Indian Factories Journal

V12. P7. 15th June 19

THE INDIAN FACTORIES JOURNAL

VOL. XII] 15TH JUNE, 1957. [PART VII

CONTENTS

REPORTS OF CASES

CUMULATIVE TABLE OF CASES REPORTED (Parts I to VII)

PAGE

SUPREME COURT

HIGH COURTS

LABOUR APPELLATE TRIBUNAL OF INDIA

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

PAGE

AWARDS

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

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

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

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

PAGE

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

PAGE

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

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

THE LIFE INSURANCE CORPORATION (AMENDMENT) ACT, 1957.

No. 17 OF 1957*

[Received the assent of the President on 6th June, 1957.]

An Act to amend the Life Insurance Corporation Act, 1956.

Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:—

1. *Short title*:—This Act may be called the Life Insurance Corporation (Amendment) Act, 1957.

2. *Amendment of section 11*:—In section 11 of the Life Insurance Corporation Act, 1956 (hereinafter referred to as the principal Act), for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of remuneration and the other terms and conditions of service applicable to employees of insurers whose controlled business has been transferred to, and vested in, the Corporation, it is necessary so to do, or that, in the interests of the Corporation and its policy-holders, a reduction in the remuneration payable, or a revision of the other terms and conditions of service applicable, to employees or any class of them is called for, the Central Government may, notwithstanding anything contained in sub-section (1), or in the Industrial Disputes Act, 1947, or in any other law for the time being in force, or in any award, settlement or agreement for the time being in force, alter (whether by way of reduction or otherwise) the remuneration and the other terms and conditions of service to such extent and in such manner as it thinks fit; and if the alteration is not acceptable to any employee, the Corporation may terminate his employment by giving him compensation equivalent to three month's remuneration unless the contract of service with such employee provides for a shorter notice of termination.

Explanation:—The compensation payable to an employee under this sub-section shall be in addition to, and shall not affect, any pension, gratuity, provident fund money or any other benefit to which the employee may be entitled under his contract of service."

3. *Amendment of section 43*.—In section 43 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Section 42 of the Insurance Act shall have effect in relation to the issue to any individual of a licence to act as an agent for the purpose of soliciting or procuring life insurance business for the Corporation as if the reference to an officer authorised by the Controller in this behalf in sub-section (1) thereof included a reference to an officer of the Corporation authorised by the Controller in this behalf."

*Gaz. of India Exty., 8-6-57, Pt. II-Sec. 1, p. 211.

4. *Substitution of new section for section 45.*—For section 45 of the principal Act, the following section shall be substituted, namely:—

"45. *Special provisions regarding transfer of controlled business of certain composite insurers*:—Notwithstanding anything contained in clause *(c)* of section 44, the Central Government may, by notification in the Official Gazette, direct that on and with effect from such date as may be specified in the notification the assets and liabilities appertaining to the controlled business of a composite insurer in respect of the management of whose affairs an Administrator has been appointed under section 52A of the Insurance Act shall be transferred to and vested in the Corporation, and on the issue of such a notification the provisions of this Act shall, so far as may be, apply in relation to such insurer and to the transfer and vesting of the assets and liabilities of his controlled business in the Corporation as they apply in relation to all other insurers and to the transfer and vesting of the assets and liabilities of their controlled business in the Corporation, subject to the modification that references in this Act to the appointed day shall be construed as references to the day specified in the notification."

5. *Amendment of section 49.*—In section 49 of the principal Act, after clause (*b*) of sub-section (2), the following clause shall be, and shall be deemed always to have been, inserted, namely:—

"(*bb*) the terms and conditions of service of persons who have become employees of the Corporation under sub-section (1) of section 11;".

6. *Validation of orders passed before commencement of Act altering remuneration, etc.*—Any order altering the remuneration and the other terms and conditions of service of the employees referred to in sub-section *(2)* of section 11 of the principal Act made or purporting to have been made under that sub-section before the commencement of this Act by the Central Government for any of the purposes specified in that sub-section as amended by this Act, shall, notwithstanding anything contained in any judgment, decree or order of any court, be deemed to have been made under that sub-section as amended by this Act as if this Act were in force on the date on and from which the order was intended to take effect, and the order shall continue in force and have effect accordingly, unless and until superseded by anything done or action taken under the principal Act.

7. *Repeal.*—The Life Insurance Corporation (Amendment) Ordinance, 1957, is hereby repealed.

THE INDUSTRIAL DISPUTES (AMENDMENT) ACT, 1957

No. 18 OF 1957 *

[*Received the assent of the President on 6th June, 1957.*]

An Act further to amend The Industrial Disputes Act, 1947.

Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:—

1. *Short title and commencement*:—*(1)* This Act may be called the Industrial Disputes (Amendment) Act, 1957.

(2) Section 2 shall be deemed to have come into force on the 10th day of March, 1957, and section 3 on the 28th day of November, 1956.

2. *Amendment of section 2*:—In section 2 of the Industrial Disputes Act, 1947, (hereinafter referred to as the principal Act), for clause (*r*), the following clause shall be substituted, namely:—

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

3. *Substitution of new sections for section 25FF.*:—For section 25FF of the principal Act, the following sections shall be substituted, namely:—

"25FF. *Compensation to workmen in case of transfer of undertakings*:—Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if—

(*a*) the service of the workman has not been interrupted by such transfer;

(*b*) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

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

25FFF. *Compensation to workmen in case of closing down of undertakings.*—*(1)* Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the pro-

* Ibid, p. 213.

visions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched :

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

Explanation:—An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

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

4. *Repeal.*—The Industrial Disputes (Amendment) Ordinance, 1957 is hereby repealed.

THE INDUSTRIAL DISPUTES (PUNJAB AMENDMENT) ACT, 1957.

PUNJAB ACT NO. 8 OF 1957*

[Received the assent of the President on June 1, 1957.]

An Act to amend the Industrial Disputes Act, 1947, in its application to the State of Punjab.

Be it enacted by the Legislature of the State of Punjab in the Eighth Year of the Republic of India as follows :—

1. *Short title and commencement*:—(*i*) This Act may be called the Industrial Disputes (Punjab Amendment) Act, 1957.

(*ii*) It shall come into force at once.

2. *Amendment of section 7 of Central Act No. XIV of 1947*:—In sub-section (*3*) of section 7 of the Industrial Disputes Act, 1947, as amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, in its application to the State of Punjab (hereinafter referred to as the principal Act), at the end of clause (*b*), the word 'or' and the following new clauses shall be added, namely :—

"(*c*) he is or has been a District Judge ; or

*Punjab Govt. Gaz. Exty. 3-6-1957, p. 889.

(*d*) he has held the office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 or of any Tribunal, for a period not less than two years."

3. *Amendment of section 7C of Central Act No. XIV of 1947*:—In section 7C of the principal Act, for clause (*b*), the following shall be substituted, namely :—

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

THE INDUSTRIAL DISPUTES (AMENDMENT AND MISCELLANEOUS PROVISIONS) (PUNJAB AMENDMENT) ACT, 1957,

PUNJAB ACT NO. 9 OF 1957*

[Received the assent of the President on June 1, 1957.]

An Act to amend the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, in its application to the State of Punjab.

Be in enacted by the Legislature of the State of Punjab in the Eighth Year of the Republic of India as follows :—

1. *Short title and commencement*:—(*i*) This Act may be called the Industrial Disputes (Amendment and Miscellaneous Provisions) (Punjab Amendment) Act, 1957.

(*ii*) It shall come into force at once.

2. *Amendment of section 30 of Parliament Act No. 36 of 1956*:—Section 30 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, in its application to the State of Punjab, shall be numbered as sub-section (1) of that section and thereafter the following sub-section (2) shall be added, namely:—

"(2) If immediately before the commencement of this Act there was pending any proceeding in relation to an industrial dispute before a Tribunal constituted under the Industrial Disputes Act, 1947, as in force before such commencement and such proceeding could not be disposed of by that Tribunal due to the Tribunal having come to an end on the expiry of the period for which it was constituted, the State Government may re-constitute that Tribunal for adjudicating that dispute and disposing of that proceeding after such commencement as if this Act had not been passed, and the proceeding may be continued by that Tribunal from the stage at which it was left."

*Ibid, p. 891.

Industries (Dev. & Regulation) Act, 1951—Exemptions.

I

*Notification No. S.R.O. 1215/INDRA/29B/3/57, dated New Delhi, the 10th April, 1957**

In exercise of the powers conferred by sub-section (1) of section 29B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby exempts from the operation of sections 10, 10A, 11, 11A, 12, 13 and 14 of the said Act and the rules made thereunder, all industrial undertakings pertaining to the scheduled industry specified below, other than undertakings which are engaged in the manufacture or production of steel forgings with the aid of power for sale to the public.

Name of scheduled industry

The scheduled industry relating to steel forgings under "(3)—Iron and steel castings and forgings" under the sub-heading "A, Ferrous:" under the heading "1. Metallurgical Industries" in the First Schedule to the Industries (Development and Regulation) Act, 1951.

II

*Notification No. S.R.O. 1216/INDRA/29B/4/57. dated New Delhi the 10th April, 1957**

In exercise of the powers conferred by sub-section (1) of section 29B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby exempts from the operation of sections 10, 10A, 11, 11A, 12, 13 and 14 of the said Act and the rules made thereunder, all industrial undertakings pertaining to the scheduled industry specified below, other than undertakings which are engaged in the manufacture or production of the articles specified in the annexure to this notification.

Name of scheduled industry

The scheduled industry relating to "(7) other products of iron and steel" under the sub-heading "A. Ferrous" under the heading "1. Metallurgical Industries" in the First Schedule to the Industries (Development and Regulation) Act, 1951.

THE ANNEXURE

1. Ingots, Blooms, Billets, ton bars, sheet bars and slabs.
2. Shell steel ingots, blooms, billets and bars.
3. Heavy rails (over 30 lbs.) and fish plates.
4. Tinplates, ternplates.
5. Black sheets (Plain and corrugated).
6. Galvanized sheets (Plain and corrugated).
7. Plates (Shipbuilding).
8. Plates (Ordinary mild steel and tensile).
9. Plates (Bullet-proof).

*Gaz. of India Extry., 10-4-57, Pt. II, Sec. 3, p. 1453.

10. Bars (Including flats, squares, rounds, hexagons and rods).
11. Black or Galvanized wire, whether plain or barbed.
12. Wire (Miscellaneous).
13. Hoops and Strips.
14. Wire ropes.
15. Tyres, Wheels and Axles.
16. Dogspikes, Chair spikes and Screw spikes.
17. Bolts (including fish bolts), nuts and rivets.
18. Wire nails.
19. Wrought iron fittings, malleable iron fittings and steel fittings, coated or uncoated excluding electrical conduit pipes.
20. Cast iron specials.
21. Expanded metal and other fabrics used for reinforcing concrete.
22. Drums and containers made out of any category of steel.
23. Woodscrews.
24. Welding Electrodes.
25. Fabricated Steel structures.
26. Machine Screws.

U. P. Industrial Disputes (Amend. & Misc. Prov.) Act, 1957, brought into force.

*Notification No. U-177(ST)/XXXVIA dated April 15, 1957.**

In pursuance of the provision of sub-section (ii) of section 1 of the U.P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (U. P. Act No. I of 1957), the Governor is pleased to appoint the 16th day of April, 1957 as the date on which the said Act shall come into force.

Inland Steamer Services in Assam declared Public Utility Service.

*Notification No. GLR. 213/55/32 dated the 20th April, 1957.***

Whereas the Governor of Assam is satisfied that public interest requires the extension of the period specified in the Notification No. GLR. 213/55/24, dated the 26th October, 1956, declaring the industry mentioned below to be a public utility service.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947 (Act XIV of 1947), the Governor of Assam is pleased to declare the following industry to be a public utility service for purpose of the said Act for a further period of six months, with effect from 17th May, 1957.

(1) All Inland Steamer Services in Assam.

---

*U. P. Gaz. Extry., 15-4-57.

**Ass. Gaz., 1-5-57, Pt. II A, p. 1235,

Air Transport Industry in Andhra State declared Public Utility Service

[*G.O. Ms. No. 490, Social Welfare and Labour, dated 13th May, 1957.**]

Whereas the Governor of Andhra Pradesh had declared by Social Welfare and Labour Department Notification No. 5, dated 22nd November, 1956, published on pages 111 and 112 of Part I of *Andhra Pradesh Gazette*, dated 29th November, 1956, the Air Transport Industry in the State of Andhra Pradesh, to be a public utility service for the purpose of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), for a period of six months from 2nd December, 1956;

And whereas the Governor of Andhra Pradesh is satisfied that the public interest requires extension of the period specified above for a further period of six months from 2nd June, 1957;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Governor of Andhra Pradesh hereby declares the Air Transport Industry in the State of Andhra Pradesh, to be a public utility service for the purposes of the said Act for a further period of six months from 2nd June, 1957.

Air Transport Services in Punjab declared Public Utility Service

[*Notification No. 3806-C-Lab-57/8668, dated the 9th May, 1957.***]

Whereas the Governor of Punjab is satisfied that the public interest requires that the Air Transport Services operating in the State of Punjab, being an industry specified in the First Schedule to the Industrial Disputes Act, 1947 (Central Act XIV of 1947), should be declared as public utility services for the purposes of the said Act;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Punjab is pleased to declare the Air Transport Service oparating in the State of Punjab to be public utility services for the purposes of the said Act for a period of six months with effect from the date of publication of this notification in the official Gazette.

Madras Factories Rules—Amendment.

[*G.O. Ms. No. 1863, Industries, Labour and Co-operation, 29th May, 1957.*‡]

In exercise of the powers conferred by sections 58 and 112 of the Factories Act LXIII of 1948, the Governor of Madras hereby makes the following amendment to the Madras Factories Rules, 1950, published with the late Development Department notification, dated the 15th March, 1950, at pages

* Andhra Pradesh Gaz., 23-5-57, Pt. I, p. 909.

** Pb. Gazette, 17-5-57, Part I, p. 847.

‡ Fort St. Geo. Gazette, 12-6-57, Rules Sup. to Part I, p. 329.

103 to 178 of the Rules Supplement to Part I of the *Fort St. George Gazette*, dated 25th April, 1950, as subsequently amended, the same having been previously published as required by section 115 of the said Act:—

AMENDMENT.

In the said rules, rule 77-A and the schedule thereto shall be omitted.

Working Class Consumer's Price Index Numbers for different Industrial Centres in Bihar during the month of December, 1956.

BASE: YEAR ENDING JULY, 1939 = 100*.

Centres	Food.	Fuel and light.	House rent.	Clothing, bedding and footwear.	Miscellaneous.	Consumer price index number
1	2	3	4	5	6	7
Patna ...	500	384	300	374	264	424
Muzaffarpur ...	543	466	300	371	354	484
Monghyr ...	500	359	300	371	281	429
Jamshedpur ...	529	351	300	426	339	466
Jharia ...	495	235	300	337	413	469
Ranchi ...	504	274	300	307	314	430
Dehri-on-Sone ...	542	397	300	356	345	484

Consumer price index number for working class in Raniganj Asansol area.

BASE: YEAR 1951 = 100.**

Groups.	Weights.	December 1955.	January 1956.	February 1956.	November, 1956.	December 1956.	January 1957.	February. 1957.
Food ...	64·77	90	88	87	102	97	96	98
Fuel and lighting ...	4·01	92	92	92	101	100	101	101
Clothing ...	7·30	82	79	82	85	86	85	84
Miscellaneous ...	21·46	111	110	110	100	100	102	102
House rent ...	2·46	100	100	100	100	100	100	100
General Index ...	100·00	94	93	92	100	97	97	98

N.B.—The index has registered a fall of 3 points to 97 during December last year from 100 during the previous month. The fall was due mainly to fall in the prices of Rice, Vegetable, Fish, etc.

The index has remained steady during January at 97 and has gone up to 98 during February, 1957. The rise during February was mainly due to rise in the prices of Rice, Atta, Spices, Bringal, etc.

*Supp. to Bihar Gaz. 13-3-1957, p. 244.

**Calcutta Gaz. 16-5-1957, Pt. I, p. 1663.

S—1[illegible]

WORKING JOURNALISTS (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS RULES, 1957.

*Notification No. S.R.O. 1737 dated New Delhi, the 23rd May, 1957**

In exercise of the powers conferred by section 29 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of of 1955), the Central Government hereby makes the following rules, namely :—

CHAPTER I

PRELIMINARY

1. *Short title.*—These rules may be called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957.

2. In these rules, unless the context otherwise requires:—

(a) "Act" means the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955);

(b) "authorised medical practitioner" means a registered medical practitioner designated as such under rule 24 and where no such practitioner has been designated, any registered medical practitioner;

(c) "average pay" shall have the meaning assigned to it in the Indusrial Disputes Act, 1947 (14 of 1947);

(d) "competent officer" means an officer designated as such under rule 17;

(e) "family" means—

(i) wife, in the case of a male working journalist ;
(ii) husband, in the case of a female working journalist;
(iii) sons;
(iv) daughters;
(v) brothers and sisters;
(vi) father; and
(vii) mother.

(f) "form" means a form appended to these rules;

(g) "leave" means earned leave, leave on medical certificate, maternity leave, extraordinary leave, leave not due, casual leave, study leave or quarantine leave;

(h) "earned leave" means leave admissible under clause (a) of section 7 of the Act;

(i) "leave on medical certificate" means leave admissible under clause (b) of section 7 of the Act;

(j) "leave not due" means leave which is not due to a working journalist but which may be granted to him in anticipation of its being earned subsequently;

*Gaz. of India Exty., 27-5-57, Pt. II Sec. 3, p. 1728.

(k) "quarantine leave" means leave of absence from duty by reason of the presence of an infectious disease in the family or household of a working journalist ;

(l) "study leave" means leave granted to a working journalist to enable him to undergo any special course of training which may be of use to him in his journalistic career; and

(m) "shifts": 'day shift' means a shift when any hours of work of the shift do not fall between the hours of 11 p.m. and 5 a.m.; 'night shift' means a shift when any hours of work fall between the hours of 11 p.m. and 5 a.m.

CHAPTER II

GRATUITY

3. *Payment of gratuity.*—Gratuity shall be paid to a working journalist or if he is dead to his heirs as soon as possible after it becomes due and in any case not later than three months.

4. *Gratuity due to a deceased working journalist—to whom payable.*—On the death of a working journalist—

(a) if a nomination made by him in accordance with rule 5 subsists, the gratuity shall be paid to his nominee or nominees in accordance with such nomination; and

(b) if no nomination subsists or if that nomination relates only to a part of the gratuity, the amount of the gratuity or the part thereof to which the nomination does not relate, as the case may be, shall be paid to his heirs.

5. *Nominations.*—(1) A working journalist shall, as soon as he completes three years of continuous service, or in the case of those who have completed three years of continuous service at the commencement of the Act, as soon as may be after these rules come into force, make a nomination in form A conferring the right to receive any gratuity payable under the Act, in the event of his death before the amount has become payable or where the amount has become payable, before the payment has been made.

(2) A working journalist may, in his nomination distribute the amount that may become due to him amongst his nominees at his own discretion.

(3) If a working journalist has a family at the time of making a nomination, the nomination shall be in favour of one or more persons belonging to his family. Any nomination made by such working journalist in favour of a person not belonging to his family shall be invalid.

(4) If at the time of making a nomination, a working journalist has no family, the nomination may be in favour of any person or persons, but if he subsequently acquires a family, such nomination shall forthwith be deemed to be invalid and the working journalist shall make a fresh nomination favour of one or more persons belonging to his family.

(5) A nomination made under sub-rule (1) or a fresh nomination made under sub-rule (4), as the case may be, may at any time be modified by the working journalist after giving a written notice of his intention to do so in form B. If the nominee predeceases the working journalist, the interest of the nominee shall revert to the working journalist, who may make a fresh nomination in accordance with these rules.

(6) A nomination or its modification shall take effect, to the extent it is valid on the date on which it is received by the newspaper establishment.

6. *Deductions from gratuity.*—The gratuity will be subject to deductions on account of overpayments made to a working journalist by the newspaper establishment liable to pay such gratuity and monies borrowed by the working journalist from such newspaper establishment.

CHAPTER III

HOURS OF WORK

7. *Special provisions regarding editors etc.*—(1) The provision of this Chapter shall not apply to editors, or to correspondents, reporters or news-photographers.

(2) Notwithstanding anything contained in sub-rule (1), the following provisions shall apply to every correspondent, reporter or news-photographer stationed at the place at which the newspaper (in relation to which any such person is employed) is published, namely :—

(a) subject to such agreement as may be arrived at either collectively or individually between the parties concerned, every such correspondent, reporter or news-photographer shall, once he enters upon duty on any day, be deemed to be on duty throughout that day till he finishes all the work assigned to him during that day :

Provided that if such correspondent, reporter or news-photographer has had at his disposal for rest any interval or intervals for a total period of two hours or less between any two or more assignments of work, he shall not be deemed to be on duty during such period ;

Provided further that where the total period of such interval or intervals exceeds two hours, he shall be deemed to be on duty during the period which is in excess of the said period of two hours;

(b) Any period of work in excess of thirty-six hours during any week (which shall be considered as a unit of work for the purposes of this sub-rule) shall be compensated by rest during the succeeding week and shall be given in one or more spells of not less than three hours each :

Provided that where the aggregate of the excess hours worked falls short of three hours, the duration of rest shall be limited only to such excess.

8. *Normal working day.*—The number of hours which shall constitute a normal working day for a working journalist exclusive of the time for meals shall not exceed six hours per day in the case of a day shift and five and half hours per day in the case of a night shift and no working journalist shall ordinarily be required or allowed to work for longer than the number of hours constituting a normal working day.

9. *Interval for rest.*—Subject to such agreement as may be arrived at between a newspaper establishment and working journalists employed in that establishment, the periods of work for working journalists shall be so fixed that no working journalist shall work for more than four hours in the case of day shift and three hours in the case of night shift before he had had an interval of rest, in the case of day shift for one hour, and in the case of night shift for half an hour.

10. *Compensation for overtime work.*—When a working journalist works for more than six hours on any day in the case of a day shift and more than five-and-half hours in the case of a night shift he shall, in respect of that overtime work, be compensated in the form of hours of rest equal in number to the hours for which he has worked overtime.

11. *Conditions governing night shifts.*—No working journalist shall be employed on a night shift continuously for more than one week at a time or for more than one week in any period of fourteen days :

Provided that, subject to the previous approval of the State Labour Commissioner or any authority appointed by the State Government in this behalf, the limit prescribed in this rule may be exceeded where special circumstances so require.

12. *Interval preceding change of shift.*—In the case of change of shift from night shift to day shift or *vice versa*, there shall be an interval of not less than twenty-four consecutive hours between the two shifts and in the case of a change from one day shift to another day shift or from one night shift to another night shift there shall be interval of not less than twelve consecutive hours;

Provided that no such interval may be allowed if such interval either coincides with, or falls within, the interval enjoyed by a working journalist under sub-section (2) of section 6 of the Act.

CHAPTER IV

HOLIDAYS

13. *Number of holidays in a year.*—A working journalist shall be entitled to ten holidays in a calendar year.

14. *Compensatory holidays.*—If a working journalist is required to attend on a holiday, a compensatory holiday shall be given to him, within thirty days immediately following the holiday, on a day mutually agreed upon by him and his employer.

15. *Wages for holidays.*—A working journalist shall be entitled to wages on all holidays as if he was on duty.

16. *Wages for weekly day of rest.*—A working journalist shall be entitled to wages for the weekly day of rest as if he was on duty.

CHAPTER V

LEAVE

17. *Competent Officers.*—Every newspaper establishment may designate one or more officers in that establishment as competent officers for the purposes of this chapter.

18. *Application for leave.*—(1) A working journalist who desires to obtain leave of absence shall apply in writing to the Competent Officer.

(2) Application for leave, other than casual leave, leave on medical certificate and quarantine leave, shall be made not less than one month before the date of commencement of leave, except in urgent or unforeseen circumstances.

19. *Recording of reason for refusal or postponement of leave.*—If leave is refused or postponed, the competent officer shall record the reasons for such refusal or postponement, as the case may be, and send a copy of the order to the working journalist.

20. *Affixing of holidays to leave.*—Holidays, other than weekly days of rest, shall not be prefixed or suffixed to any leave without the prior sanction of the competent officer.

21. *Holidays intervening, during period of leave.*—A holiday, including a weekly rest day, intervening during any leave granted under these rules shall from part of the period of leave.

22. *Recall before expiry of leave.*—(1) A newspaper establishment may recall a working journalist on leave if that establishment considers it necessary to do so. In the event of such recall such working journalist shall be entitled to travelling allowance if at the time of recall he is spending his leave at a place other than his headquarters.

(2) The travelling allowance which shall be paid to a working journalist under sub-rule (1) shall be determined in accordance with the rules of the newspaper establishment governing travelling allowance for journeys undertaken by working journalists in the course of their duties.

23. *Production of medical certificate of fitness before resumption of duty.*—A working journalist who has availed himself of leave for reasons of health may be required by his employer to produce a medical certificate of fitness from an authorised medical practitioner before he resumes duty.

24. *Designation of authorised medical practitioner.*—Every newspaper establishment may designate one or more registered medical practitioner as authorised medical practitioners for the purposes of these rules.

25. *Earned leave.*—(1) A working journalist shall be entitled to earned leave on full wages for a period not less than one month for every eleven months spent on duty:

Provided that he shall cease to earn such leave when the earned leave due amounts to ninety days.

(2) The period spent on duty shall include the weekly days of rest, holidays, casual leave and quarantine leave.

26. *Wages during earned leave.*—A working journalist on earned leave shall draw wages equal to his average monthly wages earned during the period of twelve complete months spent on duty, or if the period is less than twelve complete months, during the entire such period, immediately preceding the month in which the leave commences.

27. *Cash compensation for earned leave not availed of.*—(1) When a working journalist voluntarily relinquishes his post or retires from service on reaching age of superannuation, he shall be entitled to cash compensation for earned leave not availed of upto a maximum of thirty days:

Provided that a working journalist who has been refused earned leave due to him shall be entitled to get cash compensation for the earned leave so refused:

Provided further that in the case of a working journalist who dies while in service and who has not availed himself of the earned leave due to him immediately preceding the date of his death, his heirs shall be entitled to cash compensation for the leave not so availed of.

(2) When a working journalist's services are terminated for any reason, whatsoever, other than as punishment inflicted by way of disciplinary action, he shall be entitled to cash compensation for earned leave not availed of upto a maximum of ninety days.

(3) The cash compensation shall not be less than the amount of wages due to a working journalist for the period of leave not availed of, the relevant wage being that which would have been payable to him had he actually proceeded on leave on the day immediately preceding the occurrence of any of the events specified in sub-rules (1) or (2), as the case may be.

28. *Leave on medical certificate.*—(1) A working journalist shall be entitled to leave on medical certificate on one-half of the wages at the rate of not less than one month for every eighteen months of service:

Provided that he shall cease to earn such leave when the leave on medical certificate amounts to ninety days.

(2) The medical certificate shall be from an authorised medical practitioner.

(3) Leave on medical certificate may be taken in continuation with earned leave provided that the total duration of earned leave and leave on medical certificate taken together shall not exceed a hundred and twenty days at any one time.

(4) A working journalist shall be entitled at his option to convert leave on medical certificate on one-half of the wages to half the amount of leave on full wages.

(5) The ceiling laid down in the provisos to sub-rule (1) and sub-rule (3) on the accumulation and total duration of leave may be relaxed by the competent officer in the cases of working journalists suffering from lingering illness such as tuberculosis.

29. *Maternity leave.*—(1) A female working journalist who has put in not less than one year's service in the newspaper establishment in which she for the time being employed shall be granted maternity leave on full wages for a period which may extend up to three months from the date of its commencement or six weeks from the date of confinement whichever be earlier.

(2) Leave of any other kind may also be granted in continuation of maternity leave.

(3) Maternity leave shall also be granted in cases of mis-carriage, including abortion, subject to the condition that the leave does not exceed six weeks.

30. *Quarantine leave.*—Quarantine leave on full wages shall be granted by the newspaper establishment on the certificate of the authorised medical practitioner designated as such under rule 24 or where, there is no such authorised medical practitioner by a district public health officer or other Municipal health officer of similar status, for a period not exceeding twenty-one days, or in exceptional circumstances, thirty days. Any leave necessary for quarantine purposes in excess of that period shall be adjusted against any other leave that may be due to the working journalist.

31. *Extraordinary leave.*—A working journalist who has no leave to his credit may be granted extraordinary leave without wages at the discretion of the newspaper establishment in which such working journalist is employed.

32. *Leave not due.*—A working journalist who has no leave to his credit may be granted at the discretion of the newspaper establishment in which such working journalist is employed leave not due.

33. *Study leave.*—A working journalist may be granted study leave with or without wages at the discretion of the newspaper establishment in which such working journalist is employed.

34. *Casual leave.*—(1) A working journalist shall be eligible for casual leave at the discretion of the newspaper establishment for fifteen days in a calendar year:

Provided that not more than five days' casual leave shall be taken at any one time and such leave shall not be combined with any other leave.

(2) Casual leave not availed of during a calendar year will not be carried forward to the following year.

35. *Wages during casual leave.*—A working journalist on casual leave shall be entitled to wages as if he was on duty.

CHAPTER VI

MISCELLANEOUS.

36. *Applications under section 17 of the Act.*—(1) An application under section 17 of the Act shall be made to the Government of the State where the headquarters of the newspaper establishment in which he is employed or its Branch are situated.

(2) Before deciding any application under section 17, the State Government or such authority specified in this behalf by the State Government under that section shall give a reasonable opportunity to the parties concerned of being heard.

37. *Appointment of Inspectors.*—The State Government may by notification in the *Official Gazette*, appoint one or more Inspectors and assign to every such Inspector such jurisdiction as it thinks fit. It shall be the duty of every such Inspector to ensure that the provisions of the Act and rules thereunder and the decisions, if any, of a Wage Board constituted under the Act, are implemented in full by all newspaper establishments within his jurisdiction. He may visit any newspaper establishment, and may make such enquiries and collect such information as he may consider necessary for the proper discharge of his duties.

38. *Effec. of rules and agreements inconsistent with these rules.*—The provisions of these rules shall have effect notwithstanding anything inconsistent therewith contained in any other rule or agreement or contract of service applicable to a working journalist:

Provided that where under any such rule, agreement or contract of service or otherwise, a working journalist is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under these rules, the working journalist shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under these rules.

FORM 'A'

Nomination form for payment of gratuity under section 5 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.

Rule 5(1)

1. Name (in block letters)..............Surname (if any)..................
2. Sex ....
3. Religion ....
4. Occupation ....
5. Father's name ....
6. Husband's name ....
   (for married women only.)
7. Marital Status ....
   (whether bachelor, spinster, married, widow or widower)
8. Date of birth..........day ....Month..........Year..........

9. Permanent address :—

Village.........Thana.........District.........State.........

I hereby nominate the person/s mentioned below to receive the amount of gratuity standing to my credit, in the event of my death before that amount has become payable, or having become payable has not been paid and direct that the said amount shall be distributed among the said persons in the manner shown below against their names :—

Name and address of the nominee or nominees	Nominee's relationship with the working journalist	Age of nominee	Amount of share of gratuity to be paid to each nominee	Contingencies on the happening of which the nomination shall become invalid
1	2	3	4	5

Date.................................... Signature of the working journalist.

Certified that above declaration has been signed by......... ....employed in..(the name of the newspaper establishment to be given) before me after he has read the entries. / the entries have been read over to him by me. *

Dated..Signature of a responsible officer of the Newspaper establishment.

Signature of witness.....................(1) Designation...................................

Dated.....................................

Signature of witness.....................(2) Name and address of the newspaper establishment...........................

Dated....................................

FORM "B"

Nomination form for payment of gratuity under section 5 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.

Rule 5(5)

I...........hereby cancel the nomination made by me on the..............as regards the disposal in the event of my death of the amount of gratuity standing to my credit and hereby nominate the person/s mentioned below to receive the amount of gratuity standing to my credit, in the event of my death before that amount has become payable, or having become payable has not been paid and direct that the said amount shall be distributed among the said persons in the manner shown below against their names :—

name & address of the Nominee or nominees	Nominee's relationship with the working journalist	Age of the nominee	Amount or share of gratuity to be paid to each nominee	Contingencies on the happening of which the nomination shall become invalid
1	2	3	4	5

Dated................................ Signature of the working journalist.

Certified that the above declaration has been signed before me by......... employed in.................(the name of the newspaper establishment to be given).

Dated................................ Signature of a responsible official of the newspaper establishment.

Signature of witness..............(1) Designation....................................

Dated...................................... Name and address of the Newspaper

Signature of witness..............(2) Establishment . ...

Dated......................................

Tramway Services in Calcutta & Howrah declared public utility services.

Notification No. 823I.R./D/1A-2/56, dated 13th March, 1957.*

Whereas the State Government is satisfied that the public interest requires that the industry mentioned in the schedule below, should be declared as a public utility service ;

Now, therefore, in exercise of the power conferred by proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor is pleased to declare the industry specified in the schedule below, to be a public utility service for a further period of six months, with effect from the 19th March, 1957 :—

SCHEDULE

The Tramway services in Calcutta and Howrah.

Certain Rules applied to Working Journalists in Bengal.

I

*Notification No. 820I.R./D/1R-5/56 dated, 12th March, 1957**.*

In exercise of the powers conferred by section 15 of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), read with section 14 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (XLV of 1955), the Governor is pleased to make, after previous publication, as required by sub-section (1) of the said section 15, the following rule, namely :—

RULE

The provisions of Bengal Industrial Employment (Standing Orders) Rules, 1946, as in force for the time being, shall apply to every newspaper establishment wherein twenty or more newspaper employees are employed or were employed on any day of the preceding twelve months as if such newspaper establishment were an industrial establishment to which the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), has been applied by a notification under sub-section (3) of section 1 of the Act, and as if a newspaper employee were a workman within the meaning of that Act.

*Cal. Gaz., 28-3-57, Pt. I, p. 1118, **Ibid 1119

II

Notification No. 8211.R./D/1R-5/56, dated 12th March, 1957.*

In exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947 (XIV of 1947), read with section 3 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (XLV of 1955), the Governor is pleased to make, after previous publication, as required by sub-section (1) of the said section 38, the following rule, namely :—

RULE

The provisions of the Bengal Industrial Disputes Rules, 1947, as in force for the time being, shall apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of the Industrial Disputes Act, 1947.

Employees State Insurance—Exemptions.

*Notification No. 6160(ST) XXXVI-A—436-56, dated October 23, 1956***

In exercise of the powers conferred by section 88 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Governor of Uttar Pradesh is pleased to exempt for a period from October 28, 1956, to September 30, 1957, from the provision of the said Act, except Chapter V-A thereof—

(*a*) any person employed directly by a principal employer or through an immediate employer on loading or unloading outside the factory or on loading or unloading of goods or material going out of or coming in at the factory gates or sidings, provided that if such person is employed directly by the principal employer continuously (but for breaks due to weekly or other holidays), for more than fifteen days (including such holidays), the exemption will cease from the 16th day of the employment by the same principal employer;

(*b*) any person employed on work which is not ordinarily the work of the factory but is of a casual nature, that is to say, work which is not ordinarily carried on for more than fifteen days in a calendar month and was not carried on for more than sixty days in the preceding calendar years.

Provided that any employee who is generally employed on any work other than that specified in (*a*) or (*b*) above shall continue to be covered under the Act irrespective of his temporary employment on the said work :

Provided further that, notwithstanding this exemption, any employee so exempted, shall continue to be entitled to such benefits under the Act to which he might have qualified on the basis of contributions paid before the date from which he gets exempted.

---

*Ibid, p. 1119, ** U.P. Gaz., 27-10-56, Pt I, p. 1421,

and the Board, Court or Tribunal may summon and examine *suo motu* 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".

The learned counsel for the petitioners has urged that under section 11(3)(b) read with rule 21 the Tribunal can order inspection only in accordance with Order XI, rule 18, Civil Procedure Code, while it is urged on behalf of the Tribunal that it is open to it under section 11(1) to decide its own procedure as it thinks fit and, therefore, it need not comply with the provisions of Order XI, rule 18, Civil Procedure Code.

Now, from reading section 11(3) of the Act together with rule 21 framed thereunder it is clear that in matters of discovery, production and inspection the Tribunal has the same powers which civil courts have under the Civil Procedure Code. In the present case we are only concerned with the production and inspection of documents of the Company. The provisions relating to inspection of documents are given in Order XI, rule 15 and rule 18. The management has no objection to the inspection of the already produced audited balance-sheets by the workmen. Its objection is limited to inspection of account books, i.e., ledgers, stock registers, vouchers, etc., etc. Admittedly, these documents have not been referred to by the management in their statement of claims and pleadings and therefore Order XI, rule 15 and Order XI, rule 18(1) have no application. It is also admitted by the parties before me that the provisions of Order XI, rule 18(2) have not been complied with in the present case as no affidavit has been filed for this purpose on behalf of the workmen, nor has the Tribunal given a finding that the inspection of these documents is necessary for effective disposal of the case. The contention of the learned counsel for the respondents, as I have stated above, is that in these proceedings the Tribunal need not conform to any provisions of the Code of Civil Procedure, and for this purpose reliance is placed on section 11(1) of the Act. That sub-section, however, is subject to any rules that may be made in this behalf and rule 21 is that rule. As the powers of civil courts are limited in these matters by the provisions laid down in Order XI, rule 18, to my mind the Tribunal's powers are also similarly limited. The general terms in which section 11(1) is couched are limited in the matters enumerated in section 11(3) and rule 21 to the provisions of the Civil Procedure Code. I am, therefore, clear that the Tribunal must comply with the provisions of Order XI, rule 18 before ordering inspection of documents of the opposite side, and the present orders must be set aside in view of the fact that these orders have been passed in contravention of the provisions of the Civil Procedure Code.

It was then urged on behalf of the workmen that it is in fact necessary that the workmen should examine these books of the Company, so that they may be able to substantiate their case before the Tribunal. I am, however, unable to see how a roving and fishing inquiry into all the account-books and other books of the Company for the years 1952-53, 1953-54 and 1954-55 can help the workmen in claiming bonus for the years 1952-53 and 1953-54, and I do not propose to decide this matter as the data available to me is wholly insufficient for the purpose. I have no doubt that the Tribunal will decide these matters afresh after complying with the provisions of the Civil Procedure Code, and at that time, it will determine the difficulties of workmen that they have to face in proving the financial position of the Company.

For all these reasons I accept this petition and set aside the orders of the Tribunal dated the 1st of September, 1952, allowing inspection of 1952-53 and 1953-54 documents to the workmen and the other order of the same date directing the Company to produce all the account-books and documents relating to the year 1954-55.

There will be no orders as to costs.

[IN THE PUNJAB HIGH COURT.]

AMIN CHAND PYARE LAL

v.

SECOND PUNJAB INDUSTRIAL TRIBUNAL.

Bishan Narain, J.

March 13, 1957.

INDUSTRIAL DISPUTES ACT, SECTION 2(s)—'WORKMAN'—DEFINITION OF—QUESTION WHETHER A PERSON FALLS WITHIN DEFINITION—WHETHER MATTER WHICH CAN BE DECIDED BY INDUSTRIAL TRIBUNAL—REFERENCE OF MATTER TO TRIBUNAL—VALIDITY.

SETTLEMENT—SETTLEMENT BEFORE CONCILIATION OFFICER—WHETHER CAN BE QUESTIONED ON GROUNDS OF IMPROPER REPRESENTATION OF PARTY—SETTLEMENT CONTAINING PROVISION FOR REFERENCE OF MATTER TO THIRD PARTY—VALIDITY—REFERENCE OF MATTERS COVERED BY SETTLEMENT TO INDUSTRIAL TRIBUNAL—VALIDITY.

The question whether a person falls within the definition of 'workman' in section 2(s) of the Industrial Disputes Act, 1947, can be decided by an Industrial Tribunal and a reference by the Government of the matter to an Industrial Tribunal under section 10 of the Act will be valid.

A settlement arrived at between the parties to an industrial dispute before a Conciliation Officer should not be invalidated on technical grounds. Where such a settlement was properly entered into and the workmen were represented by a trade union, it will not be open to another trade union to canvass the validity of the settlement on the ground that the workmen were not properly represented.

A settlement can contain a provision for reference of certain matters of dispute to a third party whose decision shall be binding on the parties and cannot be held to be invalid on the ground that the settlement does not itself settle the matters of dispute.

Where a settlement exists in respect of certain matters of dispute, a reference of those matters by the Government to an Industrial Tribunal will not be in accordance with the law.

Civil Writ No. 154 of 1956.

Bhagirath Dass for the petitioner.

S. M. Sikri, Advocate-General for the respondent.

JUDGMENT.

The Governor of the Punjab by notification dated 19th March, 1956, referred five matters for adjudication to the Industrial Tribunal under the Industrial Disputes Act, 1947. This notification refers to eight different industrial concerns of Jullundur City dealing in metal works including the present petitioners, Messrs. Amin Chand Pyare Lal and Messrs. Aeron Steel Rolling Mills, who have filed these two writ petitions (Civil Writs No. 154 of 1956 and No. 168 of 1956) to get the reference held invalid and quashed so far as it relates to them. As the facts and the points involved in these two petitions are common, it will be convenient to decide them by this judgment. These petitions were originally directed against the Tribunal and the State of the Punjab. Later on, the District Metal Mazdoor Union Registered, Jullundur, on its application were impleaded as respondents in both the cases.

The learned counsel for the petitioners has supported these petitions before me only on two grounds: (1) that the employees are contractors and not workers within the Industrial Disputes Act and this dispute is to be decided by this Court and not by the Tribunal and (2) that the employers and the employees through the Azad Factory Workers' Union had settled their disputes on intervention and in the presence of the Labour Commissioner, Punjab, on 14th March, 1956, under section 12(3) of the Act and after that settlement the reference must be held to be invalid. The correctness of both these points is challenged by the Punjab State as well as by the Metal Mazdoor Union.

It appears that on 9th December, 1955, the workers in these industries made certain demands on the employers regarding their terms of employment and conditions of labour. They resorted to a token strike for one day on 9th January, 1956, and ultimately on 24th January, 1956, went on a prolonged strike. Conciliation proceedings under section 12 of the Act were started on 29th February, 1956, between the employers and the Azad Factory Workers' Union in the presence of the Conciliation Officer. Settlement was arrived at on 14th March, 1956, in the presence of the Labour Commissioner, Punjab. The impugned notification referring the dispute to the Tribunal was, as stated above, issued on 19th March, 1956.

One of the questions referred reads:

"Whether the piece-rated workers in the establishments mentioned above should be treated as workmen, as defined in the Industrial Disputes Act."

It was half-heartedly argued that this matter could not be the subject-matter of reference as it is to be decided by this Court and it is only after the decision of this matter that the Industrial Tribunal can have any jurisdiction. Ultimately, after some arguments, the learned counsel conceded that the Tribunal had jurisdiction to decide this point. In fact this matter has been decided by their Lordships of the Supreme Court in *Dhrangadhra Chemical Works Ltd.* v. *State of Saurashtra and others* [1956] 11 F.J.R. 439. Their Lordships have held that whether employees are workers within the Act or are independent contractors is to be decided by the Tribunal and in this judgment their Lordships have laid down some of the matters that should be considered when deciding this dispute. This contention therefore fails and is rejected.

The other contention of the petitioners has considerable force. The settlement is dated 14th March, 1956. It is headed as a "settlement under section 12(3) of the Industrial Disputes Act between the workmen and management of the under-noted factories in the presence of Labour Commissioner, Punjab". It settles disputes under eight headings. It is signed by the President and Secretary of the Azad Factory Workers' Union and representatives of six employer firms. The Personal Assistant of the Labour Commissioner, Punjab, has also signed it on behalf of the Labour Commissioner with the statement that the document has been signed by the parties to the dispute in his presence. In the written statement it is pleaded that the agreement with the Azad Factory Workers' Union was not binding on the parties and that there was no formal settlement under section 12(3) between the management and the representatives of the District Metal Mazdoor Union Registered, Jullundur.

It is common ground that this settlement was arrived at in the presence of the Conciliation Commissioner, Punjab. It is conceded on behalf of the respondents that the Commissioner had the authority to bring about a settlement between the parties as laid down in sections 11 and 12 of the Act. It is admitted in para. 5 of the written statement that the agreement was mutually arrived at between the representatives of the management and the workmen (Azad Factory Workers' Union). Now, section 36 of the Act reads:

"36. *Representation of parties.*—(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of a registered trade union of which he is a member;

(b) an officer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

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

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—(a) an officer of an association of employers of which he is a member;

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

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

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

(4) In any proceeding before a Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Tribunal."

It is not stated in the written statement nor was it argued before me that the Azad Factory Workers' Union could not represent the workers who were parties to the dispute. It is therefore not understood why the workers could not be effectively represented by this union. It must be remembered that no workman as such has repudiated this settlement till to-day. Moreover considering the circumstances in which conciliation proceedings took place it is impossible to hold that at that time the Azad Factory Workers' Union did not genuinely represent the workers. The strike in these factories had started on 24th January, 1956, and conciliation proceedings were started on 29th February, 1956. In view of the seriousness of the situation the Labour Commissioner, Punjab, himself intervened and brought about a compromise on 14th March, 1956. If there had been any dispute at that time as to the union that should represent the workers then the matter was bound to have been brought to the notice of the Commissioner who would have then had to decide whether he should recognise one or the other union as representing the workers who were parties to the dispute. The District Metal Mazdoor Union, Jullundur, was impleaded at its own application. This union has not considered it fit to file any written statement showing its *locus standi* to represent the workmen nor has it made any effort to challenge the right of Azad Factory Workers' Union to represent the workers in these industries. There is also no explanation why this District Union did not appear in the conciliation proceedings and before the Labour Commissioner. There is thus no material on this record on which one can conclude that the Azad Factory Workers' Union was not entitled to represent the workers in the conciliation proceedings. In this connection the absence of repudiation of the settlement till now by any workman is not without significance. On the material on this record I hold that the Azad Factory Workers' Union effectively represented the workmen in the conciliation proceedings which culminated in a settlement on 14th March, 1956.

It was then argued that in this settlement certain disputes had been referred to another body to settle them and such a settlement cannot be considered to be one within section 12(3) of the Act. This point has not been specifically taken in the written statement. In any case it has no force. It is true that under the settlement in question most of the disputes are to be discussed between the representatives of each party in the presence of the Labour Officer whose decision in case of differences would be final. I fail to see why such a settlement is invalid in law. The main purpose of the Industrial Disputes Act is to investigate into disputes between management and workmen and to bring about an amicable settlement between them. It is only when such a settlement cannot be arrived at that the Government intervenes and by compulsory arbitration brings about adjudication of the disputes between the parties. As I read the object and purpose of the Act it appears to me that powers under section 10 are to be exercised only after all reasonable efforts to get the disputes settled amicably have failed. I see nothing improper in the parties deciding the matter through the good offices of any person (in this case it must point to Labour Officer). It must be remembered in this case that at that time the strike had gone on for about two months and it was in the interest of both parties that the strike should be terminated and work in the mills restarted. I see nothing improper in the parties agreeing to get their disputes decided with the good offices of the Labour Officer instead of getting those disputes referred for adjudication by the Tribunal. Such a settlement as the above, allows tempers to be cooled down and a lasting settlement to be arrived at between the parties after discussion in the presence of the Labour Officer. After all it is in the interest both of the management and the workmen that every endeavour should be made to support a settlement which has been arrived at between the parties freely in the presence of a Conciliation Officer and I think it would defeat the object and purpose of the Act to invalidate such a settlement on some technical ground. In this connection it may be pointed out that section 19 lays down the procedure for avoiding a settlement arrived at between the parties and admittedly no step till now has been taken to invoke the provisions of this section. My conclusion therefore is that the settlement of 14th March, 1956, is legal and binding on the parties.

It is common ground that if the settlement is binding on the parties then the reference of the alleged disputes on 19th March, 1956, was not in accordance with law. I may state at this stage that it appears to me on the material on the record that in the present case the dispute is really between the two unions relating to right of representation under section 36 of the Act rather than between the management and the workmen.

For those reasons I accept this petition and set aside the reference in dispute under section 10(1)(c) so far as it relates to the petitioners in these two writ petitions. There will be no order as to costs.

[IN THE PATNA HIGH COURT.]

DHAGAMWAR NARSINGH
v.
CHIEF INSPECTOR OF MINES IN INDIA

Ramaswami, C.J. and Raj Kishore Prasad, J.

March 27, 1957.

WELFARE OFFICER—QUALIFIED PERSON DISCHARGING DUTIES OF WELFARE OFFICER—WHETHER WELFARE OFFICER—NECESSITY OF APPOINTMENT AS WELFARE OFFICER UNDER RULE 72—INDIAN MINES RULES, 1955, RR. 72, 74.

Unless a person has been appointed as a Welfare Officer under Rule 72 of the Indian Mines Rules, 1955, he has no right of appeal under Rule 74 against an order of dismissal issued by the management. Even if the person has all the qualifications for a Welfare Officer and has actually been discharging the duties of Welfare Officer for some time, unless he has actually been appointed under Rule 72, he cannot claim the benefit of Rule 74.

Miscellaneous Judicial Case No. 315 of 1956.

Shivanugrah Narain, Keshri Kishore Saran and Brajeshwar Prasad Sinha for the petitioner.

Advocate-General, Padmanand Jha, Balbhadra Prasad Singh and *T. K. Prasad* for the opposite party.

JUDGMENT.

RAJ KISHORE PRASAD, J.—In this case the petitioner, Dhagamwar Narsingh, has obtained a rule from this Court, on an application under articles 226 and 227 of the Constitution for an appropriate writ to quash the order dated the 6th of April, 1956, of the Chief Inspector of Mines in India, opposite party 1, declining to consider on merits the appeal preferred by him under the Proviso to Rule 74 of the Mines Rules, 1955, made under section 58 of the Mines Act, 1952 (Act XXXV of 1952), against an order dated the 5th of December, 1955, of opposite party 2, discharging the services of the petitioner.

The order of opposite party 1, which is sought to be quashed, is Annexure H, to the application of the petitioner, and, the order of discharge passed by opposite party 2 is Annexure D to it.

Cause has been shown by the Advocate-General on behalf of opposite party 1, and, by Mr. Balbhadra Prasad Singh, on behalf of opposite party 2, Both of them have also filed a counter-affidavit each in reply to the affidavit of the petitioner.

The petitioner's case is that on 3rd December, 1947, he was appointed by opposite party 2 as its Chief Labour Officer, and, was subsequently designated as Chief Personnel Officer, and was posted to Jamadoba in the subdivision of Dhanbad, which was then in Manbhum district but now it appertains to Dhanbad district, and was attached to the coal mines of opposite party 2.

Before joining the services of opposite party 2, the petitioner was in the services of the Government of India in the Department of Labour from October, 1942, to November, 1947, at first as an Assistant Labour Welfare Adviser, later as Conciliation Officer, and immediately before joining the the services of opposite party 2 as a Regional Labour Commissioner at Dhanbad. The petitioner was offered the post of its Chief Labour Officer by opposite party 2 in the scheme of looking after the welfare of the workmen in the coal mines, and since his appointment he was looking after the welfare of the Labour in those coal mines. The petitioner, therefore, stated that he was qualified to work as a Welfare Officer as contemplated by Rule 72 of the Mines Rules, and since the date of his appointment in the coal mines of opposite party 2 he had been discharging the duties of a Welfare Officer as contemplated by Rule 73 of the Mines Rules, in accordance with the schedule of his duties prescribed by opposite party 2, a copy of which is attached to the application of the petitioner, and is Annexure A. The petitioner has further stated that he continued to persorm his duties in the coal mines of opposite party 2 even after the Mines Rules, 1955, came into force on the 2nd July, 1955.

The petitioner then states that on 7th December, 1955, he received a notice (Annexure B) from one of the Directors of opposite party 2 whereby the petitioner was discharged from service with effect from the 1st February, 1956, on the ground that his services were no longer required, and he was further directed to cease to work from the date of receipt of the notice.

The petitioner, therefore, preferred an appeal on 20th December, 1955, to the Chief Inspector of Mines in India, opposite party 1, as provided by the Proviso to Rule 74 of the Mines Rules, 1955. Opposite party 1, however, ultimately after hearing the petitioner rejected his appeal on 6th April, 1956, on the ground that as the petitioner was not appointed a Welfare Officer under Rule 72(1) of the Mines Rules, 1955, the proviso to Rule 74 of the said Rules was not applicable to him, and, therefore, the appeal of the petitioner could not be entertained by him.

The order of opposite party 1, is Annexure H to the affidavit of the petitioner, and, is to the following effect:

"D. Narsingh was appointed as Chief Labour Welfare Officer of the Tata Iron and Steel Co., Ltd., by appointment letter dated 23rd September, 1947. He worked in this capacity for some years and a notice was served

on him terminating his services with effect from 1st February, 1956. The notice runs as follows:

'As your services are no longer required by us, they will stand terminated as from 1st February, 1956. You will be paid your salary for December, 1955 but you are not required to work from the date of receipt of this letter.

2. You will also be paid one month's salary in lieu of one Calender month's notice. The notice period will commence from 1st January, 1956.

3. You will also be paid salary in lieu of any leave that may be due to you under the rules.

4. You will be paid proportionate profit sharing bonus for 1955-56 when declared.

5. Please arrange to vacate the quarters allotted to you by 31st January, 1956. On your giving vacant possession of the quarters by this date your dues will be settled.'

After receipt of the notice, a memorandum of appeal was filed by Mr. D. Narsingh under Rule 74 of the Mines Rules, 1955.

Mr. Narsingh has contended in his memorandum of appeal that his appointment should be treated as that of Welfare Officer under Rule 72 of the Mines Rules aforesaid and that his dismissal has been unjustified and uncalled for and irregular. The company was asked by me to submit its comments upon the memorandum of appeal filed by Mr. Narsingh. The Company has submitted its comments and it has contended that the appeal filed by Mr. Narsingh is incompetent as he was not appointed as a Welfare Officer under Rule 72 of the Mines Rules, 1955. The first point, therefore, which comes up for my consideration is as to whether Mr. Narsingh has been appointed as a Welfare Officer within the meaning of Rule 72 of the Mines Rules, 1955. The term 'Welfare Officer' has not been defined any where in the Mines Rules aforesaid, and to determine as to whether Mr. Narsingh should be treated as Welfare Officer or not, one has to consider the duties of the Welfare Officer as laid down in Rule 73 of the Mines Rules, 1955. Along with this memorandum of appeal Mr. Narsingh has given extract from the revised memorandum of duties for the Personnel Department of the Collieries of the Tata Iron and Steel Co. Ltd. The extract from the revised memorandum for the Personnel Department of the collieries of the Tata Iron and Steel Co. Ltd., lays down that the duties of the officers of that Department would be to promote the security, health, welfare of the workers in the interest of the productive efficiency and that they would be responsible for seeing that labour in turn was treated with justice and fairness.

Mr. Narsingh in his letter dated 6th February, 1956, has also given details of the duties he was performing.

On taking notice of the duties which were being performed by Mr. Narsingh in the light of the duties of the Welfare Officer as laid down in rule

73, it would be found that Mr. Narsingh was discharging the duties very akin to those of the Welfare Officer as contemplated by rule 72. Therefore, there should be no difficulty in coming to the conclusion that *Mr. Narsingh was performing duties akin to those of Welfare Officers as contemplated by rule 72 and he was qualified to work as a Welfare Officer.*

The next point for consideration is as to whether Mr. Narsingh should be deemed to have been appointed as a Welfare Officer under rule 72 of the Mines Rules, 1955. The requirements of this rule in this connection are that for every mine a Welfare Officer shall be appointed and a written notice of such appointment shall be given to the Chief Inspector of Mines. Therefore, rule 72 clearly contemplates appointments made in pursuance of these rules after the date of their enforcement. It is true that the owner, agent or manager can, in suitable cases, approach the Chief Inspector of Mines for appointment of those persons who have been working as Welfare Officers before the enforcement of these rules and where their qualifications fell short of those laid down in rule 72, but then each case of appointment made with or without the approval of the Chief Inspector of Mines, has got to be intimated to the Chief Inspector of Mines by notice in writing. This, however, is to be done by the owner, agent or Manager of the mine and not by the person who has been working in the mine before and discharging the duties akin to those of the Welfare Officer. In the present case, no written notice has been received in the office of the Chief Inspector of Mines regarding the appointment of Mr. Narsingh as the Welfare Officer of the Mine, and it is therefore difficult to see how Mr. Narsingh can be treated to have been appointed as a Welfare Officer under rule 72 of the aforesaid Mines Rules. As already pointed out it was, however, the duty of the owner, agent or manager of the mine to give such notice of appointment of Mr. Narsingh; particularly when they were taking work from him akin to that of Welfare Officer even for several months after the enforcement of these rules.

Rule 74 has got application only in a case where appointment has been made of a Welfare Officer under rule 72. As already stated, the appointment of Mr. Narsingh has not been notified to the Chief Inspector of Mines and as such rule 74 of the Mines Rules, 1955, is not applicable. The appeal therefore, cannot be entertained by me.

Mr. Narsingh in his memorandum has contended that his dismissal is unjustified, uncalled for and irregular. This, however, is a question for which he may seek redress in some proper court of law.

The parties are being informed accordingly."

Opposite party 1, the Chief Inspector or Mines in India, has filed a counter-affidavit in which he has stated that the appeal preferred before him was not competent, because the petitioner was neither appointed a Welfare Officer within the meaning of rule 72 of the Mines Rules, 1955, nor in accordance with the provisions of the Rules nor was he qualified to be so appointed.

Opposite party 2, in its counter-affidavit, has stated that the petitioner

was Principal Adviser to the Superintendent of Collieries in all personnel matters relating to all its collieries. It was denied that since his appointment the petitioner has been discharging the duties of a Welfare Officer as contemplated by rule 73 of the Mines Rules, 1955. Opposite party 2 further stated that no Welfare Officer was appointed during the relevant period and accordingly no notice was given to the Chief Inspector of Mines as required by rule 72, clause (4) of the Mines Rule, 1955.

Mr. Shivanugrah Narain, in support of the rule, attacked the validity of the order of the Chief Inspector of Mines in India, opposite party 1, (Annexure H), firstly, on the ground that the petitioner was validly appointed as a Welfare Officer within the meaning of rule 72(1) of the Mines Rules, 1955, and, as such, the failure to give a notice by opposite party 2 to opposite party 1 as required by sub-rule (4) of rule 72 of the Mines Rules, 1955, did not invalidate his appointment, and therefore, opposite party 1 has wrongly held that he was not competent to hear the appeal of the petitioner preferred before him under the Proviso to rule 74 of the Mines Rules, 1955, and consequently, he failed to exercise his jurisdiction vested in him by law in declining to decide the appeal of the petitioner on merits. Secondly, in this connection, he contended that rule 72(4) of the Mines Rules was directory, and not mandatory, and therefore, the failure to comply with the provisions of rule 72(4) of the Mines Rules, 1955, will not invalidate the appointment of a Welfare Officer under rule 72 (1) of the Mines Rules.

The principal question of law for determination on the present rule, therefore, is: "Whether the petitioner was a Welfare Officer within the meaning of rule 72 (1) of the Mines Rules, 1955?"

In order to answer this question, it is necessary to read rules 72 and 74 of the Mines Rules, 1955. Rule 72 deals with the appointment of a Welfare Officer of a mine and his qualifications. Rule 73 prescribes the duties of such Welfare Officers. Rule 74 prescribes their conditions of service. The proviso to rule 74 confers a right of appeal on such a Welfare Officer, in the case of his discharge or dismissal to the Chief Inspector, and it further provides that his decision thereon shall be final, and it shall be binding on the owner, agent or the Manager of the mine as the case may be.

Rules 72 and 74 read as below:

"72. *Welfare Officers.*—(1) In every mine wherein 500 or more persons are ordinarily employed there shall be appointed at least one Welfare Officer:

Provided that if the number of persons ordinarily employed exceeds 2,000, there shall be appointed additional Welfare Officers on a scale of one for every 2,000 persons or fraction thereof.

(2) No person shall act as a Welfare Officer of a mine unless he possesses—

(a) a University degree;

(b) a degree or diploma in Social Science or Labour Welfare from any institution recognised by the Government and preferably practical experience of handling labour problems in any industrial undertaking for at least three years; and

(c) a knowledge of the language of the district in which the mine is situated or the language understood by the majority of persons employed in the mine.

Provided that in case of a person already in service as a Welfare Officer in a mine, the above qualifications may, with the approval of the Chief Inspector, be relaxed.

....

(4) A written notice of every such appointment, authorisation, discharge or dismissal and of the date thereof shall be sent by the owner, agent or manager to the Chief Inspector within 7 days from the date of such appointment, authorisation, discharge or dismissal.

74. *Conditions of service.*—(1) A Welfare Officer shall be given appropriate status corresponding to the status of the other executive heads of the mine.

(2) The conditions of service of a Welfare Officer shall be the same as of other members of the staff of corresponding status in the mine:

Provided that, in the case of discharge or dismissal, the Welfare Officer, shall have a right of appeal to the Chief Inspector whose decision thereon shall be final and binding upon the owner, agent or manager of the mine as the case may be."

Rule 74 has to be read along with rule 72, because "the Welfare Officer" mentioned in the proviso to rule 74 refers to a Welfare Officer appointed under rule 72(1) and to none else. Reading rules 72 and 74 thus, it is plain that before a Welfare Officer who has either been discharged or dismissed can have a right of appeal to the Chief Inspector of Mines in India, he must be a Welfare Officer appointed under rule 72(1). If there is a Welfare Officer who is not appointed under rule 72(1), then in such a case the proviso to rule 74 will not apply to such a Welfare Officer, and he will not be entitled to appeal to the Chief Inspector against any order of discharge or dismissal which may be passed by the owner, agent, or manager of the mine, as the case may be, in which he is working. The *sine qua non* for the application of the proviso to rule 74, therefore, is that such a Welfare Officer must have been appointed under rule 72(1). A person may be working as a Welfare Officer, or performing the duties which are prescribed under rule 73 for Welfare Officers appointed under rule 72(1), or he may be performing the duties "akin" to those of such a Welfare Officer, but if he is not in fact appointed under rule 72(1), he cannot take advantage of the benefit conferred by the proviso to rule 74 of the Mines Rules, 1955.

In the instant case, Mr. Shivanugrah Narayan has contended that the petitioner was a Welfare Officer as contemplated by rule 72(1), because on the finding of the opposite party 1, himself, as mentioned in Annexure H, the petitioner had been found to be discharging the duties "very akin" to those of the Welfare Officer as contemplated by rule 72, in that, the definite finding of opposite party 1 is that the petitioner "was performing duties akin to those of Welfare Officer as contemplated by rule 72 and he was qualified to work as a Welfare Officer." Mr. Shivanugrah Narayan, therefore, argued that the real reason given by opposite party 1 for holding that the petitioner cannot be treated to have been appointed as a Welfare Officer under rule 72(1) of the Mines Rules was that he thought that as no notice by opposite party 2 had been given to him, as required by rule 72(4), the petitioner could not be treated as such a Welfare Officer appointed under rule 72(1) of the Mines Rules, 1955. In my opinion, this argument presented by Mr. Shivanugrah Narayan is not well-founded, and, therefore, it cannot be accepted.

It is conceded by the petitioner that in fact he has never been appointed a Welfare Officer as such under rule 72(1) of the Mines Rules, 1955. He was appointed by opposite party 2 on 3rd December, 1947, before the Mines Rules, 1955 came into force on the 2nd July, 1955, and after the Mines Rules, 1955 came into force, the petitioner concedes that he was not appointed a Welfare Officer as contemplated by rule 72(1). The proviso to sub-rule (2) to rule 72 provides that in case of a person already in the service as a Welfare Officer in a mine, the qualifications mentioned to rule 72(2) may, with the approval of the Chief Inspector, be relaxed. The petitioner may have been working as a Welfare Officer, or performing the duties "very akin to those of Welfare Officers", to quote the words of opposite party 1, he may have all or most of the qualifications required by sub-rule (2) of rule 72 for being appointed a Welfare Officer, but, as long as he is not actually in fact appointed a Welfare Officer under rule 72(1), he cannot claim the benefit of the proviso to rule 74 of the Mines Rules, 1955.

Further, sub-rule (1) of rule 72 contemplates appointment of at least *one* Welfare Officer for *every* mine where 500 or more persons are already employed. The proviso to sub-rule (1) of rule 72 further provides that if the number of persons already employed exceeds 2,000, there shall be appointed *additional* Welfare Officers on a scale of *one* for every 2,000 persons or fraction thereof. Admittedly, on the petitioner's own case, he has been working as a Welfare Officer not for one mine, but for all the mines of opposite party 2. In such circumstances, in no view of the matter the petitioner can be deemed to be a Welfare Officer appointed under rule 72(1) of the Mines Rules, 1955.

In my judgment, therefore, the petitioner, not being a Welfare Officer appointed under Rule 72(1) of the Mines Rules, 1955, had no right of appeal to the Chief Inspector of Mines, opposite party 1, under the proviso to Rule 74, against the order of his discharge passed by opposite party 2, and, as such, opposite party 1 was right in holding that he was not competent to entertain the appeal of the petitioner, and, therefore, he had no jurisdiction to decide the appeal on the merits.

In this view of the matter, it is not necessary to express any opinion on the argument of Mr. Sivanugrah Narayan that Rule 72(4) of the Mines Rules, 1955 is directory, and not mandatory, and that the omission of the owner, agent or manager of the mine, to give a notice of every appointment of a Welfare Officer under Rule 72(1) to the Chief Inspector will not invalidate the appointment of a Welfare Officer.

In the present case, the petitioner on his own case was never appointed a Welfare Officer under Rule 72(1). Opposite party 2 has also definitely stated in his counter-affidavit that during the relevant period no Welfare Officer as contemplated by Rule 72(1) had at all been appointed by it. Therefore, the question of failure to comply with Rule 72(4) does not arise here.

Mr. Shivanugrah Narayan, is not correct also in his contention that opposite party 1 decided that the petitioner was not a Welfare Officer as contemplated by Rule 72(1) simply because no notice of his appointment was sent by opposite party 2 to the Chief Inspector of Mines as required under Rule 72(4). Reading the order of opposite party 1 (Annexure H) as a whole, it is clear that what he meant to say was that if the petitioner had in fact been appointed a Welfare Officer under Rule 72(1), then in such a case a notice of his appointment would have been given by opposite party 2 to the Chief Inspector as required by Rule 72(4), and therefore, the fact that no notice under Rule 72(4) was given by opposite party 2 to the Chief Inspector also goes to show that the petitioner was not actually appointed a Welfare Officer under Rule 72(1) of the Mines Rules. But that apart, when it is conceded by the petitioner himself that he was not appointed a Welfare Officer under Rule 72(1), the question of application of the proviso to Rule 74 to him did not arise and, therefore, the petitioner had no right of appeal under the proviso to Rule 74(2) to the Chief Inspector against the order of discharge passed by opposite party 2.

It follows, therefore, for the reasons given above, that the decision of opposite party 1, dated 6th April, 1956, Annexure H, declining to entertain the appeal of the petitioner preferred under the proviso to Rule 74 of the Mines Rules, 1955, is correct.

In the result, the rule must be discharged as the petitioner has failed to make out a case for issue of any writ under Article 226, or any direction under Article 227, of the Constitution to the opposite party quashing the order of opposite party 1 dated 6th April, 1956 (Annexure H) and directing him to re-hear the appeal on the merits.

The application accordingly fails, and is hereby dismissed; but in the circumstances of the present case, there will be no order for costs.

RAMASWAMI, C. J.—I agree.

[IN THE PATNA HIGH COURT.]

SREE BIHARIJI MILLS LTD.

v.

STATE OF BIHAR AND OTHERS.

Ramaswami, C. J. and Raj Kishore Prasad, J.

April 18, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 25-I—SCOPE OF—PRIOR ASCERTAINMENT OF LIABILITY OF EMPLOYER—WHETHER NECESSARY—WHETHER GOVERNMENT CAN DETERMINE LIABILITY OF EMPLOYER AND ORDER RECOVERY.

Section 25-I of the Industrial Disputes Act, 1947, means that where there is a predetermined or ascertained liability on the part of the employer the State Government has a right to initiate proceedings for recovery of the amount in the same manner as an arrear of land revenue or as a public demand. The right of the Government to order recovery springs into existence only when there is an ascertainment of the liability of the employer by a competent authority. The section does not empower the Government to make an enquiry into the liability of the employer or to determine the extent of the liability.

Miscellaneous Judicial Case No. 255 of 1956.

A. B. N. Sinha and *N. L. Untwalia* for the petitioner.

Government Pleader, Shrideo Misra, R. Roy and *T. K. Das* for the opposite parties.

JUDGMENT.

This is an application made on behalf of the petitioner Sree Behariji Mills Ltd., for grant of a writ under Article 226 of the Constitution for calling up and quashing the certificate proceeding started against the petitioner in case No. 102 M. C. of 1955/56 pending in the Court of the Certificate Officer of Patna.

The petitioner is a Company incorporated under the Indian Companies Act and owns and runs Flour, Oil, Rice and Dal Mills in Mahalla Bharatpur Simri of Patna City. Opposite parties 5 to 12 were employed by the petitioner in the working of the mills, but on account of old age and ill-health they became unfit for work. The case of the petitioner is that a notice was given to opposite parties 5 to 12 saying that they would retire with effect from the 1st March 1955 on payment of one month's salary in lieu of notice and gratuity according to the terms of settlement arrived at between the management and the workmen's Union. Opposite party No. 4 is Patna City Mazdoor Union and its case is that the retirement of opposite parties 5 to 12 was unauthorised and it was really a case of retrenchment and under

Labour Commissioner in the matter and no settlement could be arrived at between the parties. It is alleged on behalf of the petitioner that on the 18th January, 1956, the Secretary to the Government of Bihar, Labour Department, filed a certificate of public demand for a sum of Rs. 7,242 and odd against the petitioner before the Certificate Officer of Patna. The legal validity of this certificate proceeding was challenged by the petitioner on the ground that the certificate proceeding was *ultra vires* and without jurisdiction.

Cause has been shown in this case on behalf of Patna City Mazdoor Union, opposite party No. 4, and also on behalf of opposite parties 5 to 12, the workmen concerned, in the dispute. Cause has also been shown by the learned Government Pleader on behalf of opposite parties 1 to 3.

The main question presented for determination in this case is whether the certificate proceeding taken against the petitioner is *ultra vires* and beyond the jurisdiction of the State Government. On behalf of the petitioner reference is made to section 25-I of the Industrial Disputes Act (Act XIV of 1947) as it stood before the amendment made by amending Act XXXVI of 1956. Section 25-I as it stood before the amendment is in the following terms:

"Any money due from an employer under the provisions of this Chapter, whether by way of compensation or by way of wages, may, without prejudice to any other mode of recovery, be recovered in the same manner as an arrear of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money."

In this connection learned counsel on behalf of the petitioner also referred to section 25-F which runs thus:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

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

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

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

(c) notice in the prescribed manner is served on the appropriate Government."

It is contended on behalf of the petitioner that the State Government has no authority to make investigation into the dispute between the workmen and the employer or to determine whether it is a case of retrenchment or of retirement or to determine the question of compensation payable under section 25-F of the Act. It is argued that section 25-I only applies to a case where the liability is admitted by the employer and not to a case where there is a dispute that retrenchment compensation is not payable under section 25-F of the Act. The contention put forward on behalf of opposite parties 5 to 12, on the other hand, is that upon a proper interpretation of section 25-I of the Act there is an implied power granted to the Government to make investigation of the dispute between the parties and to ascertain whether there was liability on the part of the employer to pay compensation and also the quantum of compensation which was payable. In our opinion the contention put forward on behalf of opposite parties 5 to 12 is not correct. In our opinion the language of section 25-I must be interpreted to mean that there is a pre-determined or ascertained liability and on the basis of this pre determined or ascertained liability the State Government has a right to initiate proceedings for recovery of the amount in the same manner as an arrear of land revenue or as a public demand. In other words, the right of the Government to order recovery springs into existence only when there is an ascertainment of the liability of the employer by a competent authority. It is true that there is no machinery provided in the Act for the adjudication of the matter of compensation under section 25-F in the event of a dispute. There is an obvious lacuna in the Act. But it is not the function of a Court of law to go on a voyage of discovery and to fill up the obvious omission or lacuna made by the legislature. It is a well-recognised principle that a Court has power only to interpret and not to add to or amend the law. It was argued on behalf of opposite parties 5 to 12 that if such an interpretation of section 25-I was adopted the purpose of section 25-I would be rendered nugatory. The argument is not quite correct because the workman is not wholly without remedy, for he can bring the matter before an ordinary Civil Court because the statutory right created by section 25-F is a civil right within the meaning of section 9, Civil Procedure Code. It is also possible, in the case of such a dispute between the employer and the workman, to bring the matter to the notice of the Government and to pray for a reference of the dispute to a Tribunal under section 10 of the Industrial Disputes Act. It is, therefore, clear that the workman is not wholly without remedy, though recourse to the civil Court would entail hardship upon the workman. The matter has been, however, clarified as a result of the amendment made by Act XXXVI of 1956. The newly inserted section 33-C(i) expressly grants power to the appropriate Government to make an enquiry about the legal liability of the employer to pay compensation under any provision of Chapter V-A. After the Government is so satisfied it is empowered to issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. Section 33C (i) of the Act as amended by Act XXXVI of 1956 is in the following terms:

"Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue".

But we are concerned in the present case with the law as it stood before the amendment made by Act XXXVI of 1956. As we have already said, the language of section 25-I does not warrant the interpretation that the State Government has the power to make an enquiry into the liability to pay compensation under section 25-F if there was a dispute between the employer and the workman whether there was retrenchment or not. This view is borne out by a decision of the Madras High Court in *C.B.R. Ratnam & Company* v. *Ekambaram*, [1957] 12 F.J.R. 117.

For these reasons we hold that the State Government has no authority to issue a certificate for recovery of a sum of Rs. 7,242 and odd against the petitioner in Certificate Case No. 102 M.C. of 1955/56. We, therefore, direct that a writ in the nature of *certiorari* should be issued to quash the order of the State Government dated the 18th January, 1956, issuing a certificate of public demand and all the proceedings of the Certificate Officer taken thereafter in Certificate Case No. 102 M.C. of 1955/56. We accordingly allow this application. There will be no order for costs.

[IN THE CALCUTTA HIGH COURT.]

BHARAT GLASS WORKS (PRIVATE) LTD.
v.
STATE OF WEST BENGAL AND OTHERS.

Sinha, J.

February 15, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(a)—'APPROPRIATE GOVERNMENT'—DEFINITION OF—INDUSTRY CONTROLLED BY CENTRAL GOVERNMENT—WHETHER "CARRIED ON BY OR UNDER AUTHORITY OF CENTRAL GOVERNMENT"—"APPROPRIATE GOVERNMENT' FOR SUCH INDUSTRY—WHETHER CENTRAL OR STATE GOVERNMENT.

An industry which is controlled by the Central Government under the Industries (Development & Regulation) Act, 1951, cannot be said to be an industry "carried on by or under the authority of the Central Government" so as to make the Central Government the 'appropriate Government' for such industry under section 2(a) of the Industrial Disputes Act, 1947. Even if an

industry is a controlled industry, it is only when it has been "specified in this behalf" as required by section 2(a)(i), that the Central Government becomes the 'appropriate Government' for that industry.

Application No. 146 of 1956.

P. K. Sen Gupta for the petitioner.

Advocate-General for the respondents.

JUDGMENT.

The petitioner in this case is Messrs. Bharat Glass Works (Private) Ltd. It carries on business as manufacturers and producers of glass and ceramics, having its factory at Belkhoria in the 24 parganas. On or about the 11th December, 1954, the respondent No. 4, the Bharat Glass Workers' Union, claiming to represent the workers of the petitioner-company, put forward a charter of demand. The demands were pretty exhaustive, but it is unnecessary for our purposes to deal with the nature thereof. The Government of West Bengal, by an order dated the 17th June, 1955, referred certain disputes between the petitioner-company and its workers, for adjudication under section 10 of the Industrial Disputes Act, 1947. A copy of the Order of Reference is annexed to the petition and marked as Exhibit B. The petitioner-company appeared before the Tribunal, respondent No. 3 in this case, and took a preliminary objection to jurisdiction. The objection was that as the petitioner was carrying on a controlled and scheduled industry, an Order of Reference for adjudication could only be made by the Central Government, and that the order of reference for adjudication made by the Government of West Bengal was illegal, without jurisdiction and invalid, and consequently the Tribunal had no jurisdiction to take seisin of the matter. On the 6th of July, 1956, the Tribunal decided the preliminary objection and rejected it. On the 25th July, 1956, this Rule was issued calling upon the respondents to show cause why this order of Reference should not be set aside and why the third respondent should not be prohibited from dealing with the reference and adjudicating upon the same. The short point before me is as to whether under the facts and circumstances of this case, an order of reference for adjudication should have been made by the Central Government or was it rightly made by the Government of West Bengal. The matter arises in the following manner. The Industries(Development and Regulation) Act, 1951, being Act LXV of 1951, came into operation on the 31st October, 1951. It is an Act to provide for the development and regulation of certain industries, and is a Central Act. Under section 2, it is declared that it was expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. It appears that Item No. 37 in the First Schedule annexed to the Act is "Glass and Ceramics". It is therefore, clear that the business carried on by the petitioner is an industry, controlled under the provisions of this Act. Mr. Sen Gupta appearing on behalf of the petitioner has taken me through the various provisions of the Act to show that the Union of India exercised, or had the right to exercise, a tremendous power of control over scheduled industries. That this is so cannot be denied. The Act envisages the establishment and constitution of a Central Advisory Council and Development Councils. Chapter III deals with regulation of scheduled industries. The owner of every existing 'industrial undertaking', that is to say, undertaking to which the provisions of the Act applies, has to be registered. Then there are provisions for taking out licences. Whenever new articles are to be manufactured, consent of the Central Government is necessary. Power has been given to the Central Government to cause investigations and searches to be made in respect of any scheduled industry. Then there are powers granted for direct management or control of such industrial undertakings, by the Central Government in certain cases. Under certain circumstances the Central Government might authorise any person or body of persons to take over bodily the management of the whole undertaking and to manage the same. Then there are sweeping powers given to cancel or vary contracts not made in good faith, and no compensation is to be given to anyone for termination of office or contract. These are roughly the relevant provisions which are necessary to be noted, save and except the last section, namely, section 32 which is important, inasmuch as it has amended section 2 of the Industrial Disputes Act, 1947, being Central Act XIV of 1947. It is necessary to come at once to that provision. The Industrial Disputes Act (Act XIV of 1947) came into operation on the 11th March, 1947, and is an Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. It is under this Act that the alleged disputes between the workers and the Company have been referred to respondent No. 3 for adjudication. Under section 10, the Reference has to be made by the "appropriate Government." "Appropriate Government" has been defined in section 2, the relevant provisions whereof are as follows:

"In this Act, unless there is anything repugnant in the subject or context,—

(a) "appropriate Government" means—

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government............or by a railway company (or concerning any such controlled industry as may be specified in this behalf by the Central Government)..............or in relation to an industrial dispute concerning (a banking or an insurance company, a mine, an oil-field), or a major port, the Central Government, and

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

The words within brackets have been introduced by section 32 of Act LXV of 1951. The learned Advocate-General appearing on behalf of the respondents has also drawn my attention to section 31 of the said Act which says that the provision of that Act shall be in addition and not, save as otherwise expressly provided in the Act, be in derogation of any other Central Act for the time being in force relating to any of the scheduled industries.

It will be possible now to come at once to the argument put forward by Mr. Sen Gupta. He says that according to the definition of "appropriate Government" in section 2 of the Industrial Disputes Act, the proper authority to refer any disputes concerning any industry carried on under the authority of the Central Government, was the Central Government, and therefore, the Government of West Bengal had no authority to make such a reference. He argues that an industry which is controlled in the manner laid down by the Industries (Development and Regulation) Act, 1951, must be said to be carried on under the authority of the Central Government. In other words, in respect of such industries, the Central Government exercises sweeping control, that is to say, authority. If, therefore, there is an industry in which the Central Government exercises sweeping authority, it must be said to be carried on under the authority of the Central Government. If this argument is correct, then of course it must be held that the Central Government alone was the referring authority in the case of an industrial dispute between the petitioner company and its workers, and the present order of reference dated the 17th June, 1955, must be set aside. The question is as to what is meant by the words "carried on under the authority of the Central Government" in section 2 (a)(i) of the Industrial Disputes Act. This very provision of law came up for interpretation before an Appellate Bench of this Court presided over by Harries, C.J.: *Carlsbad Mineral Water Mfg. Co. Ltd.* v. *P. K. Sarkar*, [1952] 4 F.J.R. 106. In that case, the applicant was a company manufacturing aerated waters. It entered into a contract with the Central Government by which it acquired a right to sell its aerated waters on the stations of a certain Railway and on the trains running on that Railway. Under the contract, Government had a right to fix maximum prices and to control to some extent the workings of the company. A trade dispute occurred between the company and its workers, and the Government of West Bengal, by its order dated December 28th, 1948, referred the matter for adjudication to an Industrial Tribunal. An application was made to this High Court for a writ of *mandamus* or *certiorari* on the ground that this was a dispute which could not be referred for adjudication by the Government of West Bengal, and it was urged that it was the Central Government alone which could refer the dispute, as the applicants were carrying on business under authority of the Central Government. Harries, C.J., said as follows:

"Argument for the appellant is that as the appellants have entered into a contract with the Central Government to provide amenities for Railway passengers which the Railway would normally be called upon to provide, they are carrying on an industry by the authority of the Government.

It seems to me that what is referred to in sections 2 (a) (i) and 2 (g) (i), is any industry owned by Government which is being carried on by Government itself, either through a department or by some authority created by Government to carry on that industry. An industry carried on by or under the authority of Government is a Government industry which, as I have said, may be carried on directly by Government or by some body or person nominated by Government for that purpose. No business owned and carried on by a private person or a limited Company can be a business carried on by or under the authority of Government.

It seems to me that the words 'under the authority' mean much the same as 'on behalf of'. It is to be noticed that in section 2 (g) (ii) 'employer' means 'in relation to an industry carried on by or under the authority of a local authority, the Chief Executive Officer of that authority.' With regard to such authority even if somebody has been authorised by the local authority to carry on the work, neverthless the Chief Executive Officer is in all cases to be regarded as the employer.

In my view, the learned Judge was right in holding that the appellant-company was not conducting an industry under or by authority of Government. It was conducting its own business of selling soda water and other aerated drinks.....................................The business was not the business of the Railway which was being conducted by the appellants as the nominated authority of the Railway. The business was the business of the appellants which they were conducting for their own personal profit and benefit. It was in no sense the business of Government and it appears to me that the appellants can in no sense be described as being persons authorised to carry on a Government business."

It is true that in the case quoted above, it was not necessary to consider the Industries (Development and Regulation) Act of 1951. I think however, that the principle laid down applies and is a correct principle. It is true that under the Industries (Development and Regulation) Act, the Central Government has taken upon itself a large measure of control. But to say that the Central Government exercises a measure of control, is not the same thing as saying that the business was being carried on under its authority. As stated by Harries, C. J., a business which is carried on by or under the authority of the Central Government must be a Government business. Where others carry on the business and are concerned with the profit and loss, it cannot be said to be a Government business, however much the Government might control it. The matter, in my opinion, becomes clear by reason of the amendment which has been introduced into the definition of the word "appropriate Government". In section 2 of the Industrial Disputes Act, the amendment which has been introduced by section 32 of the Industries (Development and Regulation) Act has the following effect :

If there is a controlled industry and if it is specified in this behalf by the Central Government then the 'appropriate Government' for the

purposes of reference of any industrial dispute would be the Central Government. It follows that if there is a controlled industry which is not specified, in such case the "appropriate Government" is not the Central Government but the State Government. If the words "industry carried on under the authority of the Central Government" be synonymous with the words "controlled industry", then there was no necessity for this amendment. It is clear, therefore, that the two do not mean the same thing, and this supports the interpretation that has been put by Harries, C. J., as mentioned above. The result, therefore, is as follows: Industries, that is to say an 'industrial undertaking' which has been mentioned in the first schedule of the Industries (D. and R.) Act, 1951 are controlled industries but they are not necessarily industries carried on by or under the authority of the Central Government. For an industry to be carried on under the authority of the Central Government, it must be an industry belonging to the Central Government, that is to say, its own undertaking. A controlled industry, in spite of the sweeping control exercised upon it by the Central Government, is not necessarily an industry carried on by or under the authority of the Central Government. The only point which I am willing to leave open in this case is as to whether a controlled industry might come within that meaning where Government has taken over direct management under section 18A and the other related sections contained in Chapter 111A of the Industries (D. and R.) Act, 1951. That point does not specifically arise here and may be decided upon a future occasion. In the present case, it is conceded that the glass and ceramic industry has not been specified by the Central Government and, therefore, according to the rule of construction mentioned above, the appropriate Government to refer disputes is the State Government. Mr. Sen Gupta has drawn my attention to certain notifications which have been published in the Gazette of India dated January 5, 1957. It appears that by notification No. S.R.O. 68, the Central Government, in pursuance of sub-clause (i) of clause (a) of section 2 of the Industrial Disputes Act, has specified for the purpose of that sub-clause controlled industries engaged in the manufacture and production of coal, including coke and other derivatives which have been declared as controlled industries under section 2 of the Industries (D. and R.) Act, 1951. In the same Gazette there is another notification being S.R.O. 67, which delegates the power of the Central Government to the State Government so far as they relate to industrial disputes concerning seven industrial establishments mentioned in the schedule appended thereto. Mr. Sen Gupta argued that these notifications show that in respect of controlled industries the Central Government is the appropriate Government. These notifications, divorced from the particulars set out in the schedule appended to notification No. S.R.O. 67 would appear to support this argument. But once the schedule is looked at, the position becomes clear and is destructive of the argument advanced by Mr. Sen Gupta. What has happened is that the controlled industries in the case of coal, including coke and other derivatives, have been first of all specified. As soon as ithas been specified, the appropriate Government becomes the Central

Government. Then, in respect of certain specified industrial establishments, it has delegated its power to the State Government. It might be said that this is a curious way of doing things—taking over power and then giving it back, but I am not concerned with the reasons behind such action. It may be that while taking over power in respect of a particular industry generally, it was thought necessary to exclude certain establishments for political reasons or economic reasons. In any event, these notifications demonstrate that in the case of controlled industries generally, the referring authority is the State Government, but if specified in the proper manner, the power of reference is transferred to the Central Government. That being the position, the contention put forward by the petitioner that in its case the adjudicating authority, that is to say, the "Appropriate Government" was the Central Government and not the State Government, fails. In my opinion the "Appropriate Government" in such a case is the State Government and the reference has been made properly and in accordance with law.

The result is that no case has been shown for my interference, and this application must be dismissed. The rule is discharged and the interim order is vacated. There will be no order as to costs. Stay of the operation of this order is granted for three weeks. Let the order be drawn up expeditiously. At the end of three weeks, if no further direction is obtained from the Court of Appeal, the records of the Tribunal may be sent down at once.