(1985) 10 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: L.P.A. No. 1193 of 1981 IN CWP No 2953 of 1972

The Punjab State Co-Operative Supply And Marketing Federation Limited, Chandigarh		APPELLANT
	Vs	
Des Raj, Manager 'C' Grade, The Jallalabad Co-Operative Marketing Society Ltd.		RESPONDENT

Date of Decision: Oct. 18, 1985

Acts Referred:
Constitution of India, 1950 â€" Article 309#Punjab Co-operative Societies Act, 1961 â€" Section 84A

Citation: (1985) 10 P&H CK 0003

Hon'ble Judges: Surinder Singh, J; D.S Tevatia, J

Bench: Division Bench

Advocate: D.S. Nehra, Mr. Arun Nehra and Mr. R.S. Longia, for the Appellant;

Judgement

D.S. Tewatia, J.
The Punjab State Cooperative Supply and Marketing Cooperative Service (Common Cadre) Rules, 1967, (hereinafter

referred to as the impugned rules, were declared invalid by a learned Single Judge at the instance of Shri Des Raj, respondent herein, who was

selected as Manager of the Jallalabad Zimindara Cooperative Marketing Society Limited, Jallalabad (District Ferozepur) by the Administrative

Committee of the Punjab State Cooperative Supply and Marketing Federation (hereÃ¯Â¿Â½inafter referred to at the "Markfed") with effect from

21.11.1970, on the ground that the Markfed had no power to frame the impuged rules in the year 1967, as the power to that effect came to be

conferred on it for the first time in the year 1969 as a result of the incorpoÃ¯Â¿Â½ration of section 84-A in the Punjab Cooperative Societies Act,

1961, by the amending Act No. 26 of 1969.

2. The learned Single Judge for invalidating the impugned rules sought sustenance from Supreme Court judgment reported as Board of Directors of

Andhra Pradesh Co-operative Central Land Mortgage Bank Ltd. and Others Vs. Chittor Primary Co-operative Land Mortgage Bank Ltd. and

Others, , in which it had been ruled that any rules framed prior to the jurisdiction having been conferred on an authority for framing the rules by

amendment of the Act would be ultravires in the sense that there was no rule making power in that authority.

3. There is no dispute with the law enunciated by their Lordships in the abovesaid case and to its application to the impugned rules promulgated by

the Markfed in the year 1967. However, the matter does not rest here There is another judgment of their Lordships of the Supreme Court

reported as Bachan Singh and Anr. v. Union of India 1972 S. L. R. 397, in which the Supreme Court has enunciated the proposition that the given

rules, though invalid to begin with on account of lack of power to frame them, would become valid and statutory as a result of amendment

statutorily made in those rules. Their Lordships in that case were dealing with Military Engineering Service Class I (Recruitment, Promotion and

Seniority) Rules, 1951. These rules during the years 1962, 1963 and 1964, and particularly until the year 1969, were not statutory in character, as

observed in paragraph 8 of the judgment. In 1969, these rules were amended. Then arose the question as to what would be the effect of the

amendment to the said rules Their Lordships observed that these rules became statutory by the amendment, as is evident from the following

observations of their Lordships Bachan Singh and Another Vs. Union of India (UOI) and Others, :-

The real importance of the amendments of the rules in the year 1969 lies in the fact that the amendments were made by the President in exercise of

the powers conferred by the proviso to Article 309 of the Constitution As a result of the 1969 amendment it follows that the entire body of rules of

Class I Service became statutory rules by incorporation .

The impugned rules were amended in accordance with the provi-sioni of Section 84-A of the Act from time to time and that one such amendment

was effected on 4-4-1970. In view of the statutory amendment of 4 4.1970, the entire body of the impugned rules became statutory in view of the

ratio of Bachan Singh''s case (supra)

4. We also find merit in, yet another contention of the learned Counsel for the Appellant that the Respondent having accepted the appointment

under the impugned rules could not deny the applicability of those rules when it came to taking of action against him, for we are of the view that the

appointment was effected by the Markfed to a post which was a common cadre post under the impugned rules. If the impugned rules are bad,

then the appointment of the Respondent becomes invalid and void from the very inception. The Respondent cannot have the cake and eat it too.

For this reason also, the Respondent would not have any locus standi to challenge the validity of the impugned rules.

5. For the reasons aforementioned, we allow the appeal and set aside the order of the learned Single Judge, but with no order as to costs, as the

Respondent is not represented, though he had been personally served and in accordance with the rules, an actual date notice by registered post

has also been sent to him.

Sd/- Surinder Singh, J.