

(2022) 11 CHH CK 0030

In the Chhattisgarh High Court

Case No : Writ Petition (PIL) No.19 Of 2021, Writ Petition (C) No. 3438 Of 2021

Malay Jain

APPELLANT

Vs

High Court Of Chhattisgarh

RESPONDENT

Date of Decision : 11-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 32, 136, 217, 217(2)(a), 226, 233, 233(2), 234, 235, 236, 236(a), 236(b), 309
Chhattisgarh Labour Judicial Service (Recruitment and Conditions of Service) Rules, 2015 — Rule 6(1), 6(2)(b), 6(3), 12, 13, 14, 15
Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 — Rule 2(1)(a), 3, 4, 5
Chhattisgarh Industrial Relations Act, 1960 — Section 8(1), 8(2), 8(3), 9, 9(1), 9(2)(a), 9(2)(b), 9(2)(c), 12, 64, 64A
Contempt of Courts Act, 1971 — Section 10

Citation : (2022) 11 CHH CK 0030

Hon'ble Judges : Arup Kumar Goswami, CJ;Deepak Kumar Tiwari, J

Bench : Division Bench

Advocate : Malay Jain, Dr. N.K.Shukla, Bhaskar Payashi, Chandresh Shrivastava, Anchal Kumar Matre

Final Decision : Allowed

Judgement

1. The petitioner in Writ Petition (PIL) No. 19 of 2021 is a learned Advocate of this Court. The writ petition was filed on 15.02.2021 with the grievance that after the retirement of Shri T.K. Chakraborty on 13.07.2019 as President of State Industrial Court, Raipur, the post has remained vacant for about one and half year.

2. Pledged case of the petitioner is that in terms of Section 9(1) of the Chhattisgarh Industrial Relations Act, 1960, for short, "the Act of 1960", the Industrial Court is to be constituted by a President and one or more Members. One Member, namely, Shri Shiv Kumar Tripathi, was appointed on 04.10.2019. However, for want of prescribed quorum, the appeals from Labour Courts and the reference cases from the State Government are not being adjudicated as any

hearing by a lone Member would be illegal being coram non judice. As a result, pending cases are accumulating.

3. It is stated that appointment of the President of the Industrial Court is required to be made in accordance with Rule 6(3) of the Chhattisgarh Labour Judicial Service (Recruitment and Conditions of Service) Rules, 2015, for short, "the Rules of 2015", read with Section 9 (2) (a), (b), (c) of the Act of 1960.

4. Accordingly, prayer was made for a direction to issue appointment order for the post of the President immediately.

5. In the return filed by respondents No.2 and 3 on 20.07.2021, it is stated that several applications were received from various applicants and the same were forwarded to the High Court vide letter dated 09.07.2019 seeking recommendation. Vide letter dated 04.02.2020, the High Court had made recommendation in favour of Shri Ravi Shankar Sharma, Principal Secretary, Law & Legislative Affairs Department, Government of Chhattisgarh. Subsequently, by letter dated 07.02.2020, the Department requested for recommending a panel of names for making appointment to the post of President from out of the said panel. In response thereto, vide letter dated 17.02.2020, it was communicated that as per the Rules of 2015, there is no provision for sending a panel of names.

6. It is stated that in terms of Section 9(1) of the Act of 1960, the State has to constitute Industrial Court for the State. It is further pleaded that the Rules of 2015 was not placed before the Cabinet for approval. Rules 6(3), 12 and 13 of the Rules of 2015 had been amended with effect from 19.07.2021 and that proceedings were initiated in accordance with the amended rules for making appointment. It is further pleaded that Industrial Relations Code, 2020, for short "the Code of 2020", had also been notified and as per the mandate of the same, Chhattisgarh Industrial Rules, 2020 had been notified in the Gazette on 25.05.2021 calling for objections and suggestions and that once the Code of 2020 and the rules framed thereunder are implemented, there would be no post of President in the Industrial Court. The delay in appointment was explained because of amendments proposed and Covid-19 pandemic. It is also pleaded that the Member Judge of the State Industrial Court had been declared as head of the department vide order dated 07.07.2021 till regular appointment of President is made and a proposal was, accordingly, sent to the General Administration Department. After issuance of necessary orders, concerned Controlling Authority would perform the functions including release of payments, financial works, release of pension and gratuity, etc. It is stated that while in the month of June, 2019 there were 71 cases pending, in June, 2021 only 18 cases were pending at Industrial Court, Raipur and 62 cases in the Bench at Bilaspur.

7. Subsequent to filing of the aforesaid return, amendment application was filed by the petitioner to challenge the amendments effected in Rule 6(3), 12 and 13 of the Rules of 2015 vide Notification dated 19.07.2021 and to issue direction for appointment of the President on the basis of the unamended rules.

8. The petitioner had also filed a rejoinder affidavit to the aforesaid return filed by the State stating that the State had taken no action whatsoever in the matter of appointment of the President prior to issuance of an order dated 01.07.2021 of this Court whereby this Court directed the Principal Secretary of the concerned department to file affidavit within two weeks and that thereafter only steps for amendment were taken.

9. The amendments were incorporated in the writ petition on 02.08.2021.

10. On 12.08.2021, the State issued an order appointing Shri Agralal Joshi, Principal Judge, Family Court, Raipur as President of the Chhattisgarh Industrial Court from the date of assuming charge till he attains the age of 65 years. The petitioner filed an application on 13.08.2021 bringing on record the aforesaid order dated 12.08.2021 and praying for a direction to the respondents to maintain status quo with regard to appointment, joining and working on the post of President of the State Industrial Court, Raipur. On 30.09.2021, the petitioner also filed an application, which was registered as I.A.No.06/2021, for impleading Shri Agralal Joshi as respondent No.4. Shri Agralal Joshi also filed an application on 01.10.2021, which was registered as I.A.No.07/2021, for intervening in the present writ petition. By an order dated 24.11.2021, Shri Agralal Joshi was impleaded as respondent No.4 in the writ petition and consequently, I.A. No.07/2021 was disposed of holding that no further orders were called for in that application.

11. It appears that pursuant to the aforesaid order of appointment dated 12.08.2021, respondent No.4 had joined the post on 24.08.2021. This Court, by an order dated 25.08.2021, had stayed the order dated 12.08.2021 appointing respondent No.4 as President and noticing that he had joined the post on 24.08.2021, further issued a direction restraining him from functioning as President, Industrial Court, Chhattisgarh.

12. It is relevant to note, at this juncture, that immediately after issuance of the order dated 12.08.2021 appointing Shri Agralal Joshi as President of the Industrial Court, a writ petition being Writ Petition (C) No.3438 of 2021 came to be filed on 16.08.2021 wherein Notification dated 19.07.2021 amending the Rules of 2015 as well as the order dated 12.08.2021 came to be challenged. In the said petition, Shri Agralal Joshi was arrayed as respondent No.4.

13. The order dated 25.08.2021, which is referred to in the preceding paragraph was passed in WPIL No.19 of 2021 as well as WPC No. 3438 of 2021 and that is how reference to respondent No.4 in WPC No.3438 of 2021 finds place in the said order.

14. Respondents No. 2 and 3 filed reply to the amended petition in WPIL No.19 of 2021. It is pleaded that President of Industrial Court is not a post under the Judicial Service as prescribed under the Rules of 2015, but is a post under Section 9 of the Act of 1960 and therefore, the post of President cannot be equated with the post of District Judge or Judicial Service under Articles 233, 234

and 235 of the Constitution of India and the same cannot be interpreted contrary to the provisions of Article 236 of the Constitution of India. By no stretch of Imagination, President of the Industrial Court can be brought within the ambit of 'District Judge' as well as 'Judicial Service'. The post of President, Industrial Court is a statutory post created under a separate statute and not a post as defined in Chapter VI of Part-VI of the Constitution of India and the Labour Courts and Industrial Courts are not principal Civil Courts of original jurisdiction, but are Tribunals of special jurisdiction constituted under Special Acts. It is pleaded that amendments as made by the State, which is the subject matter of challenge, is well within the jurisdiction and competency of the authority exercising powers under the proviso to Article 309 of the Constitution of India.

15. In the return filed by High Court of Chhattisgarh, respondent No.1 in WPPIL No.19 of 2021, it is pleaded that in view of the decision of the Hon'ble Supreme Court in *State of Maharashtra v. Labour Law Practitioners' Association & others*, reported in (1998) 2 SCC 688, the Rules of 2015 had been framed in exercise of power under Articles 233 and 234 read with Article 309 of the Constitution of India. On the strength of Section 64 and 64-A of the Act of 1960, it is pleaded that the Industrial Court also exercises revisional, appellate as well as inherent powers and that it also has the powers of High Court under the Code of Criminal Procedure, 1973. Members and President of the Industrial Court, prior to the Rules of 2015 coming into force, were subjected to disciplinary jurisdiction of the State Government, which hampered their judicial independence and therefore, it was necessary to relieve them from the control of executive in the light of concept of independence of judiciary. Shri Ravi Shankar Sharma, Principal Secretary, Law and Legislative Affairs Department, Government of Chhattisgarh was recommended for being appointed as President by communication dated 09.08.2019 and as no response was forthcoming for almost five months, reminder was sent on 04.02.2020 to the Principal Secretary, Government of Chhattisgarh to expedite the matter. When a panel of names was sought by the State of Chhattisgarh by communication dated 13.02.2020, the Principal Secretary was informed that the High Court has resolved to reaffirm its earlier resolution keeping in view the statutory scheme under Rule 6(3) of the Rules of 2015, which was framed in consultation with the High Court and State Public Service Commission. It is pleaded that Rule 13 of the Rules of 2015 enables the State Government to make amendment only in consultation with the High Court and the amendments were effected without any consultation with the High Court and therefore, the same are liable to be struck down on that ground alone as well as on the ground of being violative of Articles 233, 234 and 235 of the Constitution of India.

16. Respondent No.4 filed his reply stating that he having been serving as District Judge for long, was rightly appointed as the President of the State Industrial Court and the requirement of consultation as contemplated under Articles 233 and 234 of the Constitution of India is not applicable in the present case, he being a senior Judicial Officer of District Judge rank. It is stated that

recommendation of the High Court is not binding on the Government and it is also not obligatory on the part of the Governor to communicate the reasons for not considering the same. Plea has been taken that the PIL is not maintainable as it is a publicity oriented litigation and the petitioner does not have any locus standi. It being a service matter, the writ petition cannot be entertained as a public interest litigation. Amendment of service rules and appointment of President of the State Industrial Court are prerogative of the State Government. The State Government may appoint any person possessing prescribed eligibility qualifications as per the Act of 1960 and the same cannot be restricted by any rules and the amendment of the rules which are under challenge can in no way restrict the power of the State, which is provided under the Act of 1960. The Industrial Court is not court and the same is out of hierarchy of the ordinary judicial system. Relying on Section 12 of the Act of 1960, it is stated that appointment of the respondent cannot be questioned in any Court.

17. Identical affidavit to the one filed in WPPIL No.19 of 2021 by the State on 01.10.2021 is also filed on 01.10.2021 in WPC No.3438 of 2021. More or less a similar return as filed in WPPIL No.19 of 2021 by the High Court is filed in WPC No.3438 of 2021. Respondent No.4 has taken a similar stand in WPC No.3438 of 2021 as taken in WPPIL No.19 of 2021.

Additionally, paragraphs of the writ petition are also dealt with.

18. Shri Malay Jain, petitioner in person in WPPIL No.19 of 2021 submits that the impugned amendments are violative of Articles 233, 234 and 235 of the Constitution of India and therefore, the appointment of respondent No.4, based on such amendment, is, ex facie, bad in law and as such, the impugned amendments of the Rules of 2015 as well as the order of appointment of respondent No.4 dated 12.08.2021 are liable to be set aside and quashed. It is submitted that the Industrial Courts and Labour Courts have to be understood to be Courts having regard to powers exercised by them. He relies on the decisions of the Hon'ble Supreme Court in Labour Law Practitioners' Association (supra), Gauhati High Court and Another v. Kuladhar Phukan and Another, reported in (2002) 4 SCC 524 as well as in the case of Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corporation and Others, reported in (2007) 3 SCC 607.

19. Shri Goutam Khetrapal, learned counsel for the petitioner in WPC No.3438 of 2021, while endorsing the submissions of Shri Malay Jain, places reliance on the decision of the Hon'ble Supreme Court in Labour Law Practitioners' Association (supra). He also places reliance on the decisions of the Hon'ble Supreme Court in State of Gujarat and Another v. Gujarat Revenue Tribunal Bar Association and Another, reported in (2012) 10 SCC 353 and a Full Bench decision of Gujarat High Court in Shaikh Mohammedbhikhan Hussainbhai v. The Manager, Chandrabhanu Cinema & Others, reported in 1985 SCC Online Guj.148.

20. Dr. N.K. Shukla, learned Senior Counsel appearing for the High Court

assisted by Shri Bhaskar Payashi, in WPPIL No. 19 of 2021, relies on the reply affidavit filed and places reliance in High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat and Others, reported in AIR 2003 SC 1201 and State of Kerala v. B. Renjith Kumar & others, reported in AIR 2009 SC (Supp) 465.

21. Shri Prafull N. Bharat, learned Senior Counsel appearing for the High Court in WPC No.3438 of 2021 places reliance in Gujarat Revenue Tribunal Bar Association and Another (Supra).

22. Both, Dr. N.K. Shukla and Shri Prafull N. Bharat submit that on the short ground that the amendments having not been made in accordance with the process contemplated under the Rules of 2015 and the same having been effected without any consultation with the High Court, the impugned amendments cannot be sustained in law and in that view of the matter, the appointment of respondent No.4 is liable to be interfered with. It is also submitted by them that in the facts and circumstances of the case, respondent State be directed to forthwith appoint Shri Ravi Shankar Sharma, who was recommended to be appointed by the High Court, as President of the Industrial Court.

23. Shri Malay Jain, petitioner in person submits that the plea taken that the PIL is not maintainable is misconceived as the petition raises questions with regard to administration of justice and is not a mere service matter as is sought to be contended.

24. Abiding by the stand taken in the reply affidavit filed by the State, Shri Chandresh Shrivastava, learned Additional Advocate General assiduously urges that the post of President of the Industrial Court is not a post in Judicial Service. After amendment of Rules 6(3), 12 and 13 of the Rules of 2015, proceedings were initiated for making the appointment and accordingly, appointment was made. He submits that impugned amendments do not suffer from any infirmity and arguments to the contrary are liable to be rejected. Placing reliance on Section 12 of the Act of 1960, he submits that the order of the State Government appointing respondent No.4 as President cannot be called in question in any Court and therefore, challenge made in these petitions questioning appointment of respondent No.4 is mis-conceived. He places reliance in Labour Law Practitioners' Association & others(Supra) and S.D. Joshi & others v. High Court of Judicature at Bombay & others, reported in (2011) 1 SCC 252.

25. Mr. Anchal Kumar Matre, learned counsel for respondent No.4 adopts the arguments of Shri Chandresh Shrivastava and in addition places reliance on the judgments in the case of The Bharat Bank Limited v. Employees of the Bharat Bank Limited, reported in AIR 1950 SC 188 and in the case of Mani Subrat Jain & others v. State of Haryana & others, reported in (1977) 1 SCC 486.

26. We have considered the submissions of learned counsel for the parties and have perused the materials on record.

27. At the outset, it will be appropriate to consider the question of maintainability of WPPIL No.19 of 2021.

28. The petitioner being a practising advocate has concern with functioning of the Courts and Tribunals and therefore, when the post of President was lying vacant for more than one and half year, he had approached this Court seeking appropriate direction for appointment of President of the State Industrial Court and while the aforesaid petition was pending, because of turn of events occasioned by appointment of respondent No.4, who was not recommended by the High Court for appointment, the petition had to be amended appropriately. We are in agreement with Mr. Malay Jain that the petition raises important questions regarding administration of justice and separation of power and therefore, it is not correct as sought to be contended by the respondent No.4 that it is purely a service matter. Accordingly, we hold that the PIL is maintainable.

29. In Ref. Re Kerala Education Bill, 1957, reported in AIR 1958 SC 956, while examining Clause 33 of Kerala Education Bill, which laid down that notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, no court shall grant any temporary injunction or make any interim order restraining any proceedings which is being or about to be taken under the Act, the Hon'ble Supreme Court observed that the word 'law', in the context, referred to a law made by the Legislature and could not include the Constitution and accordingly held that the provision did not affect the jurisdiction of the High Court under Article 226 to issue appropriate orders and the impugned clause of the Bill was valid. It was further held that any law which seeks to take away or restricts the jurisdiction of the High Court under Article 226 must be held to be void and that the High Court shall be entitled to exercise the powers under Article 226 free from the fetters imposed. The Hon'ble Supreme Court further observed that before pronouncing a law to be void on the ground of being inconsistent with Article 226, an attempt should be made to give the statute a construction that will not affect the constitutional jurisdiction of the Supreme Court or the High Court according to the well-known principle of construction that if a provision in a statute is capable of two interpretations then that interpretation should be adopted which will make the provision valid rather than the one which will make it invalid.

30. The Hon'ble Supreme Court in Raja Krushna Bose v. Binod Kanungo, reported in AIR 1954 SC 202, in the context of legislation providing that the orders of the Tribunal shall be conclusive and final, observed that the unfettered discretionary powers conferred on the Supreme Court and the High Courts by Articles 136 and 226 of the Constitution of India, respectively, cannot be taken away or whittled down by the legislature.

31. The Hon'ble Supreme Court in Union of India v. A.V. Narasimhalu, reported in (1969) 2 SCC 658, observed that the finality which may be declared by the statute qua certain liability either by express exclusion of the jurisdiction of the

civil court or by clever implication does not affect the jurisdiction of the High Court to issue high prerogative writs.

32. The Hon'ble Supreme Court in *L. Chandra Kumar v. Union of India and Others*, reported in (1997) 3 SCC 261 held that the power of judicial review over legislative action vested in the High Courts under Article 226 and in Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure.

33. Therefore, the contention advanced that this Court cannot entertain the plea raised in view of Section 12 of the Act of 1960 is without any substance. It is well-established that the powers under Article 226 cannot be taken away or curtailed by any legislation.

34. Madhya Pradesh Industrial Relations Act, 1960 was enacted to regulate the relations of the employers and employees in certain matters, to make provisions for settlement of industrial disputes and to provide for certain other matters connected therewith. After the bifurcation of the State of Madhya Pradesh into State of Chhattisgarh and State of Madhya Pradesh, Madhya Pradesh Industrial Relations Act, 1960 was adopted as Chhattisgarh Industrial Relations Act, 1960, which had been referred to in the earlier part of the judgment as the Act of 1960. The Act of 1960 was amended by Chhattisgarh Industrial Relations (Sanshodhan) Adhiniyam, 2002.

35. At the out set, it would be relevant to extract Section 8(1), (2), (3) and Section 9(1), (2), (2-a) and (3) of the Act of 1960, which are as follows:

" 8. Labour Courts. - (1) The State Government shall, by notification, constitute one or more Labour Courts having jurisdiction in such local area or areas as may be specified in such notification.

(2) The Labour Court shall be presided over by a single person to be appointed by the State Government with the approval of the Chief Justice of the High Court.

(3) A person shall not be qualified for appointment as a Presiding Officer of a Labour Court unless -

(a) he has held any judicial office in India for not less than three years; or

(b) he has held any office in the Labour Department not below the rank of a Labour Officer for a period of not less than five years and is a law graduate; or

(c) he has practised as an advocate or a pleader in Madhya Pradesh for a total period of not less than five years; or

(d) he is or has been a Presiding Officer of a Labour Court constituted under any law.

xxxx xxxx xxxx

9. Industrial Court .- (1) There shall be an Industrial Court for the State

consisting of the President and one or more members as the State Government may, from time to time, think fit to appoint.

(2) A person shall not be qualified for appointment as President of the Industrial Court, unless -

(a) he is or has been a Judge of a High Court; or

(b) he is eligible for being appointed a Judge of a High Court,

or

(c) he has worked as President or member of the Board of Revenue for a period of not less than three years; or

(d) he has worked as a Commissioner of Labour for a period of not less than three years; or

(e) he has worked as a member of the Industrial Court for a period of not less than five years.

(2-a) A person shall not be qualified for appointment as a member of the Industrial Court, unless -

(a) he has been a Judge of a High Court; or

(b) he is eligible for being appointed a Judge of a High Court;

or

(c) he has been a District Judge for a period of not less than three years; or

(d) he has acted as a Presiding Officer of a Labour Court constituted under any law for the time being in force for not less than seven years; or

(e) he has in the opinion of the State Government adequate knowledge in the field of industrial relations."

36. Chapter VI of Part 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 Judges. Articles 233 and 234 read as follows:

"233 : Appointment of district judges -

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

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 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."

37. Article 235 provides that the control over district courts and courts subordinate thereto 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.

38. Article 236 (a) defines the expression "District Judge" as including Judge of a City Civil Court, 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.

39. 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.

40. In the case of Chandra Mohan v. State of U.P., reported in AIR 1966 SC 1987, the Hon'ble Supreme Court held that the Governor could not appoint as District Judges persons from services other than the judicial service. A person who is in the Police, Excise, Revenue or such other service cannot be appointed as District Judge. Dealing with the definition of "Judicial Service" in Article 236, the Hon'ble Supreme Court held 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 contradistinction to executive service where some executive officers may also be performing judicial or quasi-judicial functions, the Hon'ble Supreme Court emphasized the constitutional scheme for independence of the judiciary. The Hon'ble Supreme Court further held that if the Government's stand is accepted, then it would cut across the well-knit scheme of the Constitution providing for independence of the judiciary. Accordingly, the Hon'ble Supreme Court defined judicial service in exclusive terms as consisting only of judicial officers discharging entirely judicial duties. In view of the above decision, what is to be borne in mind is that paramount importance is to be attached to the enforcement of the constitutional scheme providing for independence of the judiciary.

41. In The Bharat Bank Limited (supra), it was held that Industrial Tribunal has all the trappings of a Court and performs functions which cannot but be regarded as judicial.

42. In Shaikh Mohammedbhikhan Hussainbhai (supra), a Full Bench of the High

Court of Gujarat, on a question referred as to whether the Labour Courts as well as Industrial Courts under the Bombay Industrial Relations Act, 1946 as well as Industrial Disputes Act, 1947 are courts, answered in the affirmative and held that they are courts and are subordinate to the High Court in terms of Section 10 of Contempt of Courts Act, 1971.

43. In Labour Law Practitioners' Association & others (supra), the Hon'ble Supreme Court held that there is not much difficulty in holding that the Labour Court performs judicial functions and the same is a Court. The Hon'ble Supreme Court, at paragraphs 10 and 20, observed as follows:

"10. 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 set of courts concerned 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 an 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.

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 235 of the Constitution."

44. In *B. Rejinth Kumar & Others (supra)*, the Hon'ble Supreme Court followed the decision in *Labour Law Practitioners' Association (supra)* and in *Chandra Mohan (supra)* and it was held by the Hon'ble Supreme Court that mere fact that the Constitution refers to appointment of District Judges alone cannot, by itself, be a good ground for treating the presiding officer of the Industrial Tribunal and the District Judges differently. It is in that background, the Hon'ble Supreme Court held that action of the State Government in treating the officers presiding over the Industrial Tribunal differently from the District Judges in the matter of pay-scale is violative of Article 14 of the Constitution.

45. In *Associated Indem Mechanical (P) Ltd. (supra)*, the Hon'ble Supreme Court held that the inclusive definition of District Judge under Article 236(A) of the Constitution has been very widely construed to include hierarchy of specialised civil courts viz. Labour Courts and Industrial Courts which are not expressly included in the definition.

46. In *Kumar Padma Prasad v. Union of India & Others*, reported in (1992) 2 SCC 428, the Hon'ble Supreme Court at paragraphs 22 and 25 observed as follows:

"22. It is in the above context that we have to interpret the meaning of expression "judicial office" under Article 217(2)(a) of the Constitution of India. The High Court Judges are appointed from two source, members of the Bar and from amongst the persons who have held "judicial office" for not less than ten years. Even a subordinate judicial officer manning a court inferior to the District Judge can be appointed as a Judge of a High Court. The expression "judicial office" in generic sense may include wide variety of offices which are connected with the administration of justice in one way or the other. Under the Criminal Procedure Code, 1973 powers of Judicial Magistrate can be conferred on any person who holds or has held any office under the Government. Officers holding various posts under the executive are often vested with the Magisterial-powers to meet a particular situation. Did the framers of the Constitution have this type of 'offices' in mind when they provided a source of appointment to the high office of a Judge of 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 office" under Article 217(2)(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 judiciary.

25. It is thus, clear that the expression "judicial office" under Article 217(2)(a) of the Constitution has to be interpreted in consonance with the scheme of Chapter V and VI of Part VI of the Constitution. We, therefore, hold that expression "judicial office" under Article 217(2)(a) of the Constitution means a "judicial office" which belongs to the judicial service as defined under Article 236(b) of the Constitution of India. In order to qualify for appointment as a Judge of a High Court under Article 217(2)(a) a person must hold a "judicial office" which must be a part of the judicial service of the State."

47. A perusal of the above judgments would go to show that the Hon'ble Supreme Court had held that the term 'District Judge' should not be confined only to the Judge of Principal Civil Court in the hierarchy of general civil courts but would now also include hierarchy of specialised civil courts, such as a hierarchy of Labour Courts and Industrial Courts and that a wide interpretation is to be given the expression 'District Judge'. The expression 'Judicial Service' means 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 Civil Judge. It was also held that persons presiding over Industrial and Labour Courts would constitute a judicial service. In S.D. Joshi (supra), the Hon'ble Supreme Court, while following the decisions in Labour Law Practitioners' Association and Kumar Padma Prasad (supra), with regard to meaning of the term Judicial office in the context of Article 217 of the Constitution of India, held that Family Court Judges recruited under the provisions of Maharashtra Family Court (Recruitment and Service Conditions) Rules, 1990 do not come within the fold of "judicial service" as such persons are neither eligible to fill up the post of District Judge nor are holding civil judicial post inferior to the post of District Judge. The judgment in S.D. Joshi (surpa) would not be applicable in respect of Labour Courts and Industrial Courts, as persons presiding over Industrial and Labour Courts are held to constitute a judicial service.

48. Subsequent to the judgment passed in Labour Law Practitioners' Association & others (supra), in exercise of powers conferred by Articles 233 and 234 read with proviso to Article 309 of the Constitution of India and in the light of the aforesaid judgment, the Government of Chhattisgarh, in consultation with the High Court and the State Public Service Commission, made the Rules of 2015 to regulate the recruitment and service conditions of the Member of the Labour Judicial Service, in supersession of the existing rules in force.

49. Rules of 2015 was published in the Gazette on 08.12.2015.

50. Rule 2(1)(a) defines "Judicial Service" to mean the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short, HJS Rules) and the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short, LJS Rules). Constitution of service at Rule 3 reads as follows:

"3. Constitution of service.- (1) The Labour Judicial Service shall consist of following persons:-

(1) President, Industrial Court:

(a) Member of service holding post in substantive or officiating capacity the post of President of Industrial Court at the time of commencement of these Rules;

(b) Member of service appointed to the post of President in accordance with sub-rule (3) of Rule 6.

(2) Member Judge, Industrial Court:

(a) Member of service holding post in substantive or officiating capacity, the post of Member Judge of the Industrial Court at the time of commencement of these Rules;

(b) Person appointed or promoted to the service in accordance with provisions of these Rules.

(3) Labour Judge, Labour Court :

(a) Member of service holding post in substantive or officiating capacity, the post of Labour Judge of the Labour Court at the time of commencement of these Rules;

(b) Person appointed to the post in accordance with the provisions of these Rules."

51. Perusal of Section 3 would demonstrate that service that is constituted is called Labour Judicial Service.

52. Strength of service in terms of Rule 4 is to be determined by the Government from time to time in consultation with the High Court. The post of Member Judge in terms of Rule 5 shall be the cadre post of Higher Judicial Services and the post of Labour Judge shall be the cadre post of Lower Judicial Services.

53. Having regard to the decisions in Labour Law Practitioners'

Association & Others, B. Rejinth Kumar & Others, Associate Indem Mechanical (P)Ltd., (supra), as also the Rules of 2015, the contention of Mr. Shrivastava that the President of the Industrial Court cannot be brought within the ambit of 'District Judge' as well as judicial service is without any merit.

54. At this juncture, it will be appropriate to quote Rule 6(3), which reads as under:

"6(3) Method of Appointment of President. - President shall be appointed by the Government on the recommendation of the High Court in accordance with Clause (a), (b), or (c) of sub-section (2) of section 9 of Chhattisgarh Industrial Relations Act, 1960."

55. Rule 6(3) of the Rules of 2015 provides that President is to be appointed on the basis of recommendation made by the High Court in accordance with clause (a), (b), or (c) of sub-section (2) of section 9 of Act of 1960. In Gujarat Revenue Tribunal Bar Association, (supra), it was observed that the object of consultation is to render the consultation meaningful to serve the intended purpose and if the power can be exercised only after consultation, consultation must be conscious, effective, meaningful and purposeful. Rule 6(3) of the Rules of 2015 does not provide for any consultation between the Government and the High Court before any recommendation is made and therefore, the decision in Gujarat Revenue Tribunal Bar Association, (supra) has no application qua Rule 6(3).

56. Having regard to the controversy that has arisen in these cases, it will also be relevant to reproduce Rules 12, 13, 14 and 15 for better appreciation. They are as follows:

"12. Interpretation - If any question arises as to the interpretation of these rules, the decision of the High Court shall be final.

13. Amendment. - The State Government, in consultation with the High Court, may make further amendment in these rules, as may be deemed necessary.

14. Power to Relax.- Where the High Court is satisfied that the operation of any of these rules is causing undue hardship in any particular case or class, it may, for reasons to be recorded in writing, dispense with or relax the particular rule to such extent and subject to such exceptions and conditions as may be deemed necessary:

Provided that, as and when, any such relaxation is granted by the High Court, the Governor shall be informed of the same.

15. Repeal and Saving. - All the rules corresponding to these rules, orders, resolutions, if any, in force immediately before the commencement of these rules, are hereby repealed or rescinded, as the case may be, in respect of the matters covered by these rules:

Provided that any order made or any action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules:

Provided further that the existing Labour Judges and Member Judge of Industrial Court shall be governed by the provisions of the existing rules with respect to the recruitment, seniority, promotion, pay scale, disciplinary matters and superannuation:

Provided also that the existing Labour Judges shall be considered for their

promotion to the vacancy of Member Judge or Industrial Court arising upon death, retirement, resignation of existing Member Judge of the Industrial Court, by the High Court.”

57. By Notification dated 31.12.2019, the Rules of 2015 were amended by way of substitution of existing Rule 6(1) relating to 'Method of Appointment of Labour Judge'. The aforesaid Notification dated 31.12.2019 recites that the same was issued in exercise of powers conferred by Articles 233 and 234 read with proviso to Article 309 of the Constitution of India and in the light of the dictum of the Hon'ble Supreme Court in the matter of Labour Law Practitioners' Association & others (Supra), in consultation with the High Court and the State Public Service Commission. The substituted Rule 6(1) reads as follows :

“6(1) Method of Appointment of Labour Judge.- All appointments to the post of Labour Judge after the commencement of these rules, shall be made by transfer of a member of Higher Judicial Service, who fulfills the criteria mentioned in clause (a) of sub-section (3) of Section 8 of the Chhattisgarh Industrial Relations Act, 1960(No.27 of 1960) and sub-section (3) of Section 7 of the Industrial Disputes Act, 1947 (No.14 of 1947).”

58. By Notification dated 12.03.2021, another amendment in Rules of 2015 was effected by way of substituting Rule 6(2)(b). This notification also employed identical language as contained in the Notification dated 31.12.2019. The substituted Rule 6(2)(b) reads as follows:

“For clause (b) of sub-rule (2) of rule 6, the following shall be substituted, namely:-

“(b) by promotion from existing cadre of Labour Judge of Labour Court on the basis of merit-cum seniority, by the High Court.”

59. The amendment which is subject matter of challenge in these two petitions as notified by Notification dated 19.07.2021, reads as follows:

“Atal Nagar, the 19th July 2021

NOTIFICATION

No. F1-7/2015/16:- In exercise of the powers conferred by Articles 233 and 234 read with proviso to Article 309 of the Constitution of India, the Governor of Chhattisgarh, hereby, makes the following further amendment in the Chhattisgarh Labour Judicial Services (Recruitment and Conditions of Service) Rules, 2015 namely:-

(1) For sub-rule (3) of rule 6, the following shall be substituted, namely :-

(3) Method of Appointment of President.- President shall be appointed by the State Government in accordance with clause (a), (b) or (c) of sub-section (2) of Section 9 of Chhattisgarh Industrial Relations Act, 1960 (No.27 of 1960).

(2) For rule 12, the following shall be substituted, namely:-

12. Interpretation.- If any question arises as to the interpretation of these rules, the decision of the State Government shall be final.

(3) Rule 13 shall be omitted.”

60. A perusal of the above would go to show that there was no consultation with the High Court and the State Public Service Commission while making the aforesaid amendments, though Rule 13, prior to amendment, mandated the State Government to have consultation with the High Court before any amendment is made to the Rules of 2015. A perusal of the above substituted Rule 6(3) would go to show that the power of appointment has been vested with the State Government and recommendation of the High Court as required earlier was omitted. Similarly, by way of substitution of Rule 12, power of interpretation was taken away from the High Court. The unamended Rule 13 which provided that the State Government may make amendment to the Rules as may be deemed necessary in consultation with the High Court was also deleted. When the existing Rule provided for consultation with the High Court for making an amendment and when the Rules of 2015 has been amended without any such consultation and when the Notification dated 19.07.2021 purports to be issued in exercise of powers under Articles 233 and 234 of the Constitution of India, we are of the opinion that such amendments cannot receive judicial imprimatur and have to be adjudged null and void. Accordingly, they are adjudged illegal, unconstitutional and null and void.

61. The issue raised in Gujarat Kishan Mazdoor Panchayat (supra), was as to whether under the extant rules, in the case of appointment of President of Industrial Court by nomination, he has to be appointed as Member at the first instance. Such a question does not arise for consideration in these petitions and therefore, the decision cited by Dr.Shukla in our perception has no relevance.

62. In Mani Subrat Jain & others (supra), the facts were to the effect that the High Court had obtained approval of the State Government before inviting applications from eligible members of the Bar to fill up the vacancies in the quota of direct recruits from the Bar on previous occasions. However, without obtaining approval of the Government, the High Court invited applications from the eligible members of the Bar to fill up vacancies in the Haryana Superior Judicial Service. Subsequent thereto, the High Court called for interview and thereafter recommended names of the appellants to the Government for appointment as District & Sessions Judges. The said recommendations were rejected and thereafter, the recommended candidates challenged the order of rejection and asked for a writ of mandamus. In the context of initial appointment of District Judges under Article 233, it was held that the same was within the exclusive jurisdiction of the Government after consultation with the High Court. It was in that context held that the Governor is not bound to act on the advice of the High Court. Evidently, there was no consultation between the Government and the High Court. Present is not a case where there is any requirement under the unamended Rules of 2015 for any consultation unlike the requirement of

consultation by the Government of the State with the High Court for District Judges, and therefore, the said judgment is not applicable in the facts and circumstances of this case.

63. In *Kuladhar Phukan and Another (supra)*, the Hon'ble Supreme Court observed that once a person has entered judicial service, he cannot depart therefrom save by the leave of the High Court. Even in such matter in which the Governor may take a decision, the decision cannot be taken save by consultation with the High Court. The consultation is mandatory and the opinion of the High Court is binding on the State Government; else the control, as contemplated by Article 235, would be rendered negated. Such control and consultation are not a matter of mere formality; they are the constitutional power and privilege of the High Court, also its obligation, and cannot be diluted by sheer inaction or failing to act when the High Court must act. The Governor cannot proceed to act in any matter relating to subordinate judiciary and bypass the process of consultation merely because the High Court, though 'informed', did not act or respond. The consultation means meaningful, effective and conscious consultation. It was held that in a matter affecting the service career of a judicial officer, ordinarily, the initiative for an action must come from the High Court and even otherwise in the absence of recommendation of the High Court an action taken by the Governor would be illegal and devoid of constitutional validity. Such error, if committed, would be incurable and even an ex-post facto approval would not cure the invalidity.

64. In *The State of Orissa Vs. Sudhansu Sekhar Misra & Others*, reported in AIR 1968 SC 647, at paragraph 14, the Hon'ble Supreme Court observed as follows:

".....If only there is mutual understanding and appreciation of the difficulties of the one by the other, there will be harmony. There is no reason why there should be any conflict between the High Court and the government. Except for very good reasons we think the High Court should always be willing to spare for an agreed period the services of any of the officers under its control for filling up such executive posts as may require the services of judicial officers. The government, in its turn, should appreciate the anxiety of the High Court that judicial officers should not be allowed to acquire vested interest in the secretariat. Both the High Court and the government should not forget the fact that powers are conferred on them for the good of the public and they should act in such a way as to advance public interest. If they act with that purpose in view as they should, then there is no room for conflict and no question of one dominating the other arises. Each of the organs of the State has a special role of its own. But our Constitution expects all of them to work in harmony in a spirit of service."

65. In view of the above discussions, the writ petitions are allowed. The amendments effected in Rule 6(3), 12 and 13 of the Rules of 2015 vide Notification dated 19.07.2021 are declared illegal, null and void and unconstitutional. The order dated 12.08.2021 appointing respondent No.4 as the

President of the Chhattisgarh Industrial Court is set aside and quashed. The State respondents are directed to issue order of appointment in favour of Shri Ravi Shankar Sharma, who was recommended by the High Court, as the President of the Industrial Court within a period of three weeks from today.

66. No cost.