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C.A.No. 3466 OF 1998  
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~ ITEM NO.102 COURT NO. 7 SECTION XV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.3466/1998

Agra Distt. coop. Bank Ltd. .. Appellant (s)  
Petitioner(s)

Vs.

Prescribed Authority, L.C.,U.P. .. Respondent(s)  
& Ors.

DATE : 27.2.2001 : This/These matter (s) was/were  
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Appellant (s) : Mr. S.B. Sanyal, Sr. Adv.  
Mr. Vineet Sinha, Adv.  
Mr. Rajender Prasad Saxena, Adv.

For Respondent (s) : Mr. Bharat Sangal, Adv.  
rr 2 & 3 Ms. Asha Pathak, Adv.  
Ms. Sangeeta Panicker, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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Appeal is dismissed in terms of the signed order.

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(Meenu Sethi)  
Court Master

(Om Prakash)  
Court Master

Signed order is placed on the file

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3466 OF 1998@@  
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Agra District Cooperative Bank Ltd. .. Appellant

Vs.

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Respondent Nos. 2 and 3 were selected by the Selection Committee constituted in terms of U.P. Cooperative Societies Employees Service Regulation, 1975 as in force then as Clerks/Cashiers. Appointment letters were issued to them on 28.4.1980 and they also reported to duty. Thereafter, by resolution made on 9.5.1980 the said recruitment was cancelled. Respondent Nos. 2 and 3 filed a Writ petition before the High Court challenging the action of the Managing Committee of the Agra District Cooperative Bank Ltd.- the appellant herein. The High Court, however, declined to interfere with the action and asked the parties to work out their respective alternative remedies under law. Thereafter, a dispute was raised before the Labour Court and the Labour Court declined to interfere on the ground that the High Court had already decided the matter. Again respondent Nos. 2 and 3 approached the High Court for appropriate reliefs and the High Court set aside the award made by the Labour Court and

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remitted the matter to the Labour Court for fresh consideration on the merits of the matter. The Labour Court examined the matter on merits and came to the conclusion that the termination of services of respondent Nos. 2 and 3 is invalid and directed their reinstatement with certain directions in relation to back wages. That award was challenged before the High Court.

Three contentions were raised before the High Court; firstly that the selection process had not been done properly and in terms of the relevant regulations, therefore, the same is vitiated; secondly, it was stated that the Assistant Registrar, Cooperative Societies who was one of the members of the Selection Committee, did not participate but his nominee participated in the selection process, therefore, the selection is vitiated; thirdly it is contended a dispute under Section 70 of the U.P. Cooperative Societies Act should not have been raised in relation to termination of services of the respondent Nos. 2 and 3 and, therefore, the Labour Court had no jurisdiction to decide the matter.

On behalf of the contesting respondents all these three contentions have been countered very effectively.

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So far as the regulations framed under the U.P. Cooperative Societies are concerned, the High Court, after examining the scheme thereof, came to the conclusion that the recruitment under clause(vi) is independent of clause (1),Sub-clauses (iv) and (vii) and the relevant clause (vi) reads as follows:

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"(vi) Notwithstanding anything contained in clause(i) recruitment to the posts of typists and clerks in the lowest pay scales in a Co-operative society shall be made by a Selection Committee constituted as under:

In the case of District/Central Cooperative Banks, District Co-operative Federations, Wholesale Co-operative Consumers Stores, including Naya Bazars Uttar Pradesh Postal Employee's Cooperative Bank Ltd., Lucknow and Oudh and Rohelkhand Railway Employees Co-operative Bank Ltd., Lucknow, the selection committee shall consist of:

(a) Chairman/ Administrator of the appointing society who shall be Chairman of the Selection Committee. If Assistant Registrar of the District is Administrator, Deputy Registrar of the Region shall be the Chairman of the Selection Committee;

(b) Assistant Registrar of the district, who shall be member of the Selection Committee; and

(c) Sachiv of the appointing society, who shall be convener of the Committee."

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The view taken by the High Court in this regard, prima facie appears to be correct.

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So far as the second contention is concerned regarding non-participation of the Assistant Registrar in the selection process, the High Court noticed that under a Government order issued on 27.7.1979 if the Assistant Registrar is unable to participate in any such selection, he can nominate any other person and such nominee could participate in the selection process and that order was not under challenge before the High Court. Hence the participation of the nominee for the Assistant Registrar does not vitiate the recruitment of the respondents and that finding of course prima-facie appears to be correct.

So far as the third contention is concerned regarding jurisdiction of the Labour Court, we make it clear that it was not the first round of litigation that the parties had gone before the Labour Court, and at that stage if the Labour Court had no jurisdiction, that point should have been raised at once when the matter came up before the High Court when the matter was remanded to the Labour Court to decide on merits of the case. Apart from that this Court in (1970) 1 SCR 205 - Cooperative Central Bank Ltd. and Ors. Vs. Addl. Industrial Tribunal Andhra Pradesh & Ors. considered the identical provisions arising under the Andhra Pradesh Cooperative Societies Act and held that Labour Court has jurisdiction

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in such matters. The position is that when a question of employment arises certainly it cannot be said that the doors of the Labour Court are shut. It is possible that in certain cases Section 70 of the U.P. Cooperative

Societies Act may be attracted. If parties avail of a remedy in one of the jurisdictions, that proceeding must be pursued to its logical end and should not be given up in the middle and start another proceeding under another enactment. That would be a wholesome rule to be followed rather than to state that one or the other tribunal has no jurisdiction.

In this matter none of the contentions need deeper examination for reasons to be stated now. In this case the appointments had been made as early as on 28.4.1980. Though the services were terminated the parties concerned invoked the jurisdiction of the Labour Court and the Labour Court directed their reinstatement and they were reinstated from the date of the termination itself. In these circumstances they must be deemed to be in service for more than 20 years now and to disturb their services at this stage would be harsh and inhuman.

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Mr. S.B. Sanyal, learned senior counsel appearing for the appellant submitted that this Court in (1997)2SCC 1- Ashwani Kumar and Ors. Vs. State of Bihar and Ors. held that appointments made in an unauthorised manner and against non-existent vacancies, were irregular and proper scheme will be framed to regularise the services and that same principle should be adopted in the present case. We do not think that such course is permissible. It is not a case where appointments have been made in an unauthorised manner. We have stated that prime-facie there is material to show that selection process had been gone through by them and the candidates have been selected and such appointment is not against non-existent vacancies. In the special features of the case, the ratio of the decision in (1997) 2SCC1 -Ashwani Kumar and Ors. Vs. State of Bihar and Ors. cannot be applied. Correct principle to be applied is what we have stated in Buddhi Nath Chaudhary & Ors. Vs. Abahi Kumar & Ors. - C.A. no. 1397/2001 delivered on 21.2.2001. Even though there may be irregularity in the recruitment but by reasons of respondents being in employment for more than 20 years the same stood cured by their long service and they are deemed to have been regularly appointed.

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Mr. Sanyal, learned senior counsel seeks leave of the Court to raise an argument that vacancies were not advertised or notified to the employment exchange. But it is clear that no such argument was raised before the High Court. Hence we do not permit him to raise the same before us for the first time. The appeal is dismissed accordingly.

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( S. RAJENDRA BABU )@@  
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(SHIVARAJ V. PATIL)

New Delhi,@@  
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February 27, 2001.