

## APPELLATE CIVIL

Before S. S. Sandhwalia and M. R. Sharma, JJ.

COMMITTEE OF MANAGEMENT OF GURDWARA MANJI SAHIB,  
AMBALA CITY,—Appellant.

versus

SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR,—  
Respondent.

**First Appeal From Order No. 28 of 1972.**

March 9, 1972.

*Sikh Gurdwaras Act (VIII of 1925)—Sections 108B, 124(2) and 142—  
Judgment in proceedings under section 124(2)—Appeal against—Whether  
lies.*

*Held, that the right to appeal is not an inherent one. It is entirely a  
creature of a statute. As the proceedings under section 124(2) of Sikh  
Gurdwaras Act, 1925, do not fall within the ambit of section 142(1) or (2)  
of the Act and as both sections 124 and 108B make no provision for any  
appeal hence no appeal is competent against a judgment delivered in pro-  
ceedings under section 124(2) of the Act. (Paras 3 and 4).*

*First Appeal From Order of the Court of Sikh Gurdwaras Judicial Com-  
mission, Amritsar, dated 25th October, 1971 directing that the respondent  
committee to pay Rs. 39,966 to the petitioner committee as religious fund for  
the years in dispute. The amount shall be paid by the respondent commit-  
tee in instalments.*

Amar Singh Ambalvi, Advocate, for the appellant.

B. S. Shant, Advocate, for the respondent.

**JUDGMENT**

SANDHAWALIA, J.—Whether an appeal lies to this Court against the judgment of the Sikh Gurdwaras Judicial Commission delivered in proceedings under section 124(2) of the Sikh Gurdwaras Act, 1925, is the only question that has been agitated in this appeal.

(2) The facts are not in dispute. The Shiromani Gurdwara Parbandhak Committee, Amritsar had brought the petition under section 124(2) of the Act before the Commission for the realisation of Rs. 39,966 as the religious fund assessed by it under section 108B of the said Act from the Committee of Management of Gurdwara Manji Sahib, Ambala City. The Commission repelled a preliminary

objection that the petition was not maintainable and held that the application was competent under section 124 read with section 108C of the Act. On merits also the Commission held in favour of the applicant and granted the decree for the amount prayed for. Aggrieved by the said order the appellant has come up by way of this appeal and the admitting Bench directed this appeal to be heard by a Division Bench in order to authoritatively settle the matter whether the present appeal is competent.

(3) The relevant provision of the Sikh Gurdwaras Act, which has been brought to our notice is section 142(3) which provides for an appeal to this High Court against an order passed by the Commission under the provisions of sub-section (1) or sub-section (2) thereof. Reference to the provisions of section 142(1) would show that it provides that any person having interest in a notified Sikh Gurdwara may make an application for any alleged malfeasance, misfeasance, breach of trust, neglect of duty and abuse of powers conferred by this Act against the Board, the Executive Committee of the Board or the Committee or against any member or past member of the Board or against any office-holder or past office-holder of the Gurdwara as also against any employee past or present of the Board or the Gurdwara. Similarly section 142(2) provides for the making of a similar application to the Commission in the like manner. A bare reference to the judgment under appeal would show that the proceedings before the Commission in the present case cannot even remotely be brought within the ambit of section 142(1) or (2) of the said statute. In fact when faced with the relevant provisions, Mr. Ambalvi for the appellant fairly conceded that the proceedings before the Commission were under neither of the above said two sub-sections and therefore the provisions of sub-section (3) of section 142 which provide for an appeal were not attracted in the present case.

(4) Mr. Ambalvi had then adverted to sections 124 and 108B of the Act. We have closely perused the above-said provisions and there is nothing therein which could possibly lend support to the contention on behalf of the appellant that an appeal would lie to this Court for proceedings under the above-said sections. Now it is well-settled that the right to appeal is not an inherent one. It is entirely the creature of the statute. As both sections 124 and 108B make no provision for any appeal, it is obvious that under either of these provisions also the present appeal would be incompetent.

The Union of India etc. v. Kirpal Singh etc. (Gopal Singh, J.)

(5) In fairness to Mr. Ambalvi we notice that ultimately the learned counsel conceded that neither under sections 108B nor 124 any appeal lay and he argued that his only remedy, if at all, should be under Articles 226 and 227 of the Constitution. Counsel prayed before us that we should treat the present appeal as a writ petition under those Articles. We are wholly disinclined to do so, but we would observe that the rejection of the present appeal as incompetent would not in any way prejudice the rights of the appellant to seek such other remedies which at law may be available to him.

(6) We consequently hold that the appeal is incompetent and dismiss the same, however without any order as to costs.

SHARMA, J.—I agree.

N.K.S.

LETTERS PATENT APPEAL

Before Prem Chand Pandit and Gopal Singh, JJ.

THE UNION OF INDIA, ETC.—Appellants.

versus

KIRPAL SINGH, ETC.—Respondents.

**Letters Patent Appeal No. 714 of 1970.**

March 10, 1972.

*States Re-organisation Act (XXXVII of 1956)—Section 115(7)—Practice in a Government Department of Pepsu regarding higher scale of pay on passing an examination—Whether covered by section 115(7)—Punjab Educational Service Class III School Cadre Rules (1955)—Rules 7 and 10—Appointment to the posts in the service—Appointing authority—Whether has full discretion to determine from what source or sources such appointments to be made—Executive instructions issued by the Government fixing scales of pay—Whether can be issued under Rule 10 and are statutory.*

*Held, that a practice prevalent in a Government Department of Pepsu before merger regarding higher scale of pay on passing an examination even though hardened into a rule of law is not covered by section 115(7) of States Reorganisation Act, 1956. Government servants who were serving in Pepsu prior to merger are entitled to protection against the conditions of service, but the expression condition of service cannot cover such like practice.*

(Para 7).