

HIGH COURT OF JUDICATURE AT BOMBAY

**Question paper for written examination for the post
of Member - Industrial Court.**

**Date : 12th August, 2007.
(Time: 2.30 p.m. to 5.30 p.m.)**

**Total marks : 200
Part-I - 80 Marks
Part-II - 120 Marks**

Note:

1. All questions are compulsory.
2. 30 minutes are given for reading the paper and remaining 2 hrs. and 30 minutes are for writing the paper.
3. Candidates are required to answer all questions in Part-I by tick-marking on appropriate choice of answer. Each right answer will be allotted four marks and one mark will be deducted for each wrong answer.
4. Any deviant behaviour will result in disqualification.

PART - I

Q.1. While an application submitted before the Conciliation Officer under Section 33(2)(b) of the Industrial Disputes Act is pending for approval, the dismissed workman has a remedy:

(a) to approach the Labour Court by filing a complaint of unfair labour practice under the MRTU & PULP Act, 1971.

(b) to raise a demand for reinstatement before the Conciliation Officer for reference under Section 10(1) of the Industrial Disputes Act, 1947.

(c) to file a civil suit before the Civil Judge, Junior Division for declaration.

Q.2. A decree passed in a suit came to be challenged by filing a First Appeal belatedly before the District Court and the application for condonation of delay has been allowed by the Appellate Court. The remedy for the plaintiff lies in filing:

(a) a Second Appeal under Section 100 of the Code of Civil Procedure.

(b) Revision application under Section 115 of the Code of Civil Procedure.

(c) a Writ Petition under Article 227 of the Constitution.

Q.3. For recovery of arrears of wages as per the settlement a workman has to file:

(a) an application under Section 50 of the MRTU & PULP Act 1971.

(b) an application under the Payment of Wages Act, 1936.

(c) an application under Section 33C(2) of the Industrial Disputes Act, 1947.

Q.4. A criminal complaint punishable for offence under Section 498-A of IPC has been dismissed by the Judicial Magistrate, First Class. The acquittal order can be challenged:

(a) before the Sessions Court by filing a revision application.

(b) before the High Court by seeking leave to appeal.

(c) before the Sessions Court by seeking leave to appeal.

Q.5. A settlement signed with the Recognised Union under Section 2(p) of the Industrial Disputes Act, 1947 is binding on :

(a) members of the Recognised Union and the

Management.

(b) The workmen who accept the said settlement by signing a declaration.

(c) all the workmen employed in the establishment irrespective of their membership of the Recognised Union.

Q.6. The terms "agnate" and "cognate" are referable to :

(a) the Hindu Marriage Act, 1955.

(b) Guardians and Wards Act, 1890.

(c) the Hindu Succession Act, 1956.

Q.7. The term "Protected workman" is referable to the,

(a) Bombay Industrial Relations Act, 1946.

(b) Industrial Disputes Act, 1947

(c) MRTU & PULP Act, 1971.

Q.8. When an application for permission to retrench surplus workmen is rejected by the appropriate Government, the legal remedy for the applicant lies:

(a) before the High Court by way of a writ petition.

(b) by way of complaint before the Industrial Court under the MRTU & PULP Act, 1971.

(c) by a reference for adjudication by the Industrial Tribunal.

Q.9. When an application filed under Section 9A of the Civil Procedure Code, 1908 has been allowed by the trial Court, the remedy for the aggrieved party is by way of:

(a) an Appeal from Order.

(b) a Civil Revision Application.

(c) a Writ Petition.

Q.10. The term "illegal change" is referable to:

(a) The Bombay Industrial Relations Act, 1946.

(b) The Factories Act, 1948.

(c) The Industrial Disputes Act, 1947.

Q.11. A Suit for eviction filed by the landlord has been decreed under the Maharashtra Rent Control Act, 1999 and the appeal filed under Section 34 therein has been dismissed. The remedy for the tenant lies in :

(a) a Second Appeal before the High Court.

(b) Revision Application before the High Court.

(c) Writ Petition before the High Court.

Q.12. A salesman is an employee within the meaning of :

(a) The Factories Act, 1948.

(b) The Bombay Industrial Relations Act, 1946.

(c) The MRTU & PULP Act, 1971.

Q.13. While a criminal case for an offence punishable under Section 498-A read with Section 34 of IPC is pending for trial before the JMFC, the spouses have obtained a decree of divorce by consent and, therefore, they want to get the proceedings quashed. They will have to approach for the same to,

(a) the Court of JMFC before whom the criminal case is pending.

(b) the Sessions Court by way of a revision.

(c) the High Court.

Q.14. A Clerk employed in a private aided Junior College when aggrieved on the issue of seniority has the remedy :

(a) by filing a civil suit.

(b) by filing an application before the Education Officer.

(c) by filing a complaint of unfair labour practice.

Q.15. The minimum bonus under the Payment of Bonus Act, 1965 at 8.33 per cent is payable if:

(a) irrespective of the establishment has any allocable surplus.

(b) irrespective of the establishment has made profit or loss.

(c) the establishment has made profits.

Q.16. A Shikshan Sevak appointed in a Junior College on his termination of service can challenge the same before :

(a) the School Tribunal.

(b) the Tribunal constituted by the State Government under the Scheme.

(c) The College Tribunal.

Q.17. The State Government Dairy has employed contract labour and they want to claim permanency with the principal employer. The remedy for the contract labour will lie in:

(a) a complaint of Unfair Labour Practice under the MRTU & PULP Act, 1971.

(b) a reference for adjudication before the Industrial Tribunal.

(c) an original application before the Maharashtra Administrative Tribunals Act, 1985.

Q.18. The term "set off and set on" is referable to:

(a) the Payment of Wages Act.

(b) the Payment of Gratuity Act.

(c) the Payment of Bonus Act.

Q.19. A complaint filed under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed by the JMFC under Section 256(1) of Cr.P.C. The remedy for the complainant lies :

(a) before the Sessions Court by way of a revision application.

(b) by way of an appeal against acquittal before the High Court.

(c) by a restoration application before the JMFC.

Q.20. "Vishakha case decision" of the Supreme Court relates to the subject of :

(a) Domestic violence against women.

(b) Immoral trafficking in women.

(c) Sexual harassment of women at working places.

PART - II

Q.1. Write a judgment on one of the following facts.

(30 Marks)

(a) In a factory with 700 employees represented by two different Unions A and B, A Union makes an

application for recognition in the month of January 2006 under Section 11 of the MRTU & PULP Act, 1971 claiming that it has a majority membership for the whole of the period of six calendar months immediately preceding six months. The B Union on coming to know from the employer opposes the application and claims that (a) A Union does not have the required 30 per cent membership and (b) majority of the employees are the members of B Union. Both the Unions have filed the list of members and A Union claims the membership of 500 employees whereas the B Union claims to have 600 employees. The employer has filed WS and stated that the Court may recognise the Union with the majority membership. These rival claims have to be adjudicated upon and decided under Section 12 of the MRTU & PULP Act, 1971.

OR

(b) A clerk on the ground of misappropriation of funds dismissed from service by the employer, Co-operative Bank challenged the dismissal order before the Labour Court and was not successful. He filed an appeal before the Industrial Court and averred that, (a) the departmental enquiry conducted against him was vitiated and the charge levelled was not proved, (b) the punishment was grossly disproportionate, and (c) he being an office bearer of the Union was victimised. The Bank had examined in all three witnesses including the Supervisor of the Clerk and the Clerk was represented by an office bearer of the representative Union. He had examined himself and a co-worker from his department. His total service was five years and no such incident was reported against him earlier.

OR

(c) Rukmini, a resident of village Dhotate in Vashim was married to Yashwant, a resident of Karad. The dowry amount settled was Rs.10,000/- but during the time of wedding Rukmini's father could give only Rs.7000/- and he agreed that the remaining Rs.3000/- along with the other items like bed, TV and watch, etc. would be given within three months. After the marriage was performed on 7th January 2006, Rukmini stayed in the matrimonial home for one week and on the ninth day of her marriage she was brought back to her parents' home by her brother-in-law - Jaywant, the younger brother of Yashwant. She informed her

mother that she was being tortured by her husband and the in-laws on the demand of remaining amount of Rs.3000/- as well as the other items as promised. No one came to take her back to the matrimonial home even after two weeks and, therefore, her father accompanied her and went to her matrimonial home. He requested her husband and in-laws to give him some time more to fulfil his commitments and after overnight stay he returned to his village. Within three weeks Rukmini went to her aunt who was married in the same village and informed her that she was being ill-treated and her mother-in-law as well as husband had refused to give her food. She also complained that she was unwanted in the house and was being informed that unless she brings the balance money and the items she could not stay in the matrimonial home. On 10th March 2006 the aunt received a message from the in-laws of Rukmini at about 11 a.m. that she was unwell and when the aunt reached there, she found that Rukmini was unconscious. She was informed that while she was cooking she fell down in giddiness. The doctor came and declared her dead. The aunt, therefore, sent a message to Rukmini's parents on phone and they reached Rukmini's village at about 8 p.m. Next day when the dead body was being taken out for cremation Rukmini's aunt and mother noticed some marks around her neck. This was told to the father of Rukmini who also saw the marks and suspected some foul-play. He went to the police station in the same village and lodged a complaint. The Police Inspector visited Rukmini's maternal home, sent the dead body for post-mortem in which it was revealed that the cause of death was "asphyxia due to strangulation". From the ligature marks around the neck and internal injuries the doctor opined that it was a homicidal death.

Q.2. Distinguish between any five of the following

(30 Marks)

- (a) Illegal Lock Out and Illegal Lay Off under the MRTU & PULP Act, 1971.
- (b) Tenant and Licensee under the Maharashtra Rent Control Act, 1999.

(c) Appeal and Revision under the Bombay Industrial Relations Act, 1946.

(d) Mortgage by conditional sale and absolute sale.

(e) Interim Award and Final Award under the Industrial Disputes Act, 1947.

(f) Express bar and Implied bar.

(g) Bi-partite settlement and Tri-partite settlement.

(h) Private documents and Public documents.

Q.3. Write short notes on any five of the following

(30 Marks)

(a) Interlocutory orders under Section 30(2) of the MRTU & PULP Act, 1971.

(b) No Fault Liability compensation under the Motor Vehicles Act, 1988.

(c) Matters to be decided by the Employees Insurance Court.

(d) Ownership by adverse possession.

(e) Recognised Union and Representative Union

(f) Certification of Standing Orders

(g) Falsus in uno falsus in omnibus.

(h) Powers under Section 11-A of the Industrial Disputes Act, 1947.

Q.4. Elaborate your views on the following diverse opinions on the efficacy of the Contract Labour (Regulation and Abolition) Act, 1970:

(30 Marks)

(a) It has improved productivity,

- (b) It has resulted in reduction in permanent jobs,
- (c) It is a tool for exploitation of labour and
- (d) It has encouraged litigation.
