

Joseph Mathew Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 16, 2025

Acts Referred: Kerala Co operative Societies Act, 1969 " Section 66, 69, 69(1), 69(2), 69(2)(d), 80, 80(3)
Kerala Co operative Societies Rules, 1969 Section Rule 176, 185(5)

Hon'ble Judges: Mohammed Nias C. P. , J

Bench: Single Bench

Advocate: George Poonthottam, Nisha George, A.L.Navaneeth Krishnan, Ann Maria Francis, Reginald Valsalan, Bimal Nath K., Shyam S.

Final Decision: Allowed

Judgement

Mohammed Nias C. P. , J.

1. In W.P.(C) No.2106 of 2023, the petitioner challenges the order passed by the Secretary, Department of Co-operation, that dismissed the revision

petition filed by him affirming the order passed by the Joint Registrar ordering the Society to recover an amount of Rs.2,06,937/- from the retirement

benefits of the petitioner. An order was passed dated 3.1.2022 against the petitioner's promotion, which was challenged by him by filing W.P. (C)

No. 19979/2022, wherein, by judgment dated 07.07.2022, the said order was set aside and the competent authority of the Government was directed to

reconsider the matter. The present impugned order is passed after the direction in the said judgment. It is stated that the petitioner entered into service

as a Junior Clerk in the year 1992 and was promoted as Secretary-in-charge and was given the charge on 1.11.2012 and later, promoted as Secretary

on 1.4.2014. The promotion was based on decision No.503 taken in the general body meeting of the respondent bank on 31.3.2014. The petitioner

submits that though he was eligible to be appointed much earlier, it was being denied due to political reasons. Despite the petitioner being qualified, on

the basis of a complaint received, dated 4.8.2017, before the second respondent that the petitioner did not have the requisite qualification for being

promoted as Secretary and to recover the excess salary paid, the Joint Registrar passed Ext.P1 order on 30.5.2018, aggrieved by which the petitioner

had preferred an appeal before the Government as Ext.P2. Through Ext.P3 order dated 3.1.2022, the first respondent affirmed the order of the

second respondent stating that the dispute under challenge is not a service related one and can be decided by the Joint Registrar and also, held that the

promotion granted is against Rule 185(5) of the Kerala Co-operative Societies Rules, 1969, ('The KCS Rules' for short). The petitioner, thus,

challenges Ext.P7 and also, seeks a direction to the third respondent to release the amounts deducted from his retirement benefits.

2. In W.P.(C) No.14632 of 2023, the petitioner challenges Ext.P2 order passed by the first respondent, Joint Registrar, invoking Rule 176 of the KCS

Rules, rescinding the resolution passed by the Managing Committee of the third respondent, which directed to promote and appoint the petitioner as a

Junior Clerk. It is submitted that the first respondent had no jurisdiction at all to invoke the power under Rule 176 as the petitioner was duly qualified

and was promoted and the complaint was made three years after the promotion.

3. In W.P.(C) No.24757 of 2023, the writ petition challenges Ext.P1 notification issued by the first respondent Society in attempting to conduct a

recruitment process to the post of Secretary in blatant violation of the Kerala Co-operative Societies Act, 1969 ('The KCS Act' for short), the KCS

Rules and the Circulars made therein. It is submitted that the age, qualification, remuneration and appointment have to be stated in the notification in

terms of the Kerala Co-operative Societies Act and Rules and Ext.P1 paper publication inviting applications mentioned nothing of that sort. The

petitioner had, accordingly, made a complaint to the functional Registrar of the first respondent-Society and since no decision was being taken on the

complaint, the writ petition was filed for quashing Ext.P1 notification. The interim order passed by this Court in W.P.(C) No.24757/2023 dated

27.7.2023 permitting the first respondent to proceed with the selection process pursuant to Ext.P1 but directed that no appointments shall be made.

The selection process is already over and the additional 4th respondent has been stated to be selected.

4. The learned counsel appearing for the petitioners submitted that after the amendment made to Section 69 in Chapter IX, the Co-operative

Arbitration Court alone has the jurisdiction to entertain a service dispute as regards the disputes stipulated therein. The Registrar's power, if any, under

Rule 176 has been carved out and entrusted with the Co-operative Arbitration Court as regards the dispute in Section 69, which is made clear through

the legal fiction under Section 69(2). The power of the Registrar under Rule 176 is exercisable on the four conditions mentioned therein being satisfied

and must certainly exclude the service disputes or at least the disputes between those in employment arise. At the most, in a case where a notification

for a direct recruitment is under challenge, the Registrar can invoke his power under Rule 176 even after the amendment to Section 69, on limited

grounds. After the amendment with effect from 2.1.2003, Section 69(2) specifically and exclusively dealt with the in-service disputes excluding all

other forums for adjudication. The non-obstante clause and the deeming provision creating a legal fiction are such to cover all aspects pertaining to the

employment of officers and servants. Detailed enquiry, including, adjudicatory and adversarial functions are given to the Co-operative Arbitration

Court. The parties who can raise the dispute are limited to those specified in Clauses (a) to (h) of Section 69, which can only mean a person in service

complaining against another in service can only be through the proceedings before the Co-operative Arbitration Court. Rule 176 is a subordinate

legislation traceable to Section 66 of the Kerala Co-operative Societies Act. It is a general provision dealing with all violations of law under the

provisions of the KCS Act but should exclude the service disputes, more so after the amendment. Rule 176 can only be treated as a summary

procedure where ex-facie and patent violation of the provisions of the Act which could be discerned without any detailed enquiry and based on

unimpeachable documents can be resorted to. The power under Rule 176 can be exercised by the Registrar even Suo Motu or by anyone who brings

it to the notice of the Registrar. Such a power cannot be extended to service disputes. Since Section 69(1) says that, no other court or other authority

shall have jurisdiction to decide the matters in connection with the employment of officers in service, including promotional inter se seniority, such

disputes are covered under Section 69(2)(d) and therefore, totally beyond the scope of Rule 176. It is also their argument, that, any interpretation must

ensure a harmonious existence of both Section 69(2)(d) and Rule 176. They also contend that the 'Special law will prevail over general law' and that

the non obstante clause and the legal fiction in Section 69 totally take a service dispute from the purview of adjudication by the Registrar under Rule

176.

5. The learned counsel for the petitioner in W.P(C) No.14632 of 2023 has cited the following judgments:

Prakasini v. Joint Registrar [2006 (1) KLT 199], P.S. Ravendran v. State of Kerala and Others [2007 (3) KLT 558 (DB)], F.A.C.T Service

Co-operative Society Ltd v. Balakrishna Menon K. and Others [2007 (3) KHC 813 (DB)], Board of Directors, Edava Service Co-op. Bank

Ltd and Another v. Co-operative Arbitration Court and Others [2008 (4) KHC 192], Kanjoor Service Co-operative Bank Ltd No.454, Ekm

v. Joint Registrar of Co-operative Societies (General) and Another [2016 (3) KLT 73], General Manager, Thalassery Co-operative Rural

Bank Ltd v. C. Mukundan and Another [2021 (1) KHC 551(DB)], Kerala State Co-operative Agricultural and Rural Development Bank Ltd

v. The Joint Registrar of Co-op. Societies Kasaragod and Another [2016 KHC 60], Aji Raj (Dr.) and Others v. Managing Director,

Thiruvananthapuram Regional Co-operative Milk Producers Union Ltd. and Others [2021 (2) KHC 284 (DB)], Sivaprabha v. Joint

Registrar of Co-operative Societies (General), Pathanamthitta (W.A.No.2119 of 2016), Akalakunnam Village Service Co-op Bank Ltd and

Another v. Binu N. and others [(2014) 9 SCC 294], Sumitha Mathew v. Kanjirappally Co-operative Agricultural and Rural Development

Bank Ltd. [2022 KHC 781 (DB)], Swathy Mohan and Others v. Joint Registrar of Co-operative Societies (General), Kollam and Others

[2019 (4) KHC 451]. Sudha Rani Garg (SMT) v. Jagdish Kumar (Dead) and Others [(2004) 8 SCC 329] and Parayankandiyal Eravath

Kanapraan Kalliani Amma (SMT) and Others v. K. Devi and Others [(1996) 4 SCC 76].

6. The learned counsel for the petitioner in W.P(C) No.2106/2023 has cited the following judgments:

Prakasini v. Joint Registrar [2006 KHC 452], P.S. Ravendran v. State of Kerala and Others [2007 (3) KHC 780], Board of Directors,

Edava Service Coop. Bank Ltd. and Another v. Co-operative Arbitration Court and others [2008 (4) KHC 192], Kanjoor Service Co-

operative Bank Ltd No.454, Ekm v. Joint Registrar of Co-operative Societies (General) and Another [2016 KHC 595], F.A.C.T. Service Co-

operative Society Ltd. v. Balakrishna Menon K. and others [2007 (3) KHC 813], Kerala State Co-operative Agricultural and Rural

Development Bank Ltd v. The Joint Registrar of Co-operative Societies, Kasaragod and Another [2016 KHC 60], Chirayinkeezhu Service

Co-operative Bank, Chirayinkeezhu v. K. Santhosh and Another [2015 KHC 795], Annamma K.A v. Secretary, Cochin Co-operative

Hospital Society Ltd [2018 (1) KHC 258], Anapanthy Service Co-operative Bank Ltd v. P.K. Thomas and Others [2018 (4) KHC 56],

Preethakumari B v. Joint Registrar of Co-operative Societies (General) and Others [2022 KHC 748], Swathy Mohan and Others v. Joint

Registrar of Co-operative Societies (General), Kollam and Others [2019 (4) KHC 451], Sumitha Mathew v. Kanjirappally Co-operative

Agricultural and Rural Development Bank Ltd [2022 KHC 781], Akalakunnam Village Service Coop. Bank Ltd and Another v. Binu N. and

Others [(2014) 9 SCC 294] and Aji Raj (Dr) and Others v. Managing Director, Thiruvananthapuram Regional Co-operative Milk

Producers Union Ltd and Others [2021 (2) KHC 284].

7. The learned Government Pleader, opposing the contentions of the learned counsel for the petitioners, contends that the incorporation, regulation and

winding up of cooperative societies is dealt with in Entry No.32 in List II of the Constitution of India, giving complete power to the State to enact laws.

Section 80 speaks about the officers of the cooperative societies coming under Chapter XII and the classes of societies according to the type based on

the financial position. Section 80(3) gives the Government the power to make rules regulating qualification, remuneration and other conditions of

service of officers and servants of different classes of societies. A general power is given to the Registrar to oversee the working of co-operative

societies which takes care of not only administrative matters but service matters as well. Under Section 66, there is a power of supervision on the

Registrar, based on which Rule 176 is enacted which gives him the power to rescind the resolutions on the conditions stated therein. The learned

Government Pleader also argues that, after the amendment, the only change that is brought in is the creation of an additional forum apart from the

Registrar and it is not a case where the Registrar's power is denuded through amendment. He also cited the following decisions:

Akalakunnam Village Service Cooperative Bank Limited and Another v. Binu N. and Others [(2014) 9 SCC 294], Swathy Mohan and Others

v. Joint Registrar of Co-operative Societies (General), Kollam and Others [2019 (4) KHC 451], Sumitha Mathew v. Kanjirappally Co-

operative Agricultural and Rural Development Bank Ltd. [2022 HC 781], Nilambur Co operative Urban Bank v. Joint Registrar of Co

operative Societies [2020 (2) KLT 428], State of Kerala v C.M. Francis and Co. [1961 KHC 333], Thrikkadavoor Service Co-op Society

Ltd. v. Sivasankara Pillai [1990 (2) KLT 594], Aji v. State of Kerala [1995 (1) KLT 363 (FB)], Muhammed Rashid A. v. The Deputy

Director, Diary Development Department Kollam and others [W.A.No.1297 of 2023 dated 14.7.2023] and Nazarudeen P. and another v.

Kampaladi Ksheeralpadhaka Sahakarana Samkhalam and others [W.P.(C) No.18511 of 2023 dated 5.7.2023].

8. The learned counsel, Sri.P.C.Sasidharan, appearing for the Bank in W.P(C) No.14632 of 2023, contends that the matters that are to be considered

by the Registrar under Rule 176 and under Section 69(2) are different. Service matters or disputes between employees have to be considered by the

Co-operative Arbitration Court under Section 69. However, as laid down in the judgment of the Hon'ble Supreme Court inA kalakunnam Village

Service Co-op Bank Ltd and Another v. Binu N. and others [(2014) 9 SCC 294] ,wherein, a notification calling for direct recruitment itself is

against the provisions of the Co-operative Societies Act, the power is still vested with the Registrar.

9. The learned counsel, Sri.M.M.Monaye, appearing for the 4th respondent in W.P.(C). No. 14632/2023, also adopted the arguments made by the

learned Government Pleader and would submit, that, in cases where nobody complains about an illegal act committed by a society through a resolution,

the power under the Registrar would remain intact when he comes across such illegality. The learned counsel also submits that the promotion of the

petitioner in W.P.(C) No.14632/2023 was initially challenged by those in service, but later withdrawn. The learned counsel submits that the promotion

granted to the petitioner in W.P.(C) No.14632/2023 is totally illegal as she was not qualified to be granted promotion. In the absence of any person

challenging, the illegality could have been perpetuated but for the interference of the fourth respondent in W.P.(C) No.14632/2023. In cases where

there is a violation of the provisions of the Act or Rules and the conditions stated in Rule 176 applying, the power of the Registrar remains intact

despite the amendment to Section 69(2). He also relies on the following judgments:

Aji v. State of Kerala [1995 (1) KLT 363 (FB)], Purushothaman v. Registrar [1996 KHC 261], Peechi Service Co-operative Bank, Thrissur

and Another v. Tessy Varghese and Others [2015 KHC 829], Vijayan K. and Another v. Joint Registrar of Co-operative Societies and

Others [2009 (1) KHC 235], Nedumon Service Co-operative Bank Ltd No.2720 v. Joint Registrar of Co-operative Societies (G) and Others

[2018 (3) KHC 861], Nedumon Service Co-op. Bank Ltd., Pathanamthitta v. Joint Registrar of Co-op. Societies (G), Pathanamthitta and

Others [2014 KHC 582], Swathy Mohan and Others v. Joint Registrar of Co-operative Societies (General), Kollam and Others [2019 (4)

KHC 451], Sumitha Mathew v. Kanjirappally Co-operative Agricultural and Rural Development Bank Ltd. [2022 HC 781], Akalakunnam

Village Service Coop Bank Ltd and Another v. Binu N. and others [(2014) 9 SCC 294].

10. The issue in this case revolves around the interpretation of Section 69 of the KCS Act and Rule 176 of the KCS Rules regarding the entertainment

of disputes concerning service matters of employees, more so after the amendment to Section 69 brought on 2.1.2003.

11. Heard Sri. George Poonthottam learned senior counsel, instructed by Sri. A. L. Navaneeth Krishnan, learned counsel for the petitioner in W.P.(C)

No.2106 of 2023, Sri. Jacob P. Alex, learned counsel for the petitioner in W.P.(C) No. 14632 of 2023, Sri. M. S. Amal Dharsan, learned counsel for

the petitioner in W.P.(C) No. 24757 of 2023, Sri.Bimal K.Nath, learned Senior Government Pleader, appearing for the State, Sri. S. Shyam, learned

counsel appearing for the Bank in W.P.(C) No.2106 of 2023, Sri.P.C.Sasidharan, learned counsel appearing for the Bank in W.P.(C) No.14632 of

2023 and Sri.M. M. Monaye, learned counsel appearing for the 4th respondent in W.P.(C) No.14632 of 2023, Sri. M. Paul Varghese, learned counsel

appearing for the 5th respondent in W.P.(C) No.14632 of 2023, Sri. K. P. Pradeep, learned counsel appearing for respondents 1 and 2 in WP(C).No.

14632/2023 and Smt.Athira A.Menon, learned counsel appearing for the additional 4th respondent in WP(C).No. 14632/2023.

12. Section 69 of the Kerala Co-operative Societies Act, 1969, (after^Å, amendment 2.1.2003) reads as follows:

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 Sec. 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 section 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.

(4) All monetary disputes mentioned in Schedule III to the Act shall be filed within the time limit specified in the said Schedule.

13. Rule 176 of the Kerala Co-operative Societies Rules, 1969, reads as follows:

176. Registrar's power to rescind resolution:- Notwithstanding anything contained in the bye-laws of a registered society, it shall be competent for the Registrar

to rescind any resolution of any meeting of any society or the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the

society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful

and orderly working of the society or is contrary to the better interest of the society.

14. Section 69 of the KCS Act stipulates that disputes between a society or its committee, including past committees, officers, agents, employees, or

their legal representatives, are to be resolved by the Co-operative Arbitration Court for non-monetary disputes and by the Registrar for monetary

disputes. Rule 67(3) of the KCS Rules specifies this division. Awards from the Co-operative Arbitration Court can be appealed to the Co-operative

Tribunal under Section 82(1)(a). This framework creates an exclusive mechanism for adjudicating service related disputes while restricting

consideration by other forums. Rule 176 of the KCS Rules empowers the Registrar to rescind a resolution of a society's meeting or committee if any

of the four stipulated conditions are met. These conditions include whether the resolution is ultra vires of the society's objectives or violates the Act,

Rules, Bye-laws, or departmental directives. The Registrar can make a summary examination based on relevant and unimpeachable documents,

without requiring an extensive investigation to see whether the issue comes within the conditions of Rule 176.

15. A reading of Section 69 of the Kerala Co-operative Societies Act makes it clear in stating that no other court or authority has the jurisdiction to

address a dispute arising in connection with the employment of officers and servants of different classes of societies specified in Sub-section (1) of

Section 80, including their promotion and inter se seniority. The enacted provisions effectively oust the jurisdiction of alternative forums, including the

Joint Registrar or Government bodies, from adjudicating on these non-monetary disputes. The legislative intent behind this framework appears to be

reinforced by the amendments made, particularly with Act 1 of 2000 which came into effect on 2nd January, 2003, which delineated that such disputes

must be resolved exclusively by the Co-operative Arbitration Court. This exclusivity is further underlined by Clause (d) of Sub-section (2) of Section

69 which categorizes all employment related disputes, including promotions and seniority, as 'disputes' within its purview. Consequently, any power

bestowed upon the Registrar under Rule 176 must now be interpreted within this context; they do not extend to employment related disputes once they

fall within the statutory framework of Section 69.

16. This interpretation aligns with the judicial precedents on the issue. In F.A.C.T Service Co-operative Society Ltd. Vs. Balakrishna Menon K and

Anr. (2007 (3)KHC 813), the Division Bench of this Honourable Court held that,

“9. A specific provision, namely Section 69, is made in the Act for resolving disputes between a society and its employees. Section 69 of the Act also excludes

jurisdiction of any court or authority to deal with a dispute as is referred to in that section. The powers of superintendence under Section 66 or the power to issue

general directions and guidelines under Section 66A do not override Section 69. The scope of Section 69 on the one hand and that of Sections 66 and 66A on the

other, are distinct and different. A dispute which is to be resolved under Section 69 of the Act cannot be the subject matter of the exercise of jurisdiction under

Sections 66 and 66A.”

In Kanjoor Service Co-operative Bank Ltd. Ekm. Vs. Joint Registrar of Co-operative Societies (General) and Another (2016 KHC 59,5 t)his

honourable court held that:

“7. By virtue of Section 69, which starts with the non-obstante clause providing that the disputes as mentioned therein have to be referred

to Arbitration Court/ Registrar in respect of non-monetary/monetary disputes and hence barring the authority of any other forum to deal with those disputes, the

removal of the 2nd respondent is a matter which requires to be dealt with by the Arbitration Court and the Joint Registrar has no authority to deal with the same

in any manner because of the specific ouster contained in S. 69 (1) of the Act. At any rate, the Joint Registrar cannot in exercise of his powers conferred under the

Rules interfere with or deal with a dispute overriding the exclusion of his authority by virtue of the provisions contained in the Act, by adopting summary

procedure under Rule 176, by rescinding resolution of the petitioner Co-operative Societies.

8. R. 176 is an omnibus provision and when there is a specific forum for adjudicating service disputes, a joint registrar cannot invoke its

powers under R. 176.”

In Chinchumol Joseph v. Joint Registrar of Co-operative Societies (General), Kottayam (W.A No. 2431/2018) ,the Division Bench of this Court

held as:

“3. The Registrar of Co-operative Societies cannot also invoke the general power to supervise and issue directions under Section 66 and 66 A of the Act when

a dispute lies under Section 69 of the Act xxx

xxxx xxxx xxxx

Such a power can perhaps be exercised before the appointment is made since the jural relationship to raise a dispute under Section 69 of the Act arises only after

the appointment. This makes the decision in Akalakkunnam Village Service Co-operative Bank Ltd. v. Binu N. And Others [ILR 2014 (4) Kerala 605]

distinguishable on the facts of the present case.

In Preethakumari B vs. The Joint Registrar of Co-operative Societies (General) and Ors. [2022 KHC 748],the division bench of this Court,

held as:

“25. xxxx xxxx xxxx xxxx Where the dispute which falls under clauses (a) to (h) of S. 69 (1) is raised, then such disputes, which are non-monetary disputes, will

have to be referred to the Co-operative Arbitration Court constituted under S. 70 A and such disputes, which are monetary disputes, will have to be referred to the

Registrar and it is for such forum to decide such disputes and no court or authority, other than the Co-operative Arbitration Court, in the case of such non-

monetary disputes and Registrar in the case of monetary disputes shall have the jurisdiction to entertain any suit or any other proceedings in respect of such

disputes.”

In Jayarani T vs. Assistant Registrar of Co-operative Societies and Anr. (2016 KHC 455) ,this court distinguished between Section 69 and Rule

176 and held as:

“21. Section 69 (1) (d) of the Act is eloquent on the adjudicatory mechanism, concerning the service disputes xxxx xxxx if the dispute is raised by an employee

or any other person than the employer itself, the recourse ought to be to the Co-operative Arbitration Court. The remedy indeed, is efficacious.

22. S.69 Vs. R176: The Registrar has plenary powers under Rule 176 of the Rules to rescind a resolution passed by the Managing Committee of a society.

Evidently, the power conferred on the Registrar or his delegate is a species of subordinate legislation. Section 69 of the Act, on the other hand, provides for the

dispute resolution mechanism involving the quasi-judicial authorities-service disputes included.

23. xxxx xxxx Resolutions can be rescinded by invoking Rule 176 of the Rules; the service disputes ought to be resolved by invoking Section 69 of the Act--the

Arbitration Proceedings.

24.For, once it is enacted, the subordinate legislation must be read as if it were part of the principal legislation so long as it does not suffer from any vice

of repugnancy or irreconcilable incompatibility.

25.even when harmoniously read, Rule 176 of the Rules is a generic, omnibus provision; Section 69 is a specific provision. Though they have distinct,

different spheres carved out for them; there can, however, be certain penumbral areas where they do seem to impinge on each other . In those penumbral areas,

Rule 176 of the Rules yields to Section 69 of the Act. After all, *Generalia specialibus non deroganti*-- Special law will always prevail over the general law.

17. Notably, in *Raveendran v. State of Kerala* (2007 (3) KLT 558) and *Kaduthurthy Urban Co-operative Bank Ltd. v. Joint Registrar of Co-*

operative Societies (W.A. No. 2436/2018), it was held that inter se seniority and promotion disputes between employees must be adjudicated by the

Co-operative Arbitration Court rather than the Registrar under Rule 176. This directive stems from a close reading of Section 69(2)(d), which

stipulates that all employment related disputes concerning officers and servants specified in Sub-section (1) of Section 80, including their promotions

and seniority, are to be exclusively resolved by the Co-operative Arbitration Court. Disputes outlined in Clauses (a) to (h) under Section 69(1) fall

squarely within this framework, thereby, excluding those not encompassed by these provisions. The amendment serves to delineate powers

specifically regarding service related disputes which were previously considered under Rule 176 but are now carved out for resolution only through

arbitration courts established under Section 69. While Sections 66 and 66A confer supervisory powers upon the Registrar, such authority is limited

primarily to pre-employment contexts, specifically, prior to establishing an employer-employee relationship.

18. The learned counsel for the respondents relied on the judgment in *Swathy Mohan* case [2019 (4) KHC 451] and *Sumitha Mathew* case [2022

KHC 781 (DB)] to contend that the Joint Registrar also had the power under Rule 176 of the KCS Rules to deal with service disputes. The Single

Bench and Division Bench judgments of this Court referred to above clearly have explained the jurisdiction under Section 69 to deal with service

disputes and also, the power of the Joint Registrar under Rule 176. In this context, it is relevant to note the decision of the Hon'ble Supreme Court in

Akalakunnam Village Service Co-operative Bank Ltd v Binu N. & Ors (2014 KHC 4521) wherein the challenge arose surrounding procedural

irregularities linked to recruitment notifications without adherence to prescribed guidelines. However, such situations do not suggest any broader

authority for Joint Registrars to deal with substantive employment disputes except in cases involving unauthorized selections or vacancies outside

sanctioned posts as governed by Rule 176. The judgments referred to above spelt out the unambiguous legislative intention that service-related

disputes within cooperative societies must fall exclusively under arbitration jurisdiction as per Section 69; while precluding alternate forums from

encroaching on these designated adjudicatory functions.

19. In view of the clear bar of jurisdiction delineating the difference between dispute resolution by various forums mentioned in the KCS Act, the legal

fiction in Sub-section (2) of Section 69 has to be given full effect and carried to its logical end. This is a well settled position of law. By relying on

Boucher Pierre Andre v. Superintendent, Central Jail ((1975) 1 SCC 192) and Ali v. Kunjannamma (1975 KLT 527) ,this Court held in Board

of Directors, Edava Service Co-operative Bank Ltd and Anr. v. Co-operative Arbitration Court and Ors (2008 (4) KHC 192)that, Section

69(2) opens with a deeming provision, which creates a legal fiction and that, if it is created, full effect must be given to it. It should be carried to its

logical end and while a fiction cannot be extended beyond its legitimate field, it must be allowed full operation within its intended sphere.

In Sudha Rani Garg vs. Jagdish Kumar [(2004) 8 SCC 329] the Hon'ble Supreme Court held as follows:

“9. The Explanation I is a deeming provision.

The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or

phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is

used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible". (Per Lord Radcliffe in

St. Aubyn (L.M.) v. A.G. (No.2)(1951) 2 ALL E.R. 473 (HL).

10. "Deemed", as used in statutory definitions

to extend the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage of an

enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the words

'deem' and 'deemed' when used in a statute thus simply state the effect or meaning which some matter or thing has the way in which it is to be adjudged; this need

not import artificially or fiction; it may simply be the statement of an undisputable conclusion" (per Windener J. in Hunter Douglas Australia Pty. V. Perma Blinds

(1970 (44) Aus.L.J.R.257)

11. When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per

Cave J. in R. v. Norfolk County Court, (1891)60 L.J.Q.B.379)

12. "When a statute gives a definition and then adds that certain things shall be 'deemed' to be covered by the definition, it matters not whether without that

addition the definition would have covered them or not: (Per Lord President Cooper in *Ferguson v. McMillan*, 1954 S.L.T. 109).

20. The use of a non-obstante clause in Section 69 is certainly with a purpose and object. When the Act brings a self-contained and composite

mechanism for settlement of disputes, as introduced in Chapter IX, it should be taken as that the same shall override any other law for the time being

in force. The effect of a non obstante clause has been considered in the following judgments:

In *State of Kerala and Ors. v. Biju Thomas and Ors.* [2007 (4) KHC 552] this Court held that,

A non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be

found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. The expression

notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force or in

any contract" came up for consideration before the Supreme in *Iridium India Telecom Ltd. v. Motorola Inc.*, 2005 KHC 254 : 2005 (1) KLT SN 87: AIR 2005 SC

514: 2005 (118) DLT 216 : 2005 (1) Mah LJ 678 : 2005 (2) SCC 145. observations of this Court in *South India Corpn. (P) Ltd. v. Secy., Board of Revenue*,

Trivandrum, 1964 (4) SCR 220.

In *Aswini Kumar Ghose v. Arabinda Bose* (AIR 1952 SC 369) it was held that,

27. xxxx xxxx xxxx xxx the non obstante clause can reasonably be read as overriding "anything contained" in relevant existing law which is

inconsistent with the new enactment, although draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The

enacting part of a statute must, where it is clear, be taken control the non obstante clause where both cannot be read harmoniously.

Though there cannot be any conflict when it comes to the power granted under Section 69 and Rule 176, assuming there is a conflict, the non-obstante

clause in Section 69 makes the same override the powers granted under Rule 176.

21. Swathy Mohan's case was rendered without considering the following binding decisions:

"Prakasini v. Joint Registrar [2006 KHC 452]

"P.S.Ravendran v. State of Kerala & Ors. [2007 (3) KHC 780 (DB)]

"Board of Directors, Edava Service Co-operative Bank Ltd. And Anr v. Co-operative Arbitration Court and Ors. [2008 (4) KHC 192]

"Chirayinkeezhu Service Co-operative Bank, Chirayankeezhu v. K.Santhosh [2015 KHC 795]

"Kanjoor Service Co-operative Bank Ltd., Ekm v. Joint Registrar of Co-operative Societies (General) and Another [2016 KHC 595]

22. The judgment in Sumitha Mathew also did not consider the following binding decisions:

FACT Servie Co-operative Society Ltd. v. Balakrishna Menon K. And anr. [2007 (3) KHC 813 (DB)]

P.S.Ravendran v. State of Kerala & Ors. [2007 (3) KHC 780 (DB)]

Chirayinkeezhu Service Co-operative Bank, Chirayankeezhu v. K.Santhosh [2015 KHC 795]

Chinchumol Joseph v. Joint Registrar of Co-operative Society [W.A.No. 2431/2018 (DB)]

23. The Hon'ble Supreme Court held in Hyder Consulting UK Limited v. Governor State of Orissa [(2015) 2 SCC 189] as follows:

A decision can be said to be given per incuriam when the court of record has acted in ignorance of any previous decision of its own, or a subordinate court has

acted in ignorance of a decision of the court of record. As regards the judgments of this Court rendered per incuriam, it cannot be said that this Court has

“declared the law on a given subject-matter, if the relevant law was not duly considered by this Court in its decision. In this regard, I refer to State of U.P. v.

Synthetics and Chemicals Ltd.[8], wherein R.M. Sahai, J. in his concurring opinion stated as follows: (SCC p. 162, para 40) “Incuria literally

means carelessness. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of

stare decisis. The quotable in law is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority.”

In Rattiram and Ors. v. State of M.P. through Inspector of Police [AIR 2012 SC 1485], the Hon'ble Supreme Court held as follows:

“24. the decision in Bhoooraji (supra) was a binding precedent, and when in ignorance of it subsequent decisions have been rendered, the concept of per

incuriam would come into play. In this context, it is useful to refer to a passage from A.R. Antulay (supra), wherein, Sabyasachi Mukharji, J (as his Lordship then

was), while dealing with the concept of per incuriam, had observed thus: “Per incuriam” are those decisions given in ignorance or forgetfulness of some

inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning

on which it is based, is found, on that account to be demonstrably Again, in the said decision, at a later stage, the Court observed: It is a settled rule that if a

decision has been given per incuriam the court can ignore it.

52. The decisions rendered in Moly decision in Bhoooraji (supra) and Vidyadharan (supra) have not noted the (supra), a binding precedent, and hence they are

per incuriam.”

In Bilkis Yakub Rasool Vs. Union of India (UOI) and Ors. [(2024) 5 SCC 481], the Hon'ble Supreme Court held as follows:

44.1 Thus, although it is the ratio decidendi which is a precedent and not the final order in the judgment, however, there are certain exceptions to the Rule of

precedents which are expressed by the doctrines of per incuriam and sub silentio. Incuria legally means carelessness and per incuriam may be equated with per

ignorantium. If a judgment is rendered in ignorantium of a statute or a binding authority, it becomes a decision per incuriam. Thus, a decision rendered by

ignorance of a previous binding decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a Rule having

the force of law is per incuriam. Such a per incuriam decision would not have a precedential value. If a decision has been rendered per incuriam, it cannot be

said that it lays down good law, even if it has not been expressly overruled vide Mukesh K. Tripathi v. Senior Divisional Manager, LIC, MANU/SC/0726/2004 :

(2004) 8 SCC 387 (para 23). Thus, a decision per incuriam is not binding.

The Five-Judge Bench of the Hon'ble Supreme Court held in P unjab Land Development and Reclamation Corporation Ltd. Presiding Officer,

Labor Court, Chandigarh and Ors. [(1990) 3 SCC 682] as follows:

“40. The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam

when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this

Court.....”

24. In view of the above, I have no doubt that the judgments in Swathy Mohan case and Sumitha Mathew are to be treated as per incuriam for not

referring to or following the binding decisions noted above. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not

only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench

of judges of co-equal strength. In case there is no judgment of a larger Bench of binding nature and if the court doubts the correctness of the

judgments by two or three judges, then the proper course would be to request Hon'ble the Chief Justice to refer the matter to a larger Bench of

appropriate strength.

25. As regards the interpretation of statutes, the Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai v. Century Textiles and

Industries Limited [2025 KHC Online 6021], reiterated the principles by a Three Judge Bench of that Court in CIT v. Hindustan Bulk

Carriers ((2003) 3 SCC 57) as follows:

15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction

makes that end unattainable.

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a

construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate

only for the purpose of bringing about an effective result.

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act ... as to make a

consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must

compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs.
Such a construction has the merit of avoiding

any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a

head on clash between two sections of the same Act,

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed

that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a

construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy.

26. The statutory provisions, the interpretation given in the judgments referred to above and the legal principles reaffirm that jurisdiction over the

matters specified in S.69(2)(d) lies solely with the Co-operative Arbitration Court. Moreover, as per Section 70B, pending disputes relating to non-

monetary issues that fall under an Arbitration Court's local area must be transferred there for resolution, further confirming that such matters cannot

concurrently engage multiple authorities or forums. The supervisory powers granted under Sections 66 and 66A do not supersede or negate

jurisdictional boundaries established in Section 69. Therefore, any dispute recognized under Section 69 cannot also simultaneously invoke Sections

governing general directions or guidelines. Thus, a comprehensive reading suggests not only a legislative effort to streamline dispute resolution

regarding co-operative society employment issues but, also, an intentional limitation on overlapping authority among various regulatory bodies, a

measure focused on ensuring efficiency and clarity in governance within the co-operative societies.

27. The judgments in *Aji v. State of Kerala* (1995 (1) KLT 363 (F.B)) and *Purushothaman v. Registrar* (1996 KHC 261), relied on by the respondents

were rendered prior to the amendment of Section 69 of the Kerala Co-operative Societies Act. The amendment fundamentally altered the legal

landscape concerning disputes related to employment within cooperative societies. Furthermore, this amendment empowered the Co-operative

Arbitration Court not only with exclusive jurisdiction over these disputes but also permitted it to transfer any ongoing proceedings relevant to such

matters into its domain. Thus, it becomes evident that any issues arising from employment relationships, be they disputes over seniority or promotional

considerations, must be settled by this designated court. The impact of those judgments will have to be seen in the background of the conscious

amendment made which clearly carved out "what a dispute is" and also, "the forum to decide such a dispute" and also, excluded the

jurisdiction of other forum to adjudicate such dispute. This view has been reiterated by a Five-Judge Bench of this Court in Chirayinkeezhu Service

Co-operative Bank, Chirayinkeezhu v. K. Santhosh (2015 KHC 795) and has held that the Legislation intended that settlement of any dispute as

referred to under Section 69 (1) read with Section 2(i) shall not be taken by any other court.

28. Under Rule 176, while the Registrar retains certain supervisory powers, those are limited in scope. The Registrar's role is primarily

administrative; he assesses whether there has been any statutory violation based on existing records without engaging in substantive decision-making

regarding service disputes or their implications on employee rights. In cases where the selection and appointment are made as against vacancies in

excess of the notified vacancies or if the selection notification of the selection and appointment is made to non-sanctioned posts or in cases of like

nature, can only be where the Joint Registrar may have jurisdiction in terms of Rule 176 at the instance of candidates prior to any appointment. Should

an issue arise that affects parties' rights concerning service conditions, including promotions or seniority, the Registrar must refrain from intervening

and refer such matters exclusively to arbitration courts as mandated by the amendments. The Registrar under Rule 176 is not deciding a lis and can

only see from the face of the record whether there is any statutory violation and nothing beyond that. If any decision affecting the rights of the parties

on a service dispute occurs, the Registrar has to keep his hands off.

29. Based on the findings rendered above, Ext.P2 in W.P.(C) No.14632/2023 is quashed. The writ petition is allowed. In W.P.(C) No. 2106/2023,

Ext.P7 is quashed and the 3rd respondent society is directed to compute the retirement benefits due to the petitioner in the light of the findings in the

judgment and release the amounts due to the petitioner including the amount if any recovered, within three months from the date of receipt of a copy

of this judgment. In W.P.(C) No. 24757/2023, since the selection process is already over and the additional 4th respondent has been stated to be

selected, it will be open to the petitioner to avail his remedies under Section 69 of the Kerala Co-operative Societies Act, 1969.

The Writ petitions are allowed as above.