

and of the Calcutta High Court in *Mathurapore Zamindary Co. Ltd. v. Bhasaram Mandal*<sup>(1)</sup> and *Prabashinee Debi v. Rasiklal Banerji*<sup>(2)</sup> are correct.

As at present advised, I would like to express no opinion as to whether the expression "by operation of law" can be given the interpretation suggested by my learned brother Das, J., as it is unnecessary to do so in the present appeal.

*Appeal dismissed.*

SHIVNANDAN SHARMA

v.

THE PUNJAB NATIONAL BANK LTD.

[VIVIAN BOSE, JAGANNADHADAS and SINHA JJ.]

*Master and servant—Banker—Agreement between Bank and Treasurers—Treasurers, whether servants or independent contractors—Cashier appointed by Treasurer—Whether servant of the Bank.*

The appellant was appointed head cashier in one of the branches of the respondent Bank by the Treasurers who were in charge of the Cash Department of the Bank by virtue of an agreement between them. The question arose as to whether the appellant was an employee of the Bank.

*Held*, (i) that the terms of the agreement clearly showed that the Treasurers were servants of the Bank and not independent contractors; and that

(ii) as the direction and control of the appellant and of the ministerial staff in charge of the Cash Department of the Bank was entirely vested in the Bank, the appellant was an employee of the Bank.

If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be, equally with the employer, servants of the master.

The question as to whose employee a particular person is has to be determined with reference to the facts and circumstances of each individual case, and among the many tests by which to ascertain who is the employer, the most satisfactory one is to ask who is entitled to tell the employee the way in which he is to do the work upon which he is engaged.

(1) [1924] I.L.R. 51 Cal. 703.

(2) [1931] I.L.R. 59 Cal. 297.

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*Donovan v. Laing, Wharton & Down Construction Syndicate* ([1893] 1 Q.B.D. 629) and *Mersey Docks & Harbour Board v. Coggins & Griffith (Liverpool) Ltd.* ([1947] A.C.I.), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal  
No. 207 of 1954.

Appeal by special leave from the Judgment and Order dated the 31st day of August 1953 of the Labour Appellate Tribunal of India, Lucknow, in Appeal No. III-57 of 1953.

*A. S. R. Chari* (*Bawa Shiv Charan Singh* and *M. R. Krishna Pillai*, with him), for the appellant.

*Achhru Ram* (*Naunit Lal*, with him), for the respondent.

1955. March 15. The Judgment of the Court was delivered by

**SINHA J.**—This is an appeal by special leave against the orders of the Lucknow Bench of the Labour Appellate Tribunal of India (hereinafter to be referred to as "The Appellate Tribunal") dated the 31st August 1953, setting aside the award dated the 13th October 1952 made by the Chairman, Central Government Industrial Tribunal, Calcutta (hereinafter to be referred to as "The Tribunal") reinstating the appellant as the head cashier with back salary under the Punjab National Bank (hereinafter called "The Bank").

The facts leading up to this appeal may shortly be stated. The appellant started his service as the head cashier in the Una Branch of the Bank on the 18th June 1949. The Cash Department of the Bank is in charge of Treasurers. The relation between the Bank and the Treasurers is evidenced by an agreement dated the 1st May 1944 (Ex. 1) which will be noticed in detail hereinafter. That was an agreement between the Bank and "Messrs Rai Bahadur Karam Chand Puri & Bros". That firm was appointed the Treasurers at the head office of the Bank and other places in and outside the Punjab. On the 28th September 1951 the District Manager of the Northern Circle of the Bank wrote a letter (Ex. 4) to the Treasurers informing

them that it had been decided to close the Una office of the Bank with effect from the close of business on the 3rd November 1951. In pursuance of that letter the Treasurers intimated by a letter dated 2nd October 1951 enclosing a copy of Ex. 4 to the appellant that the Una Branch of the Bank will cease to function from the close of business on the 3rd November 1951 and that his services will not be required after that date. The Punjab National Bank Employees' Union (Punjab) took up the cause of the appellant as also that of other employees and made representations to the Government of India. The Government of India by a notification No. SRO-432 dated the 8th March 1952 published in the Gazette of India, Part II—Sec. 3, in exercise of its powers under section 10 of the Industrial Disputes Act XIV of 1947 (hereinafter called the Act) referred the industrial dispute between the Bank and its workmen named in schedule 2 (concerning workers dismissed) and schedule 3 (relating to workers transferred) for adjudication to the Industrial Tribunal at Calcutta constituted under section 7 of the Act. Schedule 1 in so far as it is necessary for purposes of this case contains the following points of dispute between the employer and the workmen :—

"1. Wrongful dismissal of the workmen mentioned in schedule II and their reinstatement.

"2. In the event of any order for reinstatement payment of wages and other allowances from the date of dismissal to the date of reinstatement".

The appellant is No. 5 in schedule 2 aforesaid. The Tribunal gave its award on the 13th October 1952 in respect of a number of employees whose cases were actually in controversy before it. It is only necessary to refer to the award in so far as it concerned the appellant. After overruling the preliminary objection of the Bank that the Union had no *locus standi* to represent the appellant the Tribunal formulated the following point for its decision :—

"On merits the main point involved is, as to whether the services of an employee of the Cash

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Department can be terminated on a change made in the services of the Contractor Cashier”.

It answered this point in these words:—

“This point has been agitated in more than one case and I have also held in Reference No. 3 of 1951 as Chairman of Industrial Tribunal (P. N. Bank dispute) relating to 5 cashiers that the employees of the Cash Department are the employees of the Bank and not the nominees of the Contractor Cashiers so far service conditions are concerned, and I think it will serve no useful purpose to discuss all the legal precedents cited, more especially when the point has been set at rest by their Lordships of the Supreme Court in Civil Appeal No. 66 of 1952 in the matter of *United Commercial Bank Ltd. v. Secretary, U. P. Bank Employees’ Union and Others*. I am of the opinion that the dismissal of Shri Sharma was wrongful and liable to be set aside. Now the normal remedy is reinstatement and I have no hesitation in allowing the same. He will also be paid his back salary and allowance from the date of dismissal to the date of reinstatement”.

Whatever may be the merits of the answer given to the question propounded by the Tribunal, there is no doubt that the question posed had been wrongly framed. The discharge or dismissal of the appellant had nothing to do with the change in the personnel of the Treasurers. The appellant’s services were dispensed with on the ground that the Una Branch where he was employed as head cashier being an uneconomic unit had to be closed and that therefore the appellant’s services were no more required. The respondent’s case appears to have been that the firm known as Messrs R. B. Karam Chand Puri & Bros. have been contractors for the Cash Department of the Bank at the head office and some of the other offices in the Punjab and beyond; that from time to time agreements were executed between the Bank and the aforesaid firm; that the last agreement was executed on the 1st May 1954 (Ex. 1); that the appellant according to the respondent-Bank was the nominee of the said firm, and that his services had been dispensed

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with by the said firm whose employee he was and not by the Bank which had nothing directly to do with the employment of cashiers and other workers in the Cash Department which was in charge of the Treasurers described as "Contractor Treasurers". Hence the main question in controversy between the parties was whether the appellant was an employee of the Bank or of the said "Contractor Treasurers", whom we shall call the "Treasurers" for the sake of brevity. The Tribunal did not address itself to the determination of that question. This Court also did not discuss and decide the matter in Civil Appeal No. 66 of 1952, but assumed that cashiers of the Bank were its employees. If that question had been decided by this Court, as the Tribunal erroneously thought this Court had, in Civil Appeal No. 66 of 1952, the controversy would have been at an end. Therefore when the respondent preferred an appeal to the Appellate Tribunal, the Bank at the forefront of its attack against the award of the Tribunal raised the ground that the Tribunal had not determined the basic question which could have given jurisdiction to the Tribunal to decide the dispute whether the head cashier was an employee of the Bank or was a nominee of the "Treasurer" as contended on behalf of the Bank. The Bank relied very strongly before the Appellate Tribunal on the memorandum of agreement (Ex. 1) and the correspondence that passed between the Bank and the "Treasurers" on the one hand and the latter and the appellant before us on the other (Exs. 2, 3, 4 and 5).

The Appellate Tribunal rightly remarked that the Tribunal had recorded no finding on that basic question and had assumed that the respondent before it was an employee of the Bank. The Appellate Tribunal took the view that the agreement (Ex. 1) was decisive of that question. After referring in great detail to the terms of the agreement the Appellate Tribunal came to the conclusion that the cashier was not an employee of the Bank but of the Treasurers and that therefore the Tribunal had no jurisdiction to give any relief to the complainant before it. The

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award by the Tribunal was, in the result, set aside and the Bank's appeal allowed.

The appellant in this Court through his counsel Shri Chari, argued that the Appellate Tribunal had misinterpreted the provisions of the Industrial Disputes Act in coming to the conclusion that the Tribunal had no jurisdiction to entertain the dispute simply on the ground that one of the parties to the dispute had successfully denied the relationship of employer and employee; that the Appellate Tribunal misconceived its functions by basing its findings on the interpretation of the written agreement between the Bank and its Treasurers when it should have gone into all the relevant facts to determine the substance of the matter; and finally, that the Appellate Tribunal misdirected itself on the question of the interpretation of the agreement for coming to the conclusion that the appellant was not an employee of the Bank but was a nominee of the "Treasurers". It was further argued on behalf of the appellant that the Tribunal having based its decision on its previous award dated the 16th September 1952 in Reference No. 3 of 1951 between persons more or less in the same position as the appellant and the respondent Bank, in the background of the decision of the previous Tribunals, e.g., the award of the Conciliation Board presided over by Mr. Justice Bind Basni Prasad of the Allahabad High Court, the award by the Tribunal presided over by Mr. K. C. Sen, and the award of the All India Industrial Tribunal (Bank Disputes), presided over by Sri S. Panchapagesa Sastri and the award dated the 24th March 1951 in Reference No. 20, the award of the Tribunal was really final. The argument was that the award of the Tribunal was based on considerations of facts and circumstances disclosed in those earlier awards to which the Bank and its cashiers and other employees employed in the Cash Department were parties. It was thus a final finding of fact which was not open to appeal before the Appellate Tribunal. It was therefore contended that the Appellate Tribunal had no jurisdiction to entertain the appeal and to reverse the award of the Tribunal.

On behalf of the respondent-Bank it was contended that no specific grounds had been taken either before the Appellate Tribunal or in the memorandum of appeal to this Court that the Appellate Tribunal had no jurisdiction on the ground now taken by the appellant in this Court, nor was that ground taken in the statement of case. On merits it was contended by the respondent's counsel that the Tribunal is as much bound by the rules of evidence and procedure as any other Tribunal and as the Tribunal had not addressed itself to the question whether the cashier-appellant was an employee of the Bank, the question was open before the Appellate Tribunal which was competent to pronounce on that basic question. Finally it was argued that on a true construction of the provisions of the agreement (Ex. 1) this Court should accept the finding of the Appellate Tribunal that the appellant was not an employee of the Bank and that on that account the Tribunal had no jurisdiction to grant any relief to the appellant.

On behalf of the respondent the case was practically rested on the construction of the agreement (Ex. 1). With reference to the terms of the agreement the learned counsel for the respondent argued that the Treasurers were not servants or employees of the Bank but were "independent contractors" and that the appellant and other employees in the Cash Department having been nominees of the "independent contractors", there could not be any relation of employer and employee between the Bank and the appellant. It is therefore necessary to examine in some detail the terms of the agreement aforesaid. We set out below, underlining important words, the terms of the agreement in so far as they are relevant for the determination of the true relation between the Bank and the Treasurers. Though this agreement is dated the 1st May 1944, cl. (1) provides that it will be deemed to have commenced and come into force from the 15th March 1942, the date of the death of R. B. Karam Chand Puri and will take the place of the previous agreement dated the 26th July 1941, thus maintaining the continuity of the relationship between the

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Bank and the Treasurers. The agreement provides that the Treasurers shall *diligently and faithfully serve the Bank* at the Head Office and its various offices mentioned in schedule A attached to and forming part of the agreement and at other offices where they may hereafter be appointed treasurers and shall in all respects *diligently and faithfully obey and observe all lawful orders and instructions* of the Bank or the person placed by the Bank in authority over them in relation to the due discharge of their duties as Treasurers. The Treasurers in addition to the duties, liabilities and responsibilities devolving upon them by virtue of the provisions of the agreement shall also be liable to perform such duties and discharge such responsibilities as by custom usually devolve on treasurers *in the employ of a bank.* The Treasurers shall be paid for their services a remuneration as mentioned in schedule A aforesaid or such remuneration as the General Board of Directors of the Bank may determine from time to time. Out of the remuneration paid to them by the Bank *the Treasurers shall pay salaries to their nominees employed by them* for performing the duties of a cashier in the Bank on their behalf or other functionaries of a similar nature. The salaries of such nominees employed by them will be fixed by the Treasurers themselves but the same will be subject to the approval of the Bank. The remuneration of the Treasurers will be the net amount which will be left to them after paying *salaries to their nominees employed by them for working as cashiers, etc.* The Treasurers themselves will not be entitled to any kind of allowances besides the net remuneration as aforesaid but *their nominees or working cashiers will be entitled to allowances which the authorities of the Bank may sanction for members of the staff from time to time.* The Treasurers shall employ the number of men at each office as mentioned in schedule A aforesaid. The Board of Directors shall have the power to increase or decrease the number of their nominees for any particular office and the amount of remuneration fixed for that office. The Treasurers shall be responsible for the due safety, both within and outside the premises of the Bank at any



office placed under their charge, of all money, specie, ornaments, bullion, cash, etc. and of other valuable documents received by them for and on behalf of the Bank or from the Bank and shall be answerable to the Bank for all losses occurring either inadvertently or by or through the negligence or misconduct of the Treasurers or any of their nominees. The Treasurers shall be *entitled to resign the services of the Bank* by giving three calendar months' notice to the Bank. The Bank shall also be entitled to *dispense with the Treasurers' services* on giving three months' notice. In case of gross negligence or misconduct or of any fraud, misappropriation or embezzlement by the Treasurers or any of the nominees in the discharge of their duties as such Treasurers, no notice shall be necessary and the *Bank shall have the right to dispense with their services forthwith*. The Bank shall have the right to take *the Treasurers into the service of the Bank after settlement of remuneration* with the Treasurers at any other office or offices of the Bank. *The Treasurers and their nominees shall obey all the orders, rules and regulations prescribed by the Bank* with regard to the discharge of their duties by the cashiers as well as with regard to the amount of balance they are allowed to keep with them. It shall be the duty of the cashiers to inform the manager of the Bank as soon as the balance in hand exceeds the prescribed limit and to ask for orders on the point. *The Treasurers shall not engage any person* as their assistant or peon about whose character, conduct or reliability the manager of the Board of Directors of the Bank may have any objection. The Treasurers shall also arrange that no person under employment absents himself from duty without the written permission of the manager for the time being. If any such employee is absent without leave, or he is turned out on the objection of the Board or the Manager, the Treasurers shall forthwith appoint a substitute in his place. The Treasurers shall be responsible for the acts and defaults of all their nominees. The Treasurers and their nominees shall be *entitled to travelling allowance* according to rates sanctioned by the Board

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of Directors of the Bank. The Treasurers have deposited security of the value of Rs. 15,000/- on which they shall be entitled to receive interest at the rate of  $3\frac{1}{4}$  per cent. per annum. As a further security for the due performance of the terms and conditions of the agreement as a cover for loss that may be caused to the Bank by any act or omission of themselves or any one of their nominees, the Treasurers hypothecated properties as per schedule C attached to and forming part of the agreement. Schedule A aforesaid contains the names of the offices, the monthly remuneration of the Treasurers in respect of each one of those offices separately, net savings of the Treasurers after paying the salaries of the total number of men including cashiers, etc., as stated against each one of the offices.

Apart from the terms set out above bearing on the relation between the Bank and the Treasurers, some of which apply equally to their nominees, the following terms of the agreement bear directly on the relation between the nominees of the Treasurers, like the appellant, and the Bank. In this connection the agreement provides that the Board of Directors shall have the power to increase or decrease the number of the Treasurers' nominees for any particular office and the amount of remuneration fixed for that office. Such nominees shall be entitled *as servants of the Bank to any bonus* which may from time to time be declared for the members of the staff. The bonus of the Treasurers shall be limited to the amount of their own net remuneration and no further. They shall not be entitled to any bonus to which their cashiers are not eligible under the rules of the Bank. The nominees of the Treasurers shall be entitled to participate *as ordinary members of the staff in the provident fund* constituted by the Bank. Such nominees shall also be *entitled to travelling allowance* according to rates sanctioned by the Board of Directors of the Bank whenever they are required to go to out-stations on bank business.

From the terms of the agreement aforesaid set out above almost verbatim omitting such clauses and words as are not relevant to this case, it will appear

that the Treasurers are under the employment of the Bank on a monthly basis for an indefinite term, that is to say, until such time as either party to the agreement terminated it in accordance with the terms quoted above. They are under the complete control and direction of the Bank through its manager or other functionaries. The Treasurers have to take their orders from day to day as regards the cash balance or other cognate matters relating to the safe custody of cash, valuable documents, etc. belonging to the Bank or its constituents. The Treasurers receive in respect of each office under their charge a certain named sum out of which they have to pay the salary of a stated number of their assistants who may be head cashiers or cashiers or assistant cashiers and other such functionaries. They are entitled to receive bonus on the net amount secured to them as their remuneration, being the lump sum fixed in respect of each office, minus the salary of the assistants. It is true that these Treasurers are not and cannot be expected to be personally present to discharge their onerous duties at each one of the large number of offices spread over the Punjab and outside. Naturally they had to be authorized to engage head cashiers, cashiers, or assistant cashiers in respect of each of the offices placed in their charge. They had to guarantee the fidelity of the persons so employed as their assistants. Those assistants had to be persons in whose reliability, honesty and efficiency both the Bank and the Treasurers had confidence. The Treasurers have the right to nominate those assistants but the Bank had the final words in the choice. The Bank Manager has complete control over such nominees in the matter of leave of absence, discipline and conduct in the discharge of their duties as assistants managing the cash and other valuables in the custody of the Bank. From the very nature of things it had to be a dual control in the sense that the Treasurers had to nominate the assistants who are to discharge those responsible functions in connection with cash and other valuables of the Bank and the Bank could not abdicate its powers of full control over the day to day working of

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the Cash Department. The nominees of the Treasurers are treated on the same footing as the other servants of the Bank in the matter of bonus, travelling allowance and provident fund, etc. It is true those nominees are to be paid by the Treasurers but it is out of the money provided by the Bank.

It is not always easy to determine whether the relation between two parties, in the present case of the Treasurers *vis-a-vis* the Bank, is that of servants to a master or of independent contractors who have undertaken to do a particular job for their employer. The question has generally arisen in connection with the determination of vicarious liability of an employer in respect of acts done by his agent (using a neutral word which includes an independent contractor as also a servant). The distinction between a servant and an independent contractor has been the subject matter of a large volume of case-law from which the text-book writers on torts have attempted to lay down some general tests. For example, in Pollock's Law of Torts,\* the distinction has thus been brought out:

"A master is one who not only prescribes to the workman the end of his work, but directs or at any moment may direct the means also, or, as it has been put, 'retains the power' of controlling the work', a servant is a person subject to the command of his master as to the manner in which he shall do his work ....An independent contractor is one who undertakes to produce a given result but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand.....".

Clerk & Lindsell on Torts (11th Edn.) at p. 135 have adopted the description of an independent contractor given by Pollock as quoted above.

In the 11th Edn. of Salmond's Treatise on the Law of Torts, the same distinction has been clearly indicated in the following passage at p. 98:—

\*Pages 62 & 63 of Pollock on Torts, 15th Edn.

"What then, is the test of this distinction between a servant and an independent contractor? The test is the existence of a right of control over the agent in respect of the manner in which his work is to be done. A servant is an agent who works under the supervision and direction of his employer; an independent contractor is one who is his own master. A servant is a person engaged to obey his employer's orders from time to time; an independent contractor is a person engaged to do certain work, but to exercise his own discretion as to the mode and time of doing it—he is bound by his contract, but not by his employer's orders".

Those learned authors have discussed in great detail cases illustrative of those distinctions, indicating the circumstances in which the general rule has been applied to individual cases with such modifications as the facts and circumstances of a particular case required. We are here not concerned with those nice distinctions which have been drawn in connection with the rule of vicarious liability in torts. We are here concerned only with the question how far the test laid down by the standard authors as quoted above can be applied to determine the present controversy whether the Treasurers of the Bank were its servants as contended on behalf of the appellant or independent contractors as claimed on behalf of the respondent-Bank. The agreement between the parties, as summarised above, is a composite transaction constituting the Treasurers agents of the Bank, the former agreeing to indemnify the latter against any loss occasioned to the Bank due to the lack of fidelity and efficiency of the ministerial staff entrusted with the charge of the Bank's cash and valuable documents. The Treasurers have been charged with the duty of nominating their assistants who are to be responsible in their day to day work to the Bank which all the time has full control over them in the matter of their leave of absence, as to how they shall keep the cash and other valuables and as to how they shall be under the general direction of the Bank's manager or some

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other functionary who may be nominated by the Bank to supervise the work of the Cash Department. The Bank makes itself answerable to the employees thus appointed by the Treasurers with the concurrence of the Bank for their bonus, provident fund and travelling allowance. For those purposes these assistants are to be on the same footing as the other employees of the Bank.

It was contended on behalf of the respondent Bank that its agreement with the Treasurers shows that the latter had the fullest responsibility for the appointment and dismissal and payment of salary of the employees in charge of the Cash Department of the Bank and that therefore the Treasurers could not but be independent contractors. It has already been noticed that the appointment of such assistants as are entrusted with the work of the Cash Department is not under the absolute power of the Treasurers. The appointment has to be approved by the Bank and the Treasurers cannot continue to employ those workmen in whose fidelity and efficiency the Bank has no confidence. Hence both in the matter of appointment and dismissal of the employees the Bank reserves to itself the power to give direction to the Treasurers. Similarly in the matter of the payment of salary the money comes out of the coffers of the Bank, though it may be paid by the hand of the Treasurers. In this connection it was contended on behalf of the appellant that payment of salary of the employees in the Cash Department is made through the Bank itself but we have no tangible evidence in this case beyond the bare assertion at the Bar. But, in our opinion, the situation in respect of the appointment, dismissal and payment of salary of the employees of the Cash Department is analogous to that of the employees of a particular department of Government, in which appointment and dismissal of ministerial staff may rest with an authority so empowered by the head of the department. Payment of salary may also be made by the appointing authority but the money comes out of the Government treasury. In those circumstances, can it be rightly asserted that

those employees are not the servants of Government? The analogy may not be perfect, because, in the present case, the appointment and dismissal of the employees of the Cash Department is the joint responsibility of the Bank and its Treasurers. It has got to be so because the Treasurers are the guarantors of the fidelity and efficiency of the employees and the Bank has to exercise complete control over the day to day discharge of their functions because it is the Bank which is vitally and immediately concerned with the efficient and honest discharge of the duties of the assistants in the Cash Department, the efficient running of which is the most important of a bank's functions.

It will further be noticed with reference to the terms of the agreement set out above that whereas the Treasurers and their nominees have to take their orders from the Bank Manager or other such functionary, there is no specific provision that those nominees shall discharge their day to day functions under the direct control of the Treasurers or that they will be subject to the immediate control of the Treasurers in the discharge of their daily duties and in the matter of the grant of leave of absence. There could not be such a provision, as a dual control of that kind in the daily work of the employees would lead to a great deal of confusion and lack of discipline amongst the ministerial staff. The employees of the Cash Department have of necessity to be under the direct control of the Bank Manager or of some other functionary appointed by the Bank. It is the Bank which has undertaken the responsibility in the matter of their pay and prospects in the service and naturally therefore, such employees, even as other employees of the Bank, have to take their orders from the Bank. It must therefore be held that the Treasurers are the servants of the Bank and that their nominees must equally be so.

The Appellate Tribunal held that on a reading as a whole of the clauses of the agreement aforesaid the appellant was an employee of the Treasurers and not of the Bank. It did not address itself pointedly

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to the question as to what was the exact relation between the Bank and the Treasurers. It did not also consider the question as to what would be the position of the employees of the Cash Department *vis-a-vis* the Bank if it were held that the Treasurers themselves were the servants of the Bank and not independent contractors. Before the Appellate Tribunal both parties appear to have concentrated their attention on the question as to whether the employees of the Cash Department were servants of the Bank or of the Treasurers. In our opinion, that was not a correct approach to the determination of the controversy between the parties. If the Treasurers' relation to the Bank was that of servants to a master, simply because the servants were authorized to appoint and dismiss the ministerial staff of the Cash Department would not make the employees in the Cash Department independent of the Bank. In that situation the ultimate employer would be the Bank through the agency of the Treasurers. It was argued on behalf of the respondent that even if it were held that the Treasurers were the servants of the Bank and not independent contractors, the legal position of the employees of the Cash Department *vis-a-vis* the Bank would be the same; namely, that they will be in law the servants of the Treasurers. In our opinion, there is no substance in that contention. If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master. It is not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the employees of the third party. This would be clear from the following observations of Lord Esher, M.R., in the case of *Donovan v. Laing, Wharton & Down Construction Syndicate*<sup>(1)</sup> :—

"It is true that the defendants selected the man and paid his wages; and these are circumstances which, if nothing else intervened, would be strong to show

(1) [1893] 1 Q. B. 629 at 632.



that he was the servant of the defendants. So, indeed, he was as to a great many things; but as to the working of the crane he was no longer their servant, but bound to work under the orders of Jones & Co., and, if they saw the man misconducting himself in working the crane or disobeying their orders, they would have a right to discharge him from that employment”.

Those observations have been approved in the latest decision of the House of Lords in the case of *Mersey Docks & Harbour Board v. Goggins & Griffith (Liverpool) Ltd.*<sup>(1)</sup>. The House of Lords distinguished that ruling on facts but did not depart from the general rule laid down in the earlier decision that the determinative factor is as to which party had control over the workers as to how they would do their job from day to day. Lord Macmillan in his speech at p. 14 has observed as follows :—

“Many reported cases were cited to your Lordships but where, as all agree, the question in each case turns on its own circumstances, decisions in other cases are rather illustrative than determinative. So far as attempts have been made to formulate a criterion of general application, it cannot be said that these attempts have been very successful”.

It would thus appear that the question as to whose employee a particular person was has to be determined with reference to the facts and circumstances of each individual case. Lord Porter in the course of his speech in the reported case (*supra*) at p. 17 has observed as follows :—

“Many factors have a bearing on the result. Who is paymaster, who can dismiss, how long the alternative service lasts, what machinery is employed, have all to be kept in mind. The expressions used in any individual case must always be considered in regard to the subject matter under discussion but amongst the many tests suggested I think that the most satisfactory, by which to ascertain who is the employer at any particular time, is to ask who is entitled to tell the employee the way in which he is to do the work upon which he is engaged”.

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v.

The Punjab  
National Bank Ltd.

Sinha J.

As indicated above, in the present case the direction and control of the appellant and of the ministerial staff in charge of the Cash Department of the Bank was entirely vested in the Bank through its manager or other superior officer. We have therefore no hesitation in differing from the conclusion arrived at by the Appellate Tribunal and in holding that the appellant was an employee of the Bank. That being so, the Tribunal had the jurisdiction to make the directions it did in respect of the appellant. The respondent did not at any stage of the proceedings challenge the orders of the Tribunal on its merits. That conclusion being reached, there is no difficulty in upholding the orders of the Tribunal in respect of the appellant. It is therefore not necessary to pronounce upon the other points raised by the parties. The appeal is accordingly allowed with costs throughout.

*Appeal allowed.*

1955

March 15

BHIM SEN

v.

THE STATE OF U. P.

[VIVIAN BOSE, JAGANNADHADAS and SINHA JJ.]

*U. P. Panchayat Raj Act, 1947 (U. P. Act XXVI of 1947), ss. 49 (1)(2)(4), 52, 55—Rule 84 framed by State Government—Theft of the value of Rs. 3-0-0 committed by three accused—One of the accused belonging to Madhya Pradesh State—Panchayat Adalat constituted under the provisions of s. 49 of the Act and Rule 84 framed thereunder to try the present case—Whether could be properly constituted—Rule 84—Whether intra vires—Jurisdiction of ordinary courts—Whether excluded—Bar under s. 55—Scope of.*

Three accused were convicted by a Magistrate under s. 379 of the Indian Penal Code of the offence of theft of the value of Rs. 3 and sentenced to a fine of Rs. 25/- each. The question for determination was whether the case should have been tried by a Panchayat Adalat constituted under the U. P. Panchayat Raj Act, 1947 and the Magistrate had no jurisdiction to try it. Two of the accused belonged to U.P. State and the third belonged to Madhya Pradesh State.

Section 52(1) of the Act provides that certain specified offences (including the offence of theft when the value of stolen property does