on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusion. If two reasonable conclusions can be reached on the basis of the evidence on the record then the view in support of the acquittal of the accused should be preferred.

(11) After giving my due thought to the evidence in the case and the arguments addressed on behalf of the State, I do not think that the reasons which are necessary to set aside a judgment of acquittal are made out. Concurring with the view of the learned trial Judge, I dismiss the appeal.

S. S. Sandhawalia, C.J.—I agree.

C. S. Tewana, J,—I also agree with the ultimate conclusion.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital & S. S. Sodhi, JJ.

TUL-PAR MACHINE & TOOL COMPANY, FARIDABAD,—*Petitioner.*

versus

SHRI JOGINDER PAL, WORKMAN and others,—*Respondents.*

Civil Writ Petition No. 4411 *of* 1982.

April 13, 1983.

Industrial Disputes Act (XIV of 1947) (as amended by Haryana Act (39 of 1976)—Section 7-A(3)(aa)—Constitution of India 1950—Article 233 (2)—Appointment of a Presiding Officer of an Industrial Tribunal—Advocate or Pleader of a standing of seven years or more—Whether eligible to be appointed in the absence of a recommendation of the High Court—Award delivered by a Presiding Officer not eligible for appointment—Such award—Whether stands vitiated ipso facto.

Held, that from the language employed in section 7-A(3) (aa) of the Industrial Disputes Act, 1947 (as amended in the State of Haryana), it is plain that the legislature has still maintained the minimum modicum that

the Presiding Officer of the Industrial Tribunal must be constitutionally at par with one who is entitled to hold the office of a District Judge as prescribed by Article 233 of the Constitution of India. Viewing the amendment in its true setting, it was intended only to do away with the minimum prescribed period of three years experience as a District or Additional District Judge laid down in the Central Act. It seems to be that the Haryana Legislature wanted to step down a little and hold that a person who once held the office as District or Additional District Judge (irrespective of the period) as also a person who was straightaway eligible for appointment as such should also be within the arena of its selection. Clearly enough in the backdrop of the legislative history it seems to be plain that the sole change intended to be wrought was to do away with the three years period of experience but the basic requirement of being a legal equivalent of a District Judge was not sought so be changed or tinkered with. In other words, the scheme of the amendment is, that persons who can straight-away be appointed as District or Additional District Judges, who in fact stand so appointed and those who in the past had been so appointed, would be eligible for appointment. Therefore, a person eligible for appointment straight-away as the Presiding Officer of the Tribunal must be one who is equally eligible straightaway for appointment as a District or Additional District Judge. The acid test herein, therefore, is—could the State Government appoint such a person as District or Additional District Judge ? If it could, then the appointee could equally be appointed as the Presiding Officer of the Tribunal and in the converse if the State Government could not appoint him as a District or Additional District Judge, it equally did not have the power to designate him as the Presiding Officer of the Tribunal. The Haryana amendment has obvious reference to Article 233 which is the constitutional prescription for the appointment of District Judges and has, therefore, to be construed in its light. A plain reading of this Article makes it manifest that it provides for two distinct sources for appointment to the office of the District Judge. Clause (1) thereof provides for such an appointment by way of promotion from the Subordinate Judicial Service and clause (2) prescribes what conveniently is termed as direct recruitment thereto from the bar. It is obvious that with regard to the first category of persons, in order to merit consideration, they must have a considerable standing and experience as a Subordinate Judicial Officer, but even that *per se* would not entitle the Government to appoint them as District Judges without specific consultation, with regard to such appointment, with the High Court. However, as regards direct appointment, the Constitution is stringent in providing two essential pre-requisites for appointment as District Judges in case of persons not already in State Judicial Service. The language used in clause (2) of Article 233 is categoric and says that such persons shall only be eligible if they satisfy the twin test; the first is the minimum requirement of practice at the bar as an Advocate or a Pleader for seven years or more. This, by itself, is nevertheless not sufficient. The appointing authority, namely, the Governor cannot at his own appoint a member of the Bar with the aforesaid qualifications as District Judge, howsoever distinguished and experienced; and whatsoever high status he may command at the Bar. The significant and indeed the more important pre-

requisite herein is that such a person must be recommended by the High Court for appointment as a District Judge. Indeed this recommendation is the king-pin of Article 233(2) and further it uses the word 'only', thus excluding even a consideration of a person for the post unless he has been so recommended. Thus, under clause (aa) of section 7-A(3) of the Act (as amended in Haryana) only a person duly recommended by the High Court for appointment as a District Judge in accordance with Article 233 (2) of the Constitution can be appointed as the Presiding Officer of a Tribunal. (Paras 10, 11, 12, 13 and 20).

Held, that merely because the appointment of a Presiding Officer of an Industrial Tribunal has been quashed, this would not *ipso facto* vitiate the awards rendered by him on the basis of the *de facto* doctrine. The office of the Presiding Officer of the Tribunal did lawfully exist and even though the appointment of the incumbent thereto has been set aside, the awards delivered by him under the colour of office would not be rendered inoperative. (Paras 25 and 26).

M/s. Titan Engineering Co. *v.* Haryana State, C.W.P. 4727 of 1982 decided on October 29, 1982. *OVER-RULED.*

Case admitted by the Division Bench consisting of The Hon'ble Mr. Justice D. S. Tewatia and the Hon'ble Mr. Justice S. S. Kang on 5th October, 1982 to the Division Bench for the decision of an important question of law involved in this case. The Division Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia and the Hon'ble Mr. Justice S. S. Sodhi again referred this case to the Larger Bench for the decision of the important question of law on 27th January, 1983. The Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, the Hon'ble Mr. Justice S. C. Mital and the Hon'ble Mr. Justice S. S. Sodhi decided the important question of law dated the 13th April, 1983 and again referred this case to a Single Bench for decision on merits on the remaining issues.

Petition under Articles 226 of the Constitution of India praying that the following reliefs be granted :—

(i) *A writ in the nature of Writ of* Quo-Warranto *be issued asking Respondent No. 3 to furnish information to this Hon'ble Court regarding his right to continue as Presiding Officer of Industrial Tribunal and after proper opportunity his appointment as such be quashed;*

(ii) *A Writ in the nature of Writ of Certiorari be issued calling for the record of Respondent No. 2 relating to Award Annexure P.11 and after a perusal of the same, the impugned award be quashed.*

(iii) *Any other suitable Writ, Direction or Order that this Hon'ble Court deem fit in the circumstances of the case, be issued.*

(iv) *An* ad-interim *order be issued staying the operation of the impugned Award pending the decision of this writ petition;*

(v) *The petitioner be exempted from serving advance notice of motion on the respondents; and*

(vi) *Cost of the petition be awarded to the petitioner.*

R. S. Mital, Senior Advocate with N. K. Khosla and Harsh Kumar, Advocate.

J. K. Sibal and Mr. R. K. Chhibbar in connected case.

B. S. Gupta Advocate with S. K. Mittal, *for A.G. Haryana.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. The true import of the legislative change wrought in Section 7A(3)(aa) of the Industrial Disputes Act, 1947, with regard to the prescribed qualifications for appointment as the Presiding Officer of the Tribunal by Section 3 of the Industrial Disputes (Haryana Amendment) Act, 1976, is the spinal question which had originally necessitated the admission of this set of three Writ petitions for hearing by the Division Bench and later by the order of reference before the Full Bench.

2. Learned counsel for the parties are agreed that the pristinely legal question aforesaid is common to all the three cases and its determination would, therefore, govern all of them. Consequently, it suffices to advert briefly to the necessary matrix of facts in C.W.P. No. 4411 of 1982 (*Tul-Par Machine & Tool Company* v. *The State of Haryana and others*). The core of the challenge therein is to the appointment of respondent No. 3, Mr. M. C. Bhardwaj as the Presiding Officer of the Industrial Tribunal, Faridabad in Haryana, and it is, therefore, unnecessary to advert to the merits of controversy betwixt the petitioner-concern and its former employee—Shri Joginder Pal, workman-respondent No. 1. It is adequate to notice that the respondent-workman raised an industrial dispute which was referred by the State of Haryana for adjudication to the Industrial Tribunal, Haryana of which admittedly the Presiding Officer is respondent No. 3, Mr. M. C. Bhardwaj. The latter rendered the Award dated January 13, 1982 by which he held that the termination of the services of workman was neither justified nor in order and he was consequently entitled to reinstatement with continuity of service and with full back wages. The writ petitioner

had challenged the award *inter alia* on the ground that Mr. M. C. Bhardwaj, respondent No. 3, was not qualified to be appointed as District Judge under Article 233 of the Constitution of India and was, consequently ineligible for appointment as the Presiding Officer of the Tribunal under the amended Section 7A (3) (aa) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act'), as applicable in Haryana. Apart from challenging the Award on merits as well and seeking other reliefs, a writ of *quo warranto* in express terms is sought against respondent No. 3, prohibiting him from continuing as the Presiding Officer of the Industrial Tribunal and further to quash the impugned Award, annexure P/11.

3. In the return filed on behalf of respondent No. 4, the factual background in paras 1 to 12 of the writ petition is not controverted. On the legal issue, the stand taken is that respondent No. 3 is fully qualified to be appointed as District Judge and his appointment as such did not require the recommendation or consultation with the High Court.

4. In the connected C.W.P. No. 2537 of 1982 (*Kishan Singh* vs. *The State of Haryana and others*), the respondent State has again taken an identical stand. Mr. M. C. Bhardwaj, respondent No .3 therein has further averred in his return that he has practised as a pleader and an Advocate at Rohtak for more than ten years and has taken the plea that the qualifications for appointment of a District Judge are laid down in Article 233(2) of the Constitution of India and in accordance therewith, he fulfilled the qualifications for appointment as Presiding Officer of the Industrial Tribunal, Faridabad.

5. Now the main thrust of the argument, on behalf of the petitioner is that even under the amended provision, the Presiding Officer of an Industrial Tribunal must be either a retired or an incumbent District or Additional District Judge, or one who is straightaway qualified for appointment as such. Relying on Article 233 (2) of the Constitution of India, it has been forcefully contended that a person not already in service is eligible for appointment as a District Judge only if he satisfies the two essential prerequisites of having been an Advocate or a pleader for seven years or more and further is recommended by the High Court for appointment as a District Judge. It is contended that admittedly in the present case, the High Court having neither been consulted nor

having ever recommended respondent No. 3 for appointment, the latter is constitutionally ineligible for appointment as a District Judge and as a necessary consequence as the Presiding Officer of the Industrial Tribunal.

6. It seems plain that the controversy herein must necessarily turn on the precise import of the language employed in Section 7A(3)(aa) of the Act, as amended and applicable in the State of Haryana and Article 233(2) of the Constitution of India. However, before quoting and adverting to these provisions in detail, it is obvious that the larger scheme of the Act is not merely relevant, but appears to me as equally significant and indeed a dominant factor. What perhaps catches the eye first prominently is the fact that Industrial Tribunal is at the apex of a hierarchy of authorities envisaged under the Act. Reference to Chapter II would indicate that the statute first provides for consultative or inquisitive bodies like Conciliation Officers, Boards of Conciliation and Courts of Enquiry under Sections 4, 5 and 6 of the Act. Clauses (a) and (b) of Section 10(1) of the Act provide for references to be made to a Conciliation Board and a Court of Enquiry. Next in this set-up is the Labour Court constituted under Section 7 of the Act. It is common ground that at the very apex of this hierarchy are the Industrial Tribunals constituted by virtue of the power conferred by Section 7-A of the Act. It was not disputed before us that Appellate Tribunals are not being appointed and have now been virtually rendered obsolete. Again the significance of the matters which go to the Industrial Tribunal is obvious from the 2nd and the 3rd Schedule of the Act. Under Section 10(d) of the Act, the primary matters which the Tribunal is to consider would appear to be those contained in 3rd Schedule, but it is open to the Government to refer matters in the second Schedule as well which are otherwise normally to be considered by the Labour Court. It is unnecessary to advert individually to the eleven items specified in the 3rd Schedule but a bare reference thereto would indicate their significance in a developing economy and any adjudication thereof would sometimes govern thousands of workers, if not more.

7. Equally, the significance and importance of an Industrial Tribunal is manifest from sub-section (3) of Section 11 of the Act which vests the Industrial Tribunal with the trappings of a civil court with power to summon witnesses and record evidence. Again, by virtue of sub-section (8) of Section 11 of the Act, the Industrial

Tribunal may be deemed to be a civil court for purposes of Sections 480, 482 and 484 of the Code of Crimnial procedure, 1973 as well. The Presiding Officers of the Industrial Tribunals are declared to be public servants within the meaning of Section 21 of the Indian Penal Code,—*vide* Section 11(6) of the Act. Discretionary power to impose costs without any statutory limits is then conferred on the Industrial Tribunals by Section 11(7) of the Act. The form of the Award by the Tribunal, its publication and commencement are, in terms, provided for in Sections 16, 17 and 17-A of the Act. The manner of the prescribed publication in the official gazette bespeaks their public importance and significant nature. In particular, Section 18 of the Act provides that the same is of a binding nature obliging the parties thereto with strict compliance. Even during the pendency of the proceedings before the Tribunal, Section 23(b) provides that no strikes or lock-outs are to be resorted to either by the employers or by the employees.

8. Obviously in keeping with the significance of the matters to be adjudicated upon the Industrial Tribunal and its place in the institutional hierarchy, the Act has not left the prescription of qualifications of its Presiding Officer to the discretion of the Government. These, in terms, are prescribed by the statute itself. It is first laid down that the Tribunal shall consist of one person only and further the three clauses of sub-section (3) of Section 7-A of the Act prescribe with precision the qualifications which alone would make a person eligible for appointment as the Presiding Officer of the Tribunal. Clause (a) thereof pegs these qualifications at the highest as that of sitting or a retired Judge of a High Court. It was not seriously disputed before us that heretofore and even now usually if not invariably sitting or retired Judges in accordance therewith have presided over Industrial Tribunals. Reference to the remaining clauses in the central statute would again leave no manner of doubt about the intent of Parliament to prescribe both high judicial and administrative experience as a necessary pre-requisite for holding the very highest office of the President of the Tribunal in the industrial field. To sum up on this aspect, it is plain that the Industrial Tribunal is at the judicial apex of the hierarchy of the authorities under the Act; is entrusted with the most significant industrial issues for adjudication; its Award is clothed with finality as no statutory appeal against the same is provided; and, the legislature in its solicitude has itself prescribed one of the qualifications for appointment

thereto at the highest level of a sitting or a retired High Court Judge as well.

9. Against the above backdrop, one must also notice albeit briefly the legislative history of Section 7-A of the Act culminating in the relevant amendment by Haryana Act No. 39 of 1976. It is common ground that when initially prescribing the qualifications for the Presiding Officer of a Tribunal which, as already noticed, is at the apex of the Judicial hierarchy under the Act it was laid down that the office must be held by a sitting or a retired Judge of the High Court by clause (a) of section 7-A(3). It would appear that persons of such high rank were either not always available or sometimes unwilling to take on this burden. Parliament, therefore, lowered its sights a little by adding (and not substituting) as an alternative that the appointee may be a District Judge or an Additional District Judge, who has at least held office for a period of three years. This was done by way of amendment by Act No. 36 of 1964. It would be manifest that even at this stage Parliament in its wisdom did not provide that a person holding office as a District Judge for a day would be eligible for the high office and a minimum experience of three years therefore was laid down to which necessarily would be added the selective discretion of the appropriate Government to choose from persons satisfying these basic requirements. These provisions continue to exist on the central statute at the national level. It seems that within Haryana, the appropriate Government was still faced with some minor difficulty in finding incumbents to man the post of Labour Court and the Presiding Officers of the Tribunals. This is evidenced from the following statement of 'objects and reasons' for the bill which was ultimately enacted as an Industrial Dispute (Haryana Amendment) Act, 1976:—

> "The persons having qualifications as prescribed in sub-sections (3) of sections 7 and 7-A of the Industrial Disputes Act, 1947, are not generally available to be appointed as Presiding Officer of Labour Courts and Industrial Tribunal under the Act *ibid*, with the result that the working of these Labour Courts/Tribunals suffers and the workers have to suffer a lot on account of non-finalisation of their industrial disputes in time. The State Government have, therefore, considered it appropriate to introduce the above amendments in the Industrial Disputes Act, 1947."

By virtue of this amendment, clause (aa) of section 7-A(3) of the Central statute was substituted and another clause (aaa) was inserted. These are the following terms:—

> 7-A(3) A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless :
>
> "(aa) he is qualified for appointment as, is or has been a District Judge or an Additional District Judge; or
>
> (aaa) he has been a Commissioner of a Division or an Administrative Secretary to Government for a period of not less than two years."

At this very stage it would be apt to also quote Article 233 which is the constitutional mandate for the appointment of District Judges:—

> "233. *Appointment of district judges* :
>
> (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.
>
> (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

Viewed against the aforesaid background and also in the larger conspectus of the Central statute and the significance of the office of the Presiding Officer of the Industrial Tribunal, the core of the question herein is whether the aforesaid amendment brought about by the State of Haryana virtually intended to do away with all the legislative solicitude for the prescription of qualification for holding this high office? To put it in alternative terms did the legislature wish to render every person who has seven years of practice to be straightaway eligible for appointment thereto, irrespective of any previous judicial experience or status at the bar?

10. I am firmly inclined to answer these questions in the negative. From the language employed in the amending provision

it is plain that the legislature has still maintained the minimum modicum that the Presiding Officer of the Industrial Tribunal must be constitutionally at par with one who is entitled to hold the office of a District Judge as prescribed by Article 233 of the Constitution. As I view the amendment in its true setting, it was intended only to do away with the minimum prescribed period of three years experience as a District or Additional District Judge laid down in the Central Act. It seems to be that the Haryana legislature wanted to step down a little and hold that persons who once held the office of a District or Additional District Judge (irrespective of the period) as also a person who was straightaway eligible for appointment as such should also be within the arena of its selection. Clearly enough in the backdrop of the legislative history it seems to be plain that the sole change intended to be wrought was to do away with the three years period of experience but the basic requirement of being a legal equivalent of a District Judge was not sought to be changed or tinkered with.

11. One may now advert to the specific language of the amended clause (a) as applicable in Haryana as against the corresponding provisions of clause (aa) which still subsists at the national level and requires that the eligible person must not only be a member of the judicial service, but also have an experience of three years as a District or Additional District Judge. The Haryana legislature scaled down the prescribed qualification to abrogate the stringent requirement of a minimum period of experience. Analysed in this context, the amended clause (aa) now visualises distinctly following three categories of persons who are eligible for appointments as Presiding Officers of the Tribunals:

(i) persons who had in the past held office of the District or Additional District Judge, irrespective of the period for which they had held the post,

(ii) persons who are at present incumbents of the office of the District or Additional District Judge irrespective of the period of holding the same; and,

(iii) persons "straightaway" "qualified" for appointment as a District or Additional District Judge though not actually holding that office.

12. To put it in other words, the scheme of the amendment is, that persons who can straightaway be appointed as District or

Ac al District Judges, who in fact stand so appointed and those v. in the past had been so appointed, would be eligible for appointm. t. Therefore, viewing the amended clause cumulatively even at the lowest rung, the person eligible for appointment straightaway as the Presiding Officer of the Tribunal must be one who is equally eligible straightaway for appointment as a District or Additional District Judge. The acid test herein, therefore, is could the State Government appoint a person as District or Additional District Judge? If it could, the the appointee could equally be appointed as the Presiding Officer of the Tribunal and in the converse if the State Government could not appoint him as a District or Additional Judge, it equally did not have the power to designate him as the Presiding Officer of the Tribunal.

13. Now it was common ground before us that the Haryana Amendment has obvious reference to Article 233 which is the constitutional prescription for the appointment of District Judge and has, therefore, to be construed in its light. A plain reading of this Article makes it manifest that it provides for two distinct sources for appointment to the office of the District Judge (which by virtue of Article 236 of the Constitution includes within it the office of the Additional District Judge, as well). Clause (1) thereof provides for such an appointment by way of promotion from the Subordinate Judicial Service and clause (2) prescribes what conveniently is termed as direct recruitment thereto from the bar. It is obvious that with regard to the first category of persons, in order to merit consideration, they must have a considerable standing and experience as Subordinate Judicial Officers, but even that *per se* would not entitle the Government to appoint them as District Judges without specific consultation, with regard to such appointment, with the High Court. However, as regards direct appointment with which we are particularly concerned, the Constitution must be stringent in providing two essential pre-requisites for appointment as District Judges in case of persons not already in State Judicial service. The language used in clause (2) of Article 233 is categoric and says that such persons shall *only* be eligible if they satisfy the twin test; the first is the minimum requirement of practice at the bar as an Advocate or a pleader for seven years or more. This, by itself, is nevertheless not sufficient. It was common ground before us that the appointing authority, namely, the Governor cannot at his own appoint a member of the Bar with the aforesaid qualifications as District Judge, how-so-ever distinguished and experienced; and

whatsoever high status he may command at the bar. The sign and indeed the more important pre-requisite herein is that a person must be recommended by the High Court for appointment as a District Judge. Indeed this recommendation is the ring-pin of Article 233(2) and further it uses the Word 'only' thus excluding even a consideration of a person for the post unless he has been so recommended. Significantly, what calls for notice is that this Article has not prescribed merely consultation (which is not invariably binding) as in the preceding clause, but a specific recommendation by the High Court. It is plain that if the High Court does not recommend, the Governor has no power to directly appoint an Advocate as the District Judge.

14. The aforesaid construction of Article 233 which I am inclined to take, seems to be buttressed unreservedly by binding precedent. In *A. Pandurangam Rao* v. *State of Andhra Pradesh and others* ,(1), it was held that even candidates who had applied for the post of a District Judge and had been duly interviewed by the High Court, could not be deemed within the ambit of Article 233(2) until and unless the latter specifically and expressly recommended them for appointment. It was categorically observed as under:—

> "A candidate for direct recruitment from the Bar does not become eligible for appointment without the recommendation of the High Court. He becomes eligible only on such recommendation under clause (2) of Article 233. The High Court in the judgment under appeal felt some difficulty in appreciating the meaning of the word "recommended". But the literal meaning given in the Concise Oxford Dictionary is quite simple and apposite, it means "suggest as fit for employment". In case of appointment from the Bar it is not open to the Government to choose a candidate for appointment until and unless his name is recommended by the High Court."

The aforesaid observation has been later reiterated in *Mani Subrat Jain etc. etc.* v. *State of Haryana and others,* (2).

> "In regard to persons who are appointed by promotion or direct recruitment this Court has held that it is not open to the

(1) 1975 S.C. 1922.
(2) A.I.R. 1977 S.C. 276.

Government to choose a candidate for appointment by direct recruitment or by promotion unless and until his name is recommended by the High Court."

In view of the aforesaid authoritative enunciation, Mr. B. S. Gupta, learned counsel for the respondents had fairly and candidly conceded that recommendation by the High Court was the *sine qua non* for direct appointment to the post of District Judge. Now once that is so, it is not in dispute that the appointing authority for District Judges is the Governor of the State and such appointments have to be made strictly in accordance with the constitutional prescription in Article 233. Can a person who has more than seven years standing as a pleader be appointed as a District Judge straightaway by the Governor ? The answer to the question is plainly in the negative. Consequently, it would follow that such a person is not legally qualified for appointment as a District Judge unless the super-imposed condition of recommendation in express terms by the High Court is satisfied. *A fortiori*, it follows that if a person, because of a legal requirement, cannot straightaway be appointed to a post, he is not legally qualified for appointment as such. The constitutional mandate lays down two inflexible imperatives for the eligibility to the post of the District Judge, that is, both seven years standing at the Bar and a specific recommendation of the High Court regarding the fitness for appointment. The mere fulfilling of one of the two conditions does not make a person eligible. To carry the argument to its logical extreme, one may take the somewhat unusual example where the High Court chooses to recommend a persons for appointment, but he does not satisfy the test of seven years standing at the Bar. It is axiomatic that such a person would be ineligible under Article 233, and the legal position would be identical where he lacks the other imperative of recommendation by the High Court. Now once Article 233 is attracted as admittedly it is—it must apply as a whole with its full vigour. By no canon of logic can it be said that the condition of seven years standing would be attracted but that of the recommendation of the High Court would not be so or the same may be conveniently ignored.

15. Indeed, the matter also deserves to be looked at refreshingly from another angle. If the intent of the Haryana Legislature was to make every pleader of seven years standing as eligible or legally qualified for appointment as the Presiding Officer of the Tribunal, it would have obviously resorted to plain and forthright language to

this effect. Indeed, if this was the intent clause (aa) could have been simply framed as under:—

> "He has practised as a pleader for not less than seven years, or is, or has been a District Judge or an Additional District Judge".

Indeed, this was the terminology expressly used by the Bombay Legislature when it made a similar amendment in the Act,—*vide* Maharashtra Act No. 47 of 1977. It is manifest that if the legislature plainly intended nothing except certain years of standing at the Bar (*de hors* his status or previous judicial experience), then it would have said so in plain enough language. There seems to be neither reason nor purpose for putting something so simple in an involved language by reference to Article 233 of the Constitution and then seek to substract crucial imperative of a recommendation by the High Court therefrom. It is a sound rule of construction that a provision has first to be given its plain literal meaning and equally so is its converse that whenever the legislature wants to convey its intent, it would couch the same in plain grammatical language rather than by involved and tortuous references to another provision. As already noticed on larger consideration, it is not easy to attribute to the Haryana Legislature the radical intent on one hand retaining the prescribed qualification of a sitting Judge of the High Court and on the other of making every pleader of seven years standing (irrespective of Judicial experience and status at the Bar) as equally qualified to be appointed as the Presiding Officer of the Tribunal which, as already noticed, stands at the apex of what may be termed as the Industrial Judiciary under the Act. Indeed, a larger look at sub-section (3) of Section 7-A of the Act would indicate that a sizable judicial or administrative experience is the golden thread that runs through the web of the prescription of qualifications therein. Even the simultaneously inserted clause (aaa) of the Haryana Amendment additionally prescribes that a Commissioner of a Division or an Administrative Secretary to the Government for not less than two years is also to be eligible. It was virtually conceded before us that in practical terms this would well require a service experience of well-nigh twenty years either from the highest administrative cadre of the Indian Administrative Service or by way of promotion thereto from the Haryana Civil Service.

16. Apparently pushed to the wall, Mr. Gupta the learned counsel for the respondent-State attempted to exercise a hyper-technical distinction between the phrase "qualified for appointment"

as employed in the Haryana Amendment and "eligible to be appointed" as used in Article 233(2) of the Constitution. However, neither principle nor authority could be cited to support this tenuous stand. In the Corpus Juris Seccundum Vol 20 page 401, *inter alia* the meanings of the word 'eligible' are as under:—

> "Qualified to be chosen or elected; legally qualified to be elected and to hold office; legally qualified for election or appointment; the capacity or qualification to hold the office; legally qualified to hold office; and legally qualified to hold the office after an election, that is, at the commencement of the term of office."

In Chambers Twentieth Century Dictionary the word "eligible" means—

> "Legally qualified for election or appointment; Fit or worthy to be chosen."

In Mitra's Legal and Commercial Dictionary, the word 'eligible' is more categorically quoted as under:—

> "The word 'eligible' must mean and can only mean legally qualified".

From the above, it seems to follow that both in its ordinary dictionary meaning and its legal connotation, the word 'eligible' is quoted with one being legally qualified for appointment. What is, however, even more true is the fact that the word or phrase may take its hue from the context in which it is employed. I have already highlighted the background of the Haryana Amendment, its legislative history and its larger purpose. In this mosaic, the larger phrase qualified for appointment as is or has been a District Judge, would particularly indicate that the person must be without more entitled for appointment as such. In a similar context, while construing a statutory rule, Lord Evershed in *Faramus* v. *Film Artistes' Association,* (3) (House of Lords), observed as follows:—

> ".....As I have said, however, in the context of the phrase in the present rule I cannot for my part entertain any doubt

(3) 1964 (1) All England Reports 25.

but that, as a matter of English, the word "eligible" must mean and can only mean "legally qualified....."

17. It thus seems plain that the words "eligible to be appointed" and "qualified for appointment as" are synonymous and interchangeable terms and attempting to draw any finical line of distinction betwixt them, would in my view, be no more than what has sometimes been amusingly called as legal hair splitting. In the specific context, this becomes more evident if the words "qualified for appointment as" are interchanged or juxtaposed in Article 233 of the Constitution itself in place of "eligible to be appointed". It is obvious that the meaning thereof would not suffer the slightest change thereby. The tenuous submission of Mr. Gupta, on this score, therefore, merits nothing but rejection.

18. Repelled on the aforesaid ground Mr. Gupta had then referred by way of analogy to clause (3) of Article 124 of the Constitution and clause (2) of Article 217, negatively prescribing the conditions which would render a person as not qualified for appointment as a Judge of the Supreme Court or of the High Court respectively. A bare reference to the language of these two provisions as against that employed in Article 233(2) would show that the analogy cannot possibly hold logically. These provisions are cast in a widely and materially different language. Whilst Article 233(2) positively prescribes the two pre-conditions for eligibility of appointment as a District Judge, neither Article 124 nor Article 217 even remotely attempt to do any such thing and as already noticed, they merely lay down negatively when a person would not be qualified for appointment to the said offices. The word "recommended" is not even used in the said Article far from such recommendation being made an essential pre-requisite. If Article 233 was couched in identical terms, as Articles 124 and 217 or had it merely stated that the person with seven years standing at the Bar would be legally qualified or eligible for appointment as a District Judge, there would be no further hurdle in the way of the respondent. However, Article 233 is phrased in entirely different terminology and mandatorily adds the specific rider to the general qualification, namely, that such a person must be recommended for appointment by the High Court and only then he would be eligible to be so appointed. The patent difference in the language deliberately employed in Articles 124 and 217 on the one hand and Article 233 on the other, makes an argument on the basis of the former wholly irrelevant in the

context of the latter. A similar argument now being raised on behalf of the respondents was expressly rejected by their Lordships in *Rameshwar Dayal* v. *State of Punjab and others,* (4) in the following terms:—

> "Learned Counsel for the appellant has also drawn our attention to Explanation 1 to Cl.(3) of Art. 124 of the Constitution relating to the qualification for appointment as a Judge for the Supreme Court and to the Explanation to Cl.(2) of Art. 217 relating to the qualifications for appointment as a Judge of a High Court, and has submitted that where the Constitution makers thought it necessary they specifically provided for counting the period in a High Court which was formerly in India, Articles 124 and 217 are differently worded and refer to an additional qualification of citizenship which is not a requirement of Art. 233, and *we do not think that* Cl. (2) *of Art.* 233 *can be interpreted in the light of Explanations added to Arts.* 124 *and* 217. *Article* 233 *is a self-contained provision regarding* the *appointment of District Judges.*

19. Inevitably, learned counsel for the respondents fell back on the brief observations in C.W.P. 4727 of 1982 *M/s. Titan Engineering Co.* v. *Haryana State,* decided on October 29, 1982 made at the motion stage while dismissing a writ petition. Reference to the short order passed makes it manifest that counsel were somewhat remiss in not canvassing the matter on principle or precedent and what is even more significant, in the context of its legislative history and its larger purpose. Article 233 which is the corner-stone of the case herein was not even adverted to at all. As a dictum, it was observed that an Advocate of ten years' standing is eligible for appointment as a District Judge and this seems to ignore altogether the second pre-requisite of the said Article with regard to an express recommendation of the High Court. The observations of their Lordships in *A. Pandurangam Rao's case* (supra) were not brought to the notice of the Bench and the passage quoted therefrom in para No. 14 earlier would be directly contrary to what has been observed in *M/s. Titan Engineering Case* (supra). It has then been observed therein that

(4) A.I.R. 1961 S.C. 816.

all the two hundred advocates of the Bar Association, who have more than ten years' standing would be eligible for appointment as District Judges which would be contrary to the categoric finding in *A. Pandurangam Rao's case* (supra), wherein, it was held that even all the 355 candidates specifically interviewed by the High Court for appointment as District Judges would still be ineligible unless any one of them was specifically recommended by the High Court for such appointment. *Rameshwar Dayal's case* (supra) was not brought to the notice of the Division Bench in the particular context of Article 233 being a self-contained provision. In the light of the exhaustive discussion earlier, it appears to me, with the greatest respect, that the motion order in *M/s. Titan Engineering Co. case* (supra) does not lay down the law correctly and is hereby overruled.

20. To finally conclude on the main issue, it is held that under clause (aa) of Section 7A(3) of the Act, (as amended in Haryana) only a person duly recommended by the High Court for appointment as a District Judge in accordance with Article 233(2) of the Constitution can be appointed as the Presiding Officer of a Tribunal.

21. In fairness to Mr. B. S. Gupta, learned counsel for the respondent-State, it must be noticed that perhaps in awareness of the weakness of his case on merits, he had attempted to evade the basic issue by way of a preliminary objection. It was argued that as the Award of the Tribunal may well be sustainable on the well-known *de facto* doctrine, therefore, any challenge to the validity of the appointment of its Presiding Officer must be labelled as a collateral one and therefore, not maintainable in view of the observations in *Gokaraju Bangaraju* v. *State of Andhra Pradesh,* (5) Mr. Gupta had contended that a writ of *quo warranto* sought on behalf of the petitioners should be denied to them on this score.

22. The aforesaid stand has only to be noticed and rejected. In C.W.P. No. 4411 of 1982 *Tul Par Machine & Tool Company* v. *Sh. Joginder Pal and others*), there is an express prayer for the grant of a writ of *quo warranto* against respondent No. 3, Shri M. C. Bhardwaj, Presiding Officer, Industrial Tribunal, Faridabad in Haryana, C.W.P. No. 2537 of 1982 *Kishan Singh* v. *Haryana*

(5) A.I.R. 1981 S.C. 1473.

State etc.), in para No. 9(i) in terms assails the appointment of respondent No. 3, Shri M. C. Bhardwaj on the ground that he could not be appointed as the Presiding Officer of the Tribunal in view of the provisions of Section 3 of the Act. In C.W.P. No. 4138 of 1982 (*M/S. Remington Rand of India* vs. *Paras Singh etc.*), again a writ of *quo warranto* is expressly sought against respondent No. 6 Shri H. S. Kaushik, as the Presiding Officer of the Labour Court, Faridabad. When a relief is claimed in terms, for the issuance of a writ of *quo warranto* or arises directly and manifestly from the pleadings, it cannot possibly be said that the attack on the appointment of the Presiding Officer of the Tribunal or the Labour Court is in any way a collateral one. Indeed, it is a frontal and direct attack on the very source of the Award. Merely, because the validity of the Award is also challenged on this ground, would not disentitle the petitioners to the claim for a writ of *quo warranto*. Though it appears to be so on plain principle, it is conclusively established by the following observations in *The State of Haryana* v. *The Haryana Co-operative Transport Ltd. and others*, (6).

> "The mere circumstance that the Ist respondent did not in so many words ask for the writ of *quo warranto* cannot justify the argument that the appointment was being challenged collaterally in a proceeding taken to challenge the award. Considering the averments in the writ petition, it seems to us clear that the main and real attack on the award was the ineligibility of Shri Gupta to occupy the post of a Judge of the Labour Court, in the discharge of whose functions the award was rendered by him. The relief of *certiorari* asked for by the writ petition was certainly inappropriate but by clause (c) of paragraph 16, the High Court was invited to issue such other suitable writ, order or direction as it deemed fit and proper in the circumstances of the case. There is no magic in the use of a formula. The facts necessary for challenging Shri Gupta's appointment are stated clearly in the writ petition and the challenge to his appointment is expressly made on the ground that he was not qualified to hold the post of a Judge of the Labour Court."

(6) A.I.R. 1977 S.C. 237.

And again:

> ".....Accordingly, it is open to the High Courts in the exercise of their writ jurisdiction to consider the validity of appointment of any person as a chairman or a member of a Board or Court or as a presiding officer of a Labour Court, Tribunal or National Tribunal. If the High Court finds that a person appointed to any of these offices is not eligible or qualified to hold that post, the appointment has to be declared invalid by issuing a writ of *quo warranto* or any other appropriate *writ or direction. To strike down usurpation of office is the function and duty of High Courts in the exercise of their constitutional powers under Articles* 226 *and* 227."

In view of the above, the preliminarly objection against the grant of a writ of *quo warranto* must necessarily be rejected.

23. Once the aforesaid hurdle is out of the way, the writ *petitioners in M/s. Tul Par Machine & Tool Company;* and, *Kishan Singh* cases (supra) are *a fortiorari* entitled to and are hereby granted a writ of *quo warranto* (in view of my conclusion in para-20) against respondent No. 3—Shri M. C. Bhardwaj. It is commoun ground that at no stage was he ever recommended by the High Court for appointment and consequently would be ineligible to be appointed as the Presiding Officer of the Tribunal under Section 7A(3)(aa) of the Act as applicable in Haryana. His appointment has, therefore, to be necessarily quashed.

24. Learned counsel for the parties were rightly agreed that the legal position is identical in C.W.P. No. 4138 of 1982, *M/s. Remington Rand of India* v. *Paras Singh etc.* In this case, the challenge is to the appointment of the incumbent Presiding Officer of the Labour Court, Faridabad. It is common ground that by Haryana Act No. 39 of 1976, an identical amendment had also been introduced in Section 7 of the Act with regard to the prescription of qualitications for the Presiding Officers of the Labour Court. The ratio and observations made in this judgment with regard to the appointment of a Presiding Officer of a Tribunal, therefore, applies *mutatis mutandis* in *M/s. Remington Rand of India's case* (supra) as well for the grant of a writ of *quo warranto* against respondent No. 6—Shri H. S. Kaushik. It is

common ground that respondent No. 6, Shri H. S. Kaushik was never recommended for appointment as District Judge by the High Court and consequently would be ineligible for appointment. His appointment has, therefore, to be necessarily quashed as well.

25. However, there is merit in the stand of Mr. B. S. Gupta that merely because the appointments of the Presiding Officer of the Tribunal or the Labour Court have been quashed, this would not *ipso facto* vitiate the award rendered by them on the basis of the *de facto* doctrine. It was rightly contended that the offices of the Presiding Officers of both the Tribunals and the Labour Court did lawfully exist and even though the appointments of the incumbents thereto have been set aside, the awards delivered by them under the colour of office would not be rendered inoperative.

26. It seems unnecessary to examine the aforesaid contention on principle because it appears to be covered by the binding precedent in *Gokaraju Rangaraju's* case (supra). Therein the appointment of a Sessions Judge had already been declared invalid on the ground of its violation of Article 233 of the Constitution. Later, the judgments rendered by the Sessions Judge were assailed on the ground that they stood vitiated as his appointment had been declared illegal. Repelling such a challenge, Chinnappa Reddy, J. speaking for the Bench observed as follows:—

> "A Judge, *de facto,* therefore, is one who is not a mere intruder, or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficiency as judgments pronounced and acts done by a Judge *de jure.* Such is the *de facto* doctrine, born of necessity and public policy to prevent needless confusion and endless mischief.———"

And again:

> "——We are concerned with the office that the judges purported to hold. We are not concerned with the particular incumbents of the office. So long as the

office was validly created, it matters not that the incumbent was not validly appointed. A person appointed as a Sessions Judge or Additional Sessions Judge or Assistant Sessions Judge, would be exercising jurisdiction in the Court of Session and his judgments and orders would be those of the Court of Session. They would continue to be valid as the judgments and orders of the Court of Session, notwithstanding that his appointment to such Court might be declared invalid. On that account alone, it can never be said that the procedure prescribed by law has not been followed.——"

27. Following the above, it has necessarily to be held that the awards rendered by the respondents S/Shri M. C. Bhardwaj and H. S. Kaushik are not necessarily vitiated on the sole ground that their appointments have herein been set aside.

28. The learned counsel for the petitioners were, however, vehement in their stand that they wish to assail the respective awards on merits, on a wide variety of grounds and seek the separate relief prayed for in the writ petitions. The issues of merits, therein are plainly not of such significance as to require determination by this Full Bench. I accordingly direct that these cases be now placed before a Single Bench for decision on merits on the remaining issues.

S. C. Mital, J,—I agree.

S. S. Sodhi, J,—I too concur.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital, JJ.

DAYA CHAND HARDAYAL CLOTH COMMISSION AGENTS,—*Petitioner.*

versus

BIR CHAND,—*Respondent.*

Civil Revision No. 2232 *of* 1980.

May 17, 1983.

Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—*Sections* 15(1) & (2) *and* 24—*Punjab Urban Rent Restriction Act (VI of* 1947)—*Section* 15(1)(*a*)—*East Punjab Urban Rent Restriction Act (III of* 1949)—*Sections* 15(1)(*a*) & (*b*) *and* 21—*Punjab General Clauses Act (I of* 1898)—*Section* 22—*Specified orders only passed by Rent Controllers under the* 1947 *Act made appealable by a Government*