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

WITH

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

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[PART XI

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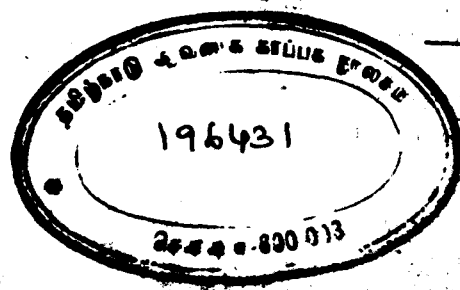
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to a notice board at or near the entrance or entrances of the establishment concerned and the notice shall remain so affixed for a period of 21 days. The notice shall be in Hindi and in such other language, if any, which is intelligible to a majority of workers.

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

8. *Arbitration agreement.* (1) An arbitration agreement referred to in section 5-B(1) of the Act shall be made in Form V, and shall be delivered personally or forwarded by registered post in triplicate to the authorities mentioned in sub-section (3) of section 5-B by the signatories to the agreement or any of them.

(2) The arbitration agreement shall be signed:—

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

(b) in the case of a workman, either by the workman himself or by the President or the Secretary of the Union of Workmen, competent to represent the workmen under section 6-I, or of a Federation of such Unions or by an officer of such Union or Federation authorized in this behalf in writing by the President of such Union or Federation, or where there is no such Union, by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.

9. *Evidence.* A Board or Labour Court or Tribunal or an arbitrator may accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit.

10. *Summons.*—Summons issued by a Labour Court or Tribunal or an arbitrator shall be in Form VI and may require any person to produce before it any books, papers or other documents and things in his possession or under his control in any way relating to the matter under investigation or adjudication by the Labour Court or Tribunal or arbitrator which the Labour Court or Tribunal or arbitrator thinks necessary for the purpose of such investigation or adjudication.

11. *Service of summons or notice.*—Any notice, summons, process or order issued by a Labour Court or Tribunal or arbitrator may be served either by personal delivery or by registered post or in any other manner prescribed in this behalf in the Code of Civil Procedure, 1908 (Act V of 1908).

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

(3) The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

5. Memorandum of settlement.—(1) A settlement arrived at before a Conciliation Officer or otherwise outside the conciliation proceeding shall be in Form I.

(2) The settlement shall be signed—

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

(b) in the case of a workman, either by the workman himself or by the President or the Secretary of the Union of Workmen competent to represent the workman under section 6-I, or of a Federation of such Unions, or by an officer of such Union or Federation authorized in this behalf by the President of such Union or Federation, or where there is no such Union, by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.

(3) Where a settlement is arrived at before a Conciliation Officer, otherwise than in the course of conciliation proceedings before a Board, the Conciliation Officer shall send a report thereof to the Government with a copy to the Labour Commissioner, Uttar Pradesh.

(4) The Conciliation Officer shall file all settlements arrived at before him either in the course of conciliation proceedings or otherwise in respect of disputes in the area within his jurisdiction in a register maintained for the purpose in Form II.

(5) The State Government may, subject to the provisions of clause (ii) of section 7, enforce, by an order in Form III, any settlement arrived at before a Conciliation Officer in the course of conciliation proceedings.

6. Powers to refer additional matters to a Board, Labour Court or Tribunal for settlement or adjudication.—Where any dispute or matter is pending before a Board or Labour Court or Tribunal, the State Government may, by order in writing, refer any other dispute or matter that may arise between the same parties, to the same Board, Labour Court or Tribunal for settlement or adjudication, as the case may be.

7. Notice of change.—(1) Subject to the provisions of section 4-J, any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Third Schedule to the Act, shall give notice of such intention in Form IV to the workman concerned.

(2) Where there are numerous workmen affected by a notice of change, the employer shall, where personal service is not practicable, cause the service of any such notice to be made on the secretary, or where there is no secretary, the principal officer of the union/unions of workers and also by affixing the same

(6) If, owing to insufficient or incorrect description the document of which a copy is sought cannot be traced that fact shall be endorsed on the application which shall be submitted to the Presiding Officer of the Labour Court or Tribunal concerned.

(7) If the estimated amount of fees is not deposited within seven days of its being notified to the applicant, the application for copy shall be rejected.

(8) If an application has been rejected under sub-rule (7) and a copy is still required, a fresh application must be presented and the same will be dealt with in the manner prescribed, as though the original application had not been made.

(9) If and when it is ascertained that additional fees are necessary, the amount thereof shall be immediately notified to the applicant and shall be deposited within seven days of receipt of the notice.

(10) The copies shall be prepared in strict order of priority, and where it is proposed to make any departure for any special reason, prior sanction of the Presiding Officer of the Labour Court or Tribunal or the Arbitrator shall be obtained.

(11) In ordinary circumstances a copy may be furnished up to 1 p.m. on the third day after the necessary fee, or additional fee, has been paid.

(12) If the applicant furnishes his address accompanied by sufficient amount (in cash) to cover the cost of registration (Acknowledgement due) a copy may be sent to him by post.

(13) When a copy is granted, the following particulars shall be recorded on the back of the copy—

- (i) Date of application for copy
- (ii) Date of notifying the fee payable
- (iii) Date of deposit of fee.
- (iv) Date of making over the copy to the applicant.

(14) A register shall be maintained in respect of applications for copies in Form VIII and shall be daily checked by the Presiding Officer of the Labour Court or Tribunal or any other person authorized by him in this behalf.

(15) Fees for making a copy of an award of a Labour Court, Tribunal or arbitrator, or any document filed in any proceeding before a Labour Court, Tribunal or an arbitrator shall be charged as follows—

- (a) for the first 200 words or less, 75 Naye Paise;
- (b) for every additional 100 words or fraction thereof, 38 Naye Paise.

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

Provided further that if a party applies for urgent delivery of a copy of any such award or document, an additional fee equal to the fee leviable under this rule shall be payable by such party.

(16) A fee of Rs. 1 shall be payable for certifying a copy of any such award or document.

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

26. Application for registration of settlement.—An application for registration of settlement arrived at otherwise than in the course of conciliation proceedings before a Board shall be made in Form IX and shall be sent by the parties to the settlement or any one of them, within one month of the date of settlement, to the Conciliation Officer of the area concerned by registered post acknowledgment due, or by personal delivery. A copy of the memorandum of settlement shall be affixed by the parties to the settlement to a notice board at or near the entrance or entrances of the establishment concerned, and shall remain so affixed for a period of 15 days before making the application for registration.

27. Procedure for registration of settlement.—On receipt of an application for registration of settlement, the Conciliation Officer or the authority notified by the Government in this behalf under section 6-B(3) of the Act may make an enquiry if he/she considers necessary. If after enquiry the Conciliation Officer or the authority concerned decides to register a settlement for which an application has been made, under sub-section (2) of section 6-B, the registration shall be made in Form X, and a certificate of registration shall be issued to all the parties to the settlement in Form XI. If the registering authority refuses to register the settlement under sub-section (3) of section 6-B, an intimation to this effect together with reasons for refusal to register, shall be given to all the parties to the agreement. The authority notified by the State Government for registering a settlement shall also give intimation of registration of settlement, or of the refusal thereof, as the case may be, to the Conciliation Officer of the area concerned and to the Labour Commissioner, Uttar Pradesh.

28. Persons on whom awards are binding.—An award which has become enforceable, shall be binding on—

(a) all parties to the industrial dispute;

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

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

29. Recognition of protected workmen.—(1) A Union desirous of recognition of its officer or officers as "protected workmen", shall, before the 1st day of September every year submit an application in Form XII to the Registrar, Trade Unions, Uttar Pradesh, Kanpur, appointed by the State Government under the Indian Trade Unions Act 1926 (Act XVI of 1926).

numerous persons arrayed on any side, such persons shall be described as follows:

(i) All such persons as are members of any Union or association shall be described by the name of such Union or association; and

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

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

(2) Where there are numerous persons as parties to any proceeding before a Board, Labour Court, Tribunal or an arbitrator, and such persons are not members of any union or association, the Board, Labour Court, Tribunal or arbitrator, as the case may be, shall, where in its/his opinion, personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned and in such other manner as the Board, Labour Court, Tribunal or arbitrator may deem fit and proper. A notice exhibited in such manner shall also be considered as sufficient in the case of such workmen as cannot be ascertained and found.

20. Assessors.—(1) The State Government may, if it considers necessary, appoint up to two persons as assessors to advise a Labour Court or Tribunal in the proceedings before it.

(2) Where assessors are appointed to advise a Tribunal or Labour Court or an arbitrator under any provisions of the Act, the Labour Court or Tribunal, or arbitrator, as the case may be, shall, in relation to proceeding before it/him, obtain the advice of such assessor but such advice shall not be binding on it/him.

21. Power of Labour Courts, Tribunals and Arbitrators.—In addition to the powers conferred by the Act, Labour Courts, Tribunals and arbitrators shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters, namely:—

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

and the Labour Court or Tribunal or arbitrator may summon and examine any person whose evidence appears to it/him 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.

22. Expenses of witnesses.—(1) Every person who is summoned and duly attends or otherwise appears as a witness before a Labour Court or

Tribunal or arbitrator shall be entitled to receive from the party concerned such allowances for expenses as, subject to such general or special instructions as may be given by Government from time to time, the Labour Court or Tribunal or arbitrator may determine.

(2) A Labour Court or Tribunal or arbitrator when summoning a witness at the request of a party, may require the party to deposit expenses of the witness in advance.

23. Right of representatives.—The representatives of the parties appearing before a Labour Court or Tribunal or an arbitrator shall have the right of examination, or cross-examination, as the case may be, of a witness.

24. Papers, records, documents, files, etc., of an Arbitration Award.—Within fifteen days of submission of an arbitration award to the State Government, the arbitrator or arbitrators shall send all papers, records, documents and files relating to the arbitration proceeding, and also the original copy of the arbitration award to the Labour Court or Tribunal which has otherwise jurisdiction over the industrial dispute.

25. Copies of awards or other documents of a Labour Court or Tribunal or an Arbitrator.—(1) A party to the dispute shall be entitled at any stage to obtain a copy of the records of the case or any portion thereof, including exhibits which have been put in and finally accepted in evidence, but excluding confidential papers and office notes.

(2) A stranger to a dispute, on application, may, after the decision, obtain a copy of an award or any document on the record of the case, except confidential documents and office notes:

Provided that a stranger may not be given a copy of exhibits admitted in evidence, except with the consent of the person by whom they were produced or his successor-in-interest.

(3) Every such copy shall be examined and certified as correct before it is issued from the office of the Labour Court or Tribunal or an arbitrator. No copy shall be certified unless it has been prepared in either of the aforesaid offices.

(4) An application for copies of awards or other documents shall be presented between 11 a.m. and 12 noon on any working day in Form VII to the Labour Court or the Registrar of the Tribunal concerned, or in the case of an arbitration award or documents relating thereto, to the Labour Court or the Registrar of the Tribunal which has otherwise jurisdiction over the dispute.

(5) On receipt of an application for a copy, the Head Clerk or clerk concerned shall inform the applicant of the amount of fees payable and that his application will not be considered complete and the preparation of the copy will not be commenced, until he has deposited the said amount.

The receipts on account of copying and certifying fees shall be credited to the head of account specified by the State Government in this behalf.

(2) On receipt of an application under sub-rule (1), or on his own initiative if no such application is received, the Registrar of Trade Unions may, after making such enquiries as he may consider necessary, pass appropriate orders in the matter. Such orders shall be communicated to the Union and the employer concerned and also to the Conciliation Officer of the area concerned.

(3) The names of protected workmen recognized under sub-rule (2) above shall be entered in a Register in Form XIII to be maintained in the office of the Registrar of Trade Unions, Uttar Pradesh. This Register can be inspected by any person on payment of a fee of Re. 1 during such hours as may be prescribed by the Registrar of Trade Unions, Uttar Pradesh.

(4) The recognition given to an officer under sub-rule (2) shall remain in force till the 30th day of September of the year following that in which the order giving such recognition is made.

(5) If a vacancy occurs amongst the protected workmen by reason of any such workmen having died or not remaining in service or for any other reason, the Union concerned shall, within one month of the occurrence of such vacancy, inform the Registrar of it. The Registrar may fill the vacancy after such enquiry as he considers necessary.

30. Distribution of protected workmen.—(1) The distribution of protected workmen for an establishment amongst unions for the purposes of sub-section (4) of section 6-E shall be made by the Registrar of Trade Unions, Uttar Pradesh, in proportion to their membership and after such enquiries as he may consider necessary.

(2) For the up-to-date maintenance of the register in Form XIII the Registrar of Trade Unions, Uttar Pradesh, may hold such enquiries as may be necessary and pass suitable orders which shall be final and binding on the parties concerned.

31. Application under section 6-E.—(1) An employer intending to obtain express permission in writing of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, under sub-section (1) or sub-section (3) of section 6-E, shall present an application in Form XIV in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal, and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court, or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 6-E, shall present an application in Form XV in triplicate to such Conciliation Officer, Board, Labour Court, or Tribunal, and shall file along with the application as many copies thereof as there are opposite parties.

(3) Every application under sub-rule (1) or sub-rule (2) shall be verified at the foot by the employer making it, or by the person duly authorized in this behalf by the employer acquainted with facts of the case.

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

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

32. Application for adjudication as to whether the conditions of services, etc., changed during the pendency of proceedings.—(1) An application under section 6-F shall be presented in duplicate in Form XVI and shall be accompanied by as many additional copies of the application as there are opposite parties to the complaint.

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

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

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

33. Application for the recovery of money due from an employer.—An Application for the recovery of money due from an employer made by a workman under sub-section (1) of section 6-H shall be in Form XVII.

34. Procedure for computing money value of a benefit.—(1) Where the State Government has specified a Labour Court for the purpose of computing the money value of a benefit, under sub-section (2) of section 6-H, the Labour Court may, by an order in writing, appoint a Commissioner for such computation and ask the Commissioner to report to the Labour Court within such time as may be specified in the order :

Provided that the Labour Court may, either on its own motion or on an application made to it by the Commissioner grant extension of time for submission of the report by the Commissioner.

(2) The Commissioner shall be paid such fees, if any, as may be specified by the Labour Court in the order appointing the Commissioner and the amount of fee so fixed shall be recoverable from such party as the Court may direct. The party concerned shall in that case deposit the amount within a specified time with the Labour Court for deposit into the nearest treasury. The Commission shall not issue until the amount of fees is deposited with the Labour Court by the party concerned :

Provided that the party concerned may, from time to time, be directed by the Labour Court for deposit of further amounts, if any.

Provided further that the Labour Court may, in its discretion, extend the time for depositing the sum by the party concerned.

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

(4) The undisbursed balance, if any, of the sum deposited shall be refunded to the party which deposited the sum.

35. Local investigation.—If any industrial dispute in which the Labour Court deems a local investigation to be requisite or proper for the purpose of computing the money value of a benefit, the Labour Court may issue a Commission to a person referred to in rule 34 directing him to make such investigation and to report thereon to it.

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

(2) The Report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the industrial dispute and shall form part of the record of the proceedings in the industrial dispute, but the Labour Court or with the permission of the Labour Court, any of the parties to the industrial dispute may examine the Commissioner personally before the Labour Court, regarding any of the matters referred to him or mentioned in his report or as to his report, or as to the manner in which he has made the investigation.

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

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

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

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

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

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

(2) Every person who is summoned and appears as a witness before the Commissioner shall be entitled to payment by the Labour Court out of the sum, deposited under rule 34 of an allowance for expenses incurred by him as may be directed by the Labour Court in this behalf.

39. Representation of parties before the Commissioner. The parties to the industrial dispute shall appear before the Commissioner, either in per-

SHORT RECITAL OF CASE

TERMS OF AGREEMENT

Witnesses :

(1) _____

(2) _____

Witnesses :

(1)

(2)

Place and date

Signature of parties.

(Representing employers)

(Representing Workmen)

Signature of Conciliation Officer

FORM II

[SECTION 4-F AND RULE 5(4)]

Register of settlements

PART I

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

*Here indicate whether the settlement was effected in the course of conciliation proceedings or otherwise at the intervention of the conciliation machinery.

PART II

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

FORM III

[SECTION 7(ii) and RULE 5(5)]

Government Order enforcing a settlement arrived at in the course of Conciliation Proceedings

Whereas the Conciliation Board,....., constituted under clause of Government Order no..... dated..... has been successful in bringing about an amicable settlement in the industrial dispute between the concern known as

Messrs..... and its workman/workmen..... (C. B. Case no..... of); and whereas in the opinion of the Governor it is necessary for the maintenance of public order and for maintaining employment to enforce the said memorandum of settlement dated..... contained in its report, dated

Now, therefore, in exercise of the powers conferred by section 3 read with section 7(ii) of the U.P. Industrial Disputes Act, 1947 (U.P. Act No. XXVIII of 1947), the Governor is pleased to order as follows, namely—

The terms of the said settlement contained in the schedule annexed herewith, shall be and are hereby enforced and shall remain in force in respect of the matters covered by the said settlement and bind the said concern and its workmen for a period of with effect from the date of this order.

2. Any person who contravenes or attempts to contravene any provisions of this order or abets any such contravention, shall be liable, on conviction, to fine or to imprisonment not exceeding three years or both.

FROM IV

[SECTION 4-I (a) AND RULE 7 (1)]

Notice of change in the conditions of service

Name of the employer

Address

Dated the.....day of.....19 ..

To

In accordance with the provisions of clause (a) of Section 4-I of the U.P. Industrial Disputes Act, 1947, I/We hereby inform you that it is my/our intention to effect the change (s) specified in the Annexure to this letter with effect from.....

Signature

Name

Designation

ANNEXURE

Statement of the Case

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

FORM V

[SECTION 4-B (1) AND RULE 8]

Arbitration Agreement

Names and addresses of the parties

Representing employers :

1.

2.

Representing workmen :

1.

2.

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of
[here specify the name (s) and address (es) of the arbitrator (s)]

(i) Specific matter in dispute.

(ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved.

(iii) Name (s) of the Union (s), if any, representing the workmen in question.

(iv) Total number of workmen employed in the undertaking affected.

(v) Estimated number of workmen affected or likely to be affected by the dispute.

Witnesses :

(1)

(2)

Signature of parties :

Representing employers

(1)Signature,

.....Designation and
.....address

(2)

.....

Witnesses :

(1)

(2)

Representing workmen

(1)Signature,

.....Designation and
.....address

(2)

.....

FORM VI

[SECTION 5-C AND RULE 10]

Registered Acknowledgement Due

SUMMONS

No.

Before the Labour Court/Industrial Tribunal.....

Adjudication Case No. of 19 ..

To

(1) The Manager

(2) The Secretary,

Whereas an industrial dispute between.....
and its workman/workmen has been referred to this Labour Court/Industrial Tribunal under section 4-K of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947) vide G. O. No. dated.....
you are hereby summoned to appear before me in person or through a duly authorized representative in accordance with rule 40 of the U. P. Industrial Disputes Rules, 1957 on the..... day of..... at.....
a.m./p.m. in the office of the Labour Court/Industrial Tribunal to answer all material questions relating to the said dispute and you are directed to produce on that day all the books, papers and other documents and things in your possession or under your control in any way relating to the matter under investigation by me. Your written statements, if any, should also be presented to me in duplicate on the date specified above.

2. The attention of all concerned is also drawn to section 6-E of the U. P. Industrial Disputes Act, 1947, reproduced below for strict compliance.

Dated.....19 ..

Presiding Officer/Registrar,
Labour Court/Industrial Tribunal.

FORM VII

[SECTION 5-C AND RULE 25 (4)]

Application for urgent/ordinary copy of award/document in case No. of 19 ..
in the matter of industrial dispute between the concern/concerns known as...
..... and its/their workmen.

To,

The Presiding Officer, Labour Court/Registrar, Industrial Tribunal,
Serial No.....

Description of document of which a copy is wanted, with date when necessary.....	Application is made by....., the undersigned for a copy/certified copy of the marginally noted documents from the Labour Court's/Industrial Tribunal's file in the above case which was disposed of on.....
---	---

Date.....

Signature of applicant.....

Office Report

The copy will cover.....sheets.

Estimate of costs.

Applicant's Signature

Record received on.....

Clerk

Head Clerk

Copy will be ready on.....

Copy actually ready on.....

Copy delivered on.....

Serial No.....

Received an application for certified copy
bearing the above no. Estimated cost Rs.....
.....N. P.....To attend for copy
on.....

Received copy on.....

Head Clerk.

Applicant.

Note—The application will not be considered as complete until costs have been supplied in full, which must be done within seven days of the date of the estimate. All enquiries and complaints shall be accompanied by this counterfoil. It will have to be given up when the copy is delivered.

FORM VIII

[SECTION 5-C AND RULE 25(14)]

Register of applications for copies of awards and other documents

Serial No.	Date of receipt or application	Name or applicant	Description of award or document	Copying fee assessed	Certifying fee assessed	Receipt number and date of payment of fees	Copy delivered on	Remarks
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FORM IX

[SECTION 6-B (2) AND RULE 26]

Application for Registration of Settlement

To

Dear Sir/Madam,

Dear Sir/Madam,

We, the following parties, viz., (names and addresses of all the parties)
(Employer/workmen)

(1)

(2)

do hereby apply for registration of the settlement arrived at between the above parties otherwise than in the conciliation proceedings on.....(Date). The memorandum of settlement in Form I, duly signed by all concerned, is hereby enclosed.

A copy of the memorandum of settlement remained affixed on the Notice Board, as required under rule 26, from _____ (date) to _____ (date).

A brief recital of the case is also given below:

Yours faithfully,

(Signatures, designations and names of the parties represented)

FORM X

[SECTION 6-B (3) AND RULE 27]

Form of Registration of Settlement

Registration No.	Names and addresses of the parties to the settlement	Terms of settlement	Date of settlement	Date of registration	Signature of the registering authority	Remarks, if any
1	2	3	4	5	6	7

FROM XI

[SECTION 6-B(3) AND RULE 27]

Certificate of Registration of Settlement

No.....of 19 .

It is hereby certified that the memorandum of settlement dated..... arrived at between as per copy enclosed, has been registered under the U.P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947), this..... day of one thousand, nine hundred and.....

Conciliation Officer, U. P. and
the Certifying Authority

FORM XII

[SECTION 6-E(3) AND RULE 29(1)]

Application for recognition of protected workmen

To
The Registrar of Trade Unions,
Uttar Pradesh,
Kanpur.

Sir,
In the meeting of the Executive Committee of.....
(Name and address of union)
Registration Certificate no..... held on.....
the following members of the Executive who are employed as workmen at

..... have been approved
(Names and address of establishment)
for being recommended for registration as "protected workmen" for a period of one year with effect from..... The Union, therefore, requests you kindly to convey your orders to the undersigned in this matter at your earliest convenience.

PARTICULARS OF OFFICERS

Name with father's name	Name of establishment in which employed	Name of department, designation and ticket No.	Date of executive meeting when selected	Local postal address	Period for which subscription paid last with date	Signature or L. T. I.	Remarks
-------------------------	---	--	---	----------------------	---	-----------------------	---------

Yours faithfully,

(Principal Secretary),

FORM XIII

[SECTION 6-E(3) AND RULE 29(3)]

Register of Protected Workmen

Name and address of establishment*

Name of Protected Workman with father's name	Department, designation and ticket or token number	Local postal address	Name of union of which he is an officer	Date of meeting of the executive committee of the union in which his name was approved as protected workman	Reference of Registrar's order by which recognized	Remarks
--	--	----------------------	---	---	--	---------

*There should be one or more separate pages for one particular establishment.

FORM XIV

[SECTION 6-E AND RULE 31(1)]

Before Presiding Officer, Labour Court/Tribunal.....

Application for permission under sub-section (1)/sub-section (3) of section 6-E of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947), in the matter of Reference No.....

A..... Applicant,
(Address)

versus

B..... Opposite Party(ies).
[Address(es)]

The abovementioned applicant begs to state as follows :

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

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

[Here mention the action specified in clause (a) or clause (b) of sub-section (1)/sub-section (3) of section 6-E.]

Signature of the applicant.

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

Space for verification.

(Signature of the person verifying.)

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

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

FORM XV

[SECTION 6-E(2) AND RULE 31(2)]

Before Labour Court/Tribunal.....

Application under sub-section (2) of section 6-E of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947), in the matter of reference No.....

A..... Applicant,
(Address)

versus

B..... Opposite Party(ies).
[Address(es)]

The abovementioned applicant begs to state as follows :

(Here set out the relevant facts and circumstances of the case)

*The workman/workmen discharged/dismissed under clause (b) of sub-section (2) of section 6-E has/have been paid wages for one month.

The applicant prays that the Labour Court/Tribunal may be pleased to approve of the action taken, namely :

[Here mention the action taken under clause (a) or clause (b) of sub-section (2) of section 6-E]

Signature of the applicant.

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

Space for verification.

(Signature of the person verifying)

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

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

*Delete, if not applicable.

FOR XVI

[SECTION 6-F AND RULE 32]

Before the Labour Court/Tribunal.....

Complaint under section 6-F of the U. P. Industrial Disputes Act, 1947

A..... Complainant(s).
(Address)

versus

B..... Opposite Party(ies).
[Address(es)]

In the matter of reference No

The petitioner(s) begs/beg to complain that the opposite part(ies) has/have been guilty of a contravention of the provisions of section 6-F of the U.P. Industrial Disputes Act, 1947 (U.P. Act. No. XXVIII of 1947) as shown below :

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

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

Copies of the complaint and its annexures as required under rule 32 of the U. P. Industrial Disputes Rules, 1957, are submitted herewith.

Signature of the Complainant(s).

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

Verification.

I do solemnly declare that what is stated in paragraphs.....above is true to my knowledge and that what is stated in paragraphs.....above

is based upon information received and believed by me to be true. This verification is signed by me at.....on.....day of19 ..

Signature/Thumb-impression of the person verifying.

FORM XVII

[SECTION 6-H (1) AND RULE 33]

**Application under section 6-H(1) of the U. P. Industrial Disputes Act,
1947**

To

The Secretary to Government,
Uttar Pradesh,
Labour (A) Department, Lucknow.
Dated.....19

Sir,

Sir,
I/We..... am/are
entitled to receive a sum of Rs.....(in figures and words)
from.....
(Name and full address of the employer) under an award of the Labour Court/
Tribunal/Arbitration award in case No.....of 19...../under
a settlement, dated...../under section 6-K/
6-N of the U. P. Industrial Disputes Act, 1947. Details of the money due are
given below—

(Here indicate details and particulars of the amount due)

It is, therefore, requested that the above amount may kindly be recovered from the employer(s) under section 6-H(1) of the Act and paid to me/us.

Yours faithfully,

Signature or thumb-impression of the
applicant(s).

Full address:.....

FORM XVIII

[SECTION 6-L AND RULE 41]

Muster Roll of workmen required to be maintained by the employer
Name of the factory
or Department.....

[illegible][illegible]

Minimum Wages Act, 1948—Amendment of Schedule I.**I**

*Notification No. LI-5079/57/L&LAD, dated, Trivandrum, 22nd May, 1957.**

In exercise of the powers conferred by section 27 of the Minimum Wages Act, 1948 (Central Act XI of 1948) the Government of Kerala hereby declare their intention to add "employment in timber industry" to Part I of the schedule to the said Act in its application to the State so that the schedule shall be deemed to be amended as follows:—

"In Part I of the schedule to the said Act the following shall be added as item 22, viz.,

"22. Employment in timber industry".

Notice is hereby given that the above proposal will be taken into consideration after a period of three months from the date of publication of this notification in the Gazette and that any objection or suggestion there may be received from any person with respect to the said proposal before the expiry of the above period will be considered by the Government.

II

*Notification No. L. 1-29389/56/L&LAD, dated, Trivandrum, 22nd May, 1957.**

In exercise of the powers conferred by section 27 of the Minimum Wages Act, 1948 (Central Act XI of 1948) the Government of Kerala hereby extend the applicability of the amendment to the schedule to the said Act effected by adding "employment in cashew industry" to Part I of the said schedule. Notification No. LI-15302/50/DD (1) dated 26th September, 1951, published in Part I of the Gazette dated 2nd October, 1951, of the former State of Travancore-Cochin to the territories referred to in section 5(2) of the States Re-organisation Act, 1956, (Central Act 37 of 1956) as the Malabar District, the same having been previously published as required by the said section.

Orissa Welfare Officers Rules, 1952—Amendment.

*Notification No. 3764—IF-47/56-Lab., dated the 18th June, 1957.**

In exercise of the powers conferred by section 112 of the Factories Act, 1948 (LXIII of 1948), the State Government do hereby direct that the following further amendments shall be made in the Orissa Welfare Officers (Recruitment and Conditions of Service) Rules, 1952 (prescribed under section 49 of the said Act), the same having been previously published as required by section 115 of the said Act, namely:

AMENDMENT

In the said Rules—

In rule 4 for clause (c) the following clause shall be substituted namely:—

"(c) has knowledge of the Oriya language up to at least M.E. standard".

*Kerala Gazette, 28-5-57, Pt. I, p. 1172.

*Orissa Gaz. 21-6-57, Pt. III, p. 514.

THE ESSENTIAL SERVICES MAINTENANCE ORDINANCE, 1957.

No. 5 OF 1957.*

Promulgated by the President in the Eighth Year of the Republic of India.

An Ordinance to provide for the maintenance of certain essential services and the normal life of the community.

Whereas a Bill to provide for the maintenance of certain essential services and the normal life of the community has been passed by the House of the People:

And whereas the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the Bill;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and extent.* (1) This Ordinance may be called the Essential Services Maintenance Ordinance, 1957.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. *Definitions.* (1) In this Ordinance—

(a) "essential service" means—

(i) any postal, telegraph or telephone service;

(ii) any railway service or any other transport service for the carriage of passengers or goods by land, water or air;

(iii) any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft;

(iv) any service connected with the loading, unloading, movement or storage of goods in any port;

(v) any service in any mint or security press;

(vi) any service in any defence establishment of the Government of India connected with the manufacture, storage or distribution of arms, ammunition or other military stores or equipment;

(vii) Any service which the Central Government, being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service or would result in the infliction of grave hardship on the community may, by notification in the Official Gazette, declare to be an essential service for the purposes of this Ordinance:

(b) "strike" means the cessation of work by a body of persons employed in any essential service acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

(2) Every notification issued under sub-clause (vii) of clause (a) of sub-section (1) shall be laid before each House of Parliament as soon as may be after it is made, and shall cease to operate at the expiration of forty days from the re-assembly of Parliament unless before the expiration of that period a resolution approving the issue of the notification is passed by both Houses of Parliament.

*Gaz. of India Exty. 7-8-57, Pt. I, Sec. 1, p. 295.

Explanation.—Where the Houses of Parliament are summoned to re-assemble on different dates, the period of forty days shall be reckoned from the later of those dates.

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

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

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

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

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

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

4. *Penalty for illegal strikes.*—Any person who commences a strike or remains or otherwise takes part in a strike which is illegal under this Ordinance shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees or with both.

5. *Penalty for instigation, etc.*—Any person who instigates, or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under this Ordinance shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

6. *Penalty for giving financial aid to illegal strikes.*—Any person who knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Ordinance shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

7. *Power to arrest without warrant.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Ordinance.

8. *Ordinance to over-ride other laws.*—The provisions of this Ordinance and of any Order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force.

It is obvious that on this reasoning the business in the present case closed on 31st May, 1956, after the close of the first shift as intimated to the workers in the notice dated 27th April, 1956. It is true that the mills did not work after 28th April, 1956, but that is of no significance. In the Pipraich Sugar Mills case the mills had actually been dismantled before 15th March, 1951, and yet their Lordships came to the conclusion that the business was not closed till 21st March, 1951, i.e., the date on which the workers were actually discharged. In the present case the workers were effectively discharged only on 31st May 1956. It was argued on behalf of the employers that the notice up to that date was given under section 25F and that in fact the business was closed on 28th April, 1956. There is no reference to section 25F in the notice. In any case, whatever the reason, the workers were not discharged before the expiry of the notice. No notice of discharge was ever given for any date prior to 31st May, 1956. It must therefore be held that the business was closed on 31st May, 1956. Obviously all the disputes referred to the Tribunal relate to a date prior to that date. All the rights claimed by the workers in this case arose and had accrued on a date prior to 31st May 1956. It is obvious that these disputes cannot be said to have arisen after the closure of the business between the quondam employer and employees. Under the notice the workmen remained in employment till after the first shift on 31st May, 1956. It is also manifest from the fact that the conciliation proceedings started between the parties after 28th April 1956. It is therefore clear that the reference of these disputes for adjudication by the Industrial Tribunal cannot be held to be invalid on these grounds.

No other point was argued before me. The result is that this petition fails and is dismissed with costs.

[IN THE CALCUTTA HIGH COURT.]

ROYAL CALCUTTA GOLF CLUB MAZDUR UNION

v.

STATE OF WEST BENGAL AND OTHERS.

Sinha, J.

July 13, 1956.

'INDUSTRY'—MEANING OF—GOLF CLUB PROVIDING FACILITIES FOR MEMBERS—WHETHER 'INDUSTRY'—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(j).

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10(1)—RIGHT OF GOVERNMENT TO REFER DISPUTE—NATURE OF—RIGHT OF GOVERNMENT TO DECIDE NOT TO REFER—WHETHER GOVERNMENT CAN BE COMPELLED TO REFER BY WRIT.

CONCILIATION OFFICER—DUTIES OF—WHETHER JUDICIAL OR ADMINISTRATIVE—WHETHER BOUND TO FOLLOW PRINCIPLES OF NATURAL JUSTICE—INDUSTRIAL DISPUTES ACT, 1947, SECTION 12.

A Golf Club which is an association of persons who desire to play golf and which renders all facilities for to its members for that purpose falls within the definition of 'industry' in section 2(j) of the Industrial Disputes Act, 1947.

There are two limitations to the exercise of the right of the appropriate Government under section 10(1) of the Industrial Disputes Act, 1947. Firstly, it has to arrive at a subjective opinion as to whether any industrial dispute exists or is apprehended. Secondly, even if it comes to such a conclusion, or, even if the facts are so patent that the existence of a dispute cannot be denied, still, the expediency to refer under the section is left open to Government. Because a dispute exists it does not follow that it must be referred under section 10(1). The appropriate Government is the authority to determine as to the expediency of referring an industrial dispute under the section. No writ in the nature of mandamus can, therefore, be issued by the High Court directing the appropriate Government to refer an industrial dispute under section 10(1) of the Act.

The nature of the duties of a Conciliation Officer under the Industrial Disputes Act, 1947, are not judicial but only administrative and he is not bound to adopt the formalities of a judicial trial.

Matter No. 151 of 1956.

Guho for the petitioner union.

Ginwalla for the respondents.

JUDGMENT.

SINHA, J.—The facts in this case are shortly as follows. The petitioner before me is the Royal Calcutta Golf Club Mazdur Union, being a trade union of the workers employed in the Royal Calcutta Golf Club, which is an institution incorporated under the Indian Companies Act with liability limited by guarantee without the addition of the word "limited." This institution is primarily an association of persons, who desire to play golf in

Calcutta, and renders all facilities for that purpose. It is not denied that it makes available food and drink for consumption of its members, as also that it maintains a shop where members can buy their golfing equipment. Lessons are also given for which fees are charged. Between 17th November, 1954, and 5/6th December, 1954, the petitioner submitted a charter of demand of the workmen of the said club, to the secretary of the club. The charter of demand, *inter alia*, contained demands for recognition of the union, for fixing scales and classification of pay, house allowance, working hours, bonus, etc. It also demanded re-instatement of some workmen who had been discharged. As the charter of demand was not complied with, it was referred to Government, and the Assistant Labour Commissioner, Government of West Bengal, called a joint conference of the club and its workmen on 17th December, 1954. At the said joint conference the main subject for discussion was the dismissal of one Ramavatar, and suspension of Mangru Sardar, and a demand was made that Ramavatar should be forthwith re-instated and the proceedings against Mangru Sardar should be withdrawn. Until this was done the union was not prepared to discuss the other disputes. As a matter of fact, it insisted that there should be a reference to adjudication straightaway with regard to the disputes regarding these two workmen. The Conciliation Officer explained that the disputes could not be considered in this piecemeal fashion, and he fixed another joint conference to be held on 28th December, 1954. According to the affidavit filed by the Conciliation Officer, nobody turned up on behalf of the petitioner on 28th December, 1954. On behalf of the petitioner it is stated that no intimation was given to the petitioner about the proposed joint conference on the 28th, but as a matter of fact it was on that date that a notice was given for a conference to be held on 11th January, 1955. It is very difficult to determine as to the truth or otherwise of this grievance. I find, however, that on 24th December, 1954, a letter was written by the president of the union to the Labour Commissioner, Government of West Bengal, a copy whereof is annexed to the affidavit of Fatik Ghose affirmed on 30th January, 1956, and marked with the letter "A". In this letter, it is definitely stated that in view of the attitude of the club authorities no fruitful result would come out of the conciliation and that the conciliation proceedings had failed. It proceeds to state as follows:

"The union considers it fruitless to continue participation in the conciliation talk. In these circumstances may I hope that you would kindly close conciliation talk and ask the Government for referring the dispute to an Industrial Tribunal at an early date."

Even after this, the Conciliation Officer held a further joint conference, and it is not denied that the petitioner participated in it. Thus there were joint conferences on 11th January, 1955, and on 20th January, 1955. On the last date, as there could not be a settlement arrived at, in the case of Mangru Sardar, the representatives of the union left the conference and refused to participate in it. A conference was again fixed on 9th March, 1955, which was postponed to 24th March, 1955. It does not appear, however, from

the affidavits as to what happened at that conference. The Conciliation Officer thereafter asked the club to submit its written comments on the charter of demand and the club did so on or about 7th March, 1955. The Conciliation Officer carefully considered all the facts and made a report as he is required to do under section 12 of the Industrial Disputes Act. By letter, dated 16th May, 1955, Mr. N. C. Moitra, Assistant Secretary to the Government of West Bengal, Labour Department, wrote to the secretary of the union informing him that the Government had decided not to intervene in the matter and the reasons were given. It was stated that according to Government, the conditions of service were not considered unreasonable, and that the dismissals of certain workmen including Mangru Sardar were considered justified. This rule was issued on 2nd September, 1955, and in effect seeks for a writ in the nature of *mandamus* directing the respondents not to act upon the decision of Government mentioned above, and directing them to act in accordance with law, that is to say, to refer the disputes for adjudication. Mr. Guho appearing on behalf of the petitioner argues as follows. He says that upon the facts as stated above, there certainly existed a dispute, that is to say, an industrial dispute. He argues that at least the disputes with regard to Ramavatar and Mangru Sardar were considered by the Conciliation Officer himself to be a dispute in regard to which conciliation proceedings had failed. Mr. Guho attacks the proceedings in two ways. Firstly, he says that there being a dispute, there should have been a reference to adjudication; secondly, he says that the Conciliation Officer had duties which were judicial in nature, inasmuch as he had the duty to investigate the dispute. He says that he had failed to act in accordance with the law, because he had violated the rules of natural justice in not giving to the petitioner sufficient opportunity of putting forward its case and of meeting the case made by the club. Consequently he argues that this officer should be made to do his duty and that the Government which has made an order based on his report has acted illegally, and it should be directed to refer the disputes for adjudication.

The relevant sections of the Industrial Disputes Act (hereinafter referred to as the "Act") are sections 10 and 12. Under section 10 where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing, refer the dispute to a board for promoting a settlement or refer any matter appearing to be connected with or relevant to the dispute, to a Court of Enquiry or refer the dispute or any matter appearing to be connected with or relevant to the dispute to a Tribunal for adjudication. It will be observed that the duty cast on Government is qualified in two ways. Firstly, it has to arrive at an opinion that an industrial dispute exists or is apprehended, and secondly, it has been given a discretion to make an order of reference. In contrast with such discretionary power, there are other provisions in section 10 which are stricter, e.g., where the disputes relate to a public utility service and a notice

under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously and vexatiously given or that it would be inexpedient so to do, make a reference notwithstanding that any other proceeding under the Act in respect of the dispute may have commenced. It will here be seen that the Government has power to go into the question as to whether the notice given under section 22 has been frivolously or vexatiously given and further to consider whether it would be inexpedient to make a reference or not. If Government comes to a conclusion which is favourable to the workman, then of course it must refer the matter. Where, however, both parties to the industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference to either a Board, Court or a Tribunal, and the appropriate Government is satisfied that the persons applying represent the majority of each party then it shall make the reference accordingly. Here the only duty cast on Government is to be satisfied that the persons applying represent the majority of each party. If Government is so satisfied, then it is bound to refer the matter. Coming to section 12 of the Act, I find that it deals with the cases where there is or might be a conciliation by a Conciliation Officer. It provides that where an industrial dispute exists or is apprehended the Conciliation Officer may, or where the dispute relates to public utility service and a notice under section 22 had been given, shall hold conciliation proceedings in a prescribed manner. Sub-sections (2), (4) and (5) are important and must be set out.

Section 12(2). "The Conciliation Officer shall, for the purpose of bringing about a settlement of the disputes without delay investigate the dispute, and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

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

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

It will be observed that where a report has been submitted by the Conciliation Officer, it is for the appropriate Government to be satisfied that there was a case for reference to a Board or Tribunal. If it does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. The question has naturally arisen as to the extent of

Government's power to refer industrial disputes and to what extent the Courts can interfere. The first case that may be cited is the Supreme Court decision, *State of Madras v. C. P. Sarathi and another*, [1952] 4 F.J.R. 431. The duties of Government to refer industrial disputes under section 10 have been discussed in this case. Patanjali Sastri, C.J., said as follows :

"But it must be remembered that in making a reference under section 10 (1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on these matters."

It will thus be seen that the learned Chief Justice has emphasized the two qualifications which I have mentioned above. Whether we call it the power of the Government to refer or its duty to refer, as laid down in section 10, there are two qualifications. Firstly, it has to arrive at a subjective opinion as to whether any industrial dispute exists or is apprehended. Secondly, even if it does come to such a conclusion or even if the facts are so patent that the existence of a dispute cannot be denied, still, the expediency to refer to adjudication is left open to Government. In other words, because a dispute exists, it does not follow that it must be referred. As framed the section does not even speak of the existence of an industrial dispute, but as to the opinion of Government as to whether it exists or is apprehended. Government cannot make a dispute, which is not an industrial dispute into an industrial dispute, because that is an objective fact. But it is the sole arbiter in deciding whether an industrial dispute exists or is apprehended. That is purely subjective. In some cases, a grievance is made that the facts are so patent that any reasonable person is bound to come to the conclusion that a dispute exists, and if it exists, then not to refer it, is *mala fide* or dishonest. I do not think that this argument is of any substance. As I have mentioned above, it is not the existence of an industrial dispute which is the last word on the subject. The Government is also the authority to determine as to the expediency of referring an existing industrial dispute. That has been made clear in the

decision of the learned Chief Justice, in the decision quoted above. It will be observed that the wordings of sub-section (5) of section 12 are slightly different from the opening words of section 10. Mr. Ginwalla has argued, not without reason, that the real power of reference is given by section 10 and section 12(5) merely lays down as to what happens when a Conciliation Officer has investigated and filed his report. It is not necessary, however, to express an opinion on the subject. Mr. Guho has argued that it is section 12 which applied to the facts of this case and if section 12(5) applies then, I think that the Government is in a still better position. What the Government has to be satisfied upon receiving a report, as laid down in section 12(5), is as to whether there was a "case for a reference" to a Board or Tribunal. These words are very wide, and include the question as to the existence of a dispute and as to the expediency of referring. The only difference is that in case Government chooses not to refer a matter for adjudication, it must record and communicate to the parties the reason. It has communicated in this case its recorded reasons.

I next come to the argument put forward by Mr. Guho that the duties of a Conciliation Officer are judicial and that the investigations have been carried out in violation of the rules of natural justice. In my opinion, the duties of a Conciliation Officer are not judicial, but are administrative. It will be observed from the provisions of section 12 that the Conciliation Officer has to do a variety of things. He has to investigate the disputes and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of the disputes. If it was to be held that the duties of a Conciliation Officer were judicial, then in connexion with everything that he does, the formalities of a judicial trial will have to be observed, e.g., he could not ascertain from one side its views except upon notice to, or in the presence of, the other side. It is but patent that no conciliation proceedings could be carried on under such conditions. The main task of the Conciliation Officer is to go from one camp to the other and find out the greatest common measure of agreement. That being so, the grievance that the investigations have not been carried on in the manner that a judicial proceeding should be carried on, is without substance. So far as the violation of the rules of natural justice is concerned that principle would not apply if the proceedings are purely administrative. Apart from this, I am by no means convinced on the facts of this case that the investigations have violated the rules of natural justice. From the facts stated above, it will appear that the Union, from the very first, took an obstructive attitude. Either the case of Ramavatar and Mangru was to be settled as a condition precedent, or it was not prepared to proceed with the discussions, Mr. Guho has pointed out that subsequently the union did attend meetings. But at all the meetings it maintained the same attitude, viz., that either the dispute as to Ramavatar and Mangru, or at least Mangru Sardar, must be settled or else there would be no conciliation. As a matter of fact, the letter dated 24th December, 1954, would go to show that the secretary of

the union definitely stated that it would be futile to proceed with the conciliation proceedings which should be brought to an end. In the premises I think, it is wholly unreal to say that the union was perfectly willing at all times to proceed with the conciliation proceedings and to come to a just settlement not to speak of the grievance that it had no opportunity whatsoever to partake in the discussions relating to an amicable settlement.

There are one or two authorities to which I might make a passing reference. The first case is *Ramachandra Abaji Pawar v. State of Bombay*, [1951] 4 F.J.R. 93. In that case Chagla, C.J., pointed out that section 10 of the Act used the word "may". It is well settled that the mere use of the word "may" was not conclusive of the question as to whether power was given coupled with a duty, or whether the expression "may" indicated an absolute discretion vested in the authority:

"But in this case," said the learned Chief Justice, "there can be no doubt as to what the legislature intended by the use of the expression 'may' because in the proviso, the legislature has used the expression 'shall'. The legislature wanted to draw a distinction between 'may' and 'shall'. Therefore, in one case an absolute discretion was given to Government whether to refer or not to refer a dispute to one of the authorities mentioned in the section: in the other case no such discretion was given to the State."

The next case is *Sasamusa Worker's Union v. State of Bihar*, [1952] 4 F.J.R. 47. The learned Judges held that even assuming that there were materials to establish that there was an industrial dispute, the Government had to come to a subjective opinion in the matter and the discretion is given to Government to refer the industrial dispute or not and that no writ in the nature of *mandamus* could be issued by the Court to the State Government directing them to refer an alleged industrial dispute to adjudication of an Industrial Tribunal. It is, therefore, clear that the order made in this case by Government is in accordance with law and that nothing has been done which calls for interference by this Court. Before concluding I might refer to only one other point, viz., as to whether the Golf Club carried on an "industry" within the meaning of the Industrial Disputes Act. This is a vexed question, but regard being had to the decisions of this Court already made and to my own decision in *Bengal Club v. Shanti Ranjan Samaddar*, [1956] 12 F.J.R. 309. I must hold that it does carry on an industry within the meaning of the Industrial Disputes Act. As a matter of fact, this has not been very much disputed in this application.

For the reasons aforesaid, this application must fail and the rule must be discharged. All interim orders are vacated. There will be no order as to costs.

[IN THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.]

VENUS BATTERY MFG. CO., LTD.

v.

SUSHANTA KUMAR DAS.

Shri J. N. Maitra.

June 25, 1957.

INDUSTRIAL DISPUTE—INDIVIDUAL DISPUTE BETWEEN DISMISSED WORKMAN AND EMPLOYER—WHEN BECOMES INDUSTRIAL DISPUTE—NEITHER REMAINING WORKMEN NOR UNION OF WORKMEN TAKING UP CAUSE OF WORKMAN—EXTRANEOUS TRADE UNION REPRESENTING WORKMAN—EFFECT.

An individual dispute between a dismissed workman and the employer is not converted into an 'industrial dispute' where the remaining workmen of the industrial undertaking or a trade union of the workmen of the undertaking has not taken up the cause of the workman. The mere fact that a trade union of workmen (not belonging to the undertaking) wrote to the Labour Commissioner to intervene in the dispute or that the order of reference of the dispute to the Industrial Tribunal stated that the workman was 'represented' by that trade union, is not sufficient to make the dispute an 'industrial dispute'.

B. Ganguly for the workman.

Gopal Chandra Ghose for the management.

AWARD

1. By order No. 3379 Dis./D/11L-244/56, dated the 3rd August, 1956, the Government of West Bengal, in the Labour Department, referred under section 10 of the Industrial Disputes Act, 1947, the industrial dispute between Messrs. Venus Battery Mfg. Co., Ltd., 3 Mangoe Lane, Calcutta-1, and their employee Shri Sushanta Kumar Das, represented by the Federation of Metal & Engineering Workers' Union, 249 Bowbazar Street, Calcutta-12, regarding the matters specified in the schedule, to the Third Industrial Tribunal constituted under section 7 of the Industrial Disputes Act, 1947, by notification No. 592 Dis./D/12L-5/52, dated the 23rd February, 1953, for adjudication.

2. After usual summons the parties put in appearance and filed their written statements. The pleadings were completed on 26th October, 1956. The parties were thereafter directed to file lists of documents. Then after adjournments the dispute was heard and award was reserved.

3. The matter of dispute as stated in the schedule to the order of reference is as follows:

Whether the Management was justified in discharging Shri Sushanta Kumar Das from his service? What relief is he entitled to?

The controversy between the parties arose in the following circumstances: Venus Battery Manufacturing Co., Ltd., is a small engineering

concern having office and workshop at 3-Mangoe Lane, Calcutta. It manufactures battery and battery parts. The concern employed about 25 workers, Shri Sushanta Kumar Das joined the concern as a battery assembler. On 10th March, 1956, he was discharged with immediate effect by a notice of that date (Ex. 1) on the ground that the business was running at a loss for more than 2 years. He had by then served for a little over 5 years. On 15th March, 1956, the workman, Shri Sushanta Kumar Das, obtained a certificate from the Managing Director of the concern on putting signature on the duplicate (Ex. A). In the said certificate the Managing Director stated besides testifying to his ability and character that Shri Sushanta Kumar Das left the concern of his own accord for better prospect. On 16th March, 1956, the workman Shri Sushanta Kumar Das addressed a registered letter with acknowledgement due to the Managing Director of the concern demanding payment of (i) one month's wages in lieu of notice, (ii) retrenchment benefit equivalent to 2½ months' wages for his service for 5 years, and (iii) 6 months' pay as damage without prejudice to his right for re-instatement (Ex. 2).

In the letter it was also complained that in retrenching him the principle of last come first go was not observed in that men junior to him were retained in service (*vide* Ex. 2). Copy of the said letter was sent by the workman to the Labour Commissioner for favour of immediate intervention. As no action was taken on the said letter the Assistant Secretary of the Federation of Metal and Engineering Workers' Union wrote to the Labour Commissioner on 17th April, 1956, to take immediate steps on the above letter of the workman so that the workman was either re-instated or paid his dues as demanded by him therein. After such letter the Conciliation Officer wanted comments from the Company. The Company wrote to him to say that as there was no Union for the workmen of the Company and as no workmen of the Company took up the cause of the workman, it was not obliged to talk about the matter with an outside Union. As thus no settlement was possible, the dispute was referred to the Tribunal for adjudication on 3rd August, 1956.

Against this background the Company in its written statement before this Tribunal took preliminary objection that what had been referred to was not an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act but pure and simple individual dispute and the reference was, in consequence, bad.

It was, on the other hand, urged on behalf of the workman that when the Federation of the Metal and Engineering Workers' Union intervened on his behalf the dispute became an industrial dispute.

On giving careful consideration to the materials on record and arguments advanced on either side it seems to me that the contention on behalf of the Company must prevail. In the case of *State of Madras v. C. P. Sarathi* reported in [1952] 4 F.J.R. 431, the Supreme Court held *inter alia* that the question about the factual existence of the dispute is only immune from

being challenged before any judicial or quasi-judicial body and the question as to the subject-matter of an order of reference, namely, whether it is an industrial dispute or not would be decided by the Industrial Tribunal to whom the industrial dispute is referred for adjudication. Then in the case of *Central Provinces Transport Service Ltd. v. Raghunath* reported in [1956] 11 F.J.R. 298, the Supreme Court observed that preponderance of the judicial opinion was clearly in favour of the view that a dispute between an employer and a single employee would not *per se* be an industrial dispute but it might become one if it was taken up by the Union of which the workman is a member or a number of workmen. In the present case the evidence shows that there was and is no Union for workmen of the concern. There is also no evidence to show that the workmen of the concern made grievance about discharge of Shri Sushanta Kumar Das or espoused his cause. There is also nothing to show that the workman Shri Sushanta Kumar Das was or is a member of the Federation of Metal and Engineering Workers' Union. There is also nothing to show that any other workman of this Company was or is a member of the Union. An officer of a Union may represent a workman under clause (c) of section 36 when he is not a member of a registered Union. But there is nothing to show that the Union actually took up the cause of the workman and made it its own. The letter which it wrote to the Labour Commissioner does not show that the Union adopted the cause of the workman and made it its own. It merely invited attention of the Labour Commissioner to the previous letter of the workman, dated 16th March, 1956, and requested the Labour Commissioner to get the employer to accede to the demands of the workman at an early date. The conciliation proceedings revealed that after writing such letter the Union took no further step. The Company, on the other hand, it appears from the record of the conciliation proceedings, declined to attend the conference called by the Conciliation Officer as the Union was not a Union of their workmen, and as it had nothing to do with the said Union. As the Company did not attend the conference on that ground, it appears, that the reference was made. It cannot, therefore, be said that the Union took up the dispute of the workman, made it its own dispute and secured the reference for adjudication. The plain language of the order of reference shows that the dispute arose between the Company on the one hand and their employee Shri Sushanta Kumar Das on the other, regarding his discharge. From the description of the parties to the dispute and from the nature of the subject-matter of the dispute, it also appears that there was only one employee who was party to the dispute, namely, Shri Sushanta Kumar Das and no other employee or workman. From the fact that in the order of reference, the Federation of Metal & Engineering Workers' Union was stated as representing Shri Sushanta Kumar Das, it cannot be said that the said Union took up the dispute of the workman and made it his own dispute. The materials on record, on the contrary, show that the said Union did not raise any dispute but the workman himself. The meaning of the word "represent" according to Chambers' Twentieth Century

the Supreme Court have laid down that the purpose of section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, and of section 33 of the Industrial Disputes Act, 1947, being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under these sections is to accord or withhold permission and that even a cursory perusal of section 33 of the 1947 Act will make it clear that the purpose of that section was not to confer any general power of adjudication of disputes. In their recent decision in the case of *Caltex (India) Ltd. v. Eugene Ferenandes and another* [1957] 11 F.J.R. 287, their Lordships of the Supreme Court have held that the only jurisdiction which the Industrial Tribunal has under section 33 is to determine whether a *prima facie* case for meting out of the punishment proposed has been made out by the employer and the employer is not actuated by any *mala fides* or unfair labour practice or victimisation. *Vide* also the decision of their Lordships of the Supreme Court in the case of *Atherton West & Co. Ltd. v. Suti Mill Mazdoor Union and others* [1953] 5 F.J.R. 83. The question of the scope of any inquiry under section 33 of the Industrial Disputes Act, 1947, had arisen before their Lordships of the Labour Appellate Tribunal in *Appeal (Bom.) No. 325 of 1955 (Sanjivan B. Karkera v. The Teddington Chemical Factory)* decided on 10th January, 1956. In that case their Lordships were dealing with an application under section 33 of the Act and there they have observed as follows :

"In such cases where the formal permission of the Tribunal is asked for, naturally the Tribunal not being allowed to consider other aspects of the question or to impose any conditions on the grant of the permission asked for by the employer, it can hold only a summary enquiry.....In this case at the stage when merely the formal permission of the Tribunal was asked for under a provision like section 33, when the *bona fides* of the employer were not seriously challenged, the Tribunal could only ascertain whether a *prima facie* case of misconduct depending on a possible view of the materials placed before the inquiring officer existed for the employer to take the proposed action, if he decided to take it after the grant of the permission."

4. It was argued by Shri Nanavati that the principles laid down in the above mentioned decisions would apply with equal force to applications under the present section 33 of the principal Act and hence in dealing with the ten applications before this Tribunal it should confine itself only to seeing whether a *prima facie* case has been made out to support the action taken by the Company and that the Tribunal has no jurisdiction to reopen the case on merits and treat these applications on the same footing as a regular reference of an industrial dispute or a complaint under section 33-A. Shri Khadilkar on behalf of the opponents, on the other hand, contended that in an application under section 33(2) of the principal Act the Tribunal has unfettered discretion to go into the merits of the matter to the extent it

may deem necessary in order to enable it to pass a proper order under sub-section (5) of section 33.

5. Now, if Shri Khadilkar's contention were to be accepted on the nature and scope of the inquiry the Tribunal is competent to make while dealing with an application under section 33(2) we would at once be confronted with several difficulties and inconsistencies. The new section 33 itself does not give us any indication as to the procedure the Tribunal should follow in dealing with applications made under the various provisions thereof. Neither does the old section 33 make any provision in that behalf. But the scope of the inquiry under the old section 33 has been precisely indicated by the decisions cited above. It will be clear from these decisions that while dealing with an application under the old section 33 the Tribunal had no jurisdiction to go over the whole subject matter of the application *de novo* and in effect to hold a fresh inquiry either in continuation of the inquiry held by the management or in supersession thereof. The Tribunal's function was limited to seeing whether a *prima facie* case was made out by the management to justify the proposed action and whether in proposing such action the employer was not actuated by any *mala fides*, unfair labour practice or victimisation. If in the opinion of the Tribunal such a *prima facie* case was made out, it was its duty to remove the bar, created by the section and to accord permission leaving it to the management either to take the action for which permission was sought or to drop taking such action. If no *prima facie* case was made out or if the application was not *bona fide* or if the principles of natural justice were ignored in holding the inquiry, etc., the Tribunal had to reject the application.

6. Now, let us turn to the new section 33 and see whether there is anything therein to justify us in following a procedure different from that indicated by the above cited decisions. The new section 33 introduces a distinction between matters and misconducts connected with such dispute. In regard to any matter or misconduct connected with the dispute, the employer is debarred from taking action indicated in sub-section (1) of section 33 without the express permission in writing of the authority before which the proceeding may be pending. Thus, so far as regards matters or misconducts as are connected with the dispute, the new section 33(1) is almost the same as the old section 33. And as regards protected workmen as defined in the explanation to section 33(3) of the act the prior permission of the authority concerned is necessary whether the misconduct, etc. be connected with the dispute or not. Therefore, so far as applications under section 33(1) and (3) are concerned the principles laid down in the above mentioned cases would apply as these sub-sections are not fundamentally different from the old section 33. That was fairly conceded by Shri Khadilkar. Now, let us turn to sub-section (2) of section 33 with which we are directly concerned in these applications. As there is an allegation of misconduct in these applications the relevant portion of this sub-section is as follows :

"33. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute,—

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

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

7. It was not disputed before me that the misconduct alleged by the Company is one which is not connected with the dispute (in the main adjudication the demand is for re-instatement of two workmen whereas the present opponents have been dismissed for the alleged misconduct of resorting to an illegal strike in connection with their demand for a holiday on 6th March, 1957, which was polling day). Now, it was argued by Shri Khadilkar that in respect of an application under section 33(2) for approval of the action taken by the employer the powers of the Tribunal are wider than those it is competent to exercise when dealing with applications under sub-sections (1) and (3) of section 33. He contends that in considering an application under section 33(2) for approval the Tribunal has to go into the merits of the case in the same way as in a complaint under section 33-A whereas in dealing with applications under sections 33(1) and (3) it has only to be satisfied whether the employer has made out a *prima facie* case in support of the permission sought and whether the application is *bona fide*. In support of this argument he has placed considerable reliance on sub-section (5) of section 33. This sub-section provides that "where an employer makes an application to a Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned, shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit". Shri Khadilkar laid considerable emphasis on the words "pass such order as it deems fit." He has fairly conceded that but for this sub-section (5) the nature of the inquiry to be held by the authority concerned would be the same as in applications under sub-sections (1) and (3). Now, referring to the aforesaid words "pass such order as it deems fit" he argued that they give a discretion to the Tribunal to pass any kind of order that may be just and equitable and in order to enable it to pass such order, it must be deemed to be having jurisdiction to go into the merits of the case and weigh the evidence adduced before the inquiry officer and if necessary to hold a fresh inquiry. In my opinion there is no warrant for making all these deductions and drawing these inferences from the aforesaid words. There is nothing to show that these words have been used in the section to convey any special meaning. In my opinion what is emphasised in sub-section (5) is that these applications for approval shall be dealt with very urgently and expeditiously. It is

with the intention of impressing on the authority concerned the urgent nature of such applications that this sub-section, in my opinion, has been enacted and not for the purpose of merely saying that in relation to such applications the authority concerned can pass such orders as it thinks fit. It goes without saying that an authority vested with the powers of passing orders has to pass such orders as it deems fit (i.e., suitable orders) of course, within the frame work of the law of the land and the decisions of the higher Tribunals which may be binding on it. Even under section 33(1) and (3) the authority concerned has to pass suitable orders. It cannot be said that it has no powers to pass such orders as it may deem fit in relation to such applications merely because such power is not specifically conferred as in the case of applications for approval. If the intention of the legislature was, in respect of applications for approval, to confer a wider jurisdiction on the authority concerned or to enlarge the scope of the inquiry, it would have expressed such intention in unequivocal and specific language as in the case of complaints under section 33A. The legislature has used the words "Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government". No such words have been used in relation to an application for approval. And it is also significant to note that so far as such an application is concerned, the authority dealing with it has to pass an "order" and not to make an award as in the case of a complaint under section 33A or in an adjudication. There would be no justification whatever for holding that the words "pass such order as it deems fit" were intended by the legislature to put applications for approval on a fundamentally different footing from applications under sub-sections (1) and (3). I, therefore, do not think that these words emphasised by Shri Khadilkar have any particular significance so far as the scope of the inquiry is concerned. If, instead of the words used in sub-section (5) the legislature had said "the authority concerned shall, without delay, hear such application and pass orders, as expeditiously as possible" would there have been any fundamental difference? In my opinion, not. At the most it can be said that these words confer a discretion on the authority concerned to pass any suitable order to meet the requirements of the case and not only one of two orders viz., either giving approval or withholding approval. But in my opinion any order that the authority may pass would be based on the proceedings of the inquiry held by the employer. The authority concerned no doubt has jurisdiction to scrutinise the evidence adduced before the inquiry officer with a view to seeing whether a *prima facie* case has been made out or not. It would also be open to it to seek clarification on any points which may be obscure to it in the inquiry proceedings. But it would not be open to it to reopen the whole case, brush aside the inquiry held by the inquiry officer and arrive at a finding on a fresh inquiry altogether. After all, applications under section 33 are intended to be dealt with in a summary manner and

this purpose would be defeated if an elaborate inquiry were to be held before they could be disposed of.

8. If we were to accept Shri Khadilkar's contention that in an application for approval we have jurisdiction to go into the merits of the case in the same way as in a complaint under section 33A, we would be confronted with a difficulty for which there is no solution. It was pointed out by Shri Nanavaty that the jurisdiction to entertain an application for approval is conferred not only on the Labour Court, Tribunal or National Tribunal but also on the conciliation officer and the Board. Now, if an application for approval were to be treated as an adjudication or a complaint it may involve, *inter alia*, recording of evidence of witnesses and consideration of complicated questions of facts and law. The Conciliation Officer clearly would have no jurisdiction to deal with such matters. He is primarily an administrative officer and not a judicial officer. It has been held by the Calcutta High Court in the case reported in [1957] 12 F.J.R. 324, that the duties of a Conciliation Officer under the Industrial Disputes Act, are not judicial but only administrative. It is obviously for this reason that jurisdiction to hear a complaint under section 33A has not been conferred on a Conciliation Officer. Adjudications of industrial disputes and complaints under section 33A are in the nature of regular judicial proceedings which are beyond the purview of a Conciliation Officer. It cannot be said, in respect of applications under section 33(2) that the powers of a Conciliation Officer are different from those of the Labour Court, Tribunal or National Tribunal. Under section 33 all these authorities have to exercise similar powers and functions. So, if a Conciliation Officer cannot deal with an application for approval like a judicial proceeding, so also the Tribunal.

9. There is another aspect of this question which merits consideration. We have seen that under the old section 33 as also under the new section 33(1) and (3) the function of the authority concerned is to confine itself only to the question whether a *prima facie* case has been made out or not and on a decision of that question either to accord or withhold permission. Now, if permission to discharge or dismiss a workman is given and if the employer takes action consequent on such permission being given, the aggrieved workman has still a right to raise an industrial dispute and claim relief of reinstatement or compensation. That is because the authority concerned does not go into the merits of the case but deals with it in a summary manner. The same right is available to a workman who has been dismissed or discharged by an employer in exercise of the powers vested in him by section 33(2) and whose dismissal or discharge is approved by the Tribunal, etc. Such a workman can also raise an industrial dispute. There is nothing in the new section 33 to the contrary. That would lend support to the view that we have not to go into the merits of the case while dealing with an application for approval. Otherwise there would be two proceedings in which the merits of the matter would fall to be considered. These two proceedings may be

before different authorities who may arrive at conflicting decisions. That would give rise to an anomalous situation.

10. The interpretation which Shri Khadilkar wants me to accept is not even reasonable looking to the scheme of the section as a whole. Admittedly permission can be granted under section 33(1) for dismissal or discharge of a workman for misconduct connected with the dispute merely on an examination of the inquiry proceedings with a view to ascertaining whether a *prima facie* case has been made out. But where the misconduct is not even connected with the dispute can it be said that the workman concerned has higher rights and can insist on a more detailed inquiry? The reasonable view would be to put all the applications under section 33 on the same footing so far as the nature and extent of the inquiry are concerned.

11. Shri Nanavaty also drew my attention to para 4 of the statement of objects and reasons for the Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, 1955. Although the statement of objects and reasons is not of much relevance in interpreting the statute to which it may relate it may be pointed out that there is nothing in the statement of objects and reasons to lend support to any of the contentions raised by Shri Khadilkar relating to the scope and nature of the inquiry under section 33(2) of the Act. I, therefore, hold that the scope and nature of the inquiry in an application for approval under section 33(2) is the same as pointed out in the decisions cited above. The result, therefore, is that in dealing with these applications we will have to confine ourselves to seeing whether a *prima facie* case has been made out in support of the action taken by the management and whether such action was *bona fide* and no unfair labour practice or victimisation were involved in the matter. The applications shall now be fixed for further hearing.

[IN THE LABOUR COURT, COIMBATORE.]

SRI RAJALAKSHMI MILLS, LTD.

v.

THEIR WORKMEN.

Shri M. V. Harihara Aiyar.

May 24, 1957.

GO-SLOW—WHETHER AMOUNTS TO STRIKE—LOCK-OUT FOLLOWING GO-SLOW—WHETHER JUSTIFIED—WORKMEN, WHETHER ENTITLED TO WAGES FOR LOCK-OUT CAUSED BY GO-SLOW.

Where the management establishes that the workmen were giving any amount of trouble for a long time, that the management has been facing those situations with great control and patience, taking necessary steps to avert closure of the undertaking, and that the workmen had deliberately adopted go-

slow tactics and brought down the production considerably, the action of the management in declaring a lock-out as a last resort would be perfectly justified. The lock-out having been caused by the conduct of the workmen they would not be entitled to any wages for the period of the lock-out.

Industrial Dispute No. 58 of 1954.

AWARD.

By G.O. Ms. No. 3595, Industries, Labour and Co-operation, dated 22nd December, 1954, the Government of Madras referred for adjudication to this Court, the industrial dispute between the workers and the management of the Sri Rajalakshmi Mills, Limited, Coimbatore, in respect of the matters referred to in the annexure to the said Government Order, which are as follows:

1. Whether the workers of the Rajalakshmi Mills Limited, Singanallur, resorted to 'go-slow' tactics; and, if so
(a) whether the lock-out by the management of the Rajalakshmi Mills, Limited, Singanallur, Coimbatore, from 25th November, 1954 is justified; and

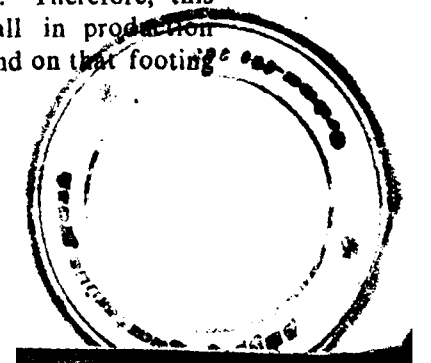
(b) if not, whether the workers are entitled to wages for the period of lock-out?

2. In this matter, a statement of claim by the Coimbatore District Textile Workers' Union was submitted on 3rd January, 1955. Another statement was submitted by the National Textile Workers' Union on 15th January, 1955. Along with that statement, this Union has also filed a list of the names of workers numbering 166, who alone are members of this Union. This mill at that time had a labour strength of 1,100. The majority of the workers thus belong to the Coimbatore District Textile Workers' Union. The pith and substance of the contention of the Coimbatore District Textile Workers' Union is that the management were themselves responsible for the fall in production. The factors which contributed to the fall in production were all brought about by the management in connivance with the supervisory staff and circumstances beyond the control of the workers.

3. The other Union only pleaded that the workers belonging to that Union never resorted to any go-slow tactics. Thus, according to them, the lock-out could have been avoided by the management if only they had taken the necessary steps to pick out the real offenders, i.e., who adopted the go-slow tactics. Thus, even at the outset, from the claim-statements of these two rival Unions, it is abundantly clear that they are not at one with regard to their grievances against the management. It is significant to note that the National Textile Workers' Union did not say that the management is responsible for the fall in production. Needless to say that they did not allege any collusion between the management and the supervisory staff. The other material allegations in the claim-statements of those Unions will be adverted to in detail while considering the points at issue.

4. The management has filed a counter, a lengthy one, and their specific case is that the workers deliberately adopted go-slow tactics and in spite of repeated reminders and warnings persisted in those unfair tactics, with the result that they had no alternative but to declare a lock-out. In fact, the counter-statement containing about 84 paragraphs, is a narration of a woeful tale as to how the management suffered continuously at the hands of the workers and how in spite of their endeavours to correct them through the help of authorities they only failed to achieve their object. Regarding the specific charge of collusion with the supervisory staff the management denies the same and to quote their own language, in paragraph 56 it is alleged that it may be noted that for the first time the Union officials on 24th January, 1954, counter-charged the supervisory staff also as being responsible for the slow-down. Never before either *suo motu* or in answer to the several notices was this counter-charge made. The management submit that prior to the 24th several notices had been displayed on the notice board and explanations called for. None of the workers explained satisfactorily and there was no word of complaint that the supervisory staff were also responsible. In another paragraph following the same, it is stated that it is, therefore, interesting and extremely important to note that for the first time a counter-charge was made only after the final notice reminding the workers that the mills may close down, that the Union put up some kind of defence by throwing the blame partly on the supervisory staff. Thus, according to the management, the fall in production has been brought about only by a concerted action on the part of the workers by adopting go-slow tactics. They also explain in their counter-statement how it is next to impossibility to pick out the individual workers, when, according to them, it is the result of a concerted attempt of direct and indirect participation of nearly all the workers and, therefore, there was no question of isolating or distinguishing between one worker and another.

5. I should not omit to refer to another point referred to by the Coimbatore District Textile Workers' Union, viz., the motive of the management to adopt what they call 'a suicidal policy.' They say that the management has been offended because of certain charges made by that Union against the Directors of the Mills Co-operative Stores, such as misappropriation, etc. It is on account of that, they would say, that the management wanted to wreak vengeance. As against that, the management in their counter also refer to the history of the strained relationship between the workers on the one hand, and the management on the other, for nearly two or three years prior to this incident of lock-out and go-slow process and the cumulative effect of all the proceedings taken by the management during that period and the militant attitude of the workers is this go-slow process deliberately conceived and put into effect by the workers. Therefore, this go-slow process which resulted in a phenomenal fall in production amounted to an illegal strike on the part of the workers and on that footing



the management justifies the lock-out declared on the night of 24th November, 1954.

6. Now, the points that arise for consideration and determination are—

(a) Whether the workers of the Rajalakshmi Mills Limited, Singanallur, resorted to "go-slow" tactics; and if so

(b) Whether the lock-out by the management of the Sri Rajalakshmi Mills, Limited, Singanallur, Coimbatore, from 25th November, 1954, is justified; and

(c) if not, Whether the workers are entitled to wages for the period of lock-out?

7. This case serves as an illustration of the disastrous consequences that will ensue if there is no harmonious and happy relationship between the management on the one hand and the labour on the other hand. The episode of lock-out in this case has to be traced in a background of hatred and contempt. In fact the atmosphere seems to have been sur-charged with mistrust and misgivings. The management has got a long woeful tale to narrate with regard to the violence amounting to assault and murder on the part of the workers and as against that the workers have got charges of misappropriation against the management with regard to certain institutions in which they have got an interest and they feel that the management have not rendered proper justice by bringing to book the miscreants and one miscreant according to them is the Assistant Manager himself. The go-slow process actively began to play a part and the management began to take serious notice of it at or about the beginning of November, 1954. It is common ground of the management as well as the workers of the District Mill Workers' Union that the relationship has been strained for a long time and has not improved at that time. If one were to imagine 'Production' as a living human being, just at the beginning of November 1954 the life of that person is brought to an end about five days before the expiry of that month. In other words, production was a corpse on the night of 25th November, 1954. However, it was not buried once and for all, for one finds that there is a resurrection within a month, i.e., the mills were re-opened on 24th December, 1954, on account of the intervention of the Government. Now, practically one has to examine only the horoscope of a dead man as it were and find out the causes which contributed to the disease of that personality of production and how it got weakened and weakened and finally life became extinct when the last dose of lock-out was administered. According to the management, the situation could have been averted, if only the personalities they drag into this history had played their part satisfactorily. In other words according to them, they did not get the necessary co-operation from quarters from where they expected the same. Thus, they accuse the workers whether they belonged to the National Textile Workers' Union or whether they belonged to the District Textile Workers' Union. They also allege that they did not receive proper response from the labour authorities and also their

approach to this question was not reasonable. They maintain that the supervisory staff behaved properly and there was absolutely no ground for making any charge against them. In giving the details they practically trace the history of the correspondence that they carried on and the notices they served during that period to responsible persons who could correct themselves or control the situation. They also rely on the records which they have maintained with regard to the fall in production on account of this go-slow tactics. Thus the management marked on their side in all 177 documents—Exhibits M-1 to M-177. They examined also six witnesses.

8. The case on the workers' side was fought out by the Union represented by Sri P. S. Chinnadorai and he marked seven documents, Exhibits W-1 to W-7 and examined three witnesses.

9. I do not think it necessary to refer to in detail about the strained relationship between this Union and the management, ever since August, 1951. Documents Exhibits M-1 to M-60 contain detailed accounts of the various happenings which are calculated to show that the relationship between them was far from cordial. Exhibit M-1 refers to a wilful breaking of standing orders and trying to create trouble. Exhibit M-4 refers to the instigation on the part of one of the workers in the spinning department in March 1952. The case against him is that he failed to carry out his own duties and prevented others also from doing their work. Exhibit M-5 refers to the indiscipline of spinning piecers. Exhibit M-8, dated 30th September, 1952, is a complaint to the Labour Officer with regard to the go-slow policy pursued by doffing boys. Exhibit M-9 refers to interference with jobber's work by the committee members set up by the Union. Exhibit M-11 refers to misbehaviour of two workers in the inter and roving department. Exhibit M-12 refers to violence towards spinning doffing jobber. Exhibit M-13, dated 17th April, 1954, refers to the complaint to the labour by the management with regard to the go-slow in speed frame section. The management in this case have also resorted to Police aid. That is clear from Exhibit M-14 which narrates the case how a head jobber was waylaid and attacked by two other persons. Exhibit M-19 refers to another go-slow complaint in the spinning and preparatory section. Exhibit M-22 is to the same effect. Exhibit M-26 of July 1953, refers to stoppage of spinning machines. Exhibit M-28 refers to go-slow by spinners. Exhibit M-32 also is to the same effect. Exhibit M-35 refers to rowdyism, unlawful obstruction and violence by spinning and roving ring leaders of the Socialist Union. Exhibit M-37 goes to show how the workers have grievances against the supervisory staff. Exhibit M-44 refers to trouble created by spinning badlis. Exhibit M-46, dated July 1954, is to the same effect and also Exhibits M-48 and M-49. Exhibits M-51, M-52 and M-57 all go to show how the management has been aggrieved on account of go-slow tactics. Exhibits M-61 to M-132 practically give the history in the shape of various correspondence and complaints made by the management during that significant month, November, 1954. In the warning notice, Exhibit M-114, dated 23rd November, 1954, the manage-

ment allege that the wilful campaign of slow-down of production has been launched by the workers from the 6th instant. It is an illegal strike. The management by personal appeal and written notices to the workers have endeavoured to restore normal production by their efforts, but they have been in vain. The management has reason to believe that this campaign is aroused from outside and due to ulterior reasons. The Labour Commissioner and the Labour Officer, Coimbatore, have been informed and yet the management do not find any change in the situation. The District Collector has also been informed. So far no change is seen in the attitude or conduct of the workers. In the circumstances the management desire to make it clear that unless production is restored to normal efficiency that was obtaining prior to "slow-down" and the "go-slow" which is an illegal strike is given up within 48 hours, the management may lock-out the mills without any further notice until they are satisfied that the workers will work normally. The management have considered the matter carefully and inasmuch as the campaign is aimed at the middle department paralysing the forward and backward processes, they have no alternative except to lock-out the whole mills. The workers and those behind them will alone be responsible for all consequences and the management will not be liable for the loss of wages caused to workers by this action. In Exhibit M-121, dated 25th November, a report by the management to the Labour Officer, it is alleged as follows :

"It has been reported by our spinning clerk and supervisor that Spg. No. 484, Sama Pillai and Spg. No. 508, Ramaswamy, collected a crowd and came to the spinning clerk. They began to abuse him and even went to the mood of attacking him. Fearing that he would be attacked, he rushed to the office immediately and reported to the manager.

As the disobedience of some workers are increasing day by day, we fear we will be forced to declare lock-out at any time after 7 p.m. to-night. We request help during interval time, i.e., between 7 p.m. and 8 p.m." On 25th November, 1954, they write a letter as per Exhibit M-121 to the Sub-Inspector of Police where they say "We fear we would be forced to declare lock-out at any time after 7.30 p.m. to-night. We request help during interval from 7 p.m. to 8 p.m." In Exhibit M-112, dated 25th November, 1954, a letter to the Labour Officer, they indicate how conciliation on the part of the Labour Officer failed. It is stated there that the tampering with the speeds of the motors was done on 6th, 7th, 9th and 10th only and after that day though they were not meddling with the speed of the motors, that they were courting more troubles collectively by breaking of standing orders and by doing the work very slowly aimed at paralysing the normal work. They also indicate how the charge against the collusion of the supervisory staff with the management is fantastic and that it is against the interest of the supervisory staff itself as their income will be affected to a great extent unlike a single worker's income. In fact, that letter goes to show how the *neptus ultra* has been reached in this go-slow tactics. Thus,

on 26th November, 1954, one finds the report sent by the management as per Exhibit M-125 how they have put up a notice that there will be a lock-out at 8 p.m. on 26th November, 1954. They add, "we very much regret to take this step but as will be seen above it was inevitable." They have stated earlier that they had no other course except to close down the mills temporarily until they were assured that the workers resumed work normally and give production on a normal basis without resorting to go-slow campaign. They also state how they have given due intimation to the Collector and the District Superintendent of Police. It will be superfluous to deal with the other details referred to in the various notices and correspondence.

10. Even without going into the oral evidence of the management, it is abundantly clear from these documents relied upon by the management that the two points which they urge are clearly made out. One is that practically, there was no love lost between the workers and the management for some time past and that the workers did not produce the normal quota and how the fall in production was gradually increasing from 6th November, 1954. The management has also demonstrated as to how that aspect has been brought to the notice not only of the workers but also to the Labour Officer. The workers are given notices to speed up production. The Labour Officer is informed for the purpose of taking such steps which will be conducive to the maintenance of normal production and which alone can prevent the lock-out or temporary lock-out or closure of the mills. When once it is admitted by the Labour Union that there was fall in production and when it goes without saying that the production depends upon the nature of the work turned out by the workers, the onus is heavy upon the workers to explain as to why the production has fallen. The explanation put forward by the Union is that the maistris reduced the speed and they also did not start the machine in time. They say that the management is responsible for this conduct on the part of the maistris. In other words, the management has given them an instruction to reduce the speed and to cause delay in starting the machine after the doffs have been filled up. Admitting that such a policy on the part of the management is suicidal to their own interests, the workers will maintain that the management pursued such a policy on a false notion of self-respect and with a view to take vengeance upon the workers. They go to the length of charging the management of preparing correspondence and documents now relied upon by the management to prop up a false case of deliberate go-slow tactics on the part of the workers. The idea of vengeance according to the Union was engendered by the management because of the demand by the workers to punish persons alleged to have misappropriated funds belonging to the co-operative society.

11. The documents filed and marked on behalf of the Union are only copies of notices and summary copies of replies that passed between the management and the Union besides the report of the Labour Officer sent in

after November 30th. In their replies evidenced by Exhibits W-3 and W-4 there is no whisper as to any collusion between the management and the supervisory staff. There is no reference to any deliberate act of vengeance on the part of the management. There is no indication or suggestion of any parties of fraud conceived by them in the manner indicated in paragraphs 23 and 26 of the claim-statement. One suggestion of the Union is that the speed of the machine has been set up to run slow by the maistris. On the other hand, according to the management, necessary speed has been set up or adjusted by the maistris to enable the workers to produce the normal quota of out-turn but that it has been tampered with by the workers. This process started in the Spinning department and it had its own reactions in the other departments as well. I have already referred to the documentary evidence of the management and as I just now observed the documentary evidence let in by the Union does not in any manner support their case of collusion. Now, let us examine the oral evidence let in by both the parties and find out whether the Union has established their case of collusion or whether the management has established their case that the workers alone are responsible for the fall in production by their deliberate go-slow tactics. The first witness for the Union is a worker in the Spinning department. Perumalswami, who has put in eight years of service, admits that the management had put up notices that the go-slow process is prevalent in the Spinning section. He stated "There was, in fact a fall in production but our case is that the management is responsible. The fall in production was in the Spinning department. There was dispute between the workers and the management even prior to this. That was due in some misappropriation case connected with the co-operative stores and the workers wanted to take action against the management. Prior to that, the relationship was cordial.

The maistris are to generally attend to the motors. They fix up the speed. We cannot interfere. If the speed is slow, that will affect the production." Then he refers to the time taken for removing the binders and refilling the empty bobbins. He would accuse the maistris of purposely delaying to reset the machine. He admitted that individual notices were received like Exhibit W-1 and the reply was as per Exhibit W-3. Then he would say, "There are trying to create evidence with ulterior motives." In cross-examination we point out how the management is responsible and is a party privy to and it was elicited that the operations in a textile mill from blow room to baling are a connected operation. All should work harmoniously. When there is a fall in one department it will adversely affect another. He referred to the preparatory department, slubbing, inter and roving and it will affect the Spinning and other departments. He was not prepared to concede that the maistris would get nearly Rs. 24 production bonus. The question was put with reference to bonus to show that a maistri would not work against his own interest by seeing that the production falls low. Then

this worker admitted that all the frames have individual motors with separate individual starters. This is to show that the workers themselves can start the machine. In fact he immediately stated that "Maistri it is who first starts the machine. We had done it when we had cordial relationship." Therefore, that evidence goes to show that it is not as if the workers could not tamper with the speed if they want it. Though he would say that before the co-operative stores muddle with regard to misappropriation, there was cordial relationship, he had to admit that there were disputes even four years prior to this lock-out. He also admitted that there was no misunderstanding between the staff and the workers inside the mills. Then he gave certain answers which are calculated to show that a worker belonging to the I.N.T.U.C. Union was assaulted but he would not concede that it was due to any rivalry between the Unions. As against the plethora of documentary evidence let in by the management to show how the workers have been giving trouble to the management, this worker would go to the length of saying that it was the management who have been giving trouble and not the workers. He stated that the management has been putting notice in the notice board prior to this for a fortnight pointing out the go-slow process. He had to concede that no complaint was given against the management in writing, if it is the worker's case, that they are responsible for tampering with the speed. It is difficult to understand his explanation that the 'Sangham' did not take any action because the management would not care for anybody. He cannot say whether the Labour Officer visited the mills prior to the lock-out. Without examining the Labour Officer he wants to rely upon the Labour Officer's statement to him made personally to the effect that the Labour Officer felt helpless against the unreasonable conduct of the management, in not listening to his advice. Making all sorts of allegations against the maistri he would only say that the workers did not want to raise it as a big dispute. He concluded that there was go-slow trouble in the preparatory department as well. Stating that he is not aware of the fall in production to the tune of Rs. 1 lakh he admitted that a notice like Exhibit M-113 was put up by the management saying how the workers collusively adopted go-slow tactics and there was fall in production. Then he made a significant statement that he has not even acquainted himself with the contents of the claim-statement. He does not also know the contents of the counter. He also says that he is not aware of the fact that the workers of the I.N.T.U.C. Union have pleaded that they have nothing to do with this go-slow process. The point for consideration is whether the evidence of this witness in any way helps the Union to prove their case that there was collusion on the part of the management and maistris, and they tampered with the speed. The conduct of the Union in not protecting against any such attitude or behaviour on the part of the maistris is inconsistent with the theory of collusion. The explanation that the management would not listen or that they did not want to raise it as a

big dispute is absolutely unacceptable. His evidence, on the other hand, practically supports the case of the management with regard to the previous disputes that existed between the management and the labour and that the management has been apprising the workers of the fall in production by notices and reports. He also supports the case of the management with regard to the general go-slow process that prevailed in other departments as well and how the departments are linked together in a manner which is calculated to show that fall in production in one department will affect other departments as well.

12. The next witness was a worker in the Roving department. He goes to the length of saying that the maistris asked them to work slow. Needless to say that such a case has not been put forward in any way by the Union. That only shows that the worker wants to throw all sorts of blame upon the management and supervisory staff. In cross-examination he would even say that he is not aware that the manager has posted notices in the notice board. He would say that there is a sub-committee to which they refer all the matters touching their interest and only listen to their advice. He would say that the workers reported to the committee about the maistris' advice to go-slow and their advice was "do not listen to them. There is going to be a lockout. So we maintained the speed." Needless to say that it is impossible to hold from this evidence that the maistris would have advised the workers to go-slow. Later on, he himself went back upon his own statement and stated "maistris did not actually ask us to go-slow. I did not hear them saying that we should go-slow." He does not know what was the state of production prior to the lockout and that any body mentioned about the notices. He says that his sub-committee told him that the notice is a trick of the management. Having stated that, he does not know about the notice, he goes on to speak about the remarks made by the sub-committee about the notice. He also stated there is no ill-feeling between the maistris and the workers. Finally he made the admission that it is true that it will affect the spinning if go-slow is adopted in the roving. If there is go-slow, there is shortage of empty bobbins. Thus, the evidence of M.W. 3 does not support in any manner the case of collusion and on the other hand he has admitted the case of the management that if there is a go-slow adopted in one section it will affect the other sections. This witness's evidence that the maistry advised the workers to go-slow cannot at all be accepted. He is also controverting his own statements with regard to that aspect.

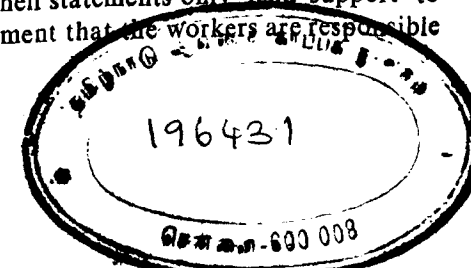
13. The next witness for the workers was one Ramaswami of the Reeling department. He does not know personally that there were notices that the mill will be closed if the go-slow is continued, but he mentions that workers mentioned to him about such notices. He does not know what happened in the Roving department and as he was told that the spinning maistri lowers the speed he did not pursue it further.

14. Thus, the three witnesses examined by the Union impress me as persons who have no regard for truth, and excepting their bald statements

about the maistris tampering with the speed, the evidence taken as a whole only goes to show that they support the case of the management more with regard to the fall in production and how it is due to the go-slow process adopted in more departments than one. So, on the evidence, let in by the Union, I have no hesitation in coming to the conclusion that the charge of collusion is absolutely unfounded. They put forward such a plea only at a very later stage and is a pure after-thought. They never cared to bring to the notice of the management about the misconduct of the maistris in this manner. Their explanations for not doing so are unacceptable. The misother Union's statements do not in any manner support their case of mischief on the part of the maistris. On the other hand, the inimical relationship between them and the management, as put forward by the management itself is admitted by the workers. Thus, in my opinion, the evidence of these workers support the points urged by the management with regard to the go-slow process on the part of the workers.

15. Now, let us examine the oral evidence on the side of the management. M.W. 1 is the head clerk. He impressed me as a truthful witness and he has spoken without any mental reservations. He narrates the story of the troubles created by the workers for some time past. Thus, he stated that the *inter se* relationship is not harmonious since three or four years. That is supported by the documents already adverted to by me. The workers, he stated, were exhibiting insolence, were picking up quarrels with maistris and they will also tamper with speeds. Then there will be conciliation proceedings. Union leaders would interfere and there will be temporary settlements. But troubles again start. It appears to me that these statements sum up the real position with regard to the management and labour relationship. He talks with personal how knowledge and says he experienced troubles in Spinning and then in the Preparatory department. There seems to be cent. per cent. truth in his statement when he says that there was an atmosphere of violence in the mills. He graphically describes how the workers came to clash with the supervisory staff and how the workers were always guided by their own sub-committees. He also explained how the members of the other Union had to bow down to the in-subordinate attitude of the Socialist Union. That only goes to show how the majority was able to silence the minority workers belonging to the other Union. Irrespective of the question whether the other Union will be justified in exposing the workers of this Union and not merely writing to the management that they had now nothing to do with the go-slow process, I may even in this connection observe that the members of the I.N.T.U.C. ought to have pointed out to the management the persons who have adopted this go-slow process and the who tampered with the machines which resulted in fall in production. The workers of the I.N.T.U.C. Union rest content by merely saying that their co-workers belonging to the other Union may alone be responsible. They owe a duty to the management. At any rate their statements only lend support to the theory propounded by the management that the workers are responsible

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for the go-slow process. At any rate, their statements are only calculated to show that the case of the other Union that maistris are responsible for the go-slow is unacceptable. This head clerk details in what manner from one department to another this go-slow tactics spread. Then he adverts to the steps taken by the management by reporting to the authorities, Labour Officer and Police and Socialist Union. "We notified the total loss of production. It depicts the helpless position of the management. Thus far, none, i.e., neither the Labour Officer nor the Union took interest in the matter. The total loss in these 20 to 25 days came to nearly 27, 337 lb". He refers to the fact how the supervisory staff consisting of maistris, jobbers and supervisors reported about the go-slow process and all workers were in sympathy with these tactics. According to him, the Labour Officer came to the mills only after the warning notice given on 23rd November, 1954. He explains how the procedure adopted by or the suggestions made by the Labour Officer were unacceptable to the management. In fact, the evidence of this head clerk goes to show how every step was taken by the management to bring the situation under control and in spite of the best efforts the management had only to declare a lockout to face this intransigent attitude on the part of the workers and the illegal strike resorted to in this manner of go-slow process. It also resulted in a big loss. He refers to the important exhibits. He denies that the management set up the jobbers and supervisory staff. In cross-examination he has not been shaken in any manner. He was first asked about the misappropriation in the co-operative society and he made it clear that after due trial the Assistant Manager was acquitted. There is nothing elicited in cross-examination which is calculated to show that the supervisory staff had been used as a tool by the management to foist a false case of go slow against these workers.

16. The next witness was the general supervisor, Ramaswami Naidu. He referred to the want of cordial relationship between the management and the workers prior to this lockout. Maistris are working under him. He talks with personal knowledge and says "I went to the spot, and had the speed restored by the maistris. But, in an hour when I came back I found it had been lowered. It is not possible to say who exactly interfered with it. There are 70 frames and the speed is reduced in all of them." Evidently the workers seem to have played a hide and seek game in this matter. Then he also detailed that the go-slow process was not confined to thus reducing the speed alone. The workers also wasted their time in the doffing, reeling and fetching the bobbins. Doffing work is a routine work. But all of them did not work. Some while away their time by going for calls. They spent more time for carrying the baskets. In every detail such as gaiting, piecing, they took more time than was necessary. They spent more time in the latrines. The maistris reported but the workers never paid any heed to their instructions and admonitions. In cross-examination, it is strange he was asked whether he was even a supervisor. He has detailed also in what manner he made his supervision work and in what manner production was affected. He

admitted that he cannot say who or which worker tampered. In this connection, it is worthwhile to refer to a point stretched by the Union that the management could have found out the culprits. In other words, it was argued that the management could have picked out the particular men who tempered with the speed. In the first blush, the argument seems to be a good one but when we examine the details and the difficulties to which the management was subjected to by a concerted action on the part of the workers one has necessarily to reject this contention. One does not know whether the management could have invented some contrivance by which if a particular worker were to reduce the speed, it will be instantaneously brought to the notice of the management. In all these matters, of course, one can speculate to any extent, about ways and means and devices, but those things may not be practicable. For instance, one can even suggest that the management could have instantaneously taken a photograph by some process and caught the offender red-handed with unchallengeable evidence in that manner. But these are all things which cannot be said to be practicable and it is not as if the management adopted a silent attitude. Every day, they have been pointing out this mischievous conduct on the part of the workers and if the workers were really innocent they could have very well protested then and there instead of putting forward charges against the management at a very late stage when the management had no other alternative but to temporarily close the mills. The third witness was the spinning clerk. He proved the records which is based upon the maistris and jobbers reports. The fourth witness was the head jobber. He made it very clear that the machines are started by the workers themselves. Each man starts his own machine. At about the time of this lockout, the workers were not doing their work properly. They ran the machine in half brake. The doffing was done leisurely. So far as the maistris are concerned, they were not in fault. At no time they slackened work or misbehaved. In cross-examination he reiterated and stuck to his version. In all sections, there was go-slow. He described the various processes. The fifth witness for the management was the head jobber in the Spinning department. He narrated the difficulties created by these workers at every stage. He is a member of the I.N.T.U.C. In fact, he has been beaten though one cannot say whether the workers of this particular Union were responsible. He also speaks with personal knowledge how the speed adjusted by the maistri was reduced by the workers and he readjusted it or restored it but found it again reduced. He also corroborated the evidence of another witness on the side of the management as to how the workers adopted go-slow in other methods as well such as in doffing, piecing, etc. Nothing is elicited in cross-examination to suggest that this person is not speaking the truth. The last witness was the spinning master. He has also corroborated in material details the other witnesses.

17. It was suggested in cross-examination that he was related to the manager, which he denied. Thus, the evidence of this witness examined on

the side of the management is, in my opinion, given in a truthful manner and they have not been shaken in cross-examination. In fact, the statements made by them are only consistent with the documentary evidence let in by the management.

18. Thus, taking the whole evidence, I am satisfied that the management has established beyond doubt that the workers were giving any amount of trouble even long prior to 24th November, 1954, that the management has been facing those situations with great control and patience taking the necessary steps to avert the closure of the mills, that the workers have been adopting violent methods to tease the management, that previously there has been some attempt to adopt this go-slow tactics and how from 6th November, systematically, in one manner or other the workers took resort to this deadly weapon. The Labour Union has miserably failed to establish their case that the management and the maistris have colluded. The management has also proved that the go-slow process has been a general one. The management is also well-founded in their contention that the workers of the I.N.T.U.C. Union cannot take shelter by saying that they are not responsible but only some other workers. As I already pointed out, it was their duty to bring to the notice of the management which workers are responsible. It is not as if they could not have found out who tampered with the machines. Admittedly the workers have not accused the maistris. The inference that can be drawn from their statements is that the workers of the other Union have started this game for reasons best known to themselves. The management have also invited my attention to cases decided by Tribunals which go to show that the tactics of go-slow process will be tantamount to an illegal strike (1953—II—L. L. J. 793). Mr. N. R. Srinivasan contended that the go-slow on the part of the workers was the result of a common understanding among other things, and therefore, their action amounted to an illegal strike, and therefore, according to him the act of the mills in adopting this lock-out is perfectly justified.

19. The management in this case also pointed out that the Labour Officer did not take the necessary steps to bring the situation under control in spite of repeated reports to him. In fact, they took steps also to have the Labour Officer examined. Finally, they gave it up because he did not turn up as expected. In a matter like this, it is not possible to throw the blame on want of efforts on the part of the Labour Officer. In fact, the final attempt made by him also failed. His suggestions are purely recommendatory in character. There ought to have been a better understanding between the labourers and the management and the leaders of the Union as well as persons who hold responsible posts on the side of the management, ought to have met and solved this problem instead of relying upon the Labour Officer to bring forward suggestions. In fact, the labour union seems to be aggrieved with regard to some misappropriation case against a particular manager. This is not a matter in which the Labour Officer could have suggested any remedies. In fact, when once the person has been acquitted

the Union ought to have accepted that verdict unless they can take other legal steps to have that decision altered. That does not mean that some efforts could not have been made by the Labour Officer in this direction as well. In the absence of the Labour Officer's evidence, it is not possible for me to say whether the situation of lockout could have been averted by him. In fact, the management did not suggest as to what concrete steps he could have taken to save this crisis. At any rate the difficult situation the management was placed is only aggravated by the fact that they did not get any external help from quarters which they could have hoped to get to prevent a lockout. Thus, in view of the above converging considerations elaborately dealt with by me, I am of opinion that the workers have adopted go-slow tactics, and therefore, the lockout by the management of the mills from 25th November, 1954, is justified.

20. Regarding the question whether the workers are entitled to wages during the period of lock-out the reference itself goes to show that the question of wages arises for consideration only if the lockout was not justifiable. But then, there is the further question whether the lockout need have been continued for a month. The further history also goes to show that until the Labour Officer and the Labour Commissioner interfered, there was no other alternative for the management. Then the question for consideration is whether the management could not have re-opened the mills either accepting suggestion of the Labour Officer or, at least, after the Labour Commissioner interfered. So far as the recommendations of the Labour Officer are concerned, I am not prepared to say that placed in the position, as they were, at that time the management were not justified in seeing eye to eye with those proposals, made by the Labour Officer as per Exhibit W-5, or W-6. Regarding the suggestion embodied in Exhibit W-7 made on 17th December, 1954, it cannot be stated that those suggestions should and ought to have been accepted by the management without demur. In fact the finding on issue 1 clearly goes to show that it is the conduct of the workers that was blameworthy and not that of the management. Therefore, I hold that the lockout from 25th November, 1954, till the mills were re-opened on 24th December, 1954, was justifiable, and therefore, the workers from any of the sections, are not entitled to any wages.

21. Thus my findings on the issues are—

1. The workers of the Rajalakshmi Mills, Limited, Singanallur, Coimbatore, resorted to go-slow tactics.

(a) The lockout declared by the management of Rajalakshmi Mills, Limited, Singanallur, Coimbatore, from 25th November, 1954, is justified.

(b) The workers are not entitled to any wages for the period of lock-out.

22. An award is passed accordingly, in the light of the above findings. Each party will bear their own costs.

[IN THE CALCUTTA HIGH COURT.]

NEW INDIA TANNIS LTD.

v.

AURORA SINGH MOJBI AND ANOTHER.

Chakravartti, C.J., and Mallick, J.

December 13, 1956.

WORKMEN'S COMPENSATION ACT, 1923, SECTION 12(1)—VICARIOUS LIABILITY OF PRINCIPAL EMPLOYER—CONTRACTOR ENGAGED TO REPAIR FACTORY BUILDING—OWNER OF FACTORY WHETHER LIABLE FOR INJURY TO CONTRACTOR'S WORKMAN—CONTRACT OF SERVICE AND CONTRACT FOR SERVICE DISTINGUISHED.

Though a contract entered into by a company, carrying on the business of manufacturing goods in a factory, for the purpose of repairing its machinery or factory building, is a contract entered into in the course of and for the purpose of the company's trade or business and can be said to fall within the first part of section 12(1) of the Workmen's Compensation Act, 1923, it does not fall within the second part of the section inasmuch as the work, to the execution of which the contract relates, is not one which is "ordinarily part of the trade or business of the principal." Therefore, the company cannot be held vicariously liable under this section for injury caused to a workman employed by a contractor under such a contract.

A contract by which the contractor was engaged to dismantle the upper portion of the chimney of a factory and hoist the new portion using the contractor's own implements, for which work a lump sum had been fixed as the contractor's remuneration, is a contract of service and not a contract for service. The workmen working under such a contractor cannot be deemed to be the workmen of the principal.

Appeal from Original Order No. 186 of 1955.

P. K. Sanyal and J. C. Roy for the appellant.

N. K. Mukherjee and J. M. Sen Gupta for the respondents.

JUDGMENT.

CHAKRAVARTTI, C. J.—The appellant-company carries on the business of making extracts of myrobalan and exporting the same to foreign countries. It has a factory called 'Rong Kuti' where its manufacturing business is carried on. Early in 1953, the chimney needed repairs and by a letter written on the 18th of March, the appellant-company engaged one Hazara Singh to dismantle the upper portion of the chimney and hoist a new length of chimney instead. In pursuance of that contract, the work was taken up by Hazara Singh through his men and while the work was being carried on, one Bishan Singh who, among others, was engaged in it, fell from a height of sixty feet and met with an instantaneous death.

On the basis of the death of his son by the accident of the fall, respondent No. 1, Aurora Singh Mojbi, made an application for compensation against the appellant under the Workmen's Compensation Act. He alleged that Bishan Singh had been employed by the appellant and while so employed, had received personal injury by accident arising out of and in the course of his employment which had resulted in his death. The appellant-company by its written statement disclaimed liability. The plea taken was that the work of the fitting of the chimney had been given on contract to Hazara Singh, who was an independent contractor, and that the deceased, while he might have been an employee under Hazara Singh, was never an employee under the appellant. Obviously, with the provisions of section 12(1) of the Act in mind, the appellant-company added that the work of fitting the particular chimney or chimneys in general was not a part of its ordinary trade or business. Having taken that plea, however, the appellant-company proceeded abruptly to pray that Hazara Singh might be made a party to the proceeding under section 12(2) of the Act. That prayer was followed up by another contained in paragraph 7 of the written statement which stated that if the appellant-company was made liable for compensation, its right to be indemnified by the contractor to the extent of the decretal amount might be declared.

The compensation claimed was Rs. 2,400 on the basis of monthly wages ranging between Rs. 60 and Rs. 80. With regard to the amount of the claim, the appellant-company stated that it did not know what the wages of the deceased had been, but it would submit that his wages could not have exceeded Rs. 30 or Rs. 35 per month.

The learned Commissioner for Workmen's Compensation decreed the claim against the appellant-company for Rs. 1,800, together with costs, but he directed that the appellant-company would be entitled to be indemnified by Hazara Singh to the extent of the decretal amount. It is against that order that the present appeal has been preferred.

It will be seen from what I have already stated that the learned Commissioner held the appellant-company liable on the footing that it had contracted with Hazara Singh in the course of and for the purposes of its trade or business for the execution of a piece of work, namely, the hoisting of a portion of a chimney, which was ordinarily a part of its trade or business. Mr. Sanyal, who appears on behalf of the appellant-company contended that the view taken by the learned Commissioner was utterly wrong and that the foundation on which he had made it rest was wholly unsound.

I am of opinion that the contention of Mr. Sanyal must prevail. The learned Commissioner has based his finding almost entirely on the plea taken by the appellant-company in its written statement. He has said that since the appellant-company had prayed for an order of indemnity against Hazara Singh, it had admitted that the hoisting of the chimney was a part of its ordinary trade or business and that, having made that admission, it could not consistently plead to the contrary and say that the hoisting of the

chimney could not be and was not a part of its ordinary trade or business. "The prayer for indemnity made by the Opposite Party No. 1 (that is to say, the appellant-company)", observed the learned Commissioner, "presupposes that this work of fitting chimney of the factory of the Opposite Party No. 1 (that is to say, the appellant-company) is their ordinary trade and business which was entrusted to their independent contractor and for which the Opposite Party No. 1 (that is to say, the appellant-company) prayed for indemnity against the said independent contractor." Proceeding to express what appears to be his own finding on the facts, the learned Commissioner observes as follows:

"The fitting of chimney on the factory of the Opposite Party No. 1 is certainly within the scope of the trade and business of the Opposite Party No. 1 and is undoubtedly part of the trade and business of the Opposite Party No. 1 within the meaning of section 12(2) of the Workmen's Compensation Act."

I can only express my surprise that such a view could be taken. I am free to confess that the drafting of the several clauses of the written statement was not as perfect as it might have been, but, however, abrupt the appellant-company's prayer for being allowed to implead Hazara Singh was, the fact that it made that prayer and asked for an order of indemnity, in case it was made liable for compensation, can in no event justify a finding that the appellant was admitting to have been the principal, as contemplated by section 12(2) of the Act. The prayer for an order of indemnity against Hazara Singh and for leave to make him a party was clearly a prayer in the alternative, the necessity for its consideration being contingent upon the appellant being found liable for compensation. It appears to me to be altogether erroneous to think that the appellant-company stood concluded by its written statement and could not be heard to say that the hoisting of the chimney was not a part of its ordinary trade or business and, therefore, it could not be made liable as the principal for compensation under section 12(2).

Mr. Mukherjee, who appears on behalf of respondent No. 1, Aurora Singh Mojbi, did not wish to support the learned Commissioner by reference to the pleading of the appellant. What he contended was that, on the true view of the relationship between the appellant-company and Hazara Singh, the contract relating to the hoisting of the chimney was clearly a labour contract and the deceased could rightly be taken to have been an employee directly under the appellant company. I may point out at once that that was not the view which the learned Commissioner took. He made the appellant-company liable only vicariously by holding that it had entered into a contract with Hazara Singh for the execution of a piece of work which was a part of its ordinary trade or business. Nevertheless, if Mr. Mukherjee could succeed in inducing us to hold that the deceased was employed directly under the appellant-company, the order made by the

learned Commissioner could be upheld, although to maintain the order for indemnity would in that event be inconsistent.

I think, however, that Mr. Mukherjee's contention is not correct. He relied on as many as three decisions which I may dispose of first.

The point which Mr. Mukherjee sought to make was that the appellant's contract with Hazara Singh was not a contract of service, but a contract for service and, therefore, the labourers whom Hazara Singh had brought in for the execution of the contract were really labourers under the appellant company itself. He also contended that inasmuch as the appellant could not possibly carry on its business without a chimney to serve its factory, repairs of the chimney would be a part of its ordinary trade or business. The first decision he invoked in aid of his contentions is a decision of the Bombay High Court in the case of *Bai Kokilabai v. Keshavlal Mangaldas & Co.* (A.I.R. 1942 Bombay 18.)

In my view, the case relied upon by Mr. Mukherjee is of no assistance whatever to him. That was a case where, under an arrangement between a mill company and their sole selling agents, the latter were to take delivery of the manufactured products from the mill company's godowns at their own expense for the purpose of selling them from their own shop. That arrangement necessarily involved that the selling agents were to transport the goods from the mill company's godowns to their own shop and it was for the purpose of transporting the goods that the selling agents employed a firm which carried on the business of transporting piece-goods for hire. The firm, in its turn hired a lorry from a third party and the cleaner of that lorry who was engaged by a member of the firm to help in removing some bales of goods from the mill-company's godowns and stacking them in the lorry, suffered an accident in the course of that work and was killed. The question being whether the selling agents could be held responsible for compensation under section 12(2) of the Act, it was held that they were clearly responsible, because the contract into which they entered with the firm was a contract for the transport of goods from the mill company's godowns to their own shop and such transport was clearly not only an ordinary but an essential part of their business. I can see no resemblance of the facts of that case to the facts of the case before us. The business of the selling agents was to sell the goods manufactured by the mill and under their contract with the mill, it was their duty to have the goods brought over from the mill premises to their own. Unless they procured the goods, they could not carry on the business of selling them and they could not procure the goods unless they had them transported from the mill. In those circumstances, it seems to me to be beyond argument, as the learned Judges of the Bombay High Court held, that the contract of the selling agents with the firm which arranged for the transport of the goods was a contract for the execution of a piece of work which was a part of the ordinary trade or business of the selling agents. I can see no analogy whatsoever between the work of transporting the goods from the mill premises to the shop of the selling agents,

as in the Bombay case and the work of hoisting a portion of the chimney in the case before us.

Mr. Mukherjee next referred to the decision of this Court in the case of *Messrs. S. Kaloo & Sons v. Ofatannessa Bibi* (42 C.W.N. 803). The facts in that case were that a workman, while engaged in the erection of a *hogla* shed on the roof of a three-storeyed house, fell from the scaffolding down into the street as the bamboo, on which he was standing, gave way. Death was instantaneous. The shed was being erected for a firm called Messrs. S. Kaloo & Sons and that firm had contracted with one Insan Sardar to do the work and it was Insan Sardar who had brought in certain labourers, including the deceased. A claim having been made against Messrs. S. Kaloo & Sons, they pleaded that they had entered into a contract with Insan Sardar for the execution of the work by him and that consequently they were entitled to an order of indemnity against Insan Sardar. That contention was repelled and the Court held that the deceased had been employed directly under Messrs. S. Kaloo & Sons and that if there was a contract with Insan Sardar at all, it was not a contract to do the whole or any part of the work, but merely a contract for the supply of labour at a certain rate of wages per head. The view which the Court took was based upon the evidence of a witness named Habibulla, apparently a member of Messrs. S. Kaloo & Sons, who deposed as follows: "We just call the Sirdar and tell him to bring so many men for so much work. We pay Insan at the rate of one rupee one anna per head."

If a person calls in a supplier of labour and asks him to bring in a specified number of men for a particular piece of work and he pays the men through the supplier at a certain rate, there is clearly no contract with the supplier for the execution of the work. The contract was clearly a labour contract, as the Court held. In the present case, however, the contract evidenced by the letter of the 18th of March, 1953, is of a quite different character. "You are hereby engaged" says the appellant-company, "to dismantle the upper portion of our chimney and hoist the new portion. The dismantling and fixing new portion are to be done by you. All the hoisting implements are to be supplied by you. The total labour charges for this job has been settled at Rs. 250/- (Rupees two hundred and fifty) only". Whereas, the contract in the case relied on by Mr. Mukherjee was a contract to bring in "so many men for so much work," the contract in the present case was for the dismantling of a portion of the chimney and the hoisting of a new portion. I cannot see, in view of that clear difference in the facts, how the case cited by Mr. Mukherjee can be of any assistance to him.

The third decision relied upon by the learned advocate is the decision of the House of Lords in *Bobbey v. Crosbie & Co.* [(1916) 85 L.J.K.B. 239], and it is of even less help. The substance of the decision is no more than that the County Court Judge having held that the contract in the case was a labour contract and the Court of Appeal having reversed him, the House of Lords said that the evidence admitted of either view as a conclusion of fact

from the incidents and since the County Court Judge had taken one of those views there was evidence on which he could rightly do so and, therefore, his decision was not liable to be reversed. It is to be noticed that their Lordships indicated no view of their own, but merely applied the well known rule, particularly applied in workmen's compensation cases, that if the primary Tribunal took a view which, on the facts, was a possible view and which it had consequently jurisdiction to take, a court of appeal ought not to reverse it, even though, sitting as a court of first instance, it might have taken a different view. But it is not the nature of the decision of the House of Lords alone which takes away its value for the purposes of Mr. Mukherjee. It was found as a fact that among the river side labourers of the place concerned, there was a custom that one of their number should be employed to collect a gang to do a job at a fixed price which the members of the gang would divide among themselves in accordance with an understood arrangement. It was thus a case of a number of people acting through one of their representatives. It is with one such representative, a man named Watts, that another man named Crosbie entered into a contract for the supply of a gang of men for a certain piece of work. That contract was interpreted as really not a contract with Watts, that he should do the work or get it done by providing a gang of labourers, but a direct contract between Crosbie and each one of the workmen who constituted the gang. There is no trace of any suggestion in the present case that a gang of workers, including the deceased, used to enter into contracts with third parties through Hazara Singh and that the contract was, therefore, really with each member of the gang. The last of the decisions relied upon by Mr. Mukherjee must also be held to fail him.

We were invited by Mr. Mukherjee to consider the evidence of one of the directors of the appellant-company who said that the company had supplied all the materials. I cannot see that this condition makes any difference. As I observed in the course of the argument, if a person wishing to have some pieces of furniture made, enters into a contract with a cabinet-maker for the execution of the work, but makes it a condition that he will supply his own timber, I cannot see that the contract becomes on that account any the less a contract of service, as distinguished from a contract for service, if it is otherwise so. Mr. Mukherjee also overlooked the very next sentence in the deposition of the director. There he said that Hazara Singh had taken the contract "to fix the chimney with his labour", thereby saying that the contract was with Hazara Singh for the execution of the work to be paid for by the sum agreed to and that the manner and means and the agency by and with which the work was to be executed was for Hazara Singh alone. Our attention was also drawn by Mr. Mukherjee to the evidence of a clerk of the appellant-company who said that the company had looked after the work of setting up the chimney. Again I fail to see that if the appellant-company looked after the setting up of the chimney in order to ensure itself that the work was being properly done, the nature of the contract was thereby altered in any way. A person calling in a contractor

to do a piece of work will naturally look after the work in the sense of attending to and viewing it so that the work may be properly done. The sentence relied upon by Mr. Mukherjee does not suggest in the remotest way that the appellant-company was looking after the setting up of the chimney in the sense of getting the work done and that, therefore, those who were doing the work were persons employed directly under the company itself.

It appears to me that neither the decision invoked by Mr. Mukherjee, nor the facts relied upon by him help him in substantiating his contention.

I have already referred to the nature of the contract. I am free to confess that it may be said to satisfy the first part of section 12 (1) which speaks of a contract entered into "in the course of or for the purposes of his trade or business." It can, I think, be legitimately said that if a company, carrying on the business of manufacturing goods in a factory, enters into a contract for the purpose of some repairs to its machinery or the factory building, such contract is entered into in the course of and for the purpose of the company's trade or business. The requirement of the second part of the section, however, is altogether different. What is required there is that the work, to the execution of which the contract relates must be one "which is ordinarily part of the trade or business of the principal." I find it wholly impossible to hold that where a company carries on the business of manufacturing goods and requires a factory for performing the manufacturing process and the factory requires a chimney, the work of occasional repairs to the chimney is a part of the ordinary trade or business of the company. The business of the company in such a case is to manufacture the goods which it produces. The manufacture may be done inside a factory and the factory may require a chimney which would occasionally need repairs, but repairing the chimney can in no view be a part of the company's trade or business, whether ordinarily or extraordinarily. In my view, the learned Commissioner was altogether wrong in holding against the appellant-company on the basis of a supposed admission in its written statement and equally wrong in his construction of the contract as also in the view taken by him of the nature of the work, for which the contract was entered into, in relation to the appellant-company's business. The order made by him cannot possibly be upheld.

For the reasons stated above, this appeal is allowed. The judgment and order of the Commissioner for Workmen's Compensation are set aside and the application of respondent No. 1 as against the appellant-company is dismissed. This order will not prejudice any rights which respondent No. 1 may have against Hazara Singh or any remedy which may still be open to him to enforce those rights.

There will be no order for costs.

The appellant-company will be entitled to withdraw from the Commissioner for Workmen's Compensation such part of the compensation as may still be lying with him.

[IN THE SECOND INDUSTRIAL TRIBUNAL, WEST BENGAL.]

GANGES PRINTING COMPANY LTD.

v.

THEIR WORKMEN.

Shri G. P. Mukherjee.

May 31, 1957.

MISCONDUCT—DISORDERLY BEHAVIOUR AND INCITING OTHER WORKMEN TO DISORDERLY CONDUCT—SURROUNDING OFFICE OF MANAGER AND CONFINING MANAGER—WHETHER GRAVE MISCONDUCT—DISMISSAL, WHETHER JUSTIFIED.

MISCONDUCT—ENQUIRY INTO—MANAGER INVOLVED IN MISCONDUCT HOLDING ENQUIRY—WHETHER PROPER.

STAY-IN-STRIKE—NATURE OF—LOCK OUT FOLLOWING STAY-IN-STRIKE—WHETHER JUSTIFIED—WAGES FOR PERIOD OF SUCH LOCK-OUT.

Where it is proved that certain workmen behaved in a disorderly manner with the manager of the undertaking and that they incited other workers to stage a demonstration and force entry into the manager's office, where they all behaved in an insolent and threatening manner confining the manager to his office, they are guilty of grave misconduct for which the punishment of dismissal would be justified. The fact that the manager or other supervisory staff were not physically molested is no indication that the workmen were peaceful.

Where the manager is the authority having disciplinary powers over the workmen, he would be justified in holding an enquiry into the misconduct of the workmen even though he himself was a victim of the misconduct with which the workers are being charged.

Though strike is a legal weapon available to the workmen as a last resort when other efforts have failed, stay-in-strike is illegal and amounts to an unfair practice on the part of the workmen. If the workmen take forcible possession of the factory for no justifiable cause, the management has every right to take precaution against such miscreants to safeguard its property and declare a lock-out. Such a lock-out would be justified and the workmen will not be entitled to any wages for the period of a lock-out caused by a stay-in-strike.

Madan Mohan Ghosh for the management.

D. L. Sen Gupta for the workmen.

AWARD.

The issues as formulated in the schedule to the order of reference stand as follows:

- (1) Whether the dismissal of the eight persons named below is justified? Whether they are entitled to re-instatement and/or compensation?—
 - (i) Shri Ram Chandra Sadhukhan—T. No. 114.
 - (ii) Shri Amar Krishna Auddy—T. No. 102.

- (iii) Shri Rabindra Nath Dey—T. No. 62.
- (iv) Shri Mohammed Nizamuddin—T. No. 296.
- (v) Shri Abdul Aziz—T. No. 142.
- (vi) Shri Abdul Razzaq—T. No. 185.
- (vii) Shri Ahmad Ali—T. No. 99.
- (viii) Shri Abdul Rauf—T. No. 232.

(2) Whether the workers are entitled to any relief during the strike-cum-lock-out period, i.e., from 20th April, to 10th May, 1956?

The Union's case is that Messrs. Ganges Printing Co., Ltd. (hereinafter to be called the Company), owns a printing press at Shibpur, Howrah. Up to 1955, the Company used to close the press half an hour earlier during Ramzan, so as to enable the large number of Muslim workmen to break their fast at the time required by the religious custom. On 29th March, 1956, the Union submitted a letter to the Company requesting it to close the press half an hour earlier during the month of Ramzan in the year 1956. But on 10th April, 1956, the Company verbally informed the Union that it was not willing to close the press half an hour earlier but was willing to give half an hour early leave, provided the time thus lost would be compensated by working extra time. The Union sent a letter to the Company protesting against this decision of the Company. On 12th April, 1956, the Company posted a notice stating the change of working hours from 9-30 a.m. to 5-48 p.m., to 9 a.m. to 5-18 p.m. during the period of Ramzan. At this, the Muslim workers approached the Secretaries of the Union and expressed their dissatisfaction to the working time stated in the aforesaid notice, and requested the Union Secretaries to press the Company to withdraw the said notice. Accordingly, the Union Secretaries requested the Company to withdraw the said notice in a letter, dated 12th April, 1956, but without any effect. Thereafter, on that very date, a general meeting of the workers was held, and it was decided that the Company would be requested to hold a tri-partite meeting on 16th April, 1956. Such tri-partite meeting was held on 16th April, 1956, at the office of the Assistant Labour Commissioner, Howrah. In that meeting, the Company refused to allow the workers the privilege of early closing of the press, which the workers enjoyed during the previous years on account of Ramzan fasting. Even the very moderate suggestion of the Assistant Labour Commissioner to close down the press 15 minutes earlier during the Ramzan period, was also turned down by the Company. So, on 16th April, 1956, the Union addressed a letter to the Assistant Labour Commissioner to conciliate over the dispute. On 17th April, 1956, the Union wrote another letter to the Company to accept the moderate suggestion as made by the Assistant Labour Commissioner in the matter. The Union also made it perfectly clear in that letter that if that was not conceded by the Company, the Union demanded full half an hour early closing of the press, as was the practice for many years in this Company. On 18th April, 1956, the Union approached the Labour Welfare Officer of this Company in his office for a reply to the letter sent by the Union on 17th April, 1956. The

said Labour Officer along with the Union representatives came to the manager's office and had discussions, but no conciliation could be arrived at. On that date (18th April, 1956), at 3 p.m. a telephonic call came from the office of the Assistant Labour Commissioner to the effect that on that very date there would be another joint discussion in his office, and the Union representatives were requested to be present there. In that discussion, which was held at 3 p.m., the Union accepted the decision of the Assistant Labour Commissioner, Howrah, under protest. On 19th April, 1956, at about 4-30 p.m. the manager, all on a sudden, called the Union Secretaries, and informed them that the Company was issuing charge-sheets on 8 workmen. The Union Secretaries found also a Police Officer within the press premises at that time. At about 5 p.m. on the same day, the manager called in the 8 workers, charge-sheeted one by one, and in presence of the Police Officer served charge-sheets on them on false grounds, and ordered them to leave the place immediately. This vindictive action on the part of the management caused great resentment among the workers, who demanded immediate withdrawal of the charge-sheets, and peacefully remained in the premises of the press for the whole night as a token of protest. On 20th April, 1956, the workers attended work as usual and started work peacefully. The Assistant Labour Commissioner being informed about the charge-sheets served on the aforesaid 8 workers, arranged for a joint discussion on that date at 10-30 a.m. The Assistant Labour Commissioner at the said joint discussion requested the Company to withdraw suspension orders of these 8 workers, but it was refused. On that very date, the management, on the contrary, posted a notice on the notice board declaring lock-out of the press from 20th April, 1956, on frivolous and false grounds. These 8 workers replied to the charge-sheets served on them, but subsequently on 22nd May, 1956, they were dismissed by way of victimisation. The enquiry that was held by the management in this respect, was but a mere show. The decision of the management in this respect was not only in violation of the principles of natural justice, but it was unjust, arbitrary and vindictive. As the lock-out was unjustified, the Union has claimed full wages for the period of lock-out from 20th April, 1956, to 10th May, 1956.

The Company has denied the allegation of the Union that up to 1955, the press was closed half an hour earlier during the month of Ramzan every year. Its reply is that the working schedule was adjusted every year during the period of Ramzan, so as to facilitate the Muslim workers in leaving the factory earlier without reducing the total daily or weekly working hours. So, on 12th April, 1956, the Company issued a notice indicating the hours of work, which permitted the factory being closed half an hour earlier without reducing the total working hours. Before that notice was actually put up on the notice board, it was made clear to the Secretary and the Assistant Secretary of the Union that the Company was always prepared to adjust the working schedule, which would not result in the diminution of the total working hours. On 13th April, 1956, the Assistant Labour Commissioner

intimated to the management that he would hold a joint conference on 16th April, 1956, and advised that the hours of work as indicated in the notice should be followed in the meantime. The Union Secretaries were informed accordingly. On 16th April, 1956, in course of the conciliation proceeding, the Assistant Labour Commissioner made various suggestions for the settlement of the dispute. The Company was prepared to help the Muslim workers to leave the press early during the month of Ramzan, but it was indicated that the working schedule would have to be so adjusted, as to avoid any reduction in the total working hours. On 18th April, 1956, at about 11 a.m. a few workers instigated other workers to stop work and to proceed towards the Labour Office in a body. The workers assembled near the Labour Office and began to shout demanding immediate assurance from the management that the press would be closed every day half an hour before the schedule time during the month of Ramzan. On hearing this shout, the Manager and the Labour Officer went to meet the workers, and tried to reason with them, but they were adamant in their attitude. When all persuasions were found to be ineffective, the manager and the Labour Officer returned to the office of the manager. As soon as they did so, a large number of workers led by the 8 workers named in the schedule to the order of reference, pushed their way into the manager's office, and kept the manager and the Labour Officer confined in their room for more than 2 hours. They indulged in disorderly behaviour and refused to leave the room in spite of the orders of the management. Placed in such a situation, the manager sent a message over phone to the Company's Head Office, and the officer concerned there immediately contacted the Assistant Labour Commissioner in view of the seriousness of the situation, and also informed the Police. The Police arrived at about 12 noon, and on their arrival the workers ceased their noisy and threatening demonstration, but continued to keep the manager and the Labour Officer confined. The Assistant Labour Commissioner also rang up stating that he would hold a joint conference at about 3 p.m. on that date. When this information was conveyed by the manager and the Police to the workers, they dispersed and resumed their duties. On 19th April, 1956, charge-sheets were issued to these 8 workers. The issue of the charge-sheets to them was fully justified in view of what they did. After the issue of the charge-sheets at about 5 p.m. all the workers surrounded the manager, shouting that the charge-sheets against those 8 workers should be immediately withdrawn. The workers also adopted a threatening attitude, and refused to allow the station-wagon which used to take the supervisory staff to their residence, to be taken out of the factory premises. Thus the manager and supervisory staff were detained and confined till about 1 a.m. The workers remained inside the premises for the whole night, and the Police were also present to watch the situation. On 20th April, 1956, in the morning, the workers dropped their tickets and continued to remain inside the premises, and refused to start work until the charge-sheets issued to the 8 workmen were withdrawn. The workers were told that they should resume

their work, and the Management would hold an enquiry in the case of those 8 workmen who have been charge-sheeted. On 20th April, 1956, at about 10-30 a.m. the Assistant Labour Commissioner, Howrah, called a joint conference. In that conference, it was made clear by the representatives of the Company that the workers should resume their normal duties. The Assistant Labour Commissioner also put forward various suggestions in that joint conference, but no settlement was arrived at and the stay-in-strike continued for the whole day. Throughout the day, the Police were present at the premises. In view of the continuance of the stay-in-strike and the threatening attitude of the workers on 19th April, 1956, and 20th April, 1956, the management had no other alternative but to notify the workers that the press would remain closed until such time as the management was assured of a peaceful and normal resumption of work by the workers. On 10th May, 1956, the Deputy Labour Commissioner called a joint conference, and it was agreed in that conference by the representatives of the Union that all workmen would resume their duties, and those 8 workers would remain suspended pending enquiry into their cases. As the workers agreed to call off this strike, the work was resumed on 11th May, 1956. The Company further states that it had no knowledge of the alleged Trade Union activities of those 8 workers who were served with charge-sheets. It contends that they were neither victimised, nor were they threatened by the management for their Union activities. A regular enquiry was held regarding these 8 workers, and in that enquiry they were given full opportunity to defend themselves and to produce their witnesses and also to cross-examine prosecution witnesses, and as such the principles of natural justice were strictly followed by the management. After full and fair enquiry it was found that those 8 workers were guilty of the charges levelled against them, and accordingly the management dismissed them from service. This decision was communicated to the workers concerned on 22nd May, 1956. The Company further submitted that the workers staged stay-in-strike on 20th April, 1956, after remaining in the premises for the whole of the previous night, and continued to remain on strike insisting that the suspended workers should be allowed to join their work. The workers had no justification for resorting to stay-in-strike and adopting various unconstitutional measures during the period of strike. The strike was uncalled for and unjustified. The management, being placed in such a precarious position, had no other alternative but to close the press from 20th April, 1956 to 10th May, 1956. The Company was neither responsible for the alleged closure. In view of this, the question of paying any wages to the workers for the period of strike does not and cannot arise.

ISSUE No. 1.

These 8 workers were admittedly dismissed with effect from 19th April, 1956, as they were found guilty of the charges levelled against them. The charges against them were that on 19th April, 1956, at 11 a.m., they were concerned in a riotous and disorderly behaviour, inasmuch as they incited other workers of the press to stage riotous demonstration and force entry

into the manager's office; behaved in an insolent and threatening manner towards the manager, and persisted in remaining in the manager's office for approximately two hours in spite of his instructions to leave. The management dismissed them after a full and proper enquiry held on 18th April, 1956, and 19th April, 1956. The entire enquiry proceedings have been placed before the Tribunal, and it is Ex. A. I have carefully gone through the said enquiry proceedings. In my view the enquiry that was held was just and proper. It was conducted not only in presence of the workmen charge-sheeted, but also in presence of the Assistant Secretary of the Union, who was allowed to be present throughout the enquiry as an observer. The workers charge-sheeted were given full opportunity to meet all evidence and circumstances appearing against them, and to cross-examine the witnesses examined to prove the charges. So, there cannot be any manner of doubt that the principles of natural justice were followed. It is futile for the Union to contend that there was a show of enquiry, and the enquiry proceedings were completely vitiated by irregularities. Learned Advocate for the Union has made a grievance regarding this enquiry. His contention is that the manager should not have conducted this enquiry, as he himself is alleged to be the victim of the acts of the workmen concerned. His line of argument was that a prosecutor should not have acted as judge. I have given my due consideration to this argument. After all, it was a domestic and departmental enquiry. Sub-clause (d) of rule 13 of the Standing Orders (Ex. M) provides that the manager not only can dismiss a worker, but also can institute an independent enquiry before dealing with the charges framed against him. Thus, it is evident that the manager is the only authority who can dismiss a worker. Therefore, the manager could not delegate the duty to some one else. The manager himself is alleged to be the victim of the acts of the workmen. So, if the manager deputed a subordinate to hold the enquiry, it is likely to be attacked as hypocrisy, on the ground that a subordinate cannot be expected to give a finding against the evidence of the manager. It is inconceivable for the manager to appoint an outsider for holding a disciplinary enquiry. In this case the manager examined witnesses to the occurrence, and tested the evidence with his own personal knowledge. That was the best that could be done under the circumstances. Supposing for a moment that the fact that the manager, who was himself a witness to the incident held the enquiry, makes the enquiry and findings and punishment unlawful, the consequence should not be to set aside the punishment inflicted by the manager simply for that reason. As the matter has come up before the Tribunal which is independent, the correct course is for the Tribunal to satisfy itself on the materials placed before it by both sides whether the punishment meted out to these workers should be allowed to stand or not on merits.

Admittedly, a controversy arose between the management and the workers at the relevant time regarding the closure of the press during the period of Ramzan. The workers wanted closing of the press half an hour earlier during this period. The management was not agreeable to this. It

wanted to adjust working hours in such a way, so that there was no reduction in the total working hours. Accordingly, it proposed to change the working hours during the Ramzan period from 9-30 a.m. to 5-48 p.m., to 9 a.m. to 5-18 p.m. But this was not accepted by the workers. So, correspondence between the management and the Union went on, and the Assistant Labour Commissioner, Howrah, also took up the matter. The manager on 17th April, 1956, also wrote a letter to the President of the Union regarding the matter, and was expecting a reply from him in this respect. The Assistant Labour Commissioner, who was apprised of the situation, was also trying his level best to make a possible settlement regarding the matter, for which joint conference between the management and the representatives of the Union was already held and was likely to be held again in the office of the Assistant Labour Commissioner. This was the state of things before the alleged incident, which took place on 18th April, 1956, as a result of which these 8 workers were charge-sheeted on 19th April, 1956, and ultimately dismissed by the management after proper enquiry. In my view, the incident that took place on 18th April, 1956, should not be mixed or jumbled up with the question of closing the press half an hour earlier before the scheduled time as demanded by the Union during the period of Ramzan. The incident that took place on 18th April, 1956, should be kept separate and distinct, and judged independently of the question of closing the Press half an hour earlier before the scheduled time during the month of Ramzan. In the present reference, this Tribunal is not concerned in any way with that question, as no issue on that point has been submitted to the Tribunal for adjudication. Now the Tribunal is to decide on a consideration of the evidence and materials placed before it, whether there was any such incident as alleged by the management on 18th April, 1956, and, if so, whether those 8 workmen were involved therein. I may say in this connection that the written statement as submitted on behalf of the Union is quite silent regarding the said incident. On a perusal of the written statement of the Union (*vide* paragraphs 17 and 18), it rather appears that there was no such incident on 18th April, 1956, as stated by the Company in its written statement. In my view, the Union in its written statement suppressed the incident altogether. But that there was an incident on 18th April, 1956, in the manager's room and also in the room of the Labour Officer and the verandah adjoining thereto, has been proved to a great extent from the evidence adduced on behalf of the Union. The Union in this case examined three witnesses. Of them, two are the workers who were charge-sheeted and ultimately dismissed by the management for the incident that took place on 18th April, 1956, and the remaining one is the Assistant Secretary of the Union. P.W. 2, Amar Kumar Auddy and P.W. 3, Abdul Razzaq, are those two workers, and P.W. 1, Shri Khagendra Nath Chakrabarty, is the Assistant Secretary of the Union. P.W. 2, Shri Amar Kumar Auddy, has admitted in his cross-examination that he went to the Labour Office on 18th April, 1956, and that when he went there,

there were 30/35 workers with him. He has further admitted that about 30 men went to the manager's Office, and he was present in that crowd. It further appears from his cross-examination that during the time they were in front of the manager's office, they absented from work for the whole period, and they left the manager's Office when the Labour Officer asked them to leave. P.W. 3, Abdul Razzaq, has admitted in his cross-examination that there were 15/20 persons on 18th April, 1956, when he went to the manager, and that others went inside the manager's room and remained there for 30 minutes or three quarters of an hour. He even admitted that he himself and 2/3 charge-sheeted persons were in the manager's room. P.W. 1, Shri Khagendra Nath Chakrabarty, who is Assistant Secretary of the Union, has stated in his examination-in-chief that on the morning of 18th April, 1956, he and a few other workers went to the Labour Officer, and that the manager at that time came to the Labour Officer's room from his own room, and that after this, both the manager and the Labour Officer went to the manager's room. He has further said that at that time they were all creating noise outside the Labour Officer's Office. In his cross-examination, he was constrained to admit that on 18th April, 1956, at about 11-15 a.m. or 11-20 a.m. there were 20/25 workers in the veranda of the manager's room, and another 10/15 men standing on the steps below. He finally added that some men entered into the manager's room with him—some of them came out with him, while some others remained inside. Now let me turn to the enquiry proceedings for a moment in order to see what was stated there by some of these 8 workers. Ticket No. 99, Ahmad Ali, whose Serial No. is (vii) in issue No. 1 of the schedule to the order of reference, admitted in the enquiry proceedings that he came to the Labour Officer's room along with others, that all the workers excepting himself were shouting, that they did not go back to their work in spite of the Labour Officer's instructions, that he was pushed into the manager's room by other workers that the manager had to move his chair from its normal position, and was found sitting with his back against the filing cabinet, that the manager requested them to go back to their work saying that he had already written a letter to Shri Shibnath Banerjee, President of the Union, and was waiting for his reply, that they did not go back to their work and they were in the manager's office for approximately 1½ hours on 18th April, 1956. Ticket No. 114, i.e., Ram Chandra Sadhukhan, whose Serial No. is (i) in Issue No. 1 of the schedule to the order of reference stated at the time of enquiry that he was pushed in by other workers to the manager's office, that he had to put his hand on the desk there, and that he did not leave the manager's room and go back to his work in spite of the Labour Officer and manager asking him to do so. He further admitted that he stayed in the manager's office with other workers for approximately 1½ hours, and there was some noise in that room because of the pushing and moving about by the workers. Ticket No. 142, Abdul Aziz, Ticket No. 185, Abdul Razzaq and Ticket No. 232, Abdul Rauf, whose

Serial Nos. are (v), (vi) and (viii) respectively, in Issue No. 1 of the schedule to the order of reference, have also stated on the same lines in the said enquiry proceedings. It is interesting to note in this connection that from the answers given by the aforesaid workers in reply to the questions put to them in the said enquiry proceedings, it appears that many workers broke into the manager's office, and adopted an attitude towards him which was unbecoming, and that the manager was forced to move his chair and take his seat against the filing cabinet. It cannot be believed for a moment that the workers concerned did not state in the enquiry proceedings what has been recorded there. The enquiry proceeding bears the signatures of all the workmen concerned. It further appears that the enquiry was conducted by the manager and the questions put to the workmen and the witnesses with their respective answers, were translated in Bengali by the Labour Officer in their presence. That an incident took place inside the premises on 18th April, 1956, at about 11-15 a.m. and that the venue of it was the office of the manager and the Labour Officer, admit of little doubt. This has also been established from the evidence as discussed above.

Now let me see whether the incident took place precisely in the manner and under the circumstances as alleged by the Company, and whether these 8 workers were involved therein and committed the acts complained of. The Company has adduced evidence before the Tribunal to prove the same. Four witnesses were examined on behalf of the Company and they are—Mr. G. Raynard (O.P.W. 2), who is the Supervisor in the Machine Department, Shri S. Saha (O.P.W. 3) who was Supervisor of the Offset Department, at the relevant time, Shri Ghosh (O.P.W. 4), who was the Labour Officer and Mr. C. Horsfield (O.P.W. 5), the manager, whose deposition was taken on commission. Besides the oral evidence, there is also the documentary evidence which consists of reports made by Mr. G. Raynard, Shri S. Saha and Shri A. Ghosh, and they are Exs. D, F, and I, respectively. These reports were made by them immediately after the occurrence. The report Mr. G. Raynard shows that on 18th April, 1956, at 11-15 a.m. there was a rowdy demonstration culminating in an invasion of the manager's office, and this unruly state of affairs lasted up to 1-15 p.m. It is further stated in his report that these 8 workers led a crowd of workmen and followed the manager, while he was returning to his office in the company of the Labour Officer. He noticed these 8 workers taking a very active part in the demonstration and urging others to enter into the manager's office. The crowd of workmen led by these 8 workers were shouting and using abusive language, and that these 8 workers with others remained in the manager's room from approximately 11-30 a.m. to 1-10 p.m. The report of Shri S. Saha (Ext. F), is to the effect that on 18th April, 1956, he heard a lot of noise, and on coming out saw the manager followed by majority of the workers, who were using most obscene language. He saw the workers very much excited, waving fists. Ten minutes after this, he saw the Labour Officer and the manager going towards the manager's office followed by

the workers, who were using obscene terms. He saw also the workers surrounding the Labour Officer and the manager in front of the manager's office. The report of the Labour Officer (Ex. I) is very exhaustive. He was discussing with the manager some labour matters in his room at about 11-10 a.m. on 18th April, 1956, and at this time they heard a great deal of noise and shouting. On hearing the same, they came out and found the workers proceeding to the Labour Office shouting. He found these 8 workers exciting others to stop work and also to stage a demonstration for immediate concession to their demand. He and the manager asked them the reason for leaving their work, and advised them to report to their duties immediately. But all their efforts failed. Thereupon, he and the manager returned to the manager's office, and a little later these 8 workers led others to force entry into the manager's room in an agitated mood and surrounded them. They entered into the manager's room in such a manner that the manager was forced to move his chair to a corner of the room, and inside the room they started shouting and showing fists. They were told to leave, but they refused. The demonstrators were so disorderly in their conduct and persistent in their threatening attitude that it was found necessary to call in the Police. Even on arrival of the Police they remained in the manager's room. But later on when they were told that a joint conference would be held in the office of the Assistant Labour Commissioner on that date at 3 p.m., they returned to duty at about 1-10 p.m. Now I shall discuss the oral evidence of the aforesaid 4 witnesses as given before the Tribunal. Mr. G. Raynard (O.P.W. 2) has proved his report (Ext. D). This report (Ext. D) contains the names of these 8 workers. Mr. Raynard has stated in his evidence that he mentioned the names of these 8 workers, as he knew them by name and sight. He has said that while he was standing on the verandah, he saw them following the manager. He has definitely stated that these 8 persons were in the manager's room along with others. O.P.W. 3, Shri S. Saha, has proved his report (Ext. F). As he did not notice any workmen doing anything in particular, he did not mention anybody's name in his report. O. P. W. 4, Shri A. Ghosh, Labour Officer, has proved his report (Ext. I). He has also deposed about the incident that took place on 18th April, 1956. His evidence is that on that date at 11 a.m. Mr. Horsfield, manager, and he were discussing some labour matters, when they heard some shouting and terrible noise. At this they came out and found these 8 workers leading other workers to the Labour Office. The manager and he asked them to go back to their work, but they were shouting and refused to return to duty. After this, he and the manager came back to the manager's office. and when they came to the manager's office, the entire crowd followed them. As soon as he and the manager came to the manager's room, these 8 persons along with others rushed into the manager's room, waving fists and shouting slogans. About 40 people including these 8 men entered into the manager's room. They were not peaceful. Some of them were leaning

towards the table, and some others were pulling and pushing others and waving fists, and were in an agitated mood. They remained there in this way for 1½ hours. When the manager informed them there would be a tri-partite conference at 3 p.m. in the office of the Assistant Labour Commissioner, the workers went away at about 1-50 p.m. O.P.W. 5, Mr. Horsfield, the manager, has deposed that on 18th April, 1956, in the morning while he was sitting in his office discussing labour matters with the Labour Officer, they heard approximately at 11 o'clock terrific shouting outside his office, and that at this they both went out to see what was happening, and saw the workers coming towards the Labour Office. His further evidence is that there was much shouting and plenty of noise by these 8 persons, who were calling others by waving their hands. He has said that he along with the Labour Officer went to the Labour Office, and asked them the reason as to why they left work, what was the noise for and as to why they were shouting slogans. As he failed to negotiate or reason with the workers, he came back to his office along with the Labour Officer. As soon as he arrived in his office, the door of his office burst open, and the men led by these 8 workers came into his office. They were pulling and pushing other men, calling, telling and instructing others to come into his office, and within a minute or two there were at least 40 workers in his office, and they were making such noise that it was impossible for him and the Labour Officer to hear each other speak. These workers were disorderly, and sat about the room, played with the pictures in the wall and picked up anything within their reach, and one man, if not sitting, was leaning against his table, and eventually from sheer force, he had to move his chair from the front of his desk and sat against the filing cabinets. He tried his best to reason with the workers, and asked them on many occasions to leave the room and go back to their work, but they flatly refused, and went on with their bragging, shouting and disorderly conduct, and in this way they remained in his room until approximately 1 o'clock. The workmen left his room when they were told that the Assistant Labour Commissioner wanted to meet them at his office at 3 p.m. I have read and re-read the oral evidence as furnished on behalf of the Company. I do not see sufficient reason to disbelieve the same. At least, I see no reason whatsoever to disbelieve the evidence of Mr. Horsfield, who was the manager and who was the victim. His evidence bears the stamp of truth. I refuse to believe that he made false statements. Mr. Horsfield is a respectable person holding a responsible position. It can hardly be believed that he would stoop so low as to make irresponsible and reckless statements against some workers, who were placed under his care and administration. Personally speaking, I cannot conceive of it. So, on a careful consideration of the evidence, facts and circumstances as discussed above, I am fully satisfied that these 8 workers were guilty of the charges levelled against them. There cannot be any manner of doubt that they behaved in a disorderly manner with the manager, who was the pivot of the administration. They also incited other workers to stage demonstration

and force entry into manager's office where they all behaved in an insolent and threatening manner towards the manager, and persisted in remaining in the manager's room for about 2 hours in spite of his instructions to leave. Their conduct was highly reprehensible, and what they did was subversive of discipline. It was argued on behalf of the Union that neither the manager nor the Labour Officer was assaulted or molested in any way. This showed that the workers who gathered in the office of the Labour Officer and also in the office of the manager, were peaceful, and they assembled there only to have their demands met by the management. But it is abundantly clear from the evidence that the workers who collected were hostile and raised slogans and behaved in a disorderly manner. If an angry crowd of workers demonstrates before the manager in that fashion and keeps him virtually confined in his room showing threats, it cannot but be held that they behaved in a disorderly manner, and that amounts to misconduct punishable with dismissal from service. It appears to me that lawlessness had run to an extreme degree. The workers setting in defiance all discipline which is the bedrock of peaceful and orderly development of industrial enterprises, and using physical violence against the person who is the pivot of the administration, deserve ruthless treatment. They are a menace to industrial peace and harmony, and it is impossible to take lenient view of the dastardly conduct of the workers, whose case the Tribunal is engaged in adjudicating upon. Such disorderly conduct and grave misconduct undermine discipline, and the gravity of such conduct cannot be under-rated. In the result, it is held that the dismissal of these 8 persons was justified. They are not entitled to re-instatement or compensation. It cannot be said that the management, in dismissing them from service, was actuated by any ulterior motive or prompted by any extraneous consideration. Nor can it be said that it is a case of victimisation or unfair labour practice. There was also no want of *bona fides* on the part of the management, nor was there any basic error of facts. There has not been any perverse finding also on the part of the management on the materials before it. That being so, the decision of the management must prevail, and accordingly it is upheld. I may say further that the decision of the management was not only the possible view on the evidence before it, but was the only reasonable view that it could take under the circumstances. Hence, the Tribunal should refrain from substituting its own judgment for the judgment of the management, as in such matters the Tribunal does not act like a Court of Appeal, but rather as a Supervisory Body. This issue is answered accordingly.

ISSUE No. 2.

The aforesaid 8 workers were charge-sheeted on 19th April, 1956, for their disorderly conduct with the manager on 18th April, 1956. The said charge-sheets were delivered to these workers by the manager in the afternoon of 19th April, 1956. It has been satisfactorily proved by the evidence adduced on the side of the Company that as soon as the charge-sheets were

issued to these 8 workers, many workers came and surrounded the manager's office and demanded withdrawal of the charge-sheets. Although they were informed that the charge-sheets would not be withdrawn and an enquiry would follow, the workers, however, stayed on inside the premises of the press and did not allow the supervisory staff to move out of the factory premises. Even the van in which the supervisory staff were going out was surrounded, and its driver threatened. The Labour Officer had to stay inside the premises of the press up to 1 a.m. (night), when the manager had to escort him to his house in his own car—taking a Police Officer with him. The manager himself was surrounded and kept confined. The workers did not allow him to leave the office and go upstairs to his flat. In this connection, I may quote what has been said by Mr. Horsfield, the manager, in his evidence: "I made one attempt to leave my room to speak to the supervisors who stirred about the station-wagon in the compound. I was told quite definitely by the workers that if I moved one step more upon the verandah, they would most certainly kill me. This I could not believe and attempted to take the other step. At this, the crowd shouted that if I did move, they would certainly kill me. I then turned back and went into my office, and stayed for a considerable period. Two Police Officers who were in my room at the time, suggested that I should stay quietly in my room, and I made no further attempts to move. At approximately between 7-30 p.m. and 8 p.m., the Police Officers rang up the Superintendent of Police, Howrah, who came along, and saw for himself what was happening at Ganges Printing Company. The Superintendent of Police went to the workers, and tried to get them to leave the premises. On his return to my office, he said that the workers would not leave the premises, but they would allow me to go upstairs to my flat, and that they would allow the station-wagon to take the supervisory staff home, but would not allow the normal driver to drive the station-wagon. I went upstairs to my flat for one thing only, and that was to pacify my wife and tell her not to worry. I came downstairs again to my office, and there remained until approximately 1 o'clock, when I decided to take my Labour Officer home in my own car, but the Police Officer said that he would come along with us and he did so. The workers remained there the whole of the night. They stayed on the premises all night. They did not work on the following morning. On the 20th April, 1956, the workers were inside the compound, but they did not do any work. In the afternoon, a meeting was held with the Assistant Labour Commissioner, Howrah. The demand of the workers was still that the charge-sheets were to be withdrawn. The Company's reply was that the charge-sheets would not be withdrawn, that the men would remain suspended, but an enquiry would be held at the earliest possible moment. During the strike, the workers kept continuously picketing outside the gate. Everybody I saw was looking underneath the gate into the compound and slogans were shouted. They refused to allow my own personal servant to go to the market to do my shopping and thre-

atened my *Baburchi*". In view of the continuance of the stay-in-strike and threatening attitude of the workers on 19th April 1956 and 20th April, 1956, the management was perfectly justified in notifying that the press would remain closed until such time as the management was assured of peaceful and normal resumption of work by the workers. A notice to that effect was admittedly given. An abnormal situation arose due to the continuance of the stay-in-strike and the threatening attitude of the workers for those two days. On 5th May, 1956, the Deputy Labour Commissioner called a joint conference, and the Union representatives reiterated that the workers would not resume their work until the suspended workers were allowed to resume their duties. On 10th May 1956 the Deputy Labour Commissioner called another joint conference, and in that conference the representatives of the Union agreed that all workmen would resume their duties, and the 8 workers would remain suspended pending enquiry into their case. When the workers agreed to call off the strike, the work was resumed on 11th May, 1956. The present issue relates to the question whether the workers are entitled to any relief during the strike-cum lock-out period, that is, 20th April 1956, to 10th May, 1956. To decide this question, the first thing that is to be taken into consideration is whether the lock-out or the closure of the press from 20th April, 1956, to 10th May, 1956, was justified. That leads me again to consider whether the stay-in-strike staged by the workers on 19th April, 1956, and 20th April, 1956, was legal and justified, because this "lock-out" or closure was the consequence of the aforesaid strike. Mr. Ludwig Teller in his book has placed the stay-in-strike in the category of unfair labour practice on the part of the workmen. Indeed, it is so. The workmen have a right to remain in the factory during the working hours. After this, the workmen may remain there, but only under the permission of the employer. A factory is owned by the employer, and not by the workmen. The workmen enjoy only user by license to enable them to run the factory. So, stay-in-strike is usurpation of the employers' right by way of denial of his ownership. By this, the workmen are guilty of illegal trespass, because, they oust the owners from his possession. "Strike" is a legal weapon available to the workmen, though as the last resort when other efforts have failed. But the stay-in-strike has never been recognised as a legal weapon. It is a strike only in the sense that all the workmen work in a concerted manner, though illegally. Next, I would consider about the propriety or justification about the stay-in-strike. On a careful consideration of the entire evidence and circumstances, my view is that there was no justification for or propriety in this stay-in-strike. The 8 persons, according to the management, indulging in disorderly and riotous conduct towards the manager, were charge-sheeted, and the charge-sheets were issued to them. The management also gave assurance that proper enquiry would be made in this respect. So, the workers, in the face of such things, had no right or justification to stage stay-in-strike. In my view, that was not the constitutional method to have their grievances redressed. Other measures for

this were available to them, and they should have followed that. They could have moved the Assistant Labour Commissioner in the matter through their Union. It seems to me that the workers, by launching stay-in-strike and by demanding withdrawal of the charge-sheets served against those 8 workers, were out for a fight with the Company to measure its strength. Taking a dispassionate view of the matter, my finding is that the stay-in-strike as staged by the workers and the threatening attitude adopted by them on 19th April, 1956, and 20th April, 1956, were quite unjustified. That was neither the constitutional nor proper way to give expression to their grievances. On a consideration of the matter, my finding is that the "lock-out" or closure of the press by the management from 20th April 1956 was perfectly justified in the background of this strike. If the workers took forcible occupation of the factory for no justifiable cause, the Company was certainly within its right to take every precaution against such miscreants to safeguard its property. It is a fact no doubt that the Police was called in, but the management had no other option. It called in Police, because nobody knew what was in the minds of the strikers. But one thing is apparent that though the Police remained there, there was no unhappy incident or any Police excess. The Police merely stood by waiting to be used in case of any untoward incident. As soon as in the joint conference called by the Deputy Labour Commissioner on 10th May, 1956, the representatives of the Union agreed that all workmen should resume their duties except the 8 workers who were charge-sheeted, the management put up a notice in the notice board that work would be resumed on 11th May, 1956. It seems that there has been no victimisation as a result of this strike. The Company has taken back many of the workers who had participated in the stay-in-strike. The workmen are primarily responsible for this lock-out-cum-strike. It was they who contributed towards the same. It cannot be said that the strike was provoked by the management. The workers had no justification for resorting to stay-in-strike and adopting various unconstitutional measures during the period of strike. I do not see anything *mala fide* on the part of the Company. It is rather apparent that the representatives of the Union accepted the original proposal of the Company when they agreed to call off the strike before the Deputy Labour Commissioner on 10th May, 1956. In the circumstances, I do not think that the Company can be made liable to pay wages for the period when the workers remained on strike. In the result, it is decided that the workers are not entitled to any relief during the strike-cum-lock-out period, that is from 20th April, 1956, to 10th May, 1956. There are also several decisions on the point that the workers concerned are not entitled to get any wages for the strike-cum-lock-out periods where the lock-out is held to be justified, and the strike unjustified. This issue is also answered in the negative.

[IN THE LABOUR APPELLATE TRIBUNAL OF INDIA.]

MODI SOAP WORKS, MEERUT

v.

KIRNA AND OTHERS

Shri R. K. Basu, President, and Shri S. M. Ahmad.

February 3, 1956.

LAY-OFF—WHETHER ALTERATION OF CONDITIONS OF SERVICE—WHETHER CONTRAVENES SECTION 33, INDUSTRIAL DISPUTES ACT, 1947—WHETHER COMPLAINT UNDER SECTION 33-A LIES—PROPER REMEDY OF WORKMEN.

Lay-off, having been provided for by statute and the standing orders, cannot be treated as tantamount to an alteration of the conditions of service of the workmen laid-off. Therefore, a lay-off will not offend section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (corresponding to section 33, Industrial Disputes Act, 1947) and cannot give rise to a complaint under section 23 of the 1950 Act (corresponding to section 33-A of the 1947 Act). If the workmen feel that they have been laid-off for an unreasonable period, their remedy is to raise an independent dispute in regard to the same.

Miscellaneous Case No. III-C-92 of 1955.

Mahadeo Prasad and V. Dayal for the management.

Bhagwati Sahai with P. K. Sharma for the workmen.

JUDGMENT.

This case arises out of an application under section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950. The application has been filed by 67 workmen of Modi Soap Works, Meerut, challenging the legality of the lay-off resorted to by the company against them in contravention of section 25C of the Industrial Disputes Act as well as of the provisions of the standing orders during the pendency of an appeal before this Tribunal in which the workmen concerned were interested.

Sri Bhagwat Sahai along with Sri P. K. Sharma appears on behalf of the workmen. The company is represented by Sri Mahadeo Prasad with Sri V. Dayal.

At the very outset an objection is taken by Sri Mahadeo Prasad to the maintainability of the miscellaneous case filed, in that the main petition and the affidavit filed by the workmen on 21st February, 1955, did not bear the requisite court-fees. It appears that the court-fees have been affixed to the petition and the affidavit on behalf of the workmen only today, as they were required to do under orders of the office signed by the assistant registrars on 23rd and 28th January, 1956. It is a rather matter of surprise that an earlier requisition was not made by the office. However, when court-fees have since been attached by the workmen as requisitioned by the office, the initial lacuna regarding the filling of application and affidavit without required court-fees must be regarded to have been duly remedied. We cannot,

therefore, attach any importance to the technical objection pleaded on the side of the company relating to the filing of application and connected affidavit without necessary court-fees.

Sri Mahadeo Prasad has next seriously questioned the legal competency of the miscellaneous case under section 23 of the Industrial Disputes (Appellate Tribunal) Act. Sri Mahadeo Prasad's contention is that the facts and circumstances as set out in the petition filed by the workmen do not constitute any violation of the provisions of section 22 of the Act attracting thereby the operation of section 23.

The undisputed fact remains that all the sixty-seven workmen concerned were played-off at a stretch from 15th January, 1955, till the date of application under section 23, namely, 16th February, 1955. It is contended on behalf of the company, and it is not denied by the workmen, that for this entire period the workmen concerned have been paid 50 per cent. of their consolidated wages excepting for statutory holidays intervening.

Sri Mahadeo Prasad has argued that playing-off of workmen for trade reasons forms a condition of service of workmen both in the Act and in accordance with the provisions of the standing orders, and that as such playing-off of workmen cannot be interpreted as an alteration of the conditions of service to the prejudice of the workmen played-off calling for the operation of section 23 of the Act. Sri Bhagwat Sahai on behalf of the workmen contends that if workmen are played-off during the pendency of an appeal in which they were interested beyond the limits provided by the statute and standing orders, the workmen are entitled to redress under section 23 of the Act on the ground that such playing-off beyond limits of law is tantamount to an alteration of the conditions of service of the workmen played-off, to their prejudice.

There can certainly be no manner of doubt that there are certain limitations within which playing-off of workmen can be resorted to by their employers. But such limitations only relate to obligations on the part of the employers regarding payment of wages to the workmen played-off, if the period of play-off is beyond certain limits. According to rule 16(a) of the standing orders the employers are entitled to play off their workmen for valid trade reasons for a period not exceeding twelve days in the aggregate (excluding statutory holidays) in a calendar month without notice and without compensation in lieu of notice.

Under section 25C of the Industrial Disputes Act workmen laid-off are entitled to compensation equal to 50 per cent. of the total of the basic wages and dearness allowance for all days during which they were laid-off excepting for intervening statutory holidays. And the proviso to section 25C limits the period of play-off during which 50 per cent. of the basic wages and dearness allowance are payable, to only 45 days during any period of twelve months.

Sri Mahadeo Prasad argues that section 25C of the Industrial Disputes Act and the standing orders lay down provisions regarding payment of com-

pensation to the workmen played off but do not in any way detract from the right of employers to resort to play-off in case of trade necessity. Accordingly, Sri Mahadeo Prasad contends that, so far as the factum of the play-off is concerned, it must be regarded to be an important incident of service conditions of workmen subject only to this limitation that the employers would be liable to pay compensation to the workmen played-off for which explicit provisions have been made both in the statute and the standing orders. Sri Mahadeo Prasad further contends that if the workmen concerned have been played-off beyond the normal limit prescribed, they are certainly entitled to raise a dispute for payment of compensation in accordance with the provisions laid down in the statute and the standing orders but it is not open to the workmen to make it a grievance that there has been an alteration of service conditions of the workmen because the period of play-off has been rather long with the result that they were deprived of their full wages.

In our opinion, there is much force in this contention. Play-off being provided for by statute as well as standing orders cannot, *ipso facto*, be treated as tantamount to an adverse alteration of service conditions of the workmen concerned because the period of play-off has been rather long at a stretch. In this regard the workmen are certainly competent to claim compensation in accordance with law. In the present case it is not denied that the workmen concerned have received 50 per cent. of their consolidated wages for the entire period from the date of play-off till the filing of the present case excepting of course statutory holidays. Sri Bhagwat Sahai contends that the play-off of the workmen continued for good many months at a stretch even after the filing of the present case and that the workmen have not been paid any compensation for the remaining period of play-off excepting for 45 days in the aggregate. We hope that the employers in good grace will pay legitimate compensation to the workmen for the entire period they had been played-off.

But, so far as the present application under section 23 is concerned, we are of opinion that no redress can be granted to the workmen as we do not think there has been any contravention of provisions of section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, warranting our interference under section 23 of the Act. It is open to the workmen, as already indicated, to raise an independent dispute for all legitimate dues by way of compensation for the period they were played-off by the company.

The miscellaneous case is accordingly dismissed on the ground of its incompetency. We make no orders for costs.

[IN THE FIFTH INDUSTRIAL TRIBUNAL, WEST BENGAL.]

BURMAH SHELL and OTHER OIL COMPANIES

v.

THEIR WORKMEN.

Shri G. Palit.

May 27, 1957.

BONUS—AWARD OF—DETERMINATION OF QUANTUM OF BONUS—NON-PRODUCTION OF FINAL ACCOUNTS—EFFECT—COST OF LIVING INDEX—HOW FAR RELEVANT—CHANGE OF MATERIAL CIRCUMSTANCES—WHETHER NECESSARY FOR VARYING AWARD OF BONUS.

SETTLEMENT—WHETHER DISPUTE CAN BE RAISED ON MATTERS COVERED BY SETTLEMENT.

On the question of award of bonus in the case of oil companies, Held,

(i) *that it is desirable that the profit and loss account and balance sheet of the year are placed before the Tribunal and the trading results made known to the workmen;*

(ii) *that the quantum of bonus cannot be linked with the cost of living index on the ground that bonus is intended to fill up the gap between the current wage and the living wage, because, even if the living wage is attained, bonus can still be claimed as participation in the profits; and*

(iii) *that the principle that an award should not be altered within a short interval unless there has been a material change in the circumstances, does not apply to the determination of bonus which is necessarily confined to the facts of each year.*

The Tribunal awarded a bonus of 4½ months' basic salary for the year 1955.

A matter which is covered by a settlement by conciliation cannot be made the subject matter of an industrial dispute so long as the settlement is in force.

C. H. Pai with D. Basu Thakur for the managements.

P. K. Sanyal and Nikhil Ranjan Roy for the workmen.

AWARD.

* * *

3. The issues contained in the schedule to the order of reference stand as follows:

(1) Bonus for 1955 payable in 1956 for Calcutta industrial area;

(2) Whether the workmen in Calcutta who are entitled to clothing but do not receive the same, should be paid a clothing allowance? If so, what should be the rate of that allowance?

4. The Union claims for the workmen of the Calcutta industrial area including the Head Office staff, bonus for the year 1955 amounting to 6 months' basic pay and dearness allowance. Under the added issue the Union claims either supply of uniforms and clothing to all workmen, or Rs. 5 per month as clothing allowance in lieu thereof.

The Companies had, *inter alia*, challenged the jurisdiction of this Tribunal to grant either the interim bonus or bonus on profits or both. They have denied that they have earned substantial profit for the year 1955. Besides, they have stressed that as a result of having increased the wages and other allowances of late, living wage has already been reached. That being so, there remains no gap between the current wage and the living wage which requires to be filled up by the granting of bonus. So the claim of bonus in that background cannot be sustained. The Companies have further contended that the present Union does not represent the clerical employees. As such, the clerical employees cannot be said to have been impleaded in the present dispute. It is pointed out that in course of negotiations the Union did concede their bonus claim to stand at $4\frac{1}{2}$ months' basic pay.

Many of the objections referred to above have not been pressed during the hearing by the Companies' counsel. The challenge to jurisdiction of the Tribunal to grant interim bonus was mooted in the hearing, dated 27th September, 1956. In my interim award I had met that objection in all its bearings. This award has been published. So I need not reiterate that finding, but I merely refer to my order, dated 29th September, 1956, recorded in detail in the order sheet. The other objection that the Companies have not made substantial profits during the year 1955 has also been dropped and, I must say, advisedly, as the Companies had withheld balance sheets including the Profit and Loss Accounts. If anybody could place before the Tribunal data about the trading results of the Companies during the year 1955, they were the Companies themselves. It is not within the reach of the workmen to place those documents before the Tribunal because they are not permitted to have access to them. So it does not lie with the Companies, after having concealed the balance sheets, to take shelter under the plea that they have not derived good profits during the year in question.

Regarding the filling up of the gap between the current wage and the living wage, I reserve my comments for the present. The other objection is that the present Union does not represent the clerical section of the workers within its fold. As such, the clerical section is said to be outside the scope of the present dispute. But I am unable to accede to this contention of the Companies. In the order of reference the workmen of all these Companies have been mentioned. "Workman" by its definition in the Industrial Disputes Act, 1947 (XIV of 1947), comprises both sections of workmen,—I mean, the operatives and the clerical staff. So the clerical section cannot be shut out in the present case. That this Union does not represent them will also not create a fatal bar. These employees have put in individual applications before the Tribunal. Their genuineness has not been challenged. The Companies cannot dispute that the clerks are not competent to represent themselves before the Tribunal, I mean, independent of the Union. That is the inherent right of every workman under the Industrial Disputes Act. Section 36 of the said Act has not either removed or restricted this right. So this contention is also untenable.

Next, I come to the crux of the objections raised by the Companies. I am glad that the Companies have not raised, as it was their wont, the stereotyped objection that the oil companies, being trading companies as distinguished from producing concerns, are not liable to pay any bonus, as laid down by the Labour Appellate Tribunal in the Rashtriya Mill Mazdoor case. I do not think any such distinction can fairly be made. These oil companies may not actually produce or manufacture any commodity, but in the broader sense they are also treated as producing concerns. If any reference to any decision of the Labour Appellate Tribunal is considered necessary, I may refer to the case of *Burmah-shell, etc.*, oil companies in Madras and their employees. This was reported in the L.L.J., 1954, Vol. I, page 782. The Labour Appellate Tribunal observed:

"We may state here at the outset that these oil companies are trading and not manufacturing concerns and their business consists in storing, distributing and selling oil and petroleum products which they import from foreign countries. They have in their employ a large number of clerks, servicemen, security staff and the like to carry on efficiently the trade in which they are engaged. The nature of work of the employees of these concerns, no doubt, differs from the nature of work of the employees of manufacturing concerns. According to Marshall's concept of production, these oil companies are as much producing concerns as those actually engaged in manufacturing goods (*vide* Marshall's Principles of Economics, 1952, Chapter III, page 53). In the profits they earn the contribution of the employees cannot therefore be said to be negligible or unsubstantial.....If therefore, these trading concerns are to be deemed as producing concerns in the scientific sense of the term and the workers contribute their labour in earning the profits, there is no reason why they should not share a portion of the available surplus as bonus to fill up the gap between their actual wages and the living wage."

So the position is that the bonus formula laid down in the Rashtriya Mill Mazdoor case could not be totally ousted. But, for practical reasons, the said formula cannot be applied here because the Companies have not placed their balance sheets or their Profit and Loss Accounts before the Tribunal.

This bonus dispute concerning the oil companies has almost proved to be a chronic affair. It bids fair to be almost eternal. If we probe into the reasons, they seem to be as follows:

The chief reason, if I may not say the primary reason, seems to lie in the fact that the Companies have chosen to conceal their balance sheets for reasons best known to them. It may be that they are apprehensive that if the balance sheets are placed before the Tribunal, profits might be revealed to be so stupendous or colossal that the workers' cupidity might be tackled. They might be allured to grab a bulk of it. So if they are left guessing, the Companies will stand to gain. But, I am afraid, the result would, perhaps, be the reverse of what the Companies are apt to think. The profits, being secreted from the view, have been very much like the forbidden fruit. The

labour allow their imagination to run riot, and they conceive of the profits perhaps, at a figure much beyond what they are in fact. They think that they are denied their legitimate portion of it in the shape of bonus. So the workmen go on knocking. I do not know when such knocking would cease,—possibly not before the door is opened to them and the iron curtain is lifted. The Companies will be better advised to squarely face the facts. That way, possibly, industrial peace lies. If there is really huge profit, why should not the labour be given its due share, or due claim? Why this hush? So, unless the Companies revise their present attitude bonus disputes perhaps will be there, and may continue as a year-to-year affair.

The Labour Appellate Tribunal achieved some sort of industrial peace, or at least found satisfaction that they have evolved a formula after all, by which the available surplus for bonus in manufacturing concerns can be determined with certain amount of precision. Though this formula, like all other formulae, had its limitation, and did not prove to be as much a success as it was supposed to be, yet both the labour and the capital found that they had a common ground to work upon. The claim of the industry was reasonably provided for. The claim of the capital was also safeguarded. The claim of the labour was met out of the available surplus. But the the present Tribunal when the bonus dispute of oil companies came before it. They were not shown the balance sheets. They were in a quandary about the trading profits of the year. Bonus can hardly be determined unless the trading profits are disclosed. So the Labour Appellate Tribunal had to fall back upon the conception of bonus being a temporary or partial satisfaction of the deficiency of the current wage below the living wage. But here also there was no smooth sailing. They were faced with another dilemma. Firstly, living wage could not be determined with anything like precision. Secondly, even when the current wage will reach the living wage standard the claim for bonus will still be there. It will consist in the claim for participation in profits derived by the joint contribution of labour and capital. Thirdly, the living wage in the present economic condition of the country, and the position of the industry as a whole, cannot be reached though it has been held out in the Constitution of India as a legitimate right of the labour in free India. So their Lordships of the Labour Appellate Tribunal could not place bonus dispute about the oil companies on a secure foundation. In this connection I refer to the decision of the Calcutta Bench of the Labour Appellate Tribunal, reported in the [1953] 5 F.J.R. 535. At page 542 the Hon'ble Judges observed:

"The living wage must include better standard of food, clothing and residence and also a surplus for (a) education of children, (b) protection from ill health, (c) requirements of essential social needs, and (d) a measure of insurance against the more important misfortune including old age." At page 542 the same Judges observed:

"The measurement of living wage standard in terms of money has not

been prescribed by law of the country nor, as far as we are aware, has been determined anywhere on any scientific basis. The Textile Enquiry Committee set up to examine the conditions of labour employed in the Textile Industries in the State of Bombay considered this question to some extent. In our opinion, it is not possible nor necessary to fix the amount with exactitude that should form minimum living wage after an exhaustive enquiry for considering the question of bonus because, according to the principle laid down, the whole gap between the existing wages and the living wages need not be filled up. It may be filled even partially, the object being to allow the workmen a supplementary income in the shape of bonus from which the reasonable needs of a human being in human society can be met."

That the "living wage" is, as a matter of fact, elusive or liable to variation will appear from the fact that the Labour Appellate Tribunal in the Madras Bench fixed it at a point 50 per cent. higher than the existing wage. In the Calcutta Bench they fixed it at 30 per cent. higher than the current wage. That being the position, any attempt to ascertain the amount that will be necessary to fill up the gap between the current wage and the living wage was bound to be a failure. Yet, this is the line in which the Companies and the workmen bent their energies for years in the past. Even before me the same attempt was sought to be made. It was, however, given up when I exposed the futility of such an attempt. But then the learned lawyers of both sides scratched their heads to find out what else, if not the present one, was the line of solution that remained. The learned counsel of the Companies preferred to take shelter under the argument that the *status quo* should be maintained. He argued that in West Bengal a certain pattern has been built up as a result of several decisions of Tribunals in the past and also as a result of agreements reached between the Companies and the Unions. He contended that this pattern should not be allowed to be departed from unless material change of circumstances has been made out by either side. For this he relied on the case of Burn & Co., Calcutta, and their employees, reported in the F.J.R., 15th November, 1956, at page 217. Their Lordships of the Hon'ble Supreme Court observed:

"Now, if we are to hold that an adjudication loses its force when it is repudiated under section 19(6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it, either party will treat it as a mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour. On the other hand, if we are to regard them as intended to have long-term operation and at the same time hold that they are liable to be modified by change in the circumstances on which they were based, both the purposes of the legislature would be served."

The learned counsel of the Companies shifts the burden on the workmen to show that there has been a material change of circumstances in the present

case. The learned advocate of the Union contends that these observations were in respect of fixation of wages which, by its nature, is a long-term affair. It does not refer to the matter of bonus which is liable to variation year after year. Bonus is confined by the Hon'ble Supreme Court to the actual profits derived during the year in question as a result of joint efforts of labour and capital. Besides, he refers to the larger volume of sales of the Standard Vacuum Oil Company during the year in question. I must here observe that increase in sales does not necessarily indicate increase in profits. But in the background of the attitude taken up by the Companies in concealing their balance sheets and Profit and Loss Accounts, I cannot say that the argument of the Union is devoid of any force. I also accept the contention of the learned advocate of the Union that in the case of bonus, a material change of circumstances is not necessary to disturb the decision of the Tribunal in previous years. Each year's profits will stand by itself, so far as the reckoning of bonus for that year is concerned.

Regarding the pattern of the quantum of bonus in West Bengal, relied on so much by the learned counsel of the Companies, I must say that it does not go far enough. If in 1950 and 1951 the Tribunal found 3 months' basic salary as the reasonable quantum of bonus for the clerical section and 4 months' salary for the workmen in 1952, I cannot say that the Tribunal must, for all time to come, stick to that standard. The learned counsel of the Companies next argues that in Bombay and Madras there have been long-term agreements, as per the Ex. B2 series. For each of the years 1955 and 1956 four months' basic wages were provided for as bonus in Madras and Ernakulam. In Bombay the quantum was $4\frac{1}{2}$ months' basic wages as a result of an award of agreement. So the argument of the learned counsel is that $4\frac{1}{2}$ months' basic wages should not in any case be exceeded. The cost of living index in Madras and Calcutta is practically the same. It is less than what prevails in Bombay. So the learned counsel argues that considered on the basis of this cost of living index, the quantum of bonus in West Bengal should be less than $4\frac{1}{2}$ months' basic wages which quantum has been allowed in Bombay. I must point out that this argument is not above criticism. I have already exposed the hollowness of the contention that the cost of living index must govern the granting of bonus. It has only a bearing on the question of fixation of wages, and it is irrelevant so far as the question of bonus is concerned. So, because the cost of living in West Bengal is behind that in Bombay, it cannot be held that the quantum of bonus in West Bengal must necessarily be less than that in Bombay.

So the Tribunal has before it one of the two choices, viz., (1) to pitch the bonus at an exorbitant figure. If the Companies who will be hard hit become afraid, they may be met with the argument that they have invited this. It is their own creation. If they had disclosed their balance sheets, the Tribunal would have had proper data to proceed upon. (2) But then again, if the Companies are capricious and wilful, the Tribunal cannot be vindictive or punitive. Two wrongs can never make one right. If the Tribunal

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grants an arbitrary award, industrial equilibrium in oil companies regarding bonus will be totally upset. There may also be serious repercussion on this industry in particular, and on other industries in general. So, in the present circumstances, the task of the Tribunal is heavier and more complex than what it seems to be at first sight. It has to proceed with more care than in other cases.

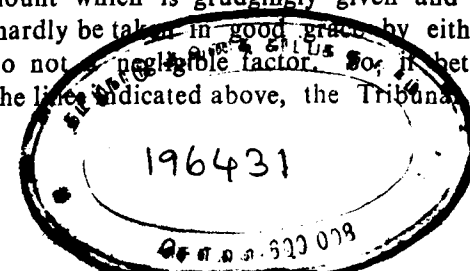
The learned counsel of the companies contends that if bonus is granted high, it may give rise to inflation. A privileged class might be created, and the consumers in the long run might also be hit. This is no doubt, true. But it is certainly not a matter of compliment for the Companies that they will make the best bargain out of it. They must give a fair deal to labour.

Having regard to all these facts and circumstances and the peculiar nature of the problem before the Tribunal, I proceed to give my award as follows:

I allow $4\frac{1}{2}$ months' basic salary as bonus for the year 1955 to the clerical staff and the operatives of all the oil companies in the Calcutta area under reference because I get in evidence that labour conceded $4\frac{1}{2}$ months' basic wage as the quantum of bonus for the year 1955 in course of negotiations, and also because I get that $4\frac{1}{2}$ months' basic wage was the maximum bonus granted in Bombay which was the highest bonus in this industry in this land; and also because I find that there have been long-term agreements in different States regarding bonus ranging between 3 and 4 months' basic wages. So bonus higher than the above might disturb those long-term agreements. But for that reason I do not like to scale down the quantum of bonus in West Bengal below $4\frac{1}{2}$ months' basic salary. This bonus is made payable within one month of the award coming into operation, reduced by two months' basic salary which has been already given under the interim award given by me.

Before I conclude this issue, I may point out that abiding peace in the matter of bonus regarding these oil companies may be achieved if the Companies either persuade the workmen to enter into long-term agreements by means of bi-partite or tri-partite conferences, or, if in case the matter is to be adjudicated upon by the Tribunal on any satisfactory footing, the balance sheets including the Profit and Loss Accounts be placed before it. I am at one with the learned counsel of the Companies in not being a believer in granting bonus in cash at a very high figure. Labour has yet to learn to be provident. A lump sum will be heartily welcome to labour, but there is the consequent risk of its being squandered away. But if it comes in a more permanent form, viz., in providing for education of children, measures against ill health and unemployment, and also other long-term benefits, the labour might be really happy and contented. But if this yearly contest on bonus is allowed to continue, as at present, industrial peace is bound to be as remote as ever. An amount which is grudgingly given and obtained through the Tribunal can hardly be taken in good grace by either party. The cost of litigation is also not a negligible factor. So, in better sense prevails on both sides on the lines indicated above, the Tribunal will feel amply rewarded.

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Issue No. 2.—The Union claims either supply of uniform or clothing to all workmen, or annas two per day, or Rs. 5 per month as clothing allowance. This claim is refused by the Companies on the ground that it is contrary to the agreement reached in the conciliation proceedings before the Labour Commissioner on 28th July, 1956. That settlement provided as follows:

“The parties agree that the matter of clothing for workers will continue to be based upon the present practice, which is in accordance with law, but the Companies agree to discuss this matter with the Union and to make, at their discretion, any alteration that appear justified.”

This agreement was stipulated to remain in force till the 1st January, 1958. So the Companies contend that the settlement does not permit the Union to agitate this matter during the tenure of its operation. The Union, of course, admits the agreement. It contends that in the said agreement there was a provision that the matter was left to be discussed between the Companies and the Union, and the decision was liable to be altered. As a matter of fact, the Union contends that in Bombay this clothing allowance or uniform in the alternative, was granted to all the workmen. Here in West Bengal there were several discussions in the Works Committee, and the Chairman of the Works Committee was inclined to grant annas two per day as clothing allowance. But, as no finality was reached, this matter has been included in the present dispute. But the learned Counsel of the Companies argues that in the aforesaid agreement the Companies were agreeable to discuss this matter, but alteration, if any, was left to their discretion. The Companies do not like to exercise this discretion. So the matter must be taken to be at an end. During the period of operation of the settlement the Tribunal cannot interfere with it. I think, the Companies' stand is legally sound. I find in the agreement of 1956 that alteration in the matter of clothing was open for discussion, but lay at the discretion of the Companies. Besides, in the said agreement there was the provision, viz., “Undertaking not to raise or pursue during the operation of this settlement, any demand (other than bonus for the year 1955 and the following years) involving financial commitments.” This being the position, it is not up to the Union who was a party to the said settlement, to raise this dispute about clothing before the 1st January, 1958. The solemn agreement cannot be allowed to be departed from in this manner so lightly. Being reached in the conciliation proceeding it is binding on the parties under the Industrial Disputes Act. If such agreements are allowed to be varied or modified contrary to what is distinctly stipulated therein, then industrial peace will run riot. There will be no peace. Besides, items covered by an agreement should not be allowed to be constantly reagitated unless there is material change in the circumstances, and certainly not during the period of operation of the agreement. So I turn down the claim of the Union in this respect. If any of these Companies is granting uniform or clothing allowance, let them so grant, but I would not make any binding award in this respect.