CASE NO.:
Appeal (civil) 3946 of 2001

PETITIONER:
Public Services Tribunal Bar Association

RESPONDENT:
State of U.P. & Another

DATE OF JUDGMENT: 29/01/2003

BENCH:
CJI & Ashok Bhan

JUDGMENT:
J U D G M E N T

With

Civil Appeal Nos. 3947 of 2001 and 3948 of 2001

BHAN, J.

These appeals are directed against a common order passed by a Full Bench of Five Judges of the High Court of Allahabad in Civil Writ Petition No. 4285 (MB) of 1999, Public Services Tribunal Bar Association Vs. State of U.P. & Anr., Civil Writ Petition No. 871 (MB) of 2000, Afzal Ahmad Siddiqui Vs. State of U.P. & Ors., and Civil Writ Petition No. 1262 (MB) of 2000, Shireesh Kumar Vs. State of U.P. & Ors., wherein the High Court has dismissed the writ petitions challenging the vires of the U.P. Public Services (Tribunal) Act, 1976, as amended from time to time. The High Court has upheld the constitutional validity of the Act as well as the subsequent amendments made therein.

To effectively adjudicate the dispute arising in these appeals it would be necessary to have a look at the events in a chronological order which are given in brief as under:

The U.P. Public Services (Tribunal) Act, 1976 (for short "the Act") was promulgated relating to public servants of the State Government and the employees of the government undertakings, local bodies etc. having power to grant interim relief as well. Before the coming into force of the Act the public servants were approaching civil courts for redressal of their grievances arising out of their service matters by filing civil suits before the civil court of competent jurisdiction or by approaching the High Court under Article 226 of the Constitution of India. After the coming into force of the Act the jurisdiction of the Civil Court was taken away. The decision to have a separate service Tribunal was taken by the State Government after considering the increasing workload of the civil courts and the delay in disposal of the service matters. The purpose for creating the Tribunal has been indicated in the statement of objects of the Act, which reads as under:

"The number of cases in the courts pertaining to the employment matters of the Government servants was constantly on the increase. This, besides increasing the workload in the courts also delayed considerably the disposal of such cases. Such litigation also involved money and time of government servants. In these circumstances, it was decided to establish Public Services Tribunals to deal with cases pertaining to employment matters of government servants and also of the

employees of the local authorities and Government Corporations and Companies, so that the employees may get quick and inexpenses justice. It was also decided that after the establishment of the Tribunals such suits be barred from being file in the subordinate courts."

Under the original Act the State Government constituted five Tribunals each comprising of an IAS Officer as a Chairman and a Judicial Officer of the rank of District Judge as a Judicial Member. Each Tribunal was vested with the jurisdiction over service matters of different departments to the State Government. Under Section 4 of the Act any person who is or has been a public servant could file a claim petition in any manner relating to employment as such public servant if his employer had dealt with him in a manner which was not in conformity with any contract or provisions of Article 16 or Article 311 of the Constitution of India or with any rules or law having force under Article 309 or Article 313 of the Constitution. Under Section 5 (5) (j) of the original Act the Tribunals had the power to pass interim orders in respect of all matters within their jurisdiction including orders of dismissal, removal, reduction in rank, termination, reversion and compulsory retirement.

The Act was amended by the U.P. Public Services (Tribunal) (Amendment) Act (U.P. Act No. 1 of 1977). By the said amendment after sub-section (5) of Section 5, sub-sections (5-A) and (5-B) were inserted. Under Section 5 (5-A) the Tribunal could pass an interim order in specific type of cases, but under Section 5 (5-B) the Tribunal was prohibited from passing interim orders in respect of the order made or purporting to be made by an employer for the suspension, dismissal, removal, reduction in rank, termination, reversion and compulsory retirement.

In the year 1982 a proviso was added to Section 4 of the Act by the U.P. Public Services (Tribunal) (Amendment) Act (U.P. Act No. 2 of 1982) divesting the Tribunal of the jurisdiction to deal with petitions arising out of orders of transfer of a public servant.

In 1985 the Administrative Tribunals Act (Act No. 13 of 1985) was enacted by the Parliament under Article 323-A of the Constitution providing a Central Administrative Tribunal with benches for adjudicating disputes in respect of recruitment and conditions of service of persons appointed under the Central Government and its undertakings in connection with the affairs of the Union. Under Section 5(1) of the said Act Tribunal was to consist of a Chairman, Vice-Chairman, Judicial and Administrative Members. Under Section 6(1)(c) of the said Act a person who had held the post of Secretary to the Government of India or any other post under Central or State Government carrying a scale of pay which was not less than that of a Secretary to the Government of India could be appointed as the Chairman of the Tribunal. The original Act vested the entire power of appointment of Chairman, Vice-Chairman, Administrative & Judicial Members of the Tribunal in the Central Government without providing for their appointments being made in consultation with the Chief Justice of India.

Writ Petition No. 12437 of 1985, S.P. Sampath Kumar v. Union of India and other connected cases were filed in this Court under Article 32 of the Constitution of India challenging the validity of the Administrative Tribunals Act, 1985 including Section 28 of the said Act whereby the High Courts were divested of their jurisdiction under Articles 226 and 227 of the Constitution in respect of matters within the jurisdiction of the Administrative Tribunals, i.e., in respect of service matters pertaining to employees of the Central Government, State Government or any undertaking which were brought within the jurisdiction of the Tribunals. S.P.Sampath Kumar’s case and other connected cases were referred to and disposed of by a Constitution Bench of this Court and the same is reported in 1987 (1) SCC 124. By the said decision, this Court upheld the constitutional validity of the Administrative Tribunals Act but directions were issued to the Central

Government to amend the Act, inter alia, to delete the provisions providing for IAS Officers to be appointed as Chairman of the Tribunal and providing for appointment of Chairman, Vice-Chairman and other members of the Tribunal in consultation with the Chief Justice of India. Thereafter in 1987 by Administrative Tribunals (Amendment) Act, section 6(1)(c) of the said Act were omitted and section 6 (7) was substituted providing for appointment of Chairman, Vice-Chairman and members of the Tribunal in consultation with the Chief Justice of India.

In Krishna Sahai v. State of U.P. [1990 (2) SCC 673] and Rajendra Singh Yadav v. State of U.P. [1990 (2) SCC 763], this Court directed the State of U.P. to consider the feasibility of setting up an appropriate Tribunal under the Central Tribunal Act, 1985 in place of the Services Tribunals functioning at present, and in case the existing State Tribunals were continued. This Court observed:

"......it would be appropriate for the State of Uttar Pradesh to change its manning and a sufficient number of people qualified in Law should be on the Tribunal to ensure adequate dispensation of justice and to maintain judicial temper in the functioning of the Tribunal..."

In the later decision in Rajendra Singh Yadav's case(supra), this Court reiterated its earlier view, a few other observations to improve the functioning of the Services Tribunal were made. The said observations read as under:

"We have been told that the Services Tribunal mostly consists of Administrative Officers and the judicial element in the manning part of the Tribunal is very small. As was pointed out by us in S.P. Sampath Kumar v. Union of India, the disputes require judicial handling and the adjudication being essentially judicial in character it is necessary that an adequate number of judges of the appropriate level should man the Services Tribunals. This would create appropriate temper and generate the atmosphere suitable in an adjudicatory Tribunal and the institution as well would command the requisite confidence of the disputants. We have indicated in the connected matter that steps should be taken to replace the Services Tribunals by Tribunals under the Administrative Tribunals Act, 1985. That would give the Tribunal the necessary colour in terms of Article 323-A of the Constitution. As a consequence of setting up of such Tribunals, the jurisdiction of the High Court would be taken away and the Tribunals can with plenary powers function appropriately. The disputes which have arisen on account of the Services Tribunals not having complete jurisdiction to deal with every situation arising before it would then not arise.

We have pointed out that notice has been issued in a later case for the State's response to the question of Tribunals to be located at different parts of the State. State of Uttar Pradesh territorially is the second largest State in India but considering the population it comes first. Almost every part of the State is well advanced and service litigation in such setting is likely to arise everywhere. To locate the seat of the Tribunals at the State capital in such a situation is not appropriate. The accepted philosophy relevant to the question today is that justice should be taken to

everyone's doors. This, of course, is not a statement which should be taken literally but undoubtedly the redressal forum should be available near about so that litigation may be cheap and the forum of ventilating grievance may not be difficult to approach. Keeping that in view which is a legitimate consideration it would be appropriate for the State Government to consider, firstly, increase in the number of benches of the Tribunal and secondly, to locate them not at the same station but at various sectors or depending upon the number of institution of disputes and pendency at the level of independent Commissionerate or by clubbing two or three of them together. This, of course, is a matter which would require further examination at the administrative level and, therefore, we express no opinion regarding location of such Tribunals although we are of the definite view that there should be Tribunals available in different parts of the State and all the benches of the Tribunal should not be located at one place."

Thereafter in 1992 the U.P. Public Services (Tribunals) (Amendment) Act (U.P. Act No. 7 of 1992) was promulgated amending drastically the provisions of the original Act. Only one Tribunal with separate division and single member benches replaced the several Tribunals constituted under the original Act. According to section 3(2) of the Amending Act the Tribunal was to consist of one Chairman, one Vice-Chairman, Judicial and Administrative Members. Under section 3(3)(c) of the Amending Act an IAS Officer could be appointed as Chairman of that Tribunal. Similarly, under section 3(4) (c) of the Amending Act an IAS officer could also be appointed as Vice-Chairman of the Tribunal. Another significant change brought about by the Amending Act was that vide Section 5-A of the Amending Act the Tribunal was vested with the powers of punishment for its contempt in the same manner as the High Court has under the provisions of the Contempt of Courts Act. Thereafter in 1993 Sri S.Venkat Ramani, an IAS officer was appointed by the State Government as Chairman of the Tribunal. Sanjai Kumar Srivastava filed writ petition No.1619(MB) of 1993 before the Allahabad High Court challenging the appointment of Sri Venkat Ramani as Chairman of the Tribunal as well as challenging the constitutional validity of the provisions of section 5(3) (c) and 5(4)(c) of the Act as amended in 1992 whereby an IAS officer could be appointed as Chairman and Vice-Chairman of the Tribunal. A Full Bench of the Allahabad High Court by its judgment dated 26th May, 1995 struck down the provisions of Section 5 (3) (c) and 5(4) (c) of the Act and quashed the appointment of Sri Venkat Ramani an IAS officer as Chairman of the Tribunal.

In 1994 the U.P. Public Services (Tribunal) (Amendment) Ordinance (U.P. Ordinance No. 23 of 1994) was promulgated whereby sub-section 5-C was inserted to section 5 of the Act divesting the Tribunal from passing any interim order in respect of an adverse entry awarded to a public servant and providing that all interim orders passed in respect of any such adverse entry before the promulgation of the Ordinance would stand vacated. This Ordinance in due course of time lapsed and thereafter in the year 1995 again the same Ordinance was promulgated by U.P. Ordinance No. 8 of 1995 introducing the same amendments as were in U.P. Ordinance No. 23 of 1994. This Ordinance also lapsed in due course of time and thereafter on 25th August, 1995 the U.P. Public Services (Tribunal) (Amendment) (Second) Ordinance, 1995 (U.P. Ordinance No.32 of 1995) was promulgated by the Governor re-promulgating U.P. Ordinance No. 8 of 1995 which had lapsed on expiry of the period specified in Article 213(2) of the Constitution.

In February, 1997 a former Judge of the Allahabad High Court, Justice K.L. Sharma (retd.) was appointed as the Chairman of the Tribunal. Justice Sharma retired as Chairman of the Tribunal on 10th July, 1999.

On 10th of September, 1999 U.P.Public Services (Tribunal) Amendment Ordinance, 1999 (U.P. Ordinance No. 17 of 1999) was promulgated by the Governor of U.P. and published vide notification dated 9th September, 1999. By Ordinance No. 17 of 1999 Section 4(1) was substituted in place of section 4 of the Act, further Section (5-C) was added to Section 5. Writ Petition No. 4285(MB) of 1999 was filed by the U.P. Public Services Tribunal Bar Association. The constitutional validity of newly added Section 4(1), sub-section (5-C) and Section 5(5-B) was challenged being ultra vires the Constitution. A further prayer was made that a writ in the nature of mandamus be issued commanding the State Government to modify the Act strictly in conformity with the Central Administrative Tribunals Act, 1985 as per the law laid down by this Court in S.P.Sampath Kumar's case(supra) and L.Chandra Kumar v. Union of India [1997 (3) SCC 261]. Lastly it was prayed that the U.P. Public Services Tribunal be given comprehensive powers to grant interim relief to make the Tribunal more efficient and effective. Subsequently the impugned U.P. Ordinance No. 17 of 1999 was replaced by U.P. Act No. 5 of 2000. Thereafter an application for amendment of the writ petition challenging the U.P. Act No. 5 of 2000 was moved which was allowed.

Sri Satish Chand Shukla, a practising advocate of Allahabad High Court filed writ petition No. 5103 (MB) of 1999 challenging the constitutional validity of the U.P. Public Services (Tribunal) Act, 1976 on the ground that the same was beyond the legislative competence of the State Legislature.

Shri Afzal Ahmad Siddiqui, a practising advocate filed writ petition No. 748 (MB) of 1999 challenging the constitutional validity of Section 3(5), (7) and (8) of the Act with a prayer to annul the above sections in order to remove the infirmities of the Act as pointed out by this Court in S.P.Sampath Kumar's case (supra). The same advocate Shri Afzal Ahmad Siddiqui filed another writ petition No. 1636 (MB) of 1999 challenging the constitutional validity of the U.P. Ordinance No. 17 of 1999. After the coming into force of the U.P. Act No. 5 of 2000 replacing the Ordinance No.17 of 1999 Shri Afzal Ahmad Siddiqui filed writ petition No. 871 (MB) of 2000 challenging the provisions of the U.P. Act No. 5 of 2000. Relief claimed in writ petition No. 871 (MB) of 2000 was the same as had been claimed in writ petition Nos. 748 (MB) of 1999 and 1636 (MB) of 1999 filed by him in which he had challenged the provisions of the Ordinance.

The provisions of the Act which are under challenge and other relevant provisions are reproduced below for reference:
"Section 3. Constitution of the Tribunal -(1) As soon as may be after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1992, the State Government shall, by notification, establish a Tribunal to be called the State Public Services Tribunal.

(2) The Trbinual shall consist of a Chairman, a Vice Chairman(Judicial), A Vice-Chairman(Administrative) and such number of other Judicial and Administrative Members not less than five in each category, as may be determined by the State Government.

(3) A person shall not be qualified for appointment as Chairman, unless he-

(a) has been a Judge of a High Court, or

(b) has, for at least two years held the post of Vice-Chairman, or
(c) has been a member of the Indian Administrative Service who has held the post of a Secretary to the Government of India or any other post under the Central or the State Government equivalent thereto, and has adequate experience in dispensation of justice.
(4) A person shall not be qualified for appointment as Vice-Chairman(Judicial) unless he,--
(a) has held the post of District Judge or any other post equivalent thereto for at least five years; or
(b) has, for at least two years, held the post of a Judicial Member.

(4-A) A person shall not be qualified for appointment as Vice-Chairman(Administrative) unless he-

(a) has, for at least two years, held the post of an Administrative Member; or
(b) has, for at least two years, held the post of Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India and has, in the opinion of the State Government, adequate experience in dispensation of Justice.

(5) A person shall not be qualified for appointment as a Judicial Member, unless he has held the post of District Judge, or any other post equivalent thereto.
(6) A person shall not be qualified for appointment as an Administrative Member, unless he has held, or has been eligible to hold, the post of Commissioner of a Division or Joint Secretary to the Government of India and has in the opinion of the State Government, adequate experience in dispensation of justice.
(7) The Chairman, Vice-Chairman and every other member shall be appointed by the State Government after consultation with the Chief Justice for which proposal will be initiated by the State Government:

Provided that no person shall assume the Office of Chairman, Vice-Chairman or other member, as the case may be, unless he has resigned or retired from, as the case may be, the Judgeship of the High Court, or the Indian Administrative Service or the Uttar Pradesh Higher Judicial Service or any other service in which he was serving except the service as Vice-Chairman or Member.

Section 4. Reference of claim to Tribunal-(1) Subject to the other provisions of this Act, a person who is or has been a public servant and is aggrieved by an order pertaining to a service

matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

Explanation - For the purpose of this sub-section "order" means an order made by the State Government or a local authority or any other Corporation or company referred to in clause (b) of Section 2 or by an officer, committee or other body or agency of the State Government or such local authority or Corporation or company:

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant.

Section 5. Powers and procedure of the Tribunal-(1)(a) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908), or the rules of evidence contained in the Indian Evidence Act, 1872 (Act 1 of 1872), but shall be guided by the principles of natural justice, and subject to the provisions of this section and of any rules made under Section 7, the Tribunal shall have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or private):

Provided that where, in respect of the subject-matter of a reference, a competent court has already passed a decree or order or issued a writ or direction, and such decree, order, writ or direction has become final, the principle of res judicata shall apply.

Section (5-B) Notwithstanding anything in the foregoing sub-sections, the Tribunal shall have no power to make an interim order (whether by way of injunction or stay or in any other manner) in respect of an order made or purporting to be made by an employer for the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant, and every interim order (whether by way of injunction or stay or in any other manner), in respect of such matter, which was made by a Tribunal before the date of commencement of this sub-section and which if in force on that day, shall stand vacated.

Section (5-C) Notwithstanding anything in the forgoing sub-sections, the Tribunal shall have no power to make an interim order (whether by way of injunction or stay or in any other manner) in respect of an adverse entry made by an employer against a public servant, and every interim order (whether by way of injunction or stay or in any other manner) in respect of an adverse entry, which was made by a Tribunal before the commencement of the Uttar Pradesh Public Services (Tribunal) (Amendment) Act, 2000 and which is in force on the date of such commencement shall stand vacated."

The validity of Section 4(1) inserted by Act NO.5 OF 2000 has been challenged on the ground that a public servant could not approach the Tribunal for 'in action' on the part of the authorities in respect of his legal rights. If there was inaction on the part of the employer a public servant had no remedy before the Tribunal and further the incumbent could not approach the Civil Court for the reason that the jurisdiction of the Civil Court had already been barred under Section 6 of the Act. That by the amendments made in the impugned Act the powers of the Tribunal regarding judicial review of administrative in-action deprives the litigants of their valuable right. Divesting of power of judicial review too was ultra vires to the Constitution of India. Judicial review being basic and essential feature of the Constitution as held by this Court in Minerva Mills Ltd. vs. Union of India reported in 1980 3 SCC 625. The object of the Act was not to leave a public servant without any remedy. It was further averred that initially there were provisions in the Act conferring powers upon the Tribunal to grant interim relief. However, in due course of time on one pretext or the other the jurisdiction of the Tribunal to grant interim reliefs has gradually been taken away. Firstly embargo was put with respect to grant of interim relief in certain matters. Subsequently the jurisdiction with respect to transfer was taken away and lastly the power to make interim order in respect of an adverse entry made by an employer against a public servant has been taken away. By the impugned action of the respondents the whole concept of the aims and objects of the Act have been diluted. If the Tribunal is not conferred with full powers of the court and the authority to grant effective relief to the public servants then it cannot be the real substitute of the courts. If the Tribunal is not empowered to deal with every situation with respect to the services of the public servants then it will loose its identity. If the rule of law is to prevail the Tribunal has to play effective role
in administration of justice and in the process the Tribunal should have all powers as are vested in courts. Challenging the later part of sub-section (c) to the effect that "every order made whether by way of injunction or stay or any other manner in respect of an adverse entry which was made by the Tribunal before the date this sub-section came into force and which was in force on that date shall stand vacated", it was contended that the interim orders granted by the Tribunal before the coming into force of section (5-C) with retrospective effect could not be nullified by exercise of legislative power and only the provisions which are the basis of the judicial orders could be amended. That the complete ouster of jurisdiction in the matter of grant of interim relief from the Tribunal in specified cases was ultra vires to the Constitution as there was no judicial remedy open for the incumbent. For example in the matter of suspension the Tribunal does not have the power to grant any interim relief whereas the order may suffer from legal infirmity, error of jurisdiction, mala fide and arbitrary exercise of power. In view of these circumstances it was submitted that a public servant does not have any judicial redress and continues under suspension during the period of disciplinary proceedings. Similarly, it was submitted that right of livelihood is a fundamental right of a government servant and by illegal termination of his service the said right is infringed. The order of termination on the face of it may be without jurisdiction and bad in law but since the Tribunal did not have the power to grant interim relief such incumbent would go without relief till the matter is finally heard and decided. It takes considerably long period before the dispute is finally decided and during this period the incumbent faces financial and mental torture. Another submission made was that judgment and orders of the Tribunal before the promulgation of the amended Act could be executed after issuance of a certificate by the Tribunal to the principal civil court under sub-section (7) of Section 5 of the Act. However, by the amendment made in the impugned Act by U.P. Act No. 7 of 1992, sub-section (7) of Section 5 was substituted by the following provisions:--

"(7) The order of the Tribunal finally disposing of a reference shall be executed in the same manner in which any final order of the State Government

or other authority or officer or other person competent to pass such order under the relevant service rules as to redressal of grievances in any appeal preferred or representation made by the claimant in connection with any matter relating to his employment to which the reference relates would have been executed."

In view of the aforesaid substituted sub-section (7) of Section 5, the orders and judgment of the Public Services Tribunal cannot be executed as a decree of civil court and they are executable only as orders of the State Government or other authority or officer or other person competent to pass such orders under relevant service rules. It was also contended that powers and functions of the Tribunal as they stand today under the Act are not in consonance with the dictum of this Court in S.P. Sampath Kumar's case(supra) and L.Chandra Kumar's case(supra).

The validity of Section 3 and especially an appointment of an Administrative Member as Vice-Chairman of the Tribunal was challenged on the ground that the same was contrary to the decision of this Court in S.P. Sampath Kumar's case(supra). That an IAS officer could not be made Vice-Chairman because in the absence of a Chairman or Vice-Chairman(Judicial), a Vice-Chairman(Administration) could officiate as a Chairman which would be contrary to the law laid down by this Court in S.P. Sampath Kumar's case(supra).

In the written statements filed by the respondents a preliminary objection was taken regarding the maintainability of the writ petition challenging the vires of the Act by the Tribunal Bar Association which was not an aggrieved party. On merits it was submitted that the amendments brought out in the Act are in consonance with the directions issued by this Court in S.P. Sampath Kumar's case(supra) and various other judgments/orders rendered by the Allahabad High Court. The amendments have been made to bring the U.P.Public Services (Tribunal) Act, 1976 at par with the Administrative Tribunals Act, 1985. That the appointment of the Chairman, Vice-Chairman (Judicial) as well as Vice-Chairman (Administration) as well as Members has now to be made in consultation with the Chief Justice of the High Court. That it has been done in pursuance to the directions issued by the Allahabad High Court in Writ Petition No. 1619(MB) of 1993 Sanjai Kumar Srivastava vs. State of U.P. and others by a Full Bench of the Allahabad High Court wherein the provisions of sub-section 3(c) and 4 (c) of Section 3 of the unamended Act were struck down. These sub-sections (as they stood on the statute book) provided that an IAS officer could be appointed as Chairman. Now the appointment of the Chairman, the two Vice-Chairmen and Members has to be made by the State Government after effective consultation with the Chief Justice of the High Court on the basis of parameters indicated in Sanjai Kumar Srivastava's case(supra) of the Allahabad High Court. That the State Legislature was competent to enact the U.P. Public Services (Tribunal) Act as well as to carry out the amendments in it in exercise of its legislative power.

In regard to challenge of sub-section (1) of Section 4 that only an 'order' passed by the authority could be challenged and not the 'in-action' on the part of the government to pass an order, it was submitted that order also would mean omission and inaction on the part of the authority concerned for which a public servant could move the Tribunal. Advocate General who had appeared before the High Court on behalf of the State very fairly stated that the 'inaction' or 'omission' to Act could also be challenged before the Tribunal. Since no explanation/clarification had come in the Act, the High Court observed:

"Now it is certain that there is no remedy provided in the Act to the Government employee to approach the Services Tribunal as far as non-action

of the State Government is concerned. Therefore we are of the considered opinion that now the remedy open to such incumbent is under Article 226 of the Constitution of India. It could be a blessing in disguise to such employees as this Court can even grant interim relief under Article 226 of the Constitution of India."

After detailed examination of the various submissions made before it, the High Court upheld the constitutional validity of the Act as well as the subsequent amendments made therein. In the concluding portions the High Court culled out the conclusions as follows:

"(i) The composition of the Tribunal as provided by the impugned Act is constitutional and valid.
(ii) The State Legislature is competent to enact, revalidate on re-enact any provision of law.
(iii) The impugned Act (U.P.Act No.5 of 2000) does not suffer from any colourable exercise of power.
(iv) The impugned Act is not inconsistent with the rights guaranteed in Part III of the Constitution.
(v) By issuance of the impugned Act there has neither been violation of fundamental rights nor violation of the principles of basic structure of the Constitution.
(vi) For non-action on the part of State Government in relation to service matters of the State employees the remedy open is only under Article 226 of the Constitution of India."

Shri Venugopal, learned senior advocate appearing in Civil Appeal No. 3946 of 2001 did not raise the point regarding the legislative competence of the State Legislature to enact the Act or the various amendments brought therein. The only submission made by him is that the amendments brought about in the Act are violative of fundamental rights guaranteed to a public servant in the spirit of Social Justice and Welfare State concepts which constitute the backbone of the Indian Constitution and basic structure of the Constitution. For effective adjudication to a cause of action complete jurisdiction to grant relief including the interim relief should vest in one and the same forum. Single cause of action cannot be split and divided for getting the interim and final relief in two different forums. A public servant is required to approach the Tribunal to challenge the order of its termination whereas for getting an interim relief against the order of termination he is forced to approach the High Court. Right to get interim relief is ancillary to the main relief and therefore should vest in one and the same forum. Splitting of the cause of action for getting the relief interim and the final works out to be iniquitous, onerous and oppressive. More often and so, the High Court may not intervene for giving interim relief as it is precluded from going into the dispute on merits at the first instance which practically leaves the litigant from getting any immediate relief against an order of transfer, termination, suspension, removal, dismissal etc. It also results in additional expenses to the litigant thus defeating the purpose of the Act itself. For the said reasons, according to him, sub-section 5B and 5C are violative of Article 14 and 16 of the Constitution being arbitrary.

Shri Ranjit Kumar, learned senior advocate appearing in Civil Appeal Nos. 3947 & 3948 of 2001 contended that object of the amendments was to

bring the U.P. Public Services (Tribunal) Act, 1976 in tune with the Administrative Tribunals Act, 1985 whereas it is to the contrary. That the impugned judgment does not deal with the question regarding holding of the post of a Vice-Chairman by a non judicial member. In other respects he adopted the submissions made by Shri Venugopal.

Shri P.P.Rao, learned senior counsel appearing for the respondents contraverted the submissions made by the respective counsels appearing for the appellants in the two sets of appeals. It was contended by him that a litigant is not left without any remedy. He has a right to approach the High Court under Article 226 of the Constitution of India for redressal of his grievance for interim relief. Power to grant interim relief from the Tribunal has not been taken away completely. It has only been taken away partially. Referring to the following judgments viz. (i) Delhi Cloth & General Mills Co. Ltd. v. Shri Rameshwar Dyal & Another reported in 1961 (2) SCR 590, (ii) U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan reported in 1993 Supp. (3) SCC 483; and (iii) State of Haryana v. Suman Dutta reported in 2000 (10) SCC 311, it was contended that this Court has consistently been of the view that final relief could not be given at the interim stage. In case the order of suspension or termination or dismissal or removal is stayed at the interim stage it amounts to allowing the petition itself at the interim stage. This Court in State of Haryana's case(supra) has held that order of termination could not be stayed by interim order. In case any public servant is finally ordered to be reinstated after quashing the order of termination, removal, dismissal, suspension etc., he can be compensated by the courts by appropriately moulding the relief whereas in cases where the order of removal, dismissal, termination etc. is stayed at the interim stage but later on the petition is dismissed then the courts cannot mould the relief to undo the mischief resulting from the interim order passed. That constitution of the forum to get redressal of grievance, the procedure prescribed and the right to file an appeal, revision etc. are all creations of statute and the State Legislature was competent to enact such a law. The same was not violative of Articles 14 & 16 of the Constitution. Under the circumstances it was contended by him that taking away of the jurisdiction to grant interim relief against an order of suspension, dismissal, removal, deduction of rank, compulsory retirement or reversion of a public servant or to grant interim relief against an order of transfer or against an adverse entry made in the record is not violative of Article 14 & 16 of the Constitution.

The constitutional validity of an Act can be challenged only on two grounds, viz., (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provisions. In State of Andhra Pradesh v. McDowell & Co. & others, 1996 (3) SCC 709, this Court has opined that except the above two grounds there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds.

Power to enact a law is derived by the State Assembly from List II of the Seventh Schedule of the Constitution. Entry 41 confers upon a State Legislature the power to make State Public Services: State Public Services Commission. Under this Entry, a State Legislature has the power to constitute State Public Services and to regulate their service conditions, emoluments and provide for disciplinary matter etc. The State Legislature had enacted the U.P. Public Services Tribunals Act, 1976 in exercise of the power vested in it by Entry 41 of List II of seventh schedule. Power to enact would include the power to re-enact or validate any provision of law in the State Legislature provided the same falls in a entry of List II of the VII Schedule of the Constitution with the restriction that such enactment should not nullify a judgment of the competent court of law. The legislative competence of the State to enact the U.P.Public Services Tribunal has not been questioned in these appeals. The challenge put forth is to various amendments made is that the same are violative of Articles 14 and 16 of the Constitution being arbitrary as they are onerous and work inequitably. In the

present appeals legislative action of the State is under challenge. Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances it is imperative upon the courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the Constitutional Courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when the Parliament or State Legislature had assumed to enact a law which is void, either from want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution.

In State of Bihar & Others v. Bihar Distillery Ltd. & Others reported in 1997 (2) SCC 453, this Court indicated the approach which the Court should adopt while examining the validity/constitutionality of a legislation. It would be useful to remind ourselves of the principles laid down which read:

"The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should to try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application (para 17)."

In the same paragraph the Court further observed as follows:
"The Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognizes and gives effect to the concept of equality between the three wings of the State and the concept of "checks and balances" inherent in such scheme."

In the light of what has been stated above, we proceed to examine the challenge to the various provisions of the Act.

The newly added sub-section (1) of Section 4 contemplates that subject to the provisions of the Act a person who is and has been public servant being aggrieved by an "order" pertaining to the service matters within the jurisdiction of the Tribunal may make a reference to the Tribunal for redressal of his grievances. Counsel appearing for the respondents fairly stated before us as had been stated by the Advocate General appearing for the State before the High Court that an "order" would also mean "omission"

and "inaction" on the part of the authority concerned for which the public servant can move the Tribunal. In the written statement filed by the respondents in the High Court it was stated that an order would include an "omission" or "inaction" on the part of the authority concerned and open to challenge. Since no such amendment or clarification had come in the Act, the High Court observed that an "omission" and "inaction" on the part of the authority could be challenged by filing a writ petition under Article 226 of the Constitution of India in the High Court. It was observed that there is no remedy provided in the Act to the Government employee to approach the Services Tribunal as far as non-action of the State Government is concerned. The only remedy open is under Article 226 of the Constitution of India.

We agree with the view taken by the High Court that unless a clarification is made by the Legislature in the Act clarifying that an order would include an "omission" or "inaction" on the part of the authority, the "inaction" on the part of the authority can be challenged in High Court by filing the writ petition under Article 226 of the Constitution of India. It cannot be said that the public servant is left without a remedy to challenge any omission or inaction on the part of the authority. Inaction by itself is an independent cause of action and the High Court can effectively deal with the same.

Sub-sections (5-B) of Section 5 was introduced earlier in the principal Act by Act No. 1 of 1977 after the same was assented to by the President of India on 10th January, 1977. The same was challenged in the High Court in the year 1978 by filing a Writ Petition No. 4255 of 1978. The validity of Sub-section (5-B) was upheld which decision was not challenged in appeal. The High Court relying upon the reasons recorded in the earlier writ petition upheld the vires of sub-Section (5-B). Since a point has been raised that earlier decision by the two Judges and the now the matter was being considered by a larger Bench of five Judges, the full Bench should have examined the point afresh and record an independent reason instead of upholding the validity of Sub-Section (5-B) for the reasons recorded in the earlier judgment by two Judges. We proceed to examine the validity of Sub-sections (5-B) and(5-C) of Section 5 independently of what had been held by the High Court in Writ Petition No. 4255 of 1978.

Before we make a reference to the various provisions of that Act under challenge and examine their validity it would be useful to refer to certain decisions of this Court wherein the grant of interim stay in cases of dismissal, termination or suspension has been examined.

In Delhi Cloth and General Mills Co. Ltd. case (supra) this Court examined the point as to whether a workman could be ordered to be reinstated as an interim measure pending final adjudication by the Tribunal under the Industrial Disputes Act. In the said case the employer dismissed the workman for disobeying the orders of the managing authority. The workman filed an application before the Industrial Tribunal under Section 33-A of the Industrial Disputes Act, 1947 contesting his dismissal on various grounds, whereupon the Tribunal passed an order to the effect that as an interim measure the workman be permitted to work and if the management failed to take him back his full wages be paid from the date he reported for duty. The employer challenged the order of the Tribunal by filing a writ petition before the High Court which was dismissed. On appeal by a certificate of the High Court it was held that the order of reinstatement could not be given as an interim relief because that would be giving the employee the very relief which he would get if order of dismissal is not found to be justified. Order passed by the Tribunal was held to be manifestly erroneous and set aside. It was observed:

"...We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which

he would be entitled only if the employer failed in the proceedings under s. 33-A. As was pointed out in Hotel Imperial's case (1960(1) SCR 476, ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order therefore of the Tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside... "

In U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. case (supra) it was held by this Court that it was desirable that an order of suspension passed by a competent authority should not be ordinarily interfered by an interlocutory order pending the proceeding. It was observed:

"...Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question..."

In Suman Dutta's case (supra) this Court set aside the order passed by the High Court staying the order of termination as an interim measure in the pending proceeding. It was observed:

"...We are clearly of the opinion that the High Court erred in law in staying the order of termination as an interim measure in the pending writ petition. By such interim order if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same...."

Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. This Court consistently has been taken a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner.

From the above quoted decisions, it is evident that this Court has consistently been of the view that by way of interim order the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the Court.

Sub-section (5-B) provides that the Tribunal shall have not the power to make an interim order (whether by way of injunction or stay or in any other manner) in respect of an order made or purporting to be made by an employer for the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant. Dismissal, removal, termination and compulsory retirement puts an end to the relationship of employer and employee. In case of suspension,, reduction in rank or reversion the relationship of employer and employee continues. Interference at the interim stage with an order of dismissal,

removal, termination and compulsory retirement would be giving the final relief to an employee at an interim stage which he would have got in case the order of dismissal, removal, termination and compulsory retirement is found not to be justified. If the order of dismissal, removal, termination and compulsory retirement is set aside then an employee can be compensated by moulding the relief appropriately in terms of arrears of salary, promotions which may have become due or otherwise compensating him in some other way. But in case the order of dismissal, removal, termination and compulsory retirement is found to be justified then holding of the office during the operation of the interim order would amount to usurpation of an office which the employee was not entitled to hold. The action becomes irreversible as the salary paid to the employee cannot be taken away as he has worked during that period and the orders passed by him during the period he holds office (because of the interim order) cannot also be put at naught. The Legislature in its wisdom thought it proper not to confer the power to grant interim relief on the Tribunal. State Legislature had the legislative competence to constitute a service tribunal and it was for it to define the parameters of the jurisdiction of the Tribunal. An employee is not left without any remedy. Judicial review of an order regarding which the jurisdiction of the Tribunal is barred would be available by approaching the High Court by filing petition under Article 226 or 227 of the Constitution of India. In an extreme and rare case where the order is passed mala fide or without following the procedure under the law then the employee can certainly approach the High Court under Article 226 of the Constitution for the interim relief. The High Court in such an extreme and rare case may in its wisdom stay the operation of the said order. In the case of suspension, reduction in rank or reversion the relationship of employer and employee remains. Normally, the suspension is made during a contemplated or a pending enquiry. During the suspension period the employee is entitled for the suspension allowance. If the suspension continues for indefinite period or order of suspension is passed mala fide then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution of India. In case the order of reduction in rank or reversion is set aside then the employee can be compensated by adequately moulding the relief while giving the relief at the final stage. Power of the Tribunal to grant interim relief has been taken away qua certain matters not completely. The power has been taken away in matters where the grant of said relief at the interim stage would result in giving the relief which would normally be given while disposing of the case finally. Simply because in a rare cases of microscopic number a case is made out for stay of orders of suspension, transfer, reduction in rank, reversion or termination, dismissal and compulsory retirement and the employee is liable to approach the High Court for interim stay by itself is no ground to strike down the law enacted by a Legislative which is within its competence to enact.

Sub-section (5-C) of Section 5 contemplates that the Tribunal shall have no power to make an interim order in respect of an adverse entry. Adverse entry in the confidential report does not affect the conditions of service of a public servant. Making of an entry in the confidential report is an administrative act based on the subjective satisfaction of the superior officer done on the objective criteria. It is an assessment of the performance of the Government servant in one year. Assessment of performance in the past year may become a criteria affecting the future prospectus of the employee. Invariably an adverse entry results in the passing of an order by the employer at a later stage and such an order may result in giving rise to a cause of action. Sub-section (5-C) does not debar the public servant to challenge the adverse entry made in the record. The adverse entry made in the service record is open to challenge and a public servant can approach the Tribunal to challenge the adverse entry made in the confidential report. Tribunal if satisfied can set aside the adverse entry by way of a final order but stay of the adverse entry at the interim stage may not be an appropriate relief. The reasons given by us for upholding the validity of Sub-section (5-B) would equally apply for upholding the validity of Sub-section (5-C) as well.

Sub-sections (5-B) and (5-C) are not arbitrary as contended by the counsel for the appellant as this Court in earlier cases has taken the view that orders of suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or reversion of a public servant normally should not be interfered with at an interim stage as the employee can be suitably compensated in case the order of suspension, dismissal, removal, etc. is found not to be in order. The cases in which the operation of orders of dismissal, removal, termination etc. is stayed by way of interim order is later on upheld at the final stage then it results in wrong usurpation of the office by the employee during the operation of the interim order. This act becomes irreversible and the employer cannot be suitably compensated by moulding the relief at the final stage. In an extreme and rare case where the order is prima facie on the face of it is mala fide or bad in law then it is open to a public servant to approach the High Court by filing a writ petition under Article 226 of the Constitution of India for stay of such an order. The employee is not left without any remedy. In an extreme and rare case an employee is to approach the High Court for interim relief resulting in some extra expense by itself is no reason to strike down the Sub-section (5-B) being arbitrary and violative of Articles 14 and 16 of the Constitution of India.

The Principal Act was promulgated in 1976 for adjudication of the disputes pertaining to employment matters of public servants of the State Government and the employees of the Government Corporations and Companies, local authorities etc. and the jurisdiction of the civil courts for redressal of their grievances was taken away. It was set up with five Tribunals and each Tribunal was independent and consisted of one Judicial member and one administrative member. Out of them one member was the Chairman. Constitution of the Tribunal was challenged in the High Court successfully. Consequently, the Original Act was amended by U.P. Act No. 7 of 1992. Sub-sections 3 (1), (2) (3) and (6) were amended. The Tribunal was constituted of one Chairman, a Vice Chairman at least five Judicial Members and Five Administrative Members which were to function at different Benches consisting of a Single Member or two members for the disposal of such references of claims and other matters as may be specified by the Chairman. Under the Act 7 of 1992 an Administrative Member could be appointed as Chairman and in fact Shri Venkatramani, IAS was appointed as the Chairman. This Act was challenged by filing a writ petition in Sanjai Kumar Srivastava in the High Court. It was contended that administrative member could not become a Chairman and the appointment of Chairman, Vice Chairman and members could not be made without consulting the Chief Justice of the State. This objection was upheld and accordingly Section 3 (3)(c) and Section 3 (4)(c) of the Act were struck down. State was permitted to make suitable amendments to bring about suitable amendments in the Act. It was also directed that in future all appointments to the Tribunal be made only after effective consultation with the Chief Justice of the State. Special Leave Petition filed against the judgment was dismissed by this Court. The Government thereafter deleted the offending clauses of Section 3(3)(c) and Section 3(4)(c) from the Act. Thereafter, Ordinance No. 17 of 1999 was promulgated which culminating in the passing of Act 5 of 2000. Section 3 (2) of the Principal Act was substituted for the words "a Vice-Chairman", the words "A vice-Chairman (Judicial) a Vice-Chairman (Administrative)". From now onwards there are two Vice chairmen instead of one Chairman. In Section 3(4)(b) the words "or an Administrative" were deleted. Sub-section (4-A) was inserted which prescribed the qualification for appointment as Vice-Chairman (Administrative). Sub-section (4-A)(a) was the same as was earlier in Sub-section 4 (b) by deleting the words "or an Administrative". The new Sub-section (4-A) (b) was an addition now added in 1999. This is in pari materia of Section 6 (2)(b) of the Administrative Tribunals Act, 1985 except the words "Additional Secretary" instead of "Secretary" to the Government of India. Sub-Section (4-A) (b) is the same as the original Section 3 (6) except adding the words as under:

" "has adequate experience", the words "has, in the opinion of the State Government, adequate experience" have been added. "

Challenge to Sub-Section (4-A) (b) of Section 3 that the same is not in conformity with the judgment in Sanjai Kumar Srivastava case is unfounded because this sub-section is in pari materia with Section 6(2)(b) of the Administrative Tribunals Act, 1985. Sub-Section (7) in Section 3 was also substituted by adding the words "State Government after consultation with the Chief Justice for which proposal will be initiated by the State Government." In other words, the power of appointments with the State Government has been retained but the same has to be exercised in consultation with the Chief Justice of the High Court as directed by the High Court in Sanjai Kumar Srivastava case.

Appointment of the Chairman, Vice-Chairmen (Judicial) and (Administrative) and members has now to be made in consultation with the Chief Justice of the High Court. Submission that the amendment carried out in Section 3 regarding appointment of Chairman, Vice-Chairmen (Judicial) as well as (Administrative) and members is not in conformity with the corresponding provisions of Administrative Tribunals Act, 1985 has no substance.

For the reasons stated above, we find that the State Legislature was competent to enact the impugned provisions. Further that the provisions enacted are not arbitrary and therefore not violative of Articles 14, 16 or any other provisions of the Constitution. They are not against the basic structure of the Constitution of India either. Accordingly, we do not find any merit in these appeals and the same are dismissed with no order as to costs.