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

WITH

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

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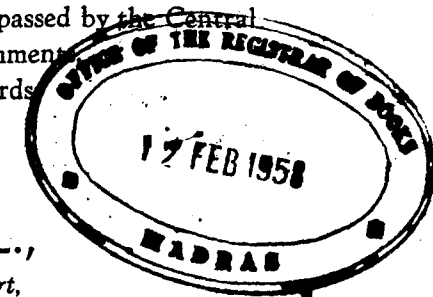
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THE
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Employees' State Insurance (General) Regulations, 1950—Amendments.

*Notification No. Genl./Amend./4. Dated New Delhi, the 11th December, 1957.**

In exercise of the powers conferred by section 97 of the Employees' State Insurance Act, 1948 (34 of 1948), the Employees' State Insurance Corporation hereby makes the following amendments in the Employees' State Insurance (General) Regulations, 1950, the same having been previously published, as required by sub-section (1) of the said section, namely:—

1. In Regulation 10—

(i) in sub-regulation (4)(i) for the words, brackets and letters "clauses (e) and (f) of", the words, brackets and letter "clause (e) of and the proviso to" shall be substituted;

(ii) in sub-regulation (4)(iii), for the word, brackets and letter "clause (g)", the word, brackets and letter "clause (f)" shall be substituted;

(iii) in sub-regulation (5), for the words, brackets and letters "clause (e) or (f) of", the words, brackets and letter "clause (a) of and the proviso to" shall be substituted; and

(iv) in sub-regulation (6)(i) for the words, brackets and letters "clauses (e) or (f) of", the words, brackets and letter "clause (e) of and the proviso to" shall be substituted.

2. After Regulation 15, the following regulations shall be inserted, namely:—

"15-A. *Registration of families.*—On the issue of a Notification under Regulation 95-A specifying the date from which the family of an insured person shall also be entitled to medical benefit under the Act, every insured person who has not furnished the particulars of his family at the time of his registration under the Act, shall furnish to the employer correct particulars in respect of his family in Form 1-A. The employer shall enter the particulars in the Form and obtain the signature or the thumb impression of such person and complete the Form as indicated thereon and send it to the appropriate office on or before the Saturday following the end of the week in which the particulars were furnished.

15-B. *Changes in family.*—An insured person shall intimate all changes in the membership of the family as defined under the Act, to the employer within 15 days of such change having occurred and the employer shall enter such particulars in Form 1-B and shall forward it to the appropriate office on or before the Saturday following the end of the week in which the particulars of the changes were furnished."

3. In Chapter III, for the heading "Cash Benefits", the heading "Benefits" shall be substituted.

4. In Regulation 57—

(i) the following proviso shall be inserted before the existing proviso, namely:—

"Provided that where the insured person, who needs absetention from work on day of examination, states that he has been actually sick or

* Gaz. of India, 28-12-57, Pt. IV, p. 235.

temporarily disabled on a day earlier than the date of his first examination the Insurance Medical Officer may, if he is satisfied as to the truth of the statement that the insured person was unable to present himself for medical examination earlier for reasons beyond his control, certify incapacity for work on the date preceding the date of examination."

(ii) after the word "Provided" in the existing proviso, the word "further" shall be inserted.

5. In the proviso to Regulation 64, after the words "Regional Office", the words "or other office as authorised by the Director General" shall be inserted.

6. After Regulation 76, the following regulation shall be inserted, namely:—

"76-A.—*Submission of claims for periodical payments of permanent disablement benefit.*—An insured person who has been declared to be permanently disabled by a Medical Board or by an Appeal Tribunal shall submit by post or otherwise, to the appropriate Local Office a claim, covering, except in the case of a first payment, a period of one or more complete calendar months in Form 25 for claiming permanent disablement benefit."

7. After Regulation 83, the following regulation shall be inserted, namely:

"83-A.—*Submission of claims for periodical payments of Dependants' Benefit.*—Each dependant whose claim for dependants' benefit is admitted under Regulation 82, shall submit to the appropriate Local Office, by post or otherwise, a claim covering, except in the case of first or a final payment a period of one or more complete calendar months in Form 18-A. Such claim may be made by the legal representative of a beneficiary or in the case of a minor, by his guardian."

8. Regulation 85 shall be omitted.

9. After Regulation 95, the following heading and regulation shall be inserted namely:—

"MEDICAL BENEFITS TO FAMILIES."

"95-A.—*Medical Benefit to families of insured persons.* (1) Medical benefit may be extended to the families of insured persons from such date as the Corporation may in consultation with State Government, notify.

(2) The family of an insured person shall become entitled to medical benefit 13 weeks after he himself first becomes entitled to medical benefit and shall continue to be so entitled so long as the insured person is entitled to receive medical benefit for himself.

(3) The nature and scale of medical benefit to which the family of an insured person shall be entitled shall be such as may be specified by the State Government in consultation with the Corporation from time to time.

(4) The appropriate Regional Office shall arrange to prepare a Family Identity Card for each insured person who is entitled to medical benefit for his family in Form 4-A, and shall send all such Identity Cards to his employer. Such employer shall obtain the signature or thumb impression

of the employee on the Family Identity Card and shall deliver the same to the employee and obtain a receipt therefor.

(5) The provisions of Regulation 18 shall apply to a Family Identity Card in the same way as they apply to the Identity Card."

10. In Regulation 102, for the words "an Insurance Officer, and an Assistant Insurance Commissioner", the words "an Assistant Insurance Commissioner and an Assistant Regional Director" shall be substituted.

11. After Regulation 106, the following regulations shall be inserted, namely:—

"107.—*Declaration by a person claiming permanent disablement or Dependants' Benefit.*—

(1) Each person whose claim for any permanent disablement benefit or dependants' benefit has been admitted shall submit at six-monthly intervals with the claim for December and June every year a declaration in Form 26 attested by such authority or persons and in such manner as may be specified by the Director General.

(2) In the case of claimant for permanent disablement benefit or dependants' benefit, the appropriate Local Office may require personal attendance and due identification of any claimant, other than a person incapacitated by bodily illness or infirmity or a purdah nashin lady, at the appropriate Local office or at any other office of the Corporation provided that such appearance may not be required more frequently than once in every six months."

108.—*Actuarial Present Value of the Periodical Payments.*—(1) For the purposes of sub-section (2) of section 66 of the Act, the actuarial present value of periodical payments shall be determined in accordance with the following sub-regulations—

(2) The actuarial present value of periodical payments of temporary disablement benefit shall be deemed to be the amount actually paid to the insured person on account of such benefit or, where the amount payable is not known, such amount as is determined in any particular case by the Director General or any other officer authorised by him in this behalf.

(3) The actuarial present value of periodical payments of permanent disablement benefit shall be the amount determined by multiplying the daily rate of permanent disablement benefit with the figure, indicated in column 2 of Schedule 1 to these regulations, corresponding to the age last birthday of the insured person on the date from which the permanent disablement benefit becomes payable to him.

(4) The actuarial present value of periodical payments on account of Dependants' Benefit payable to a widow or widows of the deceased insured person shall be the amount determined by multiplying 3/5th of the full rate of benefit as calculated under para 3 of Schedule II to the Act with the figure indicated in column 2 of the Schedule 1 to these regulations, corresponding to the age last birthday of the widow, or where there are more than one widow, the youngest widow on the date of death of the insured person.

(5) Where a widow as well as children are left behind, the actuarial present value of periodical payments on account of Dependants' Benefit payable to legitimate or adopted sons or legitimate unmarried daughters shall be the amount determined by multiplying $\frac{2}{5}$ th of the full rate of benefit as calculated under para 3 of Schedule II to the Act, with the figure indicated in column 2 of Schedule II to these regulations, corresponding to the age last birthday of the youngest son or daughter on the date of death of the insured person (the age of a posthumous child being reckoned as 0 last birthday).

(6) Where no widow is left by the insured person, the actuarial present value of periodical payments to children will be arrived at by adding together:—

(a) the product of $\frac{2}{5}$ th of the full rate as calculated under para 3 of Schedule II to the Act with the factor as indicated in column 2 of Schedule II to these regulations corresponding to the age last birthday of the youngest child on the date of death of the insured person (the age of the posthumous child being reckoned as 0 last birthday);

(b) the product of $\frac{2}{5}$ th of the full rate as calculated under para 3 of Schedule II to the Act with the factor as indicated in column 2 of Schedule II to these regulations corresponding to the age last birthday of the youngest child but one on the date of death of the insured person; and

(c) the product of $\frac{1}{5}$ th of the full rate as calculated under para 3 of Schedule II to the Act with the factor as indicated in column 2 of Schedule II to these regulations corresponding to the age last birthday of the youngest child but two, on the date of death of the insured person.

(7) Where neither a widow nor a child is left the actuarial present value of the payments on account of dependants benefit payable to:—

(a) a parent or grandparent shall be the amount determined by multiplying the daily rate of benefit awarded by the Employees' Insurance Court to such parent or grandparent, with the factor indicated in column 2 of Schedule I to these regulations corresponding to his or her age last birthday on the date of death of the insured person;

(b) any other male or female dependant shall be the amount determined by multiplying the daily rate of benefit awarded by the Employees' Insurance Court to such dependant with the factor indicated in column 3 of Schedule II to these regulations corresponding to his or her age last birthday on the date of death of the insured person.

(8) Where any particular case does not fall under any of the above two categories, the actuarial present value of the periodical payments shall be the amount determined by the Director General or by any other officer authorised by him in this behalf.

12. In Form 1 (Declaration Form):—

(a) after item 10, the following shall be inserted, namely:—

"11. Particulars of members of family—

Serial Number	Name	Date of birth	Relationship with Insured Person	Identification Marks
---------------	------	---------------	----------------------------------	----------------------

(b) after the words "I hereby declare that the above particulars have been given by me and are correct to the best of my knowledge and belief", the words "I also undertake to intimate to the Corporation any changes in the membership of my family within 15 days of such changes having occurred" shall be inserted;

(c) at the end, but before the words "cut here", the following note shall be inserted, namely:

"Note.—According to Section 2, clause (11) of the Employees' State Insurance Act, 1948, 'family' means the spouse and minor legitimate and adopted children dependant upon the insured person and where the insured person is a male, his dependant parents."

13. After Form 1, the following forms shall be inserted, namely:—

FORM 1-A

(REGULATION 15-A)

Family Declaration Form

Name of the insured person.....

Insurance Number.....

Serial Number	Name	Date of birth	Relationship with the insured person	Identification Marks
---------------	------	---------------	--------------------------------------	----------------------

I hereby declare that the particulars above have been given by me and are true to the best of my knowledge and belief. I also undertake to intimate to the Corporation any changes in the membership of my family within 15 days of such changes having occurred.

Signature/Thumb impression of the insured person

Date.....

Countersigned

Date

Designation

.....

.....

.....

Name, Address and Code No. of
employer.

Note :—According to Section 2, clause (11) of the Employees' State Insurance Act, 1948, 'family' means the spouse and minor legitimate and adopted children dependant upon the insured person, and where the insured person is a male, his dependant parents.

FORM 1-B.

(REGULATION 15-B.)

Changes in Family Declaration Form.

Name of the insured person.....
Insurance Number.....

I hereby declare that the person/persons whose particulars are given below has/have now become/ceased to be members of my family :—

Serial Number	Name	Date of change	Date of birth	Relation- ship with the insured person.	Identification Marks (for new entrants).	Reasons for change

My Family Declaration Form may kindly be corrected accordingly.

I hereby declare that the particulars given above are true to the best of my knowledge and belief.

Signature/Thumb impression of the
insured person

Date

Countersigned

Date

Designation

.....

.....

.....

.....

Name, Address and Code No. of
employer

Note :—According to Section 2, clause (11) of the Employees' State Insurance Act, 1948, 'family' means the spouse and minor legitimate and adopted children dependant upon the insured person and where the insured person is a male, his dependant parents."

14. After Form 4, the following Form shall be inserted, namely :—

" FORM 4-A.

(REGULATION 95-A).

Family Identity Card.

Insurance No.

Name of insured person.....

Sex.....

Son of/Daughter of/W/o.....

Address.....

.....

Dispensary.....

Particulars of members of family

Serial Number	Name	Date of birth	Relationship with the insured person	Identification Marks
1.				
2.				
3.				
4.				
5.				
6.				

Signature or Thumb Impression of the insured person.

Prepared by.

15. *In Form 16—*

(i) for entry 9, the following entry shall be substituted, namely :—

" 9 (a) Sex

(b) Age (last birthday)

(c) Occupation of injured person

(d) Local Office to which attached....."

(ii) in entry 12, after item (d), the following item shall be inserted namely :

" (e) Name and address of witnesses—

(1)

.....

.....

.....

(2)

.....

.....

.....

.....

(iii) entry 14 shall be relettered as item (a) of that entry and after the item as so re-lettered, the following shall be inserted, namely :—

“(b) Name of dispensary/panel doctor elected by the injured person.....”.

16. After form 18, the following form shall be inserted, namely :—

“FORM 18-A.

(REGULATION 83-A)

DEPENDANTS' Benefit

Claim Form for periodical Payments.

Name of the deceased insured person.....

Insurance No.

I.....(state relationship with the deceased).....
.....of the above named insured person, being his dependant,
claim Dependants' Benefit for the period from.....to.....

The amount due may be paid to me by money order/in cash at Local Office.....

I declare that I have not married/re-married so far (*).

I certify that I have not attained the age of eighteen years and am continuing my studies in.....
fifteen years.†

Signature or thumb impression of the claimant.

Dated.....

Present address :

(*) Applicable only in case of female dependants.

(†) Applicable only in case of minor dependants'.

Strike out what is not applicable.

Note.—In case of a minor, the guardian should sign the claim on behalf of the minor, and add the following words below his signature”.....
(name of the minor) through.....(name of the guardian) his/
her (relationship).

17. In Form 21, for the words “in the week commencing” the words “on or about”, shall be substituted.

18. In Form 23 the asterisks and words, “The confinement was premature and the week in which it was expected that she would be confined was the week commencing.....” and “*To be struck off unless applicable” shall be omitted.

19. After Form 24, the following forms shall be inserted, namely :—

FORM 25

(REGULATION 76-A)

Claim for permanent Disablement Benefit

I.....s/w/d of.....Insurance No.....
having been declared as permanently disabled by the Medical Board/Appeal
Tribunal claim Permanent Disablement Benefit accordingly, for the period
from.....to.....

The amount due may be paid to me by/in money order/cash at Local Office.....

Signature or Thumb impression.

Present Address

Dated.....

FORM 26.

(REGULATION 107)

Declaration for Dependants' Benefit Permanent Disablement Benefit

Insurance No. of deceased insured person/
permanently disabled person.

I,.....of (Address).....
do hereby solemnly declare :

* (1) that I have not re-married/married.

† (2) that I have not attained the age of eighteen years and am continuing my studies in.....
fifteen years.

Dated.....

Signature or thumb impression of
the dependant.

Certified that.....w/s/d of
is alive this day the.....day of19 ..
and that the declarations made above are true to the best of my knowledge
and belief.

Rubber stamp or seal of the attesting
authority or person.

Signature.

Designation.

Note.—(1) In the case of a minor, the guardian should sign the declaration on behalf of the minor, and add the following words below his

Signature “.....(name of minor).,
through.....(name of the guardian)”.

*(2) This declaration is to be given only by a widow or female dependant of a deceased insured person who is claiming Dependants' Benefit under the Act.

†(3) This declaration is to be given only in respect of a minor dependant.

Strike out what is not applicable."

20. After Form 26, the following Schedules shall be inserted, namely:

"SCHEDULE I

Actuarial present values for permanent Disablement Benefit and for Dependants' Benefit payable for Life or Till Re-Marriage.

(REGULATION 108).

Age last birthday of beneficiary on date from which Permanent Disablement Benefit is payable or on date of insured person's death in case of Dependants' Benefit.	The factor with which daily rate of benefit is to be multiplied.
1.	2.
Below 20 years	...
20 years and above but below 25 years	6,400
25 years and above but below 30 years	6,000
30 years and above but below 35 years	5,600
35 years and above but below 40 years	5,200
40 years and above but below 45 years	4,800
45 years and above but below 50 years	4,400
50 years and above but below 55 years	4,000
55 years and above but below 60 years	3,600
60 years and above but below 65 years	3,200
65 years and above but below 70 years	2,800
70 years and above	2,300
	1,800

SCHEDULE II

Actuarial present value of periodical payments limited to age 18 or 15.

(REGULATION 108).

Age last birthday on date of death of the insured person.	The factor with which the proportionate full rate of benefit is to be multiplied if payable to the sons or daughters.	The factor with which daily rate of benefit awarded finally by the Court is to be multiplied if payable to minor dependants other than the sons or daughters.
1.	2.	3.
0	4,900	
1	4,700	4,275
2	4,500	4,050
3	4,275	3,825
4	4,050	3,600
5	3,825	3,350
6	3,600	3,100
7	3,350	2,825
8	3,100	2,550
		2,275

9	2,825	1,975
10	2,550	1,675
11	2,275	1,375
12	1,975	1,050
13	1,675	700
14	1,375	350
15	1,050	...
16	700	...
17	350	...

Conciliation Boards in U.P.—Government Orders.

I

*Notification No. 738 (ST)/XXXVI-A—112 (ST)-1957 dated Lucknow, December 31, 1957**

Whereas it is necessary in the opinion of the State Government so to do for securing the public safety and convenience and the maintenance of public order and supplies and services essential to the life of the community, and for maintaining employment;

Now, therefore, in exercise of the powers conferred by clause (d) of 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. *Definitions.*—In this Order, unless there is anything repugnant in the subject or context,—

(a) "Act" means the U. P. Industrial Disputes Act, 1947;

(b) "Chairman" means the Chairman of a Conciliation Board;

(c) "Form" means a form given in the Schedule to this order; and

(d) "Labour Commissioner" means the Labour Commissioner, Uttar Pradesh.

2. *Reference of disputes to Conciliation Boards.*—(1) An application for the settlement of an industrial dispute may be made before the Conciliation Officer of the area concerned in Form I—

(i) in the case of a workman—

(a) subject to the provisions of sub-section (3) of section 6-I, by an officer of a union of which he is a member, or by an officer of a Federation of Unions to which such union is affiliated; or

(b) where no union of workmen exists by five representatives of the workmen employed in a concern or industry, duly elected in this behalf by a majority of the workmen employed in that concern or industry at a meeting held for the purpose; and

(ii) in the case of an employer—

* U. P. Gaz. Extry., 31-12-57, p. 1.

- (a) by the employer himself ; or
- (b) by an officer of a union or association of employers of which the employer is a member ; or
- (c) by an officer of a Federation of Unions or associations of employers, to which the union or association referred to in clause (b) above is affiliated ; or

(d) where the employer is an incorporated company or other body corporate by the agent, manager or other principal officer of the corporation:

Provided that no such application 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 Conciliation Board, a Labour Court or a Tribunal and finally settled ;

Provided further that, notwithstanding anything contained in the foregoing proviso, the Conciliation Officer may entertain an application, if he is satisfied that the applicant had sufficient cause for not making it earlier:

Provided also that, notwithstanding anything hereinbefore contained, the Labour Commissioner or the State Government may refer a dispute to any Conciliation Officer for settlement by a Conciliation Board.

(2) Where a Conciliation Officer refuses to entertain an application, he shall record in writing his reasons for such refusal and communicate them to the applicant who may, within one month of the receipt thereof, represent against such order to the Labour Commissioner at Kanpur whose decision in the matter shall be final.

3. *Constitution and composition of Conciliation Boards.*—Where an industrial dispute exists or is apprehended and an application has been duly made and entertained, or where a reference has been made to him by the Labour Commissioner or the State Government under clause 2 above, the Conciliation Officer shall constitute a Board and refer the dispute to it for promoting the settlement of such dispute. The Board shall consist of—

- (i) The Conciliation Officer, who shall be its Chairman, and
- (ii) Two members—one to represent each of the parties to the dispute—who shall be appointed by the Conciliation Officer on the recommendation of each party :

Provided that if any party fails to make a recommendation in this behalf, within such time as may be specified by the Conciliation Officer, or if the member representing any party fails to attend any meeting or proceeding of the Board, the Chairman shall be competent to conduct the business of the Board notwithstanding the absence of such members.

4. *Functions of Boards.*—When a dispute is referred to a Board it shall be its duty to endeavour to bring about a settlement of the dispute, and for this purpose the Board shall, in such manner as it thinks fit, and without delay, investigate the dispute and all matters affecting the merits and a just settlement thereof, and may do all such things as it thinks fit for the purpose of inducing the parties to come to an amicable settlement.

5. *Transaction of business.*—No business shall be transacted at any meeting of a Board in the absence of the Chairman or against his consent or any direction given by him.

6. *Place and time of hearing.*—The sittings of a Board shall be held at such times and places as the Chairman may fix and the Chairman shall inform the parties of the same in such manner as he thinks fit.

7. *Proceedings before a Board.*—The proceedings before a Board shall be held in public :

Provided that the Board may, at any stage, direct that any witness shall be examined or its proceedings shall be held in camera.

8. *Inclusion of other undertakings.*—(1) Where a Board is of the opinion that any question involved in any dispute or matter referred to it affects or is likely to affect more than one workman in the same concern or industry or business, or more than one concern in the same industry or business, situated within the jurisdiction of the Board, it shall implead in those proceedings every such workman or concern who is or is likely to be affected or where there is a Union (an officer of which is competent to represent the workmen under section 6-I of the Act and the rules made thereunder) covering the majority of such concern or workmen, such trade union :

Provided that if the question involved affects or is likely to affect concerns in the same industry or business situated elsewhere in the State, the Board shall, after briefly recording the reasons for so doing, refer such question to the Labour Commissioner, who shall then decide to which Conciliation Officer it should be referred, and the Conciliation Officer so indicated shall, as soon as possible after the receipt of a reference in this behalf from the Labour Commissioner, constitute a Board and institute proceedings for the settlement of the dispute in accordance with the provisions of this order.

9. *Powers to refer additional matters to a Board for settlement.*—Where any dispute or matter is pending before a Board, the State Government may, by order in writing, refer any other dispute or matter that may arise between the same parties, to the same Board for settlement.

10. *Powers to withdraw references made to a Board.*—The State Government may, by order in writing and for reasons stated therein, withdraw at any stage any proceeding under this Order pending before a Board or transfer a proceeding from one Board to another Board, as the case may be, for the disposal of the proceeding, and the Board to which the proceeding is so transferred may subject to any special directions in the order of transfer, proceed either *de novo* or from the stage at which it was so transferred.

11. *Members of Boards not entitled to allowances.*—No travelling or daily allowances shall be admissible to a member of a Board in respect of any journey performed or time spent in connexion with any proceedings under this Order.

12. *Payment of expenses to witnesses.*—(1) Every person, who is summoned and duly attends or otherwise appears as a witness before a

Board, 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 Board may determine.

(2) A Board, when summoning a witness at the request of a party may require the party to deposit expenses of the witness in advance.

13. *Election of workers.*—Every employer and every owner and occupier of a factory or of any undertaking shall allow meetings, of workers of his undertaking or factory for electing their representatives, for the purposes of clause 2(1) (i) (b) above:

Provided that such employer or owner or occupier shall have full discretion as regards the exact place or places where such meeting or meetings may be held:

Provided further that such employer or owner or occupier may regulate the time of such meeting or meetings in such a way that there is the least disturbance to the working of the undertaking:

Provided also that the time and place so fixed shall not deprive any worker or workers of the whole or part of the rest period to which they are entitled.

14. *Leave to workmen to attend meetings of Boards, etc.*—Every employer, owner or occupier of any undertaking shall permit at least two workmen at any time to be absent for such period as may be necessary for prosecuting or conducting an enquiry under the provisions of this Order concerning his undertaking, before a Board. If leave with wages is due to such workmen, the absence shall be treated as leave with wages. If no leave with wages is due, the absence shall be treated as leave without wages.

15. *Date of commencement and operation of the Order.*—This Order shall come into force at once and shall remain in force for a period of one year, with effect from the date of the Order, unless withdrawn or cancelled earlier.

SCHEDULE

FORM I

[CLAUSE 2(1)]

Form of application to a Conciliation Officer for reference of an Industrial Dispute to a Conciliation Board for settlement

Before the Regional Conciliation Officer.....

Applicant:

Full name of the employer, union of workmen or registered association or union of employers or registered federation of associations or trade unions of employers or workmen making the application. (In the case of a union the No. and date of registration and the industries for which it has been registered, should also be mentioned.)

Full postal address :

versus.

Opposite party:

Full name of the employer, registered trade union of workmen or registered association or trade union of employers or registered federation of associations or trade unions of employers or workmen.

Full postal address

In the matter of an industrial dispute between.....

The applicant respectfully submits that—

(1) an industrial dispute exists between the parties mentioned above in respect of the matters specified herein below:

(i)

(ii)

(iii)

(iv)

(v)

(2) that a demand was made on the employers/workmen for settlement thereof onday of(month) in writing/by approaching the management/the workmen/the registered trade union of the concern through its Secretary or President;

(3) that the representatives of the employers/workmen/registered trade union of the workmen refused in writing/verbally to settle the dispute/gave no reply;

(4) that a dispute/difference has accordingly arisen between the parties regarding the matters mentioned in paragraph (1) above;

(5) that the actual date on which the cause of action in respect of the dispute specified above arose is.....day of.....month.....year;

(6) that the time lapsing between the date on which the cause of action arose and the date of this application is.....years.....months.....days.

(7) that the circumstances responsible for this lapse of time between the date on which cause of action arose and the date of making this application are as follows:

.....
.....
.....
(8) that the matters of dispute specified herein above have not previously been the subject of proceedings before a Conciliation Board, a Labour Court or a Tribunal or any other authority and finally settled;

(9) that the applicant has not sought relief in respect of the matter of dispute specified herein above in respect of which this application has been made by moving any other authority in any other law (such as Factories Act, Payment of Wages Act and U.P. Shops and Commercial Establishments Act).

The applicant, therefore, prays that a Conciliation Board be constituted forthwith for settlement of the matters of dispute specified herein to enable him to obtain the following relief:

1.
 2.
 3.
- Date of making the application.
- Signature of the applicant with name and designation.

The applicant does solemnly hereby declare that the statements made in the preceding paragraphs are true to the best of my knowledge, belief and information.

This verification is signed at on day of 195

Signature of the applicant.

II

Notification No. 7688 (ST)/XXXVI-A-135(ST)-1955 dated December 31, 1957.

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

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

And whereas the U. P. Industrial Disputes Act, 1947, has been amended by the U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (U. P. Act No. 1 of 1957);

And whereas the said Order of July 14, 1954, was last extended in Notification No. 5901(ST)/XXXVI-A-134 (ST)-1955, dated September 27, 1957, under sub-section (1) of section 17 of the U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 and is due to expire on December 31, 1957;

And whereas the State Government is of the opinion that for the purpose of removing certain difficulties and for securing the public safety and convenience and the maintenance of public order and supplies and services essential to the life of the community and for maintaining employment, it is necessary that the said order of July 14, 1954, as hereinafter specified, should continue to be operative till February 28, 1958;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the Governor is pleased to order that G.O. No. U-464(LL)/XXXVI-B-257(LL)-1954, dated July 14, 1954, shall so far as the disputes pending before Conciliation Boards on December 31, 1957 are concerned, continue to be operative till February 28, 1958, and, under section 19 of the U. P. Industrial Disputes Act, 1947, to further direct that the notice of this Order shall be given by publication in the official Gazette.

U. P. Industrial Disputes Rules, 1957—Amendments.

Notification No. 7818(ST)/XXXVI-A-112(ST)-57 dated 31st December, 1957.

In exercise of the powers conferred by section 23 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 amendments in the U. P. Industrial Disputes Rules, 1957, published with Government notification No. 1465(ST)/XXXVI-A-102(ST)-57, dated May 20, 1957, to give effect to the provisions of the Act:

AMENDMENTS.

1. Sub-rules (4) and (5) of rule 5 shall be deleted.

2. After rule 5 the following shall be added as rules 5-A and 5-B:

"5-A. *Memorandum of settlement before a Board.*—(1) In any case where a Board is successful in bringing about an amicable settlement between the parties, it shall prepare a memorandum in Form I-A, stating the terms of settlement arrived at, and the Chairman of the Board shall send copies thereof to the Sachiv to Government, Uttar Pradesh, Labour (A) Department, Lucknow, the Labour Commissioner and the parties concerned within seven days (excluding holidays but not annual vacation observed by the courts subordinate to the High Court) of the close of the proceedings.

(2) Where no amicable settlement can be reached on any of the issues the Chairman of the Board shall send to the Sachiv to Government, Uttar Pradesh, Labour (A) Department, Lucknow and the Labour Commissioner, a full report setting forth the steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about an amicable settlement thereof.

(3) The report under sub-rule (2) above shall be submitted by the Chairman of the Board within thirty days (excluding holidays but not annual vacation observed by courts subordinate to the High Court) of the date on which the reference was made to the Board:

Provided that the State Government may extend the said period from time to time.

(4) The memorandum under sub-rule (1) or the report under sub-rule (2) above shall be signed by the Chairman of the Board and such members as may be present;

Provided that the memorandum under sub-rule (1) shall also be signed by the parties to the dispute or their authorised representatives:

Provided further that nothing in this rule shall be deemed to prevent any member of the Board from submitting a dissenting report.

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

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

"5-B. *Procedure of Boards.*—A Board shall, subject to such general or special instructions as may be issued by the State Government in this behalf from time to time, follow such procedure as it thinks fit."

3. In rules 10 and 11, between the letter and words "a" and "Labour Court" the word "Board" shall be inserted.

4. After rule 40 (1) (i) add the following clause (c):

"Where there is no union of workmen, any representative duly nominated by the workmen who are entitled to make an application before a Conciliation Board under any orders issued by Government".

5. After Form I, the following shall be added as Form I-A:

FORM I-A.

(Rule 5-A)

Memorandum of settlement

Names and addresses of parties.....

Representing employer (s).....

Representing workmen.....

SHORT RECITAL OF CASE.

Terms of Agreement.

*Signature of parties
or their representatives.*

(Employers)

(Workmen)

Witnesses:

(1).....

(2).....

Witnesses:

(1).....

(2).....

Place and date.....

*Signature of Chairman,
Conciliation Board.*

Employees' State Insurance—Certain exemptions Continued.

*Notification S.R.O. 140, dated New Delhi, 2nd January, 1958**

In exercise of the powers conferred by section 73-A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts for a further period of one year with effect from the 22nd January, 1958, from the payment of the employer's special contribution leviable under Chapter V-A of the said Act, every factory wherein ten or more persons are not employed, or were not employed at any time during the preceding twelve months, by the principal employer directly or by or through an immediate employer, even though twenty or more persons are or were working in the premises.

Industrial Disputes (Central) Rules, 1957—Amendments.

*Notification S.R.O. 141, dated New Delhi, 31st December, 1957**

In exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby makes the following further amendments in the Industrial Disputes (Central) Rules, 1957, the same having been previously published as required by sub-section (1) of the said section, namely:—

AMENDMENTS.

1. After rule 10 of the said rules, the following rule shall be inserted, namely:—

"10-A.—*Parties to submit statements.*—(1) The party representing workmen involved in an industrial dispute in a public utility service shall forward a statement of its demands along with a copy of the notice prescribed under rule 71 to the Conciliation Officer (Central), concerned. The statement shall be accompanied by as many spare copies thereof as there are opposite parties.

(2) The party representing workmen involved in a dispute in a non-public utility service, shall forward a statement of its demands to the Conciliation Officer (Central) concerned before such date as may be specified by him for commencing conciliation proceedings. The statement shall be accompanied by as many spare copies thereof as there are opposite parties.

(3) The statement of demands submitted by the party representing the workmen under sub-rule (1) or sub-rule (2) shall be transmitted to the Central Government by the Conciliation Officer (Central) concerned with his report under sub-section (4) of section 12.

(4) Where an employer, or a party representing workmen, applies to the Central Government for reference of an industrial dispute to a Labour Court, Tribunal or National Tribunal, such application shall be accompanied by a statement of the demands or points in dispute, with as many spare copies thereof as there are opposite parties.

(5) The statement referred to in sub-rules (1), (2) and (4) and every copy thereof required under the said sub-rules to accompany the said

*Gaz. of India, 11-1-58, Pt. II, Section 3, p. 101.

statement shall be duly signed, on behalf of the party, by the person making it.

10-B.—*Proceedings before the Labour Court, Tribunal or National Tribunal.*—(1) Where the Central Government refers any case for adjudication to a Labour Court, Tribunal or National Tribunal, it shall send to the Labour Court, Tribunal or National Tribunal concerned and to the opposite party concerned in the industrial dispute, a copy of every such order of reference together with a copy of the statement received by that Government under sub-rule (3) or sub-rule (4) of rule 10A.

(2) Within two weeks of the receipt of the statement referred to in sub-rule (1), the opposite party shall file its rejoinder with the Labour Court, Tribunal or National Tribunal, as the case may be, and simultaneously forward a copy thereof to the other party.

Provided that such rejoinder shall relate only to such of the issues as are included in the order for reference.

Provided further that where the Labour Court, Tribunal or National Tribunal, as the case may be, considers it necessary, it may, extend the time-limit for the filing of rejoinder by any party.

(3) The Labour Court, Tribunal or National Tribunal, as the case may be, shall ordinarily fix the date for the first hearing of the dispute within six weeks of the date on which it was referred for adjudication:

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, may, for reasons to be recorded in writing, fix a later date for the first hearing of the dispute.

(4) The hearing shall ordinarily be continued from day to day and arguments shall follow immediately after the closing of evidence.

(5) The Labour Court, Tribunal or National Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding a week at a time, nor more than three adjournments in all at the instance of any one of the parties to the dispute.

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, may, for reasons to be recorded in writing, grant an adjournment exceeding a week or more than three adjournments at the instance of any one of the parties to the dispute."

2. In rule 13, for the words "The sittings of a Board, Court, Labour Court, Tribunal or National Tribunal or of an Arbitrator", the words "Subject to the provisions contained in rule 10-A and 10-B, the sittings of a Board, Court, Labour Court, Tribunal or National Tribunal or of an Arbitrator" shall be substituted.

Rules for the Maintenance of Records by Industrial Tribunal/Labour Courts

Notification No. 9164/10104-C-Lab-57/70955 dated the 12th August, 1957*

With reference to Punjab Government notification No. 12968-LP-56/7716, dated the 26th October, 1956, and in exercise of the powers conferred by sub-section (1) of section 38 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Punjab is pleased to make the following rules relating to the maintenance of records by the Industrial Tribunal/Labour Court constituted under the said Act:—

1. Every Industrial Tribunal/Labour Court shall maintain the following records in respect of cases falling under the said Act—

(1) An Order Sheet in which shall be recorded, chronologically—

(a) the date on which a dispute is received and registered; and

(b) every subsequent proceeding in the case, including production of documents, examination of witnesses (with names), hearing of arguments, recording of terms of compromise, and orders passed and decisions given.

(2) An Index in which should be entered every paper brought upon the record, arranged according to date of filing.

Note.—Documents admitted in evidence should be kept on a separate file with an Index of its own. No document once admitted should be returned to a party until the period fixed for appeal by the Act has expired and if any document, after being admitted, is returned to a party, a certificate thereof shall be kept in its place and an undertaking, in writing, taken from the party concerned that the original will be produced if and when required. A note about the return shall at the same time be made against the document in the Index.

(3) The order or petition of reference with its accompaniments, if any.

(4) Any other document added to the record during the pendency of the case.

(5) The award or decision of the Tribunal/Labour Court.

(6) The orders and/or decision of the Appellate Tribunal/National Tribunal (if any).

Note.—The documents mentioned in items (3) to (6) above shall be paginated and the page numbers entered against each item in the Index mentioned in item (2) above.

(7) A case Register in Form No. 1 appended to these rules in respect of the references by Government.

(8) A Register of applications under sections 33 and 33-A of the Act and other applications filed before the Tribunal/Labour Court.

(9) A Register in Form No. 3, appended to these rules in respect of applications for copies.

*Punjab Govt. Gaz., 23-8-57, Pt. I, p. 1428.

(10) A Register in Form No. 4 appended to these rules in respect of all fees affixed to or paid in respect of documents filed before the Tribunal/Labour Court.

2. The papers referred to in items (3) to (5) of rule 1, shall be arranged in three files as follows:—

File A (to be preserved permanently)

- (i) the reference or application out of which the case arose ;
- (ii) the Order Sheet ;
- (iii) written statements and affidavits filed by parties ;
- (iv) record of depositions of witnesses ;
- (v) petitions to record compromise and orders passed on them ;
- (vi) petitions under the Act, including petitions under sections 33, 33-A ;
- (vii) list of witnesses examined ;
- (viii) awards ;
- (ix) copies of orders and decisions, if any, of the Appellate Tribunal/National Tribunal ;
- (x) documents exhibited ;
- (xi) index.

File B (to be preserved for six years from final order, original, appellate or revisional)

- (i) memoranda of appearance ;
- (ii) applications for adjournments and orders thereon ;
- (iii) delivery of interrogatories and copy applications.

File C (to be preserved for three years from final orders, original, appellate or revisional)

- (i) copies of notices served on parties by Tribunal/Labour Court with acknowledgements, refusal, etc.
- (ii) correspondence from and between parties and witnesses ;
- (iii) copies of intimation or notices given by one party to another ;
- (iv) documents not exhibited ;
- (v) served or unserved summons with endorsements thereon.
- (vi) all other papers not included in Files A and B.

FORM NO. 1
CASE REGISTER
Particulars of Appeal, if any

Serial No.	Date of Receipt	Date of registration	Particulars of Government notification publishing the Reference in the Gazette	Industry	Particulars of parties	Claim	Date of Filing of Written Statement	Particulars of Interim Reports or Awards sent to Government with dates	Particulars of Government notification publishing Interim Reports or Awards	Date of final Award	Particulars of Government notification publishing final Award without modification	Particulars of Government notification rejecting or modifying Award with grounds for rejection or modification	No. and year	Intimation and Regn. for records when received	Records when sent	Date of Appellate Tribunal's/National Tribunal's decision and result	Papers when received back	Particulars of Stay Orders, if any	Remarks
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FORM NO. 2
REGISTER OF APPLICATIONS

Serial No.	Date of receipt	Date of registration	Under what Statute and section	Particulars of case out of which the application arises	Particulars of parties	Date of disposal	No. and year	Intimation and Regn. for papers and when received	Papers when sent	Date of Appellate Tribunal's/National Tribunal's decision and result	Papers when received back	Particulars of Stay Orders, if any	Remarks
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FORM NO. 3
REGISTER OF APPLICATIONS FOR COPIES

Serial No.	Date of application	Case No.	Particulars of documents (with dates) to be copied	ESTIMATED COSTS				Amount of actual costs	Amount and date of refund	Date when copy made ready	Receipt of applicant for copy and amount of refund with date	REMARKS
				Amount	When deposited	When notified	How deposited (by folios or in cash)					

FORM NO. 4
REGISTER OF FEES

Serial No.	Date	By whom deposited	If copying fees, Serial No. in Register of applications for copies	Particulars of cases and documents in respect of which received	Amount	How received (in cash, in folios or by Court Fee Stamps)	Copying fee for unattested copies paid to Copying Clerk	Particulars of Chalan or Chalan by which deposited in Treasury	REMARKS
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Sugar Industry declared Public Utility Service in U. P.

Notification No. 632 (ST)/XXXVI-A—32 (ST)-52, dated 9th August, 1957.*

Whereas the Governor of Uttar Pradesh is satisfied that public interest so requires :

Now, therefore, in exercise of the powers conferred by clause (iv) of sub-section (g) of section 2 of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947) and in continuation of Government notification No. 630(ST)/XXXVI-A—32(ST)-52, dated January 25, 1957, the Governor is pleased to declare the sugar industry and every undertaking connected with the manufacture or distribution of sugar to be a public utility service for the purposes of the said Act for a further period of six months with effect from August 10, 1957.

The Governor is further pleased to direct with reference to section 19 of the U. P. Industrial Disputes Act, 1947, that a notice of this order shall be given by publication in the official *Gazette*.

Air Transport Services declared Public Utility Service.

(G. O. Ms. No. 4088, Industries, Labour and Co-operation, 12th December, 1957.)†

Whereas the Air Transport Services in the State of Madras have been declared to be a public utility service for the purposes of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), for a period of six months up to and inclusive of the 22nd December, 1957, in Industries, Labour and Co-operation Department Notification No. 451, dated the 10th June 1955, published at page 910 of Part I of the *Fort St. George Gazette*, dated the 22nd June, 1955, read with notification S. R. O. No. A-382 of 1957 at page 1064 of the *Fort St. George Gazette*, dated the 19th June, 1957.

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

Now, therefore, in exercise of the powers conferred by section 2(n)(vi) read with the proviso thereto of the said Act, the Governor of Madras hereby directs that the period so specified be extended for a further period of six months commencing on and from the 23rd December, 1957.

Minimum Wages Act—Exemptions.

(G. O. Ms. No. 3315, Industries, Labour and Co-operation, 10th October, 1957.)‡

In exercise of the powers conferred by section 26(2) of the Minimum Wages Act, 1948, (Central Act XI of 1948), the Governor of Madras hereby exempts the hospital and medical staff, domestic servants, nursery men,

*U. P. Gaz., 17-8-57, Pt. I, p. 851.

†Fort St. Geo. Gaz., 18-12-57, Pt. I., p-2224.

watchmen, cattle-keepers, scavengers and sweepers employed in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee from the provisions of sections 13 and 14 of the said Act, for a period of one year.

Employees' State Insurance—Exemptions.

Notification No. 6839(ST)/XXXVI-A—418-57, dated 16th December, 1957.*

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (XXXVI of 1948), the Governor of Uttar Pradesh is pleased to exempt the factories, engaged in Wool Pressing in the State of Uttar Pradesh, either with or without cotton pressing and ginning, to the exclusion of other manufacturing processes, from the operation of the said Act, except Chapter V-A thereof, for a period of one year, with effect from January 1, 1958.

Employees' State Insurance—Contribution and Benefit Periods.

Notification No. Ins. 1-2(I)-1/56 dated New Delhi, the 9th December, 1957**

(i) In exercise of the powers conferred by sub-regulation (1) of Regulation 5 of the Employees' State Insurance (General) Regulations, 1950, I hereby determine that in the case of insured persons in the areas specified in the Schedule below who are allotted Sets, A, B or C of the contribution and benefit periods, the first contribution and first benefit period shall begin and end as indicated in the following table:—

Set	First contribution period		First benefit period	
	Begins on midnight of	Ends on mid-night of	Begins on midnight of	Ends on mid-night of
A	14-12-1957	26-7-1958	13-9-1958	25-4-1959
B	14-12-1957	29-3-1958	13-9-1958	27-12-1958
C	14-12-1957	31-5-1958	13-9-1958	28-2-1959

(ii) In pursuance of the proviso to Section 47 of the Employees' State Insurance Act, 1948 (34 of 1948), the condition regarding minimum number of twelve contributions payable during a contribution period of entitlement to sickness benefit during the corresponding benefit period is hereby waived for the first contribution period only in respect of the insured persons in the areas specified in the Schedule below who are allotted Set B and for whom the first contribution period begins on 14th December, 1957, and ends on 29th March, 1958.

*U. P. Gaz. 21-12-57, Pt. I, p. 1319.

**Gaz. of India, 21-12-57, Pt. IV, p. 231.

Schedule—

- The areas within :—
 - the limits of the Patna Municipal Corporation;
 - the municipal limits and cantonment limits of Dinapore and
 - the revenue village of Phulwarisharif in Mauza Phulwari, Thana Phulwari No. 35 in the District of Patna.
- The areas within the municipal limits of Monghyr.
- The areas within the municipal limits of Katihar in the District of Purnea.
- The areas within the municipal limits of Samastipur and the Revenue Mauza of Muktapur in the Revenue Thana Warisnagar (Thana No. 120) in the District of Darbhanga.

Standing Orders for Sugar Industry in U.P. continued in force

I

Notification No. 6380(ST)/XXXVI-A—73(ST)-54 dated October 31, 1957*

Whereas in the opinion of the Governor of Uttar Pradesh, it is necessary, so to do, for securing public convenience, for maintaining 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), and in continuation of Government notification no. 6102(ST)(ii)/XXXVI-A—73(ST)-54, dated November 10, 1956, the Governor is pleased to order that Government notification no. 6507(ST)/XXXVI-A—73(ST)-54, dated November 12, 1955, enforcing the Standing Orders, governing the conditions of employment of workmen in Vacuum-pan Sugar Factories of Uttar Pradesh shall remain in force for a further period of one year with effect from November 12, 1957.

II

Notification No. 6381(ST)/XXXVI-A—73(ST)-54 dated October 31, 1957*

Whereas in the opinion of the Governor of Uttar Pradesh, it is necessary, so to do, for securing public convenience, for maintaining 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, 1957 (U.P. Act no. XXVIII of 1947), the Governor is pleased to order that Government notification no. 6102(ST) XXXVI-A—73(ST)-54, dated November 10, 1956, prohibiting the retrenchment of permanent workmen of Vacuum-pan Sugar Factories in Uttar Pradesh shall remain in force for a further period of one year with effect from November 12, 1957.

*U.P. Gaz. 9-11-57, Pt. I, p. 1458.

ANDHRA PRADESH LABOUR ADVISORY BOARD RULES.

[G.O. Ms. No. 1075, Social Welfare and Labour, 24th October, 1957.]*

Whereas it is expedient to constitute a State Labour Advisory Board consisting of representatives of Government, employers and employees to advise Government on matters pertaining to the broad principles of labour policy, industrial relations and labour legislation, the following rules are hereby framed :

1. *Short title and commencement.*—These rules may be called the Andhra Pradesh Labour Advisory Board Rules and shall come into force from the date of their publication in the *Andhra Pradesh Gazette*.

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

(a) 'Board' means the State Labour Advisory Board constituted under rule 3 ;

(b) 'Member' means a member of the Board ;

(c) 'Secretary' means Secretary of the Board appointed under sub-rule (3) of rule 3 ;

(d) 'Chairman' means the *ex officio* Chairman of the Board.

3. *Formation of Labour Advisory Board.*—(1) The Government shall, by notification in the *Andhra Pradesh Gazette*, constitute a Labour Advisory Board with not more than 24 official and non-official members. As far as possible representation of officials and non-officials shall be on an equal basis.

(2) The Labour Minister shall be the *ex officio* Chairman of the Board.

(3) The Commissioner of Labour shall be the official member as well as the Secretary of the Board.

4. *The term of office.*—The term of office of each non-official member shall be for a period of one year but he shall be eligible for re-nomination on the expiry of that term.

5. *Nomination of non-official members.*—The Government in the Labour Department shall, in consultation with the concerned organisations, nominate representatives of employers and employees as non-official members of the Board.

6. *Cessation of Membership.*—(1) It shall be the duty of each member, unless prevented by a valid reason, to attend every meeting of the Board. In the event of a member being unable to attend the meeting, he shall inform the Secretary the reasons thereof or,

(2) if a non-official member absents himself for three consecutive meetings of the Board, he shall cease to be a member of the Board.

7. *Allowances of members.*—The Board will be a First Class Board and the members will be eligible for travelling allowance at the rates prescribed for similar Boards/Committees under the Andhra Pradesh Travelling Allowance Rules.

*Andhra Pradesh Gaz., 14-11-57, Rules Suppl. to Pt. I, p. 158.

8. *Functions of the Board.*—The functions of the Board shall be :

(a) to advise Government in respect of the broad principles of policy regarding labour legislation, labour welfare and suggest measures for increase in production;

(b) to help them in the establishment of harmonious relations between the employer and the employees and to advise on such other matters connected with labour as the Labour Department may refer to it;

(c) to advise Government in respect of such matters as they may refer to the Board for consideration ;

(d) to consider and express its opinion in respect of any recommendation or report made by the sub-Committee before the recommendations or the report is submitted to the Labour Minister.

9. *Session of the Board and Proceedings during the meetings.*—(1) The Board shall meet at least once in every four months, unless the Chairman, after taking into consideration the nature and amount of work, directs otherwise, provided that there shall not be less than two sessions of the Board during one year.

(2) The Chairman may, whenever it is deemed necessary call a special session or convene a special meeting of the Board on such dates as may be fixed by him.

(3) Meetings of the Board shall ordinarily be held at Hyderabad at such place, date and time as may be fixed by the Chairman.

(4) Unless the Board decides otherwise at one of its meetings regarding session or meeting, the Secretary shall give at least one week's notice before the date of the commencement of the session or the meeting and send the notice together with the agenda and the memoranda to the members :

Provided that in the cases where the Chairman calls a special session or special meeting of the Board, under sub-rule (2) it shall be sufficient if notice of such session or meeting is given to members in such manner as the Chairman may consider fit having regard to the special circumstances.

10. *Agenda and suggestions from members.*—(1) The agenda of a meeting of the Board shall be fixed with the approval of the Chairman.

(2) Any suggestions in respect of the agenda may be made by the members.

(3) Suggestions regarding the agenda shall be forwarded to the Secretary at any time who shall submit them to the Chairman for his approval. Suggestions received at a time when there are only two weeks or less than two weeks' time for the holding of the session or the meeting may not be included in the agenda of that session or meeting and may be reserved for the next session of the Board.

(4) Suggestions for the agenda shall be accompanied by brief memoranda.

11. *Inclusion of items in the agenda.*—(1) The Chairman, notwithstanding anything contained in these rules, may include at any time before the

commencement of the session of the Board any subject which may require urgent consideration by the Board.

(2) If any item is included in the agenda under sub-rule (1), the Secretary shall inform the members about it and also forward a memorandum on the subject so as to reach the members at least two days prior to the date on which the question is scheduled to be considered by the Board.

12. Despatch of necessary papers together with notices.—Save in respect of any notice of such special session or meeting which is being held without giving two week's prior notice, notices to members for all other sessions or meetings shall be accompanied by such papers relating to the subjects to be considered by the sessions or meetings as the Chairman may consider necessary for the information of the members. When documents or any information is supplied to the members, such documents or information shall be kept confidential if request has been made to treat it as such.

13. Request from members for the supply of any documents and information.—At the request of the members the Chairman may permit them to see any document or supply them with information relating to a subject referred to the Board which would assist them in the formation and expression of opinion on that matter.

14. Quorum.—(1) Subject to the provisions of sub-rule (2) the business of a meeting or session shall not be continued unless 1/3 of the members are present.

(2) When a special session or meeting is held without giving two weeks' prior notice no restriction as to quorum shall apply, provided that all members have been informed, in the manner that the Chairman deems suitable, at least twenty-four hours before the holding of the meeting.

15. Powers of the Chairman.—(1) If, at a meeting of the Board, any one of these rules becomes the subject of discussion and interpretation of that rule is required, or if a decision is necessary on account of any discussion or objection raised in the course of the meeting in respect of the procedure, the decision of the Chairman in the matter shall be final.

(2) The Chairman may take part in the discussions in order to induce the greatest possible measure of common agreement among members and shall establish the final opinion of the Board in the light of the views expressed by the members and the general trend of the discussion.

16. Record of the proceedings of the meeting.—It shall be the duty of the Secretary of the Board to record the minutes of each meeting of the Board, in such a way as to give a complete account of the discussions and of the common agreement arrived at on the matter under discussion and shall also indicate the reasons why any member or group of members dissented from that common agreement.

17. Confirmation of the proceedings of the meeting.—The Secretary of the Board shall circulate copies of the minutes of the meeting thus recorded to the members for their approval before the next meeting of the Board.

18. Appointment of Sub-Committees.—(1) The Board may, having regard to the specialised nature of a particular matter referred to it or of a method on which the Labour Minister considers desirable to have an expert opinion or on a move being made by any eight members of the Board, direct that a Sub-Committee of experts shall be formed and that the matter shall be referred to it for its opinion.

(2) The Sub-Committee constituted under sub-rule (1) shall consist of not more than ten members including its Chairman and Secretary.

(3) The Chairman and Secretary of the Sub-Committee shall be appointed by the Minister for Labour.

19. Supply of important documents to the members of the Sub-Committee.—(1) The Chairman of the Board shall select the important documents and give them to the members of the Sub-Committee to enable them to form their views and express their opinion. All the documents so provided shall be kept confidential by every member if a request has been made to treat them as such.

(2) The Chairman shall decide whether a particular piece of document shall be given to a member of the Sub-Committee if he applies for it and the decision of the Chairman shall be final in the matter.

20. Duties and allowances of members of Sub-Committee.—It shall be the duty of each member of the Sub-Committee unless prevented by valid reasons, to attend every meeting of the Sub-Committee. In the event of a member being unable to attend the meeting, he shall inform the Secretary of the Sub-Committee of the reasons thereof.

(2) The Sub-Committee will be a First Class Committee and the members thereof will be eligible for travelling allowance at the rates prescribed for similar Boards/Committees under the Andhra Pradesh Travelling Allowance Rules.

(3) It shall be the duty of every Sub-Committee to submit its report to the Board within the period fixed by the Chairman at the time of the formation of the Sub-Committee.

21. For the purpose of countersigning the travelling allowance bill of the non-official members of the Board and the Sub-Committee, the Commissioner of Labour shall be the Controlling Authority in respect of the non-official members other than the members of the Legislative Assembly and the Assistant Secretary (Administration) to the Legislative Assembly shall be the Controlling Authority in respect of the non-official members who are members of the Legislative Assembly.

THE INDUSTRIAL FINANCE CORPORATION (AMENDMENT) ACT, 1957.

(ACT NO. 43 OF 1957.)

[Received the assent of the President on 30th November, 1957.*]

An Act further to amend the Industrial Finance Corporation Act, 1948.

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

1. *Short title and commencement.*—(1) This Act may be called the Industrial Finance Corporation (Amendment) Act, 1957.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Amendment of section 2.*—In section 2 of the Industrial Finance Corporation Act, 1948 (15 of 1948) (hereinafter referred to as the principal Act), in clause (c)—

(i) after the words “in mining” the words “or in hotel industry” shall be inserted; and

(ii) the following *Explanation* shall be added at the end, namely:—

Explanation.—The expression “processing of goods” includes any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation;

3. *Amendment of section 17.*—In section 17 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

“(6) If, for any reason, a Director nominated under clause (aa) or clause (b) of section 10 is unable to attend any meeting of the Board, the Central Government or the Reserve Bank, as the case may be, may depute any other person to attend the said meeting and such person shall, for all purposes of the said meeting, be deemed to be a Director nominated under clause (aa) or clause (b), as the case may be, of the said section.”

4. *Amendment of section 21.*—In the proviso to sub-section (1) and the proviso to sub-section (4) of section 21 of the principal Act, for the words “five times” the words “ten times” shall be substituted.

5. *Amendment of section 22.*—In section 22 of the principal Act, for the words “deposits from the public”, the words “from any State Government or local authority, or any person deposits” shall be substituted.

6. *Amendment of section 23.*—In section 23 of the principal Act,—

(i) in sub-section (1), after clause (a), the following clause shall be inserted, namely:—

“(aa) guaranteeing on such terms and conditions as may be agreed upon, deferred payments due from any industrial concern in connection with its import of capital goods from outside India:

Provided that no such guarantee shall be given without the prior approval of the Central Government;” and

*Gaz. of India, Extry., 1-12-57, Pt. II, sec. 1, p. 523.

(ii) in sub-section (2), after the words “prescribed by regulations”, the words “or unless it is guaranteed as to the repayment of principal and the payment of interest by the Central Government, State Government, a scheduled bank or a State co-operative bank” shall be inserted.

7. *Amendment of section 25.*—In sub-section (2) of section 25 of the principal Act,—

(i) for the words, figures and brackets “the Indian Companies Act, 1913 (VII of 1913)”, the words and figures “the Companies Act, 1956” shall be substituted; and

(ii) after the words “any instrument relating to the industrial concern”, the words “and nothing in the said Act or in any such law or instrument in so far as it makes, in relation to a director, any provision for the holding of any share qualification, age limit, restrictions on the number of directorships, retirement by rotation or removal from office shall apply to any Director appointed by the Corporation in pursuance of this section” shall be inserted.

8. *Amendment of section 27.*—In section 27 of the principal Act,—

(i) in sub-section (1), after the words “International Bank for Reconstruction and Development”, the words “or any bank or financial Institution in India or in any foreign country” shall be inserted; and

(ii) for sub-section (4), following sub-section shall be substituted, namely:—

“(4) Any loss or profit accruing in connection with any borrowing of foreign currency under sub-section (1) for the purpose of granting loans or advances to any industrial concern or concerns or its repayment on account of any fluctuations in the rates of exchange shall be reimbursed by, or paid to, the industrial concern or concerns, as the case may be.”

9. *Amendment of section 28.*—In section 28 of the principal Act,—

(i) in sub-section (1), after the words “default in repayment”, the words “of any loan or advance or any instalment thereof” shall be inserted;

(ii) in sub-section (3A), for the words “properly incurred by it”, the words “which, in the opinion of the Corporation, have been properly incurred by it” shall be substituted; and

(iii) in sub-section (4), the words “of the owner” shall be omitted.

10. *Amendment of section 30.*—For sub-section (13) of section 30 of the principal Act, the following sub-section shall be substituted namely:—

“(13) The functions of a District Judge under this section shall be exercisable—

(a) in a presidency-town, by the High Court; and

(b) elsewhere, also by an Additional District Judge.”

11. *Amendment of section 30A.*—In sub-section (1) of section 30A of the principal Act, after the words “Directors of that industrial concern”, the following shall be inserted, namely:—

"and nothing in the Companies Act, 1956 (I of 1956), or in any such law or instrument relating to the industrial concern in so far as it makes, in relation to a director, any provision for the holding of any share qualification, age limit, restrictions on the number of directorships, retirement by rotation or removal from office shall apply to any Director appointed by the Corporation under this section."

12. Amendment of sections 30B and 30E.—In sections 30B and 30E of the principal Act, for the words, figures and brackets "Indian Companies Act, 1913 (VII of 1913)" wherever they occur in those sections, the words and figures "Companies Act, 1956" shall be substituted.

13. Amendment of section 34.—In sub-section (1) of section 34 of the principal Act,—

(i) for the words, figures and brackets "section 144 of the Indian Companies Act, 1913 (VII of 1913)", the words and figures "section 226 of the Companies Act, 1956" shall be substituted; and

(ii) for the words "the other", the words "the other auditor or auditors" shall be substituted.

14. Amendment of section 35.—In sub-section (3) of section 35 of the principal Act, for the words "three months", the words "four months" shall be substituted.

15. Insertion of new section 38A.—After section 38 of the principal Act, the following section shall be inserted, namely:—

"38A. *Protection of action taken by Directors appointed under section 25 and 30A.*—No suit, prosecution or other legal proceeding shall lie against any Director of an industrial concern appointed by the Corporation under section 25 or section 30A for anything which is in good faith done or intended to be done by him as such Director."

Employees' State Insurance—Exemptions.

Notification No. 10370/11216-C-Lab-57/87531, dated 9th/17th October, 1957*

With reference to Punjab Government notification No. 13858-S-LP-56/86669 dated the 27th November, 1956/4th December, 1956 and in exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Governor of Punjab is pleased to renew the exemption from the operation of the said Act, except Chapter V-A thereof, of every factory—

(a) which is situated in any area in which Chapters IV and V of the said Act are in force; and

(b) which is exclusively engaged in one or more of the manufacturing processes specified in column 1 of the Table annexed hereto or any other manufacturing process which is incidental to or connected with any of the aforesaid processes, or in any other manufacturing process carried on in a seasonal factory, of the nature referred to in clause (12) of section 2 of the said Act,

for a further period of one year with effect from the 1st October, 1957, subject to the conditions specified in the corresponding entry in column 2 of the said Table :

TABLE		
Name of manufacturing process	Conditions	Limit
1	2	3
1. Re-drying unmanufactured leaf tobacco ...	Up to 30th September, 1958	
2. Rice milling ...	Ditto	
3. Cold storage ...	Ditto	
4. Salt manufacture ...	Ditto	
5. Cashew processing ...	Ditto	
6. Oil mills ...	Provided that the process of oil milling is subsidiary to any other manufacturing process which is seasonal and so long as the number of employees engaged in oil milling is less than fifty	
7. Ice manufacture ...	...	...

Employees' State Insurance—Exemptions.

Notification No. SIA. 1757-I dated Bombay, 20th September, 1957.†

In exercise of the powers conferred by section 88 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Government of Bombay is pleased to exempt for a further period of one year with effect from 1st October, 1957, from the provisions of the said Act, except Chapter V-A thereof :

* Punjab Govt. Gaz., 25-10-57, Pt. I, p. 1750.

† Bom. Govt. Gaz., 3-10-57, Pt. IV-A, p. 1034.

(a) any person employed directly by a principal employer or through an immediate employer on loading or unloading outside the factory or on loading or unloading of goods or material going out of or coming in at the factory gates or sidings, provided that if such person is employed directly by the principal employer continuously (but for breaks due to weekly or other holidays) for more than 15 days (including such holidays), the exemption will cease from 16th day of the employment by the same principal employer;

(b) any person employed on work which is not ordinarily the work of the factory but is of a casual nature, that is to say, work which is not ordinarily carried on for more than 15 days in a calendar month and was not carried on for more than 60 days in the preceding calendar year:

Provided that any employee who is generally employed on any work other than that specified in (a) or (b) above shall continue to be covered under the Act irrespective of his temporary employment on the said work;

Provided further that, notwithstanding this exemption, any employee so exempted, shall continue to be entitled to such benefits under the Act to which he might have qualified on the basis of contributions paid before the date from which he gets exempted.

C. P. and Berar Industrial Disputes Settlement Rules— Amendments.

*Notification No. C. P. A. 1357-I, dated September 27, 1957.**

In exercise of the powers conferred by section 61 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (Central Provinces and Berar Act No. XXIII of 1947), and of all other powers enabling it in this behalf, the Government of Bombay hereby amends the Central Provinces and Berar Industrial Disputes Settlement Rules, 1949, as follows, namely:—

In the said Rules,—

(1) for sub-rule (2) of rule 18, the following shall be substituted namely:—

“(2) If an employer fails to pay the employee the compensation awarded to him under sub-section (3), or his wages in accordance with sub-section (3-A), of section 16, the amount shall be recovered from the employer as arrears of land revenue;”

(2) after rule 54-A, the following new rule shall be inserted, namely:

“54-B. Where an appeal or revision application is filed before the State Industrial Court, the said Court, may, on an application of the party filing such appeal or revision application and on sufficient cause being shown, stay the execution of the order against which the appeal or revision application is filed.”

*Bombay Govt. Gaz., 3-10-57, Pt. IV-B, p. 1931.

THE KERALA FACTORIES (WELFARE OFFICERS) RULES, 1957.

*Notification No. D. Dis. 4668/57/L&LAD., dated 18th December, 1957.**

In exercise of the powers conferred by sections 49, 50 and 112 of the Factories Act, 1948, (Central Act LXIII of 1948) the Government of Kerala hereby make the following rules the same having been previously published as required by section 115 of the said Act, namely:

1. *Short title and commencement.*—(1) These rules may be called “The Kerala Factories (Welfare Officers) Rules, 1957.”
(2) They shall come into force at once.

2. *Definitions.*—In these rules, unless the context otherwise requires—
(a) ‘Act’ means the Factories Act, 1948 (Central Act LXIII of 1948).
(b) The expressions ‘factory’ and ‘occupier’ have the meanings respectively assigned to them in the Act.

3. *Number of Welfare Officers.*—(1) The occupier of every factory where the number of workers ordinarily employed per day is between five hundred and two thousand shall appoint one Welfare Officer and where the number of workers ordinarily employed per day exceeds two thousand shall appoint an additional Welfare Officer for every two thousand workers or fraction thereof over five hundred:

Provided that in factories where three hundred or more women workers are ordinarily employed per day there should be appointed a Women Welfare Officer.

(2) In a factory where there are more than one Welfare Officer, one of them drawing higher scale of pay shall be designated as Chief Welfare Officer and the others as Assistant Welfare Officers.

4. *Qualifications.*—A person shall not be eligible for appointment as a Welfare Officer unless he,

(a) possesses a degree of a University recognised by the State Government;

(b) has obtained a degree or diploma in Social Science from any institution recognised by the State Government in this behalf; and

(c) has adequate knowledge of the language spoken by the majority of workers in the factory to which he is to be attached.

Provided that the Welfare Officers in respect of whom all or any of the aforesaid qualifications have been relaxed under the provisions of the Madras Factories (Welfare Officers) Rules, 1953 or under the Welfare Officers (Recruitment and Conditions of Service) Rules 1952 or who were being governed by the aforesaid rules or who have before 1st July, 1956, obtained a degree or diploma in Social Science recognised by the former Travancore-Cochin Government shall be deemed to possess the qualifications prescribed by this rule.

*Kerala Gaz., 31-12-57, Pt. I, sec. IV, p. 1.

5. *Recruitment of Welfare Officers.*—(1) The post of a Welfare Officer shall be advertised in any two prominent newspapers of the State.

(2) The selection shall be made from among the candidates applying for the post by a Committee appointed by the occupier of the factory.

(3) The appointment when made shall be notified by the occupier to the Labour Commissioner giving full details of the qualification, age, pay, previous experience and other relevant particulars of the officer appointed and the terms and conditions of his service.

6. *Scale of pay, status and other conditions of service of Welfare Officers.*—(1) The Scale of pay of a Welfare Officer shall not be less than Rs. 200-10-240-EB-15-300:

Provided that if a Welfare Officer in any factory is already in a higher scale of pay at the commencement of these rules he shall have the option to continue in that scale of pay:

Provided further that in the case of factories ordinarily employing one thousand or more workers in any day, the Welfare Officer shall be given a higher scale of pay.

(2) A Welfare Officer shall be given appropriate status corresponding to the status of the other executive heads of the factory.

(3) The conditions of service of a Welfare Officer shall be the same as those of other members of the staff of corresponding status in the factory.

(4) No penalty shall be imposed upon a Welfare Officer by the management unless he has been first informed in writing of the grounds on which it is proposed to take action and has been afforded adequate opportunity of defending himself.

(5) If the management terminates the service of a Welfare Officer otherwise than under the terms of contract, the management shall forthwith report the reasons for the termination of service to the Labour Commissioner.

(6) If the service of a Welfare Officer is terminated otherwise than under the terms of contract, he shall have within 30 days of such termination a right of appeal to the Labour Commissioner whose decision shall be final and binding upon the occupier.

7. *Duties of Welfare Officers.*—The duties of a Welfare Officer shall be—

(i) to establish contacts and hold consultations with a view to maintaining harmonious relations between the factory management and workers.

(ii) to bring to the notice of the factory management the grievances of workers, individuals as well as collective, with a view to securing their expeditious redress and to act as a Liaison Officer between the management and labour.

(iii) to study and understand the point of view of labour in order to help the factory management to shape and formulate labour policies of the factory and to interpret these policies to the workers in a language they can understand.

(iv) to watch industrial relations with a view to using his influence in the event of a dispute arising between the factory management and workers and help to bring about a settlement by persuasive efforts; and to watch the working of collective agreement and the enforcement of industrial awards.

(v) to advise on fulfilment by the concerned departments of the factory of obligations, statutory or otherwise, concerning the application of provisions of the Factories Act, 1948 and the rules made thereunder, and to establish liaison with the Factory Inspector and the Medical Services concerning medical examinations of employees, health records, supervision of hazardous jobs, sick visiting and convalescence, accident prevention and supervision of safety committees, systematic plant inspection, safety education, investigation of accidents, maternity benefits and workmen's compensation.

(vi) to promote relations between the concerned departments of the factory and workers which will bring about productive efficiency as well as amelioration in the working conditions and to help workers to adjust and adapt themselves to their working environments.

(vii) to encourage the formation of Works and Joint Production Committees, Co-operative Societies and Safety-First and Welfare Committees, and to supervise their work.

(viii) to encourage provision of amenities such as canteens, shelters for rest, creches, adequate latrine facilities, drinking water, sickness and benevolent scheme payments, pension funds, gratuity payments, granting of loans and legal advice to workers.

(ix) to help the factory management in regulating the grant of leave with wages and explain to the workers the provisions relating to leave with wages and other leave privileges and to guide the workers in the matter of submission of application for grant of leave for regulating authorised absence.

(x) to advise on provision of welfare facilities, such as housing facilities, food stuffs, social and recreational facilities, sanitation, advice on individual personal problems and education of children.

(xi) to advise the factory management on questions relating to training of new starters, apprentices, workers on transfer and promotion, instructors, and supervisors, supervision and control of notice-board and information bulletins to further education of workers and to encourage their attendance at Technical Institutes.

(xii) to suggest measures which will serve to raise the standard of living of workers and in general promote their well-being.

(xiii) to study absenteeism and labour turnover and the measures to be adopted for their prevention.

8. *Powers of exemption.*—The State Government may by notification in the Official Gazette exempt any factory or class or description of factories from the operation of all or any of the provisions of these Rules subject to such condition as may be specified.

9. *Repeals.*—Welfare Officers (Recruitment and Conditions of Service) Rules, 1952, issued by the former Travancore-Cochin Government and the Madras Factories (Welfare Officers) Rules, 1953 in so far as they apply to the territories referred to in S. 5(2) of the S. R. Act 1956 (Central Act 37 of 1956) are hereby repealed :

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

Employees' State Insurance—Exemptions.

I

*Notification No. 10487/11324-C-Lab-57/1297-RA, dated 2nd October, 1957**

In exercise of the powers conferred by section 88 of Employees' State Insurance Act, 1948 (34 of 1948), the Governor of Punjab is pleased to exempt for a period of one year with effect from the 1st October, 1957, to the 30th September, 1958, from the provisions of the said Act, except Chapter V-A thereof—

(a) any person employed directly by a principal employer or through an immediate employer on loading or unloading outside the factory or on loading or unloading of goods or material going out of or coming in at the factory gates or sidings, provided that if such person is employed directly by the principal employer continuously (but for breaks due to weekly or other holidays) for more than 15 days (including such holidays), the exemption will cease from the 16th day of the employment by the same principal employer ;

(b) any person employed on work which is not ordinarily the work of the factory but is of a casual nature, that is to say, work which is not ordinarily carried on for more than 15 days in a calendar month and is not carried on for more than 60 days in the preceding calendar year :

Provided that any employee who is generally employed on any work other than that specified in (a) or (b) above shall continue to be covered under the Act irrespective of his temporary employment in the said work.

Provided further that, notwithstanding this exemption, any employee so exempted, shall continue to be entitled to such benefits under the Act to which he might have qualified on the basis of contributions paid before the date from which he gets exempted.

II

Notification No. 13092-S-Lab-57/107683, dated 12th December, 1957†

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Governor of Punjab is pleased to exempt all the factories in the State of Punjab exclusively engaged in wool pressing either with or without cotton pressing and ginning, from the operation of the said Act, except Chapter V-A thereof, for a period of one year with effect from the 1st January, 1958.

*Punjab Court. Gaz., 18-10-57, Pt. I, p. 1724.

†Ibid., 27-12-57, p. 2060.

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 Sing, (6) Raja Sing, (7) Jai Kishore Sing, 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.

[IN THE SUPREME COURT OF INDIA.]

PATNA ELECTRIC SUPPLY CO., LTD., PATNA

v.

BALI RAI AND ANOTHER.

*N. H. Bhagwati, B. P. Sinha, Jafer Imam, J. L. Kapur
and P. B. Gajendragadkar, JJ.*

November 5, 1957.

INDUSTRIAL TRIBUNAL—JURISDICTION—APPLICATION UNDER SECTION 33, INDUSTRIAL DISPUTES ACT, 1947, FOR PERMISSION TO DISMISS WORKMAN FOR MISCONDUCT—SUBSEQUENT APPLICATION FOR AMENDMENT OF PRAYER SO AS TO DISCHARGE WORKMAN—WHETHER AMENDMENT CAN BE ALLOWED.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(oo)—‘RETRENCHMENT’—DEFINITION OF—WHETHER RETROSPECTIVE—DISCHARGE BY EMPLOYER BEFORE DEFINITION WAS INTRODUCED—WHETHER ‘RETRENCHMENT’.

After filing an application under section 33 of the Industrial Disputes Act, 1947, for permission to dismiss a workman for misconduct, in accordance with the standing orders, the employer sought permission to discharge the workman under the Standing Orders on payment of notice pay. The Industrial Tribunal allowed the employer to discharge the workman in accordance with the Standing Orders. On appeal, the Labour Appellate Tribunal held that where the employer had alleged misconduct against the workman, he (the employer) could not be permitted to adopt the expedient of terminating the workman's services by giving notice for the requisite period and that the Industrial Tribunal should not have allowed the subsequent application for amendment of the prayer of the original application. On appeal by special leave to the Supreme Court against the order of the Appellate Tribunal, Held:

(i) that it is competent to an Industrial Tribunal to allow the amendment of the prayer in the original application so as to enable the employer to discharge a workman instead of visiting him with punishment of dismissal, if the Industrial Tribunal was satisfied as to the bona fides of the action of the employer; and

(ii) that the definition of ‘retrenchment’ in section 2(oo) of the Act, which was introduced by an Amendment Act in October, 1953, is not retrospective in effect and cannot be applied to a simple discharge effected by an employer before the definition was introduced, so as to bring the action of the employer within the term ‘retrenchment’ used in section 7(1)(b) of the Industrial Disputes (Appellate Tribunal) Act, 1950.

Civil Appeal No. 142 of 1956.

H. N. Sanyal, J. B. Dadachanji, S. N. Andley and Rameshwar Nath
for the Appellants.

P. K. Chatterjee for the workmen.

JUDGMENT.

The Judgment of the Court was delivered by

BHAGWATI, J.—This appeal with special leave arises out of an application made by the appellant to the Industrial Tribunal, Bihar, under section 33 of the Industrial Disputes Act, 1947, (hereinafter referred to as ‘the Act’), seeking permission to discharge the respondents from its employ.

The respondents were in the employ of the appellant and were staying in a two storeyed house in the city of Patna which had been rented by the appellant for housing its workmen. On 29th November, 1952, an occurrence took place in the said house wherein the respondents were involved. Written reports of the said occurrence were sent on 21st November, 1952, to the appellant's Chief Engineer and the respondents were placed under suspension the same day. An industrial dispute was then pending between the parties, i.e., the appellant and its workmen, before the Industrial Tribunal, Bihar, and the appellant therefore made an application to the said Tribunal under section 33 of the Act for permission to dismiss the respondents on the ground of misconduct as per clause 17(b)(viii) of the appellant's Standing Orders. On 27th November, 1952, the respondents also made an application before the said Tribunal under section 33A of the Act *inter alia* on the ground that their suspension by the appellant as aforesaid was a breach of section 33 of the Act.

On 6th December, 1952, the appellant made an application before the said Tribunal stating that on a reconsideration of the facts of the case of the respondents the original prayer for permission to dismiss the respondents was not being pressed, and for the ends of justice it would be sufficient if the appellant was granted permission to discharge the respondents under clause 14(a) of the Standing Orders instead of the original prayer for dismissal under clause 17(b)(viii) thereof. This application was resisted by the respondents. The Industrial Tribunal, however, entertained the same and after hearing the parties duly made its award on 14th May, 1953, dismissing the respondents' application under section 33A of the Act and granting the appellant permission to discharge the respondents from its employ with effect from the date

of the order on payment to the respondents of one month's pay in lieu of notice within 15 days therefrom.

The respondents carried an appeal against the said order of the Industrial Tribunal granting the appellant's application under section 33 of the Act before the Labour Appellate Tribunal of India, Calcutta. A preliminary objection was taken on behalf of the appellant before the Labour Appellate Tribunal that no substantial question of law was involved, and, as such, the appeal was not maintainable. The Labour Appellate Tribunal was of the opinion that the appellant had alleged misconduct against the respondents and could not be allowed to adopt the expedient of terminating their services by giving notice for the requisite period or payment of salary in lieu of notice and that the Industrial Tribunal, therefore, ought not to have entertained the application for amendment of the prayer of the original application in which the appellant wanted to dismiss the respondents for misconduct. This, according to the Labour Appellate Tribunal, was a substantial question of law and it, therefore, entertained the appeal. The Labour Appellate Tribunal thereafter considered whether the appellant had made out a case under clause 17(b)(viii) of the Standing Orders and came to the conclusion that the respondents had not been guilty of any misconduct within the meaning of that clause and that therefore the order made by the Industrial Tribunal granting permission to the appellant to terminate the services of the respondents was liable to be set aside. In so far, however, as, after obtaining the permission from the Industrial Tribunal the appellant had given notice of discharge to the respondents, the Labour Appellate Tribunal expressed its inability to give the respondents any substantial relief either in the shape of re-instatement or compensation.

The appellant has come up in appeal before us against this order of the Labour Appellate Tribunal.

Shri H. N. Sanyal, appearing for the appellant, has urged in the fore-front the contention that no appeal from the order of the Industrial Tribunal lay to the Labour Appellate Tribunal under section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950. He contended that the said order was not a "decision" within the meaning of that expression in section 7, and, even assuming that it was so, the appeal neither involved any substantial question of law nor was it a decision in respect of any of the matters specified in sub-section (1)(b) of that section. The answer of Shri P. K. Chatterjee on behalf of the respondents was that the action of the appellant in the matter of the termination of the services of the respondents was punitive in character, that the discharge of the respondents for which permission was sought by the appellant was a punitive discharge, that such discharge was by reason of the alleged

misconduct of the respondents falling within clause 17(b)(viii) of the Standing Orders and not within clause 14(a) thereof and that the substantial question of law which arose in the appeal was whether the appellant could be allowed to adopt the expedient of terminating the services of the respondents, without going through the procedure of submitting a charge-sheet to the respondents and holding a proper enquiry in the matter of those charges, by merely giving notice for the requisite period or payment of salary in lieu of notice and thus resorting to clause 14(a) of the Standing Orders instead of clause 17(b)(viii) of the same. The other answer made by Shri P. K. Chatterjee was that having regard to the definition of the term "retrenchment" to be found in section 2(oo) of the Act the discharge of the respondents by the appellant really amounted to retrenchment and retrenchment being one of the matters specified in sub-section (1)(b) of section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, the respondents had a right of appeal to the Labour Appellate Tribunal.

It is necessary, therefore, to appreciate what was sought to be done by the appellant when it made the application before the Industrial Tribunal on 6th December, 1952. This application has been described by the Labour Appellate Tribunal as an application for amendment of the original application which had been filed by the appellant on 21st November, 1952, for permission to dismiss the respondents from its employ as per clause 17(b)(viii) of the Standing Orders. It must be noted, however, that what the appellant purported to do by its application of 6th December, 1952, was, in effect, to substitute another application asking for permission to discharge the respondents from its employ under clause 14(a) of the Standing Orders, thus abandoning the relief which it had prayed for in the original application. The application dated 6th December, 1952, was thus, in substance, a new application made by the appellant to the Industrial Tribunal, no doubt relying upon the facts and circumstances which were set out in the original application but asking for the permission of the Industrial Tribunal to discharge the respondents from its employ under clause 14(a) of the Standing Orders instead of dismissing them from its employ under clause 17(b)(viii) thereof. We do not see how it was not competent to the Industrial Tribunal to allow the appellant to do so. If the appellant had been actuated by any oblique motives and wanted to evade the consequences of its not having held a proper enquiry after submitting a charge-sheet to the respondents one could have understood the criticism made by the Labour Appellate Tribunal in regard to the same. The Industrial Tribunal, however, expressly recorded the finding that the application for leave to discharge the respondents from its employ was *bona fide* and what the appellant

did by making the application dated 6th December, 1952, was actuated by an honest motive of exercising its right to discharge the respondents under clause 14(a) of the Standing Orders instead of visiting upon the respondents the penalty of dismissing them from its employ under clause 17(b)(viii) thereof. The discharge of the respondents was a discharge *simpliciter* in exercise of the rights of the employer under clause 14(a) of the Standing Orders and was not a punitive discharge under clause 17(b)(viii) thereof and if it was merely a discharge *simpliciter*, then, no objection could be taken to the same and the appellant would be well within its rights to do so, provided, however, that it was not arbitrary or capricious but was *bona fide*. The only question relevant to be considered by the Industrial Tribunal would be that in taking the step which it did the appellant was not guilty of any unfair labour practice or victimization. If the Industrial Tribunal did not come to a conclusion adverse to the appellant on these counts, it would have no jurisdiction to refuse the permission asked for by the appellant. Once the Industrial Tribunal was of opinion that the application dated 6th December, 1952, and the discharge of the respondents for which the permission of the Industrial Tribunal was sought were in the honest exercise of the appellant's rights, no question of law, much less a substantial question of law could arise in the appeal filed by the respondents against the decision of the Industrial Tribunal and the Labour Appellate Tribunal was clearly in error when it entertained the appeal.

In view of the above finding, we do not propose to deal with the contention that the order passed by the Industrial Tribunal under section 33 of the Act is not a "decision" within the meaning of that term in section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950.

The argument that the discharge of the respondents though patently it was a discharge *simpliciter* was, in substance, retrenchment within the meaning of the definition contained in section 2(oo) of the Act is equally untenable, for the simple reason that the term "retrenchment" was for the first time defined in the manner in which it has been done by an Ordinance promulgated in October, 1953, which was followed by Act 43 of 1953, which was published in the *Gazette of India* on 23rd December, 1953. The Industrial Tribunal made its order granting the permission under section 33 of the Act on 14th May, 1953, so that, this definition of the term "retrenchment" could not apply to the facts of the present case. If, therefore, at the relevant period the discharge *simpliciter* could not be deemed to be retrenchment of the respondents by the appellant, the decision of the Industrial Tribunal could not be said to be one in respect of any of the matters specified in sub-section (1)(b) of section 7 of the Industrial Disputes (Appellate Tribunal) Act,

1950. In that view also no appeal could lie from the decision of the Industrial Tribunal to the Labour Appellate Tribunal.

It must be observed that neither of these two points was taken by the respondents either in the proceedings before the Industrial Tribunal or the Labour Appellate Tribunal nor was either of them mentioned in the statement of case filed by the respondents in this Court. They were taken for the first time in the arguments advanced before us by Shri P. K. Chatterjee. We have, however, dealt with the same because we thought that we should not deprive the respondents of the benefit of any argument which could possibly be advanced in their favour.

We are, therefore, of opinion that no appeal lay from the decision of the Industrial Tribunal to the Labour Appellate Tribunal, that the Labour Appellate Tribunal had no jurisdiction to interfere with the order made by the Industrial Tribunal granting the appellant permission to discharge the respondents under section 33 of the Act and that the decision of the Labour Appellate Tribunal is liable to be set aside.

We accordingly allow the appeal, set aside the decision of the Labour Appellate Tribunal and restore the order made by the Industrial Tribunal, Bihar, on date 14th May, 1953. The appellant will be entitled to its costs of this appeal from the respondents.

[IN THE SUPREME COURT OF INDIA.]

SREE MEENAKSHI MILLS, LTD.

v.

THEIR WORKMEN.

N. H. Bhagwati, Jafer Imam and P. B. Gajendragadkar, JJ.

November 5, 1957.

APPELLATE TRIBUNAL—JURISDICTION OF—WHETHER HAS POWERS OF REVIEW—APPLICABILITY OF THE CODE OF CIVIL PROCEDURE, 1908—INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950, SECTIONS 9 AND 10.

BONUS—COMPUTATION OF SURPLUS OF PROFITS—PRINCIPLES—ALLOWANCES—INITIAL AND ADDITIONAL DEPRECIATION—WHETHER ALLOWABLE—INCREASE OF PROFITS ON DISALLOWANCE OF DEPRECIATION—INCREASED TAX ON SUCH INCREASED PROFITS—WHETHER ALLOWABLE.

The Labour Appellate Tribunal constituted by the Industrial Disputes (Appellate Tribunal) Act, 1950, has jurisdiction to review its own orders under the provisions of section 151, Order 41 and Order 47 of the Civil Procedure Code, 1908: MARTIN BURN LTD. v. R. N. BANERJEE [1951] 13 F.J.R. 330 followed.

In computing the available surplus of profits of a concern for distribution as bonus to the workmen, Held:

(i) *That only normal depreciation and multiple-shift depreciation allowable under the Income-tax Act, 1922, should be allowed as a prior charge and not the initial and additional depreciations: U. P. ELECTRIC SUPPLY CO. LTD. v. THEIR WORKMEN [1955] 9 F.J.R. 343 approved.*

(ii) *That the employer cannot claim to deduct the additional income-tax that would become payable on the increased total income on account of the disallowance of the initial and additional depreciation.*

QUAERE: *Whether, in computing such surplus of profits, exemptions allowed under the Income-tax Act, 1922, on account of the previous years' losses should also be taken into consideration.*

Civil Appeals Nos. 217, 218 and 219 of 1956.

A. V. Viswanatha Sastri, (S. Subramanian with him), for the appellants.

M. S. K. Sastri for the workmen.

JUDGMENT.

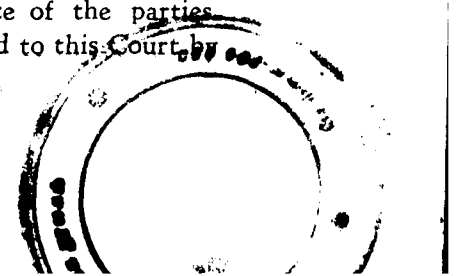
The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—These three appeals arise out of two industrial disputes Nos. 24 and 26 of 1951 between the appellants and their workmen. Dispute No. 24 of 1951 had arisen between the management and workers of the Sree Meenakshi Mills Ltd., Madurai, whereas dispute No. 26 of 1951 was between the management and workers of the Thiakesar Alai, Manapparai. Both the disputes were in respect of bonus claimed by the workmen for the year 1950-51. The workmen claimed bonus for the year 1950-51 on the allegation that the two mills constituted one unit and had made profits during the relevant year. On the other hand, the appellants contended that the two mills were two different units and the claims for bonus made by the workmen against them should not be considered together. According to the appellants, during the relevant year there was a trading loss and, as such, no bonus was payable to the workers. The Industrial Tribunal rejected the pleas raised by the appellants and held that the two mills formed part of the

same unit. It also came to the conclusion that for the year in question there was a surplus of Rs. 2,87,676 against which the workmen's claim for bonus was justified. That is why the Tribunal awarded three months' bonus to the workmen.

Against this decision the appellants preferred two appeals Nos. 133 and 134 of 1952 to the Labour Appellate Tribunal of India at Madras. In these appeals the appellants challenged the findings made by the Tribunal against them and urged that bonus was not payable during the relevant year. The workmen also preferred an appeal, No. 168 of 1952, and in this appeal they claimed a larger bonus than what had been awarded by the Tribunal below. The Appellate Tribunal confirmed the finding of the Tribunal that the two mills formed part of the same unit. According to the Appellate Tribunal, the net surplus available for distribution as bonus came to Rs. 2,57,496. The claim made by the appellants in respect of various deductions was examined by the Appellate Tribunal and deductions were substantially disallowed in respect of three items. In respect of an amount of Rs. 8,43,927 claimed by the appellants as depreciation on machinery and buildings the Appellate Tribunal concurred with the Industrial Tribunal in holding that the claim only for a sum of Rs. 4,00,000 was admissible; in other words, a claim for deducting the balance of Rs. 4,43,927 was disallowed. It is this finding in particular with which we are directly concerned in the present appeals. It may be pointed out at this stage that in determining the amount of net surplus available for distribution as bonus, the Appellate Tribunal agreed with the Industrial Tribunal that the provision for taxation made by the appellants to the extent of Rs. 1,75,000 was adequate. In the result, the appeals preferred by the appellants as well as the respondents failed and were dismissed by the Appellate Tribunal. Against the order dismissing their appeals, the appellants have preferred to this Court by special leave the present Civil Appeals Nos. 218 and 219 of 1956.

The appellants had also preferred an application for review before the Labour Appellate Tribunal, Misc. Case No. III-C-387 of 1953 (Review) on the ground that the order passed by the Labour Appellate Tribunal was patently erroneous inasmuch as there was a mistake apparent on the face of the record which should be corrected under the Appellate Tribunal's powers of review. The Appellate Tribunal held that it had no power of review and that, even if it had such a power, no case had been made out for the exercise of such power because there was no mistake apparent on the face of the record which could not have been discovered when the order was made in the presence of the parties. Against this decision, the appellants have preferred to this Court by special leave the present Civil Appeal No. 217 of 1956.



In Appeals Nos. 218 and 219 of 1956, the main point which has been urged before us on behalf of the appellants is that the Appellate Tribunal erred in law in disallowing the appellants' claim in respect of depreciation debited by the appellants to the extent of Rs. 4,43,927. In the appeal preferred against the order passed by the Appellate Tribunal refusing to review its decision, it has been urged before us by the learned counsel for the appellants that the Appellate Tribunal was in error in holding that it had no jurisdiction to review its decision under Order XLVII of the Code of Civil Procedure. It has also been argued that on the merits it was wrong to have held that the appellants had failed to make out a case for the exercise of the said jurisdiction.

It may be relevant at this stage to set out the financial position of the appellants during the relevant year as summed up in the judgment of the Appellate Tribunal:

"Net Profit as per Ex. M. 1:	...	Rs. 2,40,302
Add the sum wrongly debited as cost of repairs etc. (Rs. 2,57,793 minus Rs. 1,00,000)	...	Rs. 1,57,793
Add bonus for the year 1949-50 wrongly debited to 1950-51.	...	Rs. 1,49,920
Add bonus paid to clerical staff for 1950-51.	...	Rs. 37,896
Add depreciation debited by the company:	...	Rs. 8,43,927
Add provision for taxation:	...	Rs. 1,75,000
Add donation to a College:	...	Rs. 40,000

Total ... Rs. 16,44,838

Thus the gross total profit comes to Rs. 16,44,838.

From this the following deductions have to be made:

Depreciation allowed:	...	Rs. 4,00,000
Bonus for the year 1950-51 paid to clerical staff:	...	Rs. 37,896
Provision for taxation:	...	Rs. 1,75,000
Return on capital (preference and ordinary shares):	...	Rs. 2,94,500
Return on the reserve used as working capital at 4 per cent.:	...	Rs. 2,23,946
Provision for rehabilitation (Rs. 6,56,000 minus Rs. 4,00,000):	...	Rs. 2,56,000

Rs. 13,87,342

Thus the net surplus available for distribution as bonus comes to Rs. 16,44,838 minus Rs. 13,87,342 = Rs. 2,57,496."

Since in the present appeals we are concerned only with the amount of depreciation debited by the appellants, it would be useful to set out the depreciation analysis as explained by the representative of the appellants in the Court of the Industrial Tribunal. The depreciation analysis, according to this statement, is made thus as per the Income-tax Act:

	Normal.	Extra.	Initial.
"(245 days) Madurai.	3,17,331	38,465	2,87,250
(250 days) Usilampatti.	2,23,206	Including extra.	16,077"

It would be noticed that the total of these amounts comes to Rs. 8,82,329.

The true nature and character of the workmen's claim for bonus against their employers is now well settled. Bonus is not, as its etymological meaning would suggest, a mere matter of bounty gratuitously made by the employer to his employees; nor is it a matter of deferred wages. It has been held by this Court in *Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur*, [1955] 7 F.J.R. 483, that "the term 'bonus' is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained." This decision is based on the view that both labour and capital contribute to the earnings of the industrial concern and so it is but fair that labour should derive some benefit if there is surplus available for that purpose. Even so, the claim for bonus cannot be effectively made unless two conditions are satisfied; the wages paid to workmen fall short of what can be properly described as living wages; and the industry must be shown to have made profits which are partly the result of the contribution made by the workmen in increasing production.

In determining the question as to whether the industry has made profit, and, if so, how much is the net surplus in a given year, provision has first to be made in respect of prior charges. This principle has been recognized by what is often described as the Full Bench Formula as laid down in the matter of *The Mill Owners Association, Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay*, [1950] 2 F.J.R. 107. According to this formula, distributable surplus has to be ascertained after providing from the gross profits for (1) depreciation, (2) rehabilitation, (3) return at 6% on the paid-up capital, (4) return on the working capital at a lesser but reasonable rate, and (5) for an estimated amount in respect of the payment of income-tax. It is common ground before us that the

question as to whether the workmen's claim for bonus is justified or not must be decided in the light of this Full Bench Formula.

The appellants concede that in determining the question as to whether they have made a trading profit during the relevant year the Industrial Tribunal is not required to adopt the same basis as under the Income-tax Act. It is, however, urged that in dealing with this question there is no justification for not giving effect to the relevant provisions of the Income-tax Act in respect of depreciation. Section 10 of the Income-tax Act provides for three kinds of allowances in respect of depreciation. Section 10(2)(vi) deals with allowances in respect of depreciation of buildings, machinery, plant or furniture used for the purposes of the business, being the property of the assessee, of a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other cases, to such percentage on the written-down value thereof as may in any case or class of cases be prescribed. This allowance is in respect of what is described as normal depreciation. Section 10(2)(vi) further provides for what is described as initial depreciation in cases where the buildings have been newly erected or the machinery or plant being new, (not being machinery or plant entitled to the development rebate under cl. (vi-b)) has been installed after 31st March, 1945, a further sum (which shall however not be deductible in determining the written-down value for the purposes of this clause) in respect of the year of erection or installation as prescribed by cls. (a), (b) and (c) of s. 10(2)(vi). Then section 10(2)(vi-a) provides for allowance of what is described as additional depreciation. This is in respect of depreciation of buildings newly erected or of machinery or plant being new which has been installed after 31st March, 1948. Section 10(2)(vi-b) also provides for allowance "in respect of machinery or plant being new, which has been installed after the 31st day of March, 1954, and which is wholly used for the purposes of the business carried on by the assessee, a sum by way of development rebate in respect of the year of installation equivalent to twenty-five per cent. of the actual cost of such machinery or plant to the assessee: Provided that no allowance under this clause shall be made unless the particulars prescribed for the purpose of clause (vi) have been furnished by the assessee in respect of such machinery or plant." The question which arises for decision is whether, in determining the question as to whether net surplus is available for distribution by way of bonus or not, it is obligatory on the Industrial Tribunals to allow the whole of the depreciation admissible under the said provisions of the Income-tax Act.

Before dealing with this question, it may be relevant to mention one fact on which both the Tribunals below have placed emphasis in the present case. It appears that, when the proceedings were pending before the Industrial Tribunal, an application was made by the workmen requesting the Tribunal to direct the appellants to allow the workmen inspection of accounts. The Tribunal passed an order for inspection and inspection was allowed. Thereupon, an application was made on behalf of the workmen on 28th February, 1952, for particulars relating to the amount of Rs. 8,44,000 claimed by the appellants by way of depreciation. The appellants promised to supply the information on 8th March, 1952; but ultimately, on behalf of the appellants, it was stated to the Tribunal that the appellants were not able to give the details called for. The Industrial Tribunal and the Appellate Tribunal have both adversely commented on this conduct of the appellants and they were presumably disposed to draw an adverse inference against the appellants in respect of the amount of depreciation in question. Mr. Viswanatha Sastri, for the appellants, however, contended before us that though the Tribunals below may have been justified in commenting on the default of the appellants to supply the particulars, that itself would not justify a drastic reduction in the amount of depreciation claimed by the appellants. He argues that the balance-sheet of the appellants has been duly audited and it was not reasonable for the Tribunals to have disallowed such a large amount as Rs. 4,43,927 under the claim of depreciation. It is fairly conceded by him that if the Tribunals below were not bound to grant claims for depreciation on what is described as initial and additional depreciations, then he could not challenge the propriety or correctness of the decision of the Tribunals in disallowing the items appearing in the depreciation account in respect of these depreciations. It is in the light of these facts that the question raised by the appellants must be considered.

This question has been decided by a Full Bench of the Labour Appellate Tribunal in *U. P. Electric Supply Co., Ltd., v. Their Workmen*, [1955] 9 F.J.R. 343. It is true that the question of bonus had to be considered in this case in the light of the provisions of the U.P. Electricity (Supply) Act, 1948. Nevertheless, the Full Bench has dealt with this matter on general considerations and has set at rest the divergence of views expressed by different Benches of the Tribunal on this point. According to this decision, the initial depreciation and additional depreciation are in a sense abnormal additions to the income-tax depreciation and they are designed to meet particular contingencies and for a limited period. It would, therefore, not be fair to the workmen that these two depreciations are rated as prior charges before the available surplus is ascertained. It is likely that, in many cases, if these two depreciations are allowed as prior

charges no surplus would be left even though workmen may have laboured during the year to the best of their ability and the concern was for all purposes prosperous. In other words, according to this decision, considerations on which the grant of additional depreciation may be justified under the Income-tax Act are different from considerations of social justice and fair apportionment on which the original Full Bench Formula in regard to the payment of the bonus to the workmen is based. That is why, in the result, this subsequent Full Bench held that only normal depreciation including multiple shift depreciation, but not initial or additional depreciation, should rank as prior charge in applying the Full Bench Formula as to the payment of bonus. If it cannot be disputed that in industrial adjudication it is not obligatory to adopt the very same procedure as prescribed by the Income-tax Act for ascertaining gross profits and then determining the amount of net surplus available, it is not easy to accept the appellants' argument that in respect of depreciation alone Industrial Tribunals must necessarily and in every case follow the relevant provisions of the Income-tax Act. If that be the true position, then we see no reason why, in respect of one item of debit only the technical provisions of the Income-tax Act must be followed in industrial adjudications in respect of workmen's claim for bonus. On the whole, the reasons given by the Appellate Tribunal in the case of *The U.P. Electric Supply Co. Ltd.*, [1955] 9 F.J.R. 343, appear to us to be satisfactory; and so we are not prepared to accept the appellants' argument that the Appellate Tribunal in the present case has erred in law in not allowing the appellant's claim for initial and additional depreciations. In our opinion, therefore, the main point urged by the appellants in Appeals Nos. 218 and 219 of 1956 cannot succeed.

That takes us to the two other points raised by the appellants in Appeal No. 217 of 1956. The first point which has been raised in this appeal by the appellants is about the jurisdiction of the Appellate Tribunal to review its own orders in appropriate cases under Order 47 of the Code of Civil Procedure. This Court has recently had occasion to consider the question about the applicability of the Code of Civil Procedure to the proceedings before the Labour Appellate Tribunal in *M/s. Martin Burn Ltd. v. R. N. Banerjee*, [1957] 13 F.J.R. 330. Section 9(1) and section 10 of the Industrial Disputes (Appellate Tribunal) Act, 1950, as well as the relevant rules and orders framed under the Act were considered and it was held that the Code of Civil Procedure applies to the proceedings before the Appellate Tribunal with the result that the Appellate Tribunal can exercise its powers under Order 41, rule 21, as well as under section 151 of the Code. It is true that in this case there was no occasion to consider the applicability of the provisions of

Order 47 of the Code but that does not make any difference. If the Code of Civil Procedure applies to the proceedings before the Labour Appellate Tribunal, it is clear that the provisions of Order 47 would apply to these proceedings as much as section 151 of the Code or the provisions of Order 41. We must accordingly hold that the Appellate Tribunal erred in law in coming to the conclusion that it had no jurisdiction to review its own order under the provisions of Order 47 of the Code.

As we have already pointed out, the Appellate Tribunal has also held that even if it had jurisdiction to review its decision or judgment, in the present case it would not grant the appellants' request because it had not been shown that the order or decision suffered from any mistake which could not have been known when the order was pronounced in open court in the presence of both the parties in the present proceedings. Mr. Viswanatha Sastri, for the appellants, argues that this view is obviously wrong and should be reversed. In support of his argument, the learned counsel has invited our attention to the fact that, when the appeal was pending before the Appellate Tribunal, a statement had been filed by the appellants showing that the provision for income-tax had to be revised in view of the findings recorded by the Industrial Tribunal. According to this statement, no surplus was available for payment of bonus to workmen even on the assumption that the findings recorded by the Tribunal were correct. The appellants pointed out in this statement that if an amount of Rs. 4,43,927 was disallowed by way of depreciation that would necessarily add to the amount of gross profits and in consequence the provision for income-tax would have to be proportionately increased. The appellants' case was that instead of Rs. 1,75,000 which had been allowed by the Industrial Tribunal by way of provision for income-tax, it would be necessary to allow an amount of Rs. 4,75,582 in that behalf. The appellants' grievance is that though this statement was filed before the Appellate Tribunal the Appellate Tribunal has not considered it at all.

On the other hand, it appears from the judgment of the Appellate Tribunal that this point was not raised by the appellants before it in their arguments. No grievance was made and no higher amount was claimed by them to be reserved for taxation. The Appellate Tribunal has also observed that the point raised by the appellants in their review petition did not show that any new and important matter had been discovered which, after the exercise of due diligence, would not have been discovered by the parties at the time of the hearing of the appeal. Besides, the Appellate Tribunal also held that there was no mistake apparent on the face of the record. Technically there may be some force in the observations made by the Appellate Tribunal; but we

cannot overlook the fact that a written statement had been filed before the Appellate Tribunal expressly and specifically raising this point. That is why we propose to deal with the merits of the argument and not to reject it on the ground that this argument had not been urged at the proper stage.

On the merits, the argument is that, if out of the total amount of Rs. 8,43,927 debited by the appellants to depreciation, an amount of Rs. 4,43,927 is disallowed, that must inevitably add to the total amount of gross profits and if the total amount of gross profits is increased, logically provision for a higher amount of income-tax must be made. Thus presented the argument is simple and at first blush appears to be attractive; but the difficulty in accepting the argument is that the total amount of gross profits determined by Industrial Tribunals in these proceedings is not and cannot necessarily be the taxable gross profits of the employer. We have already observed that in determining the trading profits of the employer in such disputes, the method adopted by the Industrial Tribunals does not conform to all the requirements and provisions of the Income-tax Act, and so it would be fallacious to assume that the gross profits determined by the Industrial Tribunal should be taken to be gross profits that would be necessarily taxable under the Income-tax Act. Besides, it would be relevant to remember that the provision for taxation in question has been made by the appellants themselves and presumably it is based on the appellant's anticipation as to how much approximately they will have to pay by way of income-tax. But, apart from this consideration, there can be no doubt that the appellants would get exemption from the payment of income-tax in respect of the amounts of initial and additional depreciation also as shown in their books of accounts. That is a right which has been conferred on the appellants by the relevant provisions of section 10 of the Income-tax Act; and the benefit which the appellants are entitled to get under the said section cannot be ignored in deciding whether or not the provision of the sum of Rs. 1,75,000 for taxation purposes is adequate or not. We think it is not open to the appellants to contend that though for the amounts covered by the normal and additional depreciations they would not be required to pay income-tax, nevertheless they should be allowed to provide for the payment of income-tax in respect of these two items merely on the ground that they are disallowed by the Industrial Tribunal and have thus added to the total of gross profits as determined by the Tribunal. The adequacy or otherwise of the provision for income-tax must necessarily be judged in the light of the Income-tax Act since it is under the said Act that the liability to pay tax would ultimately be determined. Besides, if the appellants' argument is accepted and an

amount notionally payable by way of income-tax in respect of disallowed items of depreciation is added to the estimated amount of income-tax provided by the appellants, the very object of disallowing the two items of depreciation would be substantially defeated. On the other hand, the rejection of the appellants' argument would not mean any hardship because the additional amount sought to be added by them in the provision for income-tax would definitely not have to be paid by them. We are, therefore, satisfied that the grievance made by the appellants against the order passed by the Appellate Tribunal on the ground that it suffers from a mistake apparent on the face of the record is not well-founded.

It would now be necessary to refer briefly to the decisions of Industrial Courts to which our attention has been drawn by the learned counsel for the appellants. In *Model Mills, etc. Textile Mills, Nagpur v. Rashtriya Mill Mazdoor Sangh*, [1955] 8 F.J.R. 356, the implications of the Full Bench Formula for ascertainment of bonus have been explained. It is observed that "the formula did not purport to direct what a concern should do or should not do with its own moneys. In evolving the formula the rights and liabilities of the parties *inter se* in notional satisfaction of their legitimate claims as two co-operating units in the venture were tried to be equated. Opinions might differ as to the weightage to be attached to the various components constituting the formula. But the formula has to be taken as a whole in order that an equitable balance between the rights of capital and labour might be achieved for the ascertainment of bonus."

It may incidentally be pointed out that this decision recognizes that income-tax calculated on the trading profits for the year must be deducted as a prior charge from the profits even though exemption under the Income-tax Act is granted for the year in question taking into consideration the past year's losses. The same view has been expressed by the Appellate Tribunal in *Mahalaxmi Woollen Mills Ltd. v. Their Workmen*, [1956] 1 L.L.J. 305. In this case, it has been held that "even if a concern is allowed exemption from the levy of income-tax because of prior losses or unabsorbed depreciation, etc., that by itself is no ground for preventing the concern from claiming the amount of income-tax it would have been liable to pay if the profits made in the relevant year alone had been taken into account. Hence, in calculating the amount of available surplus, the amount of income-tax payable for that trading year is to be deducted irrespective of the fact whether the company in fact pays tax for the year or not". Similarly in *Bennett Coleman & Company, Ltd. v. Their Workmen*, [1955] 8 F.J.R. 555, the Labour Appellate

Tribunal has held that "unabsorbed depreciation and loss incurred during prior years are allowed under section 24(2) of the Income-tax Act to be adjusted against the profits of a future year. Where the company claims either to adjust this amount against gross profits or to deduct such amount of income-tax as would be payable on the profits if the said two items are not to be adjusted, labour cannot be permitted to refuse relief resting on unabsorbed loss and depreciation and at the same time try to get benefit for itself by refusing provision for tax resting on those very items which are permitted to be adjusted by the income-tax authorities which will result in reduced income-tax or no tax at all." It would thus appear from the decisions cited before us that Industrial Tribunals have consistently taken the view that income-tax calculated on the trading profits for the relevant year must be deducted as a prior charge from the gross profits even though the employer may be entitled to claim exemption under the Income-tax Act in view of the fact that he had suffered losses during the previous year. *Prima facie* it may be said that, if the essential basis for deciding the workmen's claim for bonus in a given year is the existence of the net surplus available for that year, it may not be permissible to question the propriety for the provision for income-tax made by the employer solely on the ground that in view of his previous year's losses he may not be called upon to pay income-tax during the year in question. After all, in this connection the calculations are made by reference to the financial position of the employer during the particular year only and in these calculations considerations relevant under the Income-tax Act in regard to the financial losses of the employer in the previous year would not be allowed to enter. However, in the present appeals we are not called upon to consider the correctness of the view taken by the Appellate Tribunal in these cases and so we need not pursue the matter any further.

Mr. Viswanatha Sastri has strongly relied on two labour decisions reported in *B. E. S. T. Workers' Union v. Bombay Suburban Electric Supply Ltd.*, [1957] 2 L.L.J. 112 and *Greaves Cotton and Crompton Parkinson Ltd. v. Its Workmen*, [1956] 1 L.L.J. 486. These two decisions no doubt support the appellants' arguments before us, but, for the reasons which we have already given, we must hold that these decisions are not sound or correct.

The last case to which our attention has been drawn by Mr. Viswanatha Sastri is the decision of the Labour Appellate Tribunal in *Bengal Chemical & Pharmaceutical Works, Ltd. v. Their Workmen*, [1954-55] 6 F.J.R. 590. This case decides that "in providing for income-tax the tax payable by the concern on its income earned in the year for which

bonus is claimed must be ascertained. The amount of income-tax actually paid during the year (which is the tax of the income of the previous year) should not be taken into account." In this case, the Tribunal has observed that "for the purpose of ascertaining the income-tax which may be payable by the employer for the year in question, the figures appearing on the expenditure side of the profit and loss account of that year have to be marshalled and examined." This case is not of much help in deciding the point with which we are concerned.

In the result, the appeals fail on the merits and must be dismissed with costs. There will, however, be one set of costs in all these appeals.

[IN THE SUPREME COURT OF INDIA.]

STATE OF UTTAR PRADESH

v.

SWADESHI COTTON MILLS CO., LTD. AND ANOTHER.

N. H. Bhagwati, Jafer Imam and P. B. Gajendragadkar, JJ.

November 20, 1957.

U. P. INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 3 AND 6—REFERENCE OF INDUSTRIAL DISPUTE—SPECIFICATION OF TIME FOR SUBMISSION OF AWARD—40 DAYS' PERIOD SPECIFIED BY GOVERNMENT ORDER—SUBSEQUENT AMENDMENT OF GOVERNMENT ORDER TO 180 DAYS—EFFECT—WHETHER ENHANCES PERIOD IN CASES OF REFERENCES ALREADY MADE.

U. P. INDUSTRIAL DISPUTES (AMENDMENT) ORDINANCE, 153, SECTION 3, SUB-SECTIONS (2) AND (3)—OBJECT OF—VALIDITY OF AWARDS MADE AFTER SPECIFIED PERIOD—DISTINCTION BETWEEN SUB-SECTIONS (2) AND (3)—PENDENCY OF PROCEEDINGS ON DATE OF COMMENCEMENT OF ORDINANCE.

The U.P. Industrial Disputes Act, 1947, requires that an award should be submitted by an Industrial Tribunal within a specified time, which time, in the absence of a special order, would be determined by the provisions of a general order made by the State Government. Where the order of reference states that the dispute referred is to be adjudicated in accordance with the provisions of a certain Government Order then it must be deemed that the Government has specified the time within which the award has to be submitted at the time stated in the Government Order. A subsequent amendment of the provision in the Government Order whereby the period is increased will not affect the period already specified in the order of reference. Where the

period specified in the Government Order was 40 days at the time of reference, it should be deemed that the period for submission of the award stated in the order of reference is 40 days, and a subsequent amendment of the Government Order increasing the period to 180 days will not materially affect the position and the award will have to be submitted within the period of 40 days.

The main purpose of the Uttar Pradesh Industrial Disputes (Amendment) Ordinance, 1953, was to validate orders of extension of time within which an award had to be submitted as well as to prevent the validity of the award being questioned merely on the ground that it had been submitted beyond the specified time or an enlargement thereof. Apart from the question of extension of time, the Ordinance, in section 3, purported to deal also with three situations so far as the submission of an award was concerned. The cases where the award was submitted before the commencement of the Ordinance and against which no proceedings were pending before any Court or Tribunal at the commencement of the Ordinance, and cases where the award was submitted after the commencement of the Ordinance were dealt with in section 3(2) of the Ordinance. The third case where an award was submitted before the commencement of the Ordinance against which proceedings were pending before a Court or Tribunal before the Ordinance came into force was dealt with by section 3(3). Where an appeal from an award had been filed in the Labour Appellate Tribunal before the commencement of the Ordinance, section 3(3) would apply and if the award had been made after the last date of enlargement of time under section 6-A, the award would be invalid. If the appeal had been filed after the commencement of the Ordinance, the award would be valid under section 3(2) even though it had been made long after the specified date.

Civil Appeals Nos. 14 and 15 of 1955.

S. S. Dhawan, (G. C. Mathur and C. P. Lal with him) for the State.

H. N. Sanyal and N. C. Chatterjee for the respondents.

JUDGMENT.

The Judgment of the Court was delivered by

IMAM, J.—These two appeals by special leave have been heard together as they arise out of a single judgment of the Labour Appellate Tribunal of India, Lucknow, dated 30th September, 1953, passed in seven appeals before it. As the question for consideration in the appeals before this Court is the same, this judgment will govern both the appeals before us. Civil Appeals Nos. 14 and 15 of 1955 arise out of Appeals

Nos. III-198 of 1953 and III-321 of 1953 respectively before the Labour Appellate Tribunal.

The question for consideration before the Labour Appellate Tribunal was whether the awards from which the seven appeals had been filed before that Tribunal were valid in law and made with jurisdiction. It is this very question which arises in the appeals before us.

Before dealing with the question raised in these appeals it is necessary to state certain facts. On 15th March, 1951, the Governor of Uttar Pradesh made a General Order consisting of numerous clauses under powers conferred on him by clauses (b), (c), (d) and (g) of section 3 and section 8 of the Uttar Pradesh Industrial Disputes Act, 1947 (Act XXVIII of 1947), hereinafter referred to as the Act, in supersession of the general Order No. 781 (L)/XVIII dated 10th March, 1948. The Order of 15th March, 1951, was numbered 615 (LL) XVIII-7 (LL) of 1951, hereinafter referred to as Order No. 615. Under clause 16 of Order No. 615, the decision of the Tribunal or Adjudicator was to be pronounced within 40 days, excluding holidays but not annual vacations observed by courts subordinate to the High Court, from the date of reference made to it by the State Government concerning any industrial dispute. The proviso to it authorized the State Government to extend the period for the submission of the award from time to time. On 18th February, 1953, this clause was amended and the time of 40 days was altered to 180 days. On 17th December, 1952, the judgment of this Court in the case of *Strawboard Manufacturing Co., Ltd. v. Gutta Mill Workers' Union*, [1952] 4 F.J.R. 456, was pronounced. In consequence of this decision the Act was amended by the Uttar Pradesh Industrial Disputes (Amendment) Ordinance, 1953 (Ordinance No. 1 of 1953), hereinafter referred to as the Ordinance, promulgated by the Governor of Uttar Pradesh. The Ordinance came into force on 22nd May, 1953. By the provisions of section 2 of the Ordinance section 6-A was introduced into the Act. Section 2 of the Ordinance states :

"After section 6 of the U. P. Industrial Disputes Act, 1947 (hereinafter referred to as the Principal Act), the following shall and be deemed always to have been added as section 6-A.

"6-A. *Enlargement of time for submission of awards.*—Where any period is specified in any order made under or in pursuance of this Act referring any industrial dispute for adjudication within which the award shall be made, declared or submitted, it shall be competent for the State Government, from time to time, to enlarge such period even though the period originally fixed or enlarged may have expired."

Section 3 of the Ordinance states :

"Removal of doubts and validation.—For the removal of doubts it is hereby declared that:—

(1) any order of enlargement referred to in section 6-A made prior to the commencement of this Ordinance under the Principal Act or any Order passed thereunder which would have been validly and properly made under the Principal Act if section 6-A had been part of the Act shall be deemed to be and to have been validly and properly made thereunder;

(2) no award whether delivered before or after the commencement of this Ordinance in any industrial dispute referred prior to the said commencement for adjudication under the Principal Act shall be invalid on the ground merely that the period originally specified or any enlargement thereof had already expired at the date of the making, declaring or submitting of the award and any action or proceeding taken, direction issued or jurisdiction exercised in pursuance of or upon such award be good and valid in law as if section 6-A had been in force at all material dates;

(3) every proceeding pending at the commencement of this Ordinance before any court or tribunal against an award shall be decided as if the provisions of section 6-A had been in force at all material dates."

The following chart will show the date of reference, the date on which the period of 40 days expired, the dates and the periods of enlargement, the date of submission of the award and the date of filing of the appeal, in the seven appeals before the Labour Appellate Tribunal:

Appeal No.	Date of reference.	Date on which 40 days, available for the initial Submission of the award expired.	Date & period of enlargement, if any.	Date of submission of the award.	Date of filing of the appeal.
III-186/53	13-2-1953	3-4-1953	Nil	6-4-1953	5-5-1953
III-187/53	28-1-1953	18-1-1953	Nil	13-4-1953	5-5-1953
III-321/53	28-1-1953	18-1-1953	Nil	26-6-1953	18-7-1953
III-183/53	28-1-1953	18-1-1953	Nil	13-4-1953	4-5-1953
III-323/53	9-2-1953	29-3-1953	Nil	22-6-1953	20-7-1953
III-209/53	15-1-1953	5-3-1953	13-3-1953	9-4-1953	8-5-1953
III-198/53	19-8-1952	10-10-1952	(upto 31-3-1953)	17-4-1953	13-5-53
			(i) 4-11-1952		
			(upto 11-11-1952)		
			(ii) 26-12-1952		
			(upto 31-12-1952)		
			(iii) 13-1-1953		
			(upto 31-1-1953)		
			(iv) 11-2-1953		
			(upto 10-3-1953)		

The Labour Appellate Tribunal found that the award in appeal No. III-198 of 1953 was made not only on the expiry of the period of enlargement but also longer after the expiry of 180 days from the date of reference. In the case of the other appeals the awards were made on the expiry of 40 days but within 180 days of the reference. Appeals Nos. III-321 and 323 of 1953 were filed after the commencement of the Ordinance and the others before its commencement.

In the case of the Swadeshi Cotton Mills Co., Ltd. (Civil Appeal No. 14 of 1955), the Governor, by an order dated 19th August, 1952, referred the dispute between the said Mills and its workmen to the Additional Regional Conciliation Officer, Kanpur, for adjudication, on the issue stated therein, in accordance with the provisions of Order No. 615. In the case of Kamlapat Motilal Sugar Mills (Civil Appeal No. 15 of 1955), the Governor by his order dated 28th January, 1953, referred the dispute between the said Mills and its workmen, on the issue mentioned therein, to the Regional Conciliation Officer, Lucknow, for adjudication in accordance with the provisions of Order No. 615. In both these orders of reference no date was specified within which the Regional Conciliation Officers of Kanpur and Lucknow were to submit their awards. All that was stated in these orders was that they shall adjudicate the dispute in accordance with the provisions of Order No. 615. It is only by reference to clause 16 of Order No. 615 that it is possible to say that the decisions of these Conciliation Officers were to be pronounced within the time specified in the orders of reference and that would be 40 days from the date of reference. In the case of the Swadeshi Cotton Mills, there were several periods of enlargement of time but in the case of the Kamlapat Motilal Sugar Mills there was no enlargement of time as will appear from the above-mentioned chart.

Under section 3 of the Act the State Government, for the purposes mentioned therein, could, by general or special order, make provisions for appointing Industrial Courts and for referring any industrial dispute for conciliation or adjudication in the manner provided in the order. Order No. 615 was a general order made by virtue of these provisions. Clause 10 of that Order authorised the State Government to refer any dispute to the Industrial Tribunal or if the State Government, considering the nature of the dispute or the convenience of the party, so decided to any other person specified in that behalf for adjudication. Clause 16 specified the time within which the decision of the Tribunal or the Adjudicator had to be pronounced, provided the State Government could extend the period from time to time. Section 6 (1) of the Act specifically stated that when an authority to which an industrial dispute had been referred for award or adjudication had completed its enquiry, it should,

within such time as may be specified, submit its award to the State Government. It would appear, therefore, that the Act required the submission of the award to be made within a specified time, which time, in the absence of a special order of reference of an industrial dispute for conciliation or adjudication under section 3 of the Act, would be determined by the provisions of a general order made by the Government in that behalf. An order of reference of an industrial dispute for adjudication without specifying the time within which the award had to be submitted would be an invalid order of reference. In fact, the orders of reference in the cases under appeal specified no time within which the award had to be submitted. All that they directed was that the dispute shall be adjudicated in accordance with the provisions of Order 615. If these orders of reference are read along with clause 16 of Order No. 615, then it must be deemed that they specified the time within which the award had to be submitted as 40 days from the dates of reference.

The proviso to clause 16 of Order No. 615 empowering the State Government to extend the period from time to time within which the award had to be submitted was found to be an invalid provision, having regard to section 6(1) of the Act, by this Court in the case of *Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union*, [1952] 4 F.J.R. 456. If the matter had stood there only, the awards, having been submitted beyond forty days from the dates of reference, would be invalid as the periods of extension granted from time to time by the State Government for their submission could not be taken into consideration. The Act, however, was amended by the Ordinance and section 6-A was added to the Act and according to the provisions of section 2 of the Ordinance, section 6-A of the Act must be deemed to have formed a part of the Act at the time of its enactment. Section 6(1) and section 6-A of the Act must therefore be read together. Section 6(1) of the Act specifically stated that the award must be submitted within a specified date in an industrial dispute referred for adjudication after the completion of the enquiry. Under section 6-A, however, the State Government was empowered from time to time to enlarge the period even though the period originally fixed or enlarged might have expired. The orders of reference in these appeals, as stated above, specified 40 days within which the awards had to be submitted. The State Government could, however, enlarge the periods within which the awards had to be submitted under section 6-A by issuing other orders in the case of each reference extending the time within which the awards had to be submitted. Admittedly, no such order was, in fact, passed in the case which is the subject of Civil Appeal No. 15 of 1955, and in the case which is the subject of Civil Appeal No. 14 of 1955, although orders extending the time for the

submission of the award were made and the last order extended the time to 10th March, 1953, yet the award was submitted on 13th May, 1953. The awards in these cases were, therefore, made in the one case beyond the time specified in the order of reference and in the other beyond the extended period within which the award had to be submitted.

It was urged on behalf of the appellant, the State of Uttar Pradesh, that as clause 16 of Order No. 615 had been amended whereby 180 instead of 40 days had been provided as the period within which an award had to be submitted, the orders of reference in the cases before us must be construed as specifying 180 days within which the awards had to be submitted. In other words, clause 16, although amended on 18th February, 1953, was retrospective in operation. Order No. 615 is a general order under which Conciliation Boards and Industrial Tribunals may be set up to deal with industrial disputes. It is true that clause 16 enjoins that the decision by the Tribunal or the Adjudicator must be pronounced within a specified number of days but this is a general direction. An order of reference is a special order. It could have stated the manner in which the industrial dispute was to be adjudicated and it could also have specified the time within which the decision had to be pronounced. As the orders of reference in the cases before us merely stated that they were to be decided in accordance with the provisions of Order No. 615, the disputes had to be adjudicated in the manner so provided and the orders of reference must, accordingly, be read as having specified 40 days as the time within which the awards had to be submitted. Subsequent amendment of clause 16, whereby 180 days instead of 40 days was provided as the time within which the award had to be submitted, could not affect an order of reference previously made according to which the award had to be submitted within 40 days. We cannot agree with the submission made on behalf of the appellant that clause 16, as amended, must be given retrospective effect and the orders of reference previously issued must be regarded as specifying the time of 180 days for the submission of the awards. Section 6(1) of the Act is to the effect that the authority to which an industrial dispute has been referred for adjudication must submit its award within such time as may be specified. This section read with section 6-A of the Act, on a proper interpretation of their provisions, makes it clear that the time within which the award shall be submitted is the period specified in the order of reference. Mere amendment of clause 16 would not, therefore, affect the period already specified in the order of reference. It seems to us, therefore, that the amendment to clause 16 did not materially affect the position and the awards in the cases before us had to be submitted within 40 days from the dates of the orders of reference or within the enlarged time for the submission of the awards.

What is the effect of section 3 of the Ordinance is a matter which now remains to be considered. This section purported to remove doubts and to validate orders of extension of time for the submission of an award. It also purported to validate certain awards. There is no difficulty in construing clause (1) of this section. It validates all orders of extension made prior to the commencement of the Ordinance as if section 6-A of the Act had been a part of the Act always. In other words, orders of extension of time made under the general order, promulgated under section 3 of the Act, would be regarded as made under section 6-A. Clause (3) of section 3 of the Ordinance also does not present any difficulty in construing its provisions. It directs that every proceeding pending before any Court or Tribunal at the commencement of the Ordinance against an award shall be decided as if section 6-A of the Act had been in force at all material dates. Clauses (1) and (3) of this section merely re-emphasise the provisions of section 6-A of the Act which, in our opinion, are clear enough even in the absence of the aforesaid clauses.

It is clause (2) of section 3 of the Ordinance which requires careful examination. Learned counsel for the appellants contended that cl. (2) was sufficiently wide in its terms to include all awards and not merely awards which had become final as held by the Labour Appellate Tribunal. The words at the end of the clause "as if section 6-A had been in force at all material dates" were redundant and they should be ignored. Indeed, according to him, there was no need for the existence of cl. (3) in view of the provisions of cl. (2). Clause (2) validated all awards whether made before or after the commencement of the Ordinance even if the period specified within which they were to be submitted or any enlargement thereof had already expired in so far as they could not be questioned merely on that ground alone and this would cover even a proceeding pending in any Court or Tribunal at the commencement of the Ordinance against an award.

Mr. N. C. Chatterjee, appearing for respondent No. 1, in Civil Appeal No. 15 of 1955, contended that the Labour Appellate Tribunal took the correct view that cl. (2) of section 3 of the Ordinance covered cases where the awards had become final. He further developed his argument in support of the decision of that Tribunal on the following lines. Such clarification, as was sought to be made by section 3 of the Ordinance, must be construed in relation to section 6-A of the Act and not independently of it. If an award were made outside the ambit of section 6-A then the whole of section 3 of the Ordinance could not apply to such a case. Section 3(1) of the Ordinance validated all orders of enlargement of time which were made prior to the commencement

of the Ordinance. Such orders should be deemed to have been validly made as if section 6-A had been a part of the Act. Section 3(2) of the Ordinance was enacted to prevent the validity of an award being questioned when it had been submitted after the specified period for its submission or any enlargement thereof. The words "as if section 6-A had been in force at all material dates" merely connote that there must be an order of enlargement made by the Government in the exercise of its powers under section 6-A of the Act. Section 3(2) of the Ordinance had no application to a case where an award was made independently of the exercise of the powers of the Government under section 6-A. Section 3 sub-sections (2) and (3) of the Ordinance were subservient to section 6-A of the Act.

The Tribunal apparently took the view that there was repugnance between sub-sections (2) and (3) of section 3 of the Ordinance and so it made an attempt to avert that repugnance by putting an artificial restriction on the scope of sub-section (2) of section 3. In holding that section 3(2) applied only to awards that have become final, the Tribunal overlooked the fact that this sub-section referred to awards which may be made even after the commencement of the Ordinance and it is not easy to appreciate how finality could be said to attach to these awards on the date when the Ordinance was promulgated. The Tribunal also felt impressed by the argument that if s. 6-A applied to appeals or proceedings against awards pending at the date of the commencement of the Ordinance, there was no reason why the same provision should not apply to appeals or proceedings which may be taken against the awards after the commencement of the Ordinance. In giving expression to this view, however, the Tribunal clearly overlooked the fact that section 3(3) is deliberately confined to proceedings against an award pending at the commencement of the Ordinance and no others.

There can be little doubt, in our opinion, that the main purpose of the Ordinance was to validate orders of extension of time within which an award had to be submitted as well as to prevent its validity being questioned merely on the ground that it had been submitted beyond the specified time or any enlargement thereof. Apart from an order of extension of time the Ordinance purported to deal with at least three situations so far as the submission of an award was concerned. One was where an award was submitted before the commencement of the Ordinance and against which no proceeding was pending before any Court or Tribunal at the commencement of the Ordinance; another was where an award was submitted after the Ordinance came into force. These cases were dealt with by clause (2) of section 3 of the Ordinance. The third was the case where an award was submitted before the commencement of the

Ordinance against which a proceeding was pending before a Court or a Tribunal before the Ordinance came into force. Section 3(3) of the Ordinance was so drafted that it should not interfere with judicial proceedings already pending against an award. It merely directed that such a proceeding must be decided as if section 6-A had been a part of the Act from the date of its enactment. Where, however, no judicial proceedings against an award were pending it was the intention of the Ordinance that the award shall not be questioned merely on the ground that it was submitted after the specified period for its submission or any enlargement thereof. Although section 3(2) of the Ordinance is not happily worded and appears to have been the result of hasty legislation, we think, that upon a reasonable construction of its provisions its meaning is clear and there is no real conflict between its provisions and the provisions of clause (3) of the section. The words "as if section 6-A had been in force at all material dates" have to be given some meaning and they cannot be regarded as redundant as suggested on behalf of the appellants. Grammatically they should be regarded as referring to any action or proceeding taken, direction issued or jurisdiction exercised in pursuance of or upon an award. Section 6-A of the Act, however, has nothing to do with this and these words cannot apply to that part of the clause. These words also cannot refer to a case where the award has been made beyond the specified period and in which there has been no order of enlargement of time as section 6-A of the Act does not apply to such a case. The words in question, therefore, can only apply to that part of the clause which refers to an enlargement of time for the submission of the award, which is the only purpose of section 6-A of the Act. In our opinion, if section 3(2) of the Ordinance is read in this way an intelligible meaning is given to it which is consistent with section 6-A of the Act and not in conflict with section 3(3) of the Ordinance. The awards referred to in section 3(2) are awards against which no judicial proceeding was pending at the commencement of the Ordinance. In our opinion, the provisions of section 3(2) and (3) are not in conflict with each other. We cannot accept the view of the Labour Appellate Tribunal that section 3(2) refers only to awards that had become final.

Having construed the provisions of section 3 of the Ordinance, it is now necessary to deal specifically with the appeals before us. Appeal No. III-198/53 of the Labour Appellate Tribunal, out of which Civil Appeal No. 14 of 1955 arises, was filed before the commencement of the Ordinance and by virtue of section 3(3) of the Ordinance the appeal had to be decided as if the provisions of section 6-A had been in force at all material dates. To such an appeal the provisions of clause (2) of section 3 of the Ordinance would not apply. This appeal would, therefore, be

governed by clause (3). As, in this case, the award had been submitted on 17th April, 1953, and the last date of enlargement gave time for the submission of the award upto 10th March, 1953, the award was submitted beyond time and, therefore, was invalid as having been made without jurisdiction.

In Civil Appeal No. 15 of 1955, arising out of Appeal No. III-321 of 1953 of the Labour Appellate Tribunal, the appeal was filed before that Tribunal after the commencement of the Ordinance. The award was submitted long after the period, namely, 40 days, within which it had to be submitted and there were no orders of enlargement of time. Section 3(2) of the Ordinance and not section 3 (3) would, therefore, apply to this appeal. The award in this case consequently has been validated by virtue of the provisions of section 3 (2) of the Ordinance and its validity cannot be questioned merely on the ground that it was submitted after the period within which it should have been submitted.

In the result, Civil Appeal No. 14 of 1955 is dismissed with costs and Civil Appeal No. 15 of 1955 is allowed with costs and the decision of the Labour Appellate Tribunal in Appeal No. III-321/53 before it is set aside.

[IN THE PUNJAB HIGH COURT.]

PALACE CINEMA, DELHI

v.

RAMESHWAR DAYAL.

Falshaw, J.

August 6, 1957.

INDUSTRIAL TRIBUNAL—PROCEDURE—DISCOVERY AND INSPECTION OF DOCUMENTS—ORDER DIRECTING EMPLOYER TO PRODUCE ACCOUNTS FOR INSPECTION BY WORKMEN—APPLICABILITY OF PROVISIONS OF CIVIL PROCEDURE CODE, 1908—INDUSTRIAL DISPUTES ACT, 1947, SECTION II(1), (3).

In the matter of production, discovery and inspection of documents an Industrial Tribunal is bound to follow the procedure laid down in the Civil Procedure Code, 1908, and cannot order the production of accounts by the employer merely because it is asked for by the workmen: METTUR CHEMICAL & INDUSTRIAL CORPORATION LTD. v. THEIR WORKMEN [1955] 7 F.J.R. 472 and SHAMBU NATH & SONS v. ADDITIONAL INDUSTRIAL TRIBUNAL, DELHI [1957] 12 F.J.R. 203 followed.

Civil Writ No. 133-D of 1956.

T. R. Bhasin for the petitioner.

Bishamber Dayal standing counsel for the respondent.

ORDER.

This petition under article 226 of the Constitution has been filed by the management of the Palace Cinema, Roshanara Road, Delhi, in the following circumstances.

An industrial dispute has arisen between the petitioner and its workmen which has been referred to Mr. Rameshwar Dayal, Additional Industrial Tribunal, Delhi, who is cited as the respondent in the petition, by the Government under the provisions of the Industrial Disputes Act of 1947. One of the items in the dispute between the management and the workers relates to the payment of bonus for the years 1953-54 and 1954-55. In this connection the workmen requested to be supplied with copies of the balance sheets and profit and loss accounts for the relevant years and this was ordered by the Tribunal, although it was noted at the time that these documents could not be claimed as a matter of right and that they should be treated as confidential in accordance with the provisions of the Act. At the hearing when these documents were supplied, it is alleged by the petitioner, and there is nothing in the order of the Tribunal which is now impugned to contradict the allegation, that without even studying the balance sheets and the statements of profit and loss account which were certified by a chartered accountant, or without even alleging by an affidavit or otherwise that any particular item in these documents was incorrect, the representative of the workmen applied for inspection of the firm's account-books and other relevant documents.

This was strongly resisted on behalf of the management. The Tribunal, after considering a number of decisions, while apparently accepting the general principle that duly audited balance sheets must be taken to be correct unless they are shown to be wrong, was of the opinion that the workmen could only show the balance sheets and profit and loss statement to be wrong by checking them in the light of the account-books. It was accordingly ordered on the 5th of October, 1956, that the management should produce the ledger, cash-book and journals for the inspection of the workmen, with an intimation that if it was thought necessary a further order would be passed allowing inspection of vouchers and other auxiliary registers and books.

In the present petition it is objected on behalf of the management that this order is entirely illegal and without jurisdiction and that

although the Industrial Disputes Act, has given the Tribunal the power to call for and allow inspection of documents, it does so subject to the provisions of the Civil Procedure Code, which have not even been referred to, much less complied with, in the order now attached.

It is also pointed out that at the time when the order of the Tribunal was passed there were two decisions by High Courts on this very point which were either not brought to the notice of the Tribunal or have been ignored by it. The first of these is the decision of Shri Rajagopalan, J., in *Mettur Chemical and Industrial Corporation Ltd. v. Their Workers*, [1955] 7 F.J.R. 472, and the other is the decision of Sinha, J., in *Burn and Company v. Jitendra Nath Maitra*, A.I.R. 1956 Cal. 592. Both these cases related to disputes between the companies and their workmen regarding the payment of bonus, and in both the cases the companies had been ordered to allow inspection of the account-books by the workmen. In the former case this order was passed after the balance sheets had already been supplied and an application had been submitted that the genuineness and accuracy of the figures was not accepted by the workmen. In the other case the order seems to have been passed almost at the outset of the proceedings before the Industrial Tribunal without even the supplying for inspection of the balance sheets. In both cases the learned Judges held that the order of the Tribunal for inspection of the account-books of the companies by the workmen was illegal and that such an order could only be passed after the relevant provisions of the Civil Procedure Code had been complied with. The observations of Shri Rajagopalan, J., at page 477 appear to be particularly pointive. The passage in question reads :

"The second requirement mentioned above that the party applying for inspection is entitled to inspect the documents appears to be a condition full proof of which the Court must insist upon before ordering inspection of the documents that fall within the scope of rule 18(2) of Order XI, Civil Procedure Code. Whether the right to inspect claimed in a given case is to be held established or not must of course depend on the circumstances of that case and it is neither desirable nor even possible to prepare an exhaustive list of cases that would amount to an established right. But unless the right is established, the Court has no power to order inspection under the terms of rule 18(2) of Order XI, Civil Procedure Code. The need for an affidavit may at first sight appear to be but a rule of procedure failure to conform to which may not affect the power to the Court to order inspection. But when we examine the classes of documents excluded from the purview of clause 2 of rule 18 of Order XI, Civil Procedure Code, the need for an affidavit, before the

Court considers an application for inspection of the documents that do fall within the scope of rule 18(2), seems to be obvious."

The learned Judge has later observed on page 480 :

"An assertion that the workers' union did not accept the accuracy of such balance-sheets and profit and loss accounts is certainly not proof of a right to inspect accounts of which those statements were passed."

It may also be mentioned that a similar point arose in this Court before Bishan Narain, J., in *Shambu Nath & Sons v. Additional Industrial Tribunal, Delhi*, [1957] 12 F.J.R. 203. The nature of dispute in that case was the same and the tenor of the judgment and the final conclusion arrived at are on the same lines as in the cases referred to above. No authority to the contrary was cited and I am in respectful agreement with the view taken in these cases. The result is that I accept the petition and quash the order of the Tribunal dated the 5th of October, 1956. I order that the provisions of law must be complied with before any order is passed permitting the workmen to inspect the firm's accounts. In the circumstances, I order that the parties shall bear their own costs.

[IN THE PUNJAB HIGH COURT.]

PUNJAB & SIND BANK LTD.

v.

RAMESHWAR DAYAL AND OTHERS.

Falshaw, J.

August 20, 1957.

INDUSTRIAL DISPUTE—DEFINITION OF—DISPUTE BETWEEN EMPLOYER AND ONE OR TWO WORKMEN—NOT INVOLVING ANY PRINCIPLE AND NOT TAKEN UP BY OTHER WORKMEN—WHETHER 'INDUSTRIAL DISPUTE'—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(K).

WRIT—MATTER AFFECTING JURISDICTION OF INDUSTRIAL TRIBUNAL—INVOLVING QUESTIONS OF LAW AND FACT—PROPER FORUM—WHETHER SHOULD BE RAISED AND DECIDED BY TRIBUNAL IN FIRST INSTANCE.

Where the disputes referred to an Industrial Tribunal under the Industrial Disputes Act, 1947, are disputes purely concerning the employer and the individuals concerned and neither separately nor taken together could they be regarded as a dispute between the employer and his workmen, and, further, neither any question of principle was involved nor did any trade union to which the workman or workmen belong take up the case before the Industrial Tribunal, the disputes do not fall within the definition of 'industrial dispute' as defined in section 2(k) of the Act and the reference to the Industrial Tribunal would be invalid.

Any contention by an employer that a reference of a dispute to an Industrial Tribunal was invalid on the ground that the other party to the dispute was not a 'workman' as defined in the Act, or that the action taken by the employer against a workman was in accordance with the terms of a general award involves questions of law and also fact and must be raised before and decided by the Industrial Tribunal itself rather than in a writ petition in the High Court.

Civil Writ No. 102-D of 1956.

R. S. Narula for the petitioners.

Jindra Lal for the respondents.

ORDER.

This is a petition under article 226 of the Constitution by the Punjab and Sind Bank Limited challenging the reference by the Government to the Industrial Tribunal consisting of Mr. Rameshwar Dayal, respondent No. 1, of an alleged dispute between the Bank and its workmen in the persons of Harnam Singh, Harbhajan Singh and Prem Singh, respondents Nos. 3, 4 and 5.

The case of the bank is that Harnam Singh, respondent No. 3, was dismissed for insubordination in connection with certain leave applications, after being heard in full in a regular enquiry by an officer appointed by the Bank for the purpose, and after his appeal had been dismissed by two other persons appointed by the bank for the purposes of hearing it. This was in March, 1955.

Harbhajan Singh and Prem Singh respondents were a clerk and peon in the Karol Bagh, New Delhi, Branch who were alleged by the bank to have been guilty of misconduct in the form of destroying or removing from the bank certain of the bank's records. However, rather than take proceedings against them with a view to dismissing them for misconduct, the bank preferred to act under clause 522 of the so-called Sastry Award, under which, in cases not involving disciplinary action for misconduct, the employment of a permanent employee could be terminated by three months' notice or on payment of three months' pay and allowances in lieu of notice. The services of these two employees were accordingly terminated on the 5th of July, 1955, on payment of three months' pay in lieu of notice.

All three of them are said to have had recourse in the first place to conciliation under the provisions of the Industrial Disputes Act, but, as the bank was unwilling to re-employ them, the Government, by an order dated the 9th of June, 1956, expressed its opinion that an industrial dispute existed between the bank and its workmen and that it was desirable to refer the dispute for adjudication and it was accordingly referred to Mr. Rameshwar Dayal as the sole member of the Tribunal. The dispute thus referred was described in the order as being "alleged wrongful termination of the services of Sarvshri Harbhajan Singh, Prem Singh and Harnam Singh and the relief, if any, to which they are entitled."

It is conceded that many of the grounds on which the jurisdiction of the Tribunal to deal with the so-called dispute was challenged in the petition, including the constitutionality of certain provisions of the Industrial Disputes Act, cannot be pressed any longer as these matters have been settled by decisions of the Supreme Court. It has, however, been contended that the reference of the alleged dispute between the bank and Harnam Singh is invalid on the ground that Harnam Singh is not a workman, and that in any case disputes between the bank and one or two of its individual workmen are not disputes between the employer and his workmen within the meaning of the Act.

I may say at once that the contention that the dispute relating to Harnam Singh could validly not be referred to the Tribunal on the ground that he is not a workman within the meaning of the Act is a

matter which could be, and ought to be raised before and decided by the Tribunal itself rather than in a writ petition in this Court, since it is a disputed question involving both law and fact which can only be decided after evidence.

Another point was also raised, which seems to me one which could be properly raised before and decided by the Tribunal, provided that there existed a dispute upon which the Tribunal had jurisdiction to adjudicate, is the point that the termination of the services of Harbhajan Singh and Prem Singh is clearly covered by the Sastry Award, which is a general award dealing with relations between the banking companies and their employees and which is still in force. It must surely be open to the Bank to raise the plea that the dismissal of these two employees was in accordance with the principles laid down in the Sastry Award and the Tribunal could obviously accept this plea and refuse to grant the employees any relief on that ground.

It seems to me, however, that the most serious objection is that a dispute between an employer and one or two workmen is not an industrial dispute such as could be referred to the Tribunal under the Act. The term "industrial dispute" is defined in section 2(k) of the Act as meaning "any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person." The question whether a dispute between an employer and an individual workman, or perhaps one or two individual workmen, is an industrial dispute has come before Courts on a number of occasions before now. I myself had to consider the matter in *The Management of the Hindustan Times Ltd., New Delhi v. The Chief Commissioner of Delhi and others*, [1956] 12 F.J.R. 105, which was a case relating to the termination of the services of one M. L. Madan who was made a respondent in the writ petition. In that case, after considering the various authorities, I was of the opinion that ordinarily speaking a dispute between an employer and an individual workman is not an industrial dispute within the meaning of section 2(k) but that in certain special circumstances it can be and I held that the dispute regarding the dismissal of the workman in that case was an industrial dispute, since the allegation which had to be investigated by the Tribunal was whether the ostensible reasons given by the employer for terminating his services were not the real reasons, and that he had been really dismissed by way of victimisation on account of his activities in connection with the Union of journalists, of which he was a prominent member.

In the present case it is clear that in fact there are really two disputes which have been referred to the Tribunal, one concerning the dismissal of Harnam Singh respondent, and the other relating to Harbhajan Singh and Prem Singh, who were dismissed by the bank in similar circumstances. As far as I see these disputes purely concern the bank and the individuals concerned, and neither separately nor taken together does it seem to me that they can be regarded as a dispute between the bank and its workmen. No particular question of principle appears to be involved in either of the disputes and there does not appear to be any suggestion of a class of workmen concerned or that any action by the body of workmen is contemplated.

Usually in these disputes, even where only a few, or even sometimes one workman, is concerned, the union to which the workmen or workman concerned belongs takes up that case and represents in the proceedings before the Tribunal and also in any writ petition which may be filed in this Court arising out of a dispute referred to the Tribunal, but there is no sign of any such thing in the present case.

Such being the case, the matter appears to be settled by the decision of the Supreme Court in *Newspapers Ltd. v. State Industrial Tribunal U.P. and others*, [1957] 12 F.J.R. 129. In that case a lino-typist was dismissed from service by the appellant company on allegations of incompetence and his case was not taken up by any union of workers of the company nor by any of the unions of workmen employed in similar or allied trades, but the U.P. Working Journalists Union, Lucknow, with which he had no connection whatsoever, took the matter to the Conciliation Board, Allahabad, and ultimately the U.P. Government made a reference to the Industrial Tribunal. It was held on a consideration of the relevant provisions of the U.P. Industrial Disputes Act, 1947 and the rules framed thereunder that the dispute did not fall within the definition of an industrial dispute as used in that Act or section 2(k) of the Central Act, and hence the reference of that dispute by the Government was bad.

Some attempt was made by the learned counsel for the Government to argue that this particular argument had to some extent taken the respondents by surprise. I find, however, that in the petition, in paragraph 12, where the grounds on which the jurisdiction of the Tribunal is challenged are set out, ground (iv) reads—"Because in this case there is no industrial dispute between the parties within the meaning of section 2(k) of the Industrial Disputes Act."

This ground clearly governs the point raised which in any case could not have been a surprise to any one who had studied the case law regard-

ing industrial disputes, since, as I have said, points of this kind have already frequently arisen. A request was made that the hearing of the case should be adjourned in order that the respondents might meet this point, but, in my opinion, it was a point which could be legitimately raised and ought to be expected to be raised on the wording of the petition itself, and it seems to me that it would merely be inviting trouble and provoking intervention by the union if I were to adjourn the proceedings in order that the union should come forward and state that it was taking up the part of the dismissed employees at this late stage. I accordingly hold that the reference of the dispute to the Tribunal is invalid on the ground that no industrial dispute within the meaning of section 2(k) of the Act exists, and, accordingly, accept the petition and quash the order of reference but in the circumstances order the parties to bear their own costs.

[IN THE PUNJAB HIGH COURT.]

BHARAT STARCH & CHEMICALS LTD.

v.

INDUSTRIAL TRIBUNAL, PUNJAB AND ANOTHER.

Bishan Narain, J.

December 3, 1957.

STANDING ORDERS—CERTIFICATION UNDER INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946—EFFECT—TRANSFER OF WORKMAN IN ACCORDANCE WITH STANDING ORDERS—WHETHER WORKMAN CAN PLEAD EXEMPTION FROM, OR IGNORANCE OF, STANDING ORDERS.

Once the Standing Orders of an establishment have been certified under the Industrial Employment (Standing Orders) Act, 1946, they are binding on all workmen in the establishment, whether originally employed before or after the Standing Orders were certified. Where a workman was transferred by the management in accordance with the certified Standing Orders, it is not open to the workmen to contend, or an Industrial Tribunal to hold, on an application under section 33 of the Industrial Disputes Act, 1947, that the Standing Orders did not bind the workman or that he was not aware of those orders.

Civil Writ No. 514 of 1957.

N. C. Chatterjee and Bhagirath Dass for the petitioners.

Roop Chand for the respondents.

ORDER.

This petition under article 226 of the Constitution has been filed by the Bharat Starch & Chemicals, Limited, Yamunanagar, Jagadhri, District Ambala, challenging the validity of the order of the Industrial Tribunal, Punjab, dated 30th April, 1957, whereby the application of the petitioner-company under section 33 of the Industrial Disputes Act has been rejected. The petitioner-company is an industrial establishment as defined in the Industrial Employment (Standing Orders) Act, 1946 (Act XX of 1946), hereinafter called the Act.

The respondent Sahib Singh is in the employment of the petitioner-company as a moulder since 1942. The Company got certified "Standing Orders" under the Act in January 1951 and one of the Standing Orders is to the effect that at the discretion of the General Manager a workman is liable to be transferred to any place which is under the management of the Managing Agents of the Company. There was a dispute between the petitioning Company and its workmen which has been referred to the Industrial Tribunal under the Industrial Disputes Act. This dispute is still pending. During the pendency of this dispute the General Manager of the Company transferred Sahib Singh to Barakar Engineering & Foundry Works, Barakar (West Bengal), in accordance with paragraph 15 of the certified Standing Orders. Sahib Singh refused to go to Barakar, and in consequence of this refusal he was charge-sheeted for insubordination. After an inquiry as provided in para 6 of the Standing Orders he was suspended pending the permission of the Industrial Tribunal under section 33 of the Act. In due course an application under section 33 was made to the Industrial Tribunal, but this application was dismissed by order dated the 30th April, 1957 on the ground that the Standing Orders are not binding on Sahib Singh as he was employed by the Company before these rules came into force and further that it is not the Company's case that Sahib Singh knew of these Standing Orders. It is this order that is being challenged by this writ petition.

Now, I have carefully gone through the provisions of this Act and it appears to me that from the date of certification the Standing Orders are binding on all workmen of the Company whether originally employed before or after these Standing Orders were certified. Under this Act, Standing Orders are framed by the management and are submitted to the certifying authority. That authority after giving notice to the workmen and after hearing both the employers and the workmen decides whether the Standing Orders submitted do or do not conform to the provisions of the Act. The decision of the certifying authority is open to appeal by any aggrieved person. On certification the Standing

Orders come into operation in accordance with the provisions of section 7 of the Act and become terms of employment between the management and workmen. The certifying officer is required to send copies of certified Standing Orders to the employers and to the trade unions or representatives of workmen and a copy is pasted at the entrance of the industrial establishment. It is well settled that if the workmen are dissatisfied with the Standing Orders so certified, then they can raise a dispute which can be referred to the Industrial Tribunal for settlement under the Industrial Disputes Act. It is common ground that when these proceedings under the Act were taken Sahib Singh was a 'workman' and was serving the Company in the present premises. In these circumstances, I do not see how the Standing Orders can be held to be not binding on Sahib Singh.

The learned counsel for the respondent urged before me that the Company did not state before the Tribunal, nor did it indicate in this petition, that these Standing Orders were made in accordance with the provisions of the Act. There is no substance in this objection. On certification there is a presumption that the Standing Orders were certified after complying with the provisions of the Act. The respondent never urged that these Standing Orders were not certified in accordance with law. In these circumstances it was not necessary for the petitioning-company to give in detail in the petition under section 33 or in the present petition all the steps that were taken at the time when the Standing Orders were certified.

Then it is submitted on behalf of the respondent that in the exercise of my discretion I should not interfere with this order. The contention is that presumably Sahib Singh is being victimised because of the part that he took in the dispute which has been referred to the Industrial Tribunal. I do not propose to go into this matter at this stage, particularly when there is no material placed before me relating to this matter. The only point that I am deciding by this judgment is that the authenticated Standing Orders are binding on Sahib Singh and for this reason I am unable to accede to the request of the respondent. The decision of the Tribunal goes to the root of the validity of all authenticated Standing Orders so far as their applicability to workmen in employment before the date of authentication is concerned. This matter affects the basic principles underlying the Act and it is an error apparent on the face of it. This is a fit case in which I should exercise my discretion in favour of the Company.

For these reasons I accept this petition and quash the order of the Tribunal dated the 30th of April, 1957. The Tribunal will now proceed to decide the petition under section 33 of the Industrial Disputes Act in

accordance with law on the basis that the authenticated Standing Orders of the Company are binding on Sahib Singh. There will be no order as to costs of this petition.

[IN THE PUNJAB HIGH COURT.]

SHAMA MAGAZINE

v.

STATE OF DELHI AND OTHERS.

Falshaw, J.

September 3, 1957.

INDUSTRIAL DISPUTE—REFERENCE TO TRIBUNAL—NOMINAL CHANGE IN MANAGEMENT—EFFECT—INDUSTRIAL DISPUTES ACT, 1947, SECTION 10.

INDUSTRIAL TRIBUNAL—JURISDICTION—POWER TO ORDER PRODUCTION OF DOCUMENTS BY PARTIES—LIMITATIONS—APPLICABILITY OF CIVIL PROCEDURE CODE, 1908—ORDER DIRECTING PARTY TO PRODUCE INCOME-TAX RETURN—ORDER DIRECTING PARTY TO PREPARE LISTS OR ABSTRACTS—VALIDITY.

The fact that there was a change in the management of a concern would not make the reference of the question of bonus for previous years illegal where the only change in the management is that the sole proprietor converted the management into a partnership with his three sons and continued to be the general manager.

On the question of the powers of an Industrial Tribunal to order production of documents by parties, Held :

(i) *that the Tribunal could not direct the management to produce its income-tax assessment returns;*

(ii) *that such an order could be issued only in compliance with the provisions of the Code of Civil Procedure, 1908; and*

(iii) *that such an order could be issued only in respect of existing documents which are in the possession of the parties or in their power and cannot direct the preparation of lists or abstracts of various kinds from existing documents.*

Civil Writ No. 122-D of 1956.

N. C. Chatterjee and H. L. Anand for the petitioner.

Bishamber Dayal for the respondents.

JUDGMENT.

By a notification dated the 26th of August, 1955, the Delhi State Government referred an industrial dispute which was stated to exist between the management of Shama Magazine and their workmen to an Industrial Tribunal under the provisions of the Industrial Disputes Act of 1947. In the order of reference several matters were in dispute relating to conditions of service, scales of pay, dearness allowance and bonus for the years 1951-52, 1952-53 and 1953-54.

Before the Tribunal the workmen were represented by a registered trade union known as the Commercial Employees' Union. The Union filed an application dated the 26th of April, 1956, for the production by the management of a large number of documents the description of which fills two typed foolscap pages. Although this application was opposed on various grounds by the management, Mr. Rameshwar Dayal, the sole member of the Tribunal, passed an order on the 16th of July, 1956, ordering the management to produce practically all the documents required by the Union on behalf of the workmen.

This is the order which is challenged in the present petition filed under article 226 of the Constitution on behalf of the management of the magazine. This petition was apparently filed on the 30th of August, 1956, and on the following day an interim order was obtained from Bishan Narain, J., staying the operation of the impugned order pending the hearing of the writ petition by the Motion Bench. For some reason or other the writ petition did not actually come up for admission until the 3rd of December, 1956, when it was admitted and the stay of further proceedings was ordered, but at the same time a very early hearing was ordered. It is unfortunate that in spite of this order a period of nine months has elapsed before the petition could be heard.

Actually in the petition more than the mere order for the production of the documents in question has been challenged since the jurisdiction of Mr. Rameshwar Dayal is also challenged on the ground that he was not the Additional District Judge originally named as constituting the Tribunal in the order of reference and also that the reference of dispute relating to the period before the present partnership firm was constituted is illegal. The first of these points has not now been raised but as regards the second it is stated in the petition supported by an affidavit that the present partnership firm which constitutes the management of the Magazine was constituted on the 1st of August, 1953, and the objection raised is that the question of bonus for the years 1951-52 and 1952-53, could not legally be referred to the Tribunal.

On this aspect of the case I do not consider that there is much substance in the objection of the petitioner, since it is stated without contradiction in the affidavit filed on behalf of the workmen that whereas formerly the Magazine was being run as sole manager and proprietor by Mr. Yunus Delhvi, the only change which has been made in the constitution of the firm since the 1st of August, 1953, is that Mr. Yunus Delhvi has taken in his three sons as partners and Mr. Yunus Delhvi is still the general manager as well as a partner in the firm. In the circumstances I do not consider that there was anything illegal in the reference of disputes relating even to the period before the 1st of August, 1953, between the management of Shama Magazine and their workmen to the Tribunal nor do I consider that it was in any way illegal for the Tribunal to order the production of documents relating to this earlier period so long as these documents could otherwise legally be ordered to be produced.

It is, however, contended on behalf of the management that the order for production of the documents is generally illegal as it was made without proper consideration of the relevant provisions of the Civil Procedure Code and in some respects it is otherwise illegal.

One instance of illegality in the order which has been pointed out is the order for the production of certain income-tax assessment orders. These documents are privileged under the provisions of the Income-tax Act itself, and it has even been a matter of controversy in the Courts as to whether even an assessee himself could waive his privilege and produce records of proceedings before the Income-tax authorities in other proceedings if he thought it advantageous to do so and although the correct view on this matter appears to be that the privilege attached to proceedings before the income-tax authorities is intended primarily for the protection of assessees, and that assessees are in certain circumstances entitled to waive this privilege, there can be no doubt of the flagrant illegality of the order of the Tribunal calling on the management in this case to produce income-tax assessment returns at the instance of the workmen.

The combined effect of section 11(3) of the Industrial Disputes Act, and rule 21 of the Rules framed under the Act is that the Tribunal's powers in relation to directing the production of documents by parties are strictly governed by the relevant provisions of the Civil Procedure Code under which *inter alia* a party can only be ordered to produce documents which are in its possession or in its power, which evidently refers to existing documents which though not actually in the immediate possession of the party are readily available to it. It is, therefore, at once obvious that such parts of the demands of workmen in this case

as involve the preparation of lists or abstracts of various kinds from existing records were improper demands and that these parts of the order of the Tribunal which directed the management to prepare and furnish such lists or abstracts were illegal.

Orders of Tribunals relating to production of documents by management have come before the Courts in previous cases. In a writ petition relating to a dispute between *Mettur Chemical and Industrial Corporation Ltd. v. Their Workers*, Sri Rajagopalan, J., in his judgment which is printed at page 472 of [1955] 7 F.J.R. has held that the provisions of the Civil Procedure Code relating to the production of documents must be strictly complied with by a Tribunal. In *Punjab National Bank Ltd. v. Ram Kanwar and others*, [1957] 12 F.J.R. 57, Khosla, J., by his order dated the 4th of January, 1957, held that proceedings before Industrial Tribunals should be conducted as far as possible in the same way as a judicial proceeding and the workmen cannot try to fill in gaps in their own case by compelling the employer to make a research into certain matters, prepare statements and produce them along with confidential information of the employer's business dealings and that an order of an Industrial Tribunal directing the employer to produce the proceedings of its board of directors or directing the employer to prepare evidence for the benefit of the workmen, or relating to information which is available in the office of the Registrar of Joint Stock Companies, would be in excess of its powers under section 11 (3) of the Industrial Disputes Act.

More recently Bishan Narain, J., in Civil Writ 373 of 1956, decided on the 11th February, 1957, and I myself in Civil Writ 133-D of 1956, decided on the 6th of August, 1957, have also held that the provisions of the Civil Procedure Code must be strictly complied with before production of documents can be ordered.

It seems to me that the order in this case must be set aside since some parts of it are evidently illegal and the whole matter requires reconsideration in the light of the above decisions. At the same time I cannot help observing that even after proper reconsideration of points involved much of the material which is now sought by the workmen in this case will probably have to be admitted in some form or other and it may well be that the management in this case may find it more convenient to prepare lists or abstracts even if they cannot be compelled to do so than to produce all the records and registers from which such documents could be prepared. The only material ordered by the Tribunal to be produced which I definitely rule out is the income-tax assessment returns. One point which was raised on behalf of the management was that the dispute was only between the management of

Shama Magazine and its workers and therefore the Tribunal could not legally, as it has done order the production of the articles of association of the company Shama (Overseas) Private Ltd., with a hint that later the accounts of this Company might also have to be gone into. It is, however, stated in the affidavit filed on behalf of the workmen that the same workmen do the work for this Company in India, and it seems to me that if Shama (Overseas) Private Limited has no separate staff of its own and it uses the ordinary staff of Shama Magazine for its work at Delhi, some aspects of the working of this Company may require consideration in connection with the present dispute, and I am certainly not prepared at this stage to order the total exclusion of matters relating to this Company in the present enquiry.

The result is that I accept the writ petition and set aside the order of the Tribunal dated the 16th of July, 1956, but at the same time leave most of the matters involved to be reconsidered and decided in accordance with the strict provisions of the Civil Procedure Code. The parties will bear their own costs.

[IN THE PUNJAB HIGH COURT.]

RAM LAL GURAMAL TEXTILE MILLS

v.

STATE OF PUNJAB AND OTHERS.

Bishan Narain, J.

December 30, 1957.

INDUSTRIAL DISPUTE—DISPUTE RELATING TO PERIOD BEFORE CLOSURE OF INDUSTRY—REFERENCE OF DISPUTE TO TRIBUNAL AFTER CLOSURE—VALIDITY—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(K) AND 10.

INDUSTRIAL DISPUTE—WHEN INDIVIDUAL DISPUTE BECOMES INDUSTRIAL DISPUTE—TRADE UNION CEASING TO REPRESENT WORKMAN'S CASE—NEW TRADE UNION TAKING UP CASE—EFFECT—WHETHER CREATES NEW INDUSTRIAL DISPUTE—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(K).

Where the subject matter of an industrial dispute relates to a period before the closure of a business, the mere fact that the reference was made to an Industrial Tribunal under section 10 of the Industrial Disputes Act, 1947, after the closure of the business will not render the reference invalid: PIPRAICH SUGAR MILLS LTD. v. PIPRAICH SUGAR MILLS MAZDOOR UNION [1957] 11 F.J.R. 262, followed.

The basis of the principle that an individual dispute becomes an 'industrial dispute' when it is taken up by a trade union or by other workmen is that such a dispute involves a principle which affects the working conditions of all or a considerable portion of the workmen in that industry. As long as a trade union which for the time being represents a workman takes up the individual workman's dispute, it continues to remain an 'industrial dispute' till it is finally decided and it is not necessary that the same trade union must remain in charge of the dispute till adjudication. If a new trade union comes into the picture and takes over the dispute relating to the individual workman, the dispute does not cease to be an industrial dispute nor does it become a new industrial dispute from the date the new trade union takes over.

Civil Writ No. 537 of 1957.

Bhagirath Dass for the petitioners.

L. D. Kaushal and Anand Swarup for the respondents.

JUDGMENT

The Punjab Government has referred the following dispute between Ramlal Guramal Textile Mills, Amritsar, hereinafter called the management, and its workmen to the Labour Court under section 10(1)(c) of the Industrial Disputes Act:

"Whether the services of Shri Ram Singh, son of Bishan Singh were wrongfully terminated on 15th February, 1954? If so, whether he is entitled to wages for the period 12th February, 1954 to 5th January, 1956, i.e., till the date of closure?"

The management has filed this petition under article 226 of the Constitution of India challenging the validity of the reference.

The facts relevant for the decision of this petition are not in dispute. On the 6th June, 1952, the Government referred six disputes between various textile mills, etc., and their workmen for adjudication to the First Industrial Tribunal under section 10(1)(c) of the Act. While the reference was pending, Ram Singh, an employee of the petitioning management, made an application under section 33A of the Act complaining of his wrongful dismissal on 12th February, 1954. This reference, however, was rescinded by notification dated the 7th December, 1954, and on the same day by another notification the dispute was referred to the Second Tribunal. One of the consequences of these notifications was that the application under section 33A filed by Ram Singh became infructuous. Before the Second Industrial Tribunal could adjudicate upon the disputes, the Government again intervened and one of the six disputes, was separated from the others, presumably, so that it

may be decided without undue delay (Reference 4 of 1955). This separated dispute reads:

"Whether the retrenched workers should be re-instated with due compensation or not."

It is the respondents' case that thereafter a list of retrenched workmen including that of Ram Singh was filed before the Tribunal. The management closed its business on 5th January, 1956, before this dispute in Reference 4 of 1955 was decided. The Government then issued a fresh notification withdrawing Reference 4 of 1955 so far as it related to the petitioning management. This notification was issued on 5th May, 1956. A year later in May 1957 the impugned notification was issued.

Now, from these facts it is clear that the dispute relates to the wages of Ram Singh for the period 12th February, 1954 to 5th January, 1956, i.e., till the date of the closure of the industry. It accordingly relates to a period when the industry was in existence. Therefore, the mere fact that the reference was made after the closure of the business does not render it invalid (*Pipraich Sugar Mills Limited v. Pipraich Sugar Mills Mazdoor Union*, [1957] 11 F.J.R. 262). Moreover, the services of Ram Singh were terminated on 12th February, 1954, and it is clear from the application of this respondent under section 33A in 1954 challenging the validity of his dismissal that a dispute existed between the management and its workmen prior to the closure of the business.

The learned counsel for the management has argued that this dispute could not be considered to be an industrial dispute within the Act and therefore the Government could not refer it to the Labour Court under section 10(1)(c) of the Act. Section 2(k) of the Act defines an industrial dispute. After examining the scheme of the Act and this section 2(k), the Supreme Court, without deciding the matter finally, observed in *Central Provinces Transport Service Limited, Nagpur v. Raghunath Gopal Patwardhan*, [1957] 11 F.J.R. 298:

"Notwithstanding that the language of section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen."

This matter came up again before the Supreme Court in *Newspapers Limited v. State Industrial Tribunals, U.P. and others*, [1957] 12 F.J.R. 129 and the above observation was approved and the case was decided

accordingly. It, therefore, follows that if the present dispute is only between the individual workman and the management, then the reference was invalid.

The respondent's case, however, is that since his dismissal, this dispute has been before the Industrial Tribunal as it had been taken up by the Union which at that time represented workmen working in this mill and that at the time of the present reference the trade union had taken up the dispute and therefore in accordance with the decisions of the Supreme Court, the present dispute is an industrial dispute.

Now, section 33-A enables an individual workman, when an action is taken against him in contravention of the provisions of section 33, to file a complaint to the Tribunal before whom an industrial dispute is already pending. In the present case Ram Singh had made this complaint against his dismissal by the management during the pendency of an industrial dispute. It was, however, a complaint of an individual and therefore it could not make his dispute with the management an industrial dispute unless it is shown that at the time of that application his fellow workmen or the Trade Union had taken up that dispute and there is no such allegations in this case.

It is alleged in paragraph 5 of the written statement in the present case that in Reference 30 of 1954 and that of 4 of 1955 the trade union concerned had included the name of Ram Singh in the list of dismissed workers when it was pending before the Second Industrial Tribunal but that dispute could not be decided as, on 15th May, 1956, the Government withdrew the management's dispute from reference. It appears that thereafter it was only in November, 1956, that the Textile Mazdoor Ekta Union again called upon the management to pay the wages due to Ram Singh but its efforts bore no fruit. It is argued that the dispute had become an industrial dispute with effect from 1954 when Reference 30 of 1954 was made. The management, however, counters this argument by contending that the Union took up this matter in November 1956, i.e., about ten months after the closure of the industry and it was only then that the dispute became an industrial dispute, and according to the learned counsel for the petitioners it was then too late for the Government to refer this dispute for adjudication to the Tribunal inasmuch as by that time the industry had ceased to be in existence.

After a careful consideration of the matter I have come to the conclusion that the respondent's contention in this matter must prevail. It is no doubt true that Reference 30 of 1954 and that of 4 of 1955 related to retrenched workmen only, but a person dismissed in contravention of section 33 would be considered to be a workman who had been

dismissed as retrenched. There is a specific allegation in para 5(c) and (d) that the Union had taken over this dispute and that could be done only on the basis that Ram Singh had been dismissed on the ground of retrenchment. Whether that was correct or not does not affect the position. The management has, it is to be noticed, not denied this allegation by filing any replication to the written statement in the present case. I am, therefore, of the opinion that this dispute had become an industrial dispute in 1954. It was suggested in the course of arguments that the present Union did not exist in 1954, but this suggestion is not supported by any affidavit. Even if it be so, the position is not changed. As long as a trade union which for the time being represents a workman of an industry takes up an individual workman's dispute it continues to remain an industrial dispute till it is finally decided and it is not necessary that the same union may remain in charge of that dispute till adjudication. A new trade union by amalgamation or otherwise may come into existence which from that date may represent the workmen of that industry and in such a case if the new union takes over the dispute, then the dispute does not cease to be an industrial dispute. It may happen in some cases that a number of workmen of an industry may take up the dispute of an individual workman and thus make it an industrial dispute. Before the dispute is, however, settled, a trade union representing the workmen of that industry may be organised which may take up the dispute. I see no reason for holding that in such circumstances the dispute on its being taken up by the union or a new union would become a new industrial dispute and will not be considered to be in continuation of the old industrial dispute. In this connection it must be remembered that the basis of the idea that a dispute of an individual becomes an industrial dispute when it is taken up by a trade union or by other workmen is that such a dispute involves a principle which affects the working conditions of all or considerable portion of the workmen in that industry. Such a situation may also arise when provisions of section 33 are contravened by the management. Taking all this into consideration I am of the opinion that this contention raised on behalf of the management is without any force.

Assuming that the present dispute became an industrial dispute only in November, 1956, when it was taken over by the present union, the position is not very different. The dispute relates to a period before the closure of the business and mere delay in the Union taking over the dispute will not affect the position. The Supreme Court in *Pipraich Sugar Mills Limited v. Pipraich Sugar Mills Mazdoor Union*, [1957] 11 F.J.R. 262, has observed:

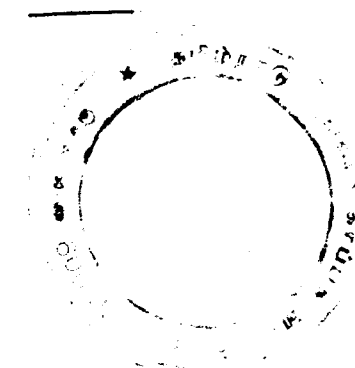
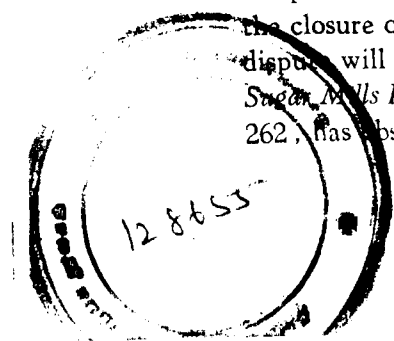
[To be reprinted]

F.J.R.] RAM LAL GURAMAL TEXTILE MILLS v. STATE OF PUNJAB 441

"We think that on a true construction of section 3, the power of the State to make a reference under that section must be determined with reference not to the date on which it is made but to the date on which the right which is the subject matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business." It will be noticed that their Lordships referred to a dispute and not to an industrial dispute. I am really unable to see why a dispute like the present one should not be decided under the Industrial Disputes Act simply because the business is closed before the trade union takes over the dispute. After all the dispute relates to a period prior to the closure of the business and the object of the Industrial Disputes Act is to make available machinery created by it for settlement of such disputes for the sake of amity in industrial sphere of this country.

For all these reasons I am of the opinion that the management has failed to show that the present dispute was not an industrial dispute. That being so, the reference made by the Government is valid.

The result is that this petition fails and is dismissed with costs. Respondent No. 3 only will be entitled to get these costs as respondents Nos. 1 to 2 neither filed any written statement nor contested the petition before me. Counsel's fee Rs. 100.



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