

(2011) 12 PAT CK 0055

In the Patna High Court

Case No : Misc. Jurisdiction Case No. 2765 of 2009

Sunil Prakash Tiwary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 — Rule 14, 23, 24(1), 27, 6(5)
Constitution of India, 1950 — Article 136(1), 215, 226, 227, 235
Contempt of Courts Act, 1971 — Section 10, 2, 3, 9
Evidence Act, 1872 — Section 10, 3
Industrial Disputes Act, 1947 — Section 30
Penal Code, 1860 (IPC) — Section 19, 20

Citation : (2012) 1 PLJR 777

Hon'ble Judges : R.K. Datta, J

Bench : Single Bench

Advocate : Abhay Kumar Singh, Kamal Kishore Mishra and Rakesh Kumar Samrendra, for the Appellant; Nawal Kishore Singh and Yogendra Kr. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Datta, J.—This application has been filed under Article 215 of the Constitution of India read with Section 10 of the Contempt of Courts Act, 1971 with a prayer to initiate proceedings of contempt against the opposite party Nos. 4 & 5 for not implementing the order dated 31.12.2007 by the Appellate Authority being the Minister, Transport Department, Government of Bihar passed u/s 24(1)(b) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. An objection has been raised regarding the maintainability of the contempt petition with respect to such an order.

2. The short facts leading up to the filing of the present application are that the Transport Commissioner who was at the relevant time the Secretary, Transport Department also and holding the charge of the Office of the Transport

Commissioner by his order dated 7.7.2006 dismissed the petitioner from the post of Motor Vehicle Inspector. Against the said order of dismissal the petitioner filed an appeal under Rule 24(1)(b) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (in short "the Rules") before the Minister of State Transport (Independent Charge). After hearing the petitioner as also the Transport Commissioner, the Appellate Authority, set aside the order of dismissal dated 7.7.2006 by his order dated 31.12.2007. Thereafter the petitioner met the Transport Commissioner and subsequently the Secretary, Transport Department also requesting them to implement the order dated 31.12.2007. The petitioner then moved the Appellate Authority to refer the matter to this Court for initiation of contempt proceedings against the opposite party Nos. 4 & 5, the Secretary and the Transport Commissioner for not implementing the order passed by the Appellate Authority. The Transport Minister issued repeated notices to the opposite party Nos. 4 & 5 to appear before him and explain the reasons for not implementing the order but they did not do so. However, since the Appellate Authority did not refer the matter to this Court for initiation of contempt proceedings the petitioner has filed the present application with the prayer aforesaid.

3. Learned counsel for the petitioner submits that the 2005 Rules have been framed under Article 309 of the Constitution of India and thus have a statutory character and the Appellate Authority is a statutory authority under the said Rules and thus it is a Tribunal/Quasi Judicial Authority and therefore a subordinate court to the High Court and under the jurisdiction of this Court that exercises supervisory jurisdiction under Article 227 of the Constitution over all the courts and Tribunals within the State. It is urged by learned counsel that the High Court is bound to uphold the majesty of all Tribunals under it under Article 227 of the Constitution and in case of non-implementation of their orders proceed to initiate contempt proceedings against those guilty of such wilful disobedience.

4. It is further submitted by learned counsel that the Appellate Authority by its order dated 31.12.2007 has passed a judgment which has got finality and definitiveness, which are the essential tests of a judicial pronouncement. Learned counsel admits that under Rules 23 to 27 of the Rules although no power to compel production of witnesses and documents is to be found but such power must be presumed as an inferred consequence of statute.

5. Learned Additional Advocate General appearing for the State, on the other hand, submits that the disciplinary authority or the appellate authority is a purely administrative body. It is urged by him that a public servant holds office at the pleasure of the President or the Governor subject to Article 311(2) of the Constitution of India and the said action pertains to the disciplinary power of the State as an employer against its employee and thus award of punishment is administrative in nature; therefore, all authorities involved in the process whether the enquiry officer, the disciplinary authority or the appellate authority

are merely administrative authorities and they cannot be held to be a court much less a court subordinate to the High Court which is the requirement of Section 10 of the Contempt of Courts Act before the High Court can initiate contempt proceedings on a contempt committed against such subordinate courts.

6. It is further contended by learned counsel for the State that even if it is presumed for the sake of argument that the appellate authority is a quasi judicial Tribunal, it still does not come within the definition of court under the Contempt of Courts Act and thus relief sought by the petitioner cannot be granted to him.

7. It is also urged by learned counsel that alternative remedy is available to the petitioner in the matter and in such circumstances the power of contempt should not be exercised.

8. It is further submitted that contempt proceedings should not be allowed to be used as a substitute for execution proceedings and it was open to the petitioner to have represented before the Chief Secretary who is competent to take action against the Transport Commissioner or the Transport Secretary for not taking steps in implementing the order.

9. Lastly it is urged that even if no alternative remedy is provided under the Rules in the matter of implementation of the order of the Appellate Authority the petitioner could have moved under Article 226 of the Constitution but a contempt proceeding in the facts and circumstances of the case with respect to non-implementation of the order of the appellate authority is not maintainable as the petitioner is not remediless.

10. In reply, learned counsel for the petitioner admits that when the petitioner moves the High Court for initiating contempt proceedings with respect to an order of a court subordinate to the High Court the discretion is conferred upon the High Court in such matter. It is submitted by learned counsel that in case it is so held that no case for initiating contempt proceedings is made out then he should be permitted to convert the present petition into an application under Article 227 of the Constitution.

11. A large number of decisions of the Supreme Court as also of this Court and various other High Courts have been cited at the Bar in support of the respective contentions of learned counsels for the parties. However, it may not be necessary to refer to each and every one of them. I may, however, refer to some of the decisions which may throw light on the issue under consideration as to the maintainability of the contempt petition in a matter of the present nature. The first such decision which deals at length with the provisions in question, although the case was under the Contempt of Courts Act, 1952, is a three Judges Bench decision of the Supreme Court in the case of *Brajnandan Sinha Vs. Jyoti Narain*, , in which the Apex Court dealt at length with the definition of the court, judicial power, judicial decision of the Tribunals; paragraphs 8 to 18 and 23 of the said judgment clarify much of the issues that have been raised in the present matter and they are accordingly quoted below:

8. The word "Court" was not defined in the Act and the expression "Courts subordinate to the High Courts" would "prima facie" mean the Courts of law subordinate to the High Courts in the hierarchy of Courts established for the purpose of administration of justice throughout the Union.

9. It would be relevant, however, to notice the definitions of "Court" available elsewhere.

10. Coke on Littleton and Shroud defined the word "Court" as the place where justice is judicially administered.

11. According to Stephen,

In every Court, there must be at least three constituent parts-the actor, the respondent and judges; the actor or plaintiff, who complains of an injury done; the respondent, or defendant, who is called upon to make satisfaction for it; and the judge, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and by its officers to apply, the remedy.

12. Section 3, Evidence Act (1 of 1872) defines "Court" as including all Judges, and Magistrates, and all persons, except arbitrators, legally authorized to take evidence. This definition, however, has been held to be not exhaustive but framed only for the purpose of Evidence Act and is not to be extended where such an extension is not warranted.

13. Sections 19 and 20, Penal Code (Act 45 of 1860) define the words "Court" and the "Court of Justice" as under:

Section 19. The word "Judge" denotes not only every person who is officially designated as a judge, but also every person-who is empowered by law to give in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against would be definitive, or a judgment which, if confirmed by some other authority would be definitive, or

who is one of a body of persons, which body of person is empowered by law to give such a judgment.

Section 20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

14. The pronouncement of a definitive judgment is thus considered the essential "sine qua non" of a Court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a Court.

15. The Privy Council in the case of-"Shell Co. of Australia vs. Federal Commissioner of Taxation", 1931 AC 275 (A) thus defined "Judicial Power" at p. 295:

Is this right? What is "Judicial power"? Their Lordships are of opinion that one of the best definitions is that given by Griffith C.J. in-"Huddart, Parker & Co. vs. Moorehead", (1909)8 CLR 330 357 (B) where he says: "I am of opinion that the words "judicial power" as used in S.71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.

Their Lordships further enumerated at p.297 certain negative propositions in relation to this subject:

1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision;
2. Nor because it hears witnesses on oath;
3. Nor because two or more contending parties appear before it between whom it has to decide;
4. Nor because it gives decisions which affect the rights of subjects;
5. Nor because there is an appeal to a Court;
6. Nor because it is a body to which a matter is referred by another body. See Rex vs. Electricity Commissioner, 1924-1 KB 171(C)" and observed at page 298:

An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a Court of judicial power

16. The same principle was reiterated by this Court in-"Bharat Bank Ltd. vs. Employees of Bharat Bank Ltd., AIR 1950 SC 188 (D); and-"Meqbool Hussain vs. State of Bombay., AIR 1953 SC 325 (E), where the test of a judicial tribunal as laid down in a passage from-"Cooper vs. Willson, 1937 2KB 309(F)340, was adopted by this Court:

A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:-(1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.

17. "Maqbool Hussain"s case (E)., above referred to, was followed by this Court in - S.A. Venkataraman vs. Union of India, AIR 1954 SC 375 (G), where a Constitution Bench of this Court also laid down that both finality and authoritativeness were the essential tests of a judicial pronouncement.

18. It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

23. The position is thus summarized in the following passage in Halsbury"s Laws of England. Hailsham Edition, volume 8, page 525:

Many bodies are not courts, although they have to decide questions and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, such as assessment committees, guardians committees, the Court of referees constituted under the Unemployment Insurance Acts to decide claims made on the insurance funds, the benchers of the Inns of Court when considering the conduct of one of their members, the General Medical Council, when considering questions affecting the position of a medical man.

12. The decision of the Constitution Bench of the Supreme Court in the case of Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, , may also be usefully referred to although the said case related to maintainability of an application by way of Special Leave before the Supreme Court under Article 136(1) of the Constitution on the ground as to whether State Government is a tribunal within the meaning of the said Article when it was exercising appellate powers under the concerned Statutory Rules. As the said case has been rigorously pressed by learned counsel for the petitioner and the case is the only one cited regarding exercise of appellate power by the State Government under certain Statutory Rules under consideration, although not with reference to the Contempt of Courts Act, the majority view, which is to be found in paragraphs 33 & 34, is quoted below:

33. The question which we have to decide in the present appeal is whether the State Government is a tribunal when it exercises its authority under R. 6(5) or R. 6(6). No rules have been made prescribing the procedure which the State Government should follow in dealing with appeals under these two sub-rules, and there is no statutory provision conferring on the State Government any specific powers which are usually associated with the trial in Courts and which are intended to help the Court in reaching its decisions. The requirements of procedure which are followed in Courts and the possession of subsidiary powers which are given to Courts to try the cases before them, are described as trappings of the Courts, and so, it may be conceded that these trappings are not shown to exist in the case of the State Government which hears appeals under R.

6(5) and R.6 (6). But as we have already stated, the consideration about the presence of all or some of the trappings of a Court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test, however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under R. 6(5) and R. 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that sense, a *lis*; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the power conferred on the State Government by R.6 (5) and R. 6(6), we feel no hesitation in holding that it is a Tribunal within the meaning of Art. 136(1).

34. In this connection, we may usefully recall the observation made by Lord Haldane in *Local Government Board vs. Arlidge*, 1915 AC 120 120. Said Lord Haldane "My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same". Having regard to the nature of the power conferred on the State Government, it seems to us clear that for reaching a fair and objective decision in the dispute brought before it in its appellate jurisdiction, the State Government has the power to devise its own procedure and to exercise such other incidental and subsidiary powers as may be necessary to deal effectively with the dispute. We are, therefore, satisfied that the State Government which exercises its appellate jurisdiction under R. 6(5) and R. 6(6) of the Rules is a Tribunal within the meaning of Art. 136(1), and so, the present appeal brought before this Court against the impugned appellate order passed by respondent No. 2 is competent. In the result, the preliminary objection raised by Mr. Goyal fails and must be rejected.

13. The next is the decision of the Apex Court in the case of *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*, , in paragraph 16 of which it was held as followed:

16. Section 2(c) of the Act defines "criminal contempt". Section 9 emphasises

that "nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act". Section 10 runs as under:

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Then, there is a proviso which is not material for our purpose. The provision in Section 10 is but a replica of. Section 3 of the 1952 Act. The phrase "courts subordinate to it" used in Section 10 is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them under Article 235 of the Constitution does not vest in the High Court. Under Article 227 of the Constitution the High Court has the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Court of Revenue Board, therefore, in the instant case, is a court "subordinate to the High Court" within the contemplation of Section 10 of the Act.

Then there is the decision of the Supreme Court in the case of K. Shamrao and Others Vs. Assistant Charity Commissioner, , in paragraph 17 of which the law has been laid down in the following terms :

17. The aforesaid provisions make it clear that the Assistant Charity Commissioner has not only the trapping of a judicial tribunal but also has power to give a decision or a definitive judgment which has finality and authoritativeness which are essential tests of a judicial pronouncement. The Assistant Charity Commissioner, therefore, possesses all the attributes of a court. The fact that the Assistant Charity Commissioner has also to perform some administrative functions is not of any relevance for coming to the conclusion that he is not a court, having regard to the provisions of the Act which substantially confer on him the power to give a definite judgment subject to finality in appeal, after hearing all concerned. Functions of the Assistant Charity Commissioner are predominantly adjudicatory. The Assistant Charity Commissioner has almost all the powers which an ordinary civil court has including power of summoning witnesses, compelling production of documents, examining witnesses on oath and coming to a definite conclusion on the evidence induced and arguments submitted.

14. On a consideration of the law laid down in the aforesaid decisions and reiterated in a large number of cases it is evident that the High Court has powers of suo motu initiating contempt proceedings with respect to a contempt committed against a court subordinate to the High Court as laid down by Section 10 of the Contempt of Courts Act, 1971, which is in the following terms:

S.10. Power of High Court to punish contempts of subordinate courts.-Every High Court shall have and exercise the same jurisdiction, powers and authority, in

accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, 1860 (45 of 1860).

15. The only bar is contained in the proviso that no cognizance of a contempt committed in respect of a court subordinate to the High Court shall be taken where such contempt is an offence punishable under the Indian Penal Code. The said proviso also leads to the conclusion that contempt jurisdiction is to be sparingly exercised and only in the absence of any recourse available to the subordinate court or Tribunal. Thus where the very act which is a contempt is also an offence punishable under the Indian Penal Code a bar has been created upon this Court to take cognizance of the contempt. Similar view has been taken by different High Courts with respect to such Tribunals which have been vested with the power to punish for contempt committed against them. Thus u/s 30 of the Industrial Disputes Act (Appellate Tribunal) Act (48 of 1950), before the repeal of the said provision, power to punish for contempt was conferred upon the Tribunal. In *Re: Mr. Hayles, Editor of "The Mail" and Another*, the Madras High Court refused to exercise its power of contempt with respect to such a tribunal holding as follows:

The inherent power of the High Court to punish contempts of a tribunal like the Industrial Tribunal subordinate to it was based on what was described as corrective duty of the High Court, correlated to the power of superintendence which a High Court had over tribunals. In 1906-1 K.B. 32 William, J., quoted the observations of Wilmot, C.J. in *Rex v. Almon* and said, "With a few verbal alterations these eloquent observations (of Wilmot, pp. 255-256) will apply with equal force to writings, the direct tendency of which is to present a fair and impartial trial or at least one that can be so considered from being had in courts of inferior jurisdiction which have not the power of protecting themselves from such encroachments and upon their independence.

16. At this stage I may also notice the provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 with respect to appeals from the orders of disciplinary authorities, Rules 23, 24 and 27, excluding the proviso to the last mentioned Rule, are as follows:

23. Orders against which appeal lies.-A Government Servant may prefer an appeal against order of suspension or order of punishment.

24. Appellate Authorities.-(1) A Government Servant, including a person who has ceased to be in government service, may prefer an appeal against the orders specified in Rule 23 to the authority specified in this behalf by a general or special order of the Government or, where no such authority is specified:-

(i) where such Government Servant is or was a member of Civil Service, Group-A

or Group-B or holder of Civil Post, Group-A or Group-B,-

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the Government where such order is made by any other authority;

(ii) where such Government servant is or was a member of a Civil Service, Group-C or Group-D, the authority to which the authority making the order appealed against is immediately subordinate.

(2) There shall be no appeal against the orders of the Government, however, review petitions may be filed in the form of Memorials.

(3) Where the person, who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate or to an authority specially authorized for this purpose by the Government.

27. Consideration of Appeal.-(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in view of the provisions of Rule 9 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or invoke or modify the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 14, the appellate authority shall consider-

(a) whether the procedure laid down in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that.....

(3) The appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

17. It is evident from the aforesaid Rules that the appeal against an order of punishment passed by the disciplinary authority lies to its higher authority. It is thus an in-house provision for appeal to a superior authority from the order of

the lower authority. It is true that the appellate authority while performing the said function has a duty to act fairly. Thus the nature of the State Government's decision may be taken to be quasi judicial yet the power exercised by the disciplinary authority as also by the superior authority as an appellate authority is essentially in the nature of exercise of the disciplinary powers by the Government and its officials over its subordinate officers and employees. Such power is essentially administrative in nature although the procedure for the exercise of such power may be quasi judicial in nature and the order itself is quasi judicial.

18. However, can it therefore be said that the appellate authority, whether the Minister acting as the Government under the Rules or any other senior official, is a court subordinate to the High Court while exercising such powers. It is evident from a consideration of the Rules themselves that no powers have been conferred upon the disciplinary authority or appellate authority to compel the production of witnesses and documents. It is difficult to accept the submission of learned counsel for the petitioner that such powers must be inferred in the appellate authority as the nature of the disciplinary power does not ipso facto lead to any such conclusion. Even assuming that the appellate authority is a tribunal in some form it cannot be held to be a tribunal in the sense the said word has been used in Article 227 of the Constitution and in no case a court in the sense the same has been considered and elaborated in *Brajnandan Sinha's* case (supra) much less a court subordinate to the High Court, for all the requirements of the duty to act fairly when the Government as the employer acts in exercise of its disciplinary powers while functioning as the appellate authority.

19. The passage from *Halsbury's Law of England*, quoted in paragraph 23 of *Brajnandan Sinha* case (supra) should clearly be kept in mind while considering such issue, which clearly lays down that although they have to decide questions and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, many of such bodies are not courts and in this regard special reference was made to the benchers of the Inns of Court when considering the conduct of one of their members, and the General Medical Council when considering questions affecting the position of a medical man. In the same way when the Minister as the Government or a superior officer decides an appeal considering the conduct of a public servant it cannot be held that he is a tribunal acting as a court although he is required to conduct the proceedings with fairness and impartiality.

20. The *Associated Cement Companies Ltd. case* (supra), where the Constitution Bench held the State Government acting under Rules 6(5) and 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 as a tribunal, was based upon very different facts and exercise of power by the State Government in a very different context. The power of the State Government by the statutory rules involved was exercised with respect to the dispute between the management and its Welfare Officers and thus it was held that it was in that

sense, a lis; there is affirmation by one party and denial by another and the dispute necessarily involves the rights and obligation of the parties to it and in the said circumstances when the State Government as the statutory authority under the Rules passes an order describing the same as a decision, it is final and binding specially being an order passed on an appeal. It was only having regard to the said distinctive features of the power conferred on the State Government by the said Rule that the Apex Court held that it was a tribunal within the meaning of Article 136 (1). The said position does not obtain when the State Government acts as a disciplinary appellate authority with respect to one of its employees.

21. Moreover, a Minister under the Rules of Executive Business is the political head of the Department and when the power has been vested in the Government itself as the appellate authority the Government cannot be held to be helpless in implementing its own orders. The whole purpose of the inherent power of punishing for contempt in a court of record like the High Court, exercising its power with respect to contempt committed of a court subordinate to it, is to protect the judicial power of the State from being brought into disrepute. The said position would not at all apply when the State Government is itself required to execute its own decision even if made under statutory rules with respect to its employee. It is not helpless even against its highest officials and has the power to proceed against them if they did not implement orders passed on an appeal, by initiating appropriate proceedings under the relevant Service Rules against them. That it did not do so in the present matter is a different issue altogether and the remedy to a citizen in such circumstances may lie elsewhere, in other jurisdiction of this Court.

22. For all the aforesaid reasons, I feel no hesitation in holding that the State Government is not a court subordinate to the High Court in terms of Section 10 of the Contempt of Courts Act, 1971 while exercising its appellate powers under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Thus, the present petition for initiating contempt proceedings for non-compliance of the order dated 31.12.2007 of the Minister, Transport as the appellate authority is not maintainable. This Court is also of the view that while exercising such powers as the disciplinary appellate authority it is not a tribunal under Article 227 of the Constitution. Thus the alternate prayer of learned counsel for the petitioner to convert the present application into one under Article 227 of the Constitution is also not acceptable and is refused. However, it would be open to learned counsel for the petitioner to convert the present matter into an application under Article 226 of the Constitution of India. But he must do so by making the necessary changes and corrections in the application within a period of three weeks from today, failing which the application shall stand rejected.