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INDIAN FACTORIES JOURNAL

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

WITH

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

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Employees' Provident Funds Scheme—Exemptions.

Notification No. S.R.O. 3416 dated New Delhi, the 17th October, 1957.*

In exercise of the powers conferred by section 17 of the Employees' Provident Funds Act, 1952 (19 of 1952) read with the notification of the Government of India, Ministry of Labour No. S.R.O. 1860, dated the 31st May, 1954 published in Part II, Section 3 of the Government of India Gazette dated the 5th June, 1954, I. S. N. Mubayi, Central Provident Fund Commissioner, hereby exempt each of the factories mentioned in Schedule I hereto annexed with effect from the date mentioned against each from the operation of the Employees' Provident Funds Scheme 1952, subject to the conditions specified in Schedule II hereto annexed, which are in addition to the conditions mentioned in sub-section (1) of the said section.

SCHEDULE I

S. No.	Name of the factory	Effective date of exemption
1	2	3
1.	Budge Budge Jute Mills Co. Ltd. (No. 1) Budge Budge, 24-Parganas ...	1-11-1952
2.	Budge Budge Jute Mills Co. Ltd. (No. 2) Budge Budge 24-Parganas ...	"
3.	Hoogly Mills Co. Ltd., 9, Garden Reach Road, Calcutta-23	"
4.	Shamnagar Jute Factory Co. Ltd., (South) No. 1 Mill, Garulia, 24-Parganas	"
5.	Shamnagar Jute Factory Co. Ltd., (South) No. 2 Mill, Garulia, 24-Parganas. ...	"
6.	Titaghur Jute Factory Co. Ltd., No. 1 Mill, Titaghur, 24-Parganas. ...	"
7.	Union Jute Co. Ltd., North Mill, 12, Convent Lane, Entally, Calcutta. ...	"
8.	Naihati Jute Mills Co. Ltd., Naihati, 24-Parganas ...	"
9.	Aukland Jute Co. Ltd., Jagatdal, 24-Parganas ...	"
10.	Caledonian Jute Mills Co. Ltd., Budge Budge, 24-Parganas ...	"
11.	Cheviot Mills Co. Ltd., Budge Budge, 24-Parganas ...	"
12.	Orient Jute Mills Co. Ltd., Budge Budge 24-Parganas ...	"
13.	Birla Jute Manufacturing Co. Ltd., Shamganj, Birlapur, 24-Parganas ...	"
14.	Meghna Mills Co. Ld., South Mill Jagat Dal, 24-Parganas...	"
15.	Meghna Mills Co. Ltd., North Mill, East Ghosepara Road, Bhatpara, 24-Parganas ...	"
16.	Nuddea Jute Mills Co. Ltd., North Mill, Naihati, 24-Parganas ...	"
17.	Nuddea Jute Mills Co. Ltd., South Mill, Naihati, 24-Parganas ...	"

*Gaz. of India, 26-10-1957, Pt. II, Sec.-3, p. 2431.

1	2	3
18.	Agarpara Co. Ltd., P.O. Kamarhatty, 24-Parganas ...	1-11-1952
19.	Kinnison Jute Mills Co. Ltd., (No. 1), Titaghur, 24 Parganas ...	"
20.	Kinnison Jute Mills Co. Ltd., (No. 2), Titaghur, 24-Parganas ...	"
21.	Lothian Jute Mills Co. Ltd., Budge Budge, 24-Parganas ...	"
22.	Albion Jute Mills Co. Ltd., Budge Budge, 24-Parganas ...	"
23.	Titaghur Jute Factory (No. 2) Titaghur, 24 Parganas ...	"
24.	Champadany Jute Co. Ltd., Champadany (Hoogly) ...	"
25.	Wellington Jute Mills, Rishra, Hoogly ...	"
26.	New Central Jute Mills Co. Ltd., 236, Jaibibi Lane, Jhusuri, Howrah ...	"
27.	Keshoram Cotton Mill Ltd., 42, Garden Reach Road, Calcutta-24 ...	"
28.	Dunbar Mills Ltd., (No. 1 and 3 Mills), Shamnagar, 24-Parganas ...	"
29.	Dunbar Mills Ltd., (No. 4 Mill), Shamnagar, 24-Parganas	"
30.	Basanti Cotton Mills Ltd., Panihati, 24-Parganas ...	"
31.	The Bengal Lux ri Cotton Mills, Ltd., Rishra, Hoogly ...	"
32.	Model Knitting Industries Ltd., Munshiganj Road, Calcutta-23 ...	"
33.	Jay Shri Textiles Ltd., Rishra, Hoogly ...	"
34.	India Paper Pulp Co. Ltd., Hazinagar, Naihati, 24-Parganas ...	"
35.	Bhartia Electric Steel Co. Ltd., 8, Swinhoe Street, Bellyganj, Calcutta-19 ...	"
36.	The General Electric Co. of India (Mfg.) Ltd., Taratolla Road, Garden Reach, Calcutta-24 ...	1- 4-1953
37.	Hindustan Motors Limited, Uttar Para, Hoogly ...	1-11-1952
38.	Phillips Electrical Co. (India) Ltd., Calcutta-24 ...	1-7-1953
39.	The Orient General Industries Ltd., 6, Ghore Bibi Lane, Calcutta ...	1- 5-1954
40.	Vivekananda Industrial Engineers Perambur, Madras ...	1-11-1952
41.	The Buckingham & Carnatic Co. Ltd., Perambur Barracks, Madras ...	"
42.	Binny's Engineering Works, Ltd., Springhavan, Harbour, Madras ...	"
43.	Richardson & Cruddas Ltd., P.B. 1276, Madras-1 ...	"
44.	The Central Scientific Supplies Co. Ltd., 2, Agram Road, Tambaram ...	"
45.	Oldham & Sons (India) Ltd., Saidapet, Madras-16 ...	1- 4-1954
46.	T. I. Cycles of India Ltd., Ambattur near Madras ...	1- 1-1955
47.	Ikkadu Village Industries Association, Trivallur, P. O. Chinglepat Dt. ...	1-11-1952
48.	Virudhunagar Textile Mills Ltd., P. B. No. 39, Virudhunagar ...	1-12-1955
49.	The Tuticorin Spinning Mills, Tuticorin ...	1-3-1956

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50.	C. Gopal Nayagar & Sons, Basin Foundry, Madras-21 ...	1-11-1952
51.	M/s Palaniandavar Mills Ltd., Udamalpet, Coimbatore Dt. ...	1- 9-1953
52.	Saroja Mills Limited, Singanallur P. O., Coimbatore Dt. ...	1-11-1952
53.	The Gounder & Co. Ltd., Goods Shed Road, Pallachi, Coimbatore Dt. ...	1-12-1953
54.	The Coimbatore Cotton Mills Ltd., Singanallur, P. O. Coimbatore ...	1-11-1952
55.	Shri Rajindera Mills Ltd.,Gandhinagar Salem, Salem Dt. ...	"
56.	Jawahar Mills Ltd., Suranmangalam Post, Salem Dt. ...	1- 8-1953
57.	Mettur Industries Ltd., Mettur, Salem Dt. ...	1-11-1952
58.	Thiakesar Alai, Manaparai, Trichinopoly Dt. ...	"
59.	A.R.P. Sarathi Dyeing & Handloom Weaving Factory, Madurai ...	"
60.	Sree Menakshi Mills Ltd., P.B. No. 1, Madurai ...	"
61.	Loyal Textile Mills Ltd., Kovilpathi, Tinunelveli Dt. ...	"
62.	St. Joseph Industrial School and Press, P. B. No. 6, Coimbatore ...	1-10-1953
63.	T. V. Sundaram Iyengar & Sons Ltd., Madurai, Madurai Dt. ...	1-11-1952
64.	Raman & Raman Ltd., P. B. No. 22, Kumbakonam ...	"
65.	M/S Voltas Ltd., Mount Road, Madras ...	"
66.	Technological Institute of Textiles, Bhiwani ...	"
67.	Shri Gopal Paper Mills, Jamnanagar ...	"
68.	Oriental Carpet Manufacturers, Amritsar ...	"
69.	E. Hill & Co. Ltd., Mirzapur ...	"
70.	Upper India Couper Paper Mills Ltd., Lucknow ...	"
71.	Bijli Cotton Mills, Hathras (Aligarh) ...	1- 7-1953
72.	Modi Lantern Works, Modinagar, (Meerut) ...	1- 1-1953
73.	Hind Lamps Limited, Shikohabad ...	1-11-1952
74.	J. K. Iron & Steel Co. Ltd., Kanpur ...	"
75.	Modi Spg. & Wvg. Mills Co. Ltd., Modinagar ...	"
76.	J. K. Jute Mills Co. Ltd., Kanpur ...	"
77.	J. K. Cotton Spg. & Wvg. Mills Co. Kanpur ...	"
78.	J. K. Cotton Manufactures Ltd., Kanpur ...	"
79.	East India Carpet Co. Ltd., Agra ...	"
80.	Laxmi-ratan Cotton Mills Co. Ltd., Kanpur ...	1 -7-1953
81.	New Victoria Mills Co. Ltd., Kanpur ...	1- 6-1953
82.	East India Carpet Company, Jaipur ...	1-11-1952
83.	Bombay Metal & Alloys Mfg. Co. (P) Ltd., Mazagon, Bombay-10 ...	1- 2-1954
84.	Estrella Batteries Ltd., Dhaware Road, Bombay-19 ...	1-11-1952
85.	Hind Cycles Ltd., Worli, Bombay-18 ...	"

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86.	The Empress Iron & Brass Works Burjorji Pestonji & Sons (P) Ltd., Bombay-1 ...	1-11-1952
87.	Indian Tool Manufacturers Ltd., Bombay-22 ...	"
88.	Investa Machine Tools & Engineering Co. Ltd., Bombay-12 ...	"
89.	Murphy Radio of India Ltd., Bombay-12 ...	"
90.	National Electrical Industries Ltd., Bombay-12 ...	"
91.	National Ekco Radio & Eng. Co. Ltd., Bombay-11 ...	"
92.	New Standard Eng. Co. (P) Ltd., Bombay-13 ...	"
93.	Oriental Metal Pressing Works, (P) Ltd., Bombay-18 ...	"
94.	Structural Eng. Works Ltd., Bombay-15 ...	"
95.	Premier Automobiles Ltd., Kurla, Bombay ...	1 -8-1953
96.	Premier Automobiles Ltd., Antop Hill, Vedala, Bombay	"
97.	Sankey Electrical Stampings Ltd., Bhandup, Bombay	1-11-1952
98.	National Machinery Manufacturers Ltd., Kalwa, Thana, Bombay ...	1- 4-1954
99.	Jyoti Ltd., Baroda ...	1-11-1952
100.	Kamani Metal & Alloys Ltd., Kurla, Bombay ...	1- 2-1954
101.	Larsen & Toubro Ltd., Powari, North Kurla Post, Bombay ...	1-11-1952
102.	Voltas Ltd., Chinchpokli Road, Bombay-12 (M/S Volkart Bros.) ...	"
103.	Mahindra & Mahindra Ltd., Mazagaon, Bombay-10 ...	"
104.	Scindhia Workshop (P) Ltd., Mazagaon, Bombay-10 ...	"
105.	Star Textile Engineering Works (P) Ltd., Lower Parel, Bombay-13 ...	1-11-1953
106.	Kamani Engineering Corporation Ltd., Kurla, Bombay	1- 2-1954
107.	Gandhi Electric Industries (P) Ltd., Bombay-4 ...	1- 4-1954
108.	Naran Lala Metal Works, Navsari, Distt. Surat ...	1-11-1952
109.	Deccan Paper Mills Co. Ltd., Mundhwa Rly. Station Hadapsar ...	"
110.	Mukund Iron & Steel Works Ltd., Sewree, Bombay ...	1- 8-1953
111.	Mukund Iron & Steel Works Ltd., Kurla, Bombay ...	"
112.	Indian Smelting & Refining Co. Ltd., Bhandup, Bombay	1-11-1952
113.	Star Metal Refinery (P) Ltd., Vikhroli, Distt. Thana ...	1-10-1953
114.	Khetan Industries Ltd., Kalachowky Road, Bombay Cotton Mills Estate, Lalbaug, Bombay ...	1- 7-1953
115.	The Indian Manufacturing Co. Ltd., Bombay-11 ...	1- 8-1953
116.	Ashoka Silk Mills Limited, Bombay-17 ...	"
117.	The Century Spinning & Manufacturing Co. Ltd., Bombay-13 ...	1-11-1952
118.	The Coorla Spinning & Weaving Co. Ltd., Bombay ...	1- 6-1953
119.	The Crown Spinning & Manufacturing Co. Ltd., Bombay-13 ...	1- 8-1953
120.	Dhanraj Mills (P) Ltd., Sun Mill Road, Lower Parel, Bombay-13 ...	"

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121.	The Edward Textiles Ltd., Bombay-13 ...	1- 8-1953
122.	The Elphinstone Spinning & Weaving Mills Co. Ltd., Bombay-13 ...	"
123.	The Finlay Mills Ltd., Parel, Bombay ...	1- 7-1953
124.	The Gold Mohur Mills Ltd., Dadar, Bombay-14 ...	"
125.	Hind Mills Ltd., Parel, Bombay-13 ...	1-11-1952
126.	The Hindustan Spg. & Wvg. Mills Co. Ltd., Bombay ...	1- 8-1953
127.	The Jasmine Mills (P) Ltd., Mahim, Bombay-16 ...	1-11-1952
128.	Kamala Mills Ltd., Lower Parel, Bombay-13 ...	"
129.	Kamla Mills Ltd., Lower Parel, Bombay (Art Silk Section) ...	"
130.	Morarji Gokaldas Spg. & Wvg. Co. Ltd., Bombay-12 ...	"
131.	The New Kaisari-Hind Spg. & Wvg. Co. Ltd., Bombay-10 ...	1- 6-1953
132.	The Pearl Thread Mills (P) Ltd., Tardeo Road, Bombay-7 ...	1- 7-1953
133.	The Podar Mills Ltd., Chinchpokli, Bombay ...	1- 8-1953
134.	Shri Madhav Mills Ltd., Bombay ...	1- 7-1953
135.	Shri Nivas Cotton Mills Ltd., Bombay-13 ...	1-11-1952
136.	Shri Ram Mills Ltd., Bombay-12 ...	"
137.	The Swan Mills Ltd., Sewree Road, Bombay-15 ...	1- 7-1953
138.	Western India Spg. & Mfg. Co. Ltd., Bombay ...	1- 8-1953
139.	The Raymond Woollen Mills Ltd., P.B. No. 1, Thana, Bombay ...	1-11-1952
140.	Shri Sita Ram Mills Ltd., Bombay-11 ...	"
141.	Shri Madusudan Mills, Bombay-13 ...	"
142.	The Ahmedabad Cotton Mfg. Co. Ltd., P.B. No. 46, Ahmedabad ...	1- 7-1953
143.	The Ahmedabad Jupitar Spg., Wvg. & Mfg. Co. Ltd., P.B. No. 43, Ahmedabad ...	1- 6-1953
144.	The Ahmedabad Kaiser-I-Hind Mills Co. Ltd., Outside Raipur gate, Ahmedabad ...	1- 7-1953
145.	The Ahmedabad Laxmi Cotton Mills Co. Ltd., P.B. No. 42, Ahmedabad ...	1- 8-1953
146.	The Ahmedabad Mfg. & Calico Printing Co. Ltd., (The Jubilee Mills) P.B. No. 158, Ahmedabad-11 ...	1- 7-1953
147.	The Ahmedabad New Cotton Mills Co. Ltd., P.B. No. 9, Ahmedabad ...	1-11-1952
148.	The Ahmedabad Sarangpur Mills Co. Ltd., Ahmedabad-1 ...	1-11-1953
149.	The Ahmedabad Shri Ram Krishan Mills Co. Ltd., Ahmedabad-10 ...	1-11-1952
150.	The Anant Mills Ltd., Ahmedabad ...	1- 8-1953
151.	The Aruna Mills Ltd., Ahmedabad-11 ...	1-11-1952
152.	The Arvind Mills Ltd., P.B. No. 56, Ahmedabad ...	"
153.	Asarva Mills Ltd., (No. 1), Ahmedabad-11 ...	"
154.	The Asoka Mills Ltd., P.B. No. 55, Ahmedabad ...	"

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155.	The Bharat Suryodaya Mills Co. Ltd., Ahmedabad-9 ...	1- 7-1953
156.	The Bechardas Spg. & Wvg. Mills Co. Ltd., P.B. No. 22, Ahmedabad ...	1- 8-1953
157.	The Ahmedabad Mfg. & Calico Printing Company Ltd., P.B. No. 12, (The Calico Mills) Ahmedabad ...	1- 7-1953
158.	The Commercial Ahmedabad Mills Co. Ltd., Ahmedabad ...	1-11-1952
159.	The Giridhari Das Hari Vallab Das Mills Ltd., P.B. No. 124, Ahmedabad ...	1-11-1953
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179.	The New India Industries Ltd., P.B. No. 67, Baroda ...	1-11-1952
180.	The Petlad Bulakhi Das Mills Co. Ltd., Petlad, Distt. Kaira ...	1- 8-1953
181.	Shri Shubh Lashmi Mills Ltd., Cambay, Distt. Kaira ...	1-11-1952
182.	The Bharatvijaya Mills Ltd., Kalol, North Gujrat ...	1- 7-1953
183.	The Navjiwan Mills (P) Ltd., Kalol ...	,,
184.	The Gaekwar Mills Ltd., Bilimora, Distt. Surat ...	1-11-1952
185.	The Navsari Cotton & Silk Mills Ltd., Navsari, Distt. Surat ...	,,
186.	The Niranjan Mills (P) Ltd., Falsawadi, Surat ...	1- 7-1953

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187.	The Vania Silk Mills (P) Ltd., Bilimora, Distt. Surat ...	1-11-1952
188.	The Ambica Mills Ltd., (No. 3), P.B. No. 54, Baroda ...	,,
189.	The Maneklal Hari Lal Spg. & Mfg. Co. Ltd., P.B. No. 1047, Saraspur, Ahmedabad	1-11-1953
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209.	The East India Commercial Co. Ltd., Eluru ...	,,
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211.	Straw Products Ltd., Chola Road, Bhopal ...	,,
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214.	R. S. Rekhchand Mohta Spg. & Wvg. Mills Ltd., Hinghanghat ...	,,
215.	Pulgaon Cotton Mills Ltd., Pulgaon ...	,,
216.	The Berar Manufacturing Co. Ltd.. Badnera ...	,,
217.	The Vidhrabha Mills (Berar) Ltd., Ellichpur	,,
218.	R. S. Rekchand Gopal Das Mohta Spg. & Wvg. Mills Ltd., Akola ...	,,
219.	The Savatram Ramprasad Mills Co. Ltd., (Spg. & Wvg. Mills Ltd.) Akola ...	,,

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220.	The Burhanpur Tapti Mills Ltd., Burhanpur ...	1-4-1953
221.	Delhi Cloth & General Mills Co. Ltd., Bara Hindu Rao, Delhi ...	1-11-1952
222.	Delhi Cloth Mills Industrial Area Power House, Najafgarh Road, Delhi ...	,,
223.	Delhi Cloth Mills Containers, Najafgarh Road, Delhi ...	,,
224.	Swatantra Bharat Mill Ltd., Najafgarh Road, Delhi ...	,,
225.	Birla Cotton Spg. & Wvg. Mills Ltd., P. O. Birla Line, Sabzimandi, Delhi ...	,,
226.	The Tata Iron & Steel Co. Ltd., Jamshedpur ...	,,
227.	The Tin Plate Co. of India, Ltd., Golmuri ...	,,
228.	The Tatanagar Foundry Co. Ltd., Tatanagar ...	,,
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230.	Eagle Rolling Mills Ltd., Kumardhubi, (Manbhum) ...	,,
231.	Tata Locomotive & Eng. Co. Ltd., Tatanagar (Jamshedpur) ...	,,
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267.	Bombay Union Dyg. Mills, Govt. Gate Road, Parel, Bombay-12 ...	1-1- 1954
268.	M. Best Cotton Rope Mfg. Co. Jugal Baug, Thana ...	1-4- 1954
269.	Manhar Silk Mills, Franji Petite Mills, Premises, Reay Road, Bombay-10 ...	1-2- 1954
270.	National Rayon Corpn, Ltd., Mohone, Kalyan (Thana)	1-8- 1955
271.	The Moon Mill Ltd., Tokersi Jivraj Road, Sewree, Bombay ...	1-11-1955
272.	The Bharatkhand Textile Mfg. Co. Ltd., P.O. Box 30, Ahmedabad ...	1-11-1952
273.	Maheshwari Mills Ltd., P.B. No. 79, Ahmedabad ...	1-7- 1953
274.	The Ahmedabad Jay Bharat Cotton Mills Ltd., P. B. No. 24, Ahmedabad ...	1-3- 1955
275.	New Maneckchowk Spg. & Wvg. Co. Ltd., Post Asarva, Ahmedabad ...	1-7- 1953
276.	The New Commercial Mills Co. Ltd., P. B. No. 1060, Railwaypura, Ahmedabad ...	1-11-1952
277.	The Vishnu Cotton Mills Ltd., Laxmi Path, Station Road, Sholapur ...	1-8- 1953
278.	The Arvind Boards & Paper products Ltd., Bilimora (Surat) ...	,,
279.	Matchwel Electricals (India) Ltd., Opp. Nagar Road, P. O. Yarvada, Poona-6 ...	1-11-1952
280.	Andhra Scientific Co. Ltd., Masulipatam ...	,,
281.	Chittivalsa Jute Mills Ltd., Chittivalsa ...	,,
282.	Nellimarla Jute Mills Ltd., Nellimarla ...	,,
283.	Shri Digvijay Cement Co. Ltd., Sika ...	,,
284.	St. Joseph's Asylum Industrial Workshop, Mangalore ...	,,

SCHEDULE II

1. Every factory shall have a provident fund scheme in force the rules of which with respect to the rates of contribution shall not be less favourable than those specified in section 6 of the Act and the employees shall also be in enjoyment of other provident fund benefits which on the whole shall not be less favourable to the employees than the benefits provided under the Act or any Scheme in relation to the employees in any other factory of a similar character and these rules shall be followed in all respects.

2. The employer in relation to each factory (hereinafter referred to as the 'employer') shall within three months of the date of publication of this notification, amend the constitution of the Provident Fund maintained in respect of the factory in regard to the following matters, namely :—

(a) the Provident Fund shall vest in a Board of Trustees and there shall be a valid instrument in writing, which adequately safeguards the interest of the employees and such instrument shall be duly registered under section 5 of the Indian Trusts Act, 1882 ;

(b) the Board of Trustees shall consist of an equal number of representatives of the employees and the employer and all questions before the Board shall be decided by a majority of votes ;

(c) the employer shall nominate one of his representatives on the Board as the Chairman who may exercise a casting vote if so provided under the rules of the factory. Where a casting vote is exercised or where no casting vote is exercised but the opinion of the representatives is equally divided, the matter shall be referred to the Regional Provident Fund Commissioner or the State Provident Fund Commissioner appointed under the said Scheme (hereinafter referred to as the Regional/State Commissioner) within whose jurisdiction the factory to which the matter relates is situated and whose decision in the matter shall be final.

3. The Provident Fund Rules of any factory shall not be amended except with the previous approval of the Regional/State Commissioner. Where any amendment affects the interests of the employees, before giving his approval, the Regional/State Commissioner shall give a reasonable opportunity to the employees to explain their point of view.

4. (a) The employer shall maintain accounts of the Provident Fund in such manner and submit such returns to the Regional/State Commissioner as the Central Provident Fund Commissioner may, from time to time direct.

(b) The employer shall furnish to the Regional/State Commissioner such accounts relating to the Provident Fund of the factory as the Central Provident Fund Commissioner may prescribe from time to time. He shall also furnish an annual statement of account or a Pass Book, in such form as may be approved, to each subscriber who, but for the exemption, would have been a member of the Fund established under the Employees' Provident Funds Scheme, 1952.

(c) The employer shall make all investment of accumulations accruing after the date of exemption in securities of the Central Government. The reinvestment or conversion of securities on maturity shall also be in the securities of the Central Government. The employer shall formulate a procedure for prompt investment of provident fund moneys and shall get it approved from the concerned Regional/State Commissioner.

5. The employer shall afford such facilities for inspection of the accounts of the Provident Fund as the Central Provident Fund Commissioner may from time to time specify.

6. All expenses involved in the administration of the Provident Funds Scheme including the maintenance of accounts, submission of accounts and returns, transfer of accumulation and payment of inspection charges shall be borne by the employer.

7. The employer shall display on the notice board of his factory in English, a copy of the approved rules and the translation of salient points of the rules in the language of the majority of the workers, respectively.

8. The employer shall within 3 months of the date of publication of this notification transfer to the Board of Trustees the accumulations standing to the credit of the employees who but for the exemption would have been members of the Statutory Fund.

9. When the Fund is wound up or exemption of the factory is cancelled, accumulations standing to the credit of the employees who, but for the exemption, would have been members of the Statutory Fund shall be transferred to that Fund as soon as possible and, in any case, not later than 30 days in the case of securities and not later than 10 days in the case of cash in hand or bank, together with a statement or statements as may be required by the Regional/State Commissioner or Commissioners concerned.

10. The employer shall accept the past provident fund accumulations of an employee who is already a member of the Employees' Provident Fund or an exempted fund and who obtains employment in his factory. Such an employee shall immediately be admitted as a member of the factory's Provident Fund. His accumulations which shall be transferred within 3 months of his joining the factory shall be credited to his account.

11. The employer shall provide for nomination in his provident fund rules in accordance with the provisions contained in paragraph 61 of the Employees' Provident Funds Scheme, 1952.

12. The amount of contributions 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. The amounts of inspection charges and damages shall be calculated to the nearest 5 naye paise; that is, 2·5 naye paise or more shall be counted as 5 naye paise and any amount less than 2·5 naye paise shall be ignored.

13. On all repayable loans granted by factories interest shall be charged at the rate of $4\frac{1}{2}$ per cent. or 1 per cent. above the rate allowed on the balance to the credit of the members whichever is higher.

14. The employer shall pay to the Regional/State Commissioner inspection charges payable, failing which damages shall be paid at a rate fixed by the Central Government from time to time.

15. Exemption granted by this notification is liable to be withdrawn by the Central Provident Fund Commissioner for breach of any of the aforesaid conditions or for any other sufficient cause which may be considered appropriate.

THE REPEALING AND AMENDING ACT, 1957.

Act No. 36 of 1957.

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

An Act to repeal certain enactments and to amend certain other enactments.

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 Repealing and Amending Act, 1957.

2. *Repeal of certain enactments.*—The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

3. *Amendment of certain enactments.*—The enactments specified in the Second Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

4. *Savings*—The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, or recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

THE FIRST SCHEDULE

REPEALS (*See* section 2)

Year 1	No. 2	Short title 3	Extent of repeal 4
		Central Acts	
1950	35	The Repealing and Amending Act, 1950. ...	The whole.
1950	56	The Minimum Wages (Amendment) Act, 1950. ...	The whole.
1950	80	The Coal Mines Provident Fund and Bonus Schemes (Amendment) Act, 1950. ...	The whole.
1951	5	The Employers' Liability (Amendment) Act, 1951. ...	The whole
1951	16	The Minimum Wages (Amendment) Act, 1951. ...	The whole.
1951	17	The Coal Mines Safety (Stowing) Amendment Act, 1951. ...	The whole.
1951	21	The Coal Mines Provident Fund and Bonus Schemes (Amendment) Act, 1951. ...	The whole.
1951	38	The Indian Boilers (Amendment) Act, 1951 ...	The whole.
1951	40	The Industrial Disputes (Amendment and Temporary Provisions) Act, 1951. ...	Secs. 3 to 6.
1951	48	The Employment of Children (Amendment) Act, 1951. ...	The whole.
1951	53	The Employees' State Insurance (Amendment) Act, 1951. ...	The whole.
1951	65	The Industries (Development and Regulation) Act, 1951. ...	Section 32.
1952	12	The Coal Mines (Conservation and Safety) Act, 1952. ...	Section 19.
1952	18	The Industrial Disputes (Amendment) Act, 1952 ...	The whole.
1952	19	The Employees' Provident Funds Act, 1952. ...	Section 20.
1952	25	The Indian Boilers (Amendment) Act, 1952. ...	The whole.
1952	35	The Mines Act, 1952. ...	Section 88.
1952	48	The Repealing and Amending Act, 1952 ...	The whole.
1952	78	The Industrial Finance Corporation (Amendment) Act, 1952 ...	The whole.
1953	26	The Industries (Development and Regulation) Amendment Act, 1953.	The whole.
1953	37	The Employees' Provident Funds (Amendment) Act, 1953. ...	The whole.
1953	42	The Repealing and Amending Act, 1953. ...	The whole.
1953	43	The Industrial Disputes (Amendment) Act, 1953. ...	The whole.

THE SECOND SCHEDULE

AMENDMENTS (*See* Section 3)

Year 1	No. 2	Short title 3	Amendments 4
1923	8	The Workmen's Compensation Act, 1923 ...	In sub-section (1) of section 35, the word "or" occurring after the word "compensation" shall be omitted.
1951	65	The Industries (Development and Regulation) Act, 1951 ...	In sub-section (4) of section 18B, for the figures "18", the figures and letter "18A" shall be substituted.

Labour Officers (Central Pool) Rules, 1951—Notification.

*Notification No. S.R.O. 2563 dated New Delhi, 31st July, 1957.**

In pursuance of sub-rule (2) of rule 5 of the Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951, the Government of India hereby recognise the following Institutions for the purpose of the said sub-rule:

(1) University of Birmingham.
(2) University of Bristol.
(3) University of Leeds.
(4) University of Durham.
(5) University of Manchester.
(6) University of Sheffield.
(7) University of Liverpool.
(8) University of London (Both Internal & External Students).
(9) University of Glasgow.
(10) University of Edinburgh.
(11) University of Oxford.
(12) Reading University.
(13) Queen's University of Belfast.
(14) University College of Wales.
(15) The National University of Ireland.

*Gazette of India, 10-8-1957, Part II, Sec. 3, p. 1696.

Coal Mines Provident Fund Scheme—Amendments

*Notification No. S.R.O. 2564 dated New Delhi, 31st July, 1957.**

In exercise of the powers conferred by section 7 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 (46 of 1948), the Central Government hereby makes the following further amendments in the Coal Mines Provident Fund Scheme published with the notification of the Government of India in the late Ministry of Labour No. PF. 15(5)/48, dated the 11th December, 1948, and as amended from time to time, namely:

In the said Scheme—

1. for clause (k) of paragraph 2 the following clause shall be substituted, namely:

"(k) 'period of membership' means in respect of a member the period beginning with the day on which he was employed in the coal mine wherefrom he qualifies for the membership of the Fund and ending with the date of the application on which he is permitted to withdraw the amount standing to his credit in the Fund under paragraph 63:

Provided that in any case where the date on which a member was employed cannot be ascertained, the first day of the period or quarter in which he qualified for membership of the Fund shall be deemed to be the date on which he was employed in the coal mine."

2. In Form 'H' before the column for "Remarks" the following column shall be inserted, namely:

"Date on which the person was employed."

Conciliation Officers for Quarrying Industry

*Notification No. S.R.O. 2569, dated New Delhi, 3rd August, 1957.***

In exercise of the powers conferred by section 4 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby appoints, for a period of one year, the officers mentioned in column 2 of the table annexed hereto, as Conciliation Officers for the quarrying industry in the area specified in the corresponding entry in column 3 of the said table.

TABLE

S. No. 1	Designation of officer 2	Jurisdiction. 3
1.	District Labour Officer, Trivandrum. ...	Trivandrum revenue district in the State of Kerala.
2.	District Labour Officer, Alleppey. ...	Quilon revenue district in the State of Kerala.
3.	District Labour Officer, Kottayam. ...	Kottayam revenue district in the State of Kerala.
4.	District Labour Officer, Alwaye ...	Trichur revenue district in the State of Kerala.
5.	District Labour Officer, Palghat. ...	Palghat revenue district in the State of Kerala.

* Ibid.

** Ibid, p. 1698.

S. No. 1	Designation of officer 2	Jurisdiction. 3
6.	District Labour Officer, Kozhikode. ...	Kozhikode revenue district in the State of Kerala.
7.	District Labour Officer, Cannanore. ...	Cannanore revenue district in the State Kerala.
8.	Deputy Labour Officer, Quilon. ...	Taluqs of Karunagappally, Quilon, Kottarakara, Kunnathur and Pathanapuram in the Quilon district in the State of Kerala.
9.	Deputy Labour Officer, ... Chenganur	Taluqs of Pathanamthitta, Thiruvalla, Chenganur and Mavelikara in the Quilon district in the State of Kerala.
10.	Deputy Labour Officer, ... Peermede	Taluqs of Kanjirapally, Peermede and Udumbanchola and Poonjar Thekkekara village in the Meenachil Taluq in the Kottayam district in the State of Kerala.
11.	Deputy Labour Officer, ... Munnar	Taluq of Devicolam in the Kottayam district in the State of Kerala.
12.	Deputy Labour Officer, ... Trichur	Taluqs of Trichur, Thalappilly, Chowghat, Mukundapuram and Cranganore in the Trichur district in the State of Kerala.
13.	Labour Officer, Jaipur ...	Ajmer Division, excluding Ajmer district, in the State of Rajasthan.
14.	Labour Officer, Ajmer ...	Ajmer district in the State of Rajasthan.
15.	Labour Officer, Jodhpur ...	Jodhpur division, including Abu Road, Taluka in the State of Rajasthan.
16.	Labour Officer, Kotah ...	Kotah Division, excluding Sirohi subdistrict and including Sunel Tappa of the former State of Madhya Bharat, in the State of Rajasthan.
17.	Labour Officer, Bikaner ...	Bikaner Division in the State of Rajasthan.
18.	Labour Officer, Bhilwara...	Udaipur Division in the State of Rajasthan.
19.	Senior Assistant Commissioner of Labour, Rajkot ...	Halar, Madhya Saurashtra, Zalwad, Gohilwad and Sorath districts in the State of Bombay.
20.	Revenue Assistant Commissioner and *ex-officio* Conciliation Officer, Port Blair ...	Andaman and Nicobar Islands.

[IN THE INDUSTRIAL TRIBUNAL, PATNA.]

J. P. FRANCIS

v.

BARAKAR ENGINEERING & FOUNDRY WORKS, LTD.

Shri A. Hasan.

September 19, 1957.

'WORKMAN'—DEFINITION OF—TESTS—EMPLOYEE ENGAGED ON MANAGERIAL FUNCTIONS—SALARY LESS THAN RS. 500 P.M.—WHETHER WORKMAN—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(S).

MISCONDUCT—EMPLOYEE RECEIVING MONEY ON BEHALF OF COMPANY —FAILURE TO DEPOSIT MONEY WITH COMPANY—GIVING INCONSISTENT STATEMENTS WHEN DISCOVERED—DISMISSAL, WHETHER JUSTIFIED.

Where the evidence shows that the employee was in charge of a department and he was given powers to write confidential reports and review the conduct of persons serving under him and do other administrative and supervisory work, he must be deemed to be employed on work of managerial nature and will not fall within the definition of 'workman' in section 2(s) of the Industrial Disputes Act, 1947, even if his salary is less than Rs. 500.

Where an employee receives money on behalf of the company and fails to deposit the same with the company and when discovered, makes three different statements to cover up his guilt, the management would be justified in finding him guilty of misuse of the company's funds and in dismissing him from service under the service rules.

Miscellaneous Case No. 19 of 1957 under section 33-A, Industrial Disputes Act, 1947.

S. S. Kapoor for the management.

AWARD.

This is a petition under section 33-A of the Industrial Disputes Act by Sri J. P. Francis, an employee of Messrs. Barakar Engineering and Foundry Works, Badjna. It is said that the management terminated his services on flimsy grounds during the pendency of an industrial dispute before the Tribunal and thus was guilty of violation of the provisions of section 33 of the Industrial Disputes Act. Accordingly, it is prayed that the complainant should be re-instated with full wages.

2. The management in its written statement contended that the complainant was not a workman under the Industrial Disputes Act and as such this petition was not maintainable. According to the opposite party the complainant was working in administrative and supervisory

capacity and as such this Tribunal had no jurisdiction to entertain this petition. On merits it is alleged that the complainant as accountant failed to deposit Rs. 117 which as accountant it was his duty to do. When he was asked to explain it he made three different statements same day. He had to admit that he had received the money on behalf of the company which he failed to account for and ultimately agreed to clear up the outstanding sum by depositing Rs. 77 from his own pocket and Rs. 40 by realising it from Sri A. K. Dutt. On enquiry he was found guilty of using the company's cash for his own purpose and benefit and also of entering into monetary dealing with his subordinates which were serious offences and punishable with dismissal under the company's service rules.

3. The objections of the opposite party are two-fold. In the first place it is said that the petition itself is not maintainable inasmuch as the petitioner is not a workman within the meaning of the Industrial Disputes Act and secondly on merits he was found guilty of offence which entails the punishment of dismissal according to the service rules of the company. I would consider the maintainability of the petition first.

4. It is the case of the opposite party that the petitioner was working in administrative and supervisory capacity which excluded him from the category of workman as defined in the Industrial Disputes Act. In support of it the duty sheet of the complainant (Exhibit A) was produced which among other things authorised him to exercise certain functions which are administrative and supervisory in nature. It appears from the duty sheet that he was incharge of a department and he was given powers to write the confidential report and review the conduct of the persons working in his department and do similar other supervisory work. He was also authorised to grant leave and do such other things which are managerial functions. The other duties enumerated in the duty sheet also appear to be more administrative than clerical. Exhibits B and C also testify to it. His salary may be less than Rs. 500 but his functions being managerial in nature he could not be described as a workman as contemplated by the Act. In the circumstances, the contention of the management about the non-maintainability of the petition succeeds and it is held that Sri Francis, not being a workman, could not maintain this petition.

5. Even on merits he seems to have no case. The papers produced by the management disclosed that a shortage of Rs. 117 was detected by the Director incharge himself on the 19th December, 1956. The fact that during the enquiry Sri Francis made three different statements on the same day clearly shows that he was guilty of the offence and tried to

conceal the same by making shifting statements. As pointed out by the management, Sri Francis acted against the Service Rule No. 17(*c*) and under rule 9(*c*) was liable for disciplinary action. Under rule 12 he was liable for dismissal. Therefore, the management was justified in terminating his services after giving him an opportunity to defend his case in the departmental enquiry.

6. It has also to be noted that in spite of repeated dates the petitioner failed to appear and represent his case.

7. As Sri Francis did not come within the definition of workman he was not entitled to maintain his petition nor was it necessary for the management to obtain permission of the Tribunal for his dismissal. Thus, there was no breach of any provision of law as alleged by the complainant and the petition must fail.

[IN THE PATNA HIGH COURT.]

P. C. GOYLE AND ANOTHER
v.
LIFE INSURANCE CORPORATION OF INDIA AND OTHERS.

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

September 27, 1957.

LIFE INSURANCE CORPORATION—CONDITIONS OF SERVICE—RELATIVE RANKS OF DIVISIONAL SUPERINTENDENT AND INSPECTOR—RIGHT OF CORPORATION TO ALTER CONDITIONS OF SERVICE OF EMPLOYEES OF CONCERNS WHOSE BUSINESS WAS TAKEN OVER—INSURANCE CORPORATION ACT, 1956, SECTION 11(1).

The rank of an Inspector of the Life Insurance Corporation is subordinate to that of the Divisional Superintendent and the terms and conditions of service of the former are less advantageous than that of the latter.

Section 11(1) of the Life Insurance Corporation Act, 1956, does not confer any right on the Life Insurance Corporation to alter the service conditions of the employees of the various insurance concerns which were vested in the Corporation. Where an employee of an insurance company which was taken over by the Corporation held a post equivalent to that of a Divisional Superintendent, he cannot be asked to serve the Corporation as an Inspector.

Miscellaneous Judicial Cases Nos. 264 and 265 of 1957.

Basudev Prasad and *Maya Mitra* for the petitioners.

Advocate-General and *Purnendu Narain* for the respondents.

JUDGMENT.

RAMASWAMI, C. J.— *M. J. C. No. 265 of 1957.* In this case the petitioner has obtained a rule from the High Court calling upon the respondents to show cause why a writ in the nature of *mandamus* under article 226 of the Constitution should not be issued commanding the respondents not to reduce the rank of the petitioner to that of an Inspector of the Life Insurance Corporation of India. Cause has been shown by the Advocate-General on behalf of the respondents to whom notice of the rule was ordered to be given.

The petitioner, Sri K. D. Banerji, was working as a Divisional Superintendent of the National Insurance Company, Limited, from the 1st January, 1955. In that post he was getting a sum of Rs. 350 per month as salary, Rs. 80 as dearness allowance and Rs. 170 per month as motor-car allowance. On the 19th January, 1956, the Life Insurance (Emergency Provisions) Ordinance, 1956, was passed, by which all life insurance business in India was nationalised with effect from the 20th January, 1956. After the passing of the Ordinance, the petitioner continued in his post of Divisional Superintendent up to the 1st September, 1956. On that date the Life Insurance Corporation of India was constituted by an official notification under section 3 of the Life Insurance Corporation Act, 1956 (Act 31 of 1956). Section 7 of that Act provided that all assets, rights and titles of the insurers and all liabilities and obligations in respect of the controlled business stood automatically transferred and vested in the Life Insurance Corporation. Section 11(1) of the Act further provided that all employees of the insurers employed in connection with the controlled business immediately before the appointed date would become employees of the Corporation and they would hold office on the same terms and conditions and have the same rights and privileges as to pension, gratuity and other matters. The case of the petitioner is that by virtue of this section he was entitled to hold the office of a Class 1 officer of the Corporation in the category of Assistant Branch Manager (Development) on the 1st September, 1956. It is further stated that the post of Divisional Superintendent corresponded to the post of Assistant Branch Manager (Development) mentioned in section 7 (7) of the Staff Regulations, 1956, made by the Corporation under section 49(2) of the Act. The petitioner, however, alleges that the respondents have issued letters or orders reducing his rank to that of an Inspector. On the 18th September, 1956, the Divisional Manager (respondent No. 1) sent to the petitioner a circular meant for the guidance and information of the Inspectors. On the 27th December, 1956, the Divisional Manager wrote to him to the effect that he should work as an Inspector of the Corporation (annexure J to the application).

On the 27th March, 1957, the Assistant Divisional Manager wrote to the petitioner, asking him to sign the Attendance Register as an Inspector of the Corporation (annexure N to the application). The contention of the petitioner is that these orders and letters are illegal and *ultra vires* and that the respondents have no legal authority to reduce the rank of the petitioner and ask him to work in the post of an Inspector. In these circumstances the petitioner has prayed for grant of a writ under article 226 of the Constitution for quashing the orders of the respondents (Exs. J and N) requiring the petitioner to work as an Inspector of the Corporation. The petitioner has also asked for a writ in the nature of *mandamus* requiring the respondents to post the petitioner as an Assistant Branch Manager (Development).

On behalf of the petitioner learned counsel made the submission that the tenure and the rank and the terms of employment of the petitioner continued to be the same after the Life Insurance Corporation of India was constituted and established. In support of his submission learned counsel referred to section 11(1) of Act 31 of 1956, which is in the following terms;

"11. (1) Every whole-time employee of an insurer whose controlled business has been transferred to and vested in the Corporation and who was employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day shall, on and from the appointed day, become an employee of the Corporation, and shall hold his office therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same on the appointed day if this Act had not been passed, and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms and conditions are duly altered by the Corporation:

Provided that nothing contained in this sub-section shall apply to any such employee who has, by notice in writing given to the Central Government prior to the appointed day, intimated his intention of not becoming an employee of the Corporation."

It was contended that the status of an Inspector was inferior to that of a Divisional Superintendent, and reference was made by learned counsel to paragraphs 22 and 24 of the application. There is no clear denial of this fact by the respondents in their counter-affidavit. The Advocate-General nevertheless stressed the argument on behalf of the respondents that there is no difference between the status of an Inspector and the status of a Divisional Superintendent. The argument of the Advocate-General was unconvincing on this point and he was not able to establish and the other terms and conditions of service to such extent and in such manner as it thinks fit; and if the alteration is not acceptable to any employee, the Corporation may terminate his employment by giving him compensation equivalent to three months' remuneration unless the contract of service with such employee provides for a shorter notice of termination.

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

It is manifest that section 11(2) as amended confers a limited power upon the Central Government to alter the terms and conditions of its existing employees for two specific purposes. The power can be exercised by the Central Government where it is satisfied that the alteration is necessary to secure uniformity in the scales of remuneration and other terms and conditions of service of all the existing employees. The Central Government may also exercise its power of revising the terms and conditions of service if it is satisfied that it is necessary to do so in the interest of the Corporation and its policy-holders. It is only for effecting these two purposes that the Central Government may exercise the power of alteration of the terms and conditions of service under section 11(2). There is a further safeguard to the existing employees under section 11(2). Even where the Central Government exercises the power of alteration of the terms and conditions of service, the employees are given the option either to accept or to refuse the altered terms and conditions. If the alteration is not acceptable to any employee, the Corporation may terminate his employment by giving him compensation equivalent to three months remuneration. The explanation to section 11(2) further provides that the compensation payable shall be in addition to and shall not affect any pension, gratuity, etc., to which an employee may be entitled under his contract of service: The argument of the Advocate-General is that section 11(1) confers on the Corporation an unfettered and unbridled power to alter the terms and conditions of the existing employees. If this interpretation is accepted, the result would be that the Corporation could terminate the services of an existing employee under section 11 without payment of any compenstion and for any purpose whatever. I am not prepared to accept this interpretation as correct. It cannot be supposed that Parliament intended to confer an unfettered power upon the Corporation to alter the terms and conditions of the existing employees under section 11. If the interpretation for which the Advocate-General contends is right, the power of the Central Government under section 11(2) would be unnecessary and redundant and there is also no reason why the Parliament should restrict the power of the Central Government under section 11(2) in such a careful manner and subject to safeguards in favour of the existing employees. In my opinion, therefore, section 11(1) cannot be construed to mean that an unfettered power was conferred upon the Corporation to alter the terms and conditions of the service of the existing employees. I think that section 11 was intended by the Parliament to provide for the continuity of service of the existing employees on the same terms and conditions as those existent under private insurers. That is, I think the true interpretation of the power conferred upon the Corporation by section 11(1). This opinion is further borne out by section 9(1) of Act 31 of 1956, which provides that "all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which an insurer whose controlled business has been transferred to and vested in the Corporation is a party or which are in favour of such insurer shall in so far as they relate to the controlled business of the insurer be of as full force and effect against or in favour of the Corporation, as the case may be, and be enforced or acted upon as fully and effectually as if, instead of the insurer, the Corporation had been a party thereto or as if they had been entered into or issued in favour of the Corporation". If this is the right interpretation of section 11(1), it follows that the respondents have no legal authority to alter the terms and conditions of service of the petitioner under the power conferred by section 11(1) of the Act,

The Advocate-General submitted in the next place that the respondents had power under the Staff Regulations to allot the employees to various categories. In support of his argument reference was made to Regulation 7 of the Staff Regulation, which relates to classification of staff. Regulation 7 reads as follows:

Board's power to fix the scales of pay and number of posts.

"7. *Board's power to fix the scales of pay and number of posts.*—

(1) The permanent staff of the Corporation shall be classified as follows:

Class I—Officers.

Class II—Salaried Field Staff (Inspectors) other than Probationary Inspector.

Class III—Supervisory and Clerical Staff.

Class IV—Probationary Inspectors.

Class V—Subordinate staff.

(1) ....

(2) The Board shall prescribe from time to time scales of pay for each post or group of posts.

(3) The Board shall also prescribe from time to time the number of posts for which the minimum of the grade is Rs. 500 or more".

The Advocate-General also pointed out that the Staff Regulations were made by the Life Insurance Corporation by virtue of the rule-making power conferred by section 49 of the Act. Section 49(1) and (2) (b) runs as follows:

"49. (1) The Corporation may, with the previous approval of the Central Government, by notification in the Gazette of India, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

....

(b) the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents."

I do not think that Regulation 7 of the Staff Regulations made under section 49(2) (b) of Act 31 of 1956, has any bearing on the question presented for determination in this case. Section 49(2)(b) does not confer any power on the Corporation to alter the terms and conditions of service of the existing employees of insurers, nor does Regulation 7 purport to confer any such power on the Life Insurance Corporation or upon the respondents. I, therefore, reject the argument of the Advocate-General that the respondents have power to reduce the rank of the petitioner under Regulation 7 of the Staff Regulations.

The Advocate-General then submitted that the Central Government has made an order under section 11(2) altering the terms of service of the existing employees. Reference was made to an order of the Government of India No. 53(1)—Ins. (1) 57, dated the 1st June, 1957, made under section 11 (2) of the Act, altering the remuneration and the other terms and conditions of service of the employees. But this order has no application to the petitioner, because it applies only to those employees who were in supervisory, clerical and subordinate staff grades of the insurers on the 31st August, 1956. Paragraph 2 of the order expressly states that it has no application to officers and field staff of the insurers. I do not, therefore, accept the argument of the Advocate-General that the rank of the petitioner can be reduced to that of an Inspector by virtue of the order of the Government of India which has already been referred to.

Lastly, it was contended on behalf of the respondents that the number of officers' posts in the Corporation was smaller than the total number of such posts in all the insurers put together, and so persons holding

executive positions in insurance companies have perforce to be appointed to positions carrying lower designations. It was also pointed out that the appointments made were provisional and there has been no final appointment of officers to various categories. The Advocate-General referred in this connection to paragraphs 14, 15 and 16 of the Interim Report of the Life Insurance Corporation of India published in August, 1957. Paragraphs 14, 15, and 16 run as follows:

"14. Selection of the officers of the various insurers for appointments to the various posts in the Corporation posed problems though of a different kind. The Central Government had, during the period between the 19th January, 1956, and the 'appointed day', *viz.*, 1st September, 1956, collected full information relating to officers in various insurance companies drawing a salary of Rs. 500 or more, numbering 688. Selections to senior posts in the Corporation were made on the basis of these data and after an interview by a Committee headed by Shri M. C. Shah, Minister for Revenue and Civil Expenditure. Broadly, the criteria for selection were qualifications, experience and the training which the officer had received and the length of service in responsible positions. For other posts of officers, selections from these as well as other employees of insurers were made by Committees in each zone composed of the senior officers designate in each zone. Though these appointments, which were made on a provisional basis, were ratified by the Corporation at its first meeting, the appointments continue to be provisional pending a review by the Corporation on the basis of a detailed study of all individual cases. The number of such appointments (which include appointments made after 1st September, 1956), to various grades is shown in Appendix IV.

15. There were considerable difficulties in assessing relative claims of officers as to seniority and gradation. Designations in companies did not in every case indicate identical duties, or functions involving the same level of responsibility. Even where the functions and the level of responsibility were the same, the size of the company and the nature of its operations meant different degrees of training and experience. The integration of all the officers into one well-knit cadre with a well-recognized seniority has, therefore, been presenting considerable difficulties. The Corporation expects to derive assistance from the report of a Committee which was set up by the Central Government under the Chairmanship of Shri S. Lall, I.C.S. (Retd.) for the purpose of studying the problem of seniority among officers of life insurance companies.

16. The number of officers' posts in the Corporation is smaller than the total number of posts carrying same or equivalent designations

in all the insurers put together. A number of persons holding executive positions in insurance companies have consequently been appointed to positions carrying lower designations. Also in the process of fitting-in of officers in the new grades of the Corporation, their emoluments were revised. These revisions have resulted, in a large number of cases, in loss of prospective increments, and in some cases even their pre-existing emoluments suffered a reduction. It speaks well of the reasonableness and public spirit of the concerned persons that as a rule they accepted the changed conditions in good spirit."

In reply to this argument counsel for the petitioner submitted that selection of officers has not been made *bona fide* and the criteria of selection laid down in paragraph 14 of the Interim Report have not been applied by the respondent in selecting officers. The case of the petitioner is that there has been victimization. In paragraph 16 of the petitioner's reply to the counter-affidavit dated the 1st of August, 1957, it is said that "Sri N. Sahay and Sri C. P. N. Sinha, who were Inspectors of the Oriental Life Insurance Company (to which the Divisional Manager, Patna Division, himself belonged) and who held the same status and nature of service as Inspectors of National Insurance Company Ltd., were posted after promotion as Branch Manager, Gaya, and acting Branch Manager, Arrah, ignoring the rights of the petitioner without any justification". It is further alleged in the paragraph that "the opposite parties have acted *mala fide* in the petitioner's case as the petitioner had reported against opposite party Nos. 3 and 4 that there were evidences that they had committed misappropriation of Government fund and other illegal acts." Copies of these reports have been annexed to the affidavit as annexures v and w. The Advocate-General may be right in contending that all the officers employed by private insurers cannot be immediately appointed to corresponding posts in the Corporation and selection has to be made on the basis of "qualifications, experience and the training which the officer had received and the length of service in responsible positions" as stated in paragraph 14 of the Interim Report. But there is no material in this case to show that this criterion was applied by the respondents in making selection for Class I posts in the Life Insurance Corporation. On the other hand, the allegation made by the petitioner in his affidavit is that there has been victimization and that persons inferior to him in capacity, qualification and experience have been appointed as Class I officers in supersession of his own merits and record of service. In any event, the respondents have no statutory power to reduce the rank of the petitioner from Class I post which he is entitled to hold under the express language of section 11(1) of Act 31

of 1956, and so long as there is no order by the Central Government under section 11(2) reducing his rank.

For the reasons I have expressed I hold that the orders of the respondents conveyed in their letters (Exs. J and N) dated the 27th December, 1956 and 27th March, 1957, requiring the petitioner to work as an Inspector of the Corporation, are illegal, *ultra vires* and without jurisdiction. I further hold that a writ in the nature of *mandamus* must be issued requring the respondents to consider the application of the petitioner dated the 24th November, 1956, (annexure I), claiming to be appointed to the post of Assistant Branch Manager (Development) and to decide and determine the claim of the petitioner in accordance with law. I would accordingly allow this application with costs. Hearing fee Rs. 200.

M.J.C. No. 264 of 1957.—The material facts in this case are closely parallel to those of Miscellaneous Judicial Case No. 265 of 1957, and for the reasons given by me in the judgment of that case I hold that the orders conveyed by the respondents in their letter (annexure H), requiring the petitioner to work as an Inspector of the Corporation, and another letter (annexure K) informing him that his status is that of an Inspector, are illegal, *ultra vires* and without jurisdiction. I further hold that a writ in the nature of *mandamus* should be issued requiring the respondents to deal with the application of the petitioner dated the 2nd July, 1957, claiming the post of Assistant Branch Manager (Development) and to decide and determine that application in accordance with law. The application is accordingly allowed with costs. Hearing fee Rs. 200.

RAJ KISHORE PRASAD, J.—I agree.

[IN THE INDUSTRIAL TRIBUNAL, BIHAR.]

PRABHUDAYAL
v.
BARAKAR ENGINEERING & FOUNDRY CO., LTD.

Shri A. Hasan.

September 21, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33—"ALTERATION OF CONDITIONS OF SERVICE TO PREJUDICE OF WORKMAN"—STOPPING WORKMAN FROM DOING HIS WORK—NO ORDER OF DISCHARGE—WHETHER AMOUNTS TO ALTERATION OF CONDITIONS OF SERVICE.

Even though there is no formal order of discharge, if the management stops a workman from doing work, that in itself would amount to alteration of conditions of service of the workman to his prejudice, which the management cannot do without the permission of the Tribunal under section 33 of the Industrial Disputes Act, 1947, during the pendency of proceedings before an Industrial Tribunal.

Miscellaneous Case No. 7 of 1957, under section 33-A of the Industrial Disputes Act, 1947.

Prabhudayal for the workman.

S. S. Kapoor for the management.

AWARD.

This is a petition under section 33-A of the Industrial Disputes Act, 1947, alleging that the petitioner was discharged by the employer during the pendency of an industrial dispute before the Tribunal without its permission and the management was thus guilty of contravention of the provisions of section 33 of the Act.

2. In its written show cause the management repudiated the allegations made in the petition and contended that first while the workshop was functioning at Barakar he was working as a contractor but when it was shifted to Badjna he requested the management for making him a regular employee. When his request was granted he again changed his mind and wanted to work on contract basis. He was called upon to give the schedule of rates and also to sign the agreement which he did on the 22nd November, 1956. After having signed the documents the workman is said to have again changed his mind and on the 26th November, 1956, he went to the record room and on some plea asked the typist to take out the original agreement. When that agreement was taken out he put ink on his signature in order to disfigure it and wanted to snatch away the paper from the typist. When the typist raised alarm he bolted away and a report was submitted by the typist to the General Manager. On 28th November, 1956, a letter was issued to him dealing out everything and requiring him to report for duty either as an employee or a contractor within two days of the receipt of the letter failing which all previous engagemnts were to stand cancelled. In spite of these he did not report himself to duty and soon after that he represented his case to the Labour Officer, Dhanbad. Finally, it is said that once when he accepted to work as a contractor he automatically ceased to be an employee.

3. Both parties adduced documentary evidence and the petitioner examined himself also in support of the allegations in his petition. The workman in his statement on oath stated that he was working both as a contractor and an employeee in the concern while it was located at Barakar. He stated further that when the workshop shifted to Badjna he continued working as before. Subsequently, he was asked to cease working as a contractor and to work only as an employee. He agreed to that and he was given a letter of appointment showing him as a new employee to which he objected. On his refusal his work was stopped and he was not allowed to go inside the workshop. He represented his case before the Labour Officer upon which he was called by the management and allowed to work both as a contractor and an employee as before. One day while he was sawing some timber he was asked to do it quickly as his work was being done in *thika*. He said that he was doing it as an employee upon which his work was stopped. Subsequently, he was asked to join the work again and as a matter of fact he went also to join the work but he was not allowed to do it. The oral evidence of the workman is practically one sided. In his cross-examination by the management it was suggested to him that he wanted to disfigure the signature on the agreement and wanted to tear the paper also. It was further suggested that he was given both the options either to work as daily-rated worker or as a contractor, but he denied that suggestion.

4. The contention of the workman is that he was discharged from service and thus the management was guilty of the breach of the provision of section 33 of the Industrial Disputes Act. Admittedly no written order of discharge was served on him and the workman did not produce any. From the evidence it appears that some trouble was going on between the workman and the management about his working as a contractor or as an employee of the concern. While the workshop was at Barakar, this workman had his dual capacity. While he was working as an employee he was also getting some work done by some labourers.

as a contractor. The fact seems to be that he was an employee of the concern and for his own benefit or for the convenience of the management he also got some work done as a contractor by some labourers engaged by him. It is not denied by the management that he was working as an employee while the workshop was at Barakar and even when it shifted to Badjna. The trouble arose when he was asked to work either as an employee or as a contractor and he accepted the first offer but was given a fresh appointment under the letter issued to him. If he had been really working as an employee while the workshop was at Barakar itself there is no reason why he should have got a fresh appointment when the workshop shifted to Badjna. This was undoubtedly unfair on the part of the management. It is true that if it was not convenient the management was justified in asking him to work either as an employee or as contractor. The allegation is that he accepted the latter offer and as a matter of fact put his thumb mark on an agreement which on a subsequent thought he tried to tear off and even attempted to disfigure the thumb mark by putting ink on it. This attempt on the part of the workman was reprehensible no doubt and he seems to have been ill-advised to do it but at the same time it has to be said that the employer's attempt to give him a fresh appointment was also not fair. Further it appears from the evidence of the workman that when subsequently he came to join the work he was not allowed to do it. Perhaps, the management after that incident in which an attempt was made to disfigure the signature and tear off the agreement, did not consider it desirable to allow him to work in the concern. But, at the same time, realising the difficulty of passing any order without the permission of the Tribunal as the pendency of adjudication proceeding was there, thought it better to stop him from joining the work. The evidence of the workman given on oath is practically *ex parte* on the point and not a question was put to him by way of challenge as to the correctness of it. That being so, it is established that the management stopped his work without the permission of the Tribunal which was obviously wrong. The plea taken by the management that having agreed to work as a contractor the workman was no longer an employee of the company and as such he could not maintain this complaint petition as a workman does not carry conviction as even if the workman had signed the agreement to work as a contractor he seems not to have acted upon it and wanted to work as an employee of the company.

5. Finally, it appears that though there was no formal order of discharge, the management stopped the workman from doing the work. That in itself amounts to alteration of the conditions of service of the employee to his prejudice and the management was not entitled to do it without the permission of the Tribunal. In the absence of any formal

order of discharge the wrong done by the management was only this that it did not allow him to do the work though subsequently he was called by a letter to join the work. In the circumstances without taking any serious view of the technical breach the management is directed to allow him to join the work as an employee of the concern and for the idle period he is not to get any wages as it was more or less a result of his own indecision to work as an employee or as a contractor. Thus this petition is disposed of.

[IN THE BOMBAY HIGH COURT.]

STATE
v.
HATHIWALA TEXTILE MILLS AND OTHERS.

Dixit and Gokhale, JJ.

November 30, 1956.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 1(3)—ACT APPLIED TO FACTORY HAVING MORE THAN FIFTY EMPLOYEES—NUMBER OF EMPLOYEES FALLING BELOW FIFTY—EFFECT—WHETHER ACT CONTINUES TO APPLY.

Section 1(3) of the Employees' Provident Funds Act, 1952, provides that the Act applies in the first instance to certain factories in which fifty or more persons are employed. On the question whether, when the number of persons employed in the factory to which the Act has been applied falls below fifty, the Act will continue to apply: Held, *that the enactment being social legislation meant for the benefit of workers, must be given a beneficient interpretation in favour of the workers, and, as the section does not provide for the discontinuance of the application of the Act in case there is a fall in the number of persons employed below fifty after the Act has once applied, the Act will continue to apply to the factory even if the number of persons employed falls below fifty.*

Criminal Appeal No. 1082 of 1956.

V. H. Gumaste for the State.

Rajni Patel with *V. B. Patel* for the respondents.

JUDGMENT.

GOKHALE, J.—In this appeal against acquittal by the State of Bombay a short but important point of law arises for our decision. There are three respondents in this appeal and respondent No. 1 is the Hathiwala Textile Mills at Begumpura, while respondent No. 2 and respondent No. 3 are its occupier and manager respectively. On 4th March, 1952, the Employees' Provident Funds Act (No. 19 of 1952), was made applicable with the result that the workers of the factory began to enjoy the benefits of provident fund under the provisions of the Act. It is not disputed that the respondents complied with the provisions of the Act sometime till April, 1954. On the 6th April, 1954, it seems that the weaving department of the respondent Mills was closed. It appears that even though the weaving department was closed, the engineering department continued. But the number of workers in the factory fell below the figure of 50. The employers, therefore, thought that the workers in their factory would no longer be entitled to the benefits under the Employees' Provident Funds Scheme and, therefore, they addressed a letter to the Regional Provident Fund Commissioner on the 10th June, 1954, pointing out that they had two departments in the Mills, one of which was the weaving department and the other was the engineering department and that these two departments between them had 184 members of the Employee's Provident Funds Scheme, but due to Government taxes, excise duty and other adverse circumstances, the weaving department was closed from 6th April, 1954, and the engineering department had been continued. The letter also pointed out that on the date on which it was written there were only 40 members in that scheme and as out of them the clerical staff consisted of eleven persons, there were only 29 members in the engineering department who enjoyed the rights of the Provident Funds Scheme. In view of this circumstance, the employers requested Government to exempt them from the operation of the Employees' Provident Funds Scheme from the month of June, 1954, or at least the clerical staff to whom reference was made in the letter. The letter added if the Mills were exempted from the Employees' Provident Funds Scheme, the requisite rights of the workers would be given to them without any grudge. To this, a reply was sent by the Regional Provident Fund Commissioner, Bombay, on the 24th June, 1954, in which it was stated that under the directions from the Government of India once a factory was covered under the Act and the Scheme, it remained covered so far as the General Provident Fund was concerned, no matter whether the number of employees ran below 50. The request of the Mills to get exemption was not, therefore, acceded to. After this letter

and the reply of Government, it appears that the respondents failed to remit the employer's and employees' share of contribution from 1st August, 1954, onwards and they also failed to remit the administrative charges under the Act from 1st July, 1954. They also failed to submit the returns prescribed under the Employees' Provident Funds Scheme from the 1st August, 1954. It may be stated that on the 15th November, 1954, there was an insolvency petition filed against the respondents under which the property of the respondent Mills came to be in the custody of receivers. As the employers had failed to comply with the provisions of the Employees' Provident Funds Scheme, 1952, a complaint was filed against them and they were charged with offences under paragraphs 76(a) and (c) of the Employees' Provident Funds Scheme, 1952, read with section 14 of the Employees' Provident Funds Act, 1952.

Now, the facts, which are stated above, were not disputed by the respondents. They denied having committed any offence because they stated that the weaving department of Hathiwala Textile Mills had stopped working since April, 1954, and that they were not liable to pay the provident fund contribution and the administrative charges under the Act, as the number of workers on the roll was not 50 or more. They also contended that as there was an insolvency petition which resulted in the property of the Mills being taken over by the receivers, they were not in a position to pay any amount and were, therefore, not liable.

The case was tried in a summary way and the learned Special Judicial Magistrate, First Class, Surat, came to the conclusion that the Employees' Provident Funds Act, 1952, and the Scheme thereunder were not applicable to the factory of Hathiwala Textile Mills on the dates of the alleged offences because the number of workers in the Mills was less then 50 and, consequently, on the second point as to the liability of the respondents also he held that they were not guilty. That is how this appeal against acquittal has been filed on behalf of the State.

Now, the short point which calls for consideration in this appeal is as to the construction of section 1(3) of the Employee's Provident Funds Act, 1952, and that reads as follows:

"Subject to the provisions contained in section 16, it applies in the first instance to all factories engaged in any industry specified in Schedule 1 in which fifty or more persons are employed, but the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act, to all factories employing such number of persons less than fifty as may be specified in the notification and engaged in any such industry." Section 16 excludes the application of the Act in the case of factories belonging to Government or local authority and also to infant factories, that is to say any factory established whether before or after the commencement of the Act, unless three years have elapsed from its establishment and the Explanation to the section states that to remove any doubt it is declared that the date of the establishment of a factory shall not be deemed to have been changed merely by reason of a change of the premises of the factory. Now, section 1(3) shows that unless the factory in question is excepted under the provisions of section 16, the Act will apply, provided the factory is engaged in any industry specified in Schedule I in which fifty or more persons are employed. There is no dispute that the first respondent-factory comes within the factories specified in Schedule I and the Act was applied to it in 1952. But, it was contended in the lower Court that admittedly on the dates of the alleged offences, *viz.*, in July and August, 1954, the workers in the factory numbered less than fifty. It was, therefore, argued that the provisions of the Act had ceased to apply and, consequently, no liability was incurred by the respondents by reason of their failure either to remit their share of contribution to the provident fund or to pay the administrative charges or to submit the returns prescribed under the Scheme. That argument, as I have said, was accepted by the learned trial Magistrate. But Mr. Gumaste contends that the interpretation put upon section 1(3) by the learned trial Magistrate is clearly erroneous and, in our opinion, that contention is well founded. If we look at section 1(2), it shows that the Act extends to the whole of India except the State of Jammu and Kashmir. Then section 1(3) states that the Act "applies in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed." The dispute is as to the interpretation of the words "are employed." It is the contention of the defence that these words must be interpreted so as to mean that on the date on which the offence is alleged to have taken place, it must be shown that the factory employed fifty or more persons and if that was not shown, then the Act would not be applicable. On the other hand, it is contended on behalf of the State that the words "are employed" must be read in relation to the words "in the first instance" and what was intended by the Legislature was that the Act should initially apply to all factories engaged in any industry covered by Schedule I in which fifty or more persons were employed. The latter part of that sub-section provides that the Central Government could, after giving not less than two months' notice of its intention so to do by notification in the Official Gazette, apply the provisions of the Act to all factories employing such number of persons less than fifty as may be specified in the notification

and engaged in any such industry. It seems, therefore, that the reasonable construction of the sub-section would be that the Legislature contemplated that the Act was to apply after it came into force to all factories in which fifty or more persons were employed. In the case of other factories employing less than fifty, the Central Government was given the option of applying the provisions of the Act by issuing a notification provided not less than two months' notice of their intention so to do was given. This sub-section, however, does not provide for the discontinuance of the application of the Act in case there is a fall in the number of workers below fifty after the Act had once applied. This construction of the sub-section would seem to be supported by some other provisions of the Act to which Mr. Gumaste drew our attention. Section 12 of the Act provides:

"No employer in relation to a factory to which any Scheme applies shall, by reason only of his liability for the payment of any contribution to the fund or any charges under this Act or the Scheme, reduce whether directly or indirectly, the wages of any employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund to which the employee is entitled under the terms of his employment, express or implied."

This would clearly show that even though the workers got the benefits under the provisions of this Act, the employers could not take away the advantage thus secured to the workers by simultaneously reducing their wages of the total quantum of benefits in the nature of old age pension, gratuity or provident fund to which the workers were already entitled. The Act is intended to provide benefits of provident fund for employees in factories and other establishments and naturally the Legislature took the precaution of seeing that these benefits were not counterbalanced by any action on the part of employers in reducing the wages or other benefits which the employees were already enjoying before the application of the Act. Section 17 of the Act empowers the appropriate Government to exempt any factory from the operation of all or any of the provisions of any Scheme, subject to certain conditions. Explanation (ii) to section 17(1) provides:

"The amount of accumulations to the credit of an employee in the provident fund shall, where he leaves his employment and obtains re-employment in another factory to which this Act applies, be transferred, within such time as may be specified in this behalf by the Central Government, to the credit of his account in the provident fund of the factory in which he is re-employed or, as the case may be, in the fund established under the Scheme applicable to the factory."

So that under this provision where a worker leaves his employment and obtains re-employment in another factory to which the Act applies, whatever provident fund has been accumulated to his credit will be transferred to the credit of his account in the provident fund of the other factory, so that the worker will not be put to any loss by reason of the fact that he has left employment in the old factory and has obtained re-employment in another factory. Under section 5 of the Act the Central Government was empowered to frame a Scheme to be called "the Employees' Provident Funds Scheme" and on 2nd September, 1952, the Government of India framed such a Scheme. Rule 26 of that Scheme refers to the class of employees who are required to join the fund and it says:

"Every employee, employed in a factory to which this Scheme applies, other than an excluded employee shall be required to become a member of the Fund from the date on which the Scheme comes into force if he has on that date completed one year's continuous service in the factory concerned. Every employee, other than an excluded employee, taking up employment, whether before or after the commencement of the Scheme, in a factory to which this Scheme applies, shall also become a member from the beginning of the month following that in which he completes one year's continuous service in the factory."

This shows that all employees other than excluded employees would get benefits of the Provident Funds Scheme, provided they have completed one year's continuous service in the factory concerned, so that any employee who has not completed one year's continuous service would not be entitled to the benefits of this Scheme. Mr. Gumaste relied on this provision to show that the Legislature intended that an employee who had completed one year's continuous services should begin to get the benefits of the Provident Funds Scheme and should continue to get those benefits, provided that factory was working. Then Mr. Gumaste referred us to rule 69(2) and (4) of the Scheme. Rule 69(2) provides that the Board of Trustees or the Commissioner may permit a member, who has not attained the age of superannuation, to withdraw the amount standing to his credit in the Fund under certain circumstances. Rule 69 (4) provides:

"A member who withdraws the amount under sub-paragraph (2) shall be required to join as a new member of the Fund if he obtains employment again in a factory to which this Scheme is applicable and qualifies again for the membership of the Fund."

The provisions of this rule again show that in case a member withdraws the amount from the fund and gets employment in another factory to which the Scheme applies, he shall have once more to qualify

himself for the membership of the Fund. As already stated, under section 17, Explanation (ii), where a worker leaves his employment and obtains re-employment in some other factory to which the Act applies, he can get a transfer of the amount of the provident fund to the factory in which he is re-employed but if he withdraws the amount of the fund, then he is placed under an obligation of again qualifying himself for the membership of the Fund. It is true that the provisions of sections 12 and 17 and the provisions of rules 26 and 69 to which Mr. Gumaste referred cannot in terms help us to interpret section 1(3), but they would show that what the Legislature intended was that a worker who began to get the benefits of the provident fund under the provisions of the Act should continue to get them even if he left the factory and obtained re-employment in another factory, provided he got the amount of the provident fund standing to his credit in the old factory transferred to the credit of his account in the provident fund of the other factory.

Mr. Rajni Patel contended that we should give a strict construction to the words "are employed" in section 1(3), because, it is a penal statute and if two constructions are possible, the one favourable to the respondents should be accepted, and his argument was that if the Legislature had intended that factories, which after the Act came into operation were governed by this Act even after they had ceased to employ fifty or more workers, then the Legislature would have said so in express terms. We are not prepared to accept this argument. What the Legislature intended in the first portion of section 1(3) of the Act was that the Act was to apply to all factories which were covered by Schedule I and in which fifty or more persons were employed. The mere fact that after the Act came to be applied to a factory the number of workers in that factory was reduced to less than fifty would not make the Act inapplicable. It is no doubt true that in the latter part of section 1(3) the Central Government is given the power to issue a notification making the provisions of the Act applicable to all factories employing persons below the figure of fifty, and Mr. Rajni Patel's argument is that if the Central Government wanted to make this Act applicable, it could have immediately issued a notification under section 1(3) continuing the application of the Act to the respondent-factory. We are not prepared to accept this contention either. What the latter part of sub-section (3) provides is that the Central Government is given the power to issue a general notification applying the Act to all factories employing less than fifty workers, provided they give the requisite notice of two months of their intention so to do. That provision does not, in our opinion, contemplate the issue of a number of notifications which would be applicable to individual factories. As regards the argument of strict construction, it must be remembered, in the first instance, that the Employees' Provident Funds Act is a social legislation meant for the benefit of workers. Penal statutes like other statutes must undoubtedly be construed according to their plain provisions. But it is now well recognised that it is the paramount duty of the Courts to put upon the language of the Legislature honestly and faithfully its plain and rational meaning so as to promote the object of the Legislature. In this connection this is what Maxwell says in his *Interpretation of Statutes* at page 284 :

"The tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the legislature, than formerly. It is unquestionably right that the distinction should not be altogether erased from the judical mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty, and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence."

Mr. Gumaste also relied in support of his contention on an unreported* decision of this Court in *J. G. Vakharia* v. *Regional Provident Fund Commissioner, Bombay*, Special Civil Application No. 829 of 1956, decided by the learned Chief Justice and my learned Brother. In that case the Court was dealing with an attempt to circumvent the provisions of the Employees' Provident Funds Act by splitting up a factory into five separate units, none of which employed fifty or more persons, and that was sought to be justified on the score of the right of the subject to avoid paying tax if he was legally entitled to do so. While dealing with this argument, the Court observed:

"It is a well settled canon of taxation laws 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,

*Since reported in [1957] 13 F.J.R. 231—Ed.

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 even if necessary 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 the Court must disapprove all subterfuges to defeat a social legislation but must actively try to prevent such subterfuges succeeding in their object."

Now, in the present case, we are not satisfied that there is any ambiguity in the meaning of the words "are employed" in section 1(3) of the Act as contended by Rajni Patel. The sub-section, read as a whole, shows that the Legislature intended that the Act should initially apply to all factories in which fifty or more persons are employed. In the case of other factories employing less than fifty persons, the Central Government is empowered to issue a notification after giving not less than two months' notice of their intention to apply the Act to the said factories. The sub-section, therefore, deals with the initial application of the Act. It has nothing to do with the continuance of the application of the Act and Mr. Rajni Patel has not been able to draw our attention to any provision of the Act which would justify his argument that as soon as the factory ceased to employ fifty workers or more but employed less than fifty workers, the Act would cease to apply and the workers would cease to get the benefit accruing to them under the provisions of the Act. In fact, the several provisions of the Act to which the learned Additional Assistant Government Pleader drew our attention show that the Act was intended for the benefit of the workers and assured them the continuance of those benefits provided the workers had the necessary qualification of one year's continuous service,. On the other hand, if the interpretation sought to be placed on section 1(3) by Mr. Rajni Patel were to be accepted, the workers would be constantly exposed to the peril of losing the benefits under the Act during such periods when the factory ceases to employ fifty or more workers. That would also undoubtedly leave wide scope for evasion and result in defeating the rights of the workers which the Court must try to prevent. It is significant to note that the evidence in this case discloses that the respondents have again begun to pay, since February, 1955, provident fund contributions and administrative charges regularly.

Then Mr. Rajni Patel drew our attention to a ruling in *Central Provident Fund Commr.* v. *Ganesh Dyeing and Printing Works*, [1957] 13 F.J.R. 197. According to Mr. Patel this ruling lays down a limitation on the rule of benevolent interpretation. In that case this Court was also dealing with the provisions of the Employee's Provident Funds Act and the learned Chief Justice remarked that :

"......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."

Even applying this test, we are not satisfied that in this case the interpretation which we propose to put on section 1 (3) would result in increasing the liability of the respondents. The respondent-factory is not called upon to pay the provident fund contributions of any of the workers who have ceased to be its workers. No doubt the factory itself was, on the material dates, employing less than fifty workers. But as already stated, that would not make the Act which had once applied, inapplicable, and the factory is being called upon under the provisions of the Act to pay the provident fund contributions regarding workers who are actually on its roll. In fact its total liability has been reduced as a result of the fall in the number of its workers owing to the closure of the weaving department. At any rate, it cannot be said that there is any enhanced liability on the respondents because the Act continues to apply to their factory. The argument of Mr. Rajni Patel on this score also must, therefore, be rejected.

The learned Counsel then referred us to a ruling of the Supreme Court in *Kalidas Dhanjibhai* v. *The State of Bombay*, [1955] 1 S.C.R. 887; A. I. R. 1955 S.C. 62. There their Lordships, while dealing with the provisions of the Bombay Shops and Establishments Act, 1948, refused to accept the extended interpretation sought to be placed on the term "shop" in that Act by the learned Attorney-General on the ground that, when there are two possible interpretations, the Court must choose the one which best accords with the policy of the Act. But in coming to the conclusion that the Bombay Legislature did not intend to rope in small establishments of the kind with which that case was concerned, under the Bombay Shops and Establishments Act, their Lordships were partly influenced by the wording of section 5 of that Act under which the State Government could by a mere notification extend the Act to any establishment or class of establishments to which the provisions of that Act did not for the time being apply. The wording of section 5 of the Bombay Shops and Establishments Act is, however, somewhat different from the wording of section 1 (3) of the Employees' Provident Funds Act and, as we have already seen, section 1 (3) would not warrant

the issue of a notification to apply the Act to individual factories. We do not think, therefore, that Mr. Rajni Patel can derive any assistance from this case either.

In our opinion, therefore, the view of the learned trial Magistrate that the Act was inapplicable to the respondent-factory is not correct and the order of acquittal must, therefore, be set aside.

DIXIT, J.—While I concur in the judgment just delivered I desire to add a few words. The sole question in this appeal is whether respondent No. 1 factory is governed by the provisions of the Employees' Provident Funds Act, 1952. That question has to be answered by reference to section 1 (3). Two interpretations are suggested with regard to section 1 (3). The learned Additional Assistant Government Pleader contends that the Act applies to this factory on the dates of offences which are July and August, 1954, while Mr. Rajni Patel, appearing for the respondents, contends that the Act does not apply because the factory had employed on these dates persons who are less than fifty. It will be best to begin with reproducing the section which, so far as material, 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, but the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act, to all factories employing such number of persons less than fifty as may be specified in the notification and engaged in any such industry."

It is evident that section 1 (3) is composed of two parts. The first part applies to a case where the factory employed fifty or more persons at the material time which was the 4th March, 1952, when the Act came into operation. Therefore, if on the 4th March, 1952, a factory had, on its register, fifty or more persons, the factory was clearly governed by the Act. The second part of the sub-section applies to a case where the factory may have less than fifty employees in which case the Act is to be made applicable, as is indicated in the section, by a notification to be issued by the Central Government in order to apply the Act to such a factory. It is indisputable that the Act is a piece of social legislation. It is also clear that the object of the Act is to promote the well-being of the workers. Now, an analysis of section 1 (3) makes it clear that the provision applies to two different sets of factories and that is by reference to the number of persons employed in a factory. The first part deals with a case were the number of employees is either fifty or more and the second part deals with a case where the number of employees is less than fifty. The modes of the application of the Act are different. In the first place, the Act applies to a factory having, on the 4th March, 1952, fifty or more employees. It is not in dispute that on the 4th March, 1952, the factory in the present case had employees exceeding fifty. It is obvious, therefore, that section 1 (3) will apply to this case. But the argument of the learned counsel, appearing for the respondents, is that although the Act was applicable on the 4th March, 1952, the Act has ceased to apply to the factory on the dates of offences which are July and August, 1954. The argument is that, because on those dates the number of workers in the factory was less than fifty, the Act had ceased to apply. One obvious answer to this contention is that there is no provision in the Act which says that the Act, even where it has once applied to a factory, would cease to apply to it as soon as the employees are less than fifty. Once the Act applies, it must continue to apply and on that view the contention of Mr. Rajni Patel is clearly wrong. But if one examines the argument, it will be clear that the argument is one which cannot be accepted. Take a case: This factory, prior to July and August, 1954, had workers exceeding fifty. It is clear that upon that basis, those emplyees would be entitled to the benefits given by the Act. If in July and August, 1954, the factory had upon its register, a number less than fifty, according to Mr. Rajni Patel the employees would not be entitled to the benefits. If the emplopees are entitled to the benefits given under the Act, I fail to see why on earth, the employees who used to enjoy the benefits would cease to enjoy those benefits merely because the factory in July and August, 1954, had, upon its register, employees less than fifty. Mr. Rajni Patel contends that as soon as the number of employees in the factory became less than fifty, it was open to the Government to issue a notification applying to this factory the provisions of the Act. That argument is clearly wrong because the intention of section 1 (3) is clear which is that the Act, in the first instance, applies to all factories in which fifty or more persons are employed. Then the second part of section 1 (3) provides for cases where the number of employees is less than fifty in which case a Central Government notification would be necessary. Section 1 (3), therefore, shows that a distinction is made between the modes in which the Act is to be made applicable. Mr. Rajni Patel says that this is a penal statute and should receive a strict construction. If there are two interpretations, the interpretation which is favourable to a subject must be adopted in a penal statute. But, in this case, we are concerned with a difficult situation and we are dealing with a piece of social legislation. If that is so, then we must give such an interpretation to its provisions that the object of the Act would be advanced and the welfare of the workers

would be promoted and it is recognised that in such a case the Court would be justified in straining the language of the section in order to promote the object of the Act.

In the course of his argument, I put to Mr. Rajni Patel a question as to whether the liability of the employer would, in any way, be increased by adopting the construction which we propose to adopt and he was unable to give a cogent reply to this question. This shows that the liability of the employer is, in no way, increased by adopting this construction. If that is the position, then it would be a question for consideration whether we should not adopt the construction which we are adopting in this case. That this is a proper construction also receives support from the other provisions of the Act and, in particular, section 12 and section 17 on which Mr. Gumaste has relied. The modern trend of interpretation of statutes is different in the case of interpretation of a piece of social legislation. The rule may not be the same as in the case of interpretation of a penal statutes. In the first case, the Court should adopt a beneficial construction and in the latter case, a strict construction would be necessary and I think we should give to section 1 (3) that interpretation which would most accord with the object of the Act and would promote the well-being of the workers. If I am not mistaken, the argument urged on behalf of the respondents really is that if the employers were to give the benefits to the employees when the workers are less than fifty, it would not be convenient to the employers to do so. But this is an argument of hardship or inconvenience and arguments of hardship and inconvenience have no place in the construction of statutes. In my opinion, therefore, I would give to section 1 (3) an interpretation which will be beneficient to the employees and on that view, it seems to me that the view taken by the lower Court is erroneous.

PER CURIAM: The appeal will, therefore, be allowed, the order of acquittal will be set aside and the case will be sent back to the learned Magistrate to be disposed of in accordance with law.

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

PARRY & CO., LTD., FORT COCHIN
v.
COCHIN PANDIKASALA THOZHILALI UNION, MATTANCHERRY.

Shri V. U. Joseph.

September 24, 1957.

'WORKMAN'—DEFINITION OF—WORK ALLOTTED BY MANAGEMENT TO A CONTRACTOR—EMPLOYEES OF CONTRACTOR—WHETHER 'WORKMEN' OF MANAGEMENT—WHETHER CAN BE PARTIES TO INDUSTRIAL DISPUTE WITH MANAGEMENT—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(s).

CONTRACT LABOUR—VICTIMISATION OF—RELIEF—DUTY OF INDUSTRIAL TRIBUNALS TO PROTECT CONTRACT LABOUR.

Contract labour is not labour employed by the by which the contractor is employed and the relationship of employer and employee does not exist between such labour and the management of the concern. The fact that such labour fall within the definition of 'worker' in the Factories Act, 1948, is not relevant as the definition under the Industrial Disputes Act, 1947, is different. Where the management has entrusted the execution of a particular work to a contractor, the workmen employed by the contractor do not come within the definition of 'workman' in section 2(s) of the Industrial Disputes Act, 1947, and cannot, therefore, be party to an 'industrial dispute' with the management.

Though there may be no relationship of employer and employee as between the management and the employees of a contractor, it is the duty of Industrial Tribunals to see that the contractor does not take undue advantage of the position of such employees and prevent their being victimised.

The Tribunal directed that the dismissed workmen should be given employment by the contractor and also awarded compensation for unemployment to each workman to be paid by the contractor.

Industrial Dispute No. 27 of 1956.

G. B. Pai for the management.

C. M. Ramachandra Menon for the contractor.

T. C. N. Menon and *G. Gangadhara Menon* for the employees.

AWARD.

1. Dispute having arisen between the Manager, Parry & Co., Ltd., Fort Cochin and the President, Cochin Pandikasala Thozhilali Union, was referred to this Tribunal for adjudication by order No. L-Dis. 3040/1955/DD. of the Department of Development and Labour, Government of Travancore-Cochin State dated 5th May, 1956. After the

statement of the parties the President of the Pandikasala Thozhilai Union moved this Court by M. P. 46/56 dated 30th July, 1956, for impleading the General Shipping and Forwarding Service as a party to the dispute. After notice to the parties and hearing their objections, the General Shipping and Forwarding Service was impleaded as the 'additional opposite party' as per the order on M.P. 46/56 on 20th September, 1956. The General Shipping and Forwarding Service is represented by its Proprietor Mr. C. I. Abraham.

2. The issues referred for adjudication are given below:

1. Are the workers entitled to any bonus from 1952 onwards? If so, what should be the quantum of bonus to be paid?
2. Are the workers entitled to any holidays with wages?
3. Are the workers entitled to one month's pay as gratuity for every year of service on the termination of service?
4. Whether the wage cut effected by the Company on 6th November, 1954 and 10th November, 1954, in the wages to the workers engaged in mixing Cynamide should be restored?
5. Is the action of the Company in discharging workers with long service and engaging new workers in their places on 8th February, 1955, justifiable? To what reliefs are these discharged workers entitled—
   (i) if the discharge is justifiable?
   (ii) if the discharge is not justifiable?
6. Are the above workers who are kept out of employment entitled to any interim relief pending adjudication? If so, to what extent?

At the time of the argument the Union advocate Mr. Gangadhara Menon confined his case with regard to issue No. 5 only. I give below the statement of case regarding issue No. 5 alone.

3. It is contended by the Union that the main business of the management concern is trading in manure. Storing, mixing, packing and distribution of various kinds of organic and inorganic manures are done by the Company in their factory at Palluruthy. In the last three years the Company was employing 72 workers regularly including 18 head-load workers. For paying the workers for the work the management Company was making use of the additional opposite party. This was with a view to deny the workmen their legitimate rights and benefits arising under the various labour legislations. While the Company was paying a rate of Rs. 18-12-0 for loading and unloading 100 bags of manure the workmen were getting only Rs. 7-8-0 for loading 100 bags and Rs. 12 for unloading 100 bags. The rest of the amount is being shared by the General Shipping and Forwarding Service and a moopen appointed by them. The workers are denied the benefits conferred by the Factories Act. Though

the workmen were compelled to do overtime work, no overtime allowance was ever paid. There was a previous dispute between the management and their workmen which was settled by the mediation of the Ernakulam Conciliation Officer. Fifty-eight workmen employed in the Factory were members of the Pandikasala Thozhilali Union and the Union was agitating for better service conditions and increased amenities for the workmen. On 1st November, 1954, the Union placed a memorandum of demand to Parry & Co., requesting for improving the service conditions of the workers and granting security of service for workmen. This demand infuriated the management of Parry & Co., and also the Proprietor of the General Shipping and Forwarding Service and they started ill-treating workmen by cutting wages and so on. Following the demand of the Union dated 11th November, 1954, the Assistant Labour Commissioner issued notice to the parties fixing a conference on 2nd February, 1955, and on the request of the management the conference was adjourned to another date. Immediately after the said conference the management and their intermediaries began to hatch a malicious conspiracy to get rid of the members of the Union. On the morning of 8th February, 1955, when the workmen assembled in the factory, the management brought in 20 new head-load workers. On that day there was only sufficient work for the old set of workers and there was no necessity to bring new hands. The workmen themselves discussed with the management in the evening of 8th February, 1955, about the troubles obtaining there but no settlement could be effected as the management was very adamant in their attitude. On the morning of 9th February, 1955, the management brought in another set of 100 workers. The management ordered 58 workmen, members of the Union, not to work and they were told that they were dismissed from employment. On the morning of 9th, when the workmen went there for work they found in the factory armed police force and the workmen were forced out of the factory by the police. Five of the prominent workmen were also arrested without any provocation. Consequent to all these the workers had to offer *satyagraha* for many days as a a redressal measure. Following this incident conciliation conferences were convened by Assistant Labour Commissioner and Labour Commissioner but ended in failure due to the unconciliatory attitude of the management. The dismissal of 58 workmen on 8th February, 1955, is void and illegal. The dismissal was an act of victimisation, because of the membership of the workers in the Union. The Union prays for the re-instatement of the workmen with their back wages.

4. In the statement of the management it is stated that the workers represented by the Union were workers engaged by a contractor

named the General Shipping and Forwarding Service and the nature of the work in the factory is intermittent and seasonal. Depending on the quantum of work available each day, the contractor employs varying number workers each day on a casual basis. The workers were paid by the contractor on the basis of the total turnover each day. The Company was never the employer of any of these workmen now represented by the Union in the adjudication proceedings. The Company maintains that there is no privity of contract or relationship of employer and employee and the above dispute is not an industrial dispute so far as the workmen and the Company is concerned. The Company has not exercised any control over the workmen. The Company's work at Palluruthy is of a seasonal character depending largely on the availability of raw materials for mixing and availability of orders and waggons for the packing and distribution of manures. The work being seasonal and intermittent in nature the whole work has been given on contract to the General Shipping and Forwarding Service from the very beginning of the factory. The Company contends, following the demands, the Union encouraged the workers to resort to slow-down tactics and refusal to work after entering the factory. This resulted in the accumulation of work in the factory and the Company had to warn the contractor that he should execute his work without any delay. The contractor engaged fresh labour when the old workers refused to work. On 8th February, 1955, the work in the factory had accumulated to a great extent, the contractor engaged 20 extra head-load workers to clear the accumulation of stock. The old workers staged a demonstration and refused to work if other extra workers were engaged. On 9th February, 1955, the old workers again prevented the new workers coming in for work and one or two of the workers were manhandled. Police had to be brought in to prevent further trouble and all the workers had to be first cleared from the factory. The old workers were asked to enter if they were agreeable to work. Only 14 of the old workers alone volunteered for such work. The contractor engaged about 50 new workers to carry on the work. The Company has denied the statement of the Union that there was only enough work for the existing number of workers on 8th February, 1955. The Company prays for the dismissal of the reference.

5. The General Shipping and Forwarding Service hereinafter referred to as the contractor filed his statement on 15th day of October, 1956. It is contended by the contractor that he is neither a necessary or proper party and has been wrongly and without jurisdiction impleaded and states that his reply statement is filed reserving the right to agitate the same. The General Shipping and Forwarding Service is a contract firm and has subsisting contract with Parry & Co.,

regarding loading, unloading, mixing and distribution of manure at the Palluruthy factory. The contract with the Company is on specified terms and is for a period of one year. The work is of varying nature and is also seasonal depending upon the availability of raw materials The work at Palluruthy factory is being done through, a sub-contractor Sri P. D. Xavier, on terms and conditions agreed between them. The workmen are engaged and paid by sub-contractor on the basis of the turn-over of work for each day and the contractor has absolutely no control over the workmen and the workmen represented by the Union are not his employees and there is no employer-employee relationship. The contractor has adopted the contention of the Company with regard to the accumulation of stock by 8th February, 1955, and the happenings that took place in the factory on 8th February, 1955, and 9th Februay, 1955.

6. The evidence of the Union consists of the oral evidence of witnesses WW1 to WW4 and Exs. A to C. The evidence of the company consisted of the oral evidence of EW1 and EW2 and Exs. 1 to IV and the evidence of the contractor consists of the oral evidence of E2W1 to E2W3 and Exs. E1 to E11,

7. The case of the Union is that the workmen were employed by the Company directly and the contractor, the additional opposite party is only a supervisor under the Company and the dismissal of workmen without any charge-sheet and enquiry is in violation of the principles of natural justice and that all the 58 workmen must be re-instated with back wages. The Company on the other hand contends that they have given the work of mixing and distribution to the additional opposite party, the contractor and there is no relationship of employer and employee between the Company and the workmen and the reference in the instant case is not an industrial dispute so as to give jurisdiction to this Tribunal to pronounce any award. The additional opposite party contends that he has given the work of the Company to sub-contractor Mr. P. D. Xavier and the workmen are engaged and paid by Xavier and not by the additional opposite party, the contractor. The first matter to be decided is whether the Company is directly managing the factory work at Palluruthy as contended by the Union or through contractors and if through contractors is it through the additional opposite party the contractor or P. D. Xavier. The Company examined EW 1, Mr. Tottan, the manager of Parry and Company. He states that the work in the Palluruthy factory is being done by the contractor, the General Shipping and Forwarding Service. Ex. EI is that contract containing the terms and conditions of the contract and the Company pays the contractor at rates as fixed for tons. Ex. IB is a quotation given by the General Shipping and Forwarding Service. By Ex. IB this

quotation was validated up to 31st December, 1953, and by Ex. IC it was validated by the Company till the end of 1954, subject to certain revisions in April, 1954. The workers are being paid by the contractor and the Company has no control over the workers employed by the contractor. It is the responsibility of the contractor to employ as many casual workers as he deems it necessary for each day depending upon the quantum of work available in the factory. In regard to this quantum of work the Company inform the contractor, the total quantity to be mixed, packed and transported each day. In the cross examination he was confronted with Ex. B, copy of a statement showing that the number of staff employed by Parry & Co., at Palluruthy Factory as 48. In Ex. B the number of workers employed at Palluruthy is shown as 48 whereas really there are only 9 staff members at Palluruthy. Ex. B is only the copy of a statement filed by the company in I. D. 46/55 on the files of the Coimbatore Industrial Tribunal. EW 2, Mr. Shanker was examined before the Coimbatore Industrial Tribunal as MW 2 and Ex. IV is the copy of his deposition in that proceeding. In Ex. IV, he has stated that the number 48 is a mistake. In Ex. IV, it is stated that the Company don't have any direct employees at Palluruthy Factory. Mr. N. Gangadhara Menon argued that clerks employed by the Company control the work in the factory and the pay is disbursed in the factory premises and once the Company clerk noted on paper the names of all the 58 workers. And on one occasion two workers were suspended by the factory clerk and the workman WW 3 was appointed by the clerk Lawrence. The Palluruthy works of Parry & Co., being a factory is governed by the Factories Act, the Company has to observe the statutory provisions as laid down by the Factories Act. The definition of the term "worker" in the Factories Act is different from the one given in section 2(s) of the Industrial Disputes Act. The term "worker" is defined in section 2 (l) of the Factories Act and it means: "A person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process." The words "directly or through any agency" used in the definition indicate that the worker concerned need not necessarily be a direct employee, and even one engaged through a contractor would be covered. Workmen employed by a contractor, however, are not covered under the definition of the term "workman" as given in section 2 (s) of the Industrial Disputes Act. It has been held in the case of *Gasliton Colliery* v. *Its workmen* ([1954] I, L.L.J. 144) that where the management entrusted the execution of a particular work to a contractor, workmen employed and paid by such contractor are not the workmen of the management as no relationship of employer and employees subsists between such workmen and the management. So also in the case of *Sri Goenka Mills* v. *Shivpur Mill Mazdoor Sangh,* [1954] 8 F.J.R. 23, the workmen employed by the contractor who looked only to the contractor for payment of wages and over whom the management had no control or supervision, were held not "workmen" of the management who entrusted the work to such contractor. The contract in favour of the additional opposite party is evidenced by Ex. E1, Ex. IB and IC and I find, that the work in the Palluruthy Factory is carried on by the contractor. The further question whether there is a sub-contract in favour of P. D. Xavier has to be decided next. Exhibit E2 dated 8th January, 1953, is the document creating sub-contract in favour of Mr. P. D. Xavier. This is written on a piece of plain paper. This does not create any sub-contractor. It contains an offer by Xavier to General Shipping and Forwarding Service to undertake the work in Palluruthy Factory on specified rates. There is no acceptance of the same by General Shipping and Forwarding Service nor does it show that anything was subsequently done in furtherance of Ex. E2. Exhibit E3 is a fixed deposit receipt dated 17th November, 1956, for Rs. 250 in the name of Mr. P. D. Xavier. Exhibit E3 is the renewal of a previous fixed deposit. Exhibit E3 is alleged to be security deposit for the due preformance of the sub-contract. Exhibit E3 by itself is no proof of any security. Exhibit E4 is a letter to the General Shipping and Forwarding Service from the Cochin branch of the Palai Central Bank Ltd., dated 26th November, 1956. A lien on this fixed amount is created in favour of the General Shipping and Forwarding Service. Exhibit E4 does not show for what purpose the lien is created. The trouble in the factory arose on 8th February, 1955. We are concerned with the question whether P. D. Xavier was a sub-contractor in February 1955, Exhibit E2, the alleged sub-contract is dated 8th January, 1953. But Exhibits E3 and E4 come into existence much later, The relevant date is 8th February, 1955. There was no security deposit on 8th February, 1955, or any date earlier to that. Exhibit E5 series (4) and E10 and E11 are bills submitted by P. D. Xavier to General Shipping and Forwarding Service for work done. It does not follow from that that these bills were prepared by Xavier as a sub-contractor of the General Shipping and Forwarding Service. These bills can be prepared in his capacity as an employee under General Shipping and Forwarding Service. In Ex. E5 series and Exs. E10 and E11 there is nothing to show that he is sub-contactor and. Ex. E8 series 12 in number are the statements showing the progress of work in the Palluruthy Factory. In all these slips G. S. and F. Service

(General Shipping and Forwarding Services) is shown as contractors and there is the signature of Mr. C. I. Abraham in all these slips and there is no mention of any sub-contractor anywhere in any one of these slips. These slips are for a period from 1st July, 1955 to 15th July, 1955. In Ex. E11 a petition dated 8th November, 1954, from Xavier to the Inspector of Police he has described himself as a sub-contractor and in Ex. E9, a card written by the Income-tax authorities, he is addressed as a contractor. The Income-tax Officer must have addressed him on the basis of some information received from enquries and no reliance can be placed upon the same. In Ex. E11, petition to the Inspector of Police, he has described himself as a sub-contractor. He chooses to describe himself by more glorified name than moopen and I do not find my way to attach any importance to this. In Ex. IB dated 1st January, 1954, from the General Shipping and Forwarding Service to Parry & Co., he agrees to take up the contract work till the end of 1953 and this is further extended till the end of 1954. In Ex. IE memorandum of agreement dated 1st March, 1953, Parry & Co., and General Shipping and Forwarding Service and P. D. Xavier are parties. There P. D. Xavier is described as a moopen under the General Shipping and Forwarding Service. In the objections filed by the General Shipping and Forwarding Service regarding the impleading matter, there is no mention of any such contract in favour of P. D Xavier. The oral evidence adduced to prove sub-contract in favour of P. D. Xavier is not acceptable. P. D Xavier, I am of opinion, was only a moopen and not a sub-concractor. The work in the Palluruthy factory was given on contract by Parry & Co., to the General Shipping and Forwarding Service and the factory work at Palluruthy was carried by them directly and I find them necessary party in this proceeding.

8. It is an accepted principle of law that contract labour is not the same as factory labour. Contract labour is not labour employed by the Company and the relationship of employer and employee does not exist in the case of contract labour. Unless, therefore, it is shown in any particular instance that any industrial establishment has undertaken particular obligations as to the labour under contractors it is difficult to extend any relief to the workmen against the Company. Contract labour normally means that contractors are entrusted with the execution of particullar works, and generally such contract is engaged where the work which the contractors are asked to do is not of a continuous character. Where the management entrust the execution of a particular work to a contractor, workmen employed and paid by such contractors are not the workmen of the management as there is no relationship of employer and employee subsisting between such workmen

and management. Any claim which the workmen under the contractor can claim has to be pursued against the contractor. The workmen employed by the contractors do not come within the definition of the 'workman' as given in the Industrial Disputes Act. As there is no jural relationship or relationship of employer and employee between the Company and the workmen under the contractors, none of the workmen can claim any lien for employment under the Company. I find that the workmen under the contractors cannot, in law claim any lien either for re-instatement or re-appointment against the Company.

9. The only issue coming up for consideration is whether the action of the Company in discharging workers with long service and engaging new workers in their places on 8th February, 1955, is justifiable? To what reliefs are these discharged workers entitled ?

(i) If the discharge is justifiable.

(ii) If the discharge is not justifiable.

The above issue is framed on the ground that the workmen concerned in this dispute were long in the service of the Company and they are workers under the Company and the Company discharged them. I have already found that the workmen were not workmen under the Company and the Company did not employ any one of them. Their claim is against the contractor, the General Shipping and Forwarding Service. The Industrial Disputes Act excludes clearly from its purview workers employed by contractor and contemplates only direct recruitment of labour. The definition of "workman" in section 2(s) and that of 'industrial dispute' in section 2(k) read together clearly show that workman must be employed for hire or reward to be fixed under a contract between the employer and employee. The 'workman' must be employed by the employer who can be made liable for contravention of any of the matter enumerated in section 2(k) of the Act. Therefore, workers employed by contractors cannot be said to be workmen within the meaning of section 2(s) of the Act. They are workers under the contractor and the Company had not discharged any one of them and no relief is available against the Company.

10. The workmen concerned were not given work from 8th February, 1955, by the contractor. The justifiability or otherwise of the refusal of employment has to be considered next. WW1, Mr. Gangadharan, the President of the Union states that the workmen involved in the reference were refused employment without any justifiable reasons. They are still unemployed. WW2, P. J. Joseph, is a workman concerned in the dispute. He states that one day the police came and removed them forcibly from the work spot. WW3 is another workman concerned in the dispute. He gives evidence regarding the details of

king in the factory. He states that there was enough and more work all the workers when they were refused employment on 8th February, 5. He states that workers were refused employment for resigning 1 C. T. T. Union and Joining Pandikasala Thozhilali Union. This is only reason for refusal of employment. None of the workers has anything against the contractor. They were getting Rs. 5 per day the very day when these workers were refused employment 70 new ds were taken. Only the 58 workers concerned in this dispute alone e working in the Palluruthy factory from 1952 onwards. The refusal mployment is due to the change of membership of the Union. WW4, s not say anything about the refusal of employment. EWs 1 and 2 do give any evidence with regard to the refusal of employment.

11. The case of the contractor, is that following the charter of nands placed by the Union, the workers began to resort to slow-down tics and refusal to work after entering the factory. This resulted in accumulation of stock in the factory and it is stated that the Company l to warn the contractor that he should execute his work without any ay. Mr. P. D. Xavier engaged 20 new head-load workers on 8th oruary, 1955, to clear the accumulation of stock. The old workers ged a demonstration and refused to work. On 9th February, 1955, old workers again prevented the new workers coming in to work. lice help had to be called to prevent troubles and the old workers re removed from the factory. All the old workers were offered ployment but only 14 of them alone volunteered for work. P. D. Xavier l to engage 50 new hands to carry on the work. The defence put ward by the company and the additional opposite party is spoken to witnesses E2W1, M. P. Mohamed. E2W2, C. I. Abraham and E2W3, D. Xavier and M. P. Mohamed are workers under the contractor, Mr. I. Abraham, and no reliance can be placed upon their evidence. It is o not safe to place any reliance upon the evidence of Mr. Abraham garding the matter of refusal of employment. All the three witnesses e highly interested. It has come out in evidence. The Mattancherry Labour fficer came to the spot at the time of the trouble and mediated in the atter. It is alleged that the old workers prevented new workers ming in and the trouble was put down with police help. The responsie officers of Labour Department and police would have been able to ve very reliable evidence as to the resistance offered by the old group workers. There is nothing written regarding the incidents that took ace on 8th February, 1955, and the following day. It is alleged that e workmen adopted go-slow method and as a result stock accumulated d the company warned the contractor. The incidents that led to the fusal of employment were not of sudden development. It arose as a

result of go-slow tactics and the consequent accumulation of stock. Either the Company or the contractor ought to have given written information to the workmen or the Union about the accumulation of stock; to which course they did not resort. Again the contractor did not give any written information stating the necessity to recruit new labour. There is no evidence to show the work to be carried on, on 8th February, 1955, was of such a nature that delay would have been detrimental to the interest of either the company or the contractor. An attempt ought to have been made to settle matters amicably. There is no case that all the workers refused resistance. Those who offered resistance ought to have been selected and dealt with according to law. It is unfair to punish all the workers for the sins of one or two. There was no service of any charge-sheet against any of the workers. Strictly a contractor may not be bound in law to issue charge-sheet and ask for explanation. Workmen are taken only according to availability of work and there is no lien for employment against a contractor. But, all the same, there is a human aspect. These workmen were in the Palluruthy godown factory from 1952 onwards as workers and in the fitness of things, considering the past services of these workmen, at least the Union ought to have been given written information pointing out the attitude of the workmen. The action of the contractor in taking 20 new workers on 8th February, 1955, and resorting to police help the following day were incidents which would have been prudently avoided or the contractor should have done the same thing after appraising the workers and the Union of the real situation obtaining on 8th February, 1955. There is no proof of any accumulation of stock nor about the pressing necessity for removal of stock on 8th February, 1955, itself. There is very serious negligence on the part of the contractor in not taking prudent precautionary measures. He wanted to send away all the old workers, because he was not pleased with them. This is really victimisation of poor workmen.

12. There is a lot of criticism against contract labour in India. From time to time commissions and enquiry committees have been appointed to go into the question of contract labour. All such committees have expresed opinions in favour of the abolition of contract labour. The opinion expressed by the Bihar Labour Enquiry Committee is worthy of note. This committee has condemned the system of recruiting labour through contractors who according to the Committee, "ordinarily lack the sense of moral obligation towards labour which the employers or their managers are expected to have and, therefore, do not often hesitate to exploit the helpless position of labour in their charge."

13. It is the duty of the contractor to treat the labour fairly. There is a duty on the part of Courts to enforce the rules of natural

[To be reprinted]

justice and fair play in the relations between contractors and their workmen. The helpless workers who are entirely left to the mercy of the contractors must be given all protections of law. Industrial Tribunals and Courts are not only to enforce the rigidities of law but rather have to keep their objective. In a labour dispute, the objective is not to find out who is guilty and who is correct and punish the guilty. The objective is to settle the dispute, the continuance of which vitally affects the very social fabric. A contractor should not be allowed to "hire and fire" as he likes. According to the availability of work a contractor has to provide work to the workers. As in the case of employers, no worker should be allowed to be victimised by contractors. The companies may not be able to avoid contract work when they have to carry on seasonal and intermittent work but that does not mean the workmen should be submerged by contractors.

14. The General Shipping and Forwarding Service is the contractor for several industrial establishments in Mattancherry and Cochin and has plenty of opportunities to provide employment and all the workers concerned in this dispute will be given employment according to availability of work under the contractor. The workmen concerned will be given employment not only in the Palluruthy godown of Parry & Co., but also in other establishments where the General Shipping and Forwarding Service is having contract work. The contractor will give timely information about the availability of work to the Union of which the workmen concerned are members. For the period of involuntary unemployment each worker will be paid Rs. 100.

15. The contractor will give employment to all the workmen concerned according to availability of work not only in the godown at Palluruthy under the Parry & Co., but in other establishments also where work is available under the contractor. As compensation each worker will be paid Rs. 100. The contractor will pay Rs. 200 towards expenses of the Union. I pass the award on the terms and conditions given above. The names of all the workmen concerned are given below as 'annexure'. The award will become enforceable after thirty days of its publication in the Government Gazette.

2/8
22/11

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