Public Services Tribunal Bar Association Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-05-2000

Reported in : (2000)3UPLBEC2553

Judge : D.S. Sinha, A.C.J., ;A.A. Desai, ;B.K. Roy, ;D.K. Trivedi and ;Jagdish Bhalla, JJ.

Acts : Uttar Pradesh Public Service Tribunal (Amendment) Act, 2000; Constitution of India - Article 226

Appeal No. : Writ Petition Nos. 748, 1636, 4285 and 5103 of 1999 and 971 and 1262 of 2000

Appellant : Public Services Tribunal Bar Association

Respondent : State of U.P. and ors.

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : S.K. Kalia, ;Hari Shankar Jain and ;Amit Bose, Advs.

Judgement :

1. By the Court.-Number of cases were referred to this Larger Bench. Few of them have already been disposed of and rest writ petitions, mentioned above, having similar facts and questions of law to be determined were heard together and are being decided by this common judgment. However, by the reference to the Larger

Bench no specific question was referred for determination.

2. In Writ Petition No. 4285 (MB) of 1999 filed on behalf of the U.P. Public Services Tribunal Bar Association a direction has been sought to declare the impugned Ordinance No. 17 of 1999 as ultra vires by which Section 4(1) has been substituted in place of Section 4 of the U.P. Public Services Tribunals Act, 1976 (hereinafter referred to as the Act), further Section 5(5-C) has been added to the Act, with the prayer to declare Section 5(5-B) of the Act as ultra vires. It has been further prayed that a writ in the nature of mandamus be issued commanding the opposite parties to modify the Act strictly in accordance with the Central Administrative Tribunals Act, 1985 as per the law laid down by the Apex Court in S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124, and L, Chandra Kumar v. Union of India, JT 1995(1) SC 454, and lastly it has been prayed that the U.P. Public Services Tribunal be given comprehensive powers to grant interim relief in all the matters relating to service disputes in the light of the recommendations and observations of the Hon'ble Supreme Curt and High Court in various decisions to make the Tribunal more efficient and effective. Subsequently the impugned U.P. Ordinance No. 17 of 1999 was replaced by U.P. Act 5 of 2000. Thereafter, an application for amendment in the writ petition challenging the U.P. Act 5 of 2000 was moved which was allowed.

3. Writ Petition No. 748 (MB) of 1999 has been filed by Sri Afzal Ahmad Siddiqui, a practising advocate of Lucknow challenging the validity of Sections 3(5), (7) and (8) of the Act with a prayer to annul the above sections in order to remove the infirmities in the Act as pointed out by the Hon'ble Supreme Court in Sampath Kumar v. Union of India and the appointments of the members of the Tribunal be only made after consultation with the high power selection committee nominated by the Chief Justice of the High Court and an advocate who is eligible to be appointed as a Judge of the High Court be also made eligible to be appointed as member of the U.P. State Public Services Tribunal and the member so appointed be allowed to continue till he attains the age of 62 years and in case of Chairman and Vice-Chairman till he attains the age of 65 years.

4. The same advocate (Sri Afzal Ahmad Siddiqui) through his Counsel, Sri Amit Bose, has filed another Writ Petition No. 1636 (MB) of 1999 challenging the constitutional validity of the U.P. Ordinance No. 17 of 1999 with a further prayer that the respondent be directed to take immediate decision with regard to strength of the members of the Tribunal and to make appointment of the Chairman and members of the Tribunal immediately.

5. Sri Satish Chandra Shukla, a practising advocate of this Court has preferred Writ Petition No. 5103 (MB) of 1999 challenging the constitutional validity of the U.P. Public Services Tribunals Act, 1976 on the ground that it is beyond the legislative competence of the State Legislature.

6. The above mentioned writ petitions were heard together and judgment was reserved. In the meantime Ordinance No. 17 of 1999 was replaced by U.P. Act No. 5 of 2000. Learned Counsel for the petitioner Sri Amit Bose moved an application in Writ Petition No. 1636 (MB) of 1999 for dismissing the writ petition as infructuous on the ground that the Ordinance has been replaced by Act 5 of 2000 and in the process Act 5 of 2000 was challenged by him on behalf of the same petitioner through Writ Petition No. 871 (MB) of 2000. However, when all these matters were taken up again Sri Amit Bose, after arguing the matter for some time, prayed that the application for dismissing the writ petition No. 1636 (MB) of 1999 be dismissed as not pressed. Accordingly the application was dismissed as not pressed by order dated 28-3-2000.

7. Sri S.K. Kalia, learned Counsel for the petitioner in Writ Petition No. 4285 (MB) of 1999 moved an application for amendment in the writ petition in the light of the changed circumstances i.e. U.P. Ordinance No. 17 of 1999 was replaced by U.P. Act 5 of 2000. In the interest of justice the amendment application was allowed by order dated 28-3-2000 and necessary amendments were carried out by the learned Counsel for the petitioner.

To adjudicate the present disputes properly it would be necessary to have a look on the events in chronological order which are given in brief as under.

8. U.P. Public Services Tribunals Act, 1976 (Act 17 of 1976) was promulgated for adjudication of the disputes 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 Act came into force 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 Courts having jurisdiction or by approaching this Court under Article 226 of the Constitution of India. However, after the Act came into force the jurisdiction of the Civil Courts was barred. 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 long pendency of the cases. The purpose for creating the Tribunal has been indicated in the prefatory note statement of objects of the U.P. Public Services Tribunal Act, 1976, which is as under :-

'(1) 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 the 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 inexpensive justice, it was also decided that after the establishment of the Tribunals such suits be barred from being filed in the subordinate Courts.'

9. Under the original Act the State Government constituted five Tribunals each comprising of an I.A.S. Officer as the Chairman and a judicial officer of the rank of District Judge as the Judicial Member. Each Tribunal was vested with the jurisdiction over service matters of different departments of the State Government.

10. Under Section 4 of the Act any person who is or has been a public servant could file a claim petition in any matter relating to employment as such public servant if his employer had dealt with him in a manner which is not in conformity with any contract or with the provisions of Article 16 or Article 311 of the

Constitution 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.

11. In 1977 by the U.P. Public Services (Tribunals) Amendment Act, (U.P. Act No. 1 of 1977) afterSub-section (5) of Section 5, Sub-sections (5-A) and (5-B) were inserted. Under Section 5(5-A) of the Act the Tribunal could pass an interim order in specific type of cases, but under Section 5(5-B) the Tribunals were prohibited from passing interim orders 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 and reversion.

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

13. 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 the 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 the 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 and Judicial Members of the Tribunal in the Central Government without providing for their appointments being made with the consultation of the Chief Justice of India.

14. In Writ Petition Nos. 12437 of 1985, S.P. Sampath Kumar v. Union of India, Writ Petition No. 12460 of 1985, J.N. Gupta v. Union of India and Writ Petition No. 238 of 1986, D. J. Somaiya and Anr. v. Union of India, (1987) 1 SCC 124, filed before the Hon'ble Supreme Court under Article 32 of the Constitution the validity of the Administrative Tribunals Act 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 Tribunal, i.e. in respect of service matters pertaining to employees of the Central Government, State Government or any undertaking which was brought within the jurisdiction of the Tribunals, was challenged. In these writ petitions, SP. Sampath Kumar v. Union of India andOrs. (supra), a Constitutional Bench of the Hon'ble Supreme Court rendered its decision whereby, although the constitutional validity of the Administrative Tribunals Act was upheld, but directions were issued to the Central Government to amend the Act, inter alia, thereby deleting the provisions providing for I.A.S. officers to the appointed as Chairman of the Tribunal and providing for appointment of the Chairman, Vice-Chairman and other Members of the Tribunal with the consultation of the Chief Justice of India. Thereafter in 1986 by the Administrative Tribunals (Amendment) Act, Section 6(1)(C) of the said Act was omitted and Section 6(7) was substituted providing for appointment of Chairman, Vice-Chairman and Members of the Tribunal with the consultation of the Chief Justice of India.

15. In Krishna Sahai v. Stale of UP., reported in (1990) 2 SCC 673 and Rajendra Singh Yadav v. State of UP., reported in (1990) 2 SCC 763, decided by the Hon'ble Supreme Court commanding the State of U.P. to consider the feasibility of setting up an appropriate tribunal under the Central Act in place of the Service Tribunal functioning at present, and in case the existing State Tribunals were to be continued the Hon'ble Supreme Court observed that '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 the judicial harmony in the functioning of the Tribunal.' In the latter decision the Hon'ble Supreme Court reiterated its earlier view that the Services Tribunal under the State Act should be withdrawn and an appropriate Tribunal under the Administrative Tribunals Act, 1985 should be set up.

16. 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 and Judicial and Administrative Members. Under Section 3(3)(C) of the Amending Act an I.A.S. Officer could be appointed as Chairman of the Tribunal. Similarly under Section 3(4)(C) of the Amending Act an I.A.S. 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 I.A.S. Officer, was appointed by the State Government as Chairman of the Tribunal.

17. Aggrieved by the above Writ Petition No. 1619 (MB) of 1993, Sanjai Kumar Srivastava v. State of U.P. and Ors. was filed before this 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 I.A.S. Officer could be appointed as Chairman and Vice-Chairman of the Tribunal. A Full Bench of this Court by its judgment dated 26-5-1995 in Sanjai Kumar Srivaslava's case (supra) struck down the provisions of Section 5(3)(cj and Section 5(4)(C) of the Act and quashed the appointment of Sri Venkat Ramani, and I.A.S. Officer, as Chairman of the Tribunal.

18. In 1994 the U.P. Public Services (Tribunals) (Amendment) Ordinance (U.P. ordinance No. 23 of 1994) was promulgated whereby Sub-section (5-C) was inserted in 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. However, in due course of time the said Ordinance lapsed.

19. In 1995 again the said 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 was challenged in Writ Petition No. 201 (SB) of 1995, Bhola Nath Asthana v. State of U.P. andOrs., wherein a Division Bench of this High Court passed the following interim order :-

'Meanwhile it is provided that if any interim order was granted by the U.P. Public Service Tribunal in the claim petition, that order shall continue to operate until the matter is decided by the Tribunal or until further orders of this Court, whichever is earlier.'

20. On 25-8-1995 the U.P. Public Services (Tribunals) (Amendment) (Second) Ordinance, 1995 (U.P. Ordinance No. 32 of 1995) was promulgated by the Governor repromulgating U.P. ordinance No. 8 of 1995 which had lapsed on expiry of the period specified in Article 213(2) of the Constitution.

21. Aggrieved by the above Writ Petition No. 4456 (SS) of 1995, Vijay Pratap Singh v. The State of U.P. and Ors., was filed on 14-11-1995 wherein a learned Single Judge of this Court passed the following interim order :-

'During meanwhile, the effect and operation of the impugned Ordinance introducing Section 5(C) in the U.P. Public Services Tribunal Act, 1976 shall remain in abeyance because it is a moot point whether the judicial orders can be nullified by the issuance of the ordinance.'

In February, 1997 a former Judge of this Court, Justice K.L. Sharma (retd.) was appointed as Chairman of the Tribunal. Justice Sharma retired as Chairman of the Tribunal on 19th July, 1999 and on 10th September, 1999 the impugned Ordinance was promulgated.

22. Heard learned Counsel for the parties, Sri S.K. Kalia, Counsel in Writ Petition No. 4285 (MB) of 1999 opened arguments and raised a preliminary objection regarding maintainability of the reference. However, during the course of arguments he withdrew the same and addressed the Court on merits.

23. On 29-3-2000 Sri S.K. Kalia and Sri Amit Bose, both learned Counsel for the petitioners in Writ Petition No. 4285 (MB) of 1999, Writ Petition No. 1636 (MB) of 1999 and Writ Petition No. 871 (MB) of 2000 adopted the arguments advanced earlier and further addressed the Court on certain new points. It has been submitted that after Section 4(1) has been inserted, a public servant cannot approach the Tribunal for non-action of the authorities in respect of his legal rights. If there is inaction on the part of the employer a public servant has no remedy before the Tribunal, further the incumbent cannot approach the Civil Court for the reason that the jurisdiction of the Civil Court has already been barred under Section 6 of the Act. In this connection it has been argued that it was not the intention of the legislature when the Act was originally enacted, further now a public servant has been left without remedy. The objection of the Act was to deliver speedy justice to public servants and, therefore, initially there were provisions in the Act conferring powers upon the Tribunal to grant interim relief. However, in due course of time it has been found that on one or the other pretext the jurisdiction of the Tribunal has been curtailed. 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 not the least by the impugned Act the whole concept o the aims and objects of the Act has been diluted.

24. Sri Kalia next submitted that if the Tribunal is not conferred with full powers of the Court and authority for granting effective remedy 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 the powers as are vested in Courts. In support of this argument it has been submitted that the word 'Court' has been defined as a body in the Government to whom the public administration of justice is delegated, assembled under authority of law, at the appropriate time and place, for the administration of justice, through which the State enforces its sovereign rights and powers. Court has also been defined as a place where justice is judicially administered. The elements and constituent parts of the Court are as under :

'Element and constituent parts.-Time, place and an authorised officer are essential constituents of the organization of a Court, that is to say, in order to constitute a Court a duly authorised officer must be present at the time and place appointed by law. In every Court there must be at least three constituent parts, the actor, reuse, and judex; the actor, or plaintiff; who complains of an injury done, the reus or defendant, who is called upon to make satisfaction for it, and the judex, or judicial power which examines the truth of the fact, to determine the law arising upon that fact that if any injury appears to be done, to ascertain any by its officers to apply the remedy.'

Sri Kalia further relies upon the definition of the 'Court' as provided in Halsbury's Laws of England, which is as under :

'809. Meaning of Court.-Originally the term 'Court' (a) meant, among other meaning, the sovereign's place; it has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either immediately or immediately from the sovereign. All tribunals, however, are not Courts, in the sense in which the term is here employed, namely, to denote such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction. Thus, arbitrators, committees of clubs, and the like, although they may be tribunals exercising judicial functions (b), are not 'Courts' in this sense of that term. On the other hand, a tribunal may be a Court in the strict sense of the term although the chief part of its duties is not judicial. Parliament is a Court. Its duties are mainly deliberative and legislative : the judicial duties are only part of its functions (c), a coroner's Court is a true Court (d), although its essential 'function is investigation (e).'

25. It was also submitted that if we examine the provisions of the Act retrospectively, we find that Section 4 as originally inserted in the principal Act it gives ample powers to consider the grievances of the public servants and to redress the same for the basic reason that express powers were conferred upon the Tribunal. In view of the express powers conferred on the Tribunal, the Tribunal could also consider the validity of the provisions, if they were violative of the

specific provisions of the Constitution. In the impugned Act no such power is available. It has been further submitted that it appears that Section 4 of the Act has been enacted after considering Section 19 of the Administrative Tribunals Act, 1985 which was enacted to give effect to the constitutional provisions as contained in Article 323-A of the Constitution. Section 19(1) is as under :

'19. Applications to Tribunals.-(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.Explanation.-For the purposes of this Sub-section 'order' means an order made :

a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government:

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to inClause (a).'

26. It was submitted that from a perusal of Section 19(1) of the Administrative Tribunals Act it appears that the application to the Tribunal is subject to other provisions of the Act. It is significant that Section 14 of the Administrative Tribunals Act, 1985 deals with jurisdiction, powers and authority of the Tribunal. From a perusal of the above provision of the Administrative Tribunals Act it is crystal clear that the Administrative Tribunal has been vested with all the jurisdiction, powers and authority expressly exercised by all the Courts except the Hon'ble Supreme Court of India). While exercising the said powers the Administrative Tribunal can adjudicate all types of disputes pertaining to the members of the service. Though language of Section 19 of the Administrative Tribunals Act has been borrowed in Section 4(1) by the impugned Act but while doing so it has lost sight of the fact that while exercising powers under Section 4 of the principal Act the other provisions of the Administrative Tribunals Act such as Section 14 of the Administrative Tribunals Act were not available in the provisions of the Act. This anomaly in fact leads to a situation which clearly frustrates the object and purpose of establishment of the service tribunal as an alternative to the Civil Courts.

27. Learned Counsel for the petitioner has submitted that by Ordinance No. 32 of 1995 Sub-section (5-C) was inserted whereby power to grant interim relief in respect of adverse entry made by the employer against the employee has been taken away. It was further provided that all the interim orders granted by the Tribunal before the date of coming into force the above provision ofSub-section (5-C) shall stand vacated. Sub-section 5(c) shall stand vacated. Sub-section 5(C) is as under:

'5(C) 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 of 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 Tribunal before the date thisSub-section came into force, and which was in force on that date, shall stand vacated.'

Accordingly it has been submitted that virtually there is no power with the Service Tribunal for grant of interim relief.

28. It has been emphatically contended by Kalia that the orders granted by the Tribunal cannot be nullified by exercise of legislative power and only the previsions which are the basis of the judicial orders could be amended. In support he relied upon the case of Cauvery Water Disputes Tribunal, 1993 (Suppl.) (1) SCC 96. He has further contended that complete ouster of jurisdiction in the matter of grant of interim relief from the Tribunal in specified cases is also ultra vires to the Constitution as there is no judicial remedy open for the incumbent e.g. in the matter of suspension the Tribunal does not have power to grant any interim relief howsoever the order may suffer from legal infirmity, error of jurisdiction, mala fide and arbitrary exercise of power, in view of these circumstances a public servant does not have any judicial redress and continues under suspension during the period of disciplinary proceedings. Similarly the right of livelihood is a fundamental right of the Government servant and by illegal termination from service the said right is infringed. Again in spite of the fact that the order of termination on the face of it is without jurisdiction and bad in law but since the Tribunal has no power to

grant interim relief such incumbent goes without relief till the matter is finally heard and decided which takes considerable long period and during this period the incumbent faces financial and mental torture. The learned Counsel further submitted that he failed to understand that what goal can be achieved by the legislature by taking away the authority of the Tribunal as indicated hereinabove. In the circumstances the Tribunal cannot be said to be the substitute of the Courts and in fact it has become non-entity. It has been submitted that there is no provision in the present Act which provides a machinery for execution of the orders of the Tribunal except the power to punish the guilty officer for contempt. The judgment and orders of the Tribunal, before promulgation of the impugned Ordinance, could be executed after issuance of a certificate by the Tribunal to the principal civil Court in view ofSub-section (7) of Section 5 of the Act. Sub-section (7) of Section 5 was substituted by U.P. Act No. 13 of 1985. The operation of the amendment did not affect the excitability of the judgment and orders of the Tribunal and they were executable as a decree by the Principal Civil Court after issuance of a certificate from the Tribunal. However, by the amendment made in the said Act by U.P. Act No. 7 of 1992,Sub-section (7) of Section 5 has been 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 order under relevant service rules. It has been pointed out that by U.P. Act 7 of 1992 for the first time the Tribunal has been conferred with the power to punish for contempt. However, power to punish for contempt cannot substitute the power to execute orders.

29. According to learned Counsel for the petitioner the status, powers and functions of the Tribunal as stand today under the Act are not in consonance with the dictum of the Hon'ble Apex Court's pronouncement in S.P. Sampath Kumar v. Union of India, reported in 1987(1) SCC 124 and L. Chandra Kumar v. Union of India, reported in 1997(3) SCC 261.

30. It has been contended that the Hon'ble Supreme Court while considering its earlier judgments and various aspects held that the Tribunals will, nevertheless, continue to act like Courts of first instance in respect of areas of law for which they have been constituted. In S.P. Sampath Kumar v. Union of India (supra), the Hon'ble Supreme Court observed, in para 17, as under :

'What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court-not only in form and demure but in content and de-facto. As was pointed out in Minerva Mills, the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations.'

31. It has been further submitted that the impugned Act curtails the power of the Tribunal regarding judicial review of administrative inaction which deprives the litigants of their valuable right and the said divesting of power of judicial review is ultra vires of the Constitution of India. Judicial review is basic/essential feature of the Constitution as has been held by the Hon'ble Supreme Court in the case of Minerva Mills (supra) and other various pronouncements. The case of Minerva Mills Ltd. v. Union of India (supra) was followed in S.P. Sampath Kumar v. Union of India (supra) wherein the Apex Court, in para 3, held as under:

'3. It is now well-settled as a result of the decision of this Court in Minerva Mills Ltd. v. Union of India, that judicial review is a basic and essential feature of the Constitution and no law passed by Parliament in exercise of its constituent power can abrogate it or take it away. If the power of judicial review is abrogated or taken away the Constitution will cease to be what it is. It is the fundamental principle of our constitutional scheme that every organ of the State, every authority under the Constitution, derives the power from the Constitution and has to act within the limits of such power. It is a limited Government which we have under the Constitution and both the executive and the legislature have to act within the limits

of the power conferred upon them under the Constitution.'

32. In Krishna Swami v. Union of India, reported in (1992) 4 SCC 605, (Para 66), Hon'ble Supreme Court observed as under :-

'Judicial review is the touchstone and repository of the supreme law of the land. Rule of law as basic feature permeates the entire constitutional structure. Independence of Judiciary is since-qna-non for the efficacy of the rule of law. This Court is the final arbiter of the interpretation of the Constitution and the law.'

In R.K Jain v. Union of India, reported in (1993) 4 SCC 120, in para 66, the Hon'ble Supreme Court observed as under :

66. 'The power of judicial review is an intergral part of our constitutional system and without it, there will be no Government of laws and the rule of law would become a teasing illusion and a promise of unreality. The judicial review, therefore, is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution and to provide alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than the High Court.'

33. It was contended by Sri S.K. Kalia that since Ordinance No. 17 of 1999 which was under challenge before this Court and after hearing the arguments the judgment was reserved, therefore, there was no necessity for the legislature to show hurry and replace the Ordinance by Act 5 of 2000. In support the learned Counsel relief upon and referred to the Law of Lexicon, 6th Edition while trying to convey the meaning of 'pending'. The term 'pending' means nothing more but 'undecided'. According to learned Counsel for the petitioner the authorities and the legislature could have awaited the decision of the Larger Bench. In support he relied upon Lt. Col. S.K. Kashyap v. State of Rajasthan, reported in (1971) II SCC 126, wherein it has been held that the word 'pending' will ordinarily mean that the matter is not concluded and the Court which has cognizance of it can make an order on the matter in issue. The test is whether any proceedings can be taken in

the case before the Court or tribunal where it is said to be pending. The answer is that until the case is concluded, it is pending. He further referred to original Section 5 wherein the jurisdiction of the Tribunal has been spelt out and in the process it has been vehemently argued that neither there was any purpose nor object to create the post of Vice-Chairman (Administration) and this was precisely added by him by way of amendment.

34. It has been submitted that by these amendments in the Act in totality the Tribunal has become ineffective and it has lost judicial character because effective and speedy justice cannot be administered by the Tribunal.

35. Further it has been submitted that the events relating to ouster of jurisdiction of Civil Courts with respect to service disputes of public servants and other employees, consequential establishment of the Tribunal to adjudicate the said dispute and constant efforts of the State to divest the Tribunal of its power to give effective relief to the public servants clearly demonstrate and corroborate the submissions of the petitioner that the Tribunal is being made a non-entity and it cannot be said to be a substitute of a Civil Court for giving effective relief to the public servants. The said efforts and amendments in the Act, which have been made, have resulted in divesting the judicial forum from judicial review of administrative actions which is against the basic feature of the Constitution of India and as such is ultra vires.

36. First a statement was made by the learned Advocate General that inaction can also be challenged in the Tribunal. No explanation/clarification has come in the Act on the other hand on behalf of the State of U.P. Preliminary objections regarding maintainability of the claim petition are being raised where a claim petition is preferred by the Government employee with regard to inaction of the State Government. In the light of the above it has been submitted that there is a complete ouster of the jurisdiction of the Service Tribunal if there is inaction on the part of the State Government and now after the Act came into force.

37. Learned Advocate General further submitted that as far as non-action on the part of the State Government is concerned even if it is presumed that the Tribunal has no jurisdiction to entertain such claim petition then the petitioner has right to

approach this Court under Article 226 of the Constitution of India.

38. 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 a disguise to such employees as this Court can even grant interim relief under Article 226 of the Constitution of India.

39. Sri S.K. Kalia submitted that whenever the question of interpretation of amended provision comes the Hon'ble Court must take into consideration the history of the provision and further the mischief which the legislature attempted to remedy by way of amendment be also taken into consideration. In support he relied upon Rameshwar Prasad and Ors. v. State of U.P. and Ors., reported in(1983) II SCC 195, wherein the State Legislature by Act 15 of 1976 substituted a newSub-section (2) in Section 43-A of the Motor Vehicles Act and in the process free permit policy was introduced. The said amendment was challenged before this Court and the Writ Petition was dismissed. The Hon'ble Supreme Court by its judgment (supra) quashed the notification of free permit policy and declared Section 43-A of the Motif Vehicles Act as ultra vires to the Constitution. Accordingly, the notification was declared void and ineffective on the ground that such amendment was not within the scope of aims and objects of the amended section.

40. To sum up it was submitted by the learned Counsel for the petitioner, Sri S.K. Kalia, that the impugned Act is absolutely against the aims and objects of the Act hence it is unconstitutional and hit by Article 14 and the basic and essential features of the Constitution of India and is also against the mandate of the Hon'ble Supreme Court in various pronouncements such as S.P. Sampath Kumar's case and L. Chandra Kumar's case (supra); the directions of the Hon'ble Supreme Court are binding and any law enacted in violation of the same is ultra vires of the Constitution of India.

41. Sri Kalia and Sri Ambit Bose both have given up their arguments advanced earlier with regard to promulgation of the Ordinance in the light of the fact that he

Act 5 of 2000 has now come into force.

42. Sri Amit Bose, Counsel for the petitioner in Writ Petition Nos. 1635 (SB) of 1999, 1636 (SB) of 1999, 871 (MB) of 2000 and 1262 (MB) of 2000 made a statement on 29-3-2000 that he does not want to make any fresh arguments in support of Writ Petition No. 1262 (MB) of 2000. He only adopted the arguments advanced by him in Writ Petition No. 1636 (MB) of 1999 and Writ Petition No. 871 (MB) of 2000. He has further submitted that the provisions of Sections 2(d) and 3(4-A) of the Act as introduced by the impugned Act are contrary to the Full Bench decision in re : Sanjai Kumar Srivastava's case (supra). He further submitted that initially there was no post of Vice-Chairman (Administration) in the Act. The Vice-Chairman, according to the Act, means the Vice-Chairman of the Tribunal and there cannot be any Vice-Chairman (Administration) and that too from the I.A.S. cadre. Such provision in fact overrides the decision of Full Bench and is also ultra vires to the Constitution. He also contended on the similar lines as Mr. Kalia has argued with regard to the jurisdiction of the Service Tribunal. It has been emphatically contended that there is erosion in the functioning of the Tribunal due to various amendments which have made the Tribunal ineffective. He further submitted that the present State Service Tribunal cannot be the alternative of the Civil Courts for the basic reason that after introduction of Section 5-B to the original Act the Tribunal has been divested from passing interim orders in respect of orders of suspension, removal, reduction in rank and compulsory retirement passed against public servants and now the Tribunal cannot even show interference as far as adverse entries are concerned. However, he admitted that the provisions of Section 5-B were challenged before this Court but ultimately the writ petitions were challenged before this Court but ultimately the writ petitions were dismissed and the provisions of Section 5-B were upheld. Thereafter, these matters was agitated before the Hon'ble Supreme Court in Krishna Sahai v. Slate of U.P., reported in (1990) 2 SCC 673, and Rajendra Singh Yadav v. State ofU.P., reported in(1990) 2 SCC 763. By the time these cases could be decided by the Hon'ble Supreme Court the Central Administrative Tribunals Act came into existence to decide the disputes in respect of the employees of Central Government. Validity of the Central Administrative Tribunal Act was challenged before the Apex Court and the same was upheld in S.P. Sampath Kumar's case

(supra). However, the Hon'ble Supreme Court did not approve the provisions of Section 6(l)(c) of that Act whereby an I.A.S. Officer was qualified to be appointed as Chairman of the Tribunal. The Hon'ble Supreme Court also did not approve the provisions of that Act under which the Central Government has been given full powers to appoint Chairman and other members of the Central Administrative Tribunal wherein it was observed that it is left to the absolute unfettered discretion of the Government to appoint such person or persons as it likes as Chairman, Vice-Chairman and Members of the Central Administrative Tribunal. It may be noted that almost all the cases with regard to service matters which come before the Tribunal would be against the Government or any of its officers and it would not at all be conducive to judicial independence to leave unfettered and unrestricted discretion in the executive to appoint the Chairman, Vice-Chairman and Administrative Members. In the circumstances it was submitted that I.A.S. Officers were not qualified to the appointed as Chairman of the Tribunal. Now if the same proposition is adopted no Vice-Chairman can be appointed from the I.A.S. cadre. In support the provisions of the Act have been relied upon. From a perusal of Section 3 of the Act which deals with the constitution of the Tribunal it is clear that there is no post of Vice-Chairman (Administration). Besides the Chairman there are posts of a Vice-Chairman and Judicial/Administrative Members in every Tribunal. In the light of Krishna Sahai's and Rajendra Singh Yadav's case (supra) no attempt has been made by the State Government to constitute the tribunals. Further no attempt has been made to constitute the Tribunal in the light of the Administrative Tribunals Act. It has also been contended that in spite of separate tribunals only one tribunal has been constituted. Further Section 5(7) of the original Act provided for execution of the orders of the Tribunal in the same manner as decree of Civil Court but by U.P. Act 13 of 1985 the said sub-section has been amended and by the amended provision it has been provided that final orders of the Tribunal shall be executed in the same manner in which final orders passed by the State Government or any other officer or authority are executed, and in the process the Tribunal has been conferred with the powers under the Contempt of Courts Act, 1971.

43. It was also pointed out that in 1993 when an officer of I.A.S. cadre was appointed as Chairman of the Tribunal, Writ Petition No. 1619 (MB) of 1993 Sanjai

Kumar Srivastava v. State of U.P. and Ors. was filed before this Court challenging the provisions of Section 5(3)(C) and 5(4)(C) of the Act and the appointment of Sri Venkat Ramani, an I.A.S. Officer, as Chairman of the Tribunal was also challenged the said writ petition was referred for hearing before a Full Bench of this Court. The Full Bench after considering the decisions of the Hon'ble Supreme Court in S.P. Sampath Kumar (supra), Krishna Sahai (supra), Rajendra Singh Yadav (supra), R.K. Jain reported in AIR 1993 SC 1769, Shri Kumar Padma Prasad, reported in AIR 1992 SCW 1093, Swaran Singh Lamba, reported in (1994) 4 SCC 152, L. Chandra Kumar (supra) and the decision of this Court in Rajendra Prasad Khare v. State of U.P., reported in 1989 SCD 539, observed as under:

'The adjudication involving the question of interpretation and applicability of Articles 14, 15, 16 and 311 required the determination not only by the judicial approach but also knowledge and expertise in this particular branch of constitutional law. The Government officers who have held the posts of Secretary to the Government have no legal or judicial experience, would fail to inspire confidence in the public mind and would also render the Administrative Tribunal a much less effective and efficacious mechanism to adjudicate such disputes. The alternative arrangement must be effective and efficient. For inspiring confidence and trust in the litigant public they must have an assurance that the person deciding their causes is totally and completely free from the influence or pressure from the Government. It is, therefore, necessary that those who adjudicate upon these matters should have legal expertise, judicial experience and modicum of legal training and knowledge and expertise in that particular branch of constitutional, Administrative and Tax laws. There should be total insulation of the judiciary from all forms of interference from the co-ordinate branches of Government is a basic essential feature of the Constitution. The objective enshrined in the Constitution cannot be achieved unless the functionaries accountable for making appointment act with meticulous care and utmost responsibility. The Chairman of the Administrative Tribunal should be or should have been a Judge of High Court or a Senior District Judge, or he should have held the office of Vice-Chairman. After holding the office of Vice-Chairman, for a period of at least two years he would have gathered sufficient experience and

acquired reasonable familiarity with the Constitution and legal questions involved in service matters. By substituting the above by an officer who has held the post of Secretary to the Government and has no legal or judicial experience, would not be able to inspire confidence in the public and the Tribunal would not be able to function effectively.'

It was further observed as under :

'We are further of the opinion that the appointment on the post of Chairman, Vice-Chairman of these officers of the Government who have held the post of Secretary and who have been members of the Indian Administrative Service on the above posts would prejudice the judicial handling and adjudication of the cases for dispensation of justice to maintain the judicial tamper of the functioning of the Tribunal.'

44. Writ Petition No. 1619 (MB) of 1999, Sanjai Kumar Srivastava v. State of U.P. andOrs., was allowed by the Full Bench of this Court quashing the amended provisions ofSub-sections (3)(c) and (4)(c) of Section 3 of the Act. It was further directed that necessary' amendments be made inSub-section (7) of Section 3 of the Act and the appointment of the Chairman. Vice-Chairman and Members should be made by the State Government after effective consultation with the Chief Justice of High Court, on the basis of the parameters indicated in the judgment. The appointment of Sri Venkat Ramani, I.A.S., as Chairman of the Tribunal was also quashed.

45. The aforesaid decision of this Court was not challenged by the State Government hence it became final. However, the amendments as suggested in the aforesaid decision were never incorporated in the Tribunals Act. the fact of the matter is that Section 3(3)(c) and 3(4)(c) of the Act have been struck down in the aforesaid decision. The only amendment made in the Act after the aforesaid decision was that by the impugned Ordinance Section 3(d) of the Act was substituted as under:

'3 (d) 'Vice-Chairman' means the Vice-Chairman (Judicial) or Vice-Chairman (Administrative) of the Tribunal.'

46. Section 3(2) of the Act was also amended by the impugned ordinance and instead of the words 'a Vice-Chairman' the words 'a Vice-Chairman (Judicial),' a Vice-Chairman (Administrate) were substituted. Section 4(4) of the Act was substituted by the impugned ordinance and thereby for the office of Vice-Chairman (Judicial) a person was qualified to be appointed if he had held the post of District Judge or any other post equivalent thereto or had held the post of a Judicial Member of the Tribunal for a period of two years. For the post of Vice-Chairman (Administrative) a person was qualified to be appointed if he had held the post of Administrative Member for two years or had for atleast 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 was not less than that of an Additional Secretary to the Government of India and had adequate experience in the dispensation of justice in the opinion of the State Government.

47. The main objection in fat is with regard to the appointment of Vice-Chairman (Administrative) which is to be filled up by an officer of I.A.S. cadre. In this respect it was brought to our knowledge that it is the identical provision which was struck down by the Full Bench of this Court in Sanjai Kumar Srivastava's case (supra). The reason for striking down the said provision as assigned in the judgment was that the appointment of an I.A.S. Officer as Vice-Chairman or Chairman of the Tribunal would prejudice the judicial handling and adjudication of the cases for dispensation of justice and to maintain the judicial approach of the functioning of the Tribunal. Now the very same prevision has been introduced in the Act by way of amendment. A Vice-Chairman (Administrative), in absence of a Vice-Chairman (Judicial) or by virtue of being the Senior Vice-Chairman would act as Chairman of the Tribunal in absence of the Chairman. Thus an I.A.S. Officer can act as Chairman of the Tribunal though such a provision in the Act was struck down by the Full Bench of this Court in Sanjai Kumar Srivastava's case (supra).

48. Now one of the questions to be determined by this Larger Bench is whether in the backdrop of the Full Bench decision (supra) such provisions as introduced by the impugned Act are valid? It has been argued that these are revalidating provisions because by the impugned Act the same provisions have been revalidated which were struck down and declared invalid by a competent Court of

law. In this connection learned Counsel for the petitioner, Sri Amit Bose, while placing reliance on the case of Meerut Development Authority v. Satbir Singh, reported in (1996) 11 SCC 462, and Indian Aluminum Co. v. State of Kerala, reported in (1996) 7 SCC 637, has submitted that the adjudication of the rights of the parties is the essential judicial function; the Legislature has to lay down the norms of conduct or rules which will govern parties; further the Constitution delineated delicate balance in the exercise of sovereign power by the legislature, executive and judiciary; in a democracy governed by the rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law. The Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries; and it is not necessary to the over-zealous and conjure up incursion into the judicial preserve invalidating the valid law competently made. The Court, therefore, needs to carefully scan the law to find out (a) whether the vice pointed out by the Court and the invalidity suffered by previous law is cured complying with the legal and constitutional requirements, (b) whether the legislature has competence to validate the law, (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution. The Court does not have power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly over-rule, revise or over-ride a judicial decision nor it can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. It was also contended that the changed or the altered conditions should be that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid. With regard to the question whether legislature has power to give retrospective effect to a legislation with a deeming date or with effect from a particular date? The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the

decision ineffective by removing the base of the decision rendered, consistent with the law of the Constitution and the legislature must have competence to do the same.

49. With regard to intention of the legislature in the light of the aims and objects of the amended prevision Sri Amit Bose has relied upon the case of IndraSawhney v. Union of India, reported in (2000) 1 SCC 168, wherein the Hon'ble Supreme Court, in para 28 observed as under :

'It is true that whenever legislative or executive action is declared as being violative of the provisions of Part III of the Constitution, it will be permissible for the executive or the legislature to remove the defect which is the cause for discrimination prospectively and which defect has been pointed out by the Court. The defect can be removed retrospectively too by legislative action and the previous actions can also the validated. But where there is a mere validation with retrospective effect, without the defect being legislatively removed with retrospective effect, the legislative action will amount to over-ruling the judgment of the Courts by way of legislative fiat and will be invalid as being contrary to the doctrine of separation of powers.'

50. Sri Amit Bose has further relied upon the case of S.S. Bola v. B.D. Sardana, reported in AIR 1997 SC 3127 and Pawan Kumar v. State of Haryana, reported in AIR 1998 SC 958 in support of his argument that an enactment cannot be used as a device to over-rule a Court judgment without removing defects pointed out in the judgment.

51. The validity of such a law can be tested on the grounds (a) whether the legislature has the legislative competence to enact the law, (b) the law so enacted is not contrary to any of the fundamental rights enshrined in Part HI or any other provision of the Constitution, and (c) the defect or the vice pointed out by the Court is removed buy the subsequent law in conformity with the legal and constitutional requirements. One of the tests to decide whether the validating statute directly over-rules the decision of the Court or it removes the basis of the said decision is the answer to the question as to whether the decision of the Court would have been the same if the new enactment was before it? If the answer to the above

question is in the positive, the legislation amounts to directly over-ruling the decision of the Court. Conversely if the answer is in the negative, the legislation amounts to removing the basis for the decision of the Court and it is a valid piece of legislation. It has been contended that in the light of the above principles, if the provisions of Sections 2(d) and 3(4-A) of the Act as substituted by the impugned Act are tested, they would amount to a mere declaration over-ruling the Full Bench decision of this Court in Sanjai Kumar Srivastava's case (supra). The validity of the aforesaid provisions can also be tested on the principle that had the aforesaid provision been there in the Act, then the decision in Sanjai Kumar Srivastava's case (supra) would have been the same.

52. This issue can be considered from another angle. Section 3(14) of the Act has not been amended by the impugned Act. Under the said provision, in absence of the Chairman of the Tribunal, the Vice-Chairman would act as Chairman. There is nothing in the impugned Act whereby it can be said that the Vice-Chairman (Administrative) would not act as the Chairman of the Tribunal. Such a course of action cannot also be possible, as in absence of the Chairman or a senior Vice-Chairman (Judicial), the Vice-Chairman (Administrative) would act as the Chairman. Even otherwise, if the Vice-Chairman (Administrative) is senior to the Vice-Chairman (Judicial) the former would act as the Chairman of the Tribunal in absence of the Chairman. In other words, by virtue of the provisions of the impugned Act read with Section 3(4) of the Act, an I.A.S. Officer can act as Chairman of the Tribunal. In the circumstances the legislature has enacted the impugned Act within its domain and it cannot be said to be an indirect attempt to enact he Act in question contrary to the decision of Full Bench of this Court in re : Sanjai Kumar Srivastava's case (supra).

53. It has been further submitted that the impugned Act does not indicate the purpose or object of providing two Vice-Chairman of the Tribunal. Further it is a colourable legislation and his Excellency the Governor while exercising powers under Article 213 had no power to enact the legislation which achieves a purpose indirectly which could not have been achieved directly. Since the impugned provisions of Sections 2(d) and 3(4-A) are without any purpose or object, therefor, they are bad in law and have been enacted to favour certain administrative

members to enable them to act as Chairman. In support reliance has been placed on the case of D.C. Wadhwa v. State of Bihar, reported in (1987) 1 SCC 378, wherein it has been held hat it is settled law that a constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provisions cannot be allowed to be defeated by adoption of any subterfuge that would be clearly a fraud on the constitutional provision.

54. In State of M.P. v. Fabric Mills Ltd., reported in 1995 Supp. (1) SCC 642, the Hon'ble Supreme Court held that the concept of colourable legislation has a well-defined connotation so far as parent legislation is concerned. If the legislation trespasses on a field not reserved for it under the relevant entry of the Seventh Schedule it can be said to be a colourable legislation meaning thereby that it purports to get covered by an entry which does not give legislative commence to the legislature concerned to enact such a law. In the case of Ashok Kumar v. Union of India, reported in (1991) 3 SCC 498, also the same view was taken.

55. In the case of Naga People's Movement of Human Rights v. Union of India, reported in (1998) 2 SCC 109 the Hon'ble Supreme Court reiterated its earlier views on the principles of colourable legislation and held that the expression 'colourable legislation' seeks to convey that by enacting the legislation in question the legislature is seeking to do indirectly what it cannot do directly. But ultimately the issue boils down to the question whether the legislature had the competence to enact the legislation because if the impugned legislation falls within the competence of the legislature the question of doing something indirectly which cannot be done directly does not arise.

56. It has been further submitted that the consultation with the Hon'ble Chief Justice which is necessary for the appointment of the Chairman, Vice-Chairman and other members of the Tribunal has been rendered ineffective by the amendments made in Sections 3(6) and (7) of the Act by Sections 4(c) and (d) of the impugned Act which is contrary to the principles of the independence of the judiciary which is a basic feature of the Constitution. In Section 3(7) it has been provided that the appointment of the Chairman, Vice-Chairman and every other

member shall be made by the State Government. According to the amended provisions now whether a particular I.A.S. officer whose name is recommended to the Hon'ble Chief Justice has adequate experience in dispensation of justice or not is to be decided by the State Government.

57. In the case of S.P. Gupta v. Union of India, reported in 1981 (supp.) SCC 87, the question arose whether the interpretation given to the term 'consultation' in the aforesaid decision would apply to the said term in Article 217(1). The Hon'ble Supreme Court held as under :

'These observations apply with equal force to determine the scope and meaning of 'consultation' within the meaning ofClause (2) of Article 124 and Clause (1) of Article 217. Each of the constitutional functionaries required to be consulted under these two articles must have for his consideration full and identical facts bearing upon appointment or non-appointment of the person concerned as a Judge and the opinion of each of them taken on identical material must be considered by the Central Government before it takes a decision whether or not to appoint the person concerned as a Judge. But, while giving the fullest meaning and effect to 'consultation' it must be borne in mind that it is only consultation which is provided by way of fetter upon the power of appointment vested in the Central Government and consultation cannot be equated with concurrence. It would, therefore; be open to the Central Government to over-ride the opinion given by the constitutional functionaries required to be consulted and to arrive at its own decision in regard to the appointment of a Judge in the High Court or the Supreme Court so long as such decision is based on relevant considerations and is not otherwise mala fide. Even if the opinion given by all the constitutional functionaries is identical, the Central Government is not bound to act in accordance with such opinion, though being the unanimous opinion of the three constitutional functionaries, it would have great weight and if an appointment is made by the Central Government in defiance of such unanimous opinion, it may prima facie be volunarable to attack on the ground that it is mala fide or based on irrelevant grounds.'

58. The aforesaid decision of the Hon'ble Supreme Court was overruled in the case of Supreme Court Advocates Record Association v. Union of India, (1993) 4

SCC 441, reported in (1993) 4 SCC 441, wherein it was held as under :

'The opinion of the Chief Justice of India, for the purpose of Articles 124(2) and 217(1) so given has primacy in the matter of all appointments, and no appointment can be made by the President under these provisions to the Supreme Court and High Courts, unless it is in conformity with the final opinion of the Chief Justice of India, formed in the manner indicated.'

59. Thus, it is settled that in so far as appointment to the offices of Judge of High Court or of the Supreme Court is concerned, the opinion of the Chief Justice of India has primacy in the sense that it is binding on the Central Government. It is also settled that the Central Government has no authority or jurisdiction ordinarily, to disagree with the opinion of the Chief Justice of India, but in exceptional cases, it can disagree. In that event, the matter has to be referred back to the Chief Justice of India and only if the Chief Justice of India concurs with the views of the Central Government, the appointments can be made. In relation of the appointments of the Chairman, Vice-Chairman and Members of the Central Administrative Tribunal also, the aforesaid procedure has been adopted and all appointments are being made after consultation with the Chief Justice of India; and the opinion of the Chief Justice of India has primacy in such appointments also.

60. It has been submitted that the Full Bench of this Court in the case of Sanjai Kumar Srivastava (supra) also directed that the appointment of Chairman, Vice-Chairman and Members of the Tribunal be made with the consultation of the Chief Justice of the High Court and the term 'consultation' in the State Tribunals Act cannot have a different interpretation than that in Articles 217(1) and 22(1) of the Constitution or the Administrative Tribunals Act, and it is not open to the Legislature to impose restrictions and pre-conditions on the consultation with the Chief Justice of the High Court or render it ineffective. It has been submitted that as far as the meaning of the term 'consultation' in Section 3(6) of the Act is concerned, it would have the same meaning as used in the Constitution and, therefore, the opinion of the Chief Justice of the High Court has primacy and no appointment can be made contrary to the said opinion. In support reliance has

been placed on the case of Ashish Handa v. Hon'ble the Chief Justice of High Court of Punjab & Haryana., (1996) 3 SCC 145, wherein it has been held that the appointment to the office of the President of the State Commission is to be made 'only after consultation with the Chief justice of the High Court' and to the office of the President of the National Commission 'after consultation with the Chief Justice of India.'

61. It has been submitted that in view of the aforesaid decision, the expression 'after consultation with the Chief Justice' used in Section 3(7) of the Act has to be construed in the same manner as the said expression has been construed in relation to Article 217 of the Constitution. In other words, the said expression would mean that the opinion of the Chief justice with regard to a particular appointment has primacy and it is not, ordinarily, open to the State Government not to accept the opinion of the Chief Justice. However, in exceptional case, the State Government can disagree with the opinion of the Chief Justice, but, in that event, the issue has to be referred to the Chief Justice and only if the opinion of the State Government is accepted then appointments according to the said opinion can be made.

62. It has further been submitted that the object e original Act for quick and inexpensive justice to the Government servants stands defeated by the impugned ordinance according to which now most of the cases filed before the Tribunal have to be heard and decided by a Division Bench while according to the provisions of Section 4(a) of the original Act except the cases involving the order of dismissal, removal or reduction in rank all other cases could be heard and decided by a single member of the Tribunal. In support it has been submitted that the vacancies of the members of the Tribunal are not being filled up in time and because of rush of work very long dates are given and comparatively a number of old cases are being adjourned and are being listed by one general order of the Tribunal.

63. There is another aspect of the matter. Sub-section (5-C) of Section 5 of the Act as inserted by Section 7, of the impugned Ordinance is in two parts. The first part relates to divesting the Tribunal of power to grant an interim order in respect of an adverse entry awarded against a public servant. The second part relates to a legal

fiction whereby all earlier interim orders passed by the Tribunal in respect of an adverse entry stand vacated with effect from the date of promulgation of the impugned Act. In fact, it is by virtue of the second part of 9 thesub-section that the provisions concerned have been given retrospective effect to apply to interim orders passed before the impugned Act came into force. In this regard it has been submitted that by virtue of the interim orders passed by the Tribunal in respect of an adverse entry rights vest in the public servants in whose favour the interim orders are passed. Such a vested right can be the right to be considered for promotion, ignoring particular adverse entry or the like and such a vested right cannot be taken away by giving retrospective effect to the provisions of Section 5(5-c) by the impugned Act and such a provision will amount to violating the rights of the public servant enshrined in Articles 14 and 16 of the Constitution. It has further been submitted that it is a settled principle of law that a statute cannot be enacted or amended with retrospective effect in such a manner that rights vested in citizen are taken away and such retrospective operation of a statute would, be ultra vires of Articles 14 and 16 of the Constitution. In this connection certain judgments have been relied upon in the written arguments.

64. Sri H.S. Jain while addressing the Court in Writ Petition No. 5103 (MB) of 1999 has challenged the competency of the legislature to enact the impugned Act. In this connection he has relied upon Articles 323-A and 323-B of the Constitution of India. He has further submitted that the appointment of Vice-Chairman (Administrative) is also not justified and not in the spirit of the earlier judgment of this Court. Although his arguments were brief but his written arguments/submissions spread over in 10 pages.

65. A preliminary objection was raised by the learned Advocate General that the writ petition filed on behalf of the U.P. Public Services Tribunal Bar Association is not maintainable because the petitioner who comes to the Court must have any interest of his own; and secondly he must be espousing the cause of the person/persons who are not in a position to come to the Court either on account of property, illiteracy, ignorance or otherwise and in the present case these ingredients arc missing, therefore, the writ petition is not maintainable. In support he has relied upon the cases of Janta Dal v. H.S. Chowdlary, 1992 (Suppl.) ACC

333 (SC) and Bhartiya Homeopathic College v. Students Council, JT 1998 SC (Vol. 1) 359.

66. As far as the preliminary objection with regard to maintainability of the writ petitions is concerned it is an old tradition of the bar to vitiate the grievances of the public at large including litigants and also guiding the society in every walk of life. The society looks upon the members of bar for guidance right from the time of struggle for independence of the country. Therefore, it is not a new thing that bar or members of the bar have agitated the interest of public for the first time the case of Sanjai Kumar Srivastava v. State of U.P. andOrs. (supra) is one of the glaring examples. So is the case of S.P. Gupta v. Union of India, 1981 SCC (Supp.) 87. Further we find that directly no personal interest of the bar association is involved in this petition and the bar association can espouse the cause of the society at large. Further who else can appreciate the difficulty of the litigant public than the bar association. Therefore, we are of the considered opinion that the bar will always feel the pinch if any wrong is done to the litigant public. In the circumstances we find that these writ petitions are maintainable. Accordingly the objection with regard to maintainability of the writ petitions is rejected.

67. While addressing on the merits of the case learned Advocate General started with the scope of judicial review. It has been submitted that in the present case it is a legislative action of the State which has been challenged and the scope of judicial, review of legislative action has been summarised in the case of State of Bihar v. Bihar Distillery, 1997(2) SCC 453, as under :-

(i) The Court will start with the presumption of constitutionality of legislation.

(ii) The burden to prove that the legislation is unconstitutional is heavily upon the person who challenges it.

(iii) The endeavour of the Court should be to sustain the constitutionality of a legislation to the extent possible.

(iv) The Court will take into consideration all the existing circumstances- matters of common knowledge, matter of common reports and history of times.

(v) The Court will not be bound by the pleading of the State to sustain the constitutional validity.

68. It has further been submitted that the Court should remain conscious that the Constitution recognises the concept of equality between three wings of the State and the concept of checks and balances is inherent in such scheme of the Constitution.

69. In the light of the above, according to learned Advocate General the petitioner has failed to make out any case.

70. While replying to the next argument the learned Advocate General submitted that the impugned Act is not hit by the principles of colourable exercise of power. In this connection he his relied upon the case of D.C. Wadhwa v. State of Bihar, 1987 (1) SCC 378, in paragraph 7 of which it has been observed as under:-

'.....Of course, there may be a situation where it may not be possible for the Government to introduce and push through in the legislature a bill containing the same provisions as in the ordinance, because the legislature may have too much legislative business in a particular session or the time at the disposal of the legislature in a particular session may be short and in that event, the Governor may legitimately find that it is necessary to re-promulgate the ordinance. Where such is the case, re-promulgation of the ordinance may not be open to attack.'

71. While submitting on the Full Bench judgment in Sanjai Kumar Srivastava v. State of U.P. (supra) it has been contended by the learned Advocate General that the impugned Act has been promulgated in compliance, of the decision of the Full Bench providing that the appointment to the post of Chairman, Vice-Chairman and Members of the Tribunal shall be made with effective consultation of the Chief Justice. Therefore, the arguments raised by the learned Counsel for the petitioners are not in consonance with the directions contained in the Full Bench judgment. In the process the learned Advocate General has distinguished the case of Ashish Handa v. The Chief Justice of Punjab & Hayana High Court, 1996(3) SCC 145, and has submitted that the above decision has been clearly distinguished in the case of State Consumer Forum. The consultation with the Chief Justice is only

with regard to appointment of the President for whom, the qualification is a sitting or retired High Court Judge whereas in the present case the source of recruitment is not Restricted to the sitting or retired High Court Judges but the field of eligibility includes the administrative officers and the composition of the Tribunal is of Chairman, Vice-Chairman and Members and in all the cases the consultation 'with the Chief justice has been provided whereas for the State Consumer Forum there is one President and two Members and with regard to appointment of Members of the State Consumer Forum there is no provision for consultation with the Chief justice.

72. It has been submitted that the State Legislature is competent to legislate and constitute the U.P. Public Services Tribunal. Once the power is conferred with the competent authority it cannot be said that the State had no jurisdiction to enact the impugned Act and, therefore, the impugned Act is constitutional, valid and just.

73. Learned Advocate General while replying the arguments of learned Court for the petitioners, Sri K.K. Kalia and Sri Amit Bose, submitted that the case of S.S Bola v. B.D. Sardana (supra) relied upon by the petitioner does not support the contention of the petitioners. They have only relied upon the minority view as indicated in para 108 of the judgment. On the other hand the learned Advocate General has relied upon para 176 of the judgment and further indicated that the validity of the statute cannot be judged purely on the basis of the objects and, reasons nor it could be decided by the Government policy from time to time. The statement of objects and reasons of the Act or Ordinance cannot control the actual words used in the legislation. In support he relied upon the case of MA. Utkal Contractors v. State of Orissa, 1987 (Supp.) SCC 751 (Para 11).

74. The above arguments have also been made with regard to amendment of Section 5 of the Principal Act. It has been further submitted that by insertion ofSub-section (5-C) the power of U.P. Public Service Tribunal to grant any order in the matter of character roll entry has been taken away and to effectively apply the same with prospective effect, the existing orders have been nullified. If this had not been done the amendment in its working could operate as discriminatory.

75. While addressing this Court on Section 4(1) of the Act it has been submitted that the object of the Act has not been defeated by replacing the expression 'dealt with' by the expression 'order made'. The employee is not remedy less and even the jurisdiction of this Court has not been taken away as was done by the Parliament while enacting the Administrative Tribunals Act.

76. In respect of constitutionality and validity of the impugned Act with regard to composition of the Tribunal the learned Advocate General has placed reliance on the case of S.P. Sampath Kumar v. Union of India (supra) and L. Chandra Kumar v. Union of India (supra).

77. In the present case the legislative action of the State is also under challenge. We are of the considered opinion that the Constitution of India recognises the concept of equality between the three wings of the State. In this backdrop the judicial system has important role to play and further has solemn obligation to fulfill. In the circumstances it is imperative upon the Courts while examining the scope of legislative action to be conscious to start with the presumption of constitutionality of the legislation and the Court should endeavour to sustain the constitutioality of the legislation to the extent possible. However, the burden of proof that the impugned legislation is unconstitutional is upon the shoulders of the incumbent who challenges it. Further while analytically examining the legislation the Court shall not be bound by the pleadings of the State to sustain the constitutional validity of the impugned legislation. In the case of State of Bihar and others v. Bihar Distillery Ltd. (supra) the Hon'ble Supreme Court has held as under:-

'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 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 un-constitutionality 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.'

In the same para the Hon'ble Court further held :

'The Court must recognise 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 recognises 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.'

78. From a perusal of Section 3(4)(b) of the Act it is, clear that a Judicial or an Administrative Member of the Tribunal was eligible for appointment on the post of Vice-Chairman. Similarly from a perusal of clause ofSub-section (4) of Section 3 it is apparent that an I.A.S. Officer who has held the post of Additional Secretary to Government of India or any other post under the Central or the State Government equivalent thereto and has adequate experience was also eligible for the post of Vice-Chairman. In the case of Sanjai Kumar Srivastava v. State of U.P. (supra), Full Bench of this Court was pleased to quash the provisions of Sections 3(3)(c) and 3(4)(c) of the Act whereas Section 3(4)(b) was allowed to remain intact. The Full Bench has declared the above provisions ultra vires on two grounds (a)Clause (c) of Sub-section (4) of Section 3 restricts the source of appointment only amongst the I.A.S. Officers, and (b) there is no provision of consultation with the Hon'ble Chief justice of the High Court in the matter of appointment giving free hand to the Government to appoint any one as Vice-Chairman. But now by the U.P. Act No. 5 of 2000, Section 3(4-A) has been inserted by which I.A.S. or any other officer is also eligible for being appointed as Vice-Chairman of the Tribunal. Now it is crystal clear that there is no restriction for appointment of Vice-Chairman of the Tribunal from amongst I.A.S Officers only but the field of eligibility has been widened by providing that any such person who has, at least for 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 adequate experience in dispensation of justice, shall be eligible for appointment to the post of Vice-Chairman of the Tribunal. Now by the impugned Act,Sub-section (7) of Section 3 of the Act has also been amended to the extent that the appointment of the Vice-Chairman of the Tribunal shall be made by the State Government after consultation with the Chief Justice of the High Court. While looking the above matter we find that it has to be examined in the backdrop of the decision of the Apex Court in re : S.P. Sampath Kumar v. Union of India (supra). The Apex Court had not declared the provisions ofClause (b) of Sub-section (2) of Section 6 of the Administrative Tribunal Act as ultra vires which are pari materia with the provisions ofClause (c) of Sub-section (4) of Section 3 of the Principal Act. It was further held by the Apex Court that any person appointed is Vice-Chairman of the Central Administrative Tribunal on the basis of the existing eligibility criteria envisaged for appointment after having judicial experience of two years as Vice-Chairman of the Tribunal becomes eligible for appointment to the post of Chairman. In these circumstances the said provision was not declared ultra vires to the Constitution of India.

79. Competence of the State Legislature to enact, re-enact or revalidate any provision of law was also considered by the Apex Court in the case of S.S. Bola arid others v. B.D. Sardana andOrs., (1997) 8 SCC 522, wherein the Apex Court in Para 174 observed as under:-

'.....The function of the judiciary is to interpret the law and to adjudicate the rights of the parties in accordance with the law made the legislature. When a particular Rule or Act is interpreted by a Court of law in a Specified manner and the law making authority forms the opinion that such an interpretation would adversely affect the rights of the parties, would be grossly inequities and accordingly a new set of rule or laws is enacted, it is often challenged as in the present case on the ground that the legislature have usurped the judicial power. In such a case the Court has a delicate function to examine the new set of laws enacted by the legislatures and to find out whether in fact the legislatures have exercised the legislative power by merely declaring an earlier judicial decision to be invalid and

ineffective or the legislatures have altered and changed the character of the legislation which ultimately may render the judicial decision ineffective. It cannot be disputed that the legislature can always render a judicial decision ineffective by enacting a valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. What is really prohibited is that the legislature cannot in exercise of its plenary power under Articles 245 and 246 of the Constitution merely declare a decision of a Court of law to be invalid or to be, inoperative in which case it would be held to be an exercise of judicial power. Undoubtedly under the scheme of the Constitution the legislature does not possess the same.'

It was further held, in Para 159 as under:-

'The power to make a law includes the power to give it retrospective effect subject to the restriction imposed by Article 20(1) that a legislature cannot make retrospective penal laws. It would be valid for the legislature to make any other enactment with retrospective effect provided no fundamental right is infringed by reasons of its taking away the vested right. Under the scheme of the Constitution, it is competent for the legislature to put an end to the finality of a judicial decision and, therefore, it would be competent for the legislature to render ineffective the judgment of a Court by changing the basis of the Act upon which that judgment was founded.'

80. Power to enact, re-enact or revalidate any provision of law on any subject by the State Legislature is within its domain as provided in Entry 41 of List II of the 7th Schedule of the Constitution with the restriction that such enactment, revalidation etc. shall not be made just to nullify the judgment of the competent Court of law. This principle of law is established one and has already been examined by the Apex Court. We are of the considered opinion that the legislature has power to remove the vices indicated by the competent Court of law through its judgment. In the light of the above we examine the Full Bench judgment in re : Sanjai Kumar Srivastava v. State of U.P. andOrs. (supra), wherein the Full Bench has come to the conclusion that (i) restriction of field of eligibility for appointment to the post of Vice-Chairman of the Tribunal is only within the officers of I.A.S. cadre, and (ii)

there is no provision of consultation with the Chief Justice of the High Court in the matter of appointment of Vice-Chairman of the Tribunal. We find that both the above vices have been removed by the impugned Act No. 5 of 2000.

81. We are of the considered opinion that the power of his Excellency them, Governor and his satisfaction to promulgate the impugned Act is not justifiable within the domain of the State Legislature and does not change the basic structure of the Constitution of India. We further find that the impugned Act is totally a new Act having a number of changes and all the provisions are within the competence of the State Legislature. Therefore, the scope of judicial review is narrowed down and the burden to establish that the impugned Act is ultra vires to the Constitution of India is upon the petitioner who failed to establish the same. Further the impugned Act has not nullified the decision of Full Bench of this Court in Sanjai Kumar Srivastava's case (supra). In fact it is in consonance with the judgment of the Full Bench. It is evident that by the impugned Act the field of eligibility for the post of Vice-Chairman has become much wider and for such appointment consultation with Hon'ble Chief Justice has also been provided. Therefore the spirit of the Full Bench judgment has been fully incorporated in U.P. Act No. 5 of 2000.

82. With respect to the apprehension shown on behalf of the petitioner that the Vice-Chairman (Administrative) will act as Chairman of the Tribunal in absence of the Chairman we find that even in the Administrative Tribunals Act Section 7 provides with regard to officiation of the Vice-Chairman as Chairman in absence of Chairman of the Central Administrative Tribunal. The question of Vice-Chairman being appointed to the post of Chairman has already been considered by the Apex Court in the case of S.P. Sampath Kumar and L. Chandra Kumar (supra) in detail and Sections 6(2)(b) and (bb) have not been declared ultra vires by the Apex Court. We further find that there was no requirement for any amendment inSub-section (3) of Section 14 of the Principal Act. It does not make the substituted provisions ofClause (b) of Sub-section (4-A) of Section 3 of the principal Act ultra vires. Learned Advocate General while addressing on the validity of Section 4(1) has made a categorical statement that the term 'order made' will even include the omissions and inaction on the part of the employer and any reference to this effect would be entertainable by the Tribunal, therefore, it cannot be said that the

jurisdiction of the Tribunal has been taken away. In the circumstances it is, evident that there is no bar for the public servants to approach the Tribunal on account of inaction or omissions, on the part of the employer. Further we find that according to the amended provisions of the Act now two members of the 'Tribunal will hear a reference of claim against the order pertaining to the matters specified in the schedule. Further it has been provided that evidence may be received and proceedings may be conducted by a single member of the Tribunal. We do not find any illegality in this provision for the reason that the Division Bench of the Tribunal will hear the matters at the stage of admission and final hearing whereas a Single Member of the Tribunal may, receive evidence and may conduct other proceedings relating thereto.

83. The question of validity of the Act and the competence of the legislature has already been considered by this Court in various cases and ultimately this Court came to the conclusion that the legislature was competent to enact U.P. Public Service (Tribunals) Act, 1976 and its amendments and in the process the validity was upheld. The first case in this link is Bharat Ram Gupta v. State of U.P., 1979 (1) SLR 618. We further find that the validity ofSub-section (5-B) of Section 5 of the Act has already been upheld by a Division Bench of this Court in the above case and the provisions of newly addedSub-section (5-C) of Section 5 of the Act are valid as they are on the similar footing as provisions ofSub-section (5-B) of Section 5 of the Act. !

84. The arguments raised by Mr. Jain with regard to Articles 323-A and 323-B of the Constitution of India have been dealt with in the case of Bharat Ram Gupta v. State of U.P. (supra), wherein the Apex Court observed as under :-

'On a perusal of Article 323-A, however, we are not inclined to except the submission made by Counsel for the petitioner that the intention of the Parliament in inserting Article 323-A was to take away the legislative competence of the State Legislature of enacting law in regard to administrative tribunals under Entry 41 aforesaid and to confer the said power exclusive on the Parliament. On a plain reading of Article 323-A it is apparent that power has been conferred on Parliament also by the said Article entitling it by law to provide for the adjudication

or trial by the administrative tribunals of disputes or complaints referred to therein. The use of the word 'may' after the word 'Parliament' and before the words 'by law' is significant. We are aware that 'may' can in certain circumstances be also read as 'shall'. The intention in enacting Article 323-A seems to us to be that in case the Parliament in exercise of the power conferred on it by the said Article chooses to make a law as contemplated by the said Article, the provisions contained to Article 254 of the Constitution will be attracted. The view which we take finds support from the circumstance that even though by Section 57 of the Constitution (42nd Amendment) Act, 1976 certain new entries were inserted in the various lists of the 7th Schedule to the Constitution and certain amendments were also made therein, but no entry in List I conferring exclusive power on the Parliament to make laws in regard to the Administrative Tribunals was inserted. This indicates that it was not the intention of the Parliament to cover the whole field in regard to the Administrative Tribunals. Under Article 323-A of the Constitution there is no obligation on the Parliament to make a law in regard to administrative tribunals. If the submission made by Counsel for the petitioner is accepted the State Legislature would cease to be competent to enact laws in regard to the administrative tribunals in spite of Entry 41 of List 2 of the 7th Schedule to the Constitution being allowed to remain intact by the Constitution (42nd Amendment) Act, 1976, even if the Parliament does not choose to make any law in exercise of the power conferred on it by Article 323-A. There is nothing in Article 323-A including itsClause (3) referred to above which may have the effect of repealing the parent Act enacted by the State Legislature. So it continues to be in force. As already seen Parliament is not bound to pass on Act on the subject. Suppose some lacuna is pointed out and it becomes necessary to amend the parent Act but the Union Government is for some reason not inclined to introduce the necessary legislation in Parliament, it would create a stalemate if the interpretation placed by Counsel for the petitioner on Article 323-A is accepted. This does not seem to be the intention of the Parliament in inserting Article 323-A in the Constitution and an interpretation which is likely to create such an anomalous situation and render an enactment validly passed by the State Legislature and still in force unworkable cannot be accepted. The only reasonable interpretation of Article 323-A including itsClause (3), in our opinion, seems to be that if Parliament chooses to enact a law

on the subject the provisions of Article 254 of the Constitution, as already pointed out above will be attracted. U.P. Act No. 1 of 1977, by which Section 5-B was inserted in the Act, as already seen above, was assented to by the President on January 10, 1977. We are consequently unable to take the view that Section 5-B of the Act is ultra vires the powers of the State Legislature.'

85. Legislative competence of the State Legislature was again considered in the case of Lal Ji Harijan v. State of U.P. and Ors., 1982(8) ALR 97, wherein it has been held that it is not necessary that an Entry in the Constitution should itself provide for the creation of a Tribunal. It is enough if powers are given to legislate on certain topic. The Entries in the various lists of the VII Schedule have to be given widest amplitude. When Entry 41 of the List 11 speaks of State Public Services, it deals with all matters pertaining thereto, including the Tribunal for adjudication of service disputes. Further there is nothing in Entry 41 of List II of 7th Schedule of the Constitution which could prevent the legislature from constituting tribunals to adjudicate disputes pertaining to employment State Public Services, including the creation of the Tribunal for adjudication of service disputes and Article 323-A of the Constitution does not take away the powers of the State Legislature to enact a law in respect of State public services.

86. In the case of Raniashraya Yadav v. State of U.P. and, Ors., 1982(8) ALR 292, a Division Bench of this Court held that Article 323-A is merely an enabling provision and it cannot itself oust the jurisdiction of the Tribunals created by any Act. The enactment of U.P. Public Services (Tribunals) Act, 1976 was within the legislative competence of the State Legislature under Entry II of the Seventh Schedule of the Constitution. In absence of a law enacted by the Parliament in exercise of the power conferred by Article 323-A, the question of repugnancy cannot arise. It has been further held that lack of power for granting interim order during the pendency of the claim petition before the Tribunal does not affect the question whether the remedy of preferring a claim petition is adequate or not.

87. The next case in this series is of Hanuman Prasad v. State of U.P. and Ors., 1988(57) FLR 381 (All.), wherein a Division Bench of this Court held as under:-

'10. Neither Articles 323-A nor 323-B is self executing provision. They merely authorise the specified Legislature to make laws and set up such Tribunals and to include therein ancillary provisions, in other words, they only offer the constitutional authority for such legislation. It follows that so long as no law is made under Articles 323-A(2)(d) or 323-B(3)(d), the existing jurisdiction of the Tribunals created under a valid legislation would continue and will not be ousted simply because, according to the 42nd amendment Act, these matters are triable by Tribunals to the exclusion of the Courts including the Tribunals created by the State Legislature. Article 323-A(1) read withClause (d) would indicate that these are enabling provisions which have been given a constitutional authority for making of a law excluding the jurisdiction of the Civil Courts including that of the High Court.'

In para 12 of the above judgment the Division Bench observed as under :

'12. The Administrative Tribunal Act, 1985 did not become applicable ipso facto to the State employees and those who were governed by the U.P. Public Services (Tribunals) Act, 1976. It is admitted that no such notification, as is provided underSub-section (4) of Section 1 of Act No. 13 of 1985, had been notified. Consequently, the Administrative Tribunal Act, 1985 does not apply to the State employees. The disputes relating to their service conditions are governed by the U.P. Public Services (Tribunals) Act, 1976.'

The Division Bench further observed in para 14 as under:-

'14. 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 services conditions, emoluments and provide for disciplinary matter etc. This power had not been in any case taken away by the enactment of the Articles 323-A and 323-B of the Constitution. As a notification underSub-section (1) of Section 1 applying the Administrative Tribunal Act had not been issued, the State Legislature could have the power to enact on the matters covered by Entry 41 of List II of the Seventh Schedule. If an Act under Entry 41

had already been passed by the State Legislature, it would continue to have force and remain applicable to all those who are covered by it. Article 323-A, was merely an enabling provision and does not oust the jurisdiction of the Tribunals created by any other Act.'

88. In this judgment the Division Bench has even dealt with the directions issued in S.P. Sampath Kumar's case (supra) and held that there is a vital difference between the Administrative Tribunal Act and the U.P. Public Services (Tribunals) Act. The High Court's jurisdiction under Articles 226 and 227 has been completely excluded whereas the Tribunal created under the U.P. Public Services (Tribunals) Act are under the supervisory control of the High Court and, therefore, the judgments and orders passed by the U.P. Public Service Tribunal can be challenged under Article 226 of the Constitution. Therefore no directions are required to be issued in the light of the case of S.P. Sampath Kumar (supra).

89. Now, of course, after latest pronouncement of the Apex Court a writ petition can be entertained by the High Court under Articles 226/227 of the Constitution against the judgment of the Administrative Tribunal also.

90. If any rale/rules are declared or struck down due to certain defect and foundation on the basis of which the rules had been declared void is removed by the Amendment Act then in such circumstances we are of the considered opinion that it is within the legislature. Similarly in the present case the defects indicated in Sanjai Kumar Srivastav's case (supra), have been removed by the impugned Act. Similar was the situation with Section 8 of the Karnataka Municipal Corporation Amendment Act, 1981 and the Apex Court in D. Dasegowda v. State of Karnataka and Ors., 1993 Supp. (4) SCC 53, held the Amendment Act to be valid since the basis of the defect on which the 1977 Rules were declared void was removed. It was further held that when the amendment Act removed the defects declared by the Court it was a valid Act.

91. We further find that the validity of Sub-section (5-B) of Section 5 of the Act has already been upheld by a Division Bench of this Court in the case of Bharat Ram Gupta v. State of U.P. (supra) and the provisions of newly addedSub-section (5-C) of Section 5 of the Act arc valid as they are on the similar footing as the as the

provisions ofSub-section (5-B) of Section 5 of the Act. We are in agreement with the view taken by the Division Bench of this Court.

92. We are of the considered opinion that basically there are two grounds for striking an Act i.e. (i) lack of legislative competence, and (ii) violation of fundamental rights or any other constitutional provision. In the present enactment we find that the State Legislature is competent to enact the impugned provisions. Further there is neither violation of any fundamental right nor violation of any constitutional provision. The provisions of the impugned Act neither violate any fundamental right nor are against the basic structure of the Constitutional of India.

93. As far as the prayer in Writ Petition No. 748 (MB) of 1999 to the effect that an advocate who is eligible to be appointed as a judge of the High Court be also made eligible to be appointed as Member/Vice-Chairman of the U.P. State Public Services Tribunal is concerned we do not think it proper to issue direction to the State Government to open another source of recruitment for appointment on the above posts from amongst the members of the Bar who are otherwise eligible to be appointed as Judge of High Court. However, this question can always be considered by the State Government.

94. If the vacancies of the Chairman, Vice-Chairman and Members of the Tribunal are not filled up within time it can lead to mounting of arrears and delay in dispensation of justice. In the circumstances we feel that a scheme be framed for filling up the vacancies expeditiously in a manner that all the appointments are cleared before the post falls vacant, in the light of Advocates on Record Association case (supra).

95. Tested on the touchstone of the principles laid down in the decisions and discussions made hereinabove, in premises, we come to the conclusions as follows :-

(i) The compensation of the Tribunal as provided by the impugned Act is constitutional and valid.

(ii) The State Legislature is competent to enact, revalidate or 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.

96. We find that still there are number of vacancies in the U.P. Public Services Tribunal. In the interest of justice and in the light of commitment of speedy justice we direct the State Government to ensure that the vacancies are filled up expeditiously and to frame a scheme that in future the appointments are cleared just before the post of Chairman, Vice-Chairman or Member of the Tribunal falls vacant.

In the light of above the writ petitions are accordingly decided. Cost easy.