Associated Cement Companies Ltd.

Vs

P. N. Sharma and Another

Civil Appeal No. 44 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, J. C. Shah, S. M. Sikri, R. S. Bachawat JJ)

09.12.1964

JUDGMENT

GAJENDRAGADKAR, C.J. -

The principal point of law which arises in this appeal by special leave is whether respondent No. 2, the State of Punjab, exercising its appellate jurisdiction under Rule 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 (hereinafter called 'the Rules') is Tribunal within the meaning of Art. 136(1) of the Constitution. The appellant, the Associate Cement Companies, Ltd., Bhupendra Cement Works, Surajpur, challenges the validity of the appellate order passed by respondent No. 2 on July 4, 1962 under the provision of the said Rule, directing the appellant to reinstate its Welfare Officer, P. N. Sharma - respondent No. 1. At the hearing of this appeal, a preliminary objection has been raised by Mr. Goyal on behalf of respondent No. 1 that special leave should not have been granted to the appellant, because the appeal is incompetent inasmuch as respondent No. 2 against whose appellate decision the appellant purports to have preferred the present appeal is not a tribunal under Art. 136(1). If the preliminary objection fails, then it would become necessary to consider the appellant's contention that the impugned appellant order is invalid and erroneous and must be set aside.

The appellant is a company with its Head Office in Bombay and it runs 14 cement factories, 2 collieries and one fire-brick works in 8 States of the Union of India. One such Cement Works is the Bhupendra Cement Works, Surajpur, within the territorial limits of respondent No. 2. Under the provisions of the Factories Act, 1948 (No. 63 of 1948) (hereafter called the Act) read with the provisions of the Rules, the appellant was required to appoint one Welfare Officer and to notify his appointment and qualification to the Chief Inspector of Factories. Respondent No. 1 was appointed such a Welfare Officer. The letter of appointment issued to him on March 2, 1956, stated that he would be liable to be transferred from one unit of the appellant to another and that his services could be terminated by the appellant by one month's notice or with one month's pay in lieu thereof. Respondent No. 1 was first posted at Lakheri Cement Works, Lakheri in Rajasthan, Where he jointed duty on March 14, 1956. Thereafter, he was transferred from one place to another according to the requirements of service and the working of the appellant's factories. On June 26, 1960, he was posted at the Bhupendra Cement Works. He was working at these works until September 26, 1951, when his services were terminated. It appears that appellant transferred respondent No. 1 from Bhupendra Cement Works to Kymore Works which is near Katni in Madhya Pradesh, but apparently, respondent No. 1 was not prepared to go to Kymore Works, and after long and protracted correspondence between the parties, the appellant wrote to him on September 26, 1961, that since he had not proceeded to Kymore on transfer as directed, he had ceased to be in the employment of the appellant, and his name had been struck off from the Company's roll.

Respondent No. 1 then filed an appeal before respondent No. 2 as the appellate authority under R. 6(6) of the Rules. On receiving notice of the said appeal, the appellant filed its written statement and disputed the validity of the grievance made by respondent No. 1 in respect of the termination of his services. Respondent No. 2 then passed the impugned order on July 4, 1962. This order was issued in the name of the Governor of Punjab in exercise of the powers conferred by R. 6(6) of the Rules, and it directed that the Governor of Punjab was pleased to reinstate respondent No. 1 as Labour Welfare Officer in the service of the appellant. "However", says the order, "nothing in this order shall be construed to prevent the management from taking action against Mr. P. N. Sharma in accordance with the provisions of the Rules for such acts and commissions on his part as may have come to their notice". It is the validity of this order which is challenged before us by the appellant.

Before proceeding to deal with the preliminary objection, we may conveniently refer to the relevant provisions of the Act and the Rules. The Act has been passed in 1948 with the object of consolidating and amending the law regulating labour in factories. Consistently with this object and policy, the Act has made several beneficent provisions in the interests of industrial labour employed in factories to which the Act applies. Section 49 deals with the appointment of welfare Officers. Section 49(1) provides that in every factory wherein five hundred or more workers are ordinarily employed, the occupier shall employ in the factory such number of welfare officers as may be prescribed. It is common ground that the appellant falls within the scope of section 49(1) and so, it has been appointing welfare officer in its factories; in fact, respondent No. 1 was one of such Welfare Officers appointed by the appellant. Section 49(2) provides that the State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1). It is by virtue of the powers conferred on the State Government that respondent No. 2 has framed the Rules.

The Rules were framed by respondent No. 2 in 1952 and have been published in the Punjab Government Gazette on March 26, 1952, and they came into force from September 30, 1952. Rule 4 prescribes the qualifications for the appointment of a Welfare Officer. R. 5 provides for the procedure which has to be followed in appointing Welfare Officers. R. 6 prescribes conditions of services of Welfare Officers and R. 7 prescribes their duties. R. 8 confers power on the State Government to exempt any factory or class or description of factories from the operation of all or any of these Rules, subject to compliance with such alternative arrangement as may be approved. In the present appeal, we are concerned with R. 6. R. 6 reads thus :-

> "(1) A Welfare Officer shall be given appropriate status corresponding to the status of the other executive heads of the factory.
>
> (2) The conditions of service of a Welfare Officer shall be the same as of other members of the Staff of corresponding status in the factory.
>
> (3) Notwithstanding anything contained in sub-rule (2) the management may impose any one or more of the following punishments on Welfare Officers :-
>
> (i) Censure;
>
> (ii) Withholding of increments including stoppage at an efficiency bar;
>
> (iii) reduction to a lower stage in a time scale;
>
> (iv) suspension; and

> (v) dismissal or termination of service in any other manner;
>
> Provided that no order of punishment shall be passed against the Welfare Officer unless he has been informed of the grounds on which it is proposed to take action and given a reasonable opportunity of defending himself against the action proposed to be taken in regard to him;
>
> Provided further that the management shall not impose any punishment other than censure except with the previous concurrence of the Labour Commissioner, Punjab.
>
> (4) The Labour Commissioner, Punjab, before passing orders on a reference made under second proviso to sub-rule (3), shall give the Welfare Officer an opportunity of showing cause against the action proposed to be taken against him and if necessary, may hear the parties in person.
>
> (5) If the Labour Commissioner, on a reference made to him under the second proviso to sub-rule (3) of rule 6, refuses to give his concurrence, the management may appeal to the State Government within thirty days from the date of the receipt of such refusal. The decision of the State Government shall be final and binding.
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> (6) A Welfare Officer upon whom the punishment mentioned in clause (v) of sub-rule (3) is imposed may appeal to the State Government against the order of punishment within thirty days from the date of receipt of the order by him. The decision of the State Government shall be final and binding.
>
> (7) The State Government may pass such interim order as may be necessary pending the decision of appeal filed under sub-rule (5) or sub-rule (6).

It would be noticed that it is under rule 6(6) that the impugned order has been passed by respondent No. 2 and the question which has first to be considered in dealing with the present appeal is whether respondent No. 2 can be said to be a tribunal within the meaning of Art. 136(1) so as to justify the appellant to bring the appellate decision of respondent No. 2 before this Court by special leave under the said Article.

Art. 136(1) reads thus :-

> "Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India."

Mr. Goyal contends that respondent No. 2, is not a tribunal under Art. 136(1), and so, the impugned appellate order passed by it cannot be challenged by appeal under the said article. It would be noticed that Art. 136(1) refers to a tribunal as distinguished from a court. The expression "court" in the context denotes a tribunal constituted by the State as a part of the ordinary hierarchy of courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts which have been constituted under its relevant provisions. The Constitution recognised a hierarchy of courts and their

adjudication are normally entrusted all disputes between citizens and citizens as well as between the citizens and the State. These courts can be described as ordinary courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which in described as judicial process. The powers which these courts exercise, are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions.

In every State there are administrative bodies or authorities which are required to deal with matters within their jurisdiction in an administrative manner and their decisions are described as administrative decisions. In reaching their administrative decisions, administrative bodies can and often to take into consideration questions of policy. It is not unlikely that even in this process of reaching administrative divisions, the administrative bodies or authorities are required to act fairly and objectively and would in many cases have to follow the principles of natural justice; but the authority to reach decision conferred on such administrative bodies is clearly distinct and separate from the judicial power conferred on courts, and the decisions pronounced by administrative bodies are similarly distinct and separate in character from judicial decision pronounced by courts.

Tribunals which fall within the purview of Art. 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the court one common characteristic; both the courts and the tribunals are "constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions." (vide Durga Shankar Mehta v. Thakur Raghuraj Singh and Other) ([1955] 1 S.C.R. 267 at p. 272.). They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the courts is regularly prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure. The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

This problem has been considered by this Court on several occasions and judicial decisions show that it arises in two different forms. Sometimes, the question which is posed for the decision of this Court is whether a particular decision reached by an authority or a body can be corrected by the issue of a writ of certiorari by the High Courts in exercise of their jurisdiction under Art. 226; and in dealing with this question, it becomes necessary to enquire whether the impugned decision is a judicial or quasi-judicial decision and whether in reaching it, the authority concerned was required to adopt a judicial approach and follow the principles of natural justice. We will very briefly indicate how this question has been considered by this Court by referring to some important

decisions in that behalf. In Province of Bombay v. Kusaldas S. Advani and Others ([1950] S.C.R. 621.), this Court had to consider whether the powers given to the Provincial Government under sections 10 and 12 of the Bombay Land Requisition Ordinance (V of 1947) required that in exercising them, the Government had to act judicial in the matter of making an order of requisition under section 3. According to the majority decision, the relevant powers and the scheme of the Ordinance did not make it incumbent on the State Government to act judicially in exercising its powers under section 3. Dealing with this question, Das J., as he then was, deduced two principles from an elaborate examination of the relevant decisions cited before the Court. He held that if a statute empowers an authority not being a court in the ordinary sense to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a list and prima facie, and in the absence of anything in the statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act. The second principle which he deduced was that if a statutory body has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority, and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet to be a quasi-judicial act provided the authority is required by the statute to act judicially (p. 725). Kania, C.J., on the other hand, observed that the true position was that "when the law under which the authority is making a decision itself requires a judicial approach, the decision would be a quasi-judicial decision. Prescribed forms are not necessary to make an inquiry judicial, provided in coming to the decision, well-recognised principles of approach are required to be followed." (p. 633).

Before we proceed to the next decision of this Court bearing on this point, we would like to refer to the recent decision of the House of Lords in Ridge v. Baldwin and Others (L.R. [1964] A.C. 40.). In that case, the House of Lords had to consider the question as to whether the watch committee in exercising its authority under section 191 of the Municipal Corporations Act, 1882, was required to act judicially or not. The case itself arose out of the dismissal of the appellant Ridge who had been appointed chief constable of borough police force in 1956. On October 28, 1957, he was suspended from duty by the borough watch committee. On February 28, 1958,he was acquitted by the jury on the criminal charges against him. On March 6, 1958, on a charge alleging corruption against the appellant, Donovan, J., who tried the case, referred to the borough's police force and remarked on its need for a leader "who will be a new influence and who will set a different example from that which has lately obtained." After his acquittal, the appellant applied to be reinstated, but on March 7, 1958, the watch committee at a meeting decided that he had been negligent in the discharge of his duties as chief constable, and, in purported exercise of the powers conferred on them by section 191(4) of the Act of 1882, dismissed him from that Office. Before doing so, no specific charge had been formulated against him, but the watch committee acted, inter alia, on the appellant's own statements in evidence and the observations made by Donovan J. during the course of the trial. The appellant appealed to the Home Secretary, but his appeal was dismissed on the ground that there was sufficient material on which the watch committee could properly exercise their power of dismissal under section 191(4). It is this dismissal which led to the action by the appellant against the watch committee for a declaration that his dismissal was illegal, ultra vires and void, and payment of salary from March 7, 1958, or, alternatively, payment of pension from that date and damages. That is how the question which arose for decision was whether the watch committee acting under section 191(4) had to act judicially.

The majority decision was that it had to act judicially, and since the order of dismissal was passed without furnishing the appellant with a specific charge, it was a nullity. In dealing with the

appellant's contention that the watch committee had to act judicially, Lord Reid has exhaustively considered the judicial decisions bearing on this point. He referred in particular to the following observation made by Atkin L.J. in Rex v. Electricity Commissioners, Exparte London Electricity, Joint Committee Co. (1920) Ltd. and Other ([1924] 1 K.B.D. 171, 205.) : "Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs." This observation was later read by Lord Hewart, C.J. in Rex v. Legislative Committee of the Church Assembly, Exparte Havnes Smith ([1928] 1 K.B.D. 411.), as meaning that before the decision of any authority could be subjected to the writ jurisdiction, it must appear that the said body should have legal authority to determine questions affecting the rights of subjects and should further be required to act judicially. The duty to act judicially, observed Lord Hewart, C.J., is an ingredient which, if the test is to be satisfied, must be present.

The Privy Council in Nakkuda Ali v. Jayaratne ([1951] A.C. 66, 77.), had taken the same view. Dealing with the order passed by the Controller of Textiles in Ceylon under a Defence Regulation which empowered him to cancel a licence "where the controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer," the Privy Council held that it did not follow from the words of the relevant Defence Regulation that the controller must be acting judicially in exercising the power. It is a long step, said the Privy Council, in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process. And yet, unless that proposition is valid, there is really no ground for holding that the controller is acting judicially or quasi-judicially when he acts under this regulation. If he is not under a duty so to act, then it would not be according to law that his decision should be amenable to review and, if necessary, to avoidance by the procedure of certiorari.

Having set out these decisions, Lord Reid expressed his dissent from the gloss which has been put by Lord Hewart C.J. in Rex v. Legislative Committee of the Church Assembly ([1928] 1 K.B.D. 411) on the observations of Atkin, L.J. in Rex v. Electricity Commissioners ([1924] 1 K.B.D. 411.), and the view taken by the Privy Council in Nakkuda Ali ([1951] A.C. 66, 77.); and he held that "the power of dismissal conferred on the watch committee by section 191(4) could not have been exercised and cannot now be exercised until the watch committee have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in defence." (p. 79). In other words, according to Lord Reid's judgment, the necessity to follow judicial procedure and observe the principles of natural justice, flows from the nature of the decision which the watch committee had been authorised to reach under section 191(4). It would thus be seen that the area where the principles of natural justice have to be followed and judicial approach has to be adopted, has become wider and consequently, the horizon of the writ jurisdiction has been extended in a corresponding measure. In dealing with questions as to whether any impugned orders could be revised under Art. 226 of our Constitution, the test prescribed by Lord Reid in this judgment may afford considerable assistance.

In Nagendra Nath Bora and Another v. The Commissioner of Hills Division and Appeals, Assam, & Ors. ([1958] S.C.R. 1240.) this Court had to consider whether the jurisdiction of the High Court under Arts. 226 and 227 of the Constitution could be invoked against the decision of the appellate authority constituted under the Eastern Bengal and Assam Excise Act, 1910 (E.B. & Assam Act I 1910). The scheme of the Act was examined and it was noticed that the Act had laid down a regular hierarchy of authorities, one above the other, with the right of hearing appeals or revisions. It is true

that there was no provision in the Act which required, in express terms, that reasoned orders should be recorded; but in the context of the subject-matter of the rules, it was held that it was the duty of the appellate authority to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it. (p. 1254). On that view of the matter, the decision of the appellate authority was theoretically held to be subject to the jurisdiction of the High Court under Art. 226 to issue a writ of certiorari.

In Shivji Nathubhai v. Union of India & Others ([1960] 2 S.C.R. 775.), this Court held that in exercising its power of review under rule 54 of the Mineral Concessions Rules, 1949, the Central Government acted judicially and not administratively. In consequence, the decision of the Central Government was liable to be questioned on proper grounds under Art. 226 of the Constitution. The question as to whether the State Government in granting the mining lease acted merely administratively or not, was not considered in this case, because it was enough for the purpose of deciding the appeal that the powers of review were not administrative powers and exercise of the said powers would be subject to examination by the High Courts under Art. 226.

It will be noticed that in these cases, this Court was not called upon to consider whether the authorities whose decisions were challenged under Art. 226 were tribunals or not, because the requirement that the impugned decision should be that of a tribunal which has been prescribed by Art. 136(1) is not to be found in Art. 226; and so, the only point which fell for decision was whether the impugned orders amounted to judicial or quasi-judicial decisions liable to be corrected by the issue of a writ of certiorari under Art. 226, or not. That problem is different from the one which we have to decide in the present case.

Let us now refer to some of the decisions which deal with the problem with which we are concerned. The first decision where this question was elaborately considered was pronounced in the case of The Bharat Bank Ltd., Delhi, v. Employees of Bharat Bank Ltd., and The Bharat Bank Employees' Union, Delhi ([1950] S.C.R. 459.). In that case, an award pronounced by an Industrial Tribunal under the provisions of the Industrial Disputes Act, 1947, was brought to this Court in appeal by special leave under Article 136(1), and the respondents' preliminary objections that the appeal was incompetent, raised the problem as to whether the Industrial Tribunal was a tribunal under Art. 136(1) or not. The majority decision was in favour of the view that the Industrial Tribunal is a tribunal within the meaning of Art. 136(1). Mahajan J., who delivered the principal judgment in support of the majority view on this point, held that "industrial tribunals though they are not full-fledged Courts, yet exercise quasi-judicial functions and are within the ambit of the word 'tribunal' in Art. 136 of the Constitution" (p. 476). "The condition precedent," said Mahajan J., "for bringing a tribunal within the ambit of Art. 136 is that it should be constituted by the State. Again, a tribunal would be outside the ambit of Art. 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties (p. 478)." It is in this connection that the learned Judge added that tribunals, however, which h are found invested with certain functions of a court of justice and have some of its trappings also would fall within the ambit of Art. 136, because, according to the learned Judge, the intention of the Constitution by the use of the word "tribunal" in the article seems to have been include within the scope of Art. 136 tribunals adorned with similar trappings as Court but strictly not coming within that definitions (p. 474). The fact that awards pronounced by Industrial Tribunals become enforceable under section 17A subject to the conditions therein prescribed, did not make any difference to the legal position that the Industrial Tribunals were tribunals within the meaning of Art. 136(1).

The majority decision in the case of Bharat Bank ([1950] S.C.R. 459.), to which we have just referred was adopted unanimously by this Court in the case of Durga Shankar Mehta ([1955] 1 S.C.R. 257.). Speaking for the court, Mukherjea, J., observed that it was now well settled by the majority decision of the Court in the case of Bharat Bank ([1950] S.C.R. 459.) that the expression "Tribunal" as used in Art. 136 does not mean the same thing as "Court" but includes, within its ambit, all adjudicating bodies, provided they are constituted by the States and are invested with judicial as distinguished from purely administrative or executive functions, subject, of course, to the exception specifically provided for by Art. 136(2).

In M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala and Others ([1962] 2 S.C.R. 339, 352.), the question which arose for decision of this Court was whether the Central Government, while it exercise its appellate power under section 111(3) of the Companies Act, 1956 (No. I of 1956), was a tribunal within the meaning of Art. 136 (1). In considering this question, the scheme of the relevant provisions of the Act was examined, the earlier decisions bearing on the point were taken into account and it was held that section 111(3) required that the Central Government, while acting as an appellate authority, had to act judicially and was entrusted with the judicial powers of the State to adjudicate upon rights of the parties in civil matters when there is a lis between the contesting parties, and so, the conclusion was inevitable that it acts as a tribunal and not as an executive body. In that connection, Shah J., who spoke for the majority of the Court, Observed that the proceedings before the Central Government have all the trappings of a judicial tribunal; and by way of illustration, he referred to the fact that pleadings had to be filed, evidence had to be led, and the disputes had to be decided according to law after considering the representations made by the parties.

Hidayatullah J., differed from the majority decision on the question as to the final order which should be passed in the said appeals. He held that there was no reason for the Central Government to have passed the impugned order, and so, he wanted the appeals to be allowed. Accordingly, he directed that the impugned order should be set aside and appeals should be allowed with costs. On the preliminary question as to whether the appeals were competent, the learned Judge agreed with the majority decision that the Central Government was a tribunal within the meaning of Art. 136(1). Construing Art. 136(1), the learned Judge observed that courts and tribunals act judicially in both senses which he had earlier discussed, and in the term "Court" are included the ordinary and permanent tribunals and in the term "tribunal" are included all others, which are not so included. Among the powers of the State, said Hidayatullah J., is included the power to decide controversies between parties. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different (pp. 362-63). Thus, it would be noticed that all the learned Judges who heard this case, were agreed in taking the view that the essential power which was exercised by the court and tribunals alike was the judicial power of the State.

In Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand and Other ([1963] Supp. I S.C.R. 242, 259-60.), this Court has held that the Conciliation Officer acting under Clause 29 of the Order promulgated in 1954 under the U.P. Industrial Disputes Act, 1947, has to act judicially in granting or refusing permission to alter the terms of employment of workmen at the instance of the employer, but even so, he was not a tribunal, because he was not invested with the judicial power of the State, as he was empowered merely to lift the ban statutorily imposed on the employer's rights, and was not authorised to pronounce a final and binding decision in any dispute. That is why an appeal preferred against the order of the said Conciliation Officer was held to be incompetent under Art.

136(1). "The condition precedent for bringing a tribunal within the ambit of Art. 136," observed Shah, J., who spoke for the Court, "is that it should be constituted by the State;" and he added that a tribunal would be outside the ambit of Art. 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties. After examining the scheme of the relevant provision, it was observed that "in deciding whether an authority required to act judicially when dealing with matters affecting right of citizens may be regarded as a tribunal, though not a Court the principal incident is the investiture of the 'trappings of a court' - such as authority to determine matters in cases initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, and others... Some, though not necessarily all such trappings will ordinarily make the authority which is under a duty to act judicially, a 'tribunal'."

In the Engineering Mazdoor Sabha representing Workmen employed under Hind Cycles Ltd. & Anr. v. The Hind Cycles Ltd., Bombay ([1963] Supp. I S.C.R. 625.), the question which arose for decision of this Court was whether an arbitrator appointed under section 10A of the Industrial Disputes Act, 1947 (No. 14 of 1947) can be said to be a tribunal under Art. 136(1), and in rendering the answer to this question in the negative, this Court observed that apart from the importance of the trappings of a Court, the basic and essential condition which makes an authority or a body a tribunal under Art. 136, is that it should be constituted by the State and should be invested with the State's inherent judicial power. Even so, the judgment has referred to the trappings of a Court and it has been observed that sometimes a rough and ready test is applied in determining the status of an adjudicating body by enquiring whether the said body or authority is clothed with the trappings of a court. In that connection, it was added that the presence of the said trappings does not necessarily make the Tribunal a Court. The Arbitrator appointed under section 10A was, however, held to be not a tribunal, because his appointment was essentially based on the agreement of the parties concerned and as such, his position was somewhat analogous to that of the arbitrator appointed by the parties.

In Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh Additional Collector of Customs, Calcutta, and Ors., ([1964] 6 S.C.R. 594.) the status of the Central Board of Revenue exercising its appellate power under section 190 of the Sea Customs Act, 1878 and that of the Central Government exercising its power under section 191 came to be examined. It was common ground that the Customs Officer exercising his authority under section 167 of the said Act was not a 'Court' or a 'Tribunal;' nevertheless, it was held that the Central Board of Revenue and the Central Government exercising their respective powers under sections 190 and 191 were 'tribunals' under Art. 136(1). This conclusion proceeding on the main ground that both the appellate and the revisional authorities in question are invested with the judicial power of the State and are required to act judicially. On this occasion, again, this Court referred to the trappings of a Court and observed that the presence of some of the trappings of a Court may assist to determine whether the proceedings before the authority in question are judicial or not, though it was emphasised that apart from the said test of trappings, the basic test was whether the authority in question had been constituted by the State and had been given a part of the State's inherent judicial powers.

It would thus be seen that in dealing with the question as to whether respondent No. 2, while it exercises its appellate power under Rule 6(6), is a tribunal under Art. 136(1), we must enquire whether respondent No. 2 has been clothed with the State's inherent judicial poser to deal with disputes between parties and determine them on the merits fairly and objectively. That is the test which has been consistently applied by this Court in considering the question about the status of any body or authority as a tribunal under Art. 136(1). Before we proceed to apply this test to respondent No. 2's status under R. 6(6), we think it is necessary to advert to one aspect of the matter which

sometimes creates some confusion.

We have referred to the three essential attributes of a sovereign State and indicated that one of these attributes is the legislative power and legislative function of the State, and we have also seen that in determining the status of an authority dealing with disputes, we have to enquire whether the power conferred on the said authority or body can be said to be judicial power conferred on it by the State by means of a statute or statutory rule. The use of the expression "judicial power" in this context proceeds on the well-recognised concept of political science that along with legislative and executive powers, judicial power vests in a sovereign State. In countries where rigid separation of powers has been effected by written Constitutions, the position is very different. Take, for instance, the Australian Constitution. Section 71 of the Commonwealth of Australia Constitution Act (63 & 64 Vict. Chapter 12) provides that the judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two as the Parliament prescribes. It is clear that the scheme of sections 71 to 80 which from part of Chapter III of the said Constitution, is that the judicial power of the State can be conferred only on courts recognised by the provisions of the said Chapter. In other words, it is not competent to the Legislature in Australia to confer judicial power properly so-called on any body or authority other than or apart from the courts recognised by Ch. III; and so, the use of the expression "judicial power" or its conferment in regard to tribunals which are not courts properly so-called, would under the Australian Constitution be wholly inappropriate. If any tribunals other than courts are established and power is given to them to deal with and decide special disputes between the parties, the power which such tribunals would exercise cannot be described as judicial power, but would have to be called quasi-judicial power.

This technical aspect of the matter which is present under the Constitutions based on rigid separation of powers, should not be ignored when we are dealing with the question posed under Art. 136(1) of our Constitution. Under our Constitution, there is no rigid separation of powers as under the Australian Constitution; and so, it would not be constitutionally inappropriate or improper to say that judicial power of the State can be conferred on the hierarchy of Courts established under the Constitution as well as on tribunals which are not courts strictly so-called. Indeed, the fact that Art. 136(1) refers to courts and tribunals and makes the determination, sentence or order passed by them subject to appeal to this Court by special leave, shows that our Constitution assumes that judicial power of the State can be vested in and exercised by both courts and tribunals alike. We have already seen that the function discharged by courts and tribunals mentioned in Art. 136(1) is essentially the same, though the nature of the questions entrusted to their jurisdiction, the procedure required to be followed by them, and the extent and character of their powers may be different.

As a result of the rigid separation of powers on which the Australian Constitution is based, questions which arise for decision of courts in Australia take a very different form. Let us refer to decision of the Privy Council in Shell Company of Australia, Ltd. v. Federal Commissioner of Taxation ([1931] A.C. 275.), by way of illustration. In that case, the Privy Council had to consider whether the Board of Review created by section 41 of the Federal Income-tax Assessment Act, 1922-1925, to review the decisions of the Commissioner of Taxation, and whose members are to hold office for seven years, is a Court exercising the judicial power of the Commonwealth within the meaning of section 71 of the Constitution of Australia. If the answer had been in the affirmative, the amending section by which the Board of Review was constituted, would have been invalid because of the provisions of section 71 of the Australian Constitution. The Privy Council however,

examined the functions of the Board and its powers and considered the scheme of the relevant provisions of the Taxation Act and came to the conclusion that the Board of Review was not a Court and stood in the same position as the Commissioner. It was observed that the orders of the Board of review were not made conclusive for any purpose whatsoever, and that the decisions of the Board were made the equivalent of the decision of the Commissioner. In dealing with the status of the Board in the context of the requirements of section 71 of the Australian Constitution, Lord Sankey, L.C. observed that "the authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power" (p. 296). It is in this connection that Lord Sankey referred to certain attributes of Courts which he characterized as trappings. The negative propositions which he enunciated by reference to these trappings, indicate that the presence of the trappings would not make the Board a Court and would not lead to the inference that the judicatory power exercised by tribunals was judicial power which courts alone can exercise. It would thus be noticed that the reference to the trappings was intended to show that the presence of the trappings does not alter the character of the tribunal, the decisive test being that judicial power under the Australian Constitution can be conferred only on courts and not on tribunals. When we refer to tribunals in dealing with the problem posted by Art. 136(1), it is necessary to bear in mind the context in which Lord Sankey referred to these trappings.

There is another point to which we would like to refer before we part with this topic. In Attorney-General for Australia v. The Queen and the Boilermakers' Society of Australia and Other ([1957] A.C. 288.) an interesting question arose for the decision of the Court under sections 29(1)(b) & (c) and 29-A of the Commonwealth Conciliation and Arbitration Act, 1904-1952. These provisions purported to vest judicial power - even to the extent of finding a citizen or depriving him of his liberty - in the Court of Conciliation and Arbitration established under the Act with powers of an administrative, arbitrator and executive character. It was held that the said provisions were invalid, because the functions of an industrial arbitrator is completely outside the realm of judicial power and is of a different character. This decision also is based on the doctrine of rigid and strict separation of powers on which the Australian Constitution is based. Viscount Simonds, who delivered the judgment of their Lordships, has referred to the structure of the Australian Constitution and observed that in the matter of conferring judicial powers, it was not open to the Parliament to turn from Chapter III to some other source of power (p. 313). Indeed, he cited with approval the observations made by Griffith, C.J. in Waterside Workers' Federation of Australia v. Alexandar (J.W.) Ltd. ([1918] 25 C.L.R. 434, 442.), that it is impossible under the Constitution to confer such functions (i.e., judicial functions) upon any body other than a court, nor can the difficulty be avoided by designating a body, which is not in its essential character a court, by that name, or by calling the functions by another name. In short, any attempt to vest any part of the judicial power of the Commonwealth in any body other than a court is entirely ineffective.

We have referred to these two decisions only for the purposes of emphasising the fact that the technical considerations which flow from the strict and rigid separation of powers, would not be applicable in dealing with the question about the status of respondent No. 2 by reference to Art. 136(1) of our Constitution. The use of the expression "judicial power" in the context, cannot be characterised as constitutionally impermissible or inappropriate, because our Constitution does not provide, as does Chapter III of the Australian Constitution, that judicial power can be conferred only on courts properly so-called. If such a consideration was relevant and material, then it would no doubt, be inappropriate to say that certain authorities or bodies which are given the power to deal with disputes between parties and finally determine them, are tribunals because the judicial power of the State has been statutorily transferred to them. In that case, the more appropriate expression to use would be that the powers which they exercise are quasi-judicial in character, and tribunals

appointed under such a scheme of rigid separation of powers cannot be held to discharge the same judicial function as the courts. However, these considerations are, strictly speaking, inapplicable to the Indian Constitution, because though it is based on a broad separation of powers, these is no rigidity or exclusiveness involved in it as under section 71 as well as other provisions of Ch. III of the Australian Constitution; and so, it would not be inappropriate to say that the main test in determining the status of any authority in the context of Art. 136(1) is whether or not inherent judicial power of the State has been transferred to it.

Let us then examine the scheme of the Rules. R. 6 as we have already seen, prescribes the conditions of service of Welfare Officers. Reading the second proviso to R. 6(3) and R. 6(4) together, it appears that if the management wants to impose any punishment other than censure, it is required to secure the previous concurrence of the Labour Commissioner; and when an application is made to the Labour Commissioner for obtaining his concurrence, he has to give the Welfare Officer an opportunity of showing cause against the action proposed to be taken against him and if necessary, he has to hear the parties in person. This provision imposes a limitation on the power of the management to subject the Welfare Office to the punishments to which it applies. In the present case, we are not called upon to consider whether the Labour Commissioner exercising his power under R. 6(4) is a tribunal or not; for the purpose of the present appeal, we will assume that he is not a tribunal under Art. 136(1).

Rule 6(5) deals with a case where the Labour Commissioner refuses to give his concurrence, and in that case, it confers on the management the right to make an appeal to the State Government within the time prescribed by it. It provides that the appellate decision of the State Government would be final and binding. Similarly, R. 6(6) enables the Welfare Officer upon whom the punishment mentioned in cl. (v) of sub-rule 3 is imposed without obtaining the concurrence of the Labour Commissioner to appeal to the State Government, and it provides that the appellate decision of the State Government in such a case would also be final and binding.

The question which we have to decide in the present appeal is whether the State Government is a tribunal when it exercises its authority under R. 6(5) or R. 6(6). No rules have been made prescribing the procedure which the State Government should follow in dealing with appeals under these two sub-rules, and there is no statutory provision conferring on the State Government any specific powers which are usually associated with the trial in court and which are intended to help the court in reaching its decisions. The requirements of procedure which is followed in courts and the possession of subsidiary powers which are given to courts to try the cases before them, are described as trappings of the courts, and so, it may be conceded that these trappings are not shown to exist in the case of the State Government which hears appeals under R. 6(5) and R. 6(6). But as we have already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a stature and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under R. 6(5) and R. 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision

and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the power conferred on the State Government by R. 6(5) and R. 6(6), we feel no hesitation in holding that it is a tribunal within the meaning of Art. 136(1).

In this connection, we may usefully recall the observation made by Lord Haldane in Local Government Board v. Arlidge ([1951] A.C. 120, 132.). Said Lord Haldane "My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same." Having regard to the nature of the power conferred on the State Government, it seems to us clear that for reaching a fair and objective decision in the dispute brought before it in its appellate jurisdiction, the State Government has the power to devise its own procedure and to exercise such other incidental and subsidiary powers as may be necessary to deal effectively with the dispute. We are, therefore, satisfied that the State Government which exercises its appellate jurisdiction under R. 6(5) and R. 6(6) of the rules is a tribunal within the meaning of Art. 136(1); and so, the present appeal brought before this Court against the impugned appellate order passed by respondent No. 2, is competent. In the result, the preliminary objection raised by Mr. Goyal fails and must be rejected.

That takes us to the merits of the impugned appellate order. Mr. Setalvad for the appellant contends that the impugned order is bad for two reasons. He argues that the relevant Rule which requires the concurrence of the Labour Commissioner before the management can dismiss or terminate the services of a Welfare Officer, is invalid inasmuch as it is outside the scope of the authority conferred on the State Government by section 49(2) of the Act. He also argues that the impugned order is invalid for the reason that in the circumstances of this case, the appeal preferred by respondent No. 1 before respondent No. 2 was incompetent under r. 6(6).

Let us first examine the contention about the invalidity of the Rule itself. We have noticed that section 49(2) of the Act confers on the State Government authority to prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1); so that there can be no doubt that the State Government would be competent to make Rules which prescribe the conditions of service of Welfare Officers. The question is whether R. 6 which purports to prescribe such conditions of service is ultra vires section 49(2) of the Act inasmuch as it imposes on the management the obligation to secure the concurrence of the Labour Commissioner before inflicting on the Welfare Officer the punishments to which the second proviso to R. 6(3) refers. In our opinion, the words "condition of service" used in section 49(2) are wide enough to cover the proviso in question and sub-rules (4), (5) and (6) of Rule 6. Under what circumstances an employee's services can be terminated and subject to what conditions, can well be the subject-matter of a contract of employment, because conditions of service would take in the termination of services and incidentally, the conditions subject to which such termination could be brought about. If that be so, we see no reason why a statutory rule imposing the obligation on the management as prescribed by the second proviso in question should be said to fall outside section 49(2) of the Act. The object of conferring on State Government the power to frame Rules in that behalf obviously is to afford special protection to Welfare Officers appointed under section 49(1) and if respondent No. 2 thought that the best way to assure security of tenure to such officers was to require that they should not be dismissed or otherwise punished without obtaining the consent of the Labour Commissioner as requited by the second proviso to R. 6(3), it would be difficult to hold that a Rule made by respondent No. 2 in that behalf is not justified by the power conferred on it by section 49(2).

Therefore, we are not impressed by Mr. Setalvad's argument that the Rule in question is ultra vires invalid.

Mr. Setalvad, however, is right in contending that the appeal preferred by respondent No. 1 before respondent No. 2 was incompetent. Rule 6(6) no doubt enables a Welfare Officer to make an appeal to the State Government if punishment has been imposed upon him contrary to the requirements of the proviso to R. 6(3), without obtaining the concurrence of the Labour Commissioner. The scheme of the relevant Rules appears to be that if the management applies for concurrence, and the concurrence is not given by the Labour Commissioner, the management can appeal under r. 6(5). If the concurrence is given, or if a welfare officer is dismissed without applying for concurrence, he may make an appeal under r. 6(6); but before such an appeal can be competent, it must appear that the punishment mentioned in clause (v) of sub-rule (3) of R. 6 has been imposed upon him. In the present case, it is difficult to hold that any such punishment has been imposed upon respondent No. 1. All that the appellant has done in the present case is to terminate the services of respondent No. 1 by virtue of clause 4 of his terms of appointment. When respondent No. 1 was appointed a Welfare Officer by the appellant, the terms of his employment were communicated to him by a letter dated March 2, 1956. Clause 4 of this communication expressly provided that during the period of probation, the appellant could terminate respondent No. 1's services without notice, and after confirmation, with one month's notice or one month's salary in lieu of notice. The order terminating his services specifically refers to an earlier latter addressed to him on September 23, 1961. In this letter, the appellant expressly informed respondent No. 1 that if he did not proceed to Kymore Cement Works within the time allowed to him, his services would stand terminated from September 26, 1961, and he would be paid his salary up to the 25th September, 1961, as well as one month's salary in lieu of notice and other dues as per Company's rules. It is thus clear that in terminating the services of respondent No. 1 the appellant was merely exercising its right to put an end to respondent No. 1's services with one month's salary in lieu of notice; and such an order cannot be said to amount to any punishment at all; it is an order of discharge served by the employer on his employee strictly within the terms of the employee's conditions of service. There is no doubt that when r. 6(3)(v) refers to dismissal or termination of service in any other manner, it takes in dismissal or termination of service which is in the nature of a punitive termination of service. R. 6(3) makes it clear that clauses (1) to (v) refer to punishments which could be imposed on Welfare Officers by the management; and so, before r. 6(3)(v) can be invoked by respondent No. 1, it must be shown that the termination of his services was in the nature of a punishment. The termination of respondent No. 1's services in terms of clause 4 of his conditions of services is no more than a discharge, and as such is not a punishment; and so, it is outside r. 6(3) altogether. Therefore, we are satisfied that the appeal preferred by respondent No. 1 before respondent No. 2 was not competent under rule 6(6).

Mr. Goyal no doubt attempted to argue that though in from the order terminating respondent No. 1's services purported to be an order of discharge under clause 4 of his conditions of service, in substance it is an order of dismissal; and in support of this argument, he referred us to the fact that before the impugned order was passed, considerable correspondence passed the parties, and it appears that the appellant had transferred respondent No. 1 to Kymore, and respondent No. 1 apparently did not obey the said order of transfer. We have not thought it necessary to refer to this correspondence, because, in our opinion, it is not possible to entertain Mr. Goyal's contention that the order of discharge in the present case in substance amounts to an order of dismissal. It is true that the from in which the impugned order has been passed will not necessarily determine the character of the termination of respondent No. 1's services. If respondent No. 1 had proved that the impugned order amounts to his punishment, that no doubt would have been a legitimate plea on

which the competence of the appeal to respondent No. 2 could have been sustained; but beyond making a vague allegation that the impugned order bad been passed not bona fide, but for ulterior purpose, no attempt has been made to suggest, much less to prove, that the appellant was actuated by any improper motive in terminating his services. It does appear that when the appellant found that respondent No. 1 was not willing to go to Kymore Cement Works where he had been transferred, it deliberately chose not to punish him, but to pass a simple order of discharge. In such cases, it is no doubt open to the Court to consider the substance of the matter and not to treat the form in which the order terminating the services of an employee has been passed, conclusive. But cases may occur in which it would be safe to conclude that the order of discharge is a bona fide order of discharge and that the employer passed such an order, because it was not its intention to cast any slur on its employee, even though it thought it necessary to terminate his services. In our opinion, the present case falls under this category. Therefore, we are not impressed by the argument that the impugned order amounts to a termination of service in any other manner contemplated by Rule 6(3)(v).

The result is, the appeal is allowed, and the impugned order passed by respondent No. 2 is set aside on the ground that in has been passed without jurisdiction. Parties to bear their own costs.

BACHAWAT, J. -

I agree with the conclusions of the learned Chief Justice and the order proposed by him, and will add a few words of my own. The preliminary objection as to the maintainability of the appeal raises important questions of interpretation of Art. 136 of the Constitution. In what sense did the Constitution-makers use the word "tribunal" in that Article ? By what sign or distinctive attribute are we to to recognise a tribunal ? In Royal Aquarium and Summer & Winter - Garden Society Ltd. v. Parkinson ([1892] 1 C.B. 446.), Fry, L.J., said that this word has not, like the word 'court' an ascertainable meaning in English law. The word cannot have the popular meaning of a Court of justice, for obviously a tribunal contemplated by Art. 136 is an authority other than a regular Court of justice. I think I that the context of Art. 136 supplies the proper meaning of this word. Article 136 concerns the regulation of the judicial power of the State vested in the Courts and other authorities. The great purpose of Art. 136 is the recognition of the basic principle that one Court having supreme judicial power in the Republic will have appellate power over all Court and adjudicating authorities vested with the judicial powers of the State throughout the territory of India barring those constituted by or under any law relating to the Armed Forces. In this background, the basic test of a tribunal within the meaning of Art. 136 is that it is an adjudicating authority (other than a Court) vested with the judicial powers of the State. I think that all the decided cases substantially lay down this test. Speaking on behalf of a unanimous Court in Durga Shankar Mehta v. Thakur Raghuraj Singh and others ([1955] S.C.R. 267, 272.), B. K. Mukherjea, J. said :

> "It is now well settled by the majority decision of this Court in the case of Bharat Bank Ltd. v. Employees of Bharat Bank Ltd. ([1950] S.C.R. 459.) that the expression 'Tribunal' as used in article 136 does not mean the same thing as 'Court' but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions."

According to this test, the adjudicating body must be constituted by the State and be vested with judicial functions. In other decided cases, other learned Judges conveyed the same idea in a somewhat different form; they have said that in order to be a tribunal, the body must be "invested

with... part of the judicial function of the State", "delegates of the judicial power of the State", "invested with the State's inherent judicial powers", "exercise judicial powers of the State."

Now, the expression "judicial power of the State" is not to be found in our Constitution. We have borrowed this expression from the Australian law. By Art. 71 of the Australian Constitution, "the judicial power of the Commonwealth" is vested in the Courts therein mentioned, and no other body or tribunal can exercise that power. The Australian cases try to soften the rigour of this prohibition by giving a somewhat narrow construction to the expression "judicial power of the Commonwealth". Thus, they hold that an arbitral power in relation to industrial disputes to ascertain and declare what in the opinion of the arbitrator are to be the respective rights and liabilities of the parties in relation to each other is not to be regarded as a judicial power of the Commonwealth within Art. 71 of the Australian Constitution. See Waterside Workers Federation v. Alexandar ([1918] 25 C.L.R. 434, 463.), Attorney-General of Australia v. Reginam ([1957] 25 All E.R. 45, 50 P.C.). But our case law does not use the expression "judicial power of the State" in the same narrow sense while giving the test of a tribunal under Art. 136 of the Constitution. Thus, the case of Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. ([1950] S.C.R. 459.), decided that an industrial tribunal is vested with the judicial functions of the State and is thus a tribunal within Art. 136. In our Country, the State (using that expression in the comprehensive sense of the Union and its component States) has inherent judicial powers or functions and the Courts and other authorities vested by State with judicial functions are regarded as delegates of the State judicial powers. Unlike Australia, in our country the judicial power of the State may the vested not only in Court but also in other authorities. The Courts alone have no monopoly of this judicial power. An authority other than a Court vested with the judicial power of the State in this sense is regarded as a tribunal within Art. 136.

In Shell Co. of Australia v. Federal Commissioner of Taxation ([1931] A.C. 275, 296.) (a case coming from Australia), Lord Sankey, L.C., said that "there are tribunals with many of the trappings of a court which, nevertheless, are not courts in the strict sense of exercising judicial power." The Lord Chancellor was obviously pointing out that a tribunal possessing one or more of the trappings of a Court was not necessarily a Court exercising the judicial power of the Commonwealth as contemplated by Art. 71 of the Australian Constitution. But is does not follow that the investiture of some or many of the trappings of a Court is an essential attribute of a tribunal contemplated by Art. 136. Nevertheless, our concept of a tribunal has been somehow coloured by Lord Sankey's idea of a tribunal with the trappings of a Court. In Bharat Bank, Ltd. v. Employees of Bharat Bank Ltd. ([1950] S.C.R. 459.), Mahajan, J. said that Art. 136 includes within its scope "tribunals adorned with similar trappings as Court but strictly no coming within that definition." In Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand ([1963] Supp. 1 S.C.R. 242, 260.), Shah, J., said that in deciding whether an authority may be regarded as a tribunal, though not a Court, "the principal incident is the investiture of the 'trappings of a court'." In Engineering Mazdoor Sabha v. Hind Cycles Ltd., Bombay ([1963] Supp. 1 S.C.R. 625 at 631, 633, 641.), Gajendragadkar, J. (as he then was) said that in determining "whether a particular body or authority is a tribunal or not, sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a court", but he added that "apart from the trappings of a Court, the basic and essential condition which makes an authority or a body a tribunal under Art. 136, is that it should be constituted by the State and should be invested with the State's inherent judicial power." Similar observations were made by the same learned Judge in Indo-China Steam Navigation Co. v. Jasjit Singh ([1964] 6 S.C.R. 594.). In trying to find out whether a body is a tribunal within the meaning of Art. 136, it is natural to consider whether the body has some of the trappings of Court. If it has one or more of such trappings, it may be easter to pronounce the body to be a tribunal. But we must

not forget that the investiture of the trappings of a Court is not an essential attribute of a tribunal. The basic test of a tribunal is that it is a body vested with the judicial power of the State. Unless this basic concept is borne in mind, the trappings of a Court may well become a trap and a snare for the unwary.

The limitations as also the full amplitude of the meaning of the word "tribunal" are thus to be found on a consideration of Art. 136 in all its parts, with such aid as may be derived from other Articles of the Constitution. The Context of Art. 136 and the constitutional background impose the limitation that the tribunal must be an adjudicating authority vested with the judicial power of the State. Barring this limitation, the word must receive a wide and liberal construction. The basic principle of Art. 136 is that if a litigant feels that injustice has been done by a Court or any other body charged with the administration of justice, there is one superior Court he may always approach and which, in its discretion, may give him special leave to appeal so that justice may be done. The plenitude of the residuary appellate power under Art. 136 embraces within its scope all adjudicating authorities vested with the judicial power of the State, whether or not such authorities have the trappings of a Court.

An authority other than a Court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to a attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial power of the State. For the purpose of this case, and sufficient to say that any outside authority empowered by the State to determined conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Art. 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under section 10-A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Art. 136. It matters little that such a body or authority is vested with trappings of a Court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a Court, so also the Industrial Dispute Act, 1947 vests an authority acting under section 10-A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals.

The word "tribunal" finds place in Art. 227 of the Constitution also, and I think that there also the word has the same meaning as in Art. 136.

Now, the question is whether the State government deciding an appeal under R. 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 (hereafter referred to as the Service Rules) is a tribunal within the meaning of Art. 136 of the Constitution. The State government made the service Rules in exercise of its rule-making power under section 112 read with section 49(2) of the Factories Act, 1947. The Service Rules relate to the qualifications and conditions of service of a Welfare Officer in a factory and are well within the rule-making power. Rule 6 of the Service Rules prescribes the conditions of service of a Welfare Officer. Sub-rules (1) and (2) of Rule 6 provide that the Welfare Officer must have the appropriate status corresponding to the status of other executive heads of the factory, and his conditions of services shall be the same as

of other members of the staff of corresponding status in the factory. Sub-rule (3) empowers the management to impose on the Welfare Officer one of more of the following punishments, viz., (i) Censure; (ii) Withholding of increments including stoppage at an efficiency bar; (iii) reduction to a lower stage in a time scale; (iv) suspension; and (v) dismissal or termination of service in any other manner. The first proviso to sub-rule (3) provides that no order of punishment shall be passed against the Welfare Officer unless he has been informed of the grounds on which it is proposed to take action and given a reasonable opportunity of defending himself against the action proposed to the taken in regard to him. The second proviso to sub-rule (3) imposes the further safeguard that the management cannot impose any punishment on him other than censure except with the previous concurrence of the Labour Commissioner, Punjab. Sub-rule (4) provides that before passing order on a reference under the last proviso, the Labour Commissioner shall give the Welfare Officer an opportunity of showing cause against the proposed action, and, it necessary, may hear the parties in person. Sub-rule (5) provides that if the Labour Commissioner refuses to give his concurrence, the management may appeal to the State Government within thirty days from the date of the receipt of such refusal. Sub-rule (6) provides that the Welfare Officer upon whom the punishment of dismissal or termination of service is imposed may appeal to the State Government against the order of punishment within thirty days from the date of the receipt of the order by him. The decision of the State Government under both sub-rr. (5) and (6) is made final and binding. Sub-rule (7) empowers the State Government to pass such interim orders as may be necessary pending the decision of the appeal filed under sub-r. (5) or sub-r. (6). If the management imposes a punishment without making a reference to the Labour Commissioner and without obtaining his concurrence, the order of the management is a nullity and is liable to be set aside on this ground alone on an appeal by the Welfare Officer under sub-r. (6). On the other hand, if the action of the management does not amount to a punishment an appeal under sub-r. (6) is incompetent and is liable to be dismissed on that ground.

On an appeal under sub-r. (6), the dispute is whether the action of the management amounts to a punishment and if so, whether the punishment should be imposed. The dispute concerns the civil rights of management and the Welfare Officer. The State Government is empowered to decide this dispute between the two contending parties. Since the State Government is empowered to give a decision, it may either confirm the punishment or set it aside and pass consequential orders such as an order of reinstatement. As a matter of fact, in the instant case the State Government passed an order of reinstatement. By the express words of sub-r. (6) of R. 6, the decision of the State Government is made final and binding. The appellate decision conclusively determines the rights of the contending parties with regard to the matter in controversy between them. The appellate function and the power of conclusive determination of civil rights of the parties with regard to matters in controversy between them indicate that the State Government is under a duty to act judicially and to decide the dispute solely by ascertaining the facts on the materials before it and by the application of the relevant law on the point. As the rule does not prescribe any procedure for the hearing of the appeal, the State Government may devise its own procedure consistently with its judicial duty. Normally, the State Government has the advantage of enquiries with regard to the subject-matter of the dispute at two previous stages, viz., once by the management under sub-r. (3) and again by the Labour Commissioner under sub-r. (4). The State Government may also call upon the parties to make their representations in writing, at the appellate stage. As a matter of fact, in this case the parties were asked to make representation, and they did so. On ascertaining the relevant facts, the State Government may decide whether having regard to the relevant law, viz., the ordinary law of master and servant as modified by the industrial law, the action of the management amounts to a punishment, and if so, whether such punishment should be imposed. A consideration of all

these matters shows that the State Government deciding an appeal under R. 6(6) of the Service Rules is vested with the judicial powers of the State, and satisfies the test of a tribunal as contemplated by Art. 136 of the Constitution. It follows that the preliminary objection that the appeal under Art. 136 does not lie, must be rejected.

On the merits, the respondent has very little to say. The management did not seek to impose any punishment on the Welfare Officer. It did not hold any enquiry with regard to any charge against the respondent. Under the conditions of service, the management was entitled to terminate the services of the respondent on payment of one month's salary in lieu of notice. In accordance with the conditions of service, the management terminated his employment. In no sense was this order of termination of employment a punishment within the meaning of sub-r. (3) of R. 6 of the Service Rules. The order of the management did not entail any evil consequences to the respondent; it did not deprive him of any right to which he was entitled. As the action of the management was not an order of punishment, the respondent was not entitled to appeal from this order to the State Government, nor was the State Government entitled to order his reinstatement. The appeal as also the order of the State Government passed on the appeal are both misconceived. The appellate order is not only erroneous but also without jurisdiction, and is liable to be set aside.

Appeal allowed.

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