

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2539 OF 2024

HDFC Bank Limited

....Petitioner

V/S

The Dy Commissioner of Labour
and another

....Respondents

**WITH
INTERIM APPLICATION (L) NO.27452 OF 2025
IN
WRIT PETITION NO.2539 OF 2024**

Harshit Katawala

.... Applicant

In the matter between

HDFC Bank Limited

....Petitioner

V/S

The Dy. Commissioner of Labour
and another

....Respondents

Mr. J. P. Cama, Senior Advocate with Mr. Satyadev Pandey,
for the Petitioner.

**Mr. Santosh S. Gavade, for Respondent No. 2 in Writ Petition
No. 2539/2024 and Applicant in Interim Application (L)
No. 27452 of 2025.**

Mr. Prashant Kamble, AGP for Respondent No.1-State.

**CORAM : SANDEEP V. MARNE, J.
DATE : 8 SEPTEMBER 2025.**

P.C.:

1. The Petition challenges two orders passed by the Presiding Officer, 7th Labour Court, Mumbai. By order dated 16 October

2023 passed on application at Exhibit U-4, the Labour Court has framed additional Issue No.4 as under:

“4. Whether the first party company proves that the resignation of the second party workman was submitted voluntarily ?”

2. By another order passed on 16 October 2023 passed on application at Exhibit C-7, the Labour Court has rejected Petitioner’s application for deciding the issue of Appropriate Government as a preliminary issue.

3. I have heard Mr. Cama, the learned Senior Advocate appearing for Petitioner and Mr. Gavade, the learned counsel appearing for Respondent No.2.

4. So far as the order dated 16 October 2023 framing additional Issue No.4 is concerned, perusal of Statement of Claim filed by Respondent No.2 would indicate that following averments are made in paragraph 15:

15. The Second Party workman states that the First Party Company tried all possible means to succumb him to resign from the services with an ulterior motive to ruin his career. The Second Party workman states that the First Party applied all sorts of management pressure tactics and made him to give resignation and **smartly showing as voluntary when as a matter of fact it was involuntary.** The Second Party workman states that the First Party deliberately shown as accepted it on same day i.e. 05.03.2015 only to get away of the wrongs committed towards him.

(emphasis added)

5. Thus it is the assertion of Respondent No.2-workman that the resignation tendered by him is involuntary. Since it is the assertion of Respondent No.2-workman that he did not tender the resignation voluntarily, the burden of proving such assertion would obviously lie on the shoulders of the second Respondent-workman. The Labour Court has thus erred in putting the burden of proving additional Issue No.4 on the shoulders of the Petitioner. In my view therefore, order dated 16 October 2023 passed on application below Exhibit U-4 deserves to be modified by putting the burden on the shoulders of Respondent No.2-workman.

6. So far as Petitioner's challenge to the order dated 16 October 2023 on application at Exhibit C-7 is concerned, it appears that the Petitioner has challenged the jurisdiction of State Government to refer the dispute for adjudication to the Labour Court. According to the Petitioner, since it is a Banking Company, the Appropriate Government is Central Government under Section 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949 (**the Act**). According to Mr. Cama, Section 4 of the Act mandates that Central Government alone is the Appropriate Government in respect of any Banking Company. In this connection reliance is placed on judgment of Single Judge of this Court in ***ICICI Bank Ltd. and Ors. vs. Surendra Chelawat and Ors.***¹ On the other hand, Mr. Gavade

¹ 2012 LLR 290

would rely upon order dated 7 July 2022 passed by the learned Judge of the 9th Labour Court in relation to the Petitioner-Bank in Complaint (ULP) No.196 of 2021 in which the Appropriate Government is held to be the State Government. Parties thus appear to be at serious dispute about the exact Appropriate Government who could refer the dispute for adjudication to the Labour Court.

7. True it is that in ***D.P. Maheshwari vs. Delhi Administration***², a three Judges Bench of the Apex Court has held that all issues relating to industrial adjudication should ordinarily be decided together rather than splitting the issues for being decided at different stages of litigation. The idea is to save time when it comes to adjudication of industrial disputes. However, Mr. Cama has relied on two Judges Bench judgment of the Apex Court in ***V.G. Jagdishan vs. Indofos Industries Limited***³ in which the Apex Court has clarified that the judgment in ***D.P. Maheshwari*** (supra) does not lay down universal law that in no case an objection relating jurisdiction can be decided as a preliminary issue. The Apex Court has held in paragraph 15 as under:

“15. In *D.P. Maheshwari* which is pressed into service by the learned Senior Advocate appearing on behalf of the appellant, in support of the submission that the Labour Court ought not to have given the decision only on preliminary issue and ought to have disposed of all the issues, whether preliminary or otherwise at the same time. On facts the said decision is not

² (1983) 4 SCC 293

³ (2022) 6 SCC 167

applicable to the facts of the case on hand. In the aforesaid decision no absolute proposition of law was laid down by this Court that even the issue touching the jurisdiction of the court cannot be decided by the court as a preliminary issue and the court has to dispose of all the issues, whether preliminary or otherwise, at the same time. When the issue touches the question of territorial jurisdiction, as far as possible the same shall have to be decided first as preliminary issue. Therefore, in the present case, the Labour Court did not commit any error in deciding the issue with respect to the territorial jurisdiction as a preliminary issue in the first instance.”

8. In my view, the issue of Appropriate Government goes to the root of the matter. If the issue is decided in an expeditious manner, the same would benefit both the parties. In the event the Labour Court holds that the Appropriate Government is not the State Government, it would be for second Respondent-workman to take appropriate steps for reference of the dispute through the Central Government. On the other hand, if the objection with regard to State Government acting as Appropriate Government is rejected, the reference can be taken up for decision on merits in an expeditious manner. In my view therefore, the issue with regard to Appropriate Government needs to be decided as preliminary issue considering the peculiar facts and circumstances of the present case.

9. The Petition accordingly succeeds partly and I proceed to pass the following order:

i) Order dated 16 October 2023 passed by the Labour

Court on Application at Exhibit U-4 is modified by recasting additional Issue No.4 as under:

“4. Whether the second party workman proves that the resignation submitted by him is involuntary?

ii) Order dated 16 October 2023 passed on application at Exhibit C-7 is set aside and the Labour Court is directed to decide the issue of Appropriate Government as a preliminary issue in an expeditious manner, preferably within a period of three months.

iii) The Labour Court shall decide the issue of Appropriate Government on its own merits without being influenced by any of the observations made in the present order. All rights and contentions of parties on the issue of jurisdiction are expressly kept open.

10. With the above directions, the Writ Petition is **partly allowed and disposed of.**

(SANDEEP V. MARNE, J.)

Digitally signed
by
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