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L.L.B Part- 1st

Subject- Banking Law

Paper- 8th

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Topic- What is Banking Law. What are the Power, Advantage and Drawbacks of Tribunals.

Banking Law

Banking law is the broad term for laws that govern how banks and other financial institutions conduct business. Banks must comply with a myriad of federal, state and even local regulations. Lawyers perform a wide variety of functions that relate to creating, following and enforcing regulations.

Multiple federal agencies oversee banking regulations. A bank or other financial institution might fall under regulations of the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve System or the Office of the Comptroller of the Currency (OCC). Banks must know what federal and state regulations they must comply with.

Power of Tribunals-

Powers of Tribunal.

1. The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—
 - a. dismiss it, with or without costs;
 - b. make any interim order as it thinks fit;
 - c. appoint a provisional liquidator of the company till the making of a winding up order;
 - d. make an order for the winding up of the company with or without costs; or

e. any other order as it thinks fit:

Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition:

Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

2. Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

Advantages of Tribunals

The concept of tribunals was introduced because it has certain advantages over ordinary courts. Few of them are mentioned below-

- **Flexibility:** The introduction of administrative tribunals engendered flexibility and versatility in the judicial system of India. Unlike the procedures of the ordinary court which are stringent and inflexible, the administrative tribunals have a quite informal and easy-going procedure.
- **Speedy Justice:** The core objective of the administrative tribunal is to deliver quick and quality justice. Since the procedure here is not so complex, so, it is easy to decide the matters quickly and efficiently.
- **Less Expensive:** The Administrative Tribunals take less time to solve the cases as compared to the ordinary courts. As a result, the expenses are reduced. On the other hand, the ordinary courts have cumbrous and slow-going, thus, making the litigation costly. Therefore, the administrative tribunals are cheaper than ordinary courts.
- **Quality Justice:** If we consider the present scenario, the administrative tribunals are the best and the most effective method of providing adequate and quality justice in less time.
- **Relief to Courts:** The system of administrative adjudication has lowered down the burden of the cases on the ordinary courts.

Drawbacks of Tribunals

Although, tribunals play a very crucial role in the welfare of modern society, yet it has some defects in it. Some of the criticisms of the administrative tribunal are discussed below-

- **Against the Rule of Law:** It can be observed that the establishment of the administrative tribunals has repudiated the concept of rule of law. Rule of law was propounded to promote equality before the law and supremacy of ordinary law over the arbitrary functioning of the government. The administrative tribunals somewhere restrict the ambit of the rule of law by providing separate laws and procedures for certain matters.
- **Lack of specified procedure:** The administrative adjudicatory bodies do not have any rigid set of rules and procedures. Thus, there is a chance of violation of the principle of natural justice.
- **No prediction of future decisions:** Since the administrative tribunals do not follow precedents, it is not possible to predict future decisions.
- **Scope of Arbitrariness:** The civil and criminal courts work on a uniform code of procedure as prescribed under C.P.C and Cr.P.C respectively. But the administrative tribunals have no such stringent procedure. They are allowed to make their own procedure which may lead to arbitrariness in the functioning of these tribunals.
- **Absence of legal expertise:** It is not necessary that the members of the administrative tribunals must belong to a legal background. They may be the experts of different fields but not essentially trained in judicial work. Therefore, they may lack the required legal expertise which is an indispensable part of resolving disputes.

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