

(1979) 06 BOM CK 0004

In the Bombay High Court

Case No : Misc. Petition No. 600 of 1979

Labour Law Practitioner's Association and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-06-1979

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(15)
Bombay Industrial Relations Act, 1946 — Section 81, 84, 85, 85A, 9
Constitution of India, 1950 — Article 227, 234, 235, 236
Industrial Disputes Act, 1947 — Section 7
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 6

Citation : (1979) 39 FLR 89

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : F.N. Kaka and S.H. Kapadia, for the Appellant; N.H. Gursahahi, Govt. Pleader and S.M. Dikshit, N.H. Gursahani, Govt. Pleader and S.M. Dikshit, for the Respondent

Judgement

M.L. Pendse, J.—By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging the legality of the order dated March 8, 1979 passed by respondent No. 1 appointing respondents Nos. 2 and 3 as Judges of the Labour Court.

2. The petitioner No. 1 is a Labour Law Practitioner's Association an Association registered under the Societies Registration Act, while petitioner No. 2 is a member of the said Association. The respondents Nos. 2 and 3 are Law Graduates and are in service of respondent No. 1 as Assistant Commissioners of Labour and were deputed on the date of the order under challenge to the Bombay Iron and Steel Labour Board and the Maharashtra State Textile Corporation Limited, Bombay, respectively.

3. The Labour Courts are constituted under the Industrial Disputes Act, 1947 and the Bombay Industrial Relations Act, 1946 and that under the Industrial Disputes

Act, Labour Courts are constituted u/s 7 for adjudication of industrial dispute relating to any matter specified in second Schedule of the Act and for performing such work as may be assigned to them under the Act. Sub-section (2) of section 7 provides that the Labour Court shall consist of one person only to be appointed by the appropriate Government. The original sub-section (3) of section 7 provides for the qualifications for appointment of the Presiding Officer of the Labour Court and the qualifications were that a person (a) is or has been a Judge of the High Court; or (b) has, for a period of not less than 3 years, been a District Judge or an Additional District Judge; or (c) has held the office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes Act for a period of not less than 2 years; or (d) held any judicial office in India for not less than 7 years; or (e) has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than 5 years. By the Industrial Disputes (Maharashtra Amendment) Act, 1974, the provisions of section 7 were amended and three more sources for recruitment to the posts of Labour Court were provided for. They are as follows :

"(d-1) he has practised as an Advocate or attorney for not less than seven years in the High Court, or any Court sub-ordinate 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 an office not lower in rank than that of Deputy Registrar of any 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."

4. By this amendment, the respondent No. 1 has provided new channel for recruitment to the post of Labour Court by providing that Assistant Commissioner of Labour working under the State Government for not less than five years and holding a Law Degree are qualified for the post of appointment of Labour Court. Under the provisions of Bombay Industrial Relations Act, Labour Courts are constituted u/s 9 for the purpose of deciding the disputes set out in section 78 of the said Act. Section 9, as it originally stood, enables the State Government to constitute one or more Labour Courts having jurisdiction in such local areas as may be specified in such notification and shall appoint persons having the prescribed qualifications to preside over such Courts. Originally, there was a proviso to section 9 which laid down that no person shall be so appointed 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. XLVII of 1977 of October 24, 1977, section 9 of the Bombay Industrial Relations Act was amended by substituting sub-section (2). The amended sub-section (2) of section 9 provides

as follows :

"A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless---

- (a) he has held any judicial office in India for not less than five years; or
- (b) he has 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, Tribunal or Labour 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 requirement contemplated under Article 234 of the Constitution of India was deleted. At this juncture, it is also necessary to mention that the Maharashtra Act titled as the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was passed by Maharashtra Legislature and section 6 of this Act enables the State Government to constitute one or more Labour Courts and appoint persons having the prescribed qualifications. The proviso to section 6 of this Act lays down that no person shall be appointed unless he possessed the qualifications (other than the qualifications of the 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. The jurisdiction conferred upon the Labour Courts constituted under this Act is to decide the complaints relating to unfair labour practice described in Item 1 of Schedule IV and try offences punishable under this Act.

5. In view of the amendments carried out by respondent No. 1 in the Industrial Disputes Act, 1947 and in the Bombay Industrial Relations Act, 1946, the State Government felt that it was open for the Government to appoint Assistant Commissioner of Labour working under the State Government for a period in excess of five years and holding a law degree to this office of the Labour Courts. The petitioners, who are the practising members belonging to the legal professions, before the Labour Courts, made certain representations before the respondent No. 1 but the respondent No. 1 ignoring the same made the appointments of respondents Nos. 2 and 3 by a Notification dated March 8, 1979. The respondents Nos. 2 and 3 were appointed Judges for Labour Court upto February 29, 1980 or until further orders. The order itself, provides that the appointments shall automatically stand terminated on February 29, 1980 unless they are continued further in consultation with the Maharashtra Public Service Commission. The legality and validity of the appointments of respondents Nos. 2 and 3 is under challenge in this petition. The petitioners have sought two reliefs in this petition: (1) For quashing and setting aside the order of the 1st respondent appointing 2nd and 3rd respondents as Presiding Officers of the Labour Courts at Poona and Sholapur respectively; and (2) for declaring that the

provisions of the amended section 9 of the Bombay Industrial Relations Act and section 7 of the Industrial Disputes Act, in so far as they authorise the appointment of Assistant Commissioners of Labour as Judges of the labour Court is void and illegal in law and contrary to the provisions of Article 234 of the Constitution of India. As regards the relief claimed for a declaration that amendments to the two Acts, the Industrial Disputes Act and the Bombay Industrial Relations Act are void and illegal, save and except the relief claimed in that connection there are no other averments in the petition and Mr. Gursahani, the learned Counsel appearing for the respondents, is right in his submission that such a relief cannot be granted unless a specific case is made out for striking down the amendments. Apart from the fact that no serious attempt has been made to challenge the legality of the amendment, it must be stated that I do not find any considerable reason to strike down the amendments made in these two Acts. By these amendments, the respondent No. 1 has opened a new channel for recruitment to the posts of Labour Courts and by no stretch of imagination can it be said that the additional qualification provided by the amendments of these two Acts in any way affects the fundamental rights guaranteed to the petitioners. The legislative competency of the State Legislature is not challenged anywhere in the petition and realising this situation, Mr. Kaka, the learned Counsel appearing for the petitioners, at a later stage of his argument, did not press for the relief claimed in that connection. In any event, I am not inclined to consider the grant of relief sought in that connection by the petitioners and the relief claimed by prayer (b) in the petition must be turned down. In my judgment, the amendments carried out in the two Acts in no way affect the fundamental rights of the petitioners nor are in any manner illegal or unconstitutional.

6. That takes me to the main challenge involved in this petition to the appointment of respondents Nos. 2 and 3. The grievance of the petitioners is that the post of Labour Court constituted under the Bombay Industrial Relations Act and the Industrial Disputes Act forms the part of the judicial service of the State and as such attracts the provisions of Article 234 of the Constitution of India. The petitioners claim that as the post of Labour Court forms part of the Judicial service of the State, it is necessary that appointment to the posts of Labour Courts shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the Public Service Commission and with the High Court exercising Jurisdiction in relation to such State. It is not in dispute that appointments of respondents Nos. 2 and 3 are made without consultation with the Maharashtra Public Service Commission or with the High Court of Maharashtra. The grievance of the petitioner in this connection is countered by the respondent No. 1 by filing a return and it is contended that the appointments of respondents Nos. 2 and 3 are not to the posts of Judicial service of the State and the provisions of Article 234 of the Constitution of India are not, at all, attracted. It is contended on behalf of respondent No. 1 that the appointments of the Assistant Commissioner of Labour for manning the posts of Labour Courts are required to be made as the High Court was unable to spare

the services of the Civil Judges to hold those posts. The respondent No. 1 claimed that the amendments were carried out in the Bombay Industrial Relations Act and the Industrial Disputes Act to facilitate the smooth working of those courts and appointments of those posts are not required to be made in consultation with the Maharashtra Public Service Commission or with the High Court of the State. In fact, the respondent No. 1 claims that the posts of Labour Court are part of the State Civil Service and are not in any way part of the Judicial service of the State. In view of these rival contentions, it is necessary to consider in this petition whether the provisions of Article 234 of the Constitution of India are attracted in case of appointments to the posts of Labour Courts.

7. The Constitution of India has introduced a group of Articles in Chapter VI of Part VI under the heading "Subordinate Chapter". In the Pre-Independent India, the Judiciary was not Separate from the executive and though our Constitution does not accept the strict doctrine of separation of powers, it does provide for an independent judiciary in the States. It constitutes a High Court for each State, prescribes the institutional conditions of service of the Judges thereof, confers extensive jurisdiction on it to issue writs to keep all tribunals, including in appropriate cases the Governments, within bounds and gives to it the power of superintendence over all courts and tribunals in the territory over which it has jurisdiction. The makers of the Constitution also realised that it is the Subordinate Judiciary in India which is brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question in the case of manning the lower judiciary. It is presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in Chapter VI of Part VI of the Constitution as mentioned hereinabove.

8. Article 233 of the Constitution of India provides for appointments of the District Judges which are to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. Article 234 reads as under :

"Appointments of persons other than District Judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules 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 234 refers to the appointments of persons other than district judges to the Judicial service of the State. Now the expression "judicial service" has been defined under Clause (b) of Article 236 of the Constitution of India and it reads as under :

"the expression "judicial service" means 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."

The expression clearly indicates that the "judicial service" means a service in

addition to the District Judges, other civil judicial posts inferior to the post of the district judge. To determine whether the provisions of Article 234 are attracted to the appointment of posts of Labour Courts under the Bombay Industrial Relations Act and Industrial Disputes Act, it is necessary to determine whether the posts of Labour Courts are civil judicial posts inferior to the post of district judge. The expression "district judge" has been defined by Clause (a) of Article 236 of the Constitution of India as follows :

"the expression "District Judge" includes judge of a City Civil Courts, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Cause Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge."

Article 235 of the Constitution of India provides for the control over subordinate courts in the State.

9. Mr. Kaka, the learned Counsel for the petitioners contended that the posts of Labour Courts are part of the judicial service of the State as those posts are civil judicial posts inferior to the post of district judge. While on the other hand, Mr. Gursahani, the learned Counsel for the respondent contends that they do not form part of the judicial service. Mr. Gursahani submits that the Labour Courts are not exercising judicial functions but are merely administrative Tribunals and it cannot be suggested that such Labour Courts would belong to the cadre or the judicial service of the State. Mr. Kaka, in support of his contention that the posts of Labour Courts are discharging or rendering judicial functions, strongly relied upon a decision of the Supreme Court in the case of the Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi and the Bharat Bank Employees' Union, Delhi, reported in 1950 Supreme Court Reports 459. The leading judgment of the majority was delivered by Mr. Justice Mahajan as he then was , and the case came before the Supreme Court by way of a special leave granted under Article 136 of the Constitution of India. Bharat Bank Limited the appellant before the Supreme Court, was a Company registered under the Indian Companies Act. Its employees made certain demands and as a result of an unfavourable response from the bank, it appears that they struck work on the 9th March, 1949. The Bank in its turn served notices on them to resume work and proceeded to discharge a number of them as they failed to do so. The Central Government constituted a Tribunal consisting of three persons for the adjudication of industrial disputes in banking companies u/s 7 of the Industrial Disputes Act and the dispute was heard by the Tribunal and the Award was passed. After the Award was declared by publishing in the Government Gazzette, the appellant Bank preferred an appeal by special leave under Article 136 of the Constitution of India challenging that Award before the Supreme Court. At the time of the hearing of the appeal, a preliminary objection was raised on behalf of the Central Government as well as on behalf of the employees that the Supreme Court had no jurisdiction to grant special leave to appeal against the

determination of an Industrial Tribunal inasmuch as it did not exercise the judicial powers of the State and that its determination was not in the nature of a judgment decree or order of the Court so as to be appealable. The question as to whether the Industrial Tribunal has all the necessary attributes of a Court of justice was considered in depth and the majority came to the conclusion that the Industrial Tribunal has all the necessary attributes of a Court of justice. Mr. Justice Mahajan approved the decision in the case of *Cooper v. Wilson*, reported in (1937) 2 K.B. 309 and held that the true judicial decision pre-supposes an existing dispute between two or more parties, and then involves four requisites :--- (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties; (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. The learned Judge, after taking into consideration the various sections of the Industrial Disputes Act and the Rules, concluded that it was difficult to conceive in view of those provisions that the Industrial Tribunal performs any functions other than that of a judicial nature. The learned Judge finally held that the Industrial Tribunal has all the necessary attributes of a Court of justice and it has no other function except that of adjudicating on a dispute. The learned Judge further observed that it is no doubt true that by reason of the nature of the dispute that they have to adjudicate, the law gives them wider powers than are possessed by ordinary courts of law, but powers of such a nature do not affect the question that they are exercising judicial power. This judgment of the Supreme Court clearly lays down that the Industrial Tribunals while exercising powers under the Industrial Disputes Act are rendering judicial functions by exercising judicial powers.

10. It is necessary in this connection to refer to certain sections of the Industrial Disputes Act. As stated earlier, the Labour Courts are constituted under the provisions of section 7, while section 10(1)(c) provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, refer the dispute or any matter appearing to be connected with, or relevant to the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. The matters within the jurisdiction of Labour Courts as set out in the Second Schedule are :---

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. discharge or dismissal of workman including reinstatement of, or grant of relief to, workmen wrongfully dismissed;

4. withdrawal of any customary concession or privilege;
5. illegality or otherwise of a strike or lock-out; and
6. all matters other than those specified in the Third Schedule.

11. The provisions of sub-section (3) of section 11 enables the Labour Court when trying a suit to enforce the attendance of any person and examine him on oath; compel the production of documents and material objects; and issue commissions for the examination of witnesses. This sub-section also provides that every inquiry of investigation by the Labour Court shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. Sub-section (8) of section 11 provides that every Labour Court shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 484 of the Code of Criminal Procedure 1898. Section 17 casts a liability upon the Government to publish within a period of thirty days every Award passed by the Labour Court, while Section 17-A of the Act makes the said Award enforceable on the expiry of thirty days from the date of the publication. The provisions of sub-section (3) of section 18 of the Act makes the Award passed by the Labour Court binding on all parties to the industrial dispute and all the workmen when the Union is recognised. The provisions of section 33-C of the Act enable the Labour Court to take proceedings of the recovery of money due from the employer under an Award or enforceable order, while section 38(2)(a) of the Act confers power upon the appropriate Government to frame rules to determine the powers and procedure of the Labour Courts as to the summoning of witnesses, the production of documents and the number of members necessary to form a quorum. The State Government has framed rules under the powers conferred u/s 38 and Rule 16 of the Industrial Disputes (Bombay) Rules, 1957 requires the Labour Court to serve a notice upon the opposite party before settling a dispute between the employer and the employee, Rule 17 of the Rules confers power upon the Tribunal to take evidence. The other rules framed by the Government require the Labour Court to issue summonses in the particular form and also provide for expenses and costs for running the Labour Courts. The provisions of the Industrial Disputes Act and the Rules leave no manner of doubt that the function performed are clearly judicial functions and it would be a fallacy to contend that the service rendered by the Labour Court is not judicial but purely administrative. The contention of Mr. Kaka must be accepted. The perusal of the Bombay Industrial Relations Act also supports the conclusions which are arrived at after setting out the provisions of the Industrial Disputes Act.

12. Let me turn to the provisions of the Bombay Industrial Relations Act. The Bombay Industrial Relations Act is an Act passed by the State Legislature to regulate the relations of employers and employees, to make provision for settlement of industrial disputes and to provide for certain other purposes. As stated hereinabove, by provisions of section 9 of the said Act, the Labour Courts are constituted and section 78 of the Act sets out the powers of the Labour Court which are almost identical with the powers conferred on the Labour Courts under

the Industrial Disputes Act. The provisions of section 80 of this Act provide for the procedure to be followed in an application to be made to the Labour Court and section 81 enables the Labour Court to refer to the Industrial Court for decision any question of law arising in a proceeding before it. This section also provides that any order passed by the Labour Court in such proceeding shall be in accordance with the decision recorded by the Industrial Court. This section makes the Labour Court inferior to that of the Industrial Court as the decision recorded by the Industrial Court is made binding on the Labour Court. Section 84 of the Act provides for an appeal against the decision of the Labour Courts. The appeal lies to the Industrial Court constituted under the Bombay Industrial Relations Act which is almost on par with the Industrial Tribunal constituted under the Industrial Disputes Act. The provisions of section 85 of the Act enable the Industrial Court to have superintendence over all the Labour Courts and permits the Industrial Court to call for returns; make and issue general rules and prescribe form for regulating the practice and procedure of such Courts; and prescribes forms in which books, entries and accounts are kept by the Labour Courts. Section 85-A of this Act enables the Industrial Court to transfer any proceeding pending before one Labour Court to another and general superintendence on the working of the Labour Courts. These provisions of sections 84, 85 and 85-A leave no doubt in my mind that the Labour Court is made inferior to the Industrial Court and the proceedings conducted before the Labour Court are judicial proceedings for all purposes. Section 118 of the Act gives powers to the Labour Courts to summon witnesses and section 119-A of the Act provides for the contempt of the Labour Courts committed by any party. These provisions under the Bombay Industrial Relations Act clearly establish that the Labour Courts would be the courts performing judicial functions and are empowered to render definitive decisions which have finality and authoritativeness so as to bind the parties appearing before them as to their rights, subject, of course, to appeal as provided in the Act.

13. Mr. Kaka, in this connection, relied upon two decisions of this Court and contended that not only the Labour Courts are discharging the judicial functions but are really courts which are subordinate to the High Court and are amenable to the proceedings under Article 227 of the Constitution of India. The first decision relied upon by Mr. Kaka in this connection is in the case of Bapusaheb Balasaheb Patil v. The State of Maharashtra, reported in 76 BomL.R. 455. The Full Bench decision relied upon by Mr. Kaka has held that to constitute a Tribunal or the authority a Court, two main criteria should be satisfied; firstly, the tribunal or an authority would be a Court if it is given power to give a definitive judgment or decision which has finality and authoritativeness that would bind the parties appearing before it so far as the rights litigated before it are concerned and; secondly, the appointment of the tribunal or authority as well as the source of its power must be the judicial power of the State coming to it by the statute itself. Mr. Kaka submits, and in my judgment, rightly that the Labour Court satisfy both the criteria laid down by the Full Bench of this Court. The Labour Court has

power to give definitive judgment which has finality and authoritativeness so as to bind the parties appearing before it and the source of the power of the Labour Court is a judicial power of the State coming to the Labour Court by the statute itself. In view of this decision, the contention of Mr. Kaka that the Labour Courts constitute the judicial service of the State must be upheld.

14. The second decision relied upon by Mr. Kaka is in the case of Shripatrao Dajisaheb Ghatge and Another Vs. The State of Maharashtra and Another, . Mr. Justice Tulzapurkar, as he then was, speaking for the Full Bench reiterated the earlier view taken in the case of Bapusaheb Balasaheb Patil v. The State of Maharashtra, reported in 76 BomLR. 455 and in paragraph 22 of the judgment reported at page 404 observed as follows

"In the first phase, neither the expression "Court" nor the express "Tribunal" has been defined in the Constitution and therefore the dictionary meaning or the normal connotation of these expressions will have to be considered. Secondly the proposition is well-settled that all courts are Tribunals but all Tribunals are not courts. If necessary, reference may be made to Justice Hidayatullah's judgment in Hidayatullah's judgment in Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, where the above proposition has been clearly stated."

The learned Judge further observed that the expression "courts" must be understood and regarded in its ordinary meaning or its accepted normal connotating, namely an adjudicating body which performs judicial function of rendering definitive judgments having finality and authoritativeness to bind the parties litigating their rights before it and that too in exercise of the sovereign judicial power transferred to it by the State. These two decisions relied upon by Mr. Kaka entirely support the contention of the petitioners that the Labour Courts are part of the judicial service of the State as contemplated by Article 234 of the Constitution of India. In view of this finding, it must be held that the Labour Courts formed part of the cadre of the judicial service of the State.

15. Mr. Gursahani, in answer to this submission of Mr. Kaka, contended that the service rendered or the functions of the Labour Court are not judicial but are purely of an administrative nature. Mr. Gursahani, in support of his contention, did not point out any provisions to show why the services performed by the Labour Court should not be termed as judicial function save and except relying upon the provisions of section 36(4) of the Industrial Disputes Act. Sub-section (4) of section 36 of the Industrial disputes Act provides that a party to a dispute in any proceeding before a Labour Court may be represented by a legal practitioner with the consent of the other parties to the proceedings. Mr. Gursahani submits that as a legal practitioner cannot appear as a matter of right, the proceedings cannot be termed as judicial proceeding. Mr. Gursahani submits that as a legal practitioner cannot appear as a matter of right, the proceedings cannot be termed as judicial proceedings. Mr. Gursahani submits that as a legal practitioners cannot appears as a matter of right, the proceedings cannot termed as judicial proceedings. Mr. Gursahani submits that in no judicial proceedings,

lawyer would require permission of the opposite party to appear. It is not possible to accept the submission of the learned Counsel. It is undoubtedly true that sub-section (4) of section 36 provides that the legal practitioner can appear only with the consent of the opposite party and in absence of the consent, an absolute right is not conferred upon the legal practitioner but that is not sufficient to conclude that the proceedings are not judicial proceedings.

16. In this connection, it must be pointed out that in the decision of the Supreme Court in the case of the The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, this facet was also taken note of by the Supreme court while considering the provisions of the Industrial Disputes Act. In the judgment delivered by Mr. Justice Fazl Ali, on page 463, the learned Judge has specifically mentioned that a party may also be represented by a legal practitioner with the permission of the Industrial Court. It is obvious that this aspect was present to the mind of the Supreme Court and in spite of that it was found that the proceedings before the Industrial Court are judicial in nature. In fact, it is difficult to conceive how the proceedings held by the Labour Court are not judicial but are administrative as contended by Mr. Gursahani. As mentioned hereinabove, in absence of any material or any submission from the learned Counsel of respondent No. 1, it must be held that the Labour Courts are performing judicial functions while exercising powers under the Industrial Disputes Act and the Bombay Industrial Relations Act.

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.

18. That leaves for considerations the last contention as to whether these Civil Judicial posts are inferior to the posts of District Judge. The expression "judicial service" requires that Article 234 of the Constitution of India is attracted in cases where the appointments are made to civil Judicial Posts inferior to the posts of Districts Judge. Mr. Kaka submits that the expression "District Judge" is not restricted only to the Civil Courts but also covers the criminal Courts as the Chief Presidency Magistrate, the Additional Chief Presidency Magistrate and Sessions Judge were also brought within the expression of "District Judge". Mr. Kaka submits that the post held by the Industrial Court or the Tribunal under the Industrial Disputes Act or the Bombay Industrial Relations Act is equivalent to the District Judge as the Industrial Court or the Tribunal is exercising original civil jurisdiction in the discharge of its function. Mr. Kaka submitted that it would not be proper to restrict the definition of the expression "District Judge" only to the

hierarchy of the Civil Courts but it must extend to all the courts which are exercising Original Civil Jurisdiction.

19. Mr. Kaka placed strong reliance upon sub-section (15) of section 3 of the Bombay General Clauses Act which defines "District Judge" as the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extra-ordinary original civil jurisdiction. Mr. Kaka submits that as the expression under Article 236(a) is not exhaustive, it would be advantageous to take the aid of the definition of "District Judge" u/s 3(15) of the Bombay General Clause Act which indicates that the "District Judge" means a Judge of the principal Civil Court of original civil jurisdiction. Mr. Kaka submits that the Industrial Court constituted under the Industrial Disputes Act or under the Bombay Industrial Relations Act is a principal Civil Court of original civil jurisdiction and as such the Industrial Court is on par or, in fact, really is a District Judge for the purpose of Article 236 of the Constitution of India. There is force in the submission of Mr. Kaka. It is undoubtedly true that Article 236(a) is not exhaustive and the expression defined under that clause is an inclusive one. It cannot be disputed that the Industrial Courts are the civil Courts exercising original civil jurisdiction in their respective states and as such the persons presiding over such Courts can well be termed as the District Judges in view of the definition provided by section 3(15) of the Bombay General Clauses Act. Mr. Kaka is also right in his submission that the meaning of expression "District Judge" under Article 236(a) of the Constitution of India is very wide and it covers every principal Civil Court and is not restricted only to the hierarchy of the Civil Court. The Chief Presidency Magistrate, the Additional Chief Presidency Magistrate and the Sessions Judge are also included in the definition of the District Judge is indicative of the fact that a very wide interpretation should be given while interpreting the expression "District Judge" in this connection, the observations of the Supreme Court in the case of the Chandra Mohan v. State of Uttar Pradesh and others, reported in AIR 1966 S C 1987 can be quoted with advantage. It is held by the Supreme Court that the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament namely, that the Court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, if, however, two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory one. In my judgment, the two constructions are not possible in the present case but the sole construction which can be put upon the expression "District Judge" is that it will include every principal Civil Court of original civil jurisdiction and its sweep is wide to include Industrial Courts or Tribunals constituted under the Industrial Disputes Act or the Bombay Industrial Relations Act. Once, it is found that the persons holding the office of the Industrial Court or Tribunal under these two Acts are equivalent to the office of the District Judge,

then it is obvious that the Labour Courts are subordinate to the Industrial Courts as provided by the Bombay Industrial Relations Act where appeals are provided against the orders of the Labour Courts and the power of superintendence is conferred on the Industrial Courts. In this view of the matter, it must be held that the post of Labour Judges are inferior to the post of District Judge as contemplated by the expression "District Judge" under the Article 236 of the Constitution of India. Once, this view is reached, then it must follow that the provisions of Article 234 of the Constitution of India are straightway attracted to the appointments to the posts of Labour Courts under the Industrial Disputes Act and the Bombay Industrial Relations Act. As the appointments of respondents Nos. 2 and 3 are admittedly not in accordance with the provisions of Article 234 of the Constitution of India, the same will have to be quashed.

20. Mr. Gursahani, the learned Counsel appearing on behalf of the respondent No. 1, contended that it is necessary to take into consideration the two facts before striking the appointments of respondents Nos. 2 and 3. Mr. Gursahani first contended that the fact that the application of Article 234 of the Constitution as earlier provided by proviso of section 9 of the Bombay Industrial Relations Act was subsequently deleted is very relevant. The learned Counsel submitted that the legislature wanted to do away with the safeguard contemplated under Article 234 of the constitution of India as the legislature felt that the posts of Labour Courts are not the judicial posts but such Courts are performing only administrative functions. This submission has no force. It is undoubtedly true that the application of Article 234 of the Constitution of India was deleted from the provisions of section 9 of the Bombay Industrial Relations Act by an amendment but it cannot be lost sight of that the legislature retained the application of Article 234 of the Constitution to the appointment of Labour Courts which are constituted under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. Mr. Gursahani submitted that although the respondents Nos. 2 and 3 are appointed as Labour Courts, they will not be conferred with powers under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. It is difficult to understand the force behind the submission that the deletion of the application of Article 234 of the Constitution would mean that the functions performed by the Labour Courts are purely of an administrative nature.

21. The second submission of Mr. Gursahani was that the appointments are made to man the posts under the Sales Tax Act, Income Tax Act and the Land Revenue Code which are also performing the functions which are not merely administrative but are quasi judicial and the appointments are made to those posts without consultation with the Public Service Commission or High Court of the State. It was urged that if appointments made to the Tribunals under those Acts are valid, then by parity of reasoning, the appointments of respondents Nos. 2 and 3 should be upheld. It is not necessary for me to express any opinion whether the officers appointed under the Income Tax Act, Sales Tax Act and the Land Revenue Code are performing the judicial functions and can be labelled as

Courts. Mr. Gursahani finally submitted that the Industrial Tribunals are known as Tribunals and cannot be termed as Courts. It is necessary to determine whether it is Court or otherwise by looking to the functions performed and by applying the two tests laid down by two Full Bench decisions mentioned hereinabove. The question is not dependent on nomenclature of the authority but on functions performed and the source of power of such authority.

22. Before parting with the case, let me advert to one contention strongly agitated by Mr. Kaka sounded an apprehension that there is a growing tendency to by-pass the Public Service Commission and High Court in making appointments to posts which are purely judicial but treated as administrative by executive. The learned Counsel submitted that disputes between master and servant were originally within the competence of Civil Courts but were transferred to Labour Courts because of its peculiar nature and the need of speedy disposal. It is open for the Legislature to create special forums but, says the learned Counsel, the executive cannot ignore the provisions of Article 234 of the Constitution of India while making appointments to these forums. Mr. Kaka suggested that in absence of consultations with High Court, there is a fear that independence of subordinate judiciary will be impaired. It is undoubtedly true that independence of judiciary is maintained not only at the higher level but even at the lowest rung which comes more in contact with the citizens. But while interpreting the true ambit and scope of Article 234 of the Constitution of India and its application to the appointment to the post of Labour Judge, I have kept out of my mind the apprehension voiced by the learned Counsel for the petitioner.

23. In the result, the petitioner must succeed and the rule is made absolute in terms of prayers (a) and (c) of the petition. The relief claimed in prayer (b) is refused. In the circumstances of the case, there will be no order as to costs.