

**(2000) 07 AHC CK 0030**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 604 of 1999**

|                                                   |            |
|---------------------------------------------------|------------|
| Pratappur Sugar and Industries Limited            | APPELLANT  |
| Vs                                                |            |
| Deputy Labour Commissioner, Gorakhpur and another | RESPONDENT |

**Date of Decision :** 14-07-2000

**Acts Referred:**

Allahabad High Court Rules, 1952 — Rule 5  
Companies Act, 1956 — Section 111  
Constitution of India, 1950 — Article 136, 136(1), 225, 226, 227  
Uttar Pradesh Industrial Disputes Act, 1947 — Section 3

**Citation :** (2000) 4 AWC 2834 : (2000) 87 FLR 142 : (2000) 3 UPLBEC 2161

**Hon'ble Judges :** Shitla Prasad Srivastava, J;G.P. Mathur, J

**Bench :** Division Bench

**Advocate :** P.K. Mukerjee, for the Appellant; Shyam Narain, S.C., for the Respondent

## Judgement

G.P. Mathur, J.—The question which requires consideration here is whether a special appeal would lie against the judgment and order of a single Judge in a writ petition under Article 226 of the Constitution wherein an order passed by Deputy Labour Commissioner under clause (LL) of the standing orders governing conditions of employment of workmen in Vaccum Pan Sugar Factories was subject-matter of challenge.

2. Surya Narain Shahi, respondent No. 2 was appointed as cane-observer in the appellant Pratappur Sugar and Industries Limited on 25.10.1956 and in the service book, his date of birth was entered as 16.12.1935. He became eligible to become member of Provident Fund Scheme and in P.F. Form II, he made a declaration on 10.10.1957, that his date of birth was 16.12.1935. On 12.11.1992, he made a representation to the appellant, that the entry regarding his date of birth be changed from 16.12.1935 to 1.5.1939, which was recorded as his date of birth in his High School Certificate. No action was, however, taken on the said representation. The appellant served a notice upon respondent No. 2 that he would attain the age of superannuation (60 years) on 16.12.1995 and,

therefore, he would retire from service after expiry of period of notice. The respondent No. 2 then moved an application before the Regional Deputy Labour Commissioner, Gorakhpur, praying that the retirement notice be set-aside and his date of birth should be treated as 1.5.1939. The application was registered as S.O. Case No. 2 of 1996 and the parties adduced oral and documentary evidence in support of their respective cases. The Deputy Labour Commissioner by his order dated 17.10.1997 set aside the retirement notice and further directed that the date of birth of respondent No. 2 shall be treated as 1.5.1939. The appellant then filed Civil Misc. Writ Petition No. 14880 of 1998 challenging the aforesaid order, but the same was dismissed by a learned single Judge on 28.4.1999. The present special appeal has been filed assailing the Judgment and order of the learned single Judge.

3. Sri Shyam Narain, learned counsel for respondent No. 2 has raised a preliminary objection that while exercising Jurisdiction under clause (LL) of the standing orders, the Deputy Labour Commissioner functions as a Tribunal and, therefore, no special appeal would be against the judgment and order of the learned single Judge in view of Chapter VIII, Rule 5 of the Rules of Court. Sri P.K. Mukherji, learned counsel for the appellant has contended that the Deputy Labour Commissioner does not function as a Tribunal and the order passed by him is only in the nature of an administrative order and, therefore the present special appeal is maintainable.

4. The provision for special appeal is contained in Chapter VIII. Rule 5 of the Allahabad High Court Rules, 1952 (for short High Court Rules) and in view of the language of the Rule, no special appeal is maintainable against the judgment of a single Judge rendered in exercise of jurisdiction conferred by Article 226 or 227 of the Constitution in respect of any judgment or order of a Tribunal made or purported to be made in exercise or purported exercise of Jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, in terms of the language of the Rule, the present special appeal will not be maintainable, if the judgment and order assailed in the writ petition was given by a Tribunal. Therefore, the question, which requires consideration is what is the nature of jurisdiction exercised by the Deputy Labour Commissioner under clause (LL) of the standing orders and whether he functions as a Tribunal.

5. Section 3 of U.P. Industrial Disputes Act lays down that if, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment, it may, be general or special order, make provision on the matters specified in sub-sections (a) to (g). Sub-section (b) empowers the State Government to make provision for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order. The conditions of employment of

workmen in Vaccum Pan Sugar Factories in the State of U.P. was initially governed by a notification dated 3.10.1958. There was a demand for revision of the aforesaid standing orders and, therefore, the matter of revision was referred to tripartite Standing Committee for Sugar Industries. The Committee after consideration of the matter submitted its report. Thereafter, a notification was issued by the State Government under subsection (b) of Section 3 of U.P. Industrial Disputes Act bearing Notification No. 5692 (HI) XXXVI-2-110 (HI)-77, dated September 27, 1988. It means that the Governor was pleased to order that all Vaccum Pan Sugar Factories in U. P. shall comply with the standing orders as annexed thereto and it shall bind the Vaccum Pan Sugar Factories and the workmen employed therein in respect of matters covered by the same. The preamble of the notification recites that the standing orders would bring about industrial piece and harmony in the Sugar Industries and in the opinion of the State Government, it was necessary so to do for maintenance of public order and supplies and services essential to the life of the community and for maintaining employment. Clause (LL) of the standing orders which is relevant for the controversy in hand, deals with retirement of workmen reaching the age of superannuation. Sub-clauses 1 to 6 thereof read as follows :

1. A workman be retired from service on reaching the age of superannuation which shall be 60 years.

2. The Provident Fund record of the factory specifying the workman's age should, to begin with, be taken as the reliable record of the age of a workman for purposes of retirement.

3. This record of age will stand modified as may be warranted by the following :

(a) Date of birth as given in High School certificate. If the school-leaving certificate is below High School, then such certificate must be authenticated by the District Inspector of Schools or by the District Education Officer as the case may be.

(b) Date of birth as certified by a Municipal Corporation. Municipal Board, a Cantonment Board, a Notified Area, or a Town Area Committee.

(c) An insurance policy taken before November 1, 1960.

Provided that :

(i) Where the month, date and the year of birth of a workmen are recorded in Provi- dent Fund records the date of birth as given in the Provident Fund records shall be taken as final ;

(ii) Where only the month and year of birth given, the date shall be taken as the 1st of that month ; and

(iii) Where the Provident Fund record of the workman does not specify the date or month of birth in that case the 1st November of the year shall be deemed to be the date for retirement.

(iv) The foregoing provisions regarding modification of age shall lapse on expiry of one year from the date of enforcement of these standing orders.

4. The age of new entrants shall be accepted on the following basis :

(i) Date of birth given in the High School Certificate/ Transfer Certificate :

(ii) Date of birth as certified by Nagar Mahapalika/ Nagar Palika/Cantonment Board/Notified Area Committee/Town Area Committee/Gram Panchayat :

Provided that the new entrants shall furnish proof of his age within three months of the date of his appointment and the management shall accept within six months of the date of appointment. The date of birth so accepted shall be final.

5. The management shall give two months notice to a workman before retiring him.

6. The workmen who are in employment at the time of enforcement of these standing orders shall have the right to get their age record modified as per clause 3 above within one year of enforcement of these standing orders. He shall have the right to represent to the Regional Additional/Deputy Labour Commissioner of the Area concerned within one month of notice of retirement. Such representations shall normally be disposed of within a period of one month of the date of representation from the workmen, and the orders passed by the Additional/Deputy Labour Commissioner regarding the age of the concerned workman shall be final and shall not be questioned by any party before any Court. In case Regional Additional/ Deputy Labour Commissioner allows the representation, the employer shall modify the record of age of the workman immediately on receipt of the said orders."

6. After receipt of the retirement notice, the workman Surya Narain Shahi (respondent No. 2) moved a representation before the Deputy Labour Commissioner, Gorakhpur on 8.2.1996 praying that in the records, his date of birth may be corrected as 1.5.1939 and the retirement notice dated 16.12.1995 given by the employer be set aside. The representation was registered as S.O. Case No. 2 of 1996 and notice was issued to the employers (appellant) which filed written statement. The workman filed rejoinder statement refuting the case set up by the employers. The workman examined himself as a witness and filed some documentary evidence. He was cross-examined by the representatives of the employers. The employers examined two witnesses and filed some documentary evidence. After examining the oral and documentary evidence on record, the Deputy Labour Commissioner by his order dated 18.10.1997, quashed the retirement notice and a further direction was issued to record the date of birth of the workman as 1.5.1939. A copy of the order has been filed as Annexure-11 to the writ petition and it will show that it is a fairly detailed order wherein the oral and documentary evidence adduced by the parties was considered and thereafter findings were recorded.

7. Chapter VIII, Rule 5 of the Allahabad High Court Rules provides that no special

appeal shall lie against the judgment and order of one Judge in exercise of jurisdiction conferred by Article 226 of the Constitution in respect of any judgment and order or award of a Tribunal. The word Tribunal is not defined in the High Court Rules and, therefore, it will be useful to notice, its meaning as given in the dictionaries which is as under :

Wharton's Law Lexicon

A seat of justice

Webster's Third New National Dictionary

A Court or forum of justice ; a person or body of persons having authority to hear and decide disputes so as to bind disputants : something that decides or judges something that a judgment or course of action.

The New Webster's Dictionary

A group of persons empowered to decide a specific issue according to the law. arbitrator in a dispute, etc.

Oxford Advanced Learners Dictionary of Current English Language

Place of judgment, board of officials or Judges appointed for special duty e.g.. to hear appeal against high rank, for exemption from military service.

Longman Dictionary of English.

A group of people appointed officially, Judges, etc., with powers to deal with special matters.

8. The dictionary meaning shows that Tribunal is a body authorised by law to decide disputes and impart justice. Article 136 of the Constitution provides that the Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or Tribunal. The Allahabad High Court Rules, 1952, have been made by the High Court of Judicature at Allahabad in exercise of powers conferred under Article 225 of the Constitution and all other powers enabling it in that behalf. It appears logical that while using the expression judgment, order or award of Tribunal or Court in Rule 5 of Chapter VIII of the Rules, the framers of the Rule had in their mind the language used in Article 136 of the Constitution. It will, therefore, be useful to refer to the decisions of the Supreme Court wherein the question as what is a Tribunal has been considered.

9. In *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, it was held that the expression "Tribunal" as used in Article 136 of the Constitution of India meant the same thing as Court, but includes within its ambit adjudicating bodies, provided they are constituted by State and are invested with judicial power as distinguished from purely administrative or executive functions.

10. In *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjunwala and Others*, , it was held that the Central Government exercising appellate powers u/s 111 of the Companies Act, 1956, even before it was amended by Act 65 of 1960 acts as a Tribunal exercising judicial functions and is subject to the appellate Jurisdiction of the Supreme Court under Article 136 of the Constitution. Hidayatullah. J., who gave the minority opinion, was of the view that by "Courts" is meant Courts of civil jurisdiction and by "Tribunal" those bodies of men who are appointed to decide controversies arising under certain special laws. It was further observed that among the powers of the State included power to decide such controversies which is called judicial power of the State and in exercise of this power, there is a clear division and broadly speaking certain special matters go before Tribunals and the residue goes to the ordinary Courts of civil Judicature. The same controversy was examined in great detail in a Constitution Bench decision in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, and what will constitute a Tribunal was explained in following words :

"..... The expression "a Court" in the technical sense is a Tribunal constituted by the State as a part of ordinary hierarchy of Courts which are invested with the State's inherent Judicial powers. The Tribunal as distinguished from the Court, exercises judicial powers and decides matters brought before it judicially or quasi-judicially, but it does not constitute a Court in the technical sense. The Tribunal, according to the dictionary meaning, is a seat of justice : and in the discharge of its functions, it shares some of the characteristics of the Court..... The Tribunals which are contemplated by Article 136(1) are clothed with some of the powers of the Courts. They can compel witnesses to appear, they can administer oath, they are required to follow certain rules of procedure ; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but nevertheless, they must decide on evidence adduced before them ; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations. The procedural rules which regulate the proceedings before the Tribunals and the powers conferred on them, in dealing with matters brought before them, are sometimes described as the "trappings of a Court" and in determining the question as to whether a particular body or authority is a Tribunal or not, sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a Court".

In para 8, it was observed as follows :

"....It would thus be noticed that apart from the importance of the trappings of a Court, the basic and essential condition which makes an authority or a body as a Tribunal under Article 136, is that it should be constituted by the State and

should be invested with the State's inherent judicial power...."

11. The same question was again examined by a Constitution Bench in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, wherein, it was held as follows :

"Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfer its Judicial functions and powers mainly to the Courts established by the Constitution ; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to Tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the Tribunals and the Courts, and features, which are distinct and separate. The basic and the fundamental features which is common to both the Courts and the Tribunals is that they discharge judicial functions and exercise Judicial powers which inherently vest in a sovereign State.

In considering the question about the status of any body or authority as a Tribunal under Article 136(1) the main test to be applied is whether the body or authority has been constituted by the State and has been clothed with the State's inherent Judicial power to deal with disputes between parties and determine them on the merits fairly and objectively."

12. The test applied by the Supreme Court in determining whether any body or authority has the status of a Tribunal for the purpose of Article 136(1) of the Constitution can safely be applied while interpreting Chapter VIII, Rule 5 of the Rules of the Court. Therefore, what is to be seen is whether the judgment or order which was subject-matter of challenge in the writ petition filed under Article 226 or 227 of the Constitution had been given by a body or authority which had been constituted by the State and had been clothed with the State's inherent judicial power to deal with disputes between the parties and to determine them on merits fairly and objectively.

13. Applying the test laid down by the Supreme Court, it will be clear that the standing orders have been made by means of a notification issued by the State Government in exercise of power conferred by Section 3 (b) of the U. P. industrial Disputes Act. Therefore, it is the State which has conferred the authority upon the Additional/Deputy Labour Commissioner to determine the age of a workman in Vaccum Pan Sugar Factory. The Additional/Deputy Labour Commissioner records findings after giving notice to both the parties and giving them opportunity to lead oral and documentary evidence. Although, strict rule of evidence is not applicable in such determination, still the matter is decided fairly and objectively on the basis of evidence adduced by the parties. The decision taken has to be consistent with the principles of natural justice and general principles of law. Sub-clause 6 of clause (LL) lays down that the order passed by the Deputy Labour Commissioner regarding the age of the concerned workman

shall be final and shall not be questioned by any party before any Court and thus a finality is attached to the decision. The proceedings before the Deputy Labour Commissioner have, therefore "trappings of Court". All these factors lead to irresistible conclusion that Deputy Labour Commissioner while deciding a dispute under clause (LL) of the standing orders functions as a Tribunal.

14. Sri P.K. Mukherji has lastly urged that the standing orders have no statutory force and, therefore while exercising jurisdiction under sub-clause 6 of clause (LL), the Deputy Labour Commissioner cannot be said to be a Tribunal. Sri Mukherji relied upon Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , wherein, it has been held that the certified standing orders framed under and in accordance with the industrial Employment (Standing Orders) Act, have statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions", in support of his submission that the standing orders have no statutory force. The principle laid down in the aforesaid case has no application to the facts of the present case for the simple reason that here the standing orders have been notified by the State Government u/s 3 (b) of U. P. Industrial Disputes Act. They are uniformly binding on all the Vaccum Pan Sugar Factories in the State of U.P. and their workmen. Their position is entirely different from a standing order made by an employer himself, which is merely certified under the provisions of industrial Employment (Standing Orders) Act. 1946. Therefore, the contention raised has no substance.

15. For the reasons discussed above, the inescapable conclusion is that an Additional/Deputy Labour Commissioner, while exercising jurisdiction under sub-clause (6) of clause (LL) of the standing orders functions as a Tribunal. The writ petition had been filed challenging the order of Deputy Labour Commissioner and being a Tribunal the present special appeal under Chapter VIII, Rule 5 of the Rules of Court is not maintainable. The special appeal is accordingly dismissed.