

(1989) 12 GUJ CK 0009
In the Gujarat High Court
Case No : LPA No. 339 of 1984

T.R. Mishra and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-12-1989

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(28)
Bombay Industrial Relations Act, 1946 — Section 85, 9, 9(2)
Constitution of India, 1950 — Article 227, 233, 234, 235, 236
Criminal Procedure Code, 1973 (CrPC) — Section 11
General Clauses Act, 1897 — Section 3(17)

Citation : (1990) 2 GLR 1103

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; R.A. Mehta, J

Bench : Division Bench

Judgement

Gokulakrishnan, C.J.—This is a public interest litigation by the appellants, who are legal petitioners, and they are supported by respondents

Nos. 4 to 20, who are Labour Unions. They are all practising before the Labour Courts in Gujarat. They are challenging the transfers of Labour

Court Judges by the Government. According to them, this power of transfer, control and superintendence over the labour judiciary is vested in the

High Court under Arts. 235 and 227 of the Constitution and, therefore, these transfers of 11 Labour Judges by the impugned order dated June 28,

1984 Annexure "A" to the petition are without any authority or competence. They have also challenged the Constitutional validity of Section 9 of

the Bombay Industrial Relations Act, 1946, under which the State Government has the power to constitute Labour Courts and to "appoint persons

having qualifications specified in sub-section (2) to Section 9". The said Section reads as follows :

9. Labour Courts :- (1) The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts having

jurisdiction in such local areas as may be specified in such notification and shall appoint persons having the qualifications specified in sub-section

(2) to preside over such Courts.

(2) A person shall not be qualified for appointment as the Presiding Officer of a Labour Court unless :

(a) he has practised as an advocate or a pleader for not less than three years in the High Court or any court subordinate thereto, or in any Labour

Court, Industrial Court or Tribunal established in the State under this Act or the Industrial Disputes Act, 1947 (XIV of 1947) or any law

corresponding to any such Act, for the time being in force in the State; or

(b) he has regularly appeared as a member of a trade union for not less than seven years in proceedings before any such Labour Court, Industrial

Court or Tribunal and holds a degree in law of a University established by law in any part of India; or

(c) he holds a degree in law University established by law in any part of India and has held an office not lower in rank than that of a Registrar of a

Labour Court or an Industrial Court or of an Assistant Commissioner of Labour under the State Government, for not less than five years.

Formerly, in place of sub-section (2) there was a proviso which has been repealed by Gujarat Act No. 22 of 1981 which was as under :

Provided that no person shall be so appointed unless he possessed the qualifications, other than the qualification of age, laid down under Art. 234

of the Constitution for being eligible to enter the judicial service in the State of Gujarat.

2. It is submitted that the independence of Judiciary and separation of judicial powers from the executive Government are fundamental and basic in

the scheme of the Constitution and Art. 50 gives the Directive Principles of State Policy as under :

The State shall take steps to separate the judiciary from the executive in the public services of the State.

In the appeal, following additional ground has been permitted to be raised :

The appellants submit that Section 9 of the Bombay Industrial Relations Act, 1946, in so far as it empowers the State Government to appoint and

transfer Labour Court Judges without following the provisions of Arts. 233, 234 235 and 236 of the Constitution of India and in violation thereof

and without intervention of the High Court, is ultra vires the said Articles and is, therefore, unconstitutional and of no effect.

There are some other contentions also which we will mention later on.

3. The learned single judge dismissed the petition holding that it is not a correct position that all the quasi judicial authorities and Tribunals are

subject to the control of the High Court so much so that the High Court should exercise, administrative control in respect of transfer and other

matters as it does for the District Court and other subordinate Courts. Other contentions were also negatived. In the Letters Patent Appeal, it is

contended that the transfer of these Labour Court Judges is violative of Constitutional Provisions and so also Section 9 which gives the power to

appoint, which would include the power to dismiss, and it is submitted that the High Court alone has the administrative power to transfer these

Judges as they are subordinate Courts as contemplated by Art. 236 of the Constitution. It is also submitted that under Art. 227 of the Constitution

also, the High Court has power of superintendence and this power includes the power of transfer and for consultation in the matter of transfer of

Labour Court Judges. Similar power of superintendence over the Labour Courts is conferred on Industrial Courts u/s 85 the Bombay Industrial

Relations Act and the Industrial Court, which consists of three members, can take a decision about transfer and/or can control transfer and the

President of the Industrial Court alone has no such power.

4. From the record, it is clear that it is the President of Industrial Court, Gujarat who had proposed these transfers of these Labour Court Judges

by his letter dated June 15, 1984, addressed to the Secretary, Government of Gujarat, Labour and Employment Department, and in accordance

with and on the basis of these recommendations, the Government of Gujarat, in administrative exigencies and public interest, has passed the

impugned order transferring 11 Labour Court Judges in 1984.

5. It may be mentioned that on this question, the Division Benches of Allahabad High Court and Bombay High Court have taken contrary views.

The view taken by the Bombay High Court is strongly relied by the appellants and the view of Allahabad High Court is strongly relied by the

respondent-State. The Division Benches of these High Courts have confirmed the view taken by their respective learned single judges.

6. The contentions raised by the appellants are as follows :

(i) That the Labour Courts come under the "judicial service" as defined in Art. 236(b) of the Constitution. Article 236(a) defines "District Judge"

by way of an inclusive definition and clause (b) defines "judicial service" to mean District Judge and other civil judicial posts inferior to the post of

District Judge. u/s 3(17) of the General Clauses Act "District Judge" has been defined to mean "Judge of a principal Civil Court of original

jurisdiction". According to the appellants Labour Courts and Industrial Courts have original civil jurisdiction and they are "Courts" and, therefore,

covered by the definition in Art. 236 of the Constitution and, therefore, they are under the control of the High Court under Art. 235 of the

Constitution and not under the control of the Government and, therefore, Section 9 is ultra vires Art. 235 of the Constitution and the impugned

orders of transfers by the Government are without any authority.

(ii) The second contention is that the Labour Court also exercises criminal jurisdiction under the Bombay Industrial Relations Act and as such, they

are Magistrates under the Criminal Procedure Code read with Section 3(32) of the General Clauses Act or Section 3(28) of the Bombay General

Clauses Act and therefore, they are under the control of the High Court u/s 11 of the Criminal Procedure Code.

(iii) The third contention of the appellants is that under Art. 227 of the Constitution, the Labour Courts and Industrial Courts are under the

superintendence of the High Court, both judicially and administratively and, therefore, the transfers could be only by administrative order of the

High Court or in the alternative, in consultation with the High Court.

An identical contention is also made in view of Section 85 of the Bombay Industrial Relations Act, which gives power of superintendence over

Labour Courts to the Industrial Courts and, therefore, it is submitted that the transfer would be the subject matter of administrative control or at

least consultation with the Industrial Courts which consist of three members and not only its President.

(iv) The fourth contention is that the Labour Court Judges are appointed to a particular Court and post and they are not transferable and there

cannot be an implied condition of transfer.

(v) The fifth contention is that the transfer suffers from arbitrariness and non-application of mind and without considering the relevant factors.

7. On the other hand, the learned Advocate General appearing for the State has contended that the Labour Courts are not administratively

subordinate to the High Court and are not under the control of the High Court and they are not covered by the definition "District Judge" and "Civil

Judicial Service". It is submitted that Labour Courts are not Courts in the sense in which the word has been used in Arts. 235 and 236 of the

Constitution relating to subordinate Courts. He has submitted that the Constitution clearly indicates that there are Courts and there are Tribunals

and other authorities dispensing justice in deciding disputes and the constitution makers have been very clear in their expression. Whenever the

Constitution makers wanted to include the Courts and Tribunal both, they have done so expressly and in Chapter VI relating to subordinate

Courts, the Constitution has provided for control over the Courts only and that too, Courts subordinate to the High Court and the Constitution has

not made the Tribunals administratively subordinate and subject to the control of the High Court. Therefore, he has stated that while reading

various decisions dealing with the concept of different types of Courts and Tribunals, it would be important to bear in mind the context in which

those decisions were rendered. He concedes that the word used is not conclusive and it is for the Court to find out whether the Labour Court is a

Court or a Tribunal and whether it is administratively subordinate to and under the control of the High Court. He also submitted that all the powers

- legislative, executive and judicial - are located in the State and there is no strict and total separation of powers and it cannot be said that judicial

power vests in the judiciary only, just as all the legislative powers do not necessarily vest in the Legislature, even judiciary also has legislative and

executive powers. Therefore, according to the learned Advocate General, if there are Special Tribunals created with special jurisdiction, they

cannot be called courts of civil jurisdiction, which is plenary and residuary jurisdiction. The learned Advocate General has also submitted that the

definition of "District Judge" contained in the General Clauses Act read with Art. 367 of the Constitution also is of no assistance to the appellants

because the subject and context of Chapter VI clearly indicate the contrary intention. He also submitted that the power of the High Court under

Art. 227 of the Constitution or of the Industrial Court u/s 85 of the Bombay Industrial Relations Act is of superintendence and not of control and

there is no administrative subordination. There is only judicial superintendence over the Tribunals in the State and there is lot of difference between

the administrative superintendence and judicial superintendence. It is also submitted that the superintendence is over Labour Courts, not over the

Government and the actions of the Government of appointing and transferring Labour Court Judges. He has also submitted that transfer is an

incident of service and power to appoint includes incident power of control, supervision and transfer, especially when all these Labour Court

Judges belong to the same cadre, they are necessarily transferable inter se. As regards the allegations of mala fide it is to be noticed that the

allegations made against the President of Industrial Court have been withdrawn. Therefore, it is submitted that on the recommendations of the

President of the Industrial Court, who is not alleged to have acted mala fide, the Government, which has accepted these recommendations, cannot

be said to have acted mala fide. He has further submitted that in the proposal for transfers by President of the Industrial Court, there are reasons

given in the proposal itself and, therefore, it is not correct to say that the transfers are arbitrary or mala fide. He has further submitted that the

transfers, which have been effected on administrative grounds or administrative exigency in public interest, cannot be a subject matter of scrutiny by

the Courts under Art. 226 of the Constitution.

8. Mr. Shailesh Parikh learned Advocate for the respondents Nos. 4 to 20, has adopted the arguments advanced by the appellants. Mr. J. M.

Patel, learned Advocate appearing for respondent No. 21, has supported the arguments of learned Advocate General.

9. The whole question is whether the Industrial Court can be considered as a "District Judge under Art. 236(a) of the Constitution and whether,

the Labour Courts and Industrial Courts are included within the expression "judicial service" under Art. 236(b) of the Constitution. There is no

dispute that the District and Sessions Judge, as designated and understood in ordinary parlance and strict sense, is District Judge and a Court

subordinate to the High Court. The questions is whether Industrial Courts and Labour Courts are also included therein. The relevant Articles of the

Constitution are contained in Part VI (the States), Chapter V (the High Courts in the States) and Chapter VI (Subordinate Courts). Articles 233 to

237 in Chapter VI relating to subordinate Courts read as follows :

233. Appointment of District Judges :- Appointment of persons to be and the posting and promotion of District Judges in any State shall be made

by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to appointed a District Judge if he has been for not less

than seven years an Advocate or a Pleader and is recommended by the High Court for appointment.

233-A. Validation of appointments of, and judgments etc., delivered by, certain District Judges.

234. Recruitment of persons other than District Judges to the judicial service :- Appointments of persons other than District Judges to the judicial

service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State

Public Service Commission and with the High Court exercising jurisdiction in relation to the such State.

235. Control over subordinate Courts :- The control over District Courts and Courts subordinate thereto including the posting and promotion of,

and the grand of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be

vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may under

the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of

his service prescribed under such law.

236. Interpretation :- In this Chapter -

(a) the expression "District Judge" includes Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge,

Chief Judge of a Small Cause Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions

Judge and Assistant Sessions Judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of District Judge and other civil

judicial posts inferior to the post of District Judge.

237. Application of the provisions of this Chapter to certain class or classes of Magistrates. :- The Governor may by public notification direct that

the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply

in relation to any class or classes of Magistrates in the State as they apply in relation to persons appointed to the judicial service of the State

subject to such exceptions and modifications as may be specified in the notification.

Article 367(1) reads as follows :

"Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made

therein under Art. 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the

Dominion of India.

10. The General Clauses Act, 1897, defines "District Judge", and "Magistrate" in Secs. 3(17) and 3(32) as follows :

3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject

or context -

(17) "'District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its

ordinary or extraordinary original civil jurisdiction.

(32) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the code of Criminal Procedure for the time

being in force.

11. The contention of the appellants is that Industrial Court is a "District Judge" because it discharges original civil jurisdiction and the Labour

Courts are inferior to Industrial Court. Both of them are constituted under the Bombay Industrial Relations Act.

12. The contention of the respondent is that having regard to the subject and

content of the Constitution and the scheme of Chapter VI relating to subordinate Courts, Labour Courts and Industrial Courts are not principal Civil Courts of original jurisdiction, but they are Tribunals of special jurisdiction constituted under the new industrial jurisprudence creating new rights and new remedies for settlement of industrial disputes (much different from civil disputes) and regulation of industrial relations between employers and employees and maintaining industrial peace.

13. Bombay Industrial relations Act, 1946 has been enacted to regulate the relations of employers and employees and to make provisions for settlement of industrial disputes. "Industrial Dispute" has been defined in Section 3(17) and "Industrial matter" in Section 3(18), "Industrial Court" in Section 3(16) and "Labour Court" in Section 3(21) and they read as follows :

3(17) "Industrial dispute" means a dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any Industrial matter :

3(18) "Industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees or the mode, terms and conditions of employment, and includes :

(a) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person;

(b) all matters pertaining to the demarcation of functions of any employee or classes of employees;

(c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act;

(d) all questions of what is fair and right in relation to any Industrial matter having regard to the interest of the person immediately concerned and or the community as a whole;

3(16) "Industrial Court" means the Court of Industrial Arbitration constituted u/s 10;

3(21) "Labour Court" means a Labour Court constituted u/s 9.

14. The industrial dispute is essentially a matter of new industrial jurisprudence which has come into existence as a result of collective bargaining and collective disputes. Under the industrial arbitration contemplated by

Industrial Courts and Labour Courts, the Courts are empowered to create new rights not existing in any contract or any law and resolve demands of employees with a view to achieving industrial peace and maintaining good industrial relations. As defined in Section 3(16), "Industrial Court" is a Court of industrial arbitration. Section 10 reads as follows :

10(1) The State Government shall constitute Court of Industrial Arbitration.

(2) The Industrial Court shall consist of three or more members, one of whom shall be its President.

(3) Every member of the Industrial Court shall be a person who is not connected with the industrial dispute referred to such court or with any industry directly affected by such dispute.

Provided that no person shall be deemed to be connected with the industrial dispute or with the Industry by reason only of the Fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by such Industrial dispute; that in such a case, he shall disclose to the State Government the nature and extent of the shares held by him in such company;

(4) Every member of the Industrial Court shall be a person who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court (or has presided over a Labour Court for not less than ten years).

Provided that one member may be a person not so eligible if in the opinion of the State Government he possesses expert knowledge of Industrial matters.

Provided further that a member, who before his appointment as such member has presided over a Labour Court for not less than ten years, shall notwithstanding anything contained in Section 92, be eligible for appointment on a Bench of the Industrial Court constituting only of one member and Section 92 shall have effect accordingly.

15. It is true that Labour Court and Industrial Courts also decide some disputes which are of civil nature and which could have gone into Civil

Courts in exercise of its original civil jurisdiction. But there are large many other cases, which could not have gone to Civil Court in exercise of

original civil jurisdiction. In light of the above nature and scheme of the Industrial Courts and the Labour Courts, let us now examine and peruse the

decisions relied by both the sides.

16. Mr. M. C. Bhat to substantiate his contentions regarding the Industrial Court and Labour Court discharging civil original jurisdiction, cited the

decision in the case of *Sriramrao v. Suryanarayan Murti*, reported in (AIR) 1954 Mad 340. In this decision, the learned single Judge of Madras

High Court observed :

Courts which decide disputed rights between subjects or between a subject and the State would be Civil Courts as opposed to Criminal Courts

where the State vindicates wrongs committed against the public. Courts constituted for deciding on purely Civil questions between persons seeking

their civil rights must be considered to be Civil courts, notwithstanding that they are created by a special statute and are mentioned in that statute as

distinct from Civil Courts. The true import of such a distinction is that while special Courts have jurisdiction over a limited class of suits specified in

the statute, the jurisdiction of the Civil Courts is not limited to any class of suits.

The aforesaid observations were made in the context of execution of an award passed by Registrar of Co-operative Societies and the question

was about the meaning of word "Civil Court" within the meaning of that expression in Section 25 of the Debt Conciliation Act. In paragraph 7,

learned Single Judge observed that :

That there is a real distinction between a Tribunal and a Court cannot be disputed, though it may often be fine and sometimes difficult to define.

After this decision in 1954, the Supreme Court had occasions to decide when a Tribunal is not a Court, to which we will refer hereafter.

17. In as much as the Labour Courts and Industrial Courts are deciding the disputes of civil rights, Mr. M. C. Bhatt states that they come under the

category of Civil Court exercising ordinary original civil jurisdiction. To support this contention, Mr. M. C. Bhatt also cited the decision in the case

of *Narayan v. Shankar*, reported in (AIR) 196 Mys 5, wherein the learned Single Judge of Mysore High Court observed :

The expression "Civil Courts" has not been defined in any Act or the Code. The CPC in its preamble indicates that it is an Act to consolidate and

amend the laws relating to the Courts of Civil Judicature in other words, the courts which have jurisdiction to deal with civil disputes and rights

pertaining to property and person.

According to Mr. M. C. Bhatt, in as much as the Labour Courts and Industrial Courts are dealing with the civil rights, they will come under the

category of Courts which are discharging civil original jurisdiction and as such, will be within the definition of Art. 236 of the Constitution.

18. The aforesaid case had arisen under the Bombay Mamlatdars' Courts Act and there Section 23(3) made express provision to the effect that

where the Collector, Assistant Collector, Deputy Collector or Assistant Commissioner takes any proceeding under the Act, he shall be deemed to

be a "Court" under the Act. For coming to the conclusion that the deemed Court is a "Civil Court", the Mysore High Court considered Section 5

of the Bombay Mamlatdars' Courts Act which gave power to adjudicate disputes with regard to the enjoyment and possession of land, including

rights to receive surface water, grazing cattle, growing trees etc. and the proviso to that section expressly empowered the Mamlatdar to refuse to

adjudicate any of the claims brought before him under the Act for reasons to be recorded in writing if it appeared to him that such case can more

suitably be dealt with by Civil Court and, therefore, the learned single Judge of Mysore High Court came to the conclusion that the jurisdiction of

the Mamlatdar is identical with that of the Civil Court. Mysore High Court held that the fact that such Court was presided by a revenue officer was

not relevant nor was it relevant that he was appointed by the Government and according to it, what is material is the power and functions entrusted

to such Presiding Officer. It is to be noted that these officers are neither exclusively appointed for judicial post not intended to fill exclusively civil

judicial post. Therefore, that decision is of no use in interpreting Art. 236 of the Constitution.

19. The learned Counsel for the appellants also followed on the judgment in the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram

Wadke of Bombay and Others, . In that case, the Supreme Court considered the principles applicable to the Civil Court in relation to the industrial

disputes. In paragraph 10, famous and off quoted words in Doe v. Bridges (1831) 1 B & AD 847 were again quoted. They read as follows (p.

451) :

Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot

be enforced in any other manner.

The Supreme Court also referred to classic enunciation of law and classification of cases in three classes done by Willies, J. in the case of

Wolverhampton New Motorworks Co. v. Hawkesford (1859) 6 CB NS (336) which reads as follows :

There are three classes of cases in which a liability may be established by statute. There is that class where there is a liability existing at common

law and which is only re-enacted by the statute with a special form of remedy; there unless the statute contains words necessarily excluding the

common-law remedy, the plaintiff has his election of proceeding either under the statute or at common law. Then there is a second class, which

consists of those cases in which a statute has created a liability, but has given no special remedy for it; there the party may adopt an action of debit

or other remedy of common law to enforce it. The third class is where the statute creates a liability not existing at common law and gives also a

particular remedy for enforcing it With respect to that class it has always been held, that the party must adopt the form of remedy given by the

statute.

20. The Supreme Court considered the scheme of Industrial Disputes Act like the B.I.R. Act and observed as follows in paragraph 9 (p. 451) :

It would thus be seen that through the intervention of the appropriate Government, of course not directly, a very extensive machinery has been

provided for settlement and adjudication of Industrial disputes. But since an individual aggrieved cannot approach the Tribunal or the Labour Court

directly for the redress of his grievance without the intervention of the Government, it is legitimate to take the view that the remedy provided under

the Act is not such as to completely oust the jurisdiction of the Civil Court for trial of Industrial disputes. If the dispute is not an Industrial dispute

within the meaning of Section 2(k) or within the meaning of Section 2A of the Act, it is obvious that there is no provision for adjudication of such

disputes under the Act. Civil Courts will be the proper forum. But where the Industrial dispute is for the purpose of enforcing any right, obligation

or liability created under the general law or the common law and not a right, obligation or liability created under the Acts, then alternative forums

are there giving an election to the suitor to choose his remedy of either moving

the machinery under the Act or to approach the Civil Court. It is plain that he cannot have both. He has to choose the one or the other. But we shall presently show that the Civil Court will have no jurisdiction to try and adjudicate upon an Industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In the event Civil Court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognised by and enforceable under the Act alone.

21. The Supreme Court gave its summary and conclusions in paragraphs 23 and 24 as follows (p. 459) :

To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus :

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the Industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A, then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

We may, however, in relation to principle 2 stated above, hasten to add that there will hardly be a dispute which will be an industrial dispute within

the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the

Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law

contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will

have hardly an occasion to deal with the type of cases falling under principle 2. Cases of Industrial disputes by and large invariably, are bound to be covered by principle 3 stated above.

It is thus, clear that, by and large, dominantly and in pith and substance, Industrial Courts and Labour Courts are special Courts exercising industrial or labour jurisdiction and not ordinary civil jurisdiction. It is jurisdiction of industrial arbitration.

22. In support of his contention, Mr. M. C. Bhatt very strongly relied on the decision in the case of State of Maharashtra v. Labour Law

Practitioner's Association, reported in 1987 (2) L & Ind Cas 1061. This is a case decided by a Division Bench of the Bombay High Court wherein

the Bombay High Court had occasion to consider the power, control, both administrative and judicial, of the Labour Court vis-a-vis the State and

judiciary. The discussion in this Division Bench mainly concentrated upon the judicial functions performed by the Labour Courts and the Division

Bench has come to the conclusion that a Labour Court which has all the trappings of the Civil Court, is definitely a Court of ordinary Civil

jurisdiction. It also held that these Courts shared the exercise of the judicial power of the State. The Bench has also observed :

Tested upon the touch-stone of these decisions, the Labour Court is invested with the judicial power of the State. It derives its authority from

statutes. It is ordinarily permanent. Its number is ordinarily fixed. It adjudicates upon disputes between parties and delivers binding judgments. It

has all the trappings of a Court. It does not implement administrative policy or determine controversies arising out of administrative law.

The Bench referred the General Clauses Act which states that the District Judge is a Judge of a Principal Civil Court of original jurisdiction.

Considering this definition in the General Clauses Act, the Bench adverted to the definition of "District Judge" in Art. 236(a) and observed :

The definition of "District Judge" in Art. 236(a) is an inclusive one and covers a large field. It expressly includes a Judge of a City Civil Court, an

Additional District Judge, a Joint District Judge and Assistant District Judge, the Chief Judge of Small Cause Court, the Chief Presidency

Magistrate, a Sessions Judge, an Additional Sessions Judge. It includes every conceivable functionary of similar status in what was ordinarily

regarded as the hierarchy of Courts but is still only inclusive in nature. This suggests that the framers of the Constitution contemplated the inclusion

within the definition of District Judge of functionaries outside what was ordinarily regarded as the hierarchy of the Courts.

Continuing further, the Bench held :

The Labour Court has been held in the various decisions aforementioned to be a Court. The Labour Court adjudicates upon disputes which are

essentially of a civil nature. The Labour Court's functions were held as far back as 1968 to be "quasi civil" in nature. This must apply to the

Industrial Court. The Industrial Court has original jurisdiction under the statute. It is also a Principal Court, exercises supervision over the Labour

Court (See. 85 BIR Act) and hears appeals, from decisions of the Labour Court (Section 84, BIR Act). Accordingly, a member of the Industrial

Court may well be said to be a District Judge. The Industrial Court and the Labour Court constitute a hierarchy or system of Courts, the latter

being inferior to the former. The posts of Labour Court Judge would being thus, inferior to the post of District Judge, i.e. the Industrial Court Judge

form part of the judicial service as defined in Art. 236(b).

With the abovesaid observations, the Bench has further held :

Turning then to Art. 234, the appointments of persons to the judicial service of the State must be made in accordance with the rules in that behalf

after consultation with the State Public Service Commission and with the State High Court. The appointments of Judges to the Labour Court, must,

therefore, be made under the provisions of Art. 234 of the Constitution.

As a corollary to the abovesaid discussion, the Bench has categorically held :

The Constitutional requirement of an independent judicatory must apply to all institutions that administer justice. It requires the application of Art.

234 to the appointment of Labour Court Judges.

23. This judgment directly covered the issue in favour of the appellants. However, it is strongly contested by other side and it is tried to be shown

that it does not decide the issue correctly.

24. The Division Bench of the Bombay High Court referred to the judgments of the Supreme Court in *Harinagar Sugar Mills Ltd. Vs. Shyam*

Sundar Jhunjhunwala and Others, and *Chandra Mohan Vs. State of Uttar Pradesh*

and Others, and in para 16 observed that the Labour Court substantially meets the requirement set out by Hidayatullah, J. to be treated as a part of the ordinary hierarchy of Courts. As seen from para 20 of the judgment of Bombay High Court, observations of Hidayatullah, J. were in the context of Art. 227. In para 21, the Bombay High Court relied on the Full Bench judgment of Gujarat High Court in the case of Shaikh Mohmed Hussainbhai v. Manager, Chandramohan Cinema 1986 LIC 1749 where Labour Courts and Industrial Tribunals were held to be Courts within the meaning of Contempt of Courts Act and on the touch-stone of these decisions, namely (Tribunals subject to Art. 227 and Courts within the meaning of Contempt of Courts Act), the Bombay High Court held that the Labour Court is invested with judicial powers of the State. These observations in para 22 are mainly in the language of para 31 of Harinagar Sugar Mill's case (supra). However, paras 32 and 33 are not given any effect and meaning wherein Hidayatullah, J. expressly stated that these Tribunals having the authority of law pronounce upon valuable rights and act in judicial manner and they are not part of ordinary Courts of civil judicature and they are not "Courts". When the Constitution speaks of "Courts" in Arts. 136, 227 or 228 or in Arts. 233 to 237 or in the Lists, it contemplates Courts of civil judicature but not tribunals other than such Courts. This is the reason for using both the expressions in Arts. 136 and 227. Hidayatullah, J. further observed that certain special matters go before the tribunals and the residue goes before the ordinary Court of Civil judicature. This express reference to Arts. 233 to 237 and holding that for the purpose of these Articles, Tribunals are not Courts, makes a world of difference and it is not possible to agree with the reasoning and conclusions of the Bombay High Court.

25. It appears that the Bombay High Court was impressed (we are also impressed) and carried away by the laudable object behind separation of judiciary from the executive. In paras 27 to 30, Bombay High Court has referred to the tendency of by-passing Public Service Commission and the High Court in making appointments to posts which are purely judicial and this tendency does not enhance the independence of judiciary, in this case, labour judiciary. We do share that laudable feeling. However, it is not possible to allow our reasoning and conclusion to be influenced by it.

26. The Bombay High Court has lifted the definition of "District Judge" in the General Clauses Act and applied the same to the labour judiciary. In

our view, when the Constitution had given its own definition of "District Judge" in Art. 236(a), more particularly in view of the Chapter heading

"Subordinate Courts", it is not possible to apply the definition in the General Clauses Act, because the context requires that the "District Judge" as

defined in Art. 236(a) should be construed in the light of inclusive definition and only such Judges and Courts will be brought into that definition

which answer that description or at the most such other categories which are of the same colour in accordance with the well known canon of

construction and interpretation of statutes ejusdem generis. Even though the Constitution-makers included Additional, Joint and Assistant District

Judges, Sessions Judge and Additional Sessions Judge in the definition of "District Judges" and even though they were aware of the existing labour

judiciary, they did not extend that definition so as to include labour judiciary, land reform judiciary or revenue judiciary within its scope. These

aspects have not been considered by the Bombay High Court. Bombay High Court has taken view that the definition in the Constitution is inclusive

and it includes every conceivable functionary which adjudicate upon disputes which are of civil nature. With respect, we are unable to agree with the

same. Even though the Labour Court adjudicates upon disputes between employers and employees, they are the disputes of special nature as held

in Premier Automobile's case (supra). In such labour dispute, there would hardly be any occasion for a litigant to go to the Civil Court. It is new

jurisprudence and even though it was known to the Constitution makers at the time of framing the Constitution, not only they did not include them

in the definition, they did not vest the judiciary with the monopoly of judicial power. Our respectful disagreement from the view of the Bombay

High Court will be further elaborated hereafter referring to some of the Supreme Court Judgments.

27. The learned Advocate General relied on several judgments and submitted that each judgment is required to be seen in the context in which the

Court was dealing with the question, because in all those cases, the Court was concerned with the question as to whether Contempt of Courts Act

is applicable or whether the Supreme Court had power to grant special leave against the judgment of a Tribunal or whether the High Court had

power of judicial superintendence over the Tribunal under Art. 227 of the Constitution and the observations made in those judgments have to be read in the light of those situations.

28. In the case of *Bharat Bank v. Employees of Bharat Bank*, reported in (1950 LLJ 921) the Supreme Court considered its power under Art.

136 in relation to an appeal filed against an order of Industrial Tribunal. It observed that it is implied that before an appeal can lie to Supreme

Court from a tribunal, the tribunal must perform some kind of judicial function and partake to some extent of the character of a Court. Kania, C.J.,

in that decision, observed (pp. 921-922) :

In my opinion the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions although it is not a

Court Having considered all the provisions of the Act, it seems to me clear that the Tribunal is discharging functions very near those of a

Court, although it is not a Court in the technical sense of the word

In this judgment, Mahajan, J., after referring to various provisions of the Industrial Disputes Act, came to the conclusion (p. 932) :

In my opinion, therefore, the Industrial Tribunal has all the necessary attributes of a Court of justice. It has no other function except that of

adjudicating on a dispute. It is no doubt true that by reason of the nature of the dispute that they have to adjudicate the law gives them wider

powers than are possessed by ordinary Courts of law, but powers of such a nature do not affect the question that they are exercising judicial

power. Statutes like the Relief of Indebtedness Act, or the Encumbered Estates Act have conferred powers on Courts which are not ordinarily

known to law and which affect contractual rights. That circumstance does not make them anything else but Tribunals exercising judicial power of

the State though in a degree different from the ordinary Courts and to an extent which is also different from that enjoyed by an ordinary Court of

law. They may rightly be described as quasi-judicial bodies because they are out of the hierarchy of the ordinary judicial system but that

circumstance cannot affect the question of their being within the ambit of Art. 136.

B. K. Mukherjee, J., in that decision took up for consideration two questions. The first is, whether the award or decision of an Industrial Tribunal

constituted under the Industrial Disputes Act is judicial decision in the proper sense of the expression or is it the pronouncement of an

administrative or quasi-judicial body which may exercise some of the functions of a court of law but is really not so. The other question is as to

whether the language of Art. 136 will include an adjudication or award of an Industrial Tribunal. After discussing various decisions and the

provisions of the Act, Mukherjee, J., held (p. 949) :

Our conclusion, therefore, is that an Industrial Tribunal formed under the Industrial Disputes Act is not a judicial Tribunal and its determination is

not a judicial determination in the proper sense of these expressions.

From this decision, it is clear that the Industrial Tribunal which functions under the Industrial Dispute Act ""is discharging functions very near those of

a Court, although it is not a Court in the technical sense of the word"" and is ""out of the hierarchy of the ordinary judicial system"".

29. In the case of *Harinagar Sugar Mills v. Shyam Sundar*, (supra), the Supreme Court had occasion to consider the order passed by the Central

Government u/s 111 of the Companies Act. Per majority, it was held that the Central Government exercising appellate powers u/s 111 of the

Companies Act, 1956 is a Tribunal exercising judicial functions and is subject to the appellate jurisdiction of the Supreme Court under Art. 136 of

the Constitution. Even though Hidayatullah J., one of the Judges in that Bench, quashed the order of the Central Government and allowed the

appeal, the majority of the Judge quashed the orders of the Central Government and directed the appeals to be rendered and disposed of

according to law by the Central Government. As regards the principles regarding the judicial power of the State being exercised both by the State

by appointment of Tribunals and by the judiciary, there is no difference of opinion in the Bench. In this decision, the Supreme Court held as follows

:

All Tribunals are not Courts, though all Courts are Tribunals. The word "Courts" used to designate those Tribunals which are set up in an

organised State for the administration of justice. By administration of justice of is meant the exercise of judicial power of the State to maintain and

uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the *vinculum juris*,

which is disturbed.

Proceeding further the Supreme Court observed :

(31) When rights are infringed or invaded, the aggrieved party can go and commence a quarries before the ordinary Civil Courts. These Courts

which are instrumentalities of Government, are invested with the judicial power of the State, and their authority is derived from the Constitution or

some Act of legislature constituting them. Their number is ordinarily fixed and they are ordinarily permanent, and can try any suit or cause within

their jurisdiction. Their numbers may be increased or decreased, but they are almost always permanent and go under the compendious name of

"Courts of Civil Judicature". There can thus be no doubt that the Central Government does not come within this class.

(32) With the growth of civilisation and the problems of modern life, a large number of administrative Tribunals have come into existence. These

Tribunals have the authority of law to pronounce upon valuable rights, they act in a judicial manner and even on evidence on oath, but they are not

part of the ordinary Courts of Civil judicature. They share the exercise of the judicial power of the State but they are brought into existence to

implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to Courts, but are

not Courts. When the constitution speaks of "Courts" in Arts. 136, 227 or 228 or in Arts. 233 to 237 or in the Lists, it contemplates courts of

Civil Judicature but not Tribunals other than such Courts. This is the reason for using both the expressions in Arts. 13 and 227.

By "Courts" is meant Courts of Civil Judicature, and by "Tribunals", those bodies of men who are appointed to decide controversies arising under

certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes

of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking,

certain special matters go before Tribunal; and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the

functions are not essentially different. What distinguished them has never been successfully established. Lord Stamp said that the real distinction is

that courts have "an air of detachment". But this is more a matter of age and

tradition and is not of the essence. Many Tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient.

The Supreme Court has also observed :

In my opinion, a Court in the strict sense is a Tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature maintained by the

State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that

are excluded by law from their jurisdiction. The word "judicial", be it noted, is itself capable of two meanings. They were admirably stated by

Lopes L.J. in *royal Aquarium and Summer and Winter Garden Society v. Parkinson* (1892) 1 QB 431 (452) in these words :

"The word "judicial" has two meanings. It may refer to the discharge of duties exercisable by a Judge or by Justices in Court, or to administrative

duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind - that is, a mind to determine

what is fair and just in respect of the matters under consideration."

That an officer is required to decide matters before him "judicially" in the second sense does not make him a Court or even a Tribunal, because

that only establishes that he is following a standard of conduct, and is free from bias or interest.

30. In the case of *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind*

Cycles Ltd., Bombay, , the Supreme Court agreed with the proposition enunciated in (1950 LLJ 921) to the effect that the functions and duties of

the Industrial Tribunal are very much like those of a body discharging judicial functions and so, though the Tribunal is not a Court, it is nevertheless

a Tribunal for the purposes of Art. 136.

31. In the case of *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, , the Supreme Court approved the principles laid down in

(1950 LLJ 921) and other decisions which is to the effect that the expression "Tribunal" used in Art. 136 does not mean the same thing as "Court"

but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from

purely administrative or executive functions. In this decision it has been clearly

brought out that the said inherent judicial power can either be with the Court established to discharge the judicial functions or with an authority or a body which will be called as Tribunal. In India, the Supreme Court recognised that the judicial power of the State can be with a Tribunal or with the Court. Elaborating the vesting of judicial power of the State both in the Court and Tribunal, Bachawat, J. in this decision has stated (p. 450) :

In our country, the State (using that expression in the comprehensive sense of the Union and its component States) has inherent judicial powers or functions and the Courts and other authorities vested by State with judicial functions are regarded as delegates of the State judicial power. Unlike Australia, in our country the judicial power of the State may be vested not only in Courts but also in other authorities. The Courts alone have no monopoly of this judicial power. An authority other than Court vested with the judicial power of the State in this sense is regarded as a Tribunal within Art. 136.

In this decision the Supreme Court also held that in order to be a Tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. Thus, it is clear from this decision that the Tribunal exercising judicial powers specifically assigned to it by a statute or statutory rule no doubt discharges judicial function of the State, but it will not strictly come under the definition of the Court, though broadly it may be called "Court".

32. In the case of Chandra Mohan Vs. State of Uttar Pradesh and Others, , the Supreme Court had to consider the power of Governor to make appointments in consultation with the High Court. Uttar Pradesh Higher Judicial Service Rules were declared constitutionally void as contravening the constitutional mandate of Art. 233 (1) and (2) because under the rules, the consultation with High Court was found to be an empty formality. In that decision, the Supreme Court observed as under (pp. 419-421) :

The Indian Constitution though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the States; it constitutes a High Court for each State, prescribes the institutional conditions of service of the Judges thereof, confers extensive jurisdiction on it to issue writs to keep all Tribunals, including in appropriate cases the Governments, within bounds and gives to it the power of superintendence over

all Courts and Tribunals in the territory over which it has jurisdiction. But the makers of the Constitution also realised that "it is the Subordinate

Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that

their independence should be placed beyond question in the case of the superior Judges." Presumably to secure the independence of the judiciary

from the executive, the Constitution introduced a group of Articles in Chapter VI of Part VI under the heading "Subordinate Courts". But at the

time the Constitution was made in most of the States the magistracy was under the direct control of the executive. Indeed it is common knowledge

that in pre-independence India there was a strong agitation that the judiciary should be separated from the executive and that the agitation was

based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be a mockery. So Art. 50

of the directive Principles of State Policy states that the State shall take steps to separate the judiciary from the executive in the public services of

the States. Simply stated, it means that there shall be a separate judicial service free from the executive control.

The Supreme Court further held :

The setting viz. the chapter dealing with subordinate Courts, in which the expression "the service" appears indicates that the service mentioned

therein is the service pertaining to Courts. That apart, Art. 236(2) defines the expression "Judicial Service" to mean a service consisting exclusively

of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge. If this definition, instead of

appearing in Art. 236, in placed as a clause before Art. 233(2) there cannot be any dispute that "the service" in Art. 233(2) can only mean the

Judicial Service. The circumstance that the definition of "Judicial Service" finds a place in a subsequent Article does not necessarily lead to a

contrary conclusion. The fact that in Art. 233(2) the expression "the service" is used whereas in Arts. 234 & 235 expression "Judicial Service" is

found is not decisive of the question whether the expression "the service" in Art. 233(2) must be something other than the Judicial Service, for, the

entire chapter is dealing with Judicial Service. The definition is exhaustive of the service. Two expressions in the definition bring out the idea that the

Judicial Service consists of hierarchy of Judicial Officers starting from the lowest and ending with the District Judges. The expressions "exclusively"

and "intended" emphasise the fact that the Judicial Service consists only of persons intended to fill up the posts of District Judges. Having defined

"Judicial Service" in exclusive terms, having provided for appointments to that service and having entrusted the control of the said service to the

care of the High Court, the makers of the Constitution would not have conferred a blanket power on the Governor to appoint any person from any

service as a District Judge.

33. In the case of *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, , the Supreme Court had an occasion

to consider the applicability of the Contempt of Courts Act in respect of the functions discharged by the Assistant Registrar u/s 48 read with

Section 6(2) of the Bihar and Orissa Co-operative Societies Act. In that connection, the Supreme Court observed :

A Registrar exercising powers u/s 8 must be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue

Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary

Civil Courts of the land by the CPC including the power to summon and examine witnesses on oath, the power to order inspection of documents,

to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in Section 151 of

the Code of Civil Procedure. In adjudicating upon dispute referred u/s 48 of the Act, the Registrar is to all intents and purpose, a Court discharging

the same functions and duties in the same manner as a Court of law is expected to do. Therefore, an Assistant Registrar discharging the function of

Registrar u/s 48 read with Section 6(2) of Bihar and Orissa Co-operative Societies Act, is a Court.

In that connection, the Supreme Court observed :

In our opinion, Art. 228 of the Constitution does not indicate that unless a High Court can withdraw a case to itself from another Court for

disposing of a substantial question of law as to the interpretation of the Constitution, the latter Court is not subordinate to the High Court. This

Article is only intended to confer jurisdiction and power on the High Court to

withdraw a case for the purpose mentioned above from the ordinary

Courts of law whose decision may, in the normal course of things, be taken up to the High Court by way of an appeal. Article 227 is of wider

ambit; it does not limit the jurisdiction of the High Court to the hierarchy of Courts functioning directly under it under the CPC and Criminal

Procedure Code but it give the High Court power to correct errors of various kinds of all Courts and Tribunal in appropriate cases.

Needless to add that errors as to the interpretation of the Constitution is not out of the purview of Art. 227 although the High Court could not

under the powers conferred by this Article, withdrew a case to itself from a Tribunal and dispose of the same, or determine merely the question of

law as to the interpretation of the Constitution arising before the Tribunal. In our view, the subordination for the purpose of Section 3 of the

Contempt of Courts Act means judicial subordination under the hierarchy of Courts under the CPC or the Criminal Procedure Code.

The Supreme Court has further observed :

It may not be out of place to note that "subordinate Courts" have been dealt with in Chapter VI of the Constitution and Art. 235 of the

Constitution gives the High Court "the control over District Courts and Courts subordinate thereto" by providing for powers like posting and

promotion and the grant of leave to persons belonging to the judicial service of a State. Such control is not judicial control and a Court may be

subordinate to a High Court for purpose other than judicial control.

34. In the case of Chief Justice, A. P. v. L. V. A. Dikshitulu, reported in (AIR) 1979 SC 19, the Supreme Court had occasion to consider the

administrative and disciplinary control of the High Court by the Chief Justice under Art. 229 of the Constitution and has also considered whether

such disciplinary proceedings should go to the Administrative Tribunals constituted under Art. 371D of the Constitution. Under clause (3) of Art.

371D the President has power to appoint the Administrative Tribunal. In that connection, the Supreme Court observed :

The phrase "Civil Service of the State" remains more or less an amorphous expressions as it has not been defined any where in the Constitution.

Contrasted with it, the expressions "judicial service of the State" and "District Judge" have been specifically defined in Art. 236, and thus given a

distinctive, definite meaning by the Constitution makers. Construed loosely, in its widest general sense, this elastic phrase can be stretched to

include the "officers and servants of the High Court" as well as members of the Subordinate Judiciary. Understood in its strict narrow sense, in

harmony with the basic constitutional scheme embodied in Chapters V and VI, Part VI, and centralised in Arts. 229 and 235, thereof, the phrase

will not take in High Court staff and the subordinate Judiciary.

Proceeding further, the Supreme Court observed that if wider meaning is given to the phrase "Civil Services of the State" in Art. 371-D(3) to

include in it the High Court staff and the members of the subordinate judiciary, it will rob the powers of the Chief Justice under Art. 229 and the

High Court under Art. 235, thereby making the directive principle in Art. 50 and the fundamental concept of independence of judiciary a mockery.

In that connection, the Supreme Court also observed :

In our quest for the true intention of Parliament, therefore, we must eschew this wide literal interpretation which will defeat or render otiose the

scheme of Chapters IV and V, Part VI particularised in Arts. 229 and 235, and instead, choose the alternative interpretation according to which

members of the High Court staff and the subordinate judiciary will not fall within the purview of the phrase "Civil Services of the State". Such a

restricted construction will ensure smooth working of the Constitution and harmony amongst its various provisions.

35. From the above decisions, it is clear that there is no strict separation of powers between the three principal organs of the State namely

Legislature, Executive and Judiciary. Judicial power does not vest exclusively in the judiciary unlike in the Australian Constitution. In fact, directive

principles of State policy contained in Art. 50 which directs that the State shall take steps to separate judiciary from the executive, shows that

separation of judiciary from the executive was a goal to be achieved in future and was not achieved by the Constitution itself. Under the

Constitution, Courts alone have monopoly no monopoly of the judicial power. The Constitution, though providing for an independent judiciary in

the States, has not completely and strictly applied the doctrine of separation of powers. The High Court is independent and the subordinate

Courts, by keeping them under the control of the High Court, are also provided a

measure of independence. As regards other authorities

dispensing justice, without the administrative control, judicial superintendence by independent judiciary is provided under Arts. 226, 227 and 136

of the Constitution. Other Tribunals, though they may be broadly and loosely called Courts, cannot be said to be "Courts" in the sense in which the

word "Court" is used in Chapter VI. In Chapter VI, the word "Subordinate Court" has been used in the sense of administrative control over the

subordinate Courts by the High Court. The expressions "exclusively" and "intended" occurring in Art. 236(b) emphasize the fact that judicial

service consists of persons intended to fill the posts of District Judges (properly so called) and other civil judicial posts inferior to the post of

District Judge and that is the exclusive judicial service set up coming under Chapter VI of the Constitution. It cannot be said that the Labour Courts

and Industrial Courts are within the meaning of Chapter VI nor they are subordinate to the High Court within the meaning of Chapter VI.

36. We can usefully look into the decisions rendered by Allahabad High Court. A single Judge of the Allahabad High Court, in the case of M/s.

Jain Shudh Vanaspati Ltd. v. Labour Court, Ghaziabad, reported in 1983 (2) L & Ind Cas 1249, has categorically held as follows :

On a reading of Chapter VI of the Constitution of India, it is apparent that it relates to the subordinate Courts. The "Civil Judicial Post" mentioned

in the definition of the word "judicial service" are those posts which are subordinate to the District Judge. It can by no stretch of imagination be

said that the Presiding Officers of the Labour Courts are Courts subordinate to the District Judges. There is no control whatsoever of the District

Judge over the Presiding Officers of the Labour Courts. The Presiding Officers of the Labour Courts cannot, therefore, come within the expression

"judicial service" as defined in Art. 236(b) of the Constitution.

The single Judge of the Allahabad High Court has further observed :

The mere fact that a particular tribunal or an authority exercises judicial or quasi-judicial function and in law they are called tribunals or Courts

does not by itself imply that the persons presiding over the said tribunals and Courts should exclusively be members of the said judicial service. The

Presiding Officers of the Labour Court do not come within the expression "judicial service" as used in Art. 236(b) of the Constitution and as such,

Art. 234 does not apply.

37. A Bench of the Allahabad High Court, in the case of M/s. Poysha Industrial Co. Ltd. Ghaziabad v. State of U. P. 1985 (2) L & Ind Cas

1683, has categorically held :

That a Presiding Officer of a Labour Court does not belong to the "judicial service" as contemplated in Art. 236 and as such the provisions

contained in Art. 234 of the Constitution were not attracted in the case of the appointment of the Presiding Officers of the Labour Courts. Chapter

VI of Part VI of the Constitution under which Arts. 233 to 237 fall was confined in its operation for regular Civil and Criminal Courts constituted

under the hierarchy of the Courts. It could, therefore, be safely held that for the purpose of the appointment of a Presiding Officer of a Labour

Court under the U.P. Act, a reference to the provisions contained in Chapter VI of the Constitution was out of place.

38. Unless the context otherwise requires, the General Clauses Act, 1897 applies for the interpretation of the Constitution. The expression "District

Judge" as defined in Art. 236(a) of the Constitution specifically and clearly includes those enumerated in that Article, and has to be construed as so

illustrative as to include categories of the same colour viz. ordinary hierarchy of judicial system. It has to follow the well known canon of

construction and interpretation of statutes i.e. ejusdem generis. It is also to be borne in mind that at the time of framing of the Constitution, the

Industrial Disputes Act and Bombay Industrial Relations Act and Tenancy & Land Reforms and Revenue Legislations were existing important

legislations. While defining "District Judge", if Constitution makers took care to include Addl. District Judge, Joint District Judge, Assistant District

Judge, Sessions Judge, Additional Sessions Judge, Assistant Sessions Judge, they would have, if they had so intended, certainly not omitted to

include labour and other special judiciary. Once the Constitution itself has given the definition, it will be too much to import the definition given in

Section 3(17) or Section 3(32) of the General Clauses Act, 1897 into the interpretation given by the Constitution regarding the expression "District

Judge" in Art. 236(a) of the Constitution. The Bombay High Court judgment referred to above has adopted the definition in the General Clauses

Act and interpreted Section 236, which, in our opinion, is not correct on the plain

reading of the Articles pertaining to subordinate Courts which occur in Chapter VI of Part VI of the Constitution. As correctly contended by the learned Advocate General, the definition in Section 3(17) of the General Clauses Act cannot be lifted and fitted in Art. 236 of the Constitution.

39. Articles 233 to 237 of the Constitution deal with the Subordinate Courts, the qualification for appointment as a District Judge, the recruitment process of the District Judge, the control of the High Court over subordinate Courts and the application of the provisions of Chapter VI to certain class or classes of Magistrates and are clear and definite to exclude any other definition for the expression "District Judge" except that given in these Articles. No doubt, as contended by Mr. M. C. Bhatt, the District Court is not the creation of the Constitution, but it is too much to state that the Civil Courts Acts of the respective State bring into the definition of the District Judge, any Judge appointed by the State irrespective of the provisions contained in Art. 233 onwards. As correctly contended by Mr. J. N. Patel the purpose of enacting the Bombay Industrial Relations Act and the Industrial Disputes Act, the manner and method for appointing members of the Industrial Courts (Section 10 of B.I.R. Act), the recruitment to the post of Labour Judges (Section 9 of B.I.R. Act) do not fit in any of the provisions of the Constitution.

40. It is clear that the Courts functioning under Bombay Industrial Relations Act and Industrial Disputes Act cannot be equated either to the District Court or to any subordinate Court coming under the administrative control of the High Court as per the constitutional provisions. At best, they may be performing quasi judicial functions which may be broadly called "Court". As we have already observed, the judicial power of the State is not exclusively vested in the Courts established under the Constitution, but some of the judicial powers are retained by the State and they perform such duties through the Tribunals and Courts established under the statute or rules made thereunder by the State Governments.

41. For all these reasons, we are of the view that neither the General Clauses Act nor the Bombay General Clauses Act can be applied for interpreting the provisions of Chapter VI, Part VI of the Constitution.

42. We are, therefore, clearly of the view that the Labour Court and Industrial Court are not "District Judge" and "judicial service" within the

meaning of Arts. 235 and 236 and they are not under the administrative control of the High Court and, therefore, Section 9 of the B.I.R. Act is not

violative of any Constitutional provision in Part IV of the Constitution. It may be also be noted that these Labour Court Judges were appointed by

the Government without any recommendation, consultation or concurrence of the High Court. If the petitioners are right, the appointments would

be void. Bombay High Court had struck down the appointments.

43. The argument of Mr. M. C. Bhatt to the effect that the High Court has administrative control over such Tribunals by virtue of Art. 227 of the

Constitution, in our view, does not have any merit. Article 227 of the Constitution reads as follows :

227. Power of superintendence over all Courts by the High Court :-

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may -

(a) call for returns from Courts.

(b) make and issue general rules and prescribed forms for regulating the practice and proceedings of such Courts, and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks of such Courts and to attorneys, advocates and pleaders practising therein;

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any

law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer on a High Court powers of superintendence over any Court or Tribunal constituted by or

under any law relating to the Armed Forces.

44. During the period i.e. from February 1, 1977, which is the date on which 42nd Amendment Act, 1976 came into force, up till June 20, 1979,

which is the date on which the 44th Amendment Act, 1979 came into force restoring Art. 227 to the position that stood before the 42nd

Amendment, it read as follows :

227. (1) Every High Court shall have superintendence over all Courts subject to its appellate jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may -

(a) call for returns from such Courts.

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts, and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates

and pleaders practising therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any

law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer on a High Court power of superintendence over any Court or Tribunal constituted by or under

any law relating to the Armed Forces.

(5) Nothing in this Article shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not

otherwise subject to appeal or revision.

45. As on date, Art. 227(1) gives the power of superintendence to the High Court over all Courts and Tribunals throughout the territories in

relation to which it exercises jurisdiction. Sub-clause (2) of Art. 227 gives the particulars regarding which the High Court can act administratively.

Sub-clauses (3) and (4) of Art. 227 also prescribe the limitation regarding the powers that is exercisable by the High Court. It will be seen from

clauses (2) and (3) Art. 227 that there is reference only to Courts and not to Tribunals. Even Art. 228 speaks of Court subordinate to the High

Court and does not spell out cases pending before Tribunals. Mr. M. C. Bhatt, learned Counsel appearing for the appellants, pointing out the 42nd

Amendment which we have extracted above, contended that the Administrative control which was taken away by this amendment was again given

to the High Court by the 44th Amendment by adding the word "Tribunals". We are not able to appreciate this argument. By 42nd Amendment, the powers of the High Court were restricted. Before 42nd Amendment, the High Court had by way of superintendence, power over all Courts and Tribunals. But after the 42nd Amendment, its power was restricted to all Courts subject to its appellate jurisdiction. In this 42nd Amendment, sub-clause (5) of Art. 227 specifically excluded the jurisdiction of the High Court to question any judgment of any inferior Court which is not otherwise subject to appeal or revision. By restoring the Art. 227 to its original position by the 44th Amendment, the judicial superintendence of the High Court was enlarged. It will be significant to note that Art. 227(1) spells out the superintendence of the High Court over all Courts and Tribunals while in art. 235, it speaks about the control over District Courts and Courts subordinate thereto by the High court. It is only in Art. 235 the power of posting, promotion and grant of leave are spelt out. Thus, it is clear that the use of word "superintendence" in Art. 227 relates only to the judicial superintendence and not administrative control by the High Court. The administrative control of the High Court has been clearly spelt out by Art. 235 of the Constitution. The learned Advocate General correctly pointed out that the power of posting and promotion will also include transfer of the Judges of the District Courts and also the Judges inferior to the post of District Judge.

46. Further, it has been made clear by various decisions of the Supreme Court which we have extracted in paragraphs supra that all Courts are Tribunals but all Tribunals are not Courts. The superintendence over the Tribunals by interpreting Art. 227 can be only judicial superintendence and administrative superintendence of Courts for such of those powers which are enumerated in clauses (2) and (3) of Art. 227 of the Constitution.

47. The discussion made by us spells out that the administrative control of Industrial Court and Labour Courts for the purpose of appointment, promotion and transfer are with the Government. The power of superintendence is over the Courts and Tribunals and not over the authority of Government making appointments and transfers. Such administrative actions of the Government may be subject to judicial review under Art. 32 or Art. 226, but not under Arts. 227 or 136 of the Constitution of India. The apprehension in the mind of Mr. M. C. Bhatt, learned Counsel

appearing for the appellants that such control should not be vested with the Government in as much as the Government is also a litigant in many of

the labour matters sounds reasonable. It is for the legislature to take note of Art. 50 of the Constitution of India and entrust the powers under the

Industrial Disputes Act and also Bombay Industrial Relations Act with the industrial service of the State occurring in Chapter VI Part VI of the

Constitution. Earlier the better. In as much as our Constitution recognises such judicial power in the hands of the executive and the residuary with

the judicial service of the State, unlike Australian Constitution, it cannot be said that the Industrial Court and Labour Court Judges come under the

purview of the judicial service of the State coming under Chapter VI of Part VI of the Constitution. As long as the Government has the power to

retain certain judicial functions through such Tribunals, we cannot equate such Tribunals constituted under the statutes and the rules made

thereunder to come under the purview of the judicial service of the State. It will be better that the Legislature and Executive bestow their attention

to put the Industrial Courts and Labour Courts under the State Judicial Service amenable to Arts. 233 to 237 of the Constitution. Until then, it is

not possible for us to treat such Tribunals as District Judge and other Labour Courts as Judges inferior to the post of District Judge. When such

clear distribution of the judicial power has been spelt out by the statute between the Courts established under these Acts and the regular judicial

service as per the Constitution, it is difficult to appreciate the argument of Mr. M. C. Bhatt that by virtue of Art. 227, both administrative and

judicial superintendence and control vests with the High Court. From the foregoing discussion and also from the fact that the word

"superintendence" alone has been used in Art. 227 in contrast to the word "control" used in Art. 235, the administrative control of the High Court

cannot be spelt out from Art. 227 except the judicial superintendence by the High Court over the Tribunals and Labour Courts on the strength of

Art. 227 of the Constitution.

48. The power of superintendence of the Industrial Court over Labour Court is also similar to the power of superintendence under Art. 227. This

power of superintendence of Industrial Court cannot be construed as power of control for the same reasons which we have discussed earlier in the

context of the High Court.

49. Mr. M. C. Bhatt, after reading Section 78-B of the Bombay Industrial Relations Act, which deals with the power of the Labour Courts to try

offences punishable under the B.I.R. Act submits that Labour Court Judges are also exercising criminal jurisdiction and as such they are Magistrate

under the Criminal Procedure Code. In support of this contention, Mr. M. C. Bhatt deals with the powers and procedures of the Labour Court in

the trials of offence punishable under the Act. This Section reads as follows :

83. In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, (of a

Magistrate of First Class), and in the trial of every such offence shall follow the procedure laid down in Chapter XXII of the said Code for a

summary trial in which an appeal lies and the rest of the provisions of the said Code shall, so far as may be, apply to such trial.

50. According to Mr. M. C. Bhatt, since the Labour Courts will have the powers of Magistrate as per the provisions of the General Clauses Act,

they will come under the administrative and judicial control of the High Court as per Section 11 of the Criminal Procedure Code which reads as

follows :

11.(1) In every District (not being a Metropolitan area), there shall be established as many Courts of Judicial Magistrates of the First Class of the

Second Class, and at such places as the State Government may, after consultation with the High Court, by notification specify :

(Provided that the State Government may, after consultation with the High Court, establish for any local area, one or more Special Courts of

Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court

is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such

Special Court of Judicial Magistrate has been established.)

(2) The Presiding Officers of such courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the First Class or of

the Second Class on any member of the Judicial Service of the State, functioning as a Judge of a Civil Court.

51. From the bare reading of above Section, it is clear that this Section applies to Courts of Judicial Magistrates and not to all Magistrates. Labour

Court, even though it may be a Magistrate within the definition of Bombay General Clause Act, it would not be a Court of Judicial Magistrate as

contemplated by Section 11 of the Criminal Procedure Code and therefore, Section 11 has no application. Article 237 is also not attracted

because there is no notification by the Governor bringing these Labour Courts exercising powers of Magistrate within the purview of Arts. 233 to

236.

52. Article 237 empowers the Governor to issue public notification in order to apply the provisions of Arts. 233 to 236 and any rules made

thereunder in relation to any class or classes of Magistrate in the State as they apply in relation to persons appointed to the judicial service of the

State subject to such exceptions and modifications as may be specified in the notification. The attempt to lift the definition of the Magistrate in

General Clauses Act, in our opinion, is incorrect and this Art. 237 amply bears out the limited application of the provisions at this Chapter VI of

the Constitution on such Magistrates notified in the manner prescribed under this Article by the Governor.

53. As a result of the aforesaid discussion, the following conclusions emerge :

(i) The Constitution clearly visualises two separate and different concepts viz. Courts and Tribunals.

(ii) Articles 136 and 227(1)(a) use both expressions whereas Chapter VI "Subordinate Courts", Arts. 233 to 237 and 227(2) and (3), use the

word "Court" only, thus, manifesting constitutional intention not to include Tribunals.

(iii) Judicial power of the State is not the monopoly of the judiciary; there is no strict separation of powers. An authority other than a Court vested

with the judicial power of the State is a Tribunal. (A.C. Company and Chandra Mohan cases, supra).

(iv) Industrial Court is Court of Industrial Arbitration which is conferred special jurisdiction not having any plenary or residual jurisdiction.

(v) Labour legislations - B.I.R. Act, I.D. Act, W.C. Act, M.W. Act, P.F. Act create special forum for special kinds of disputes and not only of

ordinary civil rights, but also new rights and obligations.

(vi) All Tribunals are not Courts and are not administratively subordinate to the High Court and are not under the control of the High Court.

(vii) Merely because a Tribunal is a "Court" for the purpose of the Contempt of Courts Act and judicially subordinate to the High Court, would not

make such Tribunal "subordinate Court" within the meaning of Chapter VI Part VI of the Constitution (Jugal Kishore case supra).

(viii) So also, merely because a Tribunal is subject to Art. 136 or 227(1) would not make a Court subordinate to High Court.

(ix) Labour & Industrial Courts "are out of the hierarchy of ordinary judicial system" exercising judicial power of the State in a degree and extent

different from ordinary Courts (Bharat Bank case, supra).

(x) Tribunals are not Courts. "When the Constitution Speaks of "Courts" in Arts. 136, 227 or 228 or in Arts. 233 to 237 or in the Lists, it

contemplates Courts of Civil Judicature, but not Tribunals other than such Courts".

(Harinagar Sugar Mills case, supra).

(xi) "Tribunals decide controversies arising under special laws ... Broadly spreading certain special matters go before Tribunals and the residue goes

before the ordinary Courts of civil judicature. These Civil Courts perform all the judicial functions of the State except those that are excluded from

their jurisdiction." (Harinagar Sugar Mills case, supra).

(xii) Since the Labour Courts and Industrial Courts are not Courts, but are Tribunals and also since they are not administratively subordinate to

High Court, the transfer of these Judges is not covered under Art. 235 of the Constitution.

(xiii) Article 227 is power of superintendence and not of control over Courts and Tribunals. It is not the power of control over Government's

administrative actions of appointment and transfer of Labour Court Judges. Similar is the power of superintendence of Industrial Court over

Labour Courts, but not control over Government.

(xiv) It is for the legislature to take note of Art. 50 and implement the Directive Principle of State policy to separate the Labour Judiciary from the

executive. Earlier the better.

(xv) Labour Courts are having some powers of Magistrates and, therefore, they are Magistrates also, but they are not Courts of Judicial

Magistrates u/s 11 of the Criminal Procedure Code and Section 11 has no application to them, nor are they covered by Art. 236(b) nor by 237.

54. Mr. M. C. Bhatt next contended that these Labour Court Judges should not have been transferred since transfer is not an implied condition of

service. According to the learned Counsel, unless transfer has been specifically provided for, the recruitment is only for a particular post and hence,

transfer cannot be effected. For this proposition, he cited the decision in the case of Automotive Manufacturers v. Nandalal, reported in (1977) 18

GLR 786. The said decision reads as follows :

If transferability out of the City was not an express condition of service, it cannot be imposed on an employee by ascribing it to him under the

doctrine of an implied term of service. It can be read into the contract as an implied term if there is some compulsion to read it into a contract of

service by necessary implication having regard to the very nature of the employment. To hold that it was an implied condition would be to attribute

to the employee a deliberate desire to subject himself to transferability. One cannot ascribe to the respondent, a lowly paid employee, such a

desire to subject himself to transfer to a branch outside the city in which he secured employment as it would have disastrous consequences on his

economic life.

55. Section 5 of the Bombay Industrial Relations Act deals with the constitution of the Labour Court. u/s 9, Labour Courts are constituted in

respect of a particular local area as may be prescribed by specified notification. Reading these Sections and also the decision cited above, Mr. M.

C. Bhatt submitted that there cannot be any transfer of Labour Court Judges. We are afraid, we are not able to appreciate this view. It is an

admitted fact that Labour Courts exist in various parts of the State of Gujarat. The decision reported in (1977) 18 GLR (supra) also states :

It can be read into the contract as an implied term if there is some compulsion to read it into a contract of service by necessary implication having

regard to the very nature of employment.

In the present case, the very nature of the employment and also the constitution of the Labour Courts in various parts of the Gujarat State

necessarily spells out the transferability of such posts. Even apart from this, the advertisement invited applications for the post of "Judge, Labour

Court (Junior Division) in General State Service, Class I", and it is clearly stated in condition No. 8(10) that a selected candidate will be required

to serve anywhere in the State of Gujarat. In the affidavit-in-reply filed by the Deputy Secretary to the Government of Gujarat, Labour and

Employment Department, it has been specifically stated that the persons holding posts which constitute a common cadre are by necessary

implication inter-transferable to an equivalent post anywhere in the State. It has been further stated in the reply affidavit that the power of transfer

by provisions of B.I.R. Act is necessary implication and such transfer does not amount to constitute a fresh appointment, as alleged. It is further

states that the power of appointment would include incidental and ancillary powers including power of transfer. Rules called "Labour Court (Junior

Division) Recruitment Rules, 1982" (so also Senior Division Rules), which were published by the Notification of the Labour and Employment

Department, Sachivalaya, Government of Gujarat, dated May 3, 1982 clearly states the power of the Government to appoint Judge, Labour

Court. Hence, considering the nature of the appointment and also the purpose for which such Courts are constituted throughout the State of

Gujarat, it can be spelt out that there is an implied power of transfer with the Government, which has the power to appoint such officers.

56. Even in case of judicial service which is directly under the control of the High Court under Art. 235 of the Constitution, there is no express

provision for the transferability. However, there is no dispute that they are transferable. They are also governed by the Bombay Civil Services

Rules. The Labour Court Judges also would be governed by these Rules. The learned Counsel for the appellants submitted that it is not the case of

the Government that they are governed by the Bombay Civil Service Rules and it has not been contended so in the affidavit-in-reply. Once they

are held to be Government servants, there is no reason as to why the Bombay Civil Services Rules should not be applicable to them. Rule 17 of

the Bombay Civil Services Rules reads as follows :

Unless in any case, it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of Government and he may be

employed in any manner required by the proper authority, whether the services required of him are such as would ordinarily be remunerated from

the consolidated fund India or of a State or from the revenues of a local fund, or from the funds of a body, incorporated or not, which is wholly or

substantially owned or controlled by the Government.

Thus, under this Rule, it is clear that every Government servant is transferable and this is the express provision for transfer.

57. As regards the contention of mala fides and arbitrariness, it is to be seen that there is no allegation of mala fides against the President of the

Industrial Court, who has made the recommendation of these transfers. Once that is gone, no mala fides can be attached to the Government

decision in accepting the recommendation.

58. The transfers are completely within the purview of the appointing authority. The administrative exigencies and the necessity to fill up certain

Labour Courts have to be judged by the administrative authorities concerned and that cannot be a subject matter of a writ proceeding. The action

in this case was taken on the proposal made and initiated by the President of the Industrial Court. In this connection the learned Advocate General

read the averments in the Special Civil Application, which run as follows :

The petitioners further submit that the impugned transfers of all the Labour Judges are absolutely mala fide and the product of extraneous and

political considerations on the part of the Government. The sole motive of the Government behind the transfers is to instill a sense of fear among the

Labour Judges and to compel them to follow a particular line and to toe the policy of the Government.

Rebutting the averment, the learned Advocate General stated that there is absolutely no motive to effect such transfers. In this connection, learned

Advocate General read the proposal of the President of the Industrial Court, Gujarat, wherein the President has clearly given the reasons and the

necessity to transfer these Judges. Inasmuch as mala fides alleged against the President, Industrial Court, Gujarat, have been withdrawn, it cannot

be said that the reasoning given by the President of the Industrial Court for transferring these Labour Court Judges is in any way tainted.

59. Mr. M. C. Bhatt, learned Counsel appearing for the appellants contended that the Government has not applied its mind but acted on the

recommendation of the President of the Industrial Court and this vitiates the transfers. Moreover, the President alone cannot be considered as the

Industrial Court in the absence of two other members concurring with such recommendation made by the President. Such argument cannot be countenanced, since the Government, which has the power to transfer, can act only through its officers and get information and reasons only from the head of the departments. The President, Industrial Court, after correctly appraising the situation prevailing in various Courts of the State, though it fit to recommend to transfer the Labour Court Judges and has also given reasons for effecting such transfers. It is unfortunate that such transfers have not been given effect to for a number of years owing to the stay given by this Court. As correctly put forth by the learned Advocate General, none of the transferred Judges of the Labour Courts have made grievance regarding such transfers. We find that the Government has correctly effected transfers in the interest of the administration of the Labour Courts.

60. In two or three cases, it was pointed out that there was hardly significant time left for the transferees to do any useful work at the new transferred place in view of the impending retirement. Since those officers have already retired, that point does not survive for consideration.

61. For the abovesaid reasons, we are of the view that the Government has power u/s 9 to appoint and transfer the Labour Court Judges and it is not necessary for such transfer of Labour Court Judges the provisions of Arts. 233, 234, 235 and 236 of the Constitution should be followed.

Inasmuch as we have found that the Industrial Court or Labour Court is not a District Judge and the Labour Court Judges are not inferior to the post of the District Judge, it is not possible to invoke the provisions under Arts. 233 to 237 in Chapter VI of Part VI of the Constitution and since Industrial Court and the Labour Courts are called "Courts" only in the broad and loose sense, we hold that Section 9 of the B.I.R. Act is not ultra vires Arts 233, 234, 235 and 236 of the Constitution.

62. For the foregoing reasons, we are not interfering with the judgment of the learned single Judge passed in Special Application No. 3313 of 1984 and accordingly, this Letters Patent Appeal is dismissed. No costs.

63. Learned Counsel for the appellants prays that a certificate of fitness and leave to appeal to Supreme Court be granted in view of the difference of views between two High Courts i.e. Allahabad and Bombay. We do not find that it is necessary to grant leave in view of the fact that we have

followed Supreme Court judgments in this regard. Therefore there is no question of granting the said request. Moreover, in our opinion, no

substantial question of law of general importance, which needs to be decided by the Supreme Court arises in this case and as such, the prayer for

certificate for appeal to the Supreme Court is rejected.

64. The learned Counsel for the appellant prays that the interim relief which has been granted since 1984 against the transfers may be continued for

a reasonable period to enable the appellant to carry the matter to the Supreme Court. We found that transfer is an incident of service. It is

unfortunate that transfers remained stayed for five years. But now we do not find any reason to continue the interim relief and hence the prayer to

continue the interim relief is rejected. Mr. M. C. Bhatt, learned Counsel for the appellant, submits that the transfers at this stage would result into

hardship to the officers having school/college going children. This hardship can be brought to the notice of the Government. The learned Advocate

General on behalf of the Government states that the Government will look into such cases and do the needful.