
(1993) 06 MP CK 0016
In the Madhya Pradesh High Court
Case No : S.A. No. 384 of 1985

Moti Marry

APPELLANT

Vs

Superintendent, Lady Elgin Hospital and Others

RESPONDENT

Date of Decision : 25-06-1993

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28, 29(2), 4(2)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 28, 100
Constitution of India, 1950 — Article 227, 323A

Citation : (1993) 2 MPJR 189 : (1993) 38 MPLJ 628 : (1993) MPLJ 628

Hon'ble Judges : P.N.S. Chauhan, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : B.D. Jain, for the Appellant; A.K. Khaskalam, for the Respondent

Judgement

Gulab C. Gupta, J.

This appeal, which is within the jurisdiction of Hon"ble Single Judge of this Court under High Court Rules and Orders, has been placed for consideration of this Division Bench under special circumstances and as a result of reference made by the Hon"ble Single Judge on 3-11-1992.

The appellant was a contingency paid employee at the Lady Elgin Hospital, Jabalpur and her services were terminated by order dated 28-9-1978 as no longer required. The appellant challenged the legal validity of the said termination by filing a Civil suit before First Civil Judge Class I, Jabalpur where it was subject matter of Civil Suit No. 116-B/79. In her suit, the appellant prayed for a decree declaring her terminatiton illegal and granting all consequential bonefits. The learned trial Judge by its judgment and decree dated 24-12-1982, dismissed the said suit on a finding that the order of termination was not illegal. The appellant thereafter preferred an appeal u/s 96, CPC before first Addl. Judge to the Court of District Judge, Jabalpur (later on transferred to 8th Addl. Judge to the Court of District Judge, Jabalpur) where it was subject-matter of Civil Appeal No. 1-B/85. The learned lower appellate Court by its judgment and decree dated

12-3-1985 affirmed the judgment and decree of the learned Trial Court. It appears that during the pendency of this appeal, the appellant filed an application on 9-11-1992 under Order 41, Rule 27, CPC seeking permission to adduce additional evidence consisting of a letter dated 22-3-1980 which, according to the appellant, was sufficient to indicate that the order of termination was punitive in nature. The said letter of respondent No. 1 sought to communicate letter dated 5-3-1980 of the Dean, Medical College, Jabalpur, the Respondent No. 2, of certain terms of compromise of the dispute. The learned lower appellate Court found no justification for admitting this additional evidence and dismissed the said application. The appellant, undaunted by the aforesaid failure, preferred the present second appeal u/s 100, CPC in this Court. This Second Appeal was heard by Hon"ble Shri Justice D.M. Dharmadhikari, who, by his judgment dated 29-11-1990, held that the application of the appellant under Order 41, Rule 27 was illegally and unjustifiably dismissed. According to the learned Judge, the documents sought to be introduced in evidence were relevant to the decision of the most vital question involved in the appeal and hence, the application under Order 41, Rule, 27 CPC should have been allowed. Learned Judge therefore held that "the application under Order 41, Rule 27, CPC filed by the appellant is allowed and the documents filed with the application be taken on record." The learned Judge thereafter noticed Sections 28 and 29 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) and held that the jurisdiction of the first Appellate Court for dealing with this appeal after remand has been taken away and conferred on the State Administrative Tribunal, Jabalpur. The learned Judge therefore transferred the appeal to the said Tribunal for decision in accordance with law.

When the record of the appeal went to the learned Administrative Tribunal, it was placed before the Chairman of the Tribunal for consideration. The learned Chairman, by his order dated 15-7-1992, held that only cases which were pending before Civil Courts on 2-8-1988 alone were liable to be transferred u/s 29 of the Act and since the present case does not fall in that category, the Tribunal has no jurisdiction to entertain and decide the appeal. The learned Chairman however examined the matter further in the context of appellant's running from pillar to post since long and observed that the proper course was to remand the appeal to the lower appellate Court for taking additional evidence and deciding the same in accordance with law.

Consequent to the aforesaid order of the learned Chairman of the Tribunal, the appeal was placed for consideration of learned Single Judge again. The learned Judge having considered the entire controversy, was of the opinion that the matter involves important legal questions which, in the ends of justice be decided by a larger Bench of this Court. The learned Judge also formulated 4 following questions which require specific consideration:--

(1) Whether the appeals pending in the High Court on service matters saved by proviso to Sub-section (1) of Section 29 of the Administrative Tribunals Act, 1985

would include proceedings remanded by High Court, in its appellate jurisdiction, to Civil Courts subordinate to it after the establishment of the Tribunal?

(2) Whether bar on jurisdiction imposed on Civil Courts contained in Section 28 of the Act of 1985 shall apply to such proceedings of subordinate Courts, received by them as a result of an order of remand passed by the High Court in its appellate jurisdiction after the establishment of the Tribunal.

(3) Whether the High Court having finally disposed of the second appeal by making it over to the Tribunal for further proceeding with it, is denuded of its jurisdiction or can deal with the appeal afresh on retransfer of the same by the Tribunal to it?

(4) Whether the order of the Tribunal retransferring the appeal to this Court can be subject matter of consideration and interference by this Court in exercise of its constitutional power of superintendence under Article 227 of the Constitution of India?

It is thereafter that the matter was placed for consideration of Hon^{ble} the Chief Justice who has directed that the matter be placed for consideration of this Division Bench.

The difference of opinion between this Court and the Administrative Tribunal appears to be about the jurisdiction of the Tribunal. The appeal, as mentioned earlier, had been decided by the lower appellate Court on 12-3-1985, that is much before the said Court lost jurisdiction over it u/s 28 of the Act. The Administrative Tribunal was admittedly established on 2-8-1988. There is also no difficulty in holding that on 2-8-1988 (which is the relevant date for applying the provisions of Section 29 of the Act) Section 29 was not attracted in the instant case, as nothing whatsoever was pending before the lower appellate Court on that date. The learned Single Judge seems to be of the opinion that Section 28 of the said Act would be attracted after remand and hence the lower appellate Court would not have jurisdiction to record evidence and decide the appeal in accordance with law. As against this, the opinion expressed by the Chairman of the Tribunal is that this is a pending matter and has to be decided in the context of Section 29 of the Act. Though the learned Chairman has stated nothing about Section 28, he seems to be of the view that Section 28 of the Act affects the jurisdiction of Civil Courts after 2-8-1988 and not prior to it. The learned Single Judge does not share this view and hence the first question requiring consideration is whether the jurisdiction of the Civil Court is excluded even in a pending case like the present one?

Exclusion of jurisdiction of Civil Courts is not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied. (See *K. Kamalajammanniavar (Dead) by Lrs. Vs. Special Land Acquisition Officer*, *Magiti Sasamal Vs. Pandab Bissoi*, *Lala Ram Swarup and Others Vs. Shikar Chand and Another*, *Richpal Singh and Others Vs. Dalip*, and *Smt. Bismillah v. Jeneshwar Prasad and Ors.* AIR 1990 SC 540). This rule has been referred to as

a fundamental rule and a principle by no means to be whittled down. As a necessary corollary, a provision excluding jurisdiction of Civil Courts is required to be strictly construed. The extent of exclusion of jurisdiction in cases where such exclusion is by a specific legal provision, must depend on the language of the exclusionary clause. The basis of this law is the acceptance of the principle that Civil Courts have jurisdiction to decide questions of Civil nature and exclusion of jurisdiction is only an exception. Cases establishing this principle and basis thereof have been noticed in Justices G.P. Singh's Principles of Statutory Interpretation, 5th Ed., Chapter IX, pages 417-454 and may usefully be referred to. Under the circumstances, there should be no difficulty in holding that Civil Courts being the Courts of general jurisdiction over civil matters, exclusion of their jurisdiction will not be readily inferred and provisions excluding such jurisdiction will have to be strictly construed. In the instant case, since exclusion of jurisdiction of Civil Court is by Section 28 of the Act, the said provision requires interpretation in the context of the aforesaid principles. The provision reads as under:--

"28. Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution -- On and from the date from which any jurisdiction, powers and authority become exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerned members of any service or persons appointed to any service or post,

No Court except -

(a) The Supreme Court, or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have

or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment of such service matters."

A bare reading of this provision would indicate that the jurisdiction is barred only "on and from the date from which the jurisdiction, power and authority become exercisable by a Tribunal" under the Act and not otherwise. In the instant case, the Tribunal under this Act was created on 2-8-1988 and therefore the jurisdiction of the Civil Court would be excluded on and from that date. In other words, on and from 2-8-1988 a matter which is now within the jurisdiction of the Tribunal under this Act will not be entertained by a Civil Court. Since Civil Courts are moved by filing a suit, appeal or application, no such suit, appeal or application will be filed with effect from 2-8-1988. This provision however does not deal with a suit which has already been filed for which Section 29 is the relevant provision. This provision deals with pending suits or other proceedings before any Court except appeals pending in the High Court and provided that all such suits or proceedings shall stand transferred to the Tribunal. The present

appeal was pending in this Court on 2-8-1988 and therefore was not affected by this provision. Under the circumstances, application Of Sections 28 and 29 of this Act to the facts and circumstances of the present case would exclude operation of Section 28 as no suits, appeal or applications were being filed in a Civil Court and jurisdiction of Civil Court was not being invoked by any one who could have invoked the jurisdiction of the Administrative Tribunal after its creation and establishment on 2-8 -1988. In this connection, it is useful to refer to Madhya Pradesh Administrative Tribunal Procedure Rules, 1988 which prescribe mode of invoking jurisdiction of the Tribunal. Rule 4(1) specifically provides that an application to the Tribunal shall be presented in Form-I by the applicant in person or by an agent or by a duly authorised legal practitioner to the Registrar of the Bench concerned. The said application after its presentation, is scrutinised by the Registrar and registered if otherwise found free from defect. Thereafter further proceedings are undertaken to summon the respondents and fix the date of hearing or final disposal of the said application. These rules do not envisage invoking jurisdiction of the Tribunal by any person except the person aggrieved and having a cause of action in his favour or his authorised representative. The rules do not, provide for the High Court or any other Court invoking jurisdiction of the Tribunal. Under the circumstances, if this Court intended to invoke the jurisdiction of the Tribunal u/s 15 of the Act by passing its judgment dated 29-11-1990 in this appeal, the same is not a mode recognised by the Act. This was also not the intention of this Court. Order 41, Rule 27, CPC under which the aforesaid direction is given, does not recognise an Administrative Tribunal for the purpose. Indeed, Order 41, Rule 27 permits admisssion of additional evidence in the appellate Cout i.e. in this Court itself. If however, the evidence was to be recorded by any other Court, the provisions of Order 41, Rule 28, CPC will have to be used as it is the only provision which authorises this Court to direct the lower appellate Court from whose decree an appeal is preferred or any other subordinate Court to record such evidence. Rule 29 may require consideration while adopting one of the courses provided in Rule 28. It is only after the evidence has been recorded, that the judgment in appeal can be pronounced. Clearly therefore neither the Act nor the CPC envisages a situation where this Court acting u/s 100, CPC could remand the case to the Administrative Tribunal for admitting fresh evidence and deciding the matter afresh thereafter. The inescapable conclusion is that the directions contained in the judgment dated 29-11-1990 to that effect are beyond this Court's power either u/s 100 or under Order 41, Rule 27, Civil Procedure Code. It is, in this context, necessary to consider whether Article 227 of the Constitution could be used to give those directions to the Administrative Tribunal. If remand by this Court could be supported by Article 227, it may require consideration, if the Chairman of the said Tribunal could lawfully refuse to act on the same and if so, whether this Court has the power to secure its compliance.

The aforesaid is however not the answer to the real questions in controversy in this appeal, which is about the jurisdiction of the first appellate Court on a

remand order passed by this Court u/s 100, Civil Procedure Code. Do the provisions of the Act affect this Court's jurisdiction u/s 100, CPC in any manner? Since Sections 28 and 29 of the Act, are the only provisions in this behalf in the said Act, and Section 29 clearly and specifically leaves out pending appeals in the High Court, there should be no difficulty in holding that the appellate jurisdiction of this Court u/s 100, CPC in so far as pending appeals are concerned, remains unaffected. In other words, this Court's jurisdiction to pass such orders including an order of remand in the present appeal is not affected by the aforesaid two provisions. Under the circumstances, this Court can lawfully pass an order under Order 41, Rule 27 or Rule 28, CPC and remand the matter to the lower appellate Court for decision in accordance with law.

The further question requiring consideration is whether the jurisdiction of the lower appellate Court on such a remand would be affected by Section 28 of the Act. The said provision, as noticed earlier, is attracted in relation to Civil Courts including the lower appellate Court with effect from 2-8-1988 precisely because the jurisdiction stands transferred to a Tribunal established under the Act. The Tribunal has not been conferred jurisdiction to act under Order 41, Rule 27 or Rule 28 or under any other provision of CPC and therefore it cannot be treated as a substitute for a Civil Court under these provisions. Section 28 of the Act cannot therefore, either expressly or impliedly support the submission that the jurisdiction of a Civil Court under Order 41, Rule 28, CPC is also excluded. Since this provision has to be strictly construed, it cannot, for that reason, be given any wider meaning than the aforesaid. Under the circumstances, duties and the responsibilities of Civil Courts after remand under Order 41, Rule 27 or 28, CPC remain unaffected by Section 28 or 29 of the Act. It can therefore be held that the appeal could lawfully be remanded to the lower appellate Court for recording additional evidence and decision. There is another way of reaching this conclusion. Section 15 of the Act, which deals with jurisdiction, power and authority of the State Administrative Tribunal, does not provide the mode of exercise of this jurisdiction, power or authority which is now prescribed by Madhya Pradesh Administrative Tribunal Procedure Rules, 1988. These Rules provide for invoking jurisdiction or exercise of power and authority at the instance of a person aggrieved and not by the High Court, exercising powers u/s 100, Civil Procedure Code. Under the circumstances, remand to the Tribunal would amount to providing a new procedure for exercise of authority and jurisdiction of the Tribunal. Such a course being impermissible in law, it must be held that the order of remand passed by this Court under Order 41, Rule 27, CPC did not amount to invoking jurisdiction of the Tribunal u/s 15 of the Act or under M. P. Administrative Tribunal Procedure Rules, 1988. Under the circumstances, Section 28 of the Act would not be attracted in case of remand if the same could lawfully be made under Article 227 of the Constitution. Clearly therefore, the view of the learned Single Judge that the jurisdiction of the lower appellate Court to record evidence pursuant to the remand order passed by him under Order 41, Rule 27, CPC is taken away by Section 28 of the Act is not correct and cannot for

reasons aforesaid be accepted. Indeed, the true legal position emerging out of Order 41, Rule 27 and Rule 28, CPC and Sections 28 and 29 of the Act is that the jurisdiction of the Civil Court to record additional evidence and pass order thereupon flows not only from the remand order of the second appellate Court but also under the order passed under Order 41, Rule 27, CPC besides Order 41, Rule 28, Civil Procedure Code. In view of this legal position, if the matter had been remanded to the lower appellate Court, the said Court would have derived jurisdiction from the remand order of this Court and also under Order 41, Rule 28, CPC and could have lawfully exercised that jurisdiction in spite of Section 28 of the Act.

The aforesaid discussion could be sufficient to answer first three questions referred for consideration of this Court. The fourth question however will require some more consideration, as it relates to jurisdiction of this Court under Article 227 of the Constitution of India. Article 227, as is well known, provides that "Every High Court shall have superintendence over Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction." This power of superintendence is in addition to the power conferred upon the High Courts under Article 226. the Supreme Court, in *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others*, examined the scope of this jurisdiction and held that it is intended to be used sparingly and only in appropriate cases for the purpose of keeping the Courts and Tribunals within the bounds of their authority and not for correcting mere errors. To the same effect is the decision in *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, Apparently therefore, power of superintendence available to the High Court under this Article is not an appellate or revisional power but is an extraordinary power intended to keep Courts and Tribunals within their authority. Explaining the use of the word "Tribunal" in Article 227, the Supreme Court in *Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others*, clarified that statutory authorities exercising quasi-judicial powers are comprehended in the expression "Tribunal" used in this; provision. Similarly in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, the Supreme Court held that appellate authority hearing an appeal in service matter under the relevant Service Rule is a Tribunal within the meaning of this Article. Under the circumstances, the jurisdiction of a High Court under this Article is not the jurisdiction to decide a dispute or correct an error but a power to keep the Tribunal within the bounds of its own authority. The focal point of this power is the Tribunal rather than the subject matter of the dispute, handled by the particular Tribunal. The power is exercised in cases where a Tribunal acts without jurisdiction or want of jurisdiction or fails to exercise jurisdiction or violates fundamental procedural rules or acts in disregard of principles of natural justice. The State Administrative Tribunal constituted under the Act exercising jurisdictions to decide disputes and complaints relating to service matters would, without doubt, be a Tribunal within the meaning of this provision and would, for that reason, be within the superintendence of this Court under this provision. The question requiring consideration is whether Article 323-

A of the Act made thereunder curtails the operational limits of Article 227 and excludes the State Administrative Tribunal from its purview. Article 323A of the Constitution does not specifically provide for ouster of jurisdiction of the High Court either under Article 226 or Article 227. Even then, Article 323-A(2) (d).provides that a law enacted by the Parliament providing for adjudication or trial of disputes and complaints regarding service matters by Administrative Tribunals amy "exclude the jurisdiction of all Courts, except the jurisdiction of Supreme Court under Article 136", with respect to such disputes or complaints. In *S.P. Sampath Kumar v. Union of India*, AIR 1987 SC 386, the Supreme Court considered the question whether bar of jurisdiction under Articles 226 and 227 affects the provisions or judiciel review and held that it does not. According to the Court, the judicial review of the Supreme Court was left wholly unaffected by providing that the jurisdiction of the Supreme Court under Article 136 of the Constitution cannot be excluded. The Court in Para 13 of the judgment also held that its jurisdiction under Article 32 was also untouched and therefore held that the exclusion of the jurisdiction of the High Court does not totally bar the judicial review. The Court further held that "It is possible to set up an alternative institution in place of the High Court for providing judicial review." The Court however gave directions to amend the Act so as to make the Tribunal little more judicial in its constitution and approach, which have since been carried out. It would thus appear that the Supreme Court did not, in this case, consider the question whether Article 323A or provisions of the Act bar jurisdiction of the court under Article 227 of the Constitution but considered this Article in the context of judicial review which is an essential feature of our Constitution and held as aforesaid. This case is therefore not the authority for the proposition that Article 323A as enacted, imposes a bar or curtails jurisdiction of the High Courts under Article 226 or 227 of the Constitution. Section 28 of the Act which was the focus of attention in the aforesaid case also does not clearly specify that Article 227 would remain amended or curtailed in any manner. The impression created by this judgment was perhaps the basis of claim in *M.B. Majumdar Vs. Union of India*, Examining the scheme of the Act and creation of Administrative Tribunals under it vis-a-vis the High Court, the Court ruled that Tribunbals created under the Act cannot be equated with the High Courts for all purposes nor can the Tribunals be treated as deemed High Courts. According to the Court, the Tribunal would not have the same jurisdiction or power while adjudicating those very matters which earlier were adjudicated by the High Court. On the aforesaid view, it was held that the members of the Tribunal cannot claim equality with High Court Judges. It would therefore appear that though the Supreme Court in *Sampath Kumar*'s casse observed that an alternative to the High Court can be created and such a creatiion would not affect the basic feature of judicial review, it subsequently ruled that the Tribunal created under the Act was nowhere near the High Court. Under the circumstances, even the logic of the *Sampath Kumar*'s case would now not be available to support the plea that Article 227 has been made inapplicable to the Tribunal under the Act.

Articles 226 and 227 of the Constitution can be modified or amended by the special procedure under Article 368 i.e. after the amendment is approved by the majority of the Legislatures of the States. This is an important amending procedure. Amending an Article of this nature is a constituent function and would not be delegated to the Parliament by enacting a provision as Article 323-A(d). If this provision is taken to include the authority of the Parliament to amend Articles 226 and 227 of the Constitution in their application to Administrative Tribunals, it would amount to delegation to the Parliament, an essential constituent function which is impermissible under the Constitution. In this regard, decisions of the Supreme Court in *re Article 143, Constitution of India and Delhi Laws Act, 1912*, AIR 1951 SC 332, *Rajnarin Singh v. Chairman, Patna Administration Committee*, Patna AIR 1954 SC 669 and *Ramesh Birch and Others Vs. Union of India (UOI) and Others*, may be referred as they clearly lay down that such essential function cannot be delegated. The aforesaid provision if intended to curtail the jurisdiction under Article 226 or 227, would also be violative of Article 368 of the Constitution, inasmuch as, the amendment or curtailment of these Articles would be made only by the Parliament without being passed by majority of the State Legislatures. In view of this constitutional context, it is not possible to hold that any clause in Article 227 was intended either by Article 323A or the Act as enacted by the Parliament.

Even if Sampath Kumar's judgment is taken to be the authority for the proposition, that exclusion provided u/s 28 of the Act is also the exclusion of jurisdiction of the High Court under Article 227 of the Constitution, it would only be to the extent the two jurisdictions overlap each other i.e. the jurisdiction, power and authority of the Tribunal in relation to disputes and complaints regarding service matters. Administrative Tribunals have not been conferred any power of superintendence nor any other authority like the High Court is created by any Act exercising superintendence. On the interpretation of the Act, as done by Courts from time to time, it may be possible to say that the jurisdiction of High Courts to decide disputes and complaints regarding service matters which has been brought within the exclusive jurisdiction of the Tribunals is now barred but that, by itself, would not be enough to bar the jurisdiction of the High Court against the Tribunal itself. The distinction between the jurisdiction over service matter and the superintendence over the Tribunal is rather well marked and has to be kept in view. Article 227 deals with the Tribunal and not the service matter. Under the circumstances, a decision on service matter may be barred but superintendence over the Tribunal cannot be said to have been barred. It may therefore be possible to say that High Court will not sit over judgment or the decision of the Tribunal in respect to the dispute or complaint relating to service matter and interference in such decisions can be made by the Supreme Court, exercising powers under Article 136 of the Constitution. But this is not to say that the power of the High Court to keep the Tribunal within the bounds of its authority is also taken away. Indeed, there appears to be some difference of opinion between the jurists on the subject. Justice K. N. Goyal of Allahabad High

Court, the Author of the Commentaries on the Administrative Tribunals Act, 1985" (Second Edition) has considered this question, in the context of Article 227 in detail and is of the view that even the jurisdiction of the High Court under Article 226 of the Constitution would not be wholly excluded. Since we are not concerned in this case with Article 226 of the Constitution, it is not considered necessary to deal with it in any detail. The jurisdiction under Article 226 is distinguishable from the jurisdiction under Article 227 and therefore there should be no difficulty in holding that the Tribunal constituted under this Act, is within the superintendence of this Court under Article 227 of the Constitution. This view is in accord with the view taken by another Division Bench of this Court in *Ramnoo v. Union of India* 1990 J.L.J. 19 to the effect that the word "Court" used in Section 28 of the Act means Civil Courts u/s 9, CPC and nothing more. The said decision thus proceeds on the assumption that jurisdiction of the High Court under Article 227 is not excluded by Section 28 of the Act.

In view of the discussion aforesaid, we are clearly of the opinion that though the remand of the appeal to the State Administrative Tribunal was not in accordance with the provisions of CPC and the learned Single Judge could have remanded the matter to the lower appellate Court for recording additional evidence and deciding the matter afresh. In spite of it, the direction in the judgment can be given in exercise of jurisdiction under Article 227 of the Constitution and if so given, the Chairman of the Tribunal could be compelled to obey the same. It must however be clarified that the learned Single Judge has not exercised that jurisdiction and could not, in view of Rules of this High Court, exercise the said jurisdiction. The said jurisdiction is exercisable only by a Division Bench of this Court.

In view of the aforesaid, our answers to the four questions referred to us for consideration are as follows:--

(i) As regards Question No. (1):--

The present Second Appeal pending in this Court being clearly and specifically saved from the operation of the Administrative Tribunals Act, 1985 and kept outside the jurisdiction of the Administrative Tribunal because of the proviso to Section 29(1) of the said Act, power of this Court to pass any order on the said appeal including the order of remand under Order 41, Rule 27 or Rule 28, CPC also remains unaffected by the provisions of the said Act. There was therefore no legal impediment in remanding the appeal to the lower appellate Court for recording evidence and deciding the same thereafter.

(ii) As regards Question No. (2):--

Bar created by Section 28 of the Administrative Tribunals Act, 1985 is the bar to invoke jurisdiction of Civil Courts in service matters from the date the Administrative Tribunal under the said Act has been established and nothing more. It does not affect pending appeals in the High Court which have to be decided in accordance with Section 100, Civil Procedure Code. A remand order

passed in exercise of this jurisdiction under Order 41, Rule 27 or Rule 28, CPC is not affected by Section 28 of the Administrative Tribunals Act, 1985, and the Civil Court to which the matter is remanded has the jurisdiction to act as per the remand order and decide the same as per the provisions of Civil Procedure Code.

(iii) As regards Question No. (3):--

The order passed by the High Court under any of the provisions of the CPC can be reviewed by it, exercising review power u/s 114, CPC read with Order 47, Civil Procedure Code. There seems to be no legal impediment in exercise of such a power. Even otherwise, this Court being the Court of record, has inherent power to correct its record. Under the circumstances, the mistake, if any, in the judgment of this Court can always be corrected.

(iv) As regards Question No. (4):--

The jurisdiction of this Court under Article 227 is unaffected by Article 323A of the Constitution and the Administrative Tribunals Act, 1985. Indeed, the aforesaid provisions could not lawfully exclude the constitutional jurisdiction of this Court. The jurisdiction is, however, excluded in relation to the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services or posts in connection with the affairs of the Union or of any State or of local authority within the territory of India or under the control of Government of India or any Corporation or societies controlled or owned by the Government of India. Since Article 227 of the Constitution does not deal with such disputes and difference, and only provides for superintendence over Tribunals, it remains unaffected. This jurisdiction, however, entitles the High Court to interfere only in cases of grave dereliction of duty or flagrant violation of law by the Tribunal and is neither appellate nor revisional jurisdiction. The purpose of superintendence under Article 227 is not to decide the dispute or difference, but keep the Tribunal within its jurisdiction and the bounds of the authority and see that it does all its duties, required by law and that it does it in a legal manner.

In view of the answers aforesaid, let the appeal be placed for consideration of Hon"ble the Single Judge in accordance with law. We are informed that a review application against the judgment of the learned Single Judge is also pending in this Court and hence it is advisable that this appeal and the review application are listed together.