Jaswant Sugar Mills Ltd., Meerut vs Lakshmichand And Others on 25 September, 1962

Equivalent citations: 1963 AIR 677, 1963 SCR SUPL. (1) 242

Author: J.C. Shah

Bench: J.C. Shah, Bhuvneshwar P. Sinha, P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
JASWANT SUGAR MILLS LTD., MEERUT

Vs.

RESPONDENT:
LAKSHMICHAND AND OTHERS

DATE OF JUDGMENT:
25/09/1962

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1963 AIR 677 1963 SCR Supl. (1) 242
CITATOR INFO :
RF 1964 SC1140 (13)
R 1964 SC1154 (27,28)
R 1965 SC1595 (22,42)
RF 1977 SC2155 (24)
RF 1987 SC1629 (16)
RF 1992 SC2219 (55,56)

ACT:
Industrial Dispute-Dismissal of workmen-Application for permission before Conciliation Officer-Direction of Conciliation Officer-Appeal to Appellate Tribunal, if maintainable Grant of special leave-Competence-U. P. Industrial Disputes Act, 1947 (U. P. 28 of 1947),ss. 3, 8-Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950), ss. 2 (c) cl. (iii), 4-Constitution of India, Art.

136.

HEADNOTE:
The workmen of the appellant company resorted to direct action in order to enforce their demands for bonus, leave etc. Thereupon, the company served charge sheets upon sixty-three workmen. The enquiry officer who investigated the charges found that all the workmen were guilty of sabotage and slowdown strike and that they were liable to be dismissed. But as at that time a dispute between the company and its workmen relating to payment of bonus was pending before the Industrial Tribunal, the conditions of service of the workmen could not, by virtue of cl. 29 of the order issued in 1954 by the Governor
243
of Uttar Pradesh under the U. P. Industrial Disputes Act, 1947, be altered nor the workmen discharged without the previous permission of the Conciliation Officer. An application was made to the Conciliation Officer for permission to dismiss the workmen. The Officer granted permission in respect of only eleven workmen on the ground that the rest of the workmen were mere passive participants in the go-slow campaign. The company preferred an appeal to the Labour Appellate Tribunal but it was dismissed as incompetent on the ground that the Conciliation Officer was not an authority within the meaning of s. 2 (c) (iii) of the Industrial disputes (Appellate Tribunal) Act, 1950. The company then obtained special leave to appeal to the Supreme Court against the direction of the Conciliation Officer and also against the order of the Labour Appellate Tribunal.
Held, that a Conciliation Officer under cl. 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 as he is not invested with the judicial power of the State, he cannot be regarded as a tribunal within the meaning of Art. 136 of the Constitution of India. Consequently, an appeal under that Article is not competent against the direction given by the Conciliation Officer.
Bharat Bank Ltd. v. Employees of Bharat Bank Ltd., [1950] S. C. R. 459, Province of Bombay v. K. S. Advani, [1950] S. C. R. 621, Atherton West & Co. Ltd. v. Suti Mill Mazdoor Union, [1953] S. C. R. 780 and Durga Shankar Mehta, v. Thakur Raghuraj Singh, [1955] 1 S, C. R. 267, relied on.
Held, further, that an "authority" under s. 2 (c) (iii) of the Industrial Disputes (Appellate Tribunal) Act, 1950, to be an industrial tribunal must be a body constituted for the purpose of adjudication of industrial disputes under a law made by the State; since a Conciliation Officer is not invested with any such power, he cannot be regarded as an

"authority" within the meaning of that section. Accordingly, an appeal against the order of the Conciliation Officer is not maintainable under s. 4 of the Industrial Disputes (Appellate Tribunal) Act, 1950.
Sassoon & Alliance Silk Mills Co. Ltd. v. Mill Mazdoor Sabha, [1955] 1 L. L. J. 70, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : CIVIL Appeal Nos. 37 and 38 of 1961.

Appeals by special leave from the judgment and orders dated July 9, 1956, and May 9, 1956, of the Labour Appellate Tribunal of. India, Lucknow, and the Additional Regional Conciliation Officer, Meerut, in Appeal No. 111-111 of 1956 and P. D. Case No. 15 of 1956 respectively.

Veda Vyasa, S. K. Kapur, J. B. Dadachanji, Prem Nath Chadha and Ganpat Rai, for the appellants.

A.S. R. Chari, R. K. Garg, S. O. Agarwala and P. C. Agarwala, for the respondents.

1962. September 25. The judgment of' the Court was delivered by SHAH, J.-Two questions arise in limine in these appeals:

> (1) Whether an appeal may be entertained in exercise of powers under Art. 136 of the Constitution against a direction of the Conciliation Officer issued in disposing of an application under cl. 29 of the Order promulgated by the Governor of Uttar Pradesh under the U. P. Industrial Disputes Act, 1947 ; and (2) Whether against the direction issued by the Conciliation Officer exercising authority under cl. 29 of the Order an appeal lay to the Labour Appellate Tribunal under the Industrial Disputes (Appellate Tribunal) Act, 1950.

It would be necessary to consider the merits of the appeal in the event of an affirmative answer on either of these questions.

Facts which have a bearing on the preliminary questions are briefly these jaswant Sugar Mills Ltd.-hereinafter referred to as 'the Company'-owns factories at Meerut in the State of Uttar Pradesh for manufacturing sugar and straw boards. On December 13, 1955, the Company received a notice relating to demands for bonus, leave, retaining allowance etc., from the Action Committee of one of the Labour Unions of the workmen employed in the Sugar Factory: It is the case of the Company that on December 26, 1955, there was a meeting of the workmen and certain employees exhorted the workmen to resort to "'direct action"

> and in pursuance thereof the workmen adopted a "slow-down strike" which resulted in great reduction in the operations of crushing sugarcane, and production of sugar. The Company thereupon served charge-sheets upon sixty-three workmen charging

them individually and collectively for doing acts calculated to destroy the machinery of the factory and for deliberately adopting a policy of "go-slow" and refusing to attend work assigned to them at the appointed time. The Enquiry Officer who investigated the charges against the delinquent workmen, by his order dated January 9, 1958, held that all the workmen were guilty of "'sabotage and slowdown strike" and were therefore liable to be dismissed. But at that time a dispute relating to payment of bonus was pending before the Uttar Pradesh State Industrial Tribunal in which the Company and the workmen were concerned, and the conditions of service of the workmen could not, by virtue of cl. 29 of the Order issued in 1954 by the Governor of Uttar Pradesh under the U. P Industrial Disputes Act, 1947, be altered, and the workmen could not be discharged without the previous permission of the Conciliation Officer. An application was accordingly submitted by the Company to the Regional Conciliation Officer, Meerut, for permission to dismiss the workmen who were, on the finding of the Enquiry Officer, concerned with "'slow-down strike and other illegal tactics" adopted by them with a view to cause loss to the Company. The Conciliation Officer granted permission in respect of only eleven workmen, for in his view, the remaining fifty-two workmen were mere " passive, participants in the go-slow campaign", and that it "would not be fair and justifiable to grant permission to dismiss those workmen from service". The Company preferred an appeal to the Labour Appellate Tribunal, Lucknow, against the direction of the Conciliation Officer refusing to grant permission to dismiss fifty-two workmen, but the appeal was rejected, because in the view of the Appellate Tribunal the Conciliation Officer was not an "authority" within the meaning of s. 2 (c) cl. (iii) of the Industrial Disputes (Appellate Tribunal) Act, 1950, and the appeal was therefore incompetent. The Company has, with special leave, preferred appeals against the direction of the Conciliation Officer, and the order of the Labour Appellate Tribunal. The order of the Conciliation Officer is challenged on the ground that in refusing permission to dismiss fifty-two workmen, the Conciliation Officer ignored the principles settled by this Court and the Labour Appellate Tribunal in cases dealing with applications for granting permission to discharge employees under s. 33 of the Industrial Disputes Act, 1947. In the appeal against the order of the Labour Appellate Tribunal, it is submitted that the Conciliation Officer was an "authority" within the meaning of s. 2 (c) cl. (iii) of the Industrial Disputes (Appellate Tribunal) Act, 1950 and the direction made by the Conciliation Officer was a decision within the meaning of s. 4 of that Act. Counsel for the workmen contended that the appeal against the direction given by the Conciliation Officer is not maintainable because that officer exercising authority under cl. 29 of the Order promulgated in 1954 under the U. P. Industrial Disputes Act, 1947, is neither a "Court' nor a 'Tribunal' within the meaning of Art. 136 of the Constitution and no appeal lies to this Court against the impugned direction.

Article 136(1) of the Constitution provides :

"'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".

By cl. (2) judgments, determinations, sentences and orders passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces are exempt from the operation of cl. (1). This Court is manifestly invested with jurisdiction to entertain appeals from judgments, decrees, determinations, sentences or orders in causes or matters passed by courts and tribunals except those constituted by or under any law relating to the Armed Forces. It is common ground that a Conciliation Officer exercising authority under cl. 29 of the Order made under the U. P. Industrial Disputes Act, 1947, is not a "court", and the impugned- direction does not amount to a judgment or decree. In determining whether an appeal still lies against the impugned direction of the Conciliation Officer, two primary questions fall to be considered:

> (1) whether the direction made by the Conciliation Officer is a determination or an order; and (2) whether the Conciliation Officer is a 'tribunal' within the meaning of the Act?

Reference to the detailed provisions of the U. P. Industrial Disputes Act and Orders made thereunder from time to time, will be made hereafter, but it may suffice at this stage to observe that the Order made by the Governor of Uttar Pradesh in 1954 authorised the State Government by Notification in the Official Gazettee to appoint Conciliation Officers, and by cl. 29 provided that during the pendency of any conciliation proceedings or proceedings before a Tribunal or an Adjudicator in respect of any dispute, an employer shall not alter the conditions of service to the prejudice of the workmen concerned in such dispute or discharge or punish any workman concerned in such dispute, save with the express permission of a Conciliation Officer irrespective of whether the dispute is pending before a Board or the Tribunal or an Adjudicator.

The Conciliation Officer is by cl. 29 authorised during the pendency of any Conciliation proceeding or proceedings before a Tribunal or an Adjudicator to permit the employer to alter to. the prejudice of the workmen concerned in such dispute the conditions of service applicable to them or to discharge or punish the workmen concerned in such disputes. If the direction of the Conciliation Officer which operates proportion vigor to authorise or to deny to the Company the exercise of its powers under the common law to terminate the employment of its workmen, amounts to an order or determination within the meaning of Art. 136, an appeal with special leave would be maintainable in this Court. The expression "determination" in the context in which it occurs in Art. 136 signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The expression "order" must have also a similar meaning, except that it need not operate to end the dispute. Determination or order must be judicial or quasi-judicial : purely administrative or executive direction is not contemplated to be made the subject-matter of appeal to this Court. The essence of the authority of this Court being judicial, this Court does not exercise administrative or executive powers i.e. character of the power conferred upon this Court, original or appellate, by its constitution being judicial, the determination or order sought to be appealed from must have the character of a judicial adjudication. The Conciliation Officer is authorised by cl. 29 to grant or withhold permission to determine the employment of a

workman concerned in a pending dispute or to alter to his prejudice conditions of his service. Clause 29 severely restricts the right of the employer to terminate employment according to the terms of the contract of employment, and the right is made exercisable upon the direction of the Conciliation Officer if at the time when the right is sought to be exercised, a dispute in which the employer and the employees are concerned, is pending before the Conciliation Officer or in an Industrial Tribunal. The true character of this direction must be examined in the light of the nature of the authority vested in the Conciliation Officer and its impact upon the rights of the parties. If the direction is purely administrative, it will not be subject to appeal to this Court.

Question whether a decision is judicial or is purely administrative, often arises when jurisdiction of the superior courts to issue writs of certiorari is invoked. Often the line of distinction between decisions judicial and administrative is thin : but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact : it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial : it is the duty to act judicially which invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially. Mukherjea, J., in The Province of Bombay v. K. S. Advani observed at p. 670 "there cannot indeed be a judicial act which does not create or imposes obligations ; but an act, x x x x x x is not necessarily judicial because it affects the rights of subjects. Every judicial act presupposes the application of judicial process. There is well marked distinction between forming a personal or private opinion about a matter, and determining it judicially. In the performance of an executive act, the authority has certainly to apply his mind to the materials before him ; but the opinion he forms is a purely subjective matter which depends entirely upon his state of mind. It is of course necessary that he must act in good faith, and if it is established that he was not influenced by any ex- traneous consideration, there is nothing further to be said about it. In a judicial proceeding, on the other hand, the process or method of application is different. "The judicial process involves the application of a body of rules or principles by the technique of a particular psychological method", vide Robson's justice and Administrative Law, p.

33. It involves a proposal and an opposition, and arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice, vide R. v. London County Council(2). It is not necessary that the strict rules of evidence should be followed : the procedure for investigation of facts or for reception of evidence may vary according to the requirements of a particular case. There need not be any hard and fast rule on such matters, but the decision which the authority arrives at, must not be his "subjective', 'Personal' or 'private' opinion.

(1) [1950] S.C.R. 621.

(2) [1931] 2 K. B. 215, 233.

It must be something which conforms to an objective standard or criterion laid down or recognised by law, and the soundness or otherwise of the determination must be capable of being tested by the same external standard. This is the essence of a judicial function which differentiates it from an administrative function ; and whether an authority is required to exercise one kind of function or the other depends entirely upon the provisions of the particular enactment. x x x x x Generally speaking where the language of a statute indicates with sufficient clearness that the personal satisfaction of the authority on certain matters about which he has to form an opinion finds his jurisdiction to do certain acts or make certain orders, the function should be regarded as an executive function." It may be observed that Mukherjea, J., was on the ultimate decision in the case, in the minority, but the principle enunciated by him had substantially the approval of the Court. Das, J., in the same case at p. 719 observed: "a person entrusted to do an administrative act has often to determine questions of fact to enable him to exercise his power. He has to consider facts and circumstances and to weigh pros and cons in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial function has to do. Both have to act in good faith. A good and valid administrative or executive act binds the subject and affects his rights or imposes liability on him just as effectively as a quasi-judicial act does. The exercise of an administrative or executive act may well be and is frequently made dependent by the legislature upon a condition or contingency which may involve a question of fact, but the question of fulfillment of which may, nevertheless, be left to the subjective opinion or satisfaction of the executive authority". To make a decision or an act judicial, the following criteria must be satisfied:

(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of preexisting legal rule;

(2) it declares rights or imposes upon parties obligations affecting their civil rights; and (3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Applying these tests, there is' little doubt that the Conciliation Officer in granting or refusing permission to alter the terms of employment of workmen, at the instance of the employer, has to act judicially. His decision is not made to depend upon any subjective satisfaction; he is required to investigate and ascertain facts, apply objective standards to facts found, and to declare whether the employer makes out a case for granting permission to alter the terms of employment of his employees. The U. P. Indus- trial Disputes Act and the Order framed thereunder do not lay down any specific procedure, but the duty cast upon him to decide after investigating facts by the application of objective standards involves an obligation to evolve a procedure consistent with the purpose and nature of the enquiry, which assures to the disputing parties an opportunity to present

their respective cases, and to substantiate the same by evidence and argument. Therefore the direction of the Conciliation Officer under cl. 29 'of the Order, cannot be said to be purely administrative.

But every decision or order by an authority under a duty to act judicially is not subject to appeal to this Court. Under Art. 136, an appeal lies to this Court from adjudications of courts and tribunals only. Adjudication of a court or tribunal must doubtless be judicial: but every authority which by its constitution or authority specially conferred upon it is required to act judicially, is not necessarily a tribunal for the purpose of Art. 136. A tribunal, adjudication whereof is subject to appeal, must beside being under a duty to act judicially, be a body invested with the judicial power of. the State. For the purpose of ascertaining whether the Conciliation Officer exercising powers under cl. 29 is invested with the judicial powers of the State, it is necessary to set out the nature of the powers and functions of the Conciliation Officer and the procedure, if any, prescribed for the exercise of those powers and functions under the Order issued by the Governor, and which was in force at the material time. A historical review of the emergence of the powers and functions of the Conciliation Officer in operation at the date when he passed the order impugned in these appeals has an important bearing. The Legislature of the United Provinces enacted the U.P. Industrial Disputes Act, XXVIII of 1947, to provide "for powers to prevent strikes and lock-outs, to settle industrial disputes and for other incidental matters". By s. 3 of the U. P. Industrial Disputes Act, the Local Government was authorised, if in its opinion it was necessary or expedient so to do for certain specified purposes to make by general or special order, provision, inter alia for appointing industrial courts and for referring any industrial dispute for conciliation or adjudication in the manner provided in the Order. The Governor of Uttar Pradesh on March 10, 1948, issued an Order in exercise of the powers conferred under ss. 3 and 8 of the U. P. Industrial Disputes Act, 1947. By cl. 1 of the Order power was conferred upon the Provincial Government to constitute Conciliation Boards for settlement of industrial disputes under the chairmanship of Conciliation Officers, and by cl. 2 the Provincial Government was authorised to appoint Conciliation Officers. By cl. 6 the Conciliation Board had to commence an inquiry into a dispute or matter brought before it and to endeavor to bring about a settlement of the same. Clause 7 prescribed the procedure to be followed by the Board in the course of the inquiry : the Board had to frame issues on points on which the parties were at variance and to endeavour to secure a settlement of the dispute. If no amicable settlement was reached, the Board investigated the dispute and recorded an award together with the reasons thereof on the issues on which the parties were at issue. The award made by the Conciliation Board was subject to appeal to the Industrial Court constituted under cl. 10 of the Order. By cl. 18 the Conciliation Board was invested with certain powers of a Civil Court under the Code of Civil Procedure, 1903, such as enforcing attendance of witnesses, compelling production of documents, inspection of any property or thing, including machinery etc. By cl. 19 provision was made for service of notice, summons, process or order issued by the Board in the manner prescribed by the Code 'of Civil Procedure, 1908. But these were the powers of the Conciliation Board, and not of the Conciliation Officer. The only statutory authority conferred upon the Conciliation Officer independently of the Board was authority under cl. 23 to permit modification of terms of employment or dismissal or discharge of workmen during the continuance of an enquiry under the U. P. Industrial Disputes Act or appeal therefrom and pending the issue of the orders of the State Government upon the, findings of the Board of Court. Under the Order promulgated in 1948, therefore, the Conciliation Board was

invested with authority analogous to that of an Industrial Tribunal under the Industrial Disputes Act, 1947. But the power to sanction discharge or dismissal of workmen during the continuance of the enquiry was vested exclusively in the Conciliation Officer, irrespective of whether the enquiry was pending before a Conciliation Board, or in appeal before the Industrial Court.. This Order was superseded by fresh Order which was promulgated in 1951. It was presumably because of the enactment of the Industrial Disputes (Appellate Tribunal) Act, 1950, by the Parliament which conferred authority upon the Labour Appellate Tribunal to entertain appeals in certain matters against the awards and decisions of the Industrial Tribunals that the necessity of reorientation of the scheme for adjudication of labour disputes under the U. P. Industrial Disputes Act arose. By the fresh Order rules were prescribed for constitution of Conciliation Boards Industrial Tribunals and Adjudicators. By this Order a Conciliation Board of which the Conciliation Officer was to be the Chairman was only to endeavour to bring about a settlement of dispute before it. If a settlement was brought about, the Conciliation Board prepared a memorandum of terms of the settlement arrived at and the same was submitted to the Labour Commissioner of the State' Where no amicable settlement was secured, the Board made a report setting forth the steps taken for ascertaining the facts and circumstances relating to the dispute and the attempts made for bringing about an amicable settlement. Power to make an award was taken away from the Conciliation Board, and was vested in the Industrial Tribunal. Powers exercisable under the Code of Civil Procedure under the previous Order were also taken away from the Conciliation Board but the authority to alter conditions of service during the pendency of proceeding before the Conciliation Officer or a Tribunal or an Adjudicator by cl. 23 remained with the Conciliation Officer of the area concerned irrespective of the fact whether a dispute was pending before a Board, Tribunal or an Adjudicator.

This Order was superseded by a fresh Order made in 1954. The scheme of the Order made in 1954 was similar to the scheme of the Order made in 1951. Disputes could be referred under this Order to the Conciliation Board which was to consist of the Conciliation Officer appointed by the State Government and two members-"one representing each of the parties to the dispute-appointed by the Conciliation Officer on the recommendation of the parties. The function of the Board was to prepare a memoratidum of a settlement, if any, reached before the Board or to report about the failure to bring about a settlement, but it had no power to make an award. By cl. 24 the Tribunal or the Adjudicator, but not the Board nor the Conciliation Officer, were vested with certain powers as were vested in the Civil Courts under the Code of Civil Procedure, 1908, such as summoning and enforcing the attendance of witnesses requiring the discovery and production of documents, issuing commissions in the examination of witnesses and inspection of any property or thing. Clause 29 (omitting the proviso thereto which is not material) was enacted as follows :-

> "During the pendency of any conciliation proceedings or proceedings before the Tribunal or an Adjudicator in respect of any dispute and where sub-clause (3) of clause 5 applies, for a further period of 30 days (excluding holidays but not annual vacations observed by courts subordinate to the High Court), an employer shall not-
>
> (a) alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings, or

> (b) discharge or punish, whether such punishment is by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of a Conciliation Officer of the area concerned, irrespective of the fact whether the dispute is pending before a Board or the Tribunal or an Adjudicator ;"

The scheme of the Order made by the Governor in 1954 was substantially the same as the Order which was promulgated in year 1951. The Conciliation Officer who was to be appointed by a Notification under cl. 2 by the State Government had two-fold functions. He was a member of the Conciliation Board and he functioned in that capacity under cls. 4, 5, 6 and 7 for the purpose of bringing about an amicable settlement of dispute. Authority to entertain applications submitted to the Conciliation Officer about an industrial dispute, existing or apprehended and to constitute a Conciliation Board were administrative duties in hi s capacity as a member of the Conciliation Board. His power independently of the Board wag invested in him only by cl.

29. The true nature of an order made by a Conciliation Officer under cl. 23 of the Order promulgated in 1951-and which was in terms substantially the same as cl. 29 of the 1954 Order., was examined by this Court in Athenian West & Co. Ltd. v. Suti Mill Mazdoor Union(1) where Bhagwati, J., announcing the judgment of the Court observed :

> "'It is clear that clause 23 imposed a ban on the discharge or dismissal of any workman pending the enquiry of an industrial dispute before the Board or an appeal before the Industrial Court and the employer, his agent or manager' could only discharge or dismiss the workman with the written permission of the Regional Conciliation Officer x x x concerned. Even if such written permission (1)[1953] S. C. R. 780.

was forthcoming the employer, his agent or manager might or might not discharge or dismiss the workman and the only effect of such written permission would be to remove the ban against the discharge or dismissal of the workman during the pendency of those proceedings. The Regional Conciliation Officer x x x concerned would institute an enquiry and come to the conclusion whether there was a prima facie case made out for the discharge or dismissal of the workman and the employer, his agent or manager was not actuated by any improper motives or did not resort to any unfair practice or victimisation in the matter of the proposed discharge or dismissal of the workman. But he was not entrusted, as the Board or the Industrial Court would be, with the duty of coming to the conclusion whether the discharge or dismissal of the workman during the pendency of the proceedings was within the rights of the employer, his agent or manager. The enquiry to be conducted by the Regional Conciliation Officer x x x x x concerned was not an enquiry into an industrial dispute as to the non-employment of the workman who was sought to be discharged or dismissed; which industrial dispute would only arise after an employer, his agent or manager discharged or dismissed the workman in accordance with the written permission obtained from the officer concerned. This was the only scope of the enquiry before the Regional Conciliation Officer x x x x x x x concerned and the effect of the written permission was not to validate the discharge or dismissal but merely to remove the ban on the powers of the employer, his agent or manager to discharge or dismiss the workman during the pendency of the proceedings. Once such written

permission was granted by him, that order made or direction issued by him was to be final and conclusive and was not to be questioned by any party thereto in any proceedings. The only effect of clause 24 (1) was to prevent any party to the pending proceedings from challenging the written permission thus granted by the officer concerned. x x x x once the written permission was granted by the officer concerned, the ban against the discharge or dismissal of the workman would be removed and the employer, his agent or manager could in the exercise of his discretion discharge or dismiss the workman but in that event an industrial dispute within the meaning of its definition contained in section 2 (k) of' the industrial Disputes Act, 1947, would arise and the workman who had been discharged or dismissed would be entitled to have that industrial dispute referred to the Regional Conciliation Board for enquiry into the same."

The essential characteristics of a "tribunal' within the meaning of Art. 136 were examined by Mahajan, J., and it was observed that in the Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.(1) ,tribunals which do not derive authority from the sovereign power cannot fall within the ambit of Art.

136. The condition precedent for bringing a tribunal within the ambit of Article 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." This view was adopted by the Court in Durga Shankar Mehta v. Thakur Raghuraj Singh(") where Mukherjea, J., observed : ""it is now well settled by the majority decision of this Court in the case of Bharat Bank Ltd. v. Employee8 of the Bharat Bank Ltd.(1) that the expression "'Tribunal" as used in Art. 136 does not mean the same thing as "'Court" but (1) [1950] S. C. R. 459.

(2) (1955) 1 S. C. R. 267.

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."

The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of' the State. Even administrative or executive authorities are often by virtue of their constitution, required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenue, Customs Authorities, Motor Vehicles Authorities, Income-tax and Sales-tax Officers are illustrations prima facie of such administrative authorities, who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed thereunder or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State. Their primary function is administrative and not judicial. 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 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, duty to follow fundamental rules of evidence (though not the strict rules of the Evidence Act), provision for imposing sanctions by way of imprisonment, fine, damages or mandatory or prohibitory orders to enforce obedience to their commands. The list is illustrative ;

some, though not necessarily all such trappings will ordinarily make the authority which is under a duty to act judicially, a 'tribunal'.

Mahajan, J., in Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.(1) observed at p. 476 (1) (1950) S.C. R. 459.

> "As pointed out in picturesque language by Lord Sankey L. C. in Shell Co. of Australia v. Federal Commissioner of Taxation(1), there are tribunals with many of the "'trappings of a Court" which, nevertheless, are not Courts in the strict sense of exercising judicial power. It seems to me that such tribunals though they are not full-fledged Courts, yet exercise quasijudicial functions and are within the ambit of the word "tribunal' in article 136 of the Constitution. It was pointed out in the above case that a tribunal is pot necessarily a Court in this strict sense because it gives a final decision, nor because it hears witnesses on oath, nor because two or more contending parties appear before it between whom it has to decide., nor because it gives decisions which affect the rights of subjects, nor because there is an appeal to a Court, nor because it is a body to which a matter is referred by another body. The intention of the Constitution by the use of the word 'tribunal' in the article seems to have been to include within the scope of article 136 tribunals adorned with similar trappings as Court but strictly not coming within that definition."

Reverting to the Order issued by the Governor of Uttar Pradesh in 1954 it is manifest that no procedure is prescribed for the investigation to be made by the Conciliation Officer, under cl. 29. He is not required to sit in public: no formal pleadings are contemplated to be tendered; he is not empowered to compel attendance of witnesses, nor is he restricted in making an enquiry to evidence which the parties may bring before him.' The Conciliation Officer is again not capable of delivering a determinative judgment or award affecting the rights and obligations of parties. He is not invested with powers similar to those of the Civil Court under the Code of Civil Procedure for eriforcing attendance of (1) [1931] A. C. 273.

any person and examining him on oath, compelling production of documents, issuing commissions for the examination of witnesses and other matters. He is concerned in granting leave to determine whether there is a prima facie case for dismissal or discharge of an employee or for altering terms of employment, and whether the employer is actuated by unfair motives; lie has not to decide whether the proposed step of discharge or dismissal of the employee was within the rights of the employer. His order merely removes a statutory ban in certain eventualities, laid upon the common law right of an employer to dismiss, discharge or alter the terms of employment according to contract between the parties. The Conciliation Officer has undoubtedly to act judicially in dealing with an application under cl. 29, but he is not invested with the judicial power of the State:

> he cannot therefore be regarded as a 'tribunal' within the meaning of Art. 136 of the Constitution.

We are not in this case called upon to decide whether the proceeding for a writ may lie under Art. 226 of the Constitution before a competent High Court against the order of the Conciliation Officer. We are concerned only to deal with the limited question whether he is a 'tribunal' within the meaning of Art. 136 of the Constitution having the attributes of the investment of the judicial powers of the State. It may be pertinent to note that provisions similar to cl. 29 of the Order issued under the U. P. Industrial Disputes Act, 1947, are to be found in s. 33 of the Industrial Disputes Act, 1947. By virtue of s.33 an employer during the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute is prohibited save with the express permission in writing of the authority before which the proceeding is pending, from altering to the prejudice of the workmen concerned in such a disputes the conditions of service applicable to them immediately before the commencement of the proceeding and from discharging or punishing, whether by dismissal. or otherwise, any workman concerned in such dispute for any misconduct connected with the dispute. Both the enactments place restrictions upon the power of the employer to terminate employment during the pendency of a dispute in which the employer and employee are concerned, and which is pending before a statutory authority. But whereas under cl. 29 the power to grant permission is exercisable only by the Conciliation Officer, the power under s . 33 is exercisable by the authority before whom the proceeding is pending. Section 33-A of the Industrial Disputes Act provides, in so far as it is material, that "'where an employer contravenes the provisions of section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a comp- laint in writing, in the prescribed mariner to such Labour Court, tribunal or National Tribunal and on receipt of such complaint that Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly". Contravention by an employer of the provisions of s. 33 when the proceeding is pending before the Conciliation Officer or the Board does not attract s. 33-A and does not make it an industrial dispute capable of being adjudicated upon in accordance with the provisions of s. 33-A. Action taken by an employer during the pendency of conciliation proceedings contrary to s. 33, may therefore sustain a claim for adjudication, only if the dispute arising thereunder be referred by the appropriate Government to an Industrial Tribunal. For breach of s. 33 of the Industrial Disputes Act, or cl. 29 of the Order by the Governor of U. P. no penalty may be imposed by the Conciliation Officer. It is thus manifest that the Conciliation Officer does not hold the status of an industrial tribunal in exercising powers under s. 33 of the Industrial Disputes Act or cl. 29 of the U.P. Order. It must therefore be held that an appeal under Art. 136 of the Constitution to this Court is not competent against the direction given by the Conciliation Officer' exercising power under cl. 29 of the Order issued by the Governor of U. P. under the U. P. Industrial Disputes Act, 1947.

The question whether an appeal lay to the Labour Appellate Tribunal under the Industrial Disputes (Appellate Tribunal) Act, 48 of 1950, does not present much difficulty in its solution. By s. 4 of Act 48 of 1950, the Central Government is authorised to constitute Labour Appellate Tribunals for hearing appeals from the awards or decisions of industrial tribunals in accordance with the provisions of the Act; an 'Industrial Tribunal' is defined in s. 2

(c) as meaning-

"(i) any Industrial Tribunal constituted under the Industrial Disputes Act, 1947 (XIV of 1947); or

(ii)in relation to cases where an appeal lies from any court, wage board or other authority set up in any State under any law relating to the adjudication of industrial disputes made, whether before or after the commencement of this Act, by the legislative authority of the State' to any other court, board or authority exercising appellate jurisdiction within the State; or

(iii)in relation to other cases, where no appeal lies under any law referred to in sub-

clause (ii), any court, board or other authority set up in ;any State under such law,"

Conciliation Officer functioning under cl. 29 is not an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, his authority being derived from the appointment made by the' State of Uttar Pradesh under the U. P., Industrial Disputes Act, 1947. Nor is any provision made in the U. P. Industrial Disputes Act, 1947, or Orders made thereunder for an appeal to any similar authority against the direction made by the Conciliation Officer in exercise of the power conferred under cl. 29. An appeal lies under s. 4 of the Act.48 of 1950, against the direction of a Conciliation Officer only if he is a Court or Authority. The Legislature has used in cl. (iii) the expression "any court, board or other authority"; the context indicates that the word "other authority' must be read ejuadem generis with Court or Board. The right to appeal conferred by s. 4 is only against awards or decisions, and a Conciliation Officer makes no award, nor even a decision. His function is not to deliver a definitive judgment affecting the rights of the parties before him. He is not invested with power to adjudicate industrial disputes. It is true that he is constituted under a statute which relates to adjudication of industrial disputes, but his functions are purely incidental to industrial adjudication. His power is not of the same character as that of an Industrial Court or Board or Tribunal. In our view an 'authority' under s. 2 (cl (iii) to be an industrial tribunal must be a body constituted for the purpose of adjudication of industrial disputes under a law made by a State. The Conciliation Officer not having been invested with any such power, he cannot be regarded as an" "authority" within the meaning of s. 2(c) (iii) of the Industrial Disputes (Appellate. Tribunal) Act. The Labour Appellate Tribunal has consistently held, and we think

rightly, that an appeal against the order of a Conciliator is not maintainable under s. 4 of the Industrial Disputes (Appellate Tribunal) Act, vide Sassoon & Alliance Silk Mills Co. Ltd v. Mill Mazdoor Sabba (1)[1955] 1 L.L. J. 70.

Both the appeals therefore fail and are dismissed with costs. There will be one hearing fee.

Appeals dismissed.