

(2002) 11 AHC CK 0139

Allahabad High Court

Case No: Special Appeal No's. 1177 of 2001 and 416, 485, 487, 501, 531, 532, 541, 607, 878 and 1118 of 2002

Vajara Yojna Seed Farm and
Others

APPELLANT

Vs

Presiding Officer, Labour Court II
and Another

RESPONDENT

Date of Decision: Nov. 21, 2002

Acts Referred:

- Constitution of India, 1950 - Article 225, 226, 227
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 48
- Uttar Pradesh Intermediate Education Act, 1921 - Section 9

Citation: (2003) 1 UPLBEC 496

Hon'ble Judges: S.K. Sen, C.J; Ashok Bhushan, J

Bench: Division Bench

Advocate: R.G. Padia, Rajendra Kumar Srivastava, Arvind Srivastava, Sidhartha, P.R. Maurya, V.S. Sinha and Prakash Padia, for the Appellant; P.S. Baghel, Manish Goyal, Ashok Khare, Ranvijai Singh, S.P. Kesarwani and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Ashok Bhushan, J.

We have heard Dr. R.G. Padia, Senior Counsel, Sri Rajendra Kumar Srivastava, Sri Arvind Srivastava, Sri Sidhartha, Sri P.R. Mauiya, Sri V.S. Sinha, Advocates, appearing for the appellants and Sri P.S. Baghel, Sri Maneesh Goyal, Advocates and Sri Ashok Khare, Senior Advocate, Sri Ranvijai Singh, learned Standing Counsel, appearing for the respondents.

2. In all these appeals, the question regarding maintainability of appeal under Chapter VIII, Rule 5 of the Rules of the Court has been raised. A preliminary objection has been raised by respondents regarding maintainability of the appeal.

3. We have heard Counsel for both the parties on the question of maintainability of the appeal under Chapter VIII, Rule 5 of the Rules of the Court and by this common order we are deciding the question of maintainability along.
4. Special Appeal No. 1177 of 2001 is being treated as leading case and facts of that case are being noted in some detail for appreciating the arguments raised by Counsel for the appellants.
5. Special Appeal No. 1177 of 2001 has been filed by appellants challenging the judgment of learned Single Judge dated 30th October, 2001 in Writ Petition No." 36087 of 1998. The writ petition under Article 226 of the Constitution of India has been filed by the appellants challenging the award of the Labour Court, U.P., Kanpur dated 6th February, 1998. Copy of the award has been filed as Annexure-8 to the affidavit filed in support of the stay application. The Deputy Labour Commissioner, U.P., Kanpur vide his referring order dated 24th November, 1994 made a reference to the Labour Court under U.P. Industrial Disputes Act, 1947 for deciding the dispute as to whether termination of skilled labour, Sri Ram Swaroop, by the employer is proper and valid and if not then to what benefit the concerned workman is entitled. Before the Labour Court the appellants and respondent No. 2 filed their statement and Labour Court ultimately gave an award dated 6th February, 1998, holding termination of respondent No. 2 dated 4th April, 1987 as illegal. Direction was issued for reinstating the workman in service. Against the aforesaid award by the Labour Court, U.P. Kanpur appellants filed the writ petition which has been dismissed by learned Single Judge by impugned judgment dated 30th October, 2001. Learned Single Judge dismissed the writ petition holding that award of Labour Court does not require any interference in the writ petition. Against this judgment dated 30th October, 2001, Special Appeal No. 1177 of 2001 has been filed.
6. Special Appeal No. 416 of 2002, Virendra Kumar v. Presiding Officer, Central Government and Ors., and Special Appeal No. 541 of 2002, The District Cooperative Bank Ltd., Ghazipur v. Badri Ram and Anr., have been filed against the judgment of learned Single Judge arising out of writ petitions in which award made by the Labour Court was challenged.
7. Special Appeal No. 878 of 2002, Prabhunath Singh v. Joint Director of Education, III Region, Gorakhpur and Ors., has been filed challenging the judgment and order of learned Single Judge dated 13th August, 2002 in Writ Petition No. 43075 of 2000, Ram Chandra Yadav v. Joint Director of Education. Joint Director of Education vide his order dated 8th September, 2000, decided the dispute of seniority between the appellant and Ram Chandra Yadav. The Joint Director of Education vide its order dated 8th September, 2000 held Prabhunath Singh, appellant, senior to Ram Chandra Yadav. The order of Joint Director was in exercise of jurisdiction under Regulation 3, Chapter II of Regulations framed under U.P. Intermediate Education Act, 1921. Learned Single Judge by the impugned judgment dated 13th August, 2002 quashed the order of Joint Director of Education and has directed the Joint Director

of Education to decide the dispute afresh in accordance with law and in accordance with the observations made in the judgment. The said judgment of learned Single Judge has been challenged in the special appeal.

8. Special Appeal No. 607 of 2002, Bhagwat Singh v. The Board of Revenue, Uttar Pradesh. Camp Meerut and Anr., has been filed against the judgment of learned Single Judge arising out of order passed by Revisional Authority under the Indian Stamp Act. The Board of Revenue exercising the revisional power under Indian Stamp Act had passed the order dated 18th March, 2002 dismissing the revision and confirming the order of Deputy Commissioner. Stamp, Meerut. Both the aforesaid orders were challenged in the writ petition which writ petition was dismissed by learned Single Judge by the order dated 29th April. 2002.

9. Special Appeal No. 487 of 2002 has been filed challenging the judgment of learned Single Judge dated 11th March, 2002 by which Writ Petition No. 9997 of 2002 filed by M/s. J.H.V. Sugar Corporation Limited has been allowed. Writ Petition No. 9979 of 2002 was filed challenging the order of State Government dated 11th February, 2002. The State Government has passed the order dated 11th February, 2002 in appeal filed by U.P. State Sugar Corporation against the reservation order dated 6.11.2001. The appeal was filed u/s 15(4) of U.P. Cane (Supply and Purchase Regulation) Act. 1953.

10. Special Appeal No. 1118 of 2002, Arya Aditya Singh v. Prescribed Authority/Sub-Divisional Officer, Chunar. Mirzapur and Ors., has been filed against the judgment of learned Single Judge dated 7th October, 2002 dismissing the Writ Petition No. 41566 of 2002 filed by the appellant. The writ petition was filed by the appellant challenging the order dated 20th September, 2002 passed by Prescribed Authority/Sub-Divisional Officer, Chunar in Election Petition No. 32 of 2000 filed u/s 12-C of U.P. Panchayat Raj Act, 1947. By the order dated 20th September. 2002. the Election "Tribunal directed for recounting of votes. The writ petition was dismissed by learned Single Judge against which this appeal has been filed.

11. Special Appeal No. 532 of 2002 has been filed by appellant challenging the order of learned Single Judge dated ! 8th September, 2002 by which Writ Petition No. 39681 of 2002 filed by the appellant has been dismissed. The writ petition was filed by the appellant challenging the order dated 9th September, 2002 passed by Additional District Judge, Bareilly in Election Petition No. 28 of 2000, Smt. Farhat Jahan and Ors. v. Terns if Ahmad. By the order dated 9th September, 2002 application filed by Tausif Ahmad, the appellant, made under Order IX. Rule 11 of CPC was rejected. The order was passed by Additional District Judge while hearing the Election Petition No. 28 of 2000. The appellant was elected as President of Nagar Panchayat Dhaura Tanda, district Bareilly.

12. Special Appeal No. 485 of 2002, Rawalji v. Deputy Director of Consolidation, Jannpur and Ors.. Special Appeal No. 501 of 2002, Shiv Nandan and Ors. v. Deputy

Director of Consolidation, Deoria and Ors., and Special Appeal No. 531 of 2002, Rajendra v. Deputy Director of Consolidation, Varanasi and Ors., have been filed against the judgment of learned Single Judge passed in writ petition arising out of proceedings under U.P. Consolidation of Holdings Act, 1953. Revisional orders passed by Deputy Director of Consolidation under the U.P. Consolidation of Holdings Act, 1953 were challenged in the writ petitions out of which the above special appeals have arisen.

13. From the facts as stated above, this bunch of appeals can be divided in following three categories of appeals :-

(a) Appeals arising out of writ petitions in which the award of Labour Court was challenged.

(b) Appeals arising out of writ petitions in which appellate or revisional orders were challenged.

(c) Appeals arising out of writ petitions in which orders passed by Election Tribunal have been challenged.

14. Dr. R.G. Padia, Senior Advocate appearing in Special Appeal No. 1177 of 2001 contended that special appeal filed against the award of the Labour Court is fully maintainable under Chapter VIII, Rule 5 of the Court. Elaborating his submissions. Dr. Padia contended that under Clause 10 of Letters Patent of Allahabad High Court special appeal is maintainable even against award of Labour Court. Reliance has been placed by Dr. Padia on Apex Court judgment in [Employer in Relation to Managment of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Another](#), and the judgment of the Apex Court in (2001) 4 Supreme 302; Chandra Kanta Sinha v. Oriental Insurance Company Ltd. and Ors., for the proposition that in the foresaid case the Apex Court observed that Clause 10 of Letters Patent of Allahabad High Court is similar to Clause 15 of Letters Patent of Calcutta, Bombay and Madras. Dr. Padia contended that while referring to Clause 10 of Letters Patent of Allahabad High Court, the Apex Court held in the aforesaid judgments that special appeal is maintainable against the Labour Court award. Elaborating his submission, Dr. Padia contended that judgment of Apex Court in Central Mine Planning case (supra) is a binding precedent on this Court and in view of the aforesaid decision it has to be held that special appeal is maintainable against the award of the Labour Court. Dr. Padia further elaborating his contention cited several decisions of Apex Court as well as this Court as to what constitute binding precedent. Reference of those decisions will be made while considering the above submission. The second limb of submission of Dr. Padia is that the award by Labour Court is not an valid award since the parties who were arrayed before the Labour Court were not employer of respondent No. 2. He contended that appellants are not the employer, hence the award is not a valid award in the eyes of law. He contended that award being not a valid awards, the bar of maintainability of special appeal as

referred to under Chapter VIII, Rule 5 of the Rules of the Court cannot be pressed since for pressing the bar. of maintainability of the special appeal there has to be valid award in the eyes of law.

15. Sri P.S. Baghel replying the submissions of Dr. Padia contended that special appeal filed against the award of the Labour Court is clearly barred under Chapter VIII, Rule 5 of the Rules of the Court. He submitted that special appeals arising out of the writ petition against the Labour Court award has been specifically excluded by the U.P. High Court (Abolition of Letters Patent Appeals) Act. 1962 as amended by the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981. Sri Baghel referred to and relied on judgment of Apex Court in [Firdosh Fatima \(Smt\) \(since Dead\) and Others Vs. Firdosh Begum \(Smt\) \(Dead\) and Others](#), .. in which the provisions of the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 as amended by U.P. Amendment Act 33 of 1972 were upheld and it was held that by abolition by enactment special appeal as referred in the aforesaid Act will be barred. Reliance was also placed on Division Bench of this Court reported in 1997(3) AWC 1997, Oriental Bank of Commerce, Kanpur v. Union of India and Ors., in which it was held that special appeal against the award under Industrial Disputes Act, 1947 is not maintainable under Chapter VIII, Rule 5 of the Rules of the Court. Learned standing Counsel contended that special appeal against the award of the Labour Court is not maintainable and barred by Chapter VIII, Rule 5 of the Rules of the Court Learned Standing Counsel contended that by virtue of 1962 as amended from time to time various special appeals have been excluded and only those special appears are maintainable which are not excluded by the aforesaid Abolition of Letters Patent Appeals Act. 1962. Learned Standing Counsel contended that maintainability of the special has to be considered on the basis of the Rules of the Court i.e., Chapter VIII, Rule 5 and those appeals which have been excluded under Chapter VIII, Rule 5 of the Rules of the Court arc not maintainable.

16. Sri Arvind Srivastava, Advocate raised submission in Special Appeal No. 878 of 2002 which appeal arose out of writ petition in which appellants order passed by Joint Director of Education was challenged. Sri Srivastava contended that the appellate order of Joint Director of Education under Regulation 3, Chapter 2 of Regulations framed under U.P. Intermediate Education Act, 1921 is not an order of a Tribunal or Court and is only an administrative order. He contended that special appeal under Chapter VIII, Rule 5 of the Rules of the Court will be barred only when appellate order is in nature of a judgment or order of a Tribunal or Court. Reliance was placed by Sri Srivastava on Apex Court judgment in [Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmichand and Others](#), .. Sri Srivastava also placed reliance on judgment of Apex Court in 2002(2) Supreme 419: Sharda Devi v. State of Bihar, for contending that special appeal will lie even when the writ petition arises out of appellate order. Sri Srivastava also contended that provisions of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act. 1981 in so far as they take away right of special appeal with regard to writ petition arising out of

appellate order is ultra vires. He contended that even though vires of the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 has been upheld by Full Bench of this Court but the said decision cannot also validate the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981. He contended that the State Legislature has no legislative competence to legislate with regard to Constitution of High Court regulating the right of appeal. Sri Srivastava Counsel for the appellant further contended that the power exercised by Joint Director of Education is under Regulation 3, Chapter [I of Regulations framed under U.P. Intermediate Education Act, 1921 and is not a power exercised under U.P. Intermediate Education Act. The contention is that since appellate power has not been exercised under any provision of U.P. Act, the Bar of Chapter VIII, Rule 5 of the Rules of the Court will not be attracted. He submitted that appellate power exercised under Regulation is a power exercised under subordinate legislation and not under the U.P. Act.

17. Sri Ashok Khare, Senior Advocate, replying the submissions of Sri Srivastava contended that Special Appeal No. 878 of 2002 is barred under Chapter VIII, Rule 5 of the Rules of the Court. He contended that provisions of Chapter VIII, Rule 5 of the Rules of the Court are fully attracted even if the appellate order has been passed by Government or any officer or authority in exercise of jurisdiction under any U.P. Act or Central Act relating to matters enumerated in State List or Concurrent List. He refuted the submission of Sri Srivastava that the order by officer or authority while exercising appellate or revisional jurisdiction has to be in the nature of order passed by Court or Tribunal having trapping of the Court. He submitted that even if the appellate or revisional order has not been passed by the officer or authority having trapping of the Court or Tribunal, the special appeal is barred by expressed language used under Chapter VIII, Rule 5 of the Rules of the Court. Sri Kharc has placed reliance on two Division Bench judgment of this Court, in which special appeal was held to be barred arising out of writ petition challenging the order of Joint Director of Education under Regulation 3, Chapter 2 of the U.P. Intermediate Education Act, 1921. His submission is that question of maintainability of the appeal is covered by aforesaid two judgments, namely (1994) 1 UPLBEC 24, Sita Ram Lal v. District Inspector of Schools; Azamgarh and Ors. and (1996) 1 UPLBEC 102, S.B. Nath v. Committee of Management, Anglo-Bangali Inter College, Allahabad and Ors.. Sri Kharc further contended that appellant has not challenged the vires of the U.P. High Court (Abolition of Letters Patent Appeals) Act, the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 or 1981 Amendment Act in this special appeal, hence he cannot be allowed to raise the said submission. He further contended that provisions of Chapter VIII, Rule 5 of the Rules of the Court have also not been challenged and the special appeal filed by appellant is barred on plain terms of Chapter VIII, Rule 5 of the Rules of the Court.

18. Sri Rajendra Kumar Srivastava, Advocate raised submissions in Special Appeal No. 487 of 2002 and contended that State Government while deciding the appeal is

not acting as a Tribunal, hence the special appeal is not barred. Reliance has been placed by Sri Srivastava on Division Bench judgment of this Court in 2001(1) LBSER 331, Pralappur Sugar and Industries Ltd. v. Deputy Labour Commissioner, for the proposition that State Government is not a Tribunal as laid down by the Division Bench in Paragraphs 9 and 12 of the aforesaid judgment which are extracted below" :-

"9. In [The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi](#), it was held that the expression "Tribunal" as used in Article 136 of the Constitution of India meant the same thing as Court but includes within its ambit adjudicating bodies, provided they are constituted by State and are invested with judicial power as distinguished from purely administrative or executive functions.

12. The test applied by the Supreme Court in determining whether any body or authority has the status of a Tribunal for the purpose of Article 136(1) of the Constitution can safely be applied while interpreting Chapter VIII, Rule 5 of the Rules of the Court. Therefore, what is to be seen is whether the judgment or order which was subject-matter of challenge in the writ petition filed under Articles 226 or 227 of the Constitution had been given by a body or authority which had been constituted by the State and had been clothed with the State's inherent judicial power to deal with disputes between the parties and to determine them on merits, fairly and objectively."

19. Sri V.S. Sinha, Advocate in support of Special Appeal No. 532 of 2002 contended that Additional District Judge while acting as Election Tribunal is not Tribunal, hence the special appeal is barred. He has placed reliance on Division Bench Judgment of this Court reported in 1996 AWC (Summary of Cases) 2.8, Prakash Timbers (P) Ltd. and Ors. v. Smt. Sushma Shinghla and Anr. and 1994 AWC 1137, State of U.P. and Anr. v. Smt. Dayavati Khanna.

20. Other Counsel appearing in other special appeals have adopted the arguments of Counsel appearing for the appellants as noted above.

21. After having heard Counsel for the parties and after having perused the record, the principal question which has arisen in all these appeals is regarding the scope of Chapter VIII, Rule 5 of the Rules of the Court and as to in which category special appeals are barred. Before considering the scope of Chapter VIII, Rule 5 of the Rules of the Court, it is relevant to look into the Letters Patent of our Court and subsequent enactments affecting the Letters Patent Appeals.

22. Right of appeal is a statutory right. A person can invoke right of appeal if it is so provided by Statute. High Court of Judicature at Allahabad was created by Letters Patent of His Majesty dated 17th March, 1866. The Letters Patent dated 17th March, 1866, provided for constitution of High Court, civil jurisdiction of the High Court, appeal to the High Court from Judges of the Court and provisions with regard to

exercise of several jurisdiction by the High Court. Clause 10 of the Letters Patent was with regard to appeal to the High Court from Judges of the Court. Clause 10 of the Letters Patent is extracted below :-

"10. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Allahabad from the judgment (not being a judgment passed in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of Superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of Criminal Jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 105 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February one thousand nine hundred and twenty nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of the Judges of the said High Court or of such Division Court shall be to us. Our heirs or successors or Our on Their Privy Council, as hereinafter provided."

23. The Letters Patent dated 17th March, 1866 were amended by Letters Patents issued from time to time. Clause 35 of the Letters Patent which is relevant for the present subject provided that provisions of Letters Patent are subject to legislative powers of the Governor General in Legislative Council. Clause 35 is extracted below :-

"35. And we do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Legislative Council, and also of the Governor General in Council u/s seventy-one of the Government of India Act, 1915, and also of the Governor General in cases of emergency u/s seventy-two of that Act and may be in all respects amended and altered thereby."

24. The special appeal from judgment of the Judges of the High Court is used to be governed by aforesaid. Clause 10 of the Letters Patent. The United Provinces High Courts (Amalgamation) Order, 1948 was issued in exercise of the power conferred by Section 229 of Government of India, 1935, and all other powers enabling in that behalf which was published on 19th July, 1948 in Government of India, Gazette Extraordinary. By aforesaid Amalgamation Order High Court in Allahabad and the Chief Court in Oudh were amalgamated and it was provided that from the appointed date they shall constitute one High Court by the name of High Court of

Judicature at Allahabad. Clause, 7, 15 and 17 of the Amalgamation Order, 1948 are relevant for the present purpose and are extracted as below :-

"7. (1) The new High Court shall have, in respect of the whole of the United Provinces, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of any part of that Province by either of the existing High Courts.

(2) The new High Court shall also have in respect of any area outside the United Provinces all such original, appellate and other jurisdiction as under the law in force immediately before the appointed day in exercisable in respect of that area by the High Court in Allahabad.

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15. The law in force immediately before the appointed day relating to appeals of His Majesty in Council or to the Federal Court from the High Court in Allahabad and the Judges and Division Courts thereof shall, with the necessary modifications apply in relation to the new High Court.

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17. As from the appointed day-

(a) The Letters Patent of Her Majesty, dated the 17th March, 1866, establishing the High Court of Judicature for the North-Western Provinces and Chapter II of the Oudh Courts Act, 1925 (U.P. Act IV of 1925), shall cease to have effect except for the purpose of construing, or giving effect to, the provisions of this order.

(b) the Government of India (High Court Judges) Order, 1937, shall be further amended as follows :

(i) in the First Schedule in the entry relating to the High Court at Allahabad for the figures "12" the figures "21" shall be substituted, and the entry relating to the Chief Court of Oudh shall be omitted; and

(ii) in the Second Schedule, the entry relating to the Chief Court of Oudh shall be omitted, and in the Note, the words "a Chief Judge and an acting Chief Judge" shall be omitted, and

(c) references in any Indian Law to either of the existing High Courts by whatever name shall, unless the context otherwise requires, be construed as references to the

new High Court."

25. From perusal of Clause 17(a), it is clear that Letters Patent of Her Majesty dated 17th March, 1866 was ceased to have effect except for the purpose of construing, or giving effect to, the provisions of this order. The jurisdiction of special appeal which was being exercised by the High Court prior to issue of Amalgamation Order, 1948 has been continued by virtue of Clauses 7 and 15 of the Amalgamation Order, hence by force of Clause 17(a) of the Amalgamation Order, the Letters Patent continued and governed the field of special appeal since the Amalgamation Order did not bring any change with regard to special appeals.

26. After coming into force of the Constitution of India, the Rules of the Courts were framed by Allahabad High Court in exercise of power conferred by Article 225 of the Constitution and all other powers enabling in that behalf. Article 225 of the Constitution is quoted as below :-

"225. Jurisdiction of existing High Courts. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make Rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

27. Article 225 of the Constitution of India provided that jurisdiction and law administered in any existing High Court shall be the same as immediately before the commencement of this Constitution subject to provisions of Constitution and to the provisions of any law of the appropriate legislature may by virtue of power conferred on that Legislature by the Constitution.

28. In Rules of the Court framed in 1952, Chapter VIII, Rule 5 provided for special appeal. Chapter VIII, Rule 5 as it originally existed in Rules of the Court, 1952 is quoted as below :-

"5. An appeal shall lie to the Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the Court, and not being an order made in the exercise of revisional jurisdiction, and not being an order passed or made in the exercise of its power of Superintendence, or

in the exercise of Criminal Jurisdiction of one Judge, and an appeal shall lie to the Court from a judgment of one Judge made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the Court, where the Judge who passed the judgment declares that the cases is a fit one for appeal."

29. A Bill was introduced, namely, U.P. High Court (Abolition of Letters Patent Appeals) Bill, 1962. The aforesaid Bill was introduced to provide for Abolition of Letters Patent Appeals in the High Court of Judicature at Allahabad. The statement of objects and reasons for bringing the aforesaid Bill was stated in following words :-

"Statement of Objects and Reasons.-The present law makes for multiplicity of appeals due to the provisions for appeals under the Letters Patent of the High Court, resulting in the inconvenience and expense to the litigants besides causing delay in the final disposal of a suit. This Bill, is, therefore, intended to provide for the Abolition of Letters Patent Appeals against appellate jurisdiction of Single Judges in the High Court of Judicature at Allahabad."

30. U.P. Act No. 14 of 1962, namely, the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 was passed by Uttar Pradesh Legislature which came into force with effect from 13th November, 1962. Section 3 of the aforesaid Act provided for abolition of special appeal from a judgment or order of one Judge of High Court, made in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence of High Court. Section 3 of U.P. Act No. 14 of 1962 is quoted as below :-

"3. (1) No appeal, arising from a suit or proceeding instituted or commenced, whether prior or subsequent to the enforcement of this Act, shall lie to the High Court from a judgment or order of one Judge of the High Court, made in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court, subject to the Superintendence of the High Court, anything to the contrary contained in Clause 10 of the Letters Patent of Her Majesty, dated the 17th March, 1866, read with Clause 17 of the U.P. High Courts (Amalgamation) Order; 1948, or in any other law, notwithstanding.

(2) Notwithstanding anything contained in Sub-section (1) all appeals pending before the High Court on the date immediately preceding the date of enforcement of this Act shall continue to lie and be heard and disposed of as heretobefore, as if this Act had not been brought into force."

31. In view of the provisions of U.P. Act No. 14 of 1962, the Rules of the Court, 1952 were also amended vide notification dated 6th November, 1963. Chapter VIII, Rule 5 was substituted by following Rule :-

"5. An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court

subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of Criminal Jurisdiction) of one Judge."

32. Further amendments were made in U.P. Act No. 14 of 1962 in 1972 and 1975. Thereafter another Amendment Act was passed by Uttar Pradesh Legislature, namely, Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981. The Statement of Objects and Reasons of the aforesaid Act were as follows :-

"Prefatory Note-Statement of Objects and Reasons.-Prior to the enactment of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 a Letters Patent Appeal could (except in certain cases), be filed before a Division Bench of a High Court against the judgment of the Single Judge. In view of the circumstances obtaining after the establishment of the Supreme Court the said Act of 1962 was enacted under which Letters Patent Appeal against the judgment of a Single Judge of the Allahabad High Court given in exercise of his appellate jurisdiction arising out of the judgment of a Subordinate Court in civil or other proceedings was abolished.

2. Amendments were made in the aforesaid Act in 1972 and 1975 to abolish the Letters Patent Appeals against the judgments of a Single Judge of the High Court in writ petitions arising out of certain judgments of the Board of Revenue, the Director of Consolidation, the District Judge and the Civil Judge.

3. Despite the aforesaid measures, the number of cases in the High Court, continued to increase and impediments in the way of speedy justice could not altogether be removed. It is, therefore, considered necessary to make a similar provision in the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 with a view to abolishing the Letters Patent Appeals against the judgment or order of a Single Judge of the High Court under Article 226 or Article 227 of the Constitution in respect of any judgment order or award of the Subordinate Courts, Tribunals or Statutory Arbitrators made in exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act relating to any of the matters enumerated in the State List or Concurrent List of the Seventh Schedule to the Constitution or in respect of any order made in exercise of the appellate or revisional jurisdiction under any such Act, by the State Government or any officer or authority. It is also being provided that the pending Letters Patent Appeal shall continue to be disposed of as before.

The Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Bill; 1981, is introduced accordingly."

33. By 1981 Amendment Act Section 5 of 1962 Act was substituted by following provisions :-

"2. Substitution of Section 5 of U.P. Act 14 of 1962.-For Section 5 of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962, the following section shall

be substituted, namely :-

"5. Abolition of Letters Patent Appeals in certain other cases.-(1) Notwithstanding anything to the contrary contained in Clause 10 of the Letters Patent of Her Majesty, dated March 17, 1866 read with Clauses 7 and 17 of the U.P. High Courts (Amalgamation) Order, 1948, or in any other law, no appeal arising from an application or proceeding, instituted or commenced whether prior or subsequent to the commencement of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981, shall lie to the High Court from a judgment or order of one Judge of the High Court, made in the exercise of jurisdiction conferred by Articles 226 or 227 of the Constitution, in respect of any judgment, order or awards-

(a) of a Tribunal, Court of Statutory Arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or

(b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act.

(2). Notwithstanding anything contained in Sub-section (1), all appeals of the nature referred to in that Sub-section pending before the High Court immediately before the commencement of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981, shall be heard and disposed of as if that Sub-section had not been enacted."

34. Chapter VIII, Rule 5 of the Rules of the Courts was again amended by Notification dated 27th July, 1883 to make it in accord with Section 5 of Amendment Act, 1881 Chapter VIII, Rule 5 now existing in the Rules of the Court is as follows :-

"5. Special Appeals-An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of criminal jurisdiction (or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award-(a) of a Tribunal, Court or Statutory Arbitrator made or purported to be made in the exercise or purported of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitutions or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

35. From the aforesaid discussion, it is clear that provisions of special appeal which contained in Clause 10 of the Letters Patent dated 17th March, 1966 had undergone various changes by Acts passed by State Legislature. Letters Patent Appeals pertaining to some categories have been abolished by Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 and further some more categories of Letters Patent Appeals have been abolished by U.P. High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981. In consequence the Letters Patent Appeals as continued in Chapter VIII, Rule 5 of the Rules of the Court is permissible subject to category of cases in which special appeals have been abolished by the aforesaid Act, 1962 as amended in 1981.

36. A Constitution Bench of the Supreme Court in [South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others](#), -, considered Clauses 10 and 11 of Letters Patent (Lahore). The Apex Court after considering the Letters Patent and the Rules of the Court laid down in Paragraph 11 as under :-

"(11) The following legal position emerges from the said discussion. A statute may give a right of appeal from an order of a Tribunal or a Court to the High Court without any limitation thereon. The appeal to the High Court will be regulated by the practice and procedure obtaining in the High Court. Under the rules made by the High Court in exercise of the powers conferred on it u/s 108 of the Government of India Act, 1915, an appeal u/s 39 of the Act will be heard by a Single Judge. Any judgment made by the Single Judge in the said appeal will, under Clause. 10 of the Letters Patent, be subject to an appeal to that Court. If the order made by a Single Judge is a judgment and if the appropriate legislature has, expressly or by necessary implication, not taken away the right of appeal, the conclusion is inevitable that an appeal shall lie from the judgment of a Single Judge under Clause 10 of the Letters Patent to the High Court. It follows that, if the Act had not taken away the Letters Patent Appeal, an appeal shall certainly lie from the judgment of the Single Judge of the High Court."

37. In the aforesaid judgment, the Apex Court has categorically laid down that if the order made by Single Judge is a judgment and if the appropriate legislature has expressly or by necessary implication not taken away the right of appeal, the conclusion is inevitable that an appeal shall lie from a judgment of a Single Judge under Clause 10 of the Letters Patent to the High Court.

38. A recent judgment of the Apex Court in [Sharda Devi Vs. State of Bihar](#), , has again reiterated the same proposition. It was held in Paragraph 9 :

"9. A Letters Patent is the charter under which the High Court is established. The power given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes

an appeal under the Letters Patent."

39. From what has been stated aforesaid, it is clear that unless the special appeal is excluded/abolished by any competent Act, the special appeal can be filed against the judgments of Single Judge. The question to be considered is as to what are the categories of the special appeal which have been abolished by U.P. Act No. 14 of 1962 as amended in 1981 and whether the present appeals falls in the excluded appeals or not.

40. From perusal of Section 5 as substituted by U.P. High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981, it is clear that no appeal arising from a judgment or order or one Judge of the High Court made in exercise of jurisdiction conferred by Articles 226/227 of the Constitution of India in respect of a judgment, order or award of a Tribunal shall lie. In the present case, the writ petition out of which present special appeal has arisen was filed against the award of the Labour Court dated 3rd September, 2001 in Adjudication Case No. 84 of 2000. The Labour Court constituted under the Industrial Disputes Act, 1947, is a Tribunal and the order dated 3rd September, 2001 was an award by the Tribunal under the provisions of U.P. Industrial Disputes Act, 1947. Thus it is clear that by Amendment Act, 1981 special appeal against judgment of Single Judge arising out of award of a Tribunal is excluded. The special appeal against judgment of learned Single Judge as in the present case having been specifically abolished by Amendment Act, 1981. the present special appeal cannot be held to be maintainable.

41. Learned Counsel for the petitioner has placed reliance on a judgment of the Apex Court in (2001) 3 UPLBEC 2515 , Kanhaiyalal Agarwal and Ors. v. The Facotory Manager, Gwalior Sugar Company Limited. The aforesaid case arose from Madhya Pradesh. The Division Bench of Madhya Pradesh High Court has dismissed the writ petition and appeal on the basis that they were not maintainable in as much as the writ petition arose out of proceedings under Article 227 of the Constitution which is revisional in nature. The Apex Court in Paragraph 5 of the aforesaid judgment has referred and relied on earlier judgment of Apex Court in [M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad](#) . Paragraph 5 of the said judgment is quoted as below :-
"

"5. So far as the law on the matter is concerned as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order of the Labour Court, this Court in its decision in [M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad](#) . stated that "if a Single Judge exercises jurisdiction under Article 22, Letters Patent Appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be maintainable". But with an explanation that if the Single Judge of the High Court in considering the petition under Article 226 or Article 227 does not state under which provision he has decided the matter and where the facts justify filing of petition both under Article 226 and Article 227 and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its

proper perspective in an appeal. This Court held as aforesaid in view of the decisions of this in [Suk Das Vs. Union Territory of Arunachal Pradesh](#), ; RDCCB v. Dinkar , and [Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others](#),

42. In Lokmat Newspapers case (supra), the Apex Court considered the Letters Patent of Bombay High Court. It was submitted before the Apex Court that writ petition filed by the respondents before the High Court was in substance under Article 227 of the Constitution, hence was not maintainable under Clause 15 of the Letters Patent. The Apex Court in the aforesaid judgment has placed reliance on earlier judgment of [Suk Das Vs. Union Territory of Arunachal Pradesh](#), in which it was laid down that where the facts justify a party for filing an application either under Article 226 or Article 227 of the Constitution and the party chooses to file application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226. Paragraph 16 of the Judgment in Lokmat Newspapers Pvt. Ltd. (supra) is extracted as below :-

"16. It is, therefore, obvious that the writ petition invoking jurisdiction of the High Court both under Articles 226 and 227 of the Constitution had tried to make out a case for the High Court's interference seeking issuance of an appropriate writ of certiorari under Article 226 of the Constitution of India. Basic averments for invoking such a jurisdiction were already pleaded in the writ petition for the High Court's consideration. It is true, as submitted by learned Counsel for the appellant, that the order the learned Single Judge nowhere stated that the Court was considering the writ petition under Article 226 of the Constitution of India. It is equally true that the learned Single Judge dismissed the writ petition by observing that the Courts below had appreciated the contentions and rejected the complaint. But the said observation of the learned Single Judge did not necessarily mean that the learned Judge was not inclined to interfere under Article 227 of the Constitution of India only. The said observation equally supports the conclusion that the learned Judge was not inclined to interfere under Articles 226 and 227. As seen earlier he was considering the aforesaid writ petition moved under Article 226 as well as Article 227 of the Constitution of India under these circumstances, it is not possible to agree with the contention of learned Counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the writ petition of the respondent. In this connection, it is profitable to have a look at the decision of this Court in the case of Umaji Keashao v. Radhikabai. In that case O. Chinnappa Reddy and D.P. Madon, JJ., considered the very same question in the light of Clause 15 of the Letters Patent of the Bombay High Court. Madon, J., speaking for the Court in Para 107 of the Report at P. 473, made the following pertinent observation : (SCC p. 473, Para 107)

"107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque, before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the Tribunals or authorities specified in Rule 18 of Chapter VIII of the Appellate side Rules or against decrees or orders of Courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such case. In our opinion, where the facts justify a party in filing an application either under Articles 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in Aidal Singh v. Karan Singh and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass and Barham Dutt v. Peoples" Coop. Transport Society Ltd. and we are in agreement with it."

The aforesaid decision squarely gets attracted on the facts of the present case. It was open to the respondent to invoke the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India. Once such a jurisdiction was invoked and when his writ petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Article 226 and 227 of the Constitution of India. This conclusion directly flows from the relevant averments made in the writ petition and the nature of jurisdiction invoked by the respondent as noted by the learned Single Judge in his judgment, as seen earlier. Consequently, it could not be said that Clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of the learned Single Judge. It is also necessary to note that the appellant being the respondent in Letters Patent Appeal joined issues on merits and did not take up the contention that the Letters Patent Appeal was not maintainable. For all these reasons, therefore, the primary objection of the maintainability of the Letters Patent Appeal as canvassed by learned Counsel for the appellant, has to be repelled. Point 1 is, therefore, answered in the affirmative against the appellant and in favour of the respondent. It takes us to the consideration of points arising for our decision on merits."

43. In both the aforesaid judgments of the Apex Court in Lokmat Newspapers Pvt. Ltd. (supra) as well as in Kanhaiyalal Agarwal's case (supra), the Letters Patent provided special appeal against judgment of High Court under Article 226 and the special appeal was not provided against a judgment under Article 227. In that view of the matter of Court took the view that when an application is filed both under Articles 226 and 227, the judgment may be treated under Article 226 so that right of appeal is not denied to a person. In the present special appeal there is no such issue

nor the maintainability of appeal is being questioned on the ground that judgment under appeal is not under Article 226 of the Constitution. In view of the aforesaid, the above judgments have no application in the present case. Further right of special appeal in this Court has to be read subject to aforesaid Act No. 14 of 1962 and Amendment Act of 1981. When the statute has specifically abolished special appeal in the particular cases, there is no question of filing an appeal in excluded categories.

44. Much emphasis has been laid by Dr. Padia on Apex Court judgment in Central Mine Planning's case (supra). His contention is that in the aforesaid judgment Apex Court has also considered Clause 10 of Letters of our Court, hence the ratio laid down in the aforesaid case is fully applicable and the special appeal has to be held to be maintainable against the award of the Labour Court. He contended that aforesaid judgment is binding precedent under Article 141 of the Constitution on this Court and on the strength of the said judgment appeal is fully maintainable. Before considering the submission raised by Dr. Padia, it is necessary to look into the facts giving rise to the aforesaid appeal and the ratio laid down therein. The appeal before the Apex Court was filed against the Division Bench judgment of High Court of Judicature at Patna. In industrial dispute was referred to Central Government Industrial Tribunal by Government of India, Ministry of Labour. Tribunal passed the award holding that termination of 28 workmen was not justified and they were entitled for reinstatement. The validity of the award was assailed by the appellant before the High Court at Patna. Learned Single Judge allowed the writ application and directed the appellant to pay the workmen full wages. The appellant challenged the correctness of the judgment of learned Single Judge by Letters Patent Appeals before the Division Bench of Patna High Court. The Division Bench held that order passed of learned Single Judge was not a "judgment" within the meaning of Clause 10 of the Letters Patent of Patna. In Paragraph 7 the Apex Court observed "iisdemterminis Clause 10 of the Letters Patent of Allahabad, Patna, Punjab and Haryana and Madhya Pradesh". Apex Court quoted Clause 15 in Paragraph 7 of the judgment. In Paragraphs 10 and 11, it was held by the Apex Court:

"10. The above analysis of Clause 15 of the Letters Patent will equally apply to Clause 10 of the Letters Patent of Patna. It follows that an appeal shall lie to a Larger Bench of the High Court of Judicature at Patna from a judgment of one Judge of the said High Court or one Judge of any Division Court pursuant to Article 225 of the Constitution of India. The following categories of judgment are excluded from the appealable judgments under the first limb of Clause 10 of the Letters Patent:

(i) a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a Court subject to Superintendence of the said High Court; in other words no Letters Patent Appeal lies to the High Court from a judgment or one Judge of the High Court passed in second

appeal;

(ii) an order made by one Judge of the High Court in exercise of revisional jurisdiction; and

(iii) a sentence or order passed or made in exercise of power under the provisions of Section 107 of the Government of India Act, 1915 (now Article 227 of the Constitution of India) or in exercise of criminal jurisdiction,"

"11. From the above discussion, it is clear that from all judgments except those falling under the excluded categories, an appeal lies to the same High Court."

45. Dr. Padia contended that since Apex Court also referred in Paragraph 7 of the judgment that Letters Patent of Patna, Allahabad, Punjab and Haryana and Madhya Pradesh is identical, hence law laid down by the Apex Court is binding precedent. Dr. Padia further contended that Apex Court in fact emphasise that Letters Patent of all the High Court should be identical and there should be similarity regarding maintainability of the special appeal. We have gone through the aforesaid judgment of the Apex Court and considered the aforesaid submissions raised by Dr. Padia. The above judgment of the Apex Court arose out of Letters Patent Appeals of Patna High Court. There is no denying that Clause 10 of Letters Patent of Patna and Allahabad High Court are identical to Clause 15 of Letters Patent of Calcutta, Barmby and Madras. However, the Apex Court in the aforesaid judgment was concerned with maintainability of the special appeal under Letters Patent of Patna. As noted above, in Allahabad High Court there is a State enactment, namely, the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962. By the aforesaid Act the Letters Patent dated 17th March, 1866 has been modified. Several categories of the special appeal have been abolished with regard to Allahabad High Court by virtue of the aforesaid U.P. High Court (Abolition of Letters Patent Appeal) Act, 1962. It is relevant to note that validity of the aforesaid U.P. High Court (Abolition of Letters Patent Appeals) (Amendment) Act (32 of 1972) was challenged before the Full Bench of this Court. Full Bench of this Court in [Hakim Singh Vs. Shiv Sagar and Others](#), , after considering the arguments upheld the validity of the aforesaid Act and Abolition of Letters Patent Appeals by the Act 14 of the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 as amended by U.P. Act No. 32 of 1972. It is relevant to note that against the aforesaid judgment of Full Bench of our Court, the matter was taken to the Apex Court and the Apex Court vide its judgment reported in [Firdosh Fatima \(Smt\) \(since Dead\) and Others Vs. Firdosh Begum \(Smt\) \(Dead\) and Others](#), ., affirmed the judgment of Full Bench of our Court. In Paragraph 2 of the aforesaid judgment. Apex Court laid down as under:-

"2. By operation of this enactment, the power to entertain Letters Patent Appeal under Clause 10 of the Letters Patent dated March 17, 1866 read with Clause 17 of U.P. High Court's (Amalgamation) Order, 1948, in respect of the enumerated subjects mentioned therein stands taken away. The controversy is no longer

respondent Integra. This Court in [Hasinuddin Khan and Others Vs. Deputy Director of Consolidation and Others,](#), by a Constitution Bench has already upheld the validity of the Act, following the ratio of this Court in [State of Bombay Vs. Narothamdas Jethabai and Another,](#), [Ram Adhar Singh Vs. Ramroop Singh and Others,](#) and [Union of India \(UOI\) Vs. Mohindra Supply Company,](#). As a fact, this Court has upheld the validity of Section 3 of 1962 Act in Mohindra Supply Co.'s case. It was held thus :

" The challenge to these Act on the ground of the unconstitutionally is, therefore, rejected."

46. The Apex Court has clearly laid down in Paragraph 2 of the aforesaid judgment that by operation of the above enactments, the power to entertain Letters Patent Appeals under Clause 10 of Letters Patent dated March 17, 1866 read with Clause 17 of High Court (Amalgamation) Order, 1948 in respect of the enumerated subjects mentioned therein stands taken away. Thus Clause 10 of the Letters Patent regarding Allahabad High Court will stand abrogated in the light of the aforesaid enactments. With regard to submission of Dr. Padia that Clause 10 of Letters Patent of Patna High Court as interpreted by Apex Court in Central Mine Ptanning's case (supra) has to be held laying down that special appeal is maintainable even against the order of Labour Court, it is relevant to note that Apex Court in Central Mine Planning's case (supra) was not considering the question of maintainability of special appeal under Chapter VIII, Rule 5 of the Allahabad High Court Rules as Clause 10 of the Letters Patent as applicable to Allahabad. The judgment of Central Mine Planning's case (supra) in which the Apex Court considered maintainability of the special appeal with regard to Letters Patent of Patna High Court cannot be held to be laying down the ratio for Chapter VIII, Rule 5 of the Rules of the Court and Clause 10 of the Letters Patent of Allahabad High Court as modified by the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 as amended from time to time. The Apex Court's judgment in Firdosh Fatima's case (supra) has clearly laid down by considering Clause 10 of Letters Patent of our Court dated 17th March, 1866 that Clause 10 of the Letters Patent shall stand modified to the extent of above enactment. The Apex Court judgment in Firdosh Fatima's case (supra) is a binding precedent under Article 141 of the Constitution since the Apex Court in that case considered Clause 10 of Letters Patent of Allahabad High Court as well as the U.P. High Court (Abolition of Letters Patent Appeals) Act, the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962. The reliance of Dr. Padia on the aforesaid case of Central Mine Planning (supra) is clearly misplaced and the said case is not attracted.

47. Large number of decisions have cited by Dr. Padia on the proposition of binding precedent, namely [Anil Kumar Neotia and Others Vs. Union of India \(UOI\) and Others,](#) , [The Corporation of Calcutta Vs. Sm. Padma Debi and Others,](#) , Smt. Somwanti and Ors. v. State of Punjab and Ors. AIR 1971 SC 169, Shailendra Nath Neogy v. Pumendu Sen and Ors. 1984 ALJ 786, Rais Ahmad and Anr. v. The Collector,

Allahabad and Ors. AIR 1968 SC 100, Ram Manohar Lohia and Ors. v. State of U.P. and Ors. and 1986 ALJ 705, Sadhu Ram Agarwal v. Smt. Shanti Sharma. All the aforesaid decisions lay down that judgment of the Apex Court is a binding under Article 141 and the said binding precedent cannot be overlooked on the premise that certain argument were not raised before the Apex Court or certain provisions have not been considered by the Apex Court. In Anil Kumar Neotia's case (supra) reliance has been placed by Dr. Padia on Paragraph 18 of the judgment. Paragraph 18 of the Apex Court judgment is extracted below :-

"18. In that view of the matter this question is no longer open for agitation by the petitioners. It is also no longer open to the petitioners to contend that certain points had not been urged and the effect of the judgment cannot be collaterally challenged. See in this connection the observations of this Court in T. Govindaraja Mudaliar v. State of Tamil Nadu, where this Court at pages 229 and 230 of the report observed as follows : (SCC pension papers 342-43, Para 10)

The argument of the appellants is that prior to the decision in Rustom Cavasjee Cooper case, it was not possible to challenge Chapter IV-A of the Act as violation of Article 19(1)(f) owing to the decision of this Court that Article 19(1)(f) could not be invoked when a case fell within Article 31 and that was the reason why this Court in all the previous decisions relating to the validity of Chapter IV-A proceeded on an examination of the argument whether there was infringement of Article 19(1)(g) and Clause (f) of that article could not possibly be invoked. We are unable to hold that there is much substance in this argument. Bhanji Munji and other decisions which followed it were based mainly on an examination of the inter-relationship between Article 19(1)(f) and Article 31(2). There is no question of any acquisition or requisition in Chapter IV-A of the Act. The relevant decision for the purpose of these cases was only the one given in Kochuni case, after which no doubt was left that the authority of law seeking to deprive a person of his property otherwise than by way of acquisition or requisition was open to challenge on the ground that it constituted infringement of the fundamental right guaranteed by Article 19(1)(f). It was, therefore, open to those affected by the provisions of Chapter IV-A to have agitated before this Court the question which is being raised now based on the guarantee embodied in Article 19(1)(f) which was never done. It is apparently too late in the day now to pursue this line of argument. In this connection we may refer to the observations of this Court in Mohd. Ayub Khan v. Commissioner of Police, according to which even if certain aspects of a question were not brought to the notice of the Court it would decline to enter upon re-examination of the question since the decision had been followed in other cases. In Smt. Somavanti v. State of Punjab, a contention was raised that in none of the decision the argument advanced in that case that a law may be protected from an attack under Article 31(2) but it would be still open to challenge under Article 19(1)(f), had been examined or considered. Therefore, the decision of the Court was invited in the light of that argument. This contention, however, was repelled by the following observations at Page 794.

The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided."

48. The proposition laid down by the Apex Court in the aforesaid case is well established and is fully supported by other decisions cited by Dr. Padia. However, what is binding under Article 141 is ratio laid down in a case. The Apex Court in Central Mine Planning's case (supra) was not considering the maintainability of the special appeal under Chapter VIII, Rule 5 of the Rules of Allahabad High Court nor had occasion to consider the effect of the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 as amended from time to time. The aforesaid case is not all attracted while considering the question of maintainability of special appeal under our Rules of the Court and Clause 10 of Letters Patent as surviving today. It is relevant to note Clause 35 of our Letters Patent. Clause 35 as extracted above clearly provides that provisions of Letters Patent are subject to legislative power. Further Apex Court has clearly laid down in Firdosh Fatima's case (supra) that Clause 10 of Letters Patent of our High Court dated 17th March, 1866 with regard to enumerated subjects mentioned in the U.P. High Court (Abolition of Letters Patent Appeals) Act, 1962 as amended is to be treated to not operating. The Apex Court in [National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. \(J. and P. Coats Ltd., Assignee\)](#), had occasion to consider Clause 44 of Letters Patent of Calcutta High Court. The Clause 44 of the Letters Patent of Calcutta High Court are similar to Clause 35 of our Letters Patent. The Apex Court in the aforesaid judgment had held that Letters Patent are subject to legislative power of the appropriate legislature. Relevant portion of Paragraphs 12 and 13 of the aforesaid judgment are extracted below :-

"(12).....

The words "subject to the legislative powers of the Governor-General" used in Section 9, Charter Act of 1861 were omitted from the section, because of the wide power conferred on the Governor-General by Section 65, Government of India Act, 1915. The jurisdiction conferred on the High Courts from the very inception was all the time liable to and subject to alternation by appropriate legislation. It is, therefore, not right to say that Section 108(1), Government of India Act, 1915 empowered the High Courts to make rules only concerning the jurisdiction that those Courts exercised when that Act passed, on the other hand power was also conferred on them to make rules in respect of all jurisdiction then enjoyed or with which they may be vested hereafter.

(13) Clause 16 of the Letters Patent on which reliance was placed by the learned Judges of the Calcutta Court is in these terms :

"The High Court shall be a Court of appeal from the Civil Courts of Bengal and from all other Courts subject to its Superintendence and shall exercise appellate

jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force."

This Clause is also subject to the legislative power of the appropriate Legislature as provided in Consolidation Lekhpal 44 of the Letters Patent. This clause is these terms :

"The provisions of the Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council."

49. From the above, it is clear that judgment of the Apex Court in Central Mine Manning's case (supra) is not applicable and it cannot be held that under Chapter VIII, Rule 5 of the Rules of the Court and Clause 10 of our Letters Patent as surviving special appeal is maintainable against the award of the Labour Court. By Clause 5 of 1981 Amendment special appeal has been taken away with regard to any judgment, order or award of Tribunal.

50. The second submission of Dr. Padia that since the employers were not party in the award, the award is not a valid award and bar of maintainability of the special appeal under Chapter VIII, Rules of the Court can be pressed only when there is a valid award is to be considered. The aforesaid submission of Dr. Padia is clearly misconceived. Even assuming without admitting that necessary parties were not impleaded in the award, the award may be invalid or unsustainable but that itself will not denude the character of award from an award of Labour Court. The aforesaid submission is submission on merits regarding challenge to the legality of the award and that submission is not relevant with regard to question of maintainability of appeal. Admittedly Labour Court giving award on reference made by competent authority under the Industrial Disputes Act, 1947. The award by the Labour Court which was impugned in the writ petition remains an award by Labour Court whether the award was valid or not. Further Chapter VIII, Rule 5 of the Rules of the Court provides that special appeal is excluded against a judgment of one Judge of this Court in exercise of jurisdiction conferred by Articles 226 or 227 of the Constitution of India in respect of any judgment, order or award of a Tribunal, Court or Statutory Arbitrator made or purported to be made in exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act. Thus even if the award is given by Labour Court in purported exercise of jurisdiction, the special appeal will be barred. The award clearly was given by Labour Court in exercise of jurisdiction under any Uttar Pradesh Act and in any view of the matter in purported exercise of jurisdiction. Even if Labour Court gives wrong award, it cannot be said that the said award is without jurisdiction. Thus the submission of Dr. Padia that since necessary parties were not before the Labour Court, the award is not a valid award by Labour Court cannot be accepted.

51. The submission of Sri P.S. Baghel appearing for the respondents in Special Appeal No. 1177 of 2001 is fully supported by the Division Bench judgment of this

Court in Oriental Bank of Commerce's case (supra). The Division Bench of this Court in the aforesaid case had occasion to consider as to whether special appeal is maintainable against a judgment of learned Single Judge passed in writ petition arising out of award by Central Industrial Tribunal. The Division Bench of this Court while considering Chapter VIII, Rule 5 of the Rules of the Court laid down in Paragraphs 4 and 5 of the aforesaid judgment as under :-

"4.....

On a plain reading of the above provision, it is clear that if the judgment of the learned Single Judge has been passed in exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award of a Tribunal, Court or Statutory Arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State Lists or the Concurrent List of the Seventh Schedule of the Constitution or of the Government or any officer or authority made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, then no appeal shall lie against the judgment of the Single Judge. If on the other hand, the judgment of the Single Judge is rendered with respect to any matter enumerated in the Union List, then an appeal may be filed against the judgment.

5. The crucial question, therefore, is whether the award passed by the Central Industrial Tribunal in the present case can be said to be with respect to any of the matters enumerated in the State List or the Concurrent List of the Seventh Schedule to the Constitution or it is in respect of a matter under the Union List. Indisputably, the reference to the Central Industrial Tribunal was made by the Central Government (appropriate Government) u/s 10 of the Industrial Disputes Act, 1947 and the Tribunal passed the award in exercise of the jurisdiction vested under the said Act. The Industrial Disputes Act, 1947 deals with matters relating to Trade Unions, Industrial and Labour Disputes; provided in Entry 22 of List III Concurrent List."

52. From the above discussion, it is clear that special appeal filed against the award by Labour Court is not maintainable and the Special Appeal Nos. 1177 of 2001. 416 of 2002 and 541 of 2002 are liable to be dismissed as not maintainable.

53. The submissions made by Arvind Srivastava in Special Appeal No. 878 of 2002 are now to be considered. The first submission of Sri Srivastava is that order of the Appellate Authority falling within the excluded category of appeals have to be an order made by an authority exercising jurisdiction of a Court or Tribunal which has trapping of the Court. The submission is that Joint Director of Education does not have trapping of the Court or Tribunal while exercising the appellate jurisdiction, hence the appeal is not excluded. A plain reading of Chapter VIII, Rule 5 of the Rules of the Court clearly spells out that for attracting the last portion of Chapter VIII, Rule

5 of the Rules of the Court the only requirement is that the order should be of a Government or any officer or authority made or purported to be made in exercise or purported exercise of appellate or revisional jurisdiction under any such Act. Thus under any Uttar Pradesh Act or Central Act with respect to matter enumerated in State List or Concurrent List if any appellate or revisional jurisdiction has been exercised by a authority the special appeal is barred in that case. There is no scope of or reading any such appellate or revisional exercise of jurisdiction having trapping of Tribunal or Court. With regard to judgment and award of Tribunal, Court or Statutory Arbitrator, there is separate category as mentioned in Chapter VIII, Rule 5 (a) of the Rules of the Court. Exercise of appellate or revisional jurisdiction has been separately and dealt with in clause (b) of Chapter VIII, Rule 5 of the Rules of the Court and there is not justification for regarding in clause (b) also that exercise of jurisdiction should be exercise of appellate or revisional jurisdiction as a Tribunal or Court. The Counsel for the respondents has rightly submitted that there is no need to consider the question as to whether Joint Director of Education while exercising the jurisdiction under Regulation 3, Chapter 2 of U.P. Intermediate Education Act, 1921 functions as a Tribunal. He submitted that even if the said Joint Director of Education does not function as Tribunal since he exercised an appellate jurisdiction the special appeal is barred. We folly agree with the submission. There is no need to consider the question as to whether Joint Director of Education exercised jurisdiction as Tribunal or not. It is sufficient for the purposes of this case that Joint Director of Education exercises appellate jurisdiction under statutory regulations framed under U.P. Intermediate Education Act, 1921".

54. Sri Srivastava has heavily relied on Apex Court judgment in Jagwant Sugar Mill's case (supra) and has referred to Paragraph 11 of the aforesaid judgment. Relevant portion of Paragraph 11 of the aforesaid judgment is extracted below :-

"(11) Question whether a decision is judicial or is purely administrative, often arises when jurisdiction of the Superior Courts to issue writs of certiorari is invoked. Often the line of distinction between decisions judicial and administrative is thin but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a Judge or a Tribunal invested with the power to determine questions of law or fact it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial, it is the duty to act judicially

which invests it with that character. What distinguishes an act judicial from administrative is, therefore, the duty imposed upon the authority to act judicially....."

In the aforesaid judgment Apex Court was considering the question as to whether appeal against the order of Conciliation Officer is maintainable u/s 4 of Industrial Disputes (Appellate Tribunal) Act, 1950. The Apex Court in that context examined the question as to whether when an authority which is under duty to act judicially is a Tribunal. As observed above, the plain words of Chapter VIII, Rule 5 of the Rules of the Court do not require that order by the Appellate Authority has to be an order by the Tribunal. Orders passed by appellate and revisional authorities under any U.P. Act or Central Act are dealt and in separate category whereas orders passed by Tribunal and Court are dealt in separate category. By adopting golden rule of interpretation that when words in statute are clear and unambiguous the plain meaning of the words has to be taken, the special appeal is barred if it arises out of writ petition against an appellate order even though Appellate Authority is not a Tribunal or Court. Two Division Benches of this Court in Sita Ram Lal's case (supra) and S.B. Nath's case (supra) had occasion to consider the identical question i.e., whether an special appeal is barred under Chapter VIII, Rule 5 of the Rules of the Court against a judgment of Single Judge arising out of writ petition against the order of Joint Director passed in exercise of power of Regulation 3, Chapter 2 of U.P. Intermediate Education Act. 1921. It was held by the Division Bench in Sita Ram Lal's case (supra) in Paragraph 9 :-

"9. From the facts narrated above it is dear that there was a decision of the Committee of Management placing the appellant senior to respondent No. 4 and in pursuance of the said decision the list was prepared by the Committee of Management. The appellant had not taken any objection that there was no decision of Committee of Management and therefore, the appeal was not maintainable. The order, which was passed by the District Inspector of Schools, shall be treated in the exercise of the appellate jurisdiction under clause (f) of Regulation 3 of the Regulations. Special appeal does not lie against an order passed in exercise of appellate jurisdiction by an authority under Rule 5 of Chapter VIII of the Rules of the Court."

55. The aforesaid judgment do support the contention of Counsel for the respondents that special appeal does not lie against an order of Single Judge arising out of writ petition filed against an appellate order. We do not seen any good ground to take a different view from the aforesaid Division Bench judgment in Sita Ram Lal's case (supra) and S.B. Nath's case (supra).

56. The second limb of submission of Counsel for the appellant was to the effect that the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981 is ultra vires. The Counsel for the respondents has rightly pointed out that there being no prayer in the special appeal for declaring the Uttar Pradesh High

Court (Abolition of Letters Patent Appeal) (Amendment) Act, 1981 as ultra vires and there is no challenge to provisions of Chapter VIII, Rule 5 of the Rules of the Court in this special appeal, the appellant is not entitled to raise this question at the time of hearing. In any view of the matter the question of vires of the U.P. High Court (Abolition of Letters Patent Appeal) Act, 1962 as well as Amendment Act No. 32 of 1972 has already been upheld by Full Bench of this Court in Hakim Singh's case (supra) and by the Apex Court in Firdosh Fatima's case (supra). There is no scope for any argument regarding challenge to vires of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981. The Constitution Bench of this Court in [Hasinuddin Khan and Others Vs. Deputy Director of Consolidation and Others](#), had upheld the validity of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 as well as Amendment Act 33 of 1972. The relevant constitutional entries pertaining to State Legislature regarding abolition of special appeals in the High Court has been considered by the Full Bench of our Court in Hakim Singh's case (supra). The ratio laid down by the Apex Court in Smt. Firdosh Fatima's case (supra) as well as Hasinuddin Khan's case (supra) is fully attracted on the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Act, 1981 and there is no substance in arguments raised by Shri Srivastava regarding vires of the aforesaid Amendment Act. It is to be noted that in Smt. Firdosh Fatim's case (supra) the Apex Court upheld the validity of the Uttar Pradesh High Court (Abolition of Letters Patent Appeal) Act, 1962 as well as Amendment Act 33 of 1972. Validity of Chapter VIII, Rule 5 of the Rules of the Court has not been challenged by Counsel for the appellant. Filing of the special appeal is regulated by Chapter VIII, Rule 5 of the Rules of the Court and as observed above, the High Court has jurisdiction under Article 225 of the Constitution to frame Rules. There being no challenge to Chapter VIII, Rule 5 of the Rules of the Court, the submission of Counsel for the appellant that special appeal is maintainable due to above submission cannot be accepted. The decision of Apex Court in Share/a Devi's case (supra) as relied by Counsel for the appellant is not applicable in the present case. The aforesaid case arose from Patna High Court. The question considered by the Apex Court was as to whether Letters Patent Appeal is maintainable against a judgment passed in appeal u/s 54 of Land Acquisition Act. The Apex Court in the aforesaid judgment held that powers given to a High Court under the Letters Patent are akin to Constitutional power of the High Court. Thus when a Letters Patent grants to a High Court power of appeal, against a judgment of Single Judge the right to entertain the appeal would not get excluded unless the concerned statutory enactments exclude an appeal under the Letters Patent. The law laid down by Apex Court in Paragraph 9 of the aforesaid judgment clearly lays down that right to entertain appeal would not get excluded unless the concerned statutory enactments exclude an appeal. In our High Court as noted above, there is the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 which excludes the special appeal in several categories. The judgment of Sharda Devi's case (supra) is not applicable in the present case on similar reasons which have been noted in

preceding paragraphs while holding that judgment of the Apex Court in Central Mine Planning"s case (supra) is not applicable in the present case. In our High Court special appeal is excluded by virtue of aforesaid Abolition Act, 1962. The last submission of Counsel for the appellant is that since appellate power has not been exercised by the Joint Director of Education under the U.P. Act but under regulations framed under the Act, bar of Chapter VIII, Rule 5 of the Rules of the Court will not be attracted needs consideration. The words used in Chapter VIII, Rule 5 of the Rules of the Court refers to the words "in the exercise of purported exercise of appellate or revisional jurisdiction under any such Act." The regulations under which appellate power has been exercised by the Joint Director has been framed under the provisions of U.P. Intermediate Education Act, 1921. The pertinent words under Chapter VIII, Rule 5 of the Rules of the Court are "exercise of appellate or revisional jurisdiction under any such Act." The exercise of appellate power under regulation has to be treated exercise of power under U.P. Intermediate Education Act. The regulations framed under the U.P. Intermediate Education Act, 1921 are statutory regulations. Regulations making power has been expressly conferred u/s 9 of the U.P. Intermediate Education Act and since the regulations have been framed under the Act they have force of law and are legislative in character. Apex Court in 2001(1) SCC 728, State of Karnataka and Anr. v. B. Suvarana Malini and Anr., while considering the rules framed u/s 8 of Karnataka State Civil Services Act, 1978 held that rules would have the force as State legislation have framed the rules. The Apex Court in Paragraph 4 of the aforesaid judgment laid down as under:-

"4.....The Karnataka State Civil Services Act is an Act to regulate the recruitment and the conditions of service of persons appointed to civil services of the State of Karnataka and posts in connection with the affairs of the State of Karnataka. Section 3 authorises the State Government to make rules, regulating recruitment and the conditions of service. Section 8 is the rule-making power of the State Government to make rules to carry out the purposes of the Act. Under Sub-section (3) of Section 8, every rule made under the Act is required to be laid as soon as may be, after it is made before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and any modification in the rule, as desired by the House, could be carried out or if both House agree that the rule should not be made, in which case the rule will not be effective and it is only when the House agrees, with or without any modification, then the rules shall have the effect in such modified form. The Absorption rules being the rules made in Sub-section (3) of Section 8. having been duly complied with, the rule is legislative in character and would have the force, as if the State Legislature has framed the rules."

Thus, appellate power exercised by Joint Director Education under statutory regulations is also a power exercised under the Act and it cannot be said that the said power is not a power exercised under the U.P. Act. In view of the above, the bar

contemplated under Chapter VIII, Rule 5 of the Rules of the Court is fully applicable and the above submission of Counsel for the appellant has no substance.

57. The submission of Sri R.K. Srivastava in Special Appeal No. 487 of 2002 that State Government while exercising the appellate jurisdiction under U.P. Cane (Supply and Purchase Regulations) Act, 1953 is not acting as a Tribunal, hence special appeal is not barred. The aforesaid submission has already been considered in detail in preceding paragraphs. The reliance of Sri Srivastava on judgment of this Court in *Pratapnagar Sugar and Industries*" case (supra) is misplaced. In *Pratapnagar Sugar Industries*" case (supra) it was held that Deputy Labour Commissioner while exercising the jurisdiction under standing orders function as a Tribunal and has all trapping of the Court. The Division Bench in the aforesaid judgment held that since the order of Deputy Labour Commissioner was by the Tribunal, special appeal was not maintainable. The aforesaid judgment was considering the question as to whether the Deputy Labour Commissioner while exercising jurisdiction under standing order function as Tribunal or not. The appeal was held not maintainable after recording finding that said Deputy Labour Commissioner function as Tribunal. In the present case bar of maintainability of the special appeal is pressed on the ground that State Government has passed order as Appellate Authority under 1953 Act. Bar is not pressed on the ground that State Government while passing the order function as Tribunal. As held above, if the order is passed by Appellate Authority in exercise of power under U.P. Act the bar of special appeal will come into play irrespective of the fact whether the Appellate Authority passed order as Tribunal or not. The aforesaid judgment is, thus clearly distinguishable and is not attracted.

58. In view of the aforesaid discussion, the Special Appeal Nos. 878 of 2002, 487 of 2002 and 607 of 2002 are held to be not maintainable since the aforesaid special appeals arose out of the appellate or revisional order.

59. The third category special appeal being Special Appeal Nos. 1118 of 2002 and 532 of 2002 arise out of writ petition in which order of Election Tribunal was challenged. The Election Tribunal while deciding the Election Petition functions as a Tribunal. Statutory rules have been framed regarding procedure to be followed while deciding the Election Petition. Certain provisions of CPC as well as provisions of Evidence Act are attracted while deciding the Election Petition. The Election Tribunal decides lis between the parties. Parties are entitled to lead evidence before the Election Tribunal. Election Tribunal, has thus, all trapping of Court and Election Tribunal is a Tribunal. Special appeal against the order passed in writ petition arising out of order of Election Tribunal is not maintainable. u/s 12-C of U.P. Panchayat Raj Act Election Petition is to be heard and decided in accordance with the statutory rules, namely, Uttar Pradesh Zila Panchayat (Settlement of Disputes Relating to Membership) Rules, 1994. Rule 11 of the aforesaid 1994 Rules are extracted below :-

"11. Procedure before the Judge.-(1) Except so far as provided by the Act or in these Rules, the procedure provided in Code of Civil Procedure, 1908 in regard to suits shall in so far as it is not inconsistent with the Act or any provisions of these Rules and it can be made applicable, be followed in the hearing of the petitions :

Provided that:

(a) any two or more petitions to the membership of the same person may be heard together;

(b) the Judge shall not be required to record the evidence in full but shall make a memorandum of the evidence sufficient in his opinion for the purpose of deciding the case;

(c) the Judge may, at any stage of the proceedings; require the petitioner to give further cash security for the payment of the casts incurred or likely to be incurred by any respondent;

(d) for the purpose of deciding any issue, the Judge shall only be found to order production of or to receive only so much evidence, oral or documentary as he considers necessary;

(e) any person aggrieved from the decision of the Judge may apply for review to the Judge within 15 days from the date of decision and the Judge may thereupon review the decision.

(2) The provisions of the Indian Evidence Act, 1872 (Act No. 1 of 1872) shall, subject to the provision of the Act and these Rules, be deemed to apply in all respects in the proceedings for the disposal of the petition."

60. Taking into consideration the aforesaid Rules and the power which is being exercised by the Election Tribunal, it is clear that Election Tribunal functions as Tribunal and it has all trapping of Court. In Special Appeal No. 532 of 2002 the Election Tribunal is Additional District Judge, Bareilly. Two decisions cited by Sri V.S. Sinha, Advocate appearing for the appellant in Special Appeal No. 532 of 2002 need to be considered. The decision of Prakash Timbers (Summary of Cases) (supra) was with regard to order passed by Company Law Board. The aforesaid case was on its own footing. In the aforesaid case the Division Bench of this Court had no occasion to consider as to whether Election Tribunal is a Tribunal. In these special appeals since orders were passed by Election Tribunal, the appeal is barred by Chapter VIII, Rule 5 of the Rules of the Court. The Division Bench judgment of this Court in Pratappur Sugar and" Industries" case (supra) has clearly held that if writ petition was filed challenging the order of Tribunal, special appeal is not maintainable. The Division Bench in Paragraph 15 of the aforesaid judgment held as under :-

"15. For the reasons discussed above, the inescapable conclusion is that an Additional/Deputy Labour Commissioner while exercising jurisdiction under

Sub-section (6) of Clause II of the Standing Orders Junctions as a Tribunal. The writ petition had been filed challenging the order of Deputy Labour Commissioner and being a Tribunal, the present special appeal under Chapter VIII, Rule 5 of the Rules of the Court is not maintainable. The special appeal is accordingly dismissed."

61. The next case relied by Counsel for the appellant is State of U.P. v. Smt. Dayavati Khanna (supra). In the aforesaid case the argument which was raised before the Division Bench was to the effect that special appeal would be competent only from an order passed in a writ petition which is required to be heard by Single Judge but not when an order is passed by Single Judge in a writ petition cognizable by Division Bench. The said argument was considered and it was held that appeal was maintainable since the judgment passed was of a Single Judge dated 29th April, 1993. The aforesaid judgment does not in any manner help the Counsel for the appellant. The Division Bench judgment of this Court reported in 1998 (32) ALR 603, Smt. Rama Devi v. Smt. Madhnri Verma and Ors., is fully applicable in the present case. In the aforesaid judgment the Division Bench held special appeal not maintainable in a case, which arose out of writ petition, filed against the order of Election Tribunal. In the aforesaid case Prescribed Authority exercising power u/s 12-C of U.P. Panchayat Raj Act passed a recounting order, The Division Bench upheld the objection or maintainability of the special appeal. It was laid down in Paragraph 6 of the judgment:

"6. It is clear from the aforesaid Rule that no special appeal is maintainable in the cases where the controversy does not originate before the High Court. The Rule admittedly is based on a logic that the Prescribed Authority or the Revisional Authority which act as Tribunal/Court having already appreciated the matter from judicial angle and in order to get finality the decision of the Single Judge should be taken as final and no appeal should further be maintainable. This Court has taken similar view in Sita Ram Lal v. D.I.O.S., Azamgarh and Ors., wherein the main object of Chapter VIII, Rule 5 has been duly discussed."

62. In view of the foregoing discussions, it is clear that special appeal arising out of writ petition filed against the order passed by Election Tribunal are also barred by Chapter VIII, Rule 5 of the Rules of the Court. Consequently Special Appeal Nos. 1118 of 2002 and 532 of 2002 are liable to be dismissed as not maintainable.

63. The last category of appeal arises out of revision which was filed against the order of Deputy Director of Consolidation passed in exercise of revisional jurisdiction u/s 48 of U.P. Consolidation of Holdings Act, 1953. Since the challenge in the writ petitions were against the revisional orders passed under U.P. Consolidation Holdings Act, the said special appeals are clearly barred under Chapter VIII, Rule 5 of the Rules of the Court as discussed above. The orders passed under U.P. Consolidation of Holdings Act, 1953 by the consolidation authorities can also be said to be orders passed by Tribunal attracting the bar under Chapter VIII, Rule 5 of the Rules of the Court. The consolidation authorities exercise their

jurisdiction under the U.P. Consolidation of Holdings Act, 1953. The consolidation authorities while exercising their power and jurisdiction under the U.P. Consolidation of Holdings Act, 1953, function as Tribunal and have all trappings of the Court. Various provisions of U.P. Consolidation of Holdings Act, 1953 make it clear that they adjudicate list between the parties on the basis of evidence brought before them including the oral evidence. There is forum of appeal and revision in the Consolidation Act and the orders passed by consolidation authorities bar jurisdiction of Civil Court which makes it clear that adjudication of rights by consolidation authorities have been given finality. Various provisions of U.P. Consolidation of Holdings Act including provisions of Sections 38, 39, 40, 41(a), 49 and 53-B make it clear that jurisdiction exercise by consolidation authorities are in the nature of jurisdiction of a Court and Consolidation Courts have all trappings of the Court while adjudicating the dispute. Thus the orders of consolidation authorities being orders of a Tribunal, the special appeals arising out of writ petition against the order of consolidation Courts are also barred due to above reason. Thus this is an additional reason for holding special appeal arising out of writ petition against the orders passes by Consolidation Courts barred under Chapter VIII, Rule 5 of the Rules of the Court. Consequently, Special Appeal Nos. 485 of 2002, 501 of 2002 and 531 of 2002 are also liable to be dismissed as not maintainable.

64. From the above discussions and looking into the provisions of U.P. Act No. 14 of 1962 as amended by Amendment Act of 1981 and Chapter VIII, Rule 5 of the Rules of the Court, 1952, special appeal is excluded from a judgment of one Judge of this Court in following categories :-

- (i) Judgment of one Judge passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court.
- (ii) Judgment of one Judge in the exercise of revisional jurisdiction.
- (iii) Judgment of one Judge made in the exercise of its power of Superintendence.
- (iv) Judgment of one Judge made in the exercise of criminal jurisdiction.
- (v) Judgment of order of one Judge made in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award of a Tribunal, Court or Statutory Arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in State List or Concurrent List.
- (vi) Judgment or order of one Judge made in exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award by the Court or any officer or authority made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any Uttar Pradesh Act or under any Central Act.

65. In view of the foregoing discussions all these special appeals are held to be not maintainable under Chapter VIII, Rule 5 of the Rules of the Court and are dismissed accordingly as not maintainable.