

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

WRITTEN EXAMINATION

FOR THE POST OF JUDGE - LABOUR COURT.

PART - I

Code No.

--

Date: 19th September, 2010

Total Marks	Marks obtained
80	

(Signature of Examiner)

NOTE:

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 (4) marks and one (1) mark will be deducted for each wrong answer.

PART-I (Objective Questions)

- Q.1) As per the Factories Act, 1948, generally no adult worker in a factory shall be required or allowed to work in a factory -
- (a) for more than 6 hours in any day.
 - (b) for more than 8 hours in any day.
 - (c) for more than 9 hours in any day.
 - (d) for more than 5½ hours in any day.
- Q.2) A certificate of fitness granted to a young person by a certifying surgeon after examining him and ascertaining his fitness for work in a factory is valid for-
- (a) Six months
 - (b) Twelve months
 - (c) Eighteen months
 - (d) Twenty-four months
- Q.3) Injury such as loss of a hand and a foot amounts to -
- (a) Partial disablement
 - (b) Permanent Partial Disablement
 - (c) Temporary Partial Disablement
 - (d) Permanent Total Disablement
- Q.4) An appeal against the order of the Commissioner under Section 30 of the Employees' Compensation Act, lies to the -
- (a) Industrial Court
 - (b) District Court
 - (c) High Court
 - (d) Appropriate Government

- Q.5) According to the provisions of Section 7 of the Payment of Wages Act, what does not amount to "Authorised Deductions"-
- (a) the withholding of an increment or promotion;
 - (b) deductions for absence from duty;
 - (c) deductions of income-tax payable by the employed person;
 - (d) deductions for contribution to any insurance scheme framed by the Government for the benefit of its employees.
- Q.6) According to the provisions of Industrial Disputes Act, 1947, no notice of change is required to be given by the employer to the employee in respect of the -
- (a) wages, including the period and mode of payment;
 - (b) compensatory and other allowances;
 - (c) change to be effected in pursuance of any settlement or award;
 - (d) hours of work and rest intervals;
- Q.7) Under the Industrial Disputes Act, "Unfair Labour Practices" are specified in -
- (a) Second Schedule of the Act
 - (b) Third Schedule of the Act
 - (c) Fourth Schedule of the Act
 - (d) Fifth Schedule of the Act
- Q.8) Award of the Labour Court must be signed by-
- (a) Chairman
 - (b) Member
 - (c) Presiding Officer
 - (d) Commissioner of the Labour Court
- Q.9) Lock-out means the following-
- (a) cessation of work by a body of persons employed in any industry
 - (b) the closing of a place of employment temporarily
 - (c) final close down of the very business engaged in by the employer
 - (d) termination of employee by way of punishment.
- Q.10) According to the provisions of Maternity Benefit Act, 1961, maternity benefit is a payment to a woman at the rate of the -
- (a) average daily wage
 - (b) average monthly wage
 - (c) average quarterly wage
 - (d) average yearly wage
- Q.11) Under the Payment of Bonus Act, 1965, every employee shall be entitled to be paid by his employer in an accounting year, a bonus, provided he has worked in the establishment-
- (a) for not less than thirty working days in that year
 - (b) for not less than sixty working days in that year
 - (c) for not less than ninety working days in that year
 - (d) for not less than one twenty working days in that year

- Q.12)** Under the Bombay Industrial Relations Act, 1946, the arbitration proceedings shall be deemed to have completed-
- (a) when the award is published.
 - (b) when a copy of the award is forwarded to the Registrar.
 - (c) when a copy of the award is forwarded to the Commissioner of Labour.
 - (d) on receipt of such award by the Registrar.
- Q.13)** Under the Bombay Industrial Relations Act, 1946, a Wage Board has no jurisdiction to decide a dispute relating to –
- (a) reduction / increase in posts
 - (b) rationalisation
 - (c) retrenchment or illegal change
 - (d) wages
- Q.14)** Under the M.R.T.U. and P.U.L.P Act, 1971, a complaint relating to unfair labour practices may be filed before the competent Court within-
- (a) sixty days of the occurrence of such unfair labour practice.
 - (b) ninety days of the occurrence of such unfair labour practice.
 - (c) one twenty days of the occurrence of such unfair labour practice.
 - (d) one eighty days of the occurrence of such unfair labour practice.
- Q.15)** Under the MRTU and PULP Act, 1971, the officer appointed to look into matter of unfair labour practice is-
- (a) Law Officer
 - (b) Inspecting Officer
 - (c) Investigating Officer
 - (d) Industrial Officer
- Q.16)** Every offence under the Bonded Labour System (Abolition) Act, 1976, shall be-
- (a) cognizable and bailable
 - (b) non-bailable
 - (c) non-cognizable
 - (d) none of the above
- Q.17)** Under the Child Labour (Prohibition and Regulation) Act, 1986, child means a person who has not completed-
- (a) his fourteenth year of age
 - (b) his sixteenth year of age
 - (c) his eighteenth year of age
 - (d) his twentieth year of age
- Q.18)** Any person who has attained the age of __ years may be a member of a registered trade union-
- (a) 14
 - (b) 15
 - (c) 18
 - (d) 21

Q.19) Factory means any premises whereon minimum __ workers are working and carrying manufacturing process without the aid of power.

- (a) 15
- (b) 20
- (c) 10
- (d) 30

Q.20) In case of tubectomy operation, a woman shall be entitled to leave with wages for a period of-

- (a) one week
- (b) two weeks
- (c) three months
- (d) four months

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

WRITTEN EXAMINATION

FOR THE POST OF JUDGE - LABOUR COURT.

PART - II

Total Marks : 120

- N.B.:* (1) Question Nos. 1, 2 and 9 are compulsory. Candidates shall answer any **Three** questions out of question nos. 3 to 8.
- (2) Your answers must be to the point and, wherever possible, quoting of the specific provisions of law will be appreciated.
- (3) Do not reproduce any question. Write only question's number against the answer.
- (4) "Except the names, if any, given in the questions / illustrations and given in the reported and cited cases, the candidate should not write any names (including their own), roll no., signature, address or any indications of their identity any where inside the answer book, otherwise he will be disqualified".
- (5) The figures given in the brackets against the questions indicate the marks assigned thereto.

Q. 1) Write a judgment on *any one* of the following disputes: (30)

- Note:** (a) The facts should be stated in brief and should not be reproduced verbatim.
(b) Candidates may presume that necessary witnesses have been examined and necessary and relevant documents have been produced by the parties in support of their respective claims and accordingly mention the same in the judgment.

Dispute 1:

There was some incident of *Gherao* by the employees of the Respondent Company. After holding Departmental Enquiry against the workmen, who were involved in that incident, were dismissed from service. They made references before the Labour Court.

It was contended by the employees that the Departmental Enquiry was not held fairly, properly and by observing the principles of natural justice. They contended that the punishment of dismissal imposed against them cannot be said to be proportionate to the charge of misconduct levelled against them. According to them, the same was harsh and disproportionate. They prayed that Employer-Company may be directed to reinstate them and pay them the amount of Rs. 3,00,000/- as compensation under Section 11-A of the Industrial Disputes Act.

The employer-company contended that considering the grave misconduct established against the Petitioners-employees, the punishment of their dismissal from service cannot be said to be harsh and dis-proportionate. The Departmental Enquiry has been conducted fairly, properly and by following the principles of natural justice. It was contended that once the Departmental Enquiry is conducted fairly and properly and once the punishment of dismissal from service imposed against the Petitioners is found to be not harsh and disproportionate, the Labour Court would have no jurisdiction u/s. 11-A of the Industrial Disputes Act to interfere with the punishment and to award compensation as prayed. On these grounds, the employer-company prayed that reference made by the employees / petitioners may be dismissed.

OR

Dispute 2:

The Petitioner employees were serving as Forest Protection Labourers w.e.f. 1987 and continued to serve with the Respondent till they were served with the notices dated 31.01.1991 informing that their services would be terminated w.e.f. 02.03.1991. They were paid certain amount by way of compensation under Section 25-F of the Industrial Disputes Act, 1947.

The Petitioners filed Complaint (ULP) before the Labour Court challenging their termination on the ground that it was illegal. It was alleged that out of 228 employees, only 109 employees were terminated and it was amounting to colourable exercise and misuse of powers. It was alleged that no seniority list was published and the principle of "Last Come, First Go" was not followed. They further stated that the amount determined u/s. 25-F of the Industrial Disputes Act was not paid to them, and therefore, the termination was illegal.

The Respondent stated that the scheme for plantation of trees was having a duration of five years. After lapse of five years, subsidy for protection of trees was not available to them. The services of the Petitioners were temporary. The seniority list of all 228 employees was prepared and published at the office of the Forest Department but nobody had taken objection to the said list. The principle of "Last Come, First Go" was followed while terminating services of 119 employees out of 228 employees. Requisite compensation was paid to them u/s. 25-F of the Industrial Disputes Act. According to the Respondent, when the scheme had come to an end, and the period for which appointments were made was also over, the termination of employees cannot be called as illegal. On these grounds, the Respondent prayed for dismissal of the complaint.

- Q. 2) Write Essay on *any one* of the following: (20)
- (a) The concept of "Moral Turpitude" in Labour and Service Laws.
 - (b) Preponderance of probability to sufficiency of evidence in disciplinary proceedings.
 - (c) Right to strike viz-a-viz essential service sector.
- Q. 3) State the provisions of the Factories Act, 1948 with regard to health, safety and welfare of workers. (20)
- Q. 4) Define and discuss 'arising out of and in the course of employment' as used in the Employees' Compensation Act, 1923? (20)
- Q. 5) What is an industrial dispute? What are its essentials? Who can raise it? (20)

- Q.6) What is the meaning of "Strike" and "Stoppage" under the Bombay Industrial Relations Act, 1946? What is the difference between strike and stoppage? (20)
- Q.7) What are the obligations and rights of a recognised union under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971? (20)
- Q.8) What is Employees' State Insurance Fund? What are the purposes for which the Fund may be expended? (20)
- Q.9) Write Short Notes: (*Any Two*). (10)
- (a) Types of disputes decided by Labour Courts
 - (b) Approved Union
 - (c) Bonded Labour
-