

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

Reserved on : 14-02-2017 & Delivered on : 01-03-2017

Coram :

The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI

Writ Petition Nos.893 of 2013, 30991 of 2014, and 41998 of 2015

W.P.No.893 of 2013

E. Laxminarayana, S/o late Raghuramaiah,
Aged 52 years, occ:Sr.Asst.
O/o Industrial Tribunal-cum-Labour Court,
Godavarikhani, R/o. Bus Stand Colony,
Godavarikhani, Karimnagar District, and another

... Petitioners

Vs.

The High Court of A.P., Hyderabad,
rep. by its Registrar (Administration)
and five others

... Respondents

Counsel for petitioners : Sri G. Vidya Sagar and
Sri M. Pandurangarao

Counsel for Respondents : Sri S. Sriram, learned standing
counsel for the High Court.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

**WRIT PETITION Nos.893 of 2013, 30991 of 2014,
and 41998 of 2015**

COMMON ORDER: *(per V.Ramasubramanian, J.)*

While two out of the three writ petitions on hand are filed by individual employees working in the Industrial Tribunal-cum-Labour Court at Godavarikhani, Karimnagar District, challenging the appointments/ promotions granted to the private respondents to certain posts in the Industrial Tribunal-cum-Labour Court, the third writ petition is filed by the Association of Employees of Labour Courts and Industrial Tribunals in the State of Telangana, seeking a declaration that the Chairman-cum-Presiding Officer of the Industrial Tribunal is a separate Head of Department, and that, therefore, the Principal District Judge of the District would have no jurisdiction to appoint anybody to the additional posts sanctioned in the Tribunal.

2. We have heard Mr. G. Vidya Sagar, learned senior counsel and Mr. M. Panduranga Rao, learned counsel, appearing for the petitioners, and Mr. S. Sriram, learned standing counsel for the High Court.

3. By G.O.Ms.No.84, Labour, Employment and Technical Education (LAB.IV) Department, dated 20.04.1988, the Government accorded sanction for the setting up of a Labour Court at Godavarikhani in Karimnagar. By Paragraph-2 of the said Government Order, certain staff were sanctioned along with the scales of pay indicated against

each category. Paragraphs-2, 3, 6, 7, 8, 9, 10 and 11 of the said Government Order are reproduced as follows:

“2. Government, therefore, accord sanction for setting up of a Labour Court at Godavarikhani in Karimnagar District, with the following supporting staff.

<i>Sl.No.</i>	<i>Name of the post</i>	<i>Number of posts</i>	<i>Scale of Pay Rs.</i>
<i>1</i>	<i>Presiding Officer (of the rank of Dist. Sessions Judge)</i>	<i>One</i>	<i>3580-5580</i>
<i>2</i>	<i>Superintendent</i>	<i>One</i>	<i>1330-2630</i>
<i>3</i>	<i>Senior Assistant</i>	<i>One</i>	<i>1100-2050</i>
<i>4</i>	<i>Senior Steno</i>	<i>One</i>	<i>1100-2050</i>
<i>5</i>	<i>Typist</i>	<i>One</i>	<i>910-1625</i>
<i>6</i>	<i>Attenders</i>	<i>Two</i>	<i>740-1150</i>
<i>7</i>	<i>Chowkidar</i>	<i>One</i>	<i>740-1150</i>
<i>8</i>	<i>Sweeper</i>	<i>One</i>	<i>740-1150</i>

3. Requirement of the staff will be met by drawing personnel from the surplus pool which is to be established.

6. The expenditure shall initially be met by an advance from the contingency fund orders regarding which will be issued by Finance and Planning (BG) Dept., separately.

7. The expenditure shall be debited to “2230-Labour and Employment – 01, Labour M.H.101, Industrial Relations – S.H (11) Labour Court, Godavarikhani (to be opened) -010 – Salaries”.

8. The Labour, Employment and Technical Education (Labour.III) Department is requested to obtain supplementary grant towards recoupment of advance to the contingency fund.

9. Government also declare the Labour Court sanctioned in para (2) above as separate Head of Department for the purpose of Fundamental Rules, Manual of Special Pay and Allowances and Andhra Pradesh Financial code etc.

10. Separate notification will be issued under Section 7 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) constituting the Labour Court at godavarikhani in Karimnagar District.

11. The Presiding Officer of the Labour Court at Godavarikhani in Karimnagar District is hereby declared as Drawing Officer.”

4. By a subsequent order in G.O.Ms.No.144, Women's Development, Child Welfare & Labour (LAB.IV) Department, dated 30.09.1991, the Government assigned to the Labour Court at Godavarikhani, the status of the Industrial Tribunal-cum-Labour Court and also the powers under Section 33-C(2) of the Industrial Disputes Act, 1947. By the said Government Order, sanction was accorded for the creation of two posts of Junior Assistants for the Industrial Tribunal-cum-Labour Court in the scale of pay of Rs.910-1625 with usual allowances. By Paragraph-6 of the said Government Order, the expenditure in relation to the creation of two posts of Junior Assistants was also directed to be debited to the Head of Account "2230-Labour & Employment".

5. By G.O.Ms.No.96, Law (LA & J-Home Courts.C) Department, dated 02.09.2011, the Industrial Tribunal-cum-Labour Court at Godavarikhani was conferred with the powers of the VI Additional District and Sessions Judge to try civil and criminal cases, in addition to being an Industrial Tribunal-cum-Labour Court. The following additional staff were also sanctioned, in view of the conferment of additional powers:

<i>Sl.No.</i>	<i>Name of the post</i>	<i>No. of posts</i>
01	<i>Administrative Officer</i>	<i>One (1)</i>
02	<i>Translator</i>	<i>One (1)</i>
03	<i>U.D.Bench Clerk</i>	<i>One (1)</i>
04	<i>Junior Assistant</i>	<i>Three (3)</i>
05	<i>Typist</i>	<i>One (1)</i>
06	<i>Examiner</i>	<i>One (1)</i>
07	<i>Copyist</i>	<i>One (1)</i>
08	<i>Amins</i>	<i>Three (3)</i>

09	<i>Record Assistant</i>	<i>One (1)</i>
10	<i>Attenders</i>	<i>Three (3)</i>
11	<i>Process Servers</i>	<i>Three (3)</i>

6. As soon as the aforesaid additional staff were sanctioned, under the aforesaid Government Orders, the Principal District Judge took steps to fill up the posts of Translator and Process Server either by promotion or by transfer of persons working in other Courts in the District. By the proceedings, dated 31.10.2012, the High court permitted the District Judge, Karimnagar, to effect promotions to the feeder categories of his Unit to fill up the Supervisory Posts additionally created in the Industrial Tribunal-cum-Labour Court. Accordingly, the District Judge passed an order dated 20.12.2012, promoting the 5th respondent in W.P.No.893 of 2013 from the post of Senior Assistant to the post of Superintendent Category-II and posting him as Translator in the additionally sanctioned post. By another order, dated 03.01.2013, the District Judge transferred the 6th respondent in W.P.No.893 of 2013 from the post of Process Server in the Court of the Junior Civil Judge, Peddapally, to the newly created post in the Industrial tribunal-cum-Labour Court.

7. Therefore, challenging the proceedings of the High Court, dated 31.10.2012, and the proceedings of the District Judge, dated 20.12.2012 and 03.01.2013 respectively promoting and posting the respondents 5 and 6, a Senior Assistant and a Chowkidar working in the Industrial Tribunal have come up with the first writ petition, W.P.No.893 of 2013.

8. Thereafter, the District Judge transferred a person by name, Kothakonda Shankar, working as Attender/Office Subordinate in the Court of the Junior Civil Judge, Godavarikhani, and posted him as Record Assistant in the Court of the Industrial Tribunal-cum-Labour Court. Challenging the said order, another Chowkidar working in the Industrial Tribunal came up with the second writ petition, W.P.No. 30991 of 2014.

9. During the pendency of these writ petitions, the Association of Employees appointed to the Labour Courts and Industrial Tribunals in the State of Telangana came up with the third writ petition, W.P.No. 41998 of 2015, seeking three sets of reliefs, namely, (a) to declare the Chairman of the Industrial Tribunal-cum-Labour Court as an independent Head of Department, (b) to declare all the proceedings of the District Judge promoting or transferring and posting the personnel to the additionally sanctioned posts as illegal, and (c) to direct the Chairman of the Tribunal to fill up all the posts additionally sanctioned without reference to the District Court.

10. Two questions arise for consideration in these writ petitions, namely, (a) whether the Chairman of the Industrial Tribunal-cum-Labour Court would be the Head of the Department or Unit Head, solely empowered to make appointments even to the posts additionally sanctioned to the Industrial Tribunal-cum-Labour Court, on account of conferment of the powers of the District and Sessions Court, and (b) whether the staff directly appointed to various posts sanctioned at the time of creation of the Industrial Tribunal-cum-

Labour Court, are entitled to stake a claim even for the posts additionally created on account of conferment of the powers of the District and Sessions Court upon the Industrial Tribunal.

11. Before finding an answer to the above questions, it must be pointed out that there is some anomaly with respect to the status of the employees directly recruited to Industrial Tribunals-cum-Labour Courts. The expression "*Labour Court*" is defined in Section 2 (kkb) of the Industrial Disputes Act, 1947, to mean, a Labour Court constituted under Section 7. Section 7(1) empowers the appropriate Government to constitute, by notification in the Official Gazette, one or more Labour Courts. Certain qualifications are prescribed under Section 7(3) of the industrial Disputes Act, 1947 for appointment as the Presiding Officer of a Labour Court. Even a Judge of the High Court can be appointed as the Presiding Officer of a Labour Court.

12. Similarly, the appropriate Government is empowered under Section 7-A(1) of the Industrial Disputes Act, 1947 to constitute one or more Industrial Tribunals. Sub-section (3) of Section 7-A prescribes the qualifications for appointment as the Presiding Officer of a Tribunal. As in the case of a Labour Court, a Judge of the High Court can also be appointed as the Presiding Officer of an Industrial Tribunal. It is needless to point out that a Labour Court or an Industrial Tribunal constituted under Section 7 or 7-A of the Industrial disputes Act, 1947, is not a Court within the meaning of Section 2(a) of the Andhra Pradesh Civil Courts Act, 1972. To be a Court within the meaning of Section 2(a) of A.P. Act 19 of 1972, the Civil Court

should have been established or deemed to be established under this Act.

13. A City Civil Court in the State of Andhra Pradesh (and Telangana) has to be one established by the Government, after consultation with the High Court, under Section 3(1) of the Andhra Pradesh Civil Courts Act, 1972. Similarly, a District Court in the State of Andhra Pradesh should be one established by the Government, after consultation with the High Court, under Section 10(1) of the Andhra Pradesh Civil Courts Act, 1972. Section 11 of the A.P. Civil Courts Act, 1972 deals with the appointment of Additional District Judges, Section 12 deals with the establishment of the Courts of Senior Civil Judges and Junior Civil Judges, and Section 13 deals with the appointment of Principal and Additional Senior Civil Judges and Junior Civil Judges. Under Section 14 of the A.P.Civil Courts Act, 1972, all the District Courts, Subordinate Courts, and District Munsif Courts existing on the date of commencement of the Act, shall be deemed to have been established under the Act. Under Section 22 of the Act, the general control over all the Courts under the Act in a District shall be vested in the District Judge, subject to the other provisions of the Act and to such orders as the High Court may issue from time to time.

14. Keeping in mind the establishment of the Labour Court, its constitution and powers on the one hand and the establishment of Civil Courts, their constitution and their powers on the other hand, now let us have a look at the pattern of staff appointed to the civil and

criminal Courts in general. The employees working in the Subordinate Courts may fall under 2 different services, namely, (a) Judicial Ministerial Services, and (c) Andhra Pradesh Last Grade Services. While the last grade servants working in the Judicial Department are governed by the Andhra Pradesh Last Grade Service Rules, 1992, which happen to be a common set of special Rules applicable to the last grade servants working in the Judicial Department as well as in the other Departments of the Government, there is a clear dichotomy between the Ministerial servants working in the Judicial Department and the Ministerial servants working in the other Departments of the State Government. The Ministerial servants working in all other Departments are governed by the Andhra Pradesh Ministerial Service Rules, 1998. But, the Ministerial servants working in the Judicial Department are governed by the Special Rules for Judicial Ministerial Services.

15. For instance, Daffedars, Jamedars and persons in the scale of pay of Office Subordinates in the Judicial Department are included in Category-2(a) of the Andhra Pradesh Last Grade Service Rules. Process Servers/Process Amins are also included in the same Category-2(a). Chowkidars are included in Category-3 of the Last Grade Service Rules. Sweepers are included in Category-8 of the Last Grade Service Rules. Therefore, persons working in the Subordinate courts as Sweepers, Chowkidars, Attenders, and Process Servers/Process Amins are also governed by the Andhra Pradesh Last Grade Service Rules, 1992 as there are no separate Rules governing the

service conditions of persons working in these posts in the Judicial Department.

16. But, insofar as the posts of Typist, Junior Assistant, Senior Assistant and Superintendent in the Judicial Department are concerned, they are governed by the A.P.Judicial Ministerial Service Rules. Persons employed in these posts in all other Departments, except the Judicial Department, are governed by a separate set of special Rules, known as Andhra Pradesh Ministerial Service Rules.

17. As we have seen earlier, the Government sanctioned the creation of one post of Superintendent, one post of Senior Assistant, one post of Senior Steno, one post of Junior Assistant, one post of Typist, two posts of Attenders, one post of Chowkidar, and one post of Sweeper, while according sanction for the setting up of a Labour Court at Godavarikhani in Karimnagar, under G.O.Ms.No.84, dated 20.04.1988. The Government Order, by which the creation of these posts was sanctioned, made it clear that the Presiding Officer of the Labour Court will be the Drawing Officer, and that the expenditure is to be debited to “2230-Labour and Employment”. Labour, Employment and Technical Education Department was also requested to obtain supplementary grant. The Government declared, under Paragraph-9 of the said Government Order, the Labour Court sanctioned therein, as a separate Head of the Department for the purpose of Fundamental Rules, Manual of Special Pay and Allowances, and Andhra Pradesh Financial Code, etc.

18. Therefore, at the most, it can be presumed that two posts of Attenders, one post of Chowkidar, and one post of Sweeper sanctioned in G.O.Ms.No.84, dated 20.04.1988, are governed by the Andhra Pradesh Last Grade Service Rules, 1992. This is due to the reason that the holders of these posts, both in the Judicial Department as well as in the other Departments, are governed by one set of special Rules, namely, A.P. Last Grade Service Rules, 1992. But, insofar as the other posts, namely, one post of Typist, one post of Junior Assistant, one post of Senior Assistant, one post of Senior Assistant, and one post of Superintendent sanctioned under G.O.Ms.No.84 are concerned, there is no clarity whether these posts will fall under the Andhra Pradesh Judicial Ministerial Service or Andhra Pradesh Ministerial service. But, the manner in which the expenditure was charged and the method of appointment was indicated in the Government Order would lead to the inevitable conclusion that the staff sanctioned exclusively for the Labour Court do not belong to the Judicial Ministerial Service, but belong to the other Ministerial Service. This conclusion is strengthened (1) by Paragraph-3 of G.O.Ms. No.84, which states that the requirement of staff will be met by drawing personnel from the surplus pool which is to be established, and (2) also by Paragraph-9 which made the Labour Court the Head of the Department for the purpose of Fundamental Rules, Manual of Special Pay and Allowances, and Andhra Pradesh Financial Code, etc.

19. But insofar as the additional posts sanctioned under G.O.Ms.No. 96 dated 02.09.2011 are concerned, it is seen from the Government

Order, under which these posts are sanctioned, that none of the conditions stipulated in G.O.Ms.No.84, dated 20.04.1988, were included in the Government Order. The distinction between G.O.Ms.No.84 on the one hand and G.O.Ms.No.96 on the other hand, is too obvious to be missed. First, G.O.Ms.No.96 is issued at the request of the High Court, while G.O.Ms.No.84 is issued at the instance of the Government, on a request made by Trade Unions and Managements of Industrial establishments. The second distinction is that Paragraphs-3 to 12 appearing in G.O.Ms.No.84 are completely absent in G.O.Ms.No.96. The third distinction is that the Labour Court was not declared in G.O.Ms.No.96 as the Head of the Department for these additional staff, though it was so declared under Paragraph-9 of G.O.Ms.No.84 for the staff originally sanctioned.

20. Since the additional staff sanctioned under G.O.Ms.No.96, dated 02.09.2011, was purely on account of the entrustment of the additional work of the District and Sessions Judge to the Industrial Tribunal-cum-Labour Court, persons appointed to these additional posts will be deemed to be the employees of the Civil Court. As a corollary, they would belong to the A.P.Judicial Ministerial Service. If the additional staff belong to the A.P.Judicial Ministerial Service, the Presiding Officer of the Labour Court and the Industrial Tribunal would have no power of appointment.

21. At the cost of repercussion, it should be pointed out that when a Labour Court was sanctioned under G.O.Ms.No.84, dated 20.04.1988, along with the supporting staff, it was made clear in Paragraph-9 of

the said Government Order that the Labour Court would be a separate Head of the Department for the purpose of Fundamental Rules, Manual of Special Pay and Allowances, and Andhra Pradesh Financial Code, etc. Such a provision was conspicuously absent in G.O.Ms.No.96, dated 02.09.2011.

22. Therefore, it is clear (1) that the posts additionally created under G.O.Ms.No.96, dated 02.09.2011, are in the Andhra Pradesh Judicial Ministerial Service and the Andhra Pradesh Last Grade Service, (2) that these posts are sanctioned specifically as supporting staff for the Industrial Tribunal-cum-Labour Court to function as the Additional District and Sessions Judge, and (3) that as a consequence, the District Judge will be the unit Head, insofar as these additional staff are concerned.

23. Fortunately for us, the only **issue** that arises for consideration in these cases is as to whether the Presiding Officer of the Industrial Tribunal-cum-Labour Court is the authority competent to make appointment to the additional posts sanctioned under G.O.Ms.No.96, or whether it is the District Judge who is competent to appoint persons to these additional posts. But, there is a larger question which does not appear to have been addressed so far. The question is as to whether the Ministerial servants and Last Grade servants appointed as supporting staff for the Industrial Tribunal-cum-Labour Court would be deemed to belong to the Judicial Department or whether they would be deemed to belong to the Labour and Employment Department or as to whether the posts sanctioned as supporting staff

for the Industrial Tribunal-cum-Labour Court would constitute a separate service, independent of the service in the Judicial Department and independent of the Ministerial or Last Grade Service in the other Departments. Since such a question has not arisen for our consideration in these writ petitions, we have not addressed the same, except indicating the service to which the employees appointed in the Industrial Tribunal-cum-Labour Court may belong to.

24. Once it is clear that the additional staff sanctioned to the Industrial Tribunal cum Labour court, was for the purpose of enabling the Tribunal to discharge the additional functions of the civil and criminal court also, then it would follow as a corollary that these additional posts belong to (i) the Judicial Ministerial Service and (ii) the Last Grade Service with respect to the Judicial Department. Therefore, the Chairman or the Presiding Officer of the Industrial Tribunal cannot have any power to make appointment to these posts, as these posts will fall within the exclusive administrative control of the District Judge. Under such circumstances, what the District Judge did in this case was perfectly in order and the writ petitions are devoid of merits.

25. In view of the above, we find no reasons to interfere with the impugned proceedings. Hence, the Writ Petitions are dismissed.

Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.

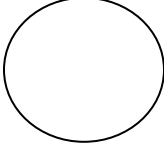
V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

Date: 01-03-2017

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THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI



W.P.Nos.893 of 2013, 30991 of 2014, and 41998 of 2015
(per VRS, J.)

1st March, 2017.
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