

Ram Chandra Pandey Vs District Administrative Committee U.P. Primary Agricultural Co-operative Credit Societies Centralised Service, Bahraich and others

Court: Allahabad High Court

Date of Decision: Feb. 6, 1997

Citation: (1998) 1 AWC 125 : (1997) 3 UPLBEC 1747

Hon'ble Judges: D.P. Mohapatra, C.J; R.A. Sharma, J; Mrs. Shobha Dikshit, J

Bench: Full Bench

Advocate: Dr. L.P. Misra, for the Appellant; A.R. Khan, for the Respondent

Final Decision: Allowed

Judgement

R.A. Sharma, J.

There being conflicting decisions of this Court regarding power of the Member/Secretary of the District Administrative Committee to suspend a

member of the centralised service in the absence of prior decision of the District Administrative Committee (hereinafter referred to as the District

Committee) to initiate, the disciplinary proceedings. Division Bench has referred the controversy to Full Bench for resolving the conflict. As the

Division Bench did not frame any question of law and has referred all the cases to Full Bench for decision, the learned counsel for the parties, apart

from the aforesaid main issue, have also raised the following other questions :

(i) Whether prior concurrence of the Assistant Registrar is a condition precedent for suspending a member of the centralised service even if the

order of suspension has been passed by a Member/Secretary of the District Committee, who himself is the Assistant Registrar?

(ii) Whether the District Committee can suspend a member of the centralised service?

(iii) Whether Member/Secretary of District Committee, while suspending a member of the centralised service, can appoint an inquiry Officer to

hold inquiry into the conduct of the member and to submit his report?

(iv) Whether the impugned orders of suspension are illegal and without jurisdiction?

2. Petitioners are the Secretaries of Primary Agricultural Co-operative Credit Societies (hereinafter referred to as the Society). They have been

suspended by the Member/Secretary of the District Committee. Feeling aggrieved by the orders of suspension, they have filed these writ petitions.

3. We have heard the learned counsel for the parties. As more than one question is to be answered by us, we are dealing with each of those

questions separately as under:

Main Question.--Power of Member/Secretary of the District Committee to suspend a member of the centralised service :

In exercise of power conferred on it by Section 122A of the U. P. Cooperative Societies Act, 1965 (hereinafter referred to as the Act), the

Government of U. P. has created centralised service of Secretaries of the Primary Agricultural Co-operative Credit Societies and has framed rules

known as Uttar Pradesh Primary Agricultural Co-operative Credit Societies Centralised Service Rules, 1976 (hereinafter referred to as the Rules)

for regulating their conditions of service. Rule 7 vests the supervision and control of centralised service in State Cadre Authority, Regional

Administrative Committee and District Committee, and has laid down the constitution of these Committees. Sub-rule (4) of Rule 7 which provides

for constitution of the District Committee is as follows :

7 (4). There shall be a District Administrative Committee in each district which shall consist of the following :

(i) Chairman/Administrator of the District Co-operative Bank--Chairman ex officio,

(ii) District Assistant Registrar, Co-operative Societies, Uttar Pradesh--Member/Secretary,

(iii) A Block Development Officer nominated by the A.D.M. (P)/District Planning Officer of the District--Member,

(iv) Chairman of a Society to be nominated by the Regional Deputy Registrar, Co-operative Societies. Uttar Pradesh of the region--Member.

(v) District Audit Officer--Member.

(vi) Secretary/Managing Director of the District Co-operative Bank--Member.

In view of Rule 13, the District Committee is the appointing authority of the members of the centralised service. The said rule has also conferred

various other powers enumerated therein including the power ""to exercise control and supervision over the members of the centralised service in

the district."" Rule 13 is as under :

13. Powers and duties of the District Administrative Committee.--(1) The District Committee shall be the Appointing Authority of the members of

the centralised service in the district and shall also have the following duties and responsibilities :

(i) To exercise control and supervision over the members of the centralised service in the district ;

(ii) To transfer the members from one place to another within the district ;

(iii) To ensure recovery of the contribution levied on the Society in the district ;

(iv) To classify the societies in the district in various categories according to their annual lending as provided in Rule 4 ;

(v) To arrange absorption of the existing employees of the societies after their screening in accordance with the instructions issued by the Registrar,

Co-operative Societies. U. P. ;

(vi) To evaluate the work of members of centralised service every year in the district :

(vii) To maintain category wise correct seniority list of the members of the centralised service ; and

(viii) To perform such other duties and functions as may be entrusted to it by the Authority or Regional Committee.

(2) The meeting of the District Committee shall be called by the Member/Secretary as and when he deems fit and upon a direction to this effect

from the Chairman or the District Assistant Registrar. Such meetings shall be called at least once in 3 months. The quorum of the meeting shall be

3.

(3) The Chairman, when present, shall preside over the meeting of the District Committee. He shall have power of suspending a member of the

centralised service with the prior concurrence of Assistant Registrar.

Rule 14 defines the power of the Member/Secretary of the District Committee and one of his power is the power of suspending a member of the

centralised service with the prior concurrence of the Assistant Registrar. Rule 14 is quoted below:

14. Powers and duties of the Member/Secretary of the District Committee.--Subject to the control and supervision of the Chairman of the District

Committee, the Member/Secretary of the Committee shall:

(i) be responsible for the proper maintenance of the Account Books and other records of the District Committee and for the correct preparation

and timely submission of periodical statements and returns to the Regional Committee and the Authority as and when required ;

(ii) convene meeting of the Committee and maintain proper record of such meetings :

(iii) arrange to carry on correspondence on behalf of the District Committee ;

(iv) ensure effective supervision over the members of the centralised service ;

(v) have power of suspending a member of the centralised service with the prior concurrence of Assistant Registrar ;

(vi) ensure proper and up-to-date maintenance of the service books, character rolls and personal files of the members of the centralised service in

the district ;

(vii) ensure speedy disposal of all service matters of the members of the centralised service ;

(viii) arrange disbursement of salaries of the members of the centralised service in the district out of contribution made to the State Primary

centralised service Fund created under Rule 15 :

(ix) ensure proper maintenance of the Office of the District Committee and its smooth functioning ; and

(x) perform such other duties and exercise such powers as may be imposed or conferred on him by the District Committee.

4. Although Rules 13 (3) and 14 (v) empower the Chairman and the Member/Secretary of the District Committee to suspend a member of the

centralised service : but the circumstances under which such a power can be exercised, have not been specified in the rules. The only condition laid

down in Rule 14 (v) is that a member of the centralised service can be suspended with the prior concurrence of the Assistant Registrar. Rules also

do not provide for disciplinary proceedings, penalties, termination of service, etc. But Rule 30 has given power to the State Authority, to frame

regulations with the prior approval of the Registrar. Co-operative Societies. U. P., Rule 30 is reproduced below :

30. Miscellaneous.--(1) Subject to the provisions of these rules, the Authority shall frame regulation with the prior approval of the Registrar,

Cooperative Societies. U. P., for the members of centralised service on their service matters which may, inter alia include :

(i) Method of promotion, appointment, probation, confirmation and termination ;

(ii) Service records, seniority, reversion, retrenchment and resignation ;

(iii) Pay scales, allowances, increment, joining time, leave, efficiency bar etc. :

(iv) Conduct and discipline, penalties, disciplinary proceeding and appeals ;

(v) Provident fund, gratuity, security and advance.

(2) So long as the regulations referred to in sub-rule (1) are not framed, all or any matters referred therein shall be governed by such orders or

directions as may be issued by the Authority with the approval of the Registrar.

(3) Any matter not covered in these rules, shall be governed by such directions as may be issued by the Authority with the approval of the

Registrar.

(4) If any doubt or dispute arises in the application of these rules, the reference shall be made to the Registrar whose decision shall be final and

binding on all concerned.

5. In exercise of power conferred by Rule 30, Regulations known as U. P. Primary Agricultural Co-operative Credit Societies Centralised Service

Regulations. 1978 (hereinafter referred to as the Regulations) have been framed. Regulation 58 has laid down penalties including reduction in rank,

removal and dismissal from service. Proviso to Regulation 58 (d) prohibits imposition of reduction in rank or grade, removal and dismissal from

service under sub-clauses (iv), (v) and (vi) of clause (a) of the said rule without recourse to disciplinary proceedings. Regulation 58 is quoted

below :

58 (a) Penalties. --Without prejudice to the provisions contained in any other regulations, a member who commits a breach of duty enjoined upon

him or has been convicted for criminal offence or an offence u/s 103 of the Act or does anything prohibited by these regulations, shall be liable to

be punished by any one of the following penalties :

(i) censure ;

(ii) withholding of increment ;

(iii) recovery from pay or security deposit to compensate in whole or in-part for any pecuniary loss caused to the society by the member"s conduct

;

(iv) reduction in rank or grade ;

(v) removal from service ;

(vi) dismissal from service.

(b) Copy of the order of the punishment shall invariably be given to the member concerned and entry to this effect shall be made in the service

record of the member ;

(c) No penalty except censure shall be imposed unless a show cause notice has been given to the member and he has either failed to reply within

the specified time or his reply has been found to be unsatisfactory by the punishing authority.

(d) (i) The charge sheeted member shall be awarded punishment by the appropriate authority according to the seriousness of the offence :

Provided no penalty under sub-clauses (iv), (v) and (vi) of clause (a) above shall be imposed without recourse to disciplinary proceedings.

(ii) No member shall be reduced in rank or grade or removed or dismissed by an authority other than by which he was appointed unless the

appointing authority has made prior delegation of such authority to such other person or authority in writing ;

(e) The appointing authority or person authorised by him while passing orders for stoppage of increments shall state the period for which they are

stopped and whether they shall have effect of postponing future increments.

6. Regulation 59 deals with the disciplinary proceedings, relevant extract of which is reproduced below :

59. Disciplinary proceedings.--(1)(a) The disciplinary proceedings against a member shall be conducted by the inquiring Officer referred to in

clause (b) below with due observance of the principles of natural justice for which it shall be necessary that:

(i) the member shall be served with a charge sheet containing specific charges and mention of evidence in support of each charge and he shall be

required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days ;

(ii) the member shall also be given an opportunity to produce at his own cost or to cross-examine witnesses in his defence and shall be given an

opportunity of being heard in person, if he so desires ;

(iii) if no explanation in respect of the charge sheet is received or the explanation submitted is unsatisfactory the competent authority may award

appropriate punishment considered necessary.

(b) (i) Where a member is dismissed or removed from service on the ground of conduct which has led to his conviction on a criminal charge ; or

(ii) Where the member refuses or fails without sufficient cause to appear before the inquiring Officer when specifically called upon in writing to

appear ; or

(iii) Where a member has absconded and his whereabouts are not known to the District Committee for more than three months ; or

(iv) Where it is otherwise (for reasons to be recorded) not possible to communicate with him, the competent authority may award appropriate

punishment without taking or continuing disciplinary proceedings.

(c) Disciplinary proceedings shall be taken by the District Committee against the member either suo moto or on a report made to this effect by an

Inspecting Authority or the Chairman of the society under whose control the member is working or may have worked.

(d) The Inquiring Officer shall be appointed by the Member-Secretary of the District Committee ;

.....

(f) A member other than one referred to in clause (e) above may be placed under suspension by the District Committee or any other officer

authorised for the purpose in the following circumstances :

(i) when the said authority is satisfied that a prima facie case exists, which is likely to result in the removal, dismissal or reduction in rank of the

member ;

(ii) when an inquiry into his conduct is immediately contemplated or is pending and his further continuance on his post is considered detrimental to

the interest of the society or the authority ;

(iii) when a complaint against him of any criminal offence is under police investigation for which he has been arrested or he is undergoing trial in a

court of law for an offence under the Indian Penal Code. U. P. Co-operative Societies Act, 1965 or any other Act or charges have been proved

against him by a Criminal Court :

(g) The order of suspension may be revoked :

(i) by the authority which passed the order, or

(ii) by the District Committee :

If there are sufficient reasons for revocation and the same shall be recorded in the order of revocation.

7. Rule 14 (v) empowers the Member/Secretary of the District Committee to suspend a Member of the Centralised service with the prior

concurrence of the Assistant Registrar. Excepting the condition of prior concurrence of the Assistant Registrar, there is no other fetter on the

power of the Member/Secretary to suspend a member. Regulations have been framed under Rule 30 and therefore, they are subordinate to the

Rules. Hence power conferred by Rule 14 (v) on the Assistant Registrar cannot be whittled down or curtailed by the regulations. In the event of

any conflict between the two, the Rule will prevail over the Regulations.

8. Regulation 59 (1) (f) has specified the following three circumstances in which "the District Committee or any other officer authorised for the

purpose" can suspend a member :

(i) when the competent authority is satisfied that a prima facie case exists, which is likely to result in dismissal, removal or reduction in rank of the

member,

(ii) when an inquiry into his conduct is immediately contemplated or is pending and his further continuance on his post is considered detrimental to

the interest of the society or the authority ; and

(iii) when a complaint against him of any criminal offence is under police investigation for which he has been arrested or he is undergoing trial in a

court of law for an offence under the Indian Penal Code. U. P. Cooperative Societies Act or any other Act or charges have been proved against

him by a criminal Court.

The Member/Secretary is "the officer authorised" by Rule 14 (v) to suspend a member. Therefore, he can exercise the power of suspension in any

of the circumstances referred to in Regulation 59 (1) (f). If the Member/Secretary is satisfied that a prima facie case exists, which is likely to result

in any of the three major penalties, he can suspend a member under Regulation 59 (1) (f) (i). The power to suspend in such a contingency has not

been subjected to any condition or limitation. There is also no necessity of the prior decision of the District Committee before suspending a

member under the said provision. But the power to suspend a member in the second contingency referred to in Regulation 59 (1) (f) (ii) can be

exercised only during the pendency or in contemplation of an inquiry into the conduct of the member, if his further continuance on his post is

detrimental to the interest of the society or the authority. The word "inquiry" has not been defined in the Act, Rules or Regulation. Although the

word "inquiry" may have more than one meaning ; but its actual meaning depends on the context in which it has been used. In Service

Jurisprudence, there are two kinds of inquiries, namely, (i) preliminary inquiry ; and (ii) departmental/disciplinary inquiry. The purpose, nature and

the depth of both these inquiries are different The former is resorted to in order to find out the truth of the allegations made against an employee

and/or to determine as to whether disciplinary inquiry should be started against him. But the disciplinary inquiry is initiated in order to punish the

employee for misconduct. For the reasons given below, the inquiry referred to in Regulation 59 (1) (f) (ii) is the disciplinary inquiry and not a

preliminary inquiry :

(i) Suspension under Regulation 59 (1) (f) (ii) can be ordered during or in contemplation of an inquiry. If the inquiry referred to therein is the

preliminary inquiry, then the suspension order passed during the pendency or in contemplation of such an inquiry has to come to an end and the

suspended member has got to be reinstated after the said inquiry is over, even though the District Committee decides to initiate disciplinary

proceedings against such a member. Such a situation/eventuality has to be avoided while interpreting the rule otherwise the very purpose of the

suspension and the disciplinary inquiry in many cases may be frustrated, in this connection reference may be made to five Judges" Full Bench

decision of this Court in Sk. Sekawat Vs. The State of West Bengal, , wherein while interpreting Rule 49A of U. P. Civil Services [Classification,

Control and Appeal) Rules, it was laid down that the word "inquiry" referred to therein relates to departmental/disciplinary inquiry and, therefore, a

Government servant can be suspended in contemplation or during the pendency of a disciplinary inquiry. The relevant extract from the said Full

Bench decision is reproduced below :

The inquiry contemplated by Rule 49A cannot have reference to an informal preliminary inquiry or a fact finding inquiry preceding the actual

disciplinary proceeding, otherwise it shall be permissible to suspend a Government servant pending such informal inquiry, but not after charges

have been framed and regular departmental proceeding is pending. This shall lead to an anomalous situation. We are, therefore, of opinion that the

"inquiry" contemplated by Rule 49A and Rule 1A has reference to the formal departmental inquiry and not to any informal preliminary or fact

finding inquiry preceding the initiation of the formal disciplinary proceedings.

(ii) An order of suspension under Regulation 59 (1) (f) (i) can be passed when the authorised officer is satisfied that a prima facie case exists,

which is likely to result in any of the three major penalties. Such a satisfaction can normally be reached after holding a preliminary inquiry in order

to determine the truth of allegations of misconduct raised against the employee unless the authorised officer is satisfied prima facie about the

correctness of the allegations on the basis of the material already on the record including the complaint itself. Preliminary inquiry is thus, covered by

sub-clause (i). Such an inquiry, therefore, cannot be a ground for suspending a member under the second sub-clause. It cannot be presumed that

same ground/reason for suspending a member has been referred to in the two independent sub-clauses of the same Regulation.

(iii) If sub-clause (ii) is taken to refer to preliminary inquiry only, the member of the service may be unnecessarily harassed by frequent Complaints,

because in order to ascertain the truth of the allegations made therein, some kind of preliminary inquiry has to be contemplated or held giving cause

for passing the order of suspension in contemplation or during the pendency of such an inquiry. The ground realities of the present day's affairs

cannot be lost sight of. The device and the mechanism through which honest and efficient officials are harassed and victimised by high-ups in the

administration are well known. In this connection, reference may be made to Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and

Others, wherein Hon'ble Supreme Court in paragraphs 223 and 243 has laid down as follows :

There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the

individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty

and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they

occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a

complainant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational.

History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and

impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.

x x x x

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The

employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is

the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of

undefined premises and uncertain applications. That will be a mockery of them.

x x x x

The prevailing social conditions and actualities of life are to be taken into account to adjudging whether the impugned legislation would subserve the

purpose of the society. The arbitrary, unbridled and naked power of wide discretion to dismiss a permanent employee without any guidelines or

procedure would tend to defeat the constitutional purpose of equality and allied purposes referred to above. Courts would take note of actualities

of life that persons actuated to corrupt practice are capable, to manoeuvre with higher echelons in diverse ways and also camouflage their activities

by becoming sycophants or cronies to the superior officers. Sincere, honest and devoted subordinate officer (are) unlikely to lick the boots of the

corrupt superior officer. They develop a sense of self-pride for their honesty, integrity and apathy and inertia towards the corrupt and tend to

undermine or show signs of disrespect or disregard towards them. Thereby, they not only become inconvenient to the corrupt officer but also stand

an impediment to the ongoing smooth siphony of corruption at a grave risk to their prospects in career or even to their tenure of office. The term

efficiency is an elusive and relative one to the adept capable to be applied in diverse circumstances. If a superior officer develops likes towards

sycophant, though corrupt, he would tolerate him and found him to be efficient and pay encomiums and corruption in such cases stand no

impediment. When he finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential with

delightfully vague language imputing to be "not up to the mark", "wanting public relations" etc. Yet times they may be termed to be "security risk"

(to their activities). Thus, they spoil the career of the honest, sincere and devoted officers. Instances either way are galore in this regard. Therefore,

one would be circumspect, pragmatic and realistic to these actualities of life while angustating constitutional validity of wide arbitrary, uncanalised

and unbridled discretionary power of dismissal vested in an appropriate authority either by a statute or a statutory rule. Vesting arbitrary power

would be a feeding ground for nepotism and insolence, instead of subserving the constitutional purpose, it would defeat the very object, in

particular, when the tribe of officers of honesty, integrity and devotion are struggling under despondence to continue to maintain honesty, integrity

and devotion to the duty, in particular, when moral values and ethical standards are fast corroding in all walks of life including public services as

well. It is but the need and imperative of the society to pat on the back of those band of honest, hard-working officers of integrity and devotion to

duty. It is the society's interest to accord such officers security of service and avenues of promotion.

That apart, the haunting fear of dismissal from service at the vagary of the concerned officer would dry up all springs of idealism of the employee

and in the process coarsens the conscience and degrades his spirit. The nobler impulses of minds and the higher values of life would not co-exist

with fear. When fear haunts a man, happiness vanishes. Where fear is, justice cannot be, where fear is, freedom cannot be. There is always a

carving in the human heart for satisfaction of the needs of the spirit, by arming by certain freedom, for some basic values without which life is not

worth-living. It is only when the satisfaction of the physical needs and the demands of the spirit coexists, there will be true efflorescence of the

human personality and the free exercise of individual faculties. Therefore, when the Constitution assures dignity of the individual and the right to

livelihood the exercise of the power by the executive should be cushioned with adequate safeguards for the rights of the employees against any

arbitrary and capricious use of those powers.

9. For the reasons given above, the Member/Secretary can suspend a member of the centralised service under Regulation 59 (1) (f) (i) in the

absence of a decision of the District Committee. Similarly, he can suspend a member under Regulation 59 (1) (f) (iii) without any decision of the

District Committee. But a member of the service cannot be suspended by the Member/Secretary under Regulation 59 (1) (f) (ii) in the absence of

a decision contemplating or initiating disciplinary inquiry. In view of Regulation 59 (1) (c), disciplinary proceedings can be taken by the District

Committee only. Therefore, unless such a decision is taken by the District Committee, the Member/Secretary cannot suspend the member of the

service. But if the District Committee has taken a decision contemplating or initiating the disciplinary proceedings, it is open to the

Member/Secretary to suspend the member of the service pending disciplinary inquiry. The Act, Rules and Regulations do not provide for

suspension of the member pending disciplinary inquiry by the District Committee alone. Such an inference cannot be drawn by implication also,

specially in view of the fact that Rule 14 (v) gives power to the Member/Secretary to suspend a member without any restriction as regards

circumstances in which he can exercise his power of suspension.

Question No. 1.--Requirement of prior concurrence of Assistant Registrar for suspending a member:

10. The Rules do not define "Assistant Registrar" but at the end of Rule 2, it has been mentioned that the words and expression used in the Rules

but not defined therein but defined in the Act and the Rules shall have the meaning assigned to them in the Act and the Rules. "Registrar" has been

defined by Section 2 (r) of the Act, according to which Registrar ""means the person for the time being appointed as Registrar of Co-operative

Societies under sub-section (1) of Section 3 and includes any person appointed under sub-section (2) of that section when exercising all or any of

the powers of the Registrar."" Section 3 has given power to the State Government to appoint a person to be the Registrar of the Co-operative

Societies for the State. Sub-section (2) of Section 3 further empowers the State Government to ""appoint other persons to assist the Registrar and

by general or special order confer on any such person all or any of the powers of the Registrar."" Rules 2 (e) and (f) of the U. P. Co-operative

Societies Rules, 1968, which have defined ""Assistant Registrar and Assistant Registrar Incharge"" are reproduced below :

2(e). "Assistant Registrar" means a person appointed as Assistant Registrar under sub-section (2) of Section 3 and "District Assistant Registrar

means an Assistant Registrar appointed to hold charge of co-operative activities of a district.

(f) "Assistant Registrar Incharge" means the Assistant Registrar appointed to hold charge of co-operative activities within a Division.

From the above provisions, it is clear that the District Assistant Registrar is also an Assistant Registrar appointed to hold charge of a district.

11. Rules 13 (3) and 14 (v), as originally framed in 1976, gave power to the Chairman and the Member/Secretary of the District Committee to

suspend a member of the centralised service with the prior concurrence of the Assistant Registrar. At that time, the District Assistant Registrar was

merely a member of the District Committee. The Rule 7 (4), which provides for constitution of District Committee was amended in 1981 and the

constitution of the District Committee was slightly changed making the Assistant Registrar as the ex officio Chairman. As the District Assistant

Registrar became the Chairman, the phrase ""with the prior concurrence of the Assistant Registrar"" in Rule 13 (3), which gave power to the

Chairman to suspend a member of the centralised service, was deleted. Rule 7 was again amended in 1984 and by this amendment

Chairman/Administrator of the District Co-operative Bank became the Chairman in place of the District Assistant Registrar, who was made

Member/Secretary of the District Committee. Although Rule 7 (4) was amended but there was no corresponding change in Rules 13 (3) and 14

(v), with the result that Rule 13 (3), which was amended in 1981 remained intact and the Chairman of the District Committee continued to enjoy

the power of suspending a member without prior concurrence of the Assistant Registrar. Although the District Assistant Registrar was made a

Member/Secretary by the said amendment but the phrase ""with the prior concurrence of the Assistant Registrar"" was not deleted from Rule 14 (v)

on account of which the requirement of prior concurrence of the Assistant Registrar before suspending a member by the Member/Secretary

continued to remain part of the said sub-rule. The resultant position was the ambiguity and the confusion regarding the power of the

Member/Secretary, who himself was the Assistant Registrar to suspend a member. The rules were again amended in 1995 but there was no

amendment in Rule 14 (v) and the position of the District Assistant Registrar as Member/Secretary of the District Committee was not changed.

12. When two authorities/powers, namely, (i) power to suspend ; and (ii) the power to approve the suspension are conferred on the same person,

it is not necessary for him to approve his own action. Law cannot be presumed to have provided for empty rituals. In such a case, the necessity of

approval is dispensed with. A Division Bench of this Court in *Bryendra Singh Sengar v. Member/ Secretary, District Assistant Registrar, Co-*

operative Society, Mathura 1989 ACJ 394, while dealing with power of suspension of the Member/Secretary under the rules and regulations has

laid down as under :

We cannot agree, whereas here, the authority whose prior concurrence is needed for a particular action himself become authorised to take action,

the action cannot be assailed merely on the ground that the provisions for obtaining prior concurrence carries no meaning. The two authorities

having been merged in a single functionary the district Assistant Registrar the action taken by that functionary would be deemed to comply with

Rule 14 (v) both in letter and spirit. We, therefore, reject the first contention.

Following the decision of another Division Bench in *Rishi Kumar Sharma v. State of U.P.*, Writ Petition No. Nil of 1088, decided on 19.8.1988,

this Court has taken the similar view in *Mewa Ram Bharti v. District Administrative Committee* 1991 ACJ 994, by laying down as under :

It is admitted that the Secretary/Member is himself the Assistant Registrar, when an officer is holding two offices, one of the Secretary/Member

and the other of Assistant Registrar, it is not necessary for him to obtain prior approval before suspending member of the centralised service. When

such an officer passes order of suspension provisions of law stand complied with and no prior approval of any other authority is required. In this

connection, reference may be made to a decision of a Division Bench in the case of *Rishi Kumar Sharma v. State of U. P.*, Writ Petition No. Nil of

1988, decided on 19.8.1988. wherein it has been laid down that if the secretary is himself Assistant Registrar provisions of obtaining approval of

Assistant Registrar becomes redundant. Relevant extract from this judgment is reproduced below :

As the District Assistant Registrar now holds the post of Secretary, in our opinion, the provisions of obtaining the concurrence of the Assistant

Registrar by the Secretary has become redundant.

We respectfully agree with the law laid down in the aforesaid cases. Therefore, when the District Assistant Registrar is himself a

Member/Secretary of the District Committee, he can suspend a member of the centralised service without any concurrence of any other Assistant

Registrar. In such a case, the provisions requiring concurrence of the Assistant Registrar stand dispensed with.

Question No. 2.--The power of the District Committee to suspend a member of the centralised service ;

13. Rule 13 has made the District Committee as the appointing authority of the member of centralised service in the district- By the said rule, the

District Committee has been given various other powers also including the power to exercise control and supervision over the members. Rule 7 (1)

also vests such a power in the District Committee. An appointing authority is entitled to suspend the employee pending disciplinary inquiry into his

conduct. In R.P. Kapur Vs. Union of India (UOI) and Another, , the Supreme Court in this connection has laid down as under:

On general principles, therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental inquiry

into his conduct or pending a criminal proceeding, which may eventually result in a departmental inquiry against him.....But what amount should be

paid to the public servant during such suspension will depend on the provisions of the statute or rule in that connection.

Same view has been reiterated in Balvantray Ratilal Patel Vs. The State of Maharashtra, ; V.P. Gidroniya Vs. The State of Madhya Pradesh and

Another, and The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, .

14. As mentioned hereinbefore, the District Committee also has the supervision and control over the members of the centralised service. The word

"supervision and control" are wide enough to include the power of passing the order of suspension pending disciplinary inquiry. In Corporation of

the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, , Supreme Court relying on its earlier decisions has held that the

word "control" includes the power of passing an order of suspension pending disciplinary inquiry. Relevant extract from the said decision is

reproduced below:

It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers

which are incidental or consequential to achieve the powers vested in the authority concerned, in the aforesaid case, suspension from service

pending a disciplinary inquiry has clearly been held to fall within the ambit of the word "control". On a parity of reasoning, therefore, the plain

language of clause (b) of Section 59 (3), as extracted above, irresistibly leads to the conclusion that the Municipal Commissioner was fully

competent to suspend the respondents pending a departmental inquiry and hence the order of suspension passed against the respondents by the

Municipal Commissioner did not suffer from any legal infirmity.

That apart, Regulation 59 (1) (f) expressly empowers the District Committee to suspend a member of centralised service. The District Committee

is, therefore, fully competent to suspend a member of the centralised service.

Question No. 3.--Power of the Member/Secretary to appoint an Inquiry Officer to hold inquiry :

15. According to Regulation 59 (1) (a), the disciplinary proceeding against a member is to be conducted by an Inquiry Officer appointed in clause

(d). As per Regulation 59 (1) (c), disciplinary proceeding can be taken by the District Committee only. Till the disciplinary proceeding has been

taken by the District Committee, the question of conducting such proceeding by an Inquiry Officer does not arise. Although the Member/Secretary

has been given power under Regulation 59 (1) (d) to appoint an Inquiry Officer ; but he can do so only after the disciplinary proceeding has been

taken by the District Committee. He, therefore, cannot appoint an Inquiry Officer in the absence of initiation of disciplinary proceeding by the

District Committee.

Question No, 4.--Impugned orders of suspension :

16. In all these writ petitions the Member/Secretary while suspending the petitioners has appointed Inquiry Officers to make inquiry into the alleged

misconduct of the petitioners and submit their reports. The Member/Secretary can appoint an Inquiry Officer for conducting disciplinary inquiry ;

but he can do so only after the disciplinary proceeding had been taken by the District Committee. It is admitted position in all these cases that the

District Committee has not taken a decision initiating or contemplating the disciplinary proceedings against the petitioners. Under the circumstances,

the Member/ Secretary could not have appointed Inquiry Officers for conducting inquiry. From the tenor of the impugned orders, it is apparent that

the Member/Secretary while suspending the petitioners has also initiated the disciplinary proceedings. Such a course is not open to him. That apart,

no attempts have been made by the respondents to justify the impugned orders by placing the relevant materials before the Court inspite of the

averments, alleging the orders to be arbitrary and illegal. The impugned orders, therefore, cannot be sustained.

17. Our answer to the questions referred to before are as under :

(i) The Member/Secretary can suspend a member of the centralised service under Regulation 59 (1) (f) (i) in the absence of a decision of the

District Committee. Similarly, he can suspend a member under Regulation 59 (1) (f) (iii) without any decision of the District Committee. But a

member of the service cannot be suspended by the Member/Secretary under Regulation 59 (1) (f) (ii) in the absence of a decision by the District

Committee contemplating or initiating disciplinary inquiry. The decisions of this Court taking the view contrary to what is contained in this judgment

stand overruled.

(ii) When the District Assistant Registrar is himself a Member/ Secretary of the District Committee, he can suspend a member of the centralised

service without any concurrence of Assistant Registrar. In such a case, the provisions requiring the prior concurrence of the Assistant Registrar

stand dispensed with.

(iii) The District Committee is fully competent to suspend a member of the centralised service.

(iv) The Member/Secretary cannot appoint an Inquiry Officer to conduct the disciplinary proceedings in the absence of decision of the District

Committee initiating or contemplating the disciplinary proceedings.

(v) The impugned orders of suspension are illegal and cannot be sustained.

18. For the reasons given above, these writ petitions are allowed. The impugned orders are quashed. In view of the facts and circumstances of the

case, there shall be no order as to costs.