9 INDUSTRIAL DISPUTES ACT

APPLICATION AND OBJECTS

Application : The law relating to industrial relations in India is contained in the Industrial Disputes Act of 1947 and several local Acts passed in States (*e.g.*, in Maharashtra). The Industrial Disputes Act is a Central Act which came into operation on 1st April, 1947. The latest amendment to the Act was made in 1984.

The Act applies to the whole of India, including the State of Jammu and Kashmir.[1]

Objects : The object of the Act is, "to make provision for the investigation and settlement of industrial dispute, and for certain other purposes."

The aim of the Act is to secure *industrial peace* through voluntary negotiation and compulsory adjudication. It lays down the procedure according to which disputes between employers and workmen can be settled. The Act also aims at securing *economic justice* to the workmen. Industrial disputes generally arise from dissatisfaction of workmen owing to the deteriorating economic conditions. The Act has also been formulated in order to improve the condition of workers in industry by (*a*) redressal of grievances of workmen through a statutory machinery and by (*b*) offering job security.

THE AMENDMENT OF 1982

The Industrial Disputes Act of 1947 was amended several times ; the latest was in August 1982. [The Industrial Disputes (Amendment) Act, 1982 ; Act of 46 of 1982.] This Act received the assent of the President on 31.8.1982. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.—Sec. 1(1) and (2).

The amendment provides for extensive changes. It has recast the terms used in a main Act *e.g.*, Industry, Workman, Industrial Establishment or Undertaking, etc. The rules regarding closure, lay off, reinstatement, retrenchment etc. are altered. Certain new

[1] Applied to Jammu and Kashmir, see page 811, footnote.

concepts and rules have been introduced, *e.g.*, the rights of legal heirs, a time limit for adjudication of disputes, a model grievances redressal procedure etc. A schedule to the amending Act gives a list of unfair labour practices.

The important provisions of the amending Act have been summarized in an Appendix added at the end of this chapter. [It is to be noted that the amendment of 1982 has not been applied yet.]

INDUSTRY

Definition

Section 2(j) defines an "industry" as, "any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

The Statement of Objects and Reasons, issued with The Industrial Disputes (Amendment) Act of 1982, contains the following observation :

"The Supreme Court in the decision in the *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa and others*[1] had, while interpreting the definition of 'industry' as contained in the Act, observed that government might restructure this definition by suitable legislative measures. It is accordingly proposed to redefine the term 'industry'. While doing so, it is proposed to exclude from the scope of this expression, certain institutions like hospitals and dispensaries, educational, scientific, research or training institutes, institutions engaged in charitable, social and philanthropic services, etc., in view of the need to maintain in such institutions an atmosphere different from that in industrial and commercial undertakings and to meet the special needs of such organisations. It is also proposed to exclude sovereign functions of government including activities relating to atomic energy, space and defence research from the purview of the term 'industry'. However, keeping in view the special characteristics of these three activities and the fact that their workmen also need protection, it is proposed to have a separate law for the settlement of individual grievances as well as collective disputes in respect of the workmen of these institutions. All these have been taken into account and the term 'industry' has been made more specific

[1] See p. 997.

while making the coverage wider. The scope of the term 'workman' has also been enlarged to cover the supervisory staff whose wages do not exceed Rs. 1,600 per month.

Section 2(j) of the Amending Act defines 'industry' as follows : '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, 1941 (9 of 1948);

(*b*) any activity, being a profession practised by any Individual or body of Individuals;

(*c*) 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; or

(2) hospitals or dispensaries; 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 activity which is carried on by a co-operative society, being a Co-operative Society in which less than ten persons are employed.

Industry means any systematic activity carried on by cooperation between an employer and his workmen for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes. It does not make any difference 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.

"Industry" encompasses—

(*a*) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 ;

(*b*) any activity relating to the promoting of sales or business or both carried on by an establishment.

Case Law :

1. The Supreme Court holds that it is necessary to draw a line, in a fair and just manner, to put some limitation on the width of the words. *N. U. C. Employees* v. *Industrial Tribunal.*[1]
2. The term Industry has a wide import. But it cannot be magnified to overreach itself. The term "undertaking" must suffer a contextual and associational shrinkage. *Bangalore Water-supply* v. *A. Rajappa.*[2] The supreme court approved the decision of *D. N. Banerjee* v. *P. R. Mukherjee.*[3] (See p. 998 and p. 1002).

Industrial Establishment or Undertaking

The expression "undertaking" in the context of S. 25FFF, means a separate and distinct business or commercial or trading or industrial activity. It cannot comprehend an infinite-simally small part of a manufacturing process. (See p. 1031)

Section 2(ka) of the Amending Act states as follows "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on :

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[1] AIR (1962) Supreme Court 1080

[2] AIR (1978) Supreme Court 548 and 969

[3] (1953) S.C.A. 303

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 or 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 establish-ment or undertaking.

The painting section of an enterprise cannot be recognised as a subsection of it, eligible for being styled as a part of the undertaking. Such a mini classification if permitted would enable the employer to flout S25F with impunity. *Avon Services Production Agencies (P) Ltd.* v. *Industrial Tribunal, Haryana and others.*[1] (See appendix)

The Concept of Industry

The meaning of the term "Industry" has created conflicting decisions in the High Courts and others. In 1976 Krishna Iyer, J. of the Supreme Court, said that an activity can be regarded as an Industry, within the meaning of section 2(*j*) only if there is a relationship between the employer and the employees and its activities are analogous to trade and business. *Workmen of Indian Standards Institution* v. *Management of Indian Standards Institution.*[2] In 1978 the question of definition of the term Industry arose before the Supreme Court with a number of cases which were adjudicated by seven judges of Supreme Court including M. H. Beg (the then C. J.), Y. V. Chandrachud (now C. J.),

[1] AIR (1979) Supreme Court 170 (171)

[2] AIR (1976) Supreme Court 145

Krishna Iyer, and four other Judges. The decision of the seven Judges was reported under the heading *Bangalore Water-supply* v. *A. Rajappa*.[1] The highlights of judgement are stated below :

1. In an Industry, there must be (*i*) systematic activity, (*ii*) organized by co-operation between employer and employee and (*iii*) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes. If the above three essential elements are found, *prima facie*, there is an Industry in that enterprise.

2. Absence of profit motive or gainful objective is irrelevant in the public, joint, private or other sector. A trade or business organization does not cease to be one because of philanthropy animating the undertaking.

3. The decisive test of the term "Industry" is the nature of the activity with the employer-employee relationship.

4. Where undertaking is calculated to satisfy material things and services, geared to celestial bliss, *e.g.* making on a large scale *prasad* or food (for spiritual or religious services), there is an Industry.

5. *What are included in Industry* ? The seven judges, mentioned above, held that the triple tests listed in para 1 above are satisfied in following enterprises : (*i*) professions (*ii*) clubs (*iii*) educational institutions including *gurukul* (*iv*) co-operatives (*v*) research institutes (*vi*) charitable projects, and (*vii*) other kindred adventures.

6. *The exemptions, i.e. where there is no Industry* :

(*a*) In pious and altruistic missions many persons employ themselves free or for small honoraria. Such an institution is not Industry, even if, stray servants, manual or technical, are hired.

(*b*) Sovereign functions are not industries. But the welfare activities or economic adventures undertaken by the government are industries.

(*c*) Departments discharging sovereign functions can be considered within Sec. 2(j), if such units are industries and substantially severable.

(*d*) Constitutional and competently enacted legislative provisions may remove them from the scope of the Act.

(*e*) Where there is a complex of activities, some of which qualify for exemption but others do not, the total undertaking

[1] AIR (1978) Supreme Court 548 and 969

and the integrated nature of the departments will be an Industry, although there are some persons who are not workmen by definition and may not benefit by that status.

A list

The concept of industry is clarified by the Court decisions on the subject. A list is given below.

I. Industry

The following are "industries":

1. *Manufacturing establishments, Agricultural farms and Commercial houses.*

2. *A Municipality*: In the term "industry" the word "undertaking" is used and a municipality is an undertaking which supplies light or water for payment. *D. N. Banerjee* v. *P. R. Mukherjee.*[1]

3. *A non-profit organisation*: The Western India Automobile Association which renders service to its members on a non-profit basis has been held to be an "industry" within the meaning of the Act. *Province of Bombay* v. *Western India Automobile Association.*[2] Profit motive is not necessary characteristic of industry.

4. *A chartered accountant (large scale)*: If a chartered accountant doing audit work with a large staff it can be called an industry. *Rabindra Nath Sen* v. *The First Industrial Tribunal, W. B. and others.*[3] (See p. 1002)

5. *A college with pharmacy*: A college pharmacy manufacturing Ayurvedic medicines for sale is an industry. *Lalit Hari Ayurvedic College Pharmacy* v. *Worker's Union.*[4]

6. The activities of the Indian Standards Institution fall within the category of Industry. *Workmen of Indian Standards Institution* v. *Management of Indian Standards Institution.*[5]

7. *Activities of Government in industry*: The State has to undertake many activities which would otherwise be called industries. Such activities are included in definition of the term 'industry'. *Nagpur Corporation* v. *Its Employees.*[6] The Machkunda Hydro Electric Project is an industry within the meaning

[1] (1953) S C A. 303
[2] (1949) F.C.R. 321
[3] (1963) 67 C.W.N. 232
[4] (1960) I.L.L.J. 250
[5] AIR (1976) Supreme Court 145
[6] AIR (1960) Supreme Court 675

of the Act. *Superintending Engineer, Machkund* v. *Workmen of Machkund 'Electric Project.*[1]

II. No Industry

The following are not "industries"

1. *The University*: A University cannot be called an industry. *University of Delhi and others* v. *Ram Nath etc.*[2]

2. *A Dock Labour Board*: A Dock Labour Board, which supplies workmen to the stevedores for loading or unloading of ships, is not an industry. *Vizagapatnam Dock Labour* v. *Stevedores Association, Vishakhapatnam and Ors.*[3]

3. *A chartered accountant*: It was held that a chartered accountant's office is not an industry. *R. Vaidyanathan* v. *Fifth Industrial Tribunal,, W. B. & Others.*[4] But, see para 4 above.

4. *A solicitor*: The calling of a solicitor is not an industry, so long as he carries on the normal avocations of a solicitor. *Brijmohan Bagaria* v. *N. C. Chatterjee.*[5] (See p. 1002).

5. *Educational institutions*: A society whose main object is advancement of learning is not an industry, even though it publishes and sells books. *Asiatic Society* v. *State of W. Bengal.*[6]

6. *A religious institution*: A religious institution like a temple or a church, is not regarded as an industry.

7. *Hospital*: Dhanrajgiriji Hospital, Sholapur is not carrying on any economic activity in the nature of trade or business. Therefore, this hospital is not an industry. *Management of Safdar Jung Hospital, New Delhi* v. *Kuldip Sing Seth.*[7] *Dhanrajgiriji Hospital* v. *Workmen.*[8]

8. *Sovereign functions*: Several English and Indian cases held that the activities of a lawful government must undertake the administration of justice, maintenance of law and order, prevention of crime etc. and such activities do not come within the term 'industry.' *Federated State School Teacher's Association of Australia* v. *State of Victoria*[9], *State of Bombay* v. *Hospital Mazdoor Sabha.*[10]

9. *Club*: Non-proprietary members clubs, with multifarious

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[1] AIR (1960) Orissa 205
[2] AIR (1963) Supreme Court 1873
[3] (1971) 1.S.C.A. 625 (Supreme Court)
[4] (1976) 71 C.W.N. 755
[5] (1958) 62 C.W.N. 473
[6] (1967) 71 C.W.N. 119
[7] AIR (1970) Supreme Court 1407
[8] AIR (1975) Supreme Court 2032
[9] 41 Com. L.R. 569
[10] AIR (1960) Supreme Court 610

activities providing a venue for sports and games and facilities for recreation, entertainment and for catering of food, and refreshment, are not Industries. *Madras Gymkhana Club Employee's Union* v. *Management.*[1]

Activity of Cricket Club of India is not industry. It is members' self-service institution. *Cricket Club of India* v. *Bombay Labour Union and another.*[2]

10. *Other organisations*: The following organisations are not industries—professions; lawyer's office; humanitarian institutions like pinjrapoles and a home for destitute children; government employees in income tax department; non-gazetted government servants; Rajbhavan staff.

11. Khadi or village industries.

12. any domestic service.

13. any activity if the number of persons employed by the individual or body of individual in relation to such profession is less than ten.

14. any activity carried on by a co-operative society if the number of persons employed by the cooperative society is less than ten.

INDUSTRIAL DISPUTES

Definition

According to Section 2(k) of the Act, 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 person."

From the definition it follows that a dispute or difference between

(*a*) employers and employers,

(*b*) employers and workmen, and

(*c*) workmen, and workmen, is an industrial dispute within the meaning of the Act, provided the dispute or difference relates to,

(*i*) employment, or (*ii*) non-employment, or (*iii*) terms of employment, or, (*iv*) the conditions of labour, of any person.

[1] AIR (1968) Supreme Court 554 [2] AIR (1969) Supreme Court 276

The definition of industrial dispute signifies that it refers to an industry defined in the Act and refers to disputes that bear upon the relationship of employers and workmen and the terms of employment and condition of labour.

When Industrial disputes arise

Disputes or differences arise when a demand is made by one party and is refused by the other party. The demand may be oral or in writing. A request contained in a letter from workmen may amount to a demand. If the request is not complied with, a dispute arises.

Who can raise a dispute ?

A demand may be made by a group of workmen or by the Trade Union on their behalf. A dispute with an individual workman may become an industrial dispute if the workman is supported by other workmen or the Union.

Collective Disputes

When the workmen raise a dispute as against their employer, the person regarding whose employment that dispute is raised, 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* v. *Management of Dimakuchi Tea Estate.*[1] Those sponsoring the case must be in the same employment, association or union. There must not be mere sympathy for the aggrieved workman but community of interest. *Express Newspaper (P) Ltd.* v. *Labour Court, West Bengal.*[2]

Disputes may be collective disputes or individual disputes. Collective disputes are those which are supported by a large number of workmen. Collective dispute may be due to many causes *e.g.*, hours of work, wages, bonus holidays, retrenchment, closure etc. collective disputes may be industrial disputes.

No rigid rule can be laid down regarding the number of workmen whose association will convert an individual into a collective dispute. The number depends upon the facts of the case and the nature of the dispute. *Associated Cement Companies Ltd.* v. *Their workmen*[3]

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[1] AIR (1958) Supreme Court 353 [2] (1959-60) 17 F.J.R. 413
[3] (1960) I.L.L.J. 491

A section of an undertaking, *e.g.*, the clerical staff, can raise an industrial dispute.

The union need not be a recognised trade union.

Individual Dispute

Cases where a dispute with an individual workman is deemed to be an industrial dispute : Section 2A, inserted by the Industrial Disputes (Amendment) Act, 1965, provides that 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.

Examples of industrial disputes :

(*i*) *Requesting bonus* : A Union of workmen wrote a letter to the employers, in very courteous and polite language requesting additional bonus. The request was refused. Held that an industrial dispute arose from the refusal. *Sree Minakshi Mills* v. *State of Madras*.[1]

(*ii*) *Municipality* : Two employees of a municipality were dismissed on certain charges and a dispute arose between the municipality and the workers employed by it. It was held that the dispute was an industrial dispute because in the definition of the term "industry" the word "undertaking" is used and a municipality is an undertaking which supplies light or water for payment. *D. N. Banerjee* v. *P. R. Mukherjee*.[2]

(*iii*) *Solicitor* : The term industry' does not include the case of an individual who carries on a profession dependent on his own intellectual skill. The calling of a solicitor is not an industry, so long as he carries on the normal avocation of a solicitor. Therefore, a dispute between a firm of solicitors and its employees is not an industrial dispute. (The calling of a solicitor may become an industry under certain circumstances *e.g.*, when he carries on an investment business). *Brijmohan Bagaria* v. *N. C. Chatterjee*.[3]

(*iv*) *A chartered accountant* : A chartered accountant carries on auditing work on a magnified scale, with more clients than he can himself manage, it was held that the dispute between the chartered accountant and his staff was an industrial dispute. *Rabindra Nath Sen* v. *The* First *Industrial Tribunal, West Bengal & Ors.*[4]

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[1] AIR (1951) Mad. 974
[2] (1953) S.C.A. 303
[3] (1958) 62 C.W.N. 473
[4] (1963) 67 C.W.N. 232

(v) *"Foreign" Union* : A dispute between a lino-operator and his management was espoused by union of workmen of another organisation. Held that is not an industrial dispute. *Newspapers Ltd., Allahabad v. State Industrial Tribunal, U.P.*[1]

WORKMAN

Definition

The definition of the term 'workman' as given in Section 2(*s*) of the Act can be summarised as follows : Workman means any person (including an apprentice) employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward. The terms of employment may be either express or implied. A workman who has been dismissed, discharged or retrenched, comes within the definition of the term 'workman' if there is any dispute relating to such dismissal, discharge or retrenchment.

Section 2(*s*) of the Amending Act defines 'workman' as follows : '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 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.

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[1] (1960) S.C. 1328

Exceptions

The Act *excludes* the following types of workers from the definition of 'workman'—

(*i*) Persons subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934.

(*ii*) Persons employed in the police service or a prison.

(*iii*) Persons employed mainly in a managerial or administrative capacity.

(*iv*) Persons employed in a supervisory capacity drawing wages exceeding Rs. 1600 per month or exercising function mainly of a managerial nature.

With the exception of the four excluded categories stated above, every person working in an industry, for hire or reward, is a workman. See "Worker", p. 814 and "Employee", p. 879.

The Relationship of Employment

The relationship of employee and employer arises between two persons by agreement between them, express or implied, when the employee is under the control of the employer. *Chintaman Rao and another* v. *State of Madhya Pradesh*.[1]

An employee is said to be under a control of an employer if he is bound to follow the orders of the employer (*a*) regarding the work which he shall execute, (*b*) the details of the work, (*c*) the manner of its execution.

The manner of payment

Hire or reward to a workman may be in any manner. It may be (*a*) time wages (*b*) at piece rates or (*c*) a commission on production or sale.

Examples of Workmen

The following persons were held 'workmen' under the Act.— Temporary workmen and casual workmen paid weekly ; persons working of a supervisory character but receiving a salary below Rs. 1600 per month ; a gardener working at an officer's quarter but whose name is on the companys' payroll ; a salesman who draws wages and not commission ; an auditor employed in the concern and doing mainly clerical work ; workers engaged by a contractor if the contractor is an employee of the principal

[1] AIR (1953) Supreme Court 388

concern and not an independent contractor ; a timekeeper ; a jamadar ; a guard.

Piece rated Tailors working in big tailoring establishment are workmen. *Shining Tailor* v. *Industrial Tribunal II, U.P., Lucknow and others.*[1]

A Security Inspector at the gate of the factory premises and it was neither managerial nor supervisory in nature, so as to exclude him from the definition of "workman" under Section 2(*s*) of the Act. *Ved Prakash Gupta* v. *Delton Cable India (P) Ltd.*[2]

Persons held not Workmen

The following persons are not regarded 'workmen' under the Act.—Casual and temporary workers are not workmen after the job for which they are engaged is finished ; the non-permanent staff of seasonal factories are not workmen during the off-season when work is not being carried on : persons holding managerial and supervisory post ; an advertisement manager ; a gate sergeant ; a sales representative ; a medical representative ; a draughtsman ; editorial staff including reporters ; a midwife and a nurse ; a chemist ; a supervisor.

EMPLOYER

Section 2(*g*) of the Industrial Disputes Act states that the term Employer means,

(*i*) in relation to an industry carried on by or, under the authority of any department of 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.

A term 'employer' has been extended in many States. The Maharashtra Industrial Relations Act adds phrase, "(*b*) Any agent of the employer." It has been held that the agent of the employer includes—general manager, director and the occupier of a factory.

The U.P. Industrial Disputes Act, 1947, adds the following more clauses :

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[1] AIR (1984) Supreme Court 23 [2] AIR (1984) Supreme Court 914

"(*iii*) an association of a group of employers ;

(*iv*) where the owner of an industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily part of the industry, the owner of such industry."

Clauses (*ii*) and (*iii*) are same in clauses (*i*) and (*ii*) of the main Act. (See above)

Workmen and Employer

Where a worker, or group of workers, labours to produce goods and services and these goods and services are for the business of another, that other is, in fact, the employer. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* has no consequence. On lifting the veil the different paper arrangement is to be found out so that the real employer is the Management not the intermediate contractors. *Ganesh Beedi's Case.*[1] *Hussainbhai* v. *The Alath Factory etc.*[2]

WAGES

Section 2(rr) of the Industrial Disputes Act states that "wages" means, "all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express 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 allowances) as the workman is for the time being entitled to ;

(*ii*) the value of any house accommodation, or of supply of any service or of any concessional supply or foodgrains or other articles ;

(*iii*) any travelling concession ;

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."

[1] AIR (1974) Supreme Court 1832 [2] AIR (1978) Supreme Court 1410

Wages constitute the return obtained by the workman for placing his labour, skill and energy at the disposal of his employer. The term is used in the Act to mean the total remuneration to which the workman is entitled under the terms of service and which can be calculated in terms of money. *It includes* (1) allowances like dearness allowance, (2) value of house accommodation, water supply and other amenities, (3) any travelling concession. *It does not include* (1) bonus (2) employer's contributions to pension, provident funds etc. and (3) gratuities payable on retirement.

PAYMENT OF FULL WAGES

Section 17B. *Payment of full wages to workman pending proceedings in higher Courts*—

Where in any case, a Labour Court, Tribunal or National Tribunal 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.

TIME LIMIT

There has been dissatisfaction with delays involved in the adjudication of industrial disputes. It is proposed to fix a time limit for the adjudication of individual and collective disputes, as also for the disposal of claims, applications and other references by the Labour Court, the Industrial Tribunal or the National Industrial Tribunal with a view to securing speedier justice to workmen. It has also been provided that no case will

lapse merely on account of the fact that the time limits specified had expired.

Section (2A) of Amending Act: An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within with 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 reasons, 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 :

Provided also that in computing any period specified in the 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.

BONUS

Definition

The term Bonus is used to denote *any extra payment* to the workman in addition to his wages, allowances and the usual fringe benefits.

The law regarding bonus was codified in 1965. Under that code, Bonus was defined as, "An annual statutory payment by an employer to his employee according to the provisions of the Payment of Bonus Act 1965."

The Bonus law

The Act of 1965 was amended in 1976, 1977, an ordinance issued on 21st August, 1980 and an Act passed in December, 1980. The Act was twice amended in 1985. At first Section 12

was abolished. But second amendment reintroduced Section 12 with an amendment. The highlights of the Bonus Acts are summarised below :

1. The Bonus Act applies (*i*) to every factory as defined in the Factories Act of 1948 and (*ii*) every other establishment in which ten or more persons are employed in any day during an accounting year. It extends to the whole of India. Bonus is payable to Banking, Reconstruction Corporation & Railways.

2. Bonus is payable on the salary or wage earned by the employee in an accounting year at the rate of up to 20%. The minimum bonus is 8.33%. The bonus is payable whether or not the employer has any allocable surplus in the accounting year.

3. Every employee who has worked in the establishment for not less than thirty working days in the accounting year, and whose monthly wage is not more than Rs. 1,600 is to be paid bonus. All employees including manual worker and also the executive staff are eligible. But a person getting a monthly wages exceeding Rs. 750 will be given bonus calculated on the basis of Rs. 750 only.

4. Where an employee who has not completed 15 years of service, the minimum shall be 8.33% or Rs. 60 whichever is higher. An employee, who has completed his service for 15 years or more, must get at least Rs. 100.

5. Where an employee has not worked for all the working days in an accounting year, the bonus shall be proportionately reduced.

6. Under the Act certain types of workers are not eligible to get bonus, *e.g.*, seamen under the Merchant Shipping Act ; employees in Indian Red Cross Society and similar Institutions ; universities and other educational institutions, etc.

7. An employee, dismissed for the following reasons, will not get bonus *viz.* fraud, riotous behaviour while on the premises of the establishment, or theft, misappropriation or sabotage of any property of the establishment.

Comment

The salient feature of the Ordinance and the Act of 1980 is that the payment of bonus was made a permanent part of law of which for the past three years were *ad hoc* arrangements. But disputes between workmen and employers occur as regards bonus

exceeding the minimum. The range is wide because it varies between 8.33% to 20%.

Case Law :

The minimum bonus under this Act is a right vested in an employee. For the enforcement of this Act, an employee can file an application to the Labour Court under the Industrial Disputes Act. For such a claim it is not necessary to refer for adjudication to an Industrial Tribunal. *Anand Oil Industry* v. *Labour Court, Hyderabad and others.*[1]

Workmen in establishment receiving attendance bonus over and above the bonus is outside the purview of the Act. *Baidyanath Ayurveda Bhawan Mazdoor Union, Patna* v. *Management of Shri Baidyanath Ayurveda Bhawan Pvt. Ltd. and others.*[2]

Latest Amendments

(*i*) On 27.9.1985 the Government of India issued an ordinance raising the ceiling limit, as discussed in 3 above, for computing bonus from Rs. 750 per mensem to Rs. 1600 per mensem. Hence by this ordinance an employee getting wages more than Rs. 750 per mensem but less than Rs. 1600 per mensem will get bonus calculated on his actual wages. This will be applicable for the accounting in 1984 and for subsequent years.

(*ii*) On 27.11.1985 a bill was introduced in Parliament amending Section 2(13) of the Payment of Bonus Act stating that an Employee means any person (other than an apprentice) employed on a salary or wage not exceeding Rs. 2500 per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for live or reward whether this terms of employment be express or implied.

In the same bill a new section had been added which made that where the salary or wage of an employee exceeds Rs. 1600 per mensem, the bonus payable to such employee under Section 10 or as the case may be under Section 11, shall be calculated as if his salary or wage were Rs. 1600 per mensem. (Sec. 12)

The Second Amendment 1985 maintains that a minimum bonus of 8.33 per cent of the wage or salary of an employee is payable irrespective of the fact whether the establishment has made a profit or loss. Bonus is no longer linked with production and profitability. Liability for bonus is a statutory liability.

[1] AIR (1979) AP 182 (Full Bench) [2] AIR (1984) Supreme Court 457

DIFFERENCES BETWEEN WAGES AND BONUS

1. Wages means the remuneration for work, the regular allowances and fringe benefits when given. Bonus means any payment other than above items.

2. The rate of wages is based on the contract between the employer and employee. Bonus is based upon contract, award, (by tripartite or bipartite) and the Bonus Act.

3. The rate of wages is more or less stable. Bonus varies from year to year.

4. Wages are given weekly or monthly. Bonus is given annually.

5. The Industrial Disputes Act specifically excludes bonus from the definition of wages. But under the Payment of Wages Act, the term wages includes bonus.

6. Wages are regarded as a part of cost of production of a firm. But under the Bonus Act, bonus must be given whether there is any surplus/profit or not. Some people consider bonus to be deferred wages.

7. In case of lay-off or discharge, the employee is entitled to get compensation on the basis of his wages of the employee. But bonus is not included in such compensation.

GRATUITY

Gratuity is a sum of money given by the employer to the employee at the end of his service. The term is not defined in the Industrial Disputes Act. Formerly, gratuity was paid under schemes formulated by the employer or by tripartite or bipartite agreement or by awards. Now the law relating to gratuity has been codified by the Payment of Gratuity Act 1972 (Act No. 39 of 1972). The Act was amended by the Amendment Act of 1987. The provisions of the Act are summarised below.

1. The Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

2. It extends to the whole of India. But in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

3. Gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years—

(*a*) on his superannuation, or
(*b*) on his retirement or resignation, or
(*c*) on his death or disablement or due to accident or disease.

But the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

4. *The amount of gratuity*: For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.

Under Section 4(3), the amount of gratuity payable to an employee shall not exceed Rs. 2,50,000. The Amendment Act 1994 replaced the existing ceiling of 20 month's wages for payment of gratuity by a monetary ceiting of Rs. 50,000. The Amendment Act 1997 has revised it to Rs. 2,50,000.

Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

5. Notwithstanding anything contained in the above rules the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee shall be wholly forfeited—

(*i*) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(*ii*) if the services of such employee have been terminated for any act when constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

6. *Penalties*: A penal provision in the Act provides that anybody intending to avoid payment of gratuity by submission of false statements, returns etc. will be liable to imprisonment, and/or to pay a fine.

7. *Protection of gratuity*: No gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Case Law :

(1) Sec. 1(3)(*b*) of the Payment of Gratuity Act applies to every establishment which is within the meaning of Sec. 2(*ii*)(*g*) of the Payment of Wages Act. The definition of Sec. 4(1) of the Gratuity Act is framed in the widest terms. The Act is a complete code containing detailed provisions covering all essential features. The proceedings for payment of gratuity must be taken under the Act. The Labour Court under the Industrial Dispute Act has no jurisdiction to entertain them. *State of Punjab* v. *The Labour Court etc.*[1]

(2) A permanent employee remaining absent without leave and working for less than 240 days in the year is not entitled to gratuity, A social welfare legislation must get beneficent construction. *Lalappa Lingappa and others* v. *Laxmi Vishnu Textile Mills Ltd.*[2]

(3) Civil suit to recover gratuity is maintainable. *Sudhir Chandra Sarkar* v. *Tata Iron and Steel Co. Ltd., and others.*[3]

AUTHORITIES UNDER THE ACT

The Act sets up certain authorities for the investigation and settlement of industrial disputes. They are (*i*) Works Committees (*ii*) Conciliation Officers (*iii*) Boards of Conciliation (*iv*) Courts of Enquiry (*v*) Labour Courts (*vi*) Industrial Tribunals (*vii*) National Tribunals and (*viii*) Grievance Settlement Authorities (*ix*) Reference to Arbitration. The powers and duties of these authorities are explained below.

The National Tribunals are constituted by the Central Government. The other authorities, (Conciliation Officers etc.) are appointed by the Appropriate Government.

Appropriate Government [Sec. 2(a)]

The Central Government is the Appropriate Government in relation to an industrial dispute concerning (*i*) any industry carried on by or under the authority of the Central Government (*ii*) a railway (*iii*) any controlled industry (*iv*) the Employees' State Insurance Corporation (*v*) the Agricultural Refinance Corporation (*vi*) the Deposit Insurance Corporation (*vii*) the Unit Trust of India (*viii*) the Indian Air Lines and Air India Corporation and (*ix*) a banking or an insurance company, a mine, an oil field, Cantonment Board, or a major port.

In relation to all other industrial disputes, the State Government is the Appropriate Government.

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[1] AIR (1979) Supreme Court 1981 [2] AIR (1981) Supreme Court 852
[3] AIR (1984) Supreme Court 1064

In section 2(*a*) of the Amending Act, a list is given of industrial establishment where the Central Government is the Appropriate Government.

Examples : a Dock Labour or the Industrial Finance Corporation of India ; the Employees' State Insurance Corporation ; the International Airport Authority of India ; The Export Credit and Guarantee Corporation Limited of the Industrial Reconstruction Corporation of India Limited ; etc.

WORKS COMMITTEE

The Works Committee is a committee consisting of representatives of employers and workmen. (Sec. 3). In the case of any industrial establishment in which 100 or more workmen are employed or have been employed on any day in the preceding twelve months, the Appropriate Government may direct the employer to constitute a Works Committee in the manner prescribed by the rules framed under the Act.

The number of representatives of workmen in the works committee must not be less than the number of representatives of the employer. The representatives of workmen are to be selected from the men engaged in the establishment in consultation with their Trade Union, if there is any registered Union.

Duties : It shall be the duty of the Works Committee (1) to promote measures for securing and preserving amity and good relations between the employer and workmen. (2) With this end in view, the Committee is to comment upon matters of their common interest or concern and (3) endeavour to compose any material difference of opinion in respect of such matters.

The Works Committee is a forum for explaining the difficulties of all the parties. It can be possible to maintain cordial relationship, even though there are disputes and differences.

The decisions of the Works Committees are not binding.

The success of Works Committees and similar organisations like Boards of Conciliation, depends on the efforts of both the parties. A Works Committee is not a substitute of Trade Unions.

CONCILIATION OFFICERS

Section 4 of the Act provides for the appointment of Conciliation Officers by the Appropriate Government. A conciliation officer may be appointed for a specified area or for a specified industry or industries in an area.

Duties : Conciliation Officers are charged with the duty of mediating in and promoting the settlement of industrial disputes. Section 12 provides as follows :

(1) Where an industrial dispute exists or is apprehended, the conciliation officer may hold conciliation proceedings in the prescribed manner. Where the dispute relates to a public utility service and the necessary notice of strike or lock-out (under Sec. 22) has been given he *shall* hold such proceedings.

(2) For the purpose of bringing about a settlement of the dispute, the conciliation officer shall without delay investigate the dispute and all matters relating to the merits thereof. He 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 the dispute is settled, the conciliation officer shall send a report to the Appropriate Government (or an officer authorised in this behalf) with a memorandum of the settlement signed by the parties.

(4) If no settlement is arrived at, the conciliation officer shall send a report stating the facts and circumstances, the steps taken and the reasons why no settlement was arrived at.—Sec. 12(6).

Case Law :

The duty of a conciliation officer is not judicial but administrative. He has to investigate the dispute and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of the dispute *Royal Calcutta Golf Club Mazdoor Union* v. *State*.[1]

The Conciliation Officer is entitled to enter an establishment to which the dispute relates, after reasonable notice, and also to call for and inspect any document which he considers relevant.

A Conciliation Officer cannot compel the attendance of parties at the conference but all parties to the dispute have the right to attend in a conference.

Generally the Conciliation Officer calls all the parties, sit around a table and discuss the dispute. Delay may be avoided. According to the rules the proceedings are conducted in private, although they actually become public.

The report of the conciliation officer shall be submitted within 14 days of the commencement of the conciliation procee-

[1] AIR (1956) Cal. 550

dings or within such shorter time as the Government may fix. The time may be extended beyond 14 days by such period as may (with the approval of the Conciliation Officer) be agreed upon in writing by all the parties to the dispute.

After considering the report, the Government may send the matter to a Tribunal or any other authority. If it does not do so it shall record and communicate to the parties concerned its reasons therefore.

BOARD OF CONCILIATION

Section 5 provides that the Appropriate Government may constitute a Board of Conciliation for promoting the settlement of an industrial dispute. The Board shall consist of a chairman and two or four members as the Government thinks fit. The Chairman shall be an independent person.

A person is "independent" for the purpose of appointment to a Board, Court or Tribunal if he is unconnected with the dispute or with any industry directly affected by such dispute. He may be a shareholder of a company connected with or likely to be affected by such dispute. But in such a case he must disclose to the Government the nature and extent of his shares.—Sec. 2(i).

The other members shall be appointed in equal numbers to represent the two parties. Each party is to recommend the names of their representatives, but if this is not done, the Government shall select the members.

Duties : Section 13 provides as follows :

(1) The Board shall endeavour to bring about a settlement between the parties.

(2) If a settlement is arrived at, the Board shall send a report thereof to the Government with a memorandum of the settlement signed by the parties.

(3) If no settlement is arrived at, the Board shall send a report stating the facts and circumstances, the steps taken, the reasons why no settlement was arrived at, and its recommendations for the determination of the dispute.

(4) If on the receipt of a report in respect of a dispute relating to a public utility sevice, the appropriate Government does not make a reference to a labour court, Industrial tribunal or National tribunal under Section 10, it shall record and communicate to the parties concerned its reasons therefore. [Sec. 13(4)].

A Board of Conciliation can only try to bring about a settlement. It has no power to impose a settlement upon the parties.

(5) The report of the Board must be sent within two months of the date on which the dispute was referred to it, or such shorter time as the Government may fix. The Government may extend the time up to two months. The time may be extended by agreement in writing by all the parties.

The report must be signed by all the members. Any member can submit a dissenting report. Every report together with the minute of dissent must be published by the appropriate Government within 30 days from its receipt.

In case of no settlement, the Government may refer the matter to a Labour Court, Tribunal or National Tribunal. If it does not do so it shall record and communicate to the parties the reasons therefore.

COURT OF ENQUIRY

Under Section 6 of the Act the Appropriate Government may appoint a Court of Enquiry for enquiring into any matter appearing to be connected with or relevant to an industrial dispute. A Court may consist of one or more independent persons. If there are more than one person, one of them shall be appointed Chairman.

Duties : Section 14 provides that a Court shall enquire into the matters referred to it and report thereon to the Appropriate Government, ordinarily within a period of six months from the commencement of the enquiry.

A Court of Enquiry has no power to impose any settlement upon the parties.

The Report of the Court must be signed by all the members. A member can submit a note of dissent. The Report together with the dissenting note must be published by the Appropriate Government within 30 days from its receipt.

LABOUR COURTS

Appointment

Under Section 7 of the Act the Appropriate Government may appoint one or more Labour Courts. The Labour Court shall consist of one person.

The person appointed to be the presiding officer of a Labour Court (*i*) must be or has been a judge of a High Court, or (*ii*) has been a District Judge or Additional District Judge for not less than three years or (*iii*) has held office as chairman or member of the Labour Appellate Tribunal (formerly existing) or any Tribunal for not less than two years, or (*iv*) has held a judicial office in India for not less than 7 years, or (*v*) must have been the presiding officer of a Labour Court constituted by Provincial Act or a State Act for not less than 5 years. He must be an "independent" person and must not have attained the age of 65 years.

Jurisdiction

The Labour Court has jurisdiction over the following matters (Second Schedule to the Act) :

1. The propriety of 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 reinstatement of, or grant of relief to, workmen wrongly dismissed.
4. Withdrawal of any customary concession or privilege.
5. Illegality or otherwise of a strike or lock-out.
6. All matters other than those specified in the Third Schedule (*i.e.*, those matters which are within the jurisdiction of Industrial Tribunals).

Case Law :

1. The Labour Court has jurisdiction to entertain a claim for bonus and determine the amount due. *Anand Oil Industries* v. *Labour Court, Hyderabad and others.*[1]
2. The Labour Court has jurisdiction to entertain a petition for minimum wages due and can determine the money the employee is entitled to. *Anand Oil Industries* v. *Labour Court, Hyderabad and others.* (See above).
3. The Labour Court was right and justified by directing reinstatement of the Appellant (the driver in this case) in service. But the driver is not entitled to backwages. *Jaswant Singh* v. *Pepsu Roadways Transport Corpn. and another.*[2]

Duties : The Labour Court shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion thereof, submit its award to the Appropriate Government.—Sec. 15.

[1] AIR (1979) AP 182 (Full Bench) [2] AIR (1984) Supreme Court 355

INDUSTRIAL TRIBUNALS

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 to the Act.—Sec. 7A.

The 2nd schedule has been reproduced above, under Labour Courts. The 3rd schedule contains the following items : wages, including the period and mode of payment ; compensatory and other allowances ; hours of work and rest intervals ; leave with wages and holidays ; bonus, profit-sharing, provident funds and gratuity ; shift working otherwise than in accordance with standing orders ; classification by grades ; rules of discipline ; rationalisation ; retrenchment of workmen and closure of establishments ; and any other matter that may be prescribed.

Section 7A also provides that a Tribunal shall consist of one person. A person shall not be qualified for appointment as presiding officer of a Tribunal unless he is or has been a judge of a High Court or has held the office of Chairman or member of the Labour Appellate Tribunal [formerly existing under the Industrial Disputes (Appellate Tribunal) Act, 1950] or of any Tribunal for a period of not less than two years or has been a District Judge or Additional District Judge for not less than three years. He must be an "independent" person and must not have attained the age of 65 years.

The Appropriate Government may appoint two persons as assessors to advise the Tribunal.

Duties : The Tribunal have the same duties as Labour Courts—Sec.15 ; when an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings and shall within the specified period submit its award to the appropriate Government. The period may be extended in accordance with Proviso 2 to Sec. 10(2-A).

NATIONAL TRIBUNAL

Section 7B provides that the Central Government may by notification in the official Gazette constitute one or more National 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.

A National Tribunal shall consist of one person only. No person can be the presiding officer of a National Tribunal unless he is or has been a judge of a High Court or has held the office of the chairman or any other member of the Labour Appellate Tribunal (formerly in existence) for a period of not less than two years.

The Central Government may, if it thinks fit appoint two persons as assessors to advise the National Tribunal.

The presiding officer of a National Tribunal must be an independent person and must not have attained the age of 65 years.—Sec. 7C.

Duties: National Tribunals have the same duties as Labour Courts and Industrial Tribunals.—Sec. 15; see above.

GRIEVANCE SETTLEMENT AUTHORITIES

Setting up of Grievance Settlement Authorities and reference of certain individual disputes to such Authorities.

Notes: A model grievances redressal procedure had been commended for adoption. But this voluntary arrangement has not proved effective. It is, therefore, proposed to make it obligatory for every industrial establishment employing 100 or more workmen to set up a time-bound grievance redressal procedure.

Section 9C: (1) The employer in relation to every industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, shall set up, 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 set up by the employer under that sub-section for settlement.

(3) The Grievance Settlement Authority referred to in sub-section (1) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter III 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.

REFERENCE TO ARBITRATION

Voluntary Reference

Section 10A of the Industrial Disputes Act provides for the voluntary reference of disputes to arbitration. Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may do so by a written agreement in the form prescribed by the rules and signed in the manner laid down in the rules. The reference to arbitration must be made before the dispute has been referred to any authority under Section 10. (See below).

The parties can select any person or persons as arbitrators (including the presiding officer of a Labour Court, Tribunal or National Tribunal). Where there is an even number of arbitrators, the agreement must provide for the appointment of an umpire. If the arbitrators are equally divided, the umpire shall enter upon the reference and his award shall be deemed to be the arbitration award for the purposes of the Act.

A copy of the arbitration agreement shall be forwarded to the appropriate Government and the Conciliation Officer. The Government shall within one month of its receipt publish it in the official Gazette.

When the Government is satisfied that the parties to the arbitration agreement represent the majority of each party, it may by notification permit employers and workmen (who are not parties to the agreement but are concerned with the dispute) to present their case before the arbitrators.

When a dispute is referred to arbitration, the appropriate Government may prohibit the continuance of any pending strike or lock-out.

The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the award signed by all of them. The provisions of the Arbitration Act of 1940 do not apply to an arbitration under Sec. 10A of the Industrial Disputes Act.

Case Law :

The Arbitrator, under S. 10A of The Industrial Disiputes Act, is amenable to the jurisdiction of the High Court. The High Court can interfere with the award of the Arbitrator. *Gujarat Steel Tubes Ltd., etc. etc.* v. *Gujarat Steel Tubes Mazdoor Sabha and others.*[1]

RIGHTS OF LEGAL HEIRS (NEW)

There have been conflicting decisions about the right of legal heirs of a workman in the event of the death of the latter pending proceedings before the authorities under the Act. Provision is being made to make it clear that pending disputes will not abate in the event of the death of the workman,

Section 10(8) of the Amending Act states as follows : 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.

REINSTATEMENT (NEW)

It is observed that when Labour Courts pass awards of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. The delay in the implementation of the award causes hardship to the workmen concerned. It is, therefore, proposed to provide for payment of wages last drawn by the workmen concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or the High Courts.

REFERENCE OF DISPUTES

Section 10 of the Industrial Disputes Act provides that 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 Enquiry ; or

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[1] AIR (1980) Supreme Court 1896

(*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.

Where the dispute relates to any matter specified in the Thrd Schedule and is not likely to affect more than 100 workmen, the appropriate Government may refer it to a Labour Court.

Where the dispute relates to a public utility service and notice (of strike/lock-out) under Sec. 22 has been given, the appropriate Government shall make a reference under Sec. 10 (notwithstanding that any other proceedings under the Act has been commenced) unless it considers that the notice has been frivolously and vexatiously given and that it is inexpedient to make a reference under Sec. 10(1).

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, it may refer the dispute or any matter connected with it, or relevant to it, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.

A reference may also be made on the application of the parties to the dispute, jointly or separately, if the appropriate Government is of opinion that the applicants represent the majority of each party.

When a reference under this section is made the appropriate Government may prohibit the continuance of any pending strike or lock-out.

The appropriate Government may in the reference order specify the points of dispute for adjudication, in which case the adjudication shall be limited to those points and matters incidental thereto.

After the order of reference, but before the award, the appropriate Government may include in the reference, establish-

ments interested in or likely to be affected by the dispute, though there may be no dispute in them at that time.

When a reference has been made to a National Tribunal, the subject under reference cannot be referred to any Labour Court or Tribunal. If any such matter was pending before any such authority, the proceedings before it shall be deemed to have been quashed when a reference is made to the National Tribunal. In proceedings before the National Tribunal the "appropriate Government" is the Central Government.

Power to make Reference

The power to make reference by the appropriate government is discretionary power and it can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the government. Its power is administrative in character. The Court cannot question the government's opinion, that is, it is not justiciable. *Avon Services Production Agencies (P) Ltd.* v. *Industrial Tribunal, Haryana and others.*[1]

Transfer

Section 33B provides that the appropriate Government can transfer proceedings from a Labour Court, Tribunal or National Tribunal to another. The order must be in writing and the reasons for doing so must be recorded.

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.—Sec. 8.

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[1] AIR (1979) Supreme Court 170

PROCEDURE AND POWERS

The authorities appointed under the Act shall follow such procedure as they think fit, subject to rules framed by the Government in this behalf. The authorities may, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

The above authorities have the powers which are vested in a Civil Court for the purpose of enforcing the attendance of witnesses and examining them, compelling the production of documents and material objects, issuing commissions for the examination of witnesses etc.

A Court of Enquiry, Labour Court, Tribunal and National Tribunal may appoint assessors to advise them. Members of the aforesaid bodies and conciliation officers are public servants. Every Labour Court, Tribunal and National Tribunal is a Civil Court. They can determine and award costs.—Sec. 11.

The powers of Labour Court, Tribunals and National Tribunals have been enlarged in 1971, by new section 11A. The provisions of the section are stated below.

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, above authorities 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 reinstatement of the workman on such terms and conditions, if any, as it thinks fit, 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.

The above authorities under section IIA, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

AWARD AND SETTLEMENT

Award

Award means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Tribunal or National Tribunal and includes an arbitration award made under section 10A.—Sec. 2(b).

The Award of a Labour Court, Tribunal or National Tribunal shall be signed by its presiding officer.—Sec. 16(2).

The report of a Board or Court shall be in writing and shall be signed by all its members. A member may, however, record a minute of dissent.—Sec. 16(1).

Every such award shall be published by the appropriate Government within 30 days from its receipt.—Sec.17(1).

Subject to the provisions of Sec. 17A (see; next two paragraphs) the award published under Sec. 17(1) shall be final and shall not be called in question by any Court in any manner whatsoever.—Sec. 17(2).

Commencement of award

An award (including an arbitration award) shall become enforceable on such date as may be specified therein and if no date is specified, on the expiry of 30 days from the date of publication by the Government.—Sec. 17A(1) & (4).

But the appropriate Government (in the case of awards of a Labour Court or a Tribunal) and the Central Government (in the case of awards of a National Tribunal) have been given power to reject or modify an award, if they are of opinion that it will be inexpedient on public grounds affecting the national economy or social justice to give effect to the whole or any part of the award. The order rejecting or modifying the award must be placed before the State legislature or the Parliament as the case may be. The modified award becomes effective from the expiry of 15 days from the date on which it is laid before the legislature.—Sec. 17A(2) & (3).

Settlement

Settlement means (1) a settlement arrived at in course of conciliation proceedings and (2) 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 an officer authorised in this behalf by the appropriate Government and the conciliation officer.—Sec. 2(p).

Persons on whom Settlements and Awards are binding

Settlements and awards are binding on the following persons—Sec. 18.

1. A settlement arrived at between the employer and workmen (otherwise than in course of conciliation proceedings)—on the parties to the agreement.

2. An arbitration award—on the parties who referred the dispute to arbitration.

3. A settlement arrived at in course of conciliation proceedings under the Act and an award of a Labour Court, Tribunal and National Tribunal—on all parties to the dispute and all parties summoned to appear as parties (unless the authority concerned records the opinion that they were summoned without proper cause). The term party, in this section, includes (in the case of an employer)—his heirs, successor or assigns ; and (in the case of workmen)—all persons employed in the establishment or the part of which to which the dispute relates and all persons who subsequently become employed in that establishment or part.

Case Law :

(1) Arbitrator functioning under Sec. 10A of the Industrial 'Disputes Act is a statutory Tribunal. If in its Award there is an apparent error of law the award can be set aside. *Rohtas Industries Ltd & another* v. *Bohtas Industries Staff Union & others.*[1]

(2) Settlement arrived at between the parties by the President and Secretary, of Union is binding on the parties. *Burmah Shell Workers' Union* v. *State of Kerala.*[2]

(3) Every settlement is an arrangement or agreement. But every arrangement or agreement is not a settlement. *India Tobacco Co.* v. *Dy. Labour Commr.*[3]

(4) "A settlement, not being one arrived at in the course of conciliation proceedings would be enforceable only against the parties thereto." *Jhagrakhan Collieries (P) Ltd.*, v. *G. C. Agraval etc.*[4]

(5) An award or settlement continues to regulate relationship between the parties till replaced by new one. There is no distinction between award and settlement from the view point of their legal force. The object of the Industrial Disputes Act is settlement of industrial disputes, not an enactment bearing merely on terms and conditions of service. *Life Insurance Corporation of India* v. *D J. Bahadur and others.*[5]

Period of Operation

A settlement shall come into operation on such date as may be agreed upon by the parties to the dispute, and if no date is

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[1] AIR (1976) Supreme Court 425
[2] AIR (1962) Kerala 190
[3] (1971) 75 C.W.N. 217
[4] AIR (1975) Supreme Court 171
[5] AIR (1980) Supreme Court 2181

agreed upon, on the date the memorandum of agreement is signed.—Sec. 19(1).

A settlement is binding for such period as is agreed upon by the parties. If no such period is agreed upon it remains binding for 6 months from the date it was signed. It continues to remain binding after this period of 6 months, till a party (representing the majority of persons bound by the settlement or award) gives notice in writing to terminate the settlement. The settlement terminates on the expiry of 2 months from the date of such notice.—Sec. 19(2).

An award remains in operation for a period of one year from the date on which it becomes enforceable. But the appropriate Government may reduce the period of operation. It can also, by an order issued before the expiry of the award, extend the period of operation. Such extension can be made for one year at a time, but the total period of operation cannot exceed 3 years.—Sec. 19(3). The award continues to remain binding after expiry of the period of operation till notice is given by a party bound by the award to the other party or parties intimating its intention to terminate the award. The award ceases to be binding on the expiry of 2 months from the date of the notice.—Sec. 19(6). The provisions of Section 19(3) do not apply to an award which by its nature, terms and other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by it—Sec. 19(5).

If it appears that since the award was made there has been a material change in the circumstances on which it is based, the appropriate Government may refer the award or a part of it to an authority (of the same kind as the one which made the original award) for decision whether the period of operation should be shortened. The decision of the authority shall be final.—Sec. 19(4).

Penalty for breach of Settlement or Award

A person who commits a breach of any settlement or award binding on him can be punished with imprisonment up to 6 months or with fine or with both. Where the breach is a continuing one, there may be a further fine of up to Rs. 200 for every day during which the breach continues after the conviction for the first. The whole or part of the fine can be-paid as compensation to the injured party.—Sec. 29.

Some cases regarding Powers of Tribunals

(*i*) *Creation of new rights and obligations*: The function of an Industrial Tribunal is not confined to administration of justice in accordance with law. It is not bound by any contract between the parties and it can create new rights and obligations if it considers it proper to do so for keeping industrial peace. But a Tribunal is vested with the powers of a Civil Court. Hence an application for special leave to appeal from the decision of a Tribunal is competent. *The Bharat Bank, Delhi* v. *Employees of Bharat Bank.*[1]

(*ii*) *Mutual rights and obligations*: The basis of industrial arbitration is the recognition of the doctrine that employers and workers engaged in an industry have mutual rights and obligations. These rights and obligations must either be incidental to the membership of a civilised community or based on positive law. *The Waterside Workers Federation of Australia* v. *J. W. Alexander Ltd.*[2]

(*iii*) *Interim Award*: A Tribunal has power to give interim relief by an interim award even though its jurisdiction to deal with the dispute has been challenged. An interim award is a provisional or temporary arrangement made in matters of urgency and subject to the final adjudication or complete determination of the dispute. *National Tobacco Co.* v. *Sarathi.*[3]

(*iv*) *Matters related to the terms of reference*: The scope of the jurisdiction of a Tribunal is created by the terms of reference to it. Ordinarily it should confine itself to the matters in dispute specifically referred to it. But if necessary, it can deal with matters related to the terms of reference.' *Associated Cement Companies* v. *Khilari Cement Workers Union.*[4]

(*v*) *A general award*: A general award affecting all workmen cannot be quashed or varied against some only. It must be quashed against all if not binding on some. *Md. Oasman Rahimtulla* v. *Labour Appellate Tribunal.*[5]

(*vi*) *Retrospective Award*: It is within the powers of a Tribunal to make an award with retrospective effect from a special date. *Jeewanlal Ltd.* v. *Their Workmen.*[6]

(*vii*) *Quasi-judicial bodies*: Industrial Tribunals are quasi-judicial bodies and are not hampered by the rules of evidence applicable to proceedings in a court of law and would be entitled to rely on data available to it otherwise from evidence adduced on behalf of the parties. *Electric Mechanical Industries* v. *Industrial Tribunal.*[7]

(*viii*) *Award on promotion of an employee*: Ordinarily promotion of a workman from a lower grade to a higher grade is a managerial

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[1] AIR (1950) Supreme Court 188
[2] (1918) 25 C.I.R. 434
[3] (1952) II L.L.J. 319
[4] (1952) II L.L.J. 484
[5] (1952) L.L.J. 172
[6] (1951-52) 3 F.J.R. 485
[7] AIR (1950) Mad. 839

function and in the absence of a finding that the refusal of the management to place a workman in the higher grade was on account of his trade union activities or any unfair labour practice, the Labour Court could not arrogate to itself the promotional function.
The award of the Court directing the reposting of the workmam in his original department was bad and should be set aside. *Hindustan Lever Ltd.* v. *The Workmen.*[1]

(*ix*) *Award*: The definition "award" in Section 2(*b*) falls in two parts. The first part covers a determination, final or interim, of any industrial dispute. The second part takes in a determination of any question relating to an industrial dispute. But the basic postulate common to both the parts of the definition is the existence of an industrial dispute, actual or apprehended. *M/S Cox and Kings (Agents) Ltd.* v. *Their Workmen and others.*[2]

CONFIDENTIAL MATTERS

Reports and Awards under the Act must not include information of a confidential nature obtained from evidence given, but not available otherwise. The information must not be disclosed in any other way. The persons concerned (the employer, the trade union etc.) can make a request in writing to the authority dealing with the matter to keep any information secret.—Sec. 21.

A person, who wilfully discloses confidential information, can be punished by fine up to Rs. 1,000 or imprisonment up to 6 months or both.—Sec. 30.

LOCK-OUT

Definition

"Lock-out" means the 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.—Sec. 2(1).

Lock-out is an act of the management. A temporary suspension of work (for example, on account of shortage of raw materials) is not a lock-out. A lock-out is generally intended to put pressure on the workers so that they may agree to the terms of work of the employer.

Conditions precedent to lock-out

1. No employer carrying on any public utility service shall lockout any of his workmen (*a*) without giving them notice of lock-out, in the prescribed manner, within six weeks before

[1] AIR (1974) Supreme Court 17 [2] AIR (1977) Supreme Court 1666

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.—Sec. 22(2).

2. Notice of lock-out or strike is not necessary when a strike or lock-out (respectively) is already in existence. But the employer shall inform the prescribed authority.—Sec. 22(3).

3. When an employer of a public utility service receives notice of strike or gives notice of a lock-out, he must within five days report to the appropriate Government or the authority appointed by such Government for this purpose.—Sec. 22(5).

Differences between Lock-out and Discharge

In a lock-out the relationship between the employer and the employee, continues. But in case of a discharge the relationship between the employer and the employee is cut off.

Differences between Lock-out and Closure

1. Lock-out means suspension of work. Closure means discontinuation of the business.

2. Lock-out is intended to exert pressure upon the workmen. Closure may be due to other factors, for example, economic causes.

3. Lock-out is generally caused by strike, fear of disorder, and destruction of the properties of the firm. Most of these causes are the results of industrial disputes. Closure is usually not the result of industrial disputes. But there were some cases where closure was a product of strike, assault upon the officer and unhappy incidents. *Feroz Din* v. *State of West Bengal.*[1]

STRIKE

"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.—Sec. 2(q).

Strike means stoppage of work by a number of employees acting together. A strike is the weapon used by workmen to force the employer to agree to their demands.

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[1] AIR (1960) Supreme Court 363

The duration of the cessation of work is not material. If the employees cease work, even only for an hour or a part thereof, would be called a strike. *Buckingham and Carnatic Co. Ltd.* v. *Workers.*[1]

Under the Industrial Disputes Act a strike notice is to be given when the workers are employed in a Public Utility Service. (See below : the definition of Public Utility Service).

A strike is illegal only when it is against the provision of the Industrial Disputes Act (See below).

Partial Refusal : A partial refusal of work may constitute a strike.

Refusal of overtime work

In certain industries, overtime work is customary and is done habitually. In certain industries overtime work is a legal obligation, *e.g.*, urgent repairs. In the above cases refusal of overtime work is against the conditions of service. Not to do such work may be interpreted as a strike.

Stay-in Strike

This type of strike happens when the workers stay inside the factory or establishment but do not work. It is sometimes also called pen-down strike or sit-down strike. This type of strike is expensive.

Go-slow

Go-slow is a deliberate delaying of production by workmen. It delays production and thereby reduces the output, although the workmen will be entitled to get full wages. In the case *Firestone Type* v. *& Rubber Co. India Ltd.* v. *Bhoja Shetty and another*[2], it was observed that go-slow methods are regarded in labour legislation as a form of misconduct. Such employees can be charges heeted, and if misconduct is proved, they can be dismissed.

Deduction from wages for strike

Section 9 of the Payment of Wages Act provides that an amount up to 8 days of wages may be deducted if ten or more persons acting in concert and without reasonable cause and without giving due notice, absent themselves from work. (See p. 967, para 2).

[1] AIR (1953) Supreme Court 47 [2] (1953) I L.L.J. 599

Where any strike is commenced without giving notice as required under Sec. 22, or within 7 days of the conclusion of proceedings, the strike must be held to be illegal irrespective of whether it was provoked by the employer, and the workmen would not be entitled to any pay for the period of strike. *Maha Luxmi Cotton Mills Ltd.* v. *Workers' Union*[1] *Crompton Greaves Ltd.* v. *The Workmen.*[2] (See p. 1036).

PUBLIC UTILITY SERVICE

This term is defined in Section 2 (n). It includes any railway service; any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends; any postal, telegraph or telephone service; any industry which supplies power, light or water to the public; any system of public conservancy or sanitation.

Any of the industries mentioned below (specified in the First Schedule to the Act) may be declared to be a public utility service (for a specified period, not exceeding six months initially but capable of being extended for further periods not exceeding six months at a time) if the appropriate Government is satisfied that public emergency or public interest so requires: Transport (other than railways) for the carriage of passengers or goods by land, or water; banking; cement; coal; cotton textiles; foodstuffs; iron and steel; defence establishment; service in hospitals and dispensaries; fire brigade service.

PROHIBITION OF STRIKES AND LOCK-OUTS

Certain types of strikes and lock-outs are prohibited by the Industrial Disputes Act :

I. Strikes and lock-out in a Public Utility Service

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, in the prescribed manner, 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.—Sec. (22)(1).

[1] F.J.R. 248 L.A. Tribunal [2] AIR (1978) Supreme Court 1489

No employer carrying on any public utility service shall lock-out any of his workmen (*a*) without giving them notice of lock-out, in the prescribed manner, 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.—Sec. 22(2).

Notice of lock-out or strike is not necessary when a strike or lock-out (respectively) is already in existence. But the employer shall inform the prescribed authority.—Sec. 22(3).

When an employer of a public utility service receives notice of strike or gives notice of a lock-out, he must within five days report to the appropriate Government or the authority appointed by such Government for this purpose.—Sec. 22(6).

II. Strike and lock-out in an Industrial Establishment

Section 23 provides that 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 a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings ;

(*bb*) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where by notification under Sec. 10A(3A) parties, other than parties to the arbitration agreement, have been permitted to present their case before the arbitrators ; 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.

III. By Order of the Government

Section 10(3) provides that where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal, the appropriate Government may by order prohibit the

continuance of a strike or lock-out in connection with such dispute which may be in existence on the date of the reference. Under Section 10A(4A) the appropriate Government can issue a similar order when a dispute has been referred to arbitration and a notification has been issued under sub-section 3A of Sec. 10A.

IV. Prohibition of Strike. Lay-off, and Lock-out in Essential Services

Under the Essential Services Maintenance Act, 1981, the Central Government can prohibit strike, lock-out, and lay-off in essential services by a notification by general or special order for a limited period. After the notification is issued the strike, lock-out and lay-off will be considered illegal. The Act has prescribed penalties for illegal strike etc. (See the next topic).

When is a strike or lock-out illegal ?

A strike or lock-out is illegal if it is in contravention of Section 22 or 23 or is against an order issued by the appropriate Government under Section 10(3) or 10A(4A). They are illegal also in essential services (See IV. above). These cases have been enumerated above.

Where a strike or lock-out is already in existence at the date of the reference to a Board, Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out is not illegal provided that such strike or lock-out was not illegal at its commencement.—Sec. 24(2).

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 illegal.—Sec. 24(3).

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out. —Sec. 25.

Penalties under the Industrial Disputes Act

The penalties provided for violation of the rules regarding strikes and lock-cuts are as follows :

Any workman who commences, continues or acts in furtherance of an illegal strike—imprisonment up to one month or fine up to Rs. 50 or both.—Sec. 26(1).

Any employer who commences, continues or acts in furtherance of an illegal lock-out—imprisonment up to one month or fine up to Rs. 1000 or both.—Sec. 26(2).

Instigating or inciting an illegal strike or lock-out-imprisonment up to six months or fine up to Rs. 1,000 or both.—Sec. 27.

Financial aid to illegal strikes and lock-outs—imprisonment up to six months or fine up to Rs. 1,000 or both.—Sec. 28.

Penalties under the ESMA : See below.

Court Decisions :

1. A strike is legal if it does not violate any provisions of the statute. A strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of fact and circumstances of each case. The use of force or violence or act of sabotage resorted by the workmen during a strike disentitle for wages during the strike. *Crompton Greaves Ltd.* v. *The Workmen.*[1]
2. Every employer declaring an illegal lock-out and every employee participating in an illegal strike can be punished according to penal section of the Industrial Disputes Act. The Supreme Court has decided that participation in an illegal strike is sufficient for dismissal from service where the standing orders contained such a provision. In an illegal strike the workmen are not entitled to any pay for the strike period. *Maha Luxmi Cotton Mills Ltd.* v. *Workers' Union.*[2] (See p. 1033).

PROHIBITION OF STRIKE, LAY OFF, AND LOCK-OUT IN ESSENTIAL SERVICES (ESMA)

Object and reasons

The Government wanted to prevent strike, lay-off, and lock-out in essential services. The object was to provide the maintenance of certain essential services and the normal life of the community.

Application

On 27th July, 1981, the Central Government issued an Ordinance with the object and reasons as stated above. The duration of the Ordinance was six months only. Later on the Ordinance was replaced by an Act on 23rd September, 1981. The

[1] AIR (1978) Supreme Court 1489 [2] F.J.R. 248 L.A. Tribunal

Act is called the Essential Services Maintenance Act, 1981, or the ESMA (Act No. 40 of 1981). The provisions of the Act are summarised below.

The Act extends to the whole of India, provided that it shall not apply to the state of Jammu and Kashmir in so far as it is related to any essential services connected to matters with respect to which Parliament has no power to make laws for that State. Section 8 (lock-out) and Sec. 9 (Lay-off) were applied immediately ; the other provisions were deemed to have come into force on 26th July, 1981.

Essential Service

The Act defines and makes a list of all services which are included within the term "Essential Servces". The list is comprehensive and covers almost all important industries, employment and services connected therewith. The items are stated below : (*i*) Postal, telegraph and telephone service ; (*ii*) railway and transport ; (*iii*) aerodromes and the operation, repair and maintenance of aircraft ; (*iv*) major ports including loading, unloading and movement of goods etc. ; (*v*) clearance of goods or passengers through customs or prevention of smuggling ; (*vi*) armed forces or its installation connected with defence ; (*vii*) any establishment or undertaking dealing with production of goods required for defence ; (*viii*) any service pertaining to scheduled Industries ; (*ix*) any service connected with purchase etc. regarding foodgrains ; (*x*) any service connected with public conservancy, sanitation, or water supply, hospital, dispensaries etc. ; (*xi*) banking ; (*xii*) production, supply and distribution of coal, power, steel and fertilizer ; (*xiii*) oil field or refinery ; (*xiv*) mint or security press ; (*xv*) election to Parliament and the state Legislature ; (*xvi*) Service connected with affairs of the union ; (*xvii*) any other service connected with matters with respect to which Parliament has power to make laws and which the Central Government being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification in the official Gazette, declare to be an essential service for the purposes of this Act.—Sec. 2(1)(a).

Strike

"Strike" means the cessation of work by a body of persons while employed in any essential service 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 work assigned and includes—

(*i*) refusal to work overtime where such work is necessary for the maintenance of any essential service ;

(*ii*) any other conduct which is likely to result in or results in, cessation or substantial retardation of work in any essential service.—Sec. 2(b).

Notification under the ESMA

Every notification issued under sub-clause (*xvii*) of clause (*a*) of-section (1) shall be laid before each House of Parliament immediately after it is made when the House is in session and on the first day of the commencement of the next session of the House if it is not in session, and shall cease to operate at the expiration of forty days from the date of its being so laid or from the re-assembly of Parliament, as the case may be, unless before the expiration of that period a resolution approving the issue of the notification is passed by both Houses of Parliament.—Sec. 2(2), See the item (*xvii*) above.

Power to prohibit strikes in certain employments

(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special Order, prohibit strikes in any essential service specified in the Order.

(2) An order made under sub-section (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force for six months only, but the Central Government may, by a like Order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an Order under sub-section (1),—

(*a*) no person employed in any essential service to which the Order relates shall go or remain on strike ;

(*b*) any strike declared or commenced whether before or after the issue of the Order, by persons employed in any such services shall be illegal.—Sec. 3.

Illegal strike : See 3(4)(b), above.

Penalties for illegal strike : See below.

Lock-out

This term is not defined in this Act but is defined in the Industrial Disputes Act, 1947. (See p. 1030).

Power to prohibit lock-out in certain establishments

Under Sec. 8 of this Act, the Central Government may prohibit, by Order, lock-out in certain establishments in the same manner as a strike is prohibited, (see above) and for the same duration.

Illegal lock-out : A lock-out declared or commenced whether before or after the issue of an Order prohibiting lock-out, is an illegal lock-out.

Penalties for illegal lock-out : The employer can be punished by imprisonment up to 6 months and/or fine up to Rs. 1000.

Lay-off

This term is not defined in this Act but is defined in the Industrial Disputes Act, 1947. Lay-off implies the failure, refusal or inability of an employer to provide employment to a workman whose name is included in muster rolls of his industrial establishment and who has not been retrenched.

Power to prohibit Lay-off in certain establishments

Under Sec. 9 of this Act, the Central Government may prohibit, by Order, lay-off in certain establishments in a same manner as in strike is prohibited, (see above) and for the same duration.

Illegal Lay-off: A lay-off declared or commenced whether before, after the issue of an order prohibiting lay-off, is an illegal lay-off.

Penalties for illegal lay-off: A workman whose lay-off is illegal shall be entitled to all the benefits under any law for the time being inforce as if he has not been lay-off. The employer can be punished by imprisonment up to 6 months and/or fine up to Rs. 1000.

Penalties

This Act provides certain penalties. Employees participating in illegal strike shall be liable to disciplinary action (including dismissal). (Sec. 4). Any person participating in illegal strike shall be punishable with imprisonment up to six months and/or fine up to Rs. 1000 (Sec. 5). Any person who instigates or incites to part in illegal strike is punishable for imprisonment up to one year and/or Rs. 2000. (Sec. 6). For giving financial aid to illegal strike may be punishable with an imprisonment for one year and/or Rs. 2000 and both. (Sec. 7).

A police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under the Act (Sec. 10). All offences under the Act can be tried in a summary way by any Metropolitan Magistrate, or any Judicial Magistrate of the First Class (Sec. 11).

LAY OFF, RETRENCHMENT AND CLOSURE

Rules regarding lay-off, retrenchment and closure are contained in sections 25A to 25J in chapter VA and in sections 25K to 25S in chapter VB. The chapter VB was added by the Industrial Disputes (Amendment) Act of 1976. The rules of chapter VA and VB are stated below.

Application of Chapter VA

Section 25A states that the rules contained in Chapter VA do not apply to—

(*a*) an industrial establishment in which less than 50 workmen on an average were employed per working day in the preceding calendar month ; or

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

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.

Certain provisions of Chapter VA apply to an "industrial establishment" *viz.*, sections 25B, 25D, 25FF, 25G, 25H, 25J, and 25S.

Application of Chapter VB [25K]

(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 three 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.

Industrial Establishment [25L(a)]

"An industrial establishment" of the purposes of Chapter VB means (*i*) a Factory as defined in Sec. 2(m) of the Factories Act, 1948, or (*ii*) a mine as defined in Sec. 2(J) of the Mines Act, 1952, or (*iii*) a plantation as defined in Sec. 2(f) of the Plantation Labour Act, 1951.

SMALL ESTABLISHMENTS

The special provisions relating to lay-off, retrenchment and closure as contained in Chapter VB of the Act apply at present to establishments employing 300 workmen or above. With a view to extending this statutory protection to workmen of smaller establishments also, it is proposed to reduce the existing employment limit from 300 to 100.

Appropriate Government [25L(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. (See p. 1013).

Authority

The Central Government has authorised the Ministry of Labour to deal with all applications for the purposes of sections 25M(1) to (7) and 25N.

Badli Workman

A badli workman is one who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment. *A badli* workman ceases to be regarded as such when he has completed one year of continuous service in the establishment.—Sec. 25C(1). Explanation.

Continuous Service (Sec. 25B)

A workman is said to be in continuous service for a period if he is, for that period, in uninterrupted service. Interruptions for the following reasons do not constitute break of service : sickness, authorised leave, accident, a strike which is not illegal, lock-out, or a cessation of work which is not due to any fault on the part of the workman.

Where a workman is not in continuous service within the meaning of the above clause, he shall be deemed to be in *continuous service for one year* under an employer, under the following circumstances :

If during a period of twelve calendar months preceding the date with reference to which calculation is to be made, he has actually worked under the employer for not less than (*i*) 190 days in the case of a workman employed below ground in a mine ; and (*ii*) 240 days in any other case.

A workman shall be deemed to be in *continuous service for six months* under an employer, under the following circumstances : If during a period of six calendar months preceding the date with reference to which calculation is to be made he has actually worked under the employer for not less than (*i*) 95 days in the case of a workman employed below ground in a mine ; and (*ii*) 120 days in any other case.

When calculating the number of days for the above purposes, the employer shall include the days on which the workman—

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

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

(*iii*) 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 12 weeks.—Explanation to Sec. 25B.

Average Pay

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.—Sec. 2(aa).

Muster Roll

Muster roll means official list. Section 25D provides that 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 sections 25A to 25J, 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.

Case Law :

The Industrial Disputes Act is a welfare statute. Such a statute must receive a broad interpretation and the Court is not to make inroads by making etymological excursions. Relief of reinstatement in service with full back wages (Sec. 25-F) can be done.

The meaning of continuous service : The workman must have worked for atleast 240 days in one year, it is not necessary that he has been in continuous service for one year. *Surendra Kumar Verma etc.* v. *The Central Government Industrial Tribunal etc* [1]

[1] AIR (1981) Supreme Court 422

LAY OFF

Definition

"Lay Off" means the failure, refusal or inability of an employer to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. Lay Off may be due to shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason. The term includes its grammatical variations and cognate expressions.—Sec. 2(kkk).

The Explanation to Sec. 2(kkk) provides that any workman—whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the time appointed for the purpose during normal working hours on any day—is not given employment within two hours, he is deemed to have been laid off for the day.

LAY OFF IN MINES

It is proposed to provide that workmen in mines could be laid off for reasons of fire, flood, excess of inflammable gas or explosion without previous permission.

If the workman, instead of being given employment at the commencement of any shift for any day, is asked to present himself during the second half of the shift for the day and is given employment then, he is deemed to have been laid off for one-half of the day. If the workman is not given any employment when he presents himself during the second half of the shift as asked, he becomes entitled to full basic wages and dearness allowance for that part of the day.

[The rule regarding the 'second half of the shift' was omitted in West Bengal by an amendment of the Industrial Disputes Act, in 1974.]

Since employment is for wages, if a workman is paid for the day but given no work, it is not a case of lay off.

The duration of lay off

The duration of lay off can be classified as follows—

(*i*) When work is denied within two hours of his presenting himself.

(*ii*) When work is denied in the first half of the shift but the workman again presents himself at the second half of the shift.
(*iii*) When there is lay-off for one full day.
(*iv*) When there is lay-off for more than one day but not amounting to retrenchment.

Distinction between Lay Off and Retrenchment

Lay off is a temporary inability or refusal to give employment. Retrenchment is termination of the services of a workman. Lay off does not involve break of service or loss of "continuous service." Retrenchment involves break of service and loss of "continuous service".

Distinction between Lay Off and Lock-Out

(1) Lay off occurs in a continuing business. In a lay off the employer is unable to give employment to some workmen. In a lock-out the business is stopped. In case of lay off compensation has to be given at the rate specified by the Industrial Disputes Act. In case of lock-out there is no statutory liability to pay wages to the workers locked out. Of course if the business is totally closed they have to pay compensation. (2) Lock out is resorted to pressurise the workers to accept employer's demands. Lay off may be due to economic reasons beyond the control of the employer. (3) Lock out may be due to an industrial dispute. Lay off is not connected with the dispute with a worker.

Prohibition of lay-off [Sec. 25M][1]

The section has been amended by the Amendment Act 1984. Sub-section (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 with the previous permission of such authority as may be specified by the appropriate Government by notification in the Official Gazette, unless such lay off is due to shortage of power or to natural calamity.

Sub-section (2). Where a lay-off was already continuing, the employer shall within a period of 15 days from such commencement, apply to the specified authority to continue the lay-off.

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[1] Sections 25M and 25Q were added by Industrial Disputes (Amendment) Act, 1976.

Sub-Section (3): In the case of every application for permission under sub-section (1) or sub-section (2), the authority to whom the application has been made may, after making such inquiry as he thinks fit, grant or refuse, for reasons to be recorded in writing, the permission applied for.

Sub-Section (4): Where an application for permission was made to the specified authority and his order was not communicated within a period of two months from the date when the application is made, the permission applied for shall be deemed to have granted all the expiration of the said period of two months.

Sub-Section (5): (*a*) Where no application for permission under sub-section (1) is made, or (*b*) where no anplication for permission under sub-section (2) has been made within the specified period therein, or (*c*) where the permission for the lay-off or the continuance of the lay-off has been refused, such three cases shall be deemed to be illegal and the workmen shall be entitled to all the legal benefits.

Sub-Section (6): The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation: For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers.

(*i*) 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

(*ii*) in any other establishment belonging to the same employer which is situated in the same town or village, or,

(iii) which is situated within such distance from the establishment to which belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case.

But the wages which would normally have been paid to the workman are to be offered for the alternative appointment.

Penalty (Sec. 25Q)

Any employer who contravenes the provisions of section 25M or clause (c) of sub-section (1) or sub-section (4) of 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.

Compensation to workmen laid off

Section 25C provides for the payment of compensation to a workman who is laid off. The rules regarding compensation can be summarised as follows :

1. To be entitled to compensation, the workman must not be a *badli* workman or a casual workman. His name must be on the muster rolls of the establishment. Also he must have completed not less than one year of continuous service.

2. The rate of compensation is 50% of the total of the basic wages and dearness allowance that would have been payable to him had he not been laid off.

3. The workman is entitled to compensation for all days during which he is laid off (except for such weekly holidays as may intervene).

4. If during any period of 12 months, a workman is laid off for more than 45 days, no such compensation shall be payable, for further lay offs after the expiry of the first 45 days, if there is an agreement to that effect between the workman and the employer.

5. In any case falling under para 4 above, the employer can retrench the workman in accordance with the provisions of Sec. 25F of the Act, any time after the expiry of the first 45 days of the lay off. If he does so, the compensation paid for lay off, during the preceding 12 months, can be set off against the compensation payable for retrenchment.

When no compensation is payable

Section 25E provides that no compensation is payable in the following cases :

(*i*) If the workman refuses to accept (*a*) any *alternative employment* in the same establishment or (*b*) in any other establishment belonging to the same employer situated in the same town or village or (*c*) situated within a radius of five miles from the establishment to which he belongs, and (*d*) 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. [The same wages must be offered for the alternative employment.]

(*ii*) If the workman 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.

Case Law :

An offer of job of coolee to a skilled workman cannot amount to the offer of an alternative job. *Industrial Employee's Union, Kanpur* v. *J.K. Cotton Spinning and Weaving Mills Company.*[1]

RETRENCHMENT

Definition

Sec. 2(oo) of the Act defines retrenchment as, "the termination by the employer of the services 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

(*c*) termination of the service of a workman on the ground of continued ill health."

Conditions precedent to retrenchment

Section 25F provides that a workman who has been in continuous service for not less than one year under an employer shall not be retrenched by that employer unless all the following conditions are fulfilled :

(1) (*a*) *Notice* : 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 notice. But no notice is necessary if the retrenchment is under an agreement which specifies a date for the termination of service.

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[1] (1956) 1 L.L.J. 327.

(*b*) *Compensation* : The workman has been paid, at the time of retrenchment, compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months.

(*c*) *Notice* : Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette, and the permission of such Government or authority is obtained under sub-section (2).

(2) On receipt of a notice under clause (c) of sub-section (1) the appropriate Government or authority may, after making such inquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing, the permission for the retrenchment to which the notice relates.

(3) Where the Government or authority does not communicate the permission or the refusal to grant permission to the employer within three months of the date of service of the notice under clause (c) of sub-section (1), the Government or authority shall be deemed to have granted permission for such retrenchment on the expiration of the said period of three months.

(4) Where at the commencement of the Industrial Disputes (Amendment) Act, 1976, the period of notice given under clause (*a*) of section 25F for the retrenchment of any workman has not expired, the employer shall not retrench the workman but shall within a period of fifteen days from such commencement, apply to the appropriate Government or to the authority specified in sub-section (2) for permission for retrenchment.

(5) Where an application for permission has been made under sub-section (4) and the appropriate Government or the authority, as the case may be, does not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months.

(6) Where no application for permission under clause (c) of sub-section (1) is made, or where no application for permission under sub-section (4) is made within the period specified therein or where the permission for the 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.

(7) Where at the commencement of the Industrial Disputes (Amendment) Act, 1976, a dispute relating, either solely or in addition to other matters, to the retrenchment of any workman or workmen of an industrial establishment to which this Chapter applies is pending before a conciliation officer or the Central Government or the State Government, as the case may be, and—

(*a*) there is an allegation that such retrenchment is by way of victimisation ; or

(*b*) the appropriate Government is of the opinion that such retrenchment is not in the interests of the maintenance of industrial peace, the appropriate Government, if satisfied that it is necessary so to do, may, by order, withdraw such dispute or, as the case may be, such dispute in so far as it relates to such retrenchment and transfer the same to an authority (being an authority specified by the appropriate Government by notification in the official Gazette) for consideration whether such retrenchment is justified and any order passed by such authority shall be final and binding on the employer and the workman or workmen.

Penalty (Sec. 25Q)

See page 1046-1047.

Last in, first out

Section 25G provides that when any workman of a particular category has to be retrenched, the employer shall select for retrenchment the person who was last to be employed in that category. This rule applies only if the workman is a citizen of India. The employer may deviate from this rule of "last in, first out" for reasons to be recorded in writing.

Preference to Indian citizens

Section 25H provides that when the employer appoints new personnel, retrenched workmen, if any, who offer themselves for re-employment shall have preference over other persons. (This rule applies only to those retrenched workmen who are Indian Citizens.)

Case Law :

1. Termination of services even of a temporary employee on the grounds of surplus labour amounts to retrenchment and the employee is entitled to claim retrenchment compensation. *Bansi Light Railway Co. Ltd.* v. *K. N. Joglakar*[1]
2. Striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of S. 2(oo) of the Act. The provisions of S. 25F(a), the proviso apart and (*b*) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent is invalid. *Delhi Cloth and General Mills Co. Ltd.* v. *Shambhu Nath Mukeerjee and others.*[2]
3. "Retrenchment" includes every kind of termination. *Santosh Gupta* v. *State Bank of Patiala.*[3]
4. Last come first go : The rule is not inflexible rule and extraordinary situations may justify variations. For instance, a junior recruit who has a special qualification needed by the employer, may be retained even though another who is one up is retrenched. The burden is on the Management to substantiate the special ground for departure from the rule. *Om Oil & Oilseeds Exchange Ltd. Delhi* v. *Their Workmen,*[4] *Workmen* v. *The Management of Jorehaut Tea Co. Ltd.*[5]
5. Termination of service on account of recession and reduction of volume of work amounts to retrenchment. *Gammon India Limited* v. *Niranjan Dass.*[6]
6. Termination of service not falling under any of the exceptions in Section 2(oo) amounts to retrenchment. *Hari Mohan Rastogi* v. *Labour Court and another.*[7]
7. Employee after his retirement on superannuation given fresh appointment for a term—Termination on expiry of that period—Does not amount to retrenchment. *Binoy Kumar Chatterjee* v. *Jugantar Limited and others.*[8]
8. Even discharge of probationer amounts to retrenchment—Requirements of Section 25-F have to be complied with. *Management of K.S.R.T. Corpn., Bangalore* v. *M. Boraiah.*[9]

Discharge

The employer has the power to end the services of an employee after a period of notice and compensation specified in Sections 25, 25G, 25H, 25N and Sec. 33(2) to (5). (See pages 1047-1051 and 1061).

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[1] AIR (1957) Supreme Court 121
[2] AIR (1978) Supreme Court 8
[3] AIR (1980) Supreme Court 1219
[4] AIR (1966) Supreme Court 1657
[5] AIR (1980) Supreme Court 1454
[6] AIR (1984) Supreme Court 500
[7] AIR (1984) Supreme Court 502
[8] AIR (1983) Supreme Court 865
[9] AIR (1983) Supreme Court 1320

The industrial authorities (tribunal etc.) can enquire into the validity of termination of services. If the discharge order was *bona fide* the industrial authorities will not interfere with it.

TRANSFER OF UNDERTAKINGS

Section 25FF provides that where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation (as if he has been retrenched) unless the following conditions are satisfied :

(*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.

CLOSURE

Definition

The term 'closure' is not defined in the Industrial Disputes Act.

Definition : 'closure' means the permanent closing down of a place of employment or part thereof.—Section 2(cc).

For Section 25-0 of the principal Act, the following section shall be substituted, namely : *25-0, 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 :

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 an 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.

(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 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 under- taking 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.

In the State Acts of Maharashtra and Madhya Pradesh the term is defined as follows : "Closure means the closing of any place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him whether such closing, suspension or refusal is or is not in consequence of an industrial dispute."

Compensation for Closure

See Sec. 25F (1)b, p. 1049 and Sec. 25-O (7), p. 1056.

Ninety days' notice to be given of intention to close down any undertaking (Sec. 25-O)

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall serve, for previous approval at least ninety days before the date on which the intended closure is to become effective, a notice on the appropriate Government. The notice should be served in the prescribed manner, stating clearly the reasons for the intended closure of the undertaking :

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

(2) On receipt of a notice under sub-section (1) the appropriate Government may, if it is satisfied that the reasons for the intended closure of the undertaking are not adequate and sufficient or such closure is prejudicial to the public interest, by order, direct the employer not to close down such undertaking.

(3) Where a notice has been served on the appropriate Government by an employer under sub-section (1) of section 25FFA and the period of notice has not expired at the commencement of the Industrial Disputes (Amendment) Act, 1976, such employer shall not close down the undertaking but shall, within a period of fifteen days from such commencement, apply to the appropriate Government for permission to close down the undertaking.

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

(5) 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 closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure 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.

(6) Notwithstanding anything contained in sub-section (1) and sub-section (3), 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) or sub-section (3) shall not apply in relation to such undertaking for such period as may be specified.

(7) Where an undertaking is approved or permitted to be closed down under section (1) or sub-section (4), every workman in the said undertaking who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section shall be entitled to notice and compensation as specified in section 25N and he will be deemed to be retrenched under that section.

Restarting

Special provision as to restarting of undertakings closed

down before commencement of the Industrial Disputes (Amendment) Act, 1976. (Sec. 25*P*).

If the appropriate Government is of opinion in respect of any undertaking of an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976—

(*a*) that such undertaking was closed down otherwise than on account 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

(*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 Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

Penalty for closure (Sec. 25R)

(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 a direction giving under sub-section (2) of section 25-O or 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) Any employer who contravenes the provisions of sub-section (3) of section 25-O 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.

Distinction between Closure and Retrenchment

Retrenchment occurs when some workers are discharged ; the business continues. In closure the business itself ceases to exist.

Case Law :

1. *Closure of a part of the undertaking* : Where an employer closes down only a branch or department of his business the Industrial Tribunal has no juridiction, even on a reference under Section 10(1) (d) of the Industrial Disputes Act, 1947, to interfere with the discretion of the employer and direct him to continue that part of the business which he has decided to close down. *Workmen of The Indian Leaf Tobacco Development Co. Ltd., Guntur* v. *Management etc.*[1]
2. There is nothing wrong for an employer to close an establishment by stages. *Workmen* v. *M/S Straw Board Manufacturing Co. Ltd.*[2]
3. *Right of Closure.* The right to close a business is an integral part of' the fundamental right to carry on business. But as no right is absolute in its scope, so is the nature of this right. It can certainly be restricted, regulated, or controlled by law in the interest of general public. The right to close down business cannot be placed at par as high as right not to start and carry on the business at all. *Excel Wear* v. *Union of India and others.*[3]

SUBSISTENCE ALLOWANCE

The West Bengal Payment of Subsistence Allowance Act, 1969, provided for a subsistence allowance to employees in certain establishments during the period for which they may be suspended by the management. According to the provisions of the Act, a suspended employee will receive 50% of his wages during the first three months and if the inquiry takes longer, then 75% of the wages for each subsequent month.

THE CONDITIONS OF SERVICE

Definition

"Conditions of Service" means the terms of employment as between the employer and the employees. It denotes the sum total of the rights and obligations of the worker and the employer. The conditions of service include the following : the contract between the employer and the employee, Statute law, decisions of the Court, the standing orders, custom and usage. In industrial

[1] (1970) II S.C. A, 477 (Supreme Court) [2] AIR (1974) Supreme Court 1132
[3] AIR (1979) Supreme Court 25

establishments the employers are required to define precisely the conditions of employment. The conditions include the Standing Orders.

SUBSISTENCE ALLOWANCE FOR SUSPENDED WORKERS

Central Rules

In 1984 the Central Government has amended the Industrial Employment (Standing Orders) central rules regarding, payment of subsistence allowance.

According to a notification pending investigation or departmental enquiry, a suspended worker shall be paid subsistence allowance at the rate of 50 per cent of the wages which he was entitled to immediately preceding the date of suspension for the first 90 days.

Workers will be paid 75 per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings is not directly attributable to his conduct.

The notification states that disputes relating to payment of subsistence allowance could be brought before the Labour Court by either party under the Industrial Disputes Act within the local limit. The decision on the Court will be binding on the parties.

The notification, further, clarifies that where the laws relating to subsistence allowance are more beneficial they shall be applicable.

The employer shall normally have to complete the enquiry within 10 days. The payment of subsistence allowance is subject to the worker not taking up employment elsewhere during suspension.

TIME-FRAME FOR LABOUR DISPUTE

The Central Government has prescribed a time frame for settlement of industrial disputes at labour courts, tribunals and national tribunals right from the reference of the case till the final verdict. For individual cases, award shall ordinarily be submitted within a period of three months.

According to the notification the Central Government shall direct the parties raising the dispute to file a list of reliable

witnesses within 15 days of the reference of the dispute to the labour court, tribunal or national tribunal.

The courts and tribunals, after ascertaining that copies of the statement of claims are furnished to the other side by the party raising the dispute, shall fix the first hearing on a date not beyond one month from the date of receipt of the order of reference. The opposition parties will also be given 15 days to file documents.

The courts and tribunals will fix a date for evidence within one month from the receipt of the filing of relevant documents, which shall ordinarily be within 60 days of the date on which dispute was referred for adjudication. On completion of evidence, a date shall be fixed which shall not be beyond a period of fifteen days from the close of evidence for arguments or oral hearing.

The Industrial Employment (Standing Orders) Act (Act XX of 1946) requires employers in industrial establishments formally to define and put down in writing the conditions of employment of the workers employed by them. A model of Standing Orders have been appended to the Act.

Change in the conditions of service

Section 9A, of the Industrial Disputes Act, provides that the conditions of service (applicable to any workman in respect of any matter specified in the 4th schedule to the Act) cannot be changed without giving notice to the persons affected and within 21 days of giving such notice. The 4th schedule to the Act contains a list of the conditions of service which cannot be changed except in the manner laid down in Section 9A. The items are as follows :

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 ;

9. Introduction of new rules of discipline, or alteration of existing rules, except insofar as they are provided in standing orders ;
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen ;
11. Any increase or reduction in the number of persons employed or to be employed in any occupation or process or department or shift, not due to forced matters.

Exemptions

No notice is required (*a*) where the change is effected in pursuance of any settlement, award or decision of the Labour Appellate Tribunal formerly in existence, and (*b*) where the workman is subject to the rules applicable to Government servants and railway establishments.

The appropriate Government can exempt any class of industrial establishment or any class of workmen from the operation of Section 9A if it is of opinion that the application of the provisions of that section will affect employers so prejudicially that there will arise serious repercussion on the industry concerned.—Sec. 9B.

During the pendency of any conciliation proceedings before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute the conditions of service of the workmen relating to any matter connected with the dispute *cannot be altered* to the prejudice of the workman without the written permission of the authority before which the proceeding is pending. Such workmen cannot be punished or discharged for any misconduct connected with the dispute without the permission of such authority.—Sec. 33(1).

Punishment

Regarding matters not connected with the dispute, the conditions on service may be changed. The workman may be punished in accordance with the standing orders of the establishment or, where there are no standing orders, according to the terms of the contract, express or implied, between the employer and the workman. But no workman can be discharged

unless he has been paid one month's wages and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action. The authority concerned shall hear the application and pass orders without delay.—Sec. 33(2) & (5).

Protected Workman

A protected workman cannot be punished or discharged, nor can his terms of service be altered without the express permission of such authority. A "protected workman" is one who is an officer of a registered trade union connected with the establishent and is recognised as such in accordance with the rules. In every establishment the number of workmen to be recognised as protected shall be one per cent of the total number of workman, subject to a minimum of five and a maximum of one hundred. Rules may be framed regarding the distribution of such workmen among various trade unions, manner of choosing them etc.—Sec. 33(3) & (4).

Complaint

When an employer contravenes any of the aforesaid provisions during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved can make a complaint in writing to the authority before which proceedings are pending and such authority shall adjudicate upon the complaint as if it were a dispute referred to or pending before it.—Sec. 33A.

Abandonment of Service (S. 33A)

Certain workers put forward some demands to their management. The management refused and intimated them to join the work within a certain date. The workmen did not join. Held that it is not a case of abandonment of service on the part of the workers and the management cannot terminate the service. *G. T. Lad and others* v. *Chemicals and Fibres India Ltd.*[1]

Penalty

A employer who contravenes the provisions of Section 33 can be punished with imprisonment up to six months or fine up to Rs. 1,000 or both.—Sec. 31(l).

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[1] AIR (1979) Supreme Court 582

Case Law :

The law relating to Certified Standing Orders has been explained by the Supreme Court in the case, *Glaxo Laboratories (I) Ltd.* v. *Presiding Officer, Labour Court, Meerut and Oihers.*[1] The judgement is summarised below.

1. The Conditions of Service under the Certified Standing Orders prescribed under the Industrial Employment (Standing Orders) Act should receive interpretation as a more or less statutory flavour. It is safe to give the words in their natural meaning. The Act was enacted for ameliorating the conditions of the workers and therefore conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief.
2. Misconduct, "Committed within the premises of the establishment or in the vicinity thereof", must have a causal connection with the place of work and with duty hours. The employer has no extra territorial jurisdiction under the above Standing Orders to punish for misconduct.
3. The power to prescribe conditions of service is not unilateral but the workmen have right to object and to be heard and a statutory authority namely, Certifying Officer have to certify the same.
4. Misconduct, neither defined nor enumerated in the Standing Orders, is not punishable merely because the employer believes to be misconduct ex post facto.
5. The provision in the Standing Orders enumerating or defining acts of misconduct are in the nature of penal and must receive strict construction.

OFFENCES AND PENALTIES

Penalty for offences not otherwise provided under the Act. : Whoever contravenes any of the provisions of the Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act, be punishable with fine which may extend to Rs. 100.—Sec. 31(2).

Offences by a company or association : Where a person committing an offence under this Act is a company or an association, 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.—Sec. 32.

Cognizance of offences : No court shall take cognizance of any offence punishable under this Act, save on complaint made

[1] AIR (1984) Supreme Court 505

by or under the authority of the appropriate Government.—Sec. 34(1).

Place of trial: No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.—Sec. 34(2)

RECOVERY OF MONEY FROM EMPLOYER

Where any money is due to workman from an employer under a settlement or an award or an account of lay off or retrenchment he can apply to the appropriate Government for the recovery of the money through the Certificate Procedur (the special procedure available for the recovery of arrears of land revenue). Any other person authorised by him can also apply. In case of his death his assignee or heirs may apply. If the appropriate Government is satisfied that the money is due, the procedure will be applied. The workman may also use any other mode of recovery if he wishes.

The application shall be made within one year of the date when the money became due. It may be made after that period if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the period.

If any question arises as to the amount of money due or the cash value of any benefit to which the workman is entitled, the question may be referred to a Labour Court. The Labour Court may appoint a Commissioner to compute the cash value of any benefit. After hearing his report, the Labour Court shall forward its decision to the appropriate Government. Thereafter the Certificate procedure can be applied.

A number of workmen under the same employer may apply jointly for the relief mentioned above.—Sec. 33C.

PROTECTION OF PERSONS

A member of a trade union or of a society cannot be expelled or in any other way punished by the union or society for refusing to take part in an illegal strike or lock out. Such a person cannot be subject to

(1) expulsion from any trade union or society,
(2) any fine or penalty, or
(3) deprivation of any right or benefit to which he or his legal representatives would be entitled to,

(4) any disability either directly or indirectly. If any person is expelled on such grounds, the Civil Court may. order the restoration of his membership or alternatively direct that he be paid out of the funds of the union or society such sum by way of compensation as the court thinks just.—Sec. 35. (See Ch. 6).

REPRESENTATION OF PARTIES

A workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by (*a*) an officer of the trade union of which he is a member, or (*b*) an officer of the federation of unions with which his trade union is affiliated, or (*c*) where the worker is not a member of any union, by an officer of any trade union connected with or by any workman employed in, the industry in which the workman is employed. The representative must be authorised in the prescribed manner.—Sec. 36(1).

An employer who is a party to a dispute is entitled to be represented by (*a*) any officer of an association of employers of which he is a member; (*b*) any officer of the federation of associations of employers with which the association referred to above is affiliated, or (*c*) where he is not a member of any association of employers, by an officer of any association of employers, connected with or by any other employee engaged in the same industry. The representative must be authorised in the prescribed manner.—Sec. 36(2).

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.—Sec. 36(3),

In any proceedings before a Labour Court, Tribunal or National Tribunal, a party may be represented by a legal practitioner with the consent of the other parties and with the leave of the Labour Court, Tribunal or National Tribunal as the case may be.—Sec. 36(4).

The director of a company can represent the company even if he be a lawyer. *Hall & Anderson Ltd.* v. *S. K. Neogy*.[1]

A lawyer, simpliciter, cannot appear before an Industrial Tribunal without the consent of the opposite party and leave of

[1] (1954) I.L.L.J. 629

the Tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the Tribunal in the capacity of an office-bearer of a registered trade union or an officer of associations of employers, and no consent of the other side and leave of the Tribunal will, then, be necessary. *Paradip Port Trust* v. *Their Workmen.*[1]

EXERCISES

1. Explain the following terms as used in the Industrial Disputes Act, 1947 :
   (*a*) Workman. (Page 1003)
   (*b*) Industry. (Page 993)
   (*c*) Industrial Dispute. (Page 1000)
   (*d*) Wages and Bonus. (Page 1006 & 1008)
   (*e*) Average Pay. (Page 1043)
   (*f*) Retrenchment. (Page 1048)
   (*g*) Strike and Lock-out. (Pages 1030-1031)
   (*h*) Illegal strike and lock-out. (Page 1035)
   (*i*) Lay-off and Retrenchment. (Pages 1044, 1048)
   (*j*) Award and Settlement. (Page 1025)
   (*k*) Employer. (Page 1005)
   (*l*) Wages. (Page 1006)
   (*m*) Public Utility Service. (Page 1033)
   (*n*) Continuous Service. (Page 1042)
2. State whether the following undertakings are included in the term "Industry"—Hospital, Electrical department of the municipality, Ayurvedic College, Staff of Delhi University and business of a chartered accountant. Hospital. (Pages 993-1000)
3. What is industry ? Discuss whether the following organisations come under the definition of industry : (*i*) A firm of chartered accountants (*ii*) The university of Delhi (*iii*) A college with an Ayurvedic Pharmacy. (1) University, (2) Hospital, (3) Municipal Corporation, (4) Firm of Solicitors. (Pages 993-1000)
4. What are the authorities prescribed under the Industrial Disputes Act, 1947 for settlement of industrial disputes ? Discuss their functions and powers. (Pages 1013-1015)
5. What authorities have been set up under the Act for investigation and settlement of Industrial disputes ? (Page 1013)
6. Mention the authorities and discuss the procedure of settlement of industrial dispute as provided in the Industrial Disputes Act. (Pages 1013-1015)

[1] AIR (1977) Supreme Court 36.

7. What do you understand by industrial dispute' as defined in the industrial Disputes Act, 1947 ? Who can raise a dispute ? (Pages 1000-1003)
8. Explain the meaning of industrial dispute according to the Industrial Disputes Act, 1947. Can a single workman raise an industrial dispute ? (Pages 1000-1003)
9. Explain the meaning of the expressions : (*i*) industry, and (*ii*) industrial dispute in the Industrial Disputes Act, 1947. Distinguish between lay-off and retrenchment. (Pages 993, 1000-1003)
10. (*a*) What is Industrial Dispute ? (*b*) Explain the procedure for voluntary reference of disputes to arbitration. (Pages 1000-1003)
11. Enumerate the statutory provisions prohibiting strikes in a public utility service. (Pages 1033-1036)
12. What are the provisions regarding "Lay Off" in the Industrial Disputes Act, 1947 ? (Pages 1036, 1039)
13. State the provisions of the Industrial Disputes Act, 1947 regarding prohibition of Strike and Lockouts. (Pages 1033-1036)
14. State the law regarding lay-off and strikes as proyided in the Industrial Disputes Act, 1947. (Pages 1031, 1039)
15. What are the conditions precedent to a Lock-out of any factory ? (Page 1030)
16. Distinguish between strikes and lock-outs. What are the restrictions imposed on strikes and lock-outs under the Industrial Disputes Act, 1947. (Pages 1030-1031, 1033-1039)
17. Discuss the circumstances when compensation is or is not payable to a workman who has been laid off. (Page 1047)
18. Define the term 'Loock-out' as used in the Industrial Disputes Act, 1947. What are the restrictions imposed on 'lock-out' by the above Act ? (Pages 1030-1033)
19. What are the rights of a workman who has been laid off for compensation ? (Pages 1047-1048)
20. Distinguish between lay-off and retrenchment under the Industrial Disputes Act, 1947. (Page 1045)
21. What are the provisions for compensation payable to workman in case of lay-off and retrenchment under the Industrial Disputes Act, 1947. (Pages 1047-1049)
22. What are rules regarding the prohibition of lay-off and closure of industrial undertaking under the Amendment of 1976. (Pages 1045, 1053)
23. What is "Retrenchment" ? State the statutory requirements for retrenching a workman. State the right of retrenched workmen. (Pages 1048-1052)
24. What are the compensation payable to workmen in cases of transfer and closing down of undertakings ? (Pages 1052-1055)

25. State the conditions to be satisfied for retrenchment of a workman. (Page 1048-1052)
26. Explain the rules regarding the period of operation of the settlement and award. (Pages 1027-1030)
27. What are the provisions in the I.D. Act relating to notice for changing the conditions of service ? What are matters in respect of which notice of change is prescribed in the I.D. Act ? (Pages 1059-1062)
28. State the provisions of the industrial Disputts Act relating (Commencement of the Award ; persons on. whom Settlements and Awards are binding and, the period of operation of Settlements and Awards. (Pages 1026-1028)
29. Who are protected workmen ? What are their privileges ? (Page 1061)
30. What do you understand by an "industrial dispute" as defined in the Indtistrial Disputes Act ? (Page 1000-1002)
31. State, the matters for which the Labour Court 'can give its award. (Page 1017)
32. (*a*) Discuss the provisions of the Industrial Disputes Act, 1947 relating to voluntary reference of disputes to arbitration.
    (*b*) Enumerate the provisions of the Industrial Disputes Act, 1947 relating to conditions precedent to retrenchment of workmen. (Pages 1021-1022, 1057-1059)
33. (*a*) Discuss the provisions of the Industrial Disputes Act, 1947 relating to, payment of compensation in case of closing down of undertakings.
    (*b*) Mention the persons on whom the settlements and awards are binding. (Pages 1054-1055, 1025-1027)
34. Discuss the provisions of the Industrial Disputes Act, 1947 relating to strikes and lock-outs in public utility service. (Pages 1033-1036, 1022-1024)
35. Who can raise an industrial dispute ? (Page 1001)
36. Objective questions. Give short answer.
    (1) Mention the persons who are not workmen according to the Industrial th Disputes Act. (Page 1003)
    (2) Define average pay as per Industrial Disputes Act, 1947. (Page 1043)
    (3) The service of a workman who has stolen some material from the factory has been terminated. Will this termination of service be amounted to retrenchment ? (Pages 1047-1048)
    (4) What are the conditions precedent to retrenchment of a workman ? (Pages 1048-1050)