
(2012) 07 AHC CK 0163

In the Allahabad High Court

Case No : Special Appeal Defective No. 319 of 2008

Silk and Kapda Karmchari Union

APPELLANT

Vs

Deputy Labour Commissioner, Varanasi and Others

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8, 5
Constitution of India, 1950 — Entry 22, Entry 24
Criminal Procedure Code, 1973 (CrPC) — Section 195
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 2(b),
2(c), 2(g), 3, 4

Citation : (2012) 07 AHC CK 0163

Hon'ble Judges : S.P.Mehrotra, J and Mahendra Dayal, J

Final Decision : Disposed Of

Judgement

1. The present Special Appeal has been filed against the Judgment and Order dated 10.12.2007 passed by the learned Single Judge whereby Civil Misc. Writ Petition No. 11975 of 2001 filed by the respondent No. 3 was allowed.

It appears that the respondentappellant herein (Silk and Kapda Karmchari Union) made an Application under the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 (in short "the 1978 Act") before the Deputy Labour Commissioner, Varanasi Region, Varanasi (respondent No. 1), inter alia, raising grievance regarding nonpayment of Wages, Bonus and Layoff Compensation.

By the Orders dated 8.3.2001 (filed as Annexures 6 and 7 to the aforesaid Writ Petition and appearing at Pages 79 and 82 respectively of the PaperBook of the Special Appeal), the respondent No. 1 directed for recovery of the amounts mentioned in the said Orders towards Wages, Bonus and Lay off Compensation from the respondent No. 3 herein.

The respondent No. 3 herein, thereupon, filed the aforesaid Civil Misc. Writ Petition No. 11975 of 2001 before this Court.

As noted above, the learned Single Judge by the Judgment and Order dated

10.12.2007 allowed the said Writ Petition and quashed the impugned Orders.

The respondentappellant herein (Silk and Kapda Karmchari Union), thereupon, filed the present Special Appeal under Chapter VIII, Rule 5 of the Rules of the Court.

2. We have heard Miss. Sumati Rani Gupta, learned counsel for the respondentappellant, the learned Standing Counsel appearing for the respondent Nos. 1 and 2, and Shri Sunil Kumar Tripathi, learned counsel for the respondent No. 3, and perused the record.

Shri Sunil Kumar Tripathi, learned counsel for the respondent No. 3 has raised a preliminary objection that the present Special Appeal filed under Chapter VIII, Rule 5 of the Rules of the Court, is not maintainable.

Miss. Sumati Rani Gupta, learned counsel for the respondentappellant submits that the present Special Appeal would be maintainable under the provisions of Chapter VIII, Rule 5 of the Rules of the Court.

3. We have considered the submissions made by the learned counsel for the parties in regard to the aforesaid preliminary objection.

Chapter VIII, Rule 5 of the Rules of the Court, which makes provisions for Special Appeal, provides as follows:

"5. Special appeal: An appeal shall lie to the Court from a judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the 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, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

From a perusal of the aforesaid provisions, we find that the Special Appeal shall lie to the Court (i.e. the High Court of Judicature at Allahabad) from a judgment of one Judge of the Court.

4. However, such Special Appeal will not lie in respect of the following judgments/orders:

1. The judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence of the Court;

2. the order made by one Judge in the exercise of revisional jurisdiction;
3. the order made by one Judge in the exercise of the power of Superintendence of the High Court;
4. the order made by one Judge in the exercise of criminal jurisdiction;
5. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by

(i) the tribunal,

(ii) Court or

(iii) statutory arbitrator

made or purported to be made in the 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 of India;

6. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of

(i) the Government or (ii) any officer or (iii) authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. 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 of India. 5. It will, thus, be noticed that the Special Appeal will not lie in respect of the Order passed by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award of a Tribunal, Court or Statutory Arbitrator made or purported to be made in the 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 of India.

The 1978 Act, as recited in its Preamble, has been enacted to provide, in the interests of maintenance of industrial peace, for timely payment of wages in bigger industrial establishments and for matters connected therewith. The said Act has been enacted by the State Legislative of Uttar Pradesh.

6. The 1978 Act has thus evidently been enacted with reference to Entry 24 of List III Concurrent List in the Seventh Schedule to the Constitution of India. The said Entry 24 reads as under:

"24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity

benefits."

We may also refer to Entry 22 of the said List, which reads as under:

"22. Trade unions; industrial and labour disputes."

Thus, the 1978 Act has been enacted with respect to the matters enumerated in the Concurrent List in the Seventh Schedule to the Constitution of India.

Hence, the Orders dated 8.3.2001, impugned in the aforesaid Writ Petition, were passed by the Deputy Labour Commissioner, Varanasi Region, Varanasi (respondent No. 1) in the exercise of jurisdiction under the aforesaid Uttar Pradesh Act (i.e. 1978 Act) enacted with respect to the matters enumerated in the Concurrent List in the Seventh Schedule to the Constitution of India.

7. Next question, which arises for consideration, is as to whether the Orders dated 8.3.2001 passed by the Deputy Labour Commissioner, Varanasi Region, Varanasi (respondent No. 1) in the exercise of jurisdiction under the 1978 Act, particularly Section 3 thereof, were the orders passed by "a Tribunal, Court or statutory arbitrator". In other words, the question to be considered is as to whether the Deputy Labour Commissioner, Varanasi Region, Varanasi (respondent No. 1) while exercising jurisdiction under the 1978 Act, particularly Section 3 thereof, was acting as a "Tribunal, Court or statutory arbitrator". The Deputy Labour Commissioner (respondent No. 1) would evidently not fall under the category of "Court" or "statutory arbitrator". Therefore, the only question to be considered is as to whether the Deputy Labour Commissioner (respondent No. 1) while exercising jurisdiction under the 1978 Act, particularly Section 3 thereof, was acting as a "Tribunal".

8. In order to decide the said question, we may refer to the provisions contained in Sections 2 (b), 2 (c), 2 (g) 3, 4, 5 and 6 of the 1978 Act.

Section 2 (b), which defines "Labour Commissioner", Section 2 (c), which defines "occupier", and Section 2 (g), which tells the meaning of "default" of payment of wages, are as under:

"2. Definitions. In this Act, (a).....

(b) "Labour Commissioner" includes an officer, not below the rank of an Assistant Labour Commissioner, authorised by him to discharge, exercise and perform the duties, powers and functions of a Labour Commissioner under this Act;

(c) "occupier" in relation to an industrial establishment, means the employer of workmen employed in such establishment, and includes in the case where the employer is a company the Managing Director and where it is a firm the partner designated in that behalf by the firm and in case of any other employer an officer designated in that behalf by the employer with his consent and whose name is intimated by the employer to the Labour Commissioner in the prescribed form by the prescribed date;

(d).....

(e).....

W.....

(g) an occupier of an industrial establishment shall be deemed to be in "default" of payment of wages if such wages are not paid within time as provided in Section 5 of the Payment of Wages Act, 1936."

9. Section 3 of the 1978 Act makes provisions regarding recovery of wages in certain industrial establishments as arrear of land revenue.

"3. Recovery of wages in certain industrial establishments as arrear of land revenue.(1) Where the Labour Commissioner is satisfied that the occupier of an industrial establishment is in default of payment of wages and that the wages bill in respect of which such occupier is in default exceeds fifty thousand rupees, he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate under his signature specifying the amount of wages due from the industrial establishment concerned.

(2) Upon receipt of the certificate referred to in subsection (1), the Collector shall proceed to realise, from the industrial establishment, the amount specified therein, besides recovery charges at the rate of ten percent, as if such amount were an arrear of land revenue.

(3) The amount realised under subsection (2) shall, after deducting the recovery charges, be placed at the disposal of the Labour Commissioner who shall disburse the same or cause it to be disbursed among the workmen entitled thereto.

(4) Where the amount so realised falls short of the wages bill in respect of which the occupier has been in default, the Labour Commissioner may arrange for disbursement of such proportion or respective proportions of the wages due to various categories of workmen as he may think fit.

(5) The liability of the occupier towards each workman in respect of payment of wages, shall, to the extent of the amount paid to such workman under this section stand discharged." Section 4 of the 1978 Act deals with the powers of Labour Commissioner, and provides as follows:

"4. Powers of Labour Commissioner. For the purposes of ascertaining the wages bill of an establishment in respect of which default has been committed the Labour Commissioner shall have all the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of witnesses, examining them on oath, and compelling production of documents, and shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973." Section 5 of the 1978 Act dealing with

"Penalties" lays down as follows:

"5. Penalties.(1) No occupier of an industrial establishment shall, at any time, be in default of a wagebill exceeding rupees one lakh.

(2) Every occupier who contravenes the provisions of subsection (1) shall be punishable with imprisonment for a term which shall not be less than three months but may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded impose a sentence of imprisonment for a term of less than three months."

Section 6 of the 1978 Act deals with offences by companies and provides as follows:

"6. Offences by companies.(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of offence is attributable to any neglect on the part of any managing agent, secretaries and treasurers, director, manager or other officer of the company, such managing agent, secretaries and treasurers, director, manager or other officer of the company shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.For the purposes of this section,

(a) "company" means any body corporate, and includes a firm or other association of individuals, and

(b) "director" in relation to a firm, means a partner in the firm."

10. It will, thus, be seen that Section 3 and Section 4 of the 1978 Act refer to the "Labour Commissioner". "Labour Commissioner" has been defined in Section 2 (b) of the said Act. The definition is in inclusive. Accordingly, "Labour Commissioner" includes an officer, not below the rank of an Assistant Labour Commissioner, authorised by him to discharge, exercise and perform the duties, powers and functions of a Labour Commissioner under the 1978 Act. Hence, "Labour Commissioner", besides Labour Commissioner, also includes an officer, not below the rank of an Assistant Labour Commissioner, provided such officer

has been authorised by the Labour Commissioner to discharge, exercise and perform the duties, powers and functions of a Labour Commissioner under the 1978 Act. In other words, any officer, not below the rank of an Assistant Labour Commissioner, may be authorised by the Labour Commissioner to discharge, exercise and perform the duties, powers and functions of a Labour Commissioner under the 1978 Act.

Subsection (1) of Section 3 of the 1978 Act, inter alia, provides that where the Labour Commissioner is satisfied that the occupier of an industrial establishment is in default of payment of wages and that the wagebill in respect of which such occupier is in default exceeds fifty thousand rupees, he may forward to the Collector, a certificate under his signature specifying the amount of wages due from the industrial establishment concerned.

Meaning of "occupier" in relation to an industrial establishment has been given in Section 2 (c) of the 1978 Act.

Clause (g) of Section 2 of the 1978 Act lays down that an occupier of an industrial establishment shall be deemed to be in "default" of payment of wages if such wages are not paid within time as provided in Section 5 of the Payment of Wages Act, 1936.

Section 4 of the 1978 Act, inter alia, lays down that for the purposes of ascertaining the wagesbill of an establishment in respect of which default has been committed, the Labour Commissioner shall have all the powers of a Civil Court, while trying a Suit, under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of witnesses, examining them on oath and compelling the production of documents, and shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

It will thus be seen that subsection (1) of Section 3 of the 1978 Act contemplates an inquiry by the Labour Commissioner for satisfying himself

(i) that the occupier of an industrial establishment [as defined in Section 2 (c) of the said Act] is in default of payment of wages [as defined in Section 2 (g) of the said Act]

and (ii) that the wagebill in respect of which such occupier is in default exceeds fifty thousand rupees.

After satisfying himself as aforesaid, the Labour Commissioner may forward to the Collector, a certificate under his signature specifying the amount of wages due from the industrial establishment concerned.

11. In order to hold the inquiry as contemplated under subsection (1) of Section 3, the Labour Commissioner has been given all the powers of a Civil Court, while trying a Suit, under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of witnesses, examining them on oath and compelling the production

of documents (See Section 4 of the 1978 Act).

Further, the Labour Commissioner shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Subsection (2) of Section 3 of the 1978 Act provides for realisation by the Collector of the amount specified in the certificate received by him under subsection (1) of Section 3.

Subsection (3) of Section 3 lays down that the amount realised by the Collector under subsection (2) shall, after deducting the recovery charges, be placed at the disposal of the Labour Commissioner who shall disburse the same or cause to be disbursed among the workmen entitled thereto.

Subsection (4) of Section 3 deals with the proportionate disbursement of the amount among various categories of workmen where the amount realised under subsection (2) falls short of the wages bill in respect of which the occupier has been in default.

Subsection (5) of Section 3 provides that the liability of the occupier towards each workman in respect of payment of wages, shall, to the extent of the amount paid to such workman under Section 3 stand discharged.

It is noteworthy that issuance of certificate under subsection (1) of Section 3 of the 1978 Act is without prejudice to the provisions of Sections 5 and 6 of the said Act.

Section 5 of the 1978 Act deals with Penalties.

Subsection (1) of Section 5 of the 1978 Act lays down that no occupier of an industrial establishment shall, at any time, be in default of a wage bill exceeding Rs. 1 lac.

Subsection (2) of Section 5 lays down that every occupier who contravenes the provisions of subsection (1) of Section 5 shall be punishable as provided in subsection (2).

Section 6 of the 1978 Act deals with offences by companies.

12. The scope of enquiry under Section 3 of the 1978 Act was considered by their Lordships of the Supreme Court in *Modi Industries Ltd. v. State of U.P. and others*, (1994) 1 SCC 159. Their Lordships laid down as under (paragraphs 8, 9, 10 and 11 of the said SCC):

"8. The inquiry under Section 3 being thus limited in its scope, the Labour Commissioner's powers extend only to finding out whether the workmen who have put in the work were paid their wages as per the terms of their employment and within the time stipulated by such terms. If the Labour Commissioner is satisfied that the workmen, though they have worked and are, therefore, entitled to their wages, are not paid the same within time, he has further to satisfy

himself that the arrears of wages so due exceed Rs. 50,000/. It is only if he is satisfied on both counts that he can issue the certificate in question. Under the Act, the Labour Commissioner acts to assist the workmen to recover their wages which are admittedly due to them but are withheld for no fault on their behalf. He does not act as an adjudicator if the entitlement of the workmen to the wages is disputed otherwise than on frivolous or prima facie untenable grounds. When the liability to pay the wages, as in the present case, is under dispute which involves investigation of the questions of fact and/or law, it is not the function of the Labour Commissioner to adjudicate the same. In such cases, he has to refer the parties to the appropriate forum.

9. The powers conferred on the Labour Commissioner under Section 3 of the Act are to prevent apprehended or present breach of industrial peace. That is why the inquiry contemplated is of a summary nature. The exercise of the said powers by the Labour Commissioner does not prevent either party from approaching the regular forum for the redressal of its grievance.

Construing a more or less similar provision of Section 3(b) of the U.P. Industrial Disputes Act, 1947 in *State of Uttar Pradesh v. Basti Sugar Mills Co. Ltd.*, (1961) 2 SCR 330: AIR 1961 SC 420, this Court had taken the same view. The provisions of the said Section 3(b) read as follows:

"3. Power to prevent strikes, lockouts, etc. 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, by general or special order, make provision

(a)**

(b) 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;

10. In that case, the State Government under the above provision had directed the sugar factories to pay bonus to the workmen. Repelling the challenge to the direction of the Government, this Court observed as follows:

"We entirely agree with Mr. Pathak that the normal way of dealing with an industrial dispute under the Act would be to have it dealt with judicially either by conciliation or by adjudication and that judicial process cannot be circumvented by resort to executive action. The proceeding before a conciliator or an adjudicator is, in a sense, a judicial proceeding because therein both the parties to the dispute would have the opportunity of being heard and of placing the relevant material before the conciliator or adjudicator. But there may be an emergency and the Government may have to act promptly "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 maintaining employment." It

was, therefore, necessary to arm it with additional powers for dealing with such an emergency. Clause (b) of Section 3 was apparently enacted for this purpose. An order made thereunder would be in the nature of a temporary or interim order as would be clear from the words "for such period as may be specified" appearing therein and from the second proviso to Section 3. Under this proviso where an industrial dispute is referred for adjudication under clause (d) an order made under clause (b) cannot be enforced after the decision of the adjudicating authority is announced by or with the consent of the State Government. It would, therefore, follow from this that where the Government has an executive order, as it did in this case, under clause (b) of Section 3, it is open to the aggrieved party to move the Government to refer the industrial dispute for conciliation or adjudication under clause (d) of Sections,..."

11. A similar view is expressed in *Basti Sugar Mills Co. Ltd. v. State of U.P.*, (1979) 1 SCR 590 : AIR 1979 SC 262. This nature of the provisions of Section 3 of the present Act emphasises two aspects which are relevant for our purpose. Firstly, the power conferred on the Labour Commissioner being meant to be used speedily to prevent apprehended or continuing industrial unrest, the procedure to be adopted by him is essentially of a summary nature. It does not contemplate a protracted inquiry. Secondly, the purpose of the inquiry being to redress the grievance of the nonpayment of wages, the authority of the Labour commissioner extends only to finding out whether on the admitted fact that the workman had worked, the grievance of the workmen has a substance in it or not. It does not, however, mean that the employer can defeat the provisions of the Act by raising frivolous pleas to avoid the payment of wages and when the employer does so, the Labour Commissioner has to wash his hands off the complaint of the workmen. While looking into the grievance of the workmen, the Labour Commissioner will undoubtedly have power to find out whether the employer has a plausible defence or not. Hence the Labour Commissioner would have to examine the pleas and to deal with them. He would have, therefore, to give reasons for accepting or not accepting them. To that extent, he is called upon to give reasons while issuing or refusing to issue the certificate. It must be remembered that Labour Commissioner is not a mere recovery officer. While the recovery officer acts on a claim which is already crystallised in some order, the Labour Commissioner in the present case, has to ascertain himself whether and to what extent, the workmen are entitled to the wages and then issue or refuse to issue the certificate. The inquiry that the Labour Commissioner conducts for the purpose is thus of a quasijudicial nature. It is the Collector to whom he forwards the certificate who in fact acts as the recovery officer. As is provided in Section 3 itself, on receipt of the claim or complaint of the workmen, the Labour Commissioner has to satisfy himself that the occupier of the industrial establishment concerned is in default of payment of wages and that the wagebill in respect of which the default is complained of exceeds Rs. 50,0000/-. He cannot satisfy himself without hearing the occupier of the industrial establishment on the claim made. That is why under Section 4, he is clothed with the powers of

the Civil Court in the matter of enforcing the attendance of the witnesses, examining them on oath and compelling production of documents. It has further to be borne in mind that the consequences to the parties of the issuance or nonissuance of the certificate are grave. When the certificate is not issued, the employees' claim stands deferred to an indefinite period. When, however, it is issued, the employer is saddled with a sizeable financial liability and the nonpayment of the amount indicated in the certificate visits him with penal consequences of both imprisonment and fine. The decisions of this Court in *Mahabir Jute Mills Ltd., Gorakhpur v. Shibban Lal Saxena*, (1976) 1 SCR 168 : AIR 1975 SC 2057, *Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi*, (1991) 2 SCC 716: 1991 AIR SCW 879, and *C.J.3. Gautam v. Union of India*, (1993) 1 SCC 78, on which Shri Tarkunde relied in support of his proposition that administrative orders need not contain reasons for the same, according to us, therefore, have only a limited application in the present case. The Labour Commissioner may have to deal with broadly three different situations, viz., (i) where there is no defence whatsoever raised by the employer to the claim of the workmen; (ii) where the employer raises frivolous and untenable pleas to resist the claim; and (iii) where there is a genuine dispute with regard to the entitlement of the workmen to the wages and the said dispute cannot be resolved without investigating the disputed questions of fact or law. In the first case, the Labour Commissioner is not called upon to give any reasons while issuing the certificate. In the second case, the Labour Commissioner has to give reasons as to why according to him, the pleas raised are untenable. In the third situation, the Labour Commissioner when he rejects the claim of the workmen, has to indicate the disputed questions of law or fact which prevent him from exercising his limited jurisdiction. Thus, both for issuing the certificate as well as for rejecting it, the Labour Commissioner may be called upon to give his reasons depending upon the facts in each case. It is wellsettled by a series of decisions beginning with *A.K. Kraipak v. Union of India*, (1970) 1 SCR 457: AIR 1970 SC 150, that even administrative decisions must bear reasons for some of them may have more vital consequences on the rights of the parties than even judicial decisions. It is not, therefore, correct to say that the Labour Commissioner is not required to give reasons for his orders."

(Emphasis supplied)

This decision thus lays down that the Labour Commissioner while exercising power under Section 3 of the 1978 Act has a limited jurisdiction. The Labour Commissioner has to satisfy himself that the occupier of the industrial establishment concerned is in default of payment of wages and that the wagebill in respect of which the default is complained of exceeds Rs. 50000/. In other words, the Labour Commissioner has to hold inquiry for ascertaining whether and to what extent the workmen are entitled to the wages and then to issue or refuse to issue the certificate. For holding such enquiry, the Labour Commissioner has been given all the powers of a Civil Court, while trying a Suit, under the Code of Civil Procedure, 1908 in the matter of enforcing the attendance of the witnesses,

examining them on oath and compelling production of documents.

The inquiry that the Labour Commissioner conducts for the purpose is of a quasijudicial nature.

It is, further, laid down that for issuing a certificate as well as for rejecting it under Section 3 of the 1978 Act, the Labour Commissioner may be called upon to give reasons depending upon facts in each case.

13. In *Hotel and Restaurant Karamchari Sanghv. Gulmarg Hotel and others*, (2006) 5 SCC 442, their Lordships of the Supreme Court have emphasized that the inquiry by the Labour Commissioner contemplated under Section 3 of the 1978 Act is of a very limited nature, namely, whether the establishment has made a default in timely payment of wages to its workmen as a whole when there is no dispute that the workmen are entitled to them. The Labour Commissioner's powers extend only to finding out whether the workmen who have put in the work were paid their wages as per the terms of their employment and within the time stipulated by such terms. If the Labour Commissioner is satisfied that the workmen, though they have worked and were entitled to their wages, had not been paid the same within time, he has further to satisfy himself that the arrears of wages so due exceed Rs. 50,000/. It is only if he is satisfied on both counts that he can issue the certificate in question.

14. Relevant portions of the Judgment of the Supreme Court in *Hotel and Restaurant Karmachari Sangh case* (supra) are reproduced below (Paragraphs 7 and 8 of the said SCC):

"7. It will thus be clear from the preamble, the Statement of Objects and Reasons and the provisions of the Act that, firstly, the Act has been placed on the statutebook to ensure timely payment of wages by the bigger establishments, the incidence of disturbance of industrial peace being greater in such establishments on account of the default in payment of wages. Secondly, the Act deals with defaults in payment of the wage bill of all the workmen in the establishment. It is not meant to provide a remedy for the default in payment of wages of individual workmen. That can be taken care of by the provisions of the Wages Act which provisions are found inadequate to ensure timely payment of wages of the whole complement of workmen in an establishment. Thirdly, it is not in respect of the default in payment of every wage bill; but only if a wage bill exceeds Rs. 50,000 the Labour Commissioner can be approached under the Act for redressal of the grievance. Fourthly, the Act is not applicable to all establishments but only to those establishments which produce, process, adopt or manufacture some articles. It will, therefore, be evident that the Act does not supplant or substitute the Wages Act but supplements the said Act, in the limited area viz. where the establishment, as stated above, (i) produces, processes, adopts or manufactures some articles, (ii) where there is a default in the wage bill of the entire such establishment, and (iii) where such wage bill exceeds Rs. 50,000. The object of the Act as stated above is not so much to secure payment

of wages to individual workmen but to prevent industrial unrest and disturbance of industrial peace on account of the default on the part of the establishment in making payment of wages to their workforce as a whole. It appears that many establishments had a tendency to delay the payment of wages to their workmen and were playing with the lives of the workmen with impunity. This naturally led to a widespread disturbance of industrial peace in the State. Hence the legislature felt the need for enacting the present statute. This being the case, the inquiry by the Labour Commissioner contemplated under Section 3 of the Act is of a very limited nature viz. whether the establishment has made a default in timely payment of wages to its workmen as a whole when there is no dispute that the workmen are entitled to them.

8. The inquiry under Section 3 being thus limited in its scope, the Labour Commissioner's powers extend only to finding out whether the workmen who have put in the work were paid their wages as per the terms of their employment and within the time stipulated by such terms. If the Labour Commissioner is satisfied that the workmen, though they have worked and were entitled to their wages, had not been paid the same within time, he has further to satisfy himself that the arrears of wages so due exceed Rs 50,000. It is only if he is satisfied on both counts that he can issue the certificate in question. Under the Act, the Labour Commissioner acts to assist the workmen to recover their wages which are admittedly due to them but are withheld for no fault on their behalf. He does not act as an adjudicator if the entitlement of the workmen to the wages is disputed otherwise than on frivolous or prima facie untenable grounds. When the liability to pay the wages is under dispute which involves investigation of the questions of fact and/or law, it is not the function of the Labour Commissioner to adjudicate the same. In such cases, he has to refer the parties to the appropriate forum." (Emphasis supplied)

From the above decisions, it follows that the jurisdiction exercised by the Labour Commissioner under Section 3 of the 1978 Act is of a very limited nature. However, while exercising such jurisdiction, the Labour Commissioner has all the powers of Civil Court, while trying a Suit, under the Code of Civil Procedure in respect of enforcing the attendance of witnesses, examining them on oath and compelling the production of documents. The power exercised by the Labour Commissioner under Section 3 of the 1978 Act is quasijudicial in nature, and he is required to give hearing to the occupier of the industrial establishment and consider the pleas raised by such occupier in defence. Further, the Labour Commissioner is required to give reasons while issuing the certificate or rejecting it depending upon the facts in each case. It is further noteworthy that in case the Labour Commissioner issues certificate, and the Collector after realising the amount places the same at the disposal of the Labour Commissioner, and the Labour Commissioner disburses the amount to workmen, then the liability of the occupier towards each workman to the extent of payment made to such workmen shall stand discharged.

Reverting to the question as to whether the Labour Commissioner (in the present case, Deputy Labour Commissioner) while exercising jurisdiction under the 1978 Act, particularly Section 3 thereof, acts as a "Tribunal", it will be relevant to refer to certain decisions wherein the meanings of the words "Court" and "Tribunal" have been considered.

15. In *Smt. Kalawati Reja v. IInd Additional Civil Judge*/"Prescribed Authority and others, 1983 All LJ 563, this Court considered a number of authorities and laid down as under (Paragraphs 4, 6 and 7 of the said All.L.J.):

"The State exercises its judicial functions through Court. It is distinct from a tribunal or an authority which is invested only with a part of the judicial powers and functions of the State for a particular purpose. A body is constituted a Court by the attributes it possesses by its constitution and not by the prescriptions made as to its performances for a particular purpose. It seems to me that a body invested with judicial powers of a State gets the constitution of a Court by its being vested with the judicial power of a sovereign character. The Court exercises the normal judicial sovereign powers of the State which is unlimited and if limits are to be fixed, the Court itself decides the same while a tribunal or a body which is not a Court exercises judicial powers in a limited area and for a particular purpose, and does not decide own limits. While a Court represents the entire sovereign judicial power of a State in its own field, a tribunal exercises only some of them for a particular purpose. This is not to confuse between the various kinds of Courts, namely, civil, criminal or revenue, which refer to the jurisdiction within which the judicial power of the State is to be exercised, without any limits, and if one has to be fixed, they would do it themselves....."

"In *Shell Co. of Australia v. Federal Commissioner of Taxation*, (1931) AC 275, it was pointed out that a tribunal is not 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 judicial power of the State is the power which every sovereign authority must of necessity have to decide controversies between the subjects, or between itself and its subjects. See also *Huddart Parker & Co. v. Moorehead*, (1909) 8 CLR 330, at p.357. It is in this sense that a Court is invested with the entire inherent judicial power of a State while a tribunal is invested with only a part of it....."

"It would thus be seen that while a Court is invested with the entire judicial powers of a State, a tribunal is vested with only a part of them. A tribunal thus does not possess all the attributes of a Court....."

".....One of such tests is that tribunals derive whatever powers they exercise under the terms of the Act which created them. If they are conferred powers which a civil or a criminal Court possesses, for particular purposes or for

purposes of particular provisions of particular Act or Acts, they could not be treated as Courts for all purposes and in the ordinary sense of that term."

".....To fall within the definition of the word "Court" as given in a particular enactment for the purposes of that enactment is not to construe a body as a Court in the strict sense of that term."

(Emphasis supplied)

This decision thus lays down that a "Tribunal" is constituted under a statute and is invested with only a part of the inherent judicial power of the State. A "Court", on the other hand, is invested with the entire judicial power of the State.

16. The Full Bench of this Court in Committee of Management, Shri Kashi Ram Mahavidyalaya, Aurai and another v. Deputy Director of Education, Varanasi and others, AIR 1997 All 99 (Full Bench) (paragraphs 8 and 9) has laid down that the basic and fundamental feature, which is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

It has further been laid down that a Tribunal within the meaning of Rule 5 of Chapter VIII of the Rules of the Allahabad High Court must be an authority which is required to act judicially and which has been entrusted with the inherent judicial powers of the State.

17. In Pratappur Sugar & Industries Limited, Pratappur, Disst. Deoriav. Deputy Labour Commissioner, U.P. Gorakhpur Region, Gorakhpur and others, (2000) 3 UPLBEC 2161, a Division Bench of this Court considered the question as to whether an order passed by the Deputy Labour Commissioner under Clause LL of the Standing Orders governing conditions of employment of workmen in Vaccum Pan Sugar Factories functioned as a Tribunal.

The Division Bench laid down as under (paragraphs 12 and 13 of the said UPLBEC):

"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 subjectmatter of challenge in the writ petition filed under Articles 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 and Dispute 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. Subclause (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, "trapping 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."

(Emphasis supplied)

This decision has thus laid down that the test to be applied in determining whether any body or authority has the status of a Tribunal is as to whether such body or authority 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.

18. The Division Bench has concluded that the Additional/Deputy Labour Commissioner while exercising jurisdiction under Clause LL of the Standing Orders functions as a Tribunal.

19. In Mohd. Arifv. M/s Mirza Glass Works and others, 2005 (107) FLR 129, a Division Bench of this Court considered the question as to whether Special Appeal under Chapter VIII, Rule 5 of the Rules of the Court was maintainable against the Judgment of the learned Single Judge passed in the Writ Petition filed against the Order passed by the Prescribed Authority against the appellant under the Payment of Wages Act, 1936.

The Division Bench of this Court held as under (Paragraph 5 of the said FLR):

"5. From a conjoint reading of Section 15 (1) with Section 18 of the Payment of Wages Act, 1936, it is clear that the authority empowered to decide claims arising out of deduction from wages is entrusted all the powers of Civil Court under the Code of Civil Procedure for the purposes of taking evidence and for attendance and compelling the production of documents. Thus, the said authority has trapping of Court and is a Tribunal. Any order, thus passed by authority under Section 15 of the Payment of Wages Act, 1936 is an order passed by Tribunal. The special appeal being barred against an order of one Judge exercising jurisdiction under Article 226/227 of the Constitution arising out of a writ petition from an order of Tribunal, the preliminary objection raised by Counsel for the respondents has substance.

"The appeal is barred under Chapter VIII, Rule 5 of the Rules of the Court and is dismissed as not maintainable."

The Division Bench has thus held that the authority under the Payment of Wages Act, 1936 has trapping of Court and is a Tribunal.

20. Let us apply the tests laid down in the above decisions to decide as to whether the Labour Commissioner in exercise of jurisdiction under the 1978 Act, particularly Section 3 thereof, acts as "Tribunal".

Provisions of the 1978 Act, particularly Sections 3, 4, 5 and 6, have already been analyzed in the earlier part of this judgment, and the scope of enquiry under Section 3 of the 1978 Act as explained by the Supreme Court in *Modi Industries Ltd.* case (supra) and *Hotel and Restaurant Karmachari Sangh* case (supra) has already I been noticed.

As noted earlier, the 1978 Act, i.e., a statute, has given jurisdiction and powers to the Labour Commissioner under various provisions of the said Act.

21. The jurisdiction of the Labour Commissioner under Section 3 of the 1978 Act is of a limited nature. The Labour Commissioner has to hold enquiry for ascertaining whether and to what extent the workmen are entitled to the wages and then to issue or refuse to issue the certificate. For holding such enquiry, the Labour Commissioner has been given all the powers of a Civil Court, while trying a Suit, under the Code of Civil Procedure in the matter of enforcing the attendance of the witnesses, examining them on oath and compelling production of documents. In other words, the authority i.e. Labour Commissioner, if necessary, may take evidence. Thus, for holding enquiry under Section 3, the authority i.e. Labour Commissioner has trappings of a Court.

The enquiry that the Labour Commissioner conducts under Section 3 of the 1978 Act is quasijudicial in nature, and he is required to give hearing to the occupier of the industrial establishment and consider the pleas raised by such occupier in defence. Further, the Labour Commissioner is required to give reasons while issuing the certificate or rejecting it depending upon the facts in each case.

22. It is further noteworthy that in case, after holding enquiry, as mentioned above, the Labour Commissioner issues certificate, then the Collector realises the amount mentioned in the certificate as arrears of land revenue. Further, in case the amount is realised by the Collector and is placed at the disposal of the Labour Commissioner, and such amount is disbursed to the workmen, then the liability of the occupier towards each workman to the extent of payment made to such workman shall stand discharged.

Therefore, the exercise of jurisdiction and power by the Labour Commissioner under the 1978 Act, particularly Section 3 thereof, affects and determines the rights and liabilities of the workmen visavis the occupier of the industrial establishment, though to a limited extent.

It will thus be seen that the authority, i.e., Labour Commissioner under the 1978 Act (i.e. a statute) has been entrusted with a part of the inherent judicial power of the State to deal with the questions/disputes between the parties, to the extent indicated in the provisions of the said Act, and the authority i.e. Labour Commissioner has to act judicially while exercising such power.

Hence, the Labour Commissioner while exercising power under the 1978 Act, particularly Section 3 thereof, acts as a Tribunal.

23. In the present case, the Deputy Labour Commissioner, Varanasi Region, Varanasi (respondent No. 1), who was evidently exercising power of Labour Commissioner by virtue of clause (b) of Section 2 of the 1978 Act, passed the Orders dated 8.3.2001 in exercise of power under Section 3 of the said Act.

The said Act, as noted above, has been enacted with respect to the matters enumerated in the Concurrent List in the Seventh Schedule to the Constitution of India.

Further, in view of the discussion above, it is evident that the Deputy Labour Commissioner was acting as a Tribunal while passing the said Orders in exercise of power under Section 3 of the said Act.

The aforesaid Writ Petition was filed challenging the said Orders. The learned Single Judge by the Judgment and Order dated 10.12.2007 allowed the aforesaid Writ Petition and quashed the said Orders passed by the Deputy Labour Commissioner, acting as a Tribunal, in exercise of power under Section 3 of the said Act.

In view of the above, the present Special Appeal filed against the said Judgment and Order dated 10.12.2007, is not maintainable under Rule 5 of Chapter VIII of the Rules of the Court.

The Special Appeal is liable to be dismissed as not maintainable, and the same is accordingly dismissed as not maintainable.

However, on the facts and in the circumstances of the case, there will be no order as to costs.