

execution of the decrees. Of course, the said persons will be liable to pay the amount for which they were the sureties. If the decree holder claims over and above that amount, then the same will be determined by the executing court and after determination, the amount over and above, that, if any, will be recovered from the judgment-debtor. No judgment taking the contrary view has been cited by the judgment-debtor. It is held in *Naurang Singh's case* (supra) that if the first appellate court on its inherent jurisdiction under section 151, C.P.C. demanded security for payment of mesne profits from the judgment-debtor when he had applied for stay of his dispossession in execution of the decree and the said security bond was executed by the surety, in pursuance thereof, then the security bond could be executed similarly in the execution proceedings without any recourse to a fresh suit.

(3) In these circumstances, this petition succeeds, the impugned order is set aside and the case is sent back to the executing court for proceeding with the execution application in accordance with law. Of course, the decree holder will implead the sureties as party to the execution application in order to claim the amount from them. The parties have been directed to appear in the executing court on 8th November, 1985. Records of the case be sent back forthwith.

H. S. B.

Before D. S. Tewatia and Surinder Singh, JJ.

PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION,—Appellant.

versus

DES RAJ,—Respondent.

L.P.A. No. 1193 of 1981

October, 18, 1985

Punjab Co-operative Societies Act (XXV of 1961)—Section 84(A)—Punjab State Co-operative Supply and Marketing Co-operative Service (Common Cadre) Rules, 1967—Rules aforesaid

Punjab State Co-operative Supply and Marketing Federation v.
Des Raj (D. S. Tewatia, J.)

framed before the power to make rules conferred and as such rules admittedly invalid when promulgated—Power to frame rules subsequently conferred by section 84(A) of the Punjab Co-operative Societies Act—Said rules—Whether would become valid by virtue of the conferment of the power under section 84(A)—Person accepting appointment under rules—Such person—Whether can deny the applicability of rules.

Held, that the Punjab State Co-operative Supply and Marketing Co-operative Service (Common Cadre) Rules, 1967 though invalid to begin with on account of the lack of power to frame them would become valid and statutory as a result of amendment made in accordance with the provisions of section 84(A) of the Punjab Co-operative Societies Act, 1961.

(Para 3).

Held, that a person who has accepted an appointment under the rules can not deny the applicability of the rules as the appointment of that person would itself become invalid and void from its very inception in such an eventuality.

(Paras 3 & 4).

Appeal under Clause 10 of Letters Patent Act against the judgment and order of Hon'ble Mr. Justice I. S. Tiwana, dated 21st October, 1981 in CWP No. 2953 of 1972, dated the 18th October, 1985.

D. S. Nehra, Arun Nehra and R. S. Longia Advocates, for the Appellant.

Nemo, for the Respondent.

JUDGMENT

D. S. Tewatia, J. (Oral) :

(1) The Punjab State Co-operative Supply and Marketing Co-operative Service (Common Cadre) Rules, 1967 (hereinafter referred to as the impugned rules, were declared invalid by a learned Single Judge at the instance of Shri Des Raj, respondent herein, who was selected as Manager of the Jallalabad Zamindara Co-operative Marketing Society Limited, Jallalabad (District Ferozepur) by the Administrative Committee of the Punjab State Co-operative Supply and Marketing Federation (hereinafter referred to as the 'Markfed'), with effect from 21st November, 1970, on the ground that the Markfed had no power to frame the impugned rules in the year 1967, as the power to that effect came to

be conferred on it for the first time in the year 1969 as a result of the incorporation of section 84-A in the Punjab Co-operative Societies Act, 1961, by the amending Act No. 26 of 1969.

(2) The learned Single Judge for invalidating the impugned rules sought sustenance from Supreme Court judgment reported as *Andhra Pradesh Co-operative Central Land Mortgage Bank, Limited, etc v. Chittor Primary Co-operative Land Mortgage Bank Limited, etc.*, (1), in which it had been ruled that any rules framed prior to the jurisdiction having been conferred on an authority for framing the rules by amendment of the Act would be *ultra-vires* in the sense that there was no rule making power in that authority.

(3) There is no dispute with the law enunciated by their Lordships in the abovesaid case and to its application to the impugned rules promulgated by the Markfed in the year 1967. However, the matter does not rest here. There is another judgment of their Lordships of the Supreme Court reported as *Bachan Singh and another v. Union of India and others*, (2), in which the Supreme Court has enunciated the proposition that the given rules, though invalid to begin with on account of lack of power to frame them, would become valid and statutory as a result of amendment statutorily made in those rules. Their Lordships in that case were dealing with Military Engineering Service, Class I (Recruitment, Promotion and Seniority) Rules, 1951. These rules during the years 1962, 1963 and 1964, and particularly until the year 1969, were not statutory in character, as observed in paragraph 8 of the judgment. In 1969, these rules were amended. Then arose the question as to what would be the effect of the amendment to the said rules. Their Lordships observed that these rules became statutory by the amendment, as is evident from the following observations of their Lordships:—

“The real importance of the amendments of the rules in the year 1969 lies in the fact that the amendments were made by the President in exercise of the powers conferred by the proviso to article 309 of the Constitution. As a result of the 1969 amendment it follows that the entire body of rules of Class I Service became statutory rules by incorporation.”

(1) A.I.R. 1974, S.C. 1692.

(2) 1972, S.L.R. 397.

Jawahar Lal Arora v. Union of India and others
(G. C. Mital, J.)

The impugned rules were amended in accordance with the provisions of section 84-A of the Act from time to time and that one such amendment was effected on 4th April, 1970. In view of the statutory amendment of 4th April, 1970, the entire body of the impugned rule became statutory in view of the ratio of *Bachan Singh's case* (supra).

(4) We also find merit in yet another contention of the learned counsel for the appellant that the respondent having accepted the appointment under the impugned rules could not deny the applicability of those rules when it came to taking of action against him, for we are of the view that the appointment was effected by the Markfed to a post which was a a common cadre post under the impugned rules. If the impugned rules are bad, then the appointment of the respondent becomes invalid and void from the very inception. The respondent cannot have the cake and eat it too. For this reason also, the respondent would not have any *locus standi* to challenge the validity of the impugned rules.

(5) For the reasons aforementioned, we allow the appeal and set aside the order of the learned Single Judge, but with no order as to costs, as the respondent is not represented, though he had been personally served and in accordance with the rules an actual date notice by registered post has also been sent to him.

H. S. B.

Before D. S. Tewatia and G. C. Mital, JJ.

JAWAHAR LAL ARORA,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 2842 of 1982

October 29, 1985

Constitution of India 1950—Article 16—Adverse remarks recorded against Government official—Representation filed by said official seeking expunction of adverse remarks—No statutory rules