The Industrial Disputes Act, 1947	
	INDEX
	THE INDUSTRIAL DISPUTES ACT, 1947
Sec.	**Particulars**
	Introduction
	CHAPTER I : PRELIMINARY
1.	Short title, extent and commencement
2.	Definitions
2A.	Dismissal, etc., of an individual workman to be deemed to be an industrial dispute
	CHAPTER II: AUTHORITIES UNDER THIS ACT
3.	Works Committee
4.	Conciliation officers
5.	Boards of Conciliation
6.	Courts of Inquiry
7.	Labour Courts
7A.	Tribunals
7B.	National Tribunals
7C.	Disqualifications for the presiding officers of Labour Courts, Tribunals and National Tribunals
8.	Filling of vacancies
9.	Finality of orders constituting Boards, etc.
	CHAPTER II A: NOTICE OF CHANGE
9A.	Notice of change
9B.	Power of Government to exempt
The Industrial Disputes Act, 1947	
	CHAPTER III: REFERENCE OF DISPUTES TO BOARDS, COURTS OR TRIBUNALS
10.	Reference of disputes to Boards, Courts or Tribunals
10A.	Voluntary reference of disputes to arbitration
	CHAPTER IV : PROCEDURE, POWERS AND DUTIES OF AUTHORITIES
11.	Procedure and power of conciliation officers. Boards, Courts and Tribunals

11A.	Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen
12.	Duties of conciliation officers
13.	Duties of Board
14.	Duties of Courts
15.	Duties of Labour Courts, Tribunals and National Tribunals.
16.	Form of report or award
17.	Publication of reports and awards
17A.	Commencement of the award
17B.	Payment of full wages to workman pending proceedings in higher courts
18.	Persons on whom settlements and awards are binding
19.	Period of operation of settlements and awards
20.	Commencement and conclusion of proceedings
21.	Certain matters to be kept confidential
	CHAPTER V: STRIKES AND LOCK-OUTS
22.	Prohibition of strikes and lock-outs
23.	General prohibition of strikes and lock-outs
24.	Illegal strikes and lock-outs
The Industrial Disputes Act, 1947	
25.	Prohibition of financial aid to illegal strikes and lock-outs
	CHAPTER VA: LAY-OFF AND RETRENCHMENT
25A.	Application of sections 25C to 25E
25B.	Definition of continuous service
25C.	Right of workmen laid-off for compensation
25D.	Duty of an employer to maintain muster rolls of workmen
25E.	Workmen not entitled to compensation in certain cases
25F.	Conditions precedent to retrenchment of workmen
25FF.	Compensation to workmen in case of transfer of undertakings
25FFA.	Sixty days' notice to be given of intention to close down any undertaking
25FFF.	Compensation to workmen in case of closing down of undertakings
25G.	Procedure for retrenchment
25H.	Re-employment of retrenched workmen
25-I.	[Repealed]
25J.	Effect of Laws i r

	CHAPTER VB: SPECIAL PROVISIONS RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS
25K.	Application of Chapter VB
25L.	Definitions
25-M.	Prohibition of lay-off
25-N.	Conditions precedent to retrenchment of workmen
25-O.	Procedure for closing down an undertaking
25P.	Special provision as to restarting undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976
25Q.	Penalty for lay-off and retrenchment without previous permission
	The Industrial Disputes Act, 1947
25R.	Penalty for closure
25S.	Certain provisions of Chapter VA to apply to industrial establishment to which this Chapter applies
	CHAPTER VC: UNFAIR LABOUR PRACTICES
25T.	Prohibition of unfair labour practice
25U.	Penalty for committing unfair labour practices
	CHAPTER VI: PENALTIES
26.	Penalty for illegal strikes and lock-outs
27.	Penalty for instigation, etc.
28.	Penalty for giving financial aid to illegal strikes and lock-outs
29.	Penalty for breach of settlement or award
30.	Penalty for disclosing confidential information
30A.	Penalty for closure without notice
31.	Penalty for other offences
	CHAPTER VII: MISCELLANEOUS
32.	Offence by companies, etc.
33.	Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings
33A.	Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding
33B.	Power to transfer certain proceedings
33C.	Recovery of money due from an employer
34.	Cognizance of offences
35.	Protection of persons
36.	Representation of parties
36A.	Power to remove difficulties
36B.	Power to exemp

37.	Protection of action taken under the Act
38.	Power to make rules
The Industrial Disputes Act, 1947	
39.	Delegation of powers
40.	Power to amend

SCHEDULES

SCHEDULES

THE FIRST SCHEDULE	Industries which may be declared to be Public Utility Services under sub-clause (vi) of clause (n) of Section 2

THE SECOND SCHEDULE	Matters within the Jurisdiction of Labour Courts

THE THIRD SCHEDULE	Matters within the jurisdiction of Industrial Tribunals

THE FOURTH SCHEDULE	Conditions of Service for change of which Notice is to be given

THE FIFTH SCHEDULE	Unfair Labour Practices
	APPENDIX
8 (1)	Extracts from the Industrial Disputes (Amendment) Act, 1982
8 (2)	The Industrial Tribunal (Procedure) Rules, 1949
8 (3)	The Industrial Tribunal (Central Procedure) Rules, 1954

The Industrial Disputes Act, 1947

INTRODUCTION

Prior to the year 1947, industrial disputes were being settled under the provisions of the Trade Disputes Act, 1929. Experience of the working of the 1929 Act revealed various defects which needed to be overcome by a fresh legislation. Accordingly the Industrial Disputes Bill was introduced in the Legislature. The Bill was referred to the Select Committee. On the recommendations of the Select Committee amendments were made in the original Bill.

STATEMENT OF OBJECTS AND REASONS

Experience of the working of the Trade Disputes Act, 1929, has revealed that its main defect is that while restraints have been imposed on the rights of strike and lock-out in public utility services no provision has been made to render the proceedings institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. This defect was overcome during the war by empowering under Rule 81A of the Defence of India Rules, the Central Government to refer industrial disputes to adjudicators and to enforce their awards. Rule 81A, which was to lapse on the 1st October, 1946, is being kept in force by the Emergency Powers (Continuance) Ordinance, 1946, for a further period of six months; and as industrial unrest in checking which this rule has proved useful, is gaining momentum due to the stress of post industrial re-adjustment, the need of permanent legislation in replacement of this rule is self-evident. This Bill embodies the essential principles of Rule 81A, which have proved generally acceptable to both employers and workmen, retaining intact, for the most part, the provisions of the Trade Disputes Act, 1929.

The two institutions for the prevention and settlement of industrial disputes provided for in the Bill are the Works Committees consisting of representatives of employers and workmen, Industrial Tribunal consisting of one or more members possessing qualifications ordinarily required for appointment as Judge of a High Court. Power has been given to appropriate Government to require Works Committees to be constituted in every industrial establishment employing 100

workmen, or more and their duties will be to remove causes of friction between the employer and workmen in the day-to-day working of the establishment and to promote measures for securing amity and good relations between them. Industrial peace will be most enduring where it is founded on voluntary settlement, and it is hoped that the Works Committees will render recourse to the remaining machinery provided for in the Bill for the settlements of disputes infrequent. A reference to an Industrial Tribunal will lie where both the parties to an industrial dispute apply for such reference and also where the appropriate Government considers it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer disputes to

Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with aview to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strike and lock-out, which must remain inviolate, except where considerations of public interest override such rights.

The Bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act. Conciliation will be compulsory in all disputes in public utility services and optional in the case of other industrial establishments. With a view to expedite conciliation proceedings time limits have been prescribed for conclusion thereof—14 days in the case of conciliation officers and two months in the case of Board of Conciliation from the date of notice of strike. A settlement arrived at in the course of conciliation proceedings will be binding for such period as may be agreed upon by the parties and where no period has been agreed upon, for a period of one year, and will continue to be binding until revoked by a 3 months' notice by either party to the dispute.

Another important new feature of the Bill relates to the prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of Industrial Tribunals declared binding by the appropriate Government. The underlying argument is that where a dispute has been referred to conciliation for adjudication a strike or lock-out, in furtherance thereof, is both unnecessary and inexpedient. Where, on the date of reference to conciliation or adjudication a strike or lock-out is already in existence, power is given to the appropriate

Government to prohibit its continuance lest the chances of settlement or speedy determination of the dispute should be jeopardized.

The Bill also empowers the appropriate Government to declare, if public interest or emergency so requires, by notification in the Official Gazette, any industry to be a public utility service, for such period, if any, as may be specified in the notification.

ACT 14 OF 1947

The Industrial Disputes Bill having been passed by the Legislature received its assent on 11th March, 1947. It came into force on first day of April, 1947 as THE INDUSTRIAL DISPUTES ACT, 1947 (14 of 1947).

LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
2. The Industrial Disputes (Banking and Insurance Companies) Act, 1949 (54 of 1949).
3. The Adaptation of Laws Order, 1950.
4. The Repealing and Amending Act, 1950 (35 of 1950).
5. The Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950).
6. The Industrial Disputes (Amendment and Temporary Provisions) Act, 1951 (40 of 1951).
7. The Industrial (Development and Regulation) Act, 1951 (65 of 1951).
8. The Industrial Disputes (Amendment) Act, 1952 (18 of 1952).
9. The Industrial Disputes (Amendment) Act, 1953 (43 of1953).
10. The Industrial Disputes (Amendment) Act, 1954 (48 of 1954).
11. The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956).
12. The Industrial Disputes (Am 956).

13. The Industrial Disputes (Amendment) Act, 1957 (18 of 1957).

14. The State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959).

15. The Deposit Insurance Corporation Act, 1961 (47 of 1961).

16. The Agricultural Refinance Corporation Act, 1963 (10 of 1963).

8(1) The Industrial Disputes Act, 1947

17. The Unit Trust of India Act, 1963 (52 of 1963).
18. The Industrial Development Bank of India Act, 1964 (18 of 1964), 19. The Industrial Disputes (Amendment) Act, 1964 (36 of 1964).

20. The Industrial Disputes (Amendment) Act, 1965 (35 of 1965).

21. The Food Corporations (Amendment) Act, 1968 (57 of 1968).

22. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

23. The Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970).

24. The Industrial Disputes (Amendment) Act, 1971 (45 of 1971).

25. The IndustrialDisputes (Amendment) Act, 1972 (32 of 1972).

26. The Banking Service Commission Act, 1975 (42 of 1975).

27. The Industrial Disputes (Amendment) Act, 1976 (32 of 1976).

28. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

29. The Export-Import Bank of India Act, 1981 (28 of 1981).

30. The National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981).

31. The Industrial Disputes (Amendment) Act, 1982 (46 of 1982).

32. The Industrial Disputes (Amendment) Act, 1984 (49 of 1984).

33 The Industrial Reconstruction Bank of India Act, 1984 (62 of 1984).

34. The National Housing Bank Act, 1987 (53 of 1987).
35. The Small Industries Development Bank of India Act, 1989 (39 of 1989). 36. The Industrial Disputes (Amendment) Act, 1996 (24 of 1996).

37. The Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 (53 of 2003).

The Industrial Disputes Act, 1947

[11th March, 1947] An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

WHEREAS it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing;

It is hereby enacted as follows:—

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement.-(1) This Act may be called the Industrial Disputes Act, 1947.

[2]*[(2) It extends to the whole of India:

[3][***]

(3) It shall come into force on the first day of April, 1947.

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context,—

(a) "**Appropriate Government"** means—

(i) in relation to any industrial dispute concerning [4][***] any industry carried on by or under the authority of the Central Government, [5][***]

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1 For Statement of Objects and Reasons see Gazette of India, 1946, Pt. V., pp. 239-240, for Report of Select Committee, see Gazette of India 1947, Pt. V. pp. 33-35. This Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, Section 3 and Schedule, to Pondicherry by Reg. 7 of 1963, Section 3 and Schedule 1 and Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, Section 3 and Schedule

2 Subs. by Act 36 of 1956, Section 2, for sub-section (2) (w.e.f. 29.8.1956).

3 Proviso omitted by Act 51 of 1970, Section 2, 2nd Schedule (w.e.f. 1.9.1971).

4 Certain words and figures inserted by Act 10 of 1963, Section 47 and Schedule II, Pt. II and omitted by Act 36 of 1964, Section 2 (w.e.f. 19.12.1964).

5 The words "by the Federal Railway Authority" omitted by the A.O. 1948.

or by a railway company [1]*[or concerning any such controlled industry as may be specified in this behalf by the Central Government] [2][***] or in relation to an industrial dispute concerning [3][4][5][6][a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [7][the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)] or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), [8][***] or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [9][the Oil and and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or 2[the Airports Authority of India constituted

1 Ins. by Act 65 of 1951, Section 32.
2 The words "operating a Federal Railway" omitted by the A.O. 1950. Ins. by Act 47 of
3 1961, Section 51 and Schedule II, Pt. III (i.e. 1.1.1962). Subs. by Act 36 of 1964,
4 Section 2, (w.e.f. 19.12.1964).
5 Subs. by Act 45 of 1971, Section 2 (w.e.f. 15.12.1971).
6 Subs. by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).
7 Subs. by Act 24 of 1996, Section 2 (w.r.e.f. 11.10.1995).
8 Certain words omitted by Act 21 of 1996, see. 2 (w.r.e.f. 11.10.1995). Subs. by Act 24 of
9 1996, Section 2 for certain words (w.r.e.f. 11.10.1995).

under section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or 1[a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or] the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], 2[the National Housing Bank established under under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or 3[4[an air transport service, or a banking or an insurance company,] company,] a mine, an oil field,] 5[a Cantonment Board,] or a major port, the Central Government, and]

(ii) in relation to any other industrial dispute, the State Government;

6[(aa) **"arbitrator"** includes an umpire;]

7[8[(aaa)] **"average pay"** means the average of the wages payable to a workman-

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days,

preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;]

9[(b) **"award**" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial

1 Ins. by Act 21 of 1976, Section 33 (w.r.e.f. 26.9.1975).
2 Ins. by Act 53 of 1987, Section 56 and Second Schedule , Pt. III (w.e.f. 9.7.1988). Subs. by
3 Act 54 of 1949, Section 3, for "a mine, oil-field".
4 Subs. by Act 24 of 1996, Section 2 for certain words (w.r.e.f. 11.10.1995).
5 Ins. by Act 36 of 1964, Section 2 (w.e.f. 19.12.1964).
6 Ins. by Act 36 of 1964, Section 2 (w.e.f. 19.12.1964).
7 Ins. by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).
8 Clause (aa) re-lettered as "(aaa)" by Act 36 of 1964, Section 2 (w.e.f. 19.12.1964). Subs. by
9 Act 36 of 1956, Section 3, for clause (b) (w.e.f. 10.3.1957).

Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;]

1[(bb) **"banking company"** means a banking company as defined in section 5 of the 2Banking Companies Act, 1949 (ID of 1949), having branches or other establishments in more than one State, and includes 3[the Export- Import Bank of India) 4[the Industrial Reconstruction Bank of India,] 5[***], 5[***], 6[the Small Industries Development Bank of India established under under section 3 of the Small Industries Development Bank of India Act, 1989], t e State Bank of India, 7[a

corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) [8][a corresponding new bank constituted under section 3 of the Banking Companies {Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary bank], as defined in the State Bank of India (Subsidiary Banks) Act/1959 (38 of 1959);]

(c) **"Board"** means a Board of Conciliation constituted under this Act;

[9](cc) **"closure**" means the permanent closing down of a place of employment employment or part thereof;]

(d)"conciliation officer" means a conciliation officer appointed under this Act;

(e)**"conciliation proceeding"** means any proceeding held by a conciliation officer or Board under this Act;

[1][(ee) **"controlled industry"** means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;]

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1 Ins. by Act 54 of 1949, Section 3 and Subs. by Act 38 of 1959, Section 64 and Schedule III, Pt. II.

2 Now "the Banking Regulation Act, 1949".

3 Ins. by Act 28 of 1981, Section 40 and Schedule II, Pt II. (w.e.f. 1.1.1982).

4 Ins. by Act 62 of 1984, Section 71 and Schedule III, Pt II (w.e.f. 20.3.1985).

5 The words "the Industrial Development Bank of India," ins. by Act 18 of 1964, Section 38 and Schedule II, Pt. II (w.e.f. 1.7.1964) and omitted by Act 53 of 2003, Section 12 & Schedule, Pt. Ill (w.e.f. 2.7.2004).

6 Ins. by Act 39 of 19S9, Section 53 and 2nd Schedule.

7 Subs. by Act 5 of 1970, sec, 20, for "and any subsidiary bank" (w.r.e.f. 19.7.1969).

8 Subs. by Act 40 of 1980, Section 20, for certain words (w.e.f. 15.4.1980).

9 Ins.by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).

[2][***]

(f) **"Court"** means a Court of Inquiry constituted under this Act;

(g) **"employer"** means—

(i) in relation to any industry carried on by or under the authority of any department of [3][the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

[4][(gg)**"executive"**, in relation to a trade union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted;]

[5][***]

(i) a person shall be deemed to be **"independent"** for the purpose of his appointment as the Chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute:

[6][Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company;]

[7](j) **"industry"** means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of

1 2 Ins. by Act 65 of 1951, Section 32.
Clause (eee) ins. by Act 43 of 1953, Section 2 and omitted by Act 36 of 1964, Section 2 (w.e.f. 19.12.1964).

3 Subs. by the A.O. 1948, for "a Government in British India".

4 Ins. by Act 45 of 1971, Section 2 (w.e.f. 15.12.1971).

5 Clause (h) omitted by the A.O. 1950.

6 Ins. by Act 18 of 1952, Section 2.

7 On the enforcement of clause (c) of section 2 of Act 46 of 1982, clause (j) of section 2 shall stand substituted as directed in clause (c) of Act 46 of 1982. For the text of clause (j) of section 2 see Appendix.

(k) "**industrial dispute"** means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;

1[(ka)"Industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment, or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;]

2[(kk) **"insurance company"** means an insurance company as defined in section 2 of the Insurance Act, 1938 (4 of 1938), having branches or other establishments in more than one State;]

3[(kka) **"khadi"** has the meaning assigned to it in clause (d) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956);] 4[(kkb) **"Labour Court"** means a Labour Court constituted under section 7;] 7;]

1 Ins. by Act 46 of 1982, sec, 2 (w.e.f. 21.8.1984).

2 Ins. by Act 54 of 1949, Section 3.

3 Ins. by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).

4 Clause (kka) ins. by Act 36 of 1956, Section 3 (w.e.f. 10.3.1957) and re-lettered as clause (kkb) by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).

1(kkk) **"lay-off"** (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery 2[or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Explanation.—Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the king hours on any day and is not

given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day:

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;]

(l) **"lock-out"** means the [3][temporary closing of a place of employment], or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

[4][(la) **"major port"** means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(lb) **"mine"** means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);]

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1 2 3 4 Ins. by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).
Subs. by Act 46 of 1982, **Section** 2, for "or for anyother reason" (w.e.f. 21.8.1984). Subs. by Act 46 of 1982, Section 2, for "closing of a place of employment' (w.e.f. 21.8.1984). Ins. by Act 36 of 1964, Section 2 (w.e.f. 19.12.1964).

[1][(ll) **"National Tribunal"** means a National Industrial Tribunal constituted under section 7B;]

[2][(lll) **"office bearer",** in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;]

(m) **"prescribed"** means prescribed by rules made under this Act;

(n) **"public utility service"** means—

(i) any railway service [2][or any transport service for the carriage of passengers or goods by air];

[3][(ia) any service in, or in connection with the working of, any major port or dock;]

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the [4][First Schedule] which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declared to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension;

(o) **"railway company"** means a railway company as defined in section 3 of the Indian Railways Act, 1890 (9 of 18

1 Ins. by Act 36 of 1956, Section 3 (w.e.f. 10.3.1957).

2 Ins. by Act 45 of 1971, Section 2 (w.e.f. 15.12.1971).

3 Ins. by Act 45 of 1971, Section 2 (w.e.f. 15.12.1971).

4 Subs. by Act 36 of 1964, Section 2, for "Schedule" (w.e.f. 19.12.1964).

1[(oo) **"retrenchment"** means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

2[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

3[(p) **"settlement"** means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to 4[an officer authorised in this behalf by] the appropriate Government and the conciliation officer;]

(q) **"strike"** means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment;

5[(qq) **"trade union"** means a trade union registered under the Trade Unions Act, 1926 (16 of 1926);]

1 2 3 4 5 Ins. by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).
Ins. by Act 49 of 1984, Section 2 {w.e.f. 18.8.1984).
Subs. by Act 36 of 1956, Section 3, for clause (p) (w.e.f. 7.10.1956). Ins. by Act 35 of 1965, Section 2 (w.e.f. 1.12.1965).
Ins. by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).

1[(r) **"Tribunal"** means an Industrial Tribunal constituted under section 7A and includes an Industrial Tribunal constituted before the 10th day of March, 1957, under this Act;]

2[(ra) **"unfair labour practice"** means any of the practices specified in the Fifth Schedule;

3(rb) **"village industries"** has the meaning assigned to it in clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956);]

4[(rr) **"wages"** means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes—

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;]

5[(iv) any commission payable on the promotion of sales or business or both; but does not include—

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;]

6[(s)"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of

1 Subs. by Act 18 of 1957, Section 2, for clause (r) (w.r.e.f. 10.3.1957) Ins. by Act 46 of
2 1982, Section 2 (w.e.f. 21.8.1984).
3 Ins. by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).
4 Ins. by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).
5 Ins. by Act 46 of 1982, Section 2 (w.e.f. 21.8.1984).
6 Subs. by Act 46 of 1982, Section 2, for clause (s) (w.e.f. 21.8.1984).

employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

Case Law

"Any person" scope thereof

The expression 'any person' in section 2(k) of the Act, must be read subject to limitations and qualifications; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other; and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour, the parties to the dispute have a direct or substantial interest; Workmen of Dimakatach Tea Estate v. Management, AIR 1958 SC 353.

'Apprentice'—A Workman

An "Apprentice" is a Workman; Uttar Pradesh Awas Evam Vikas Parishad v. Labour Court II, Kanpur, 2004 LLR 432.

Burden of proof

It is for the claimant-workman claiming retrenchment compensation to lead evidence that he had worked for two hundred forty days in the year preceding his termination and filing of affidavit cannot be regarded as sufficient evidence for any court or Tribunal to the conclusion that a workman had in fact worked for two hundred forty days in a year; Range Forest Officer v. S.T. Hadinani, 2002 LLR 339.

Definition of "appropriate Government"

The Industrial Disputes Act, 1947

The 'appropriate Government' as defined in clause (a) of section 2 of the Act in relation to industrial disputes concerning NALCO is State Government; NALCO v. Union of India, (2003) II LLJ 995 (Ori).

For whom dispute can be raised

Where the Workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised, need not be, strictly speaking, a 'workman' within the meaning of the Act, but

must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest; Workmen of Dimakatch Tea Estate v. Management of D.T.E. AIR 1958 SC 353.

Held to be worker

According to the Labour Court, the workman could not be continued as a trainee for such a long period and, therefore held that a workman was a 'workman' under section 2(s) of the Act; Mara Thomas Gonsalvies v. Concept Pharmaceuticals (Pvt. Ltd., (2002) IV LLJ (Supp) Bom 906.

'Salesman' is a workman; Management of Roneo Vickers India Ltd, v. Lt. Governor of Delhi, 1994 LLR 253 (Del).

Held not to be worker

The petitioner who joined as a clerk was later on promoted and at the time of his termination, he was working in a supervisory capacity as senior Personnel Assistant Officer and drawing salary more than Rs. 500. Held petitioner is not a workman; Vilas Dumale v. Siporex India Ltd., 1998 LLR 380.

The petitioner was working as a supervisor quality control, drawing a salary exceeding Rs. 1600 per month. Held, he was not a workman; G.M. Pillai v. A.P. Lakhmikaf Judge, 3rd Labour Court, 1998 LLR 310.

Irrigation department: Industry or not

It has been held that the irrigation department of the State is an industry; State of Uttar Pradesh v. Industrial Tribunal IV, Agra, (2002) IV LLJ (Supp) NOC 8.

Projects undertaken by irrigation department would fall within the definition of 'industry' as defined in this section; Executive Engineer Yavatmal Medium Project Division, v. Anant, (1998) II LLJ 77.

"Lock-out" meaning thereof

If an employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees, or, generally speaking, when his act is what may be called an act of belligerency there would be a lockout. If, on the other hand, he shuts down his work because he cannot for instance get

The Industrial Disputes Act, 1947

the raw materials or the fuel or the power necessary to carry on his manufacturing or because he is unable to sell the goods he has made or because his credit is exhausted or because he is losing money, that would not be a lockout; Sri Ramachandra Spinning Mills, Pandalapaka v. Province of Madras, AIR 1956 Mad 241.

Relevancy

The designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee; S.K. Maini v. Carona Sahu Co. Ltd., 1994 LLR 321 (SC).

Retrenchment: Definition

If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of sub-clause (bb) of clause (oo) and the definition of "retrenchment" has to be given full meaning; Chief Administrator, Haryana Urban Development Authority, Manimajra v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, 1994 LLR 454 (P&H) (DB).

If a person is engaged for a specific period, or for the execution of a specific work and a clear stipulation is made in the contract of employment that the services shall be terminated at the expiry of the work, the workman shall not be entitled to claim that he has been retrenched or that the action is violative of the provisions of the Act; Municipal Committee v. Presiding Officer, Labour Court, 1994 LLR 206 (P&H).

Scope

Where the workers were not project employees and were not employed for any particular project, they would not be governed by sub-clause (bb) or clause (oo) of section 2 of the Act; S.M. Nilajkar v. Telecom District Manager, (2003) 4 SCC 27.

Clubs, Educational Institutions, Co-operatives, Research Institutes, Charitable projects and other kindred adventures, if they fulfil the triple test of systematic activity. Co-operation between employer and employee and production of goods and services, then they cannot be exempted from the scope of section 2(j); Bangalore Water Supply v. A. Rajappa, AIR 1978 SC 548.

The mere fact that a worker is a piece-rate worker would not necessarily take him out of the category of a worker within the meaning of section 2(1) of the Factories Act, if the relationship of master and servant or employer and employee existed; Birdhichand v. First Civil Judge, AIR 1961 SC 644.

In an industrial dispute concerning Insurance Corporation of India the provisions of the Industrial Disputes Act, 1947 will apply; Life Insurance Corporation of India v. Rajeev Kumar Srivastava, 1994 LLR 573 (All) (DB).

Scope of 'industry'

The definition in clause (ka) of section 2 does not make any difference between "industrial establishment" and "undertaking" in which any industry is carried on; Savani

An establishment can be taken out of the pale of industry only if it exercises inalienable Government functions. Sovereign functions of the State cannot be included in "industry"; Mohan v. State of Kerala, 1994 LLR 169 (Ker).

Substantial nature test

When the Courts have to decide whether an employee was employed on manual labour or not, then the test of the substantial nature of the employment is to be applied. In determining which of the employees in the various categories are covered by the definition of "Workman", the Court has to see what is the main or substantial work which the employees are engaged to do; Burmah Shell Oil Storage v. Management of Staff, AIR 1971 SC 922.

'Workman' scope thereof

If a Workman has consented to give his personal services and not merely to get work done and if he is bound under his contract to work personally, he is not excluded from the definition, simply because he has assistance from others, who work under him; D.C. Works Ltd. v. State of Saurashtra.

The persons engaged on job work basis could be workers, but only such persons would be workers who work regularly at the factory and are paid for the work, turned out during their regular employment on the basis of the work done- Piece-rate workers can be workers, but they must be regular workers and not workers who come according to their sweet will under the provision of section 2 (1); Sankar Balaji v. State of Maharashtra, AIR 1962 SC 517.

[1][2A. **Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.**—Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

1 Ins. by Act 35 of 1965, Section 3 (w.e.f. 1.12.1965).

CHAPTER II
AUTHORITIES UNDER THIS ACT

3. Works Committee.—

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters

4. Conciliation officers.—

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

5. Boards of Conciliation.—

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

(2) A Board shall consist of a chairman and two or four other members, as the appropriate Governmen

(3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

6. Courts of Inquiry.—

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

[1][**7. Labour Courts.—**

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial

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1 Subs. by Act 36 of 1956, Section 4, for section 7 (w.e.f. 10.3.1957).

disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government**.**

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless—

[1][(a) he is, or has been, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

[2][***]]

[3][(d)] he has held any judicial office in India for not less than seven years; or

[4][(e)] he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.]

State amendment

Haryana.—In section 7, in sub-section (3),—

(i) for clause (b), substitute the following clause, namely:— "(b) he is qualified for appointment as is or has been, a District Judge or an Additional District Judge or; and"

(ii) after clause (c), insert the following clause, namely;—

"(cc) he has been a Commissioner of a division or an Administrative Secretary to Government or an officer of the Labour Department not below the rank of a Joint Labour Commissioner for a period of not less than two years; or". [Vide Haryana Act 39 of 1976, sec. 2 (w.e.f. 12-8-1976).]

Case Law

Right of Labour Court

1 Ins. by Act 36 of 1964, Section 3 (w.e.f. 19.12.1964).

2 Clause (c) omitted by Act 46 of 1982, Section 3 (w.e.f. 21.8.1984).

3 Clauses (a) and (b) reiterated as clauses (d) and (e) respectively by Act 36 of 1964, Section 3 (w.e.f. 19.12.1964).

4 Clauses (a) and (b) relettered as clauses (d) and (e) respectively by Act 36 of 1964, Section 3 (w.e.f. 19.12.1964).

The Labour Court/Tribunal has an inherent right in the interest of justice to seek proper assistance and grant 'leave' to a party before it is represented by a legal practitioner; T.K. Varghese v. Nichimen Corporation, (2002) **IV** LLJ (Supp) Bom 1018.

[1][7A. Tribunals.—

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule [2][and for performing such other functions as may be assigned to them under this Act],

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless—

(a) he is, or has been, a Judge of a High Court; or

[3][(aa) he has, for a period of not less than three-years, been a District Judge or an Additional District Judge; [4][***]]

[5][***]

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.]

Comments

Power to constitute Industrial Court/Tribunal

Section 7A empowers the appropriate Government to constitute one or more Industrial Tribunals for adjudication of the disputes relating to any matter specified in the Schedules. The Second Schedule enumerates the matters which fall within the jurisdiction of the Labour Court. The Third Schedule enumerates the matters which fall within the jurisdiction of the Industrial Tribunal; Jagdish Narain Sharma v. Rajasthan Patrika Ltd., 1994 LLR 265 (Raj).

[6][7B. National Tribunals.—

1 Ins. by Act 36 of 1956, Section 4 (w.e.f. 10.3.1957).

2 Ins. by Act 46 of 1982, Section 4 (w.e.f. 21.8.1984).

3 Ins. by Act 36 of 1964, Section 4 (w.e.f. 19.12.1964).

4 The word "or" omitted by Act 46 of 1982, Section 4 (w.e.f. 21.8.1984).

5 Clause(b) omitted by Act 46 of 1982, Section 4 (w.e.f. 21.8.1984). Ins. by Act 36 of

6 1956, Section 4 (w.e.f. 10.3.1957).

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal 7[unless he is, or has been, a Judge of a High Court].

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.] 1[**7C. Disqualifications for the presiding officers of Labour Courts, Tribunals and National Tribunals.—**No person shall be appointed to, or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if—

(a) he is not an independent person; or

(b) hehas attained the age of sixty-five years.]

State amendment

Punjab, Haryana, Chandigarh.—In section 7C, for clause (b), substitute the following clause, namely:—

"(b) he has attained the age of sixty-seven years".

[Vide Punjab Act 8 of 1957, sec. 3 (w.e.f. 3-6-1957); and the Central Act 31 of 1986.]

2[**8. Filling of vacancies.—**If, for any reason a vacancy (other than a temporary absence) occurs in the office of the presiding officer of a Labour Court, Tribunal or National Tribunal or in the office of the Chairman or any other member of a Board or Court, then, in the case of a National Tribunal, the Central Government and in any other case, the appropriate Government, shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the proceeding may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled.]

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1 2 Subs. by Act 46 of 1982, Section 5, for certain words (w.e.f. 21.8.1984). Subs. by Act 36 of 1956, Section 5, for section 8 (w.e.f. 10.3.1957).

1[**9.Finality of orders constituting Boards, etc.—**

(1) No order of the appropriate Government or of the Central Government appointing any person as the Chairman or any other member of a Board or Court or as the presiding officer of a Labour Court, Tribunal or National Tribunal shall be called in question in any manner; and no act or proceeding before any Board or Court shall be called in question in any manner on the ground merely of the existence of any vacancy in, or defect in the constitution of, such Board or Court.

(2) No settlement arrived at in the course of a conciliation proceeding shall be invalid by reason only of the fact that such settlement was arrived at after the expiry of the period referred to in sub-section (6) of section 12 or sub-section (5) of section 13, as the case may be.

(3)Where the report of any settlement arrived at in the course of conciliation proceeding before a Board is signed by the Chairman and all the other members of the Board, no such settlement shall be invalid by reason only of the casual or unforeseen absence of any of the members (including the Chairman) of the Board during any stage of the proceeding.]

1 Subs. by Act 36 of 1956, Section 5, for section 9 (w.e.f. 10.3.1957).

[1][CHAPTER II-A

NOTICE OF CHANGE

9A. Notice of change.—No, employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change— (a) where the change is effected in pursuance of any [2][settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

Case Law

Need for notice of change

Refusal by Government to refer dispute regarding increase of rate of interest by Bank for loans to employees was held without jurisdiction and such increase attracted notice of change under section 9A. Although industrial dispute did exist but could not be adjudicated by Government under section 10 (1) read with section 12; Bank of India Employees' Union v. Union of India, (2003) I LLJ Bom 171.

Section 9A of the Act requires an employer to give notice in respect of any change in conditions of service which includes allowances also; Ram Swaroop Sharma v. Coal India Ltd., 1998 LLR 588.

1 Chapter 11A (containing sections 9A and 9B) ins. by Act 36 of 1956, Section 6 (w.e.f. 10.3. 1957).

2 Subs. by Act 46 of 1982, Section 6, for certain words (w.e.f. 21.8.1984).

The State Bank of India imposed additional conditions for granting permission to award Staff to seek election to any public/civic body. Held, since the relevant rules had always prohibited the acceptance of office on public/civic bodies by the Award Staff without prior sanction of SBI, the imposition of additional conditions were not violative of section 9A of the Act as they were issued to ensure that the functioning of a Bank is free from political influences and favourism, and that the employees attend to their duties, during office hours; General Manager (Operations), State Bank of India v. State Bank of India Staff Union, (1998) 3 SCC 506.

9B. Power of Government to exempt.—Where the appropriate Government is of opinion that the application of the provisions of section 9A to any class of industrial establishments or to any class of workmen employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workmen employed in any industrial establishment.][1]

1 On the enforcement of section 7 of Act 46 of 1982, Chapter II.B shall stand inserted as directed in section 7 of Act 46 of 1982. For the text of section 7 of Act 46 of 1982 see Appendix.

CHAPTER III

REFERENCE OF DISPUTES TO BOARDS, COURTS OR TRIBUNALS

10. Reference of disputes to Boards, Courts or Tribunals.—

(1) [1][Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time,] by order in writing—

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

[2][(c)refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication-.

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

3[Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

4[Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the

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1 Subs. by Act 18 of 1952, Section 3, for "If any industrial dispute exists or is apprehended, the appropriate Government may".

2 Subs. by Act 36 of 1956, Section 7, for clause (c) (w.e.f. 10.3.1957). 3 Subs. by Act 36 of 1956, Section 7, for "Provided that" (w.e.f. 10.3.1957). 4 Ins. by Act 46 of 1982, Section 8 (w.e.f. 21.8.1984).

Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.]

1[(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.]

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, 2[Labour Court, Tribunal or National Tribunal], the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

3[(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

1 Ins. by Act 36 of 1956, Section 7 (w.e.f. 10.3.1957).
2 Subs. by Act 36 of 1956, Section 7, for "or Tribunal" (w.e.f. 10.3.1957). Ins. by Act 46
3 of 1982, Section 8 (w.e.f. 21.8.1984).

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.] (3) Where an industrial dispute has been referred to a Board, 1[Labour Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lock- out in connection with such dispute which may be in existence on the date of the reference.

2[(4) Where in an order referring an industrial dispute to 3[a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, 4[the Labour Court or the Tribunal or the National Tribunal, as the case may be,] shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a 5[Labour Court, Tribunal or National Tribunal] under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.]

1 Subs. by Act 36 of 1956, Section 7, for "or Tribunal" (w.e.f. 10.3.1957). Ins. by Act 18
2 of 1952, Section 3.
3 Subs. by Act 36 of 1956, Section 7, for "a Tribunal" (w.e.f. 10.3.1957). Subs. by Act 36
4 of 1956, Section 7, for "the Tribunal" (w.e.f. 10.3.1957).
5 Subs. by Act 36 of 1956, Section 7, for "Tribunal" (w.e.f. 10.3.1957).

1[(6) Where any reference has been made under sub-section (1A) to a National Tribunal then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly,—

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

2[Explanation.—In this sub-section, "Labour Court" or "Tribunal" includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Tribunal, then, notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33A, section 33B and section 36A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.]

3[(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government.]

Case Law

1 Ins. by Act 36 of 1956, sec, 7 (w.e.f. 10.3.1957). Ins. by Act
2 36 of 1964, Section 5 (w.e.f. 19.12.1964). Ins. by Act 46 of
3 1982, Section 8 (w.e.f. 21.8.1984).

The Industrial Disputes Act, 1947

'Authority' Meaning

As per the permission given in Supreme Court order, in case of fresh dispute, to approach authority in accordance with law. It was held that "authority" here meant authority under statute, namely, reference in terms of section 10 of Industrial Disputes Act and not High Court; Rourkela Shramik Sangh v. Steel Authority of India Ltd., (2003) I LLJ SC 849.

Conclusion of a proceeding

Proceedings under the Industrial Disputes Act, 1947 on a reference under section 10(l)(c) do not conclude till after the expiry of 30 days from the date of the publication of the award. During this interregnum, an aggrieved party is entitled to move an application for the setting aside of an ex parte award and the Labour Court does not become functus officio; Punjab State Seeds Corporation Ltd. v. The Presiding Officer,

Labour Court, 1994 LLR 452 (P&H).

No requirement of Notice

It is not necessary to issue notice to the employer nor consider their objections nor to hear them before making reference by the Competent Government and the Tribunal should adjudicate on merits; General Insurance Employees' Association (South Zone) v. Presiding Officer, Industrial Tribunal, Madras, (2002) IV LLJ (Supp) Mad 855.

Period of Limitation

The reference sought for by the workman cannot be said to be delayed or suffering from a lapse particularly when law does not prescribe any period of limitation for raising a limitation under section 10 of the Act; S.M. Nilajkar v. Telecom District Manager, (2003) 4 SCC 27.

Requirement to make reference

The real test for making a reference is whether at the time of reference dispute exists or not and when it is made it is presumed that the State Government is satisfied that natural justice is still subsisting and so the Labour Court cannot go behind the reference; U.P. State Electricity Board v. Presiding Officer, Labour Court, Varanasi, (2002) IV LLJ (Supp) NOC 1045.

It is not open to the Government to go into the merit of the dispute concerned. Once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It

cannot itself decide the merit of the, dispute; K.R. Bhagat v. State of Maharashtra, 1994 LLR 363 (Bom).

Government cannot decline to make reference for laches committed by the workman; Hari Chand v. State of Haryana, 1994 LLR 549 (P&H).

It is well-known that satisfaction of the appropriate authority in the matter of making a reference under section 10 (1) of the Industrial Disputes Act is a subjective satisfaction. Unless perversity ex facie can be shown the order of reference should not be questioned at its inception; Aviqruipo of India Ltd. v. State of West Bengal, 1994 LLR 618 (Cal).

8(1) The Industrial Disputes Act, 1947

[1][10A. Voluntary reference of disputes to arbitration.—

(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

[2][(1A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.]

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within [3][one month] from the date of the receipt of such copy, publish the same in the Official Gazette.

[4][(3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.] (4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

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1 Ins. by Act 36 of 1956, Section 8 (w.e.f. 10.3.1957).

2 Ins. by Act 36 of 1964, Section 6 (w.e.f. 19.12.1964).

3 Subs. by Act 36 of 1964, Section 6, for "fourteen days" (w.e.f. 19.12.1964).

4 Ins. by Act 36 of 1964, Section 6 (w.e.f. 19.12.1964).

The Industrial Disputes Act, 1947

[1][(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A) the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.]

(5) Nothing in the Arbitration Act, 1940 (10 of 1940) shall apply to arbitrations under this section.]

1 Ins. by Act 36 of 1964, Section 6 (w.e.f. 19.12.1964).

CHAPTER IV

PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

11. Procedure and power of conciliation officers. Boards, Courts and Tribunals.—

1[(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.]

(2) A conciliation officer or a member of a Board, 2[or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal] may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates,

(3) Every Board, Court, 3[Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of

Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath;

(b)compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed, and every inquiry or investigation by a Board, Court, [4][Labour Court, Tribunal or National Tribunal] shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A conciliation officer [5][may enforce the attendance of any person for the purpose of examination of such person or call for] and inspect any

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1 2 Subs. by Act 36 of 1956, Section 9, for sub-section (5) (w.e.f. 10.3.1957).
Subs. by Act 36 of 1956, Section 9, for **"Court or Tribunal"** (w.e.f. 10.3.1957) sub-section (6).

3 Subs. by Act 36 of 1956, Section 9, for "and Tribunal" (w.e.f. 10.3.1957). 4
Subs. by Act 36 of 1956, Section 9, (w.e.f. 10.3.1957).

5 Subs. by Act 46 of 1982, Section 9, for "may call for" (w.e.f. 21.8.1984).

document which he has ground for considering to be relevant to the industrial dispute [6][or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) [1][in respect of enforcing the attendance of any person and examining him or of compelling the production of documents]].

[2] [(5) A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter, under consideration as an assessor or assessors to advise it in the proceeding before it.]

[3][(6)All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).]

[4][(7) Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.]

[5][(8) Every [1][Labour Court, Tribunal or National Tribunal] shall be deemed to be Civil Court for the purposes of [2][sections 345, 346 and 348 of the Code Code of Criminal Procedure, 1973 (2 of 1974)].]

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1 Subs. by Act 46 of 1952, Section 9, for"in respect of compelling the production of documents" (w.e.f. 21.8.1984).

2 Subs. by Act 36 of 1956, Section 9, (w.e.f. 10.3.1957).

3 Subs. by Act 36 of 1956, Section 9, (w.e.f. 10.3.1957).

4 Sub-section (7) ins. by Act 48 of 1950, Section 34 and Schedule and Subs. by Act 36 of 1956, Section 9 (w.e.f. 10.3.1957).

5 Ins. by Act 48 of 1950, Section 34 and Schedule.

3[**11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]

Case Law

Consideration of relevant factors

The power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded; Kailash Nath Gupta v. Enquiry Officer (R.K. Rai), Allahabad Bank, AIR 2003 SC 1377.

Effect of order

The order of termination of services of a workman operates prospectively from the date on which it was passed; Kumaon Motor Owners' Union Ltd. v. State of U.P., 1994 LLR 366 (All).

Evidence

When the Tribunal allows the management to produce evidence after holding the domestic enquiry as illegal, the evidence given by the employers in domestic enquiry is wiped out and the Tribunal has to record the findings on the basis of evidence before it while adjudicating an industrial dispute pertaining to dismissal of the Workman; Luxco Electronics v. P.O., Industrial Tribunal, 2004 LLR 461.

Interpretation

1 Subs. by Act 36 of 1956, Section 9, for "Tribunal" (w.e.f. 10.3.1957). Subs. by

2 Act 46 of 1982, Section 9, for certain words (w.e.f. 21.8.1984). Ins. by Act 45 of

3 1971, Section 3 (w.e.f. 15.12.1971).

On the finding of the Labour Court that the appellant was absent for sixty-two days and had submitted leave application only for 15 days the award of the Labour Court directing reimbursement with full back wages in spite of recording a finding of delinquency as extracted hereinabove amounts to a misreading of provision of section 11A; Boman v. P.O., Labour

Court (2003) II LLJ 551 (Del).

Misappropriation

When the action of the delinquent resulted in loss of revenue to the corporation and once misappropriation is proved, then it is within the discretion of the employer to impose maximum penalty. So, no case for interference with discretion rightly exercised by Labour Court; Manoharan R. v. Presiding Officer, Labour Court, Salem, (2002) IV LLJ (Supp) Mad 850.

Misconduct

In the instant case misconduct accepted as proved by Labour Court is serious one warranting extreme punishment and Labour Court ought not to have interfered with punishment holding it to be shocking by disproportionate. No e d to interfere with order of punishment

of dismissal of respondent workman; Anantnathji Maharaj Jain Temple and its Sadharan Funds, Mumbai v. Rajan G. Pandey, (2002) IV LLJ (Supp) Bom 916.

Punishment proportionate to guilt

The punishment imposed can be interfered with only on being satisfied that it was highly disproportionate to the degree of guilt; Breach Candy Hospital and Research Centre v. Babulal B. Pardeshi, (2002) IV LLJ (Supp) Bom 1011.

The power under section 11A is akin to appellate power. The competent adjudicating authority has jurisdiction to interfere with the quantum of punishment even in cases where finding of guilt recorded by the employer is upheld or in the case of no enquiry or defective enquiry; Vidya Dhar v. Hindustan Copper Ltd., 1994 LLR 229 (Raj).

Once the misconduct is established, the maximum punishment stipulated therefore can be awarded. However, the Labour Court has full discretion to award lesser punishment; Hindalco Workers Union v. Labour Court, 1994 LLR 379 (All).

12. Duties of conciliation officers.—

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all

matters affecting the merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government [1][or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [2][Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

[3][Provided that, [4][subject to the approval of the conciliation officer,] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]

Case Law

Bound on all the parties

The settlement arrived in the course of conciliation proceedings carries a presumption that it is just and fair. It becomes binding on all the parties to the dispute as

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1 Ins. by Act 35 of 1965, Section 4 (w.e.f. 1.12.1965).

2 Subs. by Act 36 of 1956, Section 10, for "or Tribunal" (w.e.f. 10.3.1957). Ins. by Act 36

3 of 1956, see. 10 (w.e.f. 17.9.1956).

4 Ins. by Act 36 of 1964, Section 8 (w.e.f. 19.12.1964).

well as to the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of it merely because it does not suit him; I.T.C. Ltd. Workers Welfare Association v. Management of I.T.C. Ltd., AIR 2002 SC 937.

Just and fair settlement

A settlement is a product of collective bargaining and is entitled to due weight and consideration more so when a settlement is arrived at in the course of conciliation proceeding. The settlement can only be ignored in exceptional circumstances viz., if it is demonstrably unjust, unfair or the result of mala fides such or corrupt motives on the part of those who were instrumental in effecting the settlement. Also the settlement has to be judged as a whole, taking an overall view and cannot be examined in piecemeal and in vacuum. Viewed in the light of these principles it cannot be said that the settlement which is otherwise valid and just suffers from any legal infirmity merely for the reason that one of the clauses in the settlement extends the benefit of life pension scheme only to the employees retiring after a particular date. Exclusion of workmen retiring before that date is no ground to characterise the settlement as unjust or unfair, more so when it was done with the consent of majority of workmen; I.T.C Ltd. Workers Welfare Association v. Management of I.T.C. Ltd., AIR 2002 SC 937.

Obligation

According to section 12(5) of the Act, the appropriate Government, while rejecting the request for reference of the dispute to the Industrial Tribunal, is obliged to give reasons; Sukhbir Singh v. Union of India, 1994 LLR 375 (Del).

Power of appropriate Government

The appropriate Government acting under section 10 or section 12(5) of the Act has no power to decide the merits of the controversy. It can only determine whether dispute exists or not; Sukhbir Singh v. Union of India, 1994 LLR 375 (Del).

Power of Court

The tribunal while adjudicating the dispute and the High Court while exercising its jurisdictions under Articles 226/227 should be circumspect and cautious in disturbing the terms of settlement founded on collective bargaining and conciliation. It is not open to them to ignore the settlement or even belittle its effect by applying its mind independent of the settlement unless it is found to be contrary to the mandatory provisions of the Act; I.T.C. Ltd. Workers Welfare Association v. Management of I.T.C. Ltd., AIR 2002 SC 937.

Object underlying conciliation, namely, to promote settlement of dispute, to be borne in mind for exercise of discretion by conciliation officer. So, exercise of said discretion on extraneous grounds not sustainable; Shridhar T. Shetty v. Speedy Transport Company (Pot.) Ltd., (2002) IV LLJ (Supp) Bom 930.

13. Duties of Board.—

(1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliati shall send a report thereof to the

appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting for the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a [1][Labour Court, Tribunal or National Tribunal] under section 10, it shall record and communicate to the parties concerned its reasons therefore.

(5) The Board shall submit its report under this section within two months of the date [2][on which the dispute was referred to it] or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate:

Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

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1 2 Subs. by Act 36 of 1956, Section 11, for "Tribunal" (w.e.f. 10.3.1957). Subs. by Act 40 of 1951, Section 6, for "of the notice under section 22".

14. Duties of Courts.—A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

[1]**[15. Duties of Labour Courts, Tribunals and National Tribunals.—**Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, [2][within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2A) of section 10], submit its award to the appropriate Government.]

[3][**16.Form of report or award.—**

(1) The report of a Board or Court shall be in writing and shall be signed by all the members of the Board or Court, as the case may be:

Provided that nothing in this section shall be deemed to prevent any member of the Board or Court from recording any minute of dissent from a report or from any recommendation made therein.

(2) The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer.]

[4][**17. Publication of reports and awards.—**

(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2)Subject to the provisions of section 17 A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any

manner whatsoever.]

[5][**17A. Commencement of the award.—**

1 Subs. by Act 36 of 1956, Section 12, for section 15 (w.e.f. 10.3.1957).

2 Subs. by Act 46 of 1982, Section 10, for certain words (w.e.f. 21.8.1984).

3 Subs. by Act 36 of 1956, Section 12, for section 16 (w.e.f. 10.3.1957).

4 Subs. by Act 36 of 1956, Section 12, for section 17 (w.e.f. 10.3.1957).

5 Section 17A ins. by Act 48 of 1950, Section 34 and Schedule. and Subs. by Act 36 of 1956, Section 12 (w.e.f. 10.3.1957).

The Industrial Disputes Act, 1947

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17:

Provided that—

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.]

Case Law

The Industrial Disputes Act, 1947

Limitation

Industrial Tribunal retains its jurisdiction to deal with an application for setting aside an ex parte award only until the expiry of 30 days from publication of the award. Thereafter, Tribunal is relegated to the position of functus officio; Ranigunj Chemical Works v. Learned judge. Fourth Industrial Tribunal, 1998 LLR 475

[1][**17B, Payment of full wages to workman pending proceedings in higher courts.—**Where in any case, a Labour Court, al by its award directs

reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]

Case Law

Effective date for payment of "full wages"

The payment of full wages, as last drawn by the Workman payable by the employer during pendency of the proceedings in the Higher Court will be from the date of award and not from the date when the writ petition or appeal is filed by the Workman; Indra Perfumery Co. (through Sundershab Oberoi) v. Presiding Officer, 2004 LLR 325.

Full wages includes

The words "full wages last drawn" appearing in section 17B would include the wages drawn on the date of termination of service plus yearly increments and dearness allowances. For calculating the wages last drawn by the workman, the revision of pay, if any, will also have to be taken into consideration; Carona Sahu Co. Ltd. v. Abdul Karim Munakhan, 1994 LLR 199 (Bom).

18. Persons on whom settlements and awards are binding.—

1 Ins. by Act 46 of 1982, Section 11 (w.e.f. 21.8.1984).

[1][(1)A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [2][Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

[3][(3)] A settlement arrived at in the course of conciliation proceedings under this Act [4][or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [5][an award [6][of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [7][arbitrator] [8][Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Bound on all parties

1 Ins. by Act 36 of 1956, Section 13 (w.e.f. 7.10.1956).

2 Subs. by Act 36 of 1964, Section 9, for "An arbitration award" (w.e.f. 19.12.1964).

3 Section 18 re-numbered as sub-section (3) (thereof by Act 36 of 1956, Section 13 (w.e.f. 7.10.1956).

4 Ins. by Act 36 of 1964, Section 9 (w.e.f. 19.12.1964).

5 Subs. by Act 48 of 1950, Section 34 and Schedule, for "an award which is declared by the appropriate Government to be binding under sub-section (2) of section 15".

6 Ins. by Act 36 of 1956, Section 13 (w.e.f. 10.3.1957).

7 Ins. by Act 36 of 1964, Section 9 (w.e.f 19.12.1964).

8 Subs. by Act 36 of 1956, Section 13, for "or Tribunal" (w.e.f. 10.3.1957).

A settlement was arrived at by an agreement between the company and its employees/workmen represented by the Mazdoor Union Only; and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Industrial Disputes Act, 1947 only on the parties to the said agreement; Mayurakshi Cotton Mills (1990) Ltd, v. Ninth Industrial Tribunal, Durgapur, (2003) 11 LL] 485 (Cal).

Settlements are divided into two categories, namely:—(i) those arrived at outside the conciliation proceedings; and (ii) those arrived at in the course of conciliation proceedings. A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment irrespective of any objection; All India Textile janta Union v. Labour Commissioner, 1994 LLR 203 (P&H) (DB).

19. Period of operation of settlements and awards.—

(1) A settlement [***] shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months [1][from the date on which the memorandum of settlement is signed by the parries to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

[2][(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year [3][from the date on which the award becomes enforceable under section 17A:]

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any

1 Ins. by Act 36 of 1956, Section 14 (w.e.f. 7.10.1956).

2 Subs. by Act 48 of 1950, Section 34 and Schedule, for sub-section (3). Ins. by Act 36 of

3 1956, Section 14 (w.e.f. 7.10.1956).

award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made/ there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it [1][to a Labour Court, if the award was that of a Labour Court ard was that of a Tribunal or of a

National Tribunal], for decision whether the period of operation should not, by reason of such change, be shortened and the decision of [2][Labour Court or the Tribunal, as the case may be] on such reference shall, [3][***] be final.

(5)Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub- section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

[4][(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.]

20. Commencement and conclusion of proceedings.—

(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

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1 Subs. by Act 36 of 1956, Section 14, for "to a Tribunal" (w.e.f. 10.3.1957).

2 Subs. by Act 36 of 1956, Section 14, for "the Tribunal" (w.e.f. 10.3.1957).

3 The words "subject to the provision for appeal" omitted by Act 36 of 1956, Section 14 (w.e.f. 10.3.1957).

4 Ins. by Act 36 of 1964, Section 10 (w.e.f. 19.12.1964). The former sub-section (7) was omitted by Act 36 of 1956, Section 14 (w.e.f. 17.9.1956).

(2) A conciliation proceeding shall be deemed to have concluded—

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under section 17, as the case may be; or (c) when a reference is made to a Court, [1][Labour Court, Tribunal or National Tribunal] under section 10 during the pendency of conciliation proceedings.

(3) Proceedings [2][before an arbitrator under section 10A or before a Labour Court, Tribunal or National Tribunal] shall be deemed to have commenced on the date of the [3][reference of the dispute for arbitration or adjudication, as the case may be] and such proceedings shall be deemed to have concluded [4][on the date on which the award becomes enforceable under section 17A].

21. Certain matters to be kept confidential.—There shall not be included in any report or award under this Act, any information obtained by a conciliation officer, Board, Court, [5][Labour Court, Tribunal, National Tribunal or an arbitrator] in the course of any investigation or inquiry as to a trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such officer, Board, Court, [6][Labour Court, Tribunal, National Tribunal or arbitrator], if the trade union, person, firm or company, in question has made a request in writing to the conciliation officer, Board, Court [7][Labour Court, Tribunal, National Tribunal or arbitrator], as the case may be, that such information shall be treated as confidential; nor shall such conciliation officer or any individual member of the Board, [8][or Court or the presiding officer of

1 Subs. by Act 36 of 1956, Section 15, for "or Tribunal" (w.e.f. 10.3.1957).

2 Subs. by Act 36 of 1956, Section 15, for "before a Tribunal" (w.e.f. 10.3.1957).

3 Subs. by Act 36 of 1956, Section 15, for "before a Tribunal" (w.e.f. 10.3.1957).

4 Subs. by Act 36 of 1956, Section 15, for "reference of a dispute for adjudication" (w.e.f. 10.3.1957).

5 Subs. by Act 18 of 1952, Section 4, for certain words.

6 Subs. by Act 18 of 1952, Section 4, for certain words.

7 Subs. by Act 18 of 1952, Section 4, for certain words.

8 Subs. by Act 36 of 1956, Section 16, for "or Tribunal" (w.e.f. 10.3.1957).

the Labour Court, Tribunal or National Tribunal or the arbitrator] or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be:

Provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of a prosecution under section 193 of the Indian Penal Code (45 of 1860).[1]

1 Subs. by Act 36 of 1956, Section 16, for "Court or Tribunal" (w.e.f. 10.3.1957).

CHAPTER-V
STRIKES AND LOCK-OUTS

22. Prohibition of strikes and lock-outs.—

(1) No person employed in a public utility service shall go on strike, in breach of contract—

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen—

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he, within five days, thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

Case Law

Burden of back wages

When the blame attaches to both the parties, i.e. employer and the workmen, the burden of the back wages for the long period that has elapsed between the dates of the end of strike and the date of the award, ordering their reinstatement, should be divided half and half between the parties; Indian General Navigation & Railway Co. Ltd. v. Their Workmen, (1960) 1 LLJ 13.

Effect and Construction.

The effect of section 22(1)(d) is clear. If a strike is declared in a public utility user during the pendency of a conciliation proceeding it is illegal. Under the construction the said provision, if a conciliation proceeding is pending between a union and (employer and it relates to matters concerning all the employees of the employer, pendency of the said conciliation proceeding would be a bar against all the employee of the employer employed in a public utility service to go on a strike during ' pendency of the proceeding, under section 22(l)(d); Ramnagar Cane & Sugar Co, v. jatin Chalin, AIR 1960 SC 1012.

Notice

Under section 22 of the Act, a notice of strike is required to be given, only in the case of any public utility service; U.P. State Bridge Corp. Ltd. v. U.P. Rajya Setu Nigam Sa Karamchari Sangh, (2004) 4 SCC 268.

23. General prohibition of strikes and lock-outs.—No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before [1][a Labour Court, Tribunal or National Tribunal] and two months, after the conclusion of such proceedings; [2][***]

[3][(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10 A ; or]

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

24. Illegal strikes and lock-outs.—

(1) A strike or a lock-out shall be illegal if—

(i) it is commenced or declared in contravention of section 22 or section 23; or

(ii)it is continued in contravention of an order made under sub-section (3) of section 10 [4][or sub-section (4A) of section 10A].

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, [5][an arbitrator, a] [6][Labour Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 [7][or sub-section (4A) of section 10A].

(3)A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

25. Prohibition of financial aid to illegal strikes and lock-outs.—No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

Subs. by Act 36 of 1956, Section 17, for "a Tribunal" (w.e.f. 10.3.1957). The word "or" omitted by Act 36 of 1964, Section 11 (w.e.f. 19.12.1964). Ins. by Act 36 of 1964, Section 11 (w.e.f. 19.12.1964).

Ins. by Act 36 of 1964, sec, 12 (w.e.f. 19.12.1964).

Ins. by Act 36 of 1964, sec, 12 (w.e.f. 19.12.1964).

Subs. by Act 36 of 1956, Section 18, for "or Tribunal" (w.e.f. 10.3.1957). Ins. by Act 36 of 1964, sec, 12 (w.e.f. 19.12.1964).

The Industrial Disputes Act, 1947

[1][CHAPTER VA

LAY-OFF AND RETRENCHMENT

25A. Application of sections 25C to 25E.—

(1) Sections 25C to 25E inclusive [2][shall not apply to Industrial Establishments to which Chapter VB applies, or—]

(a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

[3][Explanation.—In this section and in sections 25C, 25D and 25E, "industrial establishment" means—

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948); or

(ii) a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii)a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951).]

[4]**[25B. Definition of continuous service.—**For the purposes of this Chapter,— (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

1 Chapter VA (containing sections 25A, 25B, 25C, 25D, 23E, 25F, 25G, 25H, 25-1 and 25J) ins. by Act 43 of 1953, Section 3 (w.e.f. 24.10.1953).

2 Subs. by Act 32 of 1976, Section 2, for "shall not apply—" (w.e.f. 5.3.1976).

3 Subs. by Act 48 of 1954, Section 2, for Explanation (w.e.f. 1.4.1954).

4 Subs. by Act 36 of 1964, Section 13, for section 25B (w.e.f. 19.12.1964).

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve

calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]

Case Law

Absence when Legal

If the strike is legal then cessation of work or refusal to continue work due to such strike would be "absence" authorised by law; U.P. State Bridge Corp. Ltd. v. U.P. Rajya S Nigam Sanyukt Karamchari Sangh, (2004) 4 SCC 268.

The Industrial Disputes Act, 1947

Applicability

Only cases not falling under sub-section (1) are covered by sub-section (2) of section KB; G. Yadi Reddy v. Brook Bond India Ltd., 1994 LLR 328 (AP) (DB).

Concept of 240 days for continuous service

A workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days; Gram Panchayat v. Sharadkumar D. Acharya, 1994 LLR 470 (Guj) (DB).

Section 25B(2) comprehends a situation where a workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date i.e. the date of retrenchment. He would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA; Mohan Lal v. Sharat Electronics Ltd.. AIR 1981 SC 1253.

Consideration of holidays

In the computation of the period under sub-section (2) of section 25B, Sundays and holidays should be taken into account; G.Yadi Reddy v. Brook Bond India Ltd., 1994 LLR 328 (AP) (DB).

1[**25C. Right of workmen laid-off for compensation.—**Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent, of the total

of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Provided that if during any period of twelve months, a workman is so laid- off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first forty-

1 Subs. by Act 35 of 1965, Section 5, for the section 25C (w.e.f. 1.12.1965).

five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

Explanation.—"Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.]

25D. Duty of an employer to maintain muster rolls of workmen.—Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

25E. Workmen not entitled to compensation in certain cases.—No compensation shall be paid to a workman who has been laid-off—

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii)if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the

workman has been paid in lieu of such notice, wages for the period of the notice;
1[***]

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [3][or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Case Law

Application

Section 25F has no application to a closed or dead industry; Hariprasad v. A.D, Divdker, AIR 1957 SC 129.

Burden of proof

The requirement of the statute of 240 days cannot be disputed and it is for the workman concerned to prove that he has in fact completed 240 days in the preceding twelve months period; Essen Deinki v. Rajio Kumar, 2003 LLR 113.

Held not to be retrenchment

When the appointment is against rules, no valid master and servant relationship exists and hence termination of concerned person's service was held, not retrenchment; Government Servants' Co-operative Society Ltd., Wadakkamcheny v. Industrial Tribunal, Alappuzha, (2003) I LLJ Ker 236.

The termination order cannot be said to be an order of retrenchment warranting compliance of section 25F of the Act as the workman was not being retrenched as a surplus workman but she was being terminated on the ground of her unsatisfactory work; Mana Thomas Gonsalvies v. Concept Pharmaceuticals (P) Ltd., (2002) IV LLJ (Supp) Bom 906.

Termination does not amount to retrenchment and therefore provision of section 25F is not attracted; Life Insurance Corporation of India v. Rajeev Kumar Srivastava, 1994 LLR 573 (AH) (DB)

Illegal retrenchment

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1 2 Proviso omitted by Act 49 of 1984, Section 32 (w.e.f. 18.8.1984).
Subs. by Act36 of 1964, Section 14, for "for every completed year of service" (w.e.f. 19.12.1964).

3 Ins. by Act 36 of 1964, Section 14 (w.e.f. 19.12.1964).

If the termination of an employee is based on no inquiry, no charge and not by way of punishment, then it becomes a case of illegal retrenchment. In such case, the Workman will be entitled to reinstatement with full back wages; Sachiv, Krishi Upaj Mandi I Sanawad v. Mahendra Kumar S/o Mangita! Tanwarao, 2004 LLR 405,

Notice

Pasting of notice of retrenchment on the notice board was held not substitute for individual notice. Hence, pay in lieu of notice was necessary; Alumina Mazdoor Sangh Ratna Construction Co., (2003) I LLJ Ori 793.

Termination of services of person before expiry of probationary period without issuance of prior notice according to terms of employment which provides that the employment is provisional and could be put to an end at any time without assigning any reason whatsoever and service will be regularised only after successful completion of probation period, is not illegal and will not amount to retrenchment and hence question of issue of notice required under section 25F does not arise; Kalyani Sharp India Ltd. v. labour Court No. 1, Gwalior, AIR 2002 SC 300.

Period of cessation

It is well established that the period of cessation of work not due to any fault on the| part of the employee, always gets calculated as a period of continuous service; kukadi Irrigation Project v. Woman, 1994 LLR 381 (Bom).

Precedent conditions

The conditions enumerated in section 25F are conditions precedent; State of Rajasthan K v. Miss Usha Lokiuani, 1994 LLR 369 (Raj).

Provisions are mandatory

The provisions of section 25-F are couched in mandatory form, and non-compliance therewith has the result of rendering the order of retrenchment void abinitia or non-est State of Rajasthan v. Miss Usha Lokwani, 1994 LLR 369 (Raj).

Purpose

The standardisation of retrenchment compensation and doing away with a perplexing variety of factors for granting retrenchment compensation may well have been the purposes of section 25F though the basic consideration must have granting of unemployment relief; Haripnisad v. A.D. Divelker, AIR 1957 SC 129.

[1][**25FF. Compensation to workmen in case of transfer of undertakings -** Where the ownership of management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately

1 Section 25-FF ins. by Act 41 of 1956, Section 3 (w.e.f. 4.9.1956) and Subs. by Act 18 of 1957 Section 3 (w.e.f. 28.11.1956).

before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if— (a) the service of the workman has not been interrupted by such transfer; (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.]

[1][**25FFA. Sixty days' notice to be given of intention to close down any undertaking.—**

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

(a) an undertaking in which—

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government, may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.]

1 Ins. by Act 32 of 1972, Section 2 (w.e.f. 14.6.1972).

[1][**25FFF. Compensation to workmen in case of closing down of undertakings.—**

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in cordance with the

provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F, shall not exceed his average pay for three months.

[2][Explanation.—An undertaking which is closed down by reason merely of— (i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

[3] [(1A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if—

(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

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1 Ins. by Act 18 of 1956, Section 3 (w.e.f. 28.11.1956).

2 Subs. by Act 45 of 1971, Section 4, for Explanation(w.e.f. 15.12.1971). Ins. by Act 45

3 of 1971, Section 4 (w.e.f. 15.12.1971).

(b) the service of the workman has not been interrupted by such alternative employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1-B)For the purposes of sub-sections (1) and (1A), the expressions "minerals" and "mining operations" shall have the meanings respectively assigned to them in clauses (a) and (b) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).]

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [1][completed year of continuous service] or any part thereof in excess of six months.]

Case Law

Bonafide motive

The Industrial Tribunal has no power to enquire into the motive of closure in order lo find out whether the closure is justified or not when indiscipline is established. It can only consider the question of bona fides and nothing more; Savani Transport (Pvt.) Ltd. v. Savani Transport Employees' Association, 1994 LLR 578 (Ker).

Liability of employer

Payment of compensation and payment of wages for the notice period have not been made conditions precedent to retrenchment on closure under section 25FFF. However, the liability of the employer to make payments remains, which may be enforced; Pramod Kumar Tiwari v. Hindustan Fertilizer Corporation Ltd., 1994 LLR 465 (MP) (DB).

Meaning of Undertaking

Section 25FFF deals with closing down of undertakings. The term "undertaking" is not defined in the Act. The relevant provisions use the term "industry". Undertaking is a

1 Subs. by Act 36 of 1964, Section 15, for "completed year of service" (w.e.f. 19.12.1964).

concept narrower than industry. An undertaking may be a part of the whole, that is, the industry. It carries a restricted meaning; S.M. Nilajkar v. Telecom District Manager, (2003) 4 SCC 27.

The expression "undertaking" is not intended to cover the entire industry or business of the employer. It should be a recognised sub-section or unit eligible for being styled as an undertaking. In other words, "undertaking" is a separate and distinct business or commercial or trading or industrial activity; Pramod Kumar Tiwari v. Hindustan Fertilizer Corporation Ltd., 1994 LLR 465 (MP) (DB).

Misconduct

Indiscipline is not always a misconduct; Savani Transport (Pvt.) Ltd. v. Savani Transport Employees' Association, 1994 LLR 578 (Ker).

Partial closure

Partial closure of an establishment or undertaking is allowed; Suvuni Transport (Pvt.) Ltd. v. Savtmi Transport Employees' Association, 1994 LLR 578 (Ker).

Reasonable restrictions

Closure by itself involves no dispute; it is the volition of the employer. Eventhen, the employer cannot claim it as his absolute right. The State can impose reasonable restrictions in the interest of general public; Savant Transport (Pvt.) Ltd. v. Savani Transport Employees' Association, 1994 LLR 578 (Ker).

25G.Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 1[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

Case Law

1 Subs. by Act 36 of 1964, Section 16, for certain words (w.e.f 19.12.1964).

Applicability

Section 25H is couched in wide language and is capable of application to all 'retrenched workmen' and not merely those covered under section 25F of the Act; Central Bank of India v. S. Satyam, JT 1996 (7) SC 181,

Re-employment: valid termination

Re-employment in terms of sec ses a valid termination in the first

instance and, therefore, constitutes a different cause or action and can be gone into by the Labour Court only if a reference is to be made in this regard but not otherwise. It cannot be described as a matter incidental to the dispute relating to termination; Karnal Central Co-operative Bank Ltd. v. Presiding Officer, Industrial Tribunal-cum-labour Court, 1994 LLR 248 (P&H).

25-I. Recovery of moneys due from employers under this Chapter, — [Rep. by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956), sec. 19 (w.e.f. 10-3-1957)]

25J. Effect of Laws inconsistent with this Chapter.—

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946)]

1[Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.]

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.

1 Subs. by Act 36 of 1964, Section 17, for the proviso (w.e.f. 19.12.1964).

1[CHAPTER VB]

SPECIAL PROVISIONS RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS

25K. Application of Chapter VB.—

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 2[one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

25L. Definitions.—For the purposes of this Chapter,—

(a) "industrial establishment" means—

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,—

(i) in relation to any company in which not less than fifty-one per cent, of the paid-up share capital is held by the Central Government, or (ii) in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be the appropriate Government.

25M. Prohibition of lay-off.—

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1 2 Chapter VB (containing sections 25K to 25S) added by Act 32 of 1976, sec, 3 (w.e.f. 5.3.1976), Subs. by Act 46 of 1982, Section 12, for "three hundred" (w.e.f. 21.8.194).

(1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except 1[with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion], 2[(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant

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1 2 Subs. by Act 49 of 1984, Section 4, for certain words (w.e.f. 18.8.1984).
Subs. by Act 49 of 1984, Section 4, for sub-sections (2) to (5) (w.e.f. 18.8.1984).

permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and

binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.]

[1][10] The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

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1 Sub-section (6) renumbered as sub-section (10) by Act 49 of 1984, Section 4 (w.e.f. 18.8.1984).

Explanation.—For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

Case Law

Reasonable restrictions

In order to prevent hardship to the employees and to maintain higher tempo of production and productivity, section 25M of the Act puts some reasonable restrictions on the employer's right to lay-off, retrenchment and closure; Central Pulp Mills Ltd. v. Central Pulp Mills Employees Union, 1994 LLR 130 (Guj) (DB).

[1][25N. Conditions precedent to retrenchment of workmen.—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b)the prior permission nt or such

authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be

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1 Substituted by Section 5 of Act 49 of 1984 w.e.f. 18.08.1984

The Industrial Disputes Act, 1947

served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen,

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

8(1) The Industrial Disputes Act, 1947

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permissi e entitled to receive, at the time of

retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed yearof continuous service or any part thereof in excess of six months.]

Case Law

Infirmity

The infirmity in retrenchment by reference to section 25N cannot be ventured to be found out without laying factual foundation attracting applicability of the provision; Pramod Jha v. State of Bihar, (2003) 4 SCC 619.

Burden of proof

It is incumbent on the management to prove that the copies of the application as required by section 25N read with rule 76A of the Industrial Disputes Rules, 1957, were served on the concerned workman; Shiv Kumar v. State of Haryana, 1994 IXR 522 (SC).

[1][25-O. Procedure for closing down an undertaking.—

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

1 Subs. by Act 46 of 1982, Section 14, or section 25-O (w.e.f. 21.8.1984).

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work,

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen! and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the

workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

8(1) The Industrial Disputes Act, 1947

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section(2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

Case Law

Applicability

This section deals with the permission for closure of undertaking; Union Carbide Karamchari Sangh v. Union of India, 1993 LLR 481 (MP).

Liability

When a person who had ceased to be director before a company passed a resolution for voluntary winding up, was not liable to be prosecuted under sections 25-O and 25R; Dalip Singh T. v. State of Tamil Nadu, (2003) 1 LLJ Mad 478.

25P.Special provision as to restarting undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976.—If the appropriate Government is of opinion in respect of any undertaking or an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976 (32 of 1976)—

(a) that such undertaking was closed down otherwise than onaccount of unavoidable circumstances beyond the control of the employer;

(b) that there are possibilities of restarting the undertaking;

(c) that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and

The Industrial Disputes Act, 1947

(d) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking, it may, after giving an opportunity to such employer and workmen, direct, by order published in the Official being less than one month from the date of the order) as may be specified in the order.

25Q. Penalty for lay-off and retrenchment without previous permission.— Any employer, who contravenes the provisions of section 25M or [1][***] section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

25R. Penalty for closure.—

(1) Any employer, who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(2) Any employer, who contravenes [2][an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-O or a direction given under section 25P], shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

[3][***]

25S. Certain provisions of Chapter VA to apply to industrial establishment to which this Chapter applies.—The provisions of sections 25B, 25D, 25FF,

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1 The words "clause (c) of sub-section (1) or sub-section (4) of" omitted by Act 49 of 1984, sec, 6 (w.e.f. 18.8.1984).

2 Subs. by Act 46 of 1982, Section 15, for certain words (w.e.f. 21.8.1984).

3 Sub-section (3) omitted by Act 46 of 1982, sec, 15 (w.e.f. 21.8.1984).

25G, 25H and 25] in Chapter VA shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of this Chapter apply.]

[1][**CHAPTER VC**

UNFAIR LABOUR PRACTICES

25T.Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice.

25U. Penalty for committing unfair labour practices.—Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.]

1 Chapter VC (containing sections 25T and 25U) ins. by Act 46 of 1982, Section 16 (w.e.f. 21.8.1984].

CHAPTER VI

PENALTIES

26. Penalty for illegal strikes and lock-outs.—

(1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

27. Penalty for instigation, etc.—Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

28.Penalty for giving financial aid to illegal strikes and lock-outs.—Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine whi nd rupees, or with both.

[1][29. Penalty for breach of settlement or award.—Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, [2][and where the breach is a continuing one with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first], and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of

1 2 Subs. by Act 36 of 1956, Section 20, for section 29 (w.e.f. 17.9.1956). Ins. by Act 35 of 1965, Section 6 (w.e.f. 1.12.1965).

compensation, to any person who, in its opinion has been injured by such breach.]

30. Penalty for disclosing confidential information.—Any person who willfully discloses any such information as is referred to in section 21 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[1][30A, Penalty for closure without notice.—Any employer who closes down any undertaking without complying with the provisions of section 25FFA shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.]

31. Penalty for other offences.—

(1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

1 Ins. by Act 32 of 1972, Section 3 (w.e.f. 14.6.1972).

CHAPTER VII
MISCELLANEOUS

32. Offence by companies, etc.—Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

Case Law

Applicability

This section talks of offences by companies under the Industrial Disputes Act, 1947; Rabindra Chamria v. The Registrar of Companies (W.B.), (1992) 64 FLR 939 (SC).

[33.Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [1][an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute [2][or, where there are no such

1 2 Ins. by Act 36 of 1964, Section 18 (w.e.f. 19.12.1964). Ins. by Act 36 of 1964, Section 18 (w.e.f. 19.12.1964).

standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman]—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether by dismissal or otherwise,such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.—For the purposes of this sub-section, a "protected workman" ,in relation to an establishment, means a wor er of the executive or other office

bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent, of the total number of workmen employed therein subject to a minimum number of' five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected

1 Subs. by Act 45 of 1971, Section 5, for "an officer" (w.e.f. 15.12.1971).

with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board [1][an arbitrator], a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [2] [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

[3][Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.]

Case Law

Applicability

The right to receive reduced salary (subsistence allowance) for the period of suspension has to be read along with the right of the management to place the employee under suspension pending disposal of the application under section 33(1) of the Industrial Disputes Act, 1947. Thus, the right to the employee to receive subsistence allowance are intertwined and both must survive together; Ranjit Singh v. P.O., Industrial Tribunal, 2003 LLR 396.

The date of employment is not the determinate element of the dispute. Even if the workman has been engaged subsequent to the raising of the pending industrial dispute, but its verdict would affect the conditions of service applicable at that time, such a workman would be entitled to the protection of sub-section (2) of section 33 of the Act; Rodhee v. Government of Delhi, (2003) II LLJ 5 (Del).

If the lay-off could be held to be in accordance with the terms of the contract of service, no compensation at all could be allowed under section 33C(2) of the Act. But if company had no power to lay-off any workmen, there is no escape from the position that the entire sum payable to the laid-off workmen, except the

1 Ins. by Act 36 of 1964, Section 18 (w.e.f. 19.12.1964).

2 Subs. by Act 46 of 1982, Section 17, for certain words (w.e.f. 21.8.1984). Ins. by Act 46

3 of 1982, Section 17 {w.e.f. 21.8.1984).

workmen who have settled or compromised, has got to be computed and quantified under section 33C(2) of the Act of the period of lay-off; Workmen of Fire-stone Tyre & Rubber Co. v. Firestone Tyre ft Rubber Co., AIR 1976 SC 1775.

Approval not granted

If approval is not granted the order of dismissal or discharge shall not be operative and the employee concerned shall be deemed to be in service; G.K. Sengupta v. Hindustan Construction Co. Ltd., 1994 LLR 550 (Bom).

Permission should be refused if the Tribunal is satisfied that the management's action is not bona fide or that the principles of natural justice have been violated or that the material on the basis of which the management came to a certain conclusion would not Justify any reasonable person in coming to such a conclusion; G.K. Sengupta v. Hindustan Construction Co. Ltd., 1994 LLR 550 (Bom).

Effect of court's approval of dismissal

Termination of services of a Workman (dismissal) will relate back to the date of original order of termination, if reference under section 10 of the Act has been made and the Labour Court gives its approval to such dismissal; Engineering Laghu Udyog Employees' Union v. Judge, Labour Court and Industrial Tribunal, 2004 LLR 331.

Effect of refusal

Conditions contained in the proviso to section 33(2)(b) are mandatory in nature and their non-compliance would render the order of discharge or dismissal void or inoperative. If a Tribunal refuses to grant approval sought for under section 33(2)(b) of the Act, the effect of it shall be that the order of discharge or dismissal had never been passed and consequently the workman would be deemed to have continued in service entitling him to the benefits available. It is also made clear that not making an application under section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to section 33(2)(b) of the Act; Indian Telephone Industries Ltd. v. Prabhakar H, Manyarg, 2003 LLR 68.

Entitle to complaint

Violation of the provisions of section 33 of the Act entitles the workman to file a complaint under section 33A thereof and makes the employer liable to be

punished. It, however, does not automatically entitle the employee to claim reinstatement; Kiwti Lal v. State of Haryana, 1994 LLR 212 (P&H).

Multi- union

Where there are more than one unions in operation, every union will have to be given the representation; Maharashtra State Road Transport Corporation v. Conciliation Officer, 1994 LLR 196 (Bom).

1 **[33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding, —** Where an employer contravenes the provisions of section 33 during the pendency of proceedings - 2[before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal] any employee aggrieved by such contravention, may make a complaint in writing, 3[in the prescribed manner, —

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordanc is Act and shall submit his or its

award to the appropriate Government and the provisions of this Act shall apply accordingly.]

Case Law

Nature of conditions

Conditions laid down in section 33A are preliminary and collateral upon which jurisdiction of the Industrial Tribunal depends; Management of Dainik Naveen Duniya v. Presiding Officer, labour Court, (1991) 63 FLR 9 (MP).

1 2 Ins. by Act 48 o£ 1950, Section 34 and Schedule (w.e.f. 20.5.1950).
Subs. by Act 46 of 1982, Section 18, for "before a Labour Court, Tribunal or National Tribunal" (w.e.f. 21.8.1984).

3 Subs. by Act 46 of 1982, Section 18, for certain words (w.e.f. 21.8.1984).

1[33B. Power to transfer certain proceedings. —

(1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred:

Provided that where a proceeding under section 33 or section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

(2) Without prejudice to the provisions of sub-section (1), any Tribunal or National Tribunal, if so authorised by the appropriate Government, may transfer any proceeding under section 33 or section 33A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same.]

Case Law

No jurisdiction

The Labour Court has no jurisdiction suo motu to transfer the proceedings to any othercourt; Bernet Coleman & Co. Ltd. v. State of Punjab, (1992) 64 FLR 449 (P&H).

2[33C. Recovery of money due from an employer.—

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of 3[Chapter VA or Chapter VB] the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that

1 2 Ins. by Act 36 of 1956, Section 23 (w.e.f. 10.3.1957).
Section 33C Ins. by Act 36 of 1956, Section 23 (w.e.f. 10.3.1957) and Subs. by Act 36 of 1964, Section 19 (w.e.f. 19.12.1964).

3 Subs. by Act 32 of 1976, Section 4 for "Chapter VA" (w.e.f. 5.3.1976).

any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [1][within a period not exceeding three months]:

[2][Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.—In this section "Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

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1 2 Ins. by Act 46 of 1982, Section 19 (w.e.f. 21.8.1984). Added by Act 46 of 1982, Section 19 (w.e.f. 21.8.1984).

Case Law

Cessation of master and servant relationship

The proceedings under section 33C(2) are in the nature of execution proceedings and once it is shown that the relationship of master and servant has come to an end, rightly or wrongly, it is not open to the Labour Court to proceed on the basis that it still exists and commute the monetary benefits to which the workman may, in the event, entitled to; Canara Bank v. Presiding Officer, 1994 LLR 189 (P&H).

Documentary evidence

It was for the employers to have placed before the Labour Court the documentary evidence to show what the total pay packet of the employees was and what were the components of such pay packets of all employees. In the absence of such material and evidence, order of Labour Court is just, fair and correct in accordance with law; National Textile Corporation (South Maharashtra) Ltd. v. Vijay Kumar Agarwal, (2002) IV LLJ (Supp) Bom 909.

Entitle to benefits

Once there is an admission of the existing right of the workman by the employer in regard to the

benefit which the former is entitled to and receive from the latter, section 33C(2) of the Act would come into play; M.D., Oswal Hosiery (Regd.) v. D.D. Gupta, 1994 LLR 487 (Del).

Limitation period

Claim for overtime wages after a delay of 18 years, without giving any reason for the unusual delay of 18 years, cannot be encouraged, even though there is no limitation prescribed under section 33C(2) of the Act, And, hence the order of the Labour Court deserves to be quashed and set aside; Union of India v. Narayana M, (2002) IV LLJ (Supp) Bom 912.

The cause of action created in favour of workman under section 33C(2) of the Act should in normal circumstances survive to the heirs; Rameshwar Manjhi (deceased) through his son Lakhiram Manjhi v. Management of Sungramgarh Colliery, 1994 LLR 241 (SC).

No jurisdiction

Labour Court had no jurisdiction to adjudicate claim in proceedings under section 33C(2); Uttar Pradesh State Road Transport Corporation v. State of Uttar Pradesh, (2002) IV LL] (Supp) NOC 9.

34. Cognizance of offences. —

(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior to that of [1][a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act.

Case Law

No authority to private individuals

Under section 34 of the Act the complaint for an offence thereunder, except section 30, cannot he filed by a private individual under the authority of the appropriate Government; Tube Enterprises Ltd. v. Lt.Governor of Delhi, 1994 LLR 169 (Del) (DB).

35. Protection of persons. —

(1) No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

[2][36. Representation of parties.—

(1) A workman who is a party to dispute shall be entitled to be represented in any proceeding under this Act by—

(a) [3][any member of the executive or other office bearer] of a registered trade union of which he is a member;

1 Subs. by Act 46 of 1982, sec, 20, for "a Presidency Magistrate or a Magistrate of the first class" (w.e.f. 21.8.1984).

2 Subs. by Act 48 of 1950, Section 34 and Schedule, for section 36. 3 Subs. by Act 45 of 1971, Section 6, for "an officer" (w.e.f. 15.12.1971).

(b) 1[any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by 2[any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of an association of employers of which he is a member; (b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any otheremployer engaged in the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding 3[before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and 4[with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be].]

Case Law

Engagement of legal practitioner

Party to proceedings under Industrial Disputes Act, can engage a legal practitioner only after fulfillment of conditions like consent of other party and leave of court. Hence, denial of permission to management to engage legal practitioner was justified; Ajit Kumar S.D. v. State of Kerala, (2003) I LLJ Ker 473.

1 Subs. by Act 36 of 1956, Section 24, for "before a Tribunal" (w.e.f. 10.3.1957).

2 Subs. by Act 45 of 1971, Section 6, for "an officer" (w.e.f. 15.12.1971).

3 Subs. by Aft 36 of 1956, Section 24, for "before a Tribunal" (w.e.f. 10.3.1957).

4 Subs. by Act 36 of 1956, Section 24, for "with the leave of the Tribunal" (w.e.f. 10.3.1957).

Failure to raise objection on first date of proceedings will have to be taken as implied consent and Labour Court allowed legal practitioner to appear before it, so leave deemed to be granted; T.K. Vurghese v, Nicliimen Corporation, (2002) IV LLJ (Supp) Bom 1018.

No party can withhold appearance of a legal practitioner by denying "consent'' without any justification and does not have absolute right to refuse to give consent to the other party; T.K, Varghesc v. Nichimen Corporation, (2002) IV LLJ (Supp) Bom 1018.

No revocation of consent

Sub-section (4) does not insist upon a written consent. It could be implied Consent once given could not be revoked at a later stage because there has been no provision in the Act enabling such withdrawal or revocation; Britannia Engg. Product & ServicesLtd. v. II Labour Court, (2003) II LLJ 1024 (Cal).

Representation of workman

Before a Labour Court or Industrial Tribunal, workman can be represented by an Executive or office-bearer of the Trade Union while the employer can be represented by the association of employers or its executive. The management has officers like Deputy Manager (Law), Assistant Manager (Law), etc., who are qualified law graduates. The Management is competent to engage any one of them to defend their case against one of their own workmen. However, employer is justified in approaching the

Federation of Chamber (if Commerce to contest a case of a workman of its own corporation; R.M. Duraisivany v. Labour Courts, Salem, 1998 LLR 478 (16).

Vakalatnama: No implied leave

Taking the vakalatnama and keeping it on record cannot be taken as implied leave of the court or Tribunal; Punjabi Ghasita Ram Halwai v. Sahdeo Shivram Pawar, (1994) 68 FLR 528 (Bom).

[1]**[36A. Power to remove difficulties.—**

(1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.]

[1]**[36B, Power to exempt.—**Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of

1 Ins. by Act 36 of 1956, Section 25 (w.e.f. 10.3.1957).

industrial establishments or undertakings carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workmen employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the Official Gazette, exempt, conditionally or unconditionally such establishment or undertaking or class of establishments or undertakings from all or any of the provisions of this Act.]

37. Protection of action taken under the Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

38. Power to make rules.—

(1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the powers and procedure of conciliation officers, Boards, Courts,: [2][Labour Courts, Tribunals and National Tribunals] including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;

[3][(aa) the form of arbitration agreement, the manner in which it may be signed by the parties [4][the manner in which a notification may be issued under sub-section (3A) of section 10A], the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;

(aaa) the appointment of assessors in proceedings under this Act;]

1 Ins. by Act 46 of 1982, Section 21 (w.e.f. 21.8.1984)

2 Subs. by Act 36 of 1956, Section 26, for "and Tribunals" (w.e.f. 10.3.1957). Ins. by

3 Act 36 of 1956, Section 26 (w.e.f. 10.3.1957).

4 Ins. by Act 36 of 1964, Section 20 (w.e.f. 19.12.1964).

[1](b)the constitution and functions of and the filling of vacancies in Works Committees, and the procedure to be followed by such Committees in the discharge of their duties

(c) the allowances admissible to members of Court [2][and Boards and presiding officers of Labour Courts, Tribunals and National Tribunals] and to assessors and witnesses;

(d) the ministerial establishment which may be allotted to a Court, Board, [3][Labour Court, Tribunal or National Tribunal] and the salaries and allowances payable to members of such establishment;

(e) the manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such notices shall be communicated;

(f) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court, [4][Labour Court, Tribunal or National Tribunal];

(g) any other matter which is to be or may be prescribed.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.

[5][(4) All rules made under this section shall, as soon as possible after they are made, be laid before the State Legislature or, where the appropriate Government is the Central Government, before both Houses of Parliament.]

[6][(5) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in [7][two or more successive sessions, and if,

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1 On the enforcement of section 22 of Act 46 of 1982, clause (ab) shall stand inserted in Sub-section (2) of section 38 as directed in section 22 of Act 46 of 1982. For the text of section 22 of Act 46 of 1982 see Appendix.

2 Subs. by Act 36 of 1956, Section 26, for "Boards and Tribunals" (w.e.f. 10.3.1957). 3 Subs. by Act 36 of 1956, Section 26, for "or Tribunal" (w.e.f. 10.3.1957).

4 Ins. by Act 36 of 1956, Section 26 (w.e.f. 10.3.1957).

5 Ins. by Act 36 of 1964, Section 20 (w.e.f. 19.12.1964).

6 Ins. by Act 36 of 1964, Section 20 (w.e.f. 19.12.1964).

7 Subs. by Act 32 of 1976, Section 5, for certain words (w.e.f. 5.3.1976).

before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

[1][**39. Delegation of powers.—**The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,—

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.]

[2][**40. Power to amend Schedules.—**

(1) The appropriate Government may, if it is of opinion that it is expedient or necessary in the public interest so to do, by notification in the Official Gazette, add to the First Schedule any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.

(2) The Central Government may, by notification in the Official Gazette, add to or alter or amend the Second Schedule or the Third Schedule and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.

(3) Every such notification shall, as soon as possible after it is issued, be laid before the Legislature of the State, if the notification has been issued by a

1 2 Subs. by Act 36 of 1956, Section 27, for section 39 (w.e.f. 17.9.1956).
Section 40 rep. by Act 35 of 1950, Section 2 and Schedule I and again ins. by Act 36 of 1956, Section 28 (w.e.f. 1.3.1957) and Subs. by Act 36 of 1964, Section 21 (w.e.f. 19.12.1964).

State Government, or before Parliament, if the notification has been issued by the Central Government.]

[1][**THE FIRST SCHEDULE**

[See section 2(n)(vi)]

Industries which may be declared to be Public Utility Services under sub-clause (vi) of clause (n) of section 2

1. Transport (other than railways) for the carriage of passengers or goods, [2][by land or water];
2. Banking;
3. Cement;
4. Coal;
5. Cotton textiles; 6. Food stuffs;
7. Iron and Steel;
8. Defence establishments;
9. Service in hospitals and dispensaries; 10. Fire Brigade Service;

[3][11. India Government Mints;
12. India Security Press;]

[4][13. Copper Mining;
14. Lead Mining; 15. Zinc Mining;]

[5][16. Iron Ore Mining;]

[6][17. Service in any oil-field;]

[7][***]

[8][19. Service in the Uranium Industry;]

[9][20. Pyrites Mining,
21. Security Paper Mill, Hoshangabad;]

1 Subs. by Act 36 of 1956, Section 957).

2 Subs. by Act 36 of 1964, Section 22, for "by land, water or air" (w.e.f. 19.12.1964).
3 Ins. by S. O. 2193, dated 30th June, 1965.
4 Added by S. O. 1444, dated 3rd May, 1966.
5 Ins. by S. O. 726, dated 25th February, 1967.
6 Ins. by S. O. 1776, dated 10th May, 1967.
7 Entry 18 omitted by Act 45 of 1971, Section 7 (w.e.f. 15.12.1971).
8 Ins. by S. O. 1471, dated 10th April, 1968.
9 Ins. by S. O. 2061, dated 30th May, 1971.

8(3) The Industrial Disputes (Punjab) Rules, 1958

1[22. Services in the Bank Note Press, Deewas;]

2[23. Chemical Fertilizer Industries]

3[24 Drug & Pharmaceutical Industries]

4[25. Oxygen Manufacturing]

5[26. Manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon Oils and their blends including synthetic fuels, lubricating oils and the like;]

6[27. Any industry in relation to which the state Government is the appropriates Government and is 100% Export Oriented in the state of Haryana"

7[28. Any industry established in Export Promotion Industrial park and to which the State Government is appropriate Government and is exporting up to 30% of their turn over."

8[29. Information Technology and Software Establishments.

9[30. Chemical Industry".

1 Ins. by S. O. 4697, dated 26 the November, 1976.
2 Ins. by Haryana Government Notification No. 11/86/79-4 Lab dot. 4.3.1980.
3 Ins. by Haryana Government Notification No. 11/37/80-4 Lab dt. 1.1.1981.
4 Ins. by Haryana Government Notification No. 11/166/80-4 Lab dt. 10.6.1981.
5 Ins. by S. O. 4207, dated 20th November, 1984.
6 Added by Haryana Government Notification No. 11/175/93-4 Lab dt. 11.7.1996.
7 Added by Haryana Government Notification No. 11/101/96-4 Lab dt. 9.9.1997.
8 Added by Haryana Government Notification No. 6/15/1000-1 Lab dt.13.6.2000.
9 Added by Haryana Government Notification No. 11/37/2004-4 Lab dt.14.3.2006.

[1][THE SECOND SCHEDULE

(See section 7)

Matters within the Jurisdiction of Labour Courts

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.]

1 Subs. by Act 36 of 1956, Section 29, for the Schedule (w.e.f. 10.3.1957).

8(3) The Industrial Disputes (Punjab) Rules, 1958

[1][THE THIRD SCHEDULE

(See section 7A)

Matters within the Jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident hind and gratuity;
6. Shift working otherwise than in accordance with standing orders; 7. Classification by grades;

8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and 11. Any other matter that may be prescribed.]

1 Subs. by Act 36 of 1956, Section 29, for the Schedule (w.e.f. 10.3.1957).

1[THE FOURTH SCHEDULE
(See section 9A)
Conditions of Service for change of which Notice is to be given

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage; 9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;
10. Rationalisation, standardisation or improvement of plant or technique which is likely lo lead to retrenchment of workmen;
11. Any increases or reduction (other than casual} in the number of persons employed or to be employed in any occupation or process or department or shift, 2[not occasioned by circumstances over which the employer has no control].]

1 Subs. by Act 36 of 1956, Section 29, for the Schedule (w.e.f. 10.3.1957).
2 Subs. by Act 36 of 1964, Section 23, for "not due to forced matters" (w.e.f. 19.12.1964).

[1][THE FIFTH SCHEDULE

[See section 2(ra)]
Unfair Labour Practices

I.—On the part of employers and trade unions of employers

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say—

(a) threatening workmen with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organised;

(c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say—

(a) an employer taking an active interest in organising a trade union of his workmen; and

(b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.

3. To establish employer sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say—

(a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act); (c) changing seniority rating of workmen because of trade union activities; (d) refusing to promote workmen to higher posts on account of their trade union activities;

1 Ins. by Act 46 of 1982, Section 23 (w.e.f. 21.8.1984).

e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen—

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer's rights; (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman mala fide from one place to another, under the guise of following management policy.

8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit. 10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.

13. Failure to implement award, settlement or agreement, 14. To indulge in acts of force or violence.

15. To refuse to bargain collectively, in good faith with the recognised trade unions.

8(3) The Industrial Disputes (Punjab) Rules, 1958

16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II.—On the part of workmen and trade unions of workmen

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.

2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say—

(a) for a trade union or its members to picketing in such a manner that nonstriking workmen are physically debarred from entering the work places;

(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

3. For a recognised union to refuse to bargain collectively in good faith with the employer.

4. To indulge in coercive activities against certification of a bargaining representative.

5. To stage, encourage or instigate such forms of coercive actions as wilful "go slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.

6. To stage demonstrations at the residences of the employers or the managerial staff members.

7. To incite or indulge in willful damage to employer's property connected with the industry.

8. to indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.]

8(3) The Industrial Disputes (Punjab) Rules, 1958

Extracts from the Industrial Disputes (Amendment) Act, 1982

APPENDIX

(46 of 1982)

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1. Short title 'and commencement.—

(1)** *

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. Amendment of section 2.—In section 2 of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter referred to as the principal Act),—

* * * * *

(c) for clause (j) the following clause shall be substituted, namely:—

'(j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes—

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include—

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one,

8(3) The Industrial Disputes (Punjab) Rules, 1958

Explanation.—For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;

* * * * *

7. Insertion of new Chapter IIB.- -After section 9B of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IIB
REFERENCE OF CERTAIN INDIVIDUAL DISPUTES TO GRIEVANCE SETTLEMENT AUTHORITIES

9C. Setting up of Grievance Settlement Authorities and reference of certain individual disputes to such authorities.—(1) The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months, shall

8(3) The Industrial Disputes (Punjab) Rules, 1958

provide for in accordance with the rules made in that behalf under this Act, a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

(2) Where an industrial dispute connected with an individual workman arises in an establishment referred to in sub-section (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed, such dispute to the Grievance Settlement Authority provided for by the employer under that sub-section for settlement.

(3) The Grievance Settlement Authority referred to in sub-section (!) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter 111 with respect to any dispute referred to in this section unless such dispute has been referred to the Grievance Settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the dispute."

* * * * *

22. Amendment of section 38.—In sub-section (2) of section 38 of the principal Act, after clause (aaa), the following clause shall be inserted, namely:—

"[(ab) the constitution of Grievance Settlement Authorities referred to in section 9C, the manner in which industrial disputes may be referred to such authorities for settlement, the

procedure to be followed by such authorities in the proceedings in relation to disputes referred to them and the period within which such proceedings shall be completed;]"

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THE INDUSTRIAL TRIBUNAL (PROCEDURE) RULES, 1949[1]

1. These rules may be called the Industrial Tribunal (Procedure) Rules, 1949.

2. The Industrial Tribunal constituted under the Ministry of Labour, Notification No. LR-2 (205), dated the 13th June, 1949, may entrust such cases or matters referred to it as it deems fit to one or more members for enquiry and report.

3. The report under rule 2 shall be submitted to the Chairman of the Tribunal. The Tribunal may withdraw any case or matter referred to one or more

1 Vide Ministry of Labour, Notification No. LR.2 (245), dated 3rd September, 1949, published in

members under rule 2 and transfer the same to any other member or members.

4. The Tribunal shall, after considering the report and making such further enquiry as it deems fit, deliver its award.

5. For the purpose of making any enquiry under these rules, the member or members, as the case may be, shall have all the powers of the Tribunal under section 11 and the provisions of rules 14 to 21, 24, 30 and 31 shall apply to such enquiry as if the member or members were the Tribunal.

THE INDUSTRIAL TRIBUNAL (CENTRAL PROCEDURE) RULES, 1954[1]

1. These rules may be called the Industrial Tribunal (Central Procedure) Rules, 1954.

2. In these rules—

(a) "the Act" means the Industrial Disputes Act, 1947 (14 of 1947);

(b) "Chairman" means the Chairman of the Tribunal;

(c) "member" means a member of the Tribunal;

(d) "section" means a section of the Act;

(e) "Tribunal" means the Industrial Tribunal constituted under section 7 consisting of two or more members.

[2][3. In the case of a Tribunal where it consists of two or more members, the Chairman may sit alone or with one or more members to hear an application or complaint in writing under section 33 or section 33A, as the case may be, for inquiry and report to the Tribunal or entrust any such application or complaint to one or more members, as he deems fit, for such enquiry and report.

4. The Chairman may withdraw any case or matters referred to one or more members, under rule 3 and transfer the same to himself or any other member or members.

5. The report under rule 3, where the enquiry is made by one or more members, shall be submitted to the Chairman and where the enquiry is by the Chairman

1 Vide, Section R.O. 1793, dated 27th May, 1954, published in the Gazette of India, Extra., dated 27th May, 1954, PI. II, Section 3, p. 925.

2 Subs. by Section R.O. 3534, dated 1st December, 1954.

sitting alone or with one or more members, the report shall be submitted to the Tribunal:

Provided that in all cases, the final order on such application or complaint shall be passed by the Tribunal after taking into consideration the report submitted to it by the Chairman sitting singly or with one or mor member or members-

6. The Tribunal shall, after considering the report submitted to the Chairman under rule 5 and making such further enquiry, if any, as it thinks fit, give its decision or award as the case may be.
7. For the purposes of making an enquiry under these rules the Chairman or member or members, as the case may be, shall have all the powers of the Tribunal under section 11 and the provisions of rules 14 to 21, 24, 30 and 31 of the Industrial Disputes (Central) Rules, 1947, shall apply to such enquiry as if the Chairman or member or members by themselves constituted the Tribunal.]