CHAPTER – IV
SPECIAL LEAVE TO APPEAL : A STUDY IN REFERENCE TO CIVIL CASES

Supreme Court has emphasized that the Indian Constitution under Article 136 vests Supreme Court with powers to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India except a court or Tribunal constituted by and under any law relating to Armed Forces. The Court’s appellate power under Article 136 is plenary; it may entertain any appeal by granting special leave against any order made by any magistrate, tribunal or any other subordinate court. The width and amplitude of the power is not affected by the practice and procedure followed by the Supreme Court in insisting that before invoking the jurisdiction of the Supreme Court under Article 136 of the constitution, the aggrieved party may exhaust remedy available under the law before the appellate authority or the High Court. Self imposed restrictions by the Supreme Court do not divest it of its wide powers to entertain any appeal against any order or judgment passed by any court or tribunal in the country without exhausting alternative remedy before the appellate authority or the High Court. The power of the Supreme Court under Article 136 is unaffected by Article 132, 133, 134 & 134 (A) in view of the non-obstante clause occurring in Article 136.

Article 136 (1) of the Constitution confers on the Supreme Court overriding and extensive powers of granting special leave to appeal. Article 136 does not confer a right to appeal, it confers a right to apply for special leave to appeal which is in the discretion of the court. The discretionary power under Article 136 cannot be constructed as to confer a right of appeal where none exists. Although the power under Article 136 (1) in unfettered but it cannot be held that after having entertained a special leave petition against any final or interlocutory order, the Supreme Court converts itself into a court of appeal for the hearing of the dispute involved and as such when the appeal is dismissed the decree passed by the High Court merges into the decree of the Supreme Court.

With regard to the question of the legal implications and the impact of an order rejecting a petition seeking grant of special leave under Article 136 of the Constitution of India, the apex Court opined that the appellate jurisdiction exercised...
by the Supreme Court is conferred by Article 132 to 136 of the Constitution. Articles 132, 133 and 134 provide when an appeal there under would lie and when not Article 136 of the Constitution is a special jurisdiction conferred on the Supreme Court which is sweeping in its nature. It is a residuary power in the sense that it confers an appellate jurisdiction on the Supreme Court subject to the special leave being granted in such matters as may not be covered by the proceeding Articles. It is an overriding provision conferring a special jurisdiction providing for invoking of the appellate jurisdiction of the Supreme Court not fettered by the sweep of the preceding Articles. Article 136 opens with a non-obstante clause and conveys a message that even in the field covered by the preceding Articles, jurisdiction conferred by Article 136 is available to be exercised in an appropriate case. It is an untrammeled reservoir of power incapable of being confined to definitional bounds, the discretion conferred on the Supreme Court being subjected to only one limitation, that is, the wisdom and good sense or sense of justice of the judges. No right of appeal is conferred upon any party; only discretion is vested in Supreme Court to interfere by granting leave to an applicant to event in its appellate jurisdiction not open otherwise and as of right. The exercise of jurisdiction conferred on the apex court by Article 136 of the Constitution implies two steps (i) granting special leave to appeal; and (ii) hearing the appeal. The distinction is clearly demonstrated by the provisions of order XVI of the Supreme Court Rules framed in exercise of the power conferred by Article 145 of the Constitution. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner has no locus standi to file the petition, (iv) the question raised by the petitioner for consideration by the apex Court being not fit for consideration and so on. In any case, the dismissal would remain a dismissal by a non speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are merits of the special leave petition only and thus neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order.
Scope

In Durga Shankar Mehta v. Raghuraj Singh\(^1\), the scope and extent of power of Supreme Court to entertain appeal by special leave was deliberated. In this case the consideration before election Tribunal was regarding allegations made against the appellant accusing him of various corrupt practices which the election tribunal held unfounded and not supported by proper evidence but with regard to allegations against respondent No. 2, the tribunal found it true and came to the conclusion that the accept once of the nomination of respondent No. 2, by returning officer was improper as he was disqualified number of times earlier. It is the propriety of the decision of tribunal that was challenged by an appeal by special leave before the Supreme Court.

On the pretext of facts, the Supreme Court opined that the jurisdiction of Election tribunal is a special jurisdiction but once it is held that it is a judicial tribunal obliged to deal judicially with dispute, then the overriding power of Supreme Court cannot be excluded by any Parliamentary Legislation. The court opined that once that tribunal had made any determination or adjudication on the matter, the power of this court to interfere by way of special leave can always be exercised.

The apex court opined that the expression ‘Tribunal’ as used in Article 136 does not mean the same thing as ‘court’ but includes within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial functions. Moreover, an appeal is a creature of the statute and there is no inherent right of appeal. The powers given by Art 136 of the Constitution are in the nature of special or residuary powers and vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting of special leave against any kind of judgment or order made by a court or tribunal. The Constitution for the best of reasons did not choose to fetter the powers exercisable in Article. 136.

The court opined that section 105 of the Representation of the People Act, certainly gives finality to the decision of the election tribunal so far as that Act is concerned and does not provide for any further appeal but that cannot in any way cut

\(^1\) AIR 1954 SC 520
down or affect the overriding powers which The Supreme Court can exercise in the matter of granting special leave under Article 136 of the Constitution.

*In Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal*, a best judgment assessment of a company was made by the assessing officer on the basis of the self assessment of the company as well as a comparative assessment of other companies for the relevant assessment year. It was done because the company accounts books were in the custody of the Sub-Divisional Officer, Naryanganj which could not be produced by the company. Unsatisfied by the assessment of assessing officer, the company preferred an appeal before the appellate assistant commissioner as well as before the Income Tax Tribunal but without any success. The company preferred an application to Tribunal for referring the case to High Court for determination of questions of law but the same was denied. The company applied to the High Court for the issuance of a mandamus to the tribunal but the application was summarily rejected.

Having exhausted all the remedies available under the Income Tax Act, the company preferred on appeal before the Supreme Court. The learned solicitor general submitted that the discretionary power conferred on the apex court should not be exercised for the purpose of reviewing finding of facts when the law dealing with the subject has declared those findings as final and conclusive. Moreover, when such findings are abused on material and the authorities have not acted arbitrarily.

The apex court opined that all that can be said is that the constitution having trusted the wisdom and good sense of the judges of this court in this matter, that itself is a sufficient safeguard and guarantee that the power will only be used to advance the cause of justice and that its exercise will be governed by well established principles which govern the exercise of overriding constitutional powers. It is, however, plain that when the court reaches the conclusion that a person has been dealt with in the territory of India has not given a fair deal to a litigant, no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of exercise of this power because the whole intent and purpose of this article is that it is the duty of this court to see that injustice is not perpetuated or perpetrated by decisions of courts and tribunals because certain laws have made the decisions of these courts or tribunals final and conclusive.

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2 AIR 1955 SC 65
It was observed by the court that the assessing officer has not been empowered by the Income Tax Act to make assessment on the basis of pure guess without reference to any evidence or material.

Furthermore, the non-disclosure of the information supplied by the departmental representative as well as lack of opportunity to rebut such material coupled with refusal to refer the material produced by the assessee amounts to denial of a fair hearing. Since it could not be established from the record with regard to comparative analysis of the profits of the mills as to whether the mills were situated in Bengal or elsewhere or they were similarly situated and circumstanced or not. In situations where the magnitude of problem is higher, the determining authorities are expected to act without unnecessary haste and wherever the determination is done in haste and in a suspicious way. The power can be exercised by the apex court under Art. 136.

*In Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union,* the apex court opined that the order of grant of bonus by labour appellate tribunal to the workers on the basis of social justice approach is not only irrelevant but untenable which should not emanate from fanciful notions of any particular adjudicator but must be founded on solid foundation. Therefore, the order of grant of bonus even in cases of trading laws which was on account of workers out of indiscipline strike cannot be classified as social justice. On this ground, the apex court making use of power under Art. 136 allowed the appeal.

*In M/S Bengal Chemical and Pharmaceutical Works Ltd. v. Their Employees,* there was a dispute between the M/S Bengal Chemical and Pharmaceutical works Ltd (Appellant) and their employees (respondent) as there was a demand of increased Dearness Allowance by the employees. The Govt. of West Bengal referred the dispute between the parties to the IInd Industrial Tribunal under S. 10 of the Industrial Dispute Act, 1947 with the amendment of the Act, by the order of Govt., the dispute was transferred from IInd Industrial Tribunal to the fifth Industrial tribunal. The fifth Industrial tribunal after making necessary inquiry passed the award that there was a rise in the cost of living index and to neutralize it, employees should get an increase of Rs. 7 in DA on the pay scale upto Rs. 50 and Rs. 5 on the pay scale above Rs. 50 Against this award of the tribunal both the

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3 AIR 1955 SC 170.  
4 AIR 1959 SC 633.
company as well as employees preferred a petition by special leave before apex court.

The apex court while dismissing the appeals opined that the findings given by the tribunal is one on fact and cannot be interfered in appeal by special leave. Furthermore, it was opined that Art. 136 of the Constitution does not confer a right of appeal to any party from the decision of any tribunal, but it confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any tribunal in the territory of India. It is implicit in the discretionary reserve power that it cannot be exhaustively defined. It cannot obviously be so construed as to confer a right to a party where he has none under the law. The Industrial Disputes Act is intended to be a self contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given on circumstances peculiar to each dispute and the tribunals are, to a large extent, free from the restrictions of technical considerations imposed on courts. A free and liberal exercise of the power under Article 136 may materially affect the fundamental basis of such decisions, namely, quick solution to such disputes to achieve industrial peace. Though Article 136 is couched in widest terms, it is necessary for this court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice, causing substantial and grave injustice to parties or the case raises an important principles of industrial law recurring elucidation and final decision by this court or discloses such other exceptional or special circumstances which merit the consideration of this court. The learned counsel for the company submitted that these parameters suggested by the apex court apply at the time of granting leave and not at the time of final disposal of the appeal. The apex court submitted with regard to the above contention that the limits to the exercise of the power under Article 136 cannot be made to depend upon the appellant obtaining the special leave of this court, for two reasons, viz; (i) at that stage the court may not be in full possession of all material circumstances to make up its mind and (ii) the order is only an exparte one made in the absence of the respondent. The same principle should, therefore, be applied in exercising the power of interference with the awards of tribunals irrespective of the fact that the question arises at the time of granting special leave or at the time the appeal is disposed off. It would be illogical to apply two different standards at two different stages of the same case.
In *P.J. Ratnam v. D. Kanikaram*, an appeal by special leave was filed against the judgment of the High Court of Andhra Pradesh which held the appellant (an advocate) guilty of professional misconduct. The appellant was charged for having encashed certain amount belonging to his client and on the findings of the High Court failed to pay it back when demanded. Moreover he had put forward false defence of payment. On complaint by three respondents against appellant for professional misconduct, an enquiry was held by the learned District Judge on the directions of the High Court under the Indian Bar Council Act, 1926 and on considering the report submitted by the District judge and other evidence, the High Court held the appellant guilty of professional misconduct and imposed the punishment of suspension from practice. Against this order of High Court appellant preferred an appeal by special leave.

The apex court while considering the jurisdiction of the court in these sorts of matters opined that the jurisdiction exercised by the High Court in cases of professional misconduct is neither civil nor criminal as these expressions are used in Articles 133 and 134 of the Constitution. In one aspect it is a jurisdiction over an officer of the court and the Advocates owes a duty to the court apart from his duty to his clients. In another aspect it is a statutory power under s.10 of the Bar councils Act to ensure that the highest standards of professional rectitude are maintained, so that the Bar can render its expert service to the public in general and the litigants in particular and thus discharge its function of co-operating with the judiciary in the administration of justice according to law. The primary responsibility in such matters rest with the High court and the Supreme Court is in consequence most reluctant to interfere with the orders of the High Court Only in exceptional cases where any question of principle is involved or where the court is persuaded that any violation of the principles of natural justice has taken place or there has been miscarriage of justice, the apex court will interfere.

The apex court while dismissing the appeal rejected the contention of the appellant that matter could not have been remitted for inquiry to a district judge unless the statutory pre-condition of consultation with Bar Council had taken place. The apex court opined that this is a question of fact and as it has not been raised earlier even before the High Court, it cannot be allowed to be raised in an appeal.

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5 AIR 1964 SC 244.
before the apex court under Article 136 of the Constitution. There would be a presumption of regularity in respect of official and judicial acts. Further the apex court opined that there is difference in proceedings of professional misconduct and proceeding in criminal court. The proceedings in cases of professional misconduct, though in a sense penal, are solely designed for the purpose of maintaining discipline and to ensure that a person does not continue in practice who by his conduct has shown that he is unfit to do so.

Further in, Shri Kanhaiya Lal Lohia by his legal representatives Mahabir Prasad Khenika v. Commissioner of Income Tax, West Bengal, an appeal by special leave was filed by appellant against the decision of Tribunal although the matter also came before the High Court.

The appellant had gifted certain property to his brother and nephew in 1943. But the Income Tax Officer while making assessment for the year 1945-46 included the gifted property along with the property of the appellant. The Income Tax Officer held that the gifts were not bonafide and were colourable transaction. Against this decision, an appeal was filed before Appellate Assistant Commissioner and the appellate A. Commissioner reversed the award of Income Tax Officer. Then the department preferred an appeal before Appellate Income Tax Tribunal, Calcutta which agreed with Income Tax Officer. Then the application before High Court was made which agreed with the Tribunal. Then appellant moved the Supreme Court under Article 136 of the Constitution against the decision of the Tribunal.

The Apex Court while relying on the principles laid down in earlier decisions, i.e., Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, Baldev Singh v. Commissioner of Income Tax, Chandi Prasad v. State of Bihar held that the apex court can entertain an appeal against the appellate order of the Tribunal where limitation to take other remedies was barred without any fault of the assessee concerned. The ratio in each of these cases is that circumstances which cannot be corrected by the procedure of a stated question of law on a statement of the case may afford a ground for invoking the jurisdiction of the apex court under Article 136 of the Constitution. The ratio does not apply, where a question of law can be raised and is capable of being answered by the High Court or on appeal by

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6 AIR 1962 SC 1323  
7 AIR 1955 SC 65  
8 AIR 1961 SC 736  
9 AIR 1961 SC 1708
the Supreme Court. The apex court while dismissing the appeal observed that no special circumstances existed, on which the assessees could claim to the determination by the Supreme Court against the decision of the Appellate Tribunal.

The position was against reaffirmed in *M/S Soorajmull Nagarmull v. Commissioner of Income Tax, (central) Calcutta*, the assessees and the commissioner filed appeals by special leave before the apex court against the order of the tribunal passed under Section 33(4) of the Indian Income Tax Act, after their applications to the High Court of Calcutta for orders requiring the Tribunal to state a case under Section 66(2) were dismissed.

The apex while dismissing the appeal after paying reliance on *Dhakeswari Cottom Mills Ltd. v. Commissioner of Income Tax, West Bengal*, *Baldev Singh’s case*, and *Chandi Prasad Chakhani’s case* opined that where the High Court passes an order under section 66(2) Income Tax Act, refusing to require the Tribunal to state a case arising out of the Tribunal’s order under section 33(4) of the Act, the Supreme Court in the exercise of its power under Article 136 of the Constitution will not ordinarily entertain an appeal directly against the order of the Tribunal under section 33(4) Income Tax Act unless there are special or exceptional circumstances in the case. This principle would equally apply to a case in which an appeal is filed against the order of the Tribunal as well as against the order of the High Court and the latter appeal is dismissed on merits by the Supreme Court holding that no case is made out for calling for a statement of the case from the Tribunal. In the latter case if the Supreme Court were to proceed to decide the appeal against the Tribunal’s order, it would be a departure from the well settled rule that ordinarily the Supreme Court does not in exercise of its jurisdiction under Article 136, and enter upon a reappraisal of the evidence on which the order of the court or Tribunal is founded. The legislature has expressly entrusted the power of appraisal of evidence to the Taxing authorities, and the decision of those authorities would ordinarily be regarded as final.

Further with regard in the jurisdiction of the Apex Court under Article 136, in *Laliteshwar Prasad Sahi v. Bateshwar Prasad*, opined that section 116-B of the

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10 AIR 1963 SC 491  
11 AIR 1955 SC 65  
12 AIR 1961 SC 736  
13 AIR 1961 SC 1708  
14 AIR 1966 SC 580.
Representation of the People Act cannot restrict, the jurisdiction conferred upon the Supreme Court under Articles 133 and 136 of the Constitution if the circumstances of the case justify, the Supreme Court has the power, and is indeed under a duty, to set aside the verdict of the High Court. A person who has a contractual relationship between him and the executive would, on getting elected be able to bring pressure to bear upon the executive to settle his claim or to secure advantage for himself to which he may not be lawfully entitled. If, on the evidence, substance of the contract which disqualifies a candidate is established, the supreme court would not be justified in refusing to give effect to its conclusion especially when the question vitally concerns the public in keeping out of the legislature persons who have claims arising out of subsisting contracts against the Govt.

With regard to scope of Supreme Court in Article 136 regarding award of Tribunal, the apex court in *Hindustan Antibiotics Ltd. v. Workmen*,\textsuperscript{15} opined that the scope of the power of the Supreme Court under Article 136 of Constitution vis-à-vis awards of Tribunal is not that of a regular court of appeal against orders of tribunals. Article 136 confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any tribunal in the territory of India. Awards under the Industrial Dispute Act are given on circumstances peculiar to each dispute and the tribunals are, to a large extent, free from the restrictions of technical considerations imposed on courts. A free and liberal exercise of the power under Article 136 may materially affect the fundamental basis of such decisions i.e. quick solution to such disputes to achieve industrial peace. In dealing with appeals brought to Supreme Court Article 136 of the constitution against Awards which construct wage structure unless some general are involved. In this case, the question for the consideration before a five judge bench by way of appeals by special leave related whether the wage structure, including dearness allowance of a government undertaking in the public sector should be of a pattern different from that of an undertaking in the private sector. The Industrial Tribunal who heard the dispute between the company and its workmen held that there should be no distinction in fixing the wage scale in public sector undertakings and the private sector undertakings. The tribunal fixed the wage scale considering the Company’s financial

\textsuperscript{15} AIR 1967 SC 948
position, its productive capacity and with regard to wage structure of neighbouring industries. It linked dearness allowance with the cost of living index.

Further it was opined that the object of the industrial law is two fold, namely, (i) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life; and (ii) to bring about industrial peace by that process which would in its turn accelerate productive activity of the country resulting in its prosperity. A reference was also made of the Directive Principles of State Policy (Article 39 & Article 43) providing for the upliftment of the conditions of workers by providing them a living wage and decent of stand and of life and in this regard it was held that no distinction should be made the workers working in Govt. companies or in private sector as the purpose of both is to make profits.

Furthermore, apex court considering the order of Tribunal observed that when Tribunal had taken all relevant circumstances into consideration such as employee’s contribution to employees provident fund, payment of dearness allowances to neutralize the rise in prices, observing general principles in fixing the wages, there is no violation of any principle and there is no exceptional ground for the interference with the award of the Tribunal. In collector, Varnasi v. Gauri Shanker Misra,16 The respondent preferred an appeal before High Court under section 19(1) (f) of the Act for the enhancement of compensation for the land acquired by the Government and the High Court caused the enhancement of the compensation. On this, appellant (collector) field an appeal under Article 136 of the Constitution.

The question for the determination of the apex court was that the appeal was not maintainable as the judgment appealed against was neither that of a court nor a tribunal. Moreover it was also contended that the High Court while acting under section 19(1) (f) was persona designata and not a court or a tribunal.

The apex court while allowing the appeal opined that the appeal provided in section 19(1) (f) is an appeal to the High Court and not to any judge of the High Court. It held that while acting under section 19(1) (f) the High Court functions as a ‘court’ and not as a persona designata. The decision rendered by the High Court is a ‘determination’ and hence it was within the competence of the apex court to grant special leave under Article 136. It was observed that the appeal provided in section

16 AIR 1968 SC 384
19(1) (f) is an appeal to High Court and it does not matter that it arises from the decision of an arbitrator appointed under section 19(1) (b) as there are full instances where appeal or revisions to courts are provided as against the decisions of designated persons and tribunals.

In Baldev Singh v. Commissioner of Income Tax,\textsuperscript{17} the appellant filed a special leave petition before the apex court against the judgment and order of the High Court dismissing the appeal filed against the award of Income tax Appellate Tribunal. Under the Act, appellant can only apply to the Tribunal to refer his case to the High Court when there is question of law involved in it. The appellant applied to Tribunal but with delay of one day. The Tribunal dismissed the application as having been made out of time. Against this dismissal order, appellant applied to High Court at Calcutta but the High Court also dismissed the appeal. The apex court considering the facts of the case condoned the delay and granted special leave. The apex court opined that leave could not be refused on the ground that the assessee had been unsuccessful in availing himself of other remedy provided in the Income Tax Act.

The apex court dismissing the appeal observed the provisions of Income Tax Act as provided by the legislature is to prevent the evasion of Income Tax and so it was observed that it is not a fit case for interference of apex court.

In Kirloskar Oil Engines Ltd. v. The Workmen,\textsuperscript{18} there was an industrial dispute and the matter was referred to the industrial Tribunal which made its award which dealt with the demand of privilege leave and different kind of allowances. On this the appellant applied to the State Govt. for reference of certain points to the tribunal for its clarification under s. 36A of the Industrial Dispute Act. 1947. The clarification award was thus made by the tribunal and submitted to the Govt. and against this award special leave was filed by the appellant.

The apex court while dismissing the appeal opined that a proceeding contemplated by section 36-A is not a proceeding intended to enable the tribunal to review or modify its own order, it is intended to enable the tribunal only to clarify the provisions of its award where a difficulty or doubt arose about the interpretation of the provisions. If the words used in any provision of an award are ambiguous or obscure and it is not reasonably possible to interpret them, the difficulty arising from

\textsuperscript{17} AIR 1961 SC 736
\textsuperscript{18} AIR 1966 1903
the use of such ambiguous or obscure words may be resolved by moving the appropriate Govt. to make a reference under s. 36A. It is obvious that any question about the prosperity, correctness or validity of any provisions of the award is aggrieved by any of its provisions on the merits, the only remedy available to it is making an appeal under Article 136 of the Constitution, to Supreme Court. The grievance felt by a party against any provision of the award can be ventilated only in that way and not by adopting the procedure prescribed by section 36 A. Thus where the impugned provisions in the award in relation to certain demand are clear and unambiguous and there is no difficulty or doubt about their meaning, whatever may be the grievances of the party in respect of the validity or the propriety of the said direction, the Tribunal is right in refusing to alter it in the proceeding under section 36A.

In the Kamani Metals and Alloys Ltd. v. The Workmen, an industrial dispute was brought by an appeal by special leave before the three judges bench to consider the contentions of appellant with regard to reversion of wages and monthly pays and the fixing of wage scales and time scales and the increase in dearness allowances by adopting a new system of calculation.

The apex on the analysis of the case while dismissing the appeal opined that fixation of a wage structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workmen should receive their proper share of the national income which they help to produce with a view to improving their standard of living. Minimum wage must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. A fair wage is thus related to the earning capacity and the workload. In fixing a fair wage, the capacity of the industry to bear the burden of the said wage scale is a very relevant factor.

Further it was opined that an appeal against an award brought by special leave is not an appeal as of right. It is not intended to be an appeal on every ground of fact and of law unless this court considers it fit to examine the matter from any special angle. Before a party can claim redress, it must show that the award is defective by reason of an excess of jurisdiction or of a substantial error in applying

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39 AIR 1967 SC 1175
the law or of some settled principle or of some gross and palpable error occasioning substantial injustice.

In Barium Chemical Ltd. v. Company Law Board,\(^{20}\) it was pointed out by Shelat, J. that though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of malafides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In anyone of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.

In Chandra Mohini v. Avinash Prasad,\(^{21}\) the apex court opined that special leave cannot be revoked on the grounds put forward by respondent i.e. HC granted divorce to the respondent and ordered its decree, with the result that the marriage between appellant and respondent stood dissolved when the High Court allowed the appeal. The apex court further opined that section 28 of the Hindu Marriage Act interalia provides that all decrees and orders made by the court in any proceeding under the Act may be appealed from under any law for the time being in force, as if they were decrees and orders of the court made in the exercise of its original civil jurisdiction. Further Section 15 of the Act provides that when a marriage has been dissolved by a decree of divorce or there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, it shall be lawful for either party to marriage to marry again.

Further it was opined that the party who has own in the High Court and got a decree of dissolution of marriage cannot by marrying immediately after the HC’s decree and thus take away from the losing party the chance of presenting an application for special leave. If a person does so, he takes a risk and thus cannot ask this court to revoke special leave on this ground.

\(^{20}\) AIR 1967 SC 295
\(^{21}\) AIR 1967 SC 551
In Narmada Prasad v. Chhagan Lal, a case concerning corrupt practices under Representation of Peoples Act, the Supreme Court while holding that speech exhorting voters that if they voted for the congress or a congress candidate they would be committing the sin of gohatya amounts to an attempt to induce voters to believe that they would become objects of divine displeasure or spiritual censure falling within the mischief of Section 123(2)(ii), opined that the practice of the courts has uniformly been to give the greatest assurances to the assessment of evidence made by the judge who hears the witnesses an watches their demeanor and judges of their credibility in the first instance. In an appeal, the burden is on the appellant to prove how the judgment under appeal is wrong. To establish this he must do something more than merely ask for a re-assessment of the evidence. He must show wherein the assessment has gone wrong. Where the court of first instance relies upon probabilities alone, the appellate court may be in as good position as the court of trial in judging of the probabilities; but where the court of trial relies upon its own sense of the credibility of a witness, the appellate court is certainly at a disadvantage, because it has not before it the witness but the dead record of the deposition as recorded.

Further in Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh an appeal by special leave was filed against order of the Central Board of Revenue and against the Govt. of India as the revisional application filed by the appellant had failed. The questions for the consideration of the apex court were whether the custom authorities working under section 167 (12A) and the Central Board of Revenue and Central Govt. under Sea Customs Act are a Tribunal or not; and whether the fine imposed by custom authorities for the contravention of s. 52A of Sea Customs Act which provide for alteration made in the paneling of a ship can be altered by the apex court in appeal by special leave and lastly whether the leave granted ex-parte can be raised as a point by the respondent at final hearing of the appeal.

The apex court while dismissing the appeal opined that in cases where special leave has been granted at the ex-parte hearing of the matter on the petition of the appellant for special leave, the respondent can at the final hearing, raise a preliminary contention that special leave should not have been granted, since the

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22 AIR 1969 SC 395
23 AIR 164 SC 1140. See also, Jaswant Sugar Mills Ltd v. Lakshmi Chand, AIR 1963 SC 677; Engineering Mazdoor Sabha v. Hind Cycles Ltd., AIR 1963 SC 874
decision, judgment or order appealed against has not been granted, since the
decision, judgment or order appealed against has not been pronounced either by a
court or tribunal within the meaning of Article 136 (1).

With regard to the contention that the custom authorities are not Tribunal, the
apex court opined that the customs officers are not required to act judicially on legal
evidence tendered to oath and they are not authorized to administer oath to any
witness. Therefore customs officer is not a court or Tribunal though in adjudicating
upon matters under s. 167 of the Act, he has to act in a judicial manner. With regard
to Central Board of Revenue and the Central Govt., the apex court opined that these
appellate and the revisional authorities are constituted by the legislature and they are
empowered to deal with the disputes brought before them by aggrieved persons.
Thus, the scheme of the Act, the nature of the proceedings brought before the
appellate and revisional authorities, the extent of the claim involved, the nature of
the penalties imposed and the kind of enquiry which the Act contemplates, all
indicate that both the appellate and the revisional authorities acting under the
relevant provisions of the Act constitute Tribunals under Art. 136 of the Constitution
because they are invested with the judicial powers of the State, and are required to
act judicially.

_In the Associated Cement Companies Ltd. v. Cement Workers Kamdar
Union, 24_ an appeal by special leave was filed against the award of the Industrial
Tribunal. The Tribunal by its award directed the appellant that he shall not insert
upon the production of medical certificate for obtaining sick leave for the duration of
one day and in case a workman abuse this provision, disciplinary proceedings can be
initiated against him by the appellant. Against this decision, the appellant filed an
appeal by special leave before the apex court.

The three judges bench while discussing the fate of appeal relied on the
earlier judgments, i.e., _Bengal Chemical and Pharmaceutical works Ltd case_ 25 and
_Hindustan Limited Case_ 26 and opined that the Supreme Court will not interfere with
the award of the Industrial Tribunal which is arrived at on a consideration of all the
materials placed before it especially when it does not raise any important principle
of law requiring elucidation and final decision by Supreme Court and when it does

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24 AIR 1972 SC 1552
25 AIR 1959 SC 633
26 AIR 1967 SC 948
not disclose any exceptional or special circumstances which merit decision by the Supreme Court.

*In Mundrika Prasad Sinha v. State of Bihar*[^27] The apex court while dismissing the appeal opined that Article 136 has its own conditions and limitations. Without substantial question of law of public importance which deserves to be decided by the Supreme Court or at least flaw in law which is fraught with manifest injustice, there is no other open sesame for this house of justice.

*In Delhi cloth and General Mills Co. Ltd. v. State of Rajasthan*,[^28] an appeal by special leave was filed against the decision of Board of Revenue for Rajasthan. The appellant’s contention was that the Rayon Tyre Cord Fabric is a Rayon Fabric covered by item 18 of the Schedule to the Rajasthan Sales Tax Act, 1954 and is thus exempted from Sales Tax. The Commercial Tax Officer rejected the contention of the appellant and on appeal before High Court, appeals were dismissed. Appeals were also filed before Deputy Commissioner and after considering the whole evidence, these appeals were also dismissed. Then application in revision was moved to the Board of Revenue for Rajasthan which also dismissed the revision application on the ground that the product was not a fabric.

The apex court while allowing appeal by special leave opined that whether rayon tyre cord fabric falls within entry 22 of the schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, is not one of fact. It is one of substantial importance and Supreme Court can entertain appeals for deciding it on merits. Further it was opined that by and large a tyre cord fabric is regarded a textile fabric. The peculiar feature that the tyre cord constitutes the dominating element indicating the use to which the fabric is put and the close concentration in which it is packed in contrast to the light density with which the weft thread is woven does not detract from the conclusion that it is a textile fabric. Furthermore, it was opined that Item 22 of the First Schedule to the Central Excises and Salt Act speaks of ‘all varieties of fabrics’, Thus the language is wide enough to include the rayon tyre cord fabric manufactured by the appellant.

*In Show Wallace and Co. Ltd. v. Workmen*,[^29] an appeal by special leave was filed against the decision of the labour court where the labour court found that the

[^27]: AIR 1979 SC 1871
[^28]: AIR 1980 SC 1552
[^29]: AIR 1978 SC 977
termination of services was improper and so labour court awarded compensation to him instead of directing reinstatement of the workmen.

The apex court while dismissing the appeal opined that the special jurisdiction of this court under Art. 136 can be invoked ordinarily only where there is manifest injustice, fundamental flaw in law or perverse findings of facts. So the jurisdiction stands repelled unless there are special circumstances.

In *M/S Hinustan Tin Works Pvt. Ltd. v. The Employees of M/S Hindustan Tin Works Pvt. Ltd.*, an appeal by special leave was filed against the decision of labour court reinstating the workmen in service with full back wages as it seems that there was no real reason for effecting retrenchment other than the annoyance felt by the management.

Opined that though Article 136 is couched in widest terms, it is necessary for the Supreme Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice causing substantial and grave injustice to parties or raises an important principle of industrial law requiring elucidation and final decision by Supreme Court or discloses such other exceptional or special circumstances which merit consideration of Supreme Court. Further it was opined that when the termination of services was found to be neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered services they would legitimately be entitled to the wage for the same. If the workmen were always ready to work but they were kept away from on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

*Further in Management of D.T.C v. B.B.L Majalay*, the question before the apex court related to the payment of two trivial sums to the respondent who were dismissed by the appellant.

The apex court while dismissing the appeal opined it is not necessary that once special leave granted under Article 136, the apex court is bound to decide every question of law, be it big, small or petty in the sense of actual subject matter.

In *Shantittal Manganlal v. Chuni Lal Ranchaddas*, the two judge bench while dismissing the special leave petition along with review application opined that

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30 AIR 1979 SC 75
31 AIR 1978 SC 764
32 AIR 1984 SC 1578
the way in which the petitions are filed is nothing short of an abuse of the process of the court and waste of time as it increases the daily amounting errors. The petitions are field in indiscriminate manner as no grounds and facts are mentioned for consideration of court. The apex court depreciated this practice of filing petitions in indiscriminate manner.

In *Dev Singh v. The Registrar, Punjab and Haryana High Court*, an appeal by special leave was filed against the decision of High Court dismissing the appeal on the ground that it has no merits. The appellant was slapped by judicial magistrate and on enquiry, the magistrate was held liable. Against this the civil court clerk association made a request to District judge to transfer that judicial magistrate. But due to hardened attitude of District judge, the appellants made a demonstration by shouting slogans for which they were charge sheeted and after a formal enquiry they were finally dismissed from service. The High Court also dismissed the appeal against this order. Then appellant filed an appeal by special leave before apex court. The apex court has to consider whether the High Court in disposing of the appeal of the appellants was administrative capacity or as a tribunal or as High Court.

The apex court while deciding the appeal opined that when judges in exercise of their administrative functions deride cases it cannot be said that their decisions are either judicial or quasi judicial decisions.

In *Smt. Bimla Devi v. Union of India*, an appeal by special leave was filed against the order of the Delhi High Court on the ground that one of the pleas taken did not arise for decision and the same should be considered by the High Court. The apex court while allowing the appeal opined that there was no plea by opposite party that the point was not pressed before High Court, so the case was remitted to High Court for fresh decision on the point in questions.

In *Kanchal Lal v. Board of Revenue*, an appeal by special leave was filed against the decision of the Allahabad High Court causing the eviction of the appellant and the possession of the land in dispute was given back to the earlier tenants as it was found that they had been dispossessed by coercion and the present appellants were the newly induced tenants.

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33 AIR 1987 SC 1629
34 AIR 1990 SC 449
35 AIR 1990 SC 469
The apex court while dismissing the appeal opined that it is not a fit case for calling any interference by the apex court. It is well settled that the apex court is not a regular court of appeal and the extra ordinary jurisdiction conferred under Article 136 of the Constitution will be exercised only when it finds a specific and grave injustice having been done.

In *State of Maharashtra v. G.A. Pitre*, an appeal by special leave was filed against the judgment of the Bombay High Court. In the special leave petition filed earlier to this petition, the apex court by an interim order had directed the Government of Maharashtra to dispose of a question relating to the staying of the cancellation of licenses or lease granted by it should be upheld or set-aside, after hearing the parties by a reasoned order. Despite specific directions given by the Supreme Court from time to time and despite numerous adjournments granted at the instance of the State Government over a period of 21 months, the Government did not dispose of the question.

The two judge bench of the apex court while disposing of the appeal expressed its deep concern over the indefensible indifference shown by the state government to a matter which was pending since long and considered this as a deplorable state of affairs. The Supreme Court observed that the fact that the State Government was unable to take any decision in the matter ‘in view of the Assembly session’, was no reason or justification for the Government to neglect to discharge it’s imperative functions and it was unbelievable that the entire administration of the state had come to a grinding halt on account of the fact that the legislative assembly was in session.

Further adverting to the question of pendency of arrears in various courts and reasons for delay caused in disposing of court cases, the Supreme Court further observed that this special leave petition is a speaking example of how delays occur in administering justice.

In *Thote Bhaskara Rao v. The A.P. Public Service Commission*, an appeal by special leave was filed against the decision of the High Court allowing the letters patent appeal of the respondent. The appellant’s application for appointment as a District Munsiff was rejected by the Andhra Pradesh Public Service Commission. The Andhra Pradesh State Judicial Service Rules provide for the appointment of

36 AIR 1982 SC 1996
37 AIR 1988 SC 830
District Munsiff. Rule 12 requires inter-alia that for a candidate for appointment as a District Munsiff that he should be in actual practice and should have been so engaged for not less than 3 years in a court of civil or criminal jurisdiction. The proviso to rule 12 provides that ‘Provided that in the case of a person who is already in Government service and who applied for appointment to the post of District Munsiff by direct recruitment, he must have actually practiced for a period of not less than 3 years immediately prior to the date of his entering the Government Service.’

The appellant was in service of the Hindustan Shipyard which although a fully owned undertaking of Central government cannot be equated with Government or State except for purposes of Part III of the Constitution. On this the appellant contended that the word ‘government’ should be deleted from proviso.

The apex court while dismissing the appeal opined the proviso is valid and effective and cannot be challenged on the ground of illegal discrimination having regard to the difference in the nature of service under the Government and that of the other services. Further the apex court expressed serious doubt whether court can reframe a rule and give effect to it as contended by the appellant.

*The Managing Board of the Milli Talimi Mission, Bihar v. The State of Bihar,*38 an appeal by special leave was filed against the High Court of Patna. The appellant, a minority institution started as Teacher Training College applied for grant of affiliation to the Govt. The govt. directed the universities for not granting affiliation to any non-govt. Teacher Training Colleges except minority institution. Thereafter university authorities inspected appellant’s college and recommended for grant of affiliation but no final decision was taken by the govt. As a result of this, appellant filed a writ petition before High Court which results in approval for affiliation by Govt. for only three sessions, i.e., upto 1980. Thereafter, the appellant applied for permanent recognition but the govt. without any reason cancelled the recognition and approval for affiliation already granted. The High Court quashed the order passed by the govt., and as a result, the State of Bihar filed a special leave petition which was dismissed. Then again the appellant moved the High Court for permanent recognition. The Education Commissioner made a recommendation for grant of affiliation to the appellant’s college but the writ petition was dismissed by

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38 AIR 1984 ASC 1757
the High Court in limine. As such refusal contravenes the provision of Article 30 of
the Constitution, the appellant moved the apex court by filing an appeal by special
leave under Article 136 of the Constitution.

_Fazal Ali, J._, on behalf of majority opined that while affiliation of an
institution to University itself may not be a fundamental right but refusal of
affiliation on term and conditions are situations which practically denies the progress
and autonomy of the institutions is impermissible as being violative of Article 30 of
the Constitution.

In _State of Bihar v. Ramjee Prasad_39, an appeal by special leave was filed
against the decision of the High Court of Patna. The facts of the case provide that the
State of Bihar published an advertisement inserting application for appointment to
various posts including – Assistant Professor, Register, Assistant clinical
Pathologist, Anesthetist, Resident Medical Officer and Demonstrator.

The last date for receipt of the application was fixed as 31st January, 1988.
Pursuant to the said advertisement applications were received from eligible
candidates and the select list or panel was prepared for appointments to the
respective posts. The respondents and some interveners who held appointments as
junior teachers in one or other medical college questioned the validity of State’s
action on the ground that the last date for receipt of application fixed as 31-1-1988
(cut off date) was arbitrarily fixed and was therefore violative of Article 14 of the
Constitution. The High Court took the view that the State Govt. had deviated from
its usual practice of fixing the cut of date as 30th of June of the relevant year. The
High Court held that there was no rationale in departing from the past practice and
so the State Govt. was directed to shift the last date of receipt of application from
31st Jan to 30th June. On this, the State govt. field an appeal by special leave before
the apex court.

The apex court while allowing the appeal opined that on perusal of
advertisements issued from 1974 to 1980, it becomes obvious that normally the cut-
off date was fixed one or 1½ month after the date of advertisement. It was, therefore,
not the uniform practice of the State govt. to fix the cut-off date for eligibility as was
assumed by the High Court. Once it is found that the High Court has based its

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39 AIR 1990 SC 1300
decision on an erroneous assumption of fact, the decision could not be allowed to stand.

In Deepak Sibal v. Punjab University, an appeal by special leave was filed against the judgment of the Punjab and Haryana high court dismissing the writ petition challenging the constitutional validity of the rule of admission in the evening classes of the three year LL.B. Degree course conducted by the Department of laws of the Punjab University. The impugned rule of the University provided that the admission to evening classes is open only to regular employees of govt./semi govt. Institutions/affiliated colleges/statutory corp. and govt. companies. A candidate applying for admission to the evening classes should attach no objection/permission letter from his present employer with his application for admission. The appellant being employee of Pvt. company was rejected admission in evening classes. The question before the apex court was whether the classification is a reasonable classification within the meaning of Article 14 of the Constitution.

The apex court while allowing the appeal opined that the respondents have deviated from its objective for the starting of evening classes. The objective was to accommodate in the evening classes employees in general including private employees who were unable to attend morning classes because of their employment. The employees of private establishment stand on equal footing with the govt./semi govt. institutions. To exclude the employees of private establishment will not, therefore, satisfy the test of intelligible differentia that distinguishes the employees of govt./semi govt. institutions, etc., grouped together from the employees of private establishments. It is true that a classification need not be made with mathematical precision but if there be little or no difference between the persons or things which have been grouped together and those left out of the group, is that case the classification cannot be said to be reasonable one. The circumstances relied by respondents namely, the possibility of production by them of bogus certificate and insecurity of service, will not justify the exclusion of the employees of Pvt.establishments from the evening classes. In considering the reasonableness of classification from the point of view of Article 14 of the Constitution, the court has also to consider the objective for such classification. If the objective be illogical,

\[\text{AIR 1989 SC 903}\]
unfair and unjust, unnecessarily the classification will have to be held as unreasonable.

In *Dr. P. NallaThampyThera v. B.L. Shanker*, an appeal by special leave was filed against the order passed by the Karnataka High court dismissing the election petition. Against the dismissal order, appellant moved an application for restoration of the election petition but that was also rejected after negativing the stand of the appellant that an election petition could not be dismissed for default and that a case of abandonment should be treated at par with abatement and withdrawal of election petition. Then the appellant made an application under Art. 136 of the Constitution for grant of special so that election petition would be restored.

The Apex court while dismissing the appeal opined that an election petition is a strict statutory proceeding. An appeal lies to the apex court under s. 116-A of the Representation of People Act. Both on question of law and/or fact from every order made by the High Court under section 98 and section 99 of the Act. Further it was opined that earlier order passed in the same petition which became final cannot be challenged in an appeal by special leave unless they are shown to be nullity.

In *Mohammad Swalleh v. IIIrd. Addl. District Judge*, an appeal by Special leave was filed against the judgment and order of the High Court of Allahabad. The respondent No. 2 (landlord) filed an application under s. 3 of the U.P. (Temporary) control of Rent and Eviction Act, 1947 for eviction of tenant. The application for eviction was granted by the commissioner. On this the appellant (tenant) field a revision under section 7-F of the Act which was dismissed by the State Government. The permission thereafter became final. The landlord then filed a suit in the court of Judge, Small causes, Meerut. Thereafter, he filed an application for withdrawl of the suit on the ground that as U.P. Urban Buildings (Regulation of letting, Rent and Eviction) Act of 1972 had been amended, he would file an application under the Act of 1972 for the enforcement of the permission of section 3 of the old Act. On that application, the court found that as the cause of action on which the suit had been filed was rendered anfractuous, the suit was liable to be dismissed. After the suit was dismissed, the landlord filed an application under section 43 (2)(rr) of the new Act for eviction of the appellants from the premises in question. The appellant (tenant) raised an objection that since the previous suit had been dismissed, subsequent

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41 AIR 1984 SC 135  
42 AIR 1982 SC 94
application under section 43(2) (rr) of the Act of 1972 was not maintainable. The objection was allowed by the prescribed Authority. Thereafter an appeal was filed by the landlord before the District judge against the order of the Prescribed Authority which was allowed. Then tenant moved the High Court in appeal and the High Court held that s. 43(2) (rr) permitted the landlord to file an application for the enforcement of the permission obtained by him.

The Apex court while dismissing the appeal opined that the Prescribed Authority was clearly in error in upholding the objection of the tenant that as the previous suit had been filed by the tenant on the basis of permission and the same had been dismissed the application under section 43(2) (rr) of the Act of 1972 was not maintainable. It was clearly erroneous contention. It would frustrate the very purpose of the express provision of section 43(2) (rr). Finality of order in judicial proceeding is one of the essential principles which the scheme of the administration of justice must strive for. Thus, there is no scope for interference under Article 136 of the Constitution.

In *GianiDevender Singh SantSepoy Sikh v. Union of India*, the appellant filed a public interest litigation before the High Court of Madhya Pradesh and his allegation was that there are people who are engaged in clandestine business of smuggling and selling opium, heroine, brown sugar, poppy husk and the like and the authorities are not taking any care to see that such activities are stopped. On this, the High Court made directions to stop the smuggling of such dangerous articles and to sack the officers alleged to be with those carrying on these nefarious activities. But there was no compliance with such direction of the High Court, A petition was again filed in the High Court but the same was dismissed as it was alleged that the direction was of general nature, so no relief can be given to the appellant. Against this order of the Division Bench of the High Court, the appellant filed an appeal by special leave.

Before the apex court, the appellant contended that he filed complaints before Addl. District Judge, District judge as well as before High Court. He also filed complaints against Chief Administrator of Municipal Corporation but all futile. It was alleged that the judge of the High Court being dishonest and corrupt, the

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4 Air 1995 SC 1847
judicial officers before whom complaint were filed failed and neglected to take action because of patronage of the High Court judge.

The apex court while dismissing the fate of appeal opined that when the High Court was of the view that the prayer made by the petitioner was absurd and it also held that the officers who alleged to have been carrying on nefarious activities were more imaginary than real, the direction in general and sweeping terms to sack erring officers should not have been made. If the High Court intends to pass an order on an application presented before it by treating it as a public interest litigation, the High Court must precisely indicate the allegations or the statements contained in such petition relating to Public interest litigation and should indicate how public interest was involved and only after ascertaining the correction of the allegation; should give specific directions as may deem, just and proper.

Further it was opined that there were wide, sweeping allegations in petition against judge of the High Court but no instance was put forward as to how and in what manner said judge has influenced other judicial officers of state to pass impugned order. The apex observed the allegations by the appellant reveal utter confusion and obsessions of the appellant, So Supreme Court declined to take serious view against members of judiciary.

In LaxmanMarotraoNawakhare v. KeshavraoEknathsa Tapar,\textsuperscript{44} an appeal by special leave was filed against the decision of the High Court of Bombay. The respondent filed a suit before the trial court for eviction of the appellant and the trial court dismissed the suit on a finding that as the appellant was using the suit premises for manufacturing purposes, a six months notice was required before the lease could be determined and as the notice issued to the appellant under s. 106 of the Transfer of Property Act had purported to determined the tenancy with 15 days notice, the suit in question could not have been filed. On appeal, the Assistant judge opined that the premises in question had not been let out for any manufacturing purposes but for a motor workshop and as such the notice under section 106 of the Act was valid and thus the respondent was entitled to the possession of the plot in dispute. The second appeal filed by appellant was before the High Court was dismissed in limine as it was opined that no substantial question of law was involved.

\textsuperscript{44} AIR 1993 SC 2596
Before the apex court the appellant raised a new plea that the bar placed by a new clause 13A of the C.P and Berar letting of Houses and Rent control (Second Amendment) order 1989 provided that ‘No decree for eviction shall be passed unless the landlord produces a written permission of the controller as required by sub – clause (1) of clause 13.’ And thus the aforesaid decree of eviction passed against the appellant cannot be given effect to.

On this the apex court while dismissing the appeal opined that it cannot be said that an appeal before the Supreme Court on the basis of leave granted under Art. 136 of the Constitution is a continuation of the suit/proceeding and while dismissing the said appeal, it shall be deemed that Supreme Court has passed a decree for eviction which in view of clause 13A is barred.

In *L. Chandra Kumar v Union of India*, an appeal by special leave was filed to challenge the judgment of the Madras High Court which had held that the establishment of the Tamil Nadu Land Reforms Special Appellate Tribunal will not affect the powers of the Madras High Court to issue writs. That decision of the High Court was based on the reasoning that the Legislature of the State had no power ‘to infringe upon the High Courts’ power to issue writs under Art. 226 of the Constitution and the exercise its power of superintendence under Art.227 of the Constitution.

The seven judges Constitution bench while deciding the fate of the appeal opined that the power of judicial review over legislative action vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded. Further it was opined that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot be excluded. To hold that all the decisions of Tribunals will be subject to the jurisdiction of the High Courts under Articles 226/227 of the constitution before a Division bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls. It will serve two purposes while saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure

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*AIR 1997 SC 1125*
that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter. It was further opined that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of the above mentioned observation, this situation will also stand modified. So, no appeal from the decision of a tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the constitution and from the decision of the Division Bench of the High Court, the aggrieved party could move this court under Article 136 of the Constitution.

Furthermore, it was opined that the Tribunals are competent to hear matters where the wires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, the power of the Tribunals will be subject to an exception that they shall not entertain any question regarding the vires of their parent statutes following the settled principle that a tribunal which is a creature of an act cannot declare that very act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of the Tribunals will also be subject to scrutiny before a division bench of their respective high court.

In Taherakhatoon v. Salambin Mohammad,\textsuperscript{46} an appeal by special leave was filed against the judgment of High Court of Bombay concerning the possession of land wherein it was held that the agreement of sale in favour of respondent was genuine.

The apex court while dismissing the appeal opined that though special leave is granted, the discretionary power which is vested in the court at the stage of the special leave petition continues to remain with the court even at the stage when

\textsuperscript{46} AIR 1999 SC 1104
appeals comes up for hearing and when both sides are heard on merits in the appeal. Even though the Supreme Court is dealing with the appeal after grant of special leave, it is not bound to go into merits and even if it does so and declare the law or point out the error, still it may not interfere if the justice of the case on the facts does not require interference or if it feels that the relief could be moulded in a different fashion.

Further while considering the various circumstances of the case, it was opined that although High Court had erred in not framing a substantial question of law and it also erred in interfering with pure question of fact but while considering the peculiar circumstances of the case, it was observed that the appellant had knowledge of trespass at the time it was committed but she gave notice after seven years of alleged trespass and filed suit one year thereafter, so in these circumstances, it is not a fit case for interference by apex court under Article 136 of the Constitution.

In *Sree Jain Swetambar Terapanthi Vid (S) v. Phundan Singh*, an appeal by special leave was filed against the Division Bench of the Calcutta High Court setting aside the order of injunction granted by the civil court, appointed two joint administrators in place of the society’s managing committee/trust and issued certain consequential directions.

The apex court while allowing the appeal opined that it is one thing to conclude that the trial court has not recorded its prime facie satisfaction on merits but granted the temporary injunction and it is another thing to hold that the trial court has gone wrong in recording the prima facie satisfaction and setting aside the finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established. In the first situation, the appellate court will be justified in upsetting the order under appeal even without going into the merits of the case but in the second eventuality, it cannot set aside the impugned order without discussing the material on record and recording a contrary finding.

Further it was opined that the principle that emerges is that where the High Court has granted some relief by way of social justice or on equitable grounds without violating the rights of other parties, though in law such relief was not

\[47 \text{ AIR 1999 SC 2322}\]
permissible, the Supreme Court would not interfere in its discretionary jurisdiction under Article 136 if the order under appeal advances the causes of justice and if it is just and equitable to do so.

In *M/S Upadhyay and Co. v. State of U.P.*, the petitioner filed a writ petition against the direction of commissioner whereby the commissioner directed the petitioner to refund the enhanced amount collected by him while collecting toll charges with interest at 15%. The High Court passed order to pay 50% amount and to furnish security for the balance amount. Against this decision, petitioner filed on appeal by special leave which was later withdrawn. Then he again moved High Court but the division bench dismissed the petition. Then again the petitioner filed appeal by special leave against the said two orders of the High Court.

The apex court while dismissing the petition opined that the ban under 0.23, R. 1(3) of the civil procedure code to file a fresh suit in case of withdrawal of suit without seeking permission to file a fresh suit is based on rule of public policy. This rule of public policy is applicable to writ petitions filed under Article 226 and special leave petitions filed under article 136 of the Constitution of India. Therefore, when the party had withdrawn the SLP filed to challenge order of High Court in writ petition without seeking permission to file fresh SLP, he cannot file another SLP challenging the same order again.

In *the Workmen v. The Management of Reptakos Brett and Co. Ltd.*, an appeal by special leave was filed against the award of the Tribunal by which the Tribunal abolished the existing slab system of DA and directed that in future dearness allowance in the company, be linked only to the cost living index as well as basic wage which was uphold by the High Court.

The apex court while allowing the appeal opined that the company failed to prove that the present wage structure was above minimum wage and that financially it was not in position to pay DA as per existing scheme. On the basis of the material produced before the tribunal, all that the company had been able to show was that the DA paid by the company is somewhat higher than what is being paid by the other similar industries in the region but there was no material on the record to show that what would be required by the concept of need based minimum wage. Thus the

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48 AIR1999SC 509
49 AIR 1992 SC 504
company could not be allowed to restructure the DA scheme by abolishing the slab system which had stood the test of time for almost thirty years.

Further it was opined that the management can revive the wage structure to the prejudice of the workmen in a case where due to financial stringency it is unable to bear the burden of the existing wage. But in an industry or employment where the wage structure is at the level of minimum wage, no such revision at all, is permissible – not even on the ground of financial stringency.

In *Hindustan Steel Works Construction Ltd. v. Hindustan Steel Works Construction Ltd. Employees Union, Hyderabad*\(^{50}\), the apex court opined that where the labour Tribunal was not interfering with retrenchment by taking note of fact that management is groaning under weight of surplus and excessive staff and moreover the Union was not able to show that reasons given by Tribunal for not directing reinstatement was incorrect as a factor irrelevant and impermissible in law, it is not open to the apex court, in exercise of its power under Art. 136, to substitute its opinion for that of tribunal.

In *the General Manager, Telephones, Ahmedabad v. V.G. Desai*,\(^{51}\) an appeal by special leave was filed against the judgement of the central administrative tribunal. The respondent, who was promoted as inspector, also got transferred. But he did not join and ultimately sought retirement on medical ground which was not accepted as a vigilance case was pending against him. In a departmental proceeding the punishment of censure was imposed on the respondent. After this, the respondent again requested that his retirement case should be settled but as no action was taken, he filed a writ petition in the Gujarat High Court. After the constitution of central administrative tribunal, the said writ petition was transferred to the tribunal. The tribunal opined that the respondent is not deemed to be retired on medical grounds as that has not been established by him, so he is not entitled to any pensionary benefits under civil services rule 441 because no documentary evidence was produced by him to prove his incapacity from rendering public services on medical grounds. The two judges bench while deciding the fate of appeal opined The apex court under Article 136 of the Constitution does not ordinarily interfere with orders of the tribunal or individual disputes. But since the possibility of the impugned judgment being used as a precedent in future cannot be ignored, the judgment of

\(^{50}\) AIR 1995 SC 1163

\(^{51}\) AIR 1996 SC 2062. See also, *Hindustan Lever Ltd. v. B.N. Dongre*, AIR 1995 SC 817
tribunal cannot be allowed to stand and the matter calls for interference of apex court.

In the State of Maharashtra v. Mahboob S. Alliboy, two judges bench while dismissing the appeal field against the decision of Bombay High Court against an order dropping the proceeding for contempt against the respondent opined that the contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. Further it was opined that no appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt. Even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and later dropped or whose petition for initiating contempt proceedings has been dismissed, is not without any remedy. In appropriate cases, he can invoke the jurisdiction of the apex court under article 136 of the Constitution and the apex court on being satisfied that it is a fit case where proceeding for contempt should have been initiated, can set aside the order passed by the High court.

In Punjab Urban Planning and Development Authority v. M/S. Shiv Saraswati Iron and Steel Re-rolling Mill there was an agreement between appellant and the respondent for re-rolling of M.S. Bars out of rails and blooms on certain conditions. One of such condition was regarding supply of steel weight to weight by the respondent. As the respondent failed to return the entire quantity supplied for re-rolling, the appellant filed a suit. The respondent also filed a counter claim that it has oversupplied the re-rolled matter. The trial court partly decreed the suit of the appellant to the extent of the admission made by the respondent about the balance of rail/blooms available with it after re-rolling and the counter claim of respondent was dismissed. Then the first and second appeal before the High court by the appellant was also dismissed.

The two judges bench of the apex court while dismissing the appeal opined that no document was placed before court to appreciate correctly and completely the transactions between the parties. Moreover the relevant conditions of contract were also not explained including business language ‘weight to weight’. Thus, the apex

52 AIR 1996 SC 2131
53 AIR 1998 SC 2352
court opined that there was no question of law involved for consideration of the court and hence no justification for interference by the apex court.

In *AnantMadaan v. State of Haryana*, an appeal by special leave was filed against the high court of Punjab and Haryana upholding the validity of the eligibility criteria prescribed for the year 1994 in so far as they require that candidates should have studied for the 10th, 11th, and 12th standards as regular candidates in recognized institutions in Haryana. According to the appellant, the condition imposed is arbitrary and discriminatory because it excludes children of parents who may be resident of or who may be domiciled in Haryana but who may have sent their children to schools or colleges outside Haryana for a variety of reasons.

The apex court while dismissing the appeal opined that it is now well settled that preference in admissions on the basis of residence, as well as institutional preference is permissible so long as there is no total reservation on the basis of residential or institutional preference. The apex court in the present case observed that the reservation which has been made on the basis of candidates having studied for the preceding three years in recognized schools/colleges in Haryana is in respect of 85% of seats. It excludes 15% seats which have to be filled in on an All India basis. It cannot therefore be considered as arbitrary or unreasonable or violative of Article 14 of the Constitution.

In *Ms. Bhawana Narula v. Ms. Manju Choudhar*, the appeal by special leave was filed against the decision of the Punjab and Haryana High Court. The appeals relate to admission to the second professional MBBS courses in Maharshi Dayanand University by migration from other universities. For considering the case of migration to MBBS course, the Maharishi Dayanand University set up a committee to examine the cases of various students who were seeking migration. The migration was granted to medical students on the recommendations of committee. There was no allegation of bias or personal animus against any member of committee. So migration granted is proper and the order of the High Court was set aside.

In *Munindra Kumar v. Rajiv Govit*, a special leave position was filed against the decision of the High Court of Uttar Pradesh quashing the selection list of

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54 AIR 1995 SC 955
55 AIR 1996 SC 1563
56 AIR 1991 SC 1607
Engineers on the ground that 40% marks were kept for group discussion and interview which is arbitrary and hence violative of Article 14.

The Supreme Court while partly allowing the appeal opined that the allegation of 40% marks for group discussion and interview is arbitrary in nature. The marks for the same should not exceed 15% of the total marks. In cases where group discussions in addition to the interview, then 10% of the total marks should be allocated for interview and 5% for group discussion. In so far as quashing of the selection list was concerned, the apex court allowed the selection list to prevail the selected candidates have been performing their duties and moreover there was little chance of the petitioners to be successful in view of their low merit.

In A.P State Financial Corporation v. C.M. Ashok Raju,\textsuperscript{57} the special leave petition was filed against the decision of division bench of Andhra Pradesh High Court which ordered for the reduction of marks for the interview from 25% to 15%. The corporations’ leave petition was rejected as withdrawn by the apex court with liberty to corp. to approach the High Court. The corporation approached the High Court to consider the matter afresh but the High Court dismissed the petition by a reasoned order. Again a special leave petition was filed in the Supreme Court which was opposed on the ground that the dismissal by the High Court has achieved finality.

The apex court opined that though the High Court was approached after grant of liberty to raise plausible contentions before the High Court by the apex court itself and the High Court has passed a reasoned order there upon but it cannot be presumed that the order of the High Court has achieved finality. The apex court after relying of Ansar Ahmad’s Case,\textsuperscript{58} opined that the 15% rule is applicable where written test is also prescribed, therefore, the High Court was not justified in setting aside 25% marks for interview as no written test is held.

The apex court while dismissing the appeal opined that law does not permit a person to both approbate and reprobate. No party can accept and reject the same instrument and that ‘a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage’. Thus the tenant having given an undertaking in pursuance to

\textsuperscript{57} AIR 1995 SC 39  
\textsuperscript{58} AIR 1994 SC 141
the directions given by the High Court and having availed the protection from eviction on the basis of the said undertaking cannot be permitted to involve the jurisdiction of this court under Article 136 of the Constitution and assail the said judgment of the High Court.

In *Mulkh Raj Chhabra v. New Kenil Worth Hotels Ltd.*,⁵⁹ a appeal by special leave was filed against the single-judge bench of the Calcutta High Court. The apex court while dismissing the appeal opined that where the order impugned is appealable before a division bench of the High Court under section 37 of the Arbitration and Conciliation Act, 1996, it does not deem fit for the apex court to interfere under Article 136.

In *Ashok Nagar Welfare Association v. R.K. Sharma*,⁶⁰ an appeal by special leave was filed against the decision of the Delhi High Court setting aside ex-parte decree passed by the single judge of the High Court on the ground that the ex-parte decree had been obtained by manipulating regard to show due service. The suit was filed under s.6 of the specific Relief Act and decree for possession/restoration of possession of the disputed land was sought for.

The apex court while dismissing the appeal opined that the contention of the appellant cannot be relied upon that the specific bar enacted in section 6(3) of the Specific Relief Act cannot be got over by invoking the provision relating to intra court appeals. Further, the apex court opined that Article 136 does not confer a right of appeal on any party but at confers a discretionary power on the Supreme Court to interfere in suitable cases.

Furthermore, the apex court opined that in any case the High Court in exercise of another jurisdiction viz. original jurisdiction could have set right the illegality and restored the suits to its file. What the High Court has done is to invalidate the *ex-parte* decrees which were obtained by questionable means fitting into the description of abuse of the process of the court. If such decrees were allowed to remain, it would have resulted in miscarriage of justice.

In *A.V.G.P. Chettiar and sons v. T. PalanisamyGounder*,⁶¹ the apex court while deciding the fate of the appeal filed against the decision of the High Court of Madras where the High Court by upholding the decision of the Rent Controller,

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⁵⁹ AIR 2000 SC 1917
⁶⁰ AIR 2002 SC 335
⁶¹ AIR 2002 SC 2171
ordered the eviction of the appellants under the Tamil Nadu Buildings (Lease and Control Act) Act, 1960. In the concerned suit, the appellant had challenged the derivative title of the respondent as it was contended that the suit property was the Trust property and the alienation of such property was null and void and not binding on the trust. By causing eviction of the appellant, High Court also directed him to give an undertaking that he would vacate the premises and handover the possession within prescribed time but the appellant failed to do so.

Before the apex court, the respondent contended that the suit is not maintainable as the appellants were estoppels by the impugned order of the High Court. On this the apex court opined that once an appeal is admitted without reserving the issue of maintainability and the matter is heard on merits, such a preliminary objection does not survive.

Further with regard to the failure of the giving undertaking to the High Court, it was opined that even if the appellant had given an undertaking, they could not be denied the right of appeal to the apex court on any principle of estopped unless the respondent could show that the appellants had thereby gained an advantage which was otherwise not available to them.

Furthermore, the apex court while allowing the appeal opined that the impugned judgment is erroneous. It failed to consider that the appellants had denied the derivative title of the respondent and this would not afford a ground for eviction under section 10(2) (vii) of the said act.

In M/S Konkan Railway Corporation Ltd. v. M/S Rani Construction, an appeal by special leave was filed against the decision of the High Court. The Question for construction was with regard to the nature of order where the chief justice or his nominee, acting under section 11 of the Arbitration and Conciliation Act, 1996 have decided contentious uses arising between the parties to an alleged arbitration agreement, whether such an order deciding issues a judicial order or an administrative order.

The apex court while dismissing the appeal opined that the chief justice of high court acting under section 11 of the Arbitration and Conciliation Act in cases of domestic arbitration is the authority to perform the function of appointment of an arbitrator. Where the matter was placed before the Chief Justice or his designate

62 AIR 2002 SC 778
under section 11, it was imperative for the Chief Justice that arbitral process should be set in motion without any delay and leaves all contentious issues to be raised before the arbitral tribunal. At that stage, it was not appropriate for the Chief Justice or his designate to entertain any contentious issues between the parties and decide the same. If a contingency arose where the Chief Justice or his designate refused to make an appointment, an intervention was possible by a court in the same way as an intervention was possible against an administration order of the executive.

Further, the apex court opined that the nature and function performed by the Chief Justice or his designate being essentially to aid the constitution of the arbitral tribunal, it could not be held to be a judicial function, as otherwise the legislature would have used the expression ‘court’ or ‘judicial authority’. It was, therefore, held that an order under section 11 refusing to appoint an arbitrator was not amenable to the jurisdiction of the apex court under Article 136 of the Constitution. To put it concisely, for an order properly to be the subject of a petition for special leave to appeal under Art. 136 it must be an adjudicatory order, an order that adjudicates upon the rival contentions of parties, and it must be passed by an authority constituted by the state of law for the purpose in discharge of the State’s obligation to secure justice to its people.

Thus, the apex court opined that the order of the Chief Justice or his designate under section 11 nominating an arbitrator is not an adjudicatory order and the Chief Justice or his designate is not a tribunal. Such an order cannot properly be made the subject of a petition for special leave to appeal under Article 136.

In M/S S.B.P & Co. v. M/S. Patel Engineering Ltd., the seven judge constitutional Bench while considering the important question regarding the nature of the order passed by the Chief Justice under section 11(6) of the Arbitration and Conciliation Act and the remedy available to the aggrieved party against such order, discussed the validity of the order passed in earlier decision, i.e., Konkan Railway Corpn. Ltd. v. Rani Construction Pvt, Ltd., where it was held that such an order is purely administrative order.

P.K. Balasubramanyam, J., on behalf of majority opined that normally, when a power is conferred on the highest judicial authority who normally performs judicial functions and is the head of the judiciary of the state or of the country, it can

63 AIR 2006 SC 450
64 AIR 2002 SC 778
not be assumed that the power is conferred on the Chief Justice as persona designata. Merely because the main purpose was the constitution of an arbitral tribunal, it could not be taken that the exercise of power is an administrative power. Moreover while exercising power under section 11(6) of the Act, Chief Justice acts on the basis of request made by the parties. When a party raises an objection that the conditions for exercise of the power under section 11(6) of the Act are not fulfilled and the Chief Justice comes to the conclusion that they are fulfilled, it is difficult to say that he was not adjudicating on a dispute and was merely passing an administrative order.

An opportunity of hearing to both parties is a must. The power exercised by the Chief Justice of the High Court or the designated judge under section 11(6) of the Act is a judicial order, so an appeal will lie against that order only under Article 136.

Thus, the decision in Konkan Railway Corpn Ltd. v. Rani Construction\(^65\) was overruled by this decision.

C.K. Thakker, J., in minority opined that the function to be performed by the Chief Justice of the High Court or the Chief Justice of India under Sub-section (6) of section 11 of the Act is administrative, pure and simple and neither judicial nor quasi-judicial, so there is no duty to act judicially. Since the order passed by the Chief Justice under section 11(6) is administrative, a writ petition under Article 226 of the Constitution is maintainable. A letter patent appeal/Intra Court Appeal is competent. A special leave petition under Article 136 of the Constitution also lies to this court.

Thus, the minority upheld the decision laid down in Konkan Railway Corpn. Ltd. v. Rani construction.

In the land Acquisition Officer-Cum-DSWO. A.P. v. M/S B.V. Reddy\(^66\), appeals by special leave was filed against the judgment of Andhra Pradesh High Court. The appellant acquired certain land regarding when compensation was given to the respondent @ Rs. 11,000/- per acre. But the owners claimed compensation @ Rs. 25,000/- to Rs. 30,000 per acre and regarding this a reference was made under s. 18 of the Land Acquisition Act to civil court which determined the market value of the acquired land at Rs. 75,000/- per acre but granted compensation @ Rs. 30,000/- per acre as claimed by the respondent. The learned single judge also came to the

\(^65\) Supra note 9
\(^66\) AIR 2002 SC 1045
same conclusion by considering unamended provision of s. 25 of Act. But the Division Bench allowed the enhancement upto Rs one lakh per acre and opined that there is no bar for awarding compensation more than the amount claimed, the court would be justified in enhancing the compensation if the market value is determined at higher rate.

The apex court while allowing the appeal opined that the provision of s. 25 of the land Acquisition Act, gives substantive right and the substantive right of a claimant who had made a claim to compensation pursuant to a notice under section 9, cannot be more than the amount which the land acquisition collector has awarded under section 11. Since that award of the collector is the offer that is made to the claimant. Further it was opined that substantive provisions cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of section 25 nowhere indicates that the same would have any retrospective effective. Until the statutory rigour contained in sub-section of section 25 stood obliterated by the amended provision of section 25 and until all restraints and embargoes placed for the court stood totally liberated, the reference court had no jurisdiction to award the amount in excess of the amount claimed by the claimant.

In *Kumaran Silk Trade (P.) Ltd. v. Devendra*, an appeal by special leave was filed against the judgment of Madras High Court where the High Court refused to review its earlier decision.

The apex court while relying on decision in *Shankar MotiramNale v. Shilaling Gannu singh Rajput*, and *Suseel Finance and leasing Co. v. M. Lata* opined that a petition for special leave to appeal against an order dismissing a petition for review is not maintainable. The apex court further held that once a petition for special leave to appeal is found not maintainable, no order can or should be passed thereon except an order of dismissal.

Further it was opined that as the appellant had during pendency of proceedings undertook construction without any regard to Building Bye Laws and thus showing scant respect to courts orders, is not entitled to any order by way of indulgence of discretion of court.

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67 AIR 2007 SC 1185  
68 1994 (2)SCC 753  
69 2004 (13) SCC 675
In *State of U.P. v. Smt. Janki Devi Pal*, an appeal by special leave was filed against the judgement of the High Court of Allahabad where the High Court directed impugned order of the state Govt. which divested respondent, a Zila Panchayat Adhyaksh, of financial and administrative powers exercised by her, to be quashed and holding the preliminary enquiry conducted by an Additional District Magistrate to be incompetent and irritated.

The apex court while dismissing the appeal opined that when the flaw was pointed by the High Court in state rule in writ petition, then the state of U.P. should have promptly removed that flaw by amending the rule instead of filing special leave petition and keeping the certainty of law in suspension. The state is one of the largest litigants and such tendency on part of state of adding to the bulk of pending cases when it can be avoided by taking a quick and convenient step of amending its own rule has to be depreciated.

In *Sangram Singh v. Election Tribunal, Kotak*, the question was whether the finality clause (section 105) of Representation of People Act, 1951 ousting the jurisdiction of High Courts and Supreme Court under Articles 226 and 136 is valid. The apex court entitles the High Courts and this court to examine the decision of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decisions of an inferior tribunal.

It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is and they alone can pronounce with authority and finality on what is legal and what is not.

All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite s. 106 of the Representation of People Act.

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70 AIR 2003 SC 1825
71 AIR 1955 SC 425 See Also Durga Shankar Mehta V. Raghuraj Singh AIR 1954 SC 520 (Supra Note 7)
In *India General Navigation and Railway Co. Ltd. v. Their Workmen*, a special leave was filed against the decision of Industrial Tribunal, Assam the apex court while modifying the award passed by the Tribunal, opined that the provisions of the Industrial Dispute Act are subject the paramount law laid down in Article 136 of the Constitution. Moreover, it was held that no doubt the award passed by the Tribunal is final by the provisions of Act but it can be subject to the result of determination of the appeal by special leave as constitutional provision override the statutory provisions. Therefore, the right to appeal under Article 136 cannot be curtailed by finality clauses of statutory enactments. In this case, the Industrial Tribunal opined that the strike by worker was illegal but justified. On this point, the apex court opined that the statute recognizes the distinction between legal and illegal strike but not between illegal but justified or unjustified strike.

In *Bharat Bank v. Employees of Bharat Bank*, the five judges bench while deciding the fate of appeal considered the question whether the Supreme Court could entertain an appeal under Article 136 against an award of an industrial tribunal.

*Mukherjee, J.*, who was in the minority expressed a view that the tribunal’s function was merely an extended form of the process of collective bargaining and was more akin to administrative rather than to judicial functions. In this view, therefore, the Supreme Court could not grant special leave to appeal from an award of industrial Tribunal.

*Mahajan J.*, opined that the industrial tribunal has all the necessary attributes of a court of justice. It discharges no other function except that of adjudicating a dispute. Such a tribunal could be characterized as a quasi judicial body because it is outside the regular judicial hierarchy. Nevertheless, at discharges functions which are basically judicial in nature. Accordingly it was held that the Supreme Court could grant special leave to appeal under Article 136 against an award of an industrial tribunal.

*Kania, C.J.*, opined that even though the Supreme Court has jurisdiction to grant leave to appeal from a decision given by an industrial tribunal, the Supreme Court will be very reluctant to entertain the application for leave to appeal.

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73 AIR 1950 SC 118, See also Durga Shanker Mehta vs. Raghu Raj Singh, AIR 1954 SC 520; Supra note 7.
Wide as their powers are, these tribunals are not absolute though they are not courts in the strict sense of the term. They have to discharge quasi – judicial functions and as such are subject to the overriding jurisdiction of the Supreme Court under Article 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the ‘trapping’ of a court and deprive them of arbitrary or absolute discretion and power. The adjudicators and tribunals cannot act as benevolent despots. Under the constitution the ultimate authority is given to the courts to restrain all exercise of absolute and arbitrary power, not only by the executive and by officials and lesser tribunals but also by the legislatures and even by the Parliament itself.

In *J.K. Iron and Steel Co. Ltd. v. Iron and Steel Mazdoor Union, Kanpur*,

the question was whether scope and authority of adjudicator and state Industrial Tribunal is similar to the power of civil court. The apex court opined that the tribunals are not absolute though they are not courts in the strict sense of the term. They have to discharge quasi judicial functions and as such are subject to the overriding jurisdiction of the Supreme Court under Article 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the ‘trapping’ of a court and deprive them of arbitrary or absolute discretion and power. The adjudicators and tribunals cannot act as benevolent despots. Under the constitution the ultimate authority is given to the higher courts to restrain all exercise of absolute and arbitrary powers, not only by the executive and by officials and lesser tribunals but also by the legislatures and even by the Parliament itself.

**Re-appreciation of the evidence**

In *BhikajiKeshoo Joshi v. BrijlalNandlal Biyani*,

an appeal by special leave was filed against the judgment of Election Tribunal dismissing the election petition under section 80 of the Representation of the People Act, 1951 for setting aside the election on various allegations before the Election Commission beyond the prescribed time but the election commission admitted the petition after condoning the delay of one day. Then a tribunal was constituted for the trial of the petitions.

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74 AIR 1956 SC 231
75 AIR 1955 SC 610
The Tribunal framed few issues which were partly decided in favour of the petitioner. Since majority of the findings were against the petitioner, so therefore tribunal dismissed the petition.

At an early stage, the petitioners have challenged the composition of the tribunal before the High Court and the same was dismissed by the High Court. Thereafter, they filed a special leave in the Supreme Court which was declined by the Supreme Court.

Against the final determination of tribunal, the petitioner again preferred leave by special leave before the Supreme Court. It was again argued before the apex court that the composition of tribunal was not proper but the court in view of earlier determination declined the matter to be reopened. Furthermore, on the point of presentation of petition by authorized person, the apex court declined to reopen the issue which was properly been decided by the Tribunal. On the question of condonation of delay, the apex court held that the conclusion of the Tribunal in reconsidering the condonation of delay by Election commission cannot be maintained because the matter was conclusively decided by the apex court in DinabandhuSahu v. Jadunoni Mangaraj. The court declined to reopen the ratio of the case and admittedly opined that the Tribunal cannot reconsider the matter once delay has been condoned by the Election Commission.

In Earnist John white v. Mrs. Kathleen Oliver white, it was opined by the apex court that in case of matrimonial offence it is not necessary and it is indeed rarely possible to prove the issue by any direct evidence, for in very few cases can such proof be obtainable. Therefore, the courts must satisfy themselves beyond reasonable doubt on the basis of evidence led before the court.

In Sovachand Baid v. Commissioner of Income Tax, where the apex court opined that in an appeal under Article 136, appellant could not ask the Supreme Court to reassess the evidence and to come to a conclusion of its own on it. Moreover, it is not permissible to make submissions on question of fact.

76 AIR 1954 SC 411
77 AIR 1958 SC 441
78 AIR 1959 SC 59
In *PriyaLaxmi Mills Ltd. v. MazdoorMahajan Mandal*, an appeal by special leave was filed against the decision of the labour court for considering the question whether the lock out declared by the appellant was illegal.

The apex court while dismissing the appeal opined that the labour court has properly examined all the oral and documentary evidence and has taken note of the fact that there was no evidence of any violence being cause to property or of any illegal confinement of officers. There was no such situation of grave nature which called for such a drastic step of lock out. The apex court opined that the conclusions of labour court were not perverse to call for reappraisal of evidence by the Supreme Court.

In *L. Michael v. M/S Johnson Pumps Ltd.*, an appeal by special leave was filed against the decision of the labour court by which the labour court upheld the order of the management passed in regard to the termination of the services of an employee simpliciter on the basis that the employee has lost confidence in the employee without giving any sufficient justification for that undermined confidence.

The three judge bench while allowing the appeal opined that loss of confidence is no new armour of the management, otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of the Supreme Court can be subverted by neo-formula. Loss of confidence is often a subjective feeling of individual reaction to an objective set of facts and motivation. An employer who believes or suspects that his employee, particularly one holding a position of confidence has betrayed that confidence, can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion should not be mere whim or fancy and should be bonafide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. If the exercise of such power is challenged on the ground of being colourable or malafide or an act of victimization of unfair labour practice, the employer must disclose to the courts the grounds of his impugned action so that the same may be tested judicially. The court observed that the respondent has not disclosed the grounds on which his suspicion arose. Moreover, the appellant was given two extra increments in appreciation of his

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79 AIR 1976 SC 2584
80 AIR 1975 SC 661
hardwork. These circumstances completely demolishes even the whimsical and tenuous stand taken by the employer.

Further this apex court opined that the court, in appeal, as a rule of practice, is loath to interfere with the finding of fact recorded by the trial court. But when such finding is based on no evidence, or is the result of a misreading of the material evidence, or is too unreasonable or grossly unjust that no reasonable person would judicially arrive at that conclusion, it is the duty of Supreme Court to interfere and set matters right.

In *State of Gujarat v. Mahendra Kumar Parshottambhai Desai*,81 an appeal by special leave was filed against the judgement of High Court of Gujarat dismissing the appeal preferred by appellant concerning declaration of its rights, title and interest over the lands in dispute. Moreover the application of appellant for leave to lead additional evidence was also rejected.

The two judge bench while deciding the fate of the appeal opined that lower courts had exhaustively considered the evidence on record. There was no failure of lower courts to consider material evidence which had bearing on findings recorded by them. The findings of lower courts are neither perverse nor suffering from any illegality. Regarding the plea of leading additional evidence, it was opined that documents were in fact part of Government record and there was no plea by state that documents sought to be produced by way of additional evidence could not be produced earlier despite diligent efforts or that such evidence was not within its knowledge, so the High Court was right in rejecting the plea.

In *Mahavir Singh v. Naresh Chandra*,82 an appeal by special leave was filed against the order of Punjab and Haryana High Court, allowing a revision petition under section 115 of the code of Civil Procedure, 1908 by which it allowed the application of the respondent under Order XLI, Rule 27, CPC read with section 151, CPC filed by respondents to adduce additional evidence. Before the High Court, the appellant made representation to Chief Justice of High Court to list his case before another judge but the same was not pursued either before Chief Justice or before the judge and the case was decided by the same judge before whom it was listed. These allegations have been reiterated in the course of the special leave petition. The apex

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81 AIR 2006 SC 1864
82 AIR 2001 SC 134
court held that a mere reiteration of the circumstances set forth in said representation will not disentitle the appellant to file the special leave petition.

Further, the apex court while allowing the appeal opined that the High Court in exercise of its power under section 115, CPC could not interfere with an order of appellate court rejecting permission to adduce additional evidence particularly when the whole appeal is not before the High Court. It is only in the circumstances when the appellate court requires such evidence to pronounce the judgment the necessity to adduce additional evidence would arise and not in any other circumstances. When the first appellate court passed the order on the application filed under 0.XLI, Rule 27, CPC, the whole appeal was before it and if the first appellate court is satisfied that additional evidence was not required, the High Court could not interfere with such an order under section 115, CPC.

In *Shah Phoolchand Lalchand v. Parvathi Bai*,

83 an appeal by special leave was filed against the decision of the High Court dismissing the revision petition and upholding the finding of lower courts of unlawful subletting by the appellants. Before the apex court, the appellant took a plea that the partners were not made party.

The apex court while dismissing appeal opined that such plea cannot be allowed to be raised for first time in appeal by special leave. Further it was opined that in appeal by special leave, it is not proper for apex court to undertake detailed security of evidence and to re-appreciate them.

In *Brijendra Nath Bhargava v. Shri Harsh Wardhan*,

84 an appeal by special leave was filed against a decree for direction granted by the trial court and ultimately affirmed in second appeal by the High Court of Rajasthan on the ground that the tenant without the permission of the landlord had made material alternations in the premises.

The apex court while allowing the appeal opined that the courts below had omitted to consider material pieces of evidence and had drawn improper inferences. The tenant (appellant) had constructed wooden cabin inside showroom, all was a wooden structure built on beams and planks. Thus the construction could not be said to be material alteration in premises in question within meaning of section 13(1) (c)

83 AIR 1989 SC 865

84 AIR 1988 SC 293
of the Rajasthan Premises (control of Rent and Eviction) Act and the eviction was not proper.

In *the Maharaja Sayajirao University of Baroda v. R.S. Thakar*, the apex court while dismissing the appeal preferred by the university opined that where the High Court has at length deliberated upon the right of an employee for reinstatement and back wages and rightly so, the apex court cannot interfere.

In this case, a lecturer who was sent to Germany by the University, failed to return to the parent University in time and his services were terminated, though he had applied for the sick leave for the disputed period which was denied by the University.

The High Court held that his termination was illegal and ordered for his reinstatement.

In *State of West Bengal v. Atul Krishna Show*, an appeal by special leave was filed against the decision of the High Court of Calcutta. The Assistant Settlement Officer suo-moto initiated the proceedings and considered the entire evidence on record in great detail like civil court and held that land stood vested in the state. On appeal before the tribunal, the tribunal reversed the findings without considering the validity of the reasons recorded by the Asstt. Settlement officer. Then a writ petition was filed before High Court by the State which was summarily dismissed by the High Court. Against this decision of High Court, State filed an appeal by special leave under Article 136.

The apex court while allowing the appeal opined that if the quasi – judicial tribunal had appreciated the evidence on record and recorded the findings of fact, those findings are binding on Supreme Court or the High Court. By process of judicial review, they cannot appreciate the evidence and record their own findings of fact. If the findings are based on no evidence or based on conjectures or sunrises and no reasonable man would on given facts and circumstances come to the conclusion reached by the quasi-judicial authority on the basis of the evidence on record, certainly the High Court would oversee whether the findings recorded by the authority is based on no evidence or beset with surmises or conjectures. The appellate order is, therefore vitiated by manifest and patent error of law apparent on the face of record.

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85 AIR 1988 SC 2112
86 AIR 1990 SC 2205
Mixed Question of Law and Fact

In *Joginder Kumar Butan v. R.P. Oberoi*, an appeal by special leave was filed against the decision of the Delhi High Court. The appellant was a tenant in the house of the respondent by a lease deed for a period of 18 months under section 21 of the Delhi Rent Control Act, and the order in this regard is passed by the Rent controller. After the expiry of 18 months the appellant was not vacating the house. On the ground that he was inducted into possession as a tenant before the order of rent controller and thus his tenancy was not governed by section 21 of the Act by the Rent Controller. The Rent Controller and the Rent Control Tribunal after a due consideration of the materials placed before the court by parties, rendered concurrent findings to the effect that tenancy came into effect only by reason of the permission granted by the Rent Controller under section 21 and so appellant was directed to deliver the leased premises. Then the appeal before High Court was also dismissed and then the appellant filed an appeal by special leave before the apex court.

Before the apex court the appellant raised a new contention that the respondent obtained permission for leasing out portions of the house to several tenants by playing fraud and thus the respondent is abusing the provisions of section 21 of the Act. The apex court opined that this contention was not raised earlier before the High Court. It is a mixed question of fact and law. Without a requisite foundation on facts to prove a willful contravention or abuse of a provision of law finding cannot be rendered as to whether a party has committed a fraud by abusing any legal provision. Moreover, as the respondent was a Govt. Servant, there was no material before the Rent controller to establish or even to arouse suspicion that the respondent was playing fraud on the statute, so the order of Rent controller could not be said to be vitiated in any manner.

In *Smt. Hans Raji v. Yosodanand*, the two judges bench of the apex court while dismissing the appeal opined that the trial court as well as appellate court while dismissing the suit of the appellant, had concurrently found that the appellant had on her own and without any fraud or misrepresentation on the part of the respondent had executed the sale deed. The finding is based on sufficient


88 AIR 1996 SC 761
appreciation of evidence, so there is no justification for interference of the apex court under Article 136 of the Constitution.

Further with regard to the additional ground that appellant put forth in appeal by special leave, the apex court opined an additional ground was allowed to be raised in appeal by special leave before Supreme Court based on defence of non est factum. The appellant admitted the signature on document but alleged that the signed it under the belief that it is a will. The apex court held that the additional ground allowed to be raised in appeal by special leave raises a mixed question of law and fact. Namely, whether both the parties were ad idem or not and whether the plaintiff had put her signature on the document thinking that it is a will and not a sale deed. This is a question which is linked up with the intention of the executants for which there should be pleading and evidence. On this aspect neither any pleading nor any evidence is put forward by the plaintiff in courts below. On the contrary, no such argument has been canvassed before the High Court or before the first appellate court which was the final courts of facts. Thus the additional ground was not sustainable.

In *Vasant Kumar RadhakishanVora v. The Board of Trustees of the Port of Bombay*, the apex court opined that the plea that tenant denied landlord’s title and thus contended that the suit for ejectment was not allowed is a mixed question of law and fact which cannot be allowed to be raised in an appeal by special leave.

In *Suresh Kumar Jain v. ShanitSwarup Jain*, an appeal by special leave was filed against the decision of the Allahabad High Court upholding the decision of the trial court and thus causing the eviction of the appellant (tenant).

It was opined that the determination of deemed date of construction under U.P. Rent Act by appraising and interpreting municipal records and assessment proceeding, is not determination of fact but mixed question of law and fact. So findings thereon can be interfered with by apex court in appeal by special leave under Article 136 of the Constitution.

**Interference with finding of fact.**

In *Mallappa Girimallappa Betgeri v.R. Yellappagouda Patil*, an appeal by special leave under Article 136 was filed by the appellant against the judgment of

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89 AIR 1991 SC 14
90 AIR 1997 SC 2291
91 AIR 1959 SC 906
the High Court of Bombay. The court below observed that the Kurtakoti properties (K’ properties) and certain other properties are joint family properties. It was contended by the appellant that the transfer of property in his favour was by a gift deed, without consideration. Therefore, the said properties cannot be classified as joint family properties but all the courts below decided that the transfer of properties has taken place at a consideration of Rs. 2000 by a sale deed. Therefore, all the properties purchased by the appellant were the joint family properties.

The apex court while dismissing the appeal opined that it is not the practice of the apex court to set aside the findings of fact concurrently arrived at by the courts below. The apex court emphasized that where the courts below could on evidence before them legally come to the conclusion that the consideration mentioned in the deed of sale had been paid. It is not for the Supreme Court to substitute its own view on the questions for the view by the courts below. Furthermore, it is observed that there was sufficient nucleus of joint family property out of which those properties might have been acquired and it is a question of fact which cannot be interfered by the apex court.

In *Crompton Parkinson (works) Pvt. Ltd., Bombay v. Its Workmen*[^AIR 1959 SC 1089^], the appeals by special leave was filed by the appellant (company) against the award of the Industrial Tribunal which concerns the demand of its workmen for bonus. It was alleged by the union that the company was paying huge money as service fee to the parent company on account of supply of technical knowhow concerning electric appliances and such deduction from profits is a reason for non-supply of bonus. The tribunal after looking into the facts and balance sheet of the company upheld the contention of the union and ask the company to reduce the service fee from 7.76 lacs to 2 lacs. Moreover, the tribunal allowed the bonus out of the profits in preference to prior charges which was against the formula developed for determination of bonus.

The apex court after the analysis of the case observed that the Tribunal overlooked certain important evidence before it. The tribunal had not paid attention to the company’s audited balance sheet, nor to the evidence that income tax authorities had allowed the service fee as legitimate revenue expense and that the amount of service fee was allowed as deduction every year by income tax.

[^AIR 1959 SC 1089^]: AIR 1959 SC 1089
Moreover, it was also observed by the apex court that the Tribunal did not consider the fact that remittance to the parent company was allowed by Reserve Bank. The bonus formula which should be followed by tribunal to arrive at the available surplus after providing for certain prior charges had been overlooked by tribunal. All this amounts to error of law which cannot be sustained. Therefore, the apex court while allowing the appeal modified the award by allowing only one month’s basic wages.

In Padma Vithoba Chakkayya v. Mohd. Multani,93 it was observed by the Supreme Court that if two lower courts have recorded a concurrent finding with regard to fact, then there is no sufficient reason for the Supreme Court to interfere with concurrent finding and allow the re-agitation of the question of fact. In this case, the Addl. District Judge as well as the High Court of Hyderabad recorded a finding in a suit for recovery of possession of the land that the defendant attained majority three years prior to the institution of suit, therefore the said suit became time barred.

In Ratilal Balabhai Nazar v. Ranchhodbhai Shankarbhai Patel,94 an appeal by special leave was filed by the appellant against the order of the High Court of Gujarat dismissing, the appellant’s application under section 115.CPC for revision of the judgment of the Principal Judge of city Civil Court, Ahmadabad. The appellant was tenant of the respondent and on the default of the payment of rent, respondent filed a suit before trial court against the appellant. The trial court observed that the standard rent paid by appellant include the municipal taxes and electric charge and accordingly gave the decision. On appeal before the Principal Judge of the City Civil Court, it was held that appellant was bound to pay taxes and electric charges and accordingly the amount of rent was enhanced. Against this decision appellant filed an application under section 115 CPC for revision which was dismissed. Then an appeal by special leave was filed under Article 136 of the Constitution against the decision of the High Court.

The three judges bench while dismissing the appeal opined that the erroneous construction placed upon a statute by trial court does not amount to exercising jurisdiction illegally or with material irregularity and would not furnish a ground for interference under section 115, CPC. The limitation placed upon powers of High

93 AIR 1963 SC 70
94 AIR 1966 SC 439
Court under section 115, CPC also circumscribe powers of Supreme Court to interfere under Article 136 in regard to the same matter.

In *Customs Collector, Bombay v. Shantilal and Company*, it was pointed out that the power vested with the High Court under Article 226 is discretionary in nature and the High Court can issue a writ even if an alternative statutory remedy is available. The apex court cannot interfere in the exercise of discretion by the High Court unless exceptional circumstances exist.

In *National Engineering Industries Ltd., Jaipur v. Hanuman*, an appeal by special leave was filed against the decision of the labour court, where the labour court setting aside the termination of the respondents, passed by the appellant relied on the evidence produced by the respondent that he was ill and had sent medical certificate and his services was not automatically terminated and he should be provided a chance of explanation, otherwise it would be the denial of natural justice. On this appellant preferred an appeal against the order of labour court under Art. 136 of the Constitution before the apex court.

The two judge bench of the apex court while allowing he appeal opined that the findings of the labour court was not proper as neither the statements of the witnesses produced was corroborated nor the proper record was produced which clearly indicated the truthfulness of the statement of the respondents. Further it was opined that where a standing order provides that a workmen would lose lien on his appointment, if he does not join duty within certain time after his leave expires, it one means that his service stands automatically terminated when the contingency happens.

Hence forth it was observed that ordinarily the apex court will not interfere with the findings of fact recorded by Quasi-judicial Tribunals in an appeal under Article 136 of the Constitution but this court does so if it is shown ex- faire that the finding recorded is perverse.

In *Chairman, M/S. Brooke Bond India Pvt. Ltd. v. Channath Choudhary*, an appeal by special leave was filed against the order of labour court which after

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95 AIR 1966 SC 197  
96 AIR 1968 SC 33  
97 AIR 1969 SC 992. See also, *Workmen of the Motor Industries Co. Ltd. v. Management of Motor Industries Co. Ltd.*, AIR 1969 SC 1280- Where the SC refused to interfere with the findings of fact by Labour Court regarding dismissal of workman for misconduct as urgent reasons were given by the labour court and findings were neither perverse nor such as no reasonable body of persons could come to one evidences on record.
going through the facts of case and the report of enquiry officer, set aside the order of discharge of respondent from the services passed by the appellant company.

The apex court while dismissing the appeal opined that the taking of loans by the respondents from the wholesaler is being a finding of fact and the apex court could not be justified to go behind that finding except on well recognized grounds such as perversity or unreasonableness of finding in an appeal by special leave under Article 136 of the Constitution. Further with regard to question that whether the order of management was one of discharge simpliciter or was passed as punishment, the apex opined that the charge sheet served by the appellant, the findings of the enquiry officer and the written statement filed by the appellant company before labour court clearly stated that the order was passed as a punishment.

The Supreme Court has considered in number of cases as to what constitutes question of fact. In Devidas v. Shri Shailappa, the Supreme Court opined that prima facie, the question whether at a partition between members of a joint Hindu family, certain property was left undivided is a question of fact depending upon appreciation of evidence and the Supreme Court according to its settled practice, would not disturb a concurrent finding on the question.

The Supreme Court would not be justified in an appeal with special leave in discarding a finding by the trial court because some other evidence which could have been brought before the court in support thereof was not tendered.

In DhanvantriBalwantri Desai v. State of Maharashtra, The question whether a presumption of law or fact stands rebutted by the evidence or other material or record is one of the fact and not of law and apex court is slow to interfere with the view of facts taken by the High Court. No doubt it will be open to apex court to examine the evidence for itself where the High Court has proceeded upon an erroneous view as to the nature of the presumption or again where the assessments of facts made by the High Court is manifestly erroneous.

In the Union of India v. The West Punjab Factories Ltd., the apex court opined that the concurrent finding of fact that fire which caused damage was due to

See also, S. Kartar Singh v. Chaman Lal, AIR 1969 SC 1288, the apex court while dismissing the appeal regarding eviction cuit opined that concurrent findings of lower courts being one of fact must be accepted as final.

98 AIR 1961 SC 1277
99 AIR 1964 SC 575
100 AIR 1966 SC 395
negligence of railway administration is a question of fact. The finding of fact cannot be challenged in an appeal by special leave before the apex court.

In *J.K. Woollen Manufacturer v. Commr.of Income Tax,¹⁰¹* an appeal by special leave was filed against the decision of the High Court of Allahabad. The appellant was carrying on a business for the purpose of which he was appointed General Manager and it was agreed that he will be paid along with salary and other allowances, a commission of 25% on the profit acquired from the business to the General Manager. He claimed a deduction of the said amount from the assessable income. But the income tax officer disallowed the claim on the ground that it was excessive and quite unreasonable. On appeal before Appellate Assistant Commissioner of Income Tax, it was held that payment of commission at the rate of 12% was sufficient and reasonable. Then an appeal was preferred before Income Tax Appellate Tribunal which was dismissed. Against this decision, appellant moved the High Court but the High Court also gave decision against the assessee. Against the judgment of the High Court, an appeal by special leave is brought before the Supreme Court.

Before the apex court, the assessee contended that the amount was laid out or expended wholly or exclusively for the purpose of the business of the assessee and was wrongly disallowed by the Income Tax appellate Tribunal.

The apex court on the analysis of the case while allowing the appeal opined that in applying the test of commercial expediency for determining the reasonableness of the expenditure, it has to be adjudged from the point of view of the businessman and not of the Income Tax Department. It is not the function of the Tribunal to determine the remuneration which in their view should be paid to an employee of the assessee. An employer in fixing the remuneration of his employees is entitled to consider the extent of his business, the nature of the duties to be performed and the special aptitude of the employee, future prospects of extension of the business and a host of other related circumstances. Hence, it is laid down that the final conclusion on the admissibility of an allowance is one of the law, where Supreme Court can interfere.

¹⁰¹ AIR 1969 SC 609
In the Union of India v. M/S Motilal Padampat Sugar Mills Co. (Pvt.) Ltd., Kanpur, an appeal by special leave was filed against the order of the Railway Rates Tribunal determining reasonable rates at which siding charges can be recovered from the respondents. The respondents were carrying on the business of the manufacture of sugar and by an agreement with the Bengal and North Western Railway Company Ltd. fixed the charges for affording assisted siding at the railway station to afford better facilities for the delivery of goods consigned to the mill and for the dispatch of goods sent out from the mill. Railway enhanced the charges against which the respondent filed a complaint before Railway rates Tribunal. The Tribunal after going through the evidence held the railway is not entitled to levy any charge, in addition to the freight already levied. Therefore, the claim for haltage charges for the shunting operation done at the assisted siding is unjustified and unsustainable. Against this, decision, an appeal by special leave was filed before Supreme Court under Article 136 of the Constitution.

The apex court while dismissing the appeal opined that this is a finding of fact made by the Tribunal and there appears no reason for displacing this pure finding of fact. Further it was observed that the tribunal has gone through ample evidence for arriving at the conclusion, so Supreme Court cannot go into question of fact in an appeal by special leave.

In L. Michael v. M/S. Johnson Pumps Ltd, an appeal by special leave was filed against the decision of the labour court by which the labour court upheld the order of the management passed in regard to the termination of the services of an employee simpliciter on the basis that the employer has lost confidence in the employee without giving any sufficient justification for that undermined confidence.

The three judges bench while allowing the appeal opined that loss of confidence is no new armour for the management, otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of the Supreme Court can be subverted by this neo-formula. Loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivation. An employee who believes or suspects that his employee, particularly one holding a position of confidence has betrayed that confidence, can, if the conditions and terms

102 AIR 1969 SC 630
103 AIR 1975 SC 661. See also, Heavy Engineering Corp. Ltd. Ranchi v. K. Singh and Co. Ranchi, AIR 1977 SC 2031
of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion should not more whim or fancy, but it should be bonafide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. If the exercise of such power is challenged on the ground of being colourable or malafide or an act of victimization or unfair labour practice, the employer must disclose to the court the grounds of his impugned action so that the same may be tested judicially. The court observed that the respondent has not disclosed the grounds on which his suspicion arose. Moreover, the appellant was given two extra increments in appreciation of his hardwork. This circumstances completely demolishes even the whimsical and tenuous stand taken by the employer.

Further the apex court opined that the Supreme Court, in appeal, as a rule of practice, is loath to interfere with the finding of fact recorded by the trial court. But when such finding is based on no evidence, or is the result of a misreading of the material evidence, or is unreasonable or grossly unjust that no reasonable person would judicially arrive at that conclusion, it is the duty of Supreme Court to interfere and set matters right.

In *Dr. Bhallabha Das Shah v. Smt. SushilaBai*, an appeal by special leave was filed against the judgment of the High Court dismissing the divorce petition on the ground that the wife was guilty of cruelty toward him, and that she was guilty of adultery and that she had deserted him.

The apex court while dismissing the petition opined that the finding by which plea was rejected by lower courts was fully supported by evidence. The charge against wife had not been established. The findings of facts recorded by the courts below are unexceptionable. There is no substance in the appeal.

In *Smt. Malkani v. Jamadar*, the two judges bench while dismissing the appeal opined that there are concurrent findings of court below as to due execution and attestation of will. With regard to suit property. Moreover, there was summary dismissal of second appeal as there was no question of law involved. So Supreme Court will not interfere with findings of fact.

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104 AIR 1988 SC 2089
105 AIR 1987 SC 767
In *Jiwan Mal Kochar v. UOI*, an appeal by special leave was filed by the appellant against the decision of High Court of Delhi dismissing the letters Patent Appeal filed against decision of learned single judge of that High Court dismissing the writ petition and caused the compulsory retirement of the appellant with immediate effect. A disciplinary proceeding was initiated against the appellant and certain irregularities committed by him were disclosed. Then an enquiry was conducted and on the basis of the report of Enquiry officer, the President of India found appellant not fit to be retained in service. The Union Public Service Commission also advised in a memorandum that penalty of compulsory retirement should be imposed. The appellant’s memorial in that regard was rejected by the President. On appeal before Single judge of Delhi High Court, pending the appellant’s memorial, the learned Single Judge also dismissed the petition. Then a letters patent appeal was filed and the High Court in the letters patent appeal had considered three sets of documents and several circumstances for agreeing with the enquiry officer’s finding recorded in departmental enquiry that the certain relevant letter was an antedated and fabricated document admittedly, the enquiry officer had no bias against the delinquent officer and he had given him all opportunities to defend himself in a fair and reasonable manner. There was no non-compliance with any statutory rule or requirement or any principle of natural justice.

The apex court while dismissing the appeal opined that the findings of the High Court could not be interfered with as it was already proved before High Court that enquiry officer had no bias against appellant and had given all opportunities to him to defend himself in fair and reasonable manner. The High Court had considered all the evidence is a proper way so there appears no reason for a different conclusion.

In *Ram BagasTaperia v. Ram Chandra Pal*, an appeal by special leave was filed against the decision of the High Court causing the eviction of the tenant from the leased premises on the ground of default in the payment of rent. The plea of the tenant that he had personally tendered the rent for January 1966 in the first week of February 1966 to the landlord had not been accepted by the lower courts or by the High Court. The apex court while dismissing the appeal opined that the finding being one of the fact rendered on the appreciation of evidence, its correctness cannot

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106 AIR 1983 SC 1102  
107 AIR 1989 SC 426
be re-agitated by the tenant in the appeal by special leave under Article 136 of the Constitution.

In *Dipak Banerjee v. Lilabati Chakraborty*, the apex court opined that there was eviction of tenant on the ground of creating sub-tenancy without owner’s permission but there was no evidence on the fact that the alleged sub-tenant was in exclusive occupation of any part of premises over which tenant had no control or there was any payment of money in exchange of the user of the part of premises. The High Court refused to interfere with the findings of fact. But the apex court while allowing the appeal opined that though normally Supreme Court does not interfere with finding of fact but if finding is manifestly unjust, it cannot allow to perpetuate injustice.

In *Municipal Corporation of Delhi v. M/S JaganNath Ashok Kumar*, the respondent was awarded contract for construction of staff quarters by the Municipal Corporation of Delhi but he failed to complete the contract within time, as a result of which contract was rescinded. Then an application was filed under section 20 of the Arbitration Act, 1940 in the Delhi High Court and the arbitrator by his award allowed some claims of the contractor and come counter claims of Municipal Corporation. Then a letter patent appeal was filed by the Municipal Corporation which was summarily dismissed. Then the appellant filed an appeal by special leave against the order of Division Bench of High Court. The question before apex court was whether reasonableness of the reasons in a speaking award of arbitrator is justifiable under Article 136.

The apex court opined that the reasonableness of the reasons in making his award cannot be challenged in a special leave petition. There was no evidence of violation of any principle of natural justice. The arbitrator is the sole judge of the quality as well as quantity of evidence and it will not be for the Supreme Court to take upon itself the talk of being a judge of the evidence before the arbitrator.

In *M/S Variety Emporium v. V.R.M. Mohd. Ibrahim Naina*, an appeal by special leave was filed against the decision of High Court of Madras having dismissed the revision petition which caused the eviction of the tenants of the respondents (landlord). The respondent had filed a civil suit for eviction of the

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108 AIR 1987 SC 2055
109 AIR 1987 SC 2316
110 AIR 1985 SC 207. The same principle regarding concurrent finding of fact was laid down in *M/S India Machinery Stores (Pvt.) Ltd. v. Presiding Officer, Labour Court Patna*, AIR 1990 SC 1781
tenant on the ground of need or requirement as it was pleaded on behalf of the respondent that due to loss in business, he wanted to wind up his wholesale business and start a retail business in the building in the occupation of the tenant. The three courts i.e. trial court, appellate authority and the High Court had concurrently held that the respondent required the premises bonafidely for his personal need and thus passed the decree for eviction.

The apex court while allowing the appeal opined that the concurrent findings of lower courts has relevance on the question whether Supreme Court should exercise its jurisdiction under Article 136 of the Constitution to review a particular decision and the jurisdiction has to exercised sparingly. But, that cannot mean that injustice must be perpetuated because it has been done two or three times in a case. The burden of showing that a concurrent decision of two or more courts or tribunals is manifestly unjust lies on the appellant. But once that burden is discharged, it is not only the right but the duty of Supreme Court to remedy the injustice.

Furthermore, it was opined that in a proceeding for his ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes the contrary, the requirement must continue to exist on the date when the proceeding is finally disposed of either in appeal or revision, by the relevant authority.

The apex court proceeded to exhibit how by trying a priori conclusions the lower courts have denied justice to the appellant. In the opinion of the apex court, the trial court presumed the bonafide requirement of the landlord as proved though no documentary proof including the balance sheet, tax returns was produced before the trial court. The said court accepted the ipse-dixit of the respondent that he was incurring losses in the whole sale business. The first appellate court’s decision exhibits confusion in determination of bonafide requirement as it could not properly discern between need and desire. The High Court seemingly did not apply its mind to the question involved in the case.

In state of West Bengal v. SudhirVaid,111 it was opined by the apex court that where the question of law is settled by the court in appeal, then there is no necessity to review the factual aspect while granting the leave by special leave.

111 AIR 1985 SC 735
A singular view was expressed in *Titaghur Paper Mills Co. Ltd. v. State of Orissa*,\(^{112}\) where it was opined that relief would be nugatory as the subject matter having been disposed of by previous judgments of the Supreme Court.

*In M/S Dutta Cycle Stores v. Smt. Gita Devi Sultania*,\(^{113}\) an appeal by special leave was filed against the decision of the Patna High Court, dismissing in lunine the second appeal and confirming the order of the eviction of the appellant on the ground that the tenant (appellant) was in arrears of rent.

The apex court while allowing the appeal opined that the Supreme Court does not ordinarily interfere in proceedings under Article 136 particularly when all the courts below reached the same conclusion. But where the finding of fact is based on no evidence or opposed to the totality of evidence and contrary to the rational conclusion to which the state of evidence must reasonably lead, then the Supreme court will in the exercise of its discretion intervene to prevent miscarriage of justice.

In the instant case, the apex court observed that where it was alleged that the rent has been duly paid by the tenant to the landlord, by handing over the amount to his minor daughter who went to the tenant’s shop to collect the same and by accompanying her to her house to see the safe delivery to her mother of the said amount and there was no evidence at all on the side of the landlord that rents were in arrears, it could not be suspected that the rent remained in arrears.

*In Ganga Bishan v. Jai Narain*,\(^{114}\) an appeal by special leave was filed against the judgment and decree passed by the High Court of Rajasthan where the High Court dismissed the appeal and gave a concurrent finding that the respondent (plaintiff) had entrusted gold to the appellant (defendant) for carrying it from Barmer in Rajasthan to Bombay.

The apex court while allowing the appeal opined that ordinarily the apex court is averse to interfere under Article 136 of the Constitution with the concurrent findings of fact recorded by the High Court and the trial court. But where there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in duly excessive hardship, the apex court cannot decline to interfere merely on the ground that the findings in question are findings of fact. The constitution has left it to the judicial discretion of the apex court.

\(^{112}\) AIR 1985 SC 934

\(^{113}\) AIR 1990 SC 656

\(^{114}\) AIR 1986 SC 441
court to decide for itself the scope and limits of its jurisdiction in order to render substantial justice in matters coming before it. It is neither possible nor desirable to lay down any rigid rule capable of covering all conceivable cases, while it is however clear that Art. 136 does not confer an unrestricted right of appeal on any party to claim the reopening of all questions of fact and law where non exists otherwise.

Further the apex court while not relying on the evidence as alleged by the respondents in lower courts opined that the respondents (plaintiff) deposed that he had purchased the gold with the large amount that was lying with him for 15 years which represented the earning of his father and uncle but it was found that the father had to mortgage his house for loan outstanding against him for a long time and there was no reliable evidence about the means of the plaintiff and the suit was filed about 3 years after the defendants failed to return the gold and there was no explanation about the delay nor there was any criminal complaint filed on failure to return gold nor the plaintiff had examined his son who had accompanied him when he purchased gold nor the person who assisted him when he purchased gold, thus, the concurrent finding of fact by the High Court as to entrustment of gold was liable to be interfered with.

In *Smt. Indira Kaur v. Shri. Sheo Lal Kapoor*,\(^\text{115}\) an appeal by special leave was filed against the judgment of the Allahabad High Court. The contention of the respondent was that as there was a concurrent finding of the courts below that there was a failure on the part of the appellant in the specific performance of the contract, such a plea cannot be raised again in an appeal by special leave under Article 136 of the Constitution.

The apex while allowing the appeal opined that Article 136 does not forge any such fetters expressly. It does not oblige Supreme Court to fold its hands and become a helpless spectator even when it perceives that a manifest injustice has been occasioned. If and when the court is satisfied that great injustice has been done it is not only the ‘right’ but also the ‘duty’ of Supreme Court to reverse the error and the injustice and to upset the finding notwithstanding the fact that it has been affirmed thrice.

\(^\text{115}\) *AIR 1988 SC 1074*
In *DhanjibhaiRamjibhai v. State of Gujarat*, an appeal by special leave was filed against the decision of the Gujarat High Court terminating his services. Before the apex court, the appellant contended the order terminating his services was malafide. On the expiry of the period of probation, the appellant must be deemed to have been confirmed and in as much as his services have been terminated without complying with cl. (2) of Article 311, the order is invalid.

The apex court while dismissing the appeal opined that where the finding of fact has been rendered by a single judge of the High Court and thereafter affirmed in appeal by an Appellate Bench of that High Court, the Supreme Court should be reluctant to interfere with the finding unless there is very strong reason to do so. Further it was opined that there is no right in the probationer to be confirmed merely because he had completed the period of probation of two years and had passed the requisite tests and completed the prescribed training. The function of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service. Furthermore the order of termination does not contain any stigma or refer to any charge of misconduct on the part of the appellant as on an overall appreciation of his record of service, he was found unsuitable for being absorbed in the service.

In *Rajinder Kumar Joshi v. Veena Rani*, an appeal by special leave was filed against the order of the High Court rejecting the writ petition summarily and causing the eviction of the tenant on the ground as found by the rent controller i.e. the appellant was in arrears of rent.

The apex court while dismissing the appeal opined that the Rent controller and appellate authority decided the disputes on the basis of oral assertions of the witnesses and by preferring one assertion to the other without giving any cogent reasons but since it is a finding of fact and is not interfered with by the High Court in revision, the apex court would all the more be reluctant to disturb it while exercising its jurisdiction under Article 136.

In *Board of Technical Education, U.P. v. DhanwantriKumari*, an appeal by special leave was filed against the decision of Allahabad High Court quashing the order made by the Board of Technical Education (appellant) cancelling the results of

116 AIR 1985 SC 603
117 AIR 1991 SC 259
118 AIR 1991 SC 271
the examination taken by certain students. The High Court found that the order impugned before it were unsustainable for the reasons that the students had not been given proper notices.

The apex court while dismissing the appeal opined that in the peculiar facts and special circumstances, the High Court was justified in coming to the conclusion that the notices served on the students were vague and imprecise and therefore, there is no reason for interference by the apex court.

In *Ponnapa Gounder v. Kandaswamy*119 an appeal by special leave was filed against the decision of high Court of Madras affirming the decision of the trial court causing eviction of the tenant on the ground of default committed in payment of rent. The apex court opined that default in payment of rent is a question of fact, so Supreme court declined to interfere.

In *Narpatchand A Bhandari v. Shantilal Moolshankar Jani*,120 the two judges bench while dismissing the appeal filed against the decision of the High Court of Bombay opined that the trial court tried the suit, on an appraisal of the oral and documentary evidence adduced by the parties. There were sufficient evidence to show that the appellant who was the tenant of multi tenanted building had put up textile printing mill in common terrace, ran it during night, used domestic water. All this constitute nuisance or annoyance under section 13(1)(c) of Bombay Hotel & Lodging house Rent Control Act causing eviction of the tenant.

Further it was opined that the trial court as well as appellate court give their decision on the basis of the ample evidence that was on record and so there was no justification to interfere with such findings of facts by the apex court.

In *Collector of customs, Bombay v. M/s. Krishna Sales (P) Ltd.*121, an appeal by special leave was filed against the judgment of the customs, Excise and Gold (control) Appellate Tribunal. The customs authorities caused the confiscation of machinery on the ground of misdeclaration of the machinery imported. Then the opinion of experts was sought and the Tribunal then passed on order in favour of the respondent.

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119 AIR 1993 SC 395  
120 AIR 1993 SC 1712  
121 AIR 1994 SC 1239
The apex court while dismissing the appeal opined that issue involved is not a question of law but one of fact which is also a technical matter. As the Tribunal had sought the opinion of experts, there is no reason for interference.

*In N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao*, the two judges bench while dismissing the appeal opined that in a suit for specific performance of contract where the plaintiff neither deposited the amount of sale consideration nor furnished the bank guarantee as per the direction of the trial court and he was never ready with either money or resources to fulfill his part of contract, the dismissal of suit on finding of facts that plaintiff was not ready and willing to perform his part of contract was justified. Further it was opined that as it is a finding of fact and there was no infirmity in judgment. So there is no justification for interference by the apex court in appeal by special leave.

*In M/s Rajasthan PremKrishan Goods Transport Co. v. Regional Provident Fund, Commissioner*, the apex court opined that finding of the commissioner that two companies having common place of business, common management, letter heads, bear same telephone numbers and ten partners are common, trucks plied are owned by partners are being hired by both units and the respective employees engaged by two entities when added together, being integrated entities, being finding of fact cannot be interfered with by apex court in appeal by special leave.

*In Raghunath G. Panhale (dead) by LR's v. M/s ChaganlalSundarji*, an appeal by special leave was filed against the decision of the Bombay High Court disallowing the appellant to have the suit premises for his own use. The original landlord filed a suit for the eviction of the tenant on the ground that he required the said premises for his own use. On his death, his heirs were brought on record and filed an application for amendment under order 6, rule 17 which was allowed. Then the heirs of the original appellant pleaded that same premises was required for himself for starting a grocery business as he was finding difficult to maintain his family due to the lock out in the company in which he was working. The trial court as well as the appellate court rejected the plea on the ground that the requirement was not bonafide.

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122 AIR1996 SC 116
123  AIR 1997 SC 58
124  AIR 1999 SC 3864
The apex court while allowing the appeal opined that the trial court and the appellate court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". Further it was opined that a landlord need not lose his existing job nor resign it no reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in job and had not resigned it or assuming that pending the long drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not bonafide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. The entire approach of both the courts below was absolutely wrong in law.

Furthermore it was opined that this is a fit case for interference under Art 136 in as much as the court were wrong in thinking that the plaintiff must prove not his need but his dire or absolute necessity.

_In Darshan Singh v. Gurdev Singh_125 an appeal by special leave was filed against the decision of the Punjab and Haryana High Court. The respondent after attaining majority filed a suit for the possession of the property of his father. The appellant contended that the suit is barred as it was filed after 12 years of attaining majority, while sec 6(1) and sec(8) of the Limitation Act conjointly provide that where a person is entitled to institute a suit, the limitation begins to run for a minor or insane, or an idiot to institute the suit be within the same period after the disability has ceased as would otherwise have been allowed for the time specified therefore in the 3rd column of the schedule i.e. three years from the date of cessation of disability.

The apex court on the analysis of the case opined that the suit of the respondent is barred by limitations, But as the courts below concurrently found as a fact that the appellant is a stranger to the family of the respondent and by forging the will of the father of the respondent came into the possession of the suit property, there is no reason for the interference of the apex court.

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125 AIR 1995 SC 75
In Smt. Bhatori v. Smt. Ram Piari, the appellant made a general power of attorney to respondent No. 2 who played fraud with the appellant and got her land transferred in the name of his wife. The fraud played had produced to damage to the appellant depriving her of the valuable property denuding right, title and interest to claim compensation in respect of her lands acquired by Govt. The courts below have committed grave error by not appreciating the fraud played by the respondent. Thus the apex court while allowing the appeal set aside the judgments and decree of the lower courts.

In Naresh Mohanlal Jaiswal v. State of Maharashtra, the apex court while dismissing the appeal opined that both the courts below had considered the testimony of the witnesses which was found to be credible. The fact produced by the prosecution was sufficiently corroborated, so that was no error committed by the courts below. Further the court opined that these are the concurrent finding of fact that apprehension expressed by witnesses and investigation was not tainted one, so there is no substance in appeal where the apex court can interfere.

In Mehar Singh, v. Shiromani Gurudwara Prabandhak Committee, an appeal by special leave was filed against the judgment of the Punjab and Haryana High Court confirming the award of the Sikh Gurudwara Tribunal, Punjab whereby the claim of the appellants being successors of one Bhai Arjan Singh filed under section 5(1) of the Sikh Gurudwaras Act was partly allowed and party dismissed, it was held that the land which in the revenue records was registered in the names of the appellants could not be treated as property of the langarJi or the Gurudwara.

The apex court while dismissing the appeal opined that normally, in exercise of the apex court's jurisdiction under Article 136 findings of fact concurrently arrived at by the Tribunal and the High Court will not be interfered with by the Supreme Court unless there is a clear error of law or unless some important evidence has been omitted from consideration. As the award of the Tribunal was based on ample material-historical as well as other documentary and oral evidence and no relevant document was left out of consideration, the High Court was thus right in affirming award.

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126 AIR 1996 SC 2754
127 AIR 1997 SC 1523
128 AIR 2000 SC 492. See also, Hanuman Prasad v. IIIrd Addl. District Judge, AIR 2000 SC3603
In IshwarDassJain (dead) through LRs. v. SohanLal (dead) by L.Rs., an appeal by special leave was filed against the judgment of the Punjab and Haryana High Court dismissing the second appeal of the appellant without reasons. The appellant had filed a suit for the redemption of the usufructuary mortgage and for possession which was dismissed by the trial court as well as by appellate courts.

The apex court while allowing the appeal opined that ordinarily, the Supreme Court does not go into findings of fact in exercise of its jurisdiction under Art 136 of the Constitution of India, particularly in appeals against judgment in second appeals decided by the High Courts under section 100 of the Code of Civil Procedure. But, in certain exceptional cases, the apex court will not hesitate to interfere, if interference is called for and if the High Court has failed to interfere under section 100. There are two situations in which interference with findings of fact is permissible. Firstly when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion and secondly, where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. In either of the above situations, a substantial question of law can arise.

Further the apex court with regard to the mortgage deed opined as there was not specific denial of execution, the mortgage thus stood proved by the certified copy. With regard to the plea raised by the respondent that mortgage was only a collateral security to ensure vacation of leased premises by mortgage and therefore sham, the apex court observed that the plea was not tenable since if it was a deed of collateral security by defendant, then defendant would have had to execute a deed in favour of the plaintiff and not vice versa. Moreover, the contention of the respondent with regard to the payment of rent was not proved as original account books kept in regular course of business was not produced and therefore, the private extracts of alleged account books are not admissible. The apex court thus decreed for redemption of the mortgage deed.

In Commissioner of Sales tax, Uttar Pradesh v. Eicher Good Earth Ltd, the three judge bench while allowing the appeal opined that it was not proper for the High Court to interfere with the finding of fact reached by the final fact finding

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129 AIR 2000 SC 426
130 AIR 2000 SC 3386
authority i.e. Tribunal merely on the basis of statement made in the grounds of appeal that findings of fact are arbitrary or perverse.

*In Smt. Mattoo Devi v. Damodar Lal (dead) by L.Rs.,*\(^{131}\) an appeal by special leave was filed against the judgment of the Rajasthan High Court concerning the right of the pre-emption of the respondents (original plaintiff) of the portion of the house, 3/4th portion of which is already owned and possessed by them.

The apex court while dismissing the appeal opined that the finding of fact arrived at upon the consideration of the evidence on record ought not to be interfered with unless there is a total perverse view of the matter in issue. As the appellant failed to prove that the respondents after the execution of the agreement to sell express their inability to purchase the house, thus, the question of waiver of right of pre-emption by the pre-emptor does not arise at all and as such question if any interference under Article 136

*In Management of Central P&D Inst. Ltd v. Union of India,*\(^ {132}\) an appeal by special leave was filed against the judgment of the Division Bench of the High Court agreeing with the finding arrived at by the Tribunal and single judge and held that the employee had established that she had worked for 240 days continuously in the relevant year, hence her discharge was illegal and therefore directed her reinstatement with 50% back wages.

The apex court while disposing of the appeal opined that question whether workman completed 240 days of continuous service is purely a question of fact which cannot be interfered unless such finding of fact is totally perverse.

Further, with regard to reinstatement of employee, it was opined that it is not always mandatory for courts to order reinstatement. Moreover, it was observed that the employee was not interested in continuing with job even after her reinstatement by High Court and had joined somewhere else. The apex court thus directed that the appellant should pay a sum of Rs. 25,000/- as compensation with in the time provided by the apex court.

*In Anjula Verma v. Sudhir Verma,*\(^ {133}\) the two judge bench of the apex court while dismissing the appeal opined that the finding of High Court that there was no wrong established on the part the respondent-husband subsequent to the decree of

131 AIR 2001 SC 2611
132 AIR 2005 SC 633
133 AIR 2002 SC 1447
restitution of conjugal rights which would disentitle him from seeking divorce under section 13(1A)(ii) of the Hindu Marriage Act cannot be interfered in view of the fact situation of the matter, but it was further clarified that dismissal of appeal would not in any way prejudice the right of maintenance or any other right or rights as may be available to the appellant as regard properties.

In Vinita Saxena v. Pankaj Pandita, an appeal by special leave was filed against the judgment of High Court confirming the judgment of lower court and rejecting the prayer of the appellant regarding grant of decree of divorce on the ground that the respondent is not suffering from Schizophrenia and there is insufficient material on record to establish the cause of cruelty.

The apex court while allowing the appeal opined that as the parties have been living separately for last 13 year and have crossed the point of no return. A workable solution is certainly not possible. Parties at this stage cannot reconcile themselves and live together forgetting their past as bad dream. The facts and circumstances of the case as well as aspect pertain to humanity and life would give sufficient cogent reasons for court to relieve the appellant from shackles and chain of the respondent-husband and let her live her own life, if nothing less but like a human being.

In P.V. Hemalatha v. Kattamkani Puthiya Maliarkal Saheed, an appeal by special leave was filed against the judgment of the division bench of Kerala High Court where the learned judges confirmed the decree of sub-ordinate court with regard to the specific performance of the agreement of sale in terms of section 98(2) of the Civil Procedure Code which provides where there is no such majority which concurs in a judgment varying or reversing the decree appealed from such decree shall be confirmed.

The appellant contended that as section 23 of the Travancore Cochin Act is saved under section 9 of the Kerala Act, the learned judges should follow the procedure laid down in section 23 of the Travancore-Cochin Act and they could refer the matter to the Chief Justice for the opinion of third judge.

Furthermore it was opined that the issues of fact arising between the parties in the suit and appeal were sufficient to decide the cases for or against the plaintiff, the cleavage of opinion between the two judges on other mixed issues of law and fact is inconsequential. Their difference of opinion on mixed issues of law and fact

134 AIR 2006 SC 1662
135 AIR 2002 SC 2445
even if it would have been referred for obtaining majority opinion of the judges of
the court would not have changed the ultimate result of the appeals because the
judges had also differed on issue of fact and decision of one of them was sufficient
for decision of the cases in appeals. Thus as the opinion of one of the judges on
issues of fact was decisive of the appeal, it would not be in accordance with the
established practice of the Supreme Court to interfere by grant of special leave to
appeal grant of special leave to appeal against judgments raising issues of fact which
were determinative would be against the legislative intent contained in provision of
sub section (2) of section 98 of the code.

In Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust
and others,\textsuperscript{136} an appeal by special leave has been filed against the judgment of
division bench of the High Court whereby the Division Bench while allowing the
appeal enhanced the amount of damages awarded from Rs. 7 lakhs to Rs. 11 lakhs
along with interest @12% per annum.

The apex court while dismissing the appeal opined that the learned trial
judge as well as the division bench of the High Court has held the defendant liable
for negligence and failure to take due care of the plaintiff who was an in-door patient
in the hospital. The aforesaid conclusion reached is on an elaborate consideration of
the evidence and materials on record and after a detailed discussion of the stand of
rival parties. The apex court on this opined that there is no error in the application of
\textit{res ipsa loquitur} to the present case. In so far as the findings of negligence and
absence of due care of the defendant is concerned, it has been opined that such
finding being concurrent finding of fact the same ought not to be re-opened in
appeal under Article 136 and any such exercise would be wholly in-appropriate to
the extraordinary and highly discretionary jurisdiction vested in this court by the
Constitution.

\textbf{Interference with awards of Industrial Tribunal}

In M/S Indian Iron and Steel Co. Ltd. v. their Workmen,\textsuperscript{137} an appeal by
Special leave was filed before the apex court against the determination of the
Industrial Tribunal as well as labour Appellate Tribunal concerning labour disputes.

\textsuperscript{136} AIR 2014 SC 2061
\textsuperscript{137} AIR 1958 SC 130; See Also Bharat Bank v. Employees of Bharat Bank, AIR 1955 SC 188; Muir
and Steel Mazdoor Union, AIR 1956 SC 231; M/S Bengal Chemical and Pharmaceutical Works Ltd.
v. Their Employees, AIR 1959 SC 633.
The apex court analysed the decisions of the tribunals and found them to be erroneous for wrong construction of the notices concerning lockouts, discharge and resumption of the duties by the workers as well as in matters concerning victimization and the jobs done by the workers. The court pointed out that undoubtedly, the management of a concern has power to direct its own internal administration and discipline, but the power is not unlimited and when a dispute arises, Industrial tribunals have been given the power to see whether the termination of services of a workman is justified and to give opp. relief. In case of dismissal on misconduct, the tribunal does not, however, act as court of appeal and substitute its own judgment for that of the management. It will interfere –

I. when there is a want of good faith,
II. when there is victimization or unfair labour practice,
III. when the management has been guilty of a basic error or violation of a principle of natural justice, and
IV. when on the materials, the finding is completely baseless or perverse.

In Management of Ranipur Colliery under M/S Equitable Co. Ltd v. Bhuban Singh, an appeal by special leave was filed by the company (appellant) against the decision of labour appellate tribunal. The company found the six workmen (respondents) guilty of misconduct so they were dismissed. Moreover, an industrial dispute was already pending before Industrial tribunal between the company (appellant) and its workmen. Pending this dispute, the appellant made an application to tribunal under section 33 of Industrial Dispute Act, for dismissal of workmen. Moreover, five out of seven workmen also filed two application contending that they are suspended without pay as it was against the provisions of the standing orders governing their conditions of service. The Industrial tribunal allowed the application of the company that required the dismissal of six workmen and dismissed the application of five workmen concerning their pay. Then six workmen moved the labour appellate tribunal which granted the permission of dismissal of workmen but allow the appeal concerning the salary pay of workmen. On this decision, company appealed to apex court by special leave.

The apex court while allowing the appeal opined that the proceedings under section 33 are not in the nature of an enquiry into the conduct of the employees by

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138 AIR 1959 SC 833
the Industrial tribunal. The standing order speaks of an enquiry pending and the
same was interpreted by the labour appellate tribunal to mean an enquiry pending
before the industrial tribunal. The apex court opined that the words ‘pending enquiry
refers to enquiring into the conduct of the employee which can only be done by the
employer and not by the Industrial Tribunal. Therefore, it should include the
enquiries lying pending before the employer and not before the Industrial tribunal.

In the Associated Cement Companies Ltd., Chaibasa Cement Works,
Jhinkpani v. Their workmen,\textsuperscript{139} an appeal by special leave was filed against the
award of Industrial Tribunal, Bihar where the main question for consideration before
the apex court was with regard to disqualification for lay off compensation under
section 25E read with section 25C of the Industrial Disputes Act, 1947 with special
reference to expression ‘in another part of the establishment’ occurring in clause (iii)
of section 25E. The contention on behalf of the appellant was that the cement works
and the limestone quarry form one establishment while that of respondent was that
they were separate establishments; and the workmen in the cement works were not
disentitled to lay off compensation by reason of clause (iii) of section 25E which
provides that no compensation shall be paid to workmen who has been laid off due
to strike or slowing down of production on part of workmen in another part of
establishment.

The apex court opined that the word ‘establishment’ though may include
‘Industrial establishment’ but here the meaning of the word establishment must refer
to one integrated whole. The cement works and the limestone quarry work exhibit a
unity with regard to ownership, control and supervision, finance, management and
employment as well as functional dependence, therefore, they are one integrated
whole. The court expressed the view that lay off compensation is a beneficial
provision there fore it should be constructed strictly. Allowing the appeal, it held
that the layoff compensation cannot be paid to the workers as they belong to one
establishment and the same was the result because of the strike of the workers.

In Kays Construction Co. (Pvt.) Ltd. v. Its workmen,\textsuperscript{140} the apex court while
dismissing the special leave to appeal opined that where a labour tribunal decides a
case on merits and as per the industrial jurisprudence, it cannot be agitated on
abstract questions of law in the apex court. It was contended before the apex court

\textsuperscript{139} \textit{AIR} 1960 SC 56
\textsuperscript{140} \textit{AIR} 1959 SC 208
that incorporation changes the personality of a person. Therefore, a private company is different from the person forming it, such a contention was denied by the apex court and upheld the order of tribunal of re-instating the workmen as it was a case of improper lock out.

**Revocation of leave on suppression of material facts or misleading the court.**

In *Rajabhai Abdul Rehman Munshi v. Vasudev Bhanjibhai Mody*, the appellant and the respondent were in conflict as there was default in the payment of the rent by the appellant. A suit was filed by the respondent before the trial court for the assessment of rent and the trial court held that there was no default in the payment of rent. On appeal before the District judge, defendant (appellant), deposited Rs. 400/- in the court but the appeal was not prosecuted. Then in another action by the plaintiff (respondent) Extra Assistant judge reversed the decree of the trial court and in revision application the High Court of Bombay disentifled the defendant (appellant) to any relief and it was held that the there was default in the payment of rent against the appellant (defendant), who preferred an appeal by special leave under Article 136.

The apex court on analysis of the case while revoking the appeal observed, that the appellant had withhold from the court necessary information concerning the withdrawal of amount deposited by court himself and an attempt had been made by the appellant to create an impression that the finding of the High Court was correct.

There is a restricted right of appeal to the Supreme Court conferred by the Constitution which is discretionary; it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears that interference by the Supreme Court is necessary to remedy serious injustice. A party who approaches the Supreme Court invoking the exercise of the overriding discretion of the court must come with clean hands. If there appears on his part any attempt to overreach or mislead the court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the court would be justified in refusing to exercise the discretion or if the discretion has been exercised, in revoking the leave to appeal granted even at the time of hearing of the appeal. *In P.D Sharma v. State Bank of*

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AIR 1964 SC 345
India, an appeal by special leave was filed against the order of the High Court of Allahabad. The respondent by conducting departmental enquiry held the appellant guilty of misconduct and proposed for his dismissal from the service. An industrial dispute between the respondent and its workmen was pending and during the pendency of such dispute, the respondent applied under section 33(3) of Industrial Disputes Act, to discharge the appellant, a protected workman in Bank, for his misconduct. This application came ultimately by transfer before Labour Court Lucknow who by its order held that it had no competence to deal with it in view of the award given by the National Tribunal. The appellants writ petition challenging the order was summarily dismissed by the Allahabad High Court. Thereafter appellant applied for certificate from the High Court under Articles 132 and 133 (1) (c) of the Constitution but before it was disposed off, the appellant obtained special leave to appeal under Article 136. Subsequently the application for certificate under Article 132 was rejected by the High Court with the result that the order of the High Court became final. At the hearing of appeal by special leave a preliminary objection was raised that as no appeal by special leave had been filed against the order of dismissal of writ petition by the High Court, the special leave granted against the order of the labour court dismissing the petition under section 33 (3) should be revoked as otherwise it may result in two conflicting final orders.

On this the apex court while distinguishing the case from Daryao v. State of U.P. opined that as the order summarily dismissing the writ petition was not a speaking order, no question of the res-judicata could arise. The scope of an appeal under Article 136 is much wider than a petition under Article 226. In an appeal under Article 136 the Supreme Court can go into questions of facts as well as law whereas the High Court in the writ petition could have only considered questions which would have strictly relevant in an application for a writ of certiorari. An appeal under Art. 136 against an order can succeed even if no case is made out to issue a writ of certiorari. So it was held that leave could not be revoked on this ground. Further it was observed that as the omission of the appellant to mention in his special leave application, the fact of pendency of his application under Articles 132 and 133 could not be considered to be a deliberate suppression of fact, no case was made out for revocation of the special leave.

142 AIR 1968 SC 985
143 AIR 1961 SC 1957
In Baldota Brothers v. Libra Mining Works,\textsuperscript{144} an appeal by special leave under Article 136 was filed against the order of the Bombay High Court dismissing the application for grant of an injunction in favour of the appellants to restrain the respondents from proceeding in the case filed by them in the court of subordinate judge, Kakinada in the State of Andhra Pradesh. The Bombay High Court dismissed the application of the appellant without giving any reason and it was further held that no appeal would lie against the order of injunction under the letters patent as the order will not come within the meaning of the word judgment used in letters patent.

The learned solicitor general contended that once special leave had been granted by the court, the appeal should be disposed of on merits unless it was brought to the notice of the court that there were new facts, which, if they had been disclosed earlier would have entailed its dismissal in limine. He would go further contended that if it was open to this court question the propriety of the leave granted at the time of hearing of the appeal, one division bench of this court would be sitting in the judgment over another bench.

The apex court while dismissing the petition opined that it would not be proper to apply two different standards at two different stages of the same case. So, no distinction should be made by the apex court in the scope of the exercise of the power under Article 136 at the stage of the application for special leave and at the stage when the appeal is finally disposed of. It is open to the apex court to question the propriety of the leave granted at the time of the hearing of the appeal.

The court after paying reliance on Bengal Chemical and Pharmaceuticals Ltd. v. Their Employees,\textsuperscript{145} negatived the contention of Solicitor General and opined that the apex court only hearing the appellant ex-parte, does not purport to decide any question, but takes a prima facie view of the case and gives leave. It is an implied condition of leave that at the stage of final hearing the point raised should stand the test laid down by the apex court for the exercise of its discretionary jurisdiction and from this point of view the decision at the final stage is really a decision that no case has been made out for the exercise of this court’s jurisdiction under Article 136. There is no question of one division bench sitting in judgment over another. The same court hears the same matter at different stages; one for limited purpose of granting special leave, when only the test of prima facie arguable

\textsuperscript{144} AIR 1961 SC 100
\textsuperscript{145} AIR 1959 SC 633
point is applied and the other for the final disposal when the question raised is considered in the presence of both the parties and when it is in possession of all the relevant material. We, therefore, hold that unless the apex court is satisfied that the appeal raises a question that justifies the exercise of its discretionary jurisdiction under Article 136 of the constitution, the appeal is liable to be dismissed without further investigation into the merits of the case.

**New pleas**

The Supreme Court as the general practice, does not allow the new points to be raised for the first time before it if those points were not raised before the lower courts or before the High Court. But where the circumstances are exceptional, the court has entertained new plea for the first time. When the question is purely one of law, the same has been allowed to be raised for the first time before the Supreme Courts.

*In Alembic Chemical Works Co. Ltd. v. The Workmen*, 146 an appeal by special leave arose from the Industrial Dispute between the appellant (company) and its workmen (respondent).

The award allows accumulation of privilege leave up to three years. As regards sick leave, the tribunal has ordered that the appellant should give its staff 15 days sick leave in a year with full pay and dearness allowance with a right to accumulate up to 45 days. It has also directed that no medical certificate should be demanded of sick leave for three days or less is asked for. The appellant’s contention before the Tribunal was with regard to the propriety and reasonableness of the demand. The Tribunal gave the award in favour of the respondent and allowed the appellant to prefer the special leave before the Supreme Court against the decision of the tribunal.

The apex court opined with regard to this contention of appellant that this is a new point alleged by the appellant before the apex court but since it is a point being one of law arising on admitted facts, so it can be allowed by the apex court to be argued before it.

After the analysis of the cases, the apex court observed that section 79 (1) does not purport to standardize annual leave with wages. It only provides for minimum rather than the maximum leave which may be awarded to the worker.

146 AIR 1961 SC 647
Furthermore, the apex court opined that when industrial adjudication seeks to do social justice, it cannot ignore the needs of national economy and so in considering matters of leave, tribunal should not ignore the consideration that unduly generous or liberal leave provisions would affect production.

_In Waverly Jute Mills Co. Ltd. v. Raymon and Co. (India) Pvt. Ltd._,\(^{147}\) the appeals by special leave was filed against the decision of the Division Bench of the High Court of Calcutta. The appellant entered into a contract with the respondents but the respondent made a default in the fulfillment of the contract and the appellant referred the matter to the arbitration of the Bengal Chamber of Commerce. The arbitrators made an award in favor of the appellants but on appeal before the High Court, the High Court held the contract illegal and set aside the award. Then appellant applied for certificate under Art. 133(1) of the Constitution but that was refused. The appellant then applied for special leave under Art. 136 of the Constitution which was granted.

Among the various contentions that were placed before the apex court, one point was that the Forward Contracts (Regulations) Act, 1952 is ultravires as it is repugnant to Article 19(1) (g). The apex court observed that the point was not raised before the lower courts and to decide the point the court has to make investigations on the concerned fact. The court stated that new points can be permitted to be raised in Supreme Court only in exceptional circumstances or where questions of fundamental and general importance were raised. Since no exceptional circumstance prevails, so point should not be allowed to be taken in appeal to Supreme Court.

While allowing the appeal, the Supreme Court observed that the presumption shall always be in favor of the constitutionality of the statute as conclusively determined in _RaghubirDayalJaiparkash v. UOI._\(^{148}\) It further observed that an agreement for arbitration is the very foundation in which the jurisdiction of the arbitrators to act rests, and where that is not in existence, at the time when they enter on their duties, the proceedings must be held to be wholly without jurisdiction. This defect is not cured by the appearance of the parties in those proceedings, even if that is without protest, because it is well settled that consent cannot confer jurisdiction. But in such a case there is nothing to prevent the parties from entering into a fresh agreement to refer the dispute to arbitration while it is pending adjudication before

\(^{147}\) _AIR 1963 SC 90_  
\(^{148}\) _AIR 1962 SC 263_
the arbitrators, and in that even the proceeding there after before them might be upheld as referable to that agreement and the award will not be open to attack as without jurisdiction.

*In Bharat Kala Bhandar v. Municipal Committee,*\(^\text{149}\) the apex court while allowing the appeal opined that although the provisions dealing with refund of taxes and recovery of a tax has not been raised in the suits or in the grounds of appeal before the High Court, it has been raised for the first time in appeal by special leave but it is a question of considerable importance and might be raised in other similar suits which are pending, the apex court may deal with it.

*In Gurbax Singh v. State of Punjab,*\(^\text{150}\) appellant was in possession of certain land and then applied for the purchase of said land. The Assistant collector entitled the appellant to purchase the said land. The collector also confirmed the order of the Assistant Collector. On revision before Addl. Commissioner, it was opined that the appellant had no right to purchase the same under section 18 of Punjab Security of Land Tenure Act. The Financial Commissioner agreed with view of Add. Commissioner. On appeal before High Court, order of Financial Commissioner was quashed and dismissed in limine.

The apex court opined that the scope of the appeal under Art. 136 should necessarily be confined to the ambit of the writ petition in the High Court. It is therefore necessary for the appellant to establish that the order of the Financial Commissioner was without jurisdiction or was vitiated by an error of law apparent on record.

*In Krishan Kumar Narula v. State of J&K,*\(^\text{151}\) the apex court opined that question regarding the validity of section 20 of the Excise Act which conferred absolute discretion on Commissioner of Excise and Taxation to issue or not to issue a license to do a business in liquor was not raised in the High Court, such question when not raised in High Court cannot be permitted to be raised for the first time before Supreme Court.

*In Union Co-opertive Insurance Society v. Commissioner of Income Tax Bomaby,*\(^\text{152}\) where the apex court on question of grant of bonus is rebate with in

\(^{149}\) AIR 1966 SC 249


\(^{151}\) AIR1967 SC 1368

\(^{152}\) AIR 1968 SC 78, see also T.K. Lakshmanalyer v. State of Madras, AIR1968 SC1489.
section 41 of Insurance Act and no deduction can be allowed on such amount allowed by way of rebate, the apex court opined that question with regard to grant of bonus is rebate as is not raised before Tribunal, the Supreme Court is not justified in entering upon investigation on such questions.

In Raghu Prasad Gupta v. Shri Krishna Poddar, an appeal by special leave was filed against the decision of the High Court, where the High Court allowed the revision petition and deliver the possession of land to the respondent. One Lakhan Lal obtained a settlement of land and he acted as the benamidar of the appellant in obtaining this settlement. The respondent also claimed the land on the basis of another settlement. The dispute between respondent and the benamidar of appellant was referred to arbitrator and the award made was filed in the court of Additional munisff. An application in the form of a written statement on behalf of the benamidar was filed setting forth the objections to the award and praying that the award be set aside and suit dismissed. The appellant who held a power of attorney from the benamidar verified and signed the written statement. On the death of the benamidar his heirs were brought on record. They adopted his written statement and stated that the appellant was the real owner and a necessary party. At this stage an application was filed by appellant for being added as a party which was dismissed. Eventually a decree was made by the munsiff against the heirs. The appellant obstructed the respondent to take the possession and against this the respondent filed revision application before High Court and the High Court directed the executing court to deliver the possession of the land to the respondent. Against this order of High Court, the appellant filed an appeal by special leave before the Supreme Court.

The apex court on the analysis of the case observed that in any litigation with a third party, the benamider can sufficiently represent the real owner. The decision in any proceeding brought by or against the benamidar will bind the real owner though he is not joined as a party unless it is shown that the benamidar could not or did not in fact represent the interest of the real owner in that proceeding. Further it was observed that the expression of opinion of the court while dismissing the application of the appellant that he would not be bound by the decree in the proceeding did not operate as res-judicata, as that question was not in issue before the court.

153 AIR 1969 SC 316
Further, the apex court opined that the point that the HC had no power to set aside the Munsif’s order under section 115 of CPC, was not taken in the High Court, so that point cannot be allowed to be raised before the apex court as otherwise there will be grave miscarriage of justice.

*Further in Kapur Chand Shrimtal v. Tax Recovery Officer*, 154 the apex court while allowing the appeal determined that the word ‘person’ used in sections 276, 276-A and 277 of the Income Tax Act are not used in the same sense as used in section 2(31) of the Act. Therefore, the manager of a Hindu undivided family cannot be arrested and detained for failure to satisfy the tax deal. Moreover, non-interference by the High Court in writ petition on technical points as well as the second writ petition on the ground of res-judicata was not proper.

*In Burmah Shell Refineries v. Their Workmen*, 155 a dispute arose between the appellant (company) and their clerical staff with regard to bonus for the year 1956. The company and its labour employees had entered an agreement and had settled bonus for the year 1956 at 4½ months wages. The clerical staff were paid as a matter of practice lesser amount than to labour and this time they were demanding higher rate of bonus. The matter was referred to Industrial Tribunal which was held that clerical staff should be paid bonus at the same rate as had been paid to the labour under the agreement. Then the appellant filed an appeal by special leave before apex court against the award of the Tribunal.

Before the apex court, two contentions were raised by the appellant. The first contention was that the Tribunal erred in awarding bonus with having recorded a conclusion as regards the existence and extent of gap between the actual wages received by the workmen and the living wage; second contention was that the Tribunal erred in granting to clerical staff bonus at the same rate as was payable to the labour staff and should have granted bonus to the clerical staff at a lower rate. The apex court observed that the award of the tribunal as well as the statement of the case filed by the appellant did not refer to any such question having been raised. So, the apex court held that it was not open to appellant to raise a new plea in appeal before the Supreme Court.

The apex court held that the payment of bonus is based on the fact of contribution by labour to the profit of industry and it would not be relevant to

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154 AIR 1969 SC 682  
enquire which section of the workmen has contributed to what share of profit. The Industrial Tribunal had wide discretion in deciding matters relating to payment of bonus and it is not for the Supreme Court to interfere with their exercise of discretion unless it is plainly arbitrary. Furthermore it was observed by the apex court that the tribunal was fully conscious of the difference in the wage scales of labour and clerical staff and so the observance of the Tribunal that the clerical staff belonged to middle class and suffered more than the operative class from rise in prices and should be paid bonus equal to that of the operative class was evidently reasonable.

Further in *Central India Coalfields Ltd. v. Ram Bilas Shobnath*,¹⁵⁶, an employee of the Company misconducted with other employees of the company in a state of intoxication. A complaint was made and an enquiry was conducted into the incident. The enquiry officer found the employee guilty under the relevant standing orders and proposed for the dismissal of the employee. The company referred the matter to Industrial Tribunal for the approval of dismissal order which was disallowed by the Tribunal on the observation that the relevant provisions of the standing order does not apply as the employee has done the said act after the office hours. The appellant company filed the appeal by special leave to the apex court against the decision of Industrial Tribunal.

The Supreme Court while allowing the appeal set aside the order of the Industrial Tribunal and observed that if no malafide or ulterior objectives have been attributed for taking a decision against an erring employee then the Industrial Tribunal cannot refuse the approval.

Furthermore in the *Management of Wenger and Co.v. their workmen*,¹⁵⁷ the apex court opined that when the Supreme Court entertains appeals in industrial matters under Article 136 of the Constitution, it does not act as court of appeal on facts. It is only where general question of law are raised that the apex court feels called upon to pronounce its decision on them for the guidance of industrial adjudication in this country. The decisions of Industrial Tribunal on question of fact and their conclusions in maths with in their discretion are not usually revised by the apex court under Article 136.

¹⁵⁶ AIR 1961 SC 1189
¹⁵⁷ AIR 1964 SC 864
The court in *South Asia Industries Pvt.Ltd. v. S. Swarup Singh*,\(^{158}\) opined that contention that the contractual term of lease not having expired, the proceedings before the controller was not maintainable. This plea was not raised in courts below, the apex court did not allow to raise this new plea in appeal by special leave before the apex court.

In *T.G. Appanda Mudaliar by L.R’S. v. State of Madras*,\(^{159}\) an appeal by special leave was filed against the decision of the High Court of Madras whereby the appellant challenged the validity of the notification of the Revenue Department. The contention of the appellant was that there were no guidelines to apply the provisions of the Tamil Nadu Hindu Religious and charitable Endowments Act, 1959 to the Jain Institutions, especially section 2 of the Act. On this, the apex court opined that ordinarily this court does not allow a new point to be taken because this court would always like to have the views of the High Court but however the question raised being purely one of the construction of statute was allowed to be raised.

Further it was opined that the Govt. by notification extended the provisions of the Act to all the Jain institutions, therefore Act can be applied to any particular Jain Institution which is being mismanaged because there is no compelling reasons to apply the Act in plurality in relation to the Jain Institutions. Moreover it was opined that the provisions of the Act particularly those relating to the appointment or creation of a fund pertain to administration and working of Act. There is no interference in any religious ceremonies of the institution, so even a Hindu commissioner is competent to perform the duties contemplated by the Act.

In *Bank of India v. M/S Vijay Transport*,\(^{160}\) the two judges Bench while deciding the fate of the appeal considered that the amount of loan were advanced by the bank to the firm under the cash credit account. Normally, the advances that are made from the cash credit account are repaid and thereafter, fresh advances are made. The respondents raised a contention that there is no further statement whether the first two amounts were repaid by the firm and thereafter, fresh advances were taken out of the cash credit account. The apex court while allowing the appeal opined that the respondents did not advance any such contention either in their written statements or in the arguments before the trial court and the High Court.

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\(^{158}\) *AIR 1966 SC 346*  
\(^{159}\) *AIR 1976 SC 2450*  
\(^{160}\) *AIR 1988 SC 151*
contention involves a question of fact which has to be pleaded and proved. Thus, the respondent cannot be able to allow the respondents to raise such a contention for the first in argument before the apex court.

In *State of Maharashtra v. M/S Nav. Bharat Builders*\(^{161}\), an appeal by special leave was filed against the decision of the Division Bench of the Bombay High Court. Due to the stoppage of work as agreed between the appellant (Govt.) and the respondent (contractor), the matter was referred to the arbitrator and the arbitrator after going through voluminous record placed before him granted a package of concession to him.

In *K.L. Malhotra v. Smt. Prakash Mehra*\(^{162}\), the apex court while dismissing the appeal opined that the question of validity or invalidity of the provisions of section 14 Delhi Rent Control Act was neither raised nor argued before High Court nor any ground was taken to that effect before High Court. It is for the first time in special leave petition this point has been raised and the petitioner cannot be permitted to argue this point for the first time before the Supreme Court in appeal by special leave.

In *S. Venkitachalan Iyer v. S.Rama Iyer*\(^{163}\), an appeal by special leave was filed against the decision of the Madras High Court. The appellant who was the managing trustee of a trust leased out certain property, over which a building was put up which was purchased by the respondent. Thereafter, appellant made a lease of the said property to the respondent. Due to failure of the respondent to pay rent to the trust, suit for ejectment was filed by the appellant, which was decreed in favour of the appellant by the trial court as well as by the High Court. But during the pendency of the appeal, the respondent made an application under section 9 of the Tamil Nadu Tenant’s Protection Act, 1921 as amended by Tamil Nadu Adaptation of Law order, 1969, claiming that the appellant be directed to sell out of the said property, land adjoining the said building as it was necessary for beneficial enjoyment of the said property. The trial court dismissed the application but on appeal, the High Court held that the respondent was entitled to make a application under section 9 of the said Act as he had not surrendered the possession of the property despite the deposit of amount of compensation by the appellant. On this,

\(^{161}\) AIR 1991 SC 11
\(^{162}\) AIR 1991 SC 99
\(^{163}\) AIR 1992 SC 243
the appellant filed a review petition which was dismissed. Then he filed an appeal by special leave before the apex court.

The apex court while dismissing the appeal opined that although the decree for ejectment was passed against the respondent but as he had continued to remain in possession of the property, the right of the respondent under section 9 was not lost. Further it was opined that as the said building was not put up by respondent but by his predecessor to whom the land was leased by the appellant, in these circumstances the respondent was certainly a tenant entitled to compensation under section 3 of the said Act and was entitled to make an application under section 9 of the said Act.

Furthermore, the apex court opined that the contention of the appellant that although the respondent might have been in possession at the relevant time yet he lost his possession thereafter and so the right of respondent under section 9 was also lost, this contention was not pleaded in any of the courts below such plea could not be allowed to be raised for the first time before the Supreme Court in appeal by special leave.

_In S. Raja GopalChettiar v. Hamasaveni Animal_164, an appeal by special leave was filed against the judgment of the Madras High court with regard to the ambit and scope of the will. The High Court after going through the contents of the will opined that it was provided in the will that after the lifetime of testator and his wife, properties shall be enjoyed by his daughter and after her it should go to her male children. Thus it was held by the High Court that daughter has only the life estate under the will.

The apex court while dismissing the appeal opined that the High Court was right in holding the daughter of the testator as only life estate under will and after her the property will get vested in her male children.

Then the contention of the appellant that the life estate of the daughter of the testator became absolute under section 14(1) of the Hindu Succession Act, 1956 was negative by the apex Court on the ground that this contention was neither raised in any of the courts below nor before the High Court nor in the petition for special leave cannot be allowed to be raised for the first time before the apex court during the course of arguments.

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164 AIR 1992 SC 704
In Food corporation of India, Faridkot, Punjab v. Makhan Singh\textsuperscript{165}, there was a dispute about the correct assessment of the land acquired by the State of Punjab for the Food Corporation of India for construction of foodgrain godowns. The District Collector awarded compensation at the rate of Rs. 30,000/- per acre but on reference before Additional District judge, the compensation was enhanced and it was awarded at the rate of Rs. 1,20,000/- per acre. Then the Food Corporation of India and State of Punjab appealed before the High Court for reduction of the award while the land owners appeal before the High court for enhancement of the compensation. The assessment at the rate of Rs. 1,20,000/- per acre was affirmed by the single Judge of High Court and also in letters patent appeals by the Division Bench of the High Court. On this both the Food Corporation of India as well as land owners filed an appeal by special leave before the apex court against the decision of High Court.

Before the apex court it was contended by the counsel of the respondents that provision to sub sec. (2) of section 50 of the Land Acquisition Act debars the local authority or company from demanding reference under section 18 of the said Act which logically follows that the Food Corporation of India cannot file an appeal against the award of the court. Moreover it was also contended that under section 54 of the amended Act, the appeal can be filed by the State of Punjab and not by the Food Corporation of India.

Considering the contentions of the land owners, the apex court opined that the land owners themselves had impleaded the Food Corporation of India and the State of Punjab as contesting parties before the Addl. District judge. No objection was made by the land owners before the Addl. District judge as well as before the High Court to get struck off the Food Corporation of India as party in the proceedings. The objection now at such a belated stage cannot be allowed to be raised for the first time in the Supreme Court in appeal under Article 136.

In Indore Municipal Corporation v. Gujarat Co-operating Housing Society Ltd.\textsuperscript{166}, it was opined that the plea challenging water rate levied by Municipality is not applicable to godown was not raised either before municipal commission or High Court or in Special leave petition, cannot be allowed to be raised for the first time before the Supreme Court.

\textsuperscript{165} AIR 1992 Sc 1406

\textsuperscript{166} AIR 1992 SC 1506
In *KewalKrishan v. Dina Nath*\(^{167}\), an appeal by special leave was filed against the decision of the High Court of Jammu and Kashmir setting aside the order of eviction passed by the Trial courts and also in first appeal on the ground that no specific issues was framed requiring the proof of default in payment of rent which was a ground for eviction.

The apex court while allowing the appeal opined that there was no specific denial in the default of payment of rent by the respondent, so there was no need to inquire into this fact. On the contention of the respondent that he is entitled to protection of section 12(i) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966 and that he had deposited arrears of rent within the meaning of section 12(i) of the Act, the apex court opined that this plea cannot be permitted to be raised for the first time before the apex court when the respondent did not mention about it upto the High Court. The apex court setting aside the decision of the High Court, caused the eviction of the tenant.

In *Union of India v. I.T.C. Limited*\(^{168}\), an appeal by special leave was filed against the order of the High Court of Delhi. The case of the respondent was that under a mistake a law regarding the true interpretation of section 4(a) of the Central Excises and Salt Act, it cleared its products but paid excess excise duty under the impression that the prices charged by the whole sale dealers to the secondary whole salers would form the correct basis of assessment and not the price at which goods were sold to whole sale dealers. The respondent filed applications before the Assistant collector of central excise for refund of excess excise duty paid under mistake of law which were rejected. Then respondent preferred appeals before the collector of central excise (Appeals) which allowed the appeals by directing the refund of the excess excise duty paid but rejected the appeals on the ground that they were barred by time. Then on appeal before High Court, it was held there was a legal obligation on the part of the Government to return the excess excise duty recovered by it since the same was not payable by the party. Against this order of the High Court, the Union of India (Appellant) filed an appeal by special leave before the apex court.

\(^{167}\) AIR 1993 SC 881
The appellant before the apex court raised the plea based on section 11B regulating refund of central excise duty, of Central Excise and salt Act, as amended by the Amendment Act, to deny refund the respondent. On this, the respondent raised the plea that objection of the appellant based on section 11B cannot be permitted to be taken during the hearing of the appeal for the first time.

On this the apex court opined that the appellants cannot be refused to raise a plea relating to the interpretation of the amended provisions of section 11B of the Act, which came into force only during the pendency of the appeal. A plea which relates to the interpretation of a statutory provision which comes into existence during the pendency of an appeal under Article 136 can always be permitted to be raised during the hearing to do complete justice between the parties. Such a plea relating to the interpretation of a statutory provision is essentially a question of law and can be allowed to be raised for the first time.

The apex court while allowing the appeal that the provision of the section 11.B of the amended Act can be applied in the present appeal as the order of the High Court had not acquired any finality when the amended Act came into force and the present appeal was pending in this court. Moreover the interim order of refund passed by the high court could not construed to be an order of execution of the order and directions of the High Court. Further it was opined that since the respondent has failed to establish that it had not passed on the duty of the excess excise duty to any other person as per the amended provisions of section 11B of the Act, it is not entitled to refund of the amount claimed by it.

*In Indian Triathlon Federation v. Pondy Triathlon Association*¹⁶⁹, an appeal by special leave was filed directly against the order passed by the First Assistant Judge, city civil court. An appeal against the decree has already been filed before the principal judge, city civil court. The apex court thus while dismissing the appeal opined that under these circumstances, question of granting leave and considering the matter of the apex does not survived.

*In Management of Karnataka State Road Transport corporation v. KSRTC Staff and Workers Federation*¹⁷⁰, appeals by special leave were filed against the judgment of the Karnataka high court dismissing the writ petition of the appellant.

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¹⁶⁹ AIR 1997 SC 1039
¹⁷⁰ AIR 1999 SC 1059, see also *J.K. Cotton Spinning and weaving mills Co. v. Collector of Central Excise*, AIR 1998 SC 1270
and it was held that the facility provided to employees Union concerning deduction of subscription of the members of Union was as per settlement between Union and Corporation, the said settlement was agreed to followed till recognition of Union lasted and as the employees Union continuing to be recognized Union at the time when corporation withdraw the facility, such notification was held invalid.

Before apex court, the appellant contended that the Union has no locus standi to maintain the writ petition as well as present proceedings on behalf of the workmen.

The apex court while dismissing the petition opined that the plea of locus standi was not brought in issue before the learned single judge as well as Division Bench of the High Court and thus such a plea of locus standi stood waved before High Court. Therefore, such a plea could not be countenanced in special leave petition.

*In M.L. Prabhakar v. Rajiv*\(^{171}\), an appeal by special leave was filed against the decision of the High Court where the High Court by allowing the revision application, set aside the order of the Rent controller and caused the eviction of the appellant (tenant). Before the apex court, a new plea was raised by the appellant that the respondent (landlord) has alternative accommodation which was available to him but as such plea bing disputed question of fact was not raised earlier, the apex court opined such plea cannot be allowed to be raised for the first time in special leave petition. Further, it was opined by the apex court that as eviction of tenant was ordered on the ground of bonafide requirement of landlord, if in near future it is found that this was a false ground and that after getting the tenant evicted the premises are not being used for personal use of the landlord and his family as claimed, the tenant would be at liberty to adopt appropriate proceedings for restitution and to get back the premises from the landlord.

*In H. Seshadri v. K.R. Natarajan*\(^{172}\), an appeal by special leave was filed against the judgment of Karnataka High Court where the High Court by allowing the revision application of the respondent caused the eviction of the appellant (tenant).

The apex court while allowing the appeal opined that the High Court did not come to a definite finding to the effect that the appellant was a rank trespasser or claimed his title in or over the disputed premises. Although the High Court did not

\(^{171}\) AIR 2001 SC 522

\(^{172}\) AIR 2003 SC 3524
disbelieve the actual possession of the appellant in respect of the suit premises but without any basis whatsoever and without setting aside the findings of the trial judge, it came to the conclusion that such possession was unlawful.

Further with regard to the plea of the respondent that the appellant had failed to prove his independent title in respect of the premises in question and as one of the tenant had already evicted, he was also bound to be evicted in terms thereof, the apex court opined that such a plea does not appear to have been taken either before the trial judge or before the High Court. So it is not for the apex court to examine the said question for the first time.

In *D.S. Parvathamma v. A. Srinivasan*\(^\text{173}\), the two judges bench while dismissing the appeal opined that the plea of the appellant that there is no registration of sale deed in favour of the respondent regarding the suit premises and thus he did not acquire ownership rights cannot be allowed to be raised as it was not disputed upto the High Court. A new plea which is essentially a plea of fact cannot be allowed to be urged for the first time at the hearing of appeal under Article 136 before the apex court.

**General observations**

In *Dr. Indramani Pyarelal Gupta v. W.R. Natu*\(^\text{174}\), an appeal by special leave was filed against the judgment of the division bench of Bombay High Court dismissing the writ under Article 226 of the Constitution. The appellant had challenged the validity of a notification issued by the Forward Markets Commission, a statutory body created by the forward contract (Regulation) Act, 1952 which regulated the forward contracts in cotton detrimental to the interests of the trade and economy of the India. It was contended that the commission has no power to make a bye law under the provisions of the Act.

Since the apex court had heard the arguments concerning the validity of the notification and the bye law, the court pronounce the judgment in the points and dismissed the appeal by pointing out that the power which are granted to the commission cannot not whittled down by application of the rule of Ejusden generis

\(^\text{173}\) AIR 2003 SC 3542. see also *DurgoBai v. State of Punjab*, AIR 2004 SC 4170, new plea regarding non-production of case property, custody of goods, temprings of seals of sample packets, raised nor argued before lower coins and not even in memorandum of appeal before SC cannot be gone into, in appeal under Art. 136

\(^\text{174}\) ASR 1963 SC 274. See also *Dr. Gopal Das Verma v. Dr. S.K. Bhardwaj*, AIR 1963 SC 337 where it was opined that new plea cannot be allowed to be raised for first time in appeal by special leave.
as no common positive thread runs in clauses A to E of section 4 of the impugned Act.

In Sita Ram Sagar Mills Ltd. v. The Workmen, the three judges bench while deciding the fate of the appeal opined that to decide the question whether the employees are in fact and in law employed in the Mill of the appellant, the tribunal observed that only evidence which has been produced by the appellant is the earning sheets and that shows no more than the quota of the salaries paid by the appellant to the respective employees and as such tribunals held that they are not employees of the mill. The apex court thus opined that normally supreme court is reluctant to interfere with such finding of tribunal on such a question of fact and as observed by the apex court that on consideration of evidence tribunals finding was found correct. So Supreme Court did not interfere with findings of tribunal.

In Cachar Shah Sramik Union, Silchar, Assam v. The Management Tea Estate of Cachar Assam, the apex court while dismissing the appeal opined that the Industrial Tribunals had been awarding compensation for retrenchment even before the enactment of section 25F of Industrial Disputes Act but there was no uniformity or certainty in determining the amount of compensation. In determining the amount of compensation, the Tribunals exercised complete discretion and took into account whatever factors they considered relevant. It was opined that the quantum of compensation is a matter primarily for the tribunal to estimate and it is not open to Supreme Court in appeal by special leave to go into this question unless it is shown that the Tribunal has committed any error of law or legal principal in deciding it.

In PremLata Agarwal v. Lakshman Prasad Gupta, an appeal by special leave was filed against the judgment of the Madras High Court dismissing the appeal preferred by appellant against the decree sholders application for execution of the decree. Before the apex court, the appellant raised the plea that the decree holders were guilty of good faith and diligence. The apex court while dismissing the appeal opined that the appellant could not be allowed to raise a new plea which was abandoned by him in the High Court.

175 AIR 1966 SC 1670
176 AIR 1966 SC 984
177 AIR 1970 SC 1525
In Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsingi, an appeal by special leave was filed against the judgment of Gujarat High Court and the question which was raised was whether the appellant could be said to be guilty of corrupt practice contemplated by sub. Section 3 of section 123 of the Representation of the People Act, 1951 as the election symbol of the appellant was ‘Dhruva Star’ and it give a view of religious impetus to voters to vote for him in the name of religion. Firstly the election tribunal rejected all the allegations relating to corrupt practices and held that distribution of leaflets with symbol of Dhruva star did not amount to a corrupt practice. On appeal, the High Court reversed the finding of tribunal and held that it is a symbol of Hindu religion, so held appellant guilty of corrupt practices on grounds of religion. Then an appeal by special leave was filed before the apex court.

The apex court on the analysis of the case, allowed the appeal and opined that by describing election symbol as Dhruva star and by specifying its attributes in the election pamphlets, the provisions of section 123 (3) were not contravened. The five qualities which are generally associated with Dhruva are indeed, noble qualities but they have no significance peculiar to Hindu religion.

In Management of the Northern Railway Co-operative Society Ltd. v. Industrial Tribunal, Rajasthan, Jaipur, an appeal by the special leave was filed against the award of the Industrial Tribunal, Rajasthan. A reference was made to Industrial Tribunal by the Govt. of Rajasthan to consider the dismissal of four employees of the appellant society. The Tribunal set aside the order of dismissal. A petition before High Court was also made by the appellant while the reference was pending as it was contended that it is not a industrial dispute but the petition was dismissed as the High Court held that four out of 11 employees of the society were involved. Then an appeal by special leave was filed against the order of Industrial Tribunal.

The apex court opined as the order of the High Court was an interlocutory order and no appeal was preferred to the Supreme Court against such order either by a certificate under Article 133 or Article 136 by special leave, order became final and it was no longer to raise a plea of jurisdiction in appeal against subsequent award given by tribunal. Relying on the principal laid down in Raman Bhai

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178 AIR 1965 SC 669
179 AIR 1967 SC 1182
AshaBhai Patel’s Case,\textsuperscript{180} it was further opined by the apex court that it was open to respondents to support the order of the Tribunal even on grounds decided against the respondents or grounds not urged before the tribunal which might be apparent on the face of the record, even though the respondents have filed no appeal.

**Exhaustion of other remedies**

Though the Supreme Court under Article 136 can grant special leave from any order, judgment or determination of any court or tribunal, it would not so do unless the petitioners have first availed of the appellate procedure provided in the Act or under the rules.

In the *State of Bomaby v. M/S RatilalVadilal and Bros*,\textsuperscript{181} the respondents are commission agents doing business as clearing and transport contractors. The question for determination before the collector of sales tax, Bombay was whether the respondents were dealer within the Bombay Sales Tax Act, 1953. The collector held them as dealers. On appeal, the tribunal reversed the findings which led the govt. to file the special leave petition under Article 136 without exhausting other remedies available under the act.

On this point, the apex court made a serious observation that ordinarily the apex court will not allow the High Court to be by passed and the proper course for appellant is to exhaust all the remedies before invoking jurisdiction of supreme court under Article 136. But in the present case, the apex court held that as the matter is simple and as there is no objection on behalf of the respondents, the apex court decided to hear the appeal.

On the analysis of the case, the apex court considered the question of respondents whether they are dealer or not and opined that for becoming dealer, person carry on the business of selling goods in the state of Bombay and observed that the respondents are purchasing goods from colliery for arranging their sale, in that sense they are mere agents and not the dealer and in this way the apex court upheld the award of the Tribunal.

Though the special leave was allowed in this case but the court observed that such departure from the general principle as stated above must not treated as the cursuscuraie for the court.

\textsuperscript{180} AIR 1965 SC 669
\textsuperscript{181} AIR 1961 SC 1106
In Chandi Prasad Chokhani v. State of Bombay, the apex court while dealing with the question whether the High court should be allowed to be by passed opined that save in exceptional cases, the court will not exercise its power under Article 136 in such a way as to bypass the High Court by entertaining an appeal direct from the order of the tribunal and there by ignore the decision given by the High Court.

In Ram Saran Das and Bros v. Commercial Tax Officer, Calcutta the appellant filed the special leave petition against the order of commercial Tax officer considering the order of assessment as final and without exhausting the remedies available under the Central Sales Tax Act.

The apex court made reliance on the earlier decisions i.e., MahadayalPremchandra v. Commercial Tax Officer, Calcutta, State of Bombay v. M/S RatilalVadilal and Bros, KanhaiyalalLohia v. Commrs. Of Income Tax, West Bengal and Chandi Prasad Chokhani v. State of Bihar and opined that the powers of the apex court under Article 136 of the Constitution are as wide as they could be because there is no limitation that the judgment, decree or order should be final in the sense that the appellant in this court has exhausted all the remedies provided by law before invoking the jurisdiction of the apex court to grant “Special leave to appeal from any judgment, decree, determination, sentence or order in any case on matter passed or made by any court or tribunal in the territory of India”. Inspite of the wide amplitude of the jurisdiction of the apex court to entertain appeals by special leave, this court has imposed certain limitation on its powers for very good reasons and has refused ordinarily to entertain such appeals when the litigant has not availed himself of the ordinary remedies available to him at law. Furthermore, the Supreme Court observed there should be special circumstances and the facts should be finally determined.

Therefore an assess who has been assessed to pay sales tax cannot, therefore, go upto the Supreme Court on special leave directly against the judgment of the Assessing, Authority without exhausting all his remedies under that Act.

182 AIR 1961 SC 1708
183 AIR 1962 SC 1326
184 AIR 1958 SC 667
185 AIR 1961 SC 1106
186 AIR 1962 SC 1323
187 AIR 1961 SC 1708
In Commissioner of Income-tax, Delhi v. National Finance Ltd., an appeal by special leave was filed against the order of the Income–tax Appellate tribunal Delhi Branch reversing the order of Appellate Assistant Commissioner determining the IT tribunal did not condone the delay of one day in filing the application. The same was also challenged before the High Court but was unsuccessful.

The apex court paid reliance on the principles laid down in its earlier decisions i.e., Chandi Prasad Chokhani’s case where it was laid down that the apex court would not allow the High Court to be by passed and that the appeal from the decision of the Tribunal in circumstances was incompetent but if there exists special circumstances like breach of principles of natural justice, then there is no other option but to allow appeal by special leave.

In the present case, the apex court observed that the appeal from the Tribunal’s order is justified by the special circumstances. There was no default on the part of the commissioner of the Income tax. Moreover by this appeal, no decision of the High Court can be said to be by passed because the decision of the HC related to the correctness of the decision of the Tribunal on the question of limitation, which is not a question which is sought to be raised in an indirect way by the present appeal.

In Penu Balakrishna Iyer v. Ariya M. Ramaswaniyier the question which was raised before the apex court by the appellant by filing of special leave was with regard to the correctness, propriety and legality of the decree passed by the High court of Madras. On the other hand, the contention of the respondent was that as the appellant had not filed letter patent appeal against the decision of the single judge, so the special leave granted by the apex court should be revoked.

The apex while allowing the appeal opened that it cannot be said as a general proposition that if special leave is granted under Article 136 in a given case it can never be revoked. If the respondent brings to the notice of the Supreme Court facts which would justify the court in revoking the leave already granted, the Supreme Court would, in the interests of justice, not hesitate to adopt that course. There is no doubt that if a party wants to avail himself of the remedy provided by Article 136 in cases where the decree of the High Court under appeal has been passed, it is

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188 AIR 1963 SC 835
189 AIR 1961 SC 1708
190 AIR 1965 SC 195
necessary that the party must apply for leave under the letters patent, if the relevant clause of the letters patent provides for an appeal to a Division Bench against the decision of a single judge. Normally, an application for special leave against a second appellate decision would not be granted unless the remedy of a letters patent appeal has been availed. It is only where an application for special leave against a second appellate judgment raises issues of law of general importance that the court would grant the application and proceed to deal with the merits of the contentions raised by the appellant. But even in such case it is necessary that the remedy by way of a letters patent must be resorted to before a party comes to this court. Having regard to the wide scope of the powers conferred on the apex court, it is not possible to lay down any general rule which would govern all cases. The question as to exercise of the jurisdiction of the court under Article 136 is a matter which this court has to decide on the facts of each case.

In Management of Hindustan Commercial Bank Ltd v. BhagwanDass\(^{191}\), the apex court has to decide whether the special leave to appeal granted to the appellant should be revoked on account of non-compliance with the provisions of 0.13 R.2 of the Supreme Court Rules, 1950 which provides that where an appeal lies to the Supreme court on certificate issued by the High court or other tribunal, no application to the supreme court for special leave shall be entertained unless the High court or the tribunal concerned has first been moved and it has refused to grant the certificate. The apex court opined that 0.13, R.2 of the Supreme Court Rules is mandatory. Under it no application for special leave under Article 136 of the Constitution can be entertained by the Supreme Court, unless the High Court had been first moved for the issue of a certificate under Article 132 and had refused to grant the certificate under 0.45, R. 1 of Supreme Court Rules.

Though appellant cited the ratio of Union of India v. Kishorilal Gupta\(^{192}\) wherein it was laid down that the special leave granted to an appellant cannot be revoked at a later stage. The apex court opined that this rule requires that there has to be in ordinate delay as well as it should cause prejudiced to the appellant which was not a situation in this case.

\(^{191}\) AIR 1965 SC 1142
\(^{192}\) AIR 1959 SC 1362, see also Commissioner of Income-tax, Bombay North, Ahmedabad v. LakhiranRamdas, AIR 1967 SC 338
In M/S Thungabhadra Industries Ltd. v. The Govt. of Andhra Pradesh\textsuperscript{193}, a three judge bench while allowing the special leave under Article 136 opined that where special leave to appeal under Article 136 has been granted by the Supreme Court after notice to the respondent and giving him a hearing, the Supreme Court will not permit the respondent to urge any argument regarding the correctness of the order of the court granting leave except possibly in some extraordinary cases where the ground urged happens to arise subsequent to the grant of the special leave or where it could not be ascertained by the respondent at that date notwithstanding the exercise of due care. The very object of issuing notice to the respondent before the grant of leave is to ensure that the latter is afforded an opportunity to bring to the notice of the court any grounds upon which leave should be refused and the purpose of the rule would be frustrated if the respondent were permitted to urge at a later stage i.e., at the stage of the hearing of the appeal and long after the appellant has incurred all the costs that the leave granted after notice to him should be revoked on a ground which was available to him when the application for special leave was heard. In this case, the Supreme Court rejected the oral application of the respondent for revocation of the leave on the ground that neither the statement of the case filed on behalf of the respondent did not contain a prayer for such relief nor it disclose any ground upon which the leave granted should be revoked.

The Supreme court will not ordinarily grant special leave to appeal against an order when other remedies are available and have not been exhausted. But there is no inflexible rule that the Supreme Court will not entertain an appeal.

In A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani,\textsuperscript{194} the respondents imported fountain pen from Australia having gold plated nibs, caps and clips. The Assistant collector of customs did not classify the item as “fountain pen” but classify the item as “article plated with gold or silver”. The fountain pens classification was liable to 30% duty where as articles plated with gold or silver were liable at the rate of 78 ¾ %. This difference in the rate of duty and the determination of liability at the higher rate made the respondent to file an appeal before the collector of customs who upheld the order of the said collector. Under the provisions of the Sea Customs Act, a person can file a revision petition before the Central Government. Instead of availing this remedy, the

\textsuperscript{193} AIR 1964 SC 1372
\textsuperscript{194} AIR 1961 SC 1506
appellant filed a writ petition under Article 226 before the High Court of Bombay. The Bombay High Court set aside the order of the customs officer as unreasonable and perverse. Against this decision of Bombay High Court an appeal by special leave was filed before the Supreme court challenging the decision of High Court of Bombay as well as the allowance of writ petition without exhausting the statutory alternative remedies.

The apex court opined that the guidelines issued by the court is that the rule that the party who applies for the issue of a high prerogative writ should before he approaches the court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of High Court to entertain the petition or to deal with it, but is rather a rule which courts have laid down for the exercise of their discretion. Therefore, this can be a rule of convenience not to allow the writ petitions without exhausting the alternative remedies but the existence of alternative remedies is not perceived a bar in allowing a writ petition, especially the writ of certiorari.

Furthermore, the apex court while dismissing the appeal opined that the court need only add that the broad lines of the general principles on which the court should act having been clearly laid, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and that in a matter which is thus pre-eminently one of the discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court.

In the British India Steam Navigation co. Ltd v. Jasjit Singh\textsuperscript{195} the five judges bench while deciding the fate of four civil appeals brought before them under Article 136 opined that where the appeal has been brought against the decision of the High Court and the appellant had moved the said High Court under Article 226, and that too against the order of the collector of customs, the only point which could be argued by the appellant would be one of jurisdiction. Further it was opined that the Supreme Court generally does not entertain appeals against the orders passed by a Tribunal unless the alternative remedies provided by the relevant Act by way of appeals or revision have been pursued by the aggrieved party. Against the order of

\textsuperscript{195} AIR 1964 SC 1451
confiscation and fine passed by the collector of customs under the Sea Customs Act, an appeal is competent and against the decision of the appellate authority, a revision also lies. The rule that a party who applies for the issue of a high prerogative writ should before he approaches the court have exhausted other remedies open to him under the law, though not one which bars the jurisdiction of the court to entertain the petition or to deal with it, is a rule which courts have laid down for the exercise of their discretion. If an appeal is entertained against an order passed by the collector of customs and jurisdiction of the Supreme Court is allowed to be invoked under Article 136, it would lead to this anomalous result that questions of fact determined by the collector of customs may have to be re-examined by the Supreme Court as a court of facts and an argument impeaching the validity or propriety of the order of fine may also have to be considered and these precisely are the matters which the legislature has left to the determination of the appellate and provisional authorities as prescribed by sections 190 and 191 of the Sea Customs Act. Besides, the High Court should be slow in encouraging parties to circumvent the special provisions made providing for appeals and revisions in respect of orders which they seek to challenge by writ petition under Article 226.

_In Master Construction Co. (P) Ltd v. State of Orissa_\(^{196}\), a three judge bench while dealing with the fate of special leave filed before them decided the scope of the jurisdiction of the commissioner of Sales Tax. The appellant was assessed by the sales tax officer for the period of December to June and accordingly the appellant paid the sales tax. Considering the decision of the Supreme Court in _State of Madras v. Gannon Dunkerely and Co. (Madras) Ltd._\(^{197}\), the appellant filed a writ of certiorari to quash the said assessment and High Court passed its decision in favour of appellant and asked to refund the amount. The sales tax officer agreed with appellant for refund but withheld its payment on ground that the application was filed by one of the Directors. On revision commissioner of sales tax held that appellant was entitled to the refund applied. Further, Commissioner reviewed his previous order and disallowed the application of appellant. On this appellant filed an appeal by special leave before apex court under Article 136 of the Constitution.

\(^{196}\)AIR 1966 SC 1047
\(^{197}\)AIR 1966 SC 1047
The Preliminary contention of the respondent was with regard to the maintainability of the appeal as it was contended that he had not exhausted the remedy under Article 226 of the Constitution.

The apex court opined that Article 136 confers a discretionary appellate jurisdiction on the Supreme Court against an order passed by any tribunal in the territory of India. The said jurisdiction is not subject to any condition that the party who seeks special leave of the Supreme Court to appeal from such order has to exhaust all his other remedies including a petition under Article 226. The existence of a statutory remedy to such a party may persuade this court not to give leave to appeal. The Orissa sales Tax Act does not provide for a further remedy against the order made by the commissioner in revision and under Article 226 of the Constitution of India, the High Court jurisdiction is discretionary and the scope of the jurisdiction is rather limited. In the circumstances there is no justification to throw out an appeal under Art. 136 on the ground that the appellant has not exhausted all his remedies, including one under Article 226.

*M/S Lakshmiratan Engineering works Ltd. v. Asst. Commissioner (Judicial 1), Sales tax*,\(^{198}\) an appeal by special leave was filed against an order of the Assistant Commissioner (Judicial) I, sales tax by which the Asst. Commissioner rejected as defective the memorandum of appeal as the memorandum of appeal was not accompanied by the Challan showing the deposit of admitted tax under section 9 of the U.P. Sales Tax Act, 1948. The appellant did not file an application for revision and did not also invite a reference to the High Court. The appellant directly move the apex under an appeal under special leave under Article 136 of the Constitution.

The apex court while allowing the appeal observed that legislature has used the word ‘entertained’ in the proviso 9 of U.P sales Tax Act advisedly. The proviso reads as, “Provided that no application to set aside the sale shall be entertained”. The word ‘entertained’ means ‘admitting to consideration’ and therefore when the court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. All the rules of procedure are intended to advance justice and not to defeat it.

\(^{198}\) AIR 1968 SC 488
Further with regard to the fact that appellant had not exhausted the other remedies open before making a petition for special leave in apex court, it was opined that the Supreme Court will not ordinarily grant special leave to appeal against an order when other remedies are available and have not been exhausted. But there is no inflexible rule that the Supreme Court will never entertain an appeal in such cases. So it was observed that it would have been futile for assessee under the U.P. Sales Tax Act to have gone to the court of Revision/Appeal(High Court) which was bound by a ruling of the Allahabad High Court in the case of Swastika Tannery and it would have been equally futile to have gone to that High Court on a reference. So, the apex court observed that it was one of the those extra ordinary cases in which the ends of justice would be better service by avoiding a circuity of action and by dealing with the matter in the Supreme Court directly.

In *Zila Parishad Moradabad v. M/S Kundan Sugar Mills*, 199 it was opined that the Supreme Court will not ordinarily grant special leave to appeal against an order when other remedies are available and have not been exhausted. But there is no inflexible rule that the SC will not entertain an appeal in such case.

*In Ram Dayal v. Smt. Narbada*, 200 the question for the determination by apex court was with regard to the revocation of special leave filed against the decision of the High Court of Rajasthan whereby it was held that the gift deed made by the respondent was not valid as there was no proof that her husband was dead. The appellant contended that the special leave granted should be revoked as the appellant did not avail himself of the provision for leave to appeal to a division Bench of the High Court.

The apex court while dismissing the appeal relied on the principle laid down in *Kishorilal Gupta and Bros* 201 and *State of Bombay v. RatilalVadilal’s case* 202 and held that this court has jurisdiction to entertain appeal against the order of a court when an appeal lay from that order to another court. But the proper conduct is to exhaust all the remedies before invoking jurisdiction of this court under Article 136. Further, it was opined where the value of the property is too small and the question of law involved is not of such public importance, the Supreme Court will not entertain the appeal.

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199 AIR 1968 SC 98  
200 AIR 1973 SC 804  
201 AIR 1959 SC 1362  
202 AIR 1961 SC 1106
Power to remand the case

In Surendra Nath Bibra v. Stephen Court Ltd\(^{203}\), a three judge bench decided the fate of an appeal by special leave filed against the judgment of the High Court of Calcutta in an application under section 115 of the Code of Civil Procedure and under Article 227 of the Constitution filed by the appellant (tenant). The appellant was a tenant of the respondent and a lease deed was executed in favour of the appellant by the respondent. Thereafter respondent refused to give him a portion of the premises as a result, the appellant suspended the rent. This results in the filing of suit by respondent (plaintiff) before the small cause court judge and it was held that the appellant (defendant) was entitled to suspend payment of rent. Then an applicant was made by the respondent (plaintiff) under section 38 of the Act to the Presidency small causes courts Act against the dismissal of the suit and the full bench of the small causes court held that the respondent (plaintiff) can claim for arrears of rent inspite of the fact that he had failed to give possession of portion of the demised premises. Against this appellant filed an application under section 115, CPC and Article 227 of the Constitution but the High Court dismissed the application and against this appellant preferred an appeal by special leave under Article 136 of the Constitution.

The apex court while allowing the appeal opined that the doctrine of suspension of rent should not be regarded as a rule of justice, equity and good conscience in India in all circumstances. It does not seem equitable that when the tenant enjoys a substantial portion of the property of the landlord, leased to him, without much inconvenience, he should not pay any compensation for the use of the property. It is also unfair on the part of the landlord that if a tenant is not given possession of a substantial portion of the property, he should be asked to pay any compensation for the use of the property while he is taking appropriate measures for specific performance of the contract. So it was held by the apex court that where the landlord has failed to give possession of a portion of demised premises, the tenant is entitled to suspend payment of rent but he must pay a proportionate part of the rent. So, the order of High Court was set aside and case was remanded to the court of small causes to dispose the case on the question of apportionment of rent.

\(^{203}\) AIR 1966 SC 1361
Thus, it can be said that if the High Court has rejected the matter in limine or has not considered various points. The apex court has the power under Article 136 to remand the case back to the High Court or below or Tribunal for answering certain questions according to law.

Further, in Commissioner of Income tax Bombay v. Hukumchand Mills Ltd\textsuperscript{204} it was held that where the High court while delivering the judgment had not expressed views on certain points raised before it, the apex court in an appeal by special leave has power to remand the case back to High Court for answering that questions according to law.

In \textit{S.P. Gupta v. U.P. State Electricity Board},\textsuperscript{205} an appeal by special leave was filed against the judgment of the Allahabad High court. A writ petition was filed before the High Court in which the present appellants were co-nominee parties but they were not served with any notice and the petition was disposed of by the High Court. Then an appeal by special leave was filed which was dismissed. The appellant also filed a CMP in the SLP Seeking clarification of the earlier order. On this the apex court opined that the application was dismissed as withdrawn. Then the appellant moved the High Court by filing a review petition which the High Court dismissed as being without merits. Against this decision of the High Court, an appeal by special leave was filed.

The apex court while dismissing the appeal opined that even assuming that a review application was maintainable and should have been considered by the High Court, but on considering the facts and circumstances of the cases, the apex court opined that it is not necessary to send the matter back to the High court for fresh disposal as the appellant have suffered no prejudice on account of procedural lapse and that the dismissal of review petition is justified even on merits.

\textit{In State of Orissa v. Orient Paper and Industries}\textsuperscript{206}, the two judges bench while deciding the fate of the appeal with regard to the dispute over method to determine quantity of bamboo cut opined that the arbitrator while holding that the methodology fixed by Chief conservator of Forest is final and binding on parties did not determine whether the methodology could be made applicable to all the case. So

\begin{thebibliography}{99}
\bibitem{204} AIR 1967 SC 1907
\bibitem{205} AIR 1991 SC 1309
\bibitem{206} AIR 1999 SC 2253
\end{thebibliography}
the High Court was right in allowing the appeal and remitting the matter back to the arbitrator.

Further it was opined that it was not necessary that the State Government should have challenged the order of the High Court causing unnecessary expense to the parties and time the Supreme Court had to spend in hearing the appeal. State should not act as private litigant and challenge every order passed against him.

*In State of Punjab v. Gram Panchayat*[^207^], an appeal by special leave was filed against the judgment of the Punjab and Haryana High Court concerning a dispute over title of land between government and Gram Panchayat whereby the High Court upholding the orders of collector and commissioner as appellate authority dismissed the writ petition and opined that as the Government failed to produce any material or documentary evidence to show that the land vested in them and as such ordered the delivery of possession to the Gram Panchayat.

In appeal by special leave, Government prayed for remand to the case to collector to enable them to place necessary material on record but the apex court while dismissing the petition opined that as the litigation is pending for more than fifteen years, it would not be proper to grant the remand and to put the clock back after such a long time.

*In Narendra Nath Khaware v. Parasnath Khaware*[^208^], an appeal by special leave was filed against the judgment of Patna High Court causing the acquittal of the respondent (accused) of the charges under sections 148 and 302 read with section 149, IPC.

The contention of the respondent was that the appeal is not maintainable as only the State of Bihar had the right to file special leave petition or an appeal in the apex court the State having failed to do so, an appeal at the instance of the complainant is not maintainable.

The apex court while allowing the appeal relied on its earlier judgment *i.e.*, *P.S.R. Sadhanatham v. Arunachalam*[^209^] where it Article 136 of the constitution. It was observed that Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. So, the appeal even at the instance of complainant is maintainable.

[^207^]: AIR 2002 SC 1365
[^208^]: AIR 2003 SC 2325
[^209^]: AIR 1980 SC 856
Further, it was opined that as the High Court had dismissed the appeal in limine without referring to evidence of complainant, eye-witness of occurrence, so the case was remanded back so that the High Court can go into the evidence on record in detail.

*In U.P. State Road Transport Corporation v. Omaditya Verma*\(^{210}\), an appeal by special leave was filed against the Division Bench of the Allahabad High Court where the High Court while allowing the writ petitions directed the secretary, State Transport Authority, to issue permit to all grantees, who were private operators and who have not been issued permits on the basis of the resolution dated June 14-15, 1993.

The U.P. State Road Transport Corporation by the notification dated February 12, 1952 and September 3, 1994 introduced two schemes viz. Bijnore to Noorpur and Bijnore to Muzaffar Nagar which had been notified under the scheme and published in the official Gazette.

The apex court while allowing the appeal opined that once a scheme is notified it prohibits the plying of private vehicle except as permitted by scheme. Further it was opined no permit could have been issued in pursuance of the resolution dated 14-15, 1993 and under notification dated September 3, 1994 when the route from Muzaffaranagar to Bijnore had been notified, no permit could have been granted on the aforesaid route as both scheme are of total exclusion.

The apex court thus remanded the case back to State Transport Appellate Tribunal to dispose of the matters in accordance with law. Further it was opined as no opinion was expressed on merits, so dismissal of SLPs would neither amount to res-judicata nor amount to upholding decision of High Court in writ petitions in question.

*In State of Orissa v. Surendranath Mallik*\(^{211}\), the two judge bench while remitting the case back to Tribunal opined that both the Tribunal as well as High Court failed to consider the basic issues involved concerning reverting of respondent No. 1 to the former post of Senior Assistant by the order of appellant and proceeded to deal with question of reservation and applicability of Orissa Reservation of Vacancies Act and Rules which was not a question to decide.

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\(^{210}\) AIR 2005 SC 2250  
\(^{211}\) AIR 2007 SC 3034
Interim Orders

In South Petrochemical Industries Corporation Ltd v. Madras Refineries Ltd\textsuperscript{212}, an appeal by special leave was filed against an interim order passed by the Division Bench of Madras High Court, granting injunction to the respondent so that it would not cause any irreparable loss or hardship to it. The apex court while dismissing the appeal opined that the apex court does not usually entertain appeals from interim orders passed by the High Court.

In Ram Gopal Chaturvedi v. State of Madhya Pradesh, \textsuperscript{213} an appeal by special leave was filed against the decision of the Madhya Pradesh High Court. The appellant was appointed as temporary civil judge by the Governor of the Madhya Pradesh under rule 12 of the Madhya Pradesh Govt. servants (Temporary and Quasi Permanent Services) Rules 1960 and it was provided that a notice of termination of the period of one month was provided to the appellant before terminating his services. The M.P High Court passed a resolution that the state govt. should terminate the appellant’s the Governor of an order terminated the services of the service. On this appellant against which appellant filed a writ petition in the High Court of Madhya Pradesh. The High Court held the appellant’s services are liable to be terminated and thus summarily dismissed the petition. Against this order, appellant filed an appeal by special leave.

The three judge bench of the apex court considered the contentions of the appellant that rule 12 was unconstitutional as it was framed without consulting the State Public Service Commission and the High Court and it was also violative of Articles 14 and 16 of the Constitution. It was contended that the impugned order was a sort of punishment without giving the appellant an opportunity to show cause against the proposed action.

The apex court opined that it is a mixed question of fact and law which was not raised before the High Court, so the appellant cannot be allowed to raise it for the first time in the apex court. Further it was opined that rule 12 applies to all temporary government servants who are not in quasi-permanent services. All such government servants are treated alike and as such there is no violation of Articles 14 and 16 of the Constitution. It was further opined that while terminating the appellant’s service, no charge sheet was served nor was any departmental inquiry

\textsuperscript{212} AIR 1998 SC 302
\textsuperscript{213} AIR 1970 SC 158
held against him. Moreover, the order did not cast stigma on the appellant’s character nor did visit him with any evil consequences, so the impugned order did not involve any element of punishment nor did it deprive the appellant of any vested right to any office.

In Harjeet Singh v. Raj Kishore\textsuperscript{214}, the two judge bench while deciding the fate of appeal by special leave filed against the final order of abatement of appeal by the High Court of Allahabad opined that the minor technicalities of procedures would not come in way of Supreme Court from doing substantial justice. As the respondent No. 3 died pending the petition before High Court and there was delay in filling the application of substitution which was not condoned by the High Court, the apex court opined that the High Court was in error in refusing substitution. There was delay of few days and there was satisfactory explanation for the delay in seeking substitution, so the apex court remitted the matter back to High Court to decide it on merits.

In Devi Das v. Mohan Lal\textsuperscript{215}, an appeal by special leave was filed against the order of the High Court causing the eviction of the tenant on the ground that the respondent required the disputed premises for his own use and occupation. The plea of the tenant was that the sale of the said premises was a sham transaction with ulterior motive of evicting the appellant (tenant).

The apex court while allowing the appeal opined that there was failure of the lower courts to record the finding that sale deed was a paper transaction on which the evidence can be adduced on record. So the eviction order of the lower courts was invalid and thus by setting aside the eviction order the case was remitted back to the trial court to record the finding whether the sale of the building was a bonafied transaction or not.

In Sourindra Mohan Hazra v. State of West Bengal\textsuperscript{216}, an appeal by special leave was filed against the decision of the High Court of Calcutta who while allowing the appeal of the respondent passed an ex-parté decision against the appellant. The plea of the appellant before the apex court was that he was not served with the notice of the appeal before the High Court.

\textsuperscript{214} AIR 1984 SC 1238
\textsuperscript{215} AIR 1982 SC 128
\textsuperscript{216} AIR 1982 SC 1193
The apex court which allowing the appeal opined that there was sufficient cause for not appearing at hearing of second appeal before the High Court. Thus the apex court remanded the case back to the Calcutta High Court for disposal according to law.

**Interference with discretionary power of High Court**

*In Beant Singh v. Union of India*\(^217\)* an appeal by special leave is directed against the judgment of a Division Bench of High Court of Punjab and Haryana dismissing in limine an appeal against the judgment of learned single judge of the High Court.*

The respondent, a displaced person, was the highest bidder at an auction sale of certain property and her bid was accepted. The acceptance was communicated to her so that adjustment of the compensation money due to her may be made against the balance of the sale price which she had to deposit. By a subsequent order of the District Managing Officer, her bid was cancelled and the deposit of the earnest money forfeited even though no notice under rule 90(13) of the Displaced Persons Compensation and Rehabilitation Rules had been issued to her. An appeal against that order by the respondent was also decided against her by the Asst. Settlement Commissioner without hearing the respondent as required by rule 105. A writ petition by the respondent challenging the cancellation of her bid and re-sale in favour of the appellant was allowed as it was said that there is violation of the Displaced persons Compensation and Rehabilitation Rules. On appeal by the appellant before the Division Bench, the appeal was dismissed in limine. Then appellant preferred an appeal by special leave against the order of the Division bench of the High Court.

The apex court while dismissing the appeal opined that it is a settled rule of practice of Supreme Court not to interfere with the exercise of discretionary powers of High Court under Article 226 of the Constitution merely because two views are possible upon the facts of a case. Furthermore, in order to induce the Supreme Court to interfere the question must involve at least a matter of public or general importance or injustice suffered by an individual due to an error of law should be so gross as to touch the conscience of the Supreme Court in which case it would be deemed to be one of more than private importance. On the facts and circumstances

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\(^{217}\) AIR 1977 SC 388
of the case, the Supreme Court would refuse to interfere with the orders of High Court which had not resulted in any injustice to the appellant who would get back the money deposited at the resale.

In State of Haryana v. Smt. Darshana Devi\textsuperscript{218}, the two judges bench while deciding the fate of the appeal, dismissed the appeal and opined that it is distressing that the State, mindless of the mandate of equal justice to the indigent under the Magna Carta of our, Republic, expressed in Article 14 and stressed in Article 39A of the Constitution has sought leave to appeal against the order of the High Court which has rightly extended the ‘pauper’ provisions to auto-accident claims. The reasoning of the High Court in holding that order XXXIII will apply to tribunals which have the trappings of the civil court finds approval of the court.

Further it was opined that access to court is an aspect of social justice and the state has no rational litigation policy if it forgets this fundamental. Further it was observed the state has failed to remember its duty under Article 41 of the Constitution to render public assistance without litigation, in case of disablement and undeserved want.

In Jammu University v. D.K. Rampal\textsuperscript{219}, the respondent was suspended on the ground of serious complaints against him by the Vice-Chancellor of the University in exercise of powers vested in him under clause 9(11) of schedule II and section 13(4) of the Jammu University Act, 1969. The Registrar then further directed that during the period of suspension, the respondent would not be entitled to get full salary but only subsistence allowance at an amount equal to half pay and half dearness allowance in accordance with the usual practice followed by the University. The matter was placed before syndicate and a Committee was constituted to enquire into the matter. Pending the enquiry, the respondent filed a writ petition before the High court which was dismissed. Then a letters patent appeal was filed and the Division Bench of allowing the appeal held that the order of suspension was defective for want of jurisdiction and other legal infirmities and directed the reinstatement of the respondent. Against this order, University filed an appeal by special leave before the Supreme Court.

The apex court while allowing the appeal opined that section 13 sub sec (4) of the Act of 1969 confers power on the vice chancellor to take action which he

\textsuperscript{218} AIR 1979 SC 855
\textsuperscript{219} AIR 1977 SC 1146
deems necessary in any emergency which in his opinion calls for immediate action. A new provision in sub-section (6) of section 13 entrusted the vice chancellor with the task of maintaining discipline in the University and for the purpose of enabling the vice-chancellor to effectively discharge the responsibility of maintaining the discipline, the vice chancellor has the power to suspend a teacher pending departmental enquiry against him. To bring the statute in conformity with sub-section (6) of section 13, the statute 24(11) was added by way of modification in the statute by the order dated 24 December, 1969. The apex court further observed that the order of suspension did not recite statute 24(11) as the source of power but it is well settled that when an authority makes an order which is otherwise within its competence, it cannot fail merely because it purports to be under a wrong provision of law, if it can be shown to be within its powers under any other provision; a wrong label cannot vitiate an order which is otherwise within the power of the authority to make. The vice-chancellor, therefore, clearly had power under section 13, sub-sec. (4) to make an order of interim suspension, if he thought it necessary to make such an order in an emergent situation which in his opinion called for immediate action.

Further with regard to the plea of the respondent that there was no emergency attracting the applicability of section 13, sub-sec(4), the apex court opined as such a ground was not challenged in writ petition, it could be entertained by Supreme Court in appeal by special leave.

Furthermore it was opined that where the master servant relationship comes to an end by an order of suspension by the employer by using his power conferred by an express term in contract or by rules governing the terms and conditions of service, then such an employee would not be entitled to receive any payment at all from the employer, the only payment which the respondent could claim to receive from the University was subsistence allowance which is allowed under the rules governing the terms and conditions of his service.

**Non-appearance of Parties**

*In M/S M. Laxmi& Co. v. Dr. Anant R. Deshpande*²²⁰, an appeal by special leave was filed against the decision of the High Court of Bombay allowing civil Revision application under section 115 of the CPC, set asiding the ex-parte decree and sent the case back to the small causes court to frame the preliminary issue as

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²²⁰ AIR 1973 SC 171
contemplated under section 42-A of the Presidency Small Cause Courts Act, 1882 which provides for a procedure where occupant of premises contest as a lawful tenant. The appellant who got a premises by lease deed filed an ejectment suit in the small causes court against respondent who was the previous lease holder. The respondent failed to appear in the court on the date of hearing as a result an ex-parte decree was passed against him. The respondent moved the High Court against this decision and the High Court allowed his application.

Then appellant filed an appeal by special leave against this decision of the High Court and the apex court while allowing the appeal opined that the High Court was wrong in the conclusion that it is was obligatory on the trial court to frame a preliminary issue irrespective of the appearance of the occupant. If the occupant does not take benefit of section 42A of the 1882 Act by appearing and contesting the applicant’s rights, the occupant loses his rights. Further it was opined that court can take notice of subsequent events where the courts finds that because of altered circumstances like devolution of interest, it is necessary to shorten the litigation.

**Revocation of leave to appeal**

*In Udai Chand v. Shankar Lati*\(^\text{221}\), an appeal by special leave was filed against the decision of High Court dismissing the appeal filed by the appellant rejecting his demand for framing of an issue on the question whether there was legal necessity for the transaction in favour of the respondent. Against this, appeal by special leave was filed which was granted by the apex court, but the respondent filed an application for revocation of special leave. The apex court while allowing the application of the respondent for revocation opined that the Supreme Court would be justified in revoking the leave to appeal if the same was obtained by making misstatement of a material fact which was of decisive importance in the case. The court observed that Article 136 is hardly meant to afford relief in a case where a party is in default of rent and thus cannot be permitted to hold up their evictions indefinitely or for inordinately long periods on flimsy or unsustainable grounds.

**Interference with the award**

*In M/S Voltas Ltd. v. Voltas and Volkart Employees Union*\(^\text{222}\), an appeal by special leave was filed against the decision of the Additional Industrial Tribunal, concerning the fixation of ceiling on dearness allowance. The tribunal by its award

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\(^\text{221}\) AIR 1978 SC 765  
\(^\text{222}\) AIR 1976 SC 2439
held that no ceiling on dearness allowance existed governing the employees of the Banglore branch and that such a ceiling could not in law be fixed. The apex court has to consider the correctness of these findings of the Tribunal.

In an appeal the Supreme Court set aside the award and remitted the matter for a fresh consideration of two questions – (i) whether any ceiling on dearness allowance existed as regards the employees of the Banglore Branch of the company and (ii) whether such ceiling in law can be fixed. On a consideration of additional evidence adduced by the parties in pursuance of the order of the remand, the Tribunal answered the first question in the negative on the merits but instead of considering the second question on merits, it took the view that the appellant company was precluded from urging that a ceiling should be imposed on dearness allowance.

The apex court opined that in view of the specific direction of Supreme Court to consider the questions on merits, it was the plain duty of the tribunal to consider the evidence and arguments and dispose of the second question on merits as well. The concluding portion of the award gives the impression that the Tribunal was inclined to advert to the merits of the second question but there was no gain saying that the view taken by the tribunal that the appellants were precluded from raising that question virtually sealed a proper and dispassionate discussion of the matter. Further the apex court opined that the Tribunal has ignored the specific direction given to it by the court to consider the question on its merits, so the case was remanded back.

In Gujarat Mineral Development Corporation v. P.H. Brahmbhatt, an appeal by special leave was filed against the award of the special labour court where the labour court directed the appellant to reinforce the respondent and pay compensation to the respondent who was only a temporary employee who has to undergo probationary period before confirmation. Against this decision of labour court, appellant filed an appeal by special leave under Article 136.

The apex court while allowing the appeal relied on the principle laid down in Bengal Chemical and Pharmaceutical works Ltd. case and Kamani Metal and Alloys Ltd. and opined that a party claiming relief under Article 136 must show

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223 AIR 1974 SC 136  
224 AIR 1959 SC 633  
225 AIR 1967 SC 1175, see also Kumar v. Town Improvement Trust, Bhopal, AIR 1989 SC 1222
that the impugned order or award is defective by reason of excess of jurisdiction or of a substantial error in applying the law or suffers from gross and palpable error occasioning manifest and substantial injustice. The Supreme Court, however, does not generally entertain pleas on question of fact or interfere with findings of fact so as to convert it into a third court of fact unless there are exceptional circumstances justifying interference.

Further, on the facts and circumstances of the case observed that the order of termination of services of the petitioner, a temporary servant was malafide or perverse and not all justified by any evidence on record. Moreover, the attitude of respondent was highly unreasonable and detrimental to the interest of the corporation. Furthermore, it was observed that as the services of the respondent was temporary, the order was one of the discharge simplicities and was bonafide and as such the award direction his run statement should be set aside.

**Interference with Sentence/Award**

*In P.D. Agrawal v. State Bank of India*²²⁶, appellant was held guilty on several occasions for misconduct which resulted in his suspension. Later disciplinary proceedings were initiated and on the recommendation of Disciplinary Authority, punishment of removal from service was imposed on the appellant. Then he filed appeal before Appellate Authority which was dismissed. The writ petition as well as latter patent Appeal before High Court were also dismissed. Then appeal by special leave was filed before the apex court.

The apex court while dismissing the appeal opined that the plea of condonation of disciplinary proceeding as raised by appellant due to delay in initiation of disciplinary proceedings cannot be raised in this case as there is no concept of contract of personal service and thus the doctrine of condonation of misconduct so evolved by ordinary law of master and servant is not attracted when the conditions of service are governed by statute.

Further it was opined that the charges against the appellant are almost identical. Although one charge is severable from other charges against the appellant and if that charge stands not proven, even that court observed that there is no reason for interference with punishment which is otherwise based on proven charges.

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²²⁶ AIR 2006 SC 2064
In Special Deputy Collector (Land Acquisition), General, Hyderabad v. B. Chandra Reddy\textsuperscript{227}, certain land was requisitioned for defence purposes by competent authority and compensation was offered to the respondent (claimant) which he did not accept. Then the matter was referred to the arbitrator and finally an award was made but the amount so awarded was not paid by competent authority. As a result of this, claimant approached High court where the single judge ordered the authorities to pay the amount within sixty days. Then an appeal was preferred by the appellant before the Division Bench which was dismissed on ground of delay. Thereafter, appellant filed an appeal by special leave before the apex court under Article 136 of the constitution.

The apex court while dismissing the appeal opined that while going through the record, it revealed that on the basis of award passed by arbitrator, other land owners had also claimed the similar benefit which was allowed. Therefore, the claimants are right in submitting that once an award was passed, validity of which was never under challenge, a public authority ought to have acted in accordance with directions issued in the award and should have made the payment. So, considering the facts and circumstances, Supreme Court declined to exercise discretionary power under Article 136 of the Constitution in favour of the appellant.

In Narpat Singh v. Jaipur Development Authority\textsuperscript{228}, the two judges bench while deciding the fate of an appeal by special leave filed against the decision of the High Court of Rajasthan where the High Court by its award granted residential plots to claimants in addition to monetary compensation in lieu of the land acquired by the Government and the award was passed on the basis of the Compromise arrived at between claimants, the State Government and the urban improvement trust, opined that the exercise of jurisdiction conferred by Article 136 on the Supreme Court is discretionary. It does not confer a right to appeal on a party to litigation, it only confers a discretionary power of widest amplitude on the Supreme Court to be exercised for satisfying the demands of justice. As the claimants were awarded monetary compensation as well as plots to rehabilitate themselves there is no inconsistency and thus no reason for interference of the Apex court.

Further, the apex court by partly allowing that appeal opined that for doing complete justice and not to leave the claimants in lurch – remediless directed that as

\textsuperscript{227} AIR 2007 SC 1579

\textsuperscript{228} AIR 2002 SC 2036
the appeals preferred by the State Government in the High Court were disposed of in terms of compromise and the monetary compensation was reduced in consideration of the awardees having been allotted plots and as the compromise is now vitiated it would be in the interest of justice that the appeals are restored for hearing on merits.

Summary dismissal

In Indian Oil Corporation Ltd. v. State of Bihar, an appeal by special leave was filed against the award of the labour court where it was directed that the respondent No. 3 should be promoted from grade ‘B’ to grade ‘C’ and he was also entitled to the revised pay scale after his reinstatement in service as he was earlier dismissed for his misconduct. The apex court dismissed the special leave petition by a non-speaking order. Thereafter, the appellant filed a writ petition under Article 226 of the Constitution before the High Court of Patna. The High Court dismissed the writ petition on the ground that as the appellant had chosen the remedy of approaching a superior court and failed in that attempt, he could not thereafter resort to the alternative remedy of approaching the High Court for relief under Article 226 of the constitution. Then again the appellant moved the apex court where it was opined that the dismissal of a special leave petition in lemine by a non-speaking.

In Rajendra Prasad Mathur v. Karnataka University, an appeal by special leave was filed against the order passed by the Division Bench of Karnataka High Court summarily rejecting writ appeals causing cancellation of the admission of the appellants order does not justify any inference that by necessary implication and contentions raised in the special leave petition on the merits of the case have been rejected by the Supreme Court. Neither on the principle of res-judicata nor on any principle of public policy analogous thereto, would the order of the Supreme Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before High Court merely on the basis of an uncertain assumption that the issues must have been decided by the SC at least by implication.

Further, it was opined that the grant of leave under Art. 226 of the constitution is undoubtedly in the discretion of the HC but the exercise of that discretionary jurisdiction is to be guided by established legal principles. It will not

229 AIR 1986 SC 1780. See also, workmen of Cochin Port Trust v. Board of Trustees of Cochin Port Trust, AIR 1978 SC 283; Ahmadabad – Manufacturing and Calico printing Co. Ltd. v. workmen, AIR 1980 SC 960.
230 AIR 1986 SC 1448
be a sound exercise of that discretion to refuse to consider a writ petition on its merits solely on the ground that a special leave petition filed by the petitioner in the SC had been dismissed by a non-speaking order.

**Reasoned Decision/Award**

*In State of Orissa v. Construction India*\(^{231}\), the two judges bench while dismissing the appeal by special leave filed against the decision of High Court of Orissa opined that the question before the apex court was with regard to the validity of unreasoned award and that question was not pressed before High Court. Moreover, no grievance was made on that point in SLP though it had been taken up by petitioners. The appointment of arbitrator was from panel given by parties, so court refused to interfere with the order of High Court.

*In Haryana State Adhyapak Sang v. State of Haryana*\(^{232}\), an appeal by special leave was filed against the decision of the High Court of the Punjab and Haryana. There was disparity with the teachers employed in aided private school and in Govt. schools in the matter of pay scales and other emoluments. For this purpose, Kothari Commission, the principle of parity was followed in aided private school and Govt. schools in the matter of pay scales and other emoluments until 1979. But in 1979, the pay scale of Govt. teachers was revised by state after the report of pay commission but in case of pvt. aided schools, the revision was effected two years later. In various writ petitions and in appeal by the teacher of aided schools before Supreme Court, the State govt., expressed its readiness to reimburse the payment of ten installments of the addl. DA, but not the 25 additional DA installments released after 1-4-1981.

The apex court opined that the teachers of the aided schools must be paid the same pay scale and DA as teachers in Govt. schools for the entire period claimed by the petitioners and that the expenditure on that account should be apportioned between the State and the management in the same proportion in which they share the burden of the existing emoluments of the teachers. Ten installments representing the State Govt’s liability shall be paid by the State Govt. in two equal parts, and the remaining 25 installments being payable in five equal parts. The State govt. was directed to take up with the managements of the aided schools the question of

\(^{231}\) AIR 1988 SC 1530

\(^{232}\) AIR 1988 SC 1663
brining about party and evolve a scheme for payment after having regard to the
difference allowances claimed by the petitioners.

In *Suresh Ragho Desai v. Smt. Vijaya Vinayak Ghag*, an appeal by special
leave was filed against the decision of High Court dismissing the challenge to award
in question. The parties participated in the arbitration in relation to a transaction and
the award was passed which was unreasoned one. But there was no allegation of any
violation of the principles of natural justice. The apex court opined that on the facts
of the case, from the records and on the face of the award, there was no mistake of
law apparent on the face of the award or gross mistake of fact resulting in the
miscarriage of justice or of equity. So it is unjust under Article 136 of the
Constitution to interfere.

**Suppression of material fact**

In *Krishna Ram Mahale (dead) by his LR’s v. Mrs. Shobha Venkat Rao*, the
two judges bench while dismissing the appeal opined that the appellant has
unlawfully taken possession of the business and premises and he made every attempt
to retain the possession by every mean, right or wrong. Moreover, there was
suppression or falsity of facts before the court. The counsel of the appellant was
making statement that opp. party is dead and it seems that instruction to make this
statement have been given recklessly without any attempt to find out the truth. Thus
the apex court opined that the provisions of Article 136 are not intended to come to
the assistance of such a party.

**Laches**

In *M/S Ram Lal Kapur and Sons (P) ltd. v. Ram Nath*, the appellant who
was the tenant of the first respondent moved the rent controller for fixation of rent
and the rent controller computed the fare rent payable by the appellant. The first
respondent preferred an appeal against the order of the rent controller to the learned
district judge which was dismissed. Then he moved High Court of Punjab and
constitutionality of section 7A of the Delhi and Ajmer Rent Control Act, 1947 was
challenged. The High court held section 7A which provides for fixation of rent as
void. Against this decision, the appellant preferred an appeal under the letters patent
to a Division Bench. Pending this appeal, appellant filed special leave under Article

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233 AIR 1988 SC 2026
234 AIR 1989 SC 2097
235 AIR 1963 SC 1060
136 of the Constitution and later revoked latter patent appeal in the Division Bench. Meanwhile in *British Medical Store v. Bhagirath Mal*, the apex court by its decision held section 7A of the Act as valid.

Then another objection of the respondent was that exparte special leave should be revoked as the petition is time barred and against the limitation period prescribed by the rules of the Supreme Court.

On this contention, the apex court opined that except in very rare cases, if not invariably, it should be proper that the Supreme Court should adopt as a settled rule that the delay in making an application for special leave should not be condoned ex-parte but that before granting leave in such cases notice should be served on the respondent and the latter afforded an opportunity to resist the grant of the leave. Such a course besides being just, would be preferable to having to decide applications for revoking leave at the time of hearing appeal on the ground that the delay in making the same was improperly condoned, years after the grant of the leave when the court naturally feels embarrassed by the injustice which would be caused to the appellant if leave were then revoked when he would be deprived of the opportunity of pursuing other remedies if leave had been refused earlier. Therefore the court directed that the rules of the court should be amended suitably to achieve suitably above purpose.

*In Mewa Ram (decreased by L. Rs.) v. State of Haryana*, the appeals by special leave was filed for the enhancement of the compensation for land acquisition. There was considerable delay in the filing of the petition. The apex court while dismissing the appeal opined that the claimant cannot plead their own laches as ground sufficient for condonation of delay. Further the plea that there was enhancement of the rate of compensation earlier in some cases by supreme court could not furnish ground for condonation of delay.

*In Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi*, two appeals by special leave was filed against the decision of Bombay High court.

The facts of the case provides that there was tampering with the grade sheets of the result of the M.D. Examination and as the daughter of the then Chief Minister (Appellant) was one of the examinees and had earlier failed thrice in the said
examination, it was said that such tampering was done at the behest of the Chief Minister. The single judge of the High Court in the writ petition opined that there was no direct evidence against the order of dismissal. Moreover, the reliefs sought to be included through the amendment application filed in the High Court proceeded on the assumption that the appellant was still continuing in service. The apex court thus held that in an appeal by special leave, the appellant could not be permitted to amend the plaint seeking to include the relief against the order of dismissal as no circumstances had been shown explaining why the appellant should be permitted at this late stage to amend the plant.

_In S. Kumar v. the Institute of Constitutional and Parliamentary Studies_, the three judges bench while deciding the fate of the appeal filed against the decision of the High Court against the charges, framed by the Institute (Respondent), of attempting to draw the sum by tendering a false bill, relied upon the decisions of the subordinate courts and dismissed the appeal on the ground that the remedy lay in damages instead of by a suit for declaration. Moreover, before the High Court, appellant made an application for the amendment of the plaint which was also dismissed. The apex court opined that where the original relief claimed in the suit consisted of a decree of declaration that the proceedings taken against the appellant upto the framing of the charge were invalid and in the meantime the appellant was dismissed by the society and he was aware of the order of dismissal and at no stage upto the dismissal of his second appeal did the appellant attempt to include a relief in his plaint.

_In Union of India v. Visveswaraya Iron & Steel Ltd.,_ the two judges bench while deciding the fate of appeal opined that the special leave petition was filed beyond the period prescribed by the Rules for filing a special leave petition. Even the application for the condonation of delay contained no grounds for the delay. Even after the opinion of the Addl. Solicitor General, special leave petition was filed after a delay of more than a month and a half. The supplemental affidavit explaining the delay was not allowed by the apex court to rectify the defect.

_ShreeNandanPaswan v. State of Bihar_, the apex court opined that when an appeal by special leave against an order giving consent to withdrawal of prosecution

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239 AIR 1984 SC 59
240 AIR 1987 SC 669
241 AIR 1987 SC 877
comes to the Supreme Court, the Supreme Court would not assess evidence to find out whether there is a case for acquittal of conviction nor order a retrial. It has been the declared policy of the Supreme Court not to embark upon a roving enquiry into the facts and evidence of cases. The court will not allow itself to be converted into a court of facts and evidence. The court seldom goes into evidence and facts. Any departure from this solutaryself imposed restraint is not a healthy practice. It is necessary for the Supreme Court to remember that as an apex court, any observation on merits or on facts and evidence of a case which has to go back to the courts below will seriously prejudice the party affected and it should be the policy of the court not to tread upon this prohibited ground and invite unsavory but justifiable criticism.

**Practice in respect of condonation of delay**

In *Hindustan Petroleum Corporation Ltd. v. YashwantGajanan Joshi,*[^242] an appeal by special leave was filed against the decision of the Bombay High Court allowing the writ petition filed by the respondent under Article 226 of the constitution as it was found that the person appointed by corporation as competent Authority considering the proprietary rights for respondent which were affected by for laying down pipelines for project called Bombay – Pune pipeline project was bias as she was an employee of the corporation. On this the Union of India sought time to comply with the directions of the High Court. The special leave petition was filed by Union of India as well as by the corporation. The apex court while dismissing the SLP filed by Union of India opined that the SLP filed by UOI was barred by limitation by 90 days and moreover there was no reason for condonation of delay.

With regard to special leave petition filed by the corporation, the apex court opined that there is an independent cause of grievance to the corporation, so SLP can be filed by the corporation. Further after analysing the facts and circumstances of the appeal, the apex court while dismissing the appeal opined that the apprehensions in the mind of the respondent that the officer appointed by the corporation for determining the compensation paid to respondent is bias is well founded and there is no justification for interference with order of High Court by the apex court.

[^242]: AIR 1991 SC 933
Whereas in Union of India v. Kolluni Ramaiah,243 appeals by special leave was filed against the judgment of High Court in a case concerning acquisition of land under Requisitioning and Acquisition of Immoveable Property Act, 1952 where high court granted compensation at the rate of Rs. 20/- per square yard and as regards solatium and interest affirmed the award of arbitrator and grant solatium at 15% and interest at 6%. There was a delay of 157 days in the filing of petitions by the Union of India but the apex court condoned the delay in the interest of justice.

In Warlu v. Gangotribai,244 the three judge bench while dismissing the appeal by special leave filed against the judgment of the Bombay High Court opined that the appeal concerning declaration of the claim of tenant is time barred as it is filed after the expiry of about 11 years. Moreover, the appellant failed to provide any cogent ground or explanation for the delay, so the supreme court declined to condone the delay.

In State of U.P. v. Harish Chandra,245 the two judges bench while deciding the fate of appeal opined that although there has been delay of 480 days in filing the petition but that has been due to the delay in processing the matter through official channel. Since there was sufficient reason for condoning the delay, so delay can be condoned.

In Babu Singh Bains v. Union of India,246 an appeal by special leave was filed against the decision of division bench of Punjab and Haryana High Court upholding the order of the Estate Officer who refused to condone the deley in making application under rule 11-D of the Chandigarh (sale of sites and buildings) (Amendment) Rules, 1979. The appellant misused certain plot allotted to him and so notice of resumption was served and as the appellant could not point out any invalidity in the resumption order, it became final. Then appellant filed an application under rule 11-D of the Rules of 1979 but the Estate Officer as well as the High Court dismissed the application on the ground that the appellant has not given any satisfactory explanation for the delay of 13 years in filing the application. The appellant also filed a writ petition challenging the validity of sec. 8A of the capital of Punjab (Development and Regulation) Act, 1952.

243 AIR 1994 SC 1149
244 AIR 1994 SC 466
245 AIR 1996 SC 2173
246 AIR 1997 SC 116
The apex court while dismissing the appeal opined that once an order passed on merits by the apex court exercising the power under Art. 136 has become final, no writ petition under Article 32 on the same issue is maintainable. Though the resumption order was not challenged, the apex court had permitted the appellant to convince the apex court as to the invalidity of the resumption order passed under sec. 8A but he could not point any invalidity nor did he raise any contention of constructive res judicata, stands fast in his way to raise the same contention once over.

Further it was opined that power under rule 11-D to re-grant land or building resumed, is a discretionary power of the Estate officer but he cannot arbitrarily reject application. He has to give reasons in support thereof as contemplated by rule 11-D. The appellant failed to give any proper explanation for inordinate delay of 13 years in not making the application, so the high court was right in dismissing the said application.

In State of Bihar v. Kameshwar Prasad Singh, the respondents were promoted as Dy. SP. by the order of High Court. Against this judgment, the letters patent appeal was filed by the State which was dismissed. Then the State filed an appeal by special leave but there was delay of 979 days in filing the SLP. The appellant sought condonation of delay by filing an application.

The apex court while allowing the appeal opined that there was a sufficient cause for condoning the delay. The order of the High Court was not challenged by authorities due to fear of contempt and various coercive orders passed by the High Court. The claim by authorities that order was passed in violation of law and if implemented would adversely affect more than 250 officers and likely to upset the entire cadre by Dy. S.P of Police in the State, was a sufficient cause for condoning the delay.

Further with regard to the promotion of respondents, it was opined that there were clear evidence that the respondent (BrijBihari Prasad) was promoted on officiating basis with a clear stipulation that he will not get seniority in the rank of Inspector till finally selected. It thus seems that the High Court totally ignored the basic principles governing the service rules and the mandate of law. The High Court totally lost sight of the fact that in the petition filed by the respondent, he had not

247 AIR 2000 SC 2306
impleaded any of his seniors as party respondents. In the absence of persons likely to be affected by the relief prayed for, the writ petitions should have normally been dismissed unless there existed specific reasons for non-impleadment of the affected persons. Neither any reason was assigned nor court felt it necessary to deal with this aspect of the matter. The writ petition of the respondent being totally misconceived, devoid of any legal force and prayers being made in contravention of the rules applicable in the case deserved dismissal.

Furthermore, with regard to the moulding of relief, the apex court opined that once the judgment is set aside, the consequence have to follow and a person taking advantage or benefit of the wrong orders is to suffer for his own faults which cannot be attributed to anybody else. However, in appropriate cases, the Supreme Court can mould the relief to safeguard the interests of a person whenever required. For doing complete justice between the parties, appropriate directions can be given to protect the interests of a person who is found to have been conferred the benefits on the basis of judicial pronouncements made in his favour. Thus, it was opined that where a Police Officer was promoted to the post of Deputy Superintendent of Police in year 1975 in view of directions to that effect given by High Court and such judgment of High Court was found to be not sustainable being contrary to law and service rules, it was held that the services benefits conferred upon officer consequent upon the judgments of the High courts should not be withdrawn and his appointment/promotion in the mean time in the IPS Cadre not disturbed, despite setting aside the judgment of the High Court. However, judgment passed in his favour cannot be permitted to be made a basis for conferment of similar rights upon other persons who are shown to have filed the writ petition.

_In Board of Control for Cricket, India v. Netaji Cricket Club_,248 there was a dispute about election of office bearers of Board of control of Cricket in India (BCCI). A suit was filed by the respondent in the Madras High Court to restrain BCCI from disqualifying members from participating in its election on the ground of residence. But later that suit was withdrawn on undertaking given by the Board that no one would be disqualified for the post of President on ground of residence. Later another suit was filed by Bharathi Cricket Club for grant of an ex-parte and interim in-junction restraining the appellants (Board) from passing resolutions confirming

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248 AIR 2005 SC 592

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the nomination of Shri Jagmohan Dalmia as Patron in Chief which was granted by the court. Against this order, Board filed a special leave petition before the apex court.

Further in Annual General Meeting, Maharashtra Cricket Association was not permitted to take part in the election. On this, a review petition was filed by Netaji as well as Maharashtra Cricket Association on the ground that it results in violation of the undertaking given by the Board. The Division Bench of the High Court while allowing reviews application passed the order of interim injunction. Against this order of High Court, Board filed another special leave petition before the apex court.

The apex court while dismissing the appeals opined that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex-facie bad in law. Section 114 of the Code of Civil Procedure empowers a court to review its order of the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in section 114 of the code in terms where of it is empowered to make such order as it thinks fit. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. An application for review may be necessitated by way of invoking the doctrine ‘actus curiae neminemgravabit’ Furthermore, the impugned order is interlocutory in nature. The order is not wholly without jurisdiction so as to warrant interference of apex court at this stage.

*In Madanraj v. Jalamchand*, a appeal by special leave was filed before the apex court against the order of the High Court of Madras. The High Court of Madras reversed the order of trial court in revision application before it and refered the matter back for fresh disposal in view of the observations of the High Court. On this, the appellant preferred an appeal by special leave before the apex court.

The apex court opined that the revisional powers exercisable by the High Court are an interterlocutory order and the Supreme Court as a matter of practice does not interfere with interlocutory orders under Article 136.

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249 AIR 1960 SC 744
In Ahswini Kumar Bose v. Arabinda Bose, the five judges Bench of the Supreme Court was constituted to deliberate upon the fate of the SLP filed against the decision of Calcutta High Court disallowing an advocate of the Supreme Court to act and plead on the original side of the jurisdiction in a case. In this case, under the rules of the Calcutta High Court, only an attorney can file a case on original side and advocates were not allowed to file a case on the original side. These rules were framed under Indian Bar Council Act of 1926. Another Act, the Supreme Court (Practice in High Courts) Act of 1951 provided that the Advocates of the Supreme Court are entitled to practice in any High Courts in India. Thus there was a conflict between the provisions of the Acts. The petitioner appeared on the original side and was not allowed by the registry. He filed a writ petition in the High Court under Article 226 which was dismissed by the High Court on the pretext that the later enactment does not regulate the former enactment as well as the non-obstante clause of the Supreme Court Advocates Act excludes its applicability to the provisions of the Indian Bar Council Act excluding the appearance of advocates on original side.

The majority opinion expressed by Patanjali Shastri, CJ, allowed the special leave petition and opined that the High Court has erred in its decision and the Supreme Court Advocates Act which provide the right to practice to a Supreme Court advocate include the right to act, appear and plead on both side i.e. original as well as appellate.

It was opined by the Supreme Court that the statutory right, which is conferred on the Supreme Court Advocates in relation to other courts and which they did not have before, cannot as a matter of construction, be taken to be controlled by reference to what they are allowed or not allowed to do in the Supreme Court under the Rules of that court. Such Rules are liable to be altered at any time in exercise of the rule making power conferred by Art. 145 of the Constitution.

It was pointed out that any different construction would yield startling effects and render the right as mere illusory. It is legitimate, therefore, to conclude that the legislature used the word ‘practice’ both in the Bar councils Act and in the new Act in its full sense of acting and pleading, but while in the case of advocates of the Calcutta and Bombay High Courts, it has expressly preserved and continued the power of the those courts to restrict or exclude the right of practice on the original

250 AIR 1952 SC 369
side, it has reserved no such overriding power under the new Act with the result that any restrictive rule cutting down the statutory right would be repugnant to sec. 2 and therefore void and inoperative.

It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably with the contemplation of the statute.

In the dissenting judgment, B.K. Mukherji, J., did not find a fault with the opinion of High Court of Calcutta.

S.R. Das, J., delivering his dissenting judgment opined that the appeal should be dismissed if an intending appellant who has not applied for or obtained the leave of the High Court and who does not say a word by way of explanation in the petition as to why he did not apply to the HC and as to why there has been such delay in applying to the apex court.

In Banarsidas v. State of U.P.,\textsuperscript{251} writ petition was filed by petitioners under Art. 32 of the Constitution as well as a special leave petition under Art. 136 against the decision the Allahabad High Court. The petitioners were Patwaris and were the members of ‘The U.P. Patwaris Association’. They were part time employees in the Revenue Department. There was demand of increase in pay and allowances and betterment of their services and for this reason all the patwaris went on pen – down strike. Then there was amendment in the rules of land records manual which provide for amended rules regarding recruitment, conditions of service and duties of patwaris against which there was protest by all the patwaris of the Association. Then a resolution was passed by which about 26000 patwaris resigned. There was a creation of new cadre of Lekhpal by the Govt. and the old patwaris were also recruited. The petitioner’s grievance is that they have been prevented from re-entering the Govt. service upon the re-organisation of the cadre under the new name. So it was contended that there was denial of equal opportunity to all those who are equal by the Govt. and hence a violation of Art. 16 and the general rule of equality laid down in Art. 14. It was argued on behalf of the Govt. that they have not laid down rules excluding any particular group of persons for appointment. The selection for appointment in Govt. services has to be on the competitive basis and so it was

\textsuperscript{251} AIR 1956 SC 520
held that there was not any denial of equality of opportunity as provided in Art. 16 of the Constitution.

Against this decision, most of the petitioners made an application for special leave to appeal but the petition was not filed within the time limited by the rules of apex court and there was delay of 44 days in filing the petition for special leave. Moreover, the reasons given by the petitioners were not sufficient and so the apex court does not entertain the petition.

In Swapan Kumar Pal v. Samitabhar Chakraborty, an appeal by special leave was filed against the judgment of the central administrative tribunal. The special leave petition by the Union of India was barred by limitation but in view of the fact that leave had been granted by the apex court at the instance of private persons and the judgment of the tribunal was under challenge in appeal, it would be proper to condone the delay in filing the special leave petition.

The appellants who were graduate office clerks were promoted to the cadre of senior clerk as they were declared suitable for promotions. The respondents who were already working as senior clerk on adhoc basis, after applying suitable test were promoted on regular basis as senior clerk but the result of the said test was declared after the date of the promotion of the appellant. The Railway Administration published a seniority list in which the appellants were shown senior to the respondents in the cadre of senior clerk, on the basis of the date of regular promotion, after due process of selection. The respondents challenged the legality of the seniority list. The central administrative tribunal held that the period of adhoc service of the respondents would count for their seniority, since the suitability test was delayed by the administration over which the private respondents had no hand and thus the private respondents should be declared senior of the present appellants.

The apex court while allowing the appeal opined that the appointment of the appellants and the respondents in the cadre of senior clerk was by way of promotion from the cadre of office clerk. The inter se seniority, therefore, of these two categories of personnel in the cadre of senior clerk would be from the date on which each one of them were promoted after their regular selection by due process of selection. As such the adhoc services rendered by the respondents till they were regularly absorbed on adjudging their suitability by holding test, cannot be reckoned.

252 AIR 2001 SC 2353
for the purposes of their seniority in the cadre of senior clerk. Moreover, when the
service conditions are governed by a set of rules, in the absence of any rules, it is
difficult to hold that regular promotions would date back to the date of adhoc
promotion itself.

In Dhariwal Industries Ltd. v. M/S M.S.S Food Products,\(^{253}\) an appeal by
special leave was filed against the decision of High Court confirming the order of
trial court granting the injunction in a case relating to the use of deceptive similar
trade name on the ground of prior user on the basis of documents produced by the
respondents.

The appellant contended before the apex court that the documents produced
by the respondent were forged and could not be relied on and moreover, there was
delay and laches in the filing of the suit by the respondent.

The apex court while dismissing the appeal opined that the plea of forged
document cannot be relied at this stage as such aspects had to be decided at the trial.
There was no material to show that trial court and High Court committed any error
in granting injunction by prima facie accepting case of prior user.

Further, it was opined that there was no proper plea of delay and laches
either in the objection to the application for injunction or in the petition filed under
order XXXIX, rule 8 of CPC so as to warrant denial of injunction on the ground of
delay and laches by the apex court.

Similarly, the apex court in office of the Chief Post Master General and Ors
v. Living Media India Ltd.,\(^{254}\) the apex court while dismissing the appeal opined that
unless the Govt. depts. or instrumentalists have reasonable and acceptable
explanation for the delay and there was bonafide effort, there is no need to accept
the usual explanation that the file was kept pending for several months/years due to
considerable degree of procedural red tape in the process. The Govt. depts. are under
a special obligation to ensure that they perform their duties with diligence and
commitment. Condonation of delay is an exception and should not be used as an
anticipated benefit for government department. The law shelters everyone under the
same light and should not be --swirled for the benefit of a few.

\(^{253}\) AIR 2005 SC 1999
\(^{254}\) AIR 2012 SC 1506
In Gangadeep Pratishthan Pvt. Ltd. v. M/S. Mechano, the appellant and the respondent (tenant) had entered into a compromise where the respondent agreed to vacate the premises on the fulfillment of certain terms and conditions and on payment of certain amount. This results in passing of the consent decree. Later, the respondent filed an application for recalling of consent decree on the ground that the consent was obtained under duress and coercion but that was rejected. Again an appeal was filed after about seven months where the High Court condoning the delay set aside the consent decree. Against this decision of Calcutta High Court, appellant filed an appeal by special leave under Article 136.

The two judge bench while allowing the appeal opined that though there was no satisfactory reason given for condoning the delay but as the High Court had exercised its discretion while condoning the delay, so there is no reason for interference by the apex court.

Further the apex court opined that as the consent terms were settled and cheques were given to the respondent which was encashed by him, it shows that he held himself bound by terms of settlement. Moreover, there was neither evidence to show that the respondent was compelled to sign settlement on account of duress and coercion nor he was evicted from suit premises by use of illegal means, so the high court was not right in setting aside the consent decree.

CONCLUSION

Under Article 136 of the Indian Constitution vests Supreme Court wide powers to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India except a court or Tribunal constituted by and under any law relating to Armed Forces. The court’s appellate power under Article 136 is plenary, it may entertain any appeal by granting special leave against any order made by any magistrate, tribunal or any other subordinate court. The width and amplitude of the power is not affected by the practice and procedure followed by the Supreme Court in insisting that before invoking the jurisdiction of the Supreme Court under Article 136 of the Constitution, the aggrieved party may exhaust remedy available under the law before the appellate authority or the High Court. Self imposed restrictions by the Supreme Court do not divest it of its wide powers to entertain any appeal against any
order or judgment passed by any court or tribunal in the Country without exhausting alternative remedy before the appellate authority or the High Court. The power of the Supreme Court under Article 136 is unaffected by Articles 132, 133, 134 and 134 (A) in view of the non-obstante clause occurring in Article 136.

Generally, the Supreme Court may reverse, modify or affirm the judgment, decree or order appealed against while exercising its appellate jurisdiction. The same yardstick cannot be applied to the exercise of power by the Supreme Court under Article 136.

The power of the Supreme Court cannot be curtailed by adverting to any rule of procedure except as and then warranted by the court itself. Though the court has emphasized on enlargement of the scope of Article 136 but at times has recognized certain self imposed restrictions in regulating the power under Article 136.

It has been established that the Supreme Court does not reappreciate the evidence and disturb the concurrent findings recorded by the lower courts but if the appreciation of evidence or recording of findings is manifestly unjust, then the court can always interfere. If the lower courts accord conviction to certain accused persons and acquit the other co-accused then the Supreme Court can always interfere, to ascertain in justiciability of the conviction. If the lower courts have missed the real point of determination or have discredited the evidence on erroneous grounds, the Supreme Court can easily reappreciate the evidence.

The court has emphasized that it is not the number of witness or the quantity of evidence which is required for availing conviction in a case but it is the quality of evidence which is required to assail conviction. So, therefore, if the conviction is sustained on quantity rather than quality, the court can interfere.

Generally, the court does not allow a fresh plea to be raised which has never been raised before the subordinate court, but if the fresh pleas is concerning the Constitution validity of statute or a statutory provision or is concerning the interpretation of any statutory provision, then the court exhibits its eagerness to interfere.

The court will interfere in those situations with the finding of the facts where material or relevant evidence is not considered or where the reliance is placed on inadmissible evidence or where the findings of fact are arbitrary or perverse. The interference is justified only in situation where serious or substantial miscarriage of justice is likely to take place on account of non-interference.