Once it is so found, then the plaintiff is entitled to pay Curt fee under section 7(v)(a) and not under section 7(v)(d) as held by the learned trial Court. It has thus acted illegally and with material irregularity in exercise of its jurisdiction. Consequently this petition succeeds, and both the impugned orders are set aside. The trial Court will proceed with the suit on the ground that the plaint has been properly valued by the plaintiff. It is further directed that the parties will lead their evidence at their own responsibility in order to expedite the hearing of the suit. However, *Dasti* summons may be given to them, if so desired, as contemplated under Order XVI Rule 7-A of the Code of Civil Procedure. The parties have been directed to appear in the trial Court on 9th January, 1989.

P.C.G.

Before G. C. Mital and K. S. Bhalla, JJ.

INDERJIT SINGH SEKHON AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4381 of 1985

September 13, 1988.

Constitution of India, 1950—*Art.* 226—*Sikh Gurdwaras Act (XXIV* of 1925)—*Ss.* 87(1)(*a*)(*b*), 120, 121, 122 *and* 142—*Membership of Managing Committee of Notified Sikh Gurdwara by nomination or by election—Question dependent upon the annual income of the Gurdwara—Disputed question of fact—Alternative remedy under S.* 142—*Whether adequate.*

Held, that since the petitioner has not placed before this Court its accounts which may have been duly audited so as to find out the annual income the position remains disputed whether the annual income of the Gurdwara is more than Rs. 3,000 and such question can be decided on evidence. On a reading of the provisions of section 142 of the Sikh Gurdwara Act, 1925, we are of the view that application lies to the Judicial Commission against any office-holder of the Sikh Gurdwara and on the facts of the case that was the proper remedy to be adopted. Before the Judicial Commission, both the parties would have led evidence and keeping in view the provisions of the

Act, the matter would have been decided one way or the other. In the writ petition the only ground raised for not having recourse to the provisions of section 142 of the Act was that before doing so a notice of two months as provided under section 143 of the Act had to be issued. This is no ground for not resorting to the statutory remedy under section 142 of the Act. The remedy under section 142 is adequate enough. On facts of the case High Court declined to interfere in the petition under Article 226 of the Constitution of India, 1950.

(Paras 6, 7 and 8).

Writ petition under Articles 226/227 of the Constitution of India praying that:—

(i) *That the advance notice of motion on the respondents may kindly be dispensed with.*

(ii) *That the filing of the certified copies of Annexures may kindly be dispensed with.*

(iii) *Costs of the writ petition be awarded in favour of the petitioners.*

(iv) *It is further prayed that the writ Petition be accepted, and the notification No. 374 Gurdwaras dated 14th August, 1985 under section 88(3) of the Sikh Gurdwaras (Annexure P. 1) published on 23rd August, 1985, may kindly be quashed and the newly constituted committee be declared to be illegal, unconstitutional and against the provisions of the Act section 87(1)(b) of the Act.*

It is further prayed that during the pendency of the petition, operation of the impugned notification (P. 1) be stayed and the respondents Nos. 2 to 7 be restrained from interfering and dispossessing the petitioners from the management of the said gurdwara.

T. S. Mangat, Advocate, *for the Petitioners.*

D. S. Brar, DAG, *for the State.*

Gurbachan Singh, Advocate, *for S.G.P.C.*

G. S. Doad, Advocate, *for respondent No. 4.*

ORDER

Gokal Chand Mital, J.

(1) Four petitioners and Gurdial Singh were nominated by the Board constituted under the Sikh Gurdwaras Act, 1925 (for short 'the Act'), as members of the Managing Committee of Notified Sikh

Gurdawara, known as Gurdwara Tilla Baba Farid, Shakkarganj, Faridkot, under the provisions of Section 88(3) read with section 87(1) (a) of the Act,—*vide* notification dated 6th June, 1979. Gurdial Singh, the 5th member died in August, 1985 and in his place no new member was nominated.

(2) *Vide* fresh notification dated 14th August, 1985, copy Annexure P1, the Board issued a fresh order nominating respondents 3 to 7 as members of the Managing Committee of the said Gurdwara, in exercise of powers under Section 88(3) read with Section 87(1) (a) of the Act. After the issuance of the aforesaid notification, the Board intimated the appointment of new Managing Committee of the Gurdwara with a direction to petitioner No. 1 to hand over the charge of the Gurdwara to the new President, who was to be elected on 9th September, 1985. To impugn the notification Annexure P1 and that the order of handing over possession of the management of the Gurdwara, petition under Articles 226/227 of the Constitution of India has been filed on the ground that by the time notification Annexure P1 was issued, the annual income of the Gurdwara was much more than Rs. 3000 per annum and as a result Section 87(1) (b) of the Act became applicable under which the Board had to move the State Government for election of four members of constituting the managing committee, and only one member could be nominated by the Board and the notification, Annexure P1, by which all the five members have been nominated, is illegal.

(3) This writ petition has been contested by the Board, which is known as Sikh Gurdwara Parbandhak Committee, (hereinafter referred to as the SGPC/Board). In the written statement filed by it, the stand taken is that the tenure of the previous nominated Managing Committee was for a period of five years, which expired in June 1984, and, thereafter, the SGPC nominated the new Managing Committee, which was in order as the income did not exceed Rs. 3000. A preliminary objection was raised to the effect that alternative remedy before the Judicial Commission was available.

(4) In the written statement filed by respondents No. 3 and 5 to 7, pleas were raised that the tenure of the previous Committee was for five years and it become *functus officio* before the notification Annexure P1 was issued and they had no *locus standi* to invoke the jurisdiction of this Court; the new Managing Committee started functioning from 18th August, 1985; the alternative remedy

before the Judicial Commission set up under the Act was available; the previous Committee of which the petitioners were the members was nominated under Section 87(1) (a) of the Act as the annual income of the Gurdwara was less than Rs. 3000 per annum: the Managing Committee never be sent annual income statements to the SGPC/Board, and, therefore, it could not argue that the income of the Gurdwara was more than Rs. 3000 per annum. It was specifically denied if the provisions of Section 87(1) (b) of the Act were applicable to the case.

(5) After hearing the learned counsel for the parties and on consideration of the matter, the point which arises for determination is whether the annual income of the Gurdwara is Rs. 3000 per annum or more. The legal position is not disputed on either side that if it is upto Rs. 3000 per annum, then five members have to be nominated by the SGPC/Board under Section 87(1) (a) of the Act, and if it is more than that, then four members have to be elected and one to be nominated under Section 87(1) (b) of the Act.

(6) When petitioners were nominated, the annual income of the Gurdwara was only upto Rs. 3000 per annum. Now their case in the writ petition is that it is much more, which fact is denied by the respondents. Section 120 of the Act enjoins on the Managing Committee to maintain regular accounts. Section 121 of the Act provides for audit of the accounts and the audit is to be conducted every year by an Auditor appointed by the Board. Section 122 of the Act provides regarding the report of the Auditor. The petitioners had not placed before this Court its accounts which may have been duly audited so as to find out the annual income. Hence, the position remains that the averments made in the writ petition have been denied in the written statement and we have no material before us to vouchsafe the plea raised in the writ petition that the annual of the Gurdwara is more than Rs. 3000. Since it is a disputed question of fact, which can be decided on evidence, the preliminary objection raised by the respondents that it was a fit case in which the petitioners should have challenged the nomination of respondents Nos. 3 to 7, by filing an application before the Judicial Commission under Section 142 of the Act, assumes importance.

(7) On a reading of the provisions of Section 142 of the Act, we are of the view that an application lies to the Judicial Commission against any office-holder of the Gurdwara and on the facts of the

case that was the proper remedy to be adopted. Before the Judicial Commission, both the parties would have led evidence and keeping in view the provisions of the Act, the matter would have been decided one way or the other. In the writ petition the only ground raised for not having recourse to the provisions of Section 142 of the Act was that before doing so a notice of two months as provided under Section 143 of the Act he had to be issued. This is no ground for not resorting to the statutory remedy under Section 142 of the Act. Here also, the writ petition was filed more than three weeks after the issue of the notification and more than two weeks of taking over of the management by the newly nominated members.

(8) The remedy under Section 142 of the Act is adequate enough. No factual data having been placed before us as to why it could not be considered adequate, we decline to interfere in writ jurisdiction and dismiss the same with costs.

R.N.R.

Before G. C. Mital and K. S. Bhalla, JJ.

TECHNOLOGICAL INSTITUTE OF TEXTILES, BHIWANI,
Petitioner.

versus

LABOUR COURT, ROHTAK AND ANOTHER,—*Respondents.*

C.W.P. No. 4314 *of* 1985.

September 27, 1988

Industrial Disputes Act (IV of 1947)—*Ss.* 2(*b*), 10, 20(3) *and* 17-*A* —*Industrial Tribunal* (*Central*) *Rules*, 1957—*Rls.* 22 *and* 24—*Dismissal of reference for non-prosecution—Labour Court—Whether has jurisdiction to dismiss a reference in default—Such dismissal—Whether amounts to an Award under S.* 2(*b*)—*Absence of party—Duty of Labour Court—Ex-parte Award—Power of Labour Court to set it aside.*

Held, that an *ex-parte* order dismissing the reference being simpliciter dismissal of reference for non-prosecution without going into the merits of the case, cannot be treated as interim or final