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INDIAN FACTORIES JOURNAL

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

WITH

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

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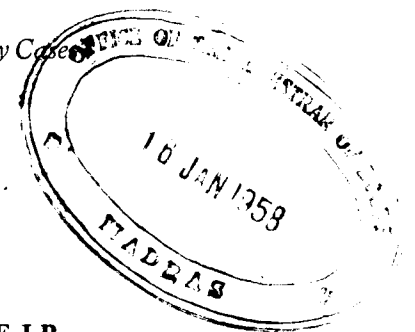
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Industrial Disputes Acts, 1947—Delegation of Powers.*Notification No. GLR. 57/57/9 dated the 23rd August, 1957†*

In exercise of the powers conferred by section 39 of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor of Assam hereby directs that the power exercisable by him under sub-section (1) of Section 33-C of the said Act shall be exercisable also by the Labour Commissioner, Assam, Shillong.

Sugar Industry declared Public Utility Service*Notification S.R.O. No. A-5473 of 1957, dated August 29, 1957*.*

Whereas the sugar industry in the State of Madras has been declared to be public utility service for the purpose of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) for a period of six months up to and inclusive of the 4th September, 1957, in the late Development Department Notification No. 714, dated the 30th August, 1952, published at page 1339 of Part I of the *Fort St. George Gazette*, dated the 10th September, 1952, read with the Industries, Labour and Co-operation Department Notification S.R.O. No. A-1246 of 1957, published at page 361 of Part I of the *Fort St. George Gazette*, dated the 27th February, 1957;

And whereas the Governor of Madras is of the opinion that public interest requires the extension of the said period for a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to section 2 (n) (vi) of the said Act, the Governor of Madras hereby extends the period so specified by a period of six months commencing on the 5th September, 1957.

Mysore Factories Rules, 1952—Amendment.*Notification No. LLH. 62 FCB 57, dated Bangalore, 12th December, 1957.***

In exercise of the powers conferred under section 112 of the Factories Act, 1948 (Central Act LXIII of 1948), the Government of Mysore hereby makes the following amendments to the Mysore Factories Rules, 1952, the draft of the same having been previously published in Notification LLH 62 FCB 57, dated 27th April, 1957, as required under section 115 of the said Act.

AMENDMENT.

In the said rules, after sub-rule (3) of rule 94, the following rule shall be inserted :—

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

*Fort St. Geo., Gaz. 4-9-57, Pt. I, p. 1515.

**Mys. Gaz., 19-12-47, Pt. IV, Sec. C, p. 3032.

"94 A. Exemption from provision of rules 87 to 93:—The Chief Inspector may grant exemption from all or any of the provisions of the rules 87 to 93 in respect of all or any of the workers in any factory subject to such conditions as he may impose."

**THE INDUSTRIAL DISPUTES (BANKING COMPANIES) DECISION
AMENDMENT ACT, 1957.**

ACT NO. 40 OF 1957*

[Received the assent of the President on November 17, 1957.]

An Act to amend the Industrial Disputes (Banking Companies)
Decision Act, 1955.

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

1. *Short title.*—This Act may be called the Industrial Disputes (Banking Companies) Decision Amendment Act, 1957.

2. *Amendment of section 3.*—In the Industrial Disputes (Banking Companies) Decision Act, 1955, section 3 shall be re-numbered as sub-section (1) of that section, and after that sub-section as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) Notwithstanding anything contained in sub-section (1), the recommendations in Chapter XI of the Report of the Bank Award Commission in relation to the banking companies incorporated in the former State of Travancore-Cochin specified in that Chapter shall be modified and shall be deemed to have been modified—

(a) with effect from the 1st January, 1955, in relation to the C Class banks known as the South Indian Bank Limited, Trichur, and the Catholic Syrian Bank Limited, Trichur, as if—

(1) in clause (1) of the said recommendations—

(i) under the heading 'C Class', after the entry '(viii), Travancore Bank', the entries '(ix), South Indian Bank, Trichur' and '(x), Catholic Syrian Bank, Trichur', had been inserted;

(ii) items (i) and (ii) under sub-clause (b) had been omitted; and

(2) in clause (2) thereof, after the words 'Travancore Bank', the words 'the South Indian Bank, Trichur, and the Catholic Syrian Bank, Trichur' had been inserted; and

(b) with effect from the 1st January, 1956, in relation to the C Class Banks known as the Palai Central Bank Limited, Palai, and the Travancore Forward Bank Limited, Kottayam, and the D Class Banks, as if in clause (1) of the said recommendations, items (i) and (ii) under sub-clause (b) had been omitted.

(3) The arrears of emoluments payable to the workmen of the banking companies specified in sub-section (2) by reason of the modifications effected by that sub-section shall be paid as follows:—

*Gaz. of India, Exty., 18-11-1957, p. 505,

(a) in the case of the banking companies specified in clause (a) of that sub-section—

(i) the arrears for the year 1955 shall be paid in two equal instalments of which the first shall be paid within thirty days from the commencement of the Industrial Disputes (Banking Companies) Decision Amendment Act, 1957, and the second within six months after such commencement; and

(ii) the arrears for the period from the 1st January, 1956, to such commencement shall be paid within thirty days thereof;

(b) in the case of the banking companies specified in clause (b) of that sub-section, arrears for the period from the 1st January, 1956, to such commencement shall be paid within thirty days thereof.

(4) For the purposes of this section, the expression "the former State of Travancore-Cochin" means the State of Travancore-Cochin as it existed immediately before the 1st November 1956."

STATEMENT OF OBJECTS AND REASONS.

The following is the Statement of Object and Reasons appended to the Bill which has resulted in the above Act:

"One of the recommendations of the Bank Award (Justice Gajendra-gadkar) Commission was that the Government of India should appoint a Commission to examine the financial position of the Banks incorporated in the former Travancore-Cochin State and make recommendations in regard to the terms and conditions of service of their employees. In pursuance of this recommendation, the Government of India in January, 1956, appointed the Travancore-Cochin Banking Inquiry Commission which submitted its report in August 1956. The Government of India have accepted the recommendations of the Travancore-Cochin Banking Inquiry Commission in respect of the terms and conditions of service of bank employees in Award banks with the modification that in the case of the South Indian Bank Ltd., and the Catholic Syrian Bank Ltd., Trichur, retrospective effect to the Labour Appellate Tribunal's decision should be given from January 1, 1955, instead of from April 1, 1954, as recommended by the Commission. This Bill is designed to give effect to the recommendations of the Travancore-Cochin Banking Inquiry Commission as thus modified. Provision has also been made in the Bill about the period during which the arrears of emoluments will be paid by the banks concerned."

U. P. WORKING JOURNALISTS (INDUSTRIAL DISPUTES) RULES, 1957.
*Notification No. 7298 (ST) /XXXVI-A-157 (ST)-1955 dated December 4, 1957**

In exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947 (XIV of 1947), the State Government hereby makes the following rules the same having been previously published, as required by sub-section (1) of the said section, namely—

PRELIMINARY.

1. *Title and Application.*—These rules may be called the U. P. Working Journalists (Industrial Disputes) Rules, 1957.

2. *Definitions.*—In these rules, unless there is anything repugnant in the subject or context,

- (a) 'Act' means the Industrial Disputes Act, 1947;
- (b) All words and expressions used but not defined shall have the meaning respectively assigned to them in the Act;
- (c) 'Chairman' means the chairman of a Board or Court or, if the Court consists of one person only, such person;
- (d) 'Form' means a form prescribed in the Schedule to these rules;
- (e) 'Section' means a section of the Act;
- (f) 'State Government' means the Government of Uttar Pradesh;
- (g) 'Labour Commissioner' means the Labour Commissioner, U. P.;
- (h) The expressions 'Newspaper', 'newspaper establishment' and 'working journalist' shall have the meanings respectively assigned to them in section 2 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act 1955;
- (i) 'Trade Union' means a trade union registered under the Indian Trade Unions Act, 1926.

3. (1) An application for the settlement of an industrial dispute may be made to the Conciliation Officer of the area concerned:

- (i) In the case of a Working Journalist by—
 - (a) a registered trade union of working journalists, or
 - (b) a federation of such trade unions, or
 - (c) where no such union or federation exists in relation to any particular newspaper establishment by five representatives of the working journalists employed in the newspaper establishment, to be elected in that behalf by a majority of the working journalists employed in the newspaper establishment, as the case may be, at a meeting held for the purpose, and
- (ii) In the case of an employer by—
 - (a) the employer of a newspaper establishment himself, or
 - (b) a trade union or association of employers, or
 - (c) a federation of such trade unions or associations.

(2) No application under sub-rule (1) shall ordinarily be entertained by the Conciliation Officer if it is in respect of a dispute arising more than six months previous to the date of the application, or if the dispute has already been the subject of proceedings before a Board, Labour Court or Tribunal and finally settled:

*U.P. Govt. Gazette, Extra., 4-12-57.

Provided that the Conciliation Officer may, if he is satisfied that the applicant had sufficient cause for not making the application earlier, entertain the same.

POWERS, PROCEDURE AND DUTIES OF CONCILIATION OFFICERS.

4. (1) Where a Conciliation Officer receives information—through an application or otherwise—about an existing or apprehended industrial dispute, and he considers it necessary to intervene in the dispute, he shall give intimation in writing to the parties concerned of his intention to commence conciliation proceedings with effect from such date as may be specified therein.

(2) The Conciliation Officer may hold a meeting of the parties jointly or of each party separately.

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

5. (1) Where a settlement is arrived at in the course of Conciliation proceeding, the Conciliation Officer shall send a report thereof to the State Government and to the Labour Commissioner together with a copy of the memorandum of settlement signed by the parties to the dispute.

(ii) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form "A".

(iii) Where no settlement has been arrived at in the course of conciliation proceedings, the Conciliation Officer shall send a report thereof stating the circumstances under which no settlement could be arrived at, to the State Government and the Labour Commissioner.

6. The settlement referred to in rule 5 shall be signed by—

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

(b) in the case of a working journalist, either by the President and Secretary of a trade union of working journalists, or by five representatives of the working journalists of the newspaper establishment duly authorized in this behalf at a meeting of the working journalists of the newspaper establishment held for the purpose.

7. Where a settlement is arrived at between an employer and his working journalists otherwise than in the course of conciliation proceedings before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the State Government, the Labour Commissioner, and the Conciliation Officer of the area concerned.

8. *Register of settlements.*—The Conciliation Officer of the area concerned shall file all settlements effected under this Act in respect of disputes in the area within his jurisdiction in a register maintained for the purpose as in Form "B".

PROCEDURE FOR REFERENCE OF INDUSTRIAL DISPUTES TO BOARDS,
COURTS, LABOUR COURTS OR INDUSTRIAL TRIBUNALS.

9. *Application.*—An application under sub-section (2) of section 10 for the reference of an industrial dispute to a Board, Court, Labour Court or Tribunal shall be made in Form "C" and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to Government, U. P., Labour (A) Department. The application shall be accompanied by a statement setting forth;

- (a) the parties to the dispute;
- (b) the specific matters in dispute;
- (c) the total number of working journalists employed in the undertaking affected;
- (d) an estimate of the number of working journalists affected or likely to be affected by the dispute, and
- (e) the efforts made by the parties themselves to adjust the dispute.

10. *Attestation of application.*—The application and the statement accompanying it shall be signed—

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

(b) in the case of working journalists either by the President and Secretary of a trade union of the working journalists, or by five representatives of the working journalists duly authorized in this behalf at a meeting of the working journalists held for the purpose.

11. *Notification of appointment of Board, Court, Labour Court or Tribunal.*—The appointment of a Board, Court, Labour Court or Tribunal together with the names of persons constituting the Board, Court, Labour Court or Tribunal shall be notified in the official *Gazette*.

12. *Notice to parties to nominate representatives.*—(1) If the State Government propose to appoint a Board, it shall send a notice in Form "D" to the parties requiring them to nominate within a reasonable time persons to represent them on the Board.

(2) The notice to the employer shall be sent to the employer personally, or if the employer is an incorporated company or a body corporate, to the agent, manager or other principal officer of such company or body.

(3) The notice to the working journalists shall be sent—

(a) in the case of working journalists who are members of a trade union, to the President or Secretary of the trade union, and

(b) in the case of working journalists who are not members of a trade union, to any one working journalist who has attested the application made under rule 10 and in this case a copy of the notice shall be sent to the employer who shall display copies thereof on notice-boards in a conspicuous manner at the main entrance to the premises of the establishment.

ARBITRATION AGREEMENT

13. *Arbitration Agreement.*—An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in Form "E" and shall be delivered personally or forwarded by registered post in triplicate by both the parties either jointly or separately within two days of such an agreement to the Secretary to the Government, U. P., Labour (A) Department, Lucknow, the Labour Commissioner and the Conciliation Officer of the area concerned. The agreement shall be accompanied by the consent in writing of the arbitrator or arbitrators.

(2) The State Government shall within fourteen days from the date of receipt of such a copy of arbitration agreement publish the same in official *Gazette*.

14. *Attestation of the Arbitration Agreement.*—The arbitration agreement shall be signed—

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

(b) in the case of working journalists either by the President and Secretary of a trade union of the working journalists or by five representatives of the working journalists duly authorized in this behalf at a meeting of the working journalists held for the purpose.

POWERS, PROCEDURE AND DUTIES OF BOARDS, COURTS, LABOUR
COURTS, TRIBUNALS AND ARBITRATORS

15. *Place and time of hearing.*—The sittings of a Board, Court, Labour Court, Tribunal or an Arbitrator shall be held at such times and places as the Chairman or the Presiding Officer or the Arbitrator, as the case may be, may fix and the Chairman, Presiding Officer or Arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit.

16. *Quorum for Boards and Court.*—The quorum necessary to constitute a sitting of a Board or Court shall be as follows:

	<i>Quorum</i>
(i) In the case of a Board—	
where the number of members is three	... 2
where the number of members is five	... 3
(ii) In the case of a Court—	
where the number of members is not more than two	... 1
where the number of members is more than two but less than five	... 2
where the number of members is five or more	... 3

17. *Administration of oath.*—Any member of a Board, or Court or presiding officer of a Labour Court or Tribunal or an Arbitrator may administer an oath.

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

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

20. Description of parties in certain cases.—Where in any proceeding before a Board, Court, Labour Court, Tribunal or an Arbitrator, there are numerous persons arrayed on any side, such persons shall be described as follows:

(1) all such persons as are members of any trade union or association shall be described by the name of such trade union or association, and

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

21. Service of summons or notice.—Any notice, summons process or order issued by a Board, Court, Labour Court, Tribunal or an Arbitrator may be served either personally or by registered post.

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

(2) Whether there are numerous persons as parties to any proceeding before a Board, Court, Labour Court, Tribunal or an Arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court, Tribunal or Arbitrator, as the case may be, shall, where personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned.

(3) A notice served in the manner specified in sub-rule (2) shall also be considered as sufficient in the case of such workmen as cannot be ascertained or found.

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

24. Information to be kept confidential.—All books, papers and other documents or things produced before a Board, Court, Labour Court or Tribunal, whether voluntarily or in pursuance of a summons may be inspected by the Board, Court, Labour Court or Tribunal and also by such parties as the Board, Court, Labour Court or Tribunal allows; but the information obtained therefrom shall not, except as provided in the Act, be made public; and such parts of the books, papers, documents or things as in the opinion

of the Board, Court, Labour Court or Tribunal do not relate to the matters at issue may be sealed up.

25. Board, Labour Court, Tribunal or Arbitrator may proceed ex-parte.—(1) If on date fixed or on any other date to which the hearing may be adjourned, any party to the proceedings before the Board, Labour Court or Tribunal or an Arbitrator, is absent, though duly served with summons or having the notice of the date of hearing, the Board, Labour Court or Tribunal or the Arbitrator, as the case may be, may proceed with the case in his absence and pass such order as it may deem fit and proper.

(2) The Board, Labour Court, Tribunal or an Arbitrator may set aside the order, passed against the party in his absence, if within ten days of such order the party applies in writing for setting aside such order and shows sufficient cause for his absence. Such an application must be supported by an affidavit stating the cause of his absence. As many copies of the application and affidavit shall be filed by the party concerned as there are persons on the opposite side. Notice of the application shall be given to the opposite parties before setting aside the order.

26. Power of entry and inspection.—The Presiding Officer of a Labour Court or a Tribunal or any other person authorized in writing by a Labour Court or Tribunal in this behalf may, for the purposes of any investigation, enquiry or adjudication entrusted to the Labour Court or Tribunal under the Act after he has given reasonable notice, enter any building, factory, workshop or other place or premises whatsoever, and inspect the same or any work, machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject-matter of the investigation, enquiry or adjudication.

27. Powers of Boards, Courts, Labour Courts and Tribunals.—In addition to the powers conferred by the Act, Boards, Courts, Labour Courts and Tribunals shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:

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

and the Board, Court, Labour Court or Tribunal may summon and examine *suo moto* any person whose evidence appears to it to be material and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

28. Assessors.—Where assessors are appointed to advise a Tribunal under sub-section (4) of section 7-A or by the Court, Labour Court or Tribunal under sub-section (5) of section 11, the Court, Labour Court or Tribunal, as the case may be, shall, in relation to proceeding before it, obtain the advice of such assessors, but such advice shall not be binding on it.

29. Decision by majority.—All questions arising for decision at any meeting of a Board or Court, save where the Court consists of one person,

shall be decided by a majority of the votes of the members thereof (including the Chairman) present at the meeting. In the event of an equality of votes the Chairman shall also have a casting vote.

30. Correction of errors.—The Labour Court, Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.

31. Right of representatives.—The representatives of the parties, appearing before a Board, Court, Labour Court, Tribunal or an Arbitrator shall have the right of examination, cross-examination and of addressing the Board, Court, Labour Court or Tribunal or Arbitrator when an evidence has been called.

32. Proceedings before a Board, Court, Labour Court or Tribunal.—The proceedings before a Board, Court, Labour Court or Tribunal shall be held in public: Provided that the Board, Court, Labour Court or Tribunal may at any stage direct that any witness shall be examined or its proceedings shall be held in camera.

REMUNERATION OF ARBITRATORS, CHAIRMAN AND MEMBERS OF COURTS, PRESIDING OFFICERS OF LABOUR COURTS, TRIBUNALS, ASSESSORS AND WITNESSES

33. Travelling allowance.—The Chairman or a member of a Board or a Court, or an Assessor of a Labour Court or Tribunal, if a non-official, shall be entitled to draw travelling allowance and halting allowance for any journey performed by him in connection with the performance of his duties at the rates admissible and subject to the conditions applicable to a Government servant of the first class in the State.

34. Expenses of witnesses.—(1) Every person who is summoned and duly attends or otherwise appears as a witness before a Labour Court or Tribunal or Arbitrator shall be entitled to receive from the party concerned such allowances for expenses as, subject to such general or special instructions as may be given by the State Government from time to time, the Labour Court or Tribunal or Arbitrator may determine.

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

REPRESENTATION OF PARTIES

35. Form of authority under section 36.—The authority in favour of a person or persons to represent a working journalist or group of working journalists or an employer in any proceeding under the Act shall be in Form "G".

36. Parties bound by acts of representatives.—A party appearing through a representative shall be bound by the acts of that representative.

37. Recognition of protected workmen.—(1) A Union desirous of recognition of its officer or officers as "protected workmen", shall, before the 1st

day of September, every year submit an application in Form "H" to the Registrar, Trade Unions, U.P., Kanpur, appointed by the State Government under the Indian Trade Unions Act, 1926 (Act XVI of 1926).

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

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

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

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

38. Distribution of protected workmen.—(1) The distribution of protected workmen for an establishment amongst unions for the purposes of sub-section (4) of section 33, of the Act shall be made by the Registrar of Trade Unions, U.P., in proportion to their membership and after such enquiries as he may consider necessary.

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

NOTICE OF CHANGE

39. Notice of change.—Any employer intending to effect any change in the conditions of service applicable to any working journalist in respect of any matter specified in the Fourth Schedule shall give notice of such intention in Form "J".

40. Manner of service of notice of change.—(1) Where there are numerous working journalists affected by a notice of change and the majority of such working journalists are members of any trade union, the service of notice, by registered post, on the secretary, or where there is no secretary, on the principal officer of the trade union shall be deemed to be service on all such workmen. The employer shall, at the same time, arrange to exhibit the notice by affixing it to a notice board in the manner specified in sub-rule (2): Provided that if the secretary or the principal officer refuses to receive the notice or for any other reason, the notice cannot be served on the secretary or the principal officer in the ordinary way, the exhibition

of the notice in the manner specified in sub-rule (2) shall be deemed to be service on all such working journalists.

(2) Where there are numerous working journalists affected by a notice of change and the majority of such working journalists are not members of any trade union or association the employer shall, where personal service is not practicable, cause the service of any such notice to be made by affixing the same to a notice-board at or near the entrance or entrances of the establishment concerned and the notice shall remain so affixed for a period of twenty-one days. The notice shall be both in English and Hindi.

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

41. Complaint regarding change of conditions of service.—(1) A complaint under section 33-A of the Act, shall be presented in triplicate in Form "K", and shall be accompanied by as many copies of the complaint as there are opposite parties to the complaint.

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

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

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

42. Application for permission under section 33.—(1) An employer intending to obtain the express permission in writing of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, under sub-section (1) or sub-section (3) of section 33 shall present an application in Form "L", in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form "M", in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

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

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

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

43. Application for recovery of dues.—An application under section 33-C shall be in Form "N", and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to Government, U.P., Labour (A) Department, Lucknow and to the Labour Commissioner.

44. Procedure for computing money value of benefit.—(1) Where the State Government has specified a Labour Court for the purpose of computing the money value of a benefit, under sub-section (2) of section 33C the Labour Court may, by an order in writing, appoint a Commissioner for such computation and ask the Commissioner to report to the Labour Court within such time as may be specified in the order:

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

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

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

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

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

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

45. Notice of retrenchment.—(1) If any employer retrenches or intends to retrench any working journalist employed in his establishment who has been in continuous service under him for not less than one year, he shall give a notice of such retrenchment in Form "O", to the Secretary to Government, U.P., Labour (A) Department, Lucknow, by registered post, in the following manners:

(a) Where a notice as required in clause (a) of section 25-F is given to the working journalist, notice of retrenchment shall be sent on the same day on which notice is given to the working journalist.

(b) Where wages are paid to the working journalist in lieu of notice, on the same date on which such wages are paid to the working journalist.

(c) Where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Secretary to Government, U.P., Labour (A) Department, Lucknow, at least one month before such date:

Provided that if the date for termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to State Government within three days of the agreement.

(2) A copy of the notice referred to in sub-rule (1) above shall likewise be sent to the Labour Commissioner and the Conciliation Officer of the area concerned.

46. Maintenance of a seniority list of retrenched working journalists.—The employer shall prepare a list of the working journalist to be retrenched by him separately in respect of each grade or class, as the case may be, arranged according to the seniority of their service in the grade or class and cause a copy thereof to be posted on a notice board in conspicuous place in the premises of the establishment at least seven days before the date of retrenchment.

47. Re-employment of retrenched working journalists.—(1) At least ten days before the date on which any vacancies are to be filled in his establishment, an employer shall arrange for the display on a notice-board in a conspicuous place in the premises of the establishment details of those vacancies and shall also send intimation thereof to every one of the retrenched working journalists eligible to be considered thereof :

Provided that where the number of such vacancies is less than the number of the retrenched working journalists it shall be sufficient if intimation is sent by the employer to such number of eligible working journalists having due regard to their seniority, as is not less than double the number of the vacancies :

Provided also that if a retrenched working journalist does not offer himself for re-employment in spite of having received such intimation, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.

(2) Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such a vacancy to individual retrenched working journalists.

(3) Unless there are good reasons to the contrary, an employer shall re-employ retrenched working journalists in order of their seniority as shown in the list maintained under rule 46.

48. Copies of awards or other documents of a Labour Court, Tribunal or an arbitrator.—(1) A party to the dispute may, at any stage of the case, obtain a copy of the records of the case or any portion thereof, including the exhibits finally accepted in evidence, but excluding awards before their publication, confidential documents and office notes.

(2) A person other than a party to the dispute, may also on application obtain after publication of an award a copy of the award or any document on the record of the case, except confidential documents and office notes.

(3) Every such copy before it is issued shall be examined and certified as true copy by the office of the Labour Court or Tribunal.

No copy shall be so certified unless it is prepared in either of these two offices.

(4) Within fifteen days of submission of arbitration award to the State Government the arbitrators shall send all papers, records, documents and files relating to the arbitration proceeding and also the original copy of the arbitration award to the Labour Court or Tribunal which has otherwise jurisdiction over the industrial dispute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) for the first 200 words or less, 75 Naye Paise ;

(b) for every additional 100 words or fraction thereof, 38 Naye Paise :

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

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

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

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

49. Any breach of these rules shall be punishable with fine not exceeding fifty rupees.

SCHEDULE.

FORM A

[See Rule 5 (ii)]

Form for Memorandum of Settlement

Names of Parties—

Representing employer (s) :

Representing workmen :

Short recital of the case.

Terms of settlement.

Witnesses—

(1)

(2)

Signature of the parties

*Signature of Conciliation Officer
Board of Conciliation

Copy to: † (1) Conciliation Officer (Here enter the office address of the Conciliation Officer in the local area concerned.)

(2) Labour Commissioner, U. P., P. B. No. 220, Kanpur.

(3) The Secretary to the Government of U. P., Labour (A) Department, Vidhan Bhawan, Lucknow.

*In cases of settlements effected by Conciliation Officer
Board of Conciliation

† In cases where settlements are arrived at between the employer and his workmen otherwise than in the course of conciliation proceeding.

FORM B.

(See Rule 8).

Register—PART I

Serial No.	Industry	Parties to the settlement	Date of settlement	Remarks*
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*Whether the settlement was effected at the intervention of the conciliation machinery, or by mutual negotiations between the parties, may be indicated here.

PART II

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

FORM C.

(See Rule 9).

Form of application for the reference of an industrial dispute to a Board of Conciliation

Court of Enquiry under section 10(2) of the Industrial Disputes Act, 1947.

Labour Court

Tribunal

Whereas an industrial dispute is apprehended between and
exists
and it is expedient that the matters specified in the enclosed statement
the dispute investigation and settlement

which are connected with or relevant to the dispute should be referred for
 enquiry by a Board of Conciliation
a Court of Enquiry
a Labour Court an application is hereby made under sub-
a Tribunal
 section (2) of section 10 of the Industrial Disputes Act, 1947, that the
 said matters a Board of Conciliation
 said disputes should be referred to a Court of Enquiry for adjudication.
a Labour Court
a Tribunal

This application is made by the undersigned who have/has been duly authorized to do so by virtue of a resolution (copy enclosed) adopted by a majority of the members present at a meeting of the.....held on the....., 19.....

A statement giving the particulars required under rule 9 of the U. P. Working Journalists (Industrial Disputes) Rules, 1957, is attached. Dated the.....Signature of the applicant (s).

To

The Secretary to the Government of U. P.,
 Labour (A) Department,
 Lucknow.

Statement required under rule 9 of the Working Journalists (Industrial Disputes) Rules, 1957, to accompany the form of application prescribed under sub-section (2) of section 10 of the Industrial Disputes Act, 1947—

- (a) Parties to the dispute including the name and address of the establishment or undertaking involved.
- (b) Specific matters in dispute.
- (c) Total number of Working Journalists employed in the undertaking affected.
- (d) Estimated number of Working Journalists affected or likely to be affected by the disputes.
- (e) Efforts made by the parties themselves to adjust the dispute.

FORM D.

(See Rule 12).

Whereas an industrial dispute has arisen between/is apprehended.....and.....and it is expedient to refer the said dispute under section 10 of the Industrial Disputes Act, 1947, to a Board of Conciliation for the purpose of investigating the same and for promoting a settlement thereof, you are hereby required to intimate to the undersigned not later than the.....the name (s) and address (es) of one (two) person (s) whom you wish to recommend for appointment as your representative (s) on the said Board.

If you fail to make the recommendation by the date specified above, the State Government will select and appoint such person(s) as it thinks fit to represent you.

Secretary to the Government of U. P.,
 Labour (A) Department, Lucknow.

FORM E.

(See Rule 13).

Agreement.

(Under section 10-A of the Industrial Disputes Act, 1947)

Between

Names of Parties—

Representing employers :

Representing Working Journalists :

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

- (i) Specific matters in dispute.
- (ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved.
- (iii) Name of the Union, if any, representing the Working Journalists in question.
- (iv) Total number of Working Journalists employed in the undertaking affected.
- (v) Estimated number of Working Journalists affected or likely to be affected by the dispute.

*We further agree that the majority decision of the arbitrators shall be binding on us.

Witness—

(2)

(1)

Signature of the Parties.

Representing employers.

Representing Working Journalists.

Copy to—

(i) The Conciliation Officer (here enter office address of the Conciliation Officer in local area concerned).

(ii) The Labour Commissioner, U. P., P. B. No. 220, Kanpur.

*Where applicable.

(iii) The Secretary to the Government of U. P., Labour (A) Department, Lucknow.

FORM F.

(See Rule 19).

Whereas an industrial dispute between.....and.....has
Board of Conciliation for investigation and settlement
been referred to this Court of Enquiry for investigation,
Labour Court/Tribunal/for adjudication
under section 10 of the Industrial Disputes Act, 1947, you are hereby
summoned to appear before the Board/Court/Labour Court/Tribunal/in per-
son on theday of.....at.....o'clock in the.....noon to
answer all material questions relating to the said dispute and you are re-
quired to produce on that day all the books, papers and other documents and
things in your possession or under your control in any way relating to the
matter under investigation by this Board/Court/Labour Court/Tribunal/

Dated.....

Chairman/Secretary, Board of Conciliation
Court of Enquiry
Presiding Officer/Secretary, Labour Court
Tribunal

FORM G.

(See Rule 35).

Before (here mention the authority concerned).

Reference no.....of.....

.....Working Journalists.

versus

.....Employer.

In the matter of.....I/we hereby authorize Sri/Sarvsri.....
.....to represent me/us in the above matter.

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

Signature of person (s) nominating the representative(s).

Address.

Accepted.

Signature of representative (s).

Address.

FORM H.

[See Rule 37 (1)].

Application for recognition of protected workmen.

To

The Registrar of Trade Unions,
Uttar Pradesh,
Kanpur.

Sir,

In the meeting of the Executive Committee of.....
(Name and address of union)

Registration Certificate no.....held on.....the following
members of the Executive who are employed as Working Journalists of.....
.....have been approved for being recommended
(Name and address of establishment)

for registration as "protected workmen" for a period of one year with effect
from.....The Union, therefore, requests you kindly to convey your
orders to the under-signed in this matter at your earliest convenience.

PARTICULARS OF OFFICERS.

Name with father's name	Name of establish- ment in which employed	Name of department, designation and ticket number	Date of ex- ecutive meet- ing when selected	Local postal address	Period for which subs- cription paid last with date	Singature or L.T.I.	Remarks
----------------------------------	---	---	--	----------------------------	---	---------------------------	---------

Yours faithfully,

(Principal Secretary)

FORM I.

[See Rule 37(3)].

Register of Protected Workmen.

Name and address of establishment*

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

FORM J.

(See Rule 39).

Notice of change to be given by an employer.

Name of employer.....Address.....

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

To

The Secretary/Principal Officer of the Union Association.
The Working Journalist/Working Journalists affected.

Dear Sir/Madam,

In accordance with section 9-A of the Industrial Disputes Act, 1947, I/we beg to inform you that it is my/our intention to effect the change/changes specified in the annexure to this letter, with effect from.....

Yours faithfully,

Signature.....

Name.....

Designation.....

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

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

FORM "K".

(See Rule 41).

LABOUR COURT

TRIBUNAL

Before The

Complaint under section 33-A of the Industrial Disputes Act, 1947

A.Complainant (s).

Address:

versus

B.Opposite Party (ies).

Address:

In the matter of Reference no.....
The petitioner (s) begs/beg to complain that the Opposite Party (ies) has/have been guilty of a contravention of the provisions of section 33 of the Industrial Disputes Act, 1947 (XIV of 1947) as shown below:

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

The complainant (s) accordingly prays/pray that the

*Labour Court—**Tribunal—*

May be pleased to decide the complaint set out above and pass such order or orders thereon as it may deem fit and proper.

The number of copies of the complaint and its annexures under Rule 41 of the U.P. Working Journalists (Industrial Disputes) Rules, 1957, are submitted herewith.

Dated this.....day of.....195 .

Verification

I do solemnly declare that what is stated in paragraphs..... is true to my knowledge and that what is stated in paragraphs..... above is stated upon information received and believed by me to be true. This verification is signed by me at on.....day of.....19 .

*Signature or Thumb
impression of the person verifying.*

FOKM L.

[See Rule 42(i)]

Before (here mention the Conciliation Officer, Board, Labour Court or Tribunal).

Application for permission under sub-section (1) of section 33 of the Industrial Disputes Act, 1947 (XIV of 1947), in the matter of Reference No.....

A.....Applicant,

versus

B.....Opposite Party (ies).

* Address (es):

The above mentioned applicant begs to state as follows;

[Here mention the action specified in clause (a) or clause (b) of sub-section (1) grounds on which the permission is sought for].

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

[Here mention the action specified in clause (a) or clause (b) of sub-section (1) of section 33].

Signature of the applicant.

Dated this.....day of.....195 .

Space for verification.

Signature of the person verifying.

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

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

FORM M.

[See Rule 42 (2)]

Before (here mention the Conciliation Officer, Board, Labour Court or Tribunal).

Application under sub-section (2) of section 33 of the Industrial Disputes Act, 1947 (XIV of 1947), in the matter of Reference No.....

A.....Applicant,

versus

B.....Opposite Party (ies).

Address (es):

The above mentioned applicant begs to state as follows:

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

*The Working Journalist/Working Journalists discharged/dismissed under clause (b) of sub-section (2) of section 33 has/have been paid wages for one month.

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

[Here mention the action taken under clause (a) or clause (b) of sub-section (2) of section 33].

Signature of the Applicant.

Dated this.....day of.....195

Space for verification.

Signature of the person verifying. *

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

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

*Delete, if not applicable.

FORM N.

(See Rule 43).

Application under section 33-C of the Industrial Disputes Act, 1947.

To

The Secretary to Government,

Uttar Pradesh,

Labour (A) Department, Lucknow.

Dated.....19

Sir,

I/We.....am/are entitled to receive a sum of Rs.....(in figures and words) from.....(Name and full address of the employer) under an award of the Labour Court, Tribunal, Arbitration award in case no.....of 19/under a settlement, dated...../under section 25-C/25-F of the Industrial Disputes Act, 1947. Details of the money due are given below:

(Here indicate details and particulars of the amount due.)

It is, therefore, requested that the above amount may kindly be recovered from the employer (s) under section 33-C of the Act and paid to me/us.

Yours faithfully,

Signature or thumb-impression of the
applicant(s)

Full address.....
.....
.....

FORM O.

(See Rule 45).

Form of notice of retrenchment to be given by an employer under clause (c)
of section 25-F of the Industrial Disputes Act, 1947

Name of employer.....Address.....dated
the.....day of.....195

To

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

Sir,

Under clause (c) of section 25-F of the Industrial Disputes Act, 1947 (XIV of 1947), I/we hereby inform you that I/we have decided to retrench*
.....Working Journalists with effect from†.....
.....for the reasons explained in the annexe.

2. ‡The Working Journalists concerned were given on †the.....
195, six month's notice (in case of an editor) /three month's notice (in case
of any other Working Journalist, in writing as required under clause (a) of
section 25-F of the Industrial Disputes Act/Retrenchment is being effected
in pursuance of an agreement, a copy of which is enclosed/the Working
Journalists were given on the †.....195....., six months' pay/three
months' pay in lieu of notice, as required under clause (a) of section 25-F of
that Act read with section 3(2) of the Working Journalists (Conditions of
Service) and Miscellaneous Provisions Act, 1955 (XLV of 1955).

3. The total number of Working Journalists employed in the indus-
trial establishment**.....and the total number of those who will
be affected by the retrenchment is given below:

Category of designation of working journalists to be retrenched	Number of Working Journalists	
	Employed	To be retrenched
1	2	3

4. I/We hereby declare that the Working Journalist/Working Journa-
lists concerned has/have been/will be paid compensation due to them under
section 25-F of the Act on the†.....expiry of the notice
period.

Yours faithfully,

ANNEXE

STATEMENT OF REASONS.

Copy to (1) Conciliation Officer. (Here enter office address of th
Conciliation Officer in local area concerned).

(2) Labour Commissioner, U. P., Post Box No. 220, Kanpur.

*Here insert the number of Working Journalists.

†Here insert the date.

‡Delete the portion which is not applicable.

**Here insert the total number of Working Journalists employed in the
Newspaper establishment.

***Here insert the position which the person who signs this letter
holds with the employer issuing the letter.

FORM P.

[See Rule 48(4)].

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

To

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

Description of document of which
a copy is wanted, with date when
necessary

Application is made by.....
the undersigned for a copy/certifi-
ed copy of the marginally noted
documents from the Labour
Court's/Industrial Tribunal's file
in the above case which was dis-
posed of on.....

Date Signature of applicant.....

Office Report

The copy will cover..... Estimate of costs.
sheets.

.....
Applicant's Signature.....

.....
Record received on.....

.....
Copy will be ready on.....

.....
Copy delivered on.....

Serial No.....

Received an application for certi-
fied copy bearing the above no. esti-
mated cost Rs.....nP.....
To attend for copy on.....

Head Clerk.

Received copy on.....

Applicant.

FORM Q.

[See Rule 48 (15)].

Register of applications for copies of awards of and other documents.

Serial number	Date of receipt of ap- plication	Name of applicant	Description of award or document	Copying fee assessed	Certifying fee assessed	Receipt number and date of payment of fees	Copy delivered on	Remarks
1	2	3	4	5	6	7	8	9

Retaining Allowance and Leave in Sugar Factories in U.P.

Notification No. 6849 (ST)/XXXVI-A---Dated Lucknow, November 13, 1957.*

Whereas, on the recommendations of the State Tripartite Labour Conference (Sugar) held on September 7, 1956, a Committee was constituted in Labour (A) Department notification No. 5775(ST)/XXXVI-A--182 (ST)-56, dated September 15, 1956, to investigate and report to the State Government among other matters, on the questions of payment of retaining allowance for the off season 1956 and leave to the workmen of the vacuum pan sugar factories in the State and also to explore the possibility of an agreement with regard to the payment of retaining allowance for the off season 1955 and arrears of previous years, if any ;

And whereas, this Committee has now submitted its report regarding these matters ;

And whereas, the Committee has succeeded in bringing about an agree-
ment between the representatives of the employers and their workmen in
regard to payment of leave and has made recommendations accordingly
which have been accepted by the State Government ;

And whereas, the Committee has also succeeded in bringing about an
agreement between the representatives of the employers of the sugar
factories and their workmen in regard to the payment of the retaining
allowance, to the effect that the decision of the Supreme Court in Appeal
No. 179-204 of 1957 (Application for special leave to appeal under article 136
of the Constitution against the decision of the Labour Appellate Tribunal of
India, Calcutta in Appeals Nos. Cal. 45--59, 61--67, 69--95 and 97--99 of
1955, between the workmen of the sugar factories in Bihar and the certain
sugar factories of Bihar), will be binding on the sugar factories in U. P. and
their workmen and given effect to from September 1, 1955, under conditions
hereinafter specified and has made recommendations accordingly, which have
been accepted by the State Government, and whereas the State Government
has been advised that the payment of the retaining allowance to existing

* U. P. Gaz. Exty. 13-11-1957.

categories drawing the allowance at the present rate should continue till the decision of the said appeals.

And whereas, in the opinion of the State Government it is necessary to enforce the recommendations of the said Committee for securing the public convenience and maintenance of public order and supplies and services essential to the life of the community and for maintaining employment.

Now, therefore, in exercise of the powers conferred by section 3 of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947), the Governor of Uttar Pradesh is pleased to make the following order and to direct, with reference to section 19 of the said Act, that notice of this order be given by publication in the official *Gazette*.

ORDER

1. *Retaining Allowance*—(1) The decision of the Hon'ble Supreme Court in Appeals Nos. 179—204 of 1957 (Application for special leave to appeal under article 136 of the Constitution against the decision of the Labour Appellate Tribunal of India, Calcutta in Appeal Nos. Cal. 45--59, 61-67, 69--95 and 97-99 of 1955 between the workmen of the sugar factories in Bihar and the certain sugar factories of Bihar), if given after considering the merits of the case, will be binding on the sugar factories of this State and their workmen. Payment based on this decision will be made made after the decision is announced but will be given effect to from September 1, 1955. Meanwhile the payment of retaining allowance to existing categories, drawing this allowance, at the present rates, will continue.

(2) In case the said appeals now pending before the Supreme Court are allowed on some technical ground the sugar factories workmen in U. P. will continue to get retaining allowance at the rates prescribed in Government Notification No. 1425 (ST)/XVIII-13 (ST)-50, dated July 5, 1950, till such time as this dispute is settled on merits. This will apply to all those categories which are in receipt of retaining allowance at the present time.

2. *Leave*—All vacuum pan sugar factories of the State shall give the following leave to their workmen other than those governed by the U.P. Shops & Commercial Establishments Act, 1948:

<i>Permanent workmen</i>	
Casual Leave	6 days in a year.
Sick Leave	10 days in a year.
<i>Seasonal workmen</i>	
Casual Leave	...

To be calculated at the rate of $\frac{1}{2}$ day for every month of the crushing season during which a workman is on the rolls of the factory. A period exceeding 15 days in any month should be counted as full month for this purpose.

Sick Leave

To be calculated at the rate of $\frac{1}{2}$ day for every month of the crushing season during which he is on the rolls of the factory. A period exceeding 15 days in any month should be counted as full month for this purpose. This will be in addition to the casual leave.

Explanation—Month—for this purpose will mean a period of 30 consecutive days commencing from the date crushing starts:

Provided that the leave allowed under this order shall not affect the festival holidays or the leave or weekly rest days to which workmen, governed by the Factories Act, may be entitled under this Act:

Provided also that the leave allowed under this order shall be treated as the minimum to be allowed by each sugar factory and if leave other than festival holidays, weekly rest days, leave with wages under the Factories Act exceeds 16 days, the factory will not be required to grant any additional leave by way of casual leave or sick leave as provided in this order:

Provided also that the casual leave and sick leave will not be carried over to the next year nor the workmen be entitled to any wages in lieu of unavailed sick or casual leave. Application for sick leave will not be rejected if it is made in accordance with the provisions of Standing Orders governing the conditions of employment of workmen in vacuum pan sugar factories of U. P. enforced by Government notification no. 6507 (ST)/XXXVI-A--73 (ST)-54, dated November 12, 1955.

Explanation—If any factory is already granting to its workmen any leave (other than weekly rest days, festival holidays, leave with wages under the Factories Act), which exceeds 16 days as admissible under this order, the same will not be curtailed.

2. This order shall be enforced for a period of one year in the first instance and the period may if it is found necessary, be extended from time to time.

3. Any person who contravenes or attempts to contravene any provision of this order or abets any such contravention shall be liable to prosecution under Section 14 of the U. P. Industrial Disputes Act, 1947.

Conciliation Officers for Newspaper Establishments in U. P.

Notification No. 7299(ST)/XXXVI-A--157(ST)-55 dated Lucknow, 5th December, 1957.*

In exercise of the powers conferred by section 4 of the Industrial Disputes Act, 1947 (14 of 1947), the State Government hereby appoints, for a period of one year in the first instance, the officers mentioned in column 2 of the table annexed hereto as Conciliation Officers charged with the duty of mediating in and promoting the settlement of industrial disputes in Newspaper Establishments in the area specified in the corresponding entry in column 3 of the said table:

*U. P. Gaz. E+ty., 5-12-57.

TABLE

Serial No.	Designation of Officer	Area of Jurisdiction
(1)	Conciliation Officer, Kanpur.	The districts of Kanpur, Farrukhabad, Hamirpur and Jalaun excluding all the railway stations along the Orai-Jhansi Railway line.
(2)	Additional Conciliation Officer, Kanpur.	Ditto ditto.
(3)	Conciliation Officer, Allahabad.	The districts of Allahabad, Banda, Varanasi, Mirzapur, Pratapgarh, Sultanpur, Jaunpur, Ghazipur, Ballia and Fatehpur.
(4)	Additional Conciliation Officer, Allahabad.	Ditto ditto.
(5)	Conciliation Officer, Gorakhpur.	The districts of Bahraich, Gonda, Azamgarh, Basti, Gorakhpur and Deoria.
(6)	Additional Conciliation Officer, Gorakhpur.	Ditto ditto.
(7)	Conciliation Officer, Lucknow.	The districts of Lucknow, Sitapur, Kheri, Hardoi, Unnao, Rae Bareilly, Bara Banki and Faizabad.
(8)	Additional Conciliation Officer, Lucknow.	Ditto ditto.
(9)	Conciliation Officer, Agra.	The districts of Agra, Aligarh, Etah, Etawah, Mainpuri, Mathura and Jhansi and all the railway stations in Jalaun District along the Orai-Jhansi Railway line.
(10)	Additional Conciliation Officer, Agra.	Ditto ditto.
(11)	Conciliation Officer, Bareilly.	The districts of Bareilly, Shahjahanpur, Naini Tal, Garhwal, Rampur, Moradabad, Budaun, Pilibhit, Bijinor, Almora and Tehri-Garhwal.
(12)	Additional Conciliation Officer, Bareilly.	Ditto ditto.
(13)	Conciliation Officer, Meerut.	The districts of Dehra Dun, Saharanpur, Muzaffarnagar, Meerut and Bulandshahr.
(14)	Additional Conciliation Officer, Meerut.	Ditto ditto.
(15)	Assistant Labour Commissioner, Uttar Pradesh, Kanpur.	Whole of Uttar Pradesh.
(16)	Sri N. L. Dixit, Assistant Labour Commissioner, Kanpur.	The districts of Kanpur, Farrukhabad, Hamirpur and Jalaun excluding all the railway stations along the Orai-Jhansi Railway line.
(17)	Sri H. N. Bajpai, Labour Intelligence Officer, Labour Commissioner's Officer, Kanpur.	Ditto.
(18)	Labour Officers of the Department of Labour, Uttar Pradesh.	Whole of Uttar Pradesh.
(19)	Labour/Conciliation Officers of the Department of Labour, Uttar Pradesh.	Ditto.

[IN THE BOMBAY HIGH COURT.]

BERAR OIL INDUSTRIES

v.

N. H. MAJUMDAR AND OTHERS.

Mudholkar and Badkas, JJ.

August 1, 1957.

C. P. & BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947, SECTIONS 22(1), 23(1), 41—DISTRICT AND STATE INDUSTRIAL COURTS—RESPECTIVE JURISDICTIONS OF—APPLICATION BY TRADE UNION OF WORKERS—WHETHER LIES TO DISTRICT OR STATE COURT.

CLOSURE—CLOSURE OF SECTION OF UNDERTAKING—WHETHER CLOSURE OR RETRENCHMENT—RIGHTS OF WORKMEN—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(00) AND 25F.

Though the jurisdiction of the District Industrial Court and the State Industrial Court under the C.P. and Berar Industrial Disputes Settlement Act, 1947, appear to be co-ordinate, rules 36 and 37 of the Rules framed by the State Government under the Act make their respective jurisdictions clear. Under rule 36(d) the District Industrial Court has jurisdiction in respect of the legality or illegality of any strike or lock-out or of any change of which notice has been given or which has taken place "upon an application by any employer or employee concerned or by the Labour Officer under section 41" provided the question concerns an industry exclusively within the local area of the Court's jurisdiction. Under rule 37(g) the State Industrial Court has jurisdiction in respect of the same matters which do not fall within the cognizance of the District Industrial Court. As an application cannot be made by a Union of workmen to a District Industrial Court in respect of such matters, such application can be made to the State Industrial Court.

The closure of a section of an undertaking does not mean the closure of the business in its entirety and would be merely the reduction of surplus staff engaged in one section of the business amounting to retrenchment : PIPRAICH SUGAR MILLS v. PIPRAICH SUGAR MILLS MAZDOOR UNION [1956] 11 F.J.R. 262 and HARIPRASAD SHIVSHANKER SHUKLA v. A. D. DIVELKAR [1956] 11 F.J.R. 317 followed.

Special Civil Application No. 131 of 1957.

T. L. Sheode and E. J. Moharil for the management.

S. W. Dhabe for the workmen.

JUDGMENT.

MUDHOLKAR, J.—This is a petition under articles 226 and 227 of the Constitution for quashing the order of the State Industrial Court, Nagpur, declaring that the termination of the services of the employees in the oil mill section, whose services were terminated by the petitioner in pursuance of its notice dated June 23, 1956, on the ground of want of oilseed, was an illegal change, and further declaring that the imposition of a condition on the employees by the petitioner to the effect that the services of those employees who may be re-employed after stocks are available would be terminated after the completion of the work of crushing the available seed as stated in the notice dated July 24, 1956, was also an illegal change.

The relevant facts are briefly these: The petitioner carries on business at Akola, and, among other things, is engaged mainly in the manufacture of vegetable ghee and allied products. There are several sections in its undertaking at Akola one of which is engaged in crushing and extracting oil from seed. This section is known as the oil mill section. There were about 45 persons engaged in this section. By the notice dated June 23, 1956, they were informed that on account of shortage of raw material and because of certain important trade reasons the oil mill section will be closed with effect from June 25, 1956. The notice further stated that the management will try to find alternative employments for the permanent employees but that the services of the temporary employees would stand terminated with effect from June 25, 1956. It further stated that this notice will be regarded as 30 days notice as required by law and that such of the employees as are entitled for compensation under the law will be given that compensation. By a subsequent notice dated July 24, 1956, the employees in the oil mill section were informed that in view of the arrival of fresh raw materials the working of the mill would be continued only for such short period as may be necessary for crushing the existing stocks of raw material. It further stated that an option was given to the workers on the temporary roll whose services had already been terminated to continue to work in the oil mill section of the factory during this short period and further that they would be permitted to return to work subject to the condition that their services would stand terminated on the completion of the crushing work without any further notice being given to them. The permanent employees were informed that

"the working of the arrangements as proposed in the notice referred to above will be undertaken after the work of crushing seed was finished."

Presumably, by this it was meant that these persons would be provided with alternative employments as far as possible.

It is common ground that the oil mill section was closed on June 23, 1956, and was re-opened on July 25, 1956. On August 10, 1956, respondent No. 2, which is a recognized Union of the employees in the National Berar Oil Industries, made an application to the State Industrial Court under section 41 of the Central Provinces and Berar Industrial Disputes Settlement Act, alleging among other things, that the petitioner had effected an illegal change by reducing the number of the employees in the industry and asked for a declaration to that effect. The Union asked for a further declaration in that application to the effect that the proposed terms in the notice of July 24, 1956, also operated so as to effect an illegal change with regard to the terms of employment and that, therefore, this change be declared as illegal.

The application of the Union was opposed by the petitioner firstly, on the ground that the State Industrial Court had no jurisdiction to entertain the application which fell within the jurisdiction of the District Industrial Court, Akola, and, secondly, on the ground that there was no illegal change whatsoever and that what had taken place was a closure. The State Industrial Court held that it had jurisdiction to entertain the application, that what had taken place was not a closure but retrenchment and that this retrenchment was an illegal change. It further held that the terms set out in the notice dated July 24, 1956, also purported to effect an illegal change, and thus granted the application of respondent No. 2 to this extent.

On behalf of the petitioner the contention as to the lack of jurisdiction in the State Industrial Court was reiterated. It was urged that under rule 37(g) of the Rules framed under the C. P. and Berar Industrial Disputes Settlement Act read along with rule 36(d) of those rules, it was the District Industrial Court alone which had jurisdiction to entertain the application and that the jurisdiction of the State Industrial Court was barred. Now, section 41 of the Act, under which the application for declaration was made by respondent No. 2, reads thus:

"The State Industrial Court or a District Industrial Court shall, on a reference made by the State Government, and may, on an application by any employer or employee concerned or by a representative of the employees concerned or by the Labour Officer, decide whether any strike or lock-out or any change of which notice has been given or which has been taken place is illegal."

Taking this section by itself it would appear that the State Industrial Court and a District Industrial Court have a co-ordinate jurisdiction

in the matter of considering whether a strike, or a lock-out or any change is illegal or not. This provision, however, has to be read with the provisions of sections 22(1) and 23(1) of the Act. Section 22(1) provides that "The State Government may constitute a State Industrial Court for determining industrial disputes and for dealing with such other industrial matters under the provisions of this Act *as may be prescribed.*"

Section 23(1) likewise provides that the State Government "may constitute a District Industrial Court for any local area to determine such industrial disputes and to deal with such other industrial matters under the provisions of this Act *as may be prescribed.*"

The words we have italicised in each of these provisions would clearly show that the matters had to be prescribed somewhere, either in the Act or in the Rules. There is no provision in the Act prescribing the matters and so we have to go to the Rules which the State Government is empowered to make under section 61(2)(a) of the Act. Under this provision the State Government may make rules regarding "all matters which are to be prescribed or for which rules are to be made under this Act." Therefore, it was competent to the State Government to frame rules stating the matters which were to be made cognizable by the State Industrial Court and which were to be made cognizable by the District Industrial Court. Rules 36 and 37 purport to have been made in pursuance of the aforesaid power. We may point out that there is no provision in the Act which empowers the State Government to make rules limiting the right of a person specified in section 41 from making an application thereunder to a particular Court or differentiate between such persons in the matter of resort to a forum. The relevant portion of rule 36 is as follows :

"The District Industrial Court within the local area for which it is constituted shall have jurisdiction to hear and adjudicate upon—

(a) any industrial dispute arising within the District Industrial Court's jurisdiction and not being a dispute of general application affecting the industry as a whole, which may be referred by the Labour Commissioner or the Labour Officer to such Court;

(b)

(c)

(d) the legality or illegality of any strike or lockout or of any change of which notice has been given or which has taken place upon an application by any employer or employee concerned or by the Labour

Officer under section 41 provided the question concerns an industry exclusively within the local area of the Court's jurisdiction."

The relevant portion of rule 37 reads thus :

"The State Industrial Court shall have jurisdiction in the following matters :—

(g) to decide about illegality of a strike or lock-out or of any change about which an application or a reference is made under section 41 and which is not within the cognizance of a District Industrial Court."

It is contended on behalf of the petitioner that an application of the kind made here by the Union lay before the District Industrial Court, Akola, either under sub-rule (a) or sub-rule (d) of rule 36 which we have quoted above. Sub-rule (a) cannot be invoked in a case of this kind because it relates to a dispute which has been referred to a District Industrial Court by the Labour Commissioner or the Labour Officer. Such is not the case here. As regards sub-rule (d), no doubt, it does comprise a matter of the kind which is in dispute in the present case, but an application under section 41 invoking the jurisdiction of the District Industrial Court for adjudicating upon the matter can be made only by an employer or employee concerned or by the Labour Officer. The present application was, as already stated, made by the Union of the employees of the National Berar Oil Industries, Akola. Under this sub-rule, therefore, a Union could not have made an application to the District Industrial Court.

On behalf of the Union it is stated that the only Tribunal before which it could make such an application was the State Industrial Court which had been given the power to entertain such an application by sub-rule (g) of rule 37 of the rules quoted above. In our opinion, the present application would fall under this provision and could be made before the State Industrial Court.

It is, however, contended by Shri Sheode, who appears for the petitioner, that sub-rule (d) of rule 36 in so far as it contravenes section 41 of the Act is bad and that we should so read the sub-rule as to make it consistent with the provisions of section 41. In other words, what he wants us to do is to regard this sub-rule as *ultra vires*. Of course, Shri Sheode says that he does not want that to be done. But it is difficult to see how we can give effect to this argument without having to consider the validity of the rule. His argument is that the right of a party to make an application is conferred by section 41. He points out that there are four categories of persons who are entitled under section 41 to make an application to the appropriate authority and they are: (1) an employer, (2) an employee, (3) the Labour Officer and (4) a representative of the employees concerned. All these categories are treated

equally by section 41 and there is nothing in sections 22(1) and 23(1) of the Act which empowers the State Government to differentiate amongst persons belonging to those categories. He contends that rules can be made under section 61(2)(a) of the Act only for carrying out the provisions of the Act and must, therefore, not derogate from any provision of the Act such as section 41. There is, according to him, nothing in the Act which permits differentiation amongst these categories of persons and justifies debarring of certain categories from making an application with regard to a particular matter before the State Industrial Court or a District Industrial Court. We may point out that no ground has been taken in the petition to the effect that any of the rules framed by the State Government is inconsistent with any of the provisions of the Act. As already stated, if we have to give effect to this argument, we will have to consider the *vires* of the rules. This cannot be done in the absence of a specific ground in this regard and also in the absence of a notice to the State Government which has framed the rules. Apart from that, even if the argument is accepted, it would mean that sub-rule (d) of rule 36 is bad. If that is so, then the whole of it would go. If that sub-rule goes away, there would be no restrictions on the powers of the State Industrial Court to entertain an application of the kind it had before it. For, even according to the petitioner, an application like the present could be made before the District Industrial Court only under sub-rule (d) of rule 36. Under sub-rule (g) of rule 37, cognizance of an application in which the illegality of a strike, or a lock-out or of any change is challenged is barred by the State Industrial Court only where such an application falls within the cognizance of a District Industrial Court as provided by rule 36. If the relevant provisions, *i.e.*, sub-rule (d) of rule 36, under which such an application would fall, is struck down as bad or *ultra vires*, then clearly there remains no bar to the jurisdiction of the State Industrial Court to entertain an application of this kind.

The next argument is that this was really a case of closure of business and as such the provisions of the Industrial Disputes Settlement Act were not attracted at all. In our opinion there is no substance in the contention that what took place was merely a closure. No doubt according to the Union it was only a lay-off, *i.e.*, temporary reduction in the strength of employees, but according to the learned Judge of the State Industrial Court this was a case of retrenchment. The Supreme Court has held in *M/s. Pipraich Sugar Mills Ltd. v. P. S. Mills Mazdoor Union*, [1957] 11 F.J.R. 262, that where one of the units of a company is closed, what happens is retrenchment and not a closure of the business. Retrenchment as defined in section 2(oo) and as used in section 25-F of

the Industrial Disputes Act (Act XIV of 1947), which is a Central Legislation, has, as observed by their Lordships of the Supreme Court in *Hariprasad Shivshankar Shukla v. A. D. Divelkar*, (1956) 11 F.J.R. 317, no wider meaning than the ordinary, accepted connotation of the word: it means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and a *bona fide* closure of business or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer. Their Lordships have also observed that there is in no case any retrenchment unless there is discharge of surplus labour or staff in a continuing or running industry.

Now, as already stated, the Berar Oil Industries is one single undertaking and it manufactures vegetable ghee and allied products. Crushing of oil seed and extracting oil is one of its activities. Whether the oil so extracted is used exclusively for the manufacture of vegetable ghee and other products or it is also marketed separately is not clear. Whether it is so or not, it seems to us that extraction of oil is merely a part of the business of the undertaking. In that sense, the oil mill could only be regarded as a section of the entire undertaking, *i.e.*, the Berar Oil Industries. Closure of such a section would not mean a closure of the business in its entirety but would be merely the reduction of surplus staff engaged in one section of the undertaking. We would also point out that even according to Shri Harkare, the Secretary of the Berar Oil Industries, "There were 33 permanent employees in the Oil Mill section and about 10 to 12 temporary workers. Though we had closed the Oil Mill section we continued the services of all the 33 employees."

As already stated, the petitioner, in the notice dated 23rd June, 1956, had stated that it would find alternative employments to those of the permanent workers in the oil mill section whose services had been terminated. The management treated the entire undertaking as a single entity and while reducing the strength of the employees in one of the sections promised to absorb them in other sections of the undertaking as far as possible. In these circumstances we must hold, according to the decision of the Supreme Court, that there was no closure of business as such but only a reduction in the number of the employees in the undertaking. Where such is the case, what are the rights of the employees so retrenched?

Now in this regard we have a provision in Chapter V-A of Act XIV of 1947, already referred to. Under this provision it is open to the employer to terminate the services of its employees after following the

proper procedure and after paying compensation to the employees so retrenched. It has been held by the State Industrial Court that the provisions of this Chapter have not been complied with by the petitioner. No objection is taken in the grounds before us to the finding of the State Industrial Court in this regard. Suffice it to say, that the State Industrial Court found that the payment of compensation to the employees retrenched and the service of notice on the State Government regarding the action taken have not been established in this case. The conditions laid down in the Central Act have thus not been fulfilled by the petitioner. In these circumstances, the action, taken by it could properly be regarded as an illegal change and the matter could thus be brought up before the State Industrial Court.

For these reasons we dismiss the petition with costs.

[IN THE PUNJAB HIGH COURT.]

BRITISH INDIA CORPORATION LTD.

v.

INDUSTRIAL TRIBUNAL, PUNJAB AND ANOTHER.

G. D. Khosla, J.

November 4, 1957.

INDUSTRIAL TRIBUNAL—JURISDICTION—FRESH REFERENCE TO TRIBUNAL OF MATTERS ALREADY COVERED BY AWARD IN FORCE—VALIDITY—WHETHER TRIBUNAL CAN ENTERTAIN REFERENCE.

So long as a previous award is in force in respect of certain industrial disputes, these disputes cannot be referred afresh to the Industrial Tribunal by merely changing the phraseology of the disputes and the Industrial Tribunal will not have jurisdiction to entertain the fresh reference in respect of these matters of dispute : Decision of Supreme Court in BURN & CO., CALCUTTA v. THEIR EMPLOYEES, [1956] 11 F.J.R. 217, applied.

Civil Writ No. 290 of 1954.

Bhagirath Das and S. D. Bahri for the management.

S. M. Sikri and Roop Chand for the respondents.

JUDGMENT.

This is a petition under article 226 of the Constitution in which the petitioners, the British India Corporation, Limited, pray for a writ in the nature of prohibition preventing the Punjab Industrial Tribunal, Jullundur, from proceeding with the reference of industrial disputes made to it by the Punjab Government on 2nd August, 1954.

The ground upon which the petition is based is that some of the matters which have been referred as industrial disputes by the Punjab Government were adjudicated upon by the Industrial Tribunal in an earlier reference and the award made upon that decision was published in the Government Gazette and was in force when the reference under dispute was made.

The relevant facts briefly are that on 30th October, 1953, eleven items of dispute between the petitioner-firm and some of its employees were referred to respondent No. 1, namely, the Punjab Industrial Tribunal. While this enquiry was pending, a second reference was made on 12th December, 1953, in which three further items of dispute were referred to the Tribunal. On 9th July, 1954, the Tribunal gave its award on both these references and this award was published in the Punjab Gazette under section 17-A of the Industrial Disputes Act on 13th August, 1954. Before its publication, however, a third reference, which is the reference in dispute, was made on 2nd August, 1954. This included five items and it was alleged that two of these items, namely, 3 and 4 were the subject-matter of the second reference. These disputes had been settled and the award in respect of them was in force as it was extended till April, 1957, by an order of the Punjab Government. It is said that the third reference was made as the result of pressure by political workers. A petition for a writ was presented in this Court soon after the third reference was made and this came up for hearing before a Division Bench of this Court consisting of my Lord the Chief Justice and Bishan Narain, J. The petition was dismissed *in limine*. The petitioners filed an application for leave to appeal to the Supreme Court, but the Court declined to certify it a fit case for appeal. The matter was, however, taken to the Supreme Court by means of special leave and this appeal was allowed. The order of the Supreme Court is reported as *British India Corporation Limited v. The Industrial Tribunal etc.*, A. I. R. 1957 S. C. 354. The Supreme Court remanded the case for decision and indicated, the lines upon which this Court should consider the matter. Paragraph 15 of the printed report sets out three points for consideration :

(1) Whether it was open to the petitioners to ask for a writ in respect of items 3 and 4 of the third reference only ;

(2) Whether items 3 and 4 were covered by previous reference and, therefore, in respect of these items there was no industrial dispute at all which could be referred to the Tribunal ; and

(3) Whether the objection with regard to items 3 and 4 affects substantially the question of jurisdiction of the Tribunal, or to use the words employed by Bhagwati, J., this objection " goes to the very root of the jurisdiction of respondent No. 1 to entertain the third reference in regard to those items or is one which tantamounts merely to a traverse of the allegations on merits . "

Item No. 3 of the third reference is in the following terms :

" Whether or not at all the employees whose mode of service has been changed or who have been transferred from one type of work to another are being paid their original wages. If not, the deductions made in their original dues may be restored to them. "

It is argued that this corresponds to item (ii) of the second reference which is in the following terms :

" Workers working on contract basis when put on another job should be paid at the rate of their average earnings calculated on the basis of their previous three months' earnings. "

The argument of the learned counsel for the petitioners may be summarised as follows : There are two kinds of workmen, those engaged on contract basis and those who are paid a daily wage. As far as the workers on daily wage are concerned, their remuneration is not affected by their transfer to another job ; they continue to be paid at the same rate. Therefore, whenever any worker on daily wage is put upon another job, he is paid at the rate of his average earnings calculated on the basis of his previous three months' earnings. A workman employed on a contract basis, however, was subject to fluctuation of wages and his case was referred to the Industrial Tribunal by means, of the second reference. The Industrial Tribunal gave its award on the matter and so the award now covers all employees, those who are employed on daily wage, because with regard to them there was never any dispute, and also those employed on contract basis whose case was specifically referred to the Tribunal.

There is no doubt that there is force in this argument, and once it is conceded that the only dispute which can arise regarding the fluctuation of a workman's wages on the change of his job can arise in the case of a workman on contract basis, it must follow that no dispute can arise on this ground after the giving of the award on the second reference.

The third item in the third reference is only an attempt to revive the dispute by wording the matter differently.

Item No. 4 of the third reference is in the following terms :

" Whether or not the piece-rate (contract basis) workers are getting wages according to the high cost of living. If not, their wages may or may not be increased suitably. "

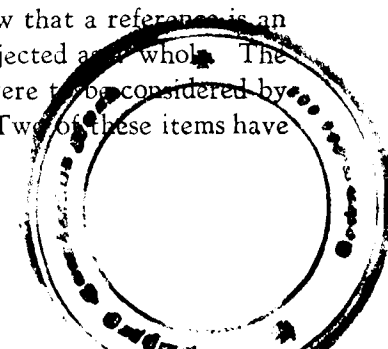
It is said that this corresponds to item (i) of the second reference which is in the following terms :

" Dearness allowance should be given to workers at Rs. 40 per mensem. "

A reference to the order of the Appellate Tribunal which dealt with the award on the second reference shows that the whole question of dearness allowance to all workers in the factory was considered. The workers who were employed on piece rate or contract basis were not excluded. Therefore, their case was also dealt with by the previous award. It cannot be said, therefore, that there was any industrial dispute on this account which could be referred to the Tribunal. In this case too the change of phraseology does not create a new dispute. As long as the previous award is in force, and it was in force when the third reference was made and when the present petition was filed, the matter contained in item No. 4 cannot be referred afresh to the Tribunal.

The Supreme Court has laid down in *Burn & Co., Calcutta v. Their Employees*, [1956] 11 F.J.R. 217, that when a dispute is once settled by an Industrial Tribunal, it cannot be raised again and referred to the Tribunal during the pendency of the previous award. Their Lordships invoked the rule of *res judicata* enacted in section 11 of the Civil Procedure Code and pointed out that although that section in terms does not apply to industrial disputes, the principle underlying it is founded on sound public policy and is of universal application. I must, therefore, hold that the Industrial Tribunal had no jurisdiction to entertain the disputes set out in items 3 and 4 of the third reference, because these disputes are nothing more than a reiteration of the previous disputes properly referred to the Tribunal, adjudicated upon and made the subject of an award which is published and was binding upon the parties.

The question now arises whether the whole of the reference becomes ultra vires by reason of the fact that two of the items could not be included in it. The learned counsel for the petitioners was not able to point to any decision or authority for the view that a reference is an indivisible entity which must be acted upon or rejected as a whole. The reference contains a number of items which were to be considered by the Tribunal and adjudicated upon separately. Two of these items have



been found to have been decided previously; they should not therefore have been included in the reference. There can be no objection to the Tribunal considering the remaining items. I am informed that a compromise has been arrived at with regard to item No. 5 and that this will not now be considered by the Tribunal. This, however, is a matter regarding which I need say nothing. For my purpose it is sufficient to say that items 3 and 4 will not be included in the reference. I, therefore, grant a writ in the nature of prohibition directing the Industrial Tribunal not to consider items 3 and 4 in the reference under dispute. The petition has been allowed in part and I, therefore, leave the parties to bear their own costs.

[IN THE MADRAS HIGH COURT.]

GORDON WOODROFFE & CO., PRIVATE, LTD.

v.

S. VENUGOPAL AND OTHERS.

Rajagopala Ayyangar, J.

October 14, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33—APPLICATION BY EMPLOYER FOR PERMISSION OR APPROVAL—SCOPE OF POWER OF AUTHORITY TO WHICH APPLICATION IS MADE—EFFECT OF AMENDMENT OF SECTION 33 IN 1956—WHETHER AUTHORITY CAN IMPOSE CONDITIONS ON GRANT OF PERMISSION OR APPROVAL.

The amendments to section 33 of the Industrial Disputes Act, 1947, by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, have not materially affected the scope of the powers of the authorities who have to deal with applications made under the section. Even after the amendment, the scope of the power to grant permission or give approval under sub-sections (1) to (3) of the section is still not to decide an industrial dispute, but to keep the ring clear by preventing either side from disturbing the equilibrium. The power given by the section is confined to saying "yes" or "no"—either to grant the permission or refuse permission and does not extend to imposing conditions subject to which permission would be granted. When once the authority negatives mala fides on the part of the employer or any intention to victimise the workman for his participation in the industrial dispute, the authority is bound to accord sanction to the action of the employer, leaving the propriety of the quantum of punishment for being agitated in other appropriate proceedings open under the Act.

Writ Petitions Nos. 596 and 597 of 1957.

V. K. Thiruwenkatachari for the management.

Mohan Kumaramangalam and *K. V. Sankaran* for the workmen.

JUDGMENT.

The principal, if not the only point raised in these two writ petitions which seek the issue of writs of *certiorari* to quash two orders of the Industrial Tribunal, Madras, is the proper construction of section 33 of the Industrial Disputes Act (Act XIV of 1947), as enacted by the Amending Central Act XXXVI of 1956.

Messrs. Gordon Woodroffe and Co., are the petitioners in these two writ petitions. There was an industrial dispute between the petitioners-management and their workmen regarding the quantum of bonus for the year ended 30th June, 1956. The dispute was referred for adjudication to the Industrial Tribunal, Madras, by the State Government by their order dated 17th April, 1957. The Tribunal decided this dispute by its order dated 19th July, 1957, but the decision of the Tribunal on this dispute is not relevant to the present proceedings but the petition is concerned with certain events which transpired during the pendency of this industrial dispute. During the period—17th April, 1957 to 19th July, 1957, the management charged two of its employees, who are the contesting respondents in these two writ petitions, with misconduct unconnected with the pending dispute. The concerned workmen were served with charge-sheets. Their explanations were obtained and an inquiry was conducted. The management passed orders on the basis that the misconduct charged against the employees was established. On 27th April, 1957, the respondent in W.P. No. 596 of 1957 was dismissed, while the respondent in W.P. No. 597 of 1957 was discharged from service by an order dated 3rd May, 1957. The management also tendered one month's salary in lieu of notice to each of these two workmen. The management thereafter filed on 9th May, 1957, two petitions before the Industrial Tribunal, Madras, pursuant to section 33(2) of the Industrial Disputes Act, 1947, as amended, seeking "the approval" of the Tribunal to the action taken by them, namely, to punish their employees in the manner mentioned above. The Tribunal passed orders granting a qualified approval of the action of the management, and directing punishments different from those inflicted by the management, and it is the legality of these orders that is challenged in these two petitions.

I shall first take up for consideration W.P. No. 596 of 1957. The workman in question was a short-hand typist. The charges against him were (1) that he had on 25th April, 1957, contrary to the instructions

given to him, refused to copy a weight list and (2) that he had on 26th April, 1957, contrary to the instructions given to him refused to type a bill of lading given to him. These items of misconduct charged against the employee were the subject matter of an enquiry by the management and as stated before they were held established. On this finding the management ordered the dismissal of this employee "subject to the approval of the Tribunal" as required by section 33(2) of the Act. It is this approval that was sought by the management in their petition to the Tribunal numbered as Petition No. 4 of 1957. The facts alleged against the workman were investigated by the Industrial Tribunal and Mr. Ramaswami Goundar, a learned Judge of this Court, who constituted the Tribunal, recorded "I am constrained to hold that the work of a short-hand-typist to which post Venugopal (respondent in W. P. No. 596 of 1957) was appointed was not confined to mere stenographic work but comprised also copy-typing work. It follows that when he refused to type the weight list and the bill of lading on the 25th and 26th April, 1957, respectively he was guilty of disobedience. The management was, therefore, justified in taking action against him which they did and which I am bound to approve." The Tribunal then went on to consider whether the punishment of dismissal imposed by the management was not excessive. After overruling the contention raised on behalf of the management based on certain decisions of the Supreme Court as regards the jurisdiction of the Tribunal to embark on this enquiry the Tribunal held that the decisions of the Supreme Court were rendered on the Act as it stood before it was amended in 1956, and that on the terms of the amended section, he had jurisdiction to pass such orders as appeared to him to be appropriate and that in the circumstances of the case he would not permit the order of dismissal to stand but would reduce it "to leave on loss of pay for the period from the date of the dismissal to the date of the order of the Tribunal."

The learned Advocate-General, who appeared for the petitioner, submitted that the amendments to section 33 introduced by the Act of 1956, did not make any basic alteration in the powers of the Tribunal and that the decisions of the Supreme Court still governed the powers and jurisdiction of Industrial Tribunals dealing with applications under section 33.

Before referring to the decisions of the Supreme Court adverted to earlier, it is necessary to set out the various changes which the relevant provision of the Industrial Disputes Act has undergone from time to time. I shall start with Act XIV of 1947, which introduced compulsory arbitration in this country for the first time. After making provision for referring industrial disputes *inter alia* to Industrial Tribunals by an

order of the appropriate Government, the enactment made provision for the maintenance of the *status quo*, during the pendency of these proceedings. Under section 23 (b) strikes and lock-outs were prohibited during the pendency of proceedings before Tribunals and for two months after the conclusion of such proceedings and provided penalties by section 26 for illegal strikes and lock-outs. Further, section 33 enacted:

"No employer shall during the pendency of any conciliation or proceedings before a Tribunal in respect of any industrial dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings nor save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be, shall he during the pendency of such proceedings, discharge, dismiss or otherwise punish any such workman except for misconduct not connected with the dispute."

The expression "pendency of the proceedings before a Tribunal" was so to speak defined by section 20 (3) of the Act in these terms: "Proceedings before a Tribunal shall be deemed to have commenced on the date of the reference of a dispute for adjudication and such proceedings shall be deemed to have concluded when the award is published by the appropriate Government under section 17 or where an award has been laid before the Legislative Assembly under the proviso to sub-section (2) of section 15, when the resolution of the Legislative Assembly thereon is passed." Any employer who contravened the provisions of section 33 was subjected, under section 31, to punishment 'with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.'

Section 33 underwent several modifications whose effect is the main point for consideration in these petitions, but before I pass on to consider them I shall analyse the basic features of the section as enacted in 1947. The provision was intended to preserve the *status quo* during the pendency of proceedings *inter alia* before Tribunals and for that duration (1) the employer was absolutely prevented from queering the pitch by any prejudicial alteration in the conditions of service of his employees, (2) in regard to 'misconduct of employees connected with the dispute' the express permission in writing of the Tribunal had to be obtained before the employer could 'discharge, dismiss or otherwise punish the workman', the 'permission' being thus, needed for every type of punishment. (3) Where the misconduct was not connected with the dispute, the common law power of the employer was left untouched and he could deal with his workmen in the manner open to him under the law without being fettered in any manner by the pendency of the dispute.

The next stage in the legislation was when the Industrial Disputes (Appellate Tribunal) Act, XLVIII of 1950, was enacted. Under the original Act of 1947 the awards of the Tribunals were final and were, when published by the appropriate Government, binding upon the parties and could not be called in question in any manner. Vide section 15 (4) of the Act. The Appellate Tribunal Act XLVIII of 1950 made an inroad into this state of affairs by creating a Labour Appellate Tribunal which was vested with jurisdiction to hear appeals from the awards and decisions of the Industrial Tribunals in respect of particular matters. The Act also introduced amendments to the Industrial Disputes Act of 1947, it amended section 33 to read thus:

Section 33: Conditions of service, etc., to remain unchanged during the pendency of proceedings: During the pendency of..... before a Tribunal in respect of any industrial dispute, no employer shall—

(a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be.

This Amending Act also introduced a new section 33-A reading:

Section 33-A: Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings: "Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention may make a complaint in writing, in the prescribed manner to such Tribunal and on receipt of such complaint that Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly." Provisions on the same lines as sections 33 and 33-A were enacted in respect of proceedings before the Labour Appellate Tribunal newly constituted, by sections 22 and 23 of the Act XLVIII of 1950 whose terms were exactly identical with the amended section 33 and the new section 33-A of the Industrial Disputes Act.

This might probably be a convenient stage where the precise change effected by the Amendment to section 33 and the introduction of section 33-A brought about in the position as it was under the section 33 of the Act of 1947 might be pointed out.

(1) The absolute ban on employers prejudicially altering conditions of service of the workmen concerned in the industrial dispute was modified by making this possible with the express permission in writing of the Tribunal before which the dispute was pending.

(2) The right of the employer to punish his workmen for misconduct unconnected with the dispute which was untouched by section 33, as it originally stood, was modified and this also was made subject to the obtaining of the permission in writing of the Industrial Tribunal. In other words, the variation in the power of the employer to punish for misconduct based upon, whether the misconduct was connected or was unconnected with the dispute was done away with.

(3) The expression "other punishments" in section 33 of the Act of 1947 might conceivably have been construed as *ejusdem generis* with the words "discharge or dismiss". This was clarified in the new section 33 which used the words "to discharge or punish whether by dismissal or otherwise" thus including every punishment, both those which amounted to dismissal or fell short of it.

Before proceeding to detail the changes introduced by the Amending Act XXXVI of 1956 I shall refer to the decisions of the Supreme Court which have construed either section 22 and section 23 of the Labour Appellate Tribunal Act or sections 33 and 33-A of the Industrial Disputes Act (between which two there was no material difference), in relation to the scope and jurisdiction of the Tribunals to whom applications might be made for the 'permission' referred to in the provisions.

It is not necessary to advert to authorities of date earlier than 1955 on the construction of sections 22 and 23 of the Labour Appellate Tribunal Act or corresponding sections 33 and 33-A of the Industrial Disputes Act, 1947. In *The Automobile Products of India Ltd. v. Rukmaji Bala and others* [1955] 7 F.J.R. 716 the employer-company who was the appellant before the Supreme Court became obliged to retrench its workmen by reason of inability to provide full work for their workmen. There was some dispute between the appellant and its workmen pending before the Labour Appellate Tribunal and in consequence the appellant company applied to the Tribunal for permission to retrench under section 22 of the 1950 Act. The workmen objected to the grant of permission on several grounds including a charge that the employers were moved by *mala fide* reasons in effecting the retrenchment. The Labour Appellate Tribunal whose decision was brought before the Supreme Court in appeal by way of special leave, had, after negating the contention of the workmen that the discharge was *mala fide*, stated

as to scope of their power: "We are the authority to whom an application has to be made for permission to retrench and when such application is made, we must of necessity exercise our judgment and discretion and satisfy ourselves that when the company retrenches it does justice by its employees." On this view they granted permission to effect the retrenchment but subject to the condition that each workman was paid at the rate of half of his basic wages and dearness allowance for the whole period from the date of lay-off up to the date of the retrenchment. The legality of this order was challenged before the Supreme Court. The appeal was allowed and the decision of the Labour Appellate Tribunal set aside. Das, J. (as he then was) analysed the provisions of sections 22 and 23 newly introduced and stated that four things were to be noted, namely, (i) that the ordinary and primary jurisdiction of the Appellate Tribunal was appellate; (ii) that section 22 of this Act conferred on the Appellate Tribunal a special jurisdiction which was in the nature of an original jurisdiction; (iii) that section 23 also vested in the Tribunal an additional jurisdiction "to decide the complaint as if it were an appeal pending before it" and (iv) that section 23 conferred on the workmen an additional remedy which they did not have under the 1947 Act. After referring to the new section 33 his Lordship stated "It will be noticed that this section has made several changes. Thus under this section provision is made for obtaining permission as a condition precedent, both for altering the conditions of service and for discharging or punishing the workmen and no exception is made for a case of misconduct unconnected with a pending dispute", and, after noticing the terms of section 33-A, his Lordship said "It may be pointed out that the new sections 33 and 33-A thus inserted into the 1947 Act conferred distinct benefits on the workmen and give some additional jurisdiction and power to the authorities mentioned therein. Section 33-A enjoins the Tribunal to decide the complaint 'as if it were a dispute referred to or pending before it' and to submit its award to the appropriate Government and provides that the provisions of the Act shall apply to the award. It is quite clear that the provisions of these two new sections 33 and 33-A of the 1947 Act correspond to and are *in pari materia* with the provisions of sections 22 and 23 of the 1950 Act and are more or less in similar terms." His Lordship then proceeded to discuss the meaning, scope and effect of these sections. The learned Judge came to the conclusion that under the terms of section 33-A and section 23 of the 1950 Act, the authority referred to in these sections would have jurisdiction to do complete justice between the parties relating to the matters in dispute and would have power to give such relief as the nature of the case might require

and not merely to adjudicate upon whether the employer had or had not been guilty of contravention of section 33 (section 22 of 1950 Act). His Lordship then proceeded to consider the submission of the counsel for the workers that the scope of section 33 of the 1947 Act and of section 22 of the 1950 Act was precisely the same as that of section 33-A and section 23. After setting out the arguments of counsel his Lordship stated, "The object of section 22 of the 1950 Act, like that of section 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the subject matter of pending proceedings against victimization by the employer on account of their having raised industrial disputes or their continuing the pending proceedings. It is further the object of the two sections to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of those proceedings take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relations between the employer and the workmen. To achieve this object a ban has been imposed upon the ordinary right which the employer has under the ordinary law governing a contract of employment. Section 22 of the 1950 Act and section 33 of the 1947 Act which impose the ban also provide for the removal of that ban by the granting of express permission in writing in appropriate cases by the authority mentioned therein. The purpose of these two sections being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under these sections is to accord or withhold permission. And so it has been held—we think rightly—by the Labour Appellate Tribunal in *Carlsbad Mineral Works Co. Ltd. v. Their Workmen*, [1953] 5 F.J.R. 40, which was a case under section 33 of the 1947 Act. Even a cursory perusal of section 33 of the 1947 Act will make it clear that the purpose of that section was not to confer any general power of adjudication of disputes.....Further, if the purpose of the section was to invest all the authorities named therein with power to decide industrial disputes one would have expected some provision enabling them to make and submit an award to which the provisions of the Act would apply such as is provided in section 33A of the 1947 Act or section 23 of the 1950 Act. There is no machinery provided in section 33 of the 1947 Act or section 23 of the 1950 Act for enforcing the decision of the authority named in those sections. This also indicates that those sections only impose a ban on the right of the employer and the only thing that the authority is called upon to do is to grant or withhold the permission, i.e., to lift or maintain the ban..... Imposition of conditions is wholly collateral to this purpose and the

authority cannot impose any condition.....In our judgment the Labour Appellate Tribunal was in error in holding that it had jurisdiction to impose conditions as a pre-requisite for granting permission to the company to retrench its workmen." This matter received further consideration at the hands of the Supreme Court in *Lakshmi Devi Sugar Mills v. Ramsarup*, [1956] 11 F.J.R. 273. Bhagwati, J., who delivered the judgment of the Court referring to the scope of the enquiry before the Labour Appellate Tribunal under sec. 22 said "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. It cannot impose any conditions on the employer before such permission is granted; nor can it substitute another prayer for the one which the employer has set out in his application. If the permission is granted, the ban would be lifted and the employer would be at liberty, if he so chooses thereafter, to deal out the punishment to the workman. On such action being taken by the employer the workman would be entitled to raise an industrial dispute which would have to be referred to the appropriate Tribunal for adjudication by the Government on proper steps being taken in that behalf. When such industrial dispute comes to be adjudicated upon by the appropriate Tribunal, the workman would be entitled to have all the circumstances of the case scrutinized by the Tribunal and would be entitled to get the appropriate relief at the hands of the Tribunal.....The Tribunal before whom such an application for permission is made under section 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a *prima facie* case has been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was *bona fide* or was actuated by the motive of victimization. If on the materials before it the Tribunal came to the conclusion that a fair enquiry was held by the management in the circumstances of the case and it had *bona fide* come to the

conclusion that the workman was guilty of misconduct with which he had been charged a *prima facie* case would be made out by the employer and the Tribunal would under these circumstances be bound to give the requisite permission to the employer to deal out the punishment to the workman. If the punishment was harsh or excessive or was not such as should be dealt out by the employer having regard to all the circumstances of the case the dealing out of such punishment by the employer to the workman after such permission was granted would be the subject matter of an industrial dispute to be raised by the workman and to be dealt with as aforesaid. The Tribunal, however, would have no jurisdiction to go into that question and the only function of the Tribunal under section 22 of the Act would be either to grant the permission or to refuse it." His Lordship then proceeded to say that there was a fair enquiry into the misconduct of the workman by the management and that the latter's action was *bona fide* and that the lower appellate tribunal ought to have held that a *prima facie* case for the dismissal of the workman had been made out by the appellant and ought to have granted the appellant the permission to dismiss the workman.

The result of these decisions might thus be summarised:—

1. Where an employer applies for permission to punish his workmen be it under section 22 or section 33 the Tribunal is concerned with two matters:—

(1) Is the act of the employer *bona fide* or is it intended to victimise the workmen for their act in raising the dispute, or in continuing it. If this was answered against the employer the permission would be refused.

(2) Was there *prima facie* misconduct on the part of the workmen justifying the employer in inflicting the punishment. If the answer was in the affirmative the quantum of punishment was left to the employer.

If the punishment which the employer inflicted was unduly harsh or was not justified by the facts and circumstances of the case, an industrial dispute could arise which might be subject to adjudication on reference by the appropriate Government under section 10 to the Tribunal. In view of the later decisions of the Supreme Court, a dispute raised between an individual workman and his employer would not *per se* amount to an industrial dispute but might fall into the category if the other workmen made it an issue between the workmen as a body and their employer (*Newspapers Ltd. v. State Industrial Tribunal, U.P.*, [1957] 12 F.J.R. 129).

The Industrial Tribunal, Madras, in its orders now impugned in these proceedings has understood the law in the same manner as set out but it has held that the amending Act of 1956, has wrought a fundamental change and that under the amended sections the Tribunal is

clothed with powers to decide an industrial dispute and impose conditions subject to which permission or approval could be granted.

I shall now proceed to set out the section as amended by the Act XXXVI of 1956 (The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956), which repealed the Appellate Tribunal Act, 1950, and introduced by its sections 21 a new section 33 which is in these terms :

Section 33. (1) Conditions of service *etc.*, to remain unchanged under certain circumstances during pendency of proceedings: During the pendency of any conciliation proceeding before a conciliation officer or a board or on any proceedings before a labour court or tribunal or national Tribunal in respect of an industrial dispute no employer shall,—

(a) in regard to any matter connected with the dispute alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending :

(2) During the pendency of any such proceeding in respect of an industrial dispute the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute.....(a) alter in regard to any matter not connected with the dispute the conditions of service applicable to that workman immediately before the commencement of such proceedings; or

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

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

(3) Notwithstanding anything contained in sub-section (2) no employer shall, during the pendency of any such proceeding in respect of an industrial dispute take any action against any protected workman concerned in such dispute

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing whether by dismissal or otherwise such protected workman, save with the express permission in

writing of the authority before which the proceeding is pending.

Explanation : For the purposes of this sub-section a "protected workman" in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, Labour Court, Tribunal or National Tribunal, under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit." The question which I have now to consider is as to the nature and the effect of the changes, if any, introduced by the Amending Act of 1956.

I shall now briefly summarise the changes which have taken place from 1947 up to date. The two main heads under which the action of the employer is calculated to disturb a proper adjudication of the industrial dispute have been: (1) prejudicial alteration in the conditions of service of workmen and (2) punishment of workmen concerned in the dispute during its pendency. Under the Act as enacted in 1947, section 33 laid an absolute embargo on the employers prejudicially altering the conditions of service of their workmen. In regard to punishments of the workmen for misconduct the 1947 Act drew a distinction between misconduct connected with the dispute and that unconnected with the dispute. In regard to the former the management had to obtain express permission in writing of the Tribunal or authority before which the dispute was pending while in regard to the latter, namely, where misconduct was unconnected with the dispute, the plenary power of the employer to proceed to exercise his common law powers was left unaffected. These underwent modification by the amending Act of 1950 which effected alterations in both the above heads. The complete ban imposed by the 1947 Act on prejudicial alterations of the conditions of service of the workman was modified by making alterations possible with the permis-

sion in writing of the Tribunal, etc. In regard to the other head the distinction drawn between misconduct connected and misconduct unconnected with the dispute was dropped and the permission of the Tribunal had to be obtained before any workman was punished by the employer during the pendency of the dispute. The changes effected by the 1956 Act indicate something like a mixture of the positions as they stood in 1947 and in 1950. A broad line of distinction was drawn between matters connected with the dispute and unconnected with the dispute, pending before the Tribunal. Prejudicial alterations of conditions of service, was placed on the same footing as disciplinary action against the workmen for their misconduct. The result of this combination is to be found in sub-sections 1 and 2 of section 33 as now amended. Section 33 (1) is concerned with the state of affairs where prejudicial alterations of conditions of service or misconduct of workmen are connected with the dispute. In both these cases the previous permission in writing of the Tribunal has to be obtained before the employer takes action. Where these are unrelated to the subject-matter of the dispute before the Tribunal they are dealt with in sub-section 2. Here the employer is given freedom of action but subject to his action meeting with the approval of the Tribunal. Sub-section 3 is concerned with protected workmen, a category introduced for the first time in Indian labour legislations but this has little relevance in the present context and might therefore be omitted out of consideration, beyond noting that in their case also the previous permission in writing of the Tribunal has to be obtained before action is taken by the employer. Lastly, we have sub-section 5 which uses the expression "as it deems fit" to describe the order which the Tribunal could pass and the introduction of this phrase in the 1956 Act, is one of the reasons assigned by the learned Judge who constituted the Tribunal for holding that the amendment has made a basic departure from the content of section 33 as it stood in the Act of 1950.

This will be a convenient stage at which to set out the reasoning on the basis of which the Tribunal held that the decisions of the Supreme Court, from which I have quoted relevant passages, do not apply to the construction of section 33(2) as it now stands. The first is that the amended section 33(2) used the expression "approval" in contradistinction to the "express permission" in writing which occurred in section 22 of the Labour Appellate Tribunal Act, 1950 and section 33 as it stood before the recent amendment as also in section 33(1) and section 33(3) in the Act as it now stands. It is a matter of concession that where the employer applied for permission of the Tribunal under section 33(1) and section 33(3) before the amendments of 1956 the jurisdiction of the

Tribunal extended only to considering whether the action of the employer was *bona fide*, that is, not an act of victimisation or intended to or calculated to effect a "queering of the pitch" in regard to the proceedings before the Tribunal for the adjudication of the industrial dispute pending before it. Harshness or excessiveness of the punishment proposed to be inflicted by the employer might be a factor for judging his *bona fides*, understood in the sense above indicated, but if the Tribunal reached a finding that the action of the employer was *bona fide*, it retained no power to direct any variation in the punishment or to impose conditions subject to which alone the punishment should be inflicted. If this were so in a case where the matter on which permission was sought was undoubtedly connected with the dispute before the Tribunal, it would indeed be a matter of some surprise that in a case where the matter was unrelated to the dispute the Tribunal's jurisdiction was more extensive, which meant that the employer's powers were in such a case more restricted.

In both the cases which are the subject matter of these two petitions the Tribunal has recorded findings that the employer was not actuated by any *mala fides* in taking action against the workmen. The Tribunal, however, proceeded to hold that it had jurisdiction to alter the punishment inflicted by the employer on the ground that it was excessive. As already stated, power was rested on two bases, firstly, that section 33(2) used the word "approval", instead of the word permission used in sub-section (1) and secondly, the jurisdiction of the Tribunal was referred to as one to pass an order "as it deemed fit" in sub-section (5). With due respect to the learned Judge who constituted the Tribunal I am unable to agree with this view.

The learned Advocate-General submitted that the expression "approval" has been used in sub-section (2), merely because the employer had already taken action and that consequently the word "permission" would have been inappropriate in that context. He also urged that the words used in sub-section (5) 'as it might think fit' do not mean that it might pass any order that it liked but that the only order which it could pass would be either to approve or not to approve the action taken by the employer which it had to decide on principles similar to those applicable to the grant of permission under sub-section (1) as construed by the Supreme Court in the decisions referred to already. In my judgment these submissions of the learned Advocate-General are well founded. The reasoning of the Tribunal amounts to saying that in the case covered by sub-section (2) the jurisdiction of the Tribunal had to be exercised on the same principles as those applicable to an industrial dispute.

The reasoning contained in the judgments of the Supreme Court in the decisions referred to above appear to me to apply with equal force to the construction of section 33 as it now stands. The broad distinction between the powers of a Tribunal in dealing with industrial disputes and when exercising jurisdiction to grant permission still prevails and there is in this connection no material difference between the powers of the Tribunal under the three sub-sections of section 33.

The jurisdiction of the Tribunal under section 33(1), (2) or (3) is still not to decide an industrial dispute, but, to keep the ring clear by preventing either side from disturbing the equilibrium. Section 33-A still continues in the same form as before and the distinction between its provisions, where the Tribunal is enjoined to decide the complaint as if it were an industrial dispute and those in section 33 still serves to underline and emphasise the contrast between the scope of the two sections 33 and 33-A which underlies the reasoning of the Supreme Court in the passages extracted. In line with the above, an order under section 33-A results in an award which is to be dealt with as other awards—and we do not have any such provision in regard to the orders under section 33.

Section 33-A constitutes a departure from the general principle that industrial disputes are brought up before Tribunals for adjudication only on reference by the appropriate Governments. In the case of complaints under section 33-A, an exception is made to this rule and the Tribunal is directed in express terms to deal with it "as if it were an industrial dispute". Parliament had before it the language of section 33-A which had been construed in the manner indicated by the Supreme Court when section 33 was amended in 1956. Parliament, however, did not choose to employ that language but chose to confer upon the Tribunal only the power to "approve". This, in my opinion, is an indication that the distinction under the class of power vested in the Tribunal under section 33-A and that under section 33 still remains. The scheme of the Industrial Disputes Act is for industrial disputes being referred to appropriate authorities or Tribunals by appropriate Governments. Section 33(2) cannot be construed in a manner which would run counter to this basic rule except, on very strong grounds and in the absence of any express language as is to be found in section 33-A, I am unable to hold that an inroad was, so to speak, made in section 10(1)(c) by section 33(2).

Again, the Supreme Court pointed out that if an employer took action against his workman in pursuance of the permission granted to him, its propriety or harshness in relation to the facts and circumstances attending the misconduct, might possibly be raised as an industrial dispute if the body of workmen made it an issue and it was only then and

in that manner that the quantum of punishment would come up for adjudication before the Industrial Tribunal. There is no provision in the Act of 1956 rendering the approval of the Tribunal final, a finality which could preclude the workmen thereafter complaining of undue harshness or the inappropriateness of the punishment in an industrial dispute if one such should subsequently arise. In making these observations I have in mind cases where the Tribunal accords unconditional approval to an action of the management. Even in such a case it appears to me, that on the decisions of the Supreme Court, the action of the employer could be challenged by the matter being raised in an industrial dispute provided, it arises and is referred by the appropriate Government to a Tribunal. If the approval of the Tribunal imparted a finality to the action of the employer precluding the arising of an industrial dispute thereafter one would have expected words in the section to achieve this result. In their absence, therefore, one feels entitled to conclude that the propriety of the action of the employer might still be impugned or attacked even after the approval of the Tribunal.

From the passages I have extracted from the judgments of the Supreme Court particularly the passage in the judgment of Bhagwati, J., in *Lakshmi Devi Sugar Mills v. Ramsarup*, [1956] 11 F.J.R. 273, it would be apparent that the scope of the power to grant permission is confined to saying "yes" or "no." The Tribunal, the Supreme Court, has held, had power merely to grant or refuse permission and not to impose conditions subject to which alone permission would be granted. It is needless to repeat the criteria laid down by the Supreme Court to be satisfied before the Tribunal could withhold permission. The expression used, "approved" in section 33 now under consideration has, in my opinion, to be construed similarly. The power of the Tribunal is to "approve" or "not to approve" the action of the employer and it does not extend to its adding conditions of its approval.

In my judgment this construction is strengthened and re-inforced by reason of the provision in sub-section (2) (a) under which prejudicial alteration in the conditions of service of the employees in respect of matters unconnected with the dispute is also made subject to the approval of the Tribunal. In that case at least the approval cannot be conditional. The Tribunal can either approve the alteration or refuse to approve. It cannot be contended that the Tribunal, in the case of clause (a) had power to suggest a course of action which the employer was bound to follow. This, in my opinion, throws light on the scope of the power of the Tribunal under sub-clause (b) also.

In the light of these considerations I have reached the conclusion that the power of the Tribunal under section 33(2) is of the same type

and nature as under section 33(1) or section 33(3) as interpreted by the Supreme Court, and that the different expressions "approval" used in sub-section (2) or the words "as it deems fit" in sub-section (5) do not affect any change in the scope of this power. When once the Tribunal negatived *mala fides* on the part of the employer or any intention to victimize the worker for his participation in the industrial dispute, the Tribunal is in my judgment bound to accord its approval to the action of the employer, leaving the propriety of the quantum of punishment for being agitated in other appropriate proceedings open under the Industrial Disputes Act.

I shall now refer to the facts in W. P. No. 597 of 1957. The employee (respondent) absented himself without leave from 27th March, 1957, to 19th April, 1957. He was called upon to offer his explanation for this action and when the management found that his explanation was unacceptable they framed charges against him for habitual absence without leave and after notice to him to show cause why he should not be punished held an enquiry as a result of which the management held that the misconduct of the workman justified their discharging him from service. The management, thereupon, applied to the Tribunal for approval of their action under section 33(2)(b) of the 1956 Act. This application was numbered as petition No. 3 of 1957 before the Tribunal and the Tribunal did not find that the action of the management was *mala fide* or that it amounted to an act of victimisation but from its judgment it appears that it was satisfied about the *bona fides* of the management but the Tribunal, however, proceeded to hold that the management could have taken a more sympathetic view of his case instead of inflicting the extreme punishment of discharging the respondent from service and it added "I think that in the circumstances of the case it will be enough if his absence is treated as leave on loss of pay. This application is accordingly ordered and the approval prayed for is granted subject to the condition that the discharge order is commuted into leave on loss of pay for the period of absence. He will be permitted to join duty forthwith." In the view which I have expressed about the scope of the power of the Tribunals under section 33(2)(b), I am of the opinion that the condition imposed was not justified by the terms of the power conferred upon the Tribunal.

Mr. Mohan Kumaramangalam, learned counsel for the workmen, respondents, urged that even assuming that the Tribunal was wrong in the construction of sections 33(2) and 33(5) it would merely be a case of erroneous decision which would not be interfered with by this Court under article 226 of the Constitution. In this connection, learned counsel contended that as the Tribunal was specifically vested with

jurisdiction to deal with petitions under section 33, the fact that it passed an erroneous order, that is, assuming, that the order was erroneous, did not affect its jurisdiction over the matter, with the consequence that unless this Court was satisfied that on the merits that order was unjust it should not interfere. I feel I cannot accede to this contention. The Industrial Tribunal is a creation of a statute which has vested it with limited jurisdiction. Where such Tribunal transgresses the limits of its jurisdiction and passes an order which it had no jurisdiction to pass, I consider that the aggrieved party has a right to approach this Court to set aside that order under article 226 of the Constitution. In my opinion, the order now impugned would, on the above classification, be either an order which the Tribunal had no jurisdiction to pass or one in regard to which it assumed jurisdiction by reason of an error apparent on the face of the record, namely, by an erroneous construction of the statute. Viewed in this light the jurisdiction of this court to issue the writ of *certiorari* would appear to be beyond question.

The next contention urged by the learned counsel for the respondents in each of the two petitions was that as a learned Judge of this Court had been constituted the Industrial Tribunal it was virtually an order of a Judge of this Court, that was being canvassed and, therefore, this Court had no power to interfere with such orders under article 226 of the Constitution. This contention, however, is concluded against the learned counsel by a decision of a Full Bench of this Court in *In re A. A. Hayles*, [1955] 7 F.J.R. 258. As the decision of the Full Bench is binding on me I did not hear any argument from counsel and indeed learned counsel himself stated that he raised the point before me merely in order to agitate it in a place where the correctness of the Full Bench decision could be challenged. Even apart from this Full Bench decision, I might refer to a decision of the Divisional Court in *Queen v. Appeal Tribunal; The Champion Paper Fibreco*, 1956 R.P.C. 323, where Lord Goddard, C. J., held that the High Court in England had jurisdiction to issue a writ of *certiorari* and to call for the records of an order passed by Mr. Justice Lloyd Jacob, when that learned Judge was acting in his capacity as the Patents Appeal Tribunal. I have, therefore, no hesitation in overruling this contention regarding the jurisdiction of this Court under article 226 of the Constitution.

The result is that these two writ petitions are allowed, the rule is made absolute and the order of the Tribunal imposing conditions is set aside. There will be no order as to costs.

[IN THE INDUSTRIAL COURT, BOMBAY.]

RAMABHAI SOMABHAI

v.

CALICO MILLS CO., LTD., AHMEDABAD.

Shri S. Taki Bilgrami.

August 21, 1957.

MISCONDUCT—CHARGE AGAINST WORKMAN—VERBAL INACCURACY
IN CHARGE—ACQUITTAL BY CRIMINAL COURT—WHETHER PROVES INNOCENCE OF WORKMAN—RIGHT OF MANAGEMENT TO PUNISH WORKMAN ON EVIDENCE ADDUCED AT ENQUIRY.

Mere verbal inaccuracy in the charge of misconduct against a workman, or the fact that the workman had been discharged by a criminal Court is not sufficient to exonerate the workman of his guilt when he is not able to substantiate his explanation in a proper and fair enquiry held by the management into his misconduct.

Appeal (IC) No. 443 of 1956.

N. C. Shah for the workman.

R. C. Trivedi for the management.

ORDER.

The appellant was an operative in the blow room of the respondent's mill who was discharged on 22nd September, 1955, on a charge of theft. It is alleged that on 9th August, 1955, at 3-30 a.m. the appellant was seen near the lavatory of the hospital which is outside the premises of the mill and which is not used. The suspicion of the jamadar on duty was aroused who started questioning him, and since no satisfactory explanation of his presence at that place was obtained, the jamadar asked the watchman Jotiram to go and look into the urinal from which the appellant had come out. Jotiram found two heaps of cloth about 775 yards in length lying inside. The jamadar reported the matter to Shri Jethalal Thaker, who informed the police. An inquiry was held by the management in which it was found that the appellant was connected with the theft of this property and he was dismissed. This is the main charge against the appellant. There is also another charge mentioned in the show cause notice, viz., that though he is a Muslim he has assumed a Hindu name and was working in the mill as such.

2. The appellant states that he was leaving the mill at 12 midnight on 8th August, when he was detained by jamadar Ramavtar near the latrine till 2-30 a.m. Jethalal Thaker then came and informed the police and got him arrested. He was released on bail the next day but he was not allowed to work. An inquiry was held in which he was not given an opportunity to cross-examine the witnesses or to produce any evidence in defence. The inquiry was unfair and, therefore, he refused to sign the papers. Regarding the other charge he says that he is a Mahomedan who has given his name as Sanji Somaji and has been working under that name since the last 10 years but he had no dishonest intention in doing so. The First Labour Court, before which the application for declaration that the order of discharge passed against him was illegal and improper and for reinstatement with full back wages was made, dismissed his application by the order dated 23rd August, 1956, which is the subject matter of this appeal.

3. On behalf of the appellant it is argued that the charge against him was fantastic, that it is not possible for any single person to carry cloth measuring 775 yards from the cloth department to the place where it was found, that the appellant works in the blow room which is several furlongs away from the cloth department. The charge, it is pointed out, says that he was found stealing the cloth which is absurd and not borne out by the evidence. It is not stated by any witness that he was found carrying the cloth or anywhere near it. It is also argued that Jotiram who found the cloth in the latrine was an important and material witness but he was not examined, which must give rise to an adverse presumption against the management. Stress is also laid on the fact that the criminal court has discharged the appellant having found that the charge of theft was not proved. I shall deal with each of these contentions separately. It is no doubt true that the statement in the charge that the appellant was found stealing cloth is not correct. But this verbal inaccuracy is not sufficient for considering that the appellant is entirely innocent, and his conduct was above suspicion. It is also not possible to believe, I concede, that the appellant alone could have carried this cloth to the place where it was found, but this again is not sufficient to establish his innocence. Simply because the management is not in a position to establish, or because it is not discovered, how the cloth was removed from the cloth room and placed in the latrine, it does not mean that there is no ground to suspect that the appellant was connected with it. It must be remembered that the appellant's duty was over by 12-30. He had no business to be in the place where he was found, near the hospital latrine, which was not in use, at 3-30 a.m. It cannot be doubted that his presence there was a circumstance which could

legitimately give rise to suspicion against him, especially when he was unable to give a reasonable explanation for it. It must also be borne in mind that the latrine is adjacent to the cloth department. It was easily possible for the appellant, in conspiracy with others, to quietly remove this cloth and place it in a safe hiding place near the latrine which was not being used. I am not prepared to believe the story of the appellant being detained by the jamadar Ram-avtar from 12 midnight to 2-30 a.m. because the duty of this jamadar admittedly does not commence till 1 a.m. This shows that the statement which the appellant has given in this regard is not correct. He was given several opportunities to produce defence evidence but he failed to do so. The appellant failed to attend the inquiry on 12th and 13th August. On the latter date the departmental head's statement was taken. The manager has noted that the appellant wishes to produce defence evidence and gave an adjournment, but no defence evidence was produced. The final order was not passed till 22nd September, 1955. The explanation of the appellant is at Ex. 23 in which he has made out the same case as in the application but he adduced no proof in support of it. The papers of inquiry also show that the appellant's allegation that no opportunity was given to him to produce defence evidence or to cross-examine witness is also not correct. So far as the discharge by the criminal Court is concerned, I think that by itself is not sufficient to hold that the appellant is innocent. A criminal Court can only convict a person if the offence with which he is charged is proved beyond reasonable doubt, whereas the management of a concern is justified in terminating the services of an operative against whom there is a reasonable ground for suspecting that he is dishonest, or is connected in any way with the theft of the employer's property. To my mind, in the present case, on the facts and circumstances proved, the company had good ground to suspect that the appellant was connected with the removal of the cloth from the premises to the hiding place in the latrine where it was found. There is no other reason by which his presence at that hour, and at that place can be explained. The appellant has himself, in spite of being given opportunities during the inquiry and in the Court, failed to establish his defence. Since the main charge is proved and is sufficient for justifying the action taken by the company it is unnecessary to deal with the other minor charge.

4. I, therefore, think that the Labour Court was right in refusing to interfere with the order of discharge passed by the management. In the result the appeal fails and is dismissed.

[IN THE SUPREME COURT OF INDIA.]

INDIAN IRON & STEEL CO., LTD., AND ANOTHER

v.

THEIR WORKMEN.

(AND CONNECTED APPEALS)

N. H. Bhagwati, S. K. Das and J. L. Kapur, JJ.

15th October, 1957.

DISCHARGE—NOTICE OF LOCK-OUT INTIMATING DISCHARGE OF WORKMEN—EFFECT—WHETHER TERMINATES SERVICES OF WORKMEN—RIGHTS OF WORKMEN ON RESUMPTION OF WORK.

LOCK-OUT—CLOSURE CAUSED BY COERCIVE TACTICS OF WORKMEN—RIGHT OF WORKMEN TO COMPENSATION FOR PERIOD OF CLOSURE.

DISMISSAL—DISMISSAL FOR CONTINUED ABSENCE—WORKMAN TAKEN INTO POLICE CUSTODY—RIGHT OF MANAGEMENT TO REFUSE LEAVE AND DISMISS WORKMAN.

RE-INSTATEMENT—TRIBUNAL ORDERING RE-INSTATEMENT—WHEN ORDER CAN BE INTERFERED WITH.

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF QUESTION OF SUSPENSION OF WORKMAN—MISCONDUCT OF WORKMAN PROVED—RIGHT TO AWARD RE-INSTATEMENT—DUTY TO GIVE PERMISSION UNDER SECTION 33, INDUSTRIAL DISPUTES ACT, 1947.

A notice put up by the employer stated that on account of the unsatisfactory attitude of the workmen the management had no option but to "declare a lock-out" and also stated that the services of the workmen "shall be deemed to be discharged" with effect from a certain date. Later on, a notice was put up lifting the lock-out and giving directions to workmen who desired to report for duty. On the question whether the first notice constituted a termination of the services of the workmen and whether the second notice gave the workmen only an opportunity of re-employment at the pleasure of the management on fulfilment of certain conditions, Held, that though the first notice stated that the workmen "shall be deemed to be discharged", the real intention of the management as evidenced by both the notices was only to effect a "lock-out", i.e., a refusal to employ the workmen during the period when the place of employment was closed. Therefore, all the workmen affected by the lock-out would be entitled to resume work in accordance with the terms of the second notice.

Where the Industrial Tribunal negated the claim of the workmen who resumed work after a lock-out for compensation for the period of unemployment

on the ground that the workmen themselves tried to coerce the management by slow-down tactics, etc., and were responsible for the lock-out, there is no question of principle involved for interfering with the order of the Tribunal.

Where certain workmen were taken into custody by the police and their applications for leave were refused by the management and their services were terminated in accordance with the standing orders for being absent for 14 consecutive days, Held, that the management should have the right in such cases to decide whether leave should be given to the workmen or not and its action in refusing leave and dismissing the workmen would be justified: *BURN & CO., CALCUTTA v. THEIR WORKMEN*, [1956] 11 F.J.R. 217 applied.

Where an Industrial Tribunal comes to the conclusion on the evidence adduced before it that the management was activated by motives of victimisation in terminating the services of certain workmen, such a finding cannot be interfered with unless there are exceptional or special circumstances or grave injustice is proved.

Where the management has only suspended a workman pending action to be taken against him for acts of misconduct, and the Tribunal finds that the workman indulged in activities prejudicial to the interests of the concern, the Tribunal cannot award re-instatement of the workman if the order of suspension was the only subject matter of the reference to it. On the other hand, where the management has applied for permission to discharge the workman under section 33 of the Industrial Disputes Act, 1947, the proper order would be to give the management permission to dismiss the workman.

Civil Appeals Nos. 44, 45, 336 and 337 of 1957.

M. C. Setalvad (Dipak Datta Chaudhury and B. N. Ghosh with him) for the management.

S. K. Acharya, A. K. Dutt, D. L. Sen Gupta and Sukumar Ghosh for the workmen.

JUDGMENT.

The Judgment of the Court was delivered by

S. K. DAS, J.—These four appeals by special leave arise out of certain labour disputes between the employer, Messrs. Indian Iron and Steel Company Limited and the Indian Standard Wagon Company Limited, Burnpur, Asansol, (hereinafter compendiously referred to as the Company) on one side and some of their employees on the other. Messrs. Martin Burn Limited, 12 Mission Row, Calcutta, are the managing agents of the Company. Originally, the case out of which Civil Appeals 44 and 45 have arisen was known as the case of 144 workmen, and the other case out of which Civil Appeals 336 and 337 have arisen was

known as the case of 74 workmen. At present, the number of workmen involved in the four appeals is much smaller. Civil Appeals 44 and 45 go together as they arise out of the same decision, Civil Appeal 44 being on behalf of the Company in respect now of 104 respondent workmen, and Civil Appeal 45 on behalf of 103 out of the said 104 workmen. Similarly, Civil Appeals 336 and 337 go together and arise out of a common decision, Civil Appeal 336 being on behalf of the Company in respect of 10 workmen in three groups and Civil Appeal No. 337 on behalf of 31 workmen. The facts of these two sets of appeals are somewhat different, and it will be conducive to convenience as also to clarity of discussion of the issues involved, if the two sets are dealt with separately.

Civil Appeals 44 and 45.—We take up first Civil Appeals 44 and 45. With regard to these appeals the relevant facts are these. In 1947 the Asansol Indian Iron and Steel Workers' Union, with one Prof. Abdul Bari as President, was recognised by the Company. On the death of Prof. Bari, one Mr. Michael John became President and the Union continued to be recognised by the Company. In 1951 the Company was declared a public utility service under the Industrial Disputes Act, 1947. It was alleged on behalf of the Company that on 12th September, 1951, a procedure was established for an amicable settlement of such disputes as might arise between the Company and its employees. The procedure was substantially this: in case of a dispute regarding an individual employee, the dispute would be referred first to the Shop-in-charge and then to a Works Committee, and the Union would discourage an individual approach to the management of the Company; if the Works Committee was able to effect a settlement, it would be final; but if it failed, the Union could take up the case on merits, with the management of the Company. The above procedure, it is stated, was accepted at a joint meeting of the Works Committee held on 13th November, 1951. Then we come to 1953. The case of the Company was that on 15th January, 1953, certain workers of the Hot Mills section resorted to an illegal stoppage of work, and on the next day all the three shifts of the Hot Mills section commenced a 'slow-down' strike. This adversely affected the production of the Company, and it addressed a letter to the secretary of the Union on 27th January, 1953, drawing the attention of the Union to the illegal stoppage of work and 'slow-down' tactics; the letter further stated that if there was no improvement in the attitude of the workers, the Company would be compelled to take such action as it considered necessary to bring about resumption of normal work. Two days later, the workers of the Hot Mills section submitted certain demands, but not through the Union.

With regard to the demands made by the workers of the Hot Mills section, they were informed that joint petitions, without reference to the Union or the Works Committee, would not be accepted and so long as normal work was not resumed, no consideration could be given to the demands made. It appears that the Union also informed the Company that the workers concerned had made no representation to the Union, and the Union did not support their activities. It is obvious that at this stage there was a cleavage between some of the workers of the Hot Mills section and the Union. The Company then issued certain notices to the workmen advising them of the consequences of their action. The workers, in their turn, elected a committee of six men to press their demands; the Company, however, refused to negotiate with this committee. The impasse continued and in March, 1953, there was a tripartite conference between the Labour Commissioner of the Government of West Bengal, the General Manager of the Company and the President of the Union. Before this, the Company had issued a notice closing 'B' and 'C' shifts of the Hot Mills section. The tripartite conference came to certain conclusions but failed to restore harmony, and one of the reasons for its failure was that the representatives of the workers of the Hot Mills section were not included therein. The workers' committee protested against the closing of two shifts, and the trouble continued till on 8th April, 1953, the Company issued a notice to the workmen that unless they voluntarily recorded their willingness to do normal work, they would be considered as no longer employed by the Company from 2 p.m. on 10th April, 1953. It was stated that on 11th April, 1953, some 700 workers resorted to an illegal stoppage of work. The Labour Minister, Government of West Bengal, then visited Asansol, and met the representatives of the workers, and of the Union and the management. He made some suggestions, which did not however end the trouble. Meanwhile, an Action Committee was set up by the workmen. There was a strike on 27th April, 1953. The Sub-divisional Magistrate, Asansol, promulgated an order under section 144, of the Code of Criminal Procedure and the situation continued to worsen. Iron and Steel were declared to be essential to the life of the community under the provisions of the West Bengal Security Act, 1950, and leave to all employees was stopped by the Company. Some 38 workers of different departments were discharged for alleged disobedience of orders, and on 18th August, 1953, the Action Committee gave a strike notice to the Company, stating that the workmen would resort to strike and abstain from duty from 11th September, 1953. We now come to the crucial date, 23rd August, 1953. On this date the Company declared a lock-out and issued a notice, which must be set out in full; because a

good part of the argument of learned counsel for both parties has centred round this notice:

"Notice.—Having regard to the continued existence of the go-slow strike and the unsatisfactory working of the Plant and in consequence of the illegal strikes which took place on—

- (1) 18th January, 1953.
- (2) 9th March, 1953.
- (3) 11th April, 1953 to 20th April, 1953.
- (4) 27th April, 1953 and 28th April, 1953.
- (5) 15th July, 1953.

the management has no option but to declare a lock-out of the entire works except the special shifts in the Hot Mills Section of the Sheet Mills with effect from Monday, the 24th August, 1953.

The following departments will continue to operate:

- No. 3 Boiler Plant.
- No. 2 Power House.
- Nos. 1 and 2 Reservoir Pump Houses.
- Riverside Pump Station.
- Town Water Works.
- Town Sub-Station.
- Coke Ovens.

Workers required in the above departments will be notified. The services of all other workers shall be deemed to be discharged with effect from Monday, 24th August, 1953.

Burnpur,
23rd August, 1953.

(Sd.) J. McCracken.
General Manager."

On 17th September, 1953, another notice was issued by the Company lifting the lock-out with effect from 6 a.m. on Friday, 18th September, 1953. This notice stated *inter alia*:

"All employees on the Works rolls of the Company on the 23rd August, 1953, and who wish to report for duty, must resume work between 6 a.m. on Friday, the 18th September, 1953, and 10 p.m. on Saturday, the 19th September, 1953, on their regular shift. If, however, any worker in the vicinity of the Works is unable to resume duty on account of illness, he should report himself to the Company's medical authorities or if unable personally to attend, send written intimation of his sickness to the Company by Saturday, the 19th September, 1953. In the latter case the Company will make arrangements for his medical examination. Such worker should resume duty from the date he is declared fit by the Company's medical authorities.

Any worker who has left the vicinity of the Works may resume duty on or before Thursday, the 24th September, 1953, provided he produces evidence satisfactory to the Company of his absence."

On 23rd September, 1953, the Company issued a third notice, which quoted a request received from the President of the Asansol Iron and Steel Workers' Union for extension of the time given to the workmen to resume work, and then concluded as follows:

"The Company is pleased to accede to this request to the extent of one week's extension and its notice No. GM/CS-3B/571 dated 17th September, 1953, may be considered amended accordingly, i.e., the extension will be until Friday, the 2nd October, 1953."

Of the workmen with whom we are now concerned, 98 workmen reported for duty on 1st October, 1953, 4 reported for duty on 2nd October, 1953, and one on 9th October, 1953. They were not, however, allowed by the Company to resume their duties. This led to an industrial dispute which the Government of West Bengal referred to the Fifth Industrial Tribunal. The two issues were—(1) whether the Company was justified in keeping the workmen mentioned in three lists A, B & C out of employment; and (2) whether the said workmen were entitled to employment and any other relief and/or compensation. The Tribunal held that all the workmen who turned up on or before 2nd October, 1953, in pursuance of the notices issued by the Company were entitled to be taken back into employment without condition and of the two men who came later, one was ill of typhoid fever and had sufficient reason for reporting himself for duty on 9th October, 1953. On the second issue, the Tribunal said:

"Accordingly, I award that these men, barring Shri Satyanarayan, No. 5 of the list C, attached to the order of reference, would get half salary for the entire period from the 2nd October, 1953, up to the date of their actual return to duties after this award. I allow only half basic pay and no dearness allowance and no other allowance."

From the decision of the Fifth Industrial Tribunal, two appeals were preferred to the Labour Appellate Tribunal, Calcutta. The appeal on behalf of the Company was mainly against the order directing that the employees who had turned up on or before 2nd October, 1953, must be taken back in employment, and the appeal on behalf of the workmen raised the question that full compensation should be given to the workmen who were directed to be taken back in employment. The Labour Appellate Tribunal dismissed both appeals—the appeal of the Company on merits and the appeal of the workmen on the ground that it did not involve any substantial question of law. Both parties then asked for

and obtained special leave from this Court to appeal from the decision of the Labour Appellate Tribunal, Calcutta.

In Civil Appeal No. 44, Mr. M. C. Setalvad, Attorney-General, has appeared for the Company and has argued that both the Tribunals below went wrong on principle in construing the notices dated 23rd August, 1953, and 17th September, 1953, respectively. According to him, the continued illegal stoppages of work, 'slow-down' tactics and strikes indulged in by the workmen despite the advice of their Union, left the Company no alternative but to discharge the workmen, except in some essential departments, with effect from 24th August, 1953, and the notice dated 23rd August, 1953, though it stated that the Company declared a lock-out of the entire Works except for some special shifts, really terminated the services of the respondents by discharging them with effect from 24th August, 1953. He has further submitted that the notice dated 17th September, 1953, did not revoke the earlier order of discharge, but merely gave the respondents an opportunity of re-employment at the pleasure of the Company on fulfilment of certain conditions. The learned Attorney-General contends that if the notices are so construed, then the Tribunals below are wrong in holding that the respondents are entitled to be taken back in employment as of right. He has further submitted that the Fifth Industrial Tribunal was wrong in law in holding that there could not be a lock-out and discharge at the same time.

In our view, the two notices in question are not capable of bearing the construction which the learned Attorney-General has pressed for our acceptance, apart altogether from the question if under the Industrial Disputes Act, 1947, there can be a simultaneous order of discharge and lock-out in respect of the same employees. The question of construction is really a question of intention—to be gathered primarily from the words used in the documents; and if the words used are ambiguous, then surrounding circumstances can be looked into for the purpose of construing the notices. It is worthy of note that the first notice states *inter alia* that in consequence of the illegal strikes which took place on several previous dates, the Management has no option but to declare a lock-out of the entire Works except some special shifts with effect from Monday, August 24, 1953; then in the concluding portion the notice states—"The services of all other workers shall be deemed to be discharged with effect from Monday, 24th August, 1953". The expression "shall be deemed to be discharged" has to be read in the context of the declaration of a lock-out; such an expression is neither usually employed nor apt to effectuate an intention to terminate the services of the workmen altogether. A 'lock-out', according to the definition in the Industrial

Disputes Act, 1947, means the "closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him". In this context, the notice when it said that the services of all other workers shall be deemed to be discharged with effect from the date of the lock-out really meant that the Company refused to employ the respondent workmen during the period when the place of employment was closed. The second notice, dated 17th September, 1953, places the matter beyond any doubt. It starts by saying that the "management have reason to believe that many workers are desirous of resuming work" etc.; then it states that "all employees on the Works rolls of the Company on 23rd August, 1953, and who wish to report for duty, must resume work between 6 a.m. on Friday, 18th September, 1953, and 10 p.m. on Saturday, 19th September, 1953." The expressions used in the second notice clearly show that the intention was not re-employment of discharged workmen, but resumption of work by employees who desired to resume work and whose employment had been stopped on account of the lock-out. The third notice dated 23rd September, 1953, which extended the date of joining to 2nd October, 1953, again said that "a large number of workers might have been prevented from resuming their work for reasons beyond their control" and gave that as the reason for extending the date. If the three notices referred to above are read together against the background of events which had happened prior to 23rd August, 1953, the only reasonable construction is the one adopted by the Tribunals, *viz.*, that the employees whose employment had been refused during the lock-out were permitted to resume work without any conditions if they reported for duty by a particular date, and on fulfilment of a condition if they reported for duty after that date.

The learned Attorney-General has referred us to some oral and documentary evidence to show that the workmen themselves understood the notice dated 23rd August, 1953, as a notice of discharge. He has referred particularly to the letter dated 2nd September, 1953, written by the Action Committee to the General Manager of the Company in which the notice dated 23rd August, 1953, was referred to as "an illegal and unconstitutional notice of discharge". On the other side, Mr. S. K. Acharya appearing for the respondent workmen has referred us to the evidence given by some of the Company's servants, which showed that no formal order of discharge was recorded in the service book of the employees, as required by the rule; nor any notice of one month given for discharging the workmen; but, on the contrary, the workmen were given continuity of service for the entire period of their absence. We do not, however, think that when the words used in the

notices sufficiently and clearly bring out the intention of the Company, it is necessary to refer to other evidence in the record. Moreover, this Court does not sit as a regular Court of appeal over Industrial Tribunals, and does not ordinarily subject the evidence given on behalf of the parties to a fresh review and scrutiny, unless it is shown that exceptional or special circumstances exist, or that substantial and grave injustice has been done or that the case in question presents features of sufficient gravity to warrant a review of the decision appealed from.

It is necessary now to consider an alternative argument of the learned Attorney-General. He has contended that assuming that the notices bear the construction which we have put on them, the respondent workmen did not join on or before Saturday, 19th September, 1953,—the latest day by which they could resume work without any condition; they reported for duty on 1st October, 1953, or 2nd October, 1953, but failed to produce evidence satisfactory to the Company of their absence as required by the notice dated 17th September, 1953, and, therefore, they were not entitled to be taken back as of right and without any condition. It is necessary to state here what happened between November 1953 and April 1954. It appears that a large number of workmen who reported for duty on 1st October, 1953, and 2nd October, 1953, were subsequently interviewed, and as a result of that interview 144 workmen were not taken back to employment. What happened at the interview was stated by Shri S. K. Kanwar, witness for the Company, who said:

"Question: Why these 144 men were not taken?"

Answer: These men were interviewed, but they could not give satisfactory explanation for not reporting for duty within the time given. These men did not comply with the condition laid down in the notice of the 17th September, 1953. Whatever happened during the interview has been put in writing."

The writing which embodied the result of the interview was not, however, produced. The same witness said that some workmen who were also subsequently interviewed were taken back without any explanation of their absence. The evidence on this point is very conflicting; one witness said that about 2,000 men came to the main gate of the Company on 1st October, 1953, and 2nd October, 1953, and from 2nd October, 1953, the instruction of the Company was "to take back only those who were not harmful to the running of the factory". Another witness said that he did not remember if any of the respondent workmen appeared before him on 1st October, 1953, or 2nd October, 1953, and if any one of them gave any reasons for their absence. In view of the conflicting evidence

on the point, it is not possible to proceed on the footing that the respondent workmen failed to produce satisfactory evidence of their absence, and that was the reason why they were not taken back by the Company. The learned Attorney-General drew our pointed attention to the evidence of Shri Promotho Nath Mukherji, witness No. 9 for the workmen, who said: "When the lock-out was lifted I did not think it proper to join immediately because most people were then outside, secondly, my colleagues and others had not then joined and lastly my social status in the place combined with the above circumstances restrained me from joining". It may be that some of the workmen could have presented themselves earlier than they actually did. But that does not prove that the company refused to take only those workmen who had failed to produce satisfactory evidence of their absence. If that was the case of the Company, then it should have produced the writing which embodied the result of the interview or given sufficient evidence to establish that in each case the respondent workman failed to produce satisfactory evidence of absence. On the contrary, the Tribunal found that the Company scrutinised the conduct of the workmen to find out how far they were associated with the Action Committee, how far they took part in the meetings, etc., and, on that basis, some workmen were taken back and some were not taken back. It is somewhat late in the day to try to make out a case that each of the respondent workmen in these two appeals failed to produce satisfactory evidence of their absence.

For these reasons, we do not think that the appellant Company in Civil Appeal 44 has made out any case for our interference with the decision appealed from. There was some argument before us as to the illegal nature of the strike declared by the workmen and also as to the legality of the lock-out declared by the Company. We do not pause to decide those questions, because it is unnecessary to do so in the present appeals. We must make it clear, however, that our reluctance to pronounce on the conduct of the workmen prior to 23rd August, 1953, does not signify an approval of that conduct which rightly came in for a good deal of criticism by the Industrial Tribunal. It has been somewhat faintly suggested that if the notice dated 23rd August, 1953, terminated the services of the workmen and the second notice dated 17th September, 1953, operated as a conditional revocation of the earlier notice, then there was no consideration for the condition imposed and the Company could change its mind and ignore the condition. In the view which we have taken of the three notices, it becomes unnecessary also to examine this submission.

As to Civil Appeal 45 on behalf of the workmen in which the prayer is for payment of full compensation, it is sufficient to state that

no question of principle is involved. The Fifth Industrial Tribunal refused to give compensation for the period anterior to 2nd October, 1953, on the ground that the workmen themselves tried to coerce the Company by 'slow-down' tactics, etc.; for the period after 2nd October, 1953, the Tribunal allowed half the wage as compensation on the ground that some of the workmen were near Burnpur and might have joined earlier, some claimed to come back to their services as of right without any explanation, and none of the workmen had done any actual work for the period. As we have said, no question of principle is involved and we do not think that the Tribunal has committed any error in the matter of awarding compensation.

Civil Appeals 336 and 337.—We now turn to the other two appeals. We have stated that the case out of which these two appeals have arisen dealt initially with 74 workmen who had been discharged or suspended by the Company for one reason or another. The question which was referred to the Fifth Industrial Tribunal was whether the discharge and/or suspension of these 74 workmen was justified; if not, to what relief these men were entitled. The Tribunal classified these men in four categories—(1) those whose services were terminated in accordance with the Standing Orders of the Company, for absence without permission for 14 consecutive days; (2) those who were dismissed for major misdemeanour; (3) those who were suspended but whose cases could not be disposed of finally; and (4) those who were dismissed for disobedience of orders and other activities in pursuance of a concerted plan of "go-slow" strike. The Tribunal considered the case of each workman under the four categories mentioned above and ordered re-instatement of 25 out of the 74 workmen and granted to 24 of the workmen directed to be re-instated compensation equal to half basic pay for the period of forced unemployment. From the decision of the Fifth Industrial Tribunal two appeals were taken to the Labour Appellate Tribunal, Calcutta,—one on behalf of the Company and the other for the workmen. The Labour Appellate Tribunal dismissed both the appeals. Hence the two appeals before us by special leave.

In Civil Appeal 336 we are concerned with only 10 workmen, seven of whom fall in the category of those whose services were terminated in accordance with the Standing Orders of the Company for absence without permission for 14 consecutive days. These seven men are—(1) Bama-pado Mukherji, (2) Chandrasekhar Mukherji, (3) Niaz Hossain, (4) Dhani Ram, (5) Chandrabhan Singh, (6) Raja Singh, and (7) Jai Kishore Singh. Two others, Samar Sen and Abharani Debi, fall in the category of those who were said to have been dismissed for major misdemeanour. The tenth workman Himansu Chattoraj falls in a class by himself.

In Civil Appeal 337 on behalf of the workmen there are 31 appellants, nine of whom (except Samar Sen) are those who figure in the Company's appeal. The rest are those who were not ordered to be reinstated. The cases of two of these men, Akka Hossain and D. P. Das, have been specially placed before us by Mr. S.K. Acharya, on the ground that Akka Hossain stands on the same footing as Himansu Chatteraj and D. P. Das on the same footing as those whose leave was not granted and who were absent for 14 consecutive days without permission.

We now proceed to consider the cases of the 10 workmen in Civil Appeal 336. Let us first take the seven workmen who were absent without leave for 14 consecutive days. Standing Order No. 9 of the Company, which is the relevant Standing Order on the subject, is in these terms:

"Absenteeism—Workers absent without leave will be subject to disciplinary action. Overstaying leave will be considered as absence without leave.

Any worker who is absent for 14 consecutive days without permission will be automatically discharged. Also, any worker who is absent for 14 individual days during any period of 12 months is liable to discharge."

What happened in the case of these men is that on diverse dates between 5th July, 1953 and 10th July, 1953, they were taken in custody by the police and remained in custody for some time; they applied for leave when in custody but leave was refused. The Industrial Tribunal took the view that Standing Order No. 9 was not an inflexible rule, and a mere application for leave was sufficient to arrest the operation of the Standing Order. When the case was before the Appellate Tribunal, Mr. S. K. Acharya on behalf of the workmen conceded that he was not in a position to support the view of the Fifth Industrial Tribunal in this respect; he contended, however, that the Industrial Tribunal had in each case considered the justification for absence without leave, and in view of the circumstance that the men were in custody, the Company was justified in refusing leave. This contention found favour with the Labour Appellate Tribunal.

The point is now covered by a decision of this Court: *Burn & Co., Calcutta v. Their Employees*, [1956] 11 F.J.R. 217. In that case one Ashimananda Banerji was arrested under the West Bengal Security Act and detained in jail from 25th January, 1949 to 5th April, 1949. The Company terminated his services on 22nd April, 1949, on the ground of continued absence. The Appellate Tribunal ordered his re-instatement on the ground that he had been discharged without a charge and without holding an enquiry. This Court observed:

"We are unable to agree with this decision. The ground of discharge is the continued absence of the employee, and his inability to do work, and it is difficult to see what purpose would be served by a formal charge being delivered to him and what conceivable answer he could give thereto. The order of the Appellate Tribunal is manifestly erroneous and must be set aside."

The same principle should apply in the present case. It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them; but it would be unjust to hold that in such circumstances the Company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by reason of their questionable activities in connection with a labour dispute, as in this case, the work of the Company will be paralysed if the Company is forced to give leave to all of them for a more or less indefinite period. Such a principle will not be just; nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The Company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be readily accepted that if the workmen are arrested at the instance of the Company for the purpose of victimization and in order to get rid of them on the ostensible pretext of continued absence, the position will be different. It will then be a colourable or *mala fide* exercise of power under the relevant Standing Order; that, however, is not the case here. We are of the view that the two Tribunals below have misdirected themselves as to the true scope and effect of the Standing Order in question, and their decision with regard to the seven workmen mentioned above cannot be supported.

We now turn to the two persons in the second category, Samar Sen and Abharani Debi, remembering what we have already stated as to the exercise of our jurisdiction on an appeal by special leave. Samar Sen worked as the manager of the Burnpur hotel, and one of the questions raised was if he was a 'workman' within the meaning of the relevant provisions of the Industrial Disputes Act, 1947. At the relevant time, 'workman' was defined in the Act as follows:

"Section 2(s). 'workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any

proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government."

The question is if Samar Sen did any clerical work for hire or his duties were merely supervisory in nature. Both the Tribunals have referred to the evidence on this point and have concurrently found that Samar Sen was a workman within the meaning of that word as used in the Industrial Disputes Act, 1947; they have referred to Samar Sen's own evidence which showed that he had to write ledgers, file correspondence, enter the cash book, etc. We see no reason to hold that the finding of the two Tribunals on this point is erroneous.

On merits, the case against Samar Sen was that as a result of a regular and proper enquiry, he was found guilty of unauthorised absence and insubordination, etc., and, therefore, the Company dismissed him. The argument before us is that the Company having held a regular and proper enquiry in which Samar Sen had an opportunity of meeting the charges against him, it was for the Company to decide whether the charges had been proved and the Industrial Tribunal should not have interfered with the decision of the Company, unless it found that the decision was *mala fide* or amounted to victimization. It is necessary to state here, in the words of the Fifth Industrial Tribunal, its finding about Samar Sen. The Industrial Tribunal said:

"Next, I consider the merit of the case. On the 6th July, 1953, he went on leave. On the 16th July, he applied for extension of leave for one month (*vide* Exhibit 6). He got a reply from the Company on the 25th or 26th July, 1953. But, as the Company refused his leave, he joined on the 1st August, 1953, with a medical certificate of fitness. So practically he was within 14 days' admissible grace period for joining one's duty. When he was on leave, he was suffering from blood pressure and fever. The doctor advised him to take rest. Of course, he should have consulted the Companies' doctor. But even if he had not done so, it did not matter as he was then on leave allowed by the Company. So where was his fault? Yes his fault was that he was the secretary of the Action Committee at that time. The Action Committee to the Companies was like a red rag to the bull. I find absolutely no reason why this man should be dismissed. So I set aside the order of dismissal passed against him, and order his re-instatement. I grant him compensation at half basic pay for the period of his forced unemployment."

The finding really amounts to this that Samar Sen was victimized as he was the secretary of the Action Committee; he was really ill and the only fault he committed was that he did not consult the Company's

doctor. The learned Attorney-General has very seriously contested the aforesaid finding of the Tribunal and taken us through the relevant evidence including Samar Sen's own statements before the Enquiry Committee. He has pointed out that though Samar Sen was said to be suffering from fever and blood pressure, his statements before the Enquiry Committee showed that he was not taking complete rest as advised by his doctor but was engaged in doing some "public work". The argument advanced by the learned Attorney-General might have been urged acceptably to a Court or Tribunal of first instance; but we are not such a Court or Tribunal, and in the absence of exceptional or special circumstances or of grave injustice, we shall not be justified in interfering with what really is a finding of fact.

This brings us to the case of Abharani Debi, where also the same principles apply. She was a nurse in the Burnpur Hospital and the charge against her was that she had incited and instigated one Karu, a sweeper working in the hospital, not to attend his duties on the morning of 5th September, 1953. An enquiry was held and she was found guilty of the charge. The Tribunal found that the charge against her was completely baseless, and the enquiry report against her made a mountain of a mole-hill. She made some comments to Karu with regard to a pass which had been issued to Karu, and the comments, innocuous in themselves, were magnified into a charge of intimidation. It is significant that before the Labour Appellate Tribunal, the Company did not even argue the case of Abharani. Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In case of dismissal on misconduct, the Tribunal does not however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of a natural justice, and (iv) when on the materials, the finding is completely baseless or perverse. In our view, Abharani's case comes under clause (iv) above.

Lastly, we come to Himansu Chatteraj. The Company's case against him was the following: It was alleged that since January, 1953, he incited other workmen to resort to 'slow-down' tactics. On 28th March, 1953, he was charged that he took an active part in the 'slow-down' strike in the Hot Mills section, and he initiated such action and instigated others to do the same. On 29th March, 1953, he submitted his

explanation. On 31st March, 1953, he was suspended pending enquiries. On 3rd April, 1953, and 4th April, 1953, some evidence was taken against several workman including Chatteraj in the course of the enquiry, but the evidence not being of an overwhelming character against Chatteraj, the management postponed its decision pending further enquiry. In May 1953, the Sub-divisional Magistrate promulgated an order section 144, Criminal Procedure Code, in which Chatteraj was mentioned. In September, 1953, the dispute was referred to the Fifth Industrial Tribunal which included the case of Chatteraj—there being a suspension order against him. It was stated that an application under section 33 of the Industrial Disputes Act, 1947, was made for permission to dismiss Chatteraj for activities subsequent to the charge-sheet of 28th March 1953. The Tribunal, instead of dealing with that application, made the following observations in its award regarding Himansu Chatteraj:

"He was, therefore, charged on the 28th March, 1953, along with others. There was an enquiry. But as the evidence against this man was not overwhelming, the management postponed their decision for the time being. This man, however, continued his activities with the result that the Sub-divisional Officer of Asansol promulgated an order under section 144, Cr.P.C., on 15th May, 1953, and in which order his name was mentioned. This workman was again obstructing the loyal workers after the lock-out had been lifted. So in view of the above, the Companies decided to terminate his services. But it could not take any direct action as his case was referred to the Tribunal. So the position is that the charge-sheet on which this man was sought to be punished, was not proved even according to the Companies' own version. For his other activities there is no charge-sheet. In such circumstances I do not think that the Companies were entitled to dismiss him. So regard being had to this aspect of the matter, I order his re-instatement. But as I am satisfied that this man indulged in activities which were prejudicial to the interest of the Companies, I do not allow him any compensation during the period of his forced unemployment consequent upon suspension. The period of unemployment should be treated as leave without pay. He must be re-instated as as soon as the award becomes operative."

The Appellate Tribunal dealt with the case of this man very summarily by saying that his re-instatement was not open to any objection.

Before us, it has been argued that the decision that Himansu Chatteraj should be re-instated is vitiated by a basic error. The only formal order against him was the order of suspension, which was certainly a valid order. The Industrial Tribunal found that Chatteraj

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indulged in activities prejudicial to the Company, and it is now recognised that deliberate 'slow-down' tactics and an incitement to other workmen to adopt such tactics both amount to misconduct. The lower Tribunal was apparently satisfied that Chatteraj was guilty of such misconduct; yet it held that the charge-sheet on which Chatteraj was suspended had not been proved. If the order of suspension was the only subject of reference so far as Chatteraj was concerned, the Tribunal could not order his re-instatement till the enquiry was completed. If, on the contrary, the Tribunal proceeded on the footing that the Company had decided to terminate the services of Chatteraj on the ground of his prejudicial and subversive activities then on being satisfied that Chatteraj was guilty of such activities the proper order would have been to give the Company permission to dismiss Chatteraj. In either view, the order of his re-instatement is unjustified.

Only a few words are necessary to dispose of Civil Appeal 337. The Tribunal had considered the case of each workman under the four categories mentioned previously and had refused re-instatement to those against whom it found that the Company had good reasons for dismissal. Mr. Acharya has not been able to satisfy us that the Tribunals below committed any error with regard to the appellants of this appeal. He has pressed the case of two persons Akka Hossain and D. P. Das. Against Akka Hossain there was a charge for slow-down tactics; later he was charged with assaulting the Company's driver. Though he was acquitted in a criminal proceeding, the Tribunal found that the decision of the Company to terminate his services was justified.

D. P. Das absented himself from duty from 5th July, 1953, and was absent without leave for more than 14 days. His case was fully considered by the Tribunal, which found that his services were rightly terminated under the Standing Orders of the Company.

The result of the foregoing discussion is this: Civil Appeal 44, Civil Appeal 45 and Civil Appeal 337 are without merit and must be dismissed. Civil Appeal 336 succeeds in part, and the decision of the Tribunals below is set aside in respect of the following eight men only—(1) Bamapada Mukherji, (2) Chandrasekhar Mukherji, (3) Niaz Hossain, (4) Dhani Ram, (5) Chandrabhan Singh, (6) Raja Singh, (7) Jai Kishore Singh, and (8) Himansu Chatteraj. In all other respects, the decision appealed from will stand. In the peculiar circumstances of this case, the parties will bear their own costs here.

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