

PETITIONER:
THE STATE OF MAHARASHTRA

Vs.

RESPONDENT:
LABOUR LAW PRACTITIONERS' ASSOCIATION AND ORS.

DATE OF JUDGMENT: 11/02/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Mrs. Sujata V. Manohar, J.

The first respondent, Labour Law Practitioners' Association is an association of Member practising in the Industrial and Labour Courts in the State of Maharashtra. The Association filed a writ petition before the High Court challenging the appointment of respondents 2 and 3 who were Assistant Commissioners of Labour, as Judge of the Labour Court at Pune and Sholapur under a Notification issued by the Government of Maharashtra dated 8.3.1979. They also prayed that the provisions of the amended Section 9 of the Bombay Industrial Disputes Act in so far as these provisions authorised the appointment of Assistant Commissioners of Labour as Judge of the Labour Court, were void and illegal and contrary to Article 234 of the Constitution. There was also a prayer in the writ petition for a direction to the State of Maharashtra to comply with the provisions of Article 235 of the Constitution in appointing judge of the Labour Court. A learned Single Judge of the High Court set aside the Notification of 8th of March, 1979 and also gave a direction to the State of Maharashtra to comply with the provisions of Article 234 of the Constitution while making appointments of judges of the Labour Court. Being aggrieved by this judgment and order, the appellant-State of Maharashtra preferred an appeal before a Division Bench of the High Court which appeal has been dismissed. Hence, the present appeal has been filed before us.

Labour Courts have been constituted in the State of Maharashtra under the Industrial Disputes Act, the Bombay Industrial Relations Act and also under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. Prior to 1974, the qualifications of a person to be appointed as a judge to of the Labour Court under the Industrial Disputes Act as laid down in Section 7 were as follows:

- (a) that he was or had been a judge of that High Court; or
- (b) that he had for a period of not less than three years been a District Judge or an

- (c) Additional District Judge ; or that he had held the office of the Chairman or any other Member of the Labour Appellate Tribunal or of any Tribunal for a period of not less than two years; or
- (d) that he had held any judicial office in India for not less than seven years; or
- (e) that he had been the Presiding Officer of the Labour Court constituted under any provincial Act for not less than five years.

By the Industrial Disputes (Maharashtra Amendment) Act, 1974, Section 7 was amended and three more sources of recruitment to the post of a judge of the Labour Court were added. These are :

- "(d-1) he has practised as an advocate or attorney for not less than seven years in the High Court or any court subordinate thereto or any Industrial Court or Tribunal or Labour Court constituted under any law for the time being in force ; or
- (d-2) he holds a degree in law of a University established by law in any part of India and is holding or has held the office not lower in rank than that of Deputy Registrar of such Industrial Court or Tribunal for not less than five years; or
- (d-3) he holds a degree in law of University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than five years."

Under the Bombay Industrial Relations Act, as it originally stood, Section 9 provided that no person shall be eligible to be appointed as a judge of the Labour Court unless he possessed the qualifications, other than the qualification of age, laid down under Article 234 of the Constitution for being eligible to enter the judicial service in the State of Maharashtra. By Maharashtra Act No. 47 of 1977 dated 24th of October, 1977, Section 9 of the Bombay Industrial Relations Act was amended by substituting a new sub-section (2) for the original sub-section (2) of Section 9. The amended sub-section (2) of Section 9 provides as follows:

- "9(2): A person shall not be qualified for appointment as the presiding officer of a Labour Court unless :
- (a) he had held any judicial office in India for not less than five years; or

- (b) he had practised as an Advocate or Attorney for not less than seven years in the High Court or any Court subordinate thereto, or in any Industrial Court constituted under any law for the time being in force; or
- (c) he holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Deputy Registrar of any such Industrial Court or Tribunal, or of Assistant Commissioner of Labour under the State Government, in both cases for not less than five years."

By this amendment, the requirements contemplated under Article 234 of the Constitution were deleted.

Under Section 6 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, the State Government is entitled to constitute one or more Labour Courts and appoint persons having prescribed qualifications as judges of these courts. The proviso to Section 6 lays down that no person shall be appointed unless he possesses the qualifications other than the qualification of age, prescribed under Article 234 of the Constitution for being eligible to enter the judicial service in the State of Maharashtra and is not more than 60 years of age. This provision remains unamended. However, in view of the amendment carried out in the Industrial Disputes Act and the Bombay Industrial Relations Act, the state Government felt that it was open to the State Government to appoint Assistant Commissioners of Labour working under the State Government for a period of not less than five years and holding a law degree, to the office of the presiding officers of Labour Courts. The impugned Notification of 8th of March, 1979, therefore, was issued appointing two such persons as presiding officers of Labour Courts at Sholapur and Pune which has been challenged in these proceedings. According to the first respondent- Association, appointments as presiding officers of Labour Courts are appointments to the judicial service of the State and are, therefore, governed by Article 234 of the Constitutions.

There is not much difficulty in holding that the Labour Court performs judicial functions and is a Court. The Labour Court adjudicates upon disputes that, had it not been for the Industrial Disputes Act, the Bombay Industrial Relations Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, would have been within the jurisdiction of the ordinary civil courts to decide, although the ordinary civil courts may not be able to grant all the reliefs that are contemplated by these Acts. The Labour Courts are, therefore, courts and decide disputes that are civil in nature.

In the case of *The Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi* (1950 SCR 459), this Court considered whether an Industrial Tribunal was a court. It said that one cannot go by mere nomenclature. One has to examine the functions of a Tribunal and how it proceeds to discharge those functions. It held that an Industrial Tribunal had all the trappings of a court and performed functions which cannot but be regarded as judicial. The

Court referred to the Rules by which proceedings before the Tribunal were regulated. The Court dwelt on the fact that the powers vested in it are similar to those exercised by civil courts under the code of civil Procedure when trying a suit. It had the power of ordering discovery, inspection etc, and forcing the attendance of witnesses. compelling production of documents and so on. It gave its decision on the basis of evidence and in accordance with law. Applying the test laid down in the case of Cooper v. Wilson [(1937) 2 K.B. 309 at p. 340], this Court said that "a true judicial decision presupposes an existence of dispute between two or more parties and then involves for requisites :- (1) the presentation of their case by the parties; (2) ascertainment of facts by means of evidence adduced by the parties often with the assistance of argument ;(3) if the dispute relates to a question of law, submission of legal arguments by the parties; and (4) by decision which disposes of the whole matter by findings on fact and application of law to facts so found, judged by the same tests, a Labour Court would undoubtedly be a court in the true sense of the term. The question, however, is whether such a court and the presiding officer of such a court can be said to hold a post in the judicial service of the State as defined in Article 236 of the Constitution.

Part VI, Chapter VI, of the Constitution of India deals with courts subordinate to the High Court. Article 233 which is the first Article of this Chapter, deals with appointment of District Judge. Article 234 provides as follows:

"234 : Recruitment of persons other than district judges to the judicial service -

Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the state shall be made by him in that behalf after consultation with the State public Service Commission and with the high Court exercising jurisdiction in relation to such State."

Article 235 provides that the control over district courts and courts subordinate there to including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judges shall be vested in the High Court.

Article 236 (a) defines the expression "district judge" as including judge of a city civil court, additional district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant session judge. This is an extensive definition and does not cover every category of a district judge. While considering the definition of a "District Judge", one can also bear in mind a similar definition of "District Judge" in Section 3(17) of the General Clauses Act, 1897 and Section 3(15) of the Bombay General Clauses Act, 1904. It is as follows:

"District Judge; shall mean the judge of a principal civil Court of original jurisdiction but shall not include a High Court in the exercise of its ordinary or extraordinary original civil

jurisdiction."

The District Judge, therefore, covers a judge of any Principal Civil Court of Original Jurisdiction. With an increase in the numbers of a specialised courts and tribunals which are being set up to deal with specific kinds of civil litigation which would otherwise have been dealt with by the ordinary civil courts, we now have a number of specialised courts exercising different categories of civil original jurisdiction. It can be specialised civil original jurisdiction pertaining to Labour and Industrial disputes specified in the relevant Acts as in the case of Labour and Industrial Courts, or it could be pertaining to recovery of bank debts and so on. The structure of civil courts exercising original jurisdiction is no longer monolithic. The judge of the Principal Civil Court heading the concerned set of courts under him and exercising that jurisdiction can also fall in the category of a "District Judge" by whatever name called. Learned single judge and learned Judges of the Division Bench have, therefore, held that and Industrial Court is a civil court exercising civil original jurisdiction; and the person presiding over it could well be termed as a District Judge. The term "District Judge" should not be confined only to the judge of the Principal Civil Court in the hierarchy of general civil courts. The term would now have to include also the hierarchy of specialised civil courts, such as a hierarchy of Labour Courts and Industrial Courts. The fact that the Chief Presidency Magistrate and the Sessions Judge were also included in the definition of "District" Judge indicates that a wide interpretation is to be given to the expression "District Judge". The extensive definition of a District Judge under Article 236 is indicative of the same.

Under Article 236 (b), the expression "judicial service" is defined to mean "a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge." Judicial service thus postulates a hierarchy of courts with the District Judge as the head and other judicial officers under him discharging only judicial functions.

In the case of Chandra Mohan v. State of Uttar Pradesh & Ors [AIR 1966 SC 1987] this Court was required to consider the question of eligibility of "judicial officers" for appointment as District Judges under Article 233 of the Constitution. Under the U.P. Higher Judicial Service Rules "Judicial Officers" were eligible for appointment as District Judges and the expression was meant to cover members of the executive department who discharged some revenue and magisterial duties also. When selection of such persons was challenged, this Court was required to consider and interpret the provisions of Articles 233 to 236 of the Constitution. The procedure for selection under the said Rules was also challenged as violative of Article 233. The Court said that the Governor could not appoint as District Judge persons from services other than the judicial services. A person who is in the police, excise, revenue or such other service cannot be appointed as a District Judge. Dealing with the definition of "judicial service" in Article 236, this Court said that the judicial service consists only of persons intended to fill up the posts of District Judges and other civil judicial posts and that is an exclusive service only consisting of judicial officers. In so interpreting judicial service in contra-distinction to executive service where some executive officers may also be performing judicial or quasi-judicial functions, this Court

was at pains to emphasize the Constitutional scheme for independence of the judiciary. It said that the acceptance of this (i.e. Government's) position would take us back to pre-independence days and would also cut across the well-knit scheme of the Constitution providing for independence of the judiciary. This Court, therefore, defined judicial officers discharging entirely judicial duties. It said that having provided for appointments to that service and having entrusted the control of the said service to the care of the High Court, the makers of the Constitution would not have conferred a blanket power on the Governor to appoint any person from any service as a District Judge.

Reliance has been placed upon this judgment as showing that judicial service is interpreted narrowly to cover only the hierarchy of civil courts headed by the District Judge. This Court, however, was not considering the position of other civil courts, in the context of the extensive definition given to the term "district judge". This Court was concerned with preserving independence of the judiciary from the executive and making sure that persons from non-judicial services, such as, the police, excise or revenue were not considered as eligible for appointment as District Judges. That is why the emphasis is on the fact that the judicial service should consist exclusively of judicial officers. This judgment should not be interpreted narrowly to exclude from judicial service new hierarchies of civil courts being set up which are headed by a judge who can be considered as a District Judge keeping in mind the extensive definition of that term in Article 236.

The High Court has, therefore, correctly interpreted the observations of this Court in Chandra Mohan's case (supra) as giving paramount importance to the enforcement of the constitutional scheme providing for independence of the judiciary. The concern of the court was to see that this independence was not destroyed by an indirect method.

For the same reason of maintaining independence of the judiciary, in the case of *Statesman (Private) Ltd. v. H.R. Deb & Ors.* [AIR 1968 SC 1495], this Court observed that the intention of the Legislature in framing Section 7 (prior to amendment) of the Industrial Disputes Act was that men who could be described as independent and with sufficient judicial experience must be selected as Labour Court Judges. The Court was considering the unamended Section 7 of the Industrial Disputes Act. In fact, in the case of the unamended Bombay Industrial Relations Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, the qualifications of a presiding officer of the Labour Court were in terms of Article 234 until the Bombay Industrial Relations Act was amended. In the case of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, the qualifications still remain as before.

We need not refer at length to various other judgments which have dealt with the question whether a Tribunal set up under different Acts which were before the Court in each case was a judicial body or a court, and whether it was a court subordinate to the High Court. In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjunwala & Ors.* [AIR 1951 SC 1559], the Central Government exercising appellate powers under Section 111 of the Companies Act was held to be acting as a judicial body and not as an administrative body. In the case of *Shripatrao Dajisahab Ghatge & Anr v. The State of Maharashtra & Anr.* [AIR 1977 Bombay 384], the term "courts" was held to cover all tribunals which were basically courts performing judicial functions giving judgments which were

binding and exercising sovereign judicial power transferred to them by the State. It was held that High Court could exercise its jurisdiction under Article 227 over such tribunals. A Full Bench of the Gujarat High Court in the case of Shaikh Mohammedbhikhan Hussainbhai & etc. v. The Manage, Chandrabhanu Cinema & Ors, etc. [1986 Lab I.C. 1749] held that Labour Courts and Industrial Courts were courts for the purposes of contempt of Courts Act and were also courts subordinate to the High Court.

The Allahabad High Court in the case of M/s Poysha Industrial Company Ltd. Ghaziabad v. State of Uttar Pradesh & Ors. [1985 Lab. I.C. 1633] has, however, held that the presiding officer of a Labour Court does not belong to the judicial service of the State as defined in Article 236. The Allahabad High Court's judgment has relied upon the decision of the Court in Chandra Mohan's case (supra) for the purpose of holding that it is only the hierarchy of ordinary civil courts in the narrow sense headed by a District Judge which comes under the term "judicial service" under Article 236. The view taken by the Allahabad High Court appears to be too narrow a view of the term "judicial service". In Chandra Mohan's case (supra), this Court was primarily concerned with excluding from judicial service persons who held posts in services which were not exclusively judicial. When the service is exclusively judicial, there is no reason to exclude such judicial service from that term under Article 236. The High Court in the present case is justified in rejecting the narrow view taken in that judgment.

In the case of Shri Kumar Padma Prasad v. Union of India & Ors. [(1992) 2 SC 428], this Court had to consider qualifications for the purpose of appointment as a judge of the High Court under Article 217 of the Constitution. While interpreting the expression "judicial office" under Article 217(2) (a), this Court held that the expression "judicial office" must be interpreted in consonance with the scheme of Chapters V and VI of Part VI of the Constitution. So construed it means a judicial office which belongs to the judicial service as defined under Article 236(b). Therefore, in order to qualify for appointment as judge of a High Court, a person must hold a judicial office which must be a part of the judicial service of the State. After referring to the cases of Chandra Mohan (supra) and Statesman (Private) Ltd. (supra), this Court said that the term "judicial office" in its generic sense may include a wide variety of offices which are connected with the administration of justice in one way or the other. Officers holding various posts under the executive are often vested with magisterial power to meet a particular situation. The Court said, "Did the framers of the Constitution have this type of officers in mind when they provided a source of appointment to the high officer of a judge of the High Court from amongst the holders of a 'judicial office'? The answer has to be in the negative. We are of the view that holder of judicial officer under Article 217(a) means the person who exercises only judicial functions, determines causes inter-parties and renders decisions in a judicial capacity. He must belong to the judicial service which as a class is free from executive control and is disciplined to uphold the dignity, integrity and independence of the Judiciary." Going by these tests laid down as to what constitutes judicial service under Article 236 of the Constitution, the Labour Court Judges and the judges of the Industrial Court can be held to belong to judicial service. The hierarchy contemplated in the case of Labour Court judges is the

hierarchy of Labour Court judges and Industrial Court judges with the Industrial Court judges holding the superior position of District Judges. The Labour Courts have also been held as subject to the High Court's power of superintendence under Article 227.

The decision in the case of Rajasthan State Road Transport Corporation & Anr. v. Krishna Kant & Ors. [(1995) 5 SC 75] is also cited before us. It dealt, inter alia, with the inter-relationship of jurisdiction of Labour and Industrial Courts and dispute resolving forums with the jurisdiction of civil courts. It is not directly concerned with the question which is before us.

The constitutional scheme under Chapter V of Part VI dealing with the High Courts and Chapter VI of Part VI dealing with the subordinate courts shows a clear anxiety on the part of the framers of the Constitution to preserve and promote independence of the judiciary from the executive. Thus Article 233 which deals with appointment of District judges requires that such appointments shall be made by the Governor of the State in consultation with the High Court. Article 233(2) has been interpreted as prescribing that "a person in the service of the Union or the State" can refer only to a person in the judicial service of the Union or the State. Article 234 which deals with recruitment of persons other than District Judges to the judicial service requires that their appointments can be made only in accordance with the Rules framed by the Governor of the State after consultation with the State Public Service Commission and with the High Court. Article 235 provides that the control over district courts and courts subordinate thereto shall be vested in the High Court; and Article 236 defines the expression "District Judge" extensively as covering judges of a city civil court etc, as earlier set out, and the expression "judicial service" as meaning a service consisting exclusively of persons intended to fill the post of the District Judge and other civil judicial posts inferior to the post of District Judge. Therefore, bearing in mind the principle of separation of powers and independence of the judiciary, judicial service contemplates a service exclusively of judicial posts in which there will be a hierarchy headed by a District Judge. The High Court has rightly come to the conclusion that the persons presiding over Industrial and Labour Courts would constitute a judicial service so defined. Therefore, the recruitment of Labour Court judges is required to be made in accordance with Article 235 of the Constitution.

In the premises, the appeal is dismissed. There will, however, be no order as to costs.