

High Court Of Gujarat & Anr vs Gujarat Kishan Mazdoor Panchayat & Ors on 10 March, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1201, 2003 (4) SCC 712, 2003 AIR SCW 1578, 2003 LAB. I. C. 1521, 2003 (2) UJ (SC) 919, 2003 (2) LRI 206, 2003 (3) SCALE 66, 2003 (5) SRJ 41, 2003 (3) ACE 510, (2003) 8 ALLINDCAS 734 (SC), (2003) 2 SCR 799 (SC), (2003) 4 ALLMR 389 (SC), (2003) 2 LAB LN 328, 2003 (3) SLT 103, 2003 (8) ALLINDCAS 734, (2003) 3 JT 50 (SC), 2003 SCC (L&S) 565, (2003) 1 CURLR 970, (2003) 2 SUPREME 672, (2003) 3 GCD 1857 (SC), (2003) 3 GUJ LR 2129, (2003) 2 GUJ LH 96, (2003) 97 FACLR 422, (2003) 2 SCT 370, (2003) 2 SERVLR 729, (2003) 3 SCALE 66, (2003) 4 INDLD 570

Author: Ar. Lakshmanan

Bench: Chief Justice, Ar. Lakshmanan

CASE NO.:

Appeal (civil) 8574-8577 of 2001

PETITIONER:

High Court of Gujarat & Anr.

RESPONDENT:

Gujarat Kishan Mazdoor Panchayat & Ors.

DATE OF JUDGMENT: 10/03/2003

BENCH:

CJI. & AR. Lakshmanan

JUDGMENT:

JUDGMENT AR. 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 7.12.2000, in this regard, was issued by the order of Governor by the Labour and Employment Department of the Government of Gujarat in the 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 93/2001 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 granted leave and made the interim order absolute.

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.

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 for 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. According to the respondents, there are twelve Members 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 anyone 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 hold 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.

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, it 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). .

..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 Rules 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 so 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"

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.

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. Venkataramani, learned senior counsel, for the contesting respondents.

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 appointed from one of the current Members of the Industrial Court and, therefore, the High Court has erroneously read these words in Section 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.

Per contra, Shri R. Venkataramani, learned senior counsel, appearing for the respondents, apart from reiterating the contentions in the applications, submitted that Section 10(2) 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 B.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(ii) 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 Court 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.

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 Judges 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 someone has to be appointed from amongst the Members of the Industrial Court only is correct and that 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.

We have given our thoughtful consideration on the rival submissions made by the respective counsel appearing on either side. Before proceeding to 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 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:

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 than 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."

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?

Our attention was drawn to the relevant pleadings filed before the High Court and also in this Court.

As already noticed, the appointment of Shri N.A. Acharya as the President of the Industrial Court vide Notification dated 7.12.2000 issued by the Labour and Employment Department, Government of Gujarat, is under challenge by way of these appeals. The circumstances and the process, which had culminated in the appointment of Shri N.A. Acharya as the President of the Industrial Court, had been fully narrated in the affidavit in reply filed on behalf of respondent No.2 in the High Court. Since Shri D.V. Joshi, who was working as the President of the Industrial Court, was to retire on 31.1.2000 and, therefore, the Labour and Employment Department, Government of Gujarat, sent a communication dated 7.1.2000 to the High Court of Gujarat, inter alia, stating therein that, due to the retirement of Shri D.V. Joshi, the post will fall vacant and the question of preparing recruitment Rules for the post of President of the Industrial Court is under consideration by the High Court and till the Rules are not finalized, Government cannot take a decision in respect of the appointment on the said post. Under these circumstances, it was decided to place the matter for consideration of the Standing Committee of the High Court of Gujarat, as to by which mode the post of the President, Industrial Court is to be filled up. Accordingly, the said matter was considered by the Standing Committee of the High Court of Gujarat and it was decided on 8.2.2000 that the post of President, Industrial Court, Ahmedabad, be filled up by nomination under clause (b) of Rule 2 of the proposed Rules, as none of the present Members of the Industrial Court is eligible to be appointed to the said post by promotion, having not completed five years' service on the post of Member, Industrial Court. The claim of all the incumbents of the post of Member of the Industrial Court was examined in light of the criteria prescribed by the High Court of Gujarat for appointment on the post of President of the Industrial Court. It was decided by the Standing Committee to fill up the post of President of the Industrial Court by nomination as stated above. In the light of the decision of the Standing Committee to fill up the post of the President of the Industrial Court by way of nomination, it was further decided to ask for the willingness of the Judicial Officers working in the cadres of City Civil Court Judges and District Judges, who are not less than 45 years of age and have put in ten years of service in judiciary including the period of practice at the Bar for being considered for appointment in question. Pursuant to the said decision, the willingness was called for and in all, nine judicial officers had expressed willingness for being considered for the post in question, the details of which have been furnished at page 92 of the paper book. Thereafter, the said matter was placed for consideration of the Standing Committee of the High Court of Gujarat and in the meeting of the Standing Committee held on 30.3.2000, it was decided to direct the office to resubmit the matter along with the recruitment Rules prescribing eligibility criteria for appointment to the post of President, Industrial Court. Pursuant to the said decision, the matter was again considered in the light of the existing Rule provision by the office. As per the directions of the Standing Committee, the matter was again placed before the Standing Committee for further consideration along with the Rule stated above. In the meeting of the Standing Committee of the High Court held on 1.5.2000, the consideration of the subject was deferred, however, in the meantime, the office was directed to resubmit the matter, pointing out the provisions of law in the matter, particularly mentioning the provisions regarding eligibility, experience and age of superannuation etc. prescribed for the post in question. Pursuant to the said direction of the Standing Committee, a detailed note was submitted for consideration of the Standing Committee and after considering all aspects, in the meeting held on 29.6.2000, the Standing Committee had taken decision to the effect that the name of Shri N.A. Acharya, Joint District Judge, Vadodara may be recommended to the Labour and Employment Department, Government of Gujarat, for appointment as President of the Industrial Court,

Ahmedabad by nomination provided under the Recruitment Rules for the post in 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 on 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 (In- charge) of the Industrial Court vide his letter dated 4.11.2000 expressed his unwillingness to be promoted as the President of the Industrial Court.

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 Court, Ahmedabad.

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 Judge(JD) Resigned on :- 30.11.1983 Period of Practice :- Enrolment No.G/296/1974 on 30.10.74 Practice : 30.10.1974 to 31.7.1978 1.12.1983 to 19.2.1992 From 20.2.1992 to 22.12.1999

-Addl. Public Prosecutor, City Civil Court, Ahmedabad From 23.12.1999 to 21.12.2000

- Worked in the cadre of District Judge at Vadodara.

From 22.12.2000

- As President, Industrial Court."

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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.

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 or from the Judges of City Civil Court, Ahmedabad and District Judges, who fulfills the eligibility requirement for appointment as Member of the Industrial Court. The High Court, in our 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.

This Court, in the case of State of Maharashtra vs. Labour Law Practitioners' Association & Ors., (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 234 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 approval 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.

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.

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