

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1128 OF 2023

DISTRICT: PUNE
Subject: Appointment

Smt. Ashvini T. Sakore)	
Age 35 years, Occ. Service,)	
R/at Flat No.201, Durvankur Building,)	
Guru Vihar Colony, near Panjarpol,)	
Bhosari, Pune 411039.)	...Applicant

Versus

The State of Maharashtra, through Principal)	
Secretary, Industrial and Labour Department,)	
O/at Mantralaya, Mumbai 400 032.)	...Respondent.

Shri B. Deshmukh, Advocate for the Applicant
Smt. Kranti Gaikwad., Presenting Officer for the Respondent.

CORAM : Justice Mridula Bhatkar, Chairperson
Shri Debashish Chakrabarty, Member (A)

RESERVED ON : 02.01.2024

PRONOUNCED ON : 07.05.2024

PER : Shri Debashish Chakrabarty, Member (A)

JUDGEMENT

1. The Applicant has challenged Industries, Energy and Labour Department letter dated 20.06.2023 addressed to her by which it has been communicated that she does not fulfil the requisite criteria for experience and cannot be appointed to post of 'Assistant Commissioner of Labour-Group A'. The Applicant seeks order that this Industries, Energy and Labour Department letter dated

20.06.2023 be set aside and thereupon she be given appointment to post of 'Assistant Commissioner of Labour- Group A'.

2. The learned Counsel for the Applicant stated that she had earlier filed O.A.No.119/2019 challenging Appointment Order of 'Industries, Energy and Labour Department' dated 17.12.2018 by which Smt. S. P. Sable, Government Labour Officer had been given appointment as 'Assistant Commissioner of Labour- Group A'. The Applicant had also filed O.A. No.705/2020 challenging letter dated 15.10.2020 of MPSC to Industries, Energy and Labour Department by which they had refused to recommend her name for appointment to post of 'Assistant Commissioner of Labour, Group A'. Another O.A.No.576/2020 came to be filed by Smt. S. P. Sable, Government Labour Officer challenging cancellation of her earlier Appointment Order by 'Industries, Energy and Labour Department' GR dated 15.09.2020 to revert her back to post of Government Labour Officer.

3. The learned Counsel for the Applicant further stated that O.A.No.119/2019 with O.A. No.705/2020 and O.A. No.576/2020 were heard together and common judgment was passed on 07.04.2022 allowing O.A.No.705/2020 while partly allowing O.A.No.119/2019 and dismissing O.A.No.576/2020. Thereafter, M.P.S.C. had approached the Hon'ble Bombay High Court challenging the common judgment passed on 07.04.2022 in O.A.No.119/2019 with O.A. No.705/2020 and O.A. No.576/2020 by filing W.P. No.475 of 2023 and W.P. No.476 of 2023. The Hon'ble Bombay High Court dismissed both the Writ Petitions filed by MPSC on 19.01.2023. Thereafter, M.P.S.C. had approached the Hon'ble Supreme Court of India by filing SLP No.15362/2023 and SLP

No.15363/2023 but these were dismissed on 17.07.2023 thus confirming order of Hon'ble Bombay High Court dated 19.01.2023 Therefore, the common judgment passed in O.A.No.119/2019 with O.A.705/2020 and O.A.576/2020 passed on 07.04.2022 has attained finality and was required to be forthwith implemented by Industries, Energy and Labour Department to appoint the Applicant on post of 'Assistant Commissioner of Labour Group A'.

4. The learned Counsel for the Applicant further pointed out that Smt S. P. Sable, Government Labour Officer had also approached the Hon'ble Bombay High Court challenging the common judgment passed in O.A. No.119/2020 with O.A.No.705/2020 and O.A. No. 576/2020 on 07.04.2022 by filing W.P. No.2999 of 2023; W.P. No. 3000 of 2023 and W.P. No.3001 of 2023. The Hon'ble Bombay High Court has dismissed all these Writ Petitions on 28.04.2023.

5. The learned Counsel for the Applicant thereupon mentioned that name of Applicant came to be recommended by MPSC to Industries, Energy and Labour Department on 20.02.2023 for appointment to post of 'Assistant Commissioner of Labour Group A'. She stated that Applicant was then called by letter dated 06.03.2023 for 'Verification of Documents' on 08.03.2023.

6. The learned Counsel for Applicant further mentioned that after (i) 'Police Verification Report' of the Applicant was received on 20.03.2023 and (2) 'Medical Examination Report' of the Applicant was received on 21.03.2023; the Industries, Energy and Labour Department was required to complete the process of 'Verification of Document' and issue 'Appointment Order' to Applicant for post of 'Assistant Commissioner of Labour Group A'. Instead complaint filed by Smt S.P Sable, Government Labour Officer dated 10.04. 2023 was taken

cognizance of in undue haste by 'Industries, Energy and Labour Department' to hold meeting of 'CSB' on 11.04.2023 and call for explanation from Applicant on 12.04.2023. The Applicant gave detailed reply to Industries, Energy and Labour Department on 12.04.2023, refuting all allegations made by Smt S.P Sable, Government Labour Officer that she did not possess requisite experience for appointment to post of 'Assistant Commissioner of Labour Group A'.

7. The learned Counsel for the Applicant then contended that 'Industries, Energy and Labour Department' did not accept the explanation submitted by Applicant on 12.04.2023. Thereafter, 'Industries, Energy and Labour Department' on 19.04.2023 decided to complete the exercise for 'Verification of Documents' submitted by Applicant through 'Third Party' check by forming team of 'Field Officers'. Accordingly, 'Deputy Commissioner of Labour Pune' by 'Office Order' dated 20.04.2023, constituted the 'Field Team' of (i) 3 Assistant Labour Commissioners and (ii) 1 Government Labour Officer who are all stationed at Pune to visit the premises of (i) M/s HYT Engineering Company Pvt. Limited Pune and (ii) M/s Enkei Wheels India Ltd. Pune and submit their 'Joint Enquiry Report' regarding the validity of 'Experience Certificates' submitted by Applicant.

8. The learned Counsel for the Applicant mentioned that findings of this team of 'Field Officers' was submitted as 'Joint Enquiry Report' on 27.04.2023 to Deputy Commissioner of Labour Pune. The 'Deputy Commissioner Labour Pune' in turn submitted report to 'Additional Commissioner Labour Pune' on 02.05.2023 who further submitted report to 'Labour Commissioner Maharashtra State Mumbai' on 03.05.2023.

9. The learned Counsel for the Applicant then emphasized that it was the 'Joint Enquiry Report' of 'Field Officers' submitted on 27.04.2023 along with proposal submitted by 'Labour Commissioner Maharashtra State Mumbai' on 03.05.2023 that had resulted in Industries, Energy and Labour Department, letter dated 20.06.2023 being issued to Applicant conveying that she did not possess requisite experience and could not be given appointment to post of 'Assistant Commissioner of Labour Group A'.

10. The learned Counsel for the Applicant concluded arguments by relying upon 'Additional Affidavit in Reply' filed by Applicant on 02.01.2024 which encloses 'Online Information' placed in 'Public Domain' by "Employee Provident Fund Organization" (EPFO) under 'Ministry of Labour Government of India' to forcefully challenge the findings of the team of 'Field Officers' in 'Joint Enquiry Report' submitted on 27.04.2023 especially with regard to periods of employment of Applicant in (i) M/s Enkei Wheels India Ltd. Pune and (ii) M/s Dev Gaurav Facilities Pvt Ltd, Pune to counter the averments in 'Affidavit-in Reply' filed on 06.11.2023 by 'Labour Commissioner Maharashtra State Mumbai'.

11. The learned P.O. relied on 'Affidavit-in-Reply' dated 06.11.2023 filed by 'Labour Commissioner Maharashtra State Mumbai' to explain the backdrop to Industry, Energy and Labour Department letter dated 20.06.2023 addressed to Applicant. She specifically relied on contents of 'Para 17' to state that 'Deputy Commissioner of Labour (Administration)' from office of 'Labour Commissioner, Maharashtra State, Mumbai' by letter dated 04.05.2023 had submitted detailed report dated 03.05.2023 received from 'Additional Commissioner Labour, Pune'

to Industries, Energy and Labour Department. In this report, it was stated that the Applicant had worked with M/s Enkei Wheels India Limited, Pune from 14.09.2012 to 03.02.2013 and then from 04.02.2013 to 31.12.2013, the Applicant had worked with M/s. Dev Gaurav Facility Services Pvt. Ltd., Pune. However, relevant documents which had been submitted by Applicant in this regard were not found available with M/s. Enkei Wheels India Limited, Pune.

12. The learned P.O. then mentioned that it was found that M/s. Dev Gaurav Facility Services Pvt. Ltd., Pune was just one 'Contractor' working for M/s. Enkei Wheels India Limited, Pune. The M/s Dev Gaurav Facility Services Pvt. Ltd. was granted registration as 'Contractor' under provision of 'Contract Labour Act, 1970'. Further, the report also stated that no written rules were found to have been adopted by M/s. Enkei Wheels India Limited, Pune about restrictions on 'Husband and Wife' working together. The concerned Government Labour Officer, Pune who had visited M/s. Dev Gaurav Facility Services Pvt. Ltd., Pune on 27.04.2023 found it had closed down and thus no information was verifiable from M/s Dev Gaurav Facilities Services Pvt. Ltd., Pune. The 'Experience Certificate' of Applicant from 'HYT Engineering Private Limited Company, Chinchwad, Pune' for 21.12.2010 to 13.09.2012 was found to be correct. However, the Applicant did not work with M/s. Enkei Wheels India Limited, Pune as per 'Experience Certificate' dated 09.05.2018. On verification revealed that no 'E.P.F.' contribution was paid to her by M/s. Enkei Wheels India Limited, Pune. Therefore, there is contradiction and inconsistently in 'Experience Certificate' issued by M/s. Enkei Wheels India Limited, Pune to Applicant on 09.05.2018.

13. The learned PO further mentioned that M/s Enkei Wheels India Limited, Pune had submitted their written explanation on 24.04.2023 that M/s Dev Gaurav Facility Services. Pvt. Ltd., Pune was engaged by them as 'Contractor' during 2013 & 2014 to work for Material Shorting, Cleaning, Packing etc. and was granted permission to engage 15 'Contract Labours'. The M/s Enkei Wheels India Ltd, Pune was thus its 'Principal Employer'. However, later on M/s Dev Gaurav Facility Services Pvt. Ltd., Pune came to be closed down and thus the 'Experience Certificate' of Applicant could not be verified even from M/s Enkei Wheels India Limited, Pune.

14. The learned PO lastly emphasised that Deputy Commissioner of Labour (Administration) from office of 'Labour Commissioner, Maharashtra State, Mumbai' by letter dated 04.05.2023 had submitted report dated 03.05.2023 received from 'Additional Labour Commissioner, Pune' to Industries, Energy and Labour Department which has clearly established the fact that Applicant did not possess requisite experience of not less than Three Years as a Labour Officer or Welfare Officer in a responsible position. Therefore, the Applicant cannot have any claim to be appointed to post of 'Assistant Commissioner of Labour, Group A'.

15. The letter of Labour Department dated 20.06.2023 inter-alia mentions that the Applicant had earlier submitted to 'MPSC' her 'Experience Certificates' to only from (i) M/s HYT Engineering Company Pvt. Limited Pune and (ii) M/s Enkei Wheels India Ltd. Pune and had not submitted 'Experience Certificate' from M/s Dev Gaurav Facility Services Ltd. Pune. The letter of Labour Department, dated 20.06.2023 addressed to the Applicant further states that

the team 'Field Officers', had visited the premises of these companies for verification of 'Experience Certificates' issued by them and thus it was on basis of their site visits that it was concluded that Applicant did not possess requisite experience not less than Three Years as a Labour Officer or Welfare Officer in a responsible position. Hence, the Applicant cannot be given appointment as 'Assistant Commissioner of Labour, Group A'.

16. The rival contentions about 'Industries, Energy and Labour Department' letter dated 20.06.2023 by which Applicant was denied that appointment to post of 'Assistant Labour Commissioner, Group A' have to be evaluated with in-depth scrutiny of evidence brought on record by the Applicant that she had indeed continued to be in employment with M/s Enkei Wheels India, Pune from 14.09.2012 to 03.02.2013 and with M/s Dev Gaurav Facility Services Pvt. Ltd. from 04.02.2013 to 31.12.2013. Thereafter it must also be examined if the findings by team of 'Field Officers' and evaluation of its 'Joint Enquiry Report' dated 27.04.2023 by 'Industries, Energy and Labour Department' had been fairly and objectively done without any bias or prejudice against the Applicant. Hence, the case of Applicant makes it imperative to delve deeper into the assessment of evidence brought on record in order to 'Lift the Veil'.

17. The documents brought on record which should be relied upon are those which have highest 'Evidential Value'. Out of various documents on record naturally those which are issued or certified by appropriate authorities of State Government and Central Government viz., (a) 'Assistant Commissioner of Labour Pune' (b) 'Regional Provident Fund Commissioner Pune' can help

establish the actual periods of employment as contended by Applicant with (i) M/s Enkei Wheels Limited, Pune from 14.09.2012 to 03.02.2013 and (ii) M/s Dev Gaurav Facility Services Pvt. Ltd. from 04.02.2013 to 31.12.2013.

18. The undated 'Certificate of Registrations' (Amendment) issued on behalf of Government of Maharashtra and signed by 'Assistant Commissioner of Labour, Pune' who is designated as 'Registering and Licencing Officer' under the Contract Labour Act 1970" mentions that M/s Enkei Wheel Pvt. Ltd. was 'Principal Employer' while M/s Dev Gaurav Facilities Services Pvt. Ltd., Pune was one amongst its several 'Contractors'. The work done by M/s Dev Gaurav Facility Services Ltd. Pune was related to Material Sorting, Cleaning, Packaging of Services etc. by engaging 15 'Contract Labourers'.

19. The Applicant claimed that while she was working in M/s Enkei Wheels Pvt. Ltd., Pune from 14.09.2012 to 03.02.2013; following her 'Marriage' with an 'Office Colleague' as per extant 'Management Policy' she was immediately directed to work with one of their 'Contractor' which was M/s Dev Gaurav facilities Services Pvt. Ltd., Pune. The Applicant was given formal 'Appointment Letter' dated 11.09.2012 by M/s Enkei Wheels Pvt. Ltd., Pune which shows her position as 'Officer HR and Administrative' at 'E-2 Level' with entitlement of fixed 'Salary & Allowances' besides other benefits such as 'Earned Leave', 'Casual Leave', 'Sick Leave' etc. The 'Appointment Letter' even mentioned the 'Retirement Age' of Applicant to be 58 Years. Hence, it is quite evident that Applicant was in regular employment of M/s Enkei Wheels Pvt. Limited, Pune and there could not have been any compelling reasons for her other than 'Management Policy' to shift to M/s Dev Gaurav Facilities Services Pvt. Ltd., Pune. Therefore, it is rather

evident that Applicant was directed to work with M/s Dev Gaurav Facilities Services Pvt. Ltd. Pune only because of extant 'Management Policy' and because M/s Enkei Wheel Pvt. Limited, Pune had influence on its 'Contractor' being in role of 'Principal Employer' under the 'Contract Labour Act 1970'. Hence, the Applicant had little choice but to work with M/s Dev Gaurav Facilities Pvt. Ltd., Pune from 04.02.2013 to 31.12.2013. Upon such lateral shifting of Applicant by M/s Enkei Wheel Pvt. Limited, Pune to M/s Dev Gaurav facilities Services Pvt. Ltd. Pune, she was obviously not be engaged as 'Contract Labourer' as she was already serving as 'Officer-HR & Admin' in M/s Enkei Wheels Pvt. Ltd., Pune. The lateral shifting of Applicant to M/s Dev Gaurav facilities Services Pvt. Ltd. Pune was also not expected to result in substantial change in terms and conditions of her employment of Applicant with M/s Enkei Wheels Pvt. Ltd. Pune which was that of 'Officer – HR & Admin'. However, it was natural that payment of 'Salary & Allowances' to Applicant from 04.02.2013 onwards were to be made by M/s Dev Gaurav Facilities Pvt. Ltd., Pune.

20. The fact that Applicant did actually work in M/s Dev Gaurav Facilities Services Pvt. Ltd., Pune from 04.02.2013 to 31.12.2023 is evident from the contents of 'Certificate' issued by 'Assistant Provident Fund Commissioner, Regional Office, Akurdi, Pune' on 22.05.2023 for the period from 04.02.2013 to 31.12.2013 which seamlessly dovetails its contents with 'Certificate' issued by 'Regional Provident Fund Commissioner, Pune' on 25.03.2023 for earlier period from 14.09.2012 to 03.02.2013 when Applicant was working with M/s Enkei Wheel Pvt. Ltd., Pune. Therefore, both these 'Certificates' issued by authorities based in Pune serving in 'Employment Provident Fund Organisation' (EPFO)

under 'Ministry of Labour and Employment of Government of India' irrefutably establish that the Applicant was in continuous employment during period from (a) 14.09.2012 to 03.02.2013 and (b) 04.02.2013 to 31.12.2013.

21. The material fact to note is that the Applicant had no break of employment during this period of even one day to suggest that there was termination of her service by M/s Enkei Wheel Pvt. Ltd., Pune, but that only lateral shifting of Applicant was made to M/s Dev Guarav Facilities Services Pvt. Ltd., Pune. The working arrangement between them thus is somewhat akin of 'Deputation Post' assigned to Government Servants who consent to leave their parent 'Organizations' or 'Institution' for 'Fixed Tenures' when their Salary & Allowances and Services Benefits become payable by borrowing 'Organizations' or 'Institutions'.

22. The Applicant with 'Member ID' PUPUN0303742000 had received her Salary & Allowances from M/s Dev Gaurav Facilities Services Pvt. Ltd. Pune for period from 'DOJ' of 04.02.2013 to 'DOE' 31.12.2013 which correlates to 'Establishment ID' No: PUPUN0303213000 assigned to M/s Dev Gaurav Facilities Pvt. Ltd. Pune by Employment Provident Fund Organization (EPFO). The earlier period from 'DOJ' of 14.09.2012 to 'DOE' of 03.02.2013 pertains to when Applicant was working in M/s Enkei Wheel Pvt. Ltd. Pune with 'Member ID' was PUPUN0303742000. Hence, co-reading of these two 'Certificates' issued by authorities based in Pune serving in Employment Provident Fund Organisation (EPFO) under Ministry of Labour and Employment Government of India leave no room but to conclude that Applicant had been in continuous employment; initially serving as 'Officer – HR & Admin' with M/s Enkei Wheel

Pvt. Ltd. Pune from 14.09.2012 to 03.02.2013 and later as 'Officer HR' in M/s Dev Gaurav Facilities Pvt. Ltd. Pune from 04.02.2013 to 31.12.2013.

23. The understanding of the relationship between 'Principal Employer' and 'Contractors' as per definitions under 'Contract Labour Act 1970' make it easier to appreciate that Applicant was in employment under working arrangement arrived at between 'Principal Employer' and 'Contractor'. The Appointment Letter dated 04.02.2023 given by M/s Dev Garav Facilities Services Ltd. Pune even mentions that although post offered to Applicant was of 'Officer-HR' but pertinently mentions there that "*Your current location will be at our Pune Office for regular work of our client Enkei Wheel Pvt. Ltd., Pune*". The relationship between M/s Enkei Wheels Pvt. Ltd. Pune and M/s Dev Gaurav Facilities Pvt. Ltd. Pune as 'Principal Employer' and 'Contractor' however ended in 2016 but outlasted the tenure of Applicant upto 31.12.2023 as is proven by contents of letter of M/s Enkei Wheels Pvt. Ltd. Pune dated 25.04.2023 addressed to Government Labour Officer, Pune.

24. The Applicant had been found eligible to be appointed as 'Assistant Labour Commissioner Group A' by common judgment dated 07.04.2022 in O.A. Nos. O.A.No.119/2019 with O.A.705/2020 and O.A.576/2020 which was subsequently upheld by string of judgments of Hon'ble Bombay High Court and Hon'ble Supreme Court of India.

25. The Industry Energy and Labour Department had forwarded on 02.03.2023 the documents provided by Applicant for (i) 'Police Verification Report' to 'CP Pune' and (ii) 'Medical Examination Certificate' to 'District Civil Surgeon Pune'. The 'Industry, Energy and Labour Department' was therefore

expected to at least inform Smt. S. P. Sable, Government Labour Officer to substantiate contentions made against Applicant that she did not possess requisite experience or not less than Three Years as a Labour Officer or Welfare Officer in a responsible position evaluate the evidence if any necessitated proceed to take appropriate steps to form team of 'Field Officers' not of officer at same level or juniors but at least under 'Deputy Commissioner of Labour, Pune' as the Applicant herself was seeking appointment to post of Assistant Commissioner of Labour Group A'.

26. The Industry Energy and Labour Department had consciously initiated the process of obtaining 'Police Verification Report' and 'Medical Examination' and had called Applicant for 'Verification of Document' on 08.03.2023. Hence, against this backdrop the locus-standi of Smt. S.P. Sable Government Labour Officer at the stage of 'Verification of Document' was first required to be established beyond all reasonable doubt by Industry Energy and Labour Department and not believe her claims to be 'Gospel Truth'; given the fact that appointment of Smt. S.P. Sable, Government Labour Officer to post of Assistant Commissioner of Labour, Group 'A' was revoked later by Industries, Energy and Labour Department GR dated 15.09.2020 solely based on complaint made by Applicant about validity of her 'NCL Certificate'. The Industry Energy and Labour Department was thus well aware of long drawn animosity between Applicant and Smt. SP Sable Government Labour Officer accentuated by the consequent legal challenges in Hon'ble Bombay High Court and Hon'ble Supreme Court of India; even hoisted by 'MPSC' after common judgment in O.A.

No. 119/2019 with O.A. No. 705/2020 and O.A. No. 576/2020 dated 07.04.2023.

27. The Industry, Energy and Labour Department undoubtedly appears to have given more than its due importance to complaint made by Smt. S.P. Sable, Government Labour Officer on 10.04.2023 while letting go of its primary responsibility to act with fairness especially when on the legal canvas, the Applicant has been indubitably found to be eligible for appointment to post of 'Assistant Commissioner of Labour Group A' by common judgment dated 07.04.2022 in O.A. Nos. O.A.No.119/2019 with O.A.705/2020 and O.A.576/2020 which was subsequently upheld by concatenation of judgments of Hon'ble Bombay High Court and Hon'ble Supreme Court of India.

28. The 'Industry Energy and Labour Department' by confidential letter dated 02.03.2023 had directed to office of 'Steam Boiler, Maharashtra State, Mumbai' to verify documents submitted by the Applicant and accordingly enquiries were done by the 'Joint Director, Steam Boiler, Maharashtra State, Pune' from both (i) M/s HYT Engineering Company Pvt. Limited Pune and (ii) M/s Enkei Wheels India Ltd. Pune and factual report was submitted by him on 05.04.2023 and soon thereafter the 'Director, Steam Boiler, Maharashtra State, Mumbai' had forwarded that report to 'Industry Energy and Labour Department'. It is very evident that this report was completely overlooked for reasons in the realm of unknown by the 'Industry Energy and Labour Department'. The action of Industry Energy and Labour Department therefore to issue letter dated 0.06.2023 to the Applicant informing that she does not fulfil the requisite criteria for experience and cannot be appointed to post of 'Assistant

Commissioner of Labour Group A' not only appears to be laced with deep prejudice against the Applicant but was even is covert attempt to undermine all judgements passed by Hon'ble Supreme Court of India and Hon'ble Bombay High Court. The Industry Energy and Labour Department was infact expected to act upon with alacrity to implement common judgement O.A.No.119/2019 with O.A. No.705/2020 and O.A. No.576/2020 dated 07.04.2022. Smt. S.P. Sable Government Labour Officer Pune who brazenly and belatedly attempted to somehow muddle the ongoing procedure at level of Industry Energy and Labour Department was entertained and allowed to forestall the appointment of Applicant to post of Assistant Commissioner of Labour, Group- A.

29. The Applicant has produced documents of high 'Evidential Value' issued by (i) 'Assistant Labour Commissioner Pune' (ii) Regional Commissioner EPFO Pune to conclusively establish that she was in continuous employment with (i) M/s Enkei Wheels India Ltd. Pune (ii) M/s Dev Gaurav Facility Services Ltd. Pune during the entire period from 14.09.2012 to 31.12.2013 and prior to that she was employed with M/s HYT Engineering Company Pvt. Limited Pune which together fulfil the requisite experience of not less than Three Years as a Labour Officer or Welfare Officer in a responsible position to make her eligible for appointment to post of 'Assistant Commissioner of Labour, Group-A' which is as per Para 4.6 of MPSC Advertisement No.39/2017 dated 17.05.2017.

30. The Hon'ble Supreme Court of India in ***Food Corporation Of India vs Rimjhim reported in (2019) 5 SCC 793*** has made pertinent observations about the often contended issue that 'Experience Certificate' must and/or ought to be submitted by candidates along with the Application Form. The relevant extracts of Para 11 are reproduced below :-

“11. Now so far as the submission on behalf of the FCI that a candidate must and/or ought to have produced the experience certificate along with the application is concerned, at this stage, a decision of this Court in the case of [Charles K. Skaria v. Dr. C. Mathew](#) (1980) 2 SCC 752 and the subsequent decision of this Court in the case of [Dolly Chhanda v. Chairman, Jee and others](#) (2005) 9 SCC 779 are required to be referred to. In the case of [Charles K. Skaria](#) (supra), this Court had an occasion to consider the distinction between the essential requirements and the proof/mode of proof. In the aforesaid case, this Court had an occasion to consider the distinction between a fact and its proof. In the aforesaid case before this Court, a candidate/student was entitled to extra 10% marks for holders of a diploma and the diploma must be obtained on or before the last date of the application, not later. In the aforesaid case, a candidate secured diploma before the final date of application, but did not produce the evidence of diploma along with the application. Therefore, he was not allowed extra 10% marks and therefore denied the admission. Dealing with such a situation, this Court observed and held that what was essential requirement was that a candidate must have obtained the diploma on or before the last date of application but not later, and that is the primary requirement and to submit the proof that the diploma is obtained on or before a particular date as per the essential requirement is secondary. This Court specifically observed and held that “what is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification”. This Court specifically observed and held that “to confuse between a fact and its proof is blurred perspicacity”. This Court further observed and held that “to make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, to invalidate the merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.”

31. The Hon’ble Supreme Court of India in **Civil Appeal No.6985 of 2021 dated 22.11.2021 (The Cotton Corporation Of India Ltd. vs Vignesh S.)**, which dealing with the issue of documents admissible as evidence of requisite work experience has made the following apposite observations regarding deduction by authorities towards dues of ‘Provisional Fund’ which reads as follows :-

“It is not even suggested that the respondent was having any documentary evidence to support his case that he had the requisite work experience for more than a year. The documents could have been in the nature of credit of the amounts towards salary into his bank account, deductions made by the requisite authorities towards his Provident fund dues or any such documents. None of those documents were even referred to in the response filed on behalf of the respondent.”

32. The case of Applicant is thus ensconced affirmatively on the common judgment dated 07.04.2022 in O.A. Nos. O.A.No.119/2019 with O.A.705/2020 and O.A. No.576/2020 by which the Applicant was found

eligible to be appointed as 'Assistant Labour Commissioner Group A' which has been subsequently upheld by concatenation of judgments of Hon'ble Bombay High Court and Hon'ble Supreme Court of India.

33. The Industry, Energy and Labour Department therefore cannot be given any further liberty to conduct itself in hemming and hawing manner while implementing the common judgment dated 07.05.2022 in O.A.Nos.1199/2019 with O.A.705/2020 and O.A.576/2020. Hence, taking into due consideration the exceptional facts and circumstances in case of Applicant as has been elaborated above; it is directed that 'Industry Energy and Labour Department' should submit comprehensive proposal within 'One Week' for due consideration of the 'Senior Secretaries Committee' under 'Chief Secretary Government of Maharashtra' as constituted by GAD Circular dated 12.02.2001. The 'Senior Secretaries Committee' to then decide about the proposal of 'Industry Energy and Labour Department' within 'Two Weeks'. The 'Industry Energy and Labour Department' to accordingly decide to give appointment to Applicant on post of 'Assistant Commissioner of Labour Group A' and if so then grant all consequential 'Services Benefits' to Applicant within 'Four Weeks'. Hence, the following order :-

ORDER

(A) Original Application is Allowed.

(B) No Order as to Costs.

Sd/-
(**Debashish Chakrabarty**)
Member (A)

Sd/-
(**Mridula Bhatkar, J.**)
Chairperson