

Indian Factors Journal,

V. 12, No. 6 18 June 1957



RECEIVED

JUN

1957

NO. 6

1764-7

No. M. 5376

XII—PART VI

1st JUNE 1957.

INDIAN FACTORIES JOURNAL

A FORTNIGHTLY JOURNAL OF THE LAW RELATING TO
FACTORIES, LABOUR, WORKMEN'S COMPENSATION,
INDUSTRIAL DISPUTES, EMPLOYEES' INSURANCE,
PAYMENT OF WAGES, PROVIDENT FUNDS,
LAW REGULATING WORK IN MINES ETC.

WITH

The Acts, Ordinances, Rules and Notifications passed by the Central
Government and the State Governments,
and Reports of Cases and Awards.

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Mode of citation of Reports [1957-58] 12 F.J.R.

Annual Subscription : Rs. 32 only (Foreign : 50sh.)

Single parts are not sold separately.

Non-receipt of parts must be intimated within 15 days of the due date.

LAWS OF INDIA PRIVATE LTD.,
GARAYANAGAR, :: MADRAS-17.

X8m2,rv462F

N87.126

196427



THE INDIAN FACTORIES JOURNAL

VOL. XII]

1ST JUNE, 1957.

[PART VI

CONTENTS

	PAGE
STATUTES SECTION (pp. 65—92)	
KERALA	
The Kerala Industrial Disputes Rules, 1957.	... 65
REPORTS OF CASES	
CUMULATIVE TABLE OF CASES REPORTED (Parts I to VI)	
SUPREME COURT	
Hooghly Jute Mills v. Their Workmen	... 2-64
Newspapers Ltd. v. State Industrial Tribunal, U.P.	... 4-129
Pratap Chandra Sen v. Commissioner of Labour, Bihar	... 5-164
HIGH COURTS	
*Divisional Superintendent, Northern Railway, Delhi v. Mukand Lal	... 182
Hindustan Times Ltd., New Delhi v. Chief Commissioner, Delhi and others	... 3-105
Hotel Imperial, New Delhi v. Chief Commissioner, Delhi and others	... 2-67
Joseph Sam v. Caltex (India) Ltd., Madras.	... 5-149
Punjab National Bank Ltd. v. Ram Kanwar and another	... 2-57
Poona Mazdoor Sabha v. G. K. Dhutia	... 5-169
Ram Lal-Gura Mal Textile Mills v. Regional Provident Funds Commis- sioner, Punjab	... 4-115
C. B. R. Ratnam and Company v. D. Ekambaram	... 4-117
Ratnam and Company v. Their Workmen	... 5-156
*Shambu Nath & Sons Ltd. v. Additional Industrial Tribunal, Delhi	... 203
Sat Pal v. Sahgal and Company	... 2-49
State of Punjab v. B. D. Meattle	... 4-113

*Asterisks denote cases reported in this part. Bold figures indicate part number.

	PAGE
Superintendent of Collieries, Giridih v. Deputy Commissioner, Hazaribagh and others	... 2-59
Trustees of the Port of Bombay v. Their Workmen	... 4-122
Trichinopoly City Co-operative Bank Ltd. v. Additional Commissioner for Workmen's Compensation, Madras	... 5-158
Travancore Mineral Workers' Union v. Government of India.	... 5-180
E. Thillai Natarajan v. C. P. Fernandes.	... 5-174
Union of India v. Babu Lal	... 2-54
Workmen of Sagar Talkies v. Odeon Cinema	... 5-153

LABOUR APPELLATE TRIBUNAL OF INDIA

Bathgate & Co., Ltd., Calcutta v. Their Workmen	... 1-27
P. T. John v. Kanan Devan Hills Produce Co., Ltd.	... 4-140
Rohtas Sugar Ltd. v. Mazdoor Seva Sangh, Dalmianagar	... 1-30
Serampore Ballykhal Bus Workers' Union v. Ghosh Brothers and others	... 1-25

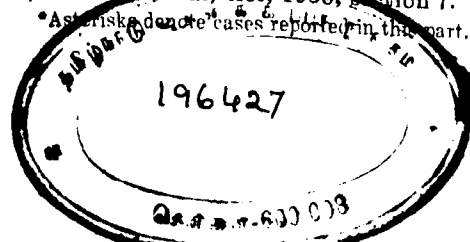
AWARDS

Workers of Uma Art Press, Calcutta v. Uma Art Press	... 1-1
Ahmedabad New Textile Mills Co., Ltd. v. Textile Labour Association...	1-17
Bacha Pandey v. Purtabpore Concern Ltd.	... 2-46
Bengal Fine Spinning & Weaving Mills Ltd. v. Sunil Chatterjee	... 3-92
P. C. Das v. Assam Oil Company Ltd., Digboi	... 1-39
Empire Bone Mills v. Their Workmen	... 2-42
Howrah Motor Accessories Agency (Private) Ltd. v. Ram Krishna Bose	3-95
Kalicharan Kundu and Janaki Nath Kundu v. Their Workers	... 3-85
Kalyanbhai Muljibhai v. New National Mills Co., Ltd., Ahmedabad	... 4-143
Kumara Pillai and others v. Harrisons & Crosfield Ltd., Quilon	... 3-111
Lever Brothers (India) Ltd., Calcutta v. Their Workmen	... 3-77
*P. S. N. Motors Ltd., Trichur v. Their Workmen.	... 192
Poddar Automobiles v. Sadhan Chandra Ghosh	... 1-21
Ravatsing Hirsing v. Asarwa Mills Ltd. (No. 2), Ahmedabad.	... 5-146
Spence Limited, Calcutta v. Their Workmen	... 3-90
Shree Luxmi Tannin Extract Factory v. Their Workmen	... 3-102
Sri Nath Pathak v. Punjab National Bank Ltd.	... 2-51
S. Vardan and others v. Hyderabad State Co-operative Bank, Ltd.	... 1-15
Workmen of Sri Sureka Mills & Co. v. Sri Sureka Mills & Co.	... 1-7

CUMULATIVE INDEX TO REPORTS OF CASES (Parts I to VI)

Appeal—Appeal to Appellate Tribunal—Appeal from award refusing reinstatement—Whether lies—When award of Industrial Tribunal on question of fact can be interfered with—Industrial Disputes (Appellate Tribunal) Act, 1950, section 7.	... 2-64
---	----------

*Asterisks denote cases reported in this part. Bold figures indicate part number.



36
X 8 11 21, 24 62
1957 12-6

Badli Worker —Nature of employment—When entitled to work—Claim for compensation for failure of employer to provide work—Whether sustainable	... 1-17
*Bonus —Award of—Principles—Claim for bonus when surplus profits not available—Whether justified—Profits of preceeding or succeeding year—Whether relevant.	... 192
Closure —Bona fide closure of establishment—Whether “retrenchment”—Workmen, whether entitled to benefits of retrenchment—Industrial Disputes Act, 1947, sections 2(oo) and 25F.	... 5-156
Conciliation officer —Duties of—Whether discretionary—Discretion to be exercised legally—Industrial Disputes Act, section 12	... 5-169
Conditions of Service —Notice for termination of service—Common law right—Termination of service on bona fide closure of establishment—Award of one month's wages in lieu of notice—Whether justified	... 5-156
Discharge —Notice of—Service by affixation on notice board—Whether sufficient service—Proof of service	... 1-1
Dismissal —Dismissal of workman without holding enquiry—Duty of Industrial Tribunal to go into merits and decide on propriety of dismissal	... 2-42
—Dismissal not based on proper evidence—Relief—Reinstatement—Alternative relief where reinstatement would not be conducive to industrial peace.	... 1-7
—Misconduct—Dismissal after due warnings—Workman continuing to be inefficient—Dismissal, whether justified	... 4-140
—Wrongful dismissal—Relief—Reinstatement not conducive to industrial peace—Award of compensation depending on financial position of concern.	... 1-1
Employees' Provident Funds Act, 1952, section 19-A —Scope of—Removal of doubt or difficulty by Central Government—Whether Government should give notice to party affected before issuing directions—Remedy of aggrieved employer	... 4-115
'Industrial Dispute' —Meaning of—'Individual dispute' not taken up by union of workers—Whether 'industrial dispute'—Reference of individual dispute by appropriate Government—Validity—Remedy of aggrieved party.	... 4-129
—Cessation of—Private settlement—Whether ends dispute—Settlement under section 12, Industrial Disputes Act—Effect—Whether dispute can be raised about matters covered by settlement.	... 5-169
—Meaning of—Essentials—Dispute Between Employer and workman—'Workman', meaning of—Tests—Lease of establishment to new management—Workmen of old management whether workmen of new management—Dispute with new management—Whether “Industrial Dispute”—Industrial Disputes Act, 1947, sections 2(k), (s) and 10.	... 5-153
—Reference of dispute by Government to Tribunal—Existence of dispute, whether can be questioned—Description of parties and points of dispute—Reference in wide terms—Whether valid—Industrial Disputes Act, 1947, sections 2(k) and 10(1).	... 2-67

*Asterisks denote cases reported in this part. Bold figures indicate part number.

	PAGE
Industrial Disputes Act, 1947, Section 2(a)—'Appropriate Government'—Controlled Industry—When Central Government is appropriate Government for controlled industry	...3-102
—Section 2(j)—'Industry', meaning of—Whether includes 'agricultural farm'—Applicability of Act to 'agriculture'	... 2-46
—Section 2(k)—'Industrial dispute', definition of—'Individual dispute' taken up by trade union, whether 'industrial dispute'—Dismissed employee, whether can raise industrial dispute regarding reinstatement.	... 3-77
—Section 2(s)—'Workman'—Definition of—Salesman, whether workman.	... 3-77
—Section 2(k) and (s)—'Industrial dispute'—Definition of—Dispute as to reinstatement of dismissed workman, whether 'industrial dispute'—Dismissed employee, whether 'workman'—Individual dispute taken up by trade union of workmen—Presumption—Absence of threat of action by workmen, whether relevant	...3-105
—Section 2(s)—'Workman', definition of—'Workman' and 'independent contractor' distinguished—Tests—Effective control over work	... 3-85
—Sections 10(1) and (2)—Reference of dispute to Industrial Tribunal—Reference under section 10(2)—Essentials—Only one party applying for reference—Reference under section 10(1)—Whether justified.	...5-180
—Section 19(6)—Termination of award—Essentials—Fresh dispute on same matter as subject of existing award—Whether can be raised— <i>Res judicata</i> , how far applicable to proceedings before Industrial Tribunals.	... 3-77
—Section 25-I—Scope of—Powers of appropriate Government—Right to order recovery when liability of employer and amount of compensation has not been determined—Whether Government can ascertain liability of employer—Proper remedy of workman	... 4-117
—Sections 33 and 33-A—Scope of—Branch Manager of concern demoted as ledger-keeper—Whether contravention of section 33—Position of employee on date of alleged contravention of section 33 that of an officer—Whether complaint under section 33-A lies—Workman wilfully avoiding joining duty as ledger-keeper—Whether guilty of misconduct—Application under section 33 for permission to dismiss workman, whether lies	... 3-95
—Sections 33 and 33-A—Workmen 'concerned in dispute', Meaning of—Reference of dispute relating to dismissal of specified workmen—Other workmen, whether 'concerned in dispute'—Whether entitled to complain under section 33-A—Award held void on appeal for want of jurisdiction—Effect—Applicability of section 33	... 1-15
—Sections 33, 33-A—Workman 'concerned in dispute', meaning of—Claim for bonus by certain workmen referred to Tribunal—Other workmen, whether 'concerned in the dispute'—Transfer of workman—Whether contravention of section 33	... 1-21
—Sections 33 and 33-A—Tribunal superseded by new Tribunal—Dispute referred afresh to new Tribunal—Contravention of section 33 during pendency before old Tribunal—Whether new Tribunal can entertain complaint under section 33-A	... 1-39
*Asterisks denote cases reported in this part. Bold figures indicate part number.	

	PAGE
—Sections 33 and 33-A—'Workman concerned in dispute'—Meaning of—Temporary workman not party to dispute before Tribunal—Likely to be affected in seniority by decision of dispute—Whether 'workman concerned in dispute'—Termination of services of temporary workman—Whether contravenes section 33	... 2-51
Industrial Disputes (Appellate Tribunal) Act, 1950, sections 22, 29—Scope of—Offences—Essentials—Mens rea—Concern running at continuous loss—Termination of service of workmen during pendency of proceedings before Appellate Tribunal without permission of Tribunal—Whether offence.	...4-113
Industrial Tribunal—Jurisdiction—Motor transport industry—Reference of dispute relating to "wages"—Whether Tribunal can deal with claim for wages for days when workers have to attend at police court	... 1-25
—Jurisdiction—Reference of dispute by Government—Duty of Tribunal to ensure that matter referred is 'industrial dispute'—Reference of dispute as 'industrial dispute', whether conclusive	... 3-85
—Jurisdiction—Reference of dispute by Government—Whether conclusive as to nature of dispute—Right of aggrieved party to show that dispute referred was not 'industrial dispute'.	...4-129
—Proceedings—Costs—Granting of leave with pay to workmen attending Tribunal—Whether debitable to leave account	... 1-30
—Proceedings—Judicial nature of—Right to direct employer to produce proceedings of Directors—Right to direct employer to search evidence for workmen's case—Industrial Disputes Act, 1947, section 11(3)	2-57
*—Procedure—Discovery and inspection of documents—Whether Tribunal can follow its own procedure—Provisions in Civil Procedure Code, 1908, how far applicable—Industrial Disputes Act, 1947, Section 11 (1), (3)	... 203
Labour Court—Jurisdiction—Claim by badli worker for compensation for failure of employer to give work—Whether falls within jurisdiction of Labour Court—Bombay Industrial Relations Act, 1946, section 78, Schedule III	... 1-17
Lay-off—Compensation—Lay-off for more than 45 days—Applicability of section 25-C proviso (b), Industrial Disputes Act, 1947—Quantum of compensation	...3-111
Madras Shops and Establishments Act, 1947, sections 41, 51—Right of Labour Commissioner to decide certain questions finally under section 51—Whether overrides jurisdiction of other authorities—Right of appellate authority under section 41 (2) to decide whether Act applies to person concerned in appeal.	...5-149
—Sections 6 and 41—Exemption of establishment under section 6 during pendency of appeal under section 41—Effect—Jurisdiction of appellate authority to continue appeal proceedings.	... 158
Minimum Wages Act, 1948, sections 13(c) and 30—Scope of—Right of appropriate Government to provide for wages for Sundays—Minimum Wages (Central) Rules, 1950, rules 22, 23, Form IX-A—Rule 23, whether provides for payment of wages for Sundays—Form IX-A containing provisions beyond matters specified in rule 22—Validity.	... 4-122
*Asterisks denote cases reported in this part. Bold figures indicate part number.	

Misconduct—Punishment—Compliance with principles of natural justice—Essentials—Written charge-sheet whether necessary—Opportunity given to workman to explain his conduct—Workman member of Committee of trade union—Whether action taken against him amounts to victimisation	... 3-92
—Workman persisting in negligent conduct in spite of punishments and warnings—Habitual negligence—Discharge of workman—Whether justified.	... 5-146
—Serious allegations by workman against senior officials before criminal court—Dismissal of criminal proceedings for default of complainant—Action of workman, whether misconduct—Dismissal of workman, whether justified—Workman also official of Trade Union—Whether liable to disciplinary action	... 2-46
—Workman refusing to obey order of employer—Whether workman can judge legality of order of employer—Proper remedy of workman against illegal order—Dismissal for deliberate disobedience of employer's orders—Whether justified	... 4-143
—Workmen guilty of bringing false charges against manager in criminal court—Whether serious misconduct—Dismissal, whether justified	... 2-42
Payment of Wages Act, 1936, section 15—Authority appointed under section 15—Jurisdiction of—Cannot decide on mere guess or speculation—Deduction of bonus illegally paid to workman—Whether attracts section 15 of the Act—Whether Authority has jurisdiction to prevent employer from deducting such illegal payments from wages	... 2-59
Punishment—Misconduct by workman—Action to be taken only after calling for explanation and holding enquiry—Failure to follow principles of natural justice—Effect	... 1-7
Punjab Trade Employees Act, 1940, section 2(d)—'Commercial establishment', meaning of—Person working as artisan in hosiery mill—Whether entitled to privileges admissible under Act	2-49
Retrenchment—Compensation—Claim for benefit under Chapter V-A, Industrial Disputes Act and also under award—Validity—Industrial Disputes Act, 1947, sections 25-F and 25-J—Effect of	... 3-90
—Compensation—Provision for payment of gratuity on termination of service—Claim for compensation under section 25-F, Industrial Disputes Act, 1947, also—Whether justified—Industrial Disputes Act, 1947, sections 25-F and 25-J.	... 1-27
Settlement—Private settlement between parties to industrial dispute—Whether ends industrial dispute—Jurisdiction of Conciliation Officer to record such settlement—Industrial Disputes Act, 1947 sections 12, 19 (2).	... 5-169
*Strike—Wages for strike period—Principles—Legal and justified strike—Workmen Resorting to force and violence—Claim for wages for strike period—Whether justified.	... 192
Sugar Industry—Dispute regarding allowance to seasonal workmen—Whether 'industrial dispute'—Award of retaining allowance to unskilled workmen—Whether justified—Leave and holidays for permanent and seasonal workmen	... 1-30
*Asterisks denote cases reported in this part. Bold figures indicate part number	

Suspension—Railway servant—Wages for period of suspension—Deduction from wages prescribed by Rules—Claim for recovery of deduction under Payment of Wages Act, 1936—Applicability of Payment of Wages Act, 1936.	... 5-174
*—Wages for period of suspension—Conditions of service providing for suspension—Certain allowance fixed for period of suspension—Right of employee to claim full wages for period of suspension	... 182
Welfare Officer—Personnel Officer appointed before provisions regarding welfare officers brought into force—Whether becomes welfare officer—Transfer to mine under same management—Effect—Privileges as welfare officer under Factories Act, whether continue—Factories Act, 1948, section 49.	... 5-164
Workmen's Compensation Act, 1923, section 11(6)—'Regularly attended by a qualified medical practitioner'—Meaning of—Refusal by injured workman to accept treatment of specialist offered by employer—Subsequent treatment by ordinary qualified medical practitioner—Right to compensation	... 2-54

*Asterisks denote cases reported in this part. Bold figures indicate part number.

THE KERALA INDUSTRIAL DISPUTES RULES, 1957.

Notification L1-27586/56/DD dated, Trivandrum, 9th March, 1957.*

In exercise of the powers conferred by Section 38 of the Industrial Disputes Act 1947 (Central Act XIV of 1947) the Government of Kerala hereby makes the following rules the same having been previously published as required by sub-section (1) of the said Section. These rules will come into force with effect from 10-3-1957.

PRELIMINARY.

1. *Title and applications* :—(1) These rules may be called the Kerala Industrial Disputes Rules, 1957.

(2) They extend to the whole of Kerala State and shall also apply in relation to all industrial disputes, concerning any industry, business and undertaking carried on by or under the authority of the Government.

2. *Interpretation* :—In these rules, unless there is anything repugnant in the subject or context—

(a) "Act" means the Industrial Disputes Act, 1947 (Central Act XIV of 1947);

(b) "Chairman" means the Chairman of a Board or Court or, if the Court consists of one person only, such person;

(c) "Committee" means a Works Committee constituted under sub-section (1) of section 3 of the Act;

(d) "form" means a form in the Schedule to these rules;

(e) "section" means a section of the Act;

(f) With reference to clause (g) of section 2 it is hereby prescribed that in relation to an industry carried on by or under the authority of a Department of the Government, the officer in charge of the industrial establishment shall be the 'employer' in respect of that establishment.

PART I

Procedure for Reference of Industrial Disputes to Boards of Conciliation, Courts of Enquiry, Labour Courts and Industrial Tribunals.

3. *Application* :—An application under sub-section (2) of section 10 for the reference of an industrial dispute to a Board, Court, Labour Court or Tribunal shall be made in Form A and shall be delivered personally or forwarded by registered Post in triplicate to the Secretary to the Government in the Department of Labour, Trivandrum. The application shall be accompanied by a statement setting forth—

(a) the parties to the dispute;

(b) the specific matters in dispute;

(c) the total number of workmen employed in the undertaking affected;

(d) an estimate of the number of workmen affected or likely to be affected by the dispute; and

(e) the efforts made by the parties themselves to adjust the dispute.

*Kerala Gazette, 12-3-57, Pt. I, Sec. IV.

4. *Attestation of application*:—The application, and the statement accompanying it shall be signed—

(a) in the case of an employer by the employer himself, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the Corporation;

(b) in the case of workmen, either by the President and a Secretary of trade union of the workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

5. *Notification of appointment of Board, Court, Labour Court, or Tribunal*:—The appointment of a Board, Court, Labour Court or Tribunal together with the names of persons constituting the Board, Court, Labour Court or Tribunal shall be notified in the Official Gazette.

6. *Notice to parties to nominate representatives*:—(1) If the Government proposes to appoint a Board, it shall send a notice in form B to the parties requiring them to nominate within a reasonable time persons to represent them on the Board.

(2) The notice to the employer shall be sent to the employer personally, or if the employer is an incorporated company or a body corporate, to the agent, manager or other principal officer of such company or body.

(3) The notice to the workmen shall be sent—

(a) in the case of workmen who are members of a trade union, to the President or Secretary of the trade union; and

(b) in the case of workmen who are not members of a trade union, to any one workman who has attested the application made under rule 3; and in this case a copy of the notice shall also be sent to the employer who shall display copies thereof on notice boards in a conspicuous manner at the main entrance to the premises of the establishment.

PART II

ARBITRATION AGREEMENT.

7. *Arbitration agreement*:—An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in form C and shall be delivered personally or forwarded by registered Post in triplicate to the Secretary to the Government, in the Department of Labour, Trivandrum, the Labour Commissioner, Trivandrum and the Conciliation Officer concerned in the Department of Labour.

8. *Attestation of the arbitration agreement*:—The arbitration agreement shall be signed—

(a) in the case of an employer, by the employer himself, or when the employer is an incorporated Company or other body corporate by the agent, manager, or other principal officer of the Corporation;

(b) in the case of workmen, either by the President and Secretary of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

PART III

POWERS, PROCEDURE AND DUTIES OF CONCILIATION OFFICER, BOARDS, COURTS, LABOUR COURTS, TRIBUNALS AND ARBITRATORS.

9. *Conciliation proceedings in public utility service*:—The Conciliation Officer, on receipt of a notice of a strike or lockout given under rule 71 or rule 72, shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

10. *Conciliation proceedings in non-public utility service*:—Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

11. The conciliation officer may hold a meeting of the representatives of both parties jointly or of each party separately.

12. The conciliation officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

13. *Place and time of hearing*:—The sittings of a Board, Court, Labour Court or Tribunal or of an Arbitrator shall be held at such times and places as the Chairman or the Presiding Officer or the Arbitrator, as the case may be, may fix and the Chairman, Presiding Officer or the Arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit.

14. *Quorum for Boards and Courts*:—The quorum necessary to constitute a sitting of a Board or Court shall be as follows:—

(i) in the case of a Board—	Quorum
where the number of members is 3	2
Where the number of members is 5	3
(ii) in the case of Court—	
where the number of members is not more than 2	1
Where the number of members is more than 2 but less than 5	2
where the number of members is 5 or more	3

15. *Evidence*:—A Board, Court, Labour Court or Tribunal or an Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/ him and in such manner as it/ he may think fit.

16. Administration of oath:—Any member of a Board or Court or Presiding Officer of a Labour Court or Tribunal or an Arbitrator may administer an oath.

17. Summons:—A summons issued by a Board, Court, Labour Court, or Tribunal shall be in form D and may require any person to produce before it any books, papers or other documents and things in the possession of or under the control of such person in any way relating to the matter under investigation or adjudication by the Board, Court, Labour Court or Tribunal which the Board, Court, Labour Court or Tribunal thinks necessary for the purposes of such investigation or adjudication.

18. Service of summons or notice:—Subject to the provisions contained in rule 20 any notice, summons, process or order issued by a Board, Court, Labour Court or Tribunal or an Arbitrator, empowered to issue such notice, summons, process or order, may be served either personally or by registered Post.

19. Description of Parties in certain cases:—Where in any proceeding before a Board, Court, Labour Court or Tribunal or an Arbitrator, there are numerous persons arrayed on any side, such persons shall be described as follows:

(1) all such persons as are members of any trade union or association shall be described by the name of such trade union or association; and

(2) all such persons as are not members of any trade union or association shall be described in such manner as the Board, Court, Labour Court or Tribunal or Arbitrator, as the case may be, may determine.

20. Manner of service in the case of numerous persons as parties to a dispute:—(1) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court, Tribunal or an Arbitrator and such persons are members of any trade union or association, the service of notice on the Secretary or where there is no Secretary, on the principal officer, of the trade union or association shall be deemed to be service on such persons.

(2) Where there are numerous persons as parties to any proceedings before a Board, Court, Labour Court or Tribunal or an Arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court or Tribunal or Arbitrator, as the case may be, shall, where personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned.

(3) A notice exhibited as mentioned in sub-rule (2) shall also be considered as sufficient in the case of such workmen as cannot be ascertained and found.

21. Procedure at the first sitting:—At the first sitting of a Board, Court, Labour Court or Tribunal the Chairman or the Presiding Officer, as the case may be, shall call upon the parties in such order as he may think fit to state their case.

22. Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex parte:—If without good cause shown, any party to proceedings, before a Board, Court, Labour Court, Tribunal, or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, or Arbitrator may proceed as if he had duly attended or had been represented.

23. Setting aside ex parte decision:—(1) The Board, Court, Labour Court, Tribunal or Arbitrator may for sufficient cause set aside after notice to the opposite party the ex parte decision either wholly or in part on an application made within fifteen days of the ex parte decision. The Board, Court, Labour Court, Tribunal or Arbitrator may extend the time on sufficient cause being shown.

(2) Such an application must be supported by an affidavit.

24. Power of entry and inspection:—A Board, or Court, or any member thereof, or a Labour Court or Tribunal, or any person authorised in writing by the Board, Court, Labour Court, or Tribunal in this behalf may, for the purposes of any investigation, enquiry or adjudication entrusted to the Board, Court, Labour Court or Tribunal under the Act, at any time between the hours of sunrise and sunset and in the case of a person authorised in writing by a Board, Court, Labour Court or Tribunal after he has given reasonable notice, enter any building, factory, workshop, or other place or premises whatsoever, and inspect the same or any work machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject matter of the investigation, enquiry or adjudication.

25. Power of Boards, Courts, Labour Courts and Tribunals:—In addition to the powers conferred by the Act, Boards, Courts, Labour Courts and Tribunals shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:—

(a) discovery and inspection;

(b) granting adjournment;

(c) reception of evidence taken on affidavit;

and the Board, Court, Labour Court or Tribunal may summon and examine any person whose evidence appears to it to be material and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

26. Assessors:—Where assessors are appointed to advise a Tribunal under sub-section (4) of Section 7A or by the Court, Labour Court or Tribunal under sub-section (5) of section 11, the Court, Labour Court or Tribunal, as the case may be, shall, in relation to proceeding before it, obtain the advice of such assessors, but such advice shall not be binding on it.

27. Fees for copies of awards or other documents of Labour Court, or Tribunal:—(1) Fees for making a copy of an award of a Labour Court or

Tribunal or any document filed in any proceedings before a Labour Court or Tribunal be charged as follows :

- (a) for the first 200 words or less, 12 annas ;
- (b) for every additional 100 words or fraction thereof, 6 annas ;

Provided that where an award or a document exceeds five pages, the approximate number of words per page shall be taken as the basis for calculating the total number of words, to the nearest hundred, for the purpose of assessing the copying fee.

(2) For certifying a copy of any such award or document, a fee of Re. 1 shall be payable.

(3) Copying and certifying fees shall be payable in cash in advance.

(4) Where a party applies for immediate delivery of a copy of any such award or document, an additional fee equal to one-half of the fee leviable under this rule shall be payable.

28. Decision by majority:—All questions arising for decision at any meeting of a Board or Court, save where the Court consists of one person, shall be decided by a majority of the votes of the members thereof (including the Chairman) present at the meeting. In the event of an equality of votes the Chairman shall also have a casting vote.

29. Correction of errors:—The Labour Court, Tribunal, or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.

30. Right of representatives:—The representatives of the parties appearing before a Board, Court, Labour Court, or Tribunal or an Arbitrator shall have the right of examination, cross-examination and of addressing the Board, Court, Labour Court or Tribunal or Arbitrator when an evidence has been called.

31. Proceedings before a Board, Court, Labour Court or Tribunal:—The proceedings before a Board, Court, Labour Court or Tribunal shall be held in public :

Provided that the Board, Court, Labour Court or Tribunal may at any stage direct that any witness shall be examined or its proceedings shall be held in camera.

PART IV

REMUNERATION OF ARBITRATORS, CHAIRMAN AND MEMBERS OF BOARDS AND COURTS, PRESIDING OFFICERS OF LABOUR COURTS OR TRIBUNALS, ASSESSORS, WITNESS AND STAFF.

32. Travelling allowance:—The Chairman or a member of a Board or Court, or the Presiding Officer or an Assessor of a Labour Court or Tribunal or an Arbitrator, if a non-official, shall be entitled to draw travelling allowance and halting allowance, for any journey performed by him in connection with the performance of his duties, at the rates admissible and subject to the conditions applicable to a Government servant of the first class under the Service Regulations in force.

33. Fees:—The Chairman and a member of a Board or Court, the Presiding Officer and an Assessor of a Labour Court, or Tribunal or an Arbitrator wherever he is not a salaried officer of Government may be granted such fees as may be sanctioned by the Government in each case.

34. Expenses of witnesses:—Every person who is summoned and duly attends or otherwise appears as a witness before a Board, Court, Labour Court or Tribunal or an Arbitrator shall be entitled to an allowance for expenses according to the scale for the time being in force with respect to witnesses in civil courts in the State where the investigation, enquiry, adjudication or arbitration is being conducted.

PART V

35. Notice of Change:—Any employer intending to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule shall give notice of such intention in Form E.

36. Manner of service of notice of change:—(1) Where there are numerous workmen affected by a notice of change and the majority of such workmen are members of any trade union or association, the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the trade union or association shall be deemed to be service on all such workmen.

(2) Where there are numerous workmen affected by a notice of change and the majority of such workmen are not members of any trade union or association, the employer shall, where personal service is not practicable, cause the service of any such notice to be made by affixing the same to a notice board at or near the entrance or entrances of the establishment concerned and the notice shall remain so affixed for period of twenty-one days. The notice shall be in the language understood by the majority of the workmen in the establishment concerned.

(3) A copy of the notice shall simultaneously be forwarded by the employer to the Labour Commissioner and the Conciliation Officer concerned.

PART VI

REPRESENTATION OF PARTIES.

37. Representation of parties:—The Authority in favour of a person or persons to represent a workman or group of workmen or an employer in any proceeding under the Act shall be in Form F.

38. Parties bound by acts of representatives:—A party appearing by a representative shall be bound by the acts of that representative.

PART VII

WORKS COMMITTEES

39. Constitution:—Any employer to whom an order made under subsection (1) of section 3 relates shall forthwith proceed to constitute a Works Committee in the manner prescribed in this part.

40. Number of members :—The number of members constituting the Committee shall be fixed so as to afford representation to the various categories, groups and classes of workmen engaged in, and to the sections, shops or departments of the establishment :

Provided that the total number of members shall not exceed twenty :

Provided further that the number of representatives of the workmen shall not be less than the number of representatives of the employer.

41. Representatives of employer :—Subject to the provisions of these rules, the representatives of the employer shall be nominated by the employer and shall as far as possible be officials in direct touch with or associated with the working of the establishment.

42. Consultation with trade unions :—Where any workmen of an establishment are members of a registered trade union, the employer shall ask the union to inform him in writing—

(a) how many of the workmen are members of the union ; and

(b) how their membership is distributed among the sections, shops or departments of the establishment.

43. Groups of Workmen's representatives :—On receipt of the information called for under rule 42, the employer shall provide for the election of workmen's representatives on the Committee in two groups—

1. Those to be elected by the workmen of the establishment who are members of the registered trade union or unions, and

2. those to be elected by the workmen of the establishment who are not members of the registered trade union or unions, bearing the same proportion to each other as the union members in the establishment bear to the non-members :

Provided that where more than half the workmen are members of the union or any one of the unions, no such division shall be made :

Provided further that where a registered trade union neglects or fails to furnish the information called for under rule 42 within one month of the date of the notice requiring it to furnish such information such union shall for the purpose of this rule be treated as if it did not exist.

44. Electoral constituencies :—Where under rule 43 the workmen's representatives are to be elected in two groups, the workmen entitled to vote shall be divided into two electoral constituencies, the one consisting of those who are members of a registered trade union and the other of those who are not :

Provided that the employer may, if he thinks fit, subdivide the two electoral constituencies and direct that workmen shall vote in either by groups, sections, shops or departments.

45. Qualification of candidates for election :—Any workman of not less than 19 years of age and with a service of not less than one year in the

establishment may, if nominated as provided in these rules, be a candidate for election as a representative of the workmen on the Committee :

Provided that the service qualification shall not apply to the first election in an establishment which has been in existence for less than a year.

46. Qualifications for voters :—All workmen, other than casual employees, who are not less than 18 years of age and who have put in not less than 6 months' service in the establishment shall be entitled to vote in the election of the representative of workmen.

47. Procedure for election :—(1) The employer shall fix a date as the closing date for receiving nominations from candidates for election as workmen's representatives on the Committee.

(2) For holding the election, the employer shall also fix a date which shall not be earlier than three days and later than ten days after the closing date for receiving nominations.

(3) The dates so fixed shall be notified at least seven days in advance to the workmen and the registered trade union or unions concerned. Such notice shall be affixed on the notice board or given adequate publicity amongst the workmen. The notice shall specify the number of seats to be elected by the groups, sections, shops or departments and the number to be elected by the members of the registered trade union or unions and by the non-members.

(4) A copy of such notice shall be sent to the registered trade union or unions concerned.

48. Nomination of candidates for election :—(1) Every nomination shall be made on a nomination paper in Form 'G' copies of which shall be supplied by the employer to the workmen requiring them.

(2) Each nomination paper shall be signed by the candidate to whom it relates and attested by at least two other voters belonging to the group, section, shop or department the candidate seeking election will represent, and shall be delivered to the employer.

49. Scrutiny of nomination papers :—(1) On the day following the last day fixed for filing nomination papers, the nomination papers shall be scrutinised by the employer in the presence of the candidates and the attesting persons and those which are not valid shall be rejected.

(2) For the purpose of sub-rule (1), a nomination paper shall be held to be not valid if (a) the candidate nominated is ineligible for membership under rule 45 or (b) the requirements of rule 48 have not been complied with.

50. Voting in Election :—(1) If the number of candidates who have been validly nominated is equal to the number of seats, the candidates shall be forthwith declared duly elected.

(2) If in any constituency the number of candidates is more than the number of seats allotted to it, voting shall take place on the day fixed for election.

(3) The election shall be held in such manner as may be convenient for each electoral constituency.

(4) The voting shall be conducted by the employer, and if any of the workmen concerned belong to a union, by such of them as the union may nominate.

(5) Every workman entitled to vote at an electoral constituency shall have as many votes as there are seats to be filled in the constituency:

Provided that each voter shall be entitled to cast only one vote in favour of any one candidate.

51. Arrangements for election:—The employer shall be responsible for all arrangements in connection with the election.

52. Officers of the Committee:—(1) The Committee shall have among its office bearers a Chairman, a Vice-Chairman, a Secretary and a Joint Secretary. The Secretary and the Joint Secretary shall be elected every year.

(2) The Committee shall elect the Chairman and the Vice-Chairman provided that where the Chairman is elected from amongst the representatives of the employers, the Vice-Chairman shall be elected from amongst the representatives of workman and *vice versa*:

Provided further that the post of the Chairman or the Vice-Chairman, as the case may be, shall not be held by a representative of the employer or the workmen, for two consecutive terms.

(3) The Committee shall elect the Secretary and the Joint Secretary provided that where the Secretary is elected from amongst the representatives of the employers, the Joint Secretary shall be elected from amongst the representatives of the workmen and *vice versa*:

Provided further that the post of the Secretary or the Joint Secretary, as the case may be, shall not be held by a representative of the employer or the workmen, for two consecutive years.

53. Term of office:—(1) The term of office of a workmen's representative on the Committee other than a member chosen to fill a casual vacancy shall be two years.

(2) A member chosen to fill a casual vacancy shall hold office for the unexpired term of his predecessor.

(3) A member who, without obtaining leave from the Committee, fails to attend three consecutive meetings of the Committee shall forfeit his membership.

54. Vacancies:—In the event of workmen's representative ceasing to be a member under sub-rule (3) of rule 52 or ceasing to be employed in the establishment or in the event of his resignation, death or otherwise, his successor

shall be elected in accordance with the provisions of this Part from the same group, section, shop or department to which the member vacating the seat belonged.

55. Power to co-opt:—The Committee shall have the right to co-opt in a consultative capacity persons employed in the establishment having particular or special knowledge of a matter under discussion. Such co-opted members shall not be entitled to vote and shall be present at meetings only for the period during which the particular question is before the Committee.

56. Number of meetings:—The Committee may meet as often as necessary but not less often than once in three months (a quarter)

57. Facilities for meeting, etc.:—The employer shall provide accommodation for holding meetings of the committee. He shall also provide all necessary facilities to the committee and to the members thereof for carrying out the work of the committee.

58. Dissolution of Works Committee:—The Government, or where the power under section 3 has been delegated to any officer or authority under section 39, such officer or authority may, after making such inquiry as it or he may deem fit, dissolve any Works Committee at any time, by an order in writing, if he or it is satisfied that Committee has not been constituted in accordance with these rules or that not less than two-thirds of the number of representatives of the workmen have, without any reasonable justification failed to attend three consecutive meetings of the Committee or that the Committee has for any other reason, ceased to function:

Provided that where a Works Committee is dissolved under this rule, the employer may, and if so required by the Government or, as the case may be, by such officer or authority, shall, take steps to re-constitute the Committee in accordance with these rules.

PART VIII

MISCELLANEOUS

59. Memorandum of settlement:—(1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form 'H'.

(2) The settlement shall be signed by—

(a) in the case of an employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated Company or other body corporate, by the agent, manager or other principal officer of the corporation;

(b) in the case of workmen, either by the President and Secretary of a trade union of workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

(3) Where a settlement is arrived at in the course of conciliation proceeding, the Conciliation Officer shall send a report thereof to the Government

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

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Government, the Labour Commissioner and the Conciliation Officer concerned.

60. Complaints regarding change of conditions of service, etc.:—(1) Every complaint under section 33-A of the Act shall be presented in triplicate in Form 'I' and shall be accompanied by as many copies of the complaint as there are opposite parties to the complaint.

(2) Every complaint under sub-rule (1) shall be verified at the foot by the workmen making it or by some other person proved to the satisfaction of the Labour Court or Tribunal to be acquainted with the facts of the case.

(3) The person verifying shall specify, by references to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(4) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

61. Application under section 33:—(1) An employer intending to obtain the express permission in writing of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, under sub-section (1) or sub-section (3) of section 33 shall present an application in form 'J' in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form 'K' in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(3) Every application under sub-rule (1) or sub-rule (2) shall be verified at the foot by the employer making it or by some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court or Tribunal to be acquainted with the facts of the case.

(4) The person verifying shall specify by reference to the numbered paragraphs of the application what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified.

62. Protected workmen:—(1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer, before the 30th September, every year, the names and address

of such of the officers of the union who are employed in that establishment and who, in the opinion of the union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to section 33, sub-section (4), recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen.

(3) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment, under section 33, sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen:

Provided that, where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it.

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union whether a particular workman should be recognised as a 'protected workman' or not, the dispute shall be referred to the Conciliation Officer concerned, whose decision thereon shall be final.

63. Appointment of Commissioner:—Where it is necessary to appoint a Commissioner under sub-section (3) of section 33-C of the Act, the Labour Court may appoint a person with experience in the particular industry, trade or business involved in the industrial dispute or a person with experience as a judge of a Civil Court, or as a stipendiary magistrate or as Registrar or Secretary of a Labour Court, or Tribunal constituted under any State Act or of a Labour Court or Tribunal constituted under the Act or of the Labour Appellate Tribunal constituted under the Industrial Dispute (Appellate Tribunal) Act, 1950.

64. Fees for the Commissioner, etc.:—(1) The Labour Court shall after consultation with the parties, estimate the probable duration of the enquiry and fix the amount of the Commissioner's fees and other incidental expenses and direct the payment thereof, into the nearest treasury, within a specified

time, by such party or parties and in such proportion as it may consider fit. The Commissioner shall not issue until satisfactory evidence of the deposit into the treasury of the sum fixed is filed before the Labour Court:

Provided that the Labour Court may from time to time direct that any further sum or sums be deposited into the treasury within such time and by such parties as it may consider fit:

Provided further that the Labour Court may in its discretion, extend the time for depositing the sum into the treasury.

(2) The Labour Court may, at any time, for reasons to be recorded in writing, vary the amount of the Commissioner's fees in consultation with the parties.

(3) The Labour Court may direct that the fees shall be disbursed to the Commissioner in such instalments and on such dates as it may consider fit.

(4) The undisbursed balance, if any, of the sum deposited shall be refunded to the party or parties who deposited the sum in the same proportion as that in which it was deposited.

65. Time for submission of report:—(1) Every order for the issue of a Commission shall appoint a date, allowing sufficient time, for the Commissioner to submit his report.

(2) If for any reason the Commissioner anticipates that the date fixed for the submission of his report is likely to be exceeded, he shall apply, before the expiry of the said date, for extension of time setting forth grounds thereof and the Labour Court shall take such grounds into consideration in passing orders on the application:

Provided that the Labour Court may grant extension of time, notwithstanding that no application for such extension has been received from the Commissioner within the prescribed time limit.

66. Local Investigation:—In any industrial dispute, in which the Labour Court deems a local investigation to be requisite or proper for the purpose of commuting the money value of a benefit, the Labour Court may issue a Commission to a person referred to in rule 63 directing him to make such investigation and to report thereon to it.

67. Commissioner's report:—(1) The Commissioner after local inspection as he deems necessary and after reducing to writing the evidence taken by him shall return such evidence together with his report in writing signed by him to the Labour Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without report) shall be evidence in the industrial dispute and shall form part of the record of the proceedings in the industrial dispute; but the Labour Court or, with the permission of the Labour Court, any of the parties to the industrial dispute may examine the Commissioner personally

before the Labour Court regarding any of the matters referred to him or mentioned in his report or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Labour Court is for any reason dissatisfied with the proceeding of the Commissioner it may direct such further enquiry to be made as it shall think fit.

68. Powers of Commissioner:—Any Commissioner appointed under these rules, may, unless otherwise directed by the order of appointment—

(a) examine the parties themselves and any witnesses whom they or any of them may produce and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject on enquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

69. Summoning of witnesses, etc.:—(1) The provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to the summoning, attendance, examination of witnesses and penalties to be imposed upon witnesses, shall apply to persons required to give evidence or to produce documents before the Commissioner under these rules.

(2) Every person who is summoned and appears as a witness before the Commissioner shall be entitled to payment by the Labour Court out of the sum deposited under rule 64 of an allowance for expenses incurred by him in accordance with the scale for the time being in force for payment of such allowance to witnesses appearing in the civil courts.

70. Representation of parties before the Commissioner:—The parties to the industrial dispute shall appear before the Commissioner, either in person or by any other person who is competent to represent them in the proceedings before the Labour Court.

71. Notice of strike:—(1) The notice of strike to be given by workmen in a public utility service shall be in Form 'L'.

(2) On receipt of a notice of a strike under sub-rule (1), the employer shall forthwith intimate the fact to the Conciliation Officer having jurisdiction in the matter.

72. Notice of lock-out:—The notice of lock-out to be given by an employer carrying on a public utility service shall be in form 'M'.

73. Report of lock-out or strike:—The notice of lock-out or strike in a public utility service to be submitted by the employer under sub-section (3) of section 22, shall be in Form 'N'.

74. Report of notice of strike or lock-out:—The report of notice of a strike or lock-out to be submitted by the employer under sub-section (6) of

section 22 shall be sent by registered post or given personally to the Conciliation Officer appointed for the local area concerned, with copy by registered post.

75. Register of settlements:—The Conciliation Officer shall file all settlements effected under this Act in respect of disputes in the area within his jurisdiction in a register maintained for the purpose in Form 'O'.

76. Notice of retrenchment:—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78) he shall give notice of such retrenchment as in Form 'P' to the Government and such notice shall be served on that Government by registered post in the following manner:

(a) Where notice is given to the workman notice of retrenchment shall be sent within three days from the date on which notice is given to the workman;

(b) Where no notice is given to the workman and he is paid one month's wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and

(c) Where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Government at least one month before such date:

Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to Government within 3 days of the agreement.

77. Maintenance of seniority list of workmen:—(1) The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be posted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

78. Re-employment of retrenched workmen:—(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the seniormost retrenched workmen in the list referred to in rule 77 the number of such seniormost workmen being double the number of such vacancies:

Provided further, that where the vacancy is of a duration of less than one month, there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen.

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.

(3) The Employer's liability to send notice of vacancies to the retrenched workmen shall be limited to one year from the date of retrenchment. A retrenched workman on receipt of the notice of vacancies from the employer shall offer himself for work or send a reply within a period of 10 days from the date on which the notice is posted and if he fails to do so, he shall lose all his claims for preference in future vacancies and the employer shall be free to fill the vacancies in all cases when retrenched persons do not come forward for re-employment.

79. Penalties:—Any breach of these rules shall be punishable with fine not exceeding fifty rupees.

80. Repeal:—The Travancore-Cochin Industrial Disputes Rules, 1951 and the Madras Industrial Disputes Rules, 1948 in their application to the territories transferred from the State of Madras to the State of Kerala, are hereby repealed; provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

SCHEDULE

FORM A

(See Rule 3)

Form of application for the reference of an industrial dispute to a Board of
Conciliation
Court of Enquiry
Labour Court
Tribunal

under Section 10 (2) of the Industrial Disputes Act, 1947.

Whereas an industrial dispute is apprehended between.....
exists

and.....and it is expedient that the matters specified in the
the dispute investigation and settlement

enclosed

Statement which are connected with or relevant to the dispute should be
referred

for enquiry by

Adjudication

a Board of Conciliation

a Court of Enquiry

a Labour Court

a Tribunal

an application is hereby made under sub-section (2) section 10 of the Industrial Disputes Act, 1947, that the said matters should be referred to said dispute

a Board of Conciliation

a Court of Enquiry

a Labour Court

a Tribunal.

This application is made by the undersigned who have been duly authorised to do so by virtue of a resolution (copy enclosed) adopted by a majority of the members present at a meeting of the held on the 19.....

A statement giving the particulars required under rule 3 of the Kerala Industrial Disputes Rules, 1957 is attached.

Dated the.....

Signature of the applicant (s)

To

The Secretary to the Government,
Department of Labour

Statement required under rule 3 of the Kerala Industrial Disputes Rules 1957, to accompany the form of application prescribed under sub-section (2) of section 10 of the Industrial Disputes Act, 1947.

- (a) Parties to the dispute including the name and address of the establishment or undertaking involved.
- (b) Specific matters in dispute
- (c) Total number of workmen employed in the undertaking affected
- (d) Estimated number of workmen affected or likely to be affected by the dispute
- (e) Efforts made by the parties themselves to adjust the dispute.

FORM B

(See Rule 6)

Whereas an industrial dispute has arisen between and and it is expedient to refer the said dispute under Section 10 of the Industrial Disputes Act, 1947 to a Board of Conciliation for the purpose of investigating the same and for promoting a settlement thereof, you are hereby required to intimate to the

undersigned not later than the..... the name(s) and address(es) of one (two) person(s) whom you wish to recommend for appointment as your representative(s) on the said Board.

If you fail to make the recommendation by the date specified above, the Government will select and appoint such person(s) as it thinks fit to represent you.

Secretary to the Government,
Department of Labour.

FORM C

(See Rule 7)

AGREEMENT

(Under Section 10A of the Industrial Disputes Act, 1947)

Between

Names of Parties.

Representing employers :

Representing workmen :

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of.....

[here specify the name(s) and address(es) of the arbitrator(s)]

- (i) Specific matters in dispute.
- (ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved :
- (iii) Name of the Union, if any, representing the workmen in question :
- (iv) Total number of workmen employed in the undertaking affected :
- (v) Estimated number of workmen affected or likely to be affected by the dispute :

Signature of the Parties :

Representing Employers:

Representing workmen :

Witnesses

(1)

(2)

Copy to:

- (i) The Conciliation Officer (here enter office address of the Conciliation Officer in local area concerned).
- (ii) The Labour Commissioner, Trivandrum.
- (iii) The Secretary to the Government, Department of Labour.

FORM D

(See Rule 17)

Whereas an industrial dispute between.....and
.....has been referred to this Board of Conciliation
for investigation and settlement
Court of Enquiry for investigation
Labour Court/Tribunal
for adjudication

under Section 10 of the Industrial Disputes Act, 1947, you are hereby
summoned to appear before the Board/Court/Labour Court/Tribunal in person
on the.....day of.....
at.....O'clock in the.....noon to answer all material

questions relating to the said dispute and you are directed to produce on that
day all the books, papers and other documents and things in your possession or
under your control in any way relating to the matter under investigation by
this Board/Court/Labour Court/Tribunal.

Dated.....

Chairman/Secretary, Board of Conciliation
Court of Enquiry
Presiding Officer or Secretary, Labour Court
Tribunal

FORM E

(See Rule 35)

Notice of Change to be given by an Employer

Name of employer..... Address.....
Dated the.....day of.....19.....

To

The Secretary/Principal Officer of the Union Association
The workman/workmen affected.

Dear Sir/Madam,

In accordance with Section 9A of the Industrial Disputes Act, 1947, I/we
beg to inform you that it is my/our intention to effect the change/changes
specified in the annexure to this letter, with effect from.....

Yours faithfully

Signature.....
Name.....
Designation.....

ANNEXURE

(Here specify the change/changes intended to be effected)

FORM F

(See Rule 37)

Before (here mention the authority concerned)

Reference No.....of..... Workmen

Versus

Employer

In the matter of
I/we hereby authorise Shri/Sarvashree.....
to represent me/us in the above matter.

Dated this.....day of.....19.....

Signature of person (s)

nominating the representative (s)

Address.

Accepted.

Signature of representative (s)

Address.

FORM G

(See Rule 48)

Form of Nomination Paper

Name of Industrial Establishment	Group/Section/Shop/Department
----------------------------------	-------------------------------

I nominate (Here enter the name of the workmen's representative eligible
for election)

a candidate for election to the Works Committee. He is eligible as a voter in
the constituency for which he is nominated.

Date.....

Signature of proposer

I agree to the proposed nomination.

Date.....

Signature of Candidate

Attested by :

(To be signed by any two voters belonging to the electoral
constituency.)

(1)
(2)

FORM H

(See Rule 59)

Form of Memorandum of Settlement

Names of parties :—

Representing employer (s) :

Representing workmen :

Short recital of the case.

Terms of settlement.

Witnesses :

(1) Signature of the parties

(2)

*Signature of Conciliation officer/Board of Conciliation.

*In cases of settlements effected by Conciliation/Board of Conciliation.

Copy to: (1) & Conciliation Officer

(Here enter the office address of the Conciliation Officer in the local area concerned.)

£. In cases where settlements are arrived at between the employer and his workmen otherwise than in the course of conciliation proceeding.

(2) Labour Commissioner, Trivandrum.

(3) The Secretary to the Government, Department of Labour.

FORM I

(See Rule 60)

Before the Labour Court/Tribunal..... Complaint under Section 33 of the Industrial Disputes Act, 1947.

A..... Complainant (s)

Address :—

versus

B..... Opposite Party (ies)

Address :—

In the matter of Reference No.....

The petitioner (s) begs/beg to complain that the Opposite Party (ies) has/have been guilty of a contravention of the provisions of Section 33 of the Industrial Disputes Act, 1947 (XIV of 1947) as shown below :—

(Here set out briefly the particulars showing the manner in which the alleged contravention has taken place and the grounds on which the order or act of the Management is challenged).

The Complainant(s) accordingly prays/pray that the Labour Court/Tribunal may be pleased to decide the complaint set out above and pass such order or orders thereon as it may deem fit and proper.

The number of copies of the complaint and its annexures required by Rule 60 of the Kerala Industrial Disputes Rules, 1957, are submitted herewith.

Signature of the Complainant (s)

Dated this..... day of..... 19.....

Verification

I do solemnly declare that what is stated in paragraph..... above is true to my knowledge and that what is stated in paragraphs..... above is stated upon information received and believed by me to be true. This verification is signed by me at on..... day of..... 19.....

Signature/or Thumb
impression of the person verifying.

FORM J

[See Rule 61(1)]

Before (here mention the Conciliation Officer, Board, Labour Court or Tribunal).

Application for permission under Sub-section (1) of /sub-section (3) of Section 33 of the Industrial Disputes Act, 1947 (XIV of 1947), in the matter of Reference.

No.....

A..... Applicant

Address :—

versus

B..... Opposite Party (ies)

Address(es) :—

The abovementioned applicant begs to state as follows :—

(Here set out the relevant facts and circumstances of the case and the grounds on which the permission is sought for).

The applicant therefore prays that express permission may kindly be granted to him to take the following action, namely :

(Here mention the action specified in clause (a) or clause (b) of sub-section (1) /sub-section (3) of Section 33.)

Signature of the applicant.

Dated this..... day of..... 195.....

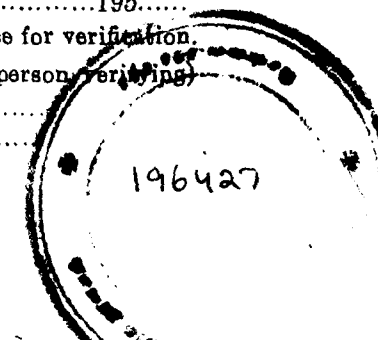
Space for verification.

(Signature of the person verifying)

Date (on which the verification was signed).....

Place (at which the verification was signed).....

22
X 2 m 20, N 16 21
15 50 12 h



FORM N.

(See Rule 73)

Form of Report of Strike or Lock-out in a public utility service

Information to be supplied in this form immediately on the occurrence of a strike or lock-out in a public utility service to the Conciliation Officer for the local area concerned.

Name of under- taking	Station and District	Normal working strength	Number of Workers involved		Strike or lock-out	Date of commencement of strike or lock-out	Cause	Was notice of strike or lock-out given: if so, on what date and for what period	Is there any permanent agency or agreement in the undertaking for the settlement of disputes between the employer and workmen? If any exist, particulars thereof	Any other information
			Directly	Indirectly						
1	2	3	4	5	6	7	8	9	10	11

NOTE:—Column (3). Give the average number of workmen employed during the month previous to the day on which the strike or lock-out occurred. While reckoning the average, omit the days on which the attendance was not normal for reasons other than individual reasons of particular workmen. Thus days on which strike or lock-out occurs or communal holiday is enjoyed by a large section of workers should be omitted.

(Column 4). If say, 200 workers in a factory strike work and in consequence the whole factory employing 1,000 workers has to be closed then, 200 should be shown under "directly" and the remaining under "indirectly". If the strike of 200 workers does not affect the working of the other departments of the factory, the number of workers involved would only be 200, which figure should appear under 'directly' and column "indirectly" would be blank.

Column (8). Give the main causes of the disputes as well as the immediate cause that led to the strike or lock-out.

FORM O.

(See Rule 75)

Register—Part I

Serial No.,	Industry	Parties to the settlement	Date of settlement	Remarks*

*Whether the settlement was effected at the intervention of the conciliation machinery, or by mutual negotiations between the parties, may be indicated here.

Part II

(Should contain one copy each of the settlements in the serial order indicated in Part I).

FORM P

(See Rule 76)

Form of notice of retrenchment to be given by an employer under Clause (c) of Section 25F of the Industrial Disputes Act, 1947.

Name of employer Address

Dated the day of

To

The Secretary to Government, .
Department of Labour

Sir,

Under Clause (c) of Section 25F of the Industrial Disputes Act, 1947 (XIV of 1947), I/We hereby inform you that I/we have decided to retrench\$workmen effect from the with†for the reasons explained in the annexe.

2. *The workmen concerned were given on the.....

*Batreachment is being effected in pursuance.....

*The workmen were given on the.....†.....195...

†195 one month's notice in writing as required/of an agreement, a copy of which is enclosed.

one month's pay in lieu of notice, as required under clause (a) of Section 25F of that Act.

3. The total number of workmen employed in the industrial establishment is X and the total number of those who will be affected by the retrenchment is given below:—

Category or designation of workmen to be retrenched (1)	Number of workmen	
	Employed (2)	To be retrenched (3)

Yours faithfully,

F

\$ Here insert the number of workmen.

† Here insert the date.

* Delete the portion which is not applicable.

F Here insert the position which the person who signs this letter holds with the employer issuing the letter.

X Here insert the total number of workmen employed in the industrial establishment.

ANNEXE

Statement of reasons.

Copy to (1) Conciliation Officer

(Here enter office address of the Conciliation Officer in local area concerned.)

(2) Labour Commissioner, Trivandrum.

of the dispute which requires adjudication while in the other the parties by agreement do so, and the Government cannot interfere with the scope of the dispute agreed upon by them.

It is admitted that if section 10(2) is not applicable to the facts of the present case, then the reference under section 10(1)(c) is valid and the petition fails. Now, under section 10(2) the parties to the dispute must jointly or separately apply for a reference of the dispute to the Tribunal and that must be done in the prescribed form. This form is given in the schedule to the rules framed under the Act as form 'A'. The workers applied on this form. The State Government, however, did not do so. The petitioner's case is that the Chief Minister of the Travancore-Cochin State Government wrote a letter on the 26th of August, 1955, to one Balakrishnan who is a member of the Legislative Assembly and also another letter of the same date to the Minister of Labour (Government of India) in which he stated that he had no objection to the reference of the dispute to the Tribunal for adjudication. These letters are, however, private letters written to these individuals and it cannot possibly be said that they are in the nature of applications to the Government of India in the prescribed form as laid down in section 10(2) of the Industrial Disputes Act. There is no reference to the scope of the dispute between the parties in these letters. It must, therefore, be held that there is no separate application by the State in form 'A' for reference of the dispute under section 10(2) and this petition fails.

No other point has been urged before me. The result is that this petition fails and is dismissed. No orders as to costs.

[IN THE PUNJAB HIGH COURT.]

DIVISIONAL SUPERINTENDENT, NORTHERN RAILWAY,
DELHI

v.

MUKAND LAL.

G. D. Khosla, K. R. Passey and Mehar Singh, JJ.

January 18, 1957.

SUSPENSION—WAGES FOR PERIOD OF SUSPENSION—CONDITIONS OF SERVICE PROVIDING FOR SUSPENSION—CERTAIN ALLOWANCE FIXED FOR PERIOD OF SUSPENSION—RIGHT OF EMPLOYEE TO CLAIM FULL WAGES FOR PERIOD OF SUSPENSION.

Where the contract of service between the employer and the employee provides that in the normal course of events the employer will pay a certain wage to the employee and it also provides that in certain eventualities the employee may be placed under suspension and that during the period of suspension the employee will not be entitled to the full wages but will be entitled only to a lesser amount as an allowance, it will not be open to an employee, who has been properly placed under suspension, to claim the full wages for the period of suspension and move the Payment of Wages Authority under section 15 of the Payment of Wages Act, 1936, for the recovery of the difference in the wages.

Civil Revision No. 96 of 1955.

K. L. Gosain and Krishan Lal Kapur for the petitioner.

H. L. Sibal and G. C. Mital for the respondent.

The petition having come before Bhandari, C. J., was, on February 17, 1956, referred to a Full Bench of the High Court. The following is the

ORDER OF REFERENCE BY

BHANDARI, C.J.—This petition raises the question whether an employee who is placed under suspension in accordance with the rules by which his conditions of service are regulated is entitled to receive wages during the period of suspension at the same rate as if he were not suspended.

The petitioner in this case was employed as a Booking Clerk at the Railway Station of Panipat. On his return to the Railway Station at about 9-30 p.m. on the 8th May, 1951, he discovered that the lock of the booking room had been opened and that a sum of Rs. 831 which he had left in a cupboard inside the room had been taken away. He reported the matter to the Station Master without loss of time and an enquiry committee was appointed in order to examine the circumstances in which the money was stolen. On the 18th June, 1951, the petitioner was placed under suspension, charges were framed against him and he was required to show cause why his services should not be dispensed with. On the 28th July, the Railway Administration directed that a sum of Rs. 831 which had been lost through his negligence should be deducted from his salary. The petitioner thereupon presented

a petition under section 15 of the Payment of Wages Act in which he alleged that the order of the Railway Administration was liable to be set aside on the simple ground that he was not afforded an opportunity of showing cause against the action which was proposed to be taken in regard to him. He stated further that the Administration had contravened the provisions of the Payment of Wages Act by making certain deductions which were not authorised by law. The administration deducted his wages (1) by putting him under suspension for a long period and giving him only one-half of the salary to which he was entitled, (2) by withholding his annual increment, and (3) by directing that a sum of Rs. 831 should be deducted from his salary even though the loss was not directly attributable to his neglect or default. The Authority constituted under the Act of 1936 observed as follows :

“Moreover it was found that proper locks were not supplied by the Railway Department to the petitioner and his colleagues. The lock which was supplied was of an ordinary type which was opened by the luggage porter very easily in the absence of the petitioner. The petitioner used to attend to other work on the Railway Station such as receiving parcels from the passenger trains after locking the door of his office. During that time also theft could have occurred from his drawer in which he kept cash”.

In a later passage the Authority observed as follows

“In the present case the respondent has deducted Rs. 831, the maximum amount provided by the law. The respondent has also withheld the increment of the applicant for one year permanently and the half of his pay during the alleged suspension period by way of deduction, which clearly offends against the provisions of section 10(1) of the Payment of Wages Act. The applicant left the booking office for his meals after locking it from outside and stationing Neki Ram porter on guard. The applicant has taken as much care as a man of ordinary prudence would have taken about his own goods. In view of the above circumstances, I think deduction of Rs. 150 only from his wages would meet the ends of justice. I therefore, order the refund to the applicant of all the amounts deducted by the respondent over and above Rs. 150.”

Two petitions have been presented in this case, one by the Booking Clerk in which he claims that in view of the finding that he had taken as much care of the money as a man of ordinary prudence would have taken about his own property, it was not within the competence of the Authority to order a deduction of Rs. 150 from his wages. The second petition has been presented by the Railway Administration in which it is stated (1) that as the Clerk had left the booking office without permission of his superior officers and had not deposited the amount in cash with the Assistant Station Master in spite of being required so to do and in failing to lock the drawer containing the money the Authority was not justified in directing that a sum of Rs. 150 only and not a sum of Rs. 831 should be deducted from salary. Secondly, it was alleged that the withholding of the incre

in *E. Thillai Natarajan v. C. P. Fernandes*, [1957] 12 F.J.R. 174, and has expressed a view which if not contrary to its previous view in *K.P. Mushran v. B. C. Patil* is certainly in complete accord with the two decisions of this Court. It is possible that had this decision been brought to the notice of my Lord the Chief Justice the occasion for this reference may not have arisen. However, the matter is of considerable importance both to the Railway Administration and to its employees and we have therefore heard lengthy arguments and considered it from all aspects independently of the previous decisions dealing with the matter.

It seems to me that the matter presents itself under three different aspects—

(1) The suspension of a Railway employee suspends wholly or in part the contract between him and the Railway Department. Therefore, the original terms regarding the quantum of wages are no longer enforceable during the period of suspension.

(2) The rules contained in the Indian Railway Establishment Code were framed under the authority of section 241 of the Government of India Act of 1935. These rules govern the conditions of service applicable to Railway employees. A Railway employee accepting employment agrees to be governed by these rules and these rules therefore become part of the contract which governs his employment. The rules contemplate suspension in certain circumstances and the payment of a subsistence or compensatory allowance less than the normal salary during the period of suspension. Therefore when the Department suspends a Railway employee in the circumstances and according to the procedure laid down in the rules the employee cannot say that his wages are being withheld from him because for the period of suspension his wages are equivalent to the compensatory allowance.

(3) The rules contained in the Indian Railway Establishment Code were framed under the authority of the Government of India Act of 1935 which came into force in 1937. The Payment of Wages Act was passed in 1936. The later rules framed under the authority given by Parliament must take precedence over an earlier Act passed by the Indian Legislature.

I now proceed to examine these three aspects in detail. Any contract between master and servant is a mutual obligation which requires each party to perform its part of the contract. In the case of Railway service an employee undertakes to do the work assigned to him and the Railway Department which is the employer in the case, undertakes to pay wages for the work done, and to provide certain other guarantees which constitute the conditions of service as laid down in the Indian Railway Establishment Code. A contract can, however, be suspended temporarily and during its period of suspension the contracting parties are absolved of all or some of their obligations. There is nothing novel in a contract being suspended. It merely amounts to a postponement of the actual performance of the contract. It and in the case of a continuing contract like the contract of service between master and servant suspension means that the relationship of master and

servant remains in abeyance for a certain period. Suspension, however, need not be complete and it cannot be argued that whenever a contract of service is suspended, the servant is free to go and seek employment elsewhere and the master is free to withhold the wages due to the servant and to employ some other servant to do his work. Such suspension would be equivalent to a total termination of the contract and suspending a contract is certainly not the same thing as terminating or rescinding it; and if suspension is something less than termination, then it must follow that a connection however tenuous, continues between the master and servant. The servant perhaps cannot seek employment elsewhere though he does not perform his normal duties for his master. Similarly the master may be obliged to give a subsistence allowance to the servant though he may not be obliged to pay him his full wages which are to be paid for specific work done by the servant. There is some though perhaps not very apt analogy in a retainer which is paid to a lawyer engaged by a firm who wants its cases handled by that particular lawyer. A fee for actually handling the case is paid over and above the retaining fee and till the actual case is handed over it cannot be said that the lawyer is representing the firm in any particular case.

It seems to me therefore that suspension need not completely absolve the two contracting parties. In other words suspension may be partial, and if that be so we shall have to examine in each individual case what the extent of the suspension is and what consequences flow from it. This will depend upon the terms agreed between the two contracting parties. In the present case the Indian Railway Establishment Code lays down the manner in which the contract of service is suspended. Suspension is to take place in certain given circumstances only, and when that happens, the railway employee is not entitled to any wages but is entitled to a lesser amount which is called compensatory or subsistence allowance and since there can be no unilateral suspension of a contract an employee can only be suspended where he has accepted as part of his contract terms which authorise his employer to suspend him in certain given circumstances. Where suspension was not in contemplation of the contract of service no suspension can take place. This seems to me to be the basis of all the rulings, both English as well as Indian, dealing with the matter. If I may put it more briefly at the risk of tautology, where two parties agree to a contract of service and the contract of service provides for suspension in certain cases the suspension when it takes place has the result of holding the contract of service temporarily in abeyance, and during the period of abeyance the relationship between the master and servant is determined by terms which have also been mutually agreed upon. In the present case the terms mutually agreed upon between the parties are contained in the rules embodied in the Indian Railway Establishment Code and this Code has been accepted by both the parties. Under the Code suspension can be ordered in certain circumstances. It is conceded that those circumstances did obtain in the present case and therefore suspension was perfectly valid. During the period of suspension the employee could not ask

for the enforcement of the original contract but was only entitled to the smaller claim specified in rule 2043 of the Code.

There can be no doubt that by the terms of the contract or by the conditions of service agreed upon between the parties power to suspend may be given to the master, and when he exercises that power the mutual obligations of master and servant cease. It was held in *Bird v. British Celanese Limited*, [1945] 1 A.E.R. 488, that where suspension can under the rules take place the mutual obligations to work and to pay wages cease. This was a case of a spinner employed by the British Celanese Limited on certain terms. The employee knew that according to a well-recognised practice the employer could temporarily suspend a workman from his employment, with a proportionate deduction from the week's wages, for breaches of the factory rules. The employee committed one of these breaches and he was suspended for two days. A deduction was made from his wages for these two days and he brought an action for the recovery of damages against the Company. It was held that "the suspension having been in accordance with the terms of the contract of employment, the mutual obligations of the parties ceased for the two days of the suspension. Therefore, non-payment of two days' wages was neither in the nature of a fine, nor a deduction from the sum contracted to be paid" by the employers.

A somewhat similar matter was considered in *Wallwork v. Fielding and others*, [1922] 2 K.B.D. 66. In that case an Act of 1882 empowered the Watch Committee to suspend a police constable and to stop his pay during the period of suspension. A police constable so suspended relying upon the Police Act of 1919 claimed full wages for the period of suspension. It was held that there was nothing in the Act of 1919 which took away the power to suspend given under the older Act of 1882. The significance of this decision is that where power to suspend can be lawfully exercised the contract of service remains in suspension and the mutual obligations of the parties are not enforceable. In *Hanley v. Pease & Partners, Limited*, [1915] 1 K.B.D. 698, it was found that the employers had no right to suspend the employee and therefore the employee was entitled to damages or wages.

This Court considered this matter in *Rura Ram v. Divisional Superintendent, N. W. Rly.*, A.I.R. 1954 Punjab 298. It was a case almost on all fours with the present one and the provisions of rules 1711 and 2043 of the Establishment Code were considered. The Division Bench gave its decision in clear and categorical terms:

"Where the employer has no power to suspend the employee he remains under an obligation to pay to such employee the full salary for the period for which he without actually dismissing him does not allow him to work professing to have suspended him for that period. Where, however, employee does suspend him he cannot be said to be under any obligation to pay any salary to the employee for the period of suspension unless the

terms of service themselves provide for payment of the whole or a part of such salary.....

.....in the present case the railway administration had an indisputable power to suspend the petitioner and the said administration having duly suspended him in the exercise of that power the petitioner is not entitled to any salary for the period of suspension excepting the subsistence grant not exceeding 14th of his salary provided for in the rules which he has already received."

I may mention again my own decision in Civil Revision No. 116-D of 1953 which followed the Division Bench and in which I distinguished the Bombay case in which a contrary view appeared to have been taken.

With regard to the Bombay case *K. P. Mushran v. B. C. Patil*, A.I.R. 1952 Bom. 235, it seems pointless to discuss it as the same Court has now taken a view more in conformity with the one set out by me. It is significant that the judgments in both these cases were written by Chagla, C.J., but the effect of the earlier Bombay decision which was mainly responsible for this reference to the Full Bench has now been wholly nullified by *E. Thillai Natarajan v. C. P. Fernandes*, [1957] 12 F.J.R., 174, the later decision of the Bombay High Court. Chagla, C.J., was at pains to discuss his earlier judgment in *K. P. Mushran v. B. C. Patil* and to point out that there were certain distinguishing features between the two cases. His final conclusion was that suspension could be ordered under rule 1711 in appropriate cases and during the period of suspension the employee was not entitled to anything more than the subsistence allowance laid down by rule 2043.

Another way of looking at the matter is that there is no question of holding the contract in abeyance but the parties have agreed upon a certain contract. That contract says that in the normal course of events the employee will be paid a certain wages. The contract goes on to say that when a certain eventuality occurs then different terms of contract will apply, and these different terms are that the employee will not be called upon to work for a temporary period though he may be required to remain present at his house or at the office and for that period he would be paid a smaller amount which for the sake of convenience is called compensatory or subsistence allowance. Therefore the contract is one whole transaction providing for different sets of circumstances. I may illustrate my point by a hypothetical example. An employee may be told that he will normally be required to work six hours a day and will be paid at the rate of say Rs. 6, a day. If, however, he is called upon to do extra work he will be paid at the rate of Rs. 1-8-0, per hour for every extra hour, but if in certain circumstances there is not enough work to keep him busy for six hours or the employer chooses not to make him work, his wages will be reduced by eight annas for every hour falling short of six hours. In such a case the wages of the employee which he can recover under the Payment of Wages Act will be the wages set down in the contract and not Rs. 6, a day, because for any particular day that he works for seven hours he will be entitled to recover Rs. 7-8-0, and if he works for five hours he cannot recover more than Rs. 5-8-0. If for some reason the employer tells his employee not to work at

all on a certain day the employee will be entitled to no more than Rs. 3, for that day according to the terms of the contract. Here there will be no question of suspension because the employee has not been told to keep away for any misconduct committed by him, but the wages which he can recover are not the full or normal wages of Rs. 6, per day. If the employer chooses to keep the employee idle for a whole week the employee cannot go to the Authority under the Payment of Wages Act and say: "The employer has deducted Rs. 3 a day from my wages. Therefore pass an order directing the employer to pay the amount so deducted." The employer's answer to this claim will be: "The employee agreed with me that I could give him less than six hours work a day and pay him a correspondingly smaller amount. It was also agreed that I could keep him idle for a whole day or a whole week and in that event I would not be obliged to pay him more than Rs. 3, per day. These were the terms of our contract and these terms only are enforceable. His wages for the days during which he remained idle were Rs. 3 and there was no question of any reduction." In a case of this type there was no suspension though the employee could have raised the argument which Mukand Lal has raised before us, and on the analogy of the hypothetical case given by me I am of the view that in the present case the contract of service between the parties was contained in the Establishment Code and according to this contract the employee could be suspended in certain circumstances and during the period of suspension the wages was equivalent to subsistence allowance. Therefore, when the employee goes to the Authority under the Payment of Wages Act he can only recover the subsistence allowance because that is what falls under the definition of 'wages'. In other words, the employee must enforce the whole contract and not a part of the contract. The whole contract covers suspension and the subsistence allowance payable to him during suspension.

Lastly, if there is any conflict between the provisions of the Payment of Wages Act and the rules contained in the Establishment Code it is the Code which must prevail. This matter was discussed very fully by Chagla, C. J., in *E. Thillai Natarajan v. C. P. Fernandes*, [1957] 12 F.J.R. 174, referred to above and I will make no apology for quoting extensive extracts from the judgment in that case, more particularly as this judgment has now nullified the effect of the earlier decision of 1952 which was mainly responsible for this reference to the Full Bench:

"It is clear and it is not disputed that the rules framed by the Governor-General under section 241(2) of the Government of India Act regulate the conditions of service between the petitioner and the railway authority with regard to his suspension and with regard to the subsistence allowance permissible to him while he is under suspension.....

The Government of India Act, 1935, came into force on April 1, 1937. The Payment of Wages Act was passed on April 23, 1936, and it came into force on March 28, 1937. A question has also been raised whether it could be said of the Payment of Wages Act that it regulates the conditions of service between the railway authority and its employees, but for the purpose of

this argument we will assume that that Act does regulate the conditions of service. Therefore, the position in law was that prior to April 1, 1937, there was on the statute book an Act which, with regard to payment of wages, regulated the conditions as between employer and employee including the railway authority and the petitioner. Then was passed the Government of India Act on April 1, 1937, and section 241(1) expressly deals with conditions of service in the case of services of the Federation, and the railway service is a service of the Federation.....the Governor-General had framed rules and the rules in question with regard to suspension and subsistence allowance fall within these rules framed by the Governor-General. Therefore, without more, it is clear that this Parliamentary legislation must override any provision made with regard to the condition of service in the case of services of the Federation made by an Indian statute passed before the Parliamentary legislation was put on the statute book".

The learned Chief Justice concluded as follows :

"We will, therefore, decide this matter on the narrow ground that the conditions of service of the petitioner with regard to his suspension and with regard to the wages to which he is entitled during the period of suspension are regulated by the rules framed by the Governor-General under section 241 of the Government of India Act and that the Payment of Wages Act has no application with regard to those conditions, and it is not open to the petitioner to claim an amount as being illegally deducted by the railway authority when that deduction is legal and permissible under the rules framed by the Governor-General under the Government of India Act."

With these remarks I wish, with great respect, to express my agreement. I have taken the liberty to quote extensively from the judgment of Chagla, C. J., because this aspect of the matter could not have been stated more clearly or more emphatically than he has done.

Therefore, it seems to me that from whatever angle the matter is viewed, a railway employee cannot, during his period of suspension, claim his full wages and he cannot go to the Authority under the Payment of Wages Act alleging that his wages have been deducted, because in fact there has been no deduction. We can say that the rules provide for suspension of the contract, and on suspension the contract between master and servant is held in abeyance, with the consequence that both parties are absolved from performing their full obligations. Or we can say that the provisions with regard to suspension and the subsistence allowance payable during suspension are part of a larger contract which must be enforced as a whole and not in part. And lastly, if there is in fact any conflict between the Establishment Code and the Payment of Wages Act, it is the Code which must prevail.

Both parts of the question referred to the Full Bench therefore must be answered in the negative.

KESHO RAM PASSEY, J.—I concur.

MEHAR SINGH, J.—I agree.

[IN THE INDUSTRIAL TRIBUNAL NO. 2, ERNAKULAM.]

P. S. N. MOTORS LTD., TRICHUR

v.

THEIR WORKMEN

Shri V. U. Joseph.

April 12, 1957.

BONUS—AWARD OF—PRINCIPLES—CLAIM FOR BONUS WHEN SURPLUS PROFITS NOT AVAILABLE—WHETHER JUSTIFIED—PROFITS OF PRECEDING OR SUCCEEDING YEAR—WHETHER RELEVANT.

STRIKE—WAGES FOR STRIKE PERIOD—PRINCIPLES—LEGAL AND JUSTIFIED STRIKE—WORKMEN RESORTING TO FORCE AND VIOLENCE—CLAIM FOR WAGES FOR STRIKE PERIOD—WHETHER JUSTIFIED.

The workmen of an industrial establishment are entitled to get bonus provided there is surplus profit in that particular year after meeting the prior and necessary charges. The profit or loss of either the year immediately preceding or succeeding is not a relevant factor in considering the question of bonus for a particular year. Where the profits of an establishment are sufficient only to meet the prior charges, the workmen will not be entitled to claim any bonus on the ground of the general sound condition of the establishment.

In order to sustain a claim for wages for strike period, it is not sufficient that the object of the strike was legal or justified. The strike must also be peaceful and there should be no resort to force or violence during the strike period. Where the workmen resort to violence during a strike, they would not be entitled to wages for the strike period even though the strike might have been legal and justified.

Industrial Dispute No. 68 of 1956.

P. Sankara Menon for the management.

K. K. Vasu Panicker for the workmen.

AWARD.

1. Disputes having arisen between the P. S. N. Motors Ltd., Trichur, hereinafter referred to as the Company and the P. S. N. Motor Workers' Congress, hereinafter referred to as the Union, the Government of Travancore-Cochin State issued Notification No. L. Dis. 19676/54/DD dated 17-7-1956 referring the same to this Tribunal for adjudication. The only two items comprised in the order of reference are given below :

(1) To what amount of bonus, if any, are the workers entitled for the year 1128 M. E.

(2) Are the workers of the workshop entitled to wages, or compensation for the strike period commencing from 18th September, 1954.

Originally this dispute was referred to the Industrial Tribunal, Trivan-

drum and after the constitution of this Tribunal, the same was referred to this Tribunal and with the written consent of parties proceedings continued from the stage at which it was left by the Trivandrum Tribunal.

2. It is contended by the Union that due to the unremitting labour of the workmen, the Company has earned large profits and that they must be paid at least three months' wages as bonus for the year 1128 M. E. The workmen were compelled to resort to strike as their legitimate demands were utterly disregarded. After the strike notice, the management was not ready for a peaceful settlement and the workmen were compelled to resort to strike from 18-9-54 to 3-10-54 (both days inclusive). It was the unconciliatory attitude of the management that brought about the strike. The strike was legal and peaceful and the workmen are entitled to get wages for the strike period.

3. In the reply statement, the management has denied the averments in the statement of the Union. It is contended by Mr. P. N. Krishna Iyer, Governing Director of the P. S. N. Motors that the management concern did not have the full co-operation of the labour force particularly of those in the workshop section, during the period in question. The management conceded the principle of giving bonus to workers if there is profit available after meeting prior and necessary charges. In the year under consideration the management concern was converted from being a family concern into a private Ltd., one. The Company had very great financial difficulties, and in order to tide over the difficulties it had to borrow large sums of money on high rate of interest. In the year under review there is only a nominal profit of Rs. 40,508-12-11 after deducting the initial depreciation. There will be absolutely no profits if the depreciation allowable under the Income-tax Act is deducted. The Company has no financial capacity to pay any bonus. In spite of all that, as a gesture of good-will and as an act of encouragement for better co-operation the Company in the meeting of the share-holders resolved to pay 15 day's basic wages as bonus to all its employees who have been in the service of the Company from its formation till 30-6-53. All the workers except 20 persons actually received these amounts without any protest. In the conference held on 23rd August, 1954, before the Conciliation Officer the profit and loss statement for the relevant period was made available to the Union representative. They read the statement and did not raise any objection to the figures contained therein. The workers struck work with a view to force the management to accept their unreasonable demands. The workers were fully aware that the dispute has been referred for adjudication. The strike was unnecessary and unjustifiable. Only a section of the workers alone decided to strike and that too without taking a strike ballot. The decision to strike was preceded by slowing down of work and sabotage of machinery. Workers mixed acid in the brake fluid with the result that these vehicles could not be used for trips. Out of 400 workers, only 50 workers in the workshop alone took part in the strike. The strike was neither peaceful

nor legal. The leaders of the strike resorted to violence in the strike, they prevented workers from entering the factory and attempted to damage the vehicles by putting nails on the road. The strike caused very heavy financial loss to the Company. The continuance of the strike after the 29th of September, 1954, in any event was even illegal and unlawful. The accounting year of the Company is from 18th August, 1952, to 30th June, 1953. It will cover only 10 1/2 months of the year 1128 and the profit and loss account prepared and marked in the proceedings is only for a period of 10 1/2 months of the year 1128 only and the determination of the question of bonus in this enquiry is to confine to this period of 10 1/2 months alone and not for the entire period of the year of 1128.

4. The Union Secretary filed a rejoinder in which he took objection to the preparation of the profit and loss account for 10 1/2 months of the year 1128 and contended that in the year under consideration the Company had no financial difficulties at all. It was an year of boom for the Company. In the conference before the Conciliation Officer, the profit and loss statement was not shown to the Union representative. At the tripartite conference before the Conciliation Officer only a scrap of paper which did not reveal the correct financial position of the Company, was alone shown. The Union did not know that the dispute was referred for adjudication. The strike was legal and peaceful and comes within the legitimate Trade Union activities of the Union. The fact that a group of workmen accepted 15 days' wages as bonus does not exonerate liability of the Company to pay bonus to workers according to law.

5. With regard to the question of bonus, it is now settled beyond all controversy that the workmen of an industrial establishment are entitled to get bonus, provided there is surplus profit in a particular year after meeting the prior and necessary charges. The basis of the claim for bonus is that the profits are earned as the result of the joint contribution of labour and capital and unless and until profits are made no question or occasion can arise for the distribution of any bonus. If the trading results of the industrial establishment has resulted in loss, there would be no profits for the particular year available for distribution. The profit and loss of a particular financial year is taken as a basis for the purpose of calculating bonus. The profit and loss of either the year immediately proceeding or succeeding is not a relevant factor for a consideration of the question of bonus.

6. This is also the basis of the demand of the Union for bonus in this case; its case being that the workmen have earned for the Company surplus profits to pay at least three months' wages as bonus. The principles for the grant of bonus were discussed and a formula was evolved by the Full Bench of the Labour Appellate Tribunal of India, in the Bombay Mills Owners' case reported in [1950] 2 F.J.R. 107. "As both labour and capital contribute to the earning of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges" and the following were prescribed as the first charge on gross profits, viz.,

(1) provision for depreciation, (2) reserves for rehabilitation, (3) a return of 6% on paid up capital and (4) a return on reserves used as working capital at a lesser rate than the return on paid up capital. The surplus that remained after deducting the aforesaid items, would be available for distribution as bonus. The trading results for the relevant year are given in Exts. XIV and XV. Ext. XIV is the profit and loss account and XV is the balance-sheet. The net profit according to Ext. XIV is Rs. 40,580-12-11. In Ext. XIV consolidated figures are given showing the different items of expenditure incurred in order to run the business. The statutory depreciation allowed by the income-tax authorities amounting to Rs. 1,51,343 is in Ext. XIV as an item of expenditure. The total expenditure comes to Rs. 19,84,913-7-10. Mr. K. K. Vasu Panicker questioned the genuineness of only three figures, viz., (1) Sundry expenses of Rs. 1,467-0-0, (2) Donation and Charities of Rs. 1,853 and (3) Presents to staff of Rs. 1,323 amounting to Rs. 4,643 out of a total expenditure of Rs. 19,84,913-7-10. I am of opinion that the three items objected to by Mr. Panicker are really items to be given credit to the management. These are amounts spent by the management in running the business. The depreciation amount of Rs. 1,51,343 allowed by the income-tax authorities is given as an item of expenditure and the management has got the right to add the same as an item of expenditure. The total profit available for distribution is only Rs. 40,580-12-11. The capital invested is Rs. 5,00,000 and 6% interest on the capital invested would amount to Rs. 30,000. The balance left is only Rs. 10,580 and out of which 15 days' wages paid to the workmen comes to Rs. 7,982-12-0. The balance is Rs. 2,598-0-11. Fifteen days' wages was paid as a gesture of good-will and not because there was profit in the year under consideration. Mr. P. Sankara Menon very seriously argued that the management is entitled to appropriate Rs. 98,100 towards special depreciation and the management has actually done so in the year 1128 M. E. If special depreciation amounting to Rs. 98,100 is allowed to be appropriated, the management concern must be taken to have suffered a loss of Rs. 91,091-5-11. But we need not take into consideration the question of special depreciation. After income-tax depreciation of Rs. 1,51,343 the available surplus is only Rs. 40,580-12-11. The interest at 6% on the Capital of Rs. 5,00,000 comes to Rs. 30,000. After deducting this amount from the net profit what is available is only Rs. 10,580-12-11 out of which the management already gave 15 days' bonus and this bonus was accepted by all the workmen except 20 persons. The bonus for 15 days comes to Rs. 7,982-12-0. Those 20 persons who have not accepted the 15 days' bonus will be paid the same and I find the workmen have no further claim for bonus in the year 1128 M. E.

7. The profit and loss account and the balance-sheet of the Company is from 18th August, 1952, to 30th June, 1953. This does not cover the full period of the year 1128 but only 10 1/2 months of the year 1128 and the enquiry with regard to the question of bonus is confined to this period of the year 1128 alone.

8. The bonus question has to be viewed from the point of view of gross profit also. In order to arrive at the gross profit the only item of expenditure that can be added back to the net profit is Rs. 1,51,343 the statutory income-tax depreciation, though, Mr. Panicker would argue to add back three other items of expenditure also amounting to Rs. 4,643. I have already found that the amount of Rs. 4,643 is really trading expenses and actually incurred by the management. So the gross profit will be, Rs. 40,580-12-11 (the net profit) + (income-tax depreciation of Rs. 1,51,343) together the gross profit will be Rs. 1,91,923-12-11. As laid down in the Bombay Full Bench Formula, depreciation of Rs. 1,51,343 has to be allowed. A return of 6% on Rs. 5,00,000 Capital will be Rs. 30,000. Together these two amounts come to Rs. 1,81,343 and the balance is Rs. 10,580-12-11. No amount is available to provide towards rehabilitation reserves. Of the balance of Rs. 10,580, bonus for 15 days' wages already paid comes to Rs. 7,982-12-0. The net balance will be Rs. 2,598. Nothing further is left for distribution as bonus in the year under reference.

9. The 2nd issue is with regard to the question whether the workers of the workshop are entitled to wages or compensation for the strike period commencing from 18th September, 1954, to 3rd October, 1954 (both days inclusive).

10. The charter of demand by the Union Ext. R was served on the management on 5-7-54. In Ext. R the Union has requested for (1) the introduction of Provident Fund Scheme to the workers in the workshop; (2) make available a resting place for the workers of the workshop to take food etc., during the interval; (3) free medical aid for all the workers and (4) the grant of 3 months' wages as bonus to all the workers for the year 1128 M. E. The Company by its letter Ext. T dated 13th July, 1954, to the Union refused to consider any of the demands. With regard to bonus the Company contended that there is no surplus profit in the year 1128 to pay bonus. The General Body of the share-holders of the Company at its meeting held on 12th April, 1954, has resolved to pay 15 days' basic wages as bonus to its employees as an encouragement for better co-operation in future. The Union was not prepared to abandon its demands and therefore it again requested the Company by its letter Ext. U dated 29-7-54 reiterating the different items of demand already embodied in Ext. R with a request to reconsider the matter. In Ext. U a request for the balance-sheet and profit and loss account of the year 1128 was also made. Ext. Y is the strike notice dated 31-8-54 with an ultimatum that if their demands were not fulfilled within 14 days thereof they would be reluctantly compelled to go on strike. This strike resolution was unanimously passed in a General Body meeting held on 31-8-54. In the meanwhile there was an attempt at conciliation but was not successful. Ext. Z dated 4-9-54 is the reply from the management. In Ext. Z it is stated by the management that their legal adviser along with the Secretary attended the conciliation meeting. They had with them a copy of the balance-sheet and profit and loss account and

also accounts supporting them. The management further stated that they were made to understand that the Union representatives admitted the figures in the balance-sheet as correct in the conciliation conference but demanded increased bonus on the vague ground that the general financial position of the Company is better. To Ext. Z the Union's reply is Ext. AA in which statement the assertion of management that the Union representatives were shown the profit and loss accounts of the year 1128 was not denied. Strike was started on 18th September, 1953. The running staff and a section of the workers in the workshop did not take part in the strike. The strike was confined only to a section of the workers in the workshop. On the second day of the strike the management issued Ext. AB to the Union General Secretary which runs as follows:—

P. S. N. MOTORS LIMITED, TRICHUR.

L/9/54.

19th September, 1954.

The Secretary,
P. S. N. Motor Workers' Congress,
Trichur.

Dear Sir,

We regret very much to report that since you announced your decision to strike work from the morning of 18th September, 1954, some of the vehicles which were in the workshop on the 17th night for maintenance work were tampered with by the workmen. When the vehicles were taken out in the morning, all the drivers complained that the brakes were jammed and they had to be taken to the workshop for examination and it was found that some foreign matter was mixed in the brake fluid, and consequently the brakes were not working properly. As a result of this act of sabotage, some minor accidents have also been reported. The Fluid taken from the Brakes is being sent for chemical analysis and we shall let you know when we receive the report.

We do not feel it necessary to impress upon you that such acts of sabotage do not come within the normal Trade Union activities and much less in a public utility concern, where the lives of many passengers are also involved.

We hope that you will take appropriate action in this matter and advise the Labourers to desist from such activities.

We also regret to note that contrary to the assurances of the President of the Union and what you professed at the public meeting, held under the auspices of the Union, the loyal workers were molested and some of them were assaulted, while they were coming to the workshop. We find from the complaints that K. R. Xavier, K. K. Madhavan, M. N. Gopalan, K. A. Kunjunny and M. Parameswaran Nair, employees of this concern, as also certain employees of the Sitaram Spinning & Weaving Mills Ltd., are

mainly responsible for this. In the best interests of both the parties concerned, it is advisable that use of force to prevent the loyal workers from entering the workshop should be eschewed.

We trust that you would take this in the true spirit and avoid clashes.

Expecting your co-operation,

Yours faithfully,

(Sd.)

Director.

For *P. S. N. Motors Limited.*

Ext. AC is a letter from the Union to the management stating that the strike is progressing peacefully and is getting the co-operation of the public. The management is adopting all tactics to put down the strike. Some workers were taken to the workshop with police escort in order to make known to the public that the strike is not peaceful. In Ext. AC the interference of the police in such matters is condemned. Ext. AE is another notice calling off strike issued by the Union to the management after the receipt of the copy of the order of adjudication. By that time the management had already discharged three workers and the management refused to take back these three workers. So the entire body of workers refused to join duty. On 3rd October, 1954, an agreement was arrived at between the representatives of the employers and employees and the strike was called off and the workers resumed work from 4th October, 1954.

11. Ext. AB is a letter dated 19-9-54; the 2nd day of the strike from the management to the Union. Details of this letter are given above. Ext. I (m), Ext. I (o) and I (j) are complaints filed before the Director by the workers Sri K. Madhavan, Sri P. R. Balakrishnan, Sri V. A. Krishnan and Sri V. Govindan Nair. Ext. I (m) is from the worker Sri Madhavan stating that he was man-handled by blacksmith Sri Kunjnni on the 19th morning when he was coming to the workshop for work. Ext. I (o) is another complaint to the management from workers Sri P. R. Balakrishnan Nair and Sri V. A. Krishnan dated 19th September, 1954. These two workers were obstructed on their way to the workshop on the morning of 19th September, 1954, by the workshop workers Messrs. M. N. Gopalan, M. Parameswaran Nair, K. C. Balakrishnan, M. M. Sultan Moideen and Devassy. The police intervened and the workers were able to go for work. Ext. I (j) is from another worker Sri V. Govindan Nair dated 19th September, 1954. He was returning home in the early morning of 19th September, 1954, after his night duty in a bus owned by P.S.N. Motors. The driver was forced to stop the bus and the worker Sri V. Gopalan Nair had to get down from the bus by the compulsion of the strikers and he was beaten by worker Sri Xavier and others. Ext. I (j) is a wound certificate issued on 19th September, 1954, by the Doctor after examining the body of Sri V. Gopalan Nair. These complaints were forwarded to the police requesting for necessary action by the

management on 19th September, 1954, itself. Ex. I (1) is a letter from one Gopalan Nair addressed to the working Director of the P. S. N. Motors. It states that Sri Gopalan Nair was travelling in a car with four other persons. Their car was stopped by strikers at three places in order to ascertain whether any of the workers in the P. S. N. Motors Workshop were travelling in the car. The driver of the car was man-handled and finally beaten with a torch two or three times by a worker named Sri Madhavan. Ex. I (b) and I (e) are complaints from the drivers Sri C. O. Thomas and Sri V. Chandrasekharan Pillai. They complain that some persons in the workshop prevented them from taking the buses to the workshop and abused and even threatened them. Ex. I (f) is a complaint from a newspaper boy stating that he was stopped on his way to P. S. N. Motors Office while carrying a bill from the office of the 'Express' newspaper by the President of the Union. Ex. I (f) states that the President forcibly got the bill and some other papers from the messenger. Ext. I (g) is a report from the P. S. N. Office Manager to the Sub-Inspector of Police regarding this incident. Ex. I (c) and I (b) are also from workers complaining of violence from strikers. Ex. VII is a report from the workshop clerk Mr. M. M. Benny stating that Mr. K. K. Madhavan tore away the notices exhibited on the notice board. He was caught red-handed and Ex. VI papers are notices that he actually removed from the notice board. Ex. IX series are four reports from four drivers of the P. S. N. Motors dated 18th September, 1954, and 29th September, 1954, respectively stating that the brakes were not working properly as some foreign matter was mixed in the brake fluid. Ex. X series (seven in number) are reports from seven drivers stating that in the various bus routes three-faced iron nails were found and as a result of running over them several tyres were damaged.

12. The Managing Director as EW1 and the Chief Mechanic as EW2 have given evidence regarding the various acts of violence and sabotage. The Union examined Messrs. K. K. Madhavan, M. N. Gopalan and P. A. Kochakken workers from the workshop section and Messrs. A. Madhavan, the General Secretary of the P. S. N. Motors Congress and the President of the Congress Mr. K. Karunakaran. Mr. Karunakaran and Mr. A. Madhavan give evidence with regard to Ex. III agreement dated 3rd October, 1954, alone by which the strike was called off. They state that at the time of Ex. III the management had promised to give work to the three discharged workers also. Sri Karunakaran does not say anything with regard to the nature of the strike. In the cross-examination Sri Madhavan, the General Secretary admits having received Ex. AB. He also admits that he did not send any reply to Ex. AB. After the receipt of Ex. AB he interviewed the workers mentioned therein and advised them. In the General Body meeting of the Union Sri Madhavan advised the workers in general to conduct the strike peacefully. He does not specifically deny the different acts of violence attributed by the management against specific persons. There is the evidence of WW1 Sri K. K. Madhavan, WW2 M. N. Gopalan and WW5 Sri Kochakken. WW1 and WW2 were discharged for their alleged acts of violence during the

strike period and these two persons were examined in connection with an application filed by them and another worker Sri M. Parameswaran Nair in these proceedings under Section 33A of the Industrial Disputes Act for their reinstatement. These three persons deny all allegations of violence. WW1 and WW2 are highly interested witnesses and WW5 is only a friend of them who has come forward to accommodate them. It is not safe to rely upon the evidence of these interested persons.

13. Before deciding the question whether the workers of the workshop are entitled to wages or compensation for the strike period it is necessary to see whether the object of the strike was legal or justifiable and how the workmen conducted the same. The demand of the Union for wages for the strike period is based on the ground that the strike was necessitated by the unsympathetic attitude of the management regarding the demand of the workers and that the strike was legal and peaceful and that the workers must be given their back wages. The Management contends that there was no necessity for strike, that the strike was illegal and that it was occasioned by the non-co-operating attitude of the workers in the conciliation talks held by the Labour Department. The management contends that the 15 day's wages already paid as bonus was a gesture good-will and better co-operation and not because there was any available surplus.

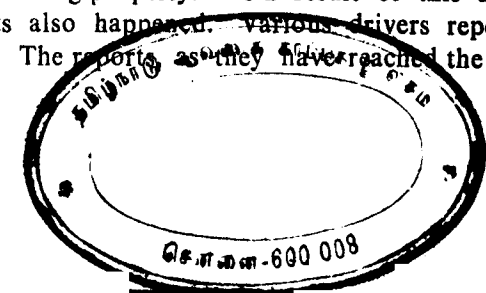
14. On page 391, para. 437, Vol. VI of the second edition of the Halsbury's Laws of England the most important liberties that have been created and elaborated have been enumerated and one such liberty is the right to strike or the right of a citizen to withhold his labour, so long as he does not commit any breach of contract, or tort or crime. Under our Constitution the right to strike is not given as a fundamental right. But it is perfectly left to a citizen to go on a strike or to withhold his labour. Whatever may be the value or result of a strike it is recognised as a legitimate weapon of the workmen for the purpose of ventilating their grievances and achieving their demands. The workers in this case thought that they had a legitimate grievance and they pressed their demands on the management but the management did not care to grant their demands, the workmen can legitimately resort to strike for getting a favourable decision upon their demands. The subsequent rejection of their demand for bonus by this Tribunal will not make the strike illegal or unjustifiable. It will not be proper to adjudge the legality or justifiability of the strike by the result of adjudications. A strike cannot be said to be unjustifiable unless the reasons for which it was started are absolutely perverse and unsustainable. In the instant case Ex. R. the charter of demand embodies four items of demand and they are described in para. 10 above. They are all very moderate demands, nay; I must say, demands which are necessary to keep the workmen in reasonable comfort. Sri P. Sankara Menon appearing for the workmen in management attempted to show that the figures in the balance-sheet of the management concern for the relevant period was shown to the representatives of the Union and they were even satisfied with their correctness. The Union requested in

writing for a copy of the balance-sheet and the management after getting the written requisition from the Union maintained studied silence. The management could have complied with the request of the Union and showed their *bona fides*. Sri Sankara Menon finds fault with the Union for not sending a reply to Ex. Z a letter sent by the management immediately after the conciliation conference wherein it is stated that the balance-sheet was shown to the Union. Whatever that may be, Ex. R, the charter of demands contains four items of demand of which one alone is bonus. There are the three other demands and the figures in the balance-sheet will not satisfy the other three items of demand. Resolution to strike was taken in a General Body meeting of the Union unanimously and in order to avoid inconvenience and trouble to the public the running staff did not take part. The Union was fully aware of its great responsibilities to the travelling public. There can be no doubt that the object of the strike was not illegal. The Union was justified in starting the strike. It must be remembered that the workmen got this right of strike in proper cases after a great deal of struggle and sacrifice.

15. Starting a strike to achieve a demand will come within the legitimate trade union activities of any Union. In this present case the strike was occasioned by the management's refusal to concede the worker's demand. The fact that Government themselves ultimately found sufficient justification for referring one of the demands to this Tribunal for adjudication, serves to vindicate the workers *bona fides* in resorting to strike at least with respect to the demand referred for adjudication. I am therefore unable to hold that the object of the strike was unjustified. The strike was started after due notice of the same to the management and the demands of the workmen cannot be said to be illegal or unreasonable.

16. In order to sustain a claim for strike wages, it is not sufficient that the object of the strike was either legal or justifiable, the strike must be peaceful also and there should not be the use of any force or violence during the strike period. Here in the instant case the strike far from being peaceful, was violent. Several acts of violence and sabotage perpetrated by some of the workers of the Union in the course of the strike is proved beyond doubt by the large number of documentary evidence proved in the case. The workers who did not strike work were molested, assaulted and even man-handled by the strikers when they were coming and returning from the workshop.

17. From the evidence adduced in this case, both documentary and oral it is beyond doubt that the strike was violent. The strike was started in the early hours of the 18th September 1954. Some of the vehicles which were in the workshop on the 17th night for repairs were tampered with by the workmen. Some kind of acid was mixed in the brake fluid and consequently the brakes were not working properly. As a result of this act of sabotage some minor accidents also happened. Various drivers reported this matter on the 18th itself. The reports as they have reached the head



office on the 18th itself, must be taken to be genuine. On the basis of the reports from several drivers the management wrote Ex. AB on 19th September, 1954, for which the Secretary did not send a reply. Several workers complained of having been man-handled, and assaulted and a few persons were molested. They were prevented from proceeding to the workshop and many were threatened from coming for their work. Mainly Sri K. R. Xavier, Sri K. K. Madhavan, Sri M. N. Gopalan, Sri M. Parameswaran Nair and Sri K. A. Kunjunny are mainly responsible for the different acts of violence. There is evidence to show that a few workers of the Sitharam Mills also joined with the employees of the P.S.N. Motors to help them. Three-faced nails were put in the bus route to damage the tyres. I find that the strike far from being peaceful was violent; there were even minor acts of sabotage also. The workers did not stop strike and resume work on getting notice of the order of adjudication on 29th September, 1954, on the ground that three workers discharged for acts of violence during the strike period were not given work. The strike was further continued till 3rd October, 1954. By Ex. III the management agreed to withdraw the orders of discharge passed on three workers without prejudice to their right to take appropriate action regarding the charges against them. The workmen are not entitled to any compensation or wages for the strike period as the strikers used violence and force and perpetrated acts of sabotage. The workmen are not entitled to any bonus for the year 1128 M. E. over and above what was given by the management. The twenty persons who have not received 15 days' bonus will be paid the same when this award becomes enforceable. I pass the award in terms given above. No costs. This award will become enforceable after thirty days of its publication in the Government Gazette.

[IN THE PUNJAB HIGH COURT.]

SHAMBU NATH & SONS LTD.

v.

ADDITIONAL INDUSTRIAL TRIBUNAL, DELHI AND ANOTHER.

Bishan Narain, J.

February 11, 1957

INDUSTRIAL TRIBUNAL—PROCEDURE—DISCOVERY AND INSPECTION OF DOCUMENTS—WHETHER TRIBUNAL CAN FOLLOW ITS OWN PROCEDURE—PROVISIONS IN CIVIL PROCEDURE CODE, 1908, HOW FAR APPLICABLE—INDUSTRIAL DISPUTES ACT, 1947, SECTION 11 (1), (3).

The general terms in which section 11(1) of the Industrial Disputes Act, 1947, is couched are limited in respect of matters enumerated in section 11(3) and rule 21 of the Industrial Disputes Rules. Therefore, in the matter of production, discovery and inspection of documents, an Industrial Tribunal cannot follow its own procedure and is bound to follow the procedure laid down in the Civil Procedure Code, 1908, Order XI, rules 15 and 18.

Civil Writ No. 373 of 1956.

N. S. Bindra for the petitioner.

Bishambar Dayal and *Harish Chandra* for the respondents.

JUDGMENT.

By notification No. F.I. (58)/56 E.J. & L. dated the 13th of March, 1956, the Chief Commissioner, Delhi, referred for adjudication to the Additional Industrial Tribunal, Delhi, consisting of Shri Rameshwar Dayal, under the Industrial Disputes Act, 1947, certain disputes between the management and workers of Messrs. Shambu Nath & Sons, Limited of Shahdara, Delhi. The dispute, *inter alia*, related to payment of bonus for the years 1952-53 and 1953-54 and the present petition is limited to this dispute and my order is also confined to this dispute.

In due course the parties filed their statements before the Industrial Tribunal. In their statement of claims the workers sought permission to be allowed to file their claim after the management had filed their statement and had made available the relevant balance-sheet and other information regarding the finance and accounts of the Company. The management on the 5th of June, 1956, replied, *inter alia*, that the workmen had claimed bonus too late as the accounts had long been closed. The management also denied its liability to pay bonus in view of the prior and necessary charges which were detailed in the statement of claims. The workmen thereupon filed a rejoinder on the 9th of August, 1956, complaining that the reply of the management was incomplete and did not give the required information and requested the Tribunal to direct the management to produce the account books and balance-sheets relating to years 1952-53 and 1953-54. The management filed audited balance-sheets and profit and loss accounts for

these years and requested that this information may be kept confidential as laid down in section 21 of the Act. On the 1st of September, 1956, the Tribunal passed two orders. By one order it directed the management to allow inspection of books like ledger, cash book, vouchers etc., that is, all those books which related to financial statements for the two years, and by the other order directed the management to produce the financial statements for the year 1954-55.

The management has filed this petition to get these two orders set aside by issue of a writ of *certiorari* under article 226 of the Constitution. This petition is contested by the Tribunal as well as by the workmen.

The learned counsel for the petitioners has contended that the Tribunal has no jurisdiction to order inspection of these account books etc., without complying with the relevant provisions of the Civil Procedure Code and particularly without complying with the provisions of Order XI, rule 18(2), of the Code of Civil Procedure. It was further argued that in any case the financial affairs of the Company relating to the year 1954-55 had nothing to do with the present dispute and the Tribunal ought not to have ordered the production of books relating to this financial year.

Section 11(1) of the Industrial Disputes Act, 1947 as amended in 1956 runs:

"11(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit."

and section 11(3) reads:—

"11(3) Every Board, Court, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit, in respect of the following matters, namely:

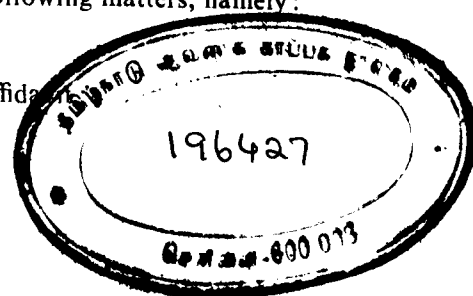
- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses;
- (d) in respect of such other matters as may be prescribed;

and every inquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (XLV of 1860)".

Rules have been framed under this Act, and rule 21 runs as follows:

"21. In addition to the powers conferred by sub-section (3) of section 11 of the Act, Boards, Courts and Tribunals shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:

- (a) discovery and inspection;
- (b) granting of adjournment;
- (c) reception of evidence taken on affidavit.



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