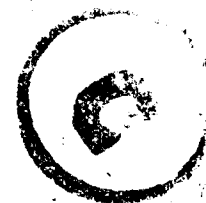


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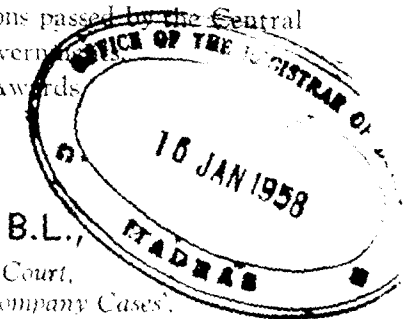
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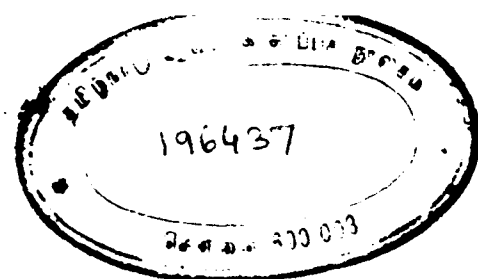
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Kerala Industrial Disputes Rules, 1957—Amendments.

Notification No. LI-6795/57/L&LAD, dated, Trivandrum, 30th October, 1957.*

In exercise of the powers conferred by Section 38 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) the Government of Kerala hereby make the following amendment to the Kerala Industrial Disputes Rules, 1957, the same having been previously published as required by sub-section (1) of the said Section.

AMENDMENT.

In the said Rules, after Rule 75, the following shall be inserted as Rule 75-A; namely:—

"75-A. *Procedure for decisions under Section 25-A (2)*: If a question arises regarding payment of lay-off compensation under Section 25-C and the employer of the industrial establishment concerned contends that his establishment is of a seasonal character or work therein is performed only intermittently, the employer or workman or representatives of employer or workman may submit to the Government a petition praying for a decision by the Government. The Government shall notwithstanding any conciliation or adjudication that is pending in this behalf, then send to the opposite party or parties and to the Labour Commissioner of the State a copy of the petition and shall appoint a day for hearing of the petition. The parties shall also be invited. After hearing the parties and after perusing the records if any produced by them, the Government shall arrive at a decision which shall be reduced to writing and communicated to the parties. The decision of the Government shall be final."

Sugar Industry declared Public Utility Service in West Bengal.

Notification No. 4003I. R./D/IA-20/56, dated 26th October, 1957.**

Whereas in the opinion of the State Government the public interest requires that the sugar industry should be declared as a public utility service;

Now, therefore, in exercise of the power conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor is pleased to declare the sugar industry to be a public utility service for the purpose of the said Act for a period of six months with effect from the 1st November, 1957.

*Kerala Gaz. 5-11-57, Pt. I, p. 2171.

**Calcutta Gaz. 7-11-57, Pt. I, p. 3802.

Orissa Factories Rules, 1950—Amendments.*Notification No. 4542-Lab., dated 24th July, 1957.**

In exercise of the powers conferred by sections 64 and 112 of the Factories Act, 1948 (LXII of 1948), the State Government do hereby direct that the following further amendments shall be made in the Orissa Factories Rules, 1950, the same having been previously published as required by section 115 of the said Act, namely :—

AMENDMENTS

In the said rules—after rule 81 the following heading and new rules thereunder shall be inserted, namely :—

“Rules 82 to 85 prescribed under section 64”

82. Persons defined to hold position of supervision or management—The following persons shall be deemed to hold positions of supervision or management :—

- (a) All persons specified in the Schedule annexed hereto
- (b) Any other person who, in the opinion of the Inspector, holds a position of supervision or management.

SCHEDULE

List of persons to hold positions of supervision or management in factories—

- (1) Managers
- (2) Assistant Managers
- (3) Engineers
- (4) Foremen
- (5) Weaving Masters and Spinning masters in Textile Mills
- (6) Head Electricians

83. Persons defined to hold confidential position.—All time-keepers employed in a factory within the meaning of sub-section (1) of section 2 shall be deemed to be employed in a confidential position in the factory.

84. List to be maintained of persons holding confidential position or position of supervision or management.—A list showing the names and designations of all persons to whom the provisions of sub-section (1) of section 64 have been applied shall be maintained in every factory.

85. Exemption of certain adult workers.—Adult workers engaged in factories specified in column 2 of the schedule hereto annexed on the work specified in column 3 of the said schedule shall be exempted from the provisions of the sections specified in column 4 subject to the conditions if any, specified in column 5 of the said schedule.

*Orissa Gaz. 23-8-57, Pt. III, p. 785.

SCHEDULE

Section of the Act empowering grant of exemption	Class of factory	Nature of exempted work	Extent of exemption	Remarks
(1)	(2)	(3)	(4)	(5)
64 (2) (a) and 64 (3)	All factories	Urgent repairs*	Sections 51, 52, 54, 55, 56 and 61	(i) No worker shall be employed on such repairs for more than 15 hours on any one day, 39 hours during any three consecutive days, or 66 hours during each period of seven consecutive days commencing from his first employment on such repairs. (ii) Within 24 hours of the commencement of the work, notice shall be sent to the Inspector describing the nature of the urgent repairs and the period probably required for their completion. (iii) Exemption from the provisions of section 54 shall apply only in the case of adult male workers.
64 (2) (b) and 64 (3)	All factories	1. Work in the mechanic shop, the smithy or the foundry or in	Sections 51, 54, 55, 56	The limits of work inclusive of overtime shall not exceed those

1.	2.	3.	4.	5	6
					mentioned in sub-section (4) of section 64.
64 (2) (c) and 64 (3)	All factories	...	connection with the mill gearing, and 61. the electric driving or lighting apparatus, the mechanical or electrical lifts or the steam or water pipes or pumps of a factory.		
		2.	Work of examining or repairing any machinery or other part of the plant which is necessary for carrying on the work in factory.		
		3.	Work in boiler houses and engine rooms, such as, lighting fires in order to raise steam or generate gas preparatory to the commencement of regular work in the factory.		

64 (2) (c) and 64 (3) ... Work performed by drivers, on Sections 51, lighting ventilating and humidity- 54, 55 and 61. The limits of work inclusive of overtime shall not exceed those mentioned in sub-section (4) of section 64.

Work performed by fire pump men
Work of persons engaged loading or unloading or transporting raw materials or finished articles in factories where such work is intermittent and mainly outside the factory premises.

(1)	(2)	(3)	(4)	(5)	(6)
					The limits of work inclusive of overtime shall not exceed those mentioned in sub-section (4) of section 64.
64 (2) (d) and 64 (3).	Oil tank and installations	Work performed by workers in connection with pumping operations.	Sections 51, 52, 54, 55, 56 and 61.		
	Hydro-electric public supply factories.	Operation and maintenance of prime movers and auxiliaries, transformers and switches.	Sections 52, 54 and 55.	Ditto	
	Public Electric Supply Companies generating electricity from oil in internal combustion engines	The work of engine drivers and assistants, generator attendants, oilers and greasers, switch-board operators and pumpmen.	Ditto	Ditto	
	Electrical Transforming factories.	The work, viz., operation and maintenance of the transforming plant, switches and synchronous condensers.	Ditto	Ditto	
	Distilleries	Work on the extraction of sugar from various bases, fermentation of sugarjuice and distillation of fermented wash.	Sections 52, 54 and 55.		The limits of work inclusive of overtime shall not exceed those mentioned in sub-section (4) of section 64.
	Sugar Factories	Extraction of the juice from the cane, clarification, evaporation and boiling of the juice, curing of the massecuite, bagging.	Ditto	Ditto	
	Chemical Factories	Work on the sulphur burners, chamber, concentrators and pumps, roasting furnace, the	Ditto	Ditto	

(1)	(2)	(3)	(4)	(5)
64 (2) (d) and 64 (3).				
		manufacture of hydrochloric and nitric acids, sulphates, sulphides, nitrates, superphosphates and chlorides, work on the steam service.		
	Vegetable Oil Hydro-generation Factories	The work, viz., refining, bleaching, filtering generation of hydrogen, hydrogenating and deodorising process also compression of oxygen and the cylinder filling and work on the electrical power plant.	Ditto	
	Ice Factories	... Work of the engine and compressor drivers and assistants and oilers.	Ditto	
	Oil Mills	... All work	... Sections 54 and 55.	
	Flour Mills	... All work	... Sections 52 and 55.	
	Glass Factories	... Work in attending to furnace	Ditto	
		All work and process from mixing of batch to removal of the manufactured glass ware from the lears.	Section 52	
	Paper Factories	... All work on paper making machinery and on the generation and supply of power connected therewith.	Sections 54 and 55.	

(1)	(2)	(3)	(4)	(5)
		Work on choppers, digesters, kneaders, strainers and washers, beaters, paper making machines, pumping plant, reelers, cutters and power plant.	Sections 52, 54 and 55.	
	Rubber tyre Factories	All work on curing process	... Section 55.	
	Iron and Steel Factories.	All work on steel furnaces	... Sections 51, 52, 54, 55 and 56.	
	Cement factories	All workers engaged in manufacture which is essentially continuous.	Sections 51, 52 and 55.	
64 (2) (i)	Newspaper printing factories.	Teleprinter service	Sections 51, 54 and 56.	
64 (2) (j)	All Factories	Loading and unloading of railway wagons.	Sections 51, 52, 54, 55 and 56.	

- (1) No workers shall be employed for more than 54 hours in any one week. The total number of hours of overtime work shall not exceed 50 for any one quarter.
- (2) Interval of at least half an hour for food and rest shall be given on each working day to all persons employed in such work.
- (3) No worker shall be allowed to work on consecutive weekly holidays.
- (4) This exemption shall not apply in case of female workers.

- (5) In the absence of a worker who has failed to report for duty, a shift worker shall be allowed to work the whole or part of a subsequent shift provided that—
- (i) The next shift of the shift worker shall not commence before a period of 16 hours has elapsed.
- (ii) Within 24 hours of the commencement of the subsequent shift notice shall be sent to the Inspector describing the circumstances under which the worker is required to work in the subsequent shift.
- (iii) The exemption will be restricted to only male adult worker.

(4)

(3)

(2)

(1)

64 (2) (d) &
64 (3)

Explanations—* 1. The following shall be considered to be urgent repairs—

(a) Repairs to any part of the machinery, plant or structure of a factory which are of such a nature that delay in their execution would involve danger to human life or safety or the stoppage of manufacturing process.

(b) Breakdown repairs to the motive power, transmission or other essential plant of other factories, collieries railway dockyards, harbours tramways, motor transport, gas electrical generating and transmission, pumping or similar essential or public utility services carried out in general engineering works and foundries and which are necessary to enable such concerns to maintain their main manufacturing processes, production of service during normal working hours.

(c) Repairs to deep-sea ships and repairs to commercial air-craft done in a factory which are essential to enable such ships or air-craft to leave port at proper time or continue their normal operations in a sea or air-worthy condition as the case may be.

(d) Repairs in connection with a change of motive power, for example, from steam to electricity or *vice versa* when such work cannot possibly be done without stoppage of the normal manufacturing process.

* 2. Periodical cleaning is not included in the terms "examining or repairing."

U. P. Factories Rules, 1950—Amendments.

*Notification No. 700(SM)/XXX-VIA—1019(SM)-57, dated October 28, 1957.**

Whereas the State Government considers it expedient to make the following rules in order to give effect to the purposes of the Factories Act, 1948, (Act LXIII of 1948);

Now, therefore, in exercise of the powers conferred by sections 64 and 112 of the said Act, the Governor of Uttar Pradesh is pleased to make the following rules, a draft of the same having been previously published in Notification No. 1273(LL) XXX-VI-B—411(LL)-53, dated April 12, 1956, as required by section 115 of the Act:

Rules

After rule 78 of the U. P. Factories Rules, 1950, the following shall be added as rules 79 to 82:

Persons holding positions of supervision or management, section 64(1)

Rule 79(1). The following persons in factories, other than sugar factories, shall be deemed to hold positions of supervision or management, provided they are not required to perform manual labour as a regular part of their duties:

- (i) The Manager;
- (ii) The Assistant Manager;
- (iii) Mill Secretary;
- (iv) Deputy Mill Secretary;

*U. P. Gaz. 2-11-57, Pt. I-A, p. 1596.

- (v) Labour Officers ;
- (vi) Heads of Technical Departments ;
- (vii) Engineers ;
- (viii) Assistant Engineers ;
- (ix) Foremen ;
- (x) Assistant Foremen ;
- (xi) Chargemen ;
- (xii) Overseers ;
- (xiii) Jobbers in textile factories ;
- (xiv) Supervisors ;
- (xv) Paper Makers ;
- (xvi) Head Store-Keepers, provided they are employed solely in a supervisory capacity ;
- (xvii) Any other person who, in the opinion of the State Government, holds a position of supervision or management and is so declared by it in writing.

(2) In sugar factories, the following persons shall be deemed to hold positions of supervision or management :

- (i) The General Manager ;
- (ii) The Manager ;
- (iii) The Mill Secretary ;
- (iv) The Deputy Mill Secretary ;
- (v) The Cane Manager ;
- (vi) The Cane Superintendent, where there is no Cane Manager ;
- (vii) The Chief Chemist ;
- (viii) The Labour Welfare Officer ;
- (ix) The Chief Engineer ;
- (x) The Secretary to the Managing Agent or the Personal Assistant to the General Manager ;
- (xi) The Cane Development Officer ;
- (xii) Any person who, in the opinion of the State Government, holds a position of supervision or management and is so declared by it in writing.

80. The following persons shall be deemed to hold confidential positions in a factory :

- (i) Stenographers ;
- (ii) Office Superintendent ;
- (iii) Head Clerk, where there is no Office Superintendent ;
- (iv) Head Munim, where there is no Office Superintendent or Head Clerk ;
- (v) Head Accountant ;
- (vi) Head Time-Keeper ;
- (vii) Cashier ;
- (viii) Any other person who, in the opinion of the State Government, holds a confidential position and is so declared in writing by it.

81. A list of all the workers in a factory to whom the provisions of section 64 (1) apply shall be kept in Form No. 6 in the Inspection Book, after it has been approved by the Inspector.

Urgent repairs, section 64 (2) (a)

82. Subject to the conditions stated below the work of adult male workers employed on urgent repairs in any factory shall be exempt from the provisions of sections 51, 52, 54, 55 and 56.

Conditions

(i) When the case of urgent repairs has arisen, a notice shall be sent, within 24 hours of the commencement of the employment of persons employed to carry out the said repairs, to the Chief Inspector of Factories at Kanpur in writing stating the names of persons employed, the precise nature of work and the exact time of commencement of such work. A copy of the said notice shall be affixed at the place mentioned in section 108(2), before the workers are put on urgent repairs.

(ii) A rest period of one hour shall be given, as work permits, during the working hours.

(iii) No worker shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.

(iv) All the workers, working in excess of 9 hours a day or 48 hours a week in a factory, shall be paid, in respect of such additional hours, at the rate of twice the ordinary rate of pay in accordance with the provisions of sub-section (1) of section 59 of the Act.

(v) Every worker shall be given compensatory holiday in accordance with section 53 of the Act.

Note—For the purposes of this rule the expression "Urgent Repairs" means (a) any repairs to the main driving machinery and plant, necessary to prevent or remedy a breakdown that may cause, or has caused, a stoppage of the whole manufacturing process; or (b) repairs that are of such nature that failure to execute them would cause a stoppage, or serious interruption, of a public service :

Provided that periodical overhaul, or repairs to any machinery, in a factory shall not be deemed to be "Urgent Repairs".

(2) in rule 83, for the heading "Loading and unloading, clerical staff, section 112" just above the rule, *substitute* the following :

"Loading and unloading of railway wagons and certain categories of clerical staff, sections 64(2)(j) and 112."

(3) After rule 83, the following shall be added as rules 84 to 96 :

Maintenance staff, section 64(2)(b)

84. (a) The work of the following classes of adult male workers shall be deemed to be of the nature referred to in clause (b) of sub-section (2) of section 64 of the Act, and such workers shall be exempt from the provisions of the sections of the Act mentioned against each :

(i) Engine drivers, firemen, coalmen, oilmen, rope and beltmen, fitters, welders, electricians, machinemens, black smiths, carpenters, masons and their assistants, when employed solely for the purpose of maintenance of a power plant and transmission machinery of a factory, from the provisions of sections 51, 55 and 56.

(ii) Workers employed solely in water supply, lighting, ventilating, airconditioning, humidifying, fire extinguishing, and the cleaning of blow-room flues, from the provisions of section 56.

Explanation—"Maintenance" for the purposes of this rule means the upkeep and repairs to power plant, transmission machinery, electric motors and thier switchgears and cables, but shall not include the repairs or adjustment of manufacturing machines and their ropes and belts.

(b) An exemption under this rule shall be subject to the following conditions :

(i) A period of rest of one hour shall be given during each shift.

(ii) The total hours of overtime work shall not exceed 50 in any one quarter, the total spread-over being limited to 12 hours in any one day.

(iii) All workers working in excess of 9 hours a day, or 48 hours a week, in a factory shall be paid, in respect of such additional hours, at the rate of twice the ordinary rate of wages, in accordance with the provisions of sub-section (i) of section 59 of the Act.

(iv) The periods of work of maintenance staff shall be indicated before hand in Form no. 11,

Foundries, section 64(2)(b)

85. The work of adult male workers employed in foundries on the cupola and casting on the day cupola is worked, shall be deemed to be of the nature referred to in clause (b) of sub-section (2) of section 64, and such workers shall be exempt from the provisions of sections 51, 54, 55 and 56, subject to the following conditions :

Conditions

(i) A notice giving the names of such workers as are employed, showing their working hours on the day on which the exemption is availed of, should be displayed before the work beyond the hours fixed in Form no. 11 is commenced and a copy of the same should be sent to the Chief Inspector and the Inspector concerned.

(ii) Total daily hours of work shall not exceed 10 and the total hours of overtime work shall not exceed 50 in any one quarter, the total spread-over being limited to twelve hours in any one day.

(iii) A minimum interval of rest of half an hour shall be given at anytime during the working hours.

(iv) The weekly hours shall not exceed 52.

(v) All workers, working in excess of 9 hours a day and 48 hours a week in a factory shall be paid, in respect of such additional hours, at the rate of twice the ordinary rate of pay, in accordance with the provisions of sub-section (1) of section 59 of the Act.

Continuous Process Factories, section 64(2)(d)

86. The following classes of work in the undermentioned classes of factories shall be deemed to be of the nature referred to in clause (d) of sub-section (2) of section 64 of the Act and shall be exempt from the provisions of sections 51, 52, 54, 55 and 56 of the Act subject to the conditions stated below :

<i>Classes of Factory</i>	<i>Class of Work</i>
(i) Electrical generating stations and distributing sub-stations.	Work of male adult workers attending to boilers, turbines, engines, generators, motors, boosters, switch-boards, transmission machinery, cables, batteries and auxiliaries.
(ii) Water works and water pumping stations.	Work of male adult workers attending to boilers, engines, motors, switch-boards pumps and auxiliaries.
(iii) Sugar factories and refineries working on the vacuum pan system.	Work of male adult workers— (a) attending to boilers, engines, motors, switch-boards and pumps; (b) handling and crushing cane and handling <i>gur</i> to melting blow ups; (c) engaged in filtration, clarification and crystallization of cane juice and <i>gur</i> liquor; (d) engaged in evaporation and concentration of cane juice and <i>gur</i> liquor; (e) engaged in curing the massacuite; (f) engaged in drying, crushing, and bagging of sugar; (g) engaged in the burning of limestone and sulphur, for the production of carbon dioxide and sulphur dioxide gases, for the clarification of cane juice.
(iv) Distilleries	The work of male adult workers attending to — (a) boilers, engines, motors, switch-boards and pumps; (b) diffusion of mahua; (c) working of molasses; (d) fermentation of wash; (e) yeast propagation; (f) distillation processes.
(v) Breweries	The work of male adult workers attending to— (a) boiler engines and pumps, (b) melting, coppers, hopback, coolers, refrigerators, yeast propagation and fermentation.
(vi) Rosin and turpentine factories.	The work of male adult workers attending to—

<i>Classes of Factory</i>	<i>Class of Work</i>
	(a) boilers, engines, pumps, dynamos, motors and switch-boards ; (b) distillation of rosin ; (c) refining of turpentine ; (d) filtration and casking of rosin ;
(vii) Ice factories	The work of male adult workers attending to— (a) boilers and ice-making machinery ; (b) receptacles for the production of ice ;
(viii) Chemical works	The work of male adult workers attending to— (a) boilers, pumps and compressors ; (b) the manufacture of sulphuric, nitric and hydrochloric acids, ammonia, magnesium sulphate, alum, hyposulphite, and sulphite of soda, sodium sulphate, sodium sulphide, nitrate of potash, alumina and bichromate of potash.
(ix) Distillation of sandal wood and essential oils.	The work of male adult workers attending to boilers and distillation processes.
(x) Plate and sheet glass factories and glass bangle factories.	The work of the following classes of male adult workers— (a) gas producers, window plate glass machinemen, tankmen, sheet-glass carriers and lift attendants and workers employed on glass blowing machines in tank and pot furnaces when run in conjunction with the glass furnace ; (b) firemen, engine and boiler attendants.
(xi) Straw-Board Factories	The work of male adult workers attending to— (a) boilers, engines, turbines, generators, motors, switch-boards and pumps ; (b) cooking, milling, beating and straw-board machines.
(xii) Kiln, seasoning of timber and bobbin stone-enamelling	Work of male adult workers attending to— (a) boilers, engines, pumps, motors, dynamos and switch-boards ; (b) timber seasoning kiln ; (c) stone enamelling chambers.

<i>Classes of Factory</i>	<i>Class of Work</i>
(xiii) Vegetable oil hydrogenation Factories.	The work of male adult workers attending to— (a) boilers, generators, motors, transformers, switch-boards and water softening plants ; (b) refining, bleaching, distillation (deodorization) and hardening plants, soldering, labelling, packing and storing of containers ; and (c) the production and compression of hydrogen and oxygen gases.
(xiv) Production and/or compression of oxygen and acetylene gases.	The work of male adult workers attending to generators and compressors.
(xv) Soap Factories	The work of male adult workers attending to— (a) boilers, generators, motors, switch-boards ; and (b) boiling, acutching and framing.
(xvi) Paper mills	The work of male adult workers attending to— (a) boilers, engines, turbines, generators, motors, switch-boards and pumps ; (b) cooking, milling, beating straw-board and paper manufacturing machines.
(xvii) Electrical steel smelting furnaces.	Work of male adult workers attending to transformers, electrode controls, hydraulic pump, scrap cutting and transporting furnacemen, ladlemen, pitside workers and workers attending to moulds for ingot.
(xviii) Rolling mills	Ingot transporters, furnacemen, furnace coolies, tongsmen, working at various rolling mills (such as roughers and loopers), workers on the cooling bed, motormen, straighteners, workers engaged in stacking of finished material and attendants of shears and other auxiliary machinery.
(xix) Starch factories	Work of male adult workers engaged in the manufacture of starch and its by-

<i>Classes of factory</i>	<i>Class of work :</i>
	products, except those employed in the engineering departments and workshops.
(xx) Glue and gelatine mills...	Work of male adult workers engaged in the manufacture of glue and gelatine, including soaking, boiling, spreading chopping and drying.
(xxi) Biscuit factories ...	Work of male adult workers engaged in the mixing of the dough, baking, drying and packing biscuits.
(xxii) Cement factories ...	Work of male adult workers attending to— (a) boilers, engines, motors, switch-boards and pumps; (b) engaged in preparation of raw materials, cement mills, working in conjunction with the continuous kilns, cement grinding, packing and storing.
(xxiii) All factories ...	Work of male adult workers attending to boilers.

Conditions

(i) Such workers shall be employed on three eight hours shifts system. An interval for rest of half an hour shall be allowed to every such workers some time during each shift he is required to work.

(ii) No such worker shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.

(iii) The total daily hours of work shall not exceed 10 with a spreadover of 12 hours except in an emergency when it is necessary to employ a shift worker for more than 8 hours in any day to enable him to work the whole or part of the subsequent shift. In such a case a compensatory period of rest with wages shall be given in addition to overtime payment in accordance with the provisions of section 59 but this compensatory period shall not be given on a festival or weekly holiday to which the worker is otherwise entitled and in no case shall the worker be employed for more than 16 hours in a period of 24 hours from the commencement of work, and the total number of hours of overtime shall also not exceed 50 in any quarter. Also, when a worker is so employed the manager shall, within 7 days, inform the Inspector in Form no. 10 and shall intimate the date of the compensatory period of rest to be given. The manager shall also enter the period of extra time worked and the extent of compensatory period of rest in the respective registers and shall note therein the time of commencement of such extra time work before its commencement.

(iv) The system of shifts shall be approved by an Inspector before enforcement.

(v) All workers working in excess of 9 hours a day or 48 hours a week in a factory shall be paid in respect of such additional hours at the rate of twice the ordinary rate of pay in accordance with the provisions of sub-section (1) of section 59 of the Act.

(vi) Every worker shall be given a compensatory holiday in accordance with section 53 of the Act.

Wood-products (Cutch and Katha) Factories Section 64(2)(d)

87. The work of adult male workers employed on engines, boilers, motors, switch-boards, pumps, mechanical sawing and chipping, autoclaves, evaporation, refrigeration, filtration and drying in woodproduct factories shall be deemed to be of the nature referred to in clause (d) of sub-section (2) of section 64 of the Act and shall be exempt from the provisions of sections 51, 54 and 56 subject to the conditions stated below :

Conditions

(i) The total daily hours of work shall not exceed 10 with a spread-over of 12 hours except in an emergency when it is necessary to employ a shift worker for more than 8 hours in any day to enable him to work the whole or part of the subsequent shift. In such a case a compensatory period of rest with wages shall be given in addition to overtime payment in accordance with the provisions of section 59 but this compensatory period shall not be given on a festival or weekly holiday to which the worker is otherwise entitled, and in no case shall the worker be employed for more than 16 hours in a period of 24 hours from the commencement of work and the total number of hours of overtime shall also not exceed 50 in any quarter. Also, when a worker is so employed, the manager shall, within 7 days, inform the Inspector of Factories in Form no. 10 and shall intimate the date of compensatory period of rest to be given. The manager shall also enter the period of extra time worked and the extent of compensatory period of rest in the respective registers, and shall note therein the time of commencement of such extra time work before its commencement.

(ii) All workers working in excess of 9 hours a day or 48 hours per week in a factory shall be paid in respect of such additional hours at the rate of twice the ordinary rate of pay in accordance with the provisions of sub-section (1) of section 59 of the Act.

Glass Works Section 64(2)(d)

88. The work of all adult workers employed in glass factories on all work and processes from the mixing of the batch to the removal of the manufactured glassware from the lehrs or annealing chambers, shall be deemed to be of the nature referred to in clause (d) of sub-section (2) of section 64 of the Act and shall be exempt from the provisions of sections 51 and 52 subject to the conditions stated below :

Conditions

(i) The daily hours of work shall not exceed 8 and the weekly hours of work 56. The total hours of overtime shall not exceed 50 in any one quarter.

(ii) No person shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.

(iii) All workers working in excess of 48 hours per week in a factory shall be paid in respect of such additional hours at the rate of twice the ordinary rate of pay in accordance with the provisions of sub-section (1) of section 59 of the Act.

(iv) Every worker shall be given a compensatory holiday in accordance with section 53 of the Act.

Vegetable Oil Mills Section 64(2)(d)

89. The work of adult male workers, employed on manufacturing processes in oil mills, shall be deemed to be of the nature referred to in clause (d) of sub-section (2) of section 64 of the Act, and shall be exempt from the provisions of section 55 of the Act subject to the conditions stated below :

Conditions

(i) The shift system shall be approved by an Inspector of Factories.

(ii) A rest period of half an hour shall be given to each worker during each shift.

Sizing, Dyeing, Bleaching and Cloth-printing Section 64(2)(d)

90. The work of adult workers employed on the processes of keirboiling, chemicking, scouring, washing, jig and yarn dyeing, padding, drying, mercerising, printing, colour-mixing, steaming, singeing, edging, calendering, sizing and size-mixing, dyeing and bleaching shall be deemed to be of the nature referred to in clause (d) of sub-section (2) of section 64 of the Act and shall be exempt from the provisions of sections 51 and 55 subject to the following conditions :

Conditions

(i) The daily hours of work shall not exceed 9 and the weekly hours of work 54. A rest interval of half an hour shall be given during each shift. The total hours of overtime shall not exceed 50 in any quarter.

(ii) All workers working in excess of 48 hours per week in a factory shall be paid in respect of such additional hours at the rate of twice the ordinary rate of pay in accordance with the provisions of sub-section (1) of section 59 of the Act.

Tanneries Section 64(2)(d)

91. The work of adult workers employed in soaking, liming, washing, bathing, tanning and drying hides, kips and skins in tanneries shall be deemed to be of the nature referred to in clause (d) of sub-section (2) of section 64 of the Act and shall be exempt from sections 51 and 52 of the Act subject to the conditions stated below :

Conditions

(i) No worker shall be employed for more than 4 hours on any Sunday.

(ii) No worker shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.

(iii) The total hours of overtime work shall not exceed 50 in any one quarter.

(iv) All workers working in excess of 48 hours per week in a factory shall be paid in respect of such additional hours at the rate of twice the ordinary rate of pay in accordance with the provisions of sub-section (1) of section 59 of the Act.

(v) Every worker shall be given a compensatory holiday in accordance with section 53 of the Act.

Preparation, Packing and Despatch of Serum and Vaccine Section 64(3)(e)

92. The work of adult workers employed in the preparation, packing and despatch of serum and vaccine in factories manufacturing serum and vaccine shall be deemed to be of the nature referred to in clause (e) of sub-section (2) of section 64 of the Act, and shall be exempt from the provisions of section 52 subject to the following conditions :

Conditions

(i) No such worker shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.

(ii) Every worker shall be given a compensatory holiday in accordance with section 53 of the Act.

Dairies Section 64(2)(e)

93. The work of adult male workers employed in dairy factories, other than those engaged in printing and in the manufacturing of containers for milk, cream, cheese and butter, shall be deemed to be of the nature referred to in clause (e) of sub-section (2) of section 64 of the Act and shall be exempt from section 52 subject to the conditions stated below :

Conditions

(i) No such worker shall be employed for more than 8 hours on Sunday.

(ii) No such worker shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.

(iii) Every such worker shall be given a compensatory holiday in accordance with section 53 of the Act.

Rice Mills Section 64(2)(f)

94. The work of adult workers employed in moving the railway wagons and on drying platforms in the rice mills shall be deemed to be of the nature referred to in clause (f) of sub-section (2) of section 64 of the Act, and shall be exempt from the provisions of section 52 subject to the conditions stated below :

Conditions

(i) No such worker shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.

(ii) Every worker shall be given a compensatory holiday in accordance with section 53 of the Act.

Opium Factories Section 64(2)(f)

95. The work of adult workers employed in opium factories and engaged in removing opium from railway wagons to the import shed, from April 1 to June 30, in each year, shall be deemed to be of the nature referred to in clause (f) of sub-section (2) of section 64 of the Act, and shall be exempt from the provisions of section 52 of the Act subject to the conditions stated below :

Conditions

- (i) No worker shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.
- (ii) Every worker shall be given a compensatory holiday in accordance with section 53 of the Act.

Tea Factories Section 64(2)(g)

96. The work of adult workers attending to boilers or engines or engaged in the processes of rolling, fermenting, firing, sieving, stewing, picking and packing in factories situated on, and used solely for the purposes of tea plantations shall be deemed to be of the nature referred to in clause (g) of sub-section (2) of section 64 of the Act, and shall be exempt from the provisions of sections 52 and 55 from April 1 to November 30, each year, provided that the following conditions are observed :

Conditions

- (i) The number of workers employed on a particular piece of work shall always be at least 25 per cent. greater than the number actually required to do the work at any given time.
- (ii) No worker shall be employed for more than 14 consecutive days without a holiday of 24 consecutive hours.
- (iii) A rest interval of half an hour shall be given during the working hours.
- (iv) Every worker shall be given a compensatory holiday in accordance with section 53 of the Act.

Printing Presses Section 64(2)(i)

96-A. The work of male adult workers engaged in the printing of newspapers, who are held up on account of breakdown of machinery, shall be deemed to be of the nature referred to in clause (i) of sub-section (2) of section 64 and shall be exempt from the provisions of sections 51, 54 and 56 subject to the conditions stated below :

Conditions

- (i) Total hours of work shall not exceed 10 and the total hours of overtime work shall not exceed 50 in any one quarter, the total spreadover being limited to 12 hours inclusive of rest interval in any one day.
- (ii) All workers working in excess of 9 hours a day or 48 hours a week in a factory, shall be paid in respect of additional hours at the rate of twice the ordinary rate of wages in accordance with the provisions of sub-section (1) of section 59 of the Act.

Industrial Disputes (Mysore) Rules, 1957—Amendments.

Notification No. LLH-195, ILD/57, dated Bangalore, 27th August, 1957 *

In exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Government of Mysore hereby makes the following amendments to the Industrial Disputes (Mysore) Rules, 1957, the draft of the said amendments having been previously published in Notification No. LLH. 195 ILD 57, dated 2nd July, 1957, as required by sub-section (1) of the said section namely :

For Rule 81 of the Industrial Disputes (Mysore) Rules, 1957, the following rule shall be substituted and shall always be deemed to have been substituted namely :

- “81. *Repeal and Savings* : (1) The Industrial Disputes (Mysore) Rules, 1951,
- (2) The Madras Industrial Disputes Rules, 1948, as in force in the South Kanara District and Kollegal Taluk,
 - (3) The Industrial Disputes (Bombay) Rules, 1947, as in force in the Districts of Belgaum, Bijapur, Kanara and Dharwar,
 - (4) The Hyderabad Industrial Disputes Rules, 1950, as in force in the Gulbarga, Bidar and Raichur Districts, and
 - (5) The Industrial Disputes (Central) Rules, 1947, as in force in the Coorg District are hereby repealed ;

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.”

Bihar Employees' Insurance Courts Rules, 1952—Amendments.

Notification No. 1/Ins 1-2044/57L—11396, dated 19th June, 1957.**

In exercise of the powers conferred by sub-section (1) of section 96 of the Employees' State Insurance Act, 1948 (Act XXXIV of 1948), the Governor of Bihar is pleased to make the following amendments to the Bihar Employees' Insurance Courts Rules, 1952, the same having been previously published as required by the said sub-section namely :

AMENDMENTS.

1. In the said Rules—
 - (i) In sub-rule (2) of rule 44, for the words “ annas eight ”, the words “ fifty naye paise ” shall be substituted ;
 - (ii) In the proviso to sub-rule (2) of rule 44, for the words “ annas two only ”, the words “ ten naye paise only ” shall be substituted.

*Mys. Gaz. 5-9-57, Pt. IV, Sec. 1-C, p. 2106.

**Bihar Gaz. 10-7-57. Pt. II, p. 1627.

(iii) In sub-rule (5) of rule 44, for the words "eight annas", the words "fifty naye paise" shall be substituted.

2. These amendments shall be deemed to have come into force with effect from the 1st April 1957.

Minimum Wages Act, 1948—Notification.

Notification L1-10782/56/L & LAD, dated Trivandrum, 17th July, 1957.*

In exercise of the powers conferred by section 3(1)(a) read with section 4(1)(iii) of the Minimum Wages Act, 1948 (Central Act XI of 1948), the Government of Kerala hereby make the following amendment to the Notification No. L1-9633/51/DD, dated 30-12-54 fixing the minimum rates of wages payable to the classes of employees employed in road construction and stone breaking, the same having been previously published as required by section 5(1)(b) of the said Act.

AMENDMENT.

In the said Notification, the following note shall be added at the end viz. :—

Note.

"Children below the age of fourteen shall not be allowed or required to be employed in this employment"

Industrial Disputes (East Punjab) Rules, 1949 applied to Working Journalists.

Notification No. 4907/5704-C-Lab-57/49172 dated 3rd June, 1957.**

With reference to Punjab Government notification No. 16240/9724-C-LP-55 80035, dated the 17th December, 1955, and in exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947, read with section 3 of the Working Journalists (Industrial Disputes) Act, 1955 (I of 1955), the Governor of Punjab is pleased to make the following rule :—

Rule

The provisions of the Industrial Disputes (East Punjab) Rules, 1949, as in force for the time being, shall apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of the Industrial Disputes Act, 1947.

*Kerala Gaz., 23-7-1957, Pt. I, p. 1554.

**Punjab Govt. Gaz., 21-6-1957, Pt. I, p. 1109.

Iron & Steel Industry declared Public Utility Service in Bihar.

Notification No. III/DR-6023/57—15940, dated 5th September, 1957.*

Whereas the Governor of Bihar is satisfied that public interest requires that "Iron and Steel" industry should be declared to be a public utility service;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor of Bihar hereby declares "Iron and Steel" industry to be a public utility service for the purpose of the said Act for a further period of six months with effect from the 15th September, 1957.

Bombay Industrial Relations Rules, 1947—Amendments.

Notification No. 2508/48 Bombay, dated 18th July, 1957.**

In exercise of the powers conferred by section 123 of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947) the Government of Bombay, hereby amends the Bombay Industrial Relations Rules, 1947, as follows, namely :—

In the said Rules, for clause (i) of sub-rule (1) of rule 72-A, the following shall be substituted, namely :

"(i) maintain records of strikes, stoppages, lock-outs, closures including lay-off, attendance and absenteeism, labour turnover, premises, rationalisation, usages and rules of discipline in such form or forms in the Appendix to these rules as it may consider appropriate for such industries, and."

Factories Act, 1948—Exemption of Tea Factories in Assam.

Notification No. GLR. 7/55—dated the 26th August, 1957.†

In exercise of the powers conferred by section 65(2) of the Factories Act, 1948 (Act XLIII of 1948), the Governor of Assam is pleased to exempt all Tea Factories in the State of Assam from provisions of sections 51, 52, 54, 55, 56 and 61 of the said Act, during the year 1957 on the following conditions :—

- (1) The total number of hours of work in any day shall not exceed ten.
- (2) The period of exemption shall be months of August, September and October.
- (3) The total number of hours of overtime during a quarter shall be limited to 50 (fifty) hours.

*Bihar Gaz. Extra., 14-9-1957, p. 1.

**Bombay Govt. Gaz., 25-7-1957, Pt. IV-B, p. 1491.

† Assam Gaz. 4-9-57, Pt. II-A, p. 2392.

(4) The spread over including rest period shall not exceed 12 (twelve) hours per day.

(5) The overtime wage shall be paid at double the ordinary rate of wages and recorded in the overtime register.

(6) No workers shall be employed for more than fourteen consecutive days without a rest period of 24 (twenty-four) consecutive hours.

(7) Compensatory holidays for loss of weekly holidays shall be given within one month of the day on which the weekly holiday is not given to the workers. The grant of compensatory holiday shall be recorded in the register of adult workers with the mark "CH".

Employees' State Insurance Courts for Bihar.

Notification No. 1/Ins. 1-2016/57-L.—12701, dated 16th July, 1957.*

In exercise of the powers conferred by section 74 of the Employees' State Insurance Act, 1948 (Act XXXIV of 1948), read with rules 3 and 4 of the Bihar Employees' Insurance Courts Rules, 1952, the Governor of Bihar is pleased to constitute for purposes of the said Act and for the areas specified in column 4 of the Schedule annexed hereto, the Employees' Insurance Courts with their places of sitting specified in column 2, consisting respectively of the Judges mentioned in column 3, of the said Schedule.

SCHEDULE.

Serial No.	Name of the Court.	Presiding officer	Jurisdiction.
1	2	3	4
1.	Employees' Insurance Court, Patna.	District Judge, Patna.	Areas in the district of Patna where all provisions of the Employees' State Insurance Act 1948 are in force.
2.	Employees' Insurance Court, Monghyr.	District Judge, Monghyr.	Areas in the district of Monghyr where all provisions of the Employees' State Insurance Act, 1948 are in force.
3.	Employees' Insurance Court, Purnea.	District Judge, Purnea.	Areas in the district of Purnea where all provisions of the Employees' State Insurance Act, 1948 are in force.
4.	Employees' Insurance Court, Darbhanga.	District Judge, Darbhanga.	Areas in the district of Darbhanga where all provisions of the Employees' State Insurance Act, 1948 are in force.

*Bihar Gaz. 21-8-1957. Pt. II, p. 1999.

[IN THE CALCUTTA HIGH COURT.]

DUKHINI RAJAHARIN

v.

CORPORATION OF CALCUTTA.

Chakravartti, C. J., and K. C. Das Gupta, J.

May 29, 1957.

WORKMEN'S COMPENSATION ACT, 1923, SECTION 2(1)(N), SCH. II, CL. (i)—'WORKMAN', DEFINITION OF—WHETHER AN EMPLOYEE FALLS WITHIN DEFINITION—TESTS—PERSON "EMPLOYED IN CONNECTION WITH OPERATION OF MOTOR VEHICLE"—MEANING OF—MUNICIPAL COOLIE ASSISTING DRIVER OF VEHICLE—WHETHER "WORKMAN".

Whether or not a particular employee falls within the definition of 'workman' under the Workmen's Compensation Act, 1923, must be decided by reference to the duties performed by him as disclosed by the evidence and not by the designation borne by him and still less by any decision given in another case with respect to another employee.

A conservancy coolie employed by a municipality who starts the engine of the lorry to which he was attached and also helps in backing the lorry safely when it needed to be backed, is a person "employed in connection with" the operation of the motor vehicle under clause (i) of Schedule II of the Act read with section 2(1)(n): SAHARI RAJWARI v. CORPORATION OF CALCUTTA, [1954] 8 F.J.R. 439, distinguished.

A. F. O. O. No. 51 of 1956.

N. K. Mukherjee for the appellant.

S. K. Basu and P. C. Choudhury for the Corporation.

JUDGMENT.

CHAKRAVARTTI, C.J.—This is an appeal on behalf of one Dukhini Rajaharin, widow of Tilakdhari Rajwar, a person who was employed under the Corporation of Calcutta as what has been called a conservancy or lorry cooly. He died on the 3rd day of October, 1953, as a result of an accident which was not denied. The widow's case was that on the day in question and at the time when the accident had occurred, the lorry on which her husband had been serving was being backed near the Beliaghata Bridge and her husband was, as it was quaintly put, "showing hands to the pedestrians." While he was doing so, the lorry, it was said, dashed him against a wall and injured him so severely that

he died in the Campbell Hospital on the self-same day. On the above recital of facts, the widow contended that her husband had died of personal injury caused to him by an accident arising out of and in the course of his employment under the Corporation of Calcutta and that consequently she was entitled to an amount of Rs. 1,500 as compensation on the basis of the monthly wages of her deceased husband which were Rs. 50 per month.

As I have already stated, the Corporation of Calcutta did not deny that Tilakdhari Rajwar had died in course of an accident, nor that he had been employed under the Corporation. It appears to have been contended that while an accident did happen, it did not happen exactly at the site alleged, but the exact location of the place of accident appears to be immaterial. The wages of the deceased employee were also admitted to have been Rs. 50 per month, as alleged by his widow. The only substantial defence raised was that, in view of the nature of his duties, Tilakdhari Rajwar was not a workman within the meaning of the Workmen's Compensation Act.

The respondent's case was that her husband was a 'workman' within the definition of that term, as given in clause (i) of Schedule II to the Workmen's Compensation Act, read with section 2(1)(n). More specifically stated, the respondent's case was that her husband had been employed otherwise than in a clerical capacity in connection with the operation of a vehicle, propelled by mechanical power. I may say at once that, in the application itself, the appellant alleged that her husband had been a lorry cooly as also a cleaner. No evidence that he had been a cleaner was given, but the contention that he came under clause (i) of Schedule II to the Act was based upon the statement of his duties as made by her sole witness, Suraj Rajbhar, in the course of his cross-examination.

In his examination-in-chief the witness stated that Tilakdhari Rajwar had been a cooly of a conservancy lorry, belonging to the Corporation of Calcutta. The only other statement material to his duties which the witness made was that, on the day in question, when the driver was moving the lorry back, the deceased "was showing hands to the pedestrians." If his evidence had been left there and there had been no cross-examination at all, there would be no evidence whatever on which the appellant could have claimed her husband to have been a workman. She was, however, to be assisted by the lawyer for the respondent Corporation who elicited by his cross-examination facts which the appellant's own lawyer had failed to do. In answer to questions put to him in cross-examination, the witness stated that the deceased "used to move the handle of the lorry. He also used to show hands to the

pedestrians at the time of turning back the lorry." There can be no question that the witness was competent to depose as to the things he was speaking to, because he said that he used to work with Tilakdhari Rajwar.

The position, therefore, is that although the deceased employee has been designated as a conservancy cooly or a lorry cooly, no evidence of any kind was given on behalf of the respondent Corporation as to what his actual duties were. It need hardly be pointed out that the mere description or designation 'cooly' does not carry with it any implication of any particular kind of duties performed by a person bearing the designation. The only positive evidence that there is in the case about the duties of the deceased is that his duties were, or included, starting the engine of the lorry, presumably in the morning, and signalling to pedestrians and warning them of the backward movement of the lorry at the time it was backed. Since the language is that the deceased "used to" perform those duties, the only legitimate conclusion is that those were, or at least were amongst, the normal duties of his post.

The learned Commissioner for Workmen's Compensation, however, has held that the cooly of a conservancy lorry cannot be said to be a person employed in connection with the operation or maintenance of a vehicle propelled by steam or other mechanical power. In taking that view, he has relied upon his own view of the evidence in this case and his reading of two decisions which he has cited. The learned Commissioner's reading of the evidence, I regret to have to say, was a complete misreading. He seems to have thought that the evidence amounted to no more than that the deceased was "showing hands to the pedestrians" at the time of the accident or at most that only on certain and rare occasions would he engage himself in that manner. Having thus disposed of the two alleged duties of "showing hands to pedestrians" and "moving the handle of the lorry" as work only casually done by the deceased, the learned Commissioner proceeded to observe that the main and substantial occupation of the deceased was employment as a conservancy cooly. He seems to have thought that since the deceased was called a conservancy cooly or called a lorry cooly by his own widow his duties must mainly have been loading and unloading of rubbish or at least doing something which was in no way connected with the operation or maintenance of the lorry in which he was employed. Why the learned Commissioner should have permitted himself to take that view is not clear because, as I have pointed out, on the side of the respondent Corporation there is no evidence whatever as to what the duties of the deceased as a conservancy cooly were.

The view which the learned Commissioner took as to the law applicable was bound to be coloured or, if I may say so, discoloured by the wrong view which he took of the facts. For the law, which he thought had been authoritatively laid down, he went to two decisions, one of Harries, C.J., and Banerjee, J., in the case of *Prativa Das Gupta v. Corporation of Calcutta*, 55 C.W.N. 496, and another of S.R. Das Gupta, J., and myself in the case of *Sahari Rajwani v. Corporation of Calcutta*, [1954] 8 F.J.R. 439. I am not a little surprised that the learned Commissioner should have considered either of the two decisions cited by him to be relevant. The first of the cases was concerned with a person employed under the Corporation of Calcutta as a Building Inspector who had met his death at the hands of a riotous mob. It was contended on his behalf that he was a workman, because he was "employed in the construction, repair or demolition of buildings and other like constructions and, therefore, came under clause (viii) of Schedule II to the Act. Harries, C. J., who delivered the judgment of the Court, pointed out that a Building Inspector employed by the Corporation had nothing to do with the construction of buildings and that, in any event, the work which the deceased was employed to do was substantially work of a nature which would not bring him within the category of persons employed in the construction, repair or demolition of buildings. It was in that context that the learned Chief Justice observed that in coming to a conclusion as to whether a man was or was not a workman, his ordinary work was to be regarded and that if the work in which a person was substantially employed was work which would not bring him within the category of workman, the fact that on every rare occasions he might do something that would bring him within that category would not suffice for the purposes of the Act. No exception need be taken to those propositions laid down by the learned Chief Justice which I would respectfully accept. I cannot, however, see what application those principles or propositions have in the present case, because it is not the evidence that the accused workman "showed hands to pedestrians" or "moved the handle of the lorry" only on rare occasions and that the work in which he was substantially employed was something different. Even less relevant to the present case is the decision of S.R. Das Gupta, J., and myself. It is true that in that case also we were concerned with a person who could perhaps be described as a conservancy coolie and whose duties were, or included, loading of garbage in Corporation lorries with a forked instrument and unloading them into railway wagons at the Chingrihata platform. Because the workman had to load the refuse on the lorry from the street and proceed to Chingrihata platform and to unload the same

into railway wagons there it was contended that he was workman within the meaning of clause (xii) of Schedule II to the Act, being a person employed upon a 'railway' as defined in clause (iv) of section 3 and sub-section (1) of section 148 of the Indian Railways Act. The contention was rejected by us, because we held that in order to establish that the workman was employed by the Corporation in a way which could be said to be fulfilling a contract with the Railway Administration, the railway concerned must be a separate administration and not an administration owned by the Corporation itself. The artificial meaning which would make the wagons at the Chingrihata platform 'railway' wagons would not suffice for the purposes of the definition. Again I fail to see how the learned Commissioner could think that he could derive any assistance from that decision.

There is no genus or species of employees, going by the name of conservancy coolies and having known, ascertainable or invariable duties. Because a certain view was taken of the status of a particular employee, called a conservancy coolie on the evidence given regarding his duties and because it was held that that particular employee was not a workman, it can by no means be said that all employees, who may bear the designation of a conservancy coolie, howsoever employed must be excluded as a matter of law from the category of a workman. The learned Commissioner for Workmen's Compensation seems to have fallen exactly into the error of reading the decisions relied upon by him as laying down general propositions. He seems to have overlooked the elementary principle that whether or not a particular employee is a workman must be decided by reference to the duties performed by him as disclosed by the evidence and not by the designation borne by him and still less by any decision given in another case, with respect to another employee bearing, it might be, the same name for his calling. There may be conservancy coolies under the Corporation of Calcutta whose sole duty it is to load and unload rubbish and who have nothing whatever to do in connection with the operation or maintenance of the lorries on which they serve. There may be other employees, also called conservancy coolies, whose duty it is to help the driver or help the maintenance or operation of conservancy lorries in other ways. There may be a third class of employees whose duties might be a combination of the two kinds I have mentioned. Many other possibilities can be thought of. So far as the present case is concerned, the only duties of the deceased employee which have been proved are duties which show him to have been a person employed in connection with the operation of a lorry which was a vehicle propelled by mechanical power. In order that a lorry may be operated, it must be made to move; and in order that it

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may be made to move, its engine must be started. So also must pedestrians near about a moving lorry be warned by signals if it is to be backed and unless the pedestrians in the vicinity of the lorry are so warned off, it cannot be backed safely, that is to say, safely operated backward. "In connection with" is an expression of wide content and the deceased employee in the present case, who used to start the engine of the lorry to which he was attached and also helped in backing it safely when it needed to be backed, was clearly employed in connection with its operation. He thus came clearly under clause (i) of Schedule II and was clearly a workman as contemplated by the Act.

If the deceased was a workman, there is no other disputed question to decide. His wages, as I have already stated, were admitted to have been Rs. 50 per month. According to section 4(1)(a) of the Act, where death results from the injury caused to a workman by accident and the workman was in receipt of monthly wages falling within the limits shown in the first column of Schedule IV, the amount of compensation in the case of an adult must be the amount shown against such limits in the second column of the Schedule. According to the second column of the Schedule the compensation awardable in the case of the death of an adult whose monthly wages were between Rs. 45 and Rs. 50 is Rs. 1,500. That was the amount claimed by the appellant and an award of that amount must, therefore, be made in her favour.

In the result, the appeal is allowed, the judgment and order of the learned Commissioner for Workmen's Compensation are set aside and the appellant's application for compensation is allowed. We award her a compensation of Rs. 1,500 on the basis of the admitted wages of her deceased husband and the scale laid down in Schedule IV and we award her further the costs of this appeal—the hearing fee being assessed at three gold mohurs. She will also have the costs of the application which we assess at Rs. 17.

K. C. DAS GUPTA, J.—I agree.

[IN THE FIRST LABOUR COURT, WEST BENGAL.]

* CALCUTTA PORCELAIN WORKS LTD.

v.

THEIR WORKMEN.

Shri N. C. Chatterjee.

August 22, 1957.

DISMISSAL—DISMISSAL FOR UNSATISFACTORY SERVICE—NECESSITY OF PROOF OF UNSATISFACTORY SERVICE—DISMISSAL WITHOUT ENQUIRY—WHETHER JUSTIFIED—RIGHT OF EMPLOYER TO DETERMINE LABOUR FORCE.

Though an employer has the authority to determine the strength of his labour force and in common law he has every right to discharge or dismiss an employee, these rights are not unqualified and are subject to the principles :

- (i) *that the workmen must be placed in such a position that their security of service does not depend on the caprice of the employer ;*
- (ii) *that industrial peace should be maintained ; and*
- (iii) *that the industry should be efficiently managed.*

Where the employer terminates the services of certain workmen on the ground that their work was found unsatisfactory, but there is no evidence to show in what manner their work was unsatisfactory and no enquiry was held into their cases before their dismissal, the termination of their services would be unjustified.

P. K. Sen Gupta with K. C. Mitra for the management.

Ram Sen for the workmen.

AWARD.

This is a case arising out of termination of services of 25 workmen of Messrs. Calcutta Porcelain Works with effect from 1st February, 1957, on the basis of a notice, dated 31st December, 1956.

The Company justifies the termination of the services of these workmen enumerated in the notice on the ground that their work was found unsatisfactory.

On the other hand, the case of the Union is that the workmen have been victimised, pure and simple, and that this is an extremely unfair labour practice. The Union further urges that the Company never found fault with their work ; that they were not charge-sheeted, nor was any enquiry held, nor were they heard in their defence, and thus the

principles of natural and social justice have been grossly violated. The Union, therefore, seeks re-instatement of the workmen with other incidental reliefs.

The main point for consideration in this case is whether the termination of the services of these workmen is justified or not.

It is common ground that no charges were framed against these workmen, nor were they heard in their defence, nor was any enquiry held. *Prima facie* these workmen suddenly found themselves thrown out of their employment. The trump-card of the Company is the reports—Exs. A-A9 on the work of these workmen. The Union has examined some 4 workmen and there is nothing in the evidence to show that the full implication of this notice was brought home to the workmen who were going to be sacked. Curiously enough, this Company has got no Standing Orders of their own laying down the terms and conditions of service of their workmen, so there is nothing before the Court regarding the minimum period of service a workman is required to put in before absorption. Few of these workmen, as will appear from the tabular statement Ex. C put in by the Company, did complete one year's service more or less and the majority did less than a year. On behalf of the Union it is said that 6 months' probationary period should be deemed sufficient for absorption. On the other hand, the Company urges that full probationary period for a year is necessary before absorption. As for myself, in the absence of any definite rule regarding the probationary period necessary before confirmation, the Court is not competent to fix the minimum probationary period either way. Be that as it may, now the Court proceeds to discuss in the state of evidence on record whether the termination of their services is justified.

The Company has got undoubted authority to determine the strength of their labour force, and in common law, it has every right to discharge or dismiss an employee, which right is popularly called the "right to hire and fire". But this right is not unqualified and is subject to certain statutory restrictions and fundamental principles as enumerated in [1956] 1 L.L.J., page 325 (*Lipton Limited and their Workmen*):—

"(1) that an industrial worker must be placed in such a position that the security of his service may not depend upon the caprice or arbitrary will of the employer,

(2) that industrial peace should be maintained, and

(3) that the industry should be efficiently managed."

"In all these types of cases, however, the requirement of *bona fides* is essential and the termination of service in colourable exercise of the power or as a result of victimization or unfair labour practice or of

caprice, should be prevented.....and that arbitrary conduct or unnecessary harshness on the part of the employer, judged by the normal standard of a reasonable man, may be cogent evidence of victimization or unfair labour practice."

Judging by this standard, I am afraid, I am unable to uphold the action of the Company in terminating the services of these workmen. Admittedly 2 or 3 days after retrenchment of these workmen some 15 or 16 men were employed in the Kiln Department and these new men do the same job as the discharged ones. Likewise, in the Sorting Department 2 or 3 days after their discharge some 5 new workmen were recruited. In the Saggur Department the unchallenged evidence is that the out-turn of work increased from 130 to 150 pieces at the time of discharge. This is a distinct improvement on the quantity of production. So there is no cogent evidence before the Court to show that the quality or quantity of the work of these workmen suffered in any way so as to justify the termination of the services of these workmen. Secondly, it is significant to point out that neither the manager who supervises the work of the workmen, nor Ganesh (Mistry), nor Pashupati Chatterjee, who is the department-in-charge, has come forward to pledge his oath in this case. If the reports Exs. A-A9 be held sacrosanct there is an end of the case of the workmen but, in the circumstances set forth above, these reports have practically no basis to stand upon and, I think, I shall not be justified in upholding the termination of the services of these workmen simply on the basis of such reports which are the handi-work of the Company's men prepared behind the back of these workmen. The Company has tried to impress upon the Court their *bona fides* inasmuch as they re-employed two men Shri Debabrata and Shri Tribhuban even after the notice but the evidence on the side of the workmen is that after service of the notice, no enquiry was held in the meantime into the quality or quantity of their work and the re-employment of 2 men can be no shield against the unjustified termination of the services of the workmen. From the evidence on record coupled with the circumstances of this case bearing in mind the fact that in each department some new men were recruited soon after these workmen were thrown off, I cannot hold that the Company accorded due treatment to these workmen and the Company's action savours of an unfair labour practice which obviously resulted in their victimisation. Thus these workmen were unjustly thrown out of their employment.

As regards relief, the normal relief in such a case is re-instatement. So I direct that these 23 workmen should be re-employed but so far as incidental reliefs are concerned I think one month's full wages should be granted to these workmen in each case. In this connection I must state

that I am not forgetful of the principle laid down in the case of *Chopra Motors v. Their Workmen* reported in [1956] 11 F.J.R. 178, which runs as follows:

"When it is clear that an employer cannot terminate the services of a workman except in a lawful manner and when the dismissal is not valid, the workman must be deemed never to have been dismissed at all and so continues in service, it is only reasonable to hold that the normal relief is re-instatement, subject, of course, to the condition *that it might be ruled out in the circumstances of any particular case.*"

In the circumstances of this particular case, as it appears from the records, the Company is not an affluent one. I therefore think that one month's full wages should be considered adequate compensation for their period of unemployment.

In conclusion, the Company must re-instate these 23 workmen as per list except serial Nos. 8 and 23 of the annexure A to the Company's written statement (Shri Debabrata and Shri Tribhuban) and pay to each of them their one month's full wages. The continuity of services of these workmen will be treated as unbroken. The Company will re-instate these workmen and pay them their wages for full one month as compensation within a month of the publication of this award.

[IN THE MADRAS HIGH COURT.]

BOMBAY PRAKASH BHAVAN

v.

P. K. NARAYANAN AND ANOTHER.

Rajagopala Ayyangar, J.

September 10, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 33 AND 33A—SUSPENSION OF WORKMAN PENDING ENQUIRY—WHETHER PUNISHMENT—WHETHER FALLS WITHIN SECTION 33—APPLICATION UNDER SECTION 33A—RIGHT OF TRIBUNAL TO AWARD COMPENSATION.

The suspension of a workman pending inquiry into his misconduct or pending application to an Industrial Tribunal for permission to terminate his services, would not be a punishment of the workman within section 33 of the Industrial Disputes Act, 1947. Therefore, an Industrial Tribunal cannot award any compensation to a workman in an application under section 33A, on the basis that the suspension without payment of wages was a punishment. LAKSHMI DEVI SUGAR MILLS v. RAM SARUP [1956] 11 F.J.R. 273, applied.

Writ Petition No. 1059 of 1956.

V. R. Narayanan for the management.

K. V. Sankaran for the respondents.

JUDGMENT.

The legality of an order passed by the Central Industrial Tribunal on an application under section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950, is the subject-matter of this petition for the issue of a writ of *certiorari*.

The petitioner here is the management of a hotel in Madras. The first respondent was a cleaner employed in this establishment. There had been some disputes between the workmen and the management previous to the incidents which led to this application under section 23 and they were pending before the Labour Appellate Tribunal. During the pendency of this dispute, the management found that the workman, the first respondent here, was guilty of an act of misconduct. He was given notice of the details of this misconduct charged against him on 29th July, 1955 and was placed under suspension pending the enquiry into this charge. The enquiry was actually held on 2nd August, 1955. The result of the enquiry was that the management held that the worker was guilty of the misconduct charged. Thereupon, they endorsed on the notes of the enquiry: "It is a clear case of misconduct and permission

for dismissal from the Tribunal has to be sought", and, in the order communicated to the worker on 3rd August, 1955, after setting out the misconduct and the guilt which they said had been established, they continued: "We have, therefore, decided to dismiss you from service but since proceedings are pending before the Labour Appellate Tribunal of India, we are seeking the necessary permission for the same".

It appears to be clearly proved from the documents as well as the pleadings before the Industrial Tribunal that the management orally informed the worker that he would be kept under suspension and would not be paid his wages till the disposal of the matter by the Labour Appellate Tribunal. The management, thereafter, filed an application seeking permission from the Tribunal for the dismissal of the worker under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950. The worker in his turn filed an application under section 23 charging the management with a violation of the terms under section 22. Both the applications were transferred by the Labour Appellate Tribunal to the Central Industrial Tribunal which disposed of these applications.

The application of the management under section 22 was stated to have become infructuous and it was, therefore, dismissed or treated as lapsed. In the application of the worker under section 23, the Tribunal held that the management were no doubt justified in terminating his services, but that they had unlawfully awarded the punishment of suspension from service for the period from 3rd August, 1955, to the date on which the Tribunal passed its order, the illegality consisting in its being in contravention of section 22 of the Industrial Disputes (Appellate Tribunal) Act. On this view it treated the workman as having been discharged and granted the latter compensation in the shape of some back wages. It is the legality of this order of the Tribunal that is challenged in this petition by the management.

It will be seen that the gravamen of the charge against the management on the basis of which the Tribunal has held that the management had contravened section 22 was that they had inflicted the punishment of suspension on the worker during the pendency of the industrial dispute without the permission of the Tribunal under section 22. In saying so, the Tribunal was clearly in error. The Supreme Court has laid down in *Lakshmi Devi Sugar Mills v. Ram Sarup*, [1956] 11 F.J.R. 273, that the suspension of a workman pending enquiry into his conduct or pending application to the Tribunal to terminate his services would not be a punishment within section 22 of the Industrial Disputes (Appellate Tribunal) Act. If this were the law and the proper construction of

section 22, the Tribunal was clearly in error in holding that the management had inflicted a punishment on the worker in contravention of section 22.

The order of the Tribunal cannot, therefore, stand, and is hereby set aside and the rule is made absolute. There will be no order as to costs.

[IN THE MADRAS HIGH COURT.]

ABDUL KHADER

v.

CONSOLIDATED COFFEE ESTATES (1943) LTD. AND OTHERS.

Rajagopala Ayyangar, J.

September 28, 1957.

INDUSTRIAL TRIBUNAL—JURISDICTION—CONTRACTUAL OBLIGATIONS BETWEEN PARTIES—WHETHER CAN BE IGNORED—DECISIONS IN THE INTERESTS OF INDUSTRIAL PEACE—NATURE OF—DISMISSAL OF WORKMAN IN ACCORDANCE WITH CONTRACT OF SERVICE—WHETHER CAN BE INTERFERED WITH.

APPEAL—APPEAL TO APPELLATE TRIBUNAL—APPEAL FROM DECISION OF TRIBUNAL "IN THE INTERESTS OF INDUSTRIAL PEACE"—WHETHER LIES—DUTY OF APPELLATE TRIBUNAL TO ENSURE THAT DISCRETION OF TRIBUNALS IS PROPERLY EXERCISED.

In dealing with the question of dismissal of a workman, the Industrial Tribunal arrived at the conclusion that the charges against the workman were substantiated and that the employer was not acting mala fide, but it held that the punishment of dismissal was too harsh and substituted for the same suspension of the workman without pay for six months. On appeal by the employer, the Labour Appellate Tribunal also came to the same conclusion regarding the charges against the workman but it held that there was no justification for interfering with the order of dismissal passed by the employer, and the dismissal of the workman was confirmed.

On a petition by the workman for a writ to quash the order of the Appellate Tribunal, it was contended that where an industrial tribunal comes to a certain conclusion "in the interests of industrial peace", such a conclusion could not be interfered with on appeal as it would not give rise to any questions of law.

Held: (i) that even before Industrial Tribunals the contractual obligations of the employer and the employees are binding and enforceable, only, in

the case of the latter the contractual obligations are not strictly enforced and the Tribunal can disregard them, having regard to the initial inequality between the parties. Where, therefore, the workman was dismissed for contravening a rule which was framed not for the benefit of the employer but in the interests of the safety of the human beings, for contravention of which rule the workman was liable to dismissal under his contract of service, the order of dismissal must stand unless, on some intelligible grounds, the Tribunal reached the conclusion that it was unreasonable or excessive; and

(ii) that though the Appellate Tribunal may be vested with jurisdiction to interfere only on points of law, it is its duty to see that the judicial discretion vested in Industrial Tribunals is not used arbitrarily or in a manner contrary to intelligible and accepted principles. Therefore, the Appellate Tribunal did not exceed its jurisdiction in confirming the dismissal of the workman in the circumstances of the case.

M. K. RANGANATHAN v. MADRAS ELECTRIC TRAMWAYS, [1952] 4 F.J.R. 77, explained.

Writ Petition No. 773 of 1955.

B. R. Dolia for the workman.

Special Government Pleader, Pai and Doraiswami for the respondents.

JUDGMENT.

This is an application for the issue of a writ of *certiorari* to quash an order of the Labour Appellate Tribunal in the following circumstances:

The petitioner was employed under the first respondent who was the owner of a coffee estate. The duties of the petitioner consisted in driving a tractor. At the time of his appointment, he was notified that he should not permit any other person to travel in the tractor or in any machinery attached to the tractor and that such conduct on his part would entail dismissal. On the 1st April, 1954, the petitioner was charged by the management with having knowingly permitted one Natesan to ride on a tiller attached to the tractor. The petitioner denied the charge and stated that if Natesan was on the machine it was without his knowledge. There was an enquiry in consequence of this denial and at that enquiry it was proved that it was with the petitioner's knowledge that Natesan rode on the tiller. On the ground of misconduct involved in this act, the management dismissed the petitioner from service. The rules of service of the petitioner provided an appeal to a higher authority within the management itself. The petitioner availed himself of this further remedy but did not succeed. Thereupon, the

Union, of which the petitioner was a member, started a dispute challenging the justness of the petitioner's dismissal from service. As it was not possible to effect a conciliation of this dispute, the matter was taken up to the Government who referred the dispute for adjudication under section 10(1)(c) of the Industrial Disputes Act. Before the Industrial Tribunal the Union put forward two contentions. The first was that the dismissal was not *bona fide* in that it involved an unfair labour practice as also that it was the result of victimisation of the petitioner; and secondly, they pleaded that as a fact Natesan was carried on the tiller by the petitioner without his knowledge. Evidence was taken by the Tribunal and as a result, it negatived the allegations regarding unfair labour practice as well as victimisation. It also found that the charge made against the petitioner was well founded. The question that then remained for consideration was as regards the justness of the punishment awarded by the employer. As regards this, the Tribunal, after citing a number of decisions, came to the conclusion that the punishment of dismissal was too harsh and was not justified by the circumstances, and substituted for the punishment inflicted by the employer one of suspension for a period of six months without pay.

The employer, the first respondent here, took the matter in appeal to the Labour Appellate Tribunal. Before this appellate authority, the Union raised the preliminary objection that no appeal lay to the Tribunal under section 7(1)(a) of the Labour Appellate Tribunal Act for the reason that no substantial question of law was involved in the appeal. The Tribunal overruled this objection and after discussing the evidence in the case reached the same conclusion as the Tribunal as regards the charge being proved and also as regards the *mala fides* of the employer. The appellate authority, however, held that there was no justification for interfering with the order of dismissal passed by the employer, and differing in that respect from the Industrial Tribunal, modified its order and gave as its answer that the dismissal of the employee was justified. It is this order of the Labour Appellate Tribunal that is challenged before me as being beyond its jurisdiction.

The learned counsel for the petitioner-workman urged that the Appellate Tribunal had no jurisdiction to entertain the appeal or to interfere with the order of the Industrial Tribunal, as no substantial question of law was involved in the appeal, and, on this ground, it was stated that the Labour Appellate Tribunal had exceeded its jurisdiction in judging the severity of the punishment and that in the circumstances of the case, the Appellate Tribunal was incompetent to interfere with the order of the Industrial Tribunal. It was further urged that as the Industrial Tribunal had stated that it was setting aside the punishment

of dismissal inflicted by the employer and substituted therefor the punishment which it decided was the reasonable one, on the stated ground that that would bring harmony into the relations between the employer and the workmen and would conduce to industrial peace, it could not be interfered with in appeal. In this connection, reliance was placed on a passage in the judgment of Subba Rao, J., in *Ranganathan v. The Madras Electric Tramways*, [1952] 4 F.J.R 77, at pages 92-93. The passage relied on was this:

"The Tribunal (the Industrial Tribunal) is not bound by the contractual terms between the parties but could make a suitable award for bringing about harmonious relations between the employers and the workers..... It would obstruct the work of the Tribunal and prevent it from discharging its difficult task of bringing about harmonious relations between the parties. I would, therefore, hold that the Industrial Tribunal is not fettered by any such limitations on its power. The only limitation on its power is to bring about harmonious relationship between the employers and the workmen."

This is not the first occasion when counsel appearing for workmen has relied on this passage as a charter to each adjudicator to substitute what he considered was fair and as affording legal justification for every order in favour of workmen, provided it was stated to be "for securing industrial peace." In my opinion, this proceeds on an entire misreading and misapprehension of what the learned Judge meant and arises out of the reading of this passage divorced from the facts of the case and the context in which it occurs. Subba Rao, J. was considering the right of an Industrial Tribunal to direct reinstatement of dismissed workmen and was repelling an argument which attached an inviolable sanctity to contractual rights. In that connection, the learned Judge said that contractual rights might not wholly determine the reliefs open to be afforded by an Industrial Tribunal. The words "for securing harmony between employer and workmen" or "for securing industrial peace" were certainly not meant to be a magical formula on the incantation of which an absolution was provided which precluded all enquiry into the propriety of the order.

It must not be forgotten that it is on the frame-work and basis of a social order which in great part rests on the sanctity and enforceability of obligations freely and voluntarily undertaken that industrial law itself has to function. Even before Industrial Tribunals, the contractual obligations of employers are binding and enforceable; similarly the obligations undertaken by workmen; only in their case, owing to the presumed economic inequality of labour *vis a vis* the employer, labour's contractual obligations are not strictly enforced, and the Tribunal can

disregard them, having regard to the initial inequality between the two contracting parties. It is not, however, correct to assume that before Industrial Tribunals, the obligations of the employer alone exist and that it is a *tabula rasa* so far as workmen are concerned. The proper approach, therefore, is to proceed on the basis of contractual obligations, relieving, however, the workmen of their strictness, where the result achieved would be harsh and one to which the workmen would not have agreed, if they were in a position to bargain on equal terms with the employer.

The question which the Industrial Tribunal was called on to adjudicate in this case was the justness of the dismissal of the workmen on the facts which I have already stated. The condition as to not permitting others to ride on the machine was one which was not wholly in the interests of the employer but was designed in the interests and safety of human beings. This would show the serious effect of any disregard of these instructions and the fact that an undertaking was taken from the workman, that if he disobeyed these instructions he was liable to dismissal, was with a view to bring home to the workman the peril involved in any departure from the rule. That condition was, in the present case, on the finding of the Tribunal, deliberately broken. The *bona fides* of the employer in preferring a charge was impugned; but that was negatived. The employee also pleaded that Natesan rode on the vehicle without his knowledge; that also had been found against. There had been a full-fledged enquiry into the charge by the employer and the charge was held established. It was in those findings that the employee was dismissed and it was in those circumstances that the dispute came before the Tribunal. The Tribunal rejected every contention regarding the *mala fides* of the employer as also the case of the employee on the merits and held that the workman was guilty of the misconduct regarding which there was no dispute that it was serious.

On these findings, the punishment inflicted by the employer would have had to stand unless, on some intelligible grounds, the Tribunal reached the conclusion that it was unreasonable and excessive. I do not find learned counsel for the petitioner disputing the position so far. But his contention was that if the Tribunal repeated the formula "that industrial peace required it", but without further elucidating it as to why the employer's discretion should be interfered with, its order could not be interfered with, and could raise no question of law for consideration by the Labour Appellate Tribunal. I am wholly unable to agree with this contention. No doubt, the application of the rules of law to the particular facts of a case might not itself give rise to a point of law. But, on a misapplication of law, a question of law would certainly arise. If the Tribunal had a discretion to interfere with the punishment

inflicted by the employer only in stated circumstances, the question whether that test was satisfied or not would be a question of law. Again, granting that the Tribunal had discretion in the matter, that was a judicial discretion to be exercised on recognised principles, not an arbitrary one to be exercised at pleasure or capriciously, and it was the function, and I would add the duty, of an Appellate Tribunal, even though vested with jurisdiction to interfere only on points of law, to see that the discretion is not used arbitrarily, or in a manner contrary to intelligible and acceptable principles.

In my judgment, the Appellate Tribunal had not exceeded its jurisdiction and the order impugned cannot be set aside. The writ petition fails and is dismissed with costs. Counsel's fee Rs. 50.

[IN THE SUPREME COURT OF INDIA.]

MARTIN BURN LTD.

v.

R. N. BANERJEE.

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

September 20, 1957.

APPELLATE TRIBUNAL—JURISDICTION—POWER TO SET ASIDE *ex parte* ORDER—INHERENT POWERS—INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950, SECTION 9 (1)—LABOUR APPELLATE TRIBUNAL ORDERS, 1951, O. 3, R. 4.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33—INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950, SECTION 22—APPLICATION FOR PERMISSION TO DISMISS WORKMAN—FORMAL ENQUIRY NOT HELD BY EMPLOYER—RIGHT OF TRIBUNAL TO COME TO ITS OWN CONCLUSION ON EVIDENCE ADDUCED BEFORE IT—NO VICTIMISATION OR UNFAIR LABOUR PRACTICE—CONCLUSION THAT NO *prima facie* CASE MADE OUT ON EVIDENCE—WHETHER JUSTIFIED.

Under section 9(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950, the Labour Appellate Tribunal is invested, while exercising its original or appellate jurisdiction, with the same powers as are vested in a civil Court under the Civil Procedure Code, 1908, when such civil Court is exercising its appellate jurisdiction. Therefore, the Appellate Tribunal has jurisdiction to exercise the powers of a civil Court as laid down in O. 41, r. 21 of the Civil Procedure Code and can re-hear an appeal which had been heard ex parte

and decided against the respondent, if the respondent satisfies the Tribunal that the notice was not duly served on him. Besides, O. 3, rule 4 of the Labour Appellate Tribunal Orders, 1951, has preserved the inherent powers of the Tribunal to make such orders as may be necessary in the ends of justice or to prevent abuse of process of the Tribunal.

Even though a very strong case for the termination of the services of a workman exists, if the employer does not hold a formal enquiry into the work and conduct of the workman before applying to a Tribunal for permission to terminate the services of the workman during the pendency of proceedings and does not adduce sufficient evidence before the Tribunal to enable it to come to the conclusion that a prima facie case has been made out for the termination of the services of the workman, the Tribunal would be justified in coming to the conclusion that even though the employer was not actuated by any motive of victimisation or was not guilty of any unfair labour practice, the employer had failed to make out a prima facie case for the termination of the services of the workman.

Civil Appeal No. 92 of 1957.

B. Sen with S. N. Mukherjee and B. N. Ghosh for the management.

D. L. Sen Gupta and Dipak Chaudhury for the workman.

JUDGMENT.

The Judgment of the Court was delivered by

BHAGWATI, J.—This appeal with special leave against the decision of the Labour Appellate Tribunal of India, Calcutta, arises out of an application made by the appellant under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, (hereinafter referred to as "the Act") for permission to discharge the respondent.

The respondent had been appointed as a pay-clerk in the appellant's cash department on April 30, 1945, and had been confirmed in service with effect from August 1, 1945. Since the beginning of 1949, the respondent was found to have become negligent and careless in his work and he was also disobedient and slow in the performance of the duties that were allotted to him. Repeated verbal and written warnings were given to him but they had no effect whatever. Consequently the chief cashier, by his letter dated October 24, 1949, addressed to the manager of the appellant, complained that he was very negligent and careless in his work, and habitually showed sulkiness, that he was also disobedient, and shirked the duties that were allotted to him and that recently, he was careless enough to keep the Company's money in an open drawer of a safe, and go home, without locking the same. The management thereupon asked for his written explanation which he submitted on October 28

inflicted by the employer only in stated circumstances, the question whether that test was satisfied or not would be a question of law. Again, granting that the Tribunal had discretion in the matter, that was a judicial discretion to be exercised on recognised principles, not an arbitrary one to be exercised at pleasure or capriciously, and it was the function, and I would add the duty, of an Appellate Tribunal, even though vested with jurisdiction to interfere only on points of law, to see that the discretion is not used arbitrarily, or in a manner contrary to intelligible and acceptable principles.

In my judgment, the Appellate Tribunal had not exceeded its jurisdiction and the order impugned cannot be set aside. The writ petition fails and is dismissed with costs. Counsel's fee Rs. 50.

[IN THE SUPREME COURT OF INDIA.]

MARTIN BURN LTD.

v.

R. N. BANERJEE.

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

September 20, 1957.

APPELLATE TRIBUNAL—JURISDICTION—POWER TO SET ASIDE *ex parte* ORDER—INHERENT POWERS—INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950, SECTION 9 (1)—LABOUR APPELLATE TRIBUNAL ORDERS, 1951, O. 3, R. 4.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33—INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950, SECTION 22—APPLICATION FOR PERMISSION TO DISMISS WORKMAN—FORMAL ENQUIRY NOT HELD BY EMPLOYER—RIGHT OF TRIBUNAL TO COME TO ITS OWN CONCLUSION ON EVIDENCE ADDUCED BEFORE IT—NO VICTIMISATION OR UNFAIR LABOUR PRACTICE—CONCLUSION THAT NO *prima facie* CASE MADE OUT ON EVIDENCE—WHETHER JUSTIFIED.

Under section 9(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950, the Labour Appellate Tribunal is invested, while exercising its original or appellate jurisdiction, with the same powers as are vested in a civil Court under the Civil Procedure Code, 1908, when such civil Court is exercising its appellate jurisdiction. Therefore, the Appellate Tribunal has jurisdiction to exercise the powers of a civil Court as laid down in O. 41, r. 21 of the Civil Procedure Code and can re-hear an appeal which had been heard *ex parte*

and decided against the respondent, if the respondent satisfies the Tribunal that the notice was not duly served on him. Besides, O. 3, rule 4 of the Labour Appellate Tribunal Orders, 1951, has preserved the inherent powers of the Tribunal to make such orders as may be necessary in the ends of justice or to prevent abuse of process of the Tribunal.

Even though a very strong case for the termination of the services of a workman exists, if the employer does not hold a formal enquiry into the work and conduct of the workman before applying to a Tribunal for permission to terminate the services of the workman during the pendency of proceedings and does not adduce sufficient evidence before the Tribunal to enable it to come to the conclusion that a *prima facie* case has been made out for the termination of the services of the workman, the Tribunal would be justified in coming to the conclusion that even though the employer was not actuated by any motive of victimisation or was not guilty of any unfair labour practice, the employer had failed to make out a *prima facie* case for the termination of the services of the workman.

Civil Appeal No. 92 of 1957.

B. Sen with S. N. Mukherjee and B. N. Ghosh for the management.

D. L. Sen Gupta and Dipak Chaudhury for the workman.

JUDGMENT.

The Judgment of the Court was delivered by

BHAGWATI, J.—This appeal with special leave against the decision of the Labour Appellate Tribunal of India, Calcutta, arises out of an application made by the appellant under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, (hereinafter referred to as "the Act") for permission to discharge the respondent.

The respondent had been appointed as a pay-clerk in the appellant's cash department on April 30, 1945, and had been confirmed in service with effect from August 1, 1945. Since the beginning of 1949, the respondent was found to have become negligent and careless in his work and he was also disobedient and slow in the performance of the duties that were allotted to him. Repeated verbal and written warnings were given to him but they had no effect whatever. Consequently the chief cashier, by his letter dated October 24, 1949, addressed to the manager of the appellant, complained that he was very negligent and careless in his work, and habitually showed sulkiness, that he was also disobedient, and shirked the duties that were allotted to him and that recently, he was careless enough to keep the Company's money in an open drawer of a safe, and go home, without locking the same. The management thereupon asked for his written explanation which he submitted on October 28

1949, stating that if there was anything wrong on his part that was due to his ill health, hard work and mental anxiety. He, therefore, asked to be excused and stated that he would take much more care in future about his work. On November 17, 1949, the chief-cashier again complained against the respondent stating that he had not only registered no improvement but was grossly negligent in his duties, in spite of repeated warnings, and was in the habit of absenting himself on flimsy grounds, and always tried to avoid duties that were entrusted to him and was very insolent in his behaviour and conduct. A charge-sheet was submitted to him on November 18, 1949, and he was suspended till the final disposal of the enquiry. On November 19, 1949, the respondent wrote a letter to the managing director of the appellant pleading not guilty to the charges framed against him and asking for an interview so that he may have a chance to represent his grievances personally. The respondent was granted an interview with the manager of the appellant who investigated the case of the respondent and found him guilty of the charges framed against him. The respondent had admitted having been rude to his superior officer in a fit of temper but appeared to be repentent of his conduct and had tendered an apology to the chief cashier. He also submitted on November 29, 1949, a letter asking to be excused. Under the circumstances, the manager of the appellant recommended in his report dated November 29, 1949, that the respondent be given one more opportunity to prove himself of good behaviour but having regard to the request made by the respondent in that behalf suggested that he be transferred to the mechanical engineering department. The manager also stated at the end of the said report that he had warned the respondent that if he got any further adverse report about his work or conduct, his services would be terminated forthwith. Following upon that report a letter was addressed by the appellant to the respondent on the same day intimating that the appellant had decided to give him one more chance of working in the organization on the distinct understanding that should there be any further adverse report about his work or conduct his services would be terminated forthwith. He was directed on that understanding to report to Mr. Hooper of the M. E. Department, where he was being transferred with effect from the next day.

In spite of these chances being given to him the respondent did not improve and he was again found seriously neglecting his work. There were also complaints from the typists to the effect that the respondent's chatter interfered with their work. Mr. Hooper after giving him verbal warnings on several occasions without any effect ultimately gave him a written warning on February 9, 1951, recording the above facts and asking that the respondent should show immediate improvement in his

conduct failing which he would take the matter further. The respondent replied by his letter dated February 16, 1951, denying the allegations contained in the said letter of Mr. Hooper. He pleaded that he was not negligent in his duty inasmuch as he had to discharge the arrears of work which were outstanding at the time when he took over the work of writing parcel challans and he was also asked to do other work of the clerks who were absent on leave. He, however, admitted that he had occasionally talked with his co-workers though he contended that that was not in such a way as would prompt his co-workers to complain against him. He further asked to be excused for the faults, if any, and gave an assurance that he was trying and would try his level best to improve further.

The respondent however did not show any improvement and again there were complaints against him that his work had not been done properly and also that he had been noisy, causing disturbance to the other clerks' work and that he had been twice found by his superior officer Mr. Girling with his head on his arms apparently sleeping. On September 3, 1952, Mr. Girling on behalf of the appellant gave the respondent a warning to which he replied on September 8, 1952, denying all the allegations except that of his being found with his head on his arms but excused himself by stating that he was ill and it was under the advice of Mr. Girling himself that he consulted the office doctor who had advised him rest. He however promised to endeavour his utmost to give every satisfaction in the discharge of his duties.

In spite of these warnings the respondent showed no improvement in his work and conduct and continued neglecting his duties and indulging in insubordination with the result that by its letter dated February 9, 1953, the management of the appellant wrote to him that the only course left to it was to dispense with his services but as a measure of leniency it had decided to give him another chance to show satisfactory improvement and in doing so it had also decided to stop his annual increment. The respondent protested against the stopping of his annual increment by his letter dated February 17, 1953, and contended that the charges levelled against him were absolutely groundless and asked the management to re-consider his case. The Labour Directorate of the Government of West Bengal was approached on his behalf but that body also refused to intervene. The management asked Mr. Hooper to report upon the respondent's work and conduct by May 31, 1953, and intimated to the respondent that unless definite improvement was reported by that date his services with the appellant would be terminated as from June 30, 1953. Mr. Hooper observed the respondent's work and conduct and not finding them satisfactory, by his memo dated August 19, 1953, reported

on the same to the management of the appellant. No action was however taken immediately against the respondent and on May 4, 1954, Mr. Hooper made his final report to the management on the strength of which the appellant wrote to the respondent its letter dated May 10, 1954, in which it stated that on receipt of the complaint from Mr. Hooper it had made a thorough enquiry into his records of service, had found that he was unsuitable to be retained in its service and had therefore decided to terminate his service on payment of full retrenchment compensation. It asked the respondent to choose one of the two alternatives, viz., that it may forthwith terminate his services if he was agreeable to accept payment of retrenchment compensation or in case he refused to accept the same to make an application before the Fifth Industrial Tribunal for permission to terminate his service. The respondent failed and neglected to send any reply with the result that by its letter dated June 21, 1954, the appellant intimated to the respondent that it was approaching the Tribunal for permission to terminate his service as per its letter dated May 28, 1954. The appellant thereafter filed on September 21, 1954, an application before the Fifth Industrial Tribunal, West Bengal, under section 33 of the Industrial Disputes Act, 1947, for permission to discharge the respondent. The Fifth Industrial Tribunal however became *functus officio* on the expiry of thirty days from the publication of its award in the dispute which was then pending before it with the result that the said application could not be disposed of and was accordingly struck off.

The appellant eventually filed an application under section 22 of the Act before the Labour Appellate Tribunal of India at Calcutta for permission to discharge the respondent from its service. This step became necessary as there was an appeal bearing No. Cal.-152 pending before the Labour Appellate Tribunal to which the appellant and the respondent were parties. The Labour Appellate Tribunal consisting of Shri M. N. Gan (President) and Shri P. R. Mukherji (Member) heard the appellant *ex parte* and by its order dated October 14, 1955, allowed the said application and granted the permission to discharge the respondent holding *inter alia* that a *prima facie* case had been made out for permission to dismiss the respondent. The appellant accordingly on November 11, 1955, wrote a letter to the respondent stating that the necessary permission had been granted by the Labour Appellate Tribunal to discharge him from the appellant's service and that the decision of the management of the appellant dated May 28, 1954, to terminate his services was, therefore, given effect to on the terms communicated to him in that letter.

On December 6, 1955, the respondent filed an affidavit before the

Labour Appellate Tribunal, Calcutta, praying for a review of the order dated October 14, 1955, for setting it aside and for restoration of the application under section 22 of the Act.

The Labour Appellate Tribunal presided over by Mr. M. N. Gan and Mr. V. N. Dikshitulu heard the parties concerned and by its order dated March 6, 1956, allowed the respondent's application and restored the appellant's case to its file. On a further hearing of that application the parties adduced evidence and after hearing both the parties the Labour Appellate Tribunal, presided over this time by Mr. V. N. Dikshitulu, rejected the application under section 22 of the Act by its order dated May 11, 1956, and refused to the appellant permission to discharge the respondent from its service.

The appellant being aggrieved by the said decision of the Labour Appellate Tribunal of India, Calcutta, applied for and obtained special leave to appeal to this Court.

Mr. Sen on behalf of the appellant raised two contentions: (i) that the Labour Appellate Tribunal had no jurisdiction to review its own order which it had passed on October 14, 1955, and (ii) that the Labour Appellate Tribunal had exceeded its jurisdiction under section 22 of the Act in coming to the conclusion that the appellant had failed to make out a *prima facie* case to discharge the respondent from its service.

Re: (i) It was contended that once the Labour Appellate Tribunal pronounced its order on October 14, 1955, it had become *functus officio* and thereafter it had no jurisdiction to review its own order. The circumstances, moreover, did not bring the application which was made by the respondent on December 6, 1955, strictly within the provisions of Order 47, rule 1 of the Code of Civil Procedure and no application for review could therefore be maintained.

It is significant, however, to remember that the application made by the respondent on December 6, 1955, was an omnibus one and was intitled as one under Order 47, rule 1 of the Code of Civil Procedure for review; under Order 41, rule 21 of the Civil Procedure Code for restoration and under Order 9, rule 13 of the Code of Civil Procedure for setting aside the permission granted *ex parte* and to restore the respondent in his original position. The respondent evidently sought to rely upon one or the other of the provisions above set out in order to obtain the relief which he sought in that application.

Whether one or more of these provisions of the Code of Civil Procedure could be availed of by the respondent depends upon what are the powers which are vested in the Labour Appellate Tribunal when hearing the matters which come before it. The Labour Appellate

Tribunal is the creature of the statute and all its powers must be found within the four-corners of the statute. The constitution and functions of the Labour Appellate Tribunal are to be found in Chapter II of the Act. Sections 4 to 6 of the Act lay down the constitution and functions of the Labour Appellate Tribunal and section 7 prescribes its jurisdiction in appeal from awards or decisions of the Industrial Tribunals. Section 9 lays down the powers and procedure of the Labour Appellate Tribunal. The provisions of section 9 so far as they are relevant for the purpose of this appeal may be set out here:

"Section 9. Powers and procedure of the Appellate Tribunal.

(1) The Appellate Tribunal shall have the same powers as are vested in a civil court, when hearing an appeal, under the Code of Civil Procedure, 1908 (Act V of 1908).

.....
(10) The Appellate Tribunal shall follow such procedure as may be prescribed, and subject thereto, it may, by order, regulate its practice and procedure and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), shall, so far as they are not inconsistent with this Act, or the rules or orders made thereunder, apply to all proceedings before the Appellate Tribunal".

It may be noted that the Labour Appellate Tribunal not only exercises appellate jurisdiction by way of hearing appeals from the awards or decisions of the Industrial Tribunals but also exercises original jurisdiction when applications are made to it under section 22 of the Act to obtain its permission in writing to alter the conditions of service applicable to the workman or to discharge or punish whether by dismissal or otherwise any workman concerned in appeals pending before it. If an employer contravenes the provisions of section 22 during the pendency of the proceedings before the Labour Appellate Tribunal, it also entertains complaints in writing at the instance of the employees aggrieved by such contravention and the Labour Appellate Tribunal decides these complaints as if they are appeals pending before it in accordance with the provisions of the Act. This is also an exercise of original jurisdiction though under the express terms of the section the exercise of that jurisdiction is assimilated to the exercise of appellate jurisdiction by the Labour Appellate Tribunal. Whatever be the nature of the jurisdiction thus exercised by the Labour Appellate Tribunal—whether original or appellate—that jurisdiction is exercised by it by virtue of the provisions of the Act: And section 9 of the Act has reference to the exercise of the whole of that jurisdiction when it talks of the powers and procedure of the Labour Appellate Tribunal. In regard to such powers and procedure no distinction is made between the

exercise of original jurisdiction and the exercise of appellate jurisdiction by the Labour Appellate Tribunal and these provisions apply equally to the jurisdiction exercised by it, whether under section 7, 22, or section 23 of the Act.

Section 9(1) of the Act invests the Labour Appellate Tribunal with the same powers as are vested in a civil Court, when hearing an appeal, under the Code of Civil Procedure, 1908 (Act V of 1908). A question was mooted before us whether the words "when hearing an appeal" were to be read with the words "Appellate Tribunal" or with the words "a civil court". It was argued that these words went with the words "Appellate Tribunal" and, therefore, the powers of a civil Court under the Code of Civil Procedure were to be exercised by the Labour Appellate Tribunal only when it was exercising its appellate jurisdiction and hearing matters which fall within the purview of section 7 or section 23 of the Act and not when it was exercising original jurisdiction and hearing applications under section 22 of the Act. This construction of the provisions of section 9(1) of the Act however suffers from this disability that it takes no count of the fact that the Labour Appellate Tribunal under the provisions of the Act itself exercises both original as well as appellate jurisdiction and if such a construction was put on those provisions the result would be that there would be no provision as regards the powers of the Labour Appellate Tribunal when it is exercising original jurisdiction. The powers of the Labour Appellate Tribunal which are sought to be provided in section 9(1) of the Act are not limited only to the exercise of appellate jurisdiction by it but have reference to the whole of the jurisdiction which is vested in the Labour Appellate Tribunal under the provisions of the Act. The words "when hearing an appeal" have, moreover, been used between the words "a civil Court" and "under the Code of Civil Procedure, 1908" which, in the context in which they have been used, could only have been meant to refer to a civil Court. Whatever the jurisdiction the Labour Appellate Tribunal is exercising—whether original or appellate—it is vested with the powers as are vested in a civil Court under the Code of Civil Procedure, 1908, when it is hearing an appeal. The very juxtaposition of the words "when hearing an appeal" with the words "a civil court", is sufficient, in our opinion, to invest the Labour Appellate Tribunal while exercising its jurisdiction—whether original or appellate—with the same powers as are vested in a civil Court under the Code of Civil Procedure when it is exercising its appellate jurisdiction, and hearing appeals. (See *Burmah Shell Oil Storage Case*, [1953] 5 F.J.R. 707, and *The New Mills Ltd.*, 1954 Labour Appeal Cases, 252).

If this is the true construction to be put on the provisions of section 9(1) of the Act, the provisions of Order 41, rule 21 of the Code of Civil Procedure are attracted forthwith. Order 41, rule 21 provides:

"Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him".

When the Labour Appellate Tribunal heard the application under section 22 of the Act *ex parte* on October 14, 1955, the summons had not been served on the respondent owing to its being addressed to him at a wrong place. There was sufficient cause, therefore, for the respondent not appearing when the application was called on for hearing and on this circumstance being established he was entitled to a re-hearing of the application and setting aside of the *ex parte* order made against him. The Labour Appellate Tribunal was, therefore, right in making the order which it did on March 6, 1956.

There is also another aspect of the question which may be dealt with at this stage and it is that under the provisions of section 9 sub-section (10) of the Act, the Labour Appellate Tribunal is enjoined to follow such procedure as may be prescribed, and subject thereto it may, by order, regulate its practice and procedure and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), shall, so far as they are not inconsistent with the Act or the rules or orders made thereunder, apply to all proceedings before it. Pursuant to the powers conferred upon it by this sub-section the Labour Appellate Tribunal has made orders to regulate its practice and procedure and Order 3, rule 4 provides:

"Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

This provision is analogous to that which is contained in section 151 of the Code of Civil Procedure which relates to the inherent powers of the Court and even apart from the applicability of Order 41, rule 21 of the Code of Civil Procedure as hereinbefore set out it was open to the Labour Appellate Tribunal to pass the order which it did on March 6, 1956, as it was evidently necessary for the ends of justice or to prevent the abuse of the process of the Court.

We are, therefore, of opinion that the Labour Appellate Tribunal had jurisdiction to set aside the *ex parte* order dated October 14, 1955,

and restore the appellant's application under section 22 of the Act to its file. This contention of the appellant, therefore, is without any substance and must be negatived.

Re: (ii) It was next contended that even though the Labour Appellate Tribunal had jurisdiction to hear an application under section 22 of the Act it misconceived its jurisdiction and in the exercise of it, launched into an inquiry which it was not competent to do and erroneously came to the conclusion that the appellant had failed to make out a *prima facie* case for terminating the service of the respondent.

The nature and scope of the enquiry before the Labour Appellate Tribunal under section 22 of the Act has been the subject-matter of decisions of this Court in *Atherton West & Co. Ltd. v. Suti Mill Mazdoor Union and others*, [1953] 5 F.J.R. 83, *The Automobile Products of India Ltd. v. Rukmaji Bala & others*, [1955] 7 F.J.R. 716, and *Lakshmi Devi Sugar Mills Limited v. Pt. Ram Sarup & others*, [1956] 11 F.J.R. 273. In the last mentioned case this Court succinctly laid down the principles governing such enquiry and observed at page 286:

"The Tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A *prima facie* case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting *mala fide* or is not resorting to any unfair practice or victimization."

We have, therefore, got to consider whether in the instant case a *prima facie* case was made out by the appellant for terminating the service of the respondent and whether in giving the notice dated November 11, 1955, terminating the respondent's service the appellant was motivated by any unfair labour practice or victimization.

The facts as they appear from the narration of events in the earlier part of this judgment go to establish that the respondent was grossly negligent in the performance of his duties, was in the habit of absenting himself on flimsy grounds, was also insolent in his behaviour and conduct and in spite of repeated warnings, oral as well as written, addressed to him by the management of the appellant, did not show any signs of improvement. The incidents of 1949, 1951, and 1952 culminating in the stoppage of his annual increment in February, 1953, were sufficient to

reference to his report of May 4, 1954, without disclosing the contents thereof there was nothing in the deposition of Mr. Hooper which would even go to show that the contents of that report were prejudicial to the respondent. In cross-examination also he admitted that before reporting on May 4, 1954, against the respondent he did not draw up a charge-sheet as it was for the appellant to do so.

The Labour Appellate Tribunal had to determine on these materials whether a *prima facie* case had been made out by the appellant for the termination of the respondent's service. A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima facie* case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See *Buckingham & Carnatic Co., Ltd.*, [1951] 3 F.J.R. 265).

The Labour Appellate Tribunal in the instant case discussed the evidence led before it in meticulous detail and came to the conclusion that no *prima facie* case was made out by the appellant for the termination of the service of the respondent. It applied a standard of proof which having regard to the observations made above was not strictly justifiable. If the matter had rested there it may have been possible to upset the finding of the Labour Appellate Tribunal. But if regard be had to the evidence which was actually led before it, there is such a lacuna in that evidence that it is impossible to come to the conclusion that even if the evidence was taken at its face value a *prima facie* case was made out by the appellant. Mr. Hooper's evidence did not go to show what were the contents of his report dated May 4, 1954, and it contained only a bare reference to the report without anything more. This was not enough to prove the contents of that report, much less to give the respondent an opportunity of controverting the allegations made against him. If, therefore, these essential ingredients were wanting, it cannot be said that the evidence led by the appellant before the Labour Appellate Tribunal was sufficient to establish a *prima facie* case for the termination of the respondent's service. This contention also does not, therefore, avail the appellant.

Mr. Sen endeavoured to draw a distinction between discharge on the one hand and punishment by way of dismissal or otherwise on the

other, in clause (b) of section 22 of the Act. He contended that no *prima facie* case need be made out when an employee was sought to be discharged *simpliciter* by the employer. A charge-sheet was required to be submitted to the workman and an enquiry thereon required to be made in conformity with the principles of natural justice only in those cases where the workman was sought to be punished by dismissal or otherwise. That was not the case when the workman was sought to be discharged without assigning any reason whatever and such a case did not fall within the category of punishment at all. For the purpose of the present case we need not dilate upon this; it is sufficient to point out that Shri Ramani Ranjan Dhar in his affidavit in rejoinder filed on behalf of the appellant categorically stated that the respondent was sought to be "dismissed" by reason of his having been found guilty of the various charges which had been levelled against him. Even at the *ex parte* hearing of the application under section 22 of the Act before the Labour Appellate Tribunal the case of the appellant was that it had made out a *prima facie* case for permission to "dismiss" the respondent. This distinction sought to be drawn by Mr. Sen is, therefore, of no consequence whatever and need not detain us any further.

Mr. Sen also relied upon the circumstance that after the Labour Appellate Tribunal had on the *ex parte* hearing of the application under section 22 of the Act granted to the appellant permission to terminate the service of the respondent on October 14, 1955, the appellant had implemented the same and by its notice dated November 11, 1955 actually terminated the service of the respondent offering him full retrenchment compensation. In so far as the appellant had acted upon such permission and implemented the same, it was contended, that the respondent's service was irrevocably terminated and nothing more was to be done thereafter, except the possible raising of an industrial dispute by the respondent on the score of his service having been wrongfully terminated. It was submitted that after such an irrevocable step had been taken by the appellant terminating the respondent's service, the Labour Appellate Tribunal ought not to have reconsidered its decision and restored the application under section 22 of the Act to its file and that the further decision of the Labour Appellate Tribunal had no effect so far as the actual termination of the service of the respondent was concerned. We do not propose to go into these interesting questions for the simple reason that the only question which arises for our consideration in this appeal is whether on the evidence led before it the decision of the Labour Appellate Tribunal dated May 11, 1956, dismissing the appellant's application under section 22 of the Act was correct. As a matter of fact, no such contention had been urged by the appellant

We, therefore, hold that the decision of the Labour Appellate Tribunal refusing permission to the appellant under section 22 of the Act was correct and this appeal is liable to be dismissed. It will accordingly be dismissed with costs.

