SUPREME COURT OF INDIA

High Court of Gujarat and Anr.

Versus

Gujarat Kishan Mazdoor Panchayat and Ors.

10.3.2003

(V.N. Khare, C.J.I. and S.B. Sinha and A.R. Lakshmanan, JJ.)

Civil Appeal Nos. 8574-8577 of 2001.

JUDGMENT

A.R. Lakshmanan, J. - By these four appeals, we are called upon to consider the legality, correctness and validity of the impugned Notification dated 7.12.2000 appointing Shri N.A. Acharya as the President of the Industrial Court at Ahmedabad. A Notification dated 17.12.2000, in this regard, was issued by the order of Governor by the Labour and Employment Department of the Government of Gujarat in Gujarat Government Gazette whereby Shri N.A. Acharya had been appointed as the President of the Industrial Court which was under challenge before the High Court of Gujarat in Special Civil Application Nos. 12665/2000, 79/2001, 80/2001 and 93/20001 filed by Gujarat Kishan Mazdoor Panchayat, Gujarat Industrial Court Judges' Association, Labour Laws Practitioners' Association and Surat Textile Labour Union. As per the directions of the Chief Justice, the applications were placed before the Full Bench of the Gujarat High Court. The Full Bench, by its judgment dated 4.5.2001, allowed the applications and quashed the said Notification dated 7.12.2000. The Full Bench further directed the respondents to proceed to make the appointment afresh on the post of the President of the Industrial Court, Gujarat in the light of what has been held in the said order and in accordance with law. Aggrieved by the order passed by the Full Bench of the High Court, the High Court of Gujarat through its Registrar preferred Special Leave Petition (c) Nos. 11795-11798/2001 on the grounds raised in the special leave petitions. By order dated 14.12.2001, this Court grated leave and made the interim order absolute.

2. All these appeals involve common question of law based on same set of facts, therefore, we propose to decide these appeals by a common judgment. A Special Civil Application was filed by the Gujarat Kishan Mazdoor Panchayat, a Registered Trade Union to direct the respondents therein not to make any appointments on the post of President of the Industrial Court save and except by appointing any Member of the Industrial Court as President and other allied reliefs. A prayer to issue a writ of *quo warranto* was also asked for to direct Shri N.A. Acharya-respondent No. 3 in the application to state the basis of his right to be appointed as President of the Industrial Court and to set aside and quash the appointment order dated 7.12.2000 purporting to appoint Shri N.A. Acharya as President of the Industrial Court.

3. The brief facts leading to the filing of the applications are briefly stated as under :

The Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the B.I.R. Act") governs the relationship between the employers and workmen in several industries operating in Gujarat and more particularly, the Industry of Textile, the Industry of Power in the late Bombay State area of Gujarat, the Surat Industry, the Banking Industry run by Banking Companies having no branches outside the State of Gujarat. Sections 9 and 10 of the B.I.R. Act thereof provide for setting up of Labour Courts and Industrial Court. Section 10 of the B.I.R. Act, which pertains to the setting up of a Court of Industrial Arbitration to be known as Industrial Court, is provided to consist of three or more Members, one of whom shall be its President. Section 10(4) of the B.I.R. Act provides that every Member of the Industrial Court shall be a person who is or has been a Judge of High Court or is eligible of being appointed a Judge of such Court provided, *inter alia*, that a person who has been a Judge not lower in rank than that of Assistant Judge, for not less than three years; or a person who has been the Presiding Officer of a Labour Court for not less than five years shall also be eligible for appointment as a Member of the Industrial Court functioning in Gujarat State and so far as the Labour Courts are concerned, there are 38 Judges functioning in Gujarat, four of them are Judges who have completed more than ten years' service as Labour Judges and several more Labour Judges are those who have completed more than five years' service as Labour Judges and are, therefore, eligible for being appointed as Members of the Industrial Court. When the post of President of the Industrial Court was vacant since the retirement of Shri D.V. Joshi, Shri Y.P. Bhatt, the senior-most Member of the Industrial Court expressed his unwillingness to be appointed as President of the Industrial Court, the post was, therefore, required to be filled up by a regular appointment. According to the respondents, a person for being appointed as President should be a Member of the Industrial Court and no one except a Member can be appointed as a President of the Industrial Court. It was, therefore, submitted before the High Court that any one from the Members of the Industrial Court can be considered to be eligible for being appointed as President. It was further submitted that in view of the scheme of Section 10(2) of the B.I.R. Act, no one who is not a Member of the Industrial Court can be directly appointed as President of the Industrial Court. It was further argued before the High Court that for Members of the Industrial Court, there is no other avenue of promotion except one by way of appointment as President of the Industrial Court and now, if the post of President is to be filled up by bringing someone from Judicial Service, it will cause a great frustration among Members of the Industrial Court as their hopes of promotion at an appropriate time will be dashed to the ground. Opposing the applications, it was submitted by the respondents, appellants herein, that no illegality was committed by recommending the name of Shri N.A. Acharya for appointment as the President of the Industrial Court and that under Rules 2 and 3 of the Draft Recruitment Rules, it has become necessary for the High Court, on its administrative side to recommend the appointment of an appropriate person by nomination on the said post under Rule 2(b) and that Shri N.A. Acharya, whose name was recommended, is fulfilling the criteria prescribed by the Government as per the old Rules as well. It was submitted that considering the totality of the facts, the High Court of Gujarat had not only acted within its rights but the same had been done in due discharge of the Constitutional duty. The petitioners, respondents herein, filed their rejoinder to the reply affidavit on behalf of the High Court of Gujarat reiterating the contentions raised in the applications. In the rejoinder affidavit, it was submitted that neither the appointment order nor the reply affidavit filed on behalf of the High Court shows that the appointment was made by the Governor of the State and that there is nothing to show that the Full Court was consulted by the appointing authority before making the appointment. It was further stated that assuming that the appointment by nomination can be made on the post of a President of the Industrial Court either under the old Rules pertaining to the post of President or under the new Rules which are at the draft stage only, the candidate concerned should have atleast for ten years either held a judicial post in India or should have been an advocate for High Court or should have

expert knowledge of Industrial matters. According to the petitioners, respondents herein, the appointee, under the impugned appointment, had not held a judicial post for ten years and in fact he was holding the post of Joint District Judge only and he had not even completed three years on the post of Additional District Judge to which post he was directly recruited. It was, therefore, submitted that the appointment had been made without coming to the conclusion that the appointee was fulfilling the criteria for appointment as required by the Rules. An affidavit in reply was filed before the High Court by the Law Officer of the High Court of Gujarat giving all details as to how the matter was considered by the Standing Committee of the High Court and as to how the decision was taken to appoint Shri N.A. Acharya as the President of the Industrial Court.

4. The Full Bench of the High Court, by its judgment, held that a reading of Section 10 of the B.I.R. Act would show that it provides for the constitution of the Industrial Court with three or more Members, one of whom as its President and it also provides the eligibility for appointment as Member of the Industrial Court. While the eligibility has been prescribed under Section 10(3) and (4) of the B.I.R. Act for being a Member of the Industrial Court, for the purpose of President of the Industrial Court all that has been said in sub-section (2) of Section 10 of the B.I.R. Act is that one of the Members shall be its President. Therefore, being a Member of the Industrial Court is a pre-requisite and condition precedent for being the President of the Industrial Court and no person can be appointed as the President of the Industrial Court unless he is a Member of the Industrial Court. The Full Bench further held that the absence of any Rules with regard to the appointment on the post of President of the Industrial Court except the existing Draft Rules framed by the High Court and the Rules as had been framed under proviso to Article 309 of the Constitution vide Gujarat Government Gazette dated 25.2.1965 being only for recruitment for the post of Member, Industrial Court and the Rules for appointment of President, Industrial Court as contained in the Hand Book (1992) that too not in consultation with the High Court the only relevant provision which can be traced is Section 10 of the B.I.R. Act and according to Section 10(2) of the B.I.R. Act, one of the Members of the Industrial Court has to be the President. The Full Bench further held that there was no lawful justification for excluding the candidates, who were holding the post of Member, Industrial Court and whereas they have been kept out of consideration on the basis of the proposed Draft Rules, the consideration for making the appointment to the post in question stands vitiated. Elaborating further, the Full Bench held :

"....In the first instance, there is no question of appointment by nomination on the basis of the proposed Draft Rules by holding that existing Members were not eligible because they have not completed five years as Member. In a given case when the only mode of appointment is promotion and it is found that no one is eligible for appointment by promotion, if may be open to make appointment by direct recruitment, which would mean inviting application from all eligible candidates and then making the selection. No such procedure has been followed and the consideration was kept confined to the Members of the Judicial Services, who had conveyed their willingness for appointment as President of the Industrial Court. We find that the procedure, which has been adopted and which has led to the impugned appointment, is not in conformity either with the general right of equality under Article 14 of the Constitution of India and with the right of equality in matters relating to employment as contemplated by Article 16 of the Constitution of India and, therefore, this appointment cannot be sustained in the eye of law.

It is also not in dispute that the respondent No. 3 had never been appointed as Member of the Industrial Court and in terms of Section 10(2) of the Bombay Industrial Relations Act, without being a Member of the Industrial Court, there is no question of his appointment as the President of the Industrial Court either by promotion or by direct recruitment. Being a Member of the Industrial

Court is a sine qua non for consideration for the post of President of the Industrial Court and no person who is not a Member of Industrial court could be considered for appointment as such without committing violence to the recruitment of Section 10(2).

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.....In the instant case, we find that the mode of direct recruitment is not contemplated and even if any direct recruitment is held for the post of President of Industrial Court when no Member is eligible, such direct recruitment is required to be held after affording equal opportunity to all those, who are eligible. The proposed Draft Rule 2(a) seeks to render the Members of the Industrial Court to be ineligible by putting the condition of the completion of 5 years service on the post of Member. When the Act has not put any such fetter and the Act contemplates that one of the Members of the Industrial Court shall be the President and it is not stated that he must complete certain years of service as Member, through executive instructions such a requirement could not be pressed as to defeat the right of consideration of the Members, through executive instructions such a requirement could not be pressed as to defeat the right of consideration of the Members of the Industrial Court for consideration of the post of the President. Under Section 10(2) every Member of the Industrial Court is eligible to be considered for the post of President notwithstanding the number of years of service put in by him as a Member.

In our considered opinion, Section 10 of the Bombay Industrial Relations Act, 1946 is the only relevant provision to be taken note of for the purpose of appointment of the President and the only mode of appointment is by way of promotion from amongst the Members of the Industrial Court and in this regard, if any Rules are to be framed in exercise of the powers under Chapter VI of Part VI of the Constitution of India, the same cannot be inconsistent with the requirements of the Bombay Industrial Relations Act, 1946....."

5. The High Court, for the reasons stated above, quashed the Notification which is impugned in the applications and further directed the respondents therein to proceed to make the appointment afresh on the post of the President of the Industrial Court, Gujarat in the light of what has been held in the said order and in accordance with law.

6. Aggrieved by the impugned judgment, the above four appeals, by way of special leave petitions, were preferred by the High Court of Gujarat. We heard Shri Mahendra Anand, learned senior counsel, for the appellants and Shri R. Venkatarmani, learned senior counsel, for the contesting respondents.

7. Learned senior counsel appearing for the appellants submitted that the provisions of Section 10 of the B.I.R. Act clearly spells out that apart from the mode of selecting the President, by promotion from amongst the Members, the President can also directly be appointed from the sitting or retired High Court Judges. He further submitted that the High Court failed to appreciate that Section 10(2) of the B.I.R. Act does not envisage the mode of appointment and that the High Court failed to appreciate that the words of Section 10(2) of the B.I.R. Act are not that the President shall be qppointed from one of the current Members of the Industrial Court and, therefore, the High Court has erroneously read these words in Sectgion 10(2) of the B.I.R. Act. He further submitted that the High Court failed to appreciate that Section 10(4) of the B.I.R. Act provides for eligibility criteria and Shri N.A. Acharya fulfills the eligibility criteria. He further submitted that the High Court

proceeded on an erroneous footing that the B.I.R. Act does not contemplate the appointment by direct recruitment and only the Members of the Industrial Court from the zone of consideration for appointment to the post of President, Industrial Court.

8. Per contra, Shri R. Venkataramani, learned senior counsel, appearing for the respondents, apart from reiterating the contentions in the applications, submitted that Section 1092) of the B.I.R. Act clearly indicates that only Member of Industrial Court is eligible for becoming the President of the Industrial Court and that becoming Member of the Industrial Court is *sine qua non* for being considered for the post of President of the Industrial Court. According to him, Shri N.A. Acharya does not fulfil any of the three eligibility conditions mentioned in Section 10(4) of the N.I.R. Act and that mandatory consultation with the Gujarat Public Service Commission was not followed. He further urged that the plain and natural meaning of Section 10(2) of the B.I.R. Act is capable of only one construction and that is only Members of the Industrial Court could become its President. He further submitted that unless one is or has been the Judge of the High Court, the post of the President of the Industrial Court could be filled up only and only by way of promotion, because there exist only one post for the whole State of Gujarat. He further contended that the impugned appointment was void and stillborn since the same was not made by His Excellency, the Governor of Gujarat, but the same was purported to have been made in the name of the Governor of Gujarat. It was further contended that the appointment on a judicial post can be made only by His Excellency, the Governor, under Article 234 of the Constitution of India and the State Government cannot issue Notification appointing Judicial Officer under the business rules by and in the name of His Excellency, the Governor of the State. He further submitted that even assuming the appointment to the post of President can be made through nomination or direct recruitment, all the Members of the Industrial Court were qualified for being appointed as President of the Industrial Court by nomination in accordance with the Draft Rules that were relied upon by the Government supporting the appointment of Shri N.A. Acharya and that the Members of the Industrial Court were eligible for appointment by nomination according to the Draft Rules also and that Rule 2(i) of the Draft Rules provides *inter alia*, that appointment to the post of President shall be made either (a) by promotion from amongst the Members of the Industrial Court on the basis of seniority-cum-merit subject to the provision that for being considered as eligible for such promotion, the Member concerned should have completed five years' service as a Member of the Industrial court; (b) by nomination. Draft Rule, 3 *inter alia*, provides that to be eligible for appointment by nomination a candidate must have atleast ten years either held a judicial post in India or been a Advocate of High Curt or have expert knowledge of industrial matters. It was further contended that the appointment of Shri N.A. Acharya straightaway by nomination without taking into consideration the cases of nomination of existing Members of the Industrial Court who had completed ten years' functioning as a Judicial Officer has been rightly held by the High Court as violative of Articles 14 and 16 of the Constitution of India and that, therefore, no public appointment can be made in disregard of consideration of the cases of those who were qualified for the post.

9. Arguing further, learned senior counsel for the respondents, submitted that the appointment of a Junior Judicial Officer as President of the Industrial Court without considering the cases of existing Members of the Industrial Court who are senior on the basis of longer experience on equivalent post will also not be conducive to the judicial service which, according to him, will result in a Junior Judicial Officer presiding over Industrial Court who have Members far senior to the President and that Junior Judicial Officer will thus exercise administrative powers of control over undisputedly Senior Judicial Officers. It was further submitted that assuming that a District Judge can be directly appointed to the post of President, Industrial Court carrying a higher pay scale than that of the District Judge in Gujarat, and assuming that even if somebody is already a Member of the judiciary,

he can be nominated or directly appointed and that he did not pass through the channel of promotion or selection meant for those who are already in service in view of Article 234 of the Constitution, even in that case, there was no justification for the High Court on the administrative side to pick up Shri N.A. Acharya who was 9th in the list of seniority at the relevant time. He submitted that the appointment of Shri N.A. Acharya was also vitiated on account of the fact that if nomination or direct recruitment was a permissible course in the matter of appointment of the President of the Industrial Court, then a large number of Labour Court Judges, Advocates apart from the Members of the Industrial Court who had completed ten years of practice or seven years of judicial work were also qualified for that appointment and, therefore, they could not be excluded from consideration. Concluding his arguments, he submitted that the High Court's conclusion that Section 10(2) of the B.I.R. Act does not provide for nomination or direct recruitment and some one has to be appointed from amongst the Members of the Industrial Court only is correct and the there is no other provision in the entire B.I.R. Act to provide for the mode of appointment of the President of the Industrial Court. In that view, it is quite reasonable to read Section 10(2) of the B.I.R. Act as providing that President can be appointed only from amongst the Members.

10. We have given our thoughtful consideration on the rival submissions made by the respective counsel appearing on either side. Before proceeding to the consider the rival submissions, it is useful to reproduce the relevant provisions governing the controversy which run as follows :

"Section 10. Industrial Court. - (1) The State Government shall constitute a Court of Industrial Arbitration.

(2) The Industrial Court shall consist of three or more members, one of whom shall be its President.

(3) Every member of the Industrial Court shall be a person who is not connected with the industrial dispute referred to such court or with any industry directly affected by such dispute :

Provided that no person shall be deemed to be connected with the industrial dispute or with the industry by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by such industrial dispute, but in such a case, he shall disclose to the State Government the nature and extent of the shares held by him in such company.

(4) Every members of the Industrial Court shall be a person who is or has been a judge of High Court or is eligible for being appointed a judge of such Court :

Provided that -

(a) a person who has been a Judge not lower in rank than that of Assistant Judge, for not less than three years; or

(b) a person who has been the presiding officer of a Labour Court constituted under any law for the time being in force, for not less than five years; or

(c) a person who 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 Assistant Commissioner of Labour under the State Government, for not less that ten years,

shall also be eligible for appointment as a member of the Industrial Court :

Provided further that, one member of the Industrial Court may be a person not so eligible, if in the opinion of the State Government he possesses expert knowledge of industrial matters.

DRAFT RULES

1. These rules may be called the Recruitment Rules for the Post of President, Industrial Court, Gujarat, 1998.

2. The appointment of President, Industrial Court, Gujarat, shall be made by the Governor of Gujarat, in consultation with the Public Service Commission and the High Court, either -

(a) by promotion from amongst the Members, Industrial Court on the basis of seniority-cum-merits provided that a person shall not be eligible to be promoted to the post of President, Industrial Court, unless he has completed five years' service on the post of Member, Industrial Court, or

(b) by nomination.

3. To be eligible for appointment by nomination, mentioned in rule 2(b), a candidate must not be connected with any industry as defined in the Bombay Industrial Relations Act, 1946 and must -

(i) not be less than 45 years of age, and

(ii) have for at least 10 years either held a judicial post in India or been an Advocate for High Court or have expert knowledge of Industrial matters.

4. A person appointed by direct recruitment shall normally be on probation for a period of one year and shall have to pass an Examination in Hindi and/or Gujarati, according to the Rules prescribed by the Government.

Existing Rules

The Recruitment Rules for the post of President, Industrial Court, is as under :

Unless the post is filled up by appointment of a serving or retired Judge of High Court, appointment shall be made either (a) by nomination or (b) by promotion from among the Members of the Industrial Court.

To be eligible for appointment by nomination, the candidate must not be connected with any industry as defined in the Bombay Industrial Relations Act, 1946 and must -

(i) not be less than 45 years of age;

(ii) have for atleast 10 years either held a judicial post in India or been an Advocate for High Court or have expert knowledge of Industrial matters."

11. In the background of the facts and circumstances and the provisions of law extracted above, the following points arise for consideration by this Court :-

(a) What is the true scope and interpretation of Section 10(2) read with Section 10(4) of the B.I.R. Act ?

(b) Whether Section 10(2) of the B.I.R. Act can be read to mean that the President of the Industrial Court must be appointed from among the existing Members of the industrial Court when the provision in fact is not in such terms ?

(c) Whether the reading of the provisions of Section 10 of the B.I.R. Act clearly spells out that apart from the mode of selecting the President, by promotion from amongst the Members, the President can also directly be appointed from the sitting or retired High Court Judges or from the Judges of the City Civil Court, Ahmedabad and District Judges, who fulfills the eligibility requirement for appointment as Member of the Industrial Court ?

(d) Whether the High Court has failed to appreciate that Section 10(2) of the B.I.R. Act does not envisage the mode of appointment ?

12. Our attention was drawn to the relevant pleadings filed before the High Court and also in this Court. question. Accordingly, the office had sent a communication to the Government on 5.7.2000 recommending the name of Shri N.A. Acharya for appointment to the post of President, Industrial Court, Ahmedabad. Soon after the recommendation was made by the High Court to the Government as aforesaid, a representation was received by the High Court from Shri B.I. Kazi, the President, Gujarat Industrial Judges' Association, Ahmedabad in connection with the filling up of the post of President, Industrial Court, Ahmedabad. In this connection, Shri Kazi was called for personal hearing on 11.8.2000 and he was heard by the Chief Justice on the issue. Again, Shri Y.P. Bhatt, President (Incharge) of the Industrial Court vide his letter dated 4.11.2000 expressed his unwillingness to be promoted as the President of the Industrial Court.

14. On the basis of what is stated above, it is clear that the decision to fill up the post of the President of the Industrial Court by way of *nomination* as provided under the Rules, was arrived at, after considering all aspects, not only that the process of selecting the person to be recommended to the Government was also undertaken transparently and before taking the decision, the matter was considered from time and again by the Standing Committee of the High Court of Gujarat and after due consideration and deliberations the decision was taken to recommend the name of Shri N.A. Acharya. Considering the totality of the facts, it is clear to us that there is neither illegality nor arbitrariness in taking the decision of recommending the name of Shri N.A. Acharya for appointment on the post of President, Industrial Courts, Ahmedabad.

15. It is seen from the records that at the request of the Government, the eligibility criteria for appointment on the post of President, Industrial Court has been determined by the High Court and the same has been incorporated in the Draft Recruitment Rules. We have already extracted Rules 2 & 3 of the Draft Recruitment Rules. Shri N.A. Acharya is eligible for the post of the President, Industrial Court, Ahmedabad as he has completed ten years' service in judiciary including the period of practice at the Bar. The period of practice/service of Shri N.A. Acharya is given below :-

"Period of Practice/Service of Mr. N.A. Acharya :-

1.8.1978 to 30.11.1983:-	Worked as Civil	Resigned on:-	30.11.1983	Period of Practice:-	Enrolment No. G/296/1974	Practice : 30.10.1974	1.12.1983 to 19.2.1992	from 20.2.92 to 22.12.1999	Addl. Public Prosecutor, City	From 23.12.1999 to 21.12.	Worked in the cadre of	From 22.12.2000	As President, Industrial

Judge (JD)	on 30.10.74.	to 31.7.1978	Civil Court, Ahmedabad.	2000	District Judge at Vadodara.	Court."

16. In our opinion, in the case of appointment of President of the Industrial Court by nomination, it is not necessary that he must be appointed as Member at the first instance. Section 10(2) of the B.I.R. Act deals with the composition of Industrial Court, which does not lay down the mode of appointment. The words of Section 10(2) of the B.I.R. Act are not that the President shall be appointed from one of the current members of the Industrial Court. In our view, the High Court has erroneously read these words in Section 10(2) of the B.I.R. Act. It is also seen that the proposed Recruitment Rules were framed by the High Court at the request of the Government and pending approval of the Government. We are, therefore, of the opinion that the appointment of Shri N.A. Acharya as President of the Industrial Court is not in breach of Section 10(2) of the B.I.R. Act and also not violative of Articles 14 and 16 of the Constitution of India. To be eligible for appointment by nomination, the candidate must not be connected with any industry as defined in the B.I.R. Act and must (1) not be less than 45 years of age, and (2) have for atleast ten years either held a judicial post in India or been an advocate for High Court or have expert knowledge of Industrial matters. Based on the recommendation of the High Court, on its administrative side, the Government of Gujarat issued the Notification on 7.12.2000 Whereby Shri N.A. Acharya had been appointed as the President of the Industrial Court. Considering the totality of the facts, it is clear that by recommending the appointment in question, the High Court of Gujarat had not only acted within its rights but the same had been done in due discharge of the constitutional duty.

17. In our view, Section 10(2) of the B.I.R. Act cannot be read to mean that the President of the Industrial Court must be appointed from amongst the existing Members of the Industrial Court when the provision in fact is not in such terms. The High Court has confused the concept of the President of the Industrial Court being from among the Members of the said Court with the erroneous concept that the said President must be from amongst the existing members of that Court. A reading of the provisions of Section 10 of the B.I.R. Act clearly spells out that, apart from the mode of selecting the President by promotion amongst the Members, the President can also directly be appointed from the sitting or retired High Court Judges, who fulfills the eligibility requirement for appointment as Member of the Industrial Court. The High Court, in out view, has failed to appreciate that the words of Section 10(2) of the B.I.R. Act are not "that the President shall be appointed from one of the current Members of the Industrial Court". The narrow interpretation of Section 10(2) of the B.I.R. Act and the reasoning of the High Court, in our view, completely rules out the appointment of President, Industrial Court through the mode of nomination. In other words, the High Court failed to appreciate that once a person is appointed as the President of the Industrial Court, he automatically becomes a Member. Section 10(2) of the B.I.R. Act only envisages that the President is the senior Member of the Industrial Court and that the appointment of President of the Industrial Court is inherent in his appointment as Member of the Industrial Court.

18. This Court, in the case of ***State of Maharashtra v. Labour Law Practitioners' Association & Ors., 1998(2) SCT 133 : 1998(2) SCC 688,*** held that the Labour Court Judges and the Judges of the Industrial Court belong to Judicial service and recruitment is to be made in accordance with Article 243 of the Constitution of India. The existing Recruitment Rules did not comply with the provision of Article 234 of the Constitution of India. The State Government, therefore, referred to the High

Court for consultation and approvals of the Rules. The administrative side of the High Court framed the Draft Rules and the appointment offered to Shri N.A. Acharya was in accordance with the Draft Rules. This apart, the eligibility criteria for appointment on the post of the President of the Industrial Court has been determined by the High Court and the same has been incorporated in the Draft Recruitment Rules at the request of the Government.

19. For the foregoing reasons, we are of the opinion that no illegality is committed by recommending the name of Shri N.A. Acharya as the President of the Industrial Court, for appointment by nomination.

20. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

S.B. Sinha, J. -

21. Although I have agree with the conclusions arrived at by my learned Brother, having regard to the importance of the question involved, I would like to assign additional reasons therefor.

22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of *quo warranto*. The jurisdiction of the High Court to issue a writ of *quo warranto* is a limited one. While issuing such a writ, the court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of writ of certiorari. [See ***R.K. Jain v. Union of India and others reported in 1993(4) SCT 181 (SC) : 1993(4) SCC 119 para 74]***.

23. A writ of quo warranto can only be issued when the appellant is contrary to statutory rules. [See ***Mor Modern Cooperative Transport Society Ltd. v. Financial Commissioner & Secretary to Govt. of Haryana and Another, (2002)6 SCC 269]***.

24. When questioned, Mr. R. Venkataramani, learned senior counsel on behalf of the respondents fairly stated that in this case the High Court was concerned with the question as to whether a writ of quo warranto can be issued or not. Thus, with a view to find out as to whether a case has been made out for issuance of quo warranto, the only question which was required to be considered was as to whether Shri N.A. Acharya fulfilled the qualifications laid down under sub-section (4) of Section 10 of the Bombay Industrial Relations Act 1946 or not. The Full Bench of the High Court has mainly proceeded on the basis that the Industrial Court was required to have three or more members, one of whom shall be President as specified in sub-section (2) of Section 10 and, thus, a person before he is appointed as the President must necessarily be appointed as a Member. In my opinion, while arriving at the said finding what the High Court has failed to take into consideration was that sub-section (2) of Section 10 did not impose any restriction on the power of the State to appoint a Member or a President. The said provision merely speaks of the composition of the Court of Industrial Arbitration. The expression `shall consist of three or more Members' is important. Sub-section (2) of Section 10 provides for the composition of the Tribunal and nothing else. By necessary implication a President of the Court of Industrial Arbitration would also have to be a Member and precisely that was the reason why no separate qualification for the appointment of a qualification has been laid down in the Act. Sub-section (4) of Section 10 of the Act lays down the eligibility criteria of a Member only. It is, therefore, significant that for the purpose of appointment of a Member as also the President of the Court of Industrial Arbitration the eligibility criteria

remains the same.

25. The legitimate expectation of a Member to be promoted to the Post of the Chairman as has been submitted by Mr. Venkataramani will, thus, have no relevance as nobody has a vested right to be promoted.

26. It may be true that reference has been made by the High Court while making the recommendations to the draft rules known as Draft Recruitment Rules but it appears from the records that the said draft rules, purported to have been framed by the High Court for replacing the Recruitment Rules for the Post of President as contained at Item 34 in the Handbook of Guidelines on Recruitment Rules of Officers under Labour and Employment Department, Government of Gujarat, Gandhinagar, December, 1990, were published in the year 1992.

27. It is now trite that draft rules which are made to lie in a nascent state for a long time cannot be the basis for making appointment or recommendation. Rules even in their draft stage can be acted upon provided there is a clear intention on the part of the Government of enforce those rules in the near future (See ***Vimal Kumari v. State of Haryana and Others reported in (1998)4 SCC 114)***.

28. Sub-section (4) of Section 10 of the Act states that a Member of the Industrial Court shall be a person who is or has been a Judge of High Court or is eligible for being appointed a Judge of such Court. Article 217 of the Constitution of India *inter alia* lays down the qualification to be possessed by the citizen for his appointment as a High Court Judge. It has not been and could not be disputed that Shri N.A. Acharya has the requisite qualification. The other and further qualifications for appointment of a member have been laid down in the provisos appended thereto. The qualifications specified in the said provisos are meant for those who do not satisfy the requirements of main provision. First and Second provisos appended to sub-section (4) of Section 10 are exceptions to the main provision. Once it is held that sitting judicial officers can be appointed either as Member or President of the Court of Industrial Arbitration, indisputably the High Court is required to be consulted therefor. It is for the High Court and High Court alone to nominate a person of its choice. Such a practice is followed by all the High Courts of the country and although the ultimate authority is the State, the recommendations made by the High Court is normally accepted.

29. A statute as is well-known must be interpreted having regard to the purport and object which it seeks to achieve. The object of the Act is to constitute Industrial Arbitration Court for the purpose of adjudication of the disputes between the management and the workmen. Such courts which are normally manned by the judicial officers cannot be kept vacant for a long time. Whenever they are meant to be filled up by the sitting judicial officers, consultation with the High Curt is imperative.

30. Although we do not find any difficulty in interpreting the provisions, even if it be assumed that the provision of Sub-section (2) and sub-section (4) of Section (4) of Section 10 of the Act render two different meanings, it is trite, that in such an event the rule of purposive construction should be taken recourse to.

31. In ***Jt. Registrar of Cooperative Societies, Kerala v. T.A. Kuttappan and Others [(2000) 6 SCC 127]*** while interpreting the provisions dealing with the question as regard the duties and functions of Committee of Management of the Society constituted under Kerala Cooperative Societies Act, 1969 this Court observed :

"The duty of such a committee or an administrator is to set right the default, if any, and to enable the

society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult."

32. In ***Associated Timber Industries and Others v. Central Bank of India and Another [(2000)7 SCC 93],*** while considering the provisions of the Bombay Money Lenders Act vis-a-vis the provisions of other Acts upon a purposive and meaningful interpretation held that the banks do not come under the purview of the Assam Money Lenders Act.

33. In ***United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. and Others [(2000)7 SCC 357]*** this Court noticed :

"25. In regard to purposive interpretation, Justice Frankfurter observed as follows:

Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose [Some Reflections on the Readings of Statutes, 47 Columbia LR 527, at p. 538 (1947)].

26. That principle has been applied to his very Act by this Court recently in Allahabad Bank v. Canara bank. If the said principle is applied, it is clear that the provision in Section 31 must be construed in such a manner that, after the Act, no suit by the Bank is decided by the civil court and all such suits are decided by the Tribunal."

34. In ***K. Duraisamy and Another v. State of T.N. and others, 2001(1) SCT 773 and 886 (SC) : 2001(2) SCC 538*** it was held :

"The mere use the word `reservation' per se does not have the consequence of ipso facto applying the entire mechanism underlying the consituational concept of a protective reservation specially designed for the advancement of any socially-and-educationally-backward classes of citizens or for the Scheduled Castes and Scheduled Tribes, to enable them to enter and adequately represent in various fields. The meaning, content and purport of the expression will necessarily depend upon the purpose and object with which it is used."

35. The Court while interpreting the provision of a statute, although, it not entitled to re-write the statute itself, is not debarred from "ironing out the creases". The Court should always make an attempt to uphold the rules and interpret the same in such a manner which would make it workable.

36. It is also a well settled principles of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided.

37. In ***Reserve Bank of India v. Peerless Co. reported in 1987(1) SCC 424,*** this Court said :-

"Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we known why it was enacted. With this knowledge,

the statute must be read, first a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the content of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to any as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place....."

38. In "The Interpretation and Application of Statutes" by Reed Dickersen, the author at page 135 has discussed the subject while dealing with the importance of context of the statute in the following terms :-

"....The existence of the language is to reflect, express, and perhaps even effect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called `conceptual map of human experience'."

39. The purport and object of the Statute is to see that a Tribunal becomes functional and as such the endeavour of the Court would be to see that to achieve the same, an interpretation of Section 10 of the Act be made in such a manner so that appointment of a President would be possible even at the initial constitution thereof.

40. Such a construction is permissible by taking recourse to the doctrine of strained construction, as has been succinctly dealt with by Francis Bennion in his Statutory Interpretation. At Section 304, of the treatise; purposive construction has been described in the following manner :-

"A purposive construction of an enactment is one which gives effect to the legislative purpose by :-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

41. In DPP v. Schildkamp (1971) AC 1, it was held that severance may be effected even where the `blue pencil' technique is imprecaticable.

42. In ***Jones v. Wrotham Park Settled Estates (1980) AC 74 at page 105,*** the law is stated in the following terms :-

"... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. ***Kammins Ballrooms Co. Ltd. v. Zeneith Investments (Torquay) Ltd. (1971 AC 850)*** provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so ommitted to deal with an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a

court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed."

43. In Principles of Statutory Interpretation of Justice G.P. Singh, 5th Edition, 1992, it is stated :

"The Supreme Court in ***Bangalore Water Supply v. A. Rajappa (AIR 1978 SC 548)*** approved the rule of construction stated by DENNING, L.J. while dealing with the definition of `Industry' in the Industrial Disputes Act, 1947. The definition is so general and ambiguous that BEG, C.J. said that the situation called for "some judicial heroics to cope with the difficulties raised". K. IYER, J., who delivered the leading majority judgment in that case referred with approbation the passage extracted above from the judgment of DENNING, L.J. in Seaford Court Estates Ltd. v. Asher. But in the same continuation he also cited a passage from the speech of LORD SIMONDS in the case of ***Magor & St. Mellons R.D.C. v. Newport Corporation, 1951(2) All ER 839*** as if it also found a part of the judgment of DENNING, L.J. This passage reads : "The duty of the court is to interpret the words that the legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited." As earlier noticed LORD SIMONDS and other Law Lords in Magor and St. Mellon's case were highly critical of the views of DENNING, L.J. However, as submitted above, the criticism is more because of the unconventional manner in which the rule of construction was stated by him. In this connection it is pertinent to remember that although a court cannot supply a real casus omissus it is equally clear that it should not so interpret a statute as to create a casus imissus when there is really none."

44. In ***Hameedia Hardware Stores v. B. Mohan Lal Sowcar reported in (1988) 2 SCC 513 at 524*** the rule of addition of word had been held to be permissible in the following words :-

"We are of the view that having regard to the pattern in which clause (a) of sub-section (3) of Section 10 of the Act is enacted and also the context, the words 'if the landlord required it for his own use or for the use of any member of his family' which are found in sub-clause (ii) of Section 10(3)(a) of the Act have to be read also into sub-clause (iii) of Section 10(3) of the Act. Sub-clauses (ii) and (iii) both deal with the non-residential building. They could have been enacted as one sub-clause by adding a conjunction `and' between the said two sub-clauses, in which event the clause would have read thus : `In case it is non-residential building which is used for the purpose of keeping a vehicle or adapted for such use if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own; and in case it is any the non-residential building, if the landlord or member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own'. If the two sub-clauses are not so read, it would lead to an absurd result.

45. In ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and Ors. reported in (1990)3 SCC 682,*** this Court held :

"The court has to interpret a statute and apply it to the facts. Hans Kelsin in his Pure Theory of Law. (p. 355) makes a distinction between interpretation by the science of law or jurisprudence on the one hand and interpretation by a law-applying organ (especially the court) on the other. According to him "jurisprudential interpretation is purely cognitive ascertainment of the meaning of legal norms. In contradistinction to the interpretation by legal organs, jurisprudential interpretation does not create law". "The purely cognitive interpretation by jurisprudence is therefore unable to fill alleged gaps in the law. The filling of a so-called gap in the law is a law-creating function that can only be

performed by a law-applying organ; and the function of creating law is not performed by jurisprudence interpreting law. Jurisprudential interpretation can do no more than exhibit all possible meanings of a legal norm. Jurisprudence as cognition of law cannot decide between the possibilities exhibited by it, but must leave the decision to the legal organ who, according to the legal order, it authorised to apply the law". According to the author if law is to be applied by a legal organ, he must determine the meaning of the norms to be applied : he must `interpret' those norms (p. 348). Interpretation therefore is an intellectual activity which accompanies the process of law application in its advance from a higher level to a lower level. According to him, the law to be applied is a frame. "There are cases of intended or unintended indefiniteness at the lower level and several possibilities are open to the application of law." The traditional theory believes that the statute, applied to a concrete case, can always supply only one correct decision and that the positive-legal `correctness' of this decision in based on the statute itself. This theory describes the interpretive procedure as if it consisted merely in an intellectual act of clarifying or understanding; as if the law-applying organ had to use only his reason but not his will, and as if by a purely intellectual activity, among the various existing possibilities only one correct choice could be made in accordance with positive law. According to the author : "The legal act applying a legal norm may be performed in such a way that it conforms (a) with the one or the other of the different meaning of the legal norm, (b) with the will of the norm-creating authority that is to be determined somehow, (c) with the expression which the norm-creating authority has chosen, (d) with the one or the other of the contradictory norms; or (e) the concrete case to which the two contradictory norms refer may be decided under the assumption that the two contradictory norms annul each other. In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame."

46. In ***S. Gopal Reddy v. State of Andhara Pradesh reported in (1996)4 SCC 596*** this Court observed :

"It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statue. The courts, must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary."

47. In ***Public Service Tribunal Bar Association v. State of U.P. and Another [2003 AIR SCW 653]*** this Court noticed Section 3 of U.P. Public Services (Tribunal) Act which provided for different qualifications for Chairman, Vice-Chairman (Judicial) and Vice-Chairman (Administration) as also Judicial and Administrative Members of the Service Tribunal. A Bench of this Court of which one of us (Hon'ble the Chief Justice of India) was a member held that a appointment of Chairman, Vice-Chairman (Judicial), Vice-Chairman (Administration) and Members are to be made in consultation with the Chief Justice of High Court, the Act is *intra vires*.

48. The said decision is also a pointer to show that whenever a post is to be filled by the Judicial Member who is eligible to be appointed as a High Court Judge, consultation with the High Court is imperative.

49. Furthermore, if the interpretation of Section 10 of the Act as propounded by the High Court is accepted, no President can be appointed directly by the State at the time of Constitution of the Court. Such a situation, therefore, would lead to absurdity if it is held that the candidate must first be appointed as a member and the Post of President can be filled up *inter alia* by way of

promotion or otherwise. When literal interpretation of a provision leads to absurdity or manifest injustice, it is trite, the same must be avoided.

50. Furthermore, if the legislature intended to lay down different qualifications or eligibility criteria for the President and the Members, it would have expressly stated so. We may in this connection notice the provisions of the Consumer Protection Act.

51. In absence of an express provision providing either for different qualification or eligibility criteria or the selection process, the same procedure for appointment must be followed.

52. Both under the existing rules as also the Draft Rules mode and manner of appointment have been laid down. Even in absence of the Draft Rules in terms of Rule 34 of the Recruitment Rules for the President of Industrial Court appointment can be made by nomination. Thus, appointment to the Post of President could be made by way of nomination also subject to the nominees holding requisite qualifications laid down therefor.

53. It is further trite that non-mentioning or wrong mentioning of a provision of law would not invalidate an order if a source therefor can be found out either under general law or a statute law.

54. It is further well-settled that when there are two sources of power, even if one is not applicable, the order will not become invalid if the power of the statutory authority can be traced to another source.

55. For the reasons aforementioned, taking any view of the matter it cannot be said that the appointment of Shri N.A. Acharya was illegal or invalid. The impugned judgment, therefore, cannot be sustained which is, therefore, set aside. The appeal is allowed.

Appeal allowed.