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THE

INDIAN FACTORIES JOURNAL

STATUTES

VOLUME XIII—1957-58

THE U. P. INDUSTRIAL DISPUTES (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 1957

[U. P. ACT No. XXIII OF 1957*].

(Received the assent of the President on August 31, 1957.)

An Act further to amend the U.P. Industrial Disputes Act, 1947, for certain purposes and to provide for certain other matters.

Whereas it is expedient to amend the U. P. Industrial Disputes Act, 1947, for the purposes hereinafter appearing;

It is hereby enacted in the Eighth Year of the Republic of India as follows:

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

(2) It shall come into force at once.

2. *Amendment of section 4-E of U. P. Act No. XXVIII of 1947.*—In section 4-E of the U. P. Industrial Disputes Act, 1947 (hereinafter referred to as the Principal Act), for sub-section (1) the following shall be substituted:

"(1) *Committee to prepare lists under section 4-D.*—The State Government shall constitute a Committee consistingof the following:

(i) A Chairman who shall be appointed by the State Government and shall be a person who is or has been a Judge of a High Court;

(ii) the Chief Secretary to the State Government;

(iii) the Secretary to the State Government in the Labour Department;

(iv) the Legal Remembrancer to the State Government, and

(v) a member of the Public Service Commission, Uttar Pradesh, to be nominated by the Chairman of the Commission."

3. *Amendment of section 4-I of U. P. Act No. XXVIII of 1947.*—In section 4-I of the Principal Act, for clause (ii) of the proviso, the following shall be substituted:

*U. P. Gaz. Extry., Sept. 3, 1957, p. 2.

"(ii) Where the change is likely to affect workmen who are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Civil Service Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the official *Gazette*, apply."

4. *Amendment of section 6-A of U. P. Act No. XXVIII of 1947.*—In the first proviso to sub-section (1) of section 6-A of the Principal Act, for the words "on grounds of social justice", the words "on public grou ds affecting national or State economy or social justice" shall be substituted.

5. *Amendment of section 6-H of U. P. Act No. XXVIII of 1947.*—For sub-section (1) of section 6-H of the Principal Act, the following shall be substituted:

"(1) *Recovery of money due from an employer.*—Where any money is due to a workman from an employer under the provisions of sections 6-J to 6-R or under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as if it were an arrear of land revenue."

6. *Amendment of section 6-I of U. P. Act No. XXVIII of 1947.*—For sub-section (3) of section 6-I of the Principal Act, the following shall be substituted:

"(3) No officer of a Union shall be entitled to represent any party unless a period of two years has elapsed since its registration under the Indian Trade Unions Act, 1926 and the Union has been registered for one trade only:

Provided that an officer of a federation of unions may subject to such conditions as may be prescribed represent any party."

7. *Insertion of new sections 6-S, 6-T and 6-U in U. P. Act No. XXVIII of 1947.*—After section 6-R of the Principal Act, the following shall be inserted as new sections 6-S to 6-U:

"6-S. *Prohibition of illegal strikes and lock-outs.*—(1) No person employed in an industrial establishment shall go on strike—

(*a*) without giving to the employer a notice of strike within thirty days before striking; or

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

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

(*d*) during the pendency of any conciliation proceeding before a Conciliation Officer or a Board and thirty days after the conclusion of such proceeding, if he is concerned in the dispute which is the subject-matter of such proceeding; or

(*e*) between the commencement and the conclusion of proceeding before a Labour Court or a Tribunal, if he is concerned in the dispute which is the subject-matter of such proceeding; or

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

(2) No employer shall lock-out any of his workmen—

(*a*) without giving him notice of lock-out within thirty days before locking out; or

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

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

(*d*) during the pendency of any conciliation proceeding before a Conciliation Officer or a Board, and thirty days after the conclusion of such proceeding, if the workman is concerned in the dispute which is the subject-matter of such proceeding; or

(*e*) between the commencement and the conclusion of proceeding before a Labour Court or a Tribunal, if the workman is concerned in the dispute which is the subject-matter of such proceeding; or

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

(3) The notice of strike or lock-out under this section shall not be necessary where a lock-out or, as the case may be, a strike already exists in the industrial establishment, but the employer shall send intimation of the lock-out or strike on the day on which it is declared, to such authority as may be prescribed.

(4) Every notice of a strike or lock-out under this section shall specify a date within three days of which if no strike or lock-out takes place in pursuance of the notice, the notice shall cease to have effect and fresh notice shall have to be given for a strike or lock-out.

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

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

6-T. *Illegal strikes and lock-outs.*—(1) A strike or lock-out shall be illegal if it is commenced or declared in contravention of section 6-S or is continued beyond the date on which the industrial dispute to which the strike or, as the case may be, the lock-out, relates, is taken up by a Board or is referred for adjudication to a Labour Court or Tribunal.

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

6-U. *Prohibition of instigation or incitement to illegal strikes and lock-outs.*—No person shall aid, instigate or incite others to take part in or otherwise act in furtherance of any strike or lock-out which is or when commenced will be in contravention of the provisions of this Act."

8. *Amendment of section 16 of U.P. Act No. I of 1957.*—In section 16 of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the following words shall be, and be deemed at all times to have been, added in the end:

"and the provisions of section 6-A of the Principal Act shall remain enforceable with reference to such a proceeding."

9. *Amendment of section 17 of U.P. Act No. I of 1957.*—In sub-section (2) of section 17 of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the words occurring after the words "State Legislature" shall be deleted.

THE MINIMUM WAGES (AMENDMENT) ACT, 1957

ACT NO. 30 OF 1957*

[*Received the assent of the President on 17th September, 1957.*]

An Act further to amend the Minimum Wages Act, 1948.

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

1. *Short title.*—This Act may be called the Minimum Wages (Amendment) Act, 1957.

2. *Amendment of section 2.*—In section 2 of the Minimum Wages Act, 1948 (hereinafter referred to as the principal Act),—

(*i*) in clause (*b*) (*i*), for the words "Central Government, by a railway administration", the words "Central Government or a railway administration" shall be substituted;

(*ii*) in clause (*h*), after the words "or of work done in such employment", the words "and includes house rent allowance" shall be inserted.

3. *Amendment of section 3.*—In section 3 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), for the figures "1954" whenever they occur, the figures "1959" shall be substituted;

(*ii*) to clause (*b*), the following proviso shall be added, namely:—

"Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.";

(*b*) in sub-section (*3*), for clause (*b*) excluding the proviso, the following shall be substituted, namely:—

*Gaz. of India Extry., Sept. 18, 1957, Pt. II, sec. 1, p. 431.

"(*b*) minimum rates of wages may be fixed by any one or more of the following wage periods, namely:—

(*i*) by the hour,
(*ii*) by the day,
(*iii*) by the month, or
(*iv*) by such other larger wage period as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated;".

4. *Substitution of new section for section 5.*—For section five of the principal Act, the following section shall be substituted, namely:—

"5. *Procedure for fixing and revising minimum wages.*—(*1*) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either—

(*a*) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be, or

(*b*) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (*a*) of sub-section (*1*), or as the case may be, all representations received by it before the date specified in the notification under clause (*b*) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (*b*) of sub-section (*1*), the appropriate Government shall consult the Advisory Board also."

5. *Omission of section 6.*—Section 6 of the principal Act shall be omitted.

6. *Amendment of section 7.*—In section 7 of the principal Act, for the words and figures "committees, sub-committees, advisory committees and advisory sub-committees appointed under sections 5 and 6", the words and figure "committees and sub-committees appointed under section 5" shall be substituted.

7. *Amendment of section 9.*—In section 9 of the principal Act, the words "advisory committees, advisory sub-comittees" shall be ommtted.

8. *Substitution of new section for section 10.*—For section 10 of the principal Act, the following section shall be substituted, namely:—

"10. *Correction of errors.*—(*1*) The appropriate Government may, at any time, by notification in the Official Gazette, correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under this Act, or errors arising therein from any accidental slip or omission.

(2) Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information."

9. *Amendment of section 12.*—In section 12 of the principal Act, the words and figures "or section 10" shall be omitted.

10. *Amendment of section 13.*—Section 13 of the principal Act shall be re-numbered as sub-section (*1*) of that section and to the section as so re-numbered, the following sub-sections shall be added, namely :—

"(2) The provisions of sub-section (*1*) shall, in relation of the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed :—

(*a*) employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented ;

(*b*) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned ;

(*c*) employees whose employment is essentially intermittent ;

(*d*) employees engaged in any work which for technical reasons has to be completed before the duty is over ;

(*e*) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (*c*) of sub-section (*2*), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention."

11. *Amendment of section 19.*—In section 19 of the principal Act,—

(*1*) for clause (*d*) of sub-section (*2*), the following clause shall be substituted, namely:—

"(*d*) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer; and";

(*2*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) Any person required to produce any document or thing or to give any information by an Inspector under sub-section (*2*) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code."

12. *Amendment of section 20.*—In section 20 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "any Commissioner for Workmen's Compensation or", the words "any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any" shall be substituted ;

(*ii*) after the words "less than the minimum rates of wages", the following shall be inserted, namely :—

"or in respect of the payment of remuneration for days of rest or for work done on such days under clause (*b*) or clause (*c*) of sub-section (*1*) of section 13 or of wages at the overtime rate under section 14," ;

(*b*) in sub-section (2),—

(*i*) for the words "Where an employee is paid less than the minimum rates of wages fixed for his class of work under this Act", the following shall be substituted, namely :—

"Where an employee has any claim of the nature referred to in sub-section (*1*)" ;

(*ii*) in the first proviso, after the words "minimum wages", the words "or other amount" shall be inserted ;

(*c*) for sub-section (3), the following sub-section shall be substituted, namely :—

"(3) When any application under sub-section (*2*) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct—

(*i*) in the case of a claim arising out of a payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess ;

(*ii*) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees,

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.".

13. *Amendment of section 21.*—In sub-section (*1*) of section 21 of the principal Act,—

(*i*) for the words "A single application", the words "Subject to such rules as may be prescribed, a single application" shall be substituted ;

(*ii*) after the words "such excess", the words "or ten rupees per head, as the case may be" shall be added.

14. *Substitution of new sections for section 22 and insertion of new sections 22C to 22F.*—For section 22 of the principal Act, the following sections shall be substituted, namely:—

" 22. *Penalties for certain offences.*—Any employer who—

(*a*) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or

(*b*) contravenes any rule or order made under section 13,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

22A. *General provision for punishment of other offences.*—Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act, be punishable with fine which may extend to five hundred rupees.

22B. *Cognizance of offences.*—(1) No Court shall take cognizance of a complaint against any person for an offence—

(*a*) under clause (*a*) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorised by it in this behalf has sanctioned the making of the complaint;

(*b*) under clause (*b*) of section 22 or under section 22A, except on a complaint made by, or with the sanction of, an Inspector.

(2) No Court shall take cognizance of an offence—

(*a*) under clause (*a*) or clause (*b*) of section 22, unless complaint thereof is made within one month of the grant of sanction under this section;

(*b*) under section 22A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

22C. *Offences by companies.*—(*1*) If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) " company " means any body corporate and includes a firm or other association of individuals, and

(*b*) " director " in relation to a firm means a partner in the firm.

22D. *Payment of undisbursed amounts due to employees.*—All amounts payable by an employer to an employee as the amount of minimum wages of the employee under this Act or otherwise due to the employee under this Act or any rule or order made thereunder shall, if such amounts could not or cannot be paid to the employee on account of his death before payment or on account of his whereabouts not being known, be deposited with the prescribed authority who shall deal with the money so deposited in such manner as may be prescribed.

22E. *Protection against attachment of assets of employer with Government.*—Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

22F. *Application of Payment of Wages Act, 1936, to scheduled employments.*—(*1*) Notwithstanding anything contained in the Payment of Wages Act, 1936, the appropriate Government may, by notification in the Official Gazette, direct that, subject to the provisions of sub-section (*2*), all or any of the provisions of the said Act shall with such modifications, if any, as may be specified in the notification, apply to wages payable to employees in such scheduled employments as may be specified in the notification.

(2) Where all or any of the provisions of the said Act are applied to wages payable to employees in any scheduled employment under sub-section (*1*), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of the provisions so applied within the local limits of his jurisdiction."

15. *Amendment of section 26.*—In section 26 of the principal Act,—

(*1*) in sub-section (*2*), after the words " direct that ", the words " subject to such conditions and " shall be inserted;

(*2*) in sub-section (*2A*),—

(*i*) after the words " in a local area ", the words " or to any establishment or a part of any establishment in a scheduled employment" shall be inserted;

(*ii*) after the words " in respect of such employees of that class ", the the words " or in respect of employees in such establishment or such part of any establishment " shall be inserted.

16. *Amendment of section 30.*—In section 30 of the principal Act, in clauses (*a*) and (*b*) of sub-section (*2*), the words " advisory committees, advisory sub-committees " shall be omitted.

17. *Amendment of section 31.*—Section 31 of the principal Act shall be re-numbered as sub-section (*1*) of that section and to the section as so re-numbered, the following sub-section shall be added, namely :—

" (2) The provisions of sub-section (*1*) shall apply in relation to minimum rates of wages fixed by an appropriate Government during the period commencing on the 31st day of December, 1954, and ending with the date of commencement of the Minimum Wages (Amendment) Act, 1957, as they apply in relation to minimum rates of wages fixed by an appropriate Government during the period commencingon the 1st day of April, 1952, (and ending with the date of commencement of the Minimum Wages (Amendment) Act, 1954, subject to the modification that for the words figures, brackets and letter employment specified in Part I of the Schedule in the belief or purported belief that such rates were being fixed under sub-clause (*i*) of clause (*a*) of sub-section (*1*) of section 3', the words, figures, brackets and letter 'employment specified in Part I or Part II of the Schedule in the belief or purported belief that such rates were being fixed under sub-clause (*i*) or sub-clause (*ii*) of clause (*a*) of sub-section (*1*) of section 3 ' shall be substituted."

18. *Amendment of the Schedule.*—In the Schedule to the principal Act, for item 7 under Part I, the following item shall be substituted and shall be deemed always to have been substituted, namely :—

" 7. Employment on the construction or maintenance of roads or in building operations."

Minimum Wages Act, 1948—Notifications under.

I

*Notification No. L. 1-4687/57/L. & LAD. (A) dated, Trivandrum, 11th October, 1957.**

In exercise of the powers conferred by section 30 of the Minimum Wages Act, 1948 (Central Act XI of 1948), the Government of Kerala hereby make the following amendment to the Travancore-Cochin Minimum Wages Rules, 1951, the same having been previously published as required by sub-section (1) of the said section.

AMENDMENT.

In rule 31 (ii) of the said Rules for the words "for every application made by or on behalf of an individual-One Rupee " the following shall be substituted, namely :—

" for every application made by or on behalf of an individual or by or on behalf of a group of individuals-One rupee."

II

*Notification No. L. 1-4687/57/L. & LAD. (B) dated, Trivandrum, 11th October, 1957.**

In exercise of the powers conferred by section 30 of the Minimum Wages Act, 1948 (Central Act of XI of 1948), the Government of Kerala hereby make the following amendment to the Minimum Wages (Madras) Rules, 1953, the same having been previously published as required by sub-section (1) of the said section.

AMENDMENT.

In rule 33 (ii) of the said Rules for the words " for every application made by or on behalf of an individual-One Rupee " the following shall be substituted ; namely :—

"for every application made by or on behalf of an individual or by or on behalf of a group of individuals-One Rupee."

* Kerala Gaz. 15-10-1957, Pt. I, p. 2227.

U. P. Industrial Disputes Act, 1947—Notification under.

Notification No. 5901 (ST)/XXXVI-A—134 (ST)-55 dated Lucknow, September 27, 1957‡

Whereas in the opinion of the State Government it was necessary to make on July 14, 1954, an order under clauses (*b*), (*c*), (*d*) and (*g*) of section 3 and sections 6-A and 8 of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947), for securing the public safety and convenience and the maintenance of public order and supplies and services essential to the life of the community, and for maintaining employment ;

And whereas such an Order was issued with notification no. U-464 (LL)/XXXVI-B—257 (LL)-1954, dated July 14, 1954, and the said Order was subsequently amended and extended from time to time ;

And whereas the U. P. Industrial Disputes Act, 1947, has been amended by the U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (U. P. Act No. I of 1957) ;

And Whereas the said order of July 14, 1954, was last extended in notification no. 4733 (ST)/XXXVI-A—134 (ST)-1955, dated August 14, 1957 under sub-section (1) of section 17 of the U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, and is due to expire on September 30, 1957.

And Whereas the State Government is of the opinion that for the purpose of removing certain difficulties and for securing the public safety

*Kerala Gaz. 15-10-1957, Pt. I, p. 2227.

‡U. P. Gaz. Extry., 27-9-1957, p. 1.

and convenience and the maintenance of public order and supplies and services essential to the life of the community and for maintaining employment, it is necessary that the said order of July 14, 1954, as amended from time to time, should continue to be operative till December 31, 1957.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the Governor is pleased to order that G. O. no. U-464 (LL)/XXXVI-B—257 (LL)-1954, dated July 14, 1954, as amended and extended from time to time, shall continue to be operative till December 31, 1957, and under section 19 of the U. P. Industrial Disputes Act, 1947, to further direct that the notice of the extension of the said order shall be given by publication in official *Gazette*.

Employees' Provident Funds Scheme, 1952—Amendment

*Notification No. S.R.O. 2387 dated New Delhi, the 13th July, 1957**.

In exercise of the powers conferred by sub-section (1) of section 7 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby directs that consequent on the introduction of the decimal coinage system adopted under the Indian Coinage (Amendment) Act, 1955, the following further amendments shall be made in the Employees' Provident Funds Scheme, 1952, with effect from the 1st April, 1957, namely :—

1. For paragraph 29 of the said Scheme, the following paragraph shall be substituted, namely :—

"29. *Contribution*.—(1) The contributions payable by the Employer under the Scheme shall be at the rate of $6\frac{1}{4}$ per cent. of the basic wages and the dearness allowance (including the cash value of any food concession) payable to each employee to whom the Scheme applies.

(2) The contribution payable by the employee under the Scheme shall be equal to the contribution payable by the employer in respect of such employee.

(3) The contributions shall be calculated on the basis of the basic wages and dearness allowance (including the cash value of any food concession) actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis."

2. For sub-paragraph (2) of paragraph 59 of the said Scheme, the following sub-paragraph shall be substituted, namely :—

"(2) All items of account shall be calculated to the nearest quarter of a rupee, that is, 12·5 naye paise or more shall be counted as the next higher quarter of a rupee and fractions of a rupee less than 12·5 naye paise shall be ignored."

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*Gaz. of India, 20-7-1957, Pt. II, Sec.-3, p. 1587.

Industrial Disputes Act is section 33-A, which directs that such a complaint should be treated as an industrial dispute. Whether it is treated as an industrial dispute or as an appeal, what results is an award, in the one case by the Industrial Tribunal, and, in the other case, by the Appellate Tribunal, or by the Tribunal to which the proceedings of the Appellate Tribunal stood transferred under section 23-A of Act 48 of 1950. Neither re-instatement nor payment of wages as such when the employee was out of employment is a common law right, but both reliefs could be granted by the Industrial Tribunal under section 33-A of Industrial Disputes Act, and by the Appellate Tribunal under section 23 of Act 48 of 1950. Whether independently of back wages for the period, during which the complaining workman was unjustifiably kept out of employment, the Tribunal can award compensation does not arise for consideration except in the case of Subramaniam in W.P. No. 729 of 1956. As I said, though what was awarded was styled compensation, it represented only a portion of the wages the respondents would have been entitled to, had they continued in the service of the petitioner. In my opinion, except in the case of Subramaniam, the first respondent in W.P. No. 729 of 1956, the order of the Tribunal directing a specified amount to be paid to each of the respondents was well within the jurisdiction of the Tribunal.

In the case of Subramaniam, however, it should be noted that the Tribunal came to the conclusion, that the management was justified in terminating his services, and reinstatement was refused. No question of payment of anything to him as wages or in lieu of wages could arise for consideration. The contention of the learned counsel for the petitioner, that in that case at any rate, on the findings of the Tribunal it had no jurisdiction to award any sum by way of compensation pure and simple appears to be well founded. It was certainly not "compensation" for refusal of employment, because the Tribunal held that the termination of the services and the consequent refusal of employment were justified. The only relief given to Subramaniam under the award of the Tribunal was payment *ex-gratia* of compensation. That, in the circumstances of this case, it had no jurisdiction to award. The rule *nisi* issued in W.P. No. 729 of 1956 will be made absolute, and that petition alone will stand allowed.

Coming to the fourth of the grounds I have listed above, I have pointed out that the Tribunal itself accepted the case of the petitioner management that the respondents, other than Allapichai (first respondent in W.P. No. 734 of 1956), were only substitutes. The order of reinstatement in no way touched that position. As substitutes they would have been entitled to receive work and get paid therefor under the

Standing Orders, that is, whenever work was available. The period during which they were out of employment was more than a year. The order of reinstatement passed by the Tribunal has to be interpreted only as an order directing their reinstatement as substitutes. It did not further enlarge their rights. It should be remembered that, had they been permanent employees, the question of back wages for the period for which they were kept out of employment would have been different. In awarding a specified sum as compensation the Tribunal obviously had in view what they would have earned as substitutes. The Tribunal set out specifically in dealing with the claims of Karuppiah, Arumugam and Alagan:

"I find that the applicants were not entitled to get regular work on all days and hence it is unfair to ask the management to pay back wages to them which they would not have got if they were in service. Since the refusal to give work is unjustifiable, I think the applicants deserve some relief from the date of employment for about one year."

The last of the contentions of the learned counsel for the petitioner must also be negatived. Having come to the conclusion, that the discharge without an enquiry was unjustified, the Tribunal was not called upon to go into the further question whether if there had been an enquiry the charges would have been proved. The learned counsel for the petitioner referred to the observation of Das, J., as he then was, at page 720 in *Automobile Products of India Ltd.* v. *Rukmaji Bala*, [1955] 7 F.J.R. 716. But, as the respondents' counsel pointed out, in this case, what the petitioner called the merits of the dismissal were considered by the Tribunal. The point at issue was whether the termination of services without enquiry was justified. The Tribunal held that it was not. There was, therefore, no occasion for the Tribunal to go into the question, whether the charges themselves were true or not. Failure to go into the truth or otherwise of these charges did not vitiate the exercise of the jurisdiction the Tribunal had.

As I have already recorded above, the rule issued in W.P. No. 729 of 1956, will be made absolute and that petition will stand allowed. The award of the Tribunal in that case in relation to A. Subramaniam will stand set aside.

The rule issued in the other petitions will stand discharged and each of these petitions will stand dismissed. No order as to costs in any of these applications.

[IN THE MADRAS HIGH COURT.]

T. P. CHANDRA

v.

COMMISSIONER FOR WORKMEN'S COMPENSATION, MADRAS AND ANOTHER.

Rajamannar, C. J., and Panchapakesa Ayyar, J.

April 12, 1957.

MADRAS SHOPS & ESTABLISHMENTS ACT, 1947, SECTION 4(1)(a)—'PERSON EMPLOYED IN POSITION OF MANAGEMENT'—MEANING OF—TESTS—BRANCH MANAGER OF ESTABLISHMENT WORKING UNDER DIRECTIONS OF HEAD OFFICE—WHETHER EMPLOYED IN POSITION OF MANAGEMENT.

The manager of a branch of a concern having its head office in another State who has the entire management of the branch under his control subject to the directions of the head office, is a person employed in the establishment "in a position of management" under section 4(1)(a) of the Madras Shops and Establishments Act, 1947, even though he could not lay down policies and had to take directions from the head office and he could not meet any expenditure not sanctioned by the head office.

Writ Application No. 113 of 1956.

K. Bashyam and *S. R. Subramaniam* for the appellant.

V. Srinivasan and *V. Thyagarajan* for the respondents.

JUDGMENT.

RAJAMANNAR, C. J.—This is an appeal against the judgment of Rajagopalan, J., dismissing a petition filed by the appellant for the issue of a writ of *certiorari* to quash the order of the Commissioner for Workmen's Compensation, Madras, dated 1st November, 1955. The facts necessary for disposal of this appeal may be briefly stated. Messrs. Kemp and Co., Ltd., the contesting respondent in this appeal, is a company with its head office at Bombay. It has a branch at Madras. The petitioner was appointed as the Branch Manager of the Madras Branch of the company sometime in 1950. The appellant's services were terminated with effect from 28th August, 1953. He was given a month's salary in lieu of notice and an additional payment *ex gratia*. The petitioner thereupon preferred an appeal to the Commissioner for Workmen's Compensation under section 41(2) of the Madras Shops and Establishments Act, XXXVI of 1947. A preliminary objection was raised on behalf of the company that the appeal was not competent on the ground that the appellant was not entitled to the benefit of the provisions of the Act as he was a person who fell within section 4(1)(a) of the Act which runs thus:

"4(1). Nothing contained in this Act shall apply to—

(a) persons employed in any establishment in a position of management."

The Commissioner held that the appellant is not a person who fell within that provision. He, therefore, overruled the preliminary objection. The Company filed a petition in this Court under article 226 of the Constitution for the issue of a writ of *certiorari* to quash the order of the Commissioner holding that the appeal was competent. That petition was allowed by Rajagopalan, J., who held that before the appellant had the right to invoke the appellate jurisdiction of the Commissioner, it was necessary for him to establish that he was a person employed within the meaning of Section 2(12) of the Act and as that question was not decided by the Commissioner he set aside the order of the Commissioner. The result was that the whole question remained to be gone into afresh by the Commissioner. When this case went back to the Commissioner, he held that the appellant was a person employed as defined in section 2(12) of the Act but he was a person who was employed in a position of management and, therefore, the Act would not apply to him because of the provisions of section 4(1)(a) of the Act. As a result of his finding he held that the appeal was not maintainable. It is to quash this order of the Commissioner that the writ petition was filed, out of which this appeal arises.

It was not contended before us that the appellant was not a "person employed" within the meaning of section 2(12) of the Act. The only question, therefore, which falls for decision in this appeal is whether the appellant is a person who is employed in a position of management. The Commissioner held that he was such a person because he was acting in general management and control of the establishment in Madras. He apparently relied on the following facts which emerge from the evidence, namely, that the appellant was in charge of the correspondence of the Madras branch, supervised the work of the clerks employed therein, operated on the No. 2 bank account of the firm, made payments, entered into agreements with third parties on behalf of the firm and generally represented the company at Madras. He granted leave to the staff and appointed some of them. In all the correspondence, the appellant was styling himself as manager for Madras. His name was not entered in the register of employees maintained under the Act. He never signed in any such register; nor was his name to be found in the muster rolls where the names of all the employees of the firm were noted. The learned Judge, Rajagopalan, J., held on the facts that the Commissioner

was justified in coming to the conclusion that the petitioner was in a position of management. On the evidence, the learned Judge did not find himself able to set aside the finding for any reason.

What was strongly pressed on the learned Judge and was again pressed before us by Mr. Bashyam for the appellant was that on an earlier occasion the Commissioner had held that the appellant would not fall within section 4(1)(a) of the Act. Now, it is obvious that that order as such had been set aside by this Court in the earlier writ petition. Nevertheless, we agree with Mr. Bashyam that the appellant is entitled to rely on any of the grounds or the general reasoning set out in that order of the Commissioner. We have, therefore, perused the prior order of the Commissioner. On that occasion, the Commissioner was apparently impressed by the following circumstances which influenced him to come to the conclusion that the appellant did not fall within the scope of section 4(1)(a), namely, that in almost all matters the head office was issuing directions to the appellant as branch manager and that the appellant had no authority to meet any expenditure not sanctioned by the company, that he had no authority to appoint or dismiss all the employees of the Madras branch and that he had no power to decide policies. We have no hesitation in holding that even assuming all these facts are correct, they would not render the later finding of the Commissioner as well as the finding of the learned Judge now under appeal wrong. The only question is whether the appellant was a person employed in a position of management. Admittedly he was the manager of the Madras branch of the Company.

In Madras there was no one who was superior to him in status as he was apparently in charge of the entire affairs of the Madras branch. It may be that he was not entitled to lay down himself the policies which should govern the transactions of the company even at the Madras branch and that he was bound to obey the directions issued by the head office. But these would inevitably follow from the fact that he was only a branch manager and he was bound to carry out all the directions and the policies of the company itself functioning from its head office. The fact that the appellant had no authority to meet any expenditure not sanctioned by the Company would not render him none the less a person in the position of management. If he was not such a person, then there was no person in the Madras branch who could fall within that category.

Mr. Bashyam relied upon the ruling in *Gibson* v. *Barton*, (L.R. 10 Q.B. 329) in which it was held that the secretary of a company registered under the Companies Act, 1862, who acted as the *de facto* manager would be liable to be punished under section 27 of the Act for a default in forwarding a list of the company's shareholders to the Registrar in 1873. Mr. Bashyam relied not so much on this decision as on the following observations of Blackburn, J., at page 336:

> "Section 27 enacts, if the company makes default and does not forward a list of members, the company shall incur a penalty, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. In what sense are the words 'director' and 'manager' used in that section? When the section says 'director' it is plain enough a director is a director, but the words 'and manager' we have to say who is to be considered a manager. A manager would be, in ordinary talk, a person who has the management of the whole affairs of the company; not an agent who is to do a particular thing, or a servant who is to obey orders, but a person who is entrusted with power to transact the whole affairs of the company."

The learned Judge went on to say that strictly speaking it is the directors who can be said to be really the managers of the company. In a later portion of his Judgment the same learned Judge said thus:

> "But if the articles of agreement contained a clause, that the business of the company should be managed by the directors, and the board of directors should have power to appoint a salaried general manager, not one of their body, who should manage the whole affairs of the company, subject to the directors having a control, then that person being expressly authorised to act, would be a manager."

In the case before them the appellant was not appointed a manager expressly; but the evidence established that he was permitted by the board of directors to manage the company generally. It also appeared from the evidence that he was actually in the management of the company. Therefore, he was treated as a manager *de son tort*, and for the purpose of the penal section he was also treated as manager. This ruling was followed in *Basantlal* v. *Emperor*, (43 I.C. 791), which does not carry the matter further. We fail to see what application this decision in *Gibson* v. *Barton*, (10 Q.B. 329), has or how the observations of Blackburn, J., assist the appellant's case in any way. We do not agree that it is only a person who is the manager of a company that would fall within the scope of section 4 (1) (a) as a person employed in a position of management. There may be persons designated managers in certain establishments who may not be strictly speaking managers of the company but are entrusted with the duty of management, and, therefore, occupy a position of management. In the present case, the evidence appears to us to establish convincingly that the appellant was employed in a position of management so far as the Madras branch is concerned.

It was contended by Mr. Bashyam that the status of the appellant has to be determined with reference to the head office of the company at Bombay and it was contended that the appellant was a person employed at the head office of the company. If learned counsel's argument is right, then it would mean that the appellant should be deemed to be an employee of the Bombay office. If so, the Act would not obviously apply and this Court would have no jurisdiction as the head office is outside the limits of the jurisdiction of this Court. Nor do we think that there is any substance in the contention on the merits. It may be that the appellant was appointed by the head office as the manager of the branch at Madras; but from that fact it does not follow that the appellant must be deemed to be a member of the head office. In our opinion, the appellant was clearly a person employed in the branch establishment of the respondent-company at Madras in a position of management. Both the Commissioner and the learned Judge were right in holding that the preliminary objection should be upheld and that the appeal filed by the appellant should be declared to be incompetent.

The appeal is dismissed. No costs.

[IN THE MADRAS HIGH COURT.]

KALESWARI HANDLOOM FACTORY AND OTHERS

v.

STATE OF MADRAS AND OTHERS.

Rajagopalan, J.

July 31, 1957.

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF DISPUTE —DUTY OF TRIBUNAL TO DECIDE WHETHER DISPUTE IS 'INDUSTRIAL DISPUTE'—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(k) and 10(1)(c).

WRIT—WRIT OF PROHIBITION—ISSUE OF—PRINCIPLES—INDUSTRIAL TRIBUNAL DEALING WITH REFERENCE UNDER INDUSTRIAL DISPUTES ACT, 1947—WHETHER WRIT CAN BE ISSUED BEFORE TRIBUNAL DECIDES JURISDICTIONAL ISSUE—CONSTITUTION OF INDIA, ART. 226.

Despite the order of reference made to an Industrial Tribunal by the appropriate Government under section 10 (1) (c) of the Industrial Disputes Act, 1947, the Tribunal has jurisdiction—in fact it will be its duty—to decide, if required to do so, whether the dispute referred to it is an 'industrial dispute' as defind in section 2 (k) of the Act. If it comes to a right conclusion that it is an industrial dispute, it has jurisdiction to proceed further with the adjudication of the dispute. If, however, it comes to the conclusion that the *dispute is not an industrial dispute, it can have no jurisdiction to proceed further. As a statutory Tribunal whose jurisdiction is to be sought within the terms of the statute which created it, it cannot give itself juriidiction by deciding wrongly such a jurisdictional issue and if the Tribunal wrongly decides such an issue, the error can be corrected by appropriate proceedings under article 226 of the Constitution.*

As an Industrial Tribunal has jurisdiction to decide the question whether the dispute referred to it is an 'industrial dispute' as defined in the Act, a writ of prohibition to restrain the Tribunal from proceeding further with the dispute cannot issue at a stage where the Tribunal has not yet decided that question. It is only when the Tribunal wrongly decides the jurisdictional issue and comes to the conclusion that the dispute is an industrial dispute when it is not, that the aggrieved party can ask for the issue of a writ of prohibition to restrain the Tribunal from proceeding further in the matter.

Writ Petitions Nos. 177 and 264 to 267 of 1957.

M. K. Nambiar for the petitioners.

Additional Government Pleader, Mohan Kumaramangalam and *K.V. Sankaran* for the respondents.

JUDGMENT.

The main question that arises for consideration in each of these applications, preferred under article 226 of the Constitution for the issue of a writ of prohibition, is the same and they can be disposed of by a single order. Each of the petitioners is the proprietor of what has been styled a handloom factory. Varying numbers of weavers work for the petitioners. Disputes arose between the management and the weavers in seven such factories including those of the five petitioners. Conciliation proceedings failed, and on 20th July, 1955, the Government referred to the Industrial Tribunal, Madras, under section 10(1)(c) of the Industrial Disputes Act, the following disputes for adjudication as industrial disputes:

"Whether the wage cut made in November, 1954, should be restored and if so from what date?

The fixation of the number of festival holidays."

Four of the petitioners filed W.P. No. 555 of 1955 for the issue of a writ of *certiorai* to quash the reference ordered under section 10(1)(c) of the Act. The petition was dismissed by this Court on 12th February, 1957. The order of dismissal ran:

"The order of the Government sought to be quashed by the issue of a writ of *certiorai* is clearly an administrative order and so it is not amenable to being quashed as prayed."

During the pendency of W.P. No. 555 of 1955 the further proceedings before the Industrial Tribunal stood stayed.

On 18th February, 1957, the five petitioners presented a joint application to this Court for the issue of a writ of prohibition to restrain the Industrial Tribunal from proceeding with the adjudication of what were referred to it as industrial disputes. Eventually, that petition, W.P. No. 177 of 1957, was accepted as an application by one of the Proprietors, Guruswami Nadar. Each of the others presented a similar application, and the relief asked for was identical, the issue of writ of prohibition.

The main contention of the petitioners was that the weavers were not workmen as defined by section 2(s) of the Act, and that, therefore, what were referred for adjudication were not industrial disputes within the meaning of section 2(k). It was on similar contentions that the petitioners applied for the issue of a writ of *certiorari* in W.P. No. 555 of 1955, and in the counter affidavit filed by the Government in those proceedings the correctness of the claim of the petitioners was traversed. It was on those very contentions that the parties relied in these proceedings also. I have set this out only to show that the truth of the allegations in the affidavit filed in W.P. No. 177 of 1957 has not been admitted by the respondents and has yet to be established.

The question for determination is, whether this is the stage of the proceedings before the Industrial Tribunal when a writ of prohibition can issue. It should be remembered that the proceedings before the Tribunal which were stayed during the pendency of W.P. No. 555 of 1955, continued to be stayed after the presentation of these applications for the issue of writs of prohibition.

In *Kadachira Motor Service Ltd.* v. *State of Madras*, [1957] 12 F.J.R. 389, I stated:

"Whether there was an industrial dispute as defined by the Act to justify a reference by the Government to the Industrial Tribunal for adjudication is the question which the petitioners want to be determined at this stage.......................It has been held in more cases than one that despite the fact that the validity of the reference itself cannot be challenged by an application for the issue of a writ of *certiorari* to quash the order of reference, the question whether a given dispute is an industrial dispute has yet to be decided. It is primarily for the Industrial Tribunal to decide that issue. If there is no industrial dispute at all as defined by the Act, the Industrial Tribunal would obviously have no further jurisdiction to adjudicate any dispute. Possibly, it may be desirable for the Industrial Tribunal to decide that issue as a preliminary issue. But at this stage neither a writ of prohibition can issue, nor a writ of *mandamus* can issue. As the proceedings are pending, the Industrial Tribunal, as I said, has jurisdiction to decide the question whether an industrial dispute existed." I took the same view in a subsequent and unreported decision of mine in W.P. No. 370 of 1957.

In canvassing the correctness of this view, Mr. Nambiar, the learned counsel for the petitioners, invited my attention to an earlier decision of mine in *Radhakrishna Mills* v. *State of Madras,* [1956] 9 F.J.R. 125. I held in that case that what was referred was in fact and in law an industrial dispute within the scope of section 2(k) of the Act. At page 128, I stated:

> " What I have to consider is whether the Tribunal had jurisdiction to adjudicate the industrial dispute referred to it. If it had no jurisdication a writ of prohibition could issue even as a writ of *certiorari* could issue to quash an award of the Tribunal if it had acted without jurisdiction. Absence of an industrial dispute would obviously be sufficient to negative jurisdiction. The validity of the order of reference is open to examination by this Court to decide whether the Tribunal had jurisdiction."

With reference to that case I again pointed out there was an industrial dispute in this case. In making these observations I was not concerned with the stage at which a writ of prohibition could issue. That, as I stated, is the real question for determination in this case. I cannot see any real conflict between the views I recorded in *Radhakrishna Mills* v. *State of Madras,* [1956] 9 F.J.R. 125, and those which I recorded in my later judgments. Mr. Nambiar next referred to *Haji Abdul Kader Sahib* v. *State of Madras,* [1956] 10 F.J.R. 158, in which Rajagopala Ayyangar, J., directed the issue of a writ of prohibition, and to *Sri Rama Vilas Service Ltd.* v. *State of Madras,* [1956] 9 F.J.R. 160, in which I ordered the issue of a writ of prohibition. In each of these cases the decision was based on the finding that the dispute that was referred under section 10(1)(c) of the Act for adjudication by the Tribunal was not an industrial dispute at all as defined by section 2(k) and that, therefore, the Tribunal had no jurisdiction to proceed with the adjudication.

Neither Rajagopala Ayyangar, J., nor I had occasion then to determine whether the Tribunal itself had jurisdiction to decide whether the dispute that was referred to it for adjudication was an industrial dispute. It is true that in each of these cases the Court examined the facts pleaded and proved by affidavits and came to the conclusion that what had been referred was not an industrial dispute. But I can look upon neither decision as having a direct bearing upon the question, whether this Court has exclusive jurisdiction even in proceedings under article 226 of the Constitution to decide whether what was referred was an industrial dispute, and whether the Industrial Tribunal has no jurisdiction to try even as a preliminary issue the question whether what was referred was an industrial dispute.

Mr. Nambiar submitted that though the questions, whether the weavers were workmen and if so the disputes between them and the petitioners were industrial disputes, had to be decided as jurisdictional issue, involving determination of jurisdictional facts, the Tribunal had no jurisdiction to determine these issues. The same plea was presented in a slightly different aspect. Mr. Nambiar urged that the jurisdiction of the Tribunal depended on a valid reference under section 10 (1) (c) of the Act and the reference could be valid only if there was a dispute which in fact and in law amounted to an industrial dispute. Based on this was the further submission, that the Tribunal had no jurisdiction to adjudicate on the validity of the reference under section 10(1)(c). If I understand Mr. Nambiar's contentions, they come to this: If a party to a dispute referred to the Industrial Tribunal for adjudication pleaded in this Court in proceedings under article 226 of the Constitution for the issue of a writ of prohibition that what was referred was not an industrial dispute with or without advancing a similar plea before the Tribunal itself, the Tribunal could not claim any iurisdiction to determine whether the dispute was an industrial dispute. In such cases only this Court can determine that question and if after an investigation of the facts alleged the Court comes to the conclusion that the dispute was not an industrial dispute, a writ of prohibition has to issue.

I have no hesitation in rejecting these extreme contentions of the learned counsel for the petitioners. The jurisdiction of this Court, even in proceedings under article 226 of the Constitution, to decide, where it is necessary to do so, whether a given dispute is an industrial dispute cannot be doubted. That does not necessarily imply that the Industrial Tribunal has no jurisdiction to try such an issue should it become necessary to do so in the proceedings before it. In my opinion, the Tribunal had that jurisdiction. If it comes to a right conclusion that it is an industrial dispute, it has jurisdiction to proceed further with the adjudication of that dispute. If, however, it comes to the conclusion that the dispute is not an industrial dispute, it can have no jurisdiction to proceed any further. As a statutory Tribunal whose jurisdiction is to be sought within the terms of the statute which created it, it cannot give itself jurisdiction by deciding wrongly such a jurisdictional issue. If the Tribunal wrongly decides such a question, the error can be corrected by appropriate proceedings under article 226 of the Constitution.

In *Ebrahim Aboobaker and another* v. *Custodian General of Evacuee Property,* [1952] S.C.R. 696, Mahajan, C.J., observed at pages 703-4:

"It was contended that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit of its jurisdiction depends.........As pointed out by Lord Esher, M.R., in *Reg.* v. *Commissioner of Income-tax*, 21 Q.B.D. 313, the formula enunciated above is quite plain but its application is often misleading. The learned Master of the Rolls classified the cases under two categories thus:

"When an inferior court or Tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that Tribunal or body. It may in effect say that if a certain state of facts exists and is shown to such Tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the Tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction, and on finding that it does exist, to proceed further or do something more. When the legislatures are establishing such a Tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is erroneous application of the formula to say that the Tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

In my opinion, Industrial Tribunals constituted under the Industrial Disputes Act fall within the scope of the first category mentioned by the learned Master of the Rolls.

In *State of Madras* v. *C. P. Sarathi and another*, [1952] 4 F.J.R. 431, after pointing out at pages 346 and 347, that a reference under section 10 (1)(c) of the Act was an administrative act (and, therefore, outside the purview of correction by the issue of a writ of *certiorari*), the learned Chief Justice observed;

"No doubt it will be open to a party seeking to impugne 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."

In *Hari Vishnu Kamath* v. *Syed Ahmed Ishaque and others*, [1955] 7 F.J.R. 521, Venkatarama Ayyar, J., after an exhaustive review of the case law explained the scope of a writ of *certiorari*, and at page 528, the learned Judge pointed out the distinction between an error in the exercise of jurisdiction and an error in the assumption of jurisdiction.

With reference to an industrial dispute, an error in the assumption of jurisdiction by the Industrial Tribunal could be proved by showing that the decision of the Tribunal on the jurisdictional issue, whether the dispute that was referred to it for adjudication was an industrial dispute, was erroneous. I shall refer later to the appropriate remedy if such an error is established. At present I am dealing only with the question whether the decision of an Industrial Tribunal on such a jurisdictional issue as the existence of an industrial dispute is open to correction in proceedings under article 226 of the Constitution.

I am unable to see anything in the later judgment of Bhagwati, J., in *Dhrangadhra Chemical Works Ltd.* v. *State of Saurashtra*, [1956] 11 F.J.R. 439, to indicate that the Supreme Court intended to depart from the principles laid down earlier; nor was such a contention pressed before me.

If I am right in my view that the Industrial Tribunal had jurisdiction to decide whether the dispute referred to it was an industrial dispute as defined by section 2(k), and as incidental thereto decide whether the weavers represented by their Union, the third respondent in the proceedings before me, were workmen as defined by section 2(s) of the Act, it should be obvious that no writ of prohibition can issue at this stage to restrain the exercise of that jurisdiction. It was on similar considerations that a writ of prohibition was refused in the *Skipton Industrial Co-operative Society Ltd.* v. *Princie*, [1864] 33 L.J.Q.B. 323.

The observations of Venkatarama Ayyar, J., at page 528 in *Hari Vishnu Kamath* v. *Syed Ahmed Ishaque and others*, [1955] 7 F.J.R. 521, clearly explain under what circumstances a writ of prohibition and a writ of *certiorari* could be asked for. The learned Judge observed:

".........both writs of prohibition and *certiorari* have for their object the restraining of inferior courts from exceeding their jurisdiction, and they could be issued not merely to courts but to all authorities exercising judicial or quasi-judicial functions. But there is one fundamental distinction between the two writs, and that is what is material for the present purpose. They are issued at different stages of the proceedings. When a inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court for a writ of prohibition, and on that, an order will issue forbidding the inferior court from continuing the proceedings. On the other hand, if the court hears that cause or matter and gives a decision, the party aggrieved would have to move the superior court for a writ of *certiorari*, and on that, an order will be made quashing the decision on the ground of want of jurisdiction. It might happen that in a proceeding before the inferior court a decision might have been passed, which does not completely dispose of the matter, in which case it might be necessary to apply both for *certiorari* and prohibition—*certiorari* for quashing what had been decided, and prohibition for arresting the further continuation of the proceeding."

On the application of these principles it should be clear that, if an Industrial Tribunal wrongly decides the jurisdictional issue and comes to the conclusion that the dispute is an industrial dispute when it is not, the aggrieved party can ask for the issue of a writ of prohibition to restrain the Industrial Tribunal from proceeding further in the matter. The aggrieved party can also ask for a writ of *certiorari* to quash the proceedings so far taken resulting in the erroneous decision, that what was referred was an industrial dispute.

Mr. Nambiar relied to a considerable extent on *Mayor and Aldermen of the City of London* v. *Cox*, [1867] 2 L.R. (English and Irish Appeal Cases) 229, where after an exhaustive review of the earlier cases the House of Lords held that a writ of prohibition was the appropriate remedy in that case, though no plea had been taken as yet in the inferior Tribunal (Lord Mayor's Court) in bar of the jurisdiction of that Court. Willes, J., pointed out at page 253 of the report that the plaint in that case did not allege any jurisdiction over the debt alleged to be due from Farquharson, and the presumption was against the existence of such jurisdiction. After discussing further the scope of the plaintiff's pleas in that case the learned Judge summed up at page 254:

"Such being the plea, it appears to us to be bad..........."

At page 275 after pointing out the difference in the procedural law which applied then to a defendant and to a garnishee, the learned Judge observed:

"The garnishee, however, has no right to plead more than one plea, in the Court below; and he is not allowed costs there, if successful ......It is therefore material for him to incur as little expense as may be before applying for a prohibition; and the question is, in effect, whether, if a party entitled to plead in the Court below moves for a prohibition instead, it is competent for the Court to grant his application."

It was with reference to these facts that the House of Lords decided

that in that case a writ of prohibition should issue.

There is nothing in the scheme of the Industrial Disputes Act which denies jurisdiction to the Industrial Tribunal to decide whether the dispute referred to it for adjudication is an industrial dispute. In the circumstances of this case, where the truth of the facts alleged by the petitioner and at least not admitted by the respondents has yet to be investigated, the Industrial Tribunal would appear to be the appropriate forum for such investigation. It has jurisdiction to undertake such an investigation and to decide upon proof of the materials placed before it, the question at issue.

One of the contentions of Mr. Nambiar was, as I stated above, that the Industrial Tribunal had no jurisdiction to go into the validity of a reference under section 10 (1) (c) of the Act. If by that Mr. Nambiar meant that the Industrial Tribunal had no jurisdiction to decide whether the dispute that was referred to it for adjudication was an industrial dispute, I am unable to accept that contention. Despite the order of reference under section 10(1)(c) an Industrial Tribunal has jurisdiction—in fact it will be its duty—to decide, if required to do so, whether the dispute that was referred under section 10 (1) (c) was an industrial dispute within the meaning of section 2 (k) of the Act.

I am not to be understood as saying that in no circumstances can a writ of prohibition issue when a dispute is referred as an industrial dispute to an Industrial Tribunal, and that Tribunal has not decided whether it is an industrial dispute. All I say is, that in the circumstances of these cases this is not the stage of the proceedings before the Industrial Tribunal when the petitioners can seek the issue of writs of prohibition.

In Halsbury's *Laws of England*, 3rd Edn., Vol. II, the position is summed up thus in paragraphs 218 and 219:

"Prohibition goes as soon as the inferior tribunal proceeds to apply a wrong principle of law when deciding a fact on which the jurisdiction depends......In any event where the jurisdiction of the inferior Court depends on the judicial determination of facts the order does not lie until the Court has wrongfully on these facts given itself jurisdiction.

Prohibition may be applied for as soon as the absolute absence of jurisdiction is apparent on the record of the proceedings of the inferior Court, without the question of jurisdiction being raised by plea or otherwise in that Court."

To similar effect is what is stated in the *Law of Jurisdiction* by Bailey. At page 668 of Vol. II, the learned author stated:

"The writ (writ of prohibition) lies only where the subordinate Tribunal has no jurisdiction at all in the premises, or where, having jurisdiction, some question arises which is not within the power of the Court to decide. The use of the writ is not confined to those cases where the Court has no jurisdiction originally of the subject-matter, but extends also to those cases where the Court having such jurisdiction is about to exceed its powers, and to do that which it has no power to do at all. In other words, the writ will lie to confine Tribunals within the limits of their powers.

The writ has a proper but a restricted and limited office, and it cannot be enlarged so as to bring within its scope and operation questions merely collateral or incidental to its direct purpose, or more or less intimately connected with such purpose and object. It cannot be made a drag net by means of which all controverted and litigated questions between individual suitors may be brought into Court and tried and determined, for its office, as we repeat, is to prevent the exercise by a Tribunal possessing judicial powers of jurisdiction over matters not within its cognisance or exceeding its jurisdiction in matters of which it has cognisance. It is a preventive rather than remedial process, and cannot take the place of a writ of error or other proceeding for the review of judicial action................."

The stage at which a writ of prohibition can be asked for was even more expressly dealt with in the *Practice on the Crown Side* by Short and Mellor, 2nd Edn., page 264:

"Application for a prohibition should be made as soon as an inferior Court has taken any step in any proceeding in which it has no jurisdiction. If the matter is one in which the inferior Court has jurisdiction, then it should be applied for as soon as some point is raised during the trial which the Court has no jurisdiction to try.................Although the application may be made before the case has been heard in the inferior Court it may be made too soon, as where several matters are pending in a suit before an inferior Court some of which are within its jurisdiction. In such a case the superior Court will not assume that the inferior Court will exceed its jurisdiction."

As I have already stated, the Industrial Tribunal has jurisdiction to decide whether what was referred to it was an industrial dispute. That question is not concluded by the reference ordered by the Government under section 10 (1) (c) of the Act. I am not called upon to express any opinion now whether if the Industrial Tribunal is in error in deciding such a jurisdictional issue, the appropriate remedy to correct such an error is a writ of *certiorati* or a writ of prohibition. But I should like to refer again to the observations of Venkatarama Ayyar, J., in *Hari Vishnu Kamath* v. *Syed Ahmed Ishaque and others*, [1955] 7 F.J.R. 521, which I have extracted already. A writ of prohibition

cannot issue at this stage of the proceedings before the Industrial Tribunal.

The rule *nisi* in each of these cases is discharged and the petitions are dismissed. No order as to costs.

[IN THE QUEEN'S BENCH DIVISION]

R. *v.* INDUSTRIAL DISPUTES TRIBUNAL AND ANOTHER;
Ex parte QUEEN MARY COLLEGE.

Lord Goddard, C.J., Byrne and Devlin, JJ.

June 27, 1957.

INDUSTRIAL "DISPUTE"—DISPUTE BETWEEN SINGLE WORKMAN AND EMPLOYER—DISPUTE TAKEN UP BY UNION OF WORKMEN—WHETHER INDUSTRIAL "DISPUTE"—INDUSTRIAL DISPUTES ORDER (ENGLISH), 1951, ART. 12(1).

A dispute between a single workman and his employer, when it is taken up by a trade union consisting of a body of the workmen, falls within the definition of "dispute" in article 12(1) of the Industrial Disputes Order, 1951, as it becomes a "dispute" between the employer and his "workmen".

J. F. Donaldson for the applicants.

W. Gumbel and *P. R. Pain* for the respondents.

JUDGMENT.

The Judgment of the Court was delivered by

DEVLIN, J.—Counsel for the applicants, Queen Mary College, University of London, moves for an order of prohibition preventing the Industrial Disputes Tribunal and a body called the Association of Scientific Workers from further proceeding in the arbitration or settlement of a dispute concerning the upgrading of one John Norman Carreck which has been referred to the tribunal by the Minister of Labour and National Service by a reference in writing dated 31st January, 1957. The question to which the application gives rise is the meaning of "dispute" within the terms of the Industrial Disputes Order, 1951. Counsel submits that the dispute described in the notice of reference is not a "dispute" within the meaning of that Order.

The dispute arises in this way. Mr. Carreck, who is the individual whose claim has given rise to the dispute, is a laboratory assistant in the

Department of Geology at Queen Mary College, and has been so employed from 7th July, 1947. There are other scientific workers who are employed by the college (referred to hereinafter as "the applicants"), and these workers are members of the Association of Scientific Workers, which is a trade union. On 1st February, 1953, the applicants agreed to grade their scientific workers in accordance with an agreement made between the Universities' Committee of Vice-Chancellors and Principals, the Association of Scientific Workers and two other trade unions, and it was arranged that there should be four grades, namely, chief technician, senior technician, technician and junior technician. Mr. Carreck was and is still employed as a technician. In September, 1954, Mr. Carreck applied to the governing body of the applicants through the registrar for upgrading to the grade of senior technician and his application was refused. He was apparently sufficiently aggrieved about it to report the matter to his union, which he did in December, 1955. The union has a group within itself, consisting of those scientific workers who are members of the union and who are in the employment of the applicants. A Mr. Paynter is the regional organiser of the group and the person who is responsible.

It appears that there were some other members of the group, at that time, who had complaints similar to that of Mr. Carreck, that is to say, who thought that they ought to be up-graded and who were not up-graded, and on January 7, 1956, as a result of a meeting of the group, they gave instructions to Mr. Paynter. He wrote to the registrar Colonel Tong, asking for an opportunity of meeting him so that he could discuss the grading of these members. A long correspondence took place with which I need not deal. The upshot of it was that at the end the applicants made their position perfectly clear, which is, indeed, the position which they stand on today, namely, that they are not prepared to discuss with the union the terms and conditions of employment of individual workers. They considered, rightly or wrongly, that that was a matter which must be dealt with by the individual member himself direct with the applicants and that no external body such as the union ought to be allowed to take part in those discussions. The correspondence covered a good deal of time, but by March, 1956, the attitude of the applicants' governing body had been made quite clear, and Mr. Paynter was then taking the line (which he set out in a letter written to the registrar on March 21, 1956) that, if that was their attitude, he would be obliged to call on the services of the Ministry of Labour and National Service to deal with the situation. On April 18, he wrote again to the registrar saying that he would be reporting the matter to the Ministry. Some correspondence took place between the Ministry and the applicants

and the applicants were asked by the Ministry to consider the matter again. The applicants' governing body did consider it and reaffirmed the principle which they had previously laid down. As the result of that, a meeting of the group of the trade union was called on September 11, 1956, and the dispute was reported in detail.

By that time a number of cases of up-grading which had been in dispute had been considered by the governing body and the applications had been granted, so that there was no longer any claim in relation to them. At the date of the meeting there were two cases outstanding, one of which was Mr. Carreck's and a resolution was carried at the meeting that the matter should be referred to the Industrial Disputes Tribunal. It was agreed, on Mr. Paynter's recommendation, that Mr Carreck's case should he selected for reporting to the tribunal. Accordingly, on November 6, Mr. Paynter formally reported the dispute in a letter of that date to the Ministry of Labour and National Service. He said: "The dispute arises from the grading of the technician in charge of the geology department, Mr. J. N. Carreck, who, we believe, should be graded as a senior technician and not as a technician. Our member has himself made approaches......for immediate upgrading to senior technician but, as he met with no success, referred the matter to us." Mr. Paynter then recounts at length his efforts to get the applicants to discuss the matter with him and their refusal to do so, and he ends by saying: "It is, of course, most unfortunate that the authorities should have refused to meet us when we have not experienced this difficulty with any other college since we have been engaged in national negotiations with the Committee of Vice-Chancellors and Principals. Therefore, we have no alternative but to ask for this individual case of up-grading to be referred to the Industrial Disputes Tribunal."

Meanwhile, Mr. Carreck decided to make another effort on his own, putting forward his claim individually to the applicant's registrar. He wrote to the registrar on November 7, referring to a conversation which they had had and at which, apparently, they came near to agreement, but that did not content Mr. Carreck. After saying that Dr. Kirkaldy has confirmed that it would be the position of curator in that grade, but subject to the applicants' possession of sufficient funds in 1957, Mr. Carreck asked for a statement in writing that, subject to the necessary funds being available and "provided that war has not been declared, I shall be appointed as curator and librarian in the senior technician grade, as from September 1, 1957..........." Whether that was a reasonable request or not is not a matter with which we are concerned, nor are we concerned with whether it was reasonably dealt with by the applicants. All that, no doubt, would have to be decided, if there is a dispute, by the Industrial Disputes Tribunal. The registrar answered that he could not formally commit himself in terms of that sort and that the matter must be put before the governors. That, evidently, did not content Mr. Carreck, because it appears from Mr. Paynter's affidavit, that Mr. Carreck reported the matter to Mr. Paynter and asked him, in effect, to go ahead, saying that he, Mr. Carreck, wanted an immediate up-grading and was not prepared to wait until September, 1957. Mr. Paynter, when he heard of Mr. Carreck's individual efforts, had asked that his letter to the Ministry should be held in abeyance, as it were, and then asked for it to be treated as having been written on November 6, 1956, and as received on December 5, 1956. The Minister decided on the basis of it to refer this dispute to the tribunal.

The main submission made by counsel for the applicants is that, in the present case, there is no "dispute" within the meaning of the Industrial Disputes Order, 1951, because this is a dispute which concerns only the case of Mr. Carreck. The order was interpreted in *R.* v. *National Arbitration Tribunal; Ex parte South Shields Corporation* ([1952] 1 K.B. 46), known as "the town clerk's case", where it was decided that there could not be a "dispute" within the terms of an order phrased as this one is if there was merely a dispute between a single workman and his employers. That is what counsel for the applicants' submits this dispute is; that it is merely a dispute on the issue whether Mr. Carreck should be up-graded or not, and that is not within the order. There can be no doubt that, if that is the right view of it, if the only parties to the dispute are the employer, on the one hand, and Mr. Carreck, on the other, then it comes within *R.* v. *National Arbitration Tribunal; Ex parte South Shields Corporation.* Is that, however, the true position on the facts which I have recounted? The mere fact that a person is not materially affected by decisions on the subject-matter of the dispute does not appear to us automatically to prevent him from being a party to the dispute. There are all sorts of industrial disputes which arise out of a difference between the employer and the employees in a factory in relation to a claim made merely by one man, cases, for an example, where one man is unfairly victimised, or is unfairly victimised in the estimation of his fellow employees, and his fellow employees may make themselves parties to the dispute because they may say: "Unless this man is treated in the way in which we think that he ought to be treated, there is going to be trouble". Or there may be other reasons which cause men to be interested and to wish to make themselves parties to a dispute which concerns only the claim of one man. Without being materially affected, other people may feel that their prospects of promotion are injured generally. They may be interested in the principle of

the thing. They may say: "If a person of the length of service of Mr. Carreck is not promoted, what is going to happen to us when he get to that stage?". Or there may be, on the facts which I have recounted, some general principle involved in the dispute on which this particular claim happens to be founded which is selected as a test action, the general principle here being whether it is right or wrong for the applicants to adopt the attitude that they will not discuss individual claims with the trade union but will discuss them only with the individuals concerned.

These are plainly the sort of grounds which have caused the trade union in this case to take the matter up, because Mr. Paynter says at the end of his affidavit: "It is a dispute of general interest to such members because the reference derives from the unwillingness of the applicants to discuss any individual case of promotion with the association and also because such members are concerned to secure the up-grading of a post and to assist a fellow member."

In short, the proposition for which counsel for the Minister contends really comes down to this: If the union chooses to make the matter a union issue, if it chooses to take up the cudgels on behalf of its member and thereby to become belligerent in the matter it is a dispute to which more than one workman is a party. No doubt, the union will not do it unless there is a matter of some general principle involved; but if the union chooses to make it a general issue, it becomes a dispute to which the whole body of workmen or group are made parties. We think that that is the right view of the matter, and, indeed—although I shall have to consider the terms of the order and the submissions of counsel for the applicants—we think that it is implicit so for as the authorities go, particularly *R.* v. *National Arbitration Tribunal; Ex parte South Shields Corporation,* on which counsel for the applicants relied for his general proposition. At the end of the judgment of the Divisional Court in that case, Lord Goddard, C. J., having announced the general principle and that there was only a single workman involved in the dispute, said:

"It may well be that this definition is contemplating all along a class of workmen. Industrial disputes do arise because a large number or class of workmen support a particular workman who may be dismissed or down-graded by the employer, or sometimes because some particular workman is promoted and in the opinion of the body of workmen someone ought to have been preferred in his place. It may be that it is such matters as that that the order is contemplating in its definition of 'dispute'. That point we need not decide. What we do decide is that there must be a dispute between an employer and more than one workman in his employ though it may be that the dispute originates with a single workman, and that the others only become parties to the dispute in support of one member of their body." The last sentence seems to us exactly to cover the facts of this case.

In *R.* v. *Industrial Disputes Tribunal*; *Ex parte Banstead U.D.C.* (unreported), a decision of this court, the point is underlined where Lord Goddard, C.J., said again:

" We pointed out that the object of the order must be to include the case where there is a dispute which has been taken up, to use a convenient expression, by a trade union or trade representatives of the workmen and they have made themselves a party to it, although the dispute may only be with regard to one workman because of the words 'with the conditions of labour of any of those workmen'."

That is how the matter stands on the authorities.

As the matter stands on the construction of the order, counsel for the applicants has raised a point which has not hitherto been considered, and that is the bearing on this issue of article 10 of the order. Before I deal with that, however, I ought to deal with the definition of "dispute" in article 12(1), on which the matter must ultimately turn. The definition in article 12(1) reads:

"'dispute' does not include a dispute as to the employment or non-employment of any person or as to whether any person should or should not be a member of any trade union but, save as aforesaid, means any dispute between an employer and workmen in the employment of that employer........"

Pausing there, it was decided in *R.* v. *National Arbitration Tribunal; Ex parte South Shields Corporation* that "workmen" is to be interpreted literally in the plural and that the Interpretation Act, 1889, s. 1(1)(b), does not apply, because it is not the intention of the order, looked at as a whole, that a dispute between a single workman and his employer should be within it. The definition of "dispute" in article 12(1) of the order, goes on:

"........connected with the terms of the employment or with the conditions of labour of any of those workmen".

If those words are interpreted literally, it is enough that the dispute should be connected with the conditions of labour of any one of those workmen. It is quite plain from the passage which I have read from the judgment of the Divisional Court in *R.* v. *National Arbitration Tribunal; Ex parte South Shields Corporation*, that the decision of the Court did not intend to negative a reading of that sort. We see no reason why the words should not be given that meaning. If the dispute is connected with the conditions of labour of "any workmen", then, providing that one man makes himself a party to the dispute, it appears to us to fall within the definition.

Counsel for the applicants submitted that that could not be so because of the terms of article 10, which is headed: "Award to be implied term of contract". Article 10 provides that, where an award has been made by the tribunal,

"........it shall be an implied term of the contract between the employer and workers to whom the award applies that the terms and conditions of employment to be observed under the contract shall be in accordance with the award........"

Counsel submitted that that meant that the workmen who were parties to the dispute must also have, so to speak, a grievance which was to be remedied by the award, because the terms of the award were to be read into their contract; that the only award which could be made in this particular case, for example, was that Mr. Carreck should be immediately up-graded; and that that was not a term which could properly be read into the contract of employment of any other worker. We think that the answer to counsel's submission is that it does not follow in a matter of this sort, which is arbitration of a general character and not a strict legal proceeding, that the workers who are parties to the dispute must necessarily be workers to whom the award applies. We think that there is no reason why persons should not make themselves parties to a dispute although they are not workers to whom the award applies. For the reasons which we have given, questions of general principle, matters of supporting or assisting a fellow worker, make them parties to the dispute although they are not the people to whom the award is going to apply. I suppose that somewhat similar considerations apply to the ordinary case where a guarantor is interested in the construction of a contract although he need not be strictly a party to whom the contract applies. Counsel for the applicants relies on the fact that the word "workers", in article 10 is also in the plural, but we see no reason why, in relation to this article, section 1(1)(b) of the Interpretation Act, 1889, should not have its usual effect, so that the word "workers" should be interpreted as including the singular. Having regard to the passage which I have read from the judgment of Lord Goddard, C.J., in *R.* v. *National Arbitration Tribunal; Ex parte South Shields Corporation*, there is nothing in the judgment in that case which could interfere with such an interpretation. The fact that section 1(1)(b) of the Interpretation Act, 1889, was held not to apply to article 12(1) does not necessarily mean that it does not apply to any other article of the order, and we think that that is plain from the judgment in *R.* v. *National Arbitration Tribunal; Ex parte South Shields Corporation.*

That concludes the substantial point that was argued by counsel for the applicants, but he also raised a subsidiary point on which we should give our decision. He submitted that there was not any dispute at all in the present case, as the matter had not really reached the stage of a dispute between Mr. Carreck and the applicants. It is significant, as was pointed out by counsel for the Minister, that that is not one of the grounds set forward in the statement. It is also significant that, when the notice of reference was sent to the applicants, they did not reply on the basis that there was no dispute, they replied on the footing that they maintained their attitude that the matter should be dealt with as between them and the individual worker. We think that in this case there is a dispute, although it is of a somewhat narrow character. The dispute is merely whether Mr. Carreck should be up-graded immediately or whether his claim to be up-graded should, if one may so put it, await favourable consideration in, or sometime before, September next. One can hardly suppose that the union would have taken such a matter up and referred it to the Tribunal unless there had been some general principle, as they think, lying behind it and, narrow though the matter is, it is a dispute. Mr. Carreck has made a claim to be up-graded immediately; his claim has not been granted by the applicants, and plainly the applicants and the union are in dispute about that. For these reasons, we think that the matter was properly referred to the Tribunal, and, therefore, the order of prohibition must be refused.

[IN THE INDUSTRIAL COURT, BOMBAY.]

MAJOOR MAHAJAN SANGH, PETLAD

v.

PETLAD BULAKHIDAS MILLS CO., LTD., PETLAD.

Shri S. H. Naik.

July 13, 1957.

BOMBAY INDUSTRIAL RELATIONS ACT, 1946, SECTIONS 3(6), 73A AND 116(1)—WITHDRAWAL OF REFERENCE MADE TO INDUSTRIAL COURT BY REPRESENTATIVE UNION—ORDER OF COURT ALLOWING WITHDRAWAL—WHETHER 'AWARD'—APPLICABILITY OF SECTION 116(1)—FRESH REFERENCE OF SAME MATTERS OF DISPUTE—VALIDITY OF.

Where, during the pendency of proceedings before the Industrial Court, the representative union requested the permission of the Court to withdraw the reference made to the Court, and the Industrial Court accorded the permission and allowed the reference to be withdrawn, Held *that the order of the Industrial Court permitting the withdrawal of the reference was not an 'award' and, therefore, it was not necessary that that 'award' should be terminated as required by section 116(1) of the Bombay Industrial Relations Act, 1946, in order to enable the representative union to make a fresh reference of the same matters of dispute to the Industrial Court.*

Reference (IC) No. 208 of 1956.

Nathalal Shah for the representative union.

I. M. Nanavaty for the management.

AWARD.

This is a reference under section 73A of the Bombay Industrial Relations Act, made by the Majoor Mahajan Sangh, Petlad, as a representative Union, on behalf of the employees of the Petlad Bulakhidas Mills Co., Ltd., Petlad. The Mill Company raised a preliminary objection that the present reference is not tenable as there was a previous award between the parties and it has not been terminated by the Sangh as required by the provision of section 116(1) of the Bombay Industrial Relations Act. In order to appreciate this contention it is necessary to recount a few facts antecedent to the present dispute. This Sangh gave a notice of change on September 26, 1951, to the Mill Company making the same demands as it has made under the present reference (annexure "A" to the Company's written statement). The dispute was taken up in conciliation but, as the conciliation proceedings ended in failure, the Sangh made a reference to the Industrial Court under section 73A of the Bombay Industrial Relations Act. That reference was numbered as Reference (IC) No. 27 of 1952, by the Industrial Court. Some time after the Sangh gave the notice of change it appears that there was a settlement on June 1, 1953, between the Mill Company and the clerks on whose behalf the notice of change was given on the demands referred to the Industrial Court. On November 2, 1953, the Sangh asked for permission to withdraw the reference in view of a statement (Exhibit C-2) made by the clerks. In Exhibit C-2 the clerks stated that the dispute had been amicably settled between them and the Mill Company to the satisfaction of the former on April 2, 1952. They stated further that they had not requested the Sangh to make the demands referred to the Industrial Court and that they did not wish to have the change desired by the Sangh. They prayed that the reference might be disposed of as no dispute existed between them and the Company. In view of the above statement made by the clerks the Sangh asked for permission from the Court to withdraw the reference by sending a *purshis* (Exhibit C-1). The Mill representative wrote on that *purshis* that he had no objection to the withdrawal of the reference. The parties forwarded that *purshis* to the Industrial Court under a covering letter (Exhibit C-3) and requested the Court to "do the needful". The Industrial Court thereupon made the following order: "The parties desire to withdraw this reference by joining application dated 2nd November, 1953. The reference is allowed to be withdrawn". This order was styled as an "award" by the Industrial Court and it was published by the Registrar in the Bombay Government Gazette, Part I-L, dated December 3, 1953, on p. 2711.

2. It was urged by Shri Nanavaty on behalf of the Mill Company that the above award of the Industrial Court has been still in operation and it has not been terminated as required by section 116(1) of the Bombay Industrial Relations Act and, therefore, the present reference by the Sangh is not tenable. This contention was treated as a preliminary objection at the request of the parties as it concerns the maintainability of the present reference.

3. The short question before me now is as to whether the order passed by the Industrial Court in Reference (IC) No. 27 of 1952 permitting withdrawal of the reference amounts to an "award" within the meaning of section 3(6) of the Bombay Industrial Relations Act and whether the present reference is tenable without its termination as required by the provisions of section 116(1) of the Bombay Industrial Relations Act. Shri Nanavaty referred to section 115A of the Bombay Industrial Relations Act and urged that there was an agreement between

the parties in the above reference and, therefore, the Industrial Court made an award in terms of the agreement as required by that section. The Sangh took a unilateral decision to withdraw its reference and communicated the said decision to the Court by its *purshis* (Exhibit C-1). Merely because the Mill representative wrote on that *purshis* that he had "No objection" to the withdrawal, it does not follow that there was an agreement between the parties to withdraw the reference. The Sangh could have withdrawn the reference even if the Mill authorities had objected to the withdrawal but the Court allowed it. No consideration flowed from the Mill management for the so called agreement, The alleged settlement between the clerks and the Mill management was no consideration for the agreement. Once the Sangh gave the notice as a representative Union, the clerks were out of the picture and they had no authority to enter into any settlement with the management. No doubt the Sangh stated in its *purshis*, Exhibit C-1, that it wanted to withdraw the reference "in view of the affidavit dated 1st June, 1953, together with the statement filed before the Honourable Court by the clerks of the Mills" but that was only a motive for the withdrawal and not the consideration therefor. Perhaps, the Sangh thought that it was no use spoiling the good relations between it and the clerks concerned by pressing the reference to its logical conclusion when the clerks themselver did not desire it. It might have thought that it would be worthwhile pressing the demand when the ground for misunderstanding between it and the clerks concerned was cleared. The Sangh did not request the Court to draw up an award in terms of the so called agreement or settlement between the clerks and the Mills. There is no evidence in this case as to the terms of the agreement. It had no legal sanctity under the Bombay Industrial Relations Act. Such an agreement could not form the consideration for the withdrawal. The withdrawal of the reference by the Sangh cannot in any sense be construed as an agreement not to reagitate the same demands again without terminating the award.

4. Now let us see whether the withdrawal of the reference by the Sangh really falls within the definition of an "award" given in section 3(6) of the Bombay Industrial Relations Act. Merely because the Industrial Court styled its order permitting withdrawal as an "award" it would not become an award unless it falls within the definition of an "award" given in the above section, Section 3(6) defines an "award" as any "interim, final or supplementary determination in an arbitration proceeding of any industrial dispute or of any question relating thereto." It is the determination of the industrial dispute and not of the arbitration proceedings in one of the ways specified in the said sub-section that

makes it an award. In this case there was a termination of the proceedings, and not of the dispute. Withdrawal of the reference does not determine the dispute. Determination means decision one way or the other. Withdrawal of the reference would not prevent the Union reagitating the dispute at the proper time. As an illustration that a mere withdrawal of a reference does not amount to an award I may refer to an instance where a Mill Company seeking to introduce a change gives a notice in Form "K" to the representative Union. If the representative Union does not accept the change, and there is no settlement in the conciliation proceedings, the Union has to make a reference under section 73A if it still opposes the change. In such a case, the Union may, withdraw the reference, when it comes up before the Court, if it thinks that it is not expedient to press the reference to a hearing. If the Union withdraws the reference it means that it withdraws its objection against the proposed change. In that event the industrial dispute does not survive and the Company is at liberty to carry out the change desired by it. If the industrial dispute does not survive, the order passed by the Industrial Court permitting the withdrawal will not mean the determination of an industrial dispute within the meaning of section 3(6) of the Bombay Industrial Relations Act. The question of terminating the "award" does not, therefore, arise in such a case.

5. Assuming that the withdrawal of the reference by the Sangh and the orders passed by the Court permitting withdrawal amounted to an "award" the termination contemplated by section 116(1) of the Bombay Industrial Relations Act is the termination of an effective award and not of an innocuous award or an award simpliciter. Sub-section (1) of section 116 says "A registered agreement or settlement or award shall cease to have effect on the date specified therein, or if no such date is specified therein, on the expiry of the period of two months from the date on which notice in writing to terminate such agreement, settlement or award as the case may be is given in the prescribed manner by any of the parties thereto to the other party. Now, it is only an effective award that can cease to have effect and not every kind of award. It is only the contravention of the terms of an effective award by the employer that will make the contravention by him an "illegal change" within the meaning of sub-section (3) read with sub-section (4) of section 46 of the Bombay Industrial Relations Act. In this case, if the employer had effected some change in the conditions of service of the clerks existing at the date of withdrawal of Reference (IC) No. 27 of 1952 nobody could have complained that the employer had acted in contravention of any award.

6. Shri Nanavaty then invited a reference to the provisions of

section 87(*vi*) of the Act and contended that if a reference is made by a representative union under section 73A of that Act the Industrial Court is bound to decide, and, whatever may be its decision, that decision amounts to an award. I do not think that such a construction can be put upon clause (*vi*) of sub-section (*a*) of section 87. That section merely enumerates the duties of the Industrial Court. It does not lay down that even if a party making a reference to the Industrial Court does not desire that it should be decided, but it seeks permission to withdraw the reference, the Court should decide the reference on merits notwithstanding such a desire on the part of the party concerned. If a representative union which is also an approved union is empowered under section 73A to make a reference that section also gives an implied power to the Union to withdraw it.

7. Lastly, Shri Nanavaty called in aid the decision of the Labour Appellate Tribunal in *Indian Industrial Works Ltd.* v. *Engineering Mazdoor Sabha*—[1955] 2 L.L.J. 675, in support of his contention that during the operation of the prior award the Sangh could not make a reference to this Court without terminating the prior award. This decision is quite distinguishable from the facts of the present case. In the case cited above, while a prior award was in force and in operation, the parties bound by the award agreed to request the Government to refer to adjudication an item of dispute covered by the said award. Thereupon, Government referred the dispute *de novo* for adjudication ignoring the prior award. It was held that the reference was bad and without jurisdiction.

8. It is clear that the preliminary objection raised by the Mills cannot prevail and it must fail. I, therefore, direct the reference to be set down for hearing on the other issues arising in the case.

[IN THE INDUSTRIAL COURT, BOMBAY.]

JAM SHRI RANJITSINGHJI SPG. & WVG. MILLS

v.

HARIBA DONGRI.

Shri M. R. Meher, President.

July 19, 1957.

MISCONDUCT—ENQUIRY INTO—PRINCIPLES OF NATURAL JUSTICE—WITNESSES EXAMINED BEFORE ACCUSED WORKMAN—WHETHER SUFFICIENT COMPLIANCE—WORKMAN ADMITTING GUILT—PUNISHMENT, WHETHER JUSTIFIED—NATURE OF DOMESTIC ENQUIRY.

A workman was caught while coming out of the gate, with certain articles belonging to the factory concealed on his person. He was duly charge-sheeted and an enquiry into his misconduct was held during which he admitted his guilt and expressed regret. During the enquiry, the watchmen who caught the workman were also examined. On dismissal for the misconduct, the workman's application for reinstatement came before the Industrial Court and it was contended that the principles of natural justice had not been complied with during the enquiry into his misconduct as he was not given any opportunity to cross examine the witnesses against him. Held, *that as the witnesses were examined before the workman, the enquiry was properly conducted and that the order of dismissal was justified even on the admission of guilt by the workman.*

Obiter: *Industrial Courts should not take a very technical view in examining whether such domestic enquiries were properly conducted, as neither the employer nor the workman was expected to be conversant with strict legal procedure.*

Appeal (1C) No. 155 of 1957.

B. Narayanaswami for the management.

S. G. Athavale for the workman.

ORDER.

This is an appeal against an order of the Judge, Second Labour Court, Bombay, by which he directed the appellant company to re-instate the respondent with compensation equivalent to a month's wages, but with liberty to the Company to hold a fresh inquiry into the charge of theft against the respondent and to pass a fresh order in respect of the charge.

2. The respondent was charge-sheeted with theft of a grass-cutter which he was alleged to be carrying while coming out of the main gate

at 4 p.m. on 6th September, 1956. He was dismissed after an inquiry by the manager. The respondent, in his application to the Labour Court, stated that he was not guilty of theft and that no proper and full inquiry was held in respect of the charge and no opportunity was given to him to lead evidence. The Company contended that the misconduct of theft was admitted by the respondent and also proved by independent evidence and, therefore, the order of dismissal was legal and proper. The Labour Judge came to the conclusion that as the witnesses against the respondent were not examined by the manager in the presence of the respondent and no opportunity was given to him to cross-examine the witnesses the order was vitiated and that the admission of misconduct by the respondent was not in clear terms. He, therefore, set aside the order but, as there was evidence before the manager that the grass-cutter was carried by the respondent concealed below his shirt and embedded in the *dhoti* and that it was recovered in the presence of two watchmen and the gate-keeper, there was a case for giving liberty to the Company to hold a fresh inquiry. He, therefore, directed the Company to re-instate the respondent with one month's wages as compensation with liberty to the Company to hold a fresh inquiry.

3. In the appeal it is urged that the inquiry conducted by the manager was full and proper and according to the standing orders, that the *bona fides* of the manager was never challenged at any stage and that the Labour Court was in error in holding that the admission of guilt was not sufficient. In my opinion the contentions urged in the appeal are well founded. The manager stated in his evidence that he examined the two witnesses, *viz.*, the engineer and the assistant jamadar, in the presence of the respondent. The engineer stated that one of the grass-cutters was found to be stolen. The assistant jamadar stated that the respondent was carrying the grass-cutter concealed below his shirt and embedded below his *dhoti* and he recovered the property in the presence of two other watchmen and the gate-keeper. The manager has stated that he did not examine two other witnesses in view of the admission of guilt by the respondent. There is no reason to disbelieve the statement of the manager that the two witnesses whose evidence has been referred to above were examined in the presence of the respondent. It is true that the respondent has stated that no inquiry was held in his presence but his statement cannot be accepted. He falsely denied his thumb-impression on the statement made by him in the inquiry in which he admitted his guilt. The Labour Judge has stated that the respondent's statement that the thumb-impression was not his did not deserve any credit and that the respondent did give his written explanation, Ex. 20. When the respondent obviously lied on this point I do not see why his

other statement that the inquiry was not held in his presence should be believed and why the manager's evidence should be disbelieved. In fact, the learned Labour Judge has not stated that he disbelieves the manager, but the learned Labour Judge appears to have assumed, for reasons which are not apparent, that the two witnesses were not examined in the presence of the respondent. It is true that the manager has stated that he does not remember if he told the respondent to cross-examine the witnesses. Now, the very object of examining witnesses on the subject matter of a charge in the presence of an employee against whom a charge is made is to enable him to put any questions to the witnesses if the employee desires and to contradict any statements made by the witnesses. It has not been suggested that the respondent wanted to put any questions to the witnesses and that he was prevented from doing so. And as the respondent admitted the misconduct with which he was charged and did not allege any enmity with the witnesses, I do not see what useful purpose would have been served by his attempting to cross-examine the witnesses. In the circumstances I do not consider that the inquiry was illegal or improper or vitiated by the non-observance of the principles of natural justice. Assuming for argument that there was any irregularity, the respondent was in no way prejudiced and the managers order is justified in view of the written admission of the respondent in reply to the charge of theft of the grass-cutter. The respondent has stated in that statement : "At about 4 p.m. when returning from the mill I was found with a grass-cutter. I have not intentionally committed the crime. I did something which I should not have done. For that I am repenting very much. My family circumstances are very difficult. I have four children. So you have pity and give me life (service). You are my *ma baap*. I say in the presence of God that *such kind of serious offence will never be committed by me.* So you should have pity on me. This is my request. *I should be pardoned.*" In my opinion, notwithstanding the statement, "I have not intentionally committed the crime" which is inconsistent with the whole of the remaining portion of the statement of the respondent, the statement taken as a whole may fairly be taken as an admission of guilt, taking a common sense view. The learned Labour Judge has in his order stated that the respondent had not stated that he intended to carry the grass-cutter for his private use or that he intended to appropriate it for himself. I am afraid the learned Judge has taken a very technical view. Every one knows what is theft, but a rustic cannot be expected to know the definition given in the Indian Penal Code, and it is not necessary for an admission of the charge of misconduct of theft to be acted on by a manager that the charged person should say in as many words that he removed

the article from out of the possession of the Company with intent to cause wrongful gain to himself or wrongful loss to the Company. Nor is the manager expected, when such a reply to a charge as has been set out above is given, to leave aside his other duties and look up Ratanlal's Law of Crimes and Mitra's Annotated Volumes of the Criminal Procedure Code, to ascertain whether such an admission can properly be acted upon by a criminal Court as a plea of guilty on a charge of theft. The respondent made no attempt to explain the circumstances in which he was found with the grass-cutter admittedly belonging to the company and concealed in his clothes and clearly stated that he would never commit such a serious offence again. In face of this admission I do not see how the action of the manager can be found fault with. It would, besides, be futile to ask the manager to make a fresh inquiry for, in view of the evidence recorded in the presence of the respondent and his admission of guilt, a fresh inquiry can lead to one and only one conclusion.

4. For the foregoing reasons, I set aside the order of the Labour Judge and direct that the application filed by the respondent should be dismissed.

[IN THE BOMBAY HIGH COURT.]

CENTRAL PROVIDENT FUND COMMISSIONER AND ANOTHER
v.
GANESH DYEING & PRINTING WORKS AND OTHERS.

Chagla, C.J. and Desai, J.

March 20, 1956.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SCHEDULE I—" INDUSTRY ENGAGED IN MANUFACTURE AND PRODUCTION OF TEXTILES"—MEANING OF—FACTORY PROCESSING AND DYEING FABRICS—WHETHER FALLS IN SCHEDULE I—AMENDMENT ORDINANCE AND ACT OF 1953, WHETHER RETROSPECTIVE.

The words "any industry engaged in the manufacture or production of textiles" in Schedule I of the Employees' Provident Funds Act, 1952, (before amendment in 1953), are wider than "factory engaged in the manufacture or production of textiles." They include not only any industry engaged in the manufacture of actual woven fabric or cloth, but embrace every process connected with the manufacture or production of textiles. The use of the word "production" in addition to the word "manufacture" also shows that the intention of the legislature is that a factory engaged in any process which is *connected with the textile industry should fall under Schedule I. Even if the different processes are carried on in separate factories, each factory would fall within the Schedule.*

The amendment to Schedule I made by the Amendment Ordinance and the Amendment Act of 1953, are not expressed in those enactments as having retrospective effect and cannot affect the rights and liabilities of the parties before the dates on which they came into force.

Civil Appeal No. 52 of 1955.

Joshi for the appellant.

Laud for the respondent.

JUDGMENT.

CHAGLA, C. J.:—The first respondent is a registered firm carrying on the business of printing, bleaching and dyeing of cloth, and they were called upon by the Collector of Bombay who is the third respondent to pay a sum of Rs. 10,272 alleged to be due by the first respondent on account of provident fund contributions payable by them under the Employees' Provident Funds Act, 1952, for the period from November, 1952 to October, 1953. The first respondent filed a petition contending that the demand made by the Collector was unwarranted by law and for a direction restraining him from recovering the amount. The petition came up before Mr. Justice Tendolkar and the learned Judge gave a direction against the Collector as sought by the petitioner. The Central Provident Fund Commissioner and the Regional Provident Fund Commissioner have now come in appeal.

The question that we have to decide lies in a very narrow compass. The Act in question, the Employees' Provident Funds Act, 1952, was enacted for providing for the institution of provident funds for employees in factories and other establishments. To the extent that this is social legislation and caters for the social good, it must receive a benevolent interpretation at our hands. But, in giving a benevolent interpretation to the Act, we must not also overlook the fact that it constitutes a levy or a charge upon the employer and to that extent we must be careful in seeing that the liability of the employer is not increased beyond what Parliament clearly intended. Sub-section (3) of section 1 provides:

"Subject to the provisions contained in section 16, it applies in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed....................."

Admittedly the first respondent is a factory. It employs more than fifty persons. It is engaged in an industry. The only question is whether

the industry is an industry specified in Schedule 1, and when we turn to Schedule 1 the industries mentioned there are:

"Any industry engaged in the manufacture or production of any of the following, namely—cement, cigarettes, electrical, mechanical or general engineering products, iron and steel, paper, and textiles (made wholly or in part of cotton or wool or jute or silk, whether natural or artificial)."

We are concerned with the last industry mentioned, *viz.*, textiles. Attention must be drawn to the fact the sub-section (3) does not provide that the Act applies to factories engaged in the manufacture or production of textiles. If that was the expression used by the legislature, different considerations might come into play. But the expression used by the legislature is that the Act applies to a factory engaged in an industry which is engaged in the manufacture or production of textiles. Clearly, the expression "industry engaged in the manufacture or production of textiles" is wider than the expression "factory engaged in the manufacture or production of textiles." If the expression was "a factory engaged in the manufacture or production of textiles", it may have been contended with some force that the factory of the first respondent does not manufacture or produce textiles in the sense that the factory does not make or produce woven fabric or cloth. All that it does is to give, as it were, a finishing touch to the cloth which has already been produced by other agencies. But when we are confronted with a different expression which must have a wider connotation than the expression which we have just considered, we must give to the other expression used by the legislature a different meaning and content. An industry engaged in the manufacture or production of textiles must, in our opinion, mean an industry not merely engaged in the manufacture of actual woven fabric or cloth, but the industry must embrace every process connected with the manufacture or production of textiles. Again, one must bear in mind that the legislature has not only used the expression "manufacture" but has also used the expression "production", and clearly the intention of the legislature was not to indulge in surplusage. Production, in our opinion, is wider than mere manufacture, and taking the two words together, the clear intention of the legislature was that a factory engaged in any process which is connected with the textile industry should be included within the definition contained in Schedule. 1.

Mr. Laud argues that the first respondent appeared on the scene after the textile has been manufactured. He says that the first respondent gets coarse unbleached cloth and that this cloth is textile, and what the first respondent does is to process it or to finish it or even to bleach and dye it. But the manufacture and production of textile, according to him, is complete, and, therefore, it could not be said of his clients that they have a factory which is engaged in an industry engaged in the manufacture or production of textiles. In our opinion, that is too narrow a view to take of an industry engaged in the manufacture or production of textiles. Bleaching, dyeing, finishing and processing are all clearly part of the textile industry. The textile industry, as it had developed in our country and in other parts of the world, is not confined or restricted merely to producing what is known as grey or coarse unbleached cloth. Perhaps, the most important aspect of the textile industry is that side of it which concerns itself with bleaching, dyeing and finishing the raw produce which is turned out by the mills. That this is so can be clearly gathered from the fact that many textile mills obviously engaged in the textile industry, have as a part of their activities—and an important part of their activities—bleaching, dyeing and printing. Therefore, to contend as Mr. Laud has contended that the production of textile stops at the manufacture of the coarse grey cloth is to minimize the importance of the later processes which are connected with the textile industry. The learned Judge has made a distinction between an industry engaged in the manufacture or production of textiles and textile industry. With respect, we do not see what possible distinction can be drawn between these two expressions. What the learned Judge has overlooked, with respect, is that the legislature was not referring to a factory engaged in the manufacture or production of textiles, but it was referring to a factory engaged in an industry engaged in the manufacture and production of textiles. The learned Judge has again taken the view that if all these processes were combined and carried on in the same factory, then each process would be a link in the chain which would go to make up textiles, but separately each link could not be considered as a part of the industry engaged in the manufacture or production of textiles, and the learned Judge gives the instance of carding of cotton and he suggests that carded cotton may never find its way into a textile mill at all. But on that analogy let us take into consideration the case of spinning. Yarn is spun and yarn may ultimately not reach a mill which is turning out textiles. Can it possibly be suggested that a spinning mill is not a factory engaged in the industry of manufacturing or producing textiles? Once it is conceded, as the learned Judge has conceded, that dyeing, bleaching and finishing are processes in the manufacture or production of textiles, then, in our opinion, it makes no difference whether these processes are combined in one factory or each one is carried on separately in a separate factory.

Another argument was sought to be advanced by Mr. Joshi, and which was rightly rejected by the learned Judge, was based upon a

subsequent amendment to which we might now draw attention. An Ordinance was issued on 14th October, 1953, the provisions of which were subsequently embodied in Act XXXVII of 1953. and this Ordinance introduced a new definition which was the definition of "manufacture" and the definition was :"manufacture means making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal." And the Schedule was amended by deleting the words "or production" after the words "engaged in the manufacture" and an explanation was added to the schedule to the effect that in this schedule, without prejudice to the ordinary meaning of the expressions, used therein, inclusive definitions were given of various expressions, and the expression "textiles" was defined as including the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering. What was urged by Mr. Joshi before Mr. Justice Tendolkar was that this Ordinance was a declaratory Ordinance and the Ordinance made clear what Parliament always intended by using the expressions it had in the original Act. In our opinion, that contention is obviously untenable. Unless we are prepared to give retrospective operation to the Ordinance, it is clear that the rights of the parties cannot be governed by subsequent legislation. We are concerned with the liability of the employer prior to the promulgation of the Ordinance, and the Ordinance, unless Parliament expressly so intended, cannot retrospectively affect that liability. It is difficult to understand what the expression "declaratory" Ordinance or law as suggested by Mr. Joshi really means. If the intention of the legislature was that the meaning now given to the expression "manufacture of the textiles" should always be given to those expressions as used in the original law, then there was nothing to prevent Parliament from saying so. But Parliament not having said so, the Ordinance cannot possibly affect the rights or liabilities of parties, and we therefore must consider the law as it was and not as it was subsequently amended by the Ordinance. But, in our opinion, on a true construction of the Act and its provisions to which reference has been made, the first respondent was a factory which was engaged in an industry engaged in the manufacture and production of textiles, and if that is so, then clearly the demand made by the Collector was a proper and justifiable demand.

Mr. Joshi has drawn our attention to a decision of the Punjab High Court in *Kapur Textile Finishing Mills* v. *Regional Provident Fund Commissioner*, A.I.R. 1955 Punjab 130; [1955] 8 F.J.R. 141, which had to consider the very question that we have been called upon to consider, and in that case Mr. Justice Kapur and Mr. Justice Dulat have given the same interpretation to the expression used in the Schedule as we have given.

The result is that the appeal must succeed and is allowed. Petition will be dismissed with costs. Costs to be in two sets. With regard to the costs of the appeal, the first respondent to pay the costs of the appellants. The third respondent to bear his own costs.

[IN THE MADRAS HIGH COURT.]

MODERN MATCH INDUSTRIES, GUDIYATHAM AND OTHERS

v.

LABOUR APPELLATE TRIBUNAL OF INDIA AND OTHERS.

Rajagopalan, J.

September 19, 1956.

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF DISPUTE TO TRIBUNAL—NECESSITY OF RELATIONSHIP OF MASTER AND SERVANT BETWEEN PARTIES—DECISION OF TRIBUNAL ON JURISDICTIONAL ISSUE NOT BASED ON EVIDENCE—EFFECT.

'WORKMAN'—DEFINITION OF—ESSENTIALS—RELATIONSHIP OF MASTER AND SERVANT—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(S).

INDUSTRIAL TRIBUNAL—ADJUDICATION BY—SCOPE OF—MATTERS BEYOND EVIDENCE PRODUCED BY PARTIES—MINIMUM LIVING WAGE—WHETHER CAN BE TAKEN INTO CONSIDERATION.

Where the persons named as workmen in a reference to an Industrial Tribunal under section 10(1)(c) of the Industrial Disputes Act, 1947, do not fall within the definition of 'workman' in section 2(s) of the Act, a claim on their behalf cannot be an 'industrial dispute' as defined in the Act and the Industrial Tribunal would have no jurisdiction to adjudicate on the dispute between them and the management. The question is one of jurisdiction and the correct determination of this jurisdictional issue alone will confer jurisdiction on the Tribunal.

In order that a person may fall within the definition of 'workman' in section 2(s) of the Act, he must be 'employed', i.e., the relationship of master and servant must be proved.

Where there is no evidence on which the Industrial Tribunal could rest its decision that the relationship of master and servant existed between the parties to a reference made to the Tribunal under section 10(1)(c) of the Act the Tribunal would be acting without jurisdiction and its award is liable to be set aside.

An Industrial Tribunal is not a Court as that expression is normally understood. Its functions are quasi-judicial and it can take into consideration the fact that a certain amount is normally accepted as the minimum living wage for a workman. It is not bound to decide the matters referred to it only on the material placed before it by the parties.

Writ Petitions Nos. 96 and 322 of 1956.

K. V. Venkatasubramania Aiyar for the petitioners.

M. M. Ismail, A. Ramachandran and *S. Krishnamurthy* for the respondents.

ORDER

The disputes between the Modern Match Industries, Gudiyatham, and its employees were referred as industrial disputes under section 10(1)(*c*) of the Industrial Dispute Act, and the case was registered as Industrial Dispute No. 59 of 1954. One of the disputes was whether the workers should be paid higher wages than they were actually getting from their employer. A similar dispute between Eswaran Match Works and its workers was also referred and that was registered by the Industrial Tribunal as Industrial Dispute No. 58 of 1954.

The factories in question were in Gudiyatham, where matches were manufactured. The workers employed in the box-filling department of the factories were paid on piece-work basis at one anna six pies per gross of boxes containing forties and one anna nine pies per gross of boxes containing sixties each. Despite the claim of the managements, that these constituted the highest rate of wages paid in that industry either at Gudiyatham or elsewhere, the Tribunal directed by its award that the workers should be paid 3 pies more per unit, that is one anna and nine pies per gross of forties and at two annas per gross of sixties.

Another of the disputes in Industrial Dispute No. 59 of 1954 between the Modern Match Industries and its employees was, whether the management was justified in refusing to assign work to five women, and whether those five women should be reinstated in the employment of the Modern Match Industries. The Industrial Tribunal upheld the contention of the management, that these five workmen were not 'workmen' as defined by section 2(*s*) of the Industrial Disputes Act and that no relief could be granted.

The management of both the factories and the workers appealed to the Labour Appellate Tribunal. The Appellate Tribunal upheld the award of the Industrial Tribunal enhancing the rates of wages. The Appellate Tribunal set aside the portion of the award of the Industrial Tribunal which had rejected the claim for reinstatement of the five women. The Appellate Tribunal held that they were workmen and that their retrenchment was not justified and it ordered their reinstatement. Each of the petitioners applied under article 226 of the Constitution for the issue of a writ of *certiorari* to set aside the award as confirmed or modified by the Appellate Tribunal.

I shall first deal with the question that arises only with reference to I. D. No. 59 of 1954 that is, in W. P. No. 96 of 1956, If the five women named in the order of reference under section 10 (1) (*c*) of the Act, Jayammal, Radha, Govindammal, Vithobhai and Saroja were not 'workmen' within the meaning of section 2 (*s*) of the Act, a claim on their behalf could not be an industrial dispute, and the Industrial Tribunal constituted under the Industrial Disputes Act would have no jurisdiction to adjudicate on a dispute between them and the management. The question would really be one of jurisdiction, and the correct determination of that jurisdictional issue alone could confer jurisdiction on the Industrial Tribunal. If the determination of that jurisdictional issue by the Appellate Tribunal was wrong, that would suffice to negative the jurisdiction of the Appellate Tribunal to modify, in this case to substitute, its award for the award the Industrial Tribunal could have given on that question but declined to give.

The relevant portion of section 2 (*s*) runs:

"Workman means any person employed in any industry to do any skilled or unskilled manual..............work for hire or reward........ ...."

The contention of the learned counsel for the petitioner was that the use of the expression 'employed' in the statutory provisions defining a workman necessitates the relationship of master and servant between the parties concerned before one could be held to be employed in the service of the other. That contention, in my opinion, is well founded. Obviously if the person is not 'employed' within the meaning of section 2 (*s*) he could not claim to be a workman as defined by that clause. In my judgment in W. P. No 445 of 1954, *Annamalai Mudaliar and Brothers* v. *Regional Provident Fund Commissioner* [1955] 8 F.J.R. 111, I referred to *Smith* v. *General Motor Cab Co., Ltd.*, L.R. (1911) A.C. 188 and recorded:

"What would be the position if these principles were applied to

the facts in issue in this case? The owner of the factory had really no control over the time taken by the worker to complete the work the latter had undertaken to do for the remuneration specified. The worker was under no obligation to attend on any particular day or at any particular hour. It is no doubt true that the worker had to do his work within the precincts of the factory, and I presume the hours of work in the factory would be regulated under the Factories Act. But even during those hours no compulsion could be brought to bear upon the worker to do the work. Further, as in *Smith's case*, L.R. (1911) A.C. 188, the owner of the factory was under no obligation to provide work for any given worker on any given day, that is, the owner was under no obligation to provide for a reasonable continuity of service or the work. These features would appear to militate against the existence of a jural relationship of master and servant."

I also stated that if the time spent on the work was not at the disposal or under the orders of the owner of the factory, it would be difficult to hold that the relationship betwen the worker and the owner of the factory was that of servant and master.

In my opinion, unless the relationship of master and servant is proved, a person who claims to be a workman within the meaning of section 2 (*s*) of the Act cannot be said to be employed within the meaning of that clause; and, as I said, if he was not employed, he would not be a workman as defined by that clause.

Therefore, the question with reference to the facts held established in this case is whether there was a relationship of master and servant between the management and each of the five women named in the order of reference.

The Appellate Tribunal also held the view that there should be the relationship of master and servant. It held that, on the material placed before it, such a relationship did exist.

The Tribunal recorded:

"It appears that these workers (the five women workers in question) used to take the raw-material to their house and they did what is called frame filling or box-making work, *i.e.*, to fill up the frames with match sticks and make the match boxes. Nonetheless there does arise a relationship of master and servant and there does exist a control over them in the sense that they have to present themselves for work every day, carry raw material to their homes and finish the work as required within a certain time. Here is not a fluctuating body of workmen changing from day-in and day-out for about two years and the management could hardly refuse them work at their sweet will on a particular day, without taking suitable action without assigning any reason......The term 'industry' has thus a sufficiently wide meaning to include the manual work to do which these female workers were employed for hire and the employer exercised sufficient control over them in that they were required to execute the work according to the instructions as per the required standard and within a fixed time. It is not necessary that they should work in the workshop under the direct supervision of the management and simply for this reason such workers cannot be called independent contractors."

I agree with the view, that the place of work may not decide the issue whether the relationship was that of master and servant. The real question is whether there was material on record on which the Appellate Tribunal could base its finding, that the management exercised control over the workers and that the time of the workers was really at the disposal of the management. It should be noticed that no oral evidence was taken in this case. The question at issue had to be disposed of on the basis of the claims and counter-claims of the management and the workers represented by their union. All that was stated in the statement filed by the workers regarding the second question, the dismissal of five women, was: "The petitioner submits that all these workers have put in two or three years of permanent service." What were the terms on which they worked was not disclosed. In paragraph 11 of its statement the management was no more helpful. It stated:

"This respondent denies....................The five women were admittedly out-workers. They cannot by any means be called permanent workers. They can stay away or be left out of work without assigning any reason. They are only casual workers who can be hired or dropped to suit the need of the workshop."

The only other document, the report of the Labour Officer, whose attempts at conciliation failed, does not take us much further.

That there was not sufficient data for reaching the conclusion should be obvious. The insufficiency of data is certainly not enough to reverse the finding of a statutory tribunal, the Appellate Tribunal. The question is, was there any evidence on which the Appellate Tribunal could come to the conclusion that the relationship of master and servant had been established.

That the women had been regularly given work may not materially affect the issue. Could they be compelled to work if they did not choose to, would be one of the tests. If the claim of the management, which was not disputed, that the women could stay away without assigning any reason, is correct, there is certainly absence of control over the services of these women. They did their work in their own homes outside the factory. But that again may not be relevant, because if the time to be spent on the work given to them, the work being done in their own homes, was at the disposal of the management, that should be sufficient. Even to prove that, there was no evidence. Though the Appellate Tribunal recorded that they had to finish the work within a certain time, on what evidence that finding was based I am unable to gather. If the position was that they were expected to finish their work within a reasonable time and deliver the finished goods to the management before claiming the remuneration due to them, and if the management thought that they had failed to keep up to that standard and, therefore, decided not to entrust them with any more work, that would not be sufficient to prove that one of the terms of the contract between them was that the work allotted should be completed within the specified time or that that time was at the disposal of the management.

In my opinion, there was really no evidence on which the Appellate Tribunal could rest its decision, that the relationship of master and servant existed as between these five women and the petitioner. The portion of the substituted award given by the Appellate Tribunal directing the reinstatement of these five women with back wages with effect from 15th October, 1954, was without jurisdiction, and it is, therefore, liable to be set aside.

The question that arises both in W.P. No. 96 of 1956 and W.P. No. 322 of 1956 is whether the Industrial Tribunal had jurisdiction to award an enhancement of wages. That the wages paid before the dispute were the highest paid by any employer in that industry was not disputed. That, of course, would not affect the question of jurisdiction. The Industrial Tribunal pointed out that payment at the old rates came nowhere near what had been accepted as the minimum living wage—Rs. 26 a month. The learned counsel for the petitioner urged that the Industrial Tribunal had no jurisdiction, in adjudicating upon an industrial dispute, to rest its decision on any grounds of policy. He urged that the function of the Industrial Tribunal, called upon to adjudicate, was a judicial function, and that judicial function could be exercised only on the material placed before it by the contending parties and not on any grounds of policy. If it rested its decision on any grounds of policy it ceased to be in discharge of any judicial function and since its function was judicial any such decision passed upon a ground of policy would be beyond its jurisdiction as a Tribunal invested with judicial functions to discharge, it would really be arrogating to itself a legislative power which it did not possess, such were the contentions of the learned counsel for the petitioner.

I am unable to accept as sound in law the restricted scope of the jurisdiction of the Industrial Tribunal, for which the learned counsel for the petitioner contended. It may be taken as well settled now that though the functions of the Industrial Tribunal are quasi-judicial, it is not a Court as that expression is normally understood. Though its functions are quasi-judicial, an Industrial Tribunal cannot be denied the jurisdiction to take into account the relevant factor that Rs. 26 a month is normally accepted as the minimum living wage for a workman, and if an award is based on such a factor, it cannot, in my opinion, be said to be one in excess of the jurisdiction vested in the Industrial Tribunal, though that jurisdiction passes under the name of adjudication of industrial dispute.

The quantum of the wages payable under the award, of course, is not within the purview of my jurisdiction exercised under article 226 of the Constitution.

I have no hesitation in rejecting the contention of the learned counsel for the petitioner that the Industrial Tribunal and the Appellate Tribunal acted in excess of their jurisdiction in awarding an enhancement of wages.

The rule issued in W.P. No. 322 of 1956 will stand discharged and that petition will stand dismissed.

In W.P. No. 96 of 1956 the *rule nisi* will be made absolute in part in so far as it relates to the order of the Appellate Tribunal directing reinstatement of the five women mentioned above.

There will, however, be no order as to costs.

[IN THE MADRAS HIGH COURT.]

K. KESAVA REDDIAR

v.

LABOUR APPELLATE TRIBUNAL OF INDIA AND OTHERS.

Rajagopalan, J.

January 17, 1957.

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF DISPUTE TO TRIBUNAL—NECESSITY OF RELATIONSHIP OF MASTER AND SERVANT BETWEEN PARTIES.

'WORKMAN', DEFINITION OF—WHEN EMPLOYEE FALLS WITHIN DEFINITION—TESTS—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(S).

In order that an Industrial Tribunal may have jurisdiction to deal with an 'industrial dispute' referred to it under the Industrial Disputes Act, 1947, there must be the relationship of master and servant as between the parties to

the dispute so that one of the parties falls within the definition of 'workmen' section 2(s) of the Act.

In deciding whether a relationship of master and servant existed between the parties, the mere fact that the master had a large measure of control over the employee or that the employee worked on the premises of the master are not conclusive. What has to be considered is whether the time of those who claim to be workmen was at the disposal of the master. If the master had no control over the time of the employee there cannot be a relationship of master and servant so as to bring the employee within the definition of 'workman' in the Act.

The exgratia, *payment of bonus does not imply that the person receiving the bonus is a 'workman'.*

Writ Petition No. 637 of 1956.

S. Ramachandra Ayyar for the petitioner.

A. Ramachandran for the respondents.

JUDGMENT.

The petitioner who manufactured and sold jewels at Quilon, applied under article 226 of the Constitution for the issue of a writ of *certiorari* to set aside the order of the Labour Appellate Tribunal at Madras, dated 9th May, 1956.

On 19th November, 1954, the Government of Travancore-Cochin State ordered a reference under section 10 (1) (*c*) of the Industrial Disputes Act (XIV of 1947). The Industrial Disputes set out in the annexure to that order were:

(1) Whether the denial of the employment by the management to Sri S. Venkatachalam Achari, V. Thankappan Achari, G. Kumaraswami Achari and P. Padmanabhan Achari is justified? If not to what reliefs are they entitled? and

(2) Whether the following workmen have been denied employment by the management for the whole or part of the period from 31st August, 1954 to 3rd October, 1954, and if so, whether the denial of employment is justifiable? If not, to what reliefs are the workmen entitled?

A list of eight names was appended to the second question.

The reference came up for adjudication before the Industrial Tribunal, Trivandrum. The labourers were represented by their Union. The petitioner presented a preliminary objection to the jurisdiction claimed by the Industrial Tribunal. The petitioner contended that as none of the persons mentioned in the order of reference was a "workman" as defined by section 2 (*s*) there was no "industrial dispute" within the meaning of section 2 (*k*) of the Industrial Disputes Act. The

Industrial Tribunal upheld that objection after an enquiry, and it came to the conclusion that it had no jurisdiction to adjudicate upon the disputes referred to it. The labourers appealed to the Labour Appellate Tribunal. By its order, dated 9th May, 1956, the Appellate Tribunal set aside the order of the Industrial Tribunal and directed a further enquiry into the disputes referred to the Industrial Tribunal under section 10 (1) (*c*). The Appellate Tribunal differed from the Industrial Tribunal and held that the labourers, whose names were mentioned in the order of reference, were workmen as defined by the Act, and that therefore, the disputes between them and their employer were industrial disputes, within the meaning of section 2 (*k*) of the Act. It was the validity of that decision of the Appellate Tribunal that the petitioner challenged.

The real question for determination was whether the 12 persons whose names were enumerated in the order of reference under section 10(1) (*c*), were "workmen" as defined by section 2 (*s*) of the Act. If they were not workmen within the meaning of section 2 (*s*) there could obviously be no industrial dispute within the meaning of section 2 (*k*). The relevant portion of section 2 (*s*) runs :—

"Workman means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward.................."

In my judgment in W.P. No. 445 of 1954, since reported in *Annamalai Mudaliar and Brothers* v. *Regional Provident Fund Commissioner*, [1955] 8 F.J.R. 111, I had occasion to discuss the scope and significance of the word "employed" as it occurred in section 1 (3) of the Employees' Provident Funds Act (Act XIX of 1952), and I recorded :

"In my opinion, the expression 'employed' in section 1 (3) taken in the context of the Act as a whole would imply, subject to the statutory definition in section 2 (*f*), the existence of the relationship of master and servant between an employer and the worker."

In my decision in W.P. Nos. 96 and 322 of 1956, since reported in *Modern Match Industries* v. *Labour Appellate Tribunal of India, Madras*, [1957] 13 F.J.R. 202, where the scope of the expression "employed" as it occurs in section 2 (*s*) of the Industrial Disputes Act arose for consideration, I took the view that it postulated the relationship of master and servant. I had also to consider in that case whether the tests had been satisfied—whether the management exercised control over the workers, and whether the time of the workers was really at the disposal of the management.

A similar view was taken by Rajagopala Ayyangar, J., in W.P. No. 476 of 1954 where he observed :—

"It does not need much argument to show that under the Industrial Disputes Act the existence of a relationship of employer and employee is necessary before there can be any industrial dispute, and the existence of an industrial dispute is necessary before there can be any valid reference by the Government of such dispute to an Industrial Tribunal".

The learned Judge, on the facts of that case, came to the conclusion that no such relationship had been established, and that the real position of the persons who worked for the management in that case was that of contractors.

In the present case the Appellate Tribunal, no doubt, correctly posed the question for determination :

"The only question is whether they are employed by the management, or in other words whether there is a relationship of employees and employer as between them and the gold merchant or whether they are independent contractors."

In paragraph 13 the Appellate Tribunal pointed out:

"On the above evidence, it is clear that the first respondent (Kesava Reddiar) has a large measure of control over these workmen so as to constitute them his employees."

That was followed up by the finding in paragraph 14 where the Appellate Tribunal stated :

"The workers, in the first respondent's shop itself, prepare gold jewels according to the instructions of the first respondent and within the time fixed by him and receive the stipulated making charges. The employer, therefore, exercises a good deal of control over them and directs the work to be turned out by them",

The findings on the questions whether the labourers were workmen as defined by section 2 (*s*) of the Act and if so whether the disputes between them and the petitioner were industrial disputes were findings on what really amounted to a jurisdictional issue. It was rightly treated as such both before the Industrial Tribunal and before the Appellate Tribunal; and it is the correctness of the decision of the Appellate Tribunal that is now in issue in these proceedings,

The test the Appellate Tribunal postulated was whether the petitioner had a large measure of control over the labourers. That may not be quite correct. What the Appellate Tribunal had to consider was whether the time of those who claimed to be employees of the petitioner as workmen within the meaning of section 2 (*s*) of the Act, was at the disposal of the master. Another of the grounds on which the Appellate Tribunal rested its decision was that in *Modern Match Industries, Ltd., Gudiyatham and their Workmen*, (1956) 1 L.L.J. 335, a Bench of the

Tribunal took the same view, and the position of those who worked for the petitioner in his shop was analogous to that of the workers involved in the industrial dispute that related to the Modern Match Industries Ltd., Gudiyatham. It was the validity of the order of the Labour Appellate Tribunal in the Gudiyatham case that was successfully challenged before me in the *Modern Match Industries* v. *Labour Appellate Tribunal of India, Madras*, since reported in [1957] 13 F.J.R. 202.

The question at issue, however, has to be decided on the material on record even as the Appellate Tribunal purported to decide it. Four witnesses were examined during the enquiry held by the Industrial Tribunal. One of these, Bhima Bhattar, E. W. 1, was the Vice-President of the Travancore-Cochin Gold Merchants' Association, and he spoke to the general practice prevalent in the shops of gold merchants of Quilon. The petitioner himself was examined as E. W. 2. Kumaraswami Achari, one of the persons whose names were enumerated in the order of reference and who had been working in the shop of the petitioner was examined as W. W. 1. Another Padmanabha Achari, who also worked in the shop of the petitioner, was examined as W. W. 2 but he furnished no real evidence on any of the questions at issue. The Industrial Tribunal accepted the evidence of Bhima Bhattar and the petitioner. But the Appellate Tribunal was not inclined to place any great reliance on the evidence of the petitioner, E. W. 2, where it conflicted with that of Bhima Bhattar, E. W. 1. It was, of course, within the jurisdiction of the Appellate Tribunal to assess the evidence on record, and to decide whom it should believe and to what extent. But it was also bound to take into account the entire evidence on record including that of Kumaraswami Achari, W. W. 1.

Both Bhima Bhattar and the petitioner gave evidence that each item of work entrusted to a person who worked in the shop of the goldsmith was a separate contract, in support of the plea, that at no time was there the relationship of master and servant between the goldsmith and the person who made the jewel.

Bhima Bhattar deposed :

"There is no control over the labourer in regard to the time-limit. Sub-contract is allowed".

When he was cross-examined he stated :

"A person with whom gold is entrusted is allowed to engage others to work for him".

But the Appellate Tribunal discounted the value of this statement on the ground that E. W. 1 was unable to give any details in his cross-examination in regard to them and even conceded that the workers from the neighbouring shop did not come to work in his (Bhima Bhattar's) shop. Bhima Bhattar further stated when he was cross-examined :

"Generally workmen come and go when they like".

He admitted that those who worked for a goldsmith even on contract basis were given an annual bonus of 6¼ per cent. calculated on the total amounts earned by them under their contracts during the year.

It should however be remembered that Bhima Bhattar's evidence related to the circumstances under which work was done in his shop, and he did not speak with personal knowledge of what happened in the petitioner's shop. Bhima Bhattar admitted that the workers in his shop were supplied by him with the husk and charcoal necessary for the work, whereas in the petitioner's shop the petitioner claimed that it was the worker that had to find the husk and charcoal, and that was admitted to be correct by Kumaraswami Achari who stated: "We have to buy rice husk and charcoal." I am only giving these as instances of the variations that might possibly exist between shop and shop. The primary question for consideration was whether those who admittedly worked in the shop of the petitioner were his "workmen" as defined by section 2 (*s*) of the Act.

Keeping aside for the moment the oral evidence of the petitioner E. W. 2, I shall examine the scope of some of the statements made by K. Kumaraswami Achari as W. W. 1. He stated:

"The system of workers taking gold from the shop, work at the home and to get wages is also prevalent".

When he was cross-examined, in answer to the question "Do workers take gold for work in their homes?" he stated "No. The employer will not give". Kumaraswami Achari deposed further :

"The tools for work belong to the workers. The employer will weigh and give the gold to the workers. We have to buy rice husk and charcoal. When work is given the type of ornament to be made will be instructed. The details will also be said. The size of the ornament and how it should be made will also be instructed. The period in which it can be finished will also be asked. The total wages will be fixed."

One of the claims of the petitioner before the Industrial Tribunal was that those who worked in his shop on a contract basis were masters of their own time and they could take in work not belonging to the petitioner to be done in the premises of the petitioner When Kumaraswami Achari was questioned "Have you a right to make ornaments for other shops than that of Kesava Reddiar (Petitioner) ?" he did not specifically deny it but stated "The principle is that it should not be done". Again in answer to the question "If an ornament of 10 or 20 sovereigns is made will you engage workers from outside?" his answer was "That is not the practice. The employer will not allow".

The petitioner examined as E. W. 2 categorically stated:

"I entrust each work on contract basis".

That was also the claim of Bhima Bhattar examined as E. W. 1. The petitioner stated further:

"There is no fixed time for work. They can come and go as they like..............I allow some people in whom I have confidence to take gold to their homes................."

He also stated that if work was entrusted to one person he has the liberty to take other persons and do the work.

As I pointed out in my judgment in W. P. No. 445 of 1954, *Annamalai Mudaliar and Brothers* v. *Regional Provident Fund Commissioner*, [1955] 8 F.J.R. 111, that work was done at the premises of either of the contracting parties may not be determinative of the question, was the relationship between the parties that of master and servant, or was the position of the person who did the work that only of a contractor.

One of the main tests to be applied in deciding whether the relationship of master and servant was present is whether the time of the person who worked was at the disposal of the master. Taking the evidence of the petitioner and even that of Kumaraswami Achari, it should be fairly clear that that test was not satisfied in this case. As the learned counsel for the petitioner pointed out, if a labourer was given 10 days within which to complete the ornament, no doubt he was expected to complete it within 10 days. Suppose he completed the work in a shorter period, there was no real obligation on the petitioner to give him another jewel to manufacture. There was no obligation on the labourer to present himself for work on the remaining days.

In my view, on the evidence on record, the view taken by the Industrial Tribunal, that there was no relationship of master and servant between the petitioner and those who worked in his shop, was correct, and the view of the Appellate Tribunal that such a relationship did exist was erroneous and was not supported by any real evidence on record.

The learned counsel for the respondents urged that the admission of E. W. 1 that bonus was paid to the workers, should suffice to show the relationship of master and servant, because payment of bonus to a contractor was unthinkable. Bonus was a payment made *ex gratia* even according to the evidence of E. W. 1. I fail to see why a person whose real position was that of a contractor could not be paid bonus *ex gratia*. Payment of bonus by itself is rather inconclusive as a piece of evidence when the question at issue is, was the labourer a servant or was he merely a contractor?

As I said there was no real evidence on record to support the finding of the Appellate Tribunal, that the persons whose names were enumerated in the order of reference were workmen employed under the petitioner within the meaning of section 2 (*s*) of the Act.

The rule is made absolute and the petition is allowed. There will be no order as to costs.

[IN THE MADRAS HIGH COURT.]

NEWTONE STUDIOS LTD.

v.

MADRAS STATE CINEMA & STUDIO EMPLOYEES' UNION AND OTHERS.

Rajagopala Ayyangar, J.

October 26, 1956.

RETRENCHMENT—COMPENSATION—RETRENCHMENT EFFECTED BEFORE ENACTMENT OF CHAPTER V-A, INDUSTRIAL DISPUTES ACT, 1947—WORKMEN AGREEING TO AWARD OF COMPENSATION BASED ON BASIC WAGES—CLAIM ON APPEAL FOR AWARD IN ACCORDANCE WITH CHAPTER V-A—WHETHER JUSTIFIED.

Certain retrenched workmen accepted before the Industrial Tribunal to receive retrenchment compensation at the rate of 15 days' basic wages for each year of service and an award was made accordingly. The workmen thereafter went on appeal to the Labour Appellate Tribunal claiming that in computing the amount of compensation, their wages including dearness allowance should be taken into consideration and not merely the basic wages, and relied on certain provisions in Chapter V-A of the Industrial Disputes Act, 1947, introduced by the Industrial Disputes (Amendment) Act, 1953, which had been enacted in the mean time and the Labour Appellate Tribunal upheld the claim of the workmen. On a petition for a writ of certiorari to quash the order of the Appellate Tribunal, Held, *that the workmen having agreed to the mode of computation of compensation awarded by the Tribunal, it was not open to them to contend on appeal that it should have been computed on some other basis.* Held, also *that the Industrial Disputes (Amendment) Act, 1953, which introduced, provisions regarding payment of compensation on retrenchment, did not have any retrospective effect and could not be applied to any retrenchment effected before that Act came into force.*

Writ Petition No. 946 of 1955.

K. Venkataramani and *S. B. Mani* for the petitioner.

S. N. Balaraman for the respondent.

ORDER.

This is an application under article 226 of the Constitution for the issue of a writ of *certiorari* to quash the order of the Labour Appellate Tribunal in Appeal No. III-381 of 1954, dated 20th August, 1955, to the extent of the direction for the additional payment by the petitioner to the workers concerned on the basis of inclusion of dearness allowance as part of the wages in the calculation of retrenchment compensation.

There is not much dispute about the facts at least at this stage. The petitioner is a cinema studio company. On 10th September, 1953, it retrenched 54 of its workers on the ground that they were surplus for its requirements. This was contested by the workmen which resulted in an industrial dispute. This dispute was referred to the Industrial Tribunal of Madras for adjudication. The Tribunal, after enquiry, passed its award on 6th July, 1954. It held that the management were justified in retrenching 50 of the workers and as regards the other four the management themselves agreed to reinstate them in service,

The next question which the Tribunal was called upon to consider was in regard to the compensation payable to the retrenched workers. The management agreed to pay retrenchment compensation on the basis of 15 days' wages for each year's completed service. In doing so, they calculated the wages payable as the basic wage exclusive of the dearness allowance. They filed a list or tabulated statement giving these figures marked as Ex. M-3 in the case. Before the Tribunal the Union which appeared on behalf of the workers did not contest this basis of compensation. The only objection which is raised to this Ex. M-3 was that the compensation was calculated on the basis of reduced salary and that a larger scale paid at earlier periods ought to have been taken into account. The Tribunal in its order states: "The details in other aspects are admitted by the Unions to be correct", which I take to mean that there was no dispute as regards the correctness of the computation except in regard to the one matter which I have mentioned. An award was passed by the Tribunal granting compensation on the basis of M-3.

The workers filed an appeal from this award to the Labour Appellate Tribunal under section 7 of the Labour Appellate Tribunal Act. In the grounds of appeal the Union raised two points. One was that the wages on the basis of which retrenchment compensation was to be computed should have included the dearness allowance. They also called in aid the definition of "wages" in section 2 (*rr*) introduced by the Amending Act XLIII of 1953. The Amending Act made provision for regulating the conditions on which workmen could be retrenched and the compensation payable to them. In making these provisions the basis of computation of wages was defined to include dearness allowance. This enactment was, on the terms of section 1 (2) of the Act, to be in force from 24th October, 1953, notwithstanding that it received the assent of the President on 24th December, 1953. The Union in its grounds of appeal claimed that under the provision introduced by this Amending Act XLIII of 1953, the workers were entitled to retrenchment compensation on the definition of "wages" found in section 2 (*rr*). The Appellate Tribunal upheld these contentions and giving retrospective effect to the statutory provision introduced in 1953, allowed the appeal and granted retrenchment compensation by including dearness allowance as part of the wages. It is this order of the Labour Appellate Tribunal that is challenged as erroneous and without jurisdiction by the learned counsel for the petitioner.

Two points were urged in support of this petition. The first was that as the Union had agreed to the computation of retrenchment compensation based on wages not including dearness allowance, it was not open to it to contend before the Labour Appellate Tribunal that it should be on any other basis. Secondly, that the Tribunal was in error in considering that the Amending Act of 1953 governed the relationship between the parties or could be availed of to determine the amount of retrenchment compensation payable to the workers. In my opinion, the counsel for the petitioner is well-founded in both these arguments. I have extracted the relevant portion of the Tribunal's order which would show that the workers had agreed to the calculation of the compensation on the basis of wages which did not include dearness allowance. In the face of this agreement it was not open to them to urge the contention they put forward before the Labour Appellate Tribunal and the Tribunal erred and acted without jurisdiction in acceding to this argument of the Union. On the second point, even the learned counsel for the respondent does not seek to support the order of the Tribunal that the amending Act was retrospective so as to govern the relationship between the parties. The retrenchment was effected on 10th September, 1953, and the basis of compensation can only be that which was the law on that date. Surely Act XLIII of 1953 was not applicable then and so could not govern the computation of retrenchment compensation which became payable in September, 1953.

The rule is, therefore, made absolute. The writ petition is allowed and the order of the Tribunal is quashed to the extent prayed for. There will be no order as to costs.

[IN THE SUPREME COURT OF INDIA.]

S. S. SHETTY

v.

BHARAT NIDHI, LIMITED.

N. H. Bhagwati, S. K. Das and P. B. Gajendragadkar, JJ.

September 17, 1957.

REINSTATEMENT—REINSTATEMENT OF DISMISSED WORKMAN BY TRIBUNAL—EFFECT—FAILURE BY EMPLOYER TO REINSTATE WORKMAN—COMPUTATION OF MONETARY VALUE OF AWARD OF REINSTATEMENT—PRINCIPLES—INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950, SECTION 20(1) AND (2)*, SCOPE AND EFFECT OF.

The effect of an order of an Industrial Tribunal reinstating a dismissed workman is merely to set at nought the order of wrongful dismissal of the workman by the employer and to re-instate him in the service of the employer as if the contract of employment originally entered into had been continuing. The terms and conditions of the contract which obtained when the workman was in the employ of the employer prior to his wrongful dismissal which is set aside continue to govern the relations between the parties, and the workman continues in the employ of the employer under those terms and conditions.

The purpose of the enactment of section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950 is not to award to the workman compensation or damages for a breach of contract or a breach of a statutory obligation on the part of the employer. Where any benefit which is not expressed in terms of money is awarded to a workman by an award of an Industrial Tribunal, it will be necessary to compute in terms of money the value of that benefit before the workman can invoke the provisions of section 20(1) of the Act and seek the help of the appropriate Government in recovering the same. It is for the purpose of making such a computation that section 20 (2) has been enacted.*

The monetary value of the benefit of re-instatement is to be computed under section 20(2) not on the basis of a breach of the contract of employment nor on the basis of a tort alleged to have been committed by the employer by reason of the non-implementation of the direction for re-instatement contained in the award. What is to be computed in such cases is the value in terms of money of the benefit of re-instatement which was granted by the Tribunal and which the employer did not implement. Such computation has relation only to the date from which the reinstatement of the workman has been ordered under the terms of the award and would have to be made by the Tribunal having regard to all the circumstances of the case. The Tribunal would have to take into account the terms and conditions of the employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunals in the event of industrial disputes arising between the parties in the future. Where it is not possible to compute the monetary value with mathematical exactitude, the best that an Industrial Tribunal can do would be to make as correct an estimate as is possible bearing in mind all the relevant factors, pro and con.

* Now section 33C of the Industrial Disputes Act, 1947—Ed.

Civil Appeal No. 329 of 1956.

B. R. L. Iyengar and *B. C. Misra* for the appellant.

Veda Vyasa (*K. L. Mehta* and *I. S. Sawhney* with him) for the respondent.

JUDGMENT

The Judgment of the Court was delivered by

BHAGWATI, J.—This appeal with special leave is directed against the decision of the Labour Appellate Tribunal of India, Lucknow, confirming, on appeal, the award made by the Central Government Industrial Tribunal, Calcutta, in a dispute between the appellant and the respondent.

The appellant took up service with the respondent, then known as the Bharat Bank Ltd., with effect from July 1, 1944, as an Inspector at Bombay in the grade of Rs. 170-10-200-20-400 and was given three increments when the first increment fell due as from October 1, 1945. He was also given promotions on October 1, 1946, and on October 1, 1947, and was drawing Rs. 240 per month plus a special allowance for a servant of Rs. 30 per month, at the time when he was discharged by the respondent on August 5, 1949, on the plea that he had become surplus to the requirement of the respondent. The Government of India, Ministry of Labour had by Notification No. LR. 2(273) dated February 21, 1950, referred for adjudication to the Central Government Industrial Tribunal at Calcutta, the disputes pending between the various banks and their employees, and the appellant's case came up for hearing in the course of those proceedings before that Tribunal which held on December 5, 1950, that the order of discharge of the appellant was illegal and that the respondent should take him back in service as well as pay the appellant his arrears of salary and allowances from the date of discharge. This direction was to be carried out within a month of the date of the publication of the award which was actually published in the Gazette of India, (Part II, Section 3, page 1143) of December 30, 1950.

On January 30, 1951, the respondent preferred an appeal against the said order to the Labour Appellate Tribunal, Calcutta, sitting at Allahabad which, by its decision dated September 25, 1951, upheld the directions given by the Industrial Tribunal and dismissed the appeal. The respondent failed and neglected to implement the decision of the Labour Appellate Tribunal within the prescribed period inspite of the appellant's intimating to the respondent by his letter dated October 10, 1951, at its address at 37, Faiz Bazar, Delhi, that he was at Bombay and that he would like to know where he should report himself for duty. By this letter he also claimed arrears of salary and allowances which had not till then been paid to him, apart from the payments made under the interim orders of the Labour Appellate Tribunal. The respondent did not send any reply to the said letter with the result that the appellant served on the respondent a notice on November 5, 1951, through his solicitors intimating that the respondent had failed and neglected to reinstate the appellant in spite of his letter dated October 10, 1951, requesting it to do so. The appellant further intimated to the respondent that by reason of its failure to reinstate him within the prescribed period the respondent had committed a breach of the directions of the Labour Appellate Tribunal and the appellant had, therefore, become entitled to compensation for the same. The appellant, therefore, called upon the respondent to pay to him a sum of Rs. 32,388 as the amount of compensation to which he was entitled on account of the pay he would have earned till his 55th year *i.e.*, upto May 4, 1960, Provident Fund contribution on pay at $6\frac{1}{4}\%$ as allowed by the Rules of the Bank and gratuity for about 16 years from July 1, 1944, to May 4, 1960, at half month's pay per year of service, adjustment being made at 6% per annum for payment, if made as demanded. This amount was exclusive of other claims against the respondent such as amounts due to him under the order dated February 17, 1951, of the Labour Appellate Tribunal of India, Allahabad, arrears of salary etc., withheld by the respondent. As the respondent failed and neglected to send any reply to the said notice or to comply with the requisitions therein contained, the appellant made an application to the Government of India on February 22, 1952, for recovery of money under section 20(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950, (hereinafter referred to as "the Act") to which he received a reply on May 13, 1952, stating that an application for recovery of money under that section could be entertained only if it was confined to the arrears of salary and allowances from the date of his discharge upto the date of the application, and advising him to submit a revised application accordingly. A suggestion was also made in that letter that the appellant might approach the Industrial Tribunal, Calcutta, under section 20(2) of the Act for a computation in terms of money of the benefit of reinstatement, as it was only when a definite sum had been so determined that action for recovery under section 20(1) of the Act could be taken by the Government.

It appears that in the meantime the respondent had transferred its banking business under an agreement with the Punjab National Bank Ltd., and had also changed its name to Bharat Nidhi Ltd. By its letter dated 3rd April, 1952, the respondent in its new name of the Bharat Nidhi Ltd., addressed a letter to the appellant stating that due to the transfer of its liabilities and equivalent assets to the Punjab National Bank Ltd., and the closure of all its branches in India, the appellant was surplus to its requirements. It, therefore, purported to give to the appellant two months' notice of its intention to terminate the said award and his services in terms of section 19(6) of the Industrial Disputes Act, 1947. The letter further proceeded to state that the appellant had not so far reported himself for duty at its office at Delhi which was the only office that it had in India since 10th March, 1951, and which was its Head Office and registered office before that date. The Appellant replied by his Advocate's letter dated 16th April, 1952, pointing out that in spite of his letter dated 10th October, 1951, addressed to the respondent the latter had not informed him as to when and where he should report for duty nor had it cared to respond to the same. He intimated that he had already made an application to the Government of India under section 20(1) of the Act and was awaiting the result thereof. The letter dated 3rd April, 1952, addressed by the respondent to the appellant was under the circumstances characterized by the appellant as evidently addressed to him with some ulterior motive. The respondent by its letter dated 10th May, 1952, addressed to the appellant reiterated that in spite of its asking the appellant to do so, he had failed to join its office. It stated that by its letter dated 3rd April, 1952 it had, clearly asked the appellant to join at Delhi but that the appellant had failed to do so and the conduct of the appellant clearly amounted to evasion of its instructions and absence from duty. It also stated that the notice dated 3rd April, 1952, had effect from the date of receipt thereof by the appellant, *viz.*, 9th April, 1952. No further reply was made by the appellant to the aforesaid letter but it appears that on 28th June, 1952, the respondent addressed a letter to the Under Secretary, Government of India, New Delhi, in answer to a communication dated 12th June, 1952, addressed by the latter to it that the appellant had already been paid arrears of his pay and allowances awarded by the Tribunal, that he was further asked by it to resume duty which he had failed to do, and, in the circumstances, he was being considered absent from duty. A copy of the letter dated 10th May, 1952, addressed by it to the appellant as also a copy of the letter of the same date addressed to the Chief Labour Commissioner (Central), New Delhi, were enclosed therewith for information. Nothing further transpired and on 8th October, 1952, the appellant filed the petition under section 20(2) of the Act for computation of the money value of the benefit of reinstatement because of non-implementation of the directions contained in the award by the respondent. He claimed a sum of Rs. 47,738 computed in the manner indicated in annexure "D" to that petition.

The respondent filed its written statement on 4th December, 1952, wherein the only plea taken was that there was a flagrant violation by the appellant of its instructions to join duty and that thereby the appellant had forfeited his right to claim reinstatement and all benefits flowing therefrom. It further stated that without prejudice and with a view to close his case it had offered him salary upto 19th June, 1952, by its letter dated 15th November, 1952, under intimation to the Conciliation Officer, Central Government, New Delhi, but the appellant had not replied to the same. The respondent further contended that the award in question was in force for only one year under section 19(3) of the Industrial Disputes Act, 1947, and that the same was therefore no longer in force and the respondent had already terminated the same. The claim of the appellant was therefore illegal and preposterous and the respondent prayed that the petition be dismissed with costs.

The petition came up for hearing before the Central Government Industrial Tribunal at Calcutta and it was observed that there were three aspects of the case, *viz.*, (i) whether the respondent refused to implement the award or the subsequent decision of the Labour Appellate Tribunal by not taking the appellant in service as directed by the Tribunals (as urged on behalf of the appellant); (ii) whether it was the petitioner who failed to resume his duty in spite of having been asked to do so and thereby forfeited the right conferred upon him in terms of the award (as urged by the respondent); (iii) To what relief or compensation in lieu of reinstatement the petitioner was entitled in the peculiar circumstances in which Bharat Bank ceased functioning soon after the award of December, 1950, and in the light of various other applications of other employees in which only retrenchment relief was awarded. On

the first two questions the Industrial Tribunal held in favour of the appellant and then proceeded to consider the third question, *viz.*, as to what relief or compensation in lieu of reinstatement the appellant was entitled to. After discussing the legal position it came to the conclusion that the measure of damages was that laid down under section 95 of the Code of Civil Procedure which put it at a figure of Rs. 1,000. It, therefore, assessed the value of reinstatement asked for at the sum of Rs. 1,000 and awarded that sum under section 20(2) of the Act. The other prayers of the appellant regarding arrears were not dealt with by the Industrial Tribunal in so far as they were the subject-matter of the application under section 20(1) of the Act which the appellant had already made to the Central Government. The appellant being aggrieved by the award of the Industrial Tribunal carried an appeal to the Labour Appellate Tribunal of India at Lucknow. A preliminary objection was taken by the respondent before the Labour Appellate Tribunal that the appeal was not competent under the provisions of section 7 of the Act. This objection found favour with the Labour Appellate Tribunal and holding that no substantial question of law was raised by the award it dismissed the appeal as incompetent. The appellant applied for and obtained special leave to appeal against this decision of the Labour Appellate Tribunal and that is how the present appeal is before us.

The two questions of fact, *viz.*, (i) whether the respondent refused to implement the award by not taking the appellant back in service and (ii) whether it was the appellant who had failed to resume his duty inspite of having been asked to do so and thereby forfeited the right conferred upon him in terms of the award are concluded by the findings arrived at by the Industrial Tribunal after due consideration of the correspondence which passed between the parties. We also have perused the said correspondence and we see no reason to disturb those findings. If, therefore, the appellant was ready and willing to be reinstated in the service of the respondent and was not guilty of any default in the matter of reporting himself for duty, the only question that remains to be considered by us here is what is the amount at which this benefit of reinstatement which was awarded to the appellant should be computed within the meaning of section 20 (2) of the Act. That was the only scope of the enquiry before the Industrial Tribunal and we have to determine what is the correct method of such computation.

Section 20(2) of the Act reads as follows:

"*Section 20:—Recovery of money due from an employer under an award or decision.*

(2) Where any workman is entitled to receive from the employer any benefit under an award or decision of an Industrial Tribunal which

is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to the rules made under this Act, be determined by that Industrial Tribunal, and the amount so determined may be recovered as provided for in sub-section (1)."

It may be noted that sub-section (1) above referred to provides that:

"Any money due from an employer under any award or decision of an Industrial Tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision."

The petition of the appellant proceeded on the basis that the benefit of reinstatement which he was entitled to receive under the terms of the award was capable of being computed in terms of money and that position was not disputed by the respondent. Even though there was no plea by the respondent in its written statement that there were any circumstances which made it impossible for the respondent to reinstate the appellant in its service except the failure of the appellant to resume his duty inspite of his having been asked to do so, the respondent was allowed to lead evidence in regard to the transfer of its liabilities and equivalent assets to the Punjab National Bank Ltd., and the closure of its banking business in all of its branches in India in order to show that the respondent was not in default and the value of the benefit of reinstatement in terms of money had thus dwindled into insignificance. Reliance was placed on the further circumstance that the Punjab National Bank Ltd., was not under any obligation to take into its employ the employees of the respondent, that, as a matter of fact, only 10% of the employees of the respondent had been absorbed by the Punjab National Bank Ltd., and in regard to the rest who were not so absorbed the only sums awarded to them by the Industrial Tribunals were salary for the notice month and retrenchment compensation. We are of opinion that these circumstances cannot be availed of by the respondent. It is no doubt true that the respondent transferred its liabilities and equivalent assets to the Punjab National Bank Ltd., some time in March 1951. The correspondence which was carried on between the appellant and the respondent, however, shows that in spite of such transfer to the Punjab National Bank Ltd., and the change of the name of the respondent from the Bharat Bank Ltd., to Bharat Nidhi Ltd., the respondent never contended that Bharat Nidhi Ltd., was not in a position to reinstate the appellant in its service. The correspondence proceeded all along on the footing that Bharat Nidhi Ltd., was in a position to reinstate the appellant in its service and as a matter of fact took up the plea that it had invited the appellant to join it at Delhi but that the appellant had failed and neglected to do so. Not only in its letter dated 10th May, 1952, did the Bharat Nidhi Ltd., state that the appellant's failure to join it at Delhi amounted to absence from duty but as late as 28th June, 1952, in its letter addressed to the Under Secretary to the Government of India, New Delhi, it reiterated that the appellant was asked to resume duty which he had failed to do and that in the circumstances he was being considered as absent from duty. It is clear, therefore, that the Bharat Nidhi Ltd., was all the time insisting that the appellant should join its service at Delhi and never took up the plea that the transfer of its liabilities and equivalent assets to the Punjab National Bank Ltd., and also the possibility of the Punjab National Bank Ltd., not absorbing the appellant in its employ were circumstances available to it by way of defence. The appellant having become surplus to its requirement was, of course, a plea taken by it in the course of the correspondence and by its letter dated 3rd April, 1952, the Bharat Nidhi Ltd., gave the appellant two months' notice of its intention to terminate the award and service of the appellant. In this behalf it also relied on the provisions of section 19(6) of the Industrial Disputes Act, 1947, but when it came to file its written statement it did not put forward that plea as an answer to the claim of the appellant under section 20(2) of the Act. We fail to understand, therefore, how these circumstances could ever have been taken into consideration by the Industrial Tribunal while arriving at the computation in terms of money of the benefit of re-instatement awarded to the appellant under the terms of the award. Such computation has, therefore, got to be made regardless of those circumstances which were put forward by the respondent as a last resort.

The Industrial Tribunal computed the money value of this benefit on the analogy of section 95 of the Code of Civil Procedure. It treated the non-implementation of the direction in the award made by an Industrial Tribunal on a par with the obtaining of arrest, attachment or injunction on insufficient grounds and awarded to the appellant the sum of Rs. 1,000, which it deemed to be a reasonable compensation for the injury caused to him. Even if the direction given by the Industrial Tribunal in its award be treated as a statutory obligation imposed on the respondent, this certainly could not be a measure of compensation or damages and it was fairly conceded by the learned counsel for the respondent that he was not in a position to support that part of the judgment.

Mr. Aiyangar who appeard for the appellant before us urged that the computation of the money value of the benefit of re-instatement awarded to the appellant should be made on one or the other of the three bases which he suggested for the purpose, *viz.*, (i) the order of re-instatement should be construed as entitling the appellant to the full tenure of service in accordance with the terms of the original contract and the appellant should be awarded compensation commensurate with the salary and the benefits which he would have earned during his service with the respondent for the full term of 55 years which was the age of superannuation; (ii) the non-implementation of the direction as to re-instatement should be treated as a breach of contract on the part of the respondent and the appellant should be awarded damages for breach of the contract which would be calculated again on the same basis; (iii) the non-implementation should be treated as a breach of a statutory duty and the appellant should be awarded damages for such non-implementation as on a tort committed by the respondent. The appellant would in that event be entitled not only to general damages but also special damages by reason of oppressive conduct on the part of the respondent.

The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained. "They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he is fitted. If the contract expressly provides that it is terminable upon, *e.g.*, a month's notice, the damages will ordinarily be a month's wages ....No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages." (Chitty on Contracts, 21st Edition, Vol. 2, p. 559, para 1040).

If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured *prima facie* and subject to the rule of mitigation in the salary of which the master had deprived him. (Vide *Collier* v. *Sunday Referee Publishing Co., Ltd.*, (1940) 4 All E. R. 234, 237). The servant would then be entitled to the whole of the salary, benefits, etc., which he would have earned had he continued in the employ of the master for the full term of the contract, subject of course to mitigation of damages by way of seeking alternative employment.

Such damages would be recoverable by the servant for his wrongful dismissal by the master only on the basis of the master having committed

a breach of the contract of employment. If, however, the contract is treated as subsisting and a claim is made by the servant for a declaration that he continues in the employ of the master and should be awarded his salary, benefits, etc., on the basis of the continuation of the contract, the servant would be entitled to a declaration that he continues in the employ of the master and would only be entitled to the payment of salary, benefits etc., which accrued due to him up to the date of the institution of the suit.

The benefit of reinstatement which is awarded to a workman under the terms of the award does not become a term or condition of the contract between him and the employer. There are no doubt other reliefs by way of changes in the terms and conditions of employment which when awarded by the appropriate tribunal might be treated as implied terms of the contract between the employer and the workers to whom the award applies and would enure for the benefit of the worker until varied by appropriate legal proceedings. There is no statutory provision in that behalf contained in the Industrial Disputes Act, 1947. But it is interesting to note that in the Industrial Disputes Order, 1951, obtaining in England there is enacted section 10 which runs as follows:

"*Section 10*: *Award to be implied term of contract*: Where an award on a dispute or issue has been made by the Tribunal then as from the date of the award or from such other date, not being earlier than the date on which the dispute or issue to which the award relates first arose, as the Tribunal may direct, it shall be an implied term of the contract between the employer and workers to whom the award applies that the terms and conditions of employment to be observed under the contract shall be in accordance with the award until varied by agreement between the parties or by a subsequent award of the Tribunal or until different terms and conditions of employment in respect of the workers concerned are settled through the machinery of negotiation or arbitration for the settlement of terms and conditions of employment in the trade or industry or section of trade or industry or undertaking in which those workers are employed."

Whatever be the position in regard to the terms and conditions of employment thus varied in accordance with the terms of the award, the benefit of reinstatement awarded to a workman certainly cannot be treated as part of the contract between him and the employer. The effect of an order of reinstatement is merely to set at nought the order of wrongful dismissal of the workman by the employer and to reinstate him in the service of the employer as if the contract of employment originally entered into had been continuing. The terms and conditions of the contract which obtained when the workman was in the employ of the employer prior to his wrongful dismissal which has been set aside continue to govern the relations between the parties and the workman continues in the employ of the employer under those terms and conditions. There is no variation of those terms and conditions of the contract. The only thing which happens is that the workman is reinstated in his old service as before.

The monetary value of the benefit of such reinstatement is therefore to be computed not on the basis of a breach of the contract of employment nor on the basis of a tort alleged to have been committed by the employer by reason of the non-implementation of the direction for reinstatement contained in the award. The analogy of a suit for a declaration that the workman is continuing in the employ of the employer and that he should be paid the salary and benefits, etc., which would have been earned by him up to the date of the institution of the suit also does not strictly apply for the simple reason that the workman here is not asking for a declaration that he is still continuing in service on the ground that there was a termination of his service after the award, which termination is void; What he is asking for is a computation in terms of money of the benefit of reinstatement which was granted to him by the Industrial Tribunal and which the employer did not implement.

The purpose of the enactment of section 20(2) of the Act is not to award to the workman compensation or damages for a breach of contract or a breach of a statutory obligation on the part of the employer. Any money which is due from an employer under the award can, by virtue of the provisions of section 20(1) of the Act, be recovered by the appropriate Government on an application made to it by the workman. Where, however, any benefit which is not expressed in terms of money is awarded to the workman under the terms of the award it will be necessary to compute in terms of money the value of that benefit before the workman can ask the appropriate Government to help him in such recovery. Section 20, sub-section (2), provides for the computation in terms of money of the value of such benefit and the amount at which such benefit should be computed is to be determined by the Industrial Tribunal to which reference would be made by the appropriate Government for the purpose. Such computation has relation only to the date from which the reinstatement of the workman has been ordered under the terms of the award and would have to be made by the Industrial Tribunal having regard to all the circumstances of the case. The Industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the

possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including re-instatement under the terms of future awards by Industrial Tribunals in the event of industrial disputes arising between the parties in the future.

Even in the case of ordinary contracts between master and servant such considerations have been imported by the courts. The observations of Greer, L. J., in *Salt* v. *Power Plant Co., Ltd.,* (1936) 3 A.E.R. 322 at p. 325 are apposite in this context:

"This is the case of a man who had, according to my view, got an engagement which was to last for life, or at any rate for the joint lives of himself and the company, but I think for his life, because I think there are authorities to the effect that if a company winds up, that is a dismissal of the servants, and they can then prove for damages and get their dividend, whatever it may happen to be. Fortunately, the company has not been wound up, but in estimating the damages, of course, the tribunal estimating them will have to take into consideration the fact that at any time after June 26, 1935, it might have appeared to the directors that they had good reasons for terminating the plaintiff's services, reasons connected with his conduct. The present value of what his salary would be for the rest of his life must also be considered, and there must also be taken into account the fact that he is a man who might at any time terminate his service by his life coming to an end, and other matters with which I need not deal."

These and similar considerations would equally be germane in the matter of the computation in terms of money of the value of the benefit of re-instatement which was awarded to the appellant in the case before us.

Turning therefore to the terms and conditions of employment we find that the respondent had enacted bye-laws for the employees of Bharat Bank Ltd., which were applicable to the appellant. Bye-law 9 provides that an employee may resign from the service of the respondent by giving one month's notice. Bye-law 11 provides that the respondent shall have the option to terminate an employee's service on giving him the same notice as he is required to give to the respondent under rule No. 9 (which can be served even when the employee may be on leave), or by paying him salary for the notice period in lieu of notice. In the absence of an agreement to the contrary, provided that no notice shall be necessary when he is dismissed on account of misconduct, dishonesty, gross-negligence, insubordination or disregard of any of the standing instructions. Bye-law 13 lays down that every employee is required to retire on attaining the age of 55 years. He may be retained in service after that age only with the express sanction of the authorities but such extension of service will not exceed more than 2 years at a time.

If regard be had to these terms and conditions, it was possible for the respondent to terminate the service of the appellant by paying him one month's salary in lieu of notice. If there was nothing more, the appellant would have been entitled only to that amount as and by way of compensation for non-implementation of the direction for re-instatement. There was however a finding recorded by the Industrial Tribunal which made the award dated December 5, 1950, that the respondent had been guilty of unfair labour practice and victimization and the ordinary right, which the respondent would have been in a position to exercise, of terminating the service of the appellant on giving him one month's salary lieu of notice could not be availed of by the respondent. On an industrial dispute raised by the appellant on the respondent's terminating his service at any time in the future, it would be open to the Industrial Tribunal to go into the question whether the termination of the appellant's service by the respondent was justified and if the Industrial Tribunal came to an adverse conclusion, it would be open to it to re-instate the appellant in the service of the respondent with all back salary, allowances, etc. Even if the respondent wanted to retrench the appellant, the same considerations would arise with a possible result against the respondent. On the other hand, there was also a possibility of the respondent being in the right and being entitled to lawfully terminate the service of the appellant in which event of course the appellant would be without any redress whatever. In computing the money value of the benefit of reinstatement the Industrial Tribunal would also have to take into account the present value of what his salary, benefits, etc., would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such re-instatement was ordered under the terms of the award.

Having regard to the considerations detailed above it i simpossible to compute the money value of this benefit of re-instatement awarded to the appellant with mathematical exactitude and the best that any Tribunal or Court would do under the circumstances would be to make as correct an estimate as is possible bearing of course in mind all the relevant factors pro and con. We have ourselves devoted very anxious thought to this aspect of the matter and we have come to the conclusion that, having regard to all the circumstances of the case, it would be reasonable to compute the benefit of reinstatement which was awarded to the appellant at an amount of Rs. 12,500 (Rupees twelve thousand and five hundred only).

We accordingly allow the appeal and set aside the decision of the

Labour Appellate Tribunal of India, Lucknow, as well as the award made by the Central Government Industrial Tribunal, Calcutta and award that the appellant shall recover from the respondent the said sum of Rs. 12,500 (Rupees twelve thousand and five hundred only) being the computation of the money value of the benefit of re-instatement awarded to him under the terms of the award of the Central Government Industrial Tribunal at Calcutta dated 5th December, 1950. The respondent will pay the appellant's costs of this appeal as well as the proceedings before the Industrial Tribunal and the Labour Appellate Tribunal.

[IN THE BOMBAY HIGH COURT.]

J. G. VAKHARIA

v.

REGIONAL PROVIDENT FUND COMMISSIONER, BOMBAY.

Chagla, C.J., and Dixit, J.

June 28, 1956.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 1 (3)—SCOPE AND OBJECT OF—INTERPRETATION OF SOCIAL LEGISLATION—INDUSTRIAL ESTABLISHMENT SPLIT UP INTO SMALLER UNITS TO AVOID EMPLOYEES' PROVIDENT FUNDS ACT, 1952—WHETHER SPLITTING UP SHOULD BE RECOGNISED—DUTY OF COURTS TO PREVENT SUBTERFUGES TO AVOID IMPLEMENTATION OF SOCIAL LEGISLATION.

A partnership consisting of a father and two major sons, which was carrying on the business of silk manufacture, closed down its business on October 22, 1953, and the same business was restarted as five separate units, owned respectively by the father and four sons, on November 4, 1953. If the original partnership business had been continued, the workmen employed by the concern would have been entitled to the benefits of the Employees' Provident Funds Act, 1952, which would have become applicable to the factory on November 12, 1953, on which date the factory would have completed three years from the date of its establishment. Moreover, by splitting the business into five units each unit had less than 50 workmen and thereby none of the units would fall within the scope of the Employees' Provident Funds Act, 1952. Held, *that as there was practically no change in the processes and the work was continued on the same machinery, the formation of five separate units out of one factory was a clear subterfuge intended to defeat the rights of the workmen who would have benefited by the Employees' Provident Funds Act, 1952.*

Held, also *that the analogy of strict interpretation of taxing statutes could not be applied to the interpretation of social legislation and that Courts must not countenance any subterfuge which would defeat the provisions of a social legislation and must, if necessary, even strain the language of the enactment in order to achieve the purpose which the Legislature had in placing the enactment on the statute book, and thus prevent such subterfuges succeeding in their object.*

Special Civil Application No. 829 of 1956.

Vimadalal for the appellant.

Seervai for the respondent.

JUDGMENT.

CHAGLA, C.J.—This petition discloses a rather glaring attempt at resorting to a subterfuge in order to defeat the law and the question that we have to consider is whether the subterfuge has succeeded and whether the subterfuge should be permitted to circumvent the law of the land. The petitioner is the father of two major and two minor sons. In October, 1949, there was a partnership between the petitioner and his father in the name of Standard Silk Mills and this partnership was doing business of manufacturing silk and dealing in silk yarn and silk cloth. Although the partnership was commenced in October, 1949, the actual business of manufacturing silk was started from 13th November, 1950. It seems that subsequent to 1950, the father died and there was a new partnership sometime in November, 1951, consisting of the petitioner and his two major sons. On 22nd October, 1953, this partnership purported to close its manufacturing business and it entered into an agreement which is dated 24th October, 1953, which sets out the fact that the business of manufacturing silk was being closed on account of slackness in business and on account of lack of purchasers of goods and on account of financial difficulties and, therefore, this business was being discontinued from 22nd October, 1953. This agreement further recorded that in future if any of the parties wanted to start any department, that party would be entitled to start that department of his own accord and at his own cost by executing rent notes to the partnership firm of Standard Silk Mills. Lest anyone should throw any doubt either on the sanity of the parties to this agreement or to the wisdom of the transaction which it was evidencing, at the foot of the agreement it is solemnly stated that the parties were signing this agreement without any intoxication. It is the case of the petitioner that subsequent to this agreement five units were started which did manufacturing processes which were being originally done by the Standard Silk Mills and these units were:

(1) Naranjan Weaving Works,
(2) Jayant Weaving Works,
(3) Govind Throwing Works,
(4) Tara Processing Works, and
(5) Hemu Finishing and Dyeing Works.

In respect of these five units five rent notes were executed in favour of the Standard Silk Mills by the petitioner and his four sons, two of whom were minors. It also appears that the licence issued to the Standard Silk Mills under the Factories Act, was surrendered and separate licences were issued to the five units and under section 11 (1) of the Bombay Industrial Relations Act, all these five units were recognized as five separate undertakings. It is also the case of the petitioner that there were separate assessments of these five units.

On these facts the petitioner contends before us that there is no factory now in existence to which the Employees' Provident Funds Act can apply, and therefore, the demand made by the Regional Provident Fund Commissioner upon him to pay the contribution necessary under that Act is an illegal demand. The Employees' Provident Funds Act, was passed in 1952, and under sub-section (3) of section 1, it applied in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed, and it is not disputed that the factory in question is engaged in the industry specified in Schedule 1. But the contention of the petitioner is that if these five units are to be treated as separate units, then none of these units employ fifty or more persons. Attention is also drawn to section 16 which exempts from the operation of the Act under sub-section (b) any other factory, established whether before or after the commencement of the Act, unless three years have elapsed from its establishment. These factories are known as infant factories and the contention of the petitioner is that as these five factories came into existence on 4th November, 1953, they are infant factories and the Act cannot apply to them. The answer given by the Regional Provident Fund Commissioner is that the factory to which the Act is sought to be applied is the Standard Silk Mills. Admittedly, it came into existence on 13th November, 1950; admittedly if that factory is looked upon as a factory constituted by all the five units now separately working, it employs more than fifty workers, and, therefore, three years after it came into existence the Act applied to it and there is a liability upon that factory to make the contribution to the Employees' Provident Fund as laid down in the Act.

There are certain striking and salient facts in this case to which attention must be drawn. The five units which it is suggested constitute five separate factories are all run by members of one undivided family. In the first place, there is the father himself, the petitioner, and then we have not only the two major sons but also the two minor sons. The premises in which these so-called factories are being run continue to belong to the partnership formed of The Standard Silk Mills and even the machinery for the different processes also belong to the partnership. The Standard Silk Mills originally did the work of various processes which resulted in the manufacture of silk and it also sold yarn and cloth. Those very processes in identical condition and in identical location are being carried on with only this difference that instead of those processes being carried on by the Standard Silk Mills, they are now allowed to be carried on by five separate units. In this connection it is important to draw attention to the rent notes that were signed by the five persons who were running these five units. There is no lease of the premises at all. The only lease is of the machinery and even this lease is not for any specific duration; but the lease agrees to hand over possession of the said machineries as and when demanded without any notice and dispute. If the lessee does labour work on the machineries taken on lease, then they agree that the first preference would be given to the lessor and it is only if the lessor cannot afford to give the lessee labour work that the lessee would be entitled to do the labour work of somebody else. A right is also expressly reserved for workmen working in one part of the premises going to another. Therefore, this lease excepting the clever device or subterfuge does not bring about any change whatsoever in the conditions that prevailed before this lease was executed and subsequent to it. The same machinery is being used for the same purpose. Instead of the Standard Silk Mills manufacturing silk by different processes, the silk is being manufactured by the very same processes on the very same machinery by these five units artificially set up which are under a clear obligation to manufacture silk by various processes on behalf of what might be called the parent company.

It is also significant to consider the reason given by the petitioner for closing the Standard Silk Mills. In the first place, the date of closure itself leads to a clear inference as to the reason for bringing about this change. 13th November, 1950, is the date when the factory started working. Three years would have elapsed on 12th November, 1953, and about a month before that eventful date the partners of the Standard Silk Mills decided to work the factory not as it was being worked but in a different way but for the same results and for the same purpose. Now, it is difficult to understand how we can be asked seriously to accept the reason given by Mr. Vimadalal for closing that factory and the reason

is, as appears from the agreement to which reference has been made already, that it was because of losses incurred that the partners decided to close this part of their business. We would have understood the reason if this business had been sold to some other person. We would have understood if the Standard Silk Mills had nothing whatever to do with manufacturing of silk. But when this business is divided between the members of the same family—between the father and four sons—surely it could not have been expected that the same business being run by five units would be cheaper and likely to produce more profits than the same business being run by one unit and as we have pointed out, it is not left to these units to do such business as they like. In the very forefront of the lease to which reference has been made it is stated that the units must first do the work given to them by the partners. Therefore, in no sense of the terms could it be said that the partnership ceased to do the work of manufacturing silk. The work continued and it continued on the same machinery and by means of the same processes. Under the circumstances it is difficult to understand how it could be said that the reason for closing the partnership was losses incurred by the partners, and as a matter of fact, as Mr. Seervai has drawn our attention to the fact, in a letter written by the Labour Officer on behalf of the petitioner, dated 14th May, 1955, to the Secretary, Ministry of Labour, Government of India, New Delhi, the reason for closing this partnership was not the incurring of losses but the fact that the partners could not carry on the business of the concern smoothly and there were some troubles among themselves. It should be noted that these partners were the father and the two sons and leases were given to these very sons to carry on the processes resulting in the manufacture of silk which the Standard Silk Mills was originally doing. Therefore, in our opinion, it is clear that the factory originally started on 13th November, 1950, did not cease to function and on a true view of the transaction five new factories did not come into existence on 4th November, 1953, and the same original factory continued and continues to function till to-day. These five units are not independent units; they are clearly interdependent and between them they carry on the same processes which the Standard Silk Mills was carrying on and the processes are carried on for the benefit of the Standard Silk Mills and for no one else.

Mr. Seervai has also drawn our attention to the definition of "employee" in the Act which *inter alia* means any person who gets his wages directly or indirectly from the employer. Now, even if it could be said that the employees of these five units do not get their wages directly from the Standard Silk Mills, they certainly get them indirectly from these mills because these employees are employed to carry out and execute the work given to these units by the Standard Silk Mills and although the hand which might pay these employees may be the hand of the particular individual in charge of any one unit, in the real sense of the term these wages are paid for by the Standard Silk Mills for whose purpose these employees are employed. Mr. Vimadalal urged upon us that although the transaction may look odd—and he was describing it rather mildly—even so, if legally five units could exempt themselves from the operation of the Act, then no liability should be imposed upon them merely because the Court may not approve the manner in which the transaction was effected. It is a well-settled canon of taxation law that a subject is entitled to avoid paying tax if legally he can do so. Even that canon is looked at rather askance in the context of times that we are living in, but the Act that we are dealing with is not a taxation law. It is a social legislation and the canon of construing a social legislation is very different from the canon of construing a taxation law. The Court must not countenance any subterfuge which would defeat the provisions of a social legislation and the Court must if necessary even strain the language of the Act in order to achieve the purpose which the Legislature had in placing this legislation on the statute book. Therefore, not only must the Court disapprove all subterfuges to defeat a social legislation but must actively try to prevent such subterfuges succeeding in their object. In our opinion, this is a clear case of a subterfuge and this subterfuge cannot be permitted to succeed so as to defeat the rights of the employees who are benefited by the Employees' Provident Funds Act.

The result is that the petition fails and must be dismissed with costs.

[IN THE SUPREME COURT OF INDIA.]

UNION OF INDIA
v.
T. R. VARMA.

S. R. Das, C.J., Venkatarama Aiyar, B. P. Sinha, J. L. Kapur and A. K. Sarkar, JJ.

September 18, 1957.

MISCONDUCT—ENQUIRY INTO—NATURE OF—RULES OF EVIDENCE ACT, 1872—WHETHER APPLICABLE—PRINCIPLES OF NATURAL JUSTICE—MEANING OF.

On the scope of the enquiry to be held into the misconduct committed by a public servant before awarding punishment: Held, (*i*) *that where there are two versions of an enquiry, in flat contradiction of each other, the statement of the Presiding Officer of the enquiry in regard to it should generally be taken to be correct*; (*ii*) *that the Evidence Act, 1872, has no application to enquiries conducted by Tribunals, even though they may be judicial in character; they have to observe rules of natural justice in the conduct of the enquiry and if they do so, their decision cannot be questioned on the ground that they did not follow the procedure which obtains in Courts of law.*

Civil Appeal No. 118 of 1957.

C. K. Daphtary (*R. Ganapathy Iyer* and *R. H. Dhebar* with him) for the Union of India.

Purshottam Tricumdas (*T. S. Venkataraman* and *K. R. Chaudhury* with him) for the respondent.

JUDGMENT.

The following extract is from the Judgment of the Court delivered by VENKATARAMA AIYAR, J.

* * * *

The main ground on which the respondent attacked the order dated September 16, 1954, was that at the enquiry held by Mr. Byrne, he was not given an opportunity to cross-examine the witnesses, who deposed against him, and that the findings reached at such enquiry could not be accepted. But the question is whether that allegation has been made out. In para 7 of his petition, the respondent stated:

"Despite repeated verbal requests of the petitioner, the Inquiry Officer did not permit him to cross-examine any witness, who deposed against him."

But this was contradicted by Mr. Byrne, who filed a counter-affidavit, in which he stated:

"(4) That it is incorrect that no opportunity was given to the petitioner at the time of the oral enquiry to cross-examine the witnesses who had deposed against the petitioner.

(5) That all witnesses were examined in petitioner's presence and he was asked by me at the end of each examination whether he had any questions to put.

(6) That the petitioner only put questions to one witness Shri P. Govindan Nair, and to others he did not."

On this affidavit, Mr. Byrne was examined in Court, and he repeated these allegations and added:

"I have distinct recollection that I asked Shri T. R. Varma to put questions in cross-examination to witnesses."

It was elicited in the course of his further examination that he did not make any note that he asked Shri T. R. Varma to put questions in cross-examination to witnesses, and that that might have been due to a slip on his part.

We have thus before us two statements, one by Mr. Byrne and the other by the respondent, and they are in flat contradiction of each other. The question is which of them is to be accepted. When there is a dispute as to what happened before a Court or Tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct, and there is no reason why the statement of Mr. Byrne should not be accepted as true. He was admittedly an officer holding a high position, and it is not suggested that there was any motive for him to give false evidence. There are moreover, features in the record, which clearly show that the statement of Mr. Byrne must be correct. The examination of witnesses began on April 20, 1953, and four witnesses were examined on that date, among them being Sri C. B. Tawakley. If, as stated by the respondent, he asked for permission to cross-examine witnesses, and that was refused, it is surprising that he should not have put the complaint in writing on the subsequent dates on which the enquiry was continued. To one of the witnesses, Sri. P. Govindan Nair, he did actually put a question in cross-examination, and it is difficult to reconcile this with his statement that permission had been refused to cross-examine the previous witnesses. A reading of the deposition of the witnesses shows that the Enquiring Officer himself had put searching questions, and elicited all relevant facts. It is not suggested that there was any specific matter in respect of which cross-examination could have been but was not directed. We think it likely that the respondent did not cross-examine the witnesses, because there was nothing left for him to cross-examine. The learned Judges gave two reasons for accepting the statement of the respondent in preference to that of Mr, Byrne. One is that

there was no record made in the depositions of the witnesses that there was no cross-examination. But what follows from this? That, in fact there was no cross-examination, which is a fact; not that the request of the respondent to cross-examine was disallowed. Then again, the learned Judges say that the respondent was present at the hearing of the writ petition before them, that they put questions to him, and formed the opinion that he was sufficiently intelligent, and that it was difficult to believe that he would not have cross-examined the witnesses. We are of opinion that this was a consideration which ought not to have been taken into account in a judicial determination of the question, and that it should have been wholly excluded. On a consideration of the record and of the probabilities, we accept the statement of Mr. Byrne as true, and hold that the respondent was not refused permission to cross-examine the witnesses, and that the charge that the enquiry was defective for this reason cannot be sustained.

The respondent attacked the enquiry on two other grounds, which were stated by him in his petition in the following terms:

"(C) That the petitioner was cross-examined and was not enabled to make an oral statement on his own behalf.

(D) That the defence witnesses were not given an opportunity to tell their own version or to be examined by the petitioner as their depositions were confined to answers in reply to questions put by the Inquiry Officer."

In substance, the charge is that the respondent and his witnesses should have been allowed to give their evidence by way of examination-in-chief, and that only thereafter, the officer should have cross-examined them, but that he took upon himself to cross-examine them from the very start and had thereby violated well-recognised rules of procedure. There is also a complaint that the respondent was not allowed to put questions to them.

Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in *New Prakash Transport Co.* v. *New Suwarna Transport Co.*, [1957] S.C.R. 98, where this question is discussed.

We have examined the record in the light of the above principles, and find that there has been no violation of the principles of natural justice. The witnesses have been examined at great length, and have spoken to all relevant facts bearing on the question, and it is not suggested that there is any other matter, on which they could have spoken. We do not accept the version of the respondent that he was not allowed to put any questions to the witnesses. Indeed, the evidence of Sri Jai Narayan at page 188 of the Paper Book shows that the only question on which the respondent wished this witness to testify was put to him by Mr. Byrne. The evidence of Sri Bhan and Sri Fateh Singh was, it should be noted, wholly in support of the respondent. The findings of Mr. Byrne are based entirely on an appreciation of the oral evidence taken in the presence of the respondent. It should also be mentioned that the respondent did not put forward these grounds of complaint in his explanation dated September 11, 1953, and we are satisfied that they are wholly without substance, and are an afterthought. We accordingly hold, differing from the learned Judges of the Court below, that the enquiry before Mr. Byrne was not defective, that the respondent had full opportunity of placing his evidence before him, and that he did avail himself of the same. In this view, it becomes unnecessary to express any opinion on the second question, which was raised by the learned Solicitor-General.

In the result, we allow the appeal, set aside the order of the Court below, and dismiss the writ application. There will be no order as to costs.

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