cooperative Society Employees Service Rules, 1975 may be obtained necessarily.”

C 15. It is in terms of the said Circular that the order of punishment was passed against the employee after approval from the Commissioner (Dairy Milk), discharging functions as the Registrar.

D 16. The High Court relied upon a judgment of Division Bench of the High Court in *Chandra Pal Singh v. State of U.P. & Ors.*<sup>7</sup> wherein it was held that prior approval of the Board was not obtained as is required under Regulation 87 of the Service Regulations. It was noted that though in terms of notification dated 17.11.1979 Service Regulations ceased to apply, but provisions as were existing before the provisions of Service Regulations, would be applicable to the employees of the Centralised Services in terms of the resolution dated 20.9.1984. It was also held that the notification dated 17.11.1979 was not mentioned in the resolution dated 20.9.1984. Thus, it was concluded that the order of punishment without approval of the Board was not legal in terms of Regulation 87 of the Service Regulations. Hence, the order of punishment was quashed.

F The relevant extract from *Chandra Pal Singh* reads as under:

G “Considered the submissions of learned counsel for the parties and perused the record. As far as the approval part is concerned, admittedly, no approval/concurrence was obtained by the Board before passing the order of dismissal from service. In view of the provision of Regulation 87 of U.P. Cooperative Societies Employees Service Regulation 1975, concurrence of the Board is required before passing the order of dismissal. According to notification dated 17.11.1979, Pradeshik Cooperative Dairy Federation Ltd. including the Primary Milk Cooperative Society

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H <sup>7</sup> Writ-A No. 45263 of 2011 passed on 9.1.2018



were put out of purview of U.P. Cooperative Societies Employees Service Regulation 1975 with respect to the recruitment, training and disciplinary control and by the same notification, selection committee was constituted for category 1 and 2 employees of cooperative dairy federation. Hence, in case of the Centralised Services, the provision of Regulation 87 ceased to apply and whatever provision was applicable before the provision of Regulation 1975 was adopted, which will be applicable to the employees of Centralised Services. When the provision was adopted by the resolution of the Board dated 20.9.1984, the notification of 1979 was not mentioned in the same and the resolution regarding adoption of the provisions of Pradeshik Cooperative Society Employees Service Regulation 1979 were adopted till regulation for the Centralised Services was framed. Subsequently, it was clarified and approved vide order dated 31.1.2000 by the Dairy Commissioner/Registrar and the resolution dated 20.9.1984 was approved. Hence, till regulations are framed, the provisions of U.P. Cooperative Societies Employees Service Regulations 1975 are applicable.”

17. We find that the High Court in the impugned judgment and in *Chandra Pal Singh* proceeded on wrong assumptions of facts and law. Factually, in the present appeal, the disciplinary proceedings against the employee were initiated on 21.4.2015. The Inquiry Report was submitted on 13.6.2018 wherein the charges nos. 1 and 3 were found to be proved. Thus, there was no question of recording of any disagreement with the findings recorded by the Inquiry Officer. A show cause notice was subsequently served upon the employee enclosing a copy of the Inquiry Report on 25.6.2018. The employee was given an opportunity for personal hearing as well. Thereafter, an order of punishment was passed after obtaining approval from the Commissioner (Dairy Milk).

18. Section 122 of the Act and Rule 389-A of the 1968 Rules empower the State Government to constitute an authority for recruitment, training and disciplinary control of the employees of Co-operative Societies. By virtue of notification dated 4.3.1972, Uttar Pradesh Co-operative Institutional Service Board was constituted for the purpose of recruiting, training and exercising disciplinary control of the employees of Apex Level Societies, Central or Primary Societies. Later, Regulation 87 of the Service Regulations mandated that no order of punishment

- A could be passed without prior concurrence of the Board. However, by notification dated 17.11.1979 issued again in terms of the powers conferred on the State Government under Section 122 of the Act and Rule 389-A of the 1968 Rules, the Apex Level Society i.e. Pradeshik Co-operative Dairy Federation, Central or Primary Milk Societies, whose area of operation extends to more than one district or State and Co-operative Milk Unions, including Kanpur Co-operative Milk Board, were taken out of the control of Uttar Pradesh Co-operative Institutional Service Board. A Selection Committee was constituted in respect of Category I and II employees. Thereafter, it was the Selection Committee who was empowered for the purpose of recruitment, training and disciplinary control of the employees of Dairy Co-operative Societies until the Dairy Service Rules came into force upon publication of the Gazette on 29.8.1984 and not the Service Regulations since it ceased to apply vide notification 17.11.1979 issued by the State. The Resolution dated 20.09.1984 by the Cadre Authority which provided that the service conditions of the members of the Centralised Service shall be governed by the 1975 Regulations will not revive the applicability of Regulation 87 of the Service Regulations as Rule 15 of the Dairy Service Rules contemplate the Appointing and Disciplinary Authority.

19. The Administrative Committee exercises overall control and supervision over the members of the Service in terms of Rule 10(i) of the Dairy Service Rules. Such Administrative Committee constituted under Rule 5 of the Dairy Service Rules is the Appointing Authority till the time Regulations are framed in terms of Rule 15 of the said Rules. Therefore, the Resolution dated 20.9.1984 will not determine the Appointing or Disciplinary Authority, the same being covered the Statutory Rule namely the Dairy Service Rules.

20. The Dairy Service Rules have been framed in exercise of the jurisdiction conferred under Section 122A of the Act. The Regulations can be framed by the Registrar or the State either under Section 121 or 122 of the Act or in terms of Rule 9 of the Dairy Service Rules. Such Rules would have precedence over the Regulations, which are framed or are required to be framed either by the Registrar or by the Authority entrusted with the task of recruitment, training and disciplinary control. Therefore, in terms of proviso to Rule 15, the Chairman of the Administrative Committee is the Appointing and Disciplinary Authority. Hence, the Service Regulations would be inapplicable to determine the

Appointing Authority and/or the Disciplinary Authority in respect of the employees of Co-operative Milk Societies. A

21. The attention of the Division Bench in *Chandra Pal Singh* was not drawn to Rule 15 of the Dairy Service Rules. The proviso to the said Rule empowered the Administrative Committee constituted under Rule 5 as an Appointing Authority and the authority to exercise disciplinary control over the employees of the centralised services till the time regulations are framed. The resolution dated 20.9.1984 would thus be applicable in respect of other service conditions. However, with regard to disciplinary control, it would be the Dairy Service Rules which would be applicable. B

22. Regulation 106 of the Service Regulations empowers the State Government or the Registrar to pass such orders not inconsistent with the Regulations in respect of termination, dismissal or removal. The punishment imposed is of reversion and not of either termination, dismissal or removal. Therefore, Regulation 106 will not be applicable. There is also no inconsistency or difficulty which the State Government or Registrar is empowered to remove in exercise of powers conferred under Regulation 106. C

23. In *Chandra Pal Singh*, the finding of the Division Bench that the 1979 notification is not mentioned in the resolution of the Cadre Authority passed on 20.9.1984 is untenable in view of statutory rules contemplating the Appointing Authority. Therefore, the order of punishment passed by the Chairman of the Administrative Committee in terms of proviso to Rule 15 is by the competent Disciplinary Authority. D

24. The Administrative Committee however passed an office order on 8.8.2016 that the Chairman shall seek prior approval of Dairy Milk Commissioner/Registrar prior to imposing penalty. Such decision of the Administrative Committee is self-regulatory and has been applied by the Administrative Committee in the present case as well while seeking prior approval of the Milk Commissioner/Registrar. E

25. As mentioned before, the 1975 Regulations were framed in exercise of power conferred under Section 122 of the 1965 Act. Till the time 1975 Regulations were framed, the entire statutory regime, in terms of which service conditions including disciplinary control of employees in a co-operative society or class of co-operative societies could be regulated, was in terms of Sections 121 and 122 of the 1965 Act. F

- A Regulation 87 of 1975 Regulations, therefore, has to be seen as part of such general statutory regime.

26. On 16.04.1976, Section 122-A was inserted in the 1965 Act which now provided for centralization of services. This Section opens with a non-obstante clause and thus, the intent is to give an overriding effect over the general regime contemplated by Sections 121 and 122 of the 1965 Act. Section 122-A of the 1965 Act empowers the Government, by rules, to provide for creation of one or more services of employees of such co-operative society or class of co-operative societies as the Government may think fit and prescribe *inter alia* conditions of service including appointment and removal of persons appointed to such service.

27. It was in exercise of power conferred under Section 122-A of the 1965 Act that 1984 Rules were framed. Rule 15 of the 1984 Rules stipulates that the appointing authority and the authority exercising disciplinary control over the members of the service shall be such as may be laid down in the Regulations and till such Regulations are brought in force, '*the Chairman of the Committee shall be the appointing authority and the authority exercising disciplinary control over them*'.  
D

28. In terms of the specific statutory regime referable to Section 122-A of the 1965 Act, Rule 15 thus, would be the governing principle rather than Regulation 87 framed in exercise of regulation making power referable to the general dispensation under Sections 121 and 122 of the 1965 Act. Rule 15 does not contemplate that the Chairman of the Committee is required to have any prior concurrence of any authority.

29. It would, therefore, be incorrect to rely upon or import the principles of Rule 87 in substitution of clear intent and mandate of Rule 15 of 1984 Rules.

30. The Resolution dated 20.09.1984 or for that matter the Office Order dated 08.08.2016 which are pure departmental executive instructions cannot displace statutory Rule 15 and the process contemplated therein and import a requirement which would be in the teeth of Rule 15.

31. The learned Single Bench found that the Chairman of the Administrative Committee and that the Milk Commissioner are one and the same person, which vitiates the order of punishment passed. We do

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not find any merit in the said finding. Sir William Wade in A  
his *Administrative Law* stated:

“But there are many cases where no substitution is possible, since  
no one else is empowered to act. Natural justice then has to give  
way to necessity; for otherwise there is no means of deciding and  
the machinery of justice or administration will break down. B

It was further stated:

“In administrative cases the same exigency may arise. Where  
the statute empowers a particular minister or official to act, he  
will usually be the one and only person who can do so. There is C  
then no way of escaping the responsibility, even if he is personally  
interested. Transfer of responsibility is, indeed, a recognised type  
of ultra vires. In one case it was unsuccessfully argued that the  
only minister competent to confirm a compulsory purchase order  
for land for an airport had disqualified himself by showing bias  
and that the local authority could only apply for a local Act of D  
Parliament.”

32. The Milk Commissioner has been appointed as Registrar in  
exercise of the powers conferred on the State Government by the Act.  
The approval from the Registrar is in terms of the resolution of the  
Administrative Committee constituted in terms of Dairy Service Rules. E  
The exercise of the powers under the Act are conferred by designation.  
The prior approval of the punishment is by the Registrar. If, incidentally,  
the person holding the post of Registrar is also Chairman of the  
Administrative Committee, it cannot be said to be illegal as he is exercising  
the powers of Registrar as well as of the Chairman of the Administrative  
Committee in terms of the Act or the Rules. F

33. The Chairman is the Disciplinary Authority in terms of proviso  
to Rule 15 of the Dairy Service Rules. Though, the Administrative  
Committee has resolved that the approval of the Dairy Milk  
Commissioner/Registrar would be mandatory, but such Resolution has  
to be read in the context of proviso to Rule 15 which confers jurisdiction G  
on the Chairman of the Administrative Committee to be a Disciplinary  
Authority. Since the Chairman of the Administrative Committee happens  
to be the Registrar, the decision to impose punishment may not require  
prior approval. However, if the prior approval has been sought from the  
office of Registrar, that will not vitiate the proceedings. H

A           34. Viewed thus, the power exercised by the Chairman of the Committee in the instant case cannot be subject to Regulation 87. Therefore, there is nothing wrong in the exercise of power by the Chairman of the Committee in the present case.

B           35. Thus, we do not find any error in the order of punishment passed by the Administrative Committee. We find that the orders passed by the High Court are not based upon correct appreciation of law and facts. Consequently, the orders are set aside and the writ petition is dismissed. The appeal is allowed.

Devika Gujral

Appeal allowed.