Dev Singh and Others

Vs

The Registrar Punjab and Haryana High Court and Others

Civil Appeal No. 1278 of 1982

(CJI R. S. Pathak, V. Khalid JJ)

15.04.1987

JUDGMENT

KHALID, J. -

1. The appellants were the employees in the ministerial establishments of the courts at Ferozepur and Zira having entered into service varying from the years 1952 to 1965. They are members of the Punjab Civil Courts Clerks Association. On July 24, 1980, there was an incident in the court of Shri N. S. Mundra, Judicial Magistrate, 1st Class, Zira. On the day, one Jagdish Lal, a Senior Ahlmad of the court was slapped. He is one of the appellants in this appeal. On the day he was slapped, he presented a representation to the District and Sessions Judge Shri Nehra. An enquiry was directed to be held by the Senior Sub-Judge, Ferozepur into the incident. In this enquiry, it was found that Shri Mundra, Judicial Magistrate, Zira slapped Jagdish Lal. This incident caused resentment in the Association and the Association, therefore, felt that something should be done to demonstrate this resentment. Accordingly, it was decided by the Association that a request should be made to the District and Sessions Judge, Ferozepur, to transfer Jagdish Lal from the court at Zira to any other court so that calm could be be restored. The appellants among others met the District and Sessions Judge for this purpose on 28th July 1980. It is alleged that the Sessions Judge did not accede to the request of the representatives of the Association to plead their case before him. This aggravated the situation. Though the association and their representatives including the appellants were keen to resolve the matter, the District and Sessions Judge adopted a hardened attitude. The matter came to the notice of the High Court. An enquiry by Justice S. P. Goyal of the High Court of Punjab and Haryana was directed to be held and it was scheduled for August 9, 1980. He was to reach the Canal Rest House at 4.00 p.m. but he could reach only at 7.30 p.m. At that time the District and Sessions Judge, along with other judicial officers were present to receive him. A demonstration was organised by the subordinate court officials. There was continued slogan shouting from 4 p.m. till 7.30 p.m. before Justice Goyal's arrival. The appellants are said to have taken a prominent part in raising objectionable slogans. The slogans are :

> N. S. Mundra Murdabad; N. S. Mundra Hai Hai; Dakia Mahajan Superintendent Murdabad; B. S. Nehra Murdabad; B. S. Nehra naun Chalta Karo; Katal Nehra Murdabad; B. S. Nehra Murdabad.

The appellants were charge-sheeted for this conduct of theirs.

2. Justice Goyal alighted from his car and went inside the visiting room of the house. He called the representatives of the Association. Some of them met him. They came out after the meeting. There were other demonstrators waiting for the result of the talks. After they came back, those who raised

slogans disbursed. On August 11, 1980, the District Judge sent a letter to Shri G. S. Khurana, Chief Judicial Magistrate. Ferozepur, to hold preliminary enquiry into the demonstration by the court officials in front of the Canal Rest House and the slonges raised there. Mr. Khurana recorded the statements of some officers on the same day and submitted his report on that very day itself. According to his report, the appellants had taken a prominent part in raising objectionable slonges in question. On the basis of this report, the District Judge placed the appellants under suspension by this order dated August 14, 1980. On August 12, 1980, the District Judge had intimated the High Court about the finding in the preliminary report and had sought guidance of the High Court. The appellants were supplied with the articles of the charges and statements of imputation etc. They gave their relies. While admitting that they had taken part in the demonstration on the day in question they denied that they had taken a prominent part in the demonstration as leaders in raising objectionable and defamatory slogans against their superior officers. A formal enquiry was ordered against these appellants. After a detailed enquiry it was found that the appellants had contravened inter alia rule 7(1) of the Government Employees (Conduct) Rules, 1966, and had thus acted prejudicially to the public order, decency and morality and there by contravened Rule 7(1) of the Government Employees (Conduct) Rules, 1966. The District Judge, Ferozepur in his capacity as the punishing authority then served a show cause notice on all the appellants as to why the penalty or dismissal from service be not imposed on them. The appellants submitted their explanation. After considering the replies, the District Judge, by his order dated November 17, 1980, imposed on them punishment of dismissal from service.

3. The appellants preferred a service appeal in the High court of Punjab and Haryana at Chandigarh. The High Court considered the various contentions raised by the appellants in detail and dismissed the appeal as having no merit. One of the employees who had also filed appeal before the High Court withdrew his appeal and is now reported to be practising law.

4. This appeal has, therefore, come up before us by special leave under Article 136, against the order of the Single Judge in the above mentioned service appeal.

5. We have given only the bare facts in this judgment for the reason that this Court issued notice ion the SLP for consideration of a preliminary point only which will be evident by the orders passed on December 3, 1981, January 4, 1982 and April 2, 1982.

Order of the Court on December 3, 1981

Issue show cause notice on SLP returnable on January 4, 1982, on the question as to whether the High Court in disposing of the appeal of the petitioners was acting in administrative capacity or as a Tribunal or as High Court. There will be interim injunction restraining the respondents from evicting petitioner No. 2 from government accommodation held by him on the condition that the said petitioner continues to pay rent or compensation at hitherto charges, pending notice.

Order of the Court on January 4, 1982

Special leave petition to be heard on the question whether the High Court in disposing of the appeal of the petitioners was acting in an administrative capacity under Article 235 or as a Tribunal or as the High Court. The special leave petition to be heard on February 9, 1982 on this question. Stay to continue till then.

Order of the Court on April 2, 1982

Special leave granted. Printing of records and filing of statement of case dispensed with. Security dispensed with. Appeal will be heard on present papers on the preliminary issue as to whether the High Court in disposal of appeal was acting in administrative capacity under Article 235 or as Tribunal or as a High Court and the circumstances in which the appeal was maintained, if so. Hearing of appeals will be fixed on second Tuesday in July 1982 peremptorily subject to overnight's part heard.

From the above orders it is clear that the question that is to be decided in this appeal is whether an appeal under Article 136 lies to this Court from the order under challenge. That being so, it is necessary to consider the nature of the appeal before the High Court and the rules governing that appeal, before discussing the question of law raised by the appellant's counsel with reference to various authorities of this Court, to contend that article 136 was attracted.

6. The appointment of the Ministerial Officers of the District Courts and Courts of Small Causes and their suspension and removal are provided under Section 35 of the Punjab Courts Act, 1918. That Section reads as follows :

> 35(1) The ministerial officers of the District Courts and Courts of Small Causes shall be appointed and may be suspended or removed by the Judges of those courts respectively.
>
> (2) The ministerial officers of all courts controlled by a District Court, other than Courts of Small Causes; shall be appointed, and may be suspended or removed by the District Court.
>
> (3) Every appointment under this section shall be subject to such rules as the High Court may prescribe in this behalf, and in dealing with any matter under this section, a Judge of a court of Small Causes shall act subject to the control of the District Court.
>
> (4) Any order passed by a District Judge under this section shall be subject to the control of the High Court.

7. The High Court framed rules under this section for the subordinate services attached to or controlled by District Courts. These rules apply to subordinate services attached to Civil Courts other than the High Court, namely to ministerial and menial establishment of District and Sessions Judge, Sub Judge and Courts of Small Causes. Chapter 18-A of the Rules is the one relevant for our purpose. A close study of the scheme and the various provisions of Chapter 18-A would make it abundantly clear that the appointments, promotions, punishments etc. of the ministerial officials of the courts subordinate to the High Court, were fully within the powers of the District and Sessions Judge subject to the control of the High Court. Chapter 18-A is captioned 'control'. Though there were changes effected by notifications issued by the State of Punjab regarding appointments, promotions in other services after the coming into force of the Government of India Act, 1935, it is enough to note for our purpose that the appointment, promotion and punishment of ministerial officials in the District or other Civil Courts continued to be governed by the rules in Chapter 18-A of the High Court Rules and Orders.

8. Control in Chapter 18-A is the same as control under Article 235 of the Constitution of India. Article 233, 234 and 235 of the Constitution of India deal with the High Courts control over the

subordinate judiciary. Article 227 deals with the power of superintendence over all courts by the High Court. Its predecessor section in the Government of India Act, 1935 was Section 224 which dealt with administrative functions of the High Court. Article 233 deals with the appointment of District Judges and Article 234 with the recruitment of persons other than the District Judges to the judicial service. Article 235 deals with the control over subordinate courts and the control under this article is wider than the control under the corresponding provision of the Government of India Act. For our purpose, it is sufficient to note that Chapter 18-A contains provisions relating to the control of the High Court over the subordinate judiciary.

9. For the purpose of this appeal, we are concerned only with Rules IX and X of the rules in Chapter 18-A. Rule IX deals with punishment. We extract the entire section since it would be profitable to have a correct look at this section.

> IX. Punishment. - (1) The following penalties may for good and sufficient reasons be imposed upon members of the ministerial staff :
>
> (i) Censure,
>
> (ii) Fine of an amount not exceeding one month's salary for misconduct or neglect in the performance of duties,
>
> (iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by neglecting or breach of orders.
>
> (iv) withholding of increments or promotion including stoppage at efficiency bar,
>
> (v) Suspension
>
> (vi) Removal, and
>
> (vii) Dismissal.
>
> (2)(a) Any of the above penalties may be inflicted by the District Judge on the ministerial officers of his own Court of Small Causes, and on the menials of his own court.
>
> (b) The Judge of a Court of Small Causes may inflict any of the above penalties on the ministerial officers or menials of his own court.
>
> (c) The District Judge may, with the previous sanction of the High Court, delegate to any Subordinate Judge the power to inflict penalties given in clause (a) to be exercised by the Subordinate Judge in any specified portion of the district subject to the control of the District Court.
>
> Note :- This delegation has been made to the Senior Sub-Judge, 1st Class, in each district in regard to the process-serving establishment of all courts in the district except that of the District Judge's Court and Court of the Judge, Small Causes, Lahore, Amritsar and Delhi.
>
> (d) Any Subordinate Judge may fine, in an amount not exceeding one month's salary,

any ministerial officer of his own Court for misconduct or neglect in the performance of his duties.

(e) The Senior Judge may inflict any of the above penalties on menials of his own court or the courts of other Subordinate Judges in the same district.

10. In sub-rule (1), eight penalties are categorised, Sub-rule (2) enables the District Judge to inflict any of the penalties mentioned in sub-rule (1) Rule X(2)(c) enables the District Judge, with the previous sanction of the High Court, to delegate to any Subordinate Judge the power to inflict penalties given in clause (a). Then comes the important section that deals with appeals i.e. Rule X. We think it useful to extract the rule in full :

X. Appeals. - (1) The District Judge may on appeal or otherwise reverse or modify any order made under rule IX(2) by any court under his control including a Court of Small Causes, and his order shall be final :

Provided that nothing in this rule shall preclude the High Court from altering where it deems fit any such appellate order of a District Judge on petition by an aggrieved person or otherwise :

Provided further that the District Judge shall not enhance any punishment but should, if he considers enhancement desirable, refer the case to the High Court for orders.

(2) Appeals against penalties inflicted by a District Judge shall lie to the High Court in the following cases only -

(a) Penalties mentioned in Rule IX(iii) to (viii) in respect of ministerial servants, holding permanent and pensionable posts;

(b) Orders of substantive appointment by promotion or otherwise to a permanent and pensionable post the maximum pay of which is Rs. 75 or more per mensem;

(c) Orders of temporary appointment which is to last more than three months or has in fact lasted more than three months in respect of posts the maximum pay of which is Rs. 75 or more per mensem;

(3) Persons appealing to the High Court under this rule shall do so by petition. Such petition, accompanied by a copy of the order complained against, shall be presented to the District Judge who passed the order within one month of the date of such order (the period between the date of application for the copy and the date on which is supplied being excluded). The District Judge will forward the petition to the Registrar of the High Court without unnecessary delay, and in forwarding the same he will be at liberty to record any remarks which he may wish to make concerning any matter stated in the petition.

After reading the petition, the High Court may either -

(a) summarily reject it without hearing the petitioner;

(b) refer it to the District Judge for report and on receipt of such report reject the

petition without hearing the petitioner; or

(c) hear the petitioner, and in cases where other persons are held to be concerned in the subject of the petition, such other person in open court.

Nothing in these rules shall debar the High Court or a District Judge, from altering, if deemed fit, any order of punishment or appointment not providing for above which may be passed by a District Judge, Senior Subordinate Judge or the Judge of a Small Causes Court in respect of ministerial or menial establishment when an aggrieved person petitions or otherwise. District and Sessions Judges should not, therefore withhold any petition addressed to the High Court whether an appeal lies to it in the case or not under these rules. In a case in which no appeal lies the District and Sessions Judge should forward it without any comments and relevant documents unless he wishes to do so or is so required by the High court.

(4) Petitioners are forbidden to attend personally at the High Court unless summoned to do so. Orders on their petitions will be communicated to them through the District Judge concerned.

(5) In order that a dismissed official may be able to exercise his right of appeal, the charge against him should be reduced to writing, his defence should either be taken in, or reduced to writing and the decision on such defence should also be in writing. The record of the charge, defence and decision should in all cases be such as to furnish sufficient information to the appellant authority to whom the dismissed official may prefer an appeal.

(6) Establishment orders, in which an appeal lies to the High Court as a matter of right, should state briefly the claims of the person appointed as well as those of their seniors, if any, who are considered unfit for the appointments in question, and where the order of seniority has not been followed the reasons for departure from it should be stated.

11. Rule X(1) deals with the powers of the District Judge to reverse or modify any order made under Rule IX(2) passed by any court under his control. This sub-section contains two provisos. The first proviso gives the High Court an absolute power to alter when it deems fit any order passed by the District Judge in appeal when an aggrieved person moves the High Court or even suo motu. The second proviso restricts the powers of the District Judge to enhance any punishment imposed and makes it subject to the orders of the High Court when such case is referred to the High Court for orders. Rule X(2) deals with appeals against penalties inflicted by District Judge as in the case on hand. This section provides that appeals shall lie to the High Court from orders imposing penalties by the District Judge, but not at all cases. Appeals lie only against order imposing penalties mentioned in Rule IX(iii) to IX(viii). In other words, an appeal does not lie when the District Judge passes an order imposing a penalty of censure or fine of not more than one months' salary for misconduct or neglect in the performance of duties.

12. We are not concerned here with the orders mentioned in Rule X(2)(b) and (c). Sub-rule (3) of Rule X deals with the procedure in filing appeals to the High Court. It states that appeals shall be by a petition. It obligates presentation of the petition to the District Judge who passed the order within the time prescribed therein. The District Judge is directed to forward the petition to the Registrar of

the High Court unnecessary delay. The District Judge is given powers to record his remarks which he may wish to make concerning any matter stated in the petition.

13. A reading of this sub-rule makes it abundantly clear that the appeal to be heard by the High Court is something which is has to do in exercise of its powers of control over the subordinate courts on the administrative side. The appeal has to be by a petition. It is to be routed through the District Judge who sends it to the Registrar of the High Court. These are the procedural formalities which normally govern appeals preferred before the High Court, on the administrative side. The permission given to the authority who imposes penalty to record his own remarks which he wishes to make concerning his own order is further proof of the fact that what the High Court has to consider is not a matter on the judicial side but one in its power of control and superintendence over the Subordinate courts. Appeals under the general law have their own procedure, which is different from the procedure detailed for the appeals under these rules : of the deciding authority forwarding the appeal through the proper channel to the controlling authority and of the freedom of the deciding authority to give its own remarks over and above the order already passed. This procedure robs the appeal to the High Court of characteristic of the normal appeal culminating in judicial orders. The matter will be further clear when we look at the procedure that is to be followed by the High Court in disposing of the appeals in this sub-section itself.

14. Rule X(3) enables the High Court to summarily reject the appeal without hearing the petitioner or refer it to the District Judge for report and on receipt of such report reject the petition without hearing the petitioner; secondly to hear the petitioner, and in cases where other persons are held to be concerned in the subject of the petition, such other person in open court. The procedure contained in this rule of hearing the petition is not similar to the procedure followed in regular judicial proceedings. Under these rules it is not obligatory for the High Court to hear the petitioner. It can go into the papers and reject it summarily without giving the petitioner an opportunity to be heard. It can also refer to the District Judge for report. The second method of disposal of this petition is to get a report from the District Judge and on receipt of such a report to dismiss it without hearing the petitioner and thirdly to give a hearing to the petioner and also those who will be affected by the disposal of the petition. The manner of disposal of the petition. The manner of disposal of the petition under this rule makes it abundantly clear that this petition which the appellants call an appeal is not strictly a judicial proceeding involving a lis between two adversaries and the decision thereon is not a judicial decision. It has all the trapping of an administrative proceedings and an administrative decision.

15. Sub-clause (4) gives further insight into the nature of the appeal. It reads :

> (4) Petitioners are forbidden to attend personally at the High Court unless summoned to do so. Orders on their petitions will be communicated to them through the District Judge concerned.
>
> This again marks a complete departure from the normal judicial proceeding before a court. The petitioners are forbidden to attend personally at the High Court. They can do so only when summoned to do so. In a judicial proceedings, the party has a right to appear personally or through his counsel. Here that right is denied to him. This denial also robs the appeal of its character of a judicial proceeding. Orders passed by the High Court on such petitions will be communicated to the parties through the District Judge concerned.

16. A close study of these rules leaves no doubt in our mind that in deciding the appeal under rule X, the High Court exercises only a supervisory administrative control and does not act as a Tribunal disposing of an appeal involving a lis between two rival parties and arriving at a judicial decision. As indicated above Rule X is in Chapter 18-A which deals with control. This gives the administrative shade to the proceedings under this rule. Section 35(3) contains the rule making power. Section 35(4) stipulates that any order passed by the District Judge under this section shall be subject to the control of the High Court, thus fortifying our conclusion that the proceedings under this section and the decisions made thereunder are not judicial in nature. This appeal can be disposed of with this conclusion and it is not necessary to refer to the various authorities cited before us. However, for the completeness of the judgment, we think it proper to briefly refer to the various authorities cited before us, for and against the position that the High Court, while deciding this appeal acted as a Tribunal whose order can be challenged before this Court under Article 136 of the Constitution, though in our view the decisions cited dealt with situations different from the one we are dealing here.

17. In Durba Shankar Mehta v. Thakur Raghuraj Singh ((1955) 1 SCR 267 : AIR 1954 SC 520 : 9 ELR 494), a Constitution Bench of this Court was considering the jurisdiction of the Supreme Court under Article 136 of the Constitution in an election case. It is not necessary for our purpose to state the facts of the case here. It was contended that the special jurisdiction that was conferred in the Election Tribunal could be invoked by an aggrieved party only by means of an election petition, whose decision was final and conclusive and that therefore a challenge of the order of the Tribunal under Article 136 of the Constitution was not maintainable. To support this contention Article 329 and the non-obstante clause therein were called into aid. This Court repelled that contention as untenable though apparently attractive. This Court held that the expression Tribunal as used in Article 136 did not mean something as 'court', but included in its ambit all adjudicating bodies provided they were constituted by the State and were entrusted with the judicial as distinctive from purely administrative or executive functions. This decision has been pressed into service by the appellants' counsel to contend that the High Court in the case on hand having been constituted by the State and invested with judicial power was a Tribunal and therefore, its decision could be examined by this Court under Article 136. In our view, the decision cannot help the appellants because this decision clearly held that if the power exercised was administrative in nature it would exclude such a Tribunal from the ambit of Article 136.

18. In Bachhittar Singh v. The State of Punjab (1962 Supp 3 SCR 713 : AIR 1963 SC 395) an employee in PEPSU was dismissed by the Revenue Secretary. Against this order he preferred an appeal to the State Government. The Revenue Minister, PEPSU felt that the order of dismissal was too harsh and instead, he should be reverted and made an endorsement to that effect on the file, but no written order was served on the employee. After the merger of PEPSU with Punjab, the Revenue Minister, Punjab sent the file to the Chief Minister for his advice. The Chief Minister passed an order confirming the order of dismissal and the order was duly communicated to the employee. This order was challenged by him before the High Court. It was contended before the High Court by the State of Punjab, with success, that the order of dismissal started with proceedings beginning with the enquiry and culminating in punishment and that the first part involved a decision on evidence while the second part of taking action an administrative one. This dichotomy was ingeniously put forward before this Court to render the appeal not maintainable by contending that the order of dismissal was not a judicial order. This Court repelled that contention. This Court held that departmental proceedings taken against a government servant were not divisible in the sense in which the High Court understood it. There is just one continuous proceeding though there are two stages in it. Mudholkar, J. speaking for the Constitution Bench observed thus in repelling this

contention :

> There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the government servant are established or not and second is reached only if it is found that they are so established. That stage deals with the action to be taken against the govt. servant concerned. The High Court accepts that the first stage is a judicial proceedings and indeed it must be so because charges have to be framed, notice has to be given and the person concerned has to be given an opportunity of being heard. Even so far as the second stage is concerned, Article 311(2) of the Constitution requires a notice to be given to the person concerned as also an opportunity of being heard. Therefore this stage of the proceeding is no less judicial than the earlier one. Consequently any action decided to be taken against a government servant found guilty of misconduct is a judicial order and as such it cannot be varied at the will of the authority who is empowered to impose the punishment. Indeed, the very object with which notice is required to be given on the question of punishment is to ensure that it will be such as would be justified upon the charges established and upon the other attendant circumstances of the case. It is thus wholly erroneous to characterise the taking of action against a person found guilty of any charge at a departmental enquiry as an administrative order.

This judgment will not help us in this case. It only lays down a general principle that a departmental enquiry and a decision is one continuous process consisting of the enquiry part and the decision making part, both the aspect of which are judicial in nature, and the decision taken there in are in exercise of judicial power.

19. The counsel for the appellant placed strong reliance on the decision of a Constitution Bench in the case of Associated Cement Companies Ltd. v. P. N. Sharma ((1965) 2 SCR 366 : AIR 1965 SC 1595 : (1964-65) 27 FLR 204 : (1965) 1 Lab LJ 433) to contend that the decision of the High Court in this case was a judicial decision of a Tribunal within the scope of Article 136. In that judgment this Court considered most of its previous decisions relating to the scope of Article 136. What fell to be decided in that case was whether the State Government was a Tribunal when it exercised its authority under Rule 6(5) and 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952. It is necessary to briefly state the facts of the case. The employer-company appointed the first respondent as a Welfare Officer as required by the Factories Act. 1948 and as per the rules mentioned above. The letter of appointment stated that the first respondent was liable to be transferred from one unit of the company to another and that his services could be terminated by one month's notice or with one month's notice or with one month's pay in lieu thereof. The Welfare Officer was not prepared to go to a place to which he was transferred. Thereupon the company terminated the service of 1 respondent with one month's salary. He appealed to the State of Punjab under Rule 6(6). The State of Punjab ordered his reinstatement as the previous concurrence of the Labour Commissioner as required by rule 6(3) proviso (2) was not obtained, the company brought the matter to this Court under Article 136(1) of the Constitution. A preliminary objection was raised before this Court that the appeal to this Court was incompetent because the second respondent was not a Tribunal when it decided the appeal within the meaning of Article 136(1) of the Constitution. Rule 6(6) read as follows :

> 6(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.

It was by virtue of this Rule that the State Govt. got the powers of appeal. Dealing with the preliminary objection the Constitution Bench speaking through Gajendragadkar, C.J. referred to this Court's earlier decision in Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjunwals ((1962) 2 SCR 339 : AIR 1961 SC 1669 : (1961) 31 Com Cas 387), and observed as follows :

> 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 Article 136(1). Construing Article 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 all permanent tribunal 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. 362-62). 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 courts and tribunals alike was the judicial power of the state.

20. This court then referred to its decision in Jaswant Sugar Mills Ltd. v. Lakshmichand (1963 Supp 1 SCR 242 : AIR 1963 SC 677 : 24 FJR 53 : (1963) 1 Lab LJ 524 : (1965) 10 Fac LR 179), in which the finding that an appeal under Article 136(1) against the order of a Conciliation Officer was incompetent was considered. Under clause (29) of the order promulgated in 1954 under the U.P. Industrial Disputes Act 1947, the Conciliation Officer could grant or refuse permission to alter the terms of employment of workmen at the instance of the employer. This Section did not suit the employer. That was challenged before this Court. This Court held that the Conciliation Officer 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 statutory imposed on the employers' rights and was not authorised to pronounce a final and binding decision in any dispute. Regarding the conclusion in that case this Court observed as follows :

> "The condition precedent for bringing a tribunal within the ambit of Article 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 Article 126 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 rights 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 an 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'".

20. Then dealing with the question whether the State Government when it exercised its authority

under rule 6(5) and rule 6(6) was a Tribunal or not, this Court observed as follows :

The question which we have to decide in the present appeal is whether the State Government is a tribunal when it exercises its authority order Rule 6(5) or Rule 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 courts and which are intended to help the court in reaching its decisions. The requirements of procedure which is followed in courts and 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 Rule 6(5) and Rule 6(6). But as we 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 to 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 Statute and can be described as a part of the State's inherent power exercised in discharging its judicial functions. Applying this test there can be no doubt that the power which the State Government exercise under Rule 6(5) and Rule 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 Officer. 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 Govt. 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 Rule 6(5) and Rule 6(6). We feel no hesitation in holding that it is a Tribunal within the meaning of Article 136 (1).

What follows from this case and the authorities referred therein is this : The State is invested in some cases with a power to decide controversies between parties. This power is undoubtedly one of the attributes of the State and that is called the judicial power of the State. What has to be remembered is that this power is exercised to resolve controversies between parties. In Associated Cements case ((1965) 2 SCR 366 : AIR 1965 SC 1595 : (1964-65) 27 FJR 204 : (1965) 1 Lab LJ 433) also, this Court took notice of the fact that a dispute existed between the management and its welfare officer. It was held that there existed a lis the decision of which lis was rendered by the State in exercise of its judicial power. This was the test that has to be applied to find out whether an order is a judicial order or not.

21. In Engineering Mazdoor Sabha v. Hind Cycles Limited Bombay (1963 Supp 1 SCR 625 : AIR 1963 SC 874 : (1962) 2 Lab LJ 760 : (1963) 6 Fac LR 103 : (1963-64) 24 FJR 245), the question considered by a Constitution Bench was whether the decision of an arbitrator to whom industrial disputes were voluntarily referred under Section 10-A of the industrial Dispute Act 1947, was quasi-judicial in character and his decision amounted to a determination or order under Article 136(1) of the Constitution of India. This Court held that for invoking Article 136(1), two conditions must be satisfied - (1) The proposed appeal must be from any judgment, decree, determination, sentence or order, that is to say, it must not be against a purely executive or administrative order. If the determination or order giving rise to the appeal is a judicial or quasi-judicial determination or order the first condition is satisfied. (2) The second condition imposed by the article is that the said determination or order must have been made or passed by any court or Tribunal in the territory of India. These conditions therefore, require that the order complained against must have a judicial or

quasi-judicial character and the authority whose order is complained against must be a court or a Tribunal. Unless both the conditions are satisfied. Article 136(1) cannot be invoked. The decision of the arbitrator it was held could not characterised as quasi-judicial one, but the power of the arbitrator is not exercise of the sovereign power by the State. He gets the power to adjudicate by virtue of the authority given by the parties. It was held that an appeal from the order of the arbitrator did not lie under article 136(1) of the Constitution.

22. In Indo-China steam Navigation Co. Ltd. v. Jasjit Singh, Additional Collector of Customs ((1964) 6 SCR 594 : AIR 1964 SC 1140 : ((1964) 6 SCR 594 : AIR 1964 SC 1140 : (1964) 34 Com Cas 435 : 1964 (2) Cri LJ 234) question debated was whether the Central Board of Revenue exercising its appellate power under Section 190 of the Sea Customs Act or the Central Government exercising its revision jurisdiction under Section 191 could be held to be a Tribunal under Article 136. This court repeated the principles laid down in the earlier decisions that two conditions have to be satisfied before an appeal could be entertained in this court under Article 136; the order impugned must be an order of a judicial or quasi-judicial character and should not be purely an administrative or executive order; and that the said order should have been passed either by a court or a Tribunal in the territory of India. After examining the earlier decisions and the tests laid down therein and also after examining the procedure prescribed in the Act in relation to the adjudication of disputes under these sections, it was held that the Central Board of Revenue and the revisional authority the Central, Government had the character of a Tribunal under Article 136 of the Constitution and thus the preliminary objection that the appeal was not maintainable was overruled. Since great stress was laid by the learned counsel for the appellant on this authority we would like to extract the relevant portion on which such reliance was placed to distinguish it from the facts of our case :

> The fact that the status of the Customs Officer who adjudicates under Section 167(12-A) and Section 183 of the Act is not that of a Tribunal, does not make any difference when we reach the stage of appeal or revision. A period of limitation is prescribed for the appeal a procedure is prescribed by Rule 49 that the appeal or revision must be accompanied by a copy of the decision or order complained against, and the obvious scheme is that both the appellate and the revisional authorities must consider the matter judicially on the evidence and determine it in accordance with law. It is obvious that heavy fines are imposed in these proceedings and the confiscation orders passed may affect ships of very large value. By this appeal or revisional application the ship owner naturally contends that the order of confiscation is improper or invalid and he sometimes urges that the fine imposed is unreasonable and excessive. Where disputes of this character are raised before the appellate or the revisional authority, it would be difficult to accede to the argument that the authority which deals with these disputes in its appellate or revisional jurisdiction is not a Tribunal under Article 136. These authorities are constituted by the legislature and they are empowered to deal with the disputes brought before them by aggrieved persons. Thus the scheme of the Act the nature of the proceedings brought before the appellate and the revisional authorities extent of the claim involved, nature of the penalties imposed and the kind of enquiry which the Act contemplates, all indicate that both the appellate and the revisional authorities acting under the relevant provisions of the Act constitute Tribunals under Article 136 of the Constitution, because they are invested with the judicial power of the State, and are required to act judicially. Therefore, we must over-rule the preliminary objection raised by the Additional Solicitor General and proceed to deal with the appeal on the merits.

This judgment can be easily distinguished from the case on hand on the finding that the High Court in this case, as already indicated by us, was acting purely administratively and was not making a judicial decision and the procedure adopted was totally different from the procedure in a court. This decision, therefore cannot create any hurdle for our conclusion against the appellants.

23. In APHLC v. M. A. Sangma ((1978) 1 SCR 393 : (1977) 4 SCC 161 : AIR 1977 SC 2155), this Court was dealing with the jurisdiction of the Election Commission to decide the question of a symbol to the parties contesting the election. It was held that the decision from the Election Commission was amenable to appeal under Article 136 of the Constitution of India since the powers were conferred on the Election Commission by rules, that the Election Commission was dealing with the matter between two rival parties and that the decision taken was a judicial decision. Here again, the court reiterated the several tests to determine whether a particular body or authority was a Tribunal within the ambit of Article 136 or not. These tests are not exhaustive. The two necessary prerequisites for the authority to come within Article 136(1) are that it must be constituted by the State and invested with some judicial power of the State. These two tests, it was held, were unfailing one, while some of the other test or tests may not be present. At pages 409 and 410 the matter is made abundantly clear in the following statement of law by the Court : (SCC pp. 176-77, paras 37 and 38)

There is thus lis between two groups of the Conference. The commission is undoubtedly the specified and exclusive adjudicating authority of this lis. The Commission is created by the Constitution and the power to adjudicate the dispute flowing from Article 324 as well as from Rule 5 and is thus conferred under the law as a fraction of judicial power of the State. The commission has prescribed its own procedure in the Symbols Order, namely to give hearing to the parties when there is a dispute with regard to recognition of regarding choice of symbols .....

To repeat the power to decide the particular dispute is a part of the State's judicial power and that power is conferred on the Election Commission by Article 324 of the Constitution as also by Rule 5 of the Rules. The principal and non-falling test which must be present in order to determine whether a body or authority is a Tribunal within the ambit of Article 136(1) is fulfilled in this case when the Election Commission is required to adjudicate a dispute between two parties. One group asserting to be recognised political party of the State and the other group controverting the proposition before it but at the same time not laying any claim to be that party.

25. We have considered the above decisions carefully. In our view, the principles laid down in these cases cannot help the appellants in support of the plea that the High Court while disposing of the appeal was acting as a Tribunal. The relevant provisions quoted in the earlier part of the judgment relating to the appeal in question, in our judgment clearly establishes that the High Court acted on the administrative side in deciding the appeal.

26. There is a clear distinction between courts of law exercising judicial powers and other bodies. Decisions by Courts are clearly judicial. That is not the case with bodies exercising administrative or executive powers. In certain matters even Judges have to act administratively and in so doing may have to act quasi judicially in dealing with the matters entrusted to them. It is only where the authorities are required to act judicially either by express provisions of the statue or by necessary implication that the decisions of such an authority would amount to a quasi judicial proceeding. When Judges in exercise of their administrative functions decide cases it cannot be said that their decisions are either judicial or quasi judicial decisions.

27. Every decisions or order by an authority which has a duty to act judicially is not subject to appeal to this Court. Article 136 contemplates appeals to this Court only from adjudications of courts and tribunals. Such adjudications must doubtless be judicial. This does not mean that every authority which is required to act judicially either by its constitution or by virtue of the authority conferred upon it is necessarily a tribunal for the purpose of Article 136. A tribunal whose adjudication is subject to appeal must beside being under a duty to act judicially be a body invested with the judicial power of the State.

28. In the appeal before the High Court, the High Court was following its own procedure a procedure not normally followed in judicial matters. The High Court was not resolving any dispute or controversy between two adversaries. In other words, while deciding this appeal there was no lis before the High Court. The High Court was only exercising its power of control while deciding this appeal. We have therefore no hesitation to hold that the appeal is not maintainable. However, we do not propose to dismiss it without leaving any remedy to the appellants. We direct the Registrar to transfer the records of the case to the Punjab and Haryana High Court requesting the High Court to take this petition on its file as a petition under Article 226 and dispose of the matter as expeditiously as possible on the available pleadings and documents. There will be no order as to costs.

</html