

APPELLATE CIVIL

Before Harbans Singh, C.J. and Prem Chand Jain, J.

HARDIAL SINGH,—Petitioner

versus

THE STATE OF HARYANA, ETC.,—Respondents

Civil Writ No. 2232 of 1970.

December 24, 1970.

*Punjab Co-operative Societies Act (XIV of 1954)—Sections 50 and 60—Punjab Co-operative Societies Rules (1956)—Rule 56—Punjab Co-operative Societies Service Rules (1959)—Rule 33—Such rule, empowering the Registrar to hear appeals against disciplinary action taken by a co-operative Society against its employees—Whether ultra vires the Act—Manager of a co-operative society—Whether its “paid servant”—Punjab Co-operative Societies Act (XXV of 1961)—Section 69—Order of dismissal of its Manager by a co-operative society—Appeal against the order decided by Registrar—Revision petition against such decision—Whether lies to the State Government.*

*Held*, that under section 50 of Punjab Co-operative Societies Act, 1954, any dispute touching the constitution or business of a co-operative society can be referred to the Registrar for decision by himself or his nominee or, if either of the parties so desires, to arbitration, except the dispute relating to disciplinary action taken by the Society or its managing committee against a paid servant of the Society. It is clear that when the dismissal of an employee of the Society is the outcome of a disciplinary action taken by the Society, such a dispute cannot be referred to the decision of the Registrar under section 50. Rule 56 of Punjab Co-operative Society Rules, 1956, provides that in a Society or class of Societies, the appointment of officers, other than the members of the committee, shall be subject to such directions as the Registrar may, from time to time, issue in regard to their strength, qualifications and conditions of service. On the strength of this rule, the Registrar issued instructions in the shape of Service Rules. Under Rule 36 of these Rules, the Registrar has been empowered to decide an appeal against the order of a Managing Committee of a Co-operative Society imposing punishment in consequence of disciplinary action taken against its employees. The effect of the rule is that a matter which cannot legally be gone into and decided by the Registrar under section 50 of the Act, can be heard and decided under this rule. Such a power cannot be assumed and the Registrar cannot clothe himself with such a power by issuing instructions in exercise of power vested in him under

rule 56 of the Rules. It is inconceivable that an appropriate authority having no jurisdiction to decide a matter under the provisions of a particular statute, can under the garb of the power assumed under the Rules decide the same. Assumption of such a power in any given case would nullify the object of the statute. Moreover, rule 56 nowhere authorises the Registrar to issue directions regarding the matter relating to disciplinary action taken by the Managing Committee against any of its officers nor does it authorise the Registrar to frame such orders. Hence rule 36 of the Service Rules, so far as it empowers the Registrar to hear appeals against the disciplinary action taken by the Society or its Managing Committee, is *ultra vires* the Act.

*Held*, that no doubt a Manager of a Co-operative Society being an employee of the Society falls within definition of 'Officer' as given in section 2(e) of the Act, but he does fall within the category of "paid servant" as given in section 50. The legislature by using the word "paid servants" has tried to draw distinction between the persons who are paid out of the funds of the Society and the persons like the President or the Chairman, who though officers, are not entitled to any salary. The words "paid servant" in section 50 means any person in the employment of the Society and paid out of its funds and clearly covers the case of a Manager of the Society.

*Held*, that section 69 of Punjab Co-operative Societies Act, 1961, gives revisional powers to the State Government in cases where no appeal lies under section 68 of the Act and the power is exercisable either *suo motu* or on the application of a party to a reference. From the plain reading of the section, it is clear that action can be taken by the State Government *suo motu* or on an application filed only by a party to a reference. When a Society takes disciplinary action against its Manager by dismissing him and his appeal is decided by the Registrar, there is no question of the reference of any dispute for decision to any authority under the Act. Hence no revision lies to the State Government against the decision of the Registrar. Where the proceedings are started at the instance of aggrieved party, the State Government cannot be said to have acted *suo motu* otherwise no difference will remain in the action taken by an appropriate authority *suo motu* and the one taken on the application of an aggrieved party. It can never be the intention of the legislature to treat both on the same footing.

*Petition under Articles 226 and 227 of the Constitution of India praying that a Writ in the nature of certiorari, prohibition, mandamus or any other appropriate writ, order or direction be issued, quashing the order of the Minister Co-operative Society dated 8th April, 1970, reverting the petitioner from the post of Manager of the Society, and further praying that pending disposal of Writ petition the operation of the impugned order be stayed.*

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C. L. Lakhanpal and I. S. Vimal, Advocates, for the petitioners.

B. S. Khoji and Gobinder Singh, Advocates, for Respondent No. 4.

R. N. Mittal for State respondents & for Advocate-General, Haryana.

JUDGMENT

Judgment of the Court was delivered by:—

JAIN, J.—This order and judgment of ours will dispose of Civil Writ No. 2232 of 1970, filed by Hardial Singh, Manager, the Shahabad Farmers Co-operative Marketing-cum-Processing Society, Ltd., Shahabad Markanda, District Karnal (hereinafter called the Society) and Civil Writ No. 2854 of 1970, filed by the Society through its President, Kanwarjit Singh Braich, as common questions of law and fact arise in both these petitions. The facts are being narrated from the petition of Hardial Singh.

(2) The Society is a registered Society under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act). The petitioner joined the service of the Society as an Accountant on 23rd November, 1959. He was later on promoted to the post of Manager. A complaint was made by one Shivdev Singh of village Rattangarh, against the petitioner and in order to consider that complaint a meeting of the Managing Committee of the Society was held on 7th January, 1969. In that meeting, vide resolution No. 9 of the Board of Directors, the petitioner was placed under suspension on charges of shortage of stocks and misappropriation of amount. A sub-committee was also constituted to serve the charge-sheet on the petitioner and enquire into the charges against him. It is stated that Board of Directors suspended the petitioner under rules 29 and 30 of the Service Rules for the Co-operative Marketing Societies (hereinafter referred to as the Rules), which are in the following terms:—

“29-A. A person appointed to the service of the society may be awarded one or more of the following punishments:

- (i) Warning;
- (ii) with holding of increment;
- (iii) reduction in pay;

(iv) suspension and dismissal.

30. A person in the service of the Society may be placed under suspension by the Managing Committee in such cases where *prima facie* dismissal is the ultimate punishment."

(3) It is stated in the petition that this order of suspension was passed without conducting any preliminary enquiry. However, the petitioner submitted a detailed report to the charge-sheet, dated 12th February, 1969. Finally on the report of the sub-committee, a show-cause notice, dated the 16th June, 1969, was served on the petitioner by the Registrar, Co-operative Societies, respondent No. 2. The petitioner submitted his reply to the show-cause notice on July 3, 1969. The petitioner was finally dismissed from service of the Society, as Manager,—*vide* order, dated 5th July, 1969, conveyed to him by respondent No. 2, a copy of which is attached with the petition as Annexure 'A'. Feeling aggrieved from that order, the petitioner filed an appeal before the Registrar, Co-operative Societies, under rule 36 of the Rules which was heard by the Joint Registrar, who partly accepted the same and reinstated the petitioner and imposed on him the punishment that four increments of his be withheld with cumulative effect. The period of petitioner's suspension was treated as on duty but he was only allowed 50 per cent of the pay for that period. A true copy of the order of the Joint Registrar is attached with the petition as Annexure 'B'. Dissatisfied from the order of the Joint Registrar, the Society filed a petition under section 69 of the Act. That petition was heard by the Minister, who partially allowed the same and ordered that the petitioner be reverted to some inferior post from that of the Manager. Copy of the order of the Minister is attached with the petition as Annexure 'E'. It is the legality of this order of the Minister which has been challenged by Hardial Singh, Manager.

(4) In the petition filed by the Society, the legality of the order of the Minister as well as that of the Joint Registrar (copies Annexures 'E' and 'B' respectively) has been challenged as the interest of the Society is to see that its order dismissing the Manager is upheld. From the facts stated above it is clear that so far as the order of the Minister is concerned, it is common case of both the petitioners that the same is illegal, and is liable to be quashed; but so far as the order of the Joint Registrar is concerned, its legality has been challenged only by the Society.

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(5) It was contended by Mr. C. L. Lakhanpal, learned counsel for the petitioner, that no revision lay under section 69 of the Act before the Minister and that the impugned order was without jurisdiction. This contention of the learned counsel was adopted by Mr. Khoji, learned counsel for the Society also. After giving our thoughtful consideration to the entire matter, we are of the view that there is considerable force in this contention of the learned counsel. Section 69 of the Act, under which revision was filed is in the following terms:—

“69. *Revision.*—The Government may *suo motu* or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal lies to the Government under section 68 for the purpose of satisfying itself as to the legality and propriety of any decision or order passed and if in any case it shall appear to the Government that any such decision or order should be modified, annulled or revised, the Government may pass such order thereon as it may deem fit”.

This section gives revisional powers to the State Government in cases where no appeal lies under section 68 of the Act and the power is exercisable either *suo motu* or on the application of a party to a reference. There is no dispute that the State Government did not act *suo motu*, but passed the impugned order on the application of the Manager. From the plain reading of this section, it is clear that such an application could be filed only by a party to a reference. In the instant case, admittedly there was no question of the reference of any dispute for decision to any authority under the Act. The Society or the Manager were not parties to any such reference. It was a simple case where the petitioner Society took disciplinary action against the Manager (Petitioner), who filed an appeal under rule 36 of the Rules on which the Joint Registrar passed an order on 5th March, 1970 (Copy Annexure 'B' to the petition).

(6) In an effort to support the impugned order, it was contended by Mr. Mittal, learned counsel for the State, that the impugned order was not liable to be quashed as it should be deemed to have been passed in exercise of the *suo motu* powers of the State. We are unable to agree with the learned counsel as admittedly the impugned order has been passed on the revision filed by the Society, under section 69 of the Act. The proceedings were started at the instance

of an aggrieved party as is evident from the opening part of the order wherein it is stated thus:—

“This is a revision petition under section 69 of the Punjab Co-operative Societies Act, 1961, filed by Shri Kanwarjit Singh, President of the Shahabad Farmers Co-operative Marketing-cum-Processing Society Ltd., Shahabad Markanda, against the order, dated 5th March, 1970 of Joint Registrar, Co-operative Societies, Haryana, Chandigarh.”

In the impugned order it is nowhere said that the action was being taken *suo motu*. If we accept the contention of the learned counsel for the State, then no difference would remain in the action taken by an appropriate authority *suo motu* and the one taken on the application of an aggrieved party. It could never be the intention of the legislature to treat both on the same footing. Thus we are of the considered view that no revision lay under section 69 of the Act to the State Government against the order of the Joint Registrar, dated 5th March, 1970, and that the impugned order of the Minister is obviously without jurisdiction. The result is that the petition filed by Hardial Singh, deserves to be allowed.

(7) Now, we come to Civil Writ No. 2854 of 1970 filed by the Society where it was vehemently contended by Mr. Khoji, learned counsel for the petitioner-Society that the order of the Registrar dated 5th March, 1970, was also without jurisdiction. According to the learned counsel, the Registrar could not order reinstatement of the Manager under rule 36 as this rule so far as it authorised interference by him on appeal in the matter of disciplinary action, was *ultra vires* inasmuch as a power which could not be exercised under section 50 of the Punjab Co-operative Societies Act, 1954 (hereinafter called the Old Act), has been conferred under this rule. In order to judge the correctness of the contentions raised by the learned counsel for the Society, it would be proper at this stage to set out the relevant provisions of the statute and the rules with which we are concerned. Section 50 of the Old Act reads as under:—

“50. (1) If any dispute, other than a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society, touching the constitution or business of a society arises between members or past members of the Society or persons

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claiming through a member or past member or between members or past members or persons so claiming and any officer, agent, or servant of the society past or present, or the liquidator of the society or between the society or its committee and any officer, agent, member; or servant of the society past or present, and the liquidator of the Society or between two registered societies or between a society and liquidator of another society or between liquidators of different societies. It shall after due notice in the manner prescribed to all parties concerned be referred to the Registrar for decision by himself or his nominee or if either of the parties so desire, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned. In case a party fails to nominate an arbitrator, within one month of the service of the due notice; the Registrar shall have the power to do so.

A dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a deceased member whether such debts or demands be admitted or not;

Provided that if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society. If no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar shall take action as laid down in paragraph 1 of this section.

(2) Where any dispute is referred under sub-section (1) for decision by the Registrar's nominee or to arbitration of arbitrators, the Registrar may, at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or the arbitrators, as the case may be and may decide the dispute himself or refer it again to any other nominee appointed by him for decision:

Provided that no such dispute shall be withdrawn except on any of the following grounds:—

- (i) the Registrar's nominee or the arbitrators have failed to decide the dispute within two months or such further period as may be allowed by the Registrar;
  - (ii) the proceedings before the Registrar's nominee or any of the arbitrators are vitiated in consequence of corruption or misconduct on the part of the Registrar's nominee or any of the arbitrators, as the case may be,
- (3) When any question arises for whether for the purposes of this section a matter referred for decision is a dispute or not, the question shall be decided by the Registrar whose decision shall be final.
- (4) In the case of a dispute involving property which is given as collateral security, it shall be competent to the person deciding such dispute to issue a mortgage award which shall have the same force as a mortgage decree of a competent civil Court.
- (5) (a) Any party not satisfied with the award given by the Registrar's nominee or by the arbitrators under sub-section (1) may appeal to the Registrar within two months of receiving notice of the award.
- (b) When an award is under consideration, in revision or on appeal, the Registrar may order the court in which such award is pending for execution to stay the execution proceedings, and may call for the file of the case.
- (6) The decision given by the Registrar under sub-section (1) or on appeal under sub-section (5) and, when no appeal is filed, the decision by the Registrar's nominee or by the arbitrators shall be final and shall not be called in question in any civil or revenue Court.
- (7) Notwithstanding anything contained in sub-section (6)—the Government or the Registrar may either *suo motu* or on the application of a party to a reference revise any



From

Shri S. S. Puri, I.A.S.,  
Registrar, Co-operative Societies,  
Punjab, Jullundur.

To

All the Presidents of the Co-operative Marketing Societies in State (as per list enclosed).

*Subject.*—Service Rules for the employees of the Co-operative Marketing Societies.

Memorandum.

As you are aware, rule 56 of the Notified Rule framed under section 60 of the Punjab Co-operative Societies Act XIV of 1955, lays down that in a society or a class of societies, the appointment of officers, other than the members of the committee, shall be subject to such directions as the Registrar may, from time to time issue in regard to their strength, qualifications and conditions of the service.

In accordance with the provisions of this rule draft rules for the employees of Co-operative Marketing Societies were prepared in this office and supplied to you,—*vide* this office Memo. No. 57/Mark./6135-D2/RCS, dated 23rd January, 1959, for consideration in the meeting of the representatives of the Marketing Societies, on 3rd February, 1959.

A copy of the rules framed in the light of the discussions held in the meeting referred to above is enclosed. As these rules have been framed in accordance with the notified rules referred to above they shall come into force immediately in suppression of rules 21—28 issued,—*vide* this office Memo. No. 711/RCS, dated 1st July, 1957. It is requested that immediate action be taken to ensure that these rules are acted upon by the Managing Committee of your society.

(Sd.) . . .

S. S. PURI,  
Registrar, Co-operative Societies,  
Punjab, Jullundur.

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In the service Rules, the relevant rule is 36, which is as follows:—

“36. A confirmed employee, who has been punished by the Managing Committee may appeal to the Registrar within two months from the date of communication of the orders of punishment. The decision of the Registrar shall be final and binding on both the parties.”

(10) After giving our thoughtful consideration to the contentions raised by Mr. Khoji, learned counsel for the petitioner, in the light of the statutory provisions reproduced above, we find that there is considerable force in these contentions. Under section 50 of the Old Act, any dispute touching the constitution or business of a Society could be referred to the Registrar for decision by himself or his nominee or, if either of the parties so desires, to arbitration, except the dispute relating to disciplinary action taken by the Society or its managing committee against a paid servant of the Society. The dismissal of Hardial Singh, Manager was the outcome of a disciplinary action taken by the Society and under section 50 of the Old Act such a dispute could not be referred to the decision of the Registrar. Rule 56 framed in exercise of the rule making power provides that in a society or class of Societies, the appointment of officers, other than the members of the committee, shall be subject to such directions as the Registrar may, from time to time, issue in regard to their strength, qualifications and conditions of service. On the strength of this rule, the Registrar issued instructions in the shape of Service Rules and under rule 36 invested himself with the power of hearing appeal against the order of punishment that may be passed by the managing committee against a confirmed employee. In this rule it is further provided that the decision of the Registrar shall be final and binding on both the parties. The punishments are provided in rule 29 of the Service Rules, which reads as under:—

“29. A person appointed to the service of the society may be accorded one or more of the following punishments:—

- (i) Warning.
- (ii) With-holding of increment.
- (iii) Reduction in pay.
- (iv) Suspension.
- (v) Dismissal.”

Thus under rule 36, the Registrar has been empowered to decide an appeal against the order of a managing committee imposing any of the punishments referred to in rule 29 reproduced above, and his decision has been made final. The effect of this rule would be that a matter which could not legally be gone into and decided by the Registrar under section 50 of the Old Act, could be heard and decided under this rule. In our view, such a power could not be assumed and the Registrar could not clothe himself with such a power by issuing instructions in exercise of the power vested in him under rule 56 of the Rules. It is inconceivable that an appropriate authority having no jurisdiction to decide a matter under the provisions of a particular statute, can under the garb of the power assumed under the Rules decide the same. Assumption of such a power in any given case would nullify the object of the statute. A somewhat similar question came up for consideration before the Patna High Court in *Ratan N. Tata and another v. Capt. S. B. Mathur and another* (1). The facts in that case were that Capt. S. B. Mathur, who was employed as the Chief Pilot Instructor of the Jamshedpur Co-operative Flying Club, was found guilty of certain charges and was dismissed by an order of the Managing Committee. Capt. Mathur made an application to the Registrar, Co-operative Societies, Bihar, praying that the order of dismissal be set aside. The Flying Club challenged the jurisdiction of the Registrar to entertain and decide the dispute of the nature of disciplinary action taken by it. The Registrar by his order, dated 27th November, 1967 held that rule 15 of the Bihar and Orissa Co-operative Societies Rules, 1959 and section 66 of the Bihar and Orissa Co-operative Societies Act, 1935, read with rule 33 of the Rules, conferred the necessary powers on the Registrar to entertain the application filed by Capt. Mathur before him. Against the said order, the matter was taken up before the High Court and the only question which fell for determination in that case, was whether the Registrar had powers or jurisdiction to entertain the application filed by Capt. Mathur. Section 48 of the Act, which provides for reference of disputes to the Registrar, is more or less in the same terms as is section 50 of the Act. It was an admitted case of the parties that the dispute could not be referred to the Registrar under section 48 of the Act. However, counsel for Capt. Mathur, submitted that the dispute could be referred under bye-law 26 or 34 of the Bye-laws and under section 11 of the Act; but that contention was rejected by the learned

(1) 1968 Co-operative Law Journal 175.

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Judges and after considering the relevant provisions of law it was observed that it was difficult to accept the contention that a power expressly excluded by section 48 of the Act, has been conferred on the Registrar either under rule 33 of the Rules or by bye-law 26 or 34 of the Bye-laws framed by the Society. It was further held that Capt. Mathur had no right to move the Registrar in the matter of his dismissal by the Managing Committee or the Club and the Registrar had no power to entertain his application and to decide the dispute. We fully agree with the view taken by the learned Judges of the Patna High Court, which squarely applies to the facts of the case in hand.

(11) Moreover, we find that rule 56 provides that in a Society or class of Societies, the appointment of officers, other than the members of the Committee, shall be subject to such directions as the Registrar may, from time to time, issue in regard to their strength, qualifications, and conditions of service. It nowhere authorises the Registrar to issue directions regarding the matter relating to disciplinary action taken by the Managing Committee against any of its officers nor does it authorise the Registrar to frame such orders. In this situation, on this score also, it is difficult to hold that the Registrar could under rule 56, issue directions in the shape of rule 36 empowering himself to hear appeals against the disciplinary action taken by the Society or its Managing Committee and making his order final.

(12) Faced with this situation it was contended by Mr. Lakhanpal, that in order to test the validity of the impugned order, it was not necessary to refer to section 50 of the Old Act as it had no application to the facts of this case. According to the learned counsel, a distinction had to be drawn between the power exercisable by the Registrar under section 50 and the power exercised by him as Head of the Department by virtue of the powers vested in him under the rules, in order to see the proper functioning of the Society, and in relieving the aggrieved persons from the effect of the arbitrary orders that may be passed by a Society. In substance, the contention of the learned counsel was that the impugned order had been passed by the Registrar as Head of the Department and such a power could legally be exercised by him under the Rules. We are afraid, we are unable to agree with the learned counsel for the respondents. As

earlier observed, an authority not empowered to decide a matter under the Act, cannot assume power for deciding that matter under the garb of Rules. The Rules cannot invest an authority with a power which the Act does not permit. If such a power is envisaged, then the effect would be that the provisions of the main Act taking away the jurisdiction of the Registrar in the matter of disciplinary action would become redundant.

(13) It was next contended by Mr. Lakhanpal, that after the enforcement of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the New Act) under section 55, even a matter relating to disciplinary action could be referred to the Registrar for arbitration, that under section 86 which is a repeal and saving section, any thing done or any action taken under the repealed Act (Old Act) shall, to the extent of being consistent with the New Act be deemed to have been done or taken under the New Act, and that the impugned order being consistent with section 55, shall be deemed to be legal and proper. Reference was also made to rules 45 and 81 of the Co-operative Societies Rules, 1963 (hereinafter referred to as the New Rules) in support of his contention that the impugned order is consistent with the provisions of the New Act and the rules thereunder and as such is saved. The said rules are in the following terms:—

“45. *Directives by Registrar for the successful conduct of the business:—*

The Registrar may from time to time, issue such directives as he considers necessary for the successful conduct of the business of a co-operative society or class of co-operative societies.”

“81. *Repeal:—*

The Punjab Co-operative Societies Rules, 1956, are hereby repealed:—

Provided that any action taken, order issued, bye-law made under the provisions of the rules hereby repealed shall, in so far as it is not inconsistent with the provisions of

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these rules, be deemed to have been taken or made under the provisions of these rules.”

On the other hand, Mr. Khoji, learned counsel contended that even under section 55 of the New Act, a matter relating to disciplinary action could not be referred to arbitration and the only remedy available to the aggrieved party was either to file a civil suit for damages or to get the matter referred for decision under the Industrial Disputes Act. In support of his contention, the learned counsel placed reliance on *Co-operative Central Bank Ltd. and others v. Additional Industrial Tribunal, Andhra Pradesh* (2) and *Dr. S. Dutt v. University of Delhi* (3). In our view, it is not at all necessary to advert to this aspect of the matter and deal with the same on merits as an action which from its very inception was illegal and void, cannot be saved by the repealing Act. The New Act could save the action taken under the Old Act or the Rules if it was legal and valid. In the view we have taken that under the rule the Registrar could not invest himself with such a power, the question of saving that action under the provisions of the New Act, does not arise. Further we are not called upon to decide whether under the provisions of the New Act, such a matter could be referred to arbitration of the Registrar or not.

(14) It was next contended by Mr. Lakhanpal, learned counsel for the respondents, that rule 36 was adopted by the Society as its bye-law and as such the power has been exercised by the Registrar under the bye-laws, which were binding on the Society. This contention of the learned counsel is imaginary and without any basis. The bye-laws have not been produced to show that such a power has been given to the Registrar. The contention of the learned counsel remains unsubstantiated and is rejected

(15) It was lastly contended by the learned counsel for the respondents, that under section 50, the dispute regarding the disciplinary action taken by a Society or its Managing Committee against a paid servant of the Society could not be referred to the Registrar for decision. According to the learned counsel, the Manager was not a paid servant of the Society and was its officer and as such the

(2) A.I.R. 1970 S.C. 245.

(3) A.I.R. 1958 S.C. 1050.

matter relating to disciplinary action taken against him could be referred to the Registrar for decision even under the Old Act and the Registrar under rule 36 could legally pass the impugned order. We are unable to agree with the learned counsel. The definition of the 'officer' as given in section 2(e) of the Old Act, reads as under:—

“‘Officer’ includes a President, Chairman, Secretary, Treasurer, member of committee, employee or any other person empowered under the rules or the bye-laws to give directions in regard to the business of the registered society;”

There is no doubt that the respondent being an employee falls in this definition and is an officer of the Society; but we have not been able to persuade ourselves to hold that the respondent being the officer of the Society would not fall in the category of paid servants. It was not disputed before us that the respondent was an employee of the Society and was paid his salary out of the Society's funds. The legislature by using the word “paid servants” has tried to draw distinction between the persons, who are paid out of the funds of the Society and the persons like the President or the Chairman, who though officers, are not entitled to any salary. The word “paid servants” in section 50 means any person in the employment of the Society and paid out of its funds and clearly covers the case of the respondents. The contention, though ingenious, is devoid of force and is rejected.

(16) As a result of the above discussion, we find that rule 36 of the Service Rules, so far as it empowers the Registrar to hear appeals against the disciplinary action taken by the Society or its managing Committee, is *ultra vires*. Consequently the impugned order of the Registrar, dated 5th March, 1970 (copy Annexure 'B') is illegal and without jurisdiction.

(17) For the reasons recorded above, Civil Writs Nos. 2232 and 2854 of 1970 are allowed and the orders of the Minister and the Registrar, dated 8th April, 1970 and 5th March, 1970 (copies Annexures 'E' and 'B') are quashed, with no order as to costs.

K. S. K.