

(2013) 01 AHC CK 0463

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 61325 of 2010

C/M District Co-operative Bank
Limited

APPELLANT

Vs

Union of India and Other

RESPONDENT

Date of Decision: Jan. 18, 2013

Acts Referred:

- Income Tax Act, 1922 - Section 21, 41, 41(1)
- Income Tax Act, 1961 - Section 161, 161(2)
- Uttar Pradesh Co-operative Societies Act, 1965 - Section 121, 122, 128, 128(1), 2(d1)
- Wealth Tax Act, 1957 - Section 21, 21(1), 3

Citation: (2013) 5 ALJ 50

Hon'ble Judges: Ashok Bhushan, J; Abhinava Upadhya, J

Bench: Division Bench

Advocate: Sudeep Harkauli, Rohit Agarwal and Shashi Nandan, for the Appellant; Ashok Khare, Gautam Baghel, K.J. Shukla, P.S. Baghel and R.K. Mishra, for the Respondent

Judgement

Ashok Bhushan, J.

These two writ petitions raising similar issues have been heard together and are being decided by this common judgment. Counter and rejoinder affidavits have been exchanged between the parties.

2. The Writ Petition No. 61325 of 2011 is being treated as leading writ petition and it is sufficient to refer the pleadings of Writ Petition No. 61325 of 2011 for deciding both the writ petitions.

3. The writ petition has been filed by the Committee of Management District Co-Operative Bank Limited, Etawah challenging the order passed by the Registrar Co-operative Societies U.P. dated 1.6.2010 by which the petitioner was directed to reconsider its resolution dated 24.5.2010 by which the Committee of Management had taken a resolution that by making new appointment financial burden of the

Bank shall increase, hence new appointment be not made and the resolution was sent to the Registrar, Co-operative Societies and the Institutional Service Selection Board. Prior to 2010 the Committee of Management of the Bank was not functioning and the Administrator appointed under the U.P. Co-operative Societies Act, 1965 (hereinafter referred to as the Act) was managing the affairs of the Bank. A decision was taken by the Administrator on 12.10.2009 to request U.P. Co-operative Societies Service Institutional Board for making selection for various posts in the Bank.

4. In pursuance of the request sent by the Administrator, the Institutional Service Board proceeded to make recruitment on various posts in the Bank including those of Branch Managers, Clerks/Cashiers. A letter dated 4.5.2010 was sent by the U.P. Co-operative Institutional Service Board (in short the Board) to the Bank sending list of 12 selected candidates for making appointment. The Committee of Management considered the letter and passed a resolution dated 21.10.2010 that new appointment cannot be made. The Registrar passed an order dated 1.6.2010 directing the Committee of Management to re-consider its resolution dated 24.5.2010. In the meantime, by letter dated 4.6.2010 a list of 52 selected candidates for the post of Clerks/Cashiers was forwarded to the Bank by the Board.

5. The writ petition was filed by the Committee of Management praying for the following reliefs:

(i) to issue a writ, order or direction in the nature of certiorari quashing the order dated 1.6.2010 passed by the respondent No. 6 u/s 128(1) of the Act (Annexure. 7).

(ii) to issue to a writ order or direction in the nature of certiorari quashing the appointment list dated 4.5.2010 and 4.6.2010 issued by respondent Nos. 7 to 68 employees (Annexure Nos. 4 & 6).

(iii) to issue a writ, order of direction in the nature of mandamus commanding the respondent Nos. 5, 6, and 7 not to compel the petitioner for joining of 68 employees in the Bank.

(iv) to issue a writ, order or direction in the nature of mandamus commanding the respondent Nos. 5 and 6 not to issue any directions compelling the petitioner for undergoing computerization through the State Government enlisted Companies and at the rate fixed by the State Government, which is highly excessive compared to the reputed and International Companies.

(v) to issue a writ, order or direction, which this Hon"ble Court may deem fit and proper in the circumstances of the case.

(vi) to award cost of the petition in favour of the petitioner.

6. This Court while entertaining the writ petition on 26.10.2010 directed that the petitioner shall not be compelled to make appointment in pursuance of the order dated 1.6.2010 passed by the Registrar Co-operative Society. An application for

impleadment has been filed by the selected candidates Harish Chandra Kushwaha and 9 others which application was allowed and they have been impleaded as respondent Nos. 9 to 19 to the writ petition.

7. A counter-affidavit on behalf of the Registrar Co-operative Societies and the State of U.P. has been filed sworn by the Joint Registrar Co-operative Societies, U.P., Kanpur. A counter-affidavit on behalf of the newly impleaded respondents has also been filed. The Registrar in its counter-affidavit has pleaded that the appointment have been made by the Service Selection Board which has been constituted by the State Government u/s 122 of the Act. It has been stated that the Service Selection Board proceeded with the recruitment on a request made by the Administrator of the Bank, who was then functioning. The recruitment having been made according to the Act and the Regulations framed thereunder, the decision of the Bank not to make appointment is erroneous. The Registrar has rightly exercised his power u/s 128 of the Act directing the Bank to reconsider its decision. The respondent Nos. 9 to 19 have also made similar pleadings and have prayed that the Bank be directed to permit the appointments of the selected candidates and the writ petition be dismissed.

8. Writ Petition No. 767 of 2011 has been filed by the Committee of Management of District Co-operative Bank Limited praying for a writ in the nature of mandamus commanding the respondent Nos. 5, 6 and 7 from not making any appointment on the post of Deputy General Manager from Senior Manager in District Cooperative Bank and further not to give effect to the interview held between 28.12.2010 to 31.12.2010.

9. The petitioner's case in the writ petition is that after amendment of U.P. Co-operative Societies Act, 1965 by U.P. Act No. 47 of 2007 the Institutional Service Board has no jurisdiction to make any recruitment/promotion. Notice is said to have been issued to the Senior Manager of the Bank to fill up the post of Deputy General Manager by promotion. The petitioner's case is that the interview has been held for effecting promotion between 28.12.2010 to 31.12.2010.

10. In Writ Petition No. 767 of 2011 the promotion exercised on the post of Deputy General Manager has been under challenge. An interim order was passed by this Court on 20.1.2011 directing respondent Nos. 4 to 7 not to make any appointment to any post in the Bank. There is nothing on record to indicate that any recommendation for promotion has been made by respondent No. 7 on the post of Deputy General Manager.

11. We have heard Sri Shashi Nandan, learned Senior Advocate assisted by Sri Rohit Agarwal and Sri Sudeep Harkaulil, learned counsel for the petitioner, learned Standing Counsel appearing for the State-respondents and Sri Ashok Khare, learned Senior Advocate assisted by Sri R.K. Mishra, learned counsel appearing for the respondent Nos. 9 to 19.

12. Learned counsel for the petitioner challenging the selection made by the Service Selection Board, has submitted that after the amendment of U.P. Co-operative Societies Act, 1965 by U.P. Act No. 47 of 2007, Section 29-A of the Act has been inserted, in accordance with which provision the power to make appointment is with the Committee of Management of the Bank which is to assess as to whether any man power is required and whether there are resources for making any appointment.

13. It is submitted that the Registrar Cooperative Society and the Service Selection Board has no jurisdiction to make any selection or appointment. It has been submitted that the amendment by Act No. 47 of 2007 has been made on account of Memorandum of Understanding dated 18th December, 2006 executed among the President of India, the Governor of State of Uttar Pradesh and the National Bank for Agricultural and Rural Development with the objective of revival and restructuring of Rural of Co-operative Credit Structure.

14. Referring to Clause-9 of Memorandum of Understanding it has been submitted that the State Government has given an undertaking to incorporate amendments in the Act by which full autonomy in all financial and internal administration is to be given to the Bank. He submits that the amendment of the Act was made in the light of the aforesaid Memorandum of Understanding and in view of the amendment now the power regarding appointment is vested in the Committee of Management. It is further submitted that there is no requirement of such huge staff as has been selected and send in the bank numbering 82 and the Bank is not in such a financial position to undertake such liability, hence decision was taken by the Committee of Management for not making appointments. It is submitted that the decision of the Bank not to appoint 82 Officers and Staff as has been selected is fully justified and the Registrar has no jurisdiction to direct the Bank to make appointment or to reconsider its proposal. It is further submitted that the Administrator, who was working in the year 2009 had no authority or jurisdiction to request for making appointment in the Bank and the letter dated 12.10.2009 written by the Administrator was not after considering relevant aspects.

15. Reliance has also been placed on a circular dated 14th September, 2007 issued by the Registrar, Co-operative Society as well as the interim order dated 14.9.2007 passed in Writ Petition No. 6665 (M/B) of 2007 (Smt. Nirmala Rani Mishra v. State of U.P. & others).

16. Learned counsel for the private respondents refuting the submissions of the learned counsel for the petitioner, contends that the Institutional Service Board has ample jurisdiction to make appointment. He further contends that the private respondents having been recommended for selection has right to appointment. The provisions of recruitment and the selection as contained in 1965 Act as well as the Regulations framed u/s 122 of the Act are still operative and Section 29-A of the Act does not affect the right of Service Selection Board to make recruitment. He

submitted that Section 29-A of sub-section (viii) itself provides that the appointment of Officers or other Staff is subject to the provisions of the Act, Rules and Bye-laws which clearly means that Section 29-A of the Act does not override the existing provisions or existing mechanism to fill up the posts. He submits that the decision of the petitioner's Bank not to make appointment is arbitrary and there is no rational basis for not appointing the staff which has been validly selected and the selection made by the Service Selection Board has not been on its own instance rather it was based upon the vacancies notified to the Board by the then Administrator, who was exercising all powers of the Committee of Management. Selection has been made against the duly sanctioned vacant post and there is no reason for not granting appointment to the selected candidates. There is no claim of the petitioner that the posts on which selected candidates have been recommended, have been abolished or the decision has been taken in any annual assessment that there are no resource to fill up the said posts.

17. Learned counsel for the parties placed reliance on various judgment of this Court and Apex Court which shall be referred to while considering the submission in detail.

18. Before we proceed to consider the respective submissions, it is relevant to note statutory provisions governing the field. U.P. Co-operative Societies Act, 1965 has been enacted to consolidate and amend laws relating to Co-operative Society. The District Cooperative Bank is the Central Society as defined in Section 2(d-1) of the Act. u/s 29, sub-section (1) of the Act the management of every Co-operative Society vests in the Committee of Management.

19. Section 29, sub-section (5) of the Act contemplates the appointment of Administrator when the election of Committee of Management could not take place before the expiry of term. Section 122 of the Act empowers the State Government to constitute an authority for recruitment and the disciplinary control of Employees of the Co-operative Societies. Section 122 of the Act is quoted below:

Authority to control employees of co-operative societies.--(1) The State Government may constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative societies, or a class of co-operative societies, and may require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees, and subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society and the society.

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

20. In exercise of power u/s 122 the State Government vide Notification dated 31st December, 1975 has framed the Regulations, namely, U.P. Co-operative Societies Employees Service Regulations, 1975. Regulations 2 of sub-clause (iii) defines the appointing authority as follows:

(iii) "appointing authority" means "Committee of Management" or any other authority which is empowered under these regulations or the bye-laws of the society concerned to make appointment:

21. Chapter II, Regulation 3 deals with the Strength of Staff, Recruitment, Appointment, Probation, Confirmation Termination and Recruitment which is as follows:

3. Strength of Staff.--(i) Subject to the provision in its budget and the requirements of its business, a co-operative society shall maintain one or more categories of employees as may be necessary.

(ii) Expansion of staff or enhancement of pay scale, if necessary, may be made by the society only:

(a) where a resolution to this effect has been passed with previous notice by the committee of management indicating reasons and financial capacity of or resources available to the society to bear the cost; and

(b) in case the society is enjoying any State aid under provisions of Chapter VI of the Act, or has outside borrowings, prior approval of the Registrar has also been obtained:

Provided that in the case of defaulter society no approval shall be accorded by the Registrar without consulting the chief central society of the co-operative society concerned.

22. Chapter II of Regulation 5 deals with the recruitment which is as follows:

(i) Recruitment for all appointments in a co-operative society shall be made through the Board whether the recruitment is:

(a) direct, or

(b) by promotion from employees already in the service of the society, or

(c) by taking on deputation or otherwise a person who is already in the service of any other society registered or deemed to have been registered under the Act.

23. U.P. Co-operative Societies Act, 1965 was amended by U.P. Act No. 47 of 2007. It is useful to note the Statement of Objects and Reasons of the Act which was as follows:

Prefatory Note-Statement of Objects and Reasons.--A task force on revival of rural cooperative institutions has been set up in August, 2004 by the Government of India

under the Chairmanship of Prof. A Vaidyanathan. The Committee of such task force submitted its report in February, 2005 wherein it had recommended to compensate the losses of the Co-operative Credit Societies incurred up to March 31, 2004. For this purpose Memorandum of Understanding was signed between the Government of India, National Bank for Agriculture and Rural Development and the State Government on December, 18, 2006. Para 9 of this Memorandum of Understanding provides for certain amendments in the Uttar Pradesh Co-operative Societies Act, 1965.

24. Section 29-A the Act has been inserted by U.P. Act No. 47 of 2007. Relevant provisions of Section 29-A are as follows:

29-A. Special provision for Primary Agricultural Co-operative Credit Societies, Central Co-operative Banks and Apex Bank.--Notwithstanding anything to the contrary in any other provision of this Act, rules and bye-laws of the society, the Committee of Management of a Primary Agricultural Co-operative Credit Society or a Central Co-operative Bank or an apex bank shall exercise such powers and perform such duties as may be necessary and expedient for the purpose of carrying out its functions under this Act which shall include,-

(1) the power to,

(i) to (vii) assess the existing manpower resources and future requirements in the context of changes that might have taken to ensure availability of the required resources and consider and remove constraints in the process or progress of manpower planning at least once at the beginning of every year.

(viii) appoint officers or other staff to conduct the business of the society and define inter alia their duties, service conditions, leave concessions and disciplinary matters subject to the provisions of this Act, the rules and the bye-laws;

25. From the facts, which has been brought on record, it is clear that the Administrator vide its requisition dated 12.10.2009 has sent requisition to the Institutional Selection Board to make appointment and recruitment. Thereafter, the Board proceeded with the recruitment and after finalizing the list sent it to the Bank for issuing the appointment. The main issue which has been raised in the writ petition is as to whether the Institutional Service Board shall have any jurisdiction to proceed with the recruitment and make selection after insertion of Section 29-A of the Act.

26. It is submitted by the learned counsel for the petitioner that the intent and purpose of the Amending Act, 1965 is to clothe the Committee of Management with full autonomy regarding appointment and selection. It is also submitted that the amended provisions contemplates that no power should be exercised by the Registrar or any other authority regarding selection and appointment. More emphasis have been laid on Memorandum of Understanding entered on

18.12.2006. Paragraph No. 9.2 of the Memorandum of Understanding on which much reliance has been placed is quoted below:

9.2. providing autonomy to CCS in all financial and internal administrative matters, especially in the following areas:

- i. interest rates on deposits and loans in conformity with RBI guidelines.
- ii. borrowings and investments.
- iii. loan policies and individual loan decisions.
- iv. personnel policy, staffing recruitment, posting and compensation to staff and
- v. internal control systems, appointment of auditors and compensation for the audit.

27. As noted above, the appointing authority of the Officers and Staff of the aforesaid Bank's society is the Committee of Management as per Regulation 1975. Section 29-A of sub-clause (viii) provides that the committee shall have power to appoint Officers or other Staff to conduct the business of the society. The appointing authority has been earlier also the Committee of Management and after the amendment also the Committee of Management.

28. Section 29-A of the Act does not contain any provision for recruitment of the Officers and Staff. Rather Section 29-A(a) of sub-section (viii) of the Act makes the power to appoint officers "subject to the provisions of this Act the rules and the bye-laws."

29. It is also relevant to note that Section 29-A of the Act begins with non obstante clause, i.e., notwithstanding anything to the contrary in any other provisions of this Act, rules or bye-laws of the society. Section 29-A of the Act thus gives an overriding effect wherever there may be any conflict with the existing provisions of the Act, rules or bye-laws. When a statute uses non obstante clause, the intent is to give enacting part of the provisions an overriding effect in case of a conflict. The Apex Court in the case of [R.S. Raghunath Vs. State of Karnataka and another](#), after noticing the earlier judgment of the Apex Court laid down the following in para-graph-11:

...On a conspectus of the above authorities it emerges that the non obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non obstante clause has to be read as clarifying the whole position and must be

understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.

30. As noted above, Section 29-A(a)(VIII) makes the power to appoint an officer subject to provisions of the Act. When any provision is made subject to the provisions of the Act, the enacting provision has to give way to the existing provisions.

31. The Apex Court while considering the Principles of Statutory Interpretation regarding the use of word "subject to" in a statute has laid down that when a provision is made subject to other provisions of the Act, the same is made subservient to the main provisions. The Apex Court in [The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad](#), had occasion to consider the provisions of Sections 3 and 21 of the Wealth Tax Act, 1957. Section 3 of the Act imposes the charge of wealth tax subject to the "other provisions of the Act." After noticing the aforesaid provisions the Apex Court laid down the following in paragraph No. 13:

Let us assume that the trustee of a trust would be assessable in respect of the trust properties u/s 3, even in the absence of section 21. But section 3 imposes the charge of wealth tax "subject to the other provisions" of the Act and these other provisions include section 21. Section 3 is, therefore, made expressly subject to section 21 and it must yield to that section in so far as the latter makes special provision for assessment of a trustee of a trust. Section 21 is mandatory in its terms and as it stood at the material time it provided as follows:

21(1) In the case of assets chargeable to tax under this Act which are held by a court of wards or an administrator-general or an official trustee or any receiver or manager or any other person, by whatever name called, appointed under any order of a court to manage property on behalf of another, or any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise (including-a trustee under a valid deed of wakf), the wealth-tax shall be levied upon and recoverable from the court of wards, administrator-general, official trustee, receiver, manager or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf the assets are held, and the provisions of the Act shall apply accordingly.

(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf the assets above referred to are held, or the recovery from such person of the tax payable in respect of such assets.

(3) Where the guardian or trustee of any person being a minor, lunatic or idiot (all of which persons are hereinafter in this sub-section included in the term "beneficiary") holds any assets on behalf of such beneficiary, the tax under this Act shall be levied

upon and recoverable from such guardian or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from any such beneficiary if of full age or sound mind and in direct ownership of such assets.

(4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager, or other person aforesaid as if the persons on whose behalf or for whose benefit the assets are held were an individual for the purposes of this Act.

Sub-section (5) was not a part of section 21 at the material time since it was introduced only with effect from 1st April, 1965 but it throws some light on the interpretation of the other sub-sections of section 21 and hence it may be reproduced here:

21(5) Any person who pays any sum by virtue of the provisions of this section in respect of the net wealth of any beneficiary, shall be entitled to recover the sum so paid from such beneficiary, and may hold on behalf or for the benefit of such beneficiary, an amount equal to the sum so paid.

It would, therefore, be clear on a combined reading of sections 3 and 21 that whenever assessment is made on a trustee, it must be made in accordance with the provisions of section 21. Every case of assessment on a trustee must necessarily fall u/s 21 and he cannot be assessed apart from and without reference to the provisions of that section. To take a contrary view giving option to the Revenue "to assess the trustee u/s 3 without following the provisions of section 21 would be to refuse to give effect to the words "subject to the other provisions of this Act" in section 3, to ignore the maxim generalia specialibus non-derogant and to deny mandatory force and effect to the provisions enacted in section 21. It may be noted that, while interpreting the corresponding provisions in section 41 of the Indian income tax Act, 1922 and section 161 of the income tax Act, 1961, this Court in [C.R. Nagappa Vs. Commissioner of Income Tax](#), approved the following observations made by Chagla, C.J. in regard to the scheme of section 41 of the Indian income tax Act, 1922 in [Commissioner of Income Tax, Ahmedabad Vs. Balwantrai Jethalal Vaidya and Others](#), :

If the assessment is upon a trustee, the tax as to be levied and recovered in the manner provided in section 41. The only option that the Legislature gives is the option embodied in sub-section (2) of section 41, and that option is that the department may assess, the beneficiaries instead of the trustees, or having assessed the trustees it may proceed to recover the tax from the beneficiaries. But on principle the contention of the department cannot be accepted that, when a trustee is being assessed to tax, his burden which will ultimately fall upon the

beneficiaries should be increased and whether that burden should be increased or not should be left to the option of the department. The basic idea underlying section 41, and which is in conformity with principle, is that the liability of the trustees should be co-extensive with that of the beneficiaries and in no sense a wider or a larger liability. Therefore, it is clear that every case of an assessment against a trustee must fall u/s 41, and it is equally clear that, "even though a trustee is being assessed, the assessment must proceed in the manner laid down in Chapter HI. Section 41 only comes into play after the income has been computed in accordance with Chapter HI. Then the question of payment of tax arises and it is at that stage that section 41 issues a mandate to the taxing department that, when they are dealing with the income of a trustee, they must levy the tax and recover it in the manner laid down in section 41.

(Emphasis supplied by us).

This Court also observed that "the some considerations must apply in the interpretation of section 161(2) of the income tax Act, 1961". The same view, it may be pointed out, was taken by this Court in an earlier decision in *C.I.T. v. Nandial Agarwal*. These decisions given under the Income Tax law must apply equally in the interpretation of section 21, since the relevant provisions of both the statutes are almost identical. That was pointed out by this Court in [Commissioner of Wealth-tax, Bihar and Orissa Vs. Kripashankar Dayashanker Worah](#), where it was said: "Section 21(1) of the Act is analogous to section 41 of the income tax Act, 1922. The only difference between the two sections is that whereas the former deals with assets, the latter deals with income. Subject to this difference, the two provisions are identically worded. Hence, the decisions rendered u/s 41(1) of the Indian income tax Act, 1922, have a bearing on the question arising for decision in this case". It must therefore, be held to be incontrovertible that whenever a trustee is sought to be assessed, the assessment must be made in accordance with the provisions of section 21.

32. When Section 29-A of sub-section (viii) of the Act which gives power to the Committee of Management to make such appointment expressly subject to the provisions of the Act, Rules and Bye-laws, the clear intention of the Act is that the other provisions of the Act is not to be disregarded rather they had to be given effect to despite the provisions of Section 29-A of the Act. The clear meaning is that Section 122 of the Act which empowers the State Government to create the authority to control the administration of the society for the purposes of recruitment, disciplinary enquiry and control has to be given effect to and the Regulation which has been framed u/s 122 of the Act is still operative and is to be given effect to.

33. Thus, the submission of the learned counsel for the petitioner that after amendment of Section 29-A of the Act, the Service Board has no authority to make recruitment, cannot be accepted.

34. It is true that the Memorandum of Understanding of Clause 9.2 contemplates autonomy to the Society in all financial and internal administrative matters including the personnel policy, staffing, recruitment, posting and compensation to the staff but when we had to interpret the statutory provisions which has been enacted after Memorandum of Understanding has to be given effect to and any clause in Memorandum of Understanding earlier cannot be given effect to in preference to the clear statutory enactment brought by the State Legislature; The Memorandum of Understanding or reasons which necessitated the amendment are relevant to note the background fact or previous history before the amendment was brought but shall not control the express provisions of the statute.

35. In view of the aforesaid, it cannot be said that the recruitments made by the Service Selection Board are without jurisdiction.

36. The next submission of the learned counsel for the petitioner on which emphasis has been laid is that even after the private respondents have been selected and recommended by the Selection Board that shall not give them indefeasible right for appointment. Reliance in this context has been placed by the learned counsel for the petitioner on the judgment of the Apex Court in [Shankarsan Dash Vs. Union of India](#), . A Constitution Bench of the Apex Court in the aforesaid judgment has laid down the proposition in following words in paragraph-7:

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in [The State of Haryana Vs. Subash Chander Marwaha and Others](#), ; [Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others](#), and [Jatinder Kumar and Others Vs. State of Punjab and Others](#), .

37. The Apex Court has clearly laid down that by mere selection the selected candidate do not acquire any right to the post. However, a caution has been given that it does not mean that the State has the licence of acting in an arbitrary manner.

38. Learned counsel for the respondents has placed reliance on the judgment of the Supreme Court in [Asha Kaul \(Mrs\) and Another Vs. State of Jammu and Kashmir and](#)

[Others](#), where after noticing the judgment of the Supreme Court in [Shankarsan Dash Vs. Union of India](#), the Court held that the State cannot act arbitrarily in making appointment of part of the select list and refuse to make appointment of the other part of the select list. In the said case on a requisition made by the High Court select list of 20 candidates for the post of Munsifs by the Jammu Kashmir Public Service Commission was forwarded to the Government. On repeated reminders, the Government approved 13 candidates from the list and issued appointment to them. The writ petition was filed by other candidates who were included in the list for issuing a direction to make appointment because they belonged to same select list. The learned Single Judge allowed the writ petition which order was reversed by the Division Bench. In the said case the Apex Court laid down the following in paragraph-8:

It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment [The State of Haryana Vs. Subash Chander Marwaha and Others](#), ; [Mani Subrat Jain and Others Vs. State of Haryana and Others](#), and [State of Kerala Vs. Smt. A. Lakshmikutty and others](#), but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a notification, holds a written test, conducts a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in [Shankarsan Dash Vs. Union of India](#), where the earlier decisions of this court are also noted. The following observations of the court are apposite:

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up 411 or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies" has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in [The State of Haryana Vs. Subash](#)

[Chander Marwaha and Others, , Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others, or Jatinder Kumar and Others Vs. State of Punjab and Others, .](#)

39. The proposition is well settled that mere selection does not clothe a candidate an indefeasible right of appointment but the State cannot arbitrarily refuse appointment or cannot pick and choose from the select list. The present is the case where the Bank has decided not to make any appointment out of list of 82 candidates which were forwarded by the Selection Board to the Bank. There cannot be any dispute to the fact that the Amendment in Act 1965 was brought by the Legislature, on account of Memorandum of Understanding which was signed among the Government of India and NABARD and the State Government on 18th December, 2006 which fact has been clearly mentioned in the statements and objects of U.P. Act No. 77 of 2007.

40. Section 29-A(a) of sub-clause (vii) empowers the Bank to assess to man power resource and future requirement which provision has already been quoted above. It cannot be denied that at the time of making an appointment the Bank has to assess the requirement of man power and its resource. Thus, it cannot be said that the Bank has no power to consider the question as to whether the appointment to the newly selected candidates be made or not looking to the existing man power and resources.

41. The Bank in its resolution dated 24.5.2010 have also noted the fact that now the computerization of the Bank has to be undertaken under the orders of the Government and the Registrar which shall substantially reduce the requirement of man power. It was further noted by the Bank in the resolution dated 24.5.2010 that earlier strength of the Bank was fixed at the time when the entire Bank was to be operated manually and the sanctioned strength after computerization of the Bank shall become unreal. Thus, it cannot be said that the Bank on any arbitrary reason or without any basis has taken decision not to appoint the newly selected candidates. The Bank, who is the appointing authority, has power to lake a decision in this context which having been taken on valid reasons, we are of the view that the decision of the Bank dated 24.5.2010 cannot be faulted. It is, however, relevant to note that in the subsequent resolution dated 10.7.2010 a decision was taken that whether there is requirement of new staff or not can be decided only when the computerization was completed. The said resolution has been brought as Annexure-10 to the writ petition.

42. In view of the aforesaid, we are of the view that till the Bank takes a decision for making any new appointment, the Bank cannot be compelled to appoint 82 staff, who has been recommended by the Service Selection Board.

43. As observed above, the selection made by the Service Selection Board cannot be said to be without jurisdiction. The Bank is obliged to make appointment of the staff which has been recommended by the Board in the event any appointment is to be

made in the said cadre.

44. The learned counsel for the petitioner has also contended that the Administrator has no jurisdiction to take a decision for sending a request for making appointment. In this context, reference of Circular dated 14th September, 2007(Annexure-3 to the writ petition) as well as the interim order of the Lucknow Bench of this Court dated 14.9.2009 as noted above, has been made. The letter dated 14.9.2007 is not a Circular nor any direction has been issued in the said letter. The said letter only communicate the interim order of the Lucknow Bench of this Court dated 14.9.2007.

45. It has not been brought on record as to whether any final decision has been taken in the said writ petition or not. For deciding this writ petition it is not necessary to consider the said issue raised by the learned counsel for the petitioner, since all relevant materials in including the appointment of Administrator, the nature of appointment of Administrator and the condition, if any, are not on the record. We proceed to decide the writ petitions assuming that the Administrator has jurisdiction to send requisition.

46. In view of the foregoing discussions, the writ petition No. 61325 of 2010 is disposed of with the following directions:

(1) The letter dated 1.6.2010 issued by the Registrar, Co-operative Society is quashed.

(2) The prayer of the petitioner to quash the select list dated 4.5.2010 and 4.6.2010 is refused.

(3) The petitioner, in the event any decision is taken to appoint Officers and Staff in the Cadre for which selections have been made by the Board vide letter dated 4.5.2010 and 4.6.2010 shall first consider the recommended candidates by the Selection Board for appointment and take fresh steps for appointment only thereafter.

47. The Writ Petition No. 767 of 2011 (Committee of Management v. Union of India) is also disposed of with the following directions:

(1) The respondents are directed not to make any appointment by promotion on the post of Deputy General Manager in the District Co-operative Bank Limited, Etawah on the basis of interview said to be held between 28th December, 2010 to 31st December, 2010.

(2) It shall be open for the respondents to undertake fresh exercise for conducting promotion on the post of Deputy General Manager in accordance with the provisions of the Act, Rules and Regulations as and when the Committee of Management of District Co-operative Bank decides that the post are required to be filled up by promotion.

Both the writ petitions are disposed of accordingly.