

MANU/MH/0772/2015

Equivalent Citation: [2015(145)FLR295]

IN THE HIGH COURT OF BOMBAY

O.O.C.J. Writ Petition No. 1547 of 2014

Decided On: 15.01.2015

Appellants: **Industrial & Labour Court Employees' Association**
Vs.

Respondent: **State of Maharashtra and Ors.**

Hon'ble Judges/Coram:

V.M. Kanade and Revati Mohite Dere, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: S.C. Naidu and Manoj Gujar i/b C.R. Naidu & Co.

For Respondents/Defendant: P.M. Palshikar and S.R. Nagolkar

JUDGMENT

V.M. Kanade and Revati Mohite Dere, JJ.

1. Heard learned Counsel appearing on behalf of the petitioners and the respondents.

By this petition filed under Article 226 of the Constitution of India, the petitioner association is challenging the decision taken by the Government which has been conveyed through their letter dated 31st December, 2012 which is annexed as Exhibit 'J' to the petition and is seeking an appropriate writ, direction or order directing the Government of Maharashtra to extend the pay scale and other benefits in accordance with the Government Resolution, Law and Judiciary Department dated 20th November, 2011 and Government Circular, Law and Judiciary Department dated 8th March, 2013 to the staff members of the Labour and Industrial Courts functioning in the State of Maharashtra.

The brief facts for the purpose of deciding this petition, are as under : The petitioner is an association of staff members working in the Industrial and Labour Courts established in the State of Maharashtra and it is affiliated to the Maharashtra State Judicial Employees' Confederation, which is a Confederation of all employees working in all Courts established in the State of Maharashtra. It is the case of the petitioner association that the State of Maharashtra has not given them the benefits of the recommendations made by the First National Judicial Pay Commission on Improvement of Service Conditions of Non-Judicial Staff in Subordinate Courts which is popularly known as "Shetty Commission". The said benefits were given to the non-judicial staff in subordinate Courts vide State Government Notification, Industry, Energy and Labour Department No. ICE-0912/PK 52-Lab-6. The State of Maharashtra informed the Registrar, Industrial Court, Maharashtra by their letter dated 31st December, 2012 that recommendations of the Shetty Commission were not applicable to the employees of the Industrial and Labour Courts in the State of Maharashtra. This letter was written pursuant to the representation made by the Registrar, Industrial Court by its letter dated 29th February, 2012.

2. The State of Maharashtra thereafter issued Government Circular No. Misc-2012/P. No. 35/Karya-6 dated 8th March, 2013. By the said Notification, the State of Maharashtra made certain clarifications to the earlier Notifications which were issued. The said circular did not make any reference to the recommendations of the Shetty Commission being made applicable to the employees of the Labour and Industrial Courts, though, it however, made reference to the employees of almost all Courts in the State of Maharashtra.

3. Mr. Naidu, the learned Counsel appearing on behalf of the petitioner submitted that the question as to whether the Labour and Industrial Courts are the Courts subordinate to the High Court as defined under Article 234 of the Constitution of India is no longer res integra. He invited our attention to the judgment of the Apex Court in the case of State of Maharashtra v. Labour Law Practitioners' Association and others 1999 (82) FLR 380 (SC), and Judgment of the learned Single Judge of this Court in the case of Labour Law Practitioners' Association and another v. State of Maharashtra and others Misc. Petition No. 600/79 decided on 12th June 1979. It is submitted that the learned Single Judge of this Court, after analysing various provisions of the Constitution, in para 17 observed that the posts of Labour Courts are civil judicial posts. He submitted that similarly in para 19 of the said Judgment, the learned Single Judge applying the ratio of the judgment in the case of Chandra Mohan v. State of Uttar Pradesh and others AIR 1996 (Sic), came to the conclusion that the expression "District Judge" will include every principal Civil Court of original civil jurisdiction and will also include Industrial Courts or Tribunals constituted under the Industrial Disputes Act or the Bombay Industrial Relations Act. He submitted that the decision given by the learned Single Judge of this Court was confirmed by the Division Bench in the Original Side Appeal No. 450 of 1979 in Misc. Petition No. 600 of 1979 decided on December 9, 1986. The Division Bench confirmed the view taken by the Single Judge and observed that the Labour Court was invested with the judicial power and that the definition of the District Judge in Article 236(a) was a conclusive definition and the Industrial and Labour Courts would fall within the said definition.

4. On the other hand, learned Counsel appearing on behalf of the respondent-State supported the decision taken by the Government and submitted that since the Shetty Commission has not expressly included the Labour and Industrial Courts, it was not open for the State Government to give benefits recommended by the Shetty Commission to the employees of the Industrial Courts.

5. We are of the view that the submission made by the learned Counsel appearing on behalf of the petitioner will have to be accepted. The Apex Court, in the case of State of Maharashtra v. Labour Law Practitioners' Association (supra), has observed in para 20 as under:

"20. 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 234 of the Constitution."

In the said case, the Labour Law Practitioners' Association had filed a writ petition before the High Court challenging the appointment of the respondent Nos. 2 and 3 who were Assistant Commissioners of Labour, as Judges of the Labour Court at Pune and Solapur under a Notification issued by the Government of Maharashtra dated 8th March, 1979. They had also prayed that the provisions of the amended section 9 of the Bombay Industrial Relations Act and the amended section 7 of the 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.

The question which came for consideration before the Apex Court was whether the Labour Courts constituted in the State of Maharashtra under the Industrial Disputes Act, the Bombay Industrial Relations Act and other Acts, were subordinate Courts within the meaning of Article 234 of the Constitution. In this context, the Apex Court considered number of Judgments of the Apex Court and also various Articles of the Constitution of India and it finally held that the persons presiding over the Industrial and Labour Courts would constitute a judicial service and therefore the recruitment of the Labour Court Judges was required to be made in accordance with Article 234 of the Constitution. The Apex Court, by the said Judgment, therefore, in terms, held that the Labour and Industrial Court Judges would fall within the definition of the District Judge as defined in the Article 236 (a) and section 3(17) of the General Clauses Act, 1897.

6. The Single Judge of this Court as also the Division Bench of this Court, which confirmed the order of the learned Single Judge, also have taken a similar view. The learned Single Judge in the case of Labour Law Practitioners' Association (supra) has observed in para 17 as under:

"17. That takes me to the question as to whether the posts of Labour Courts are Civil Judicial Posts. Once, it is found that the Labour Courts are exercising judicial functions, then it is not very seriously disputed on the part of respondent No. 1 that the Labour Courts are deciding civil rights of the parties before it. The disputes before the Industrial Courts are between the employers and the employees and the employers are in some cases the State Government or the Central Government. The dispute between the parties is of a high stake and affects the civil rights of the parties. In my judgment,

there is hardly any doubt that the posts of the Labour Courts are civil judicial posts."

7. This view was confirmed by the Division Bench of this Court in the case of State of Maharashtra v. Labour Law Practitioners' Association (supra) and the Division Bench has observed in para 26 as under:

"26. The Labour Court has been held in the various decisions aforementioned to be a Court. The Labour Court adjudicates upon disputes which are essentially of a civil nature. The Labour Court's functions were held as far back as 1968 to be 'quasi-civil' in nature. This must apply to the Industrial Court. The Industrial Court has original jurisdiction under the statute. It is also a principal Court, exercises supervision over the Labour Court (section 85, B.I.R. Act.), and hears appeals from decisions of the Labour Court (section 84, B.I.R. Act.). Accordingly, a member of the Industrial Court may well be said to be a District Judge. The Industrial Court and the Labour Court constitute a hierarchy or system of courts, the latter being inferior to the former. The posts of Labour Court Judges would, being thus inferior to the post of the District Judge, i.e., the Industrial Court Judge, form part of the judicial service as defined in Article 236(b)."

8. In our view, therefore, the issue as to whether the Labour and Industrial Courts are Courts subordinate to the High Court falling within the definition of the District Judge as defined under Articles 234 and 236(a) of the Constitution, is no longer res integra in view of the said Judgments.

9. Once it is held that the Labour and Industrial Courts fall within the definition of the District Judge, the employees of the Labour and Industrial Courts would also then be employees of District Courts and Courts subordinate to the High Court as defined under Article 234 of the Constitution of India. The State Government, therefore, having given the benefits which were recommended by the Shetty Commission to the employees of all the Courts including Family Courts, could not have deprived the employees of the Labour and Industrial Courts from being given the said benefits.

10. The impugned communication dated 31st October, 2012 which is at Exhibit 'J' is set-aside and we direct the Government of Maharashtra to extend the pay scale and other benefits as per the Government Resolution, Law and Judiciary Department dated 20th November, 2011 to the staff members of the Labour and Industrial Courts functioning in the State of Maharashtra with effect from the date as stipulated in the Notification i.e. 1st April, 2003.

11. Learned Counsel appearing on behalf of the State submitted that the petition filed by the members of the staff serving in the Family Courts in Aurangabad and Nagpur seeking extension of the benefits which was recommended by Justice Shetty Commission to them, though was allowed by the Division Bench of this Court, it was observed that the petitioner should be entitled to get the benefits from the date on which the petition was filed. It is submitted that then the said benefits should be made available to the present petitioners from the date of filing of the petition. In our view, the said submission cannot be accepted. If all the other staff members of other Courts were given benefits recommended by the Shetty Commission with effect from the date as stipulated in the Notification i.e. 1st April, 2003, there is no reason why the petitioners who are otherwise entitled to get the said benefits should be deprived. We are of the view that the State Government did not take into consideration the

settled position of law that they were District Courts falling within the definition of Judicial Officers under Article 234 of the Constitution. The petition is, therefore, accordingly allowed in the aforesaid terms and is disposed of.

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