

(1988) 09 MP CK 0049
In the Madhya Pradesh High Court
Case No : M.P. No. 8 of 1988

Vijay Singh Jadon

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 05-09-1988

Acts Referred:

Administrative Tribunals Act, 1985 — Section 4(2), 5(8)

Citation : (1988) JLJ 660 : (1988) MPLJ 640

Hon'ble Judges : T.N. Singh, J; N.K. Singh, J

Bench : Division Bench

Advocate : H.N. Upadhyaya, for the Appellant; M.C. Jain, Deputy Advocate-General for State, for the Respondent

Judgement

Dr. T.N. SINGH, J.

Under Section 4(2) of the Administrative Tribunals Act, 1985, for short, the Act, Central Government has issued Notification No. A- 11013/44/86-AT dated 29-6-1988 establishing Madhya Pradesh State Administrative Tribunal with effect from 2-8-1988, notifying further therein that the said date shall be the "appointed days" within the meaning of Clause (c) of Section 3 of the Act. By a separate Notification, No. F.A.4-8-1988-XLIX-1, dated 29-8-1988, in exercise of powers u/s 5(8) of the Act, the State Government has specified "Jabalpur as the place where the Principal seat of the Tribunal shall ordinarily" sit". It is this later Notification of which validity is seriously challenged in this matter.

Be it noted in this connection that the Act was amended on 25-3-1986, though u/s 1(2) of the Amending Act it was contemplated that the provisions of the said Act would be deemed to have come into force on 22nd day of January, 1986 unless otherwise provided elsewhere therein. Old Sub-section (7) of Section 5 was substituted by new Sub-sections (7) and (8) which read as follows:

(7) Subject to the other provisions of this Act, the Benches of the Central Administrative Tribunal shall ordinarily sit at New Delhi (which shall be known as

the principal Bench), Allahabad, Calcutta, Madras, New Bombay and at such other places as the Central Government may, by notification, specify.

(8) Subject to the other provisions of this Act, the places at which the principal Bench and other Benches of a State Administrative Tribunal shall ordinarily sit shall be such as the State Government may, by notification, specify".

The Amending Act aforesaid, also made alterations in, among others, Sections 28 and 29. As per amended Section 28, "no Court except (a) the Supreme Court; or (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters". However, we extract Sub-section (1) of Section 29 in extenso:

29. Transfer of pending cases. (1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this Sub-section shall apply to any appeal pending as aforesaid before a High Court.

Be it noted that Sub-section (2) is of the same object and purport, though it deals with the case of a particular class of employees, namely, "any local or other authority or Corporation or Society".

This petition was admitted on 8-1-1988, evidently before establishment of the State Administrative Tribunal, and on that date itself petitioner's counsel's contention that the case was covered by a Bench decision of this Court in *Brig Kishore Sharma*, 1988 M.P.L.J. 363 : 1988 J.L.J. 137, was noted. When the matter next came before us on 10-8-1988 the situation had changed and a question was raised whether this matter had to be decided by the State Administrative Tribunal and whether this Court having lost jurisdiction in the matter, the petition has to be transferred to the said Tribunal for disposal. Counsel were heard on that question on 18-8-1988 and 19-8-1988. Because of the importance of the question and the fact that the same question had to be decided generally with respect to a large number of cases involving service matters, pending disposal at this Bench, arguments were advanced at the Bar by some other counsel also appearing in other matters. We had the advantage of hearing arguments of senior counsel Sarvashri P.L. Dubey and J.P. Gupta besides hearing Sarvashri N.P. Mittal, K.S. Shrivastava, D.K. Katore and also Shri Ashok Velankar who appeared subsequently as a petitioner in Misc. Petition No. 986 of 1988 and addressed us further in that matter on 22-8-1988 also. In that matter, we heard again Shri N.P. Mittal, appearing then for the first respondent, Union of India and also Shri

M.C. Jain, Deputy Advocate General of the State who had been earlier heard in the connected matter. The contentions of Shri Velankar advanced in Misc. Petition No. 986 of 1988, shall be disposed of at the end.

Although in this matter Shri Upadhyaya, counsel appearing for the petitioner, made submissions on the nature and character of the lis, in regard thereto we did not hear Shri M.C. Jain, as the latter submitted that he shall be addressing us subsequently inasmuch as the same question has to be dealt with by him in respect to some other matters also. We propose, therefore, to limit our decision in this matter to the main question as to whether generally all writ petitions involving "service matters", pending disposal in this Court, do stand transferred automatically on 2-8-1988 to the newly established Madhya Pradesh State Administrative Tribunal at Jabalpur in virtue of the provisions of Sections 28 and 29 of the Act and the two Notifications aforementioned. We may state even at this stage that two lines of arguments were advanced by counsel on this question. According to Shri J.P. Gupta and others. until such time as a permanent Bench of the Tribunal is not established at Gwalior, this Court shall continue to exercise jurisdiction in relation to pending and also new writ petitions concerning "service matters". On the other hand, Shri P.L. Dubey, preferred not to make that tall "claim and submitted that though this Court shall not exercise jurisdiction in respect to such pending matters excluded from its purview u/s 28, those matters shall not, even then, go out of Gwalior and shall be kept in the Bench Registry here for the State Government or the Tribunal to make appropriate arrangements for disposal of those matters here, at Gwalior.

Because we are moved more by the plausibility and reasonableness of submissions of Shri Dubey, we would refer first, therefore, to the authorities cited by him. The sheet-anchor indeed is the decision reported in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, , rendered on 31-10-1985, in the nature of an interim order. The matter was finally decided on 1-12-1986 and their Lordships' final decision is reported, among others, in AIR 1987 SC 386. At para 3 of the report of the decision of their Lordships, rendered on 31-10-1985, it was held by their Lordships that "So far as the writ petitions under Article 226 of the Constitution pending in the High Courts as also suits or appeals pending in the subordinate Courts are concerned, there will be no order of stay" subject, however to certain conditions. One of the conditions is manifested in Clause (3) of para 3 of which we extract the relevant portion:

Where no Bench of the Tribunal is located at the place where there is seat of the High Court, any application or petition in regard to the matters covered by the Act will be filed in the Registry of the High Court and as soon as such application or petition is filed, intimation shall immediately be sent to the Bench of the Tribunal having jurisdiction over that area and if there is an application for interim relief made in such petition or application, a member of the Bench will make himself available at the seat of the High Court for hearing the application for interim relief within one week from the receipt of the intimation and until

then, status quo as on the date of the filing of the application for interim relief shall be maintained The Bench of the Tribunal will also in such case not take up for final hearing any applications or petitions except at the place where the seat of the High Court is situate. The Bench of the Tribunal may go on circuit for this purpose." (Emphasis supplied).

At para 4, their Lordships further observed that the interim order aforesaid will operate until further orders of the Court and the State Government was given time to decide whether additional Benches of the Central Administrative Tribunal would be set up at the seats of those High Courts where no Bench of the Tribunal is at present located. "The basic principle of administration of justice", observed their Lordships, "is that the courts should come closer to the people and not run far away from them".

The first question to be decided, is, if and to what extent, the final order rendered on 9-12-1986 modified the interim direction afore-mentioned and the second question is, if to the interim order Article 141 of the Constitution would be attracted. Indeed, the question what their Lordships meant by expression "the place where the seat of the High Court is situate" has also to be decided. We may, therefore, first have a look at the final order. Bhagwati, C.J., wrote a separate opinion, while Ranganath Misra, J. spoke for the Court and his Lordship's judgment has to be read at para 8 et. seq. of AIR 1987 SC 386. At para 7 of the report, Bhagwati, C.J. observed that if the Administrative Tribunal is to be an "equally effective and efficacious substitution for the High Court on the basis of which alone the impugned Act can be sustained, there must be a permanent or if there is not sufficient work, then a circuit Bench of the Administrative Tribunal at every place where there is seat of the High Court ". (Emphasis supplied). In his opinion, at para 10 of the Report, Ranganath Misra, J. observed that the Attorney General, after obtaining instructions from the Central Government had filed the memorandum and therein, it had been said that "Government would arrange for sittings of the benches of the Tribunal at the seat or seats of each High Court on the basis that "sittings" will include "circuit sittings" and the details thereof would be worked out by the Chairman or the Vice-Chairman concerned". (Emphasis supplied). Nothing else, in specific terms, has to be read in either opinion to suggest that in any other respect the interim order, earlier made, stood modified in any manner.

7-A. We have no doubt, therefore, that Sections 28 and 29 of the Act or, for that matter, the entire Act, continues today on the Statute Book in virtue of what their Lordships have held in paras 7 and 10 of the aforesaid final order as also of para 3 of the interim order passed on 31-10-1985 and indeed also in virtue of the amendments made in the Act pursuant to their Lordships' observations and directions. Evidently, it is the force and effect of Article 141 that would subject still the extant or amended provisions of Sections 28 and 29 to the two orders passed in Sampath Kumar's case (supra). Indeed, when a decision is rendered by the highest Court of the land on the vires of an enactment as a whole which is

saved conditionally, that decision with all its ramifications must be regarded as the law of the land. Such a decision cannot be equated to a decision made on concession in any case as reasoned order is rendered in such a case on the right of the enacted law to survive and its validity and enforceability would, therefore, ensue directly from Article 141 and not from exercise of legislative power by the concerned legislature. *Gopal Upadhyaya and Others Vs. Union of India (UOI) and Others*, is an authority that supports the proposition that questions of law decided by Supreme Court expressly or by necessary implications, constitute precedents. In *Union of India (UOI) Vs. All India Services Pensioners' Association and Another*, , it was held that any order of their Lordships deciding any matter giving reason is a binding precedent under Article 141.

On the holding of the two orders aforesaid, rendered in the case of *S.P. Sampath Kumar (supra)* we have no hesitation to hold that despite the fact that this Court will cease to exercise jurisdiction in respect of pending cases relating to "service matters", those matters cannot be "transferred" to the Madhya Pradesh State Administrative Tribunal at Jabalpur, until such time as arrangements are not made for the Tribunal to hear the same at Gwalior. The records of all such cases shall be retained at Gwalior, in the Bench Registry of this Court. Indeed, till such time as the said Tribunal does not make arrangement to hold circuit sittings at Gwalior, the Bench Registry would be entitled to entertain interim applications in those matters and send intimation in respect of those applications to the Tribunal so that the Tribunal can make, if so advised, necessary arrangements for hearing and disposal of the application for interim relief at Gwalior. To make the position further clear, we state that it shall be competent for the Bench Registry to exercise ministerial function in the manner aforesaid notwithstanding the provisions of Section 29. Only on such procedure being followed the financially-handicapped litigants would be able to get justice at the doorstep, though the affluent ones may prefer to go, if so advised, to the "principal Seat" of the Tribunal at Jabalpur, as we cannot have any objection to allow; prayers made for transfer of any particular case to the said Tribunal because of entitlement of that Tribunal u/s 28 to hear and dispose of such matters.

Although the State Administrative Tribunal set up u/s 4(2) of the Act may not be subject to the supervisory jurisdiction of this Court under Article 227 of the Constitution, there can still be no doubt that the said Tribunal, or for that matter, the State Government also, is equally bound by the Constitutional mandate of Articles 39A and 141. We have no doubt about our constitutional duty and responsibility in regard to the two Notifications aforesaid, dated 29-6-1988 and 28-7- 1988. Those have to be saved, and indeed constitutionalised also for doing so. There would have been no difficulty if the State Government would have taken cue even from the earliest Notification of the Central Government issued on 26-7-1985 constituting simultaneously the "principal Bench" and the "Additional Benches" of the Central Administrative Tribunal. That not having been done, it is difficult to take the view that the judicial mandate of the two orders rendered in the case of *S.P. Sampath Kumar (supra)*, adverted to earlier, is not

violated by the impugned Notification dated 28-7-1988, issued by the State Government. We have no doubt about validity of Central Government's Notification dated 29-6-1988 as their Lordships have held that the Act could be validly enacted in virtue of the constitutional entitlement provided in that regard by Article 323A. That Notification stands alone and the Tribunal "established" thereunder can validly exercise the power and jurisdiction conferred on it u/s 28 subject to the reservation hereinabove indicated with regard to transfer of pending matters from this Bench Registry to the Tribunal's Office at Jabalpur notwithstanding what is provided in Section 29 of the Act.

We recall in this connection the legislative mandate of Sub-section (8) afore-mentioned of Section 5, effective since 22-1-1986, though enacted on 25-3-1986. The legislative venture obviously followed the judicial exercise done on 31-10-1985, when the interim order was passed in Sampath Kumar's case. We would like to read that provision as mandatory also because of its context, of the sister clause, Sub-section (7). Though the additional Benches of the Central Administrative Tribunal were statutorily fixed to some extent in Sub-section (7), that provision as also Sub-section (8) mandated respectively the Central Government and the State Government to notify "other places" and "places" respectively for the Benches of the Central and State Tribunals besides notifying the places of sittings of the "Principal Bench" in the case of the State Tribunal. It was certainly within the contemplation of the Legislature "that I when Notification u/s 5(8) was issued, State Government would simultaneously notify the places where the "Principal Bench" and "other Benches" were required to sit to make the new set-up of the Tribunal a real and effective substitute of the existing set-up of the High Court in the State.

True, Section 22 empowers the Tribunal, subject to the other provisions of the Act and of any Rules made by the Central Government to regulate its own" procedure including "fixing of places and times of its enquiry" and thereunder, in our opinion, the Madhya Pradesh State Tribunal possesses the requisite power and jurisdiction to hold "circuit sittings" although no Rules in regard to State: Administrative Tribunal generally or for the State of Madhya Pradesh have yet been framed. But, that would not relax the mandatory nature of the provision contemplated I u/s 5(8) which saddles an obligation on the State Government and has nothing to do with Tribunal's own powers in regard to its own procedure inasmuch as Section 22 is an enabling provision, applicable only to the Tribunal. Shri K.S. Shrivastava had raised the contention that until Rules are framed, mere constitution of the Tribunal would be of no avail and this Court shall not be deprived of its jurisdiction to deal with pending or even new cases involving "service matters". However, we do not find any merit in that contention not because of what we read in Section 22 itself, but also of what has to be read in Sections 28 and 29, and the judicial mandate discussed above.

To be clear and candid is a judicial virtue and we would, therefore, say that but for the judicial mandate in the two orders passed by the Apex Court in the case

of S.P. Sampath Kumar (supra), we had little alternative or option to do anything else except making a clear and simple direction for records of all cases involving "service matters" pending disposal by us, to be transferred to the Tribunal at Jabalpur, to give effect to the legislature mandate inscribed in Section 29. The words used therein "stand transferred" are qualified by the judicial mandate and those must be read subject to the force and effect of Article 141 of the Constitution. We have also heard other arguments on the scope of the power of judicial review of this Court possessed under the Constitution for interpretation of the words "stand transferred" to which we shall soon advert.

Before we say anything more with respect to Article 39A of the Constitution of the case-law cited at the Bar, we feel it necessary to observe that the controversy could have been avoided if Shri Jain, Deputy Advocate General, would have taken a stand similar to one which Shri Parasaran, the Attorney General, had taken before the Supreme Court. We had made this position clear to him, but Shri Jain stuck to his ground and rather urged curiously the contention which, in its essence, meant that this Court need not look anywhere else except Section 29 to read the meaning of the expression "stand transferred" used therein. In other words, courts must behave like the rank and file in an Army and carry out merely a ministerial function, obeying the command of the Field Marshal, the Legislature. However, to be fair to Shri Jain, we must also note his alternative contention that the ratios of the two orders of their Lordships of the Supreme Court in the case of Sampath Kumar (supra) can have no application in those cases where the question is of transfer not to the Central Administrative Tribunal, but to the State Administrative Tribunal.

In so far as Shri Jain's main contention is concerned, that has obviously no merit at all as this Court's power of interpretation of any enacted law cannot be taken away in any manner till the Constitution in its present form presides over the destiny of 800 million people of this country. That is well settled on high authority as the power of judicial review, which includes the power of interpretation of any law to the extent even of striking out any law when found violative of any constitutional provision, has been regarded as the Basic Structure of the Constitution. This position was reiterated by Bhagwati, C.J. in Sampath Kumar's case (supra) observing, "the power of judicial review is an integral part of our constitutional system and without it, there will be no Government of laws and the Rule of Law becomes a teasing illusion and a promise of unreality". Few words, however, we have to say to meet Shri Jain's second, or alternative contention. True, in the two Sampath Kumar's case, the question was of transfer of the case to the Central Tribunal, but what cannot be ignored and forgotten is that the central issue in that case as also in the cases before us is the same. Whether and under what conditions and circumstances the jurisdiction of the High Court under Articles 226 and 227 of the Constitution in "service matters", could be excluded by an "effective, alternative institutional mechanism or arrangement for judicial review" ? That Tribunals could be established to replace High Courts was recognised first in Kamal Kanti Dutt's

case, AIR 1980 SC2056, decided on 25-4-1980; and then again in the case of Minerva Mills, AIR 1980 SC 1789, decided on 31-7-1980. This has been rightly pointed by Shri P. L. Dubey.

However, when it was observed by the Constitution Bench in the case of Kamal Kanti Dutta (supra) that "public servants ought not to be driven or required to dissipate their time and energy in court-room battle" and constitution of "Service Tribunal" was recommended, the object of the proposal was also vocalised, namely, to save High Courts "from the avalanchi of writ petitions and appeals in service matters" so that the public servant gets quick justice at the forum of the Tribunal. This was noted by the subsequent Constitution Bench in Sampath Kumar's case (supra) wherein at para 14 of the report (AIR) extracts were made from the opening paragraph of K.K. Dutta (supra). In Minerva Milk (supra), Bhagwati, C.J., at para 93 of the Report, quoted Dr. Ambedkar to stress the importance of constitutional provisions of judicial review, namely, Articles 32 and 226 of the Constitution to say that under the Constitution, "the judiciary is assigned the delicate task to determine what is the power conferred on each branch of the Government" and that it is also assigned the task of enforcing the "constitutional limitations" because that is the essence of the Rule of Law which requires that "the exercise of powers by the Government, whether it be the Legislature or the Executive or any other authority, be conditioned by the Constitution and the law". The Apex Court has indeed accepted the position that the Tribunals constituted under Article 323A can be regarded as "alternative effective mechanism" to exercise the power of judicial review, but it has expressed at the same time its anxiety to ensure that they are constituted and made functional in such manner that they supplant, in effect and reality the existing set-up of High Court in all its aspects, including that of easy access by keeping secure to the litigant existing facility available at the High Court, of "door-step justice" at the outlying or permanent Bench/Benches in the High Courts wherever available.

The question whether the Tribunal, Central or State, when established, could be accepted, in the form established, as an "effective, alternative institutional mechanism or arrangement for judicial review" was decided with reference to their functional arrangements and constitution. In these matters too that question has to be decided with reference to factual situation obtaining in the State of Madhya Pradesh, in the context specially of the State Government Notification dated 28-7-1988, fixing only the "principal seat" of the Tribunal, at Jabalpur. In this connection a reference is necessary to the geographical, demographical and political considerations pertaining to the State of Madhya Pradesh. We arranged, therefore, necessary statistics in that regard to be collected. Undeniably, the State has the largest area of 4,43,446 sq. K. Ms., not possessed by any other State in India. Populationwise, it may not have the top rank, but it still has a big population -- 5,21,78,844. More relevant statistics, however, are that the State Government employees -- 6,28,478 persons, of whom Class III employees are 5,11,619 in number and Class IV are 76,087. The

area and population of seven districts over which Gwalior Bench of this Court has so far been exercising jurisdiction are, respectively 63,48,065 souls and 52,019 sq. K. Ms. The distance by road from Gwalior to Jabalpur is 486 K. Ms. and by Rail, it is 656 K. Ms. In that regard, the position of the Indore Bench of this Court is almost comparable inasmuch as by Rail Indore is at a distance of 601 K. Ms. and by Road, it is 558 K. Ms.

Be it also noted in this connection that even prior to establishment of permanent Bench of M.P. High Court at Gwalior in virtue of the provision of Section 51(2) of the States Reorganisation Act, 1956, for short, the S.R.C. Act, Gwalior was already a Seat of the High Court for a long time. Before the State of Madhya Pradesh came into being, it was the seat of Madhya Bharat High Court and before that also the "High Court" was there, albeit of a foreign jurisdiction under the erstwhile Ruler of Gwalior. The fact that the High Court Bar Association of Gwalior celebrated in 1986 its platinum Jubilee is significant. Ever since Republican era dawned, all segments of the population of seven districts presently under the jurisdiction of Gwalior Bench of M.P. High Court, had not only substantial access to constitutional justice, in terms of Article 39A, they were ensured of justice being dispensed to them on the "basis of equal opportunity" as even a poor citizen could have door-step justice and he was not required to travel far distance to reach the Main Seat or principal Seat of the High Court at Jabalpur. Statistics of pendency of cases of this Bench show that out of total number of writ petitions involving all kinds of cases, number being 2,610 as on 31-7-1988, as many as 1,522 are "service cases", as on 3-8-1988. These figures which speak of pendency of such matters since 1979 manifest clearly that if not half the work, at least a substantial part of the work on the writ side at this Bench, consists of "service cases". That has made it necessary for us to ensure that not only Article 141 is not violated, the constitutional mandate of Article 39A is also duly enforced.

We do not see any reason why we should not construe Bhagwati, C.J.'s direction in Sampath Kumar's case for hearing of matters by Tribunal as either by a permanent, or a circuit Bench, "at every place where there is seat of the High Court" in the constitutional perspective of Article 39A. We see no warrant in the contention that the word "seat" should mean or refer only to the principal, or Main Seat of the High Court. Indeed, in the interim order dated 31-10-1985 in Sampath Kumar's case, it was observed that "courts should come closer to the people and not run far from them". There is nothing in the Constitution or even in the S.R.C. Act that prohibits us from taking that view. A "High Court", according to Article 216 consists of a Chief Justice and other Judges and according to Article 214, after a person is appointed to be a Judge of a particular High Court, he is entitled thereunder to exercise judicial power and discharge judicial functions upon entering his Office on making and subscribing the constitutional oath. Any place where any Judge of a High Court has validly exercised, in the State concerned, with respect to matters arising in the State or with respect to persons residing in the State, judicial functions and judicial

power, has to be regarded as a "seat" of the High Court. Support for this view, we also read in Articles 225 and 231. It is contemplated under Article 231 that there has to be a "Principal Seat" of a High Court when there is a common High Court for two or more States which impliedly contemplates that the same High Court can have one or more "Seats" in each of the States under its jurisdiction. Madhya Bharat High Court was definitely an "existing High Court" within the meaning of Article 225 which prohibited any alteration in the power and jurisdiction of the "Judges" of such a High Court except in accordance with law made by the appropriate Legislature. This Court, in *Jagdishlal Dhody*, 1987 MPLJ 30 = AIR 1988 MP 4, observed that by rules made under Article 225 "powers of a Judge derived from the Constitution or any Statute could not be altered". Indeed, even if we regard the S.R.C. Act as such law which is referred in Article 225, the establishment thereunder of permanent Bench of M.P. High Court at Gwalior has to be deemed recognition of the fact that there was an "existing" High Court at Gwalior.

Decisions cited by Shri Velankar on the purport and scope of Article 39A of the Constitution do support the view we have taken on the relevance of that provision to the facts and circumstances of the cases in hand. In his inimitable style, in *North Coalfields*, AIR 1980 SC 2125, Krishna Iyer, J. observed, "the right of effective access to justice has emerged in the Third World country as the first among the new social right". That observation was made to stress the primacy of dispensation of "quick justice" and court's reference for such procedure as would exclude possibility of protracted litigation. In *Atam Parkash*, AIR 1986 SC 859 it was observed that for interpretation of any law, a court can validly seek guidance from the preamble as also from the Directive Principles while stressing in that case the relevance of insertion in the Preamble of the word "Socialist" by 42nd Amendment made in 1977. This was done, it was held, to ensure that a "vibrant, throbbing, socialist welfare-society" was to be promoted under the Constitution. In virtue of the provision of Article 39(f) of the Constitution, in *Sheela Barse's* case, AIR 1986 SC 1773. their Lordships directed the Children Acts passed in different States to be brought into force and administered without delay, while emphasising necessity of "speedy trial" in Court of delinquent children in view of the Constitutional imperative underwritten in Article 21.

These judicial pronouncements of the Apex Court would have the force of the law of the land for the purpose of interpretation of Sections 5(8), 28 and 29 of the Act and also of the State Government Notification dated 28-7-1988. The Tribunal has been set up under Central Government's Notification dated 29-6-1988 with the object of deciding expeditiously "service matters" or, in other words, cases of persons in employment of State in respect of their service conditions. The object is definitely not advanced, but is likely to be rather frustrated if poor employees of Class III and Class IV are denied easy access to the Tribunal and if their cases are not disposed of expeditiously. To fulfil the twin objects the Legislature in its wisdom gave a clear mandate to the Executive, the State Government, u/s 5(8) of the Act, to set up the Tribunal with "the principal Bench and other Benches"

and unless that duty is discharged, not only the constitutional mandate of Articles 21, 39A, 141 would be frustrated, but the force and effect of Section 5(8) would be clearly lost. It is inconceivable that only the principal Bench of the Tribunal sitting at Jabalpur would be able to deal effectively with cases of persons employed in different parts of the State, 6,28,470 in number, posted at remote places.

20-A. It is a statutory as well as constitutional necessity to set up permanent Benches of the Tribunal at the existing seats of the High Court at Gwalior and Indore to fulfil the object of the setting up of the Tribunal. Not only there will be more forums instead of a single forum at Jabalpur, but employees posted at remote areas would have easy access to such forums and there would be no reason for any person in Government employment to complain frustration of constitutional imperatives of Articles 21 and 39A. After *Olga Tellis*, AIR 1986 SC 180, it is difficult now to ignore the constitutional position that when a Government servant is unlawfully or arbitrarily deprived of his employment, the action would be violative not only of Articles 16 and 311, but of Articles 21, 41 and 43 also as that would impinge on his right to livelihood and "socialist" character of the State, making the "welfare society" a distant reality still to be achieved at an uncertain point of time. We expressed this view recently in *S.P. Mishra's case*, M.P. No. 261 of 1988 decided on 19-8-1988, reiterating the view expressed in *D.S. Makara*, AIR 1983 SC 120 and by this Court in *Rajabai Gorkar*, 1987 Lab. I.C. 1386 and *Jiwanlal*, 1987 MPLJ 376.

Although we have already given our detailed reasons in the foregoing paragraphs in support of the view we have taken in accepting the contention of Shri P.L. Dubey, it is necessary still to state briefly why the contention pressed by Shri J.P.Gupta has not appealed to us. He wanted us to continue to exercise jurisdiction in cases involving "service matters" until such time as a permanent Bench or circuit Bench of the Tribunal is not set up at Gwalior. For that, he relied on the final order rendered in the case of *Sampath Kumar*, laying stress on the position that the Tribunal, as constituted, with only the "principal Seat", at Jabalpur, cannot be regarded as an "effective substitute" for this Court. But, as observed earlier, we do not think even in the final order passed in *Sampath Kumar's case*, the position was in any way altered in so far as High Courts were concerned in respect whereof, it was made clear in the interim order that there would be no stay of operation of the Act except to the extent indicated therein.

21-A. Section 28 has taken away this Court's jurisdiction to deal with "service matters" and the *Sampath Kumar's cases* have not judicially restored to this Court the power and jurisdiction that it had possessed before publication of the two Notifications, to deal with those cases under Articles 226 and 227 of the Constitution. What has been secured judicially to persons affected by the Act is their right to have hearing on the cases, whether by the Central Tribunal or by the State Tribunal "at every place where there is a seat of the High Court". True, what is also secured is that such cases shall not be "transferred" to the Tribunal if

that Tribunal is not such Tribunal as has a seat "at every place where there is a seat of the High Court". That is the only right judicially secured to the persons affected by the Act and, therefore, beyond that we are unable to give them anything overriding the supreme judicial mandate, or even the legislative mandate of Sections 28 and 29. Reliance was placed by Shri Gupta also on Sambumurthy's case, AIR 1987 SC 663 but that too, in our opinion, does not indent in any manner, the view we have taken. In that case, the Proviso to Clause (5) as also main part of Clause (5) of Article 371D were struck down taking the view that the Administrative Tribunal contemplated therein was a "less effective and efficacious institution of mechanism or authority for judicial review". That was so said because the State Government reserved to itself power to "modify or annul" any order of the Administrative Tribunal so as to rob the decision rendered by the Tribunal of its potency and efficacy.

We also do not think if M.P. State Administrative Tribunal which has been validly and lawfully established, lacks inherent potentiality of its acquiring the permissible constitutional status conforming to the requirement stated in Sampath Kumar's case because of what Section 5(8) mandates and provision of Section 22 contemplates. Indeed, the constitutional deficiencies by which the Tribunal, as constituted, is afflicted at present would vanish as soon as permanent Benches in due course, and circuit sittings on ad hoc basis, are arranged at Gwalior and Indore, where there are permanent Benches, or, in other words "seats" of the M.P. High Court, pursuant to existing statutory entitlement. The "content" of the power of judicial review of M.P. State Administrative Tribunal is not reduced a bit by State Government Notification fixing only Jabalpur as "principal Seat" of the Tribunal merely because sittings can be held by the said Tribunal there to hear "service matters" of employees of the State Government. Powers and jurisdiction which the said Tribunal possess are traceable to the provisions of the Act, namely, Sections 15 et. seq. and Section 28 and not to the notification.

Few words now we may say about Shri Velankar's submission in M.P. No. 986 of 1988 in which he appeared as petitioner. In that matter, although he has cited the High Court Bar Association, Gwalior, as petitioner No. 2, we do not find any material on record to support that claim. In the cause-title "Secretary S.S. Kushwah" is added to the description of petitioner No. 2 and in Annexure P/2, we find that Shri Kushwah was nominated as the Secretary of a Committee constituted thereunder to consider the necessity of moving this Court on the Writ Side in the matter of constitution of the Administrative Tribunal. There is nothing else, however, to indicate if the instant petition has been filed also by Shri Kushwah or that the Committee has taken any decision. In our order passed on 22-8-1988 in M.P. No. 986 of 1988, we had made the position clear that we would be only considering Shri Velankar's grievance as to whether in its present form the Administrative Tribunal is an "effective and alternative institution or mechanism" of judicial review to substitute this Court. That matter, in its principal aspect, concerning absence of any provision in the impugned

Notification dated 29-7-1988 of the State Government for hearing by the Tribunal matters at existing seats of this Court, other than at the principal Seat at Jabalpur, we have already dealt with extensively.

23-A. We do not think if the constitution of the State Administrative Tribunal can be also challenged on the ground urged in M.P. No. 986 of 1988 that the said Notification is otherwise deficient in not providing information on the qualifications of Presiding Officer or other members of the Tribunal which allegedly has been improperly constituted as per statement made in Clause (ii) of "second part" of the petition. That apart, by naming only four persons, including the Chairman, Vice- Chairman, and members, to constitute the Tribunal, we do not think that the State Government has foreclosed its option to enlarge the strength of the Tribunal. We have already taken the view that to make the Tribunal an effective substitute for the High Court in this State in the matter of dispensing justice to the employees of the State Government at its existing seats, it would be necessary for the State Government to augment the strength of the Tribunal and to ensure that at each existing seat of the High Court, the State Tribunal must have, as early as possible, a permanent Bench and even now, the Tribunal would be well-advised to hold circuit sittings at these places. There is nothing to be read in the petition to suggest that any of the persons so far appointed does not possess the qualifications prescribed u/s 6 of the Act. Accordingly, we have no doubt that there is no substance in the contentions raised in Misc. Petition No. 986 of 1988. The petition is accordingly dismissed as infructuous and there shall be no order as to costs because we have taken care of one part of grievance of Shri Velankar in dealing with the contentions which other counsel had also raised in the connected Misc. Petition No. 8 of 1988.

In so far as Misc. Petition No. 8 of 1988 is concerned, that petition shall now be listed after a week with other similar matters to examine and deal with the surviving contention of Petitioner's counsel Shri Upadhyaya that with respect to the cause of action agitated in the petition, the Tribunal has no jurisdiction and on merits the petition has to be heard, dealt with and finally decided by this Court.

However, with respect to the common contention in both petitions which we have disposed of today, the question decided is of general importance which is involved in other writ petitions pending in this Court involving "service matters". In regard to that question, hereinabove decided, our direction to the Bench Registry is not to transfer those cases to the Office of the Tribunal at Jabalpur. Those matters shall be dealt with in the manner indicated in para 8 above of this Order until such time as the permanent Bench of the Tribunal is not set up at Gwalior. When that happens, records of all pending cases held up in this Bench Registry shall go there. If the Tribunal holds any circuit sittings at Gwalior in respect of any of those matters, then also, records shall be sent of the matters requisitioned by the Tribunal for the purpose of hearing the same at Gwalior at its circuit sitting. Beyond that, we do not say today anything more. We do not

see today any warrant either in the situation or in the facts and circumstances of the case for making any mandatory and affirmative direction, fixing the time-limit within which the State Government must set up a permanent or "additional Bench" of the Tribunal at Gwalior because we do not read anywhere in records its wilful refusal to abide by the constitutional and statutory as also the supreme judicial mandate in regard to that duty though its lack of awareness or alacrity in that regard is definitely visible. The newly set up Tribunal must become a real substitute of the existing set up of this Court in all its aspects, importantly as respects easy access to justice on the basis of equal opportunity which this Court is providing at its Benches at Gwalior and Indore. In its existing form, it is less advantageous in that regard, which is constitutionally impermissible. We would hope, that duty the State Government shall discharge now with due despatch and alacrity because of all that we have herein observed.

A telegram was received from the Main Seat asking the Additional Registrar here to despatch records of all cases involving "service matters" to the Officer on Special Duty/Registrar, State Administrative Tribunal, Jabalpur. In the view of the direction aforesaid in this matter, that would not be necessary and as such, while communicating that fact the Bench Registry shall send a copy of this order to the Main Registry. Besides, a copy of this order shall also be sent to the Officer on Special Duty/Registrar, State Administrative Tribunal, Jabalpur for the information of the Tribunal. For the State Government to be informed of this Court's views and decision and to be enabled to take necessary action in the matter, copies of this order shall be sent to the Chief Secretary and Secretary, Law Department, as well.