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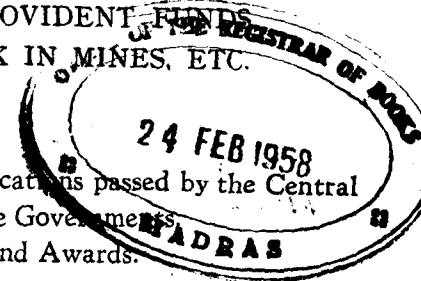
15th FEBRUARY 1958.

INDIAN FACTORIES JOURNAL

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

WITH

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



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THE INDIAN FACTORIES JOURNAL

VOL. XIII]

15TH FEBRUARY, 1958.

[PART XII

NOTICE TO SUBSCRIBERS.

Volume XIII of the Indian Factories Journal will end with this part. The General Index for Vol. XIII will be sent with Part I of Vol. XIV. Bills for renewal subscription have been despatched to all subscribers whose subscriptions end with this volume and they are requested to remit the same direct to us before 1-3-58. Subscriptions should not be paid to any book-sellers or agents.

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Employees' State Insurance—Exemptions

I

*Notification No. SIA. 1557/I, dated Bombay, 12th December, 1957.**

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Government of Bombay hereby exempts factories exclusively engaged in wool pressing either with or without cotton pressing and ginning which are situated within the State of Bombay, from the operation of the said Act, for a period of one year from 1st January, 1958.

II

Notification No. SIA. 1557-I, dated Bombay, 7th January, 1958.†

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Government of Bombay hereby exempts from the operation of the said Act any factory wherein ten or more employees, are 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 of the factory and which is situated in the area within the limits of the Corporation of the City of Nagpur, the Akola Municipality, the Hinganghat Municipality, the Municipal Corporation of Greater Bombay or the talukas of Borivli, Thana, Kalyan and Bhiwandi of Thana District, for a further period of one year with effect on and from the 22nd January, 1958.

INDUSTRIAL TRIBUNALS AND LABOUR COURTS RULES OF PROCEDURE, 1957

Notification No. 970/IT-EST(27), dated January 16, 1958†

In exercise of the powers conferred by section 5C(1) of the U.P. Industrial Disputes Act, 1947 (U.P. Act no. XXVIII of 1947), as amended up to date, the Presiding Officers of the Industrial Tribunals (General), (Sugar), Allahabad and of the Labour Courts, Kanpur, Bareilly and Meerut have jointly agreed and adopted the rules of procedure given in the annexure appended hereto with effect from July 12, 1957.

Under section 19 of the said Act, it is ordered that notice of this order shall be given by publication in the official *Gazette*.

In exercise of the powers conferred by section 5-C(1) of the U.P. Industrial Disputes Act, 1947, as amended by the U.P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the Industrial Tribunals and Labour Courts have framed the following rules of procedure:

*Bom. Govt. Gaz., 2-1-58 Pt. IV-A, p. 1.

†Ibid., 16-1-58, p. 39.

†U.P. Gaz., 25-1-58, Pt. IA, p. 111.

1. *Title and application.*—These rules shall be called the Industrial Tribunals and Labour Courts Rules of Procedure, 1957, and are subject to the provisions of the U.P. Industrial Disputes Rules, 1957.

2. *Definitions.*—In these rules of procedure, unless there be anything repugnant in the subject or context, the term:

(a) 'Rules' means the U.P. Industrial Disputes Rules, 1957.

(b) 'Pleading' includes an application in the nature of claim, counter claim, complaint and written statement.

(c) 'Registrar' means the Registrar of the Industrial Tribunals appointed by the Government.

(d) Words and expressions not defined in these rules of procedure have the same meanings as are assigned to them in the U.P. Industrial Disputes Act, 1947.

3. *Place and time of sittings.*—The sitting of the Industrial Tribunal and Labour Court shall ordinarily be held in their headquarters from 10-30 a.m. to 4-30 p.m. on all working days with a break of one hour from 1 p.m. to 2 p.m. The Industrial Tribunal may, if it considers necessary, hold sitting at any place throughout the State of U.P. and Labour Court may sit at any place within its territorial jurisdiction.

4. *Office hours.*—The office of the Industrial Tribunals and Labour Court shall be open on all working days from 10 a.m. to 5 p.m. with a break of one hour from 1 p.m. to 2 p.m.

Provided that the Presiding Officer concerned may alter the time of the Tribunal or Court and of the Office due to seasonal conditions or nature of the case.

5. *Holidays.*—Such holidays shall be observed in the offices of Industrial Tribunals and Labour Courts as are observed in Civil Courts in the Uttar Pradesh (except the annual vacation).

6. *Hearings.*—The hearings of the Industrial Tribunals and Labour Courts shall be open to public provided that the Presiding Officer concerned may, at any stage, direct that any sitting, shall be held in camera; provided further that he may direct that particular proceedings, even though held in public, may not be reported in the press, without the previous sanction of the Presiding Officer concerned.

7. *Language.*—The language of the Industrial Tribunal and Labour Court shall, for the time being, be English.

8. *Presentation of applications, pleadings and petitions.*—An application, pleading or petition may be sent to the Industrial Tribunal or Labour Court by registered post or may be presented before it or in its office by the party concerned personally or by his duly authorised agent.

9. *Verifications.*—All pleadings shall be verified and signed by the party concerned and a petition or application may be signed by the petitioner or applicant or his duly authorised agent.

10. *Registration of references, etc.*—On receiving a reference or petition which is in order it shall be registered as a case in the appropriate register in Form B, C, D or E.

11. *Authority to represent.*—The duly authorised agent shall file in the Industrial Tribunal or Labour Court written authority of appointment in Form 'A' appended to these rules duly signed or marked by the party to entitle him to represent the party mentioning the extent of his powers. Provided that when an agent is appointed by an official of a union, association, federation or Company, duly attested copy of the rule or the authority entitling that official to appoint an agent, shall also be filed by the agent, along with his authority.

12. *Addresses of the parties.*—With every initial pleading or petition shall be filed the postal address of the party and a communication sent to him by such postal address or to his agent shall be deemed to have been served on him. Any change in postal address must also be intimated to the Industrial Tribunal or Labour Court as the case may be.

13. *Agents' Rights.*—The agent shall have the right to examine, cross examine and re-examine witnesses to make a statement on fact and to address the Industrial Tribunal or Labour Court after the close of evidence and even earlier if so desired and permitted by the Industrial Tribunal or Labour Court.

14. *Defective pleading or petition.*—If a petition or pleading is not in order, the Industrial Tribunal or Labour Court shall note the defect on it and return it to the petitioner or the agent to remove the defect within a specified time.

15. *Copies of pleadings.*—A party or petitioner shall file with the pleading or petition as many copies thereof, as is the number of opposite party and two more copies.

16. *Form of summons.*—Summons issued to workmen in general shall be in Form "F".

17. *Files to be summoned.*—The Industrial Tribunal or Labour Court shall summon from the Regional Conciliation Officer or the authority concerned the relevant file of the Conciliation Board and the same shall be returned after disposal of the case.

18. *Issues.*—After the written statements and rejoinders, (if any) of both the parties are filed and after oral examination (if any) the Industrial Tribunal or Labour Court shall frame the issues if necessary.

19. *Documentary evidence.*—The parties or their authorised representatives shall produce at the first hearing of the case all the documentary evidences in their possession on which they intend to reply and which had not already been filed in the Industrial Tribunal or Labour Court and all such documents which the Industrial Tribunal or Labour Court had ordered them to produce. Except with the special leave of the Industrial Tribunal

or Labour Court, no document shall be allowed to be filed afterwards. The documents shall be accompanied by an accurate list thereof.

20. Parties to explain relevancy.—The Industrial Tribunal or Labour Court may, at any stage, if it considers necessary call upon the parties to disclose the relevancy of oral and documentary evidence sought to be tendered.

21. Summonses.—Summonses to witnesses shall issue in Form 'C'.

22. Payment to witness.—A party shall, while applying for summoning a witness deposit, for payment to him daily allowance and Travelling expenses as follows:

(a) if the witness is a Government servant his pay and Travelling allowance according to the rules contained in Financial Handbook, Volume III will be realised from the party summoning him and the same will be deposited in the Government Treasury in relevant head and the summoned Government servant will be issued a non-payment certificate in the form "H" and he will draw his travelling allowance from his department.

(b) if the witness is not a Government servant, he would be entitled to travelling allowance, daily allowance, etc., as detailed in the Schedule I.

NOTE.—The time spent in the journey by a witness coming from outside shall also be counted for the purpose of his daily allowance.

Provided, however, that if a party undertakes to pay the expenses of the witness direct to him, he need not deposit the expenses in the Industrial Tribunal or Labour Court but that fact shall be mentioned in his application and in the summons and the party shall do so at his own risk.

23. Oath or solemn affirmation.—Oath or solemn affirmation shall be administered to a witness by a peon or official of the Industrial Tribunal or Labour Court.

24. Recording of oral evidence.—Oral evidence shall be recorded in a narrative form but the Industrial Tribunal or Labour Court may order any portion of the evidence to be recorded in the form of question and answer.

25. Deposition.—Deposition shall be read over, or translated to, or may be read by a witness, as the case may be. Any *bona fide* error discovered to have been made in deposing or recording shall be rectified at that stage. The Industrial Tribunal or Labour Court shall certify that it has been so read over or translated to or read by the witness and admitted to be a correct record of his statement. It shall then be signed or marked by the witness, the parties or their agents if there be any and the Presiding Officer concerned.

26. Exhibiting the documents.—Documentary evidence tendered on behalf of the employers shall be marked as Ex. E-1, Ex. E-2, etc. and the same series of Employers' documents shall be marked Ex. E-1, Ex. E-1 (a) Ex. E-1 (b), etc. and of workers' documents Ex. W-1, Ex. W-1(a), Ex. W-1 (b) etc. Along with the exhibit mark shall also be endorsed the name of the

person filing the documents, the date of filing it the date of exhibiting it and the endorsement shall be initialled by the Presiding Officer concerned.

27. Rejected documents.—When a document is rejected as inadmissible or is not proved, it shall, before the decision of the case be returned to the party or person who produced it and if that party or person be not in attendance, it shall be placed in a sealed cover on which shall be written the words 'Not part of the Records' and shall on request be returned to the party or person who produced it or his successor in interest. This envelope shall be tagged to file B-3.

28. Particulars of the cases to be mentioned on each paper.—Each paper brought on the record of the Industrial Tribunal or Labour Court shall bear on the left hand margin the particulars of the case, e.g. reference, number, name of the Industrial Tribunal or Labour Court and name of parties.

29. Right to argue.—After the close of evidence normally the party who led evidence shall first argue and the opposite party may reply and thereafter the former party may further reply.

30. Correspondence.—All official correspondence meant for the Industrial Tribunal shall be addressed to the Registrar of the Industrial Tribunals by designation and for Labour Court shall be addressed to the Presiding Officer concerned.

31. Preparation of records.—A record shall consist of 5 files each file shall have an index of the papers contained therein as follows:

File "A" shall, besides the index, contain the order sheet of the whole case, the reference, pleading of the parties, issues, other orders and the award or decision.

File "B" shall consist of 3 parts given below:

B-1 shall contain employer's exhibits.

B-2 shall contain worker's exhibits.

B-3 shall contain all other documentary evidence summoned by the Court and not tendered by any party.

File "C" shall contain oral evidence adduced by the parties.

File "D" shall contain all other papers.

On the cover of each file shall be noted the name of the Court or Tribunal and all the particulars of the case, the date of decision and number of papers contained in it. At the close of the case, the Reader shall total the number of leaves included in a file and shall note the same at the foot of the index and shall verify and sign this note.

32. Consignment of records.—The Reader of the Industrial Tribunal or Labour Court shall within one month from the date of publication of the award, complete the record and consign it to the record-room and shall obtain from the assistant concerned an acknowledgment of receipt of the record in the despatch and receipt register, records, thereafter shall be entered in the register in form "I".

33. *Preservation of records.*—File "A" shall be preserved for 15 years from the date of enforcement of the award.

Files "B" and "C" shall be preserved for 6 years from the date of enforcement of the award.

File "D" shall be preserved for 3 years from the date of enforcement of the award.

After the expiry of the aforesaid periods, the assistant concerned shall obtain orders of the Presiding Officer concerned in writing for weeding. After weeding papers shall be destroyed and auctioned as waste papers. A note about each weeding shall be made in the index of file "A" and when file "A" is also weeded, a note about it shall be made in the remarks column of the Register of cases.

34. *Preservation of Forms and register.*—Registers in forms B, C, D, E, and H shall be preserved permanently and all other forms for 3 years only.

35. *Inspection of records.*—(1) On the date of hearing the Industrial Tribunal or Labour Court may, in its discretion, without a written order in this behalf, permit a party to a case or his authorised representative even without a written application to inspect the record of the case fixed for hearing.

(2) Any party to a case or their authorised representative may apply in form "J" for an order to inspect the record or any paper in such a case or proceedings.

(3) When the inspection is over, a note to that effect shall be made by the person making the inspection. No person while making inspection shall make any mark on the record or in any respect mutilate any record or paper. He can make short notes of the contents of documents which he inspects but shall on no account make a copy or translation of any paper or record.

(4) No stranger to a case, shall be entitled as of right to claim inspection of the record of a case or proceedings without the previous permission of the Presiding Officer concerned.

(5) The register of inspections shall be maintained in form "K".

(6) With each application for inspection, a fee of 12 Naye Paise and additional fee of 50 Naye Paise per hour of inspection shall be deposited in cash before hand or as inspection proceeds from hour to hour in the office for which a receipt shall be issued and the amount shall be noted on the application for inspection and also in column 5 of the register and shall be deposited in Government Treasury under head "XXXVI-Miscellaneous-Department-Miscellaneous-Receipts-Inspection charges".

36. *Oath Commissioner.*—The official authorised to verify the affidavit shall maintain a register in form "L". He shall endorse on the affidavit or counter affidavit a certificate of verification in form "M".

FORM 'A'

(RULE II)

(Letter of Authority)

Before the Presiding Officer,

Industrial Tribunal ()/Labour Court at.....
Reference number..... of 19.....

In the matter of.....

I/We hereby authorize Sri..... to represent
(designation)..... me/us in the above mentioned case on my/our behalf.

Name and signature.....

Designation

Address

Accepted.....

Name and signature.....

Designation

INDUSTRIAL TRIBUNAL () AT ALLAHABAD/LABOUR COURT AT.....

FORM 'B'

(RULE 10)

(Register of Cases)

Serial No. of case.	Date of registration.	Government notification number and date.	Industry.	Particulars of parties.	Nature of dispute.	Date of submission of Award to Government.	Date of publication of Award by Government.	Remarks.

INDUSTRIAL TRIBUNAL () AT ALLAHABAD/LABOUR COURT AT.....

FORM 'C'

(RULE 10)

[Register of Cases under section 6-E(1) and (3) and Rule 31(1)]

Serial No.	Date of receipt of application.	Name of applicant.	Name of opposite party.	Nature of case.	Decision.	Date of decision.	Remarks.

INDUSTRIAL TRIBUNAL () AT ALLAHABAD/LABOUR COURT AT.....

FORM 'D'

(RULE 10)

[Register of Cases under section 6-E(2) of the Act and Rule 31(2)]

Serial No.	Date of receipt of application.	Name of applicant.	Name of opposite party.	Action to be approved.	Decision (approved or not)	Remarks.

INDUSTRIAL TRIBUNAL () AT ALLAHABAD/LABOUR COURT AT.....

FORM 'E'

(RULE 10)

(Register of Applications under section 6-F of the Act and Rule 32)

Serial No.	Date of receipt of application.	Name of applicant.	Name of opposite party.	Actions of contravention of section 6-E.	Relief sought.	Date of submission of Award to Government.	Date of publication of Award by Government.	Remarks.

FORM 'F'

(RULE 16)

Before the Industrial Tribunal (General/Sugar/Textiles)/Labour Court at.....

Adjudication Case No. of 195

(General Summons to all concerned)

Whereas an industrial dispute between M/s..... and its workmen has been referred to the Industrial Tribunal (General/Sugar/Textiles)/Labour Court..... under section 4-K of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947), vide G. O. No..... dated.....195.....you are hereby summoned to appear before me in person or through a duly authorized representative as required under rule 36 of the U. P. Industrial Disputes Rules, 1957 on the..... day of.....195.....at 10-30 a.m., before the Industrial Tribunal (General/Sugar/Textiles)/Labour Court.....to answer all material questions relating to the said dispute and you are directed to produce on that day all the books, papers and other documents and things in your possession or under your control in any way relating to the matter under investigation by me. Your written statements, if any, should also be presented to me in duplicate on the date specified above.

Matter(s) of Dispute

The attention of all concerned is also drawn to section 6-E of the U. P. Industrial Disputes Act, 1947, for strict compliance.

By Order of the Tribunal,

Registrar or Presiding Officer, Labour Court.

at.....

In Industrial Tribunal () at Allahabad/Labour Court at.....

FORM 'G'

(RULE 21)

Reference No.....of 19

To.....

In the matter of.....

Whereas.....has cited you as his/their witness, you are hereby summoned to appear before the I. T. () L. C. in person

on the.....day of195.....at..... a.m./p.m.
to answer all material questions relating to the said dispute and directed to
produce on that day such papers or documents as are required by the
I. T./L. C.

Issued.....day of.....195 .

By Order of the I. T.,
Registrar or Presiding Officer, Labour Court.

In the Industrial Tribunal () at Allahabad or Labour Court at.....

FORM 'H'

CERTIFICATE OF ATTENDANCE (RULE 22)

Certified that Sri.....of
.....office posted at.....has attended this
.....Department Court on.....to give evidence of fact which come to his
knowledge in his Public capacity in the case noted below and has note
Private
has been paid by me Rs.....As.....on account of his appearance
before the Industrial Tribunals () or Labour Court at.....

(1) Travelling Expenses.....

(2) Subsistence Allowance.....

Total.....

That Sri.....'s.....day's pay,
T. A. and D. A. is deposited to the treasury at.....

Number of the case and year.....

Name of parties.....

Station

Date.....

.....
Signature of Presiding Officer.

Industrial Tribunal () at Allahabad/Labour Court at.....

FORM 'I'

[RULE 32]

(Records Room Register)

Serial No.	Date of receipt of records in records room.	Name of the office of despatch.	Particulars of records.	Date of publication of Award or decision.	Date fixed for weeding.	Details of weeding with date.	Remarks.

Industrial Tribunal () at Allahabad/Labour Court at.....

FORM 'J'

[RULE 35(2)]

Serial number.....and date of application.....

(Application for inspection of the record in the undermentioned
pending/disposed of case)

Description of case.	Number.	Year.	Description of the papers of which inspection is required.	Name of person or persons who will inspect the record (not exceeding three).	Applicant whether party to case or stranger.	Reason for inspection.	Time and date on which inspection is sought.
1	2	3	4	5	6	7	8

The.....195 .

Signature of applicant.

Industrial Tribunal () at Allahabad/Labour Court at.....

FORM 'K'

[RULE 35(5)]

(Inspection Register)

No. and date of order for inspection.	Name of person who inspected as a party or stranger to the case.	Number and description of the case with specification of record, book of register inspected.	Date of receipt and return of record book or register.	Amount of application and inspection fee realised and deposited.	Time taken in inspection.	Signature of official in charge of records in verification of entry in Col. 4.	Remarks and reasons for allowing inspection by a stranger.
1	2	3	4	5	6	7	8

Industrial Tribunal () at Allahabad/Labour Court at.....

FORM 'L'

(RULE 36)

(Register of Affidavits)

Serial No.	Date.	Name of Deponent.	Particulars of case.	Initial of the Oath Commissioner.	Remarks, if any.
1	2	3	4	5	6

Industrial Tribunal () at Allahabad/Labour Court at.....

FORM 'M'

(RULE 36)

(Certificate of Verification)

Presented this.....
 day of.....at.....
 hours by.....who is personally
 known to me or is indentified by.....
 who is personally known to me. Read over to the deponent and admitted
 to be a correct record of his affirmation.

Oath Commissioner.

SCHEDULE I

RULE 22(B)

For the purposes of payment of travelling allowances and diet money, complainants and witnesses shall be classified as follows:

Class I—Persons of superior rank.

Class II—Persons such as ordinary, traders, pleaders and those of corresponding rank, and

Class III—Persons belonging to the class of cultivators and labourers.

The rates of travelling allowance and diet money for the three classes shall be as below;

Travelling allowance	Class I	Class II	Class III
Journey by road	Up to a maximum of eight annas per mile as the Court may direct.	Up to a maximum of six annas per mile as the Court may direct.	Same as for Class II.
Journey by rail	One first class fare each way	One second class fare each way	One third class fare each way.

Travelling Allowance	Class I	Class II	Class III
Conveyance hire	Rs. 3 per diem	Rs. 2 per diem	Re. 1 per diem
Diet money in Allahabad	Rs. 5 per diem	Rs. 3 per diem	Rs. 1'50 per diem
On the journey	Rs. 4 per diem	Rs. 2 per diem	Re. 1 per diem

NOTES—(a) Diet money shall be paid for the days of actual detention as well as for the time occupied in the journeys to and from the Court. The number of days which should be allowed for the journey to and from the Court shall be determined by the Registrar in the Industrial Tribunals and by the Presiding Officer in the Labour Courts.

(b) Conveyance hire for the days of actual attendance at the Court shall be paid to all complainants and witnesses.

(c) Witnesses following any profession, such as medicine or law, shall receive such special allowance as may be determined by the Presiding Officer in each case having regard to the circumstances and custom.

(d) Diet money at the enhanced rate admissible at Allahabad shall also be admissible for the days of arrival at and departure from those places.

Madras Factories Rules—Amendments.

G. O. Ms. No. 3980, Industries, Labour and Co-operation, 3rd December, 1957.*

In exercise of the powers conferred by sections 9 and 112 of the Factories Act, 1948 (Central Act LXIII of 1948), the Governor of Madras hereby makes the following amendment to the Madras Factories Rules, 1950, published with the late Development Department notification, dated the 15th March, 1950, at pages 103 to 178 of the Rules Supplement to Part I of the *Fort St. George Gazette*, dated 25th April, 1950, as subsequently amended, the same having been previously published as required by section 115 of the said Act :—

AMENDMENT.

In the proviso to rule 13 (c) of the said rules, for the words and figures 'sections 78 to 82' (leave with wages) the words and figures 'sections 78 to 83' (leave with wages) shall be substituted.

Orissa Industrial Employment (S.O.) Rules, 1946—Amendment.

Notification No. 6003-I.F.-20/57-Lab. dated 19th September, 1957.†

In exercise of the powers conferred by section 15 read with clause (b) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), the State Government do hereby make the following further amendment in the Orissa Industrial Employment (Standing Orders) Rules, 1946, the same having been previously published as required by sub-section (1) of section 15 of the said Act, namely :—

AMENDMENT.

For the existing rule 6 (b) of the said rules, the following may be substituted, namely :—

"Where there is no such trade union, arrange for election of the workmen in such manner as he may deem fit for electing three representatives, to whom he shall, upon their election, forward a copy of the draft standing orders together with a notice in Form II."

Orissa Factories Rules, 1950—Amendment.

Notification No. 6048—I.F.-19/57-Lab. dated 20th September, 1957.‡

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

AMENDMENT.

In the said Rules—

in sub-rule (2) of rule 7, for the words "and shall be made" the words "and shall reach the Chief Inspector" shall be substituted.

*Fort St. Geo. Gaz., 25-12-57, Pt. I, p. 726.

‡Orissa Gaz., 27-9-57, Pt. III, p. 943.

THE PUNJAB COTTON GINNING AND PRESSING FACTORIES (AMENDMENT) ACT, 1957.

(PUNJAB ACT NO. 36 OF 1957.)*

An act to amend the Punjab Cotton Ginning and Pressing Factories Act, 1955.

Be it enacted by the State Legislature of Punjab in the Eighth Year of the Republic of India as follows :—

1. *Short title.*—This Act may be called the Punjab Cotton Ginning and Pressing Factories (Amendment) Act, 1957.

2. *Amendment of section 2 of the Punjab Act No. II of 1955.*—In section 2 of the Punjab Cotton Ginning and Pressing Factories Act, 1955 (hereinafter referred to as the principal Act), the following shall be added as clause (k) :—

"(k) 'Licence' means a licence granted under section 2-A, to a cotton ginning factory or a cotton pressing factory."

3. *Insertion of section 2-A in the Punjab Act No. II of 1955.*—After section 2 of the principal Act, the following section shall be inserted, namely :—

"2-A (1) No cotton ginning factory or cotton pressing factory shall be worked without a licence granted to the owner thereof by such authority, in such form, subject to such conditions and on payment of such fee, as may be prescribed.

(2) (a) A licence for which the prescribed fee has been paid shall be liable to be refused only on the ground that the owner or person in-charge of a cotton ginning or a cotton pressing factory in respect of which a licence is applied for has been convicted of an offence punishable under this Act ;

(b) A licence shall be liable to be suspended, withdrawn or cancelled only on the ground that the owner or person in-charge of the cotton ginning or cotton pressing factory in respect of which licence was granted has been convicted of an offence punishable under this Act.

Provided that no licence shall be suspended, withdrawn or cancelled under this clause until after the expiration of the season in which the said owner or person has been convicted ;

(3) If any person works a cotton ginning or cotton pressing factory in respect of which a licence has not been granted or has been suspended, withdrawn or cancelled, such person shall be punishable—

(a) on a first conviction, with fine which may extend to five hundred rupees and if the offence is continued for more than one day, with an additional fine which may extend to one hundred rupees for every day subsequent to the first day for which the offence has continued ; and

(b) on every subsequent conviction, with fine which may extend to fifteen hundred rupees and, if the offence has continued for more than one day, with an additional fine which may extend to two hundred rupees for every day subsequent to the first day during which the offence has continued."

*Punjab Govt. Gaz., Extry., 14-11-57, p. 1829.

4. *Amendment of section 15 of Punjab Act No. II of 1955*—For section 15 of the principal Act, following shall be substituted, namely:—

“15. *Restriction on closure of factories.*—The owner of a cotton ginning factory or cotton pressing factory, for which a licence has been granted for the season, shall not have the factory closed or cause it to be closed, before the end of the cotton ginning or cotton pressing season, without the previous sanction of State Government obtained in the manner prescribed, except when the factory is closed in accordance with the provisions of the Industrial Disputes Act (No. XIV of 1947) or any other law for the time being in force, and in case of default, the owner shall, on conviction, be punishable with a fine which may extend to one thousand rupees for each day of closure without such sanction.”

5. *Amendment of section 18 of Act No. II of 1955.*—In sub-section (2) of section 18 of the principal Act:—

(i) in clause (1) the word “and” at the end shall be omitted;

(ii) the following shall be inserted as clause (m) and the existing clause (m) shall be relettered as clause (n):—

“(m) the authority by whom, the form in which, the conditions subject to which and the fees on payment of which a licence may be granted under section 2-A; and”

Industrial Courts in Assam declared as Magistrates

*Notification No. GLR. 394/57/10, dated January 4, 1958**

The Governor of Assam is pleased to declare the Presiding Officers of the Industrial Tribunal, Assam and the Labour Court, Assam, as 1st Class Magistrates under the Criminal Procedure Code for the purposes of trying cases arising out of the Labour Laws specified in Schedule I.

SCHEDULE I

1. Industrial Disputes Act, 1958.
2. Employees' State Insurance Act, 1948.
3. The Factories Act, 1948.
4. The Employment of Children Act, 1938.
5. Indian Dock Labourers Act, 1934.
6. The Dock Workers (Regulation of Employment) Act, 1948.
7. The Mines Act, 1952.
8. The Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955.
9. The Indian Trade Unions Act, 1926.
10. The Industrial Employment (Standing Orders) Act, 1946.
11. The Plantations Labour Act, 1951.
12. The Coal Mines Provident Fund and Bonus Schemes Act, 1948.
13. The Employees' Provident Funds Act, 1952.
14. The Minimum Wages Act, 1948.
15. Payment of Wages Act, 1936.
16. Mines Maternity Benefit Act, 1941.

*Assam Gaz., 15-1-58, Pt. II-A, p. 78.

17. Workmen's Compensation Act, 1923.
18. Weekly Holidays Act, 1942.
19. Children (Pledging of Labour) Act, 1933.
20. Tea Districts Emigrant Labour Act, 1932.
21. Assam Maternity Benefit Act, 1948.
22. Assam Shops and Establishments Act, 1948.
23. Assam Tea Plantations Provident Fund Schemes Act, 1955.

Employees' State Insurance—Exemptions.

*Notification No. GLR. 125/57/7, dated 9th January, 1958**

In exercise of the powers conferred by Section 87 of the Employees' State Insurance Act, 1948, the Governor of Assam is pleased to exempt for a further period of one year, with effect on and from 22nd January, 1958, every factory from the payment of special contribution under Chapter V-A of the said Act, 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.

Employees' Provident Funds Scheme, 1952—Amendments.

Notification No. S.R.O. 331 dated 15th January, 1958†.

In exercise of the powers conferred by sub-section (1) of section 7 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby makes the following further amendments in the Employees' Provident Funds Scheme, 1952, namely:—

In clause (f) of paragraph 2 of the said Scheme—

(i) for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under sub-paragraph (1) of paragraph 69”;

(ii) for sub-clause (iii) and the Explanation thereunder, the following sub-clause and Explanation shall be substituted, namely:—

“(iii) an employee employed by a contractor in any operation not directly connected with any manufacturing process carried on in the factory or other establishment; or

Explanation.—In respect of an employee employed by a contractor who is not an excluded employee under this paragraph, the principal employer shall be responsible for complying with the provisions of the Act and this Scheme”;

(iii) for sub-clauses (iv) and (v), the following sub-clause and Explanation shall be substituted, namely:—

“(iv) an apprentice.

*Ibid.

†Gaz., of India, 25-1-58, Pt. II, sec. 3, p. 187.

Explanation.—An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government."

Employees' State Insurance (Central) Rules, 1950—Amendment

*Notification No. S.R.O. 334 dated New Delhi the 16th January, 1958.**

In exercise of the powers conferred by section 95 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment to the Employees' State Insurance (Central) Rules, 1950, the same having been previously published as required by sub-section (1) of the said section, namely :—

AMENDMENT

In the said rules, for sub-clause (b) of clause (i) of sub-rule (2) of rule 5 the following shall be substituted, namely :—

"(b) in respect of journeys by rail, a single fare of the class by which he travels on payment of full fare plus 12 pies per mile, provided that if he travels by air-conditioned accommodation in Mail/Express trains or by air-conditioned class in De-luxe trains he will be entitled to first class fare only, from and to the usual place of business or from and to the place from or to which the journey is actually performed by the member, whichever is less, the rate of 12 pies per mile being subject to the same modifications as the Central Government may make from time to time in this regard in respect of its own officers of the first grade.

NOTES.—(1) Non-official members who travel by air-conditioned III class in De-luxe trains shall be entitled to the railway fare paid by them plus incidental expenses at the rate specified above.

(2) Return tickets should be purchased whenever they are available, and when it is expected that the return journey will be performed before the expiry of the period for which return tickets are available."

Motor Transport Industry in Andhra Pradesh declared Public Utility Service.

[G.O. Ms. No. 1304, Social Welfare and Labour, 11th December, 1957.]†

Whereas, the Governor of Andhra Pradesh had declared by the Social Welfare and Labour Department Notification No. 310, dated 29th May, 1957, published on page 1056 of Part I of *Andhra Pradesh Gazette*, dated 6th June 1957, the Motor Transport Industry in the State of Andhra Pradesh to be a Public Utility Service for the purposes of the Industrial Disputes Act, 1947 (Central Act XIX of 1947), for a period of six months from 27th June, 1957;

**Ibid.*, p. 188.

†*Andhra Pradesh Gaz.*, 26-12-57, Pt. I, p. 1540.

And whereas, the Governor of Andhra Pradesh is satisfied that the public interest requires extension of the period specified above for a further period of six months from 27th December, 1957;

Now, therefore, in exercise of the powers conferred by sub-clause (VI) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Andhra Pradesh hereby declares the Motor Transport Industry in the State of Andhra Pradesh to be a Public Utility service for the purposes of the said Act for a further period of six months from 27th December, 1957.

Employees' State Insurance—Exemptions.

Notification No. 46L. W./L.W./IA-26/57. dated 7th January, 1958†.

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Governor has been pleased hereby to exempt from the 22nd January, 1958, every factory in which ten or more persons are not employed or were not employed at any time during the twelve months, immediately preceding that date by the principal employer directly or by or through an immediate employer, even though twenty or more persons are or were working in the factory, and which is situated in the area where chapters IV and V of the said Act have been or may be brought into force from the operation of the said Act for a period of one year, the requirement of section 89 of the said Act having already been complied with.

Employees' State Insurance—Exemptions.

*Notification No. 49(ST)XXXVI-A—403-55, dated 6th January, 1958.**

In continuation of notification No. 176(ST)/XXXVI-A—403-55, dated February 6, 1957, and in exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (Act No. XXXIV of 1948), the Governor of Uttar Pradesh is pleased to exempt for a further period of one year with effect from January 22, 1958, from the operation of the said Act, except Chapter V-A, thereof, every factory which is situated in any area of Uttar Pradesh where Chapter IV and V of the said Act are in force and 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.

†*Cal. Gaz.*, 16-1-58, Pt. I, p. 184.

**U. P. Gaz.*, 11-1-58, Pt. I, p. 40.

Notification No. 3220(SM)/XXXVI-A—1197(SM)|57. dated November 5, 1957 *

In exercise of the powers conferred by sections 110 and 112 of the Factories Act, 1948 (Act No. LXIII of 1948, the Governor of Uttar Pradesh is pleased to make the following amendments to the U. P. Factories Rules, 1959, the same having been previously published for objections and suggestions with notification No. 2908(M)/XXXVI(B)—281(M)/56 dated January 31, 1957, as required by section 115 of the said Act :

In Form No. 21 appended to the said Rules—

(17) Just above the words "Name of the Factory" given at the beginning of the Form, *insert* the following: "Number of the Licence issued by the Chief Inspector of Factories."

(2) For the table with the heading "Accidents" given under item 28 of the said Form, *substitute* the following :

ACCIDENTS "FATAL AND NON-FATAL ACCIDENTS"

[illegible]

Signature of Occupier.....
Date.....

Signature of Manager.....

*U. P. Gaz., 16-11-57, Pt. I-A, p. 1669.

"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 the 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.

[IN THE BOMBAY HIGH COURT.]

STATE

v.

CHINUBHAI HARIDAS

Vyas and Palnitkar, J.J.

August 1, 1957.

FACTORIES ACT, 1948, SECTION 36(3) AND (4)—SAFETY PROVISIONS
 —“PERMITTING A WORKER TO ENTER”—MEANING OF—POSITIVE ACT OF
 GRANTING PERMISSION, WHETHER NECESSARY—ENTRY OF WORKMAN NOT
 PREVENTED—WHETHER AMOUNTS TO “PERMITTING” ENTRY—PROVISION
 OF SAFETY APPLIANCES—WHETHER APPLIANCES SHOULD ALWAYS BE
 PROVIDED.

The manager of a factory was prosecuted for failing to comply with the provisions of section 36, sub-sections (3) and (4), of the Factories Act, 1948, in that he allowed certain workmen to enter a confined space in his factory without complying with the said provisions which resulted in their death and

the employer was acquitted by the trial Magistrate who held that as the workmen did not enter the confined space with the express permission of the employer there was no contravention of sub-section (3) and that under sub-section (4) the safety devices mentioned therein need be provided only after a person has entered the confined space. On appeal by the State against the acquittal,

Held, reversing the order of the trial Magistrate :

(i) *That the scheme of the Factories Act, 1948, is to require the employer to take precautionary measures for safeguarding the lives of his workers, prudent or imprudent, rash or careful, against all possible danger while they are working on the premises of the factory. For attracting the provisions of section 36(3) of the Act, it is not necessary that a positive act of granting permission must be done by the employer. If the occupier or manager acquiesces in the entry, he permits the entry. If he connives at the entry, then also he permits the entry. If he fails to prevent the entry, then also he permits the entry. Therefore, the manager had permitted the workmen to enter the confined space in contravention of the section.*

(ii) *That it is clear from the words of sub-section (4) of section 36 that it is not enough for the manager to procure the safety appliances when somebody has to enter the confined space. The sub-section casts an obligation on the manager to keep ready at all times the appliances mentioned therein.*

Criminal Appeal No. 365 of 1957.

V. H. Gumaste for the State.

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

JUDGMENT.

VYAS, J.—This is an appeal from acquittal and it is filed by the State from a judgment of the learned Joint Civil Judge, J.D. and Judicial Magistrate, First Class, Broach, acquitting the respondent who was charged with having committed offences under sub-sections (3) and (4) of section 36 of the Factories Act (Act LXIII of 1948) read with section 92 of the said Act.

The appeal raises a question under the Factories Act and the question is one of construction of sub-sections (3) and (4) of section 36 of the Act. This question arises upon the following facts: The respondent is the occupier of the Gopal Mills Company Ltd., Broach, a factory defined by section 2, sub-section (1), clause (m), of the Act. On July 4, 1955, at 9-30 o'clock in the morning when the factory was working, an accident occurred in the valve pit of the purification plant installed in the factory. As a result of the accident, five workers died. The names

of the workers were Chhotalal Nathubhai, Fakirji Dhanjisha, Melia Dadla, Maganlal Gordhanbhai and Chunilal Bechar. The accident occurred in this way. As the valve for pit No. 2 could not be operated on that day, Melia Dadla was asked to go down into the pit to attend to it. Melia went down into the pit without wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which should have been held by a person standing outside the confined space. He was made to go down into this confined space without taking all practicable measures to remove any dangerous fumes that were likely to be present to such an extent as to involve risk of his being overcome thereby. Melia was soon overcome by deadly poisonous gases in the valve pit and he died. Subsequently, Fakirji, Maganlal, Manilal and Chhotubhai were also made to go down into the pit. They too went down without wearing suitable breathing apparatus. They also were overpowered by the poisonous gases and died. Tanna, the Superintendent of the Municipal Fire Brigade, went to the spot with breathing apparatus and other appliances and he also entered the pit to save the dying persons. There was poisonous gas inside the pit and Tanna himself was attacked by it and his eyes were affected. He became unconscious. Dr. Rashiklal Parikh, Chief Medical Officer and Surgeon at the Sevashram Hospital, also arrived at the place of the accident. He found that three persons were lying dead outside the pit and the gas which was coming out of the pit was emitting foul odour. Dr. Ratilal Vakharia is a mill doctor. He found that five persons had died as the result of having been overcome by carbon-dioxide. Dr. Kharshedji H. Kamakka, the honorary surgeon at the Civil Hospital, Broach, is an eye-specialist. He examined the eyes of Tanna and his opinion was that the condition from which Tanna's eyes were suffering was possible to be caused by poisonous gases. The incident was reported to the Inspector of Factories, Mr. K. N. Parekh, and Mr. Parekh visited the factory and made enquiries. He found that suitable breathing apparatus, reviving apparatus, belts and ropes were not available and were not kept ready for instant use beside the confined space. The Inspector visited the factory again on July 18, 1955, and August 6, 1955, and even then none of the above appliances was kept ready beside the valve pit. Indeed, they were not available anywhere in the factory. Upon these facts, the respondent was prosecuted under section 36, sub-sections (3) and (4), read with section 92, of the Factories Act.

After this complaint was filed against the respondent, he filed a complaint under section 101 of the Factories Act against S. D. Vashistha and Haribhai Tripathi alleging that it was the duty of these two persons to maintain the apparatus specified in sub-section (4) of section 36 and,

therefore, he (respondent) was not guilty of the offences with which he was charged.

The respondent's defence to the charges against him is that he did not permit the workers to enter the valve pit, that the pit was to be worked from outside and that he was not even present in Broach on the date of the accident.

The charges against the respondent having arisen out of the alleged contraventions of sub-sections (3) and (4) of section 36 of the Factories Act, sub-sections (3) and (4) may be set out. Sub-section (3) provides:

"No person in any factory shall enter or be permitted to enter any confined space such as is referred to in sub-section (1) until all practicable measures have been taken to remove any fumes which may be present and to prevent any ingress of fumes and unless either—

(a) a certificate in writing has been given by a competent person based on a test carried out by himself, that the space is free from dangerous fumes and fit for persons to enter, or

(b) the worker is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person standing outside the confined space." Sub-section (4) provides:

"Suitable breathing apparatus reviving apparatus and belts and ropes shall in every factory be kept ready for instance use beside any such confined space as aforesaid which any person has entered, and all such apparatus shall be periodically examined and certified by a competent person to be fit for use; and a sufficient number of persons employed in every factory shall be trained and practised in the use of all such apparatus and in the method of restoring respiration."

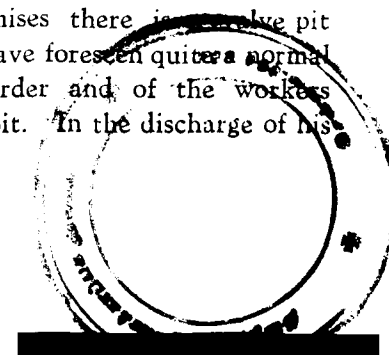
As sub-section (3) makes a reference to sub-section (1), sub-section (1) may also be set out. Sub-section (1) provides:

"In any factory no person shall enter or be permitted to enter any chamber, tank, vat, pit, pipe, flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve risk of persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress."

Now, there is no dispute that the five men who went down into the confined space, namely, the valve pit, died as they were overcome by poisonous fumes which were present in the valve pit. There is also no dispute that these five men went down into the pit without wearing a breathing apparatus. It is also not disputed that no breathing apparatus, no reviving apparatus, no belts and no ropes were kept ready for instant use beside the valve pit. Now, so far as the charge under sub-section (3) of section 36 was concerned, the learned

Magistrate held that as the pit was to be worked by a contrivance from outside, it was not necessary for anybody to enter the pit so long as the machinery outside was in order and no permission was expressly given to anybody to enter it. In the view of the learned Magistrate, "no permission was given, express or implied, to Fakirji or any of them to enter the pit." and therefore there was no contravention of sub-section (3) of section 36. Regarding the charge under sub-section (4) of section 36, the learned Magistrate held that the liability to keep the apparatus specified in sub-section (4) beside the pit arose only when the permission to enter the pit was granted or when a person had entered the pit consequent upon that permission. He took the view that for a liability to maintain the apparatus under sub-section (4) to arise, the person must enter the pit lawfully, i.e., after obtaining permission. As the five men who died in this case had entered the valve pit without permission, the learned Magistrate held that the provisions of sub-section (4) of section 36 were not attracted. Upon the above construction which the learned Magistrate put upon sub-sections (3) and (4) of section 36, he acquitted the respondent and the State has appealed from the acquittal.

In our view, the construction put by the learned Magistrate upon sub-sections (3) and (4) of section 36 is not right. For attracting the application of sub-section (3) it is not necessary that a positive act of obtaining permission must be done by a worker or a positive act of granting permission must be done by the occupier or manager. If the occupier or manager acquiesces with the entry, he permits the entry. If he connives at the entry, then also he permits the entry. If he fails to prevent the entry, then also he permits the entry. It is contended for the respondent that as the valve pit was worked by a machinery from outside, it was not necessary for anybody to ask for permission to enter the pit and no question arose for the occupier or the manager to grant the permission. It is also contended that no such permission was asked for or granted. Now, it could not possibly be said that the machinery for operating the pit would never get out of order. Machineries do get out of order, and indeed in this case it did get out of order on the date of this accident. The scheme of the Act, which is a welfare legislation, is to require an employer to take precautionary measures for safeguarding the lives of his workers, prudent or imprudent, rash or careful, against all possible danger while they are working on the premises of the factory. In our view, the respondent who is the occupier of the factory, upon whose premises there is a valve pit containing deadly poisonous gases, ought to have foreseen quite a normal possibility of the machinery getting out of order and of the workers thereupon entering the pit to operate the pit. In the discharge of his



duties and obligations under the Act, he ought to have taken all reasonable steps to prevent the workers from entering the pit except in conformity with the provisions of sub-sections (3) and (4) of section 36. In the judgment delivered by a Division Bench of this Court consisting of the learned Chief Justice and Mr. Justice Tendolkar in *Rex v. Ramanlal H. Shah* (Criminal Revision Application No. 1222 of 1948, decided by Chagla, C.J., and Tendolkar, J., on 15th October, 1948), it was observed by the learned Chief Justice that the primary responsibility is that of the manager to take every step to see that the provisions of the Act are carried out. Now, there is no evidence in this case to show that the respondent had taken all reasonable steps to prevent the workers from entering the pit in case a normal possibility of the machinery getting out of order arose. There is no evidence to show that he had instructed the workers not to enter the valve pit under any circumstances whatsoever without wearing the breathing apparatus and the belt securely attached to a rope, the free end of which was held by a person standing outside the pit. There is nothing to show that he had put up a notice to that effect upon the premises. Fakirji was the person in charge of operating the pit. There is no evidence to show that the respondent had cautioned him to see that nobody entered the valve pit without wearing the appliances aforesaid. All this would show that the respondent had failed to prevent the entry of the workers into the pit except as provided by sub-sections (3) and (4) of section 36. This would in law mean that he had permitted the entry. In *Rex v. Ramanlal H. Shah*, to which I have just referred, the fact was that no steps were taken by the manager of a factory to prevent the workmen from working overtime. It was held by this Court that the manager had permitted the workers to work overtime. For the reasons mentioned above, we hold that the respondent in this case had permitted the entry of the above-mentioned five men into the valve pit in contravention of the provisions of sub-section (3) of section 36.

As to the alleged contravention of the provisions of sub-section (4), we are of the view that it is not a sufficient compliance with the sub-section to provide a breathing apparatus, a reviving apparatus etc., only after coming to know that some person is about to enter the confined space. The Factories Act is a benevolent legislation regulating labour in factories and the safeguarding appliances contemplated by the sub-section (sub-section (4)) must be kept ready for instant use at any time and must be immediately available, not only to the person who might enter the confined space with permission, but even to the person who might enter the said space without permission. So far as the benefit of the safeguards is concerned, a beneficent legislation makes no distinction between the

persons who comply with the provisions of the Act and those who do not, while in the precincts of the factory. The benefit is intended to be enjoyed by every person working in the factory, irrespective of whether some persons through folly, rashness or negligence contravene the provisions of the Act while in the course of their employment. The respondent's factory has bleaching, dyeing and washing departments and a purification plant is installed for the treatment of effluent water from these departments. The purification plant has a valve pit which is 5 ft. square at the bottom and 12 ft. deep. In this pit or confined space, dangerous fumes are likely to be present to such an extent as to involve risk of persons being overcome thereby. Now, where an employer is making use of a dangerous process such as the one involved in the working of the purification plant, it is not enough for him to make available the appliances necessary to avert or minimise the danger, only when the danger actually overtakes or is about to overtake a worker. The appliances, viz., the breathing apparatus, the reviving apparatus, the belts and the ropes must at all times be available beside the confined space and must be kept ready for instant use at any time, no matter whether the necessity for that use might arise or not arise.

The intention of the Legislature has to be gathered from the words used in the statute and the words in sub-section (4) are "shall be kept ready for instant use". It is implicit in these words that it is not enough for the manager or occupier of a factory to procure the appliances when somebody applies for permission to enter the pit. Whether anybody applies for permission to enter the pit and then enters it or whether somebody enters it without permission and without satisfying himself that all practicable measures have been taken to remove any fumes which might be present in the pit and to prevent further ingress of fumes, the manager or occupier must keep ready the appliances for instant use. If he thinks of procuring them after a person has entered the pit, they might arrive too late and the result might be the same as if they had never been procured or provided at all. The Legislature enacting a salutary law could not have intended to create such a position. Moreover, the word 'beside' in the expression "shall be kept ready for instant use beside any such confined space" is significant. It signifies that the Legislature, by enacting sub-section (4), has cast an obligation upon the employer to keep ready at all times the appliances specified in sub-section (4) beside the confined space so as to be instantly available to a person for use in case a need suddenly arises for such use and not merely hunt for them, procure them and then keep them near the confined space in case a need is likely to arise for their use. Also, by providing for the periodical examination and certifi-

cation of the apparatus by a competent person regarding its fitness for use, the Legislature has clearly expressed its intention that the apparatus specifically referred to in sub-section (4) must always be kept ready beside the confined space for instant use, irrespective of whether any person has entered the said space or not or whether he has entered it with or without permission or whether a necessity for the use of the apparatus actually arises or not. The learned Magistrate has construed the words "which any person has entered" in sub-section (4) as meaning "which any person has lawfully entered, i.e., entered after obtaining permission" and has, upon that construction, held that it is sufficient compliance with the sub-section if the employer after granting permission to a person to enter the confined space provides the apparatus specified in sub-section (4). The learned Magistrate is in error. It is wrong, in our view, to limit the meaning of the entry of a person to an entry with permission. The word 'entered' in sub-section (4) must be given its full and natural meaning and it must be construed to mean entry with or without permission. Now, if a person enters without permission the confined space in which dangerous fumes are present, what would be the result if the breathing apparatus and reviving apparatus are not kept ready beside the confined space for instant use, but are to be procured and then kept near the said space? The result would be almost certain death, in which case the safeguard provided by the Legislature in sub-section (4) would be useless and would be as good or as bad as not provided at all. For these reasons, we must accept the contention of the State that under sub-section (4) of section 36 of the Act there is an obligation cast by the Legislature upon the manager or occupier of a factory to keep ready at all times, beside a confined space, the suitable breathing apparatus, the reviving apparatus, belts, and ropes for instant use whether any person has entered the said space or not, whether the entry has been made with permission or not and whether any need for the use of these appliances arises in fact or not. It is not disputed that no such apparatus and appliances were kept ready beside the valve pit or indeed anywhere in the factory. The respondent, therefore, clearly contravened the provisions of sub-section (4) of section 36 also.

Mr. Rajni Patel has invited our attention to the provisions of section 27 of the English Factories Act of 1937. We have read the provisions of section 27. But, in our view, a reference to these provisions on the point of construction of sub-sections (3) and (4) of section 36 of the Indian Act is futile. In the provisions of section 27 of the English Act, we do not find any provisions analogous to the provisions of sub-section (3) of the Indian Act regarding granting of

permission to enter a confined space nor do we find any provisions analogous to the provisions of sub-section (4) regarding keeping ready for instant use breathing apparatus, reviving apparatus, belts and ropes beside a confined space. It would, therefore, not be fruitful to comment further upon the provisions of section 27 of the English Act. I have already stated in the earlier part of this judgment that after the present complaint was filed by the Inspector of Factories against the respondent under sub-sections (3) and (4) of section 36 read with section 92 of the Factories Act, the respondent himself filed a complaint under section 101 of the Act against S. D. Vashistha and Haribhai Tripathi alleging that it was the duty of those two persons to maintain the apparatus specified in sub-section (4) of section 36 and that, therefore, the respondent was not guilty of the offences with which he was charged.

Accordingly, while allowing the present appeal filed by the State and while setting aside the acquittal of the respondent, we direct that respondent's complaint filed by him under section 101 of the Act, against S. D. Vashistha and Haribhai Tripathi, shall be proceeded with by the Magistrate and shall be decided according to law. After that complaint is decided according to law, the present complaint under section 36, sub-sections (3) and (4), read with section 92 of the Act against this respondent shall be decided according to law in the light of the present judgment delivered by us and also in the light of the decision of the Magistrate on the respondent's complaint under section 101 of the Act.

[IN THE SUPREME COURT OF INDIA.]

MODEL MILLS NAGPUR LTD.

v.

DHARAM DAS AND OTHERS.

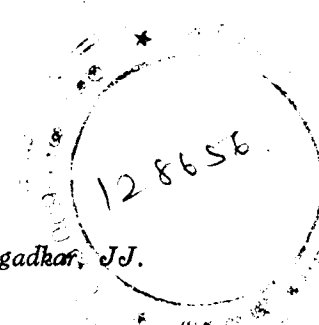
N. H. Bhagwati, Jafer Imam and P. B. Gajendragadkar, JJ.

October 25, 1957.

C. P. & BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947,
SECTION 16—STATE INDUSTRIAL COURT—JURISDICTION—REVISION OF
ORDER OF LABOUR COMMISSIONER—WHETHER CONFINED TO QUESTIONS
OF LAW.

INDUSTRIAL MATTER—MEANING OF—DISPUTE AS TO NUMBER OF
PERSONS TO WORK A MACHINE—WHETHER 'INDUSTRIAL MATTER'—
C. P. & BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947,
SECTION 2(13).

R-58



32
12.11.57
11.11.57

DISMISSAL—WORKMEN GOING ON ILLEGAL STRIKE WITHOUT JUSTIFICATION—DISMISSAL BY EMPLOYER IN ACCORDANCE WITH STANDING ORDERS—WHETHER JUSTIFIED.

Under section 16(5) of the C.P. and Berar Industrial Disputes Settlement Act, 1947, an appeal against an order passed by the Labour Commissioner under section 16 is expressly prohibited, although revisional jurisdiction is conferred upon the State Industrial Court against any such order of the Labour Commissioner. Therefore, the power of revision should be exercised by the State Industrial Court on a point of law and not merely because the State Industrial Court takes a view different from that of the Labour Commissioner on questions of fact.

A dispute as to the number of persons who should work a particular machine is a matter relating to work and is an 'industrial matter' as defined in section 2(13) of the Act, and a cessation of work by certain workmen on the ground that the management had made two workers operate a machine which was being operated by three workmen would be an illegal strike under section 40(1)(c) of the Act even if the management had made an illegal change.

The dismissal, in accordance with the Standing Orders, by an employer of workmen who went on an illegal strike without justification would be justified.

Civil Appeals Nos. 464 to 472 of 1957.

J. B. Dadachanji, S. N. Andley and Rameshwar Nath for the appellant.

R. V. S. Mani for the respondents.

JUDGMENT.

The Judgment of the Court was delivered by

IMAM, J.—These nine appeals are by special leave against the order of the State Industrial Court at Nagpur reversing the order of the Assistant Labour Commissioner of Nagpur who rejected the applications of the respondents under section 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (hereinafter referred to as the Act). The respondents had applied to the Labour Commissioner under section 16 to set aside the order of the appellant dismissing them from the service of the Model Mills Ltd., Nagpur with effect from the 11th January, 1956. The State Industrial Court purported to exercise its revisional powers under section 16(5) of the Act.

In the Model Mills Ltd., Nagpur machines known as "seven bowl calender machines", generally described as calender machines, were used. According to the respondents at least three persons were required

for working each of these machines and this had been the practice for many years. The management of the Model Mills Ltd., however, ordered that each machine was to be worked by two persons. On the 16th of December, 1955, while such a machine was being worked by two persons, one of them was seriously injured. It was contended that by reducing the number of persons to work each machine the management had not only increased the work-load of the worker but had positively made the working of any such machine a dangerous operation and it was alleged that the action of the management was illegal. On the 19th of December, 1955, the respondents refused to work, as, again, on that day, only two persons were deputed to work such a machine. On the refusal of the respondents to work, the management held an enquiry and framed a charge against the respondents on the 20th of December, 1955. After the enquiry the appellant passed the orders of dismissal against the respondents.

It may be mentioned at this stage that out of the nine respondents only two were deputed on 19th December, 1955, to work a calender machine. The other seven were deputed to work in other departments. These seven persons refused to work out of sympathy for and in support of those persons who refused to work a calender machine with only two persons.

The appellant's case was that every such calender machine did not ordinarily require more than two persons to work it. Sometimes three persons were deputed to work such a machine if there was an extra load of work and sometimes also three persons were deputed to work such a machine, even if there was no need for it, in order to save the workers from loss of wages. It was contended that the action of the respondents in refusing to work amounted to an illegal strike and was contrary to the provisions of the Standing Orders of the Model Mills Ltd. The appellant, after due enquiry, found the respondents guilty and consequently dismissed them in accordance with the provisions of the Standing Orders.

The Assistant Labour Commissioner, who heard the applications of the respondents to set aside the orders of dismissal passed by the appellant, was of the opinion that the respondents could not prove that three persons were required to work a calender machine so far as could be gathered from the records of the enquiry. He was further of the opinion that he had no jurisdiction to adjudicate upon this issue although an attempt had been made to lead evidence before him as to the nature of the work and the number of workers required to work each calender machine. He was further of the opinion that even if it be assumed that the appellant had reduced the number of workers on a calender machine,

the respondent's action to go on strike or refuse to work was illegal when legal remedies were open to them to ventilate their grievances. He, accordingly, dismissed the applications of the respondents and declined to set aside the orders of the appellant dismissing the respondents from the service of the Model Mills Ltd.

The State Industrial Court, after referring to some of the evidence, came to the conclusion that the order of the management that each calender machine should be worked by two persons only was inconsistent with the previous practice which was in existence for thirty years and it had clearly increased the workload of each employee. It was of the opinion that the management was not justified in effecting this change without following proper procedure, giving notice and entering into agreement after entering into negotiations or conciliation and as the order directing the working of each calender machine by two instead of three persons was not a lawful order, the respondents could not be punished for refusing to obey such an order. It finally came to the following conclusion: "Moreover, the refusal to share additional burden of work gave rise to the industrial dispute and the refusal to accept additional work could not be said to be in consequence of an industrial dispute. There is no doubt that the employees refused to bear the additional burden of work but that would not amount to refusal to continue to work in the normal way, that is, to share the usual or customary burden of work. Here, therefore, there was actually no refusal to continue to work in the usual manner or to accept the usual work and it could not, therefore, amount to a strike as defined in the C.P. & Berar Industrial Disputes Settlement Act". So far as the respondents who were not actually working a calender machine on the 19th of December, 1955, were concerned, the State Industrial Court was of the opinion that their refusal to work amounted to a strike but it thought that the order of dismissal was an extremely harsh punishment as the action of the management was high handed. It was further of the opinion that there were extenuating circumstances and the management had failed to take into account the extenuating circumstances and had violated the mandatory provision of the Standing Order 26(4). The State Industrial Court, accordingly, set aside the order of dismissal passed by the appellant in case of each respondent.

Under section 16(5) of the Act, an appeal against an order passed by the Labour Commissioner under section 16 is expressly prohibited, although revisional jurisdiction is conferred by the section upon the State Industrial Court against any such order of the Labour Commissioner. It follows from this that the power of revision should be exercised by the State Industrial Court on a point of law and not merely because the

State Industrial Court takes a different view to that of the Labour Commissioner on questions of fact; otherwise there would be no distinction between a revision and an appeal and the State Industrial Court, in purporting to act in the exercise of its revisional jurisdiction, would in effect be hearing the matter as an appeal, which is specifically prohibited. It remains, therefore, to consider how far the orders of the State Industrial Court passed in the revisional applications filed by the respondents is in accordance with law. For this purpose, reference to some of the provisions of the Act becomes necessary.

"Strike" has been defined in section 2(27) of the Act to mean a total or partial cessation of work by employees employed in an industrial undertaking acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work where such cessation or refusal is in consequence of an industrial dispute in any industry. "Industry" has also been defined in the Act to which a detailed reference is unnecessary as there can be no question that the Model Mills Ltd., Nagpur, is an industry within the said definition. Section 2(12) of the Act defines "industrial dispute" and this means any dispute or difference connected with an industrial matter arising between employer and employee or between employers and employees. "Industrial matter" has been defined in section 2(13) of the Act to mean any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or refusal to employ and includes questions pertaining to—(a) the relationship between employer and employee, or to the dismissal or non-employment of any person, (b) the demarcation of function of any employee or class of employee, (c) any right or claim under or in respect of or concerning an agreement, submission or award made under the Act, and (d) what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of society as a whole. "Change" has been defined in section 2(6) to mean a change in any industrial matter. Under section 40(1)(c) of the Act a strike or a lock-out shall be illegal if it is commenced or continued only for the reason that the employer had not carried out the provisions of any Standing Order or had made an illegal change. It is unnecessary to make reference to clauses (a), (b), (d), (e), (f), (g) and (h) of this sub-section.

It is clear from the material on the record that the respondents who were the employees of the Model Mills Ltd.—an industrial undertaking—ceased to work on the 19th of December, 1955, acting in combination and their refusal to work was a concerted action.

The principal questions which arise for consideration are whether the cessation of work by the respondents or their refusal to work was in consequence of an industrial dispute and whether there had been a change in any industrial matter at the instance of their employer, the Model Mills Ltd.

As already stated, the Assistant Labour Commissioner did not consider that he had jurisdiction to adjudicate upon the issue whether three persons were required to work a calender machine which had been reduced to two persons, but he was firmly of the opinion that even if there had been a reduction in the number of persons to work a calender machine, the action of the respondents to go on strike or refuse to work was illegal. He did not refer to the material on the record in order to ascertain whether there was an industrial dispute which led to the cessation of work by the respondents. The State Industrial Court, however, found, on the material before it, that three persons used to work a calender machine and the order of the management in reducing them to two was not a lawful order. The State Industrial Court made no reference to the definition of the word "strike" in the Act. It made no reference to the material on the record concerning the existence of an industrial dispute previous to the respondents refusing to work. Before the orders of dismissal passed by the appellant against the respondents could be set aside by the State Industrial Court, it was essential for it to find whether there was an industrial dispute in consequence of which the respondents refused to work. It may be conceded that the plea made by the appellant before the Labour Commissioner is inconsistent with the argument that the strike was illegal; but in view of the material on the record consisting of the conduct of the appellant immediately after the incident and the admission made by the workmen, the said defect in the pleading cannot be allowed to prejudice or adversely affect the appellant's case. Having regard to the definition of "industrial dispute" in the Act, there can be no question, on the material on the record, that there was such a dispute previous to the respondents' ceasing to work. On this question, the evidence of the respondents and the appellant is in substantial agreement; for instance, Gulabchand Nanhelal, a calenderman, had stated that previous to the 19th of December, 1955, three persons worked a calender machine, but on that day only two persons were allotted to work such a machine and the appellant was requested to give three persons but since he refused, work was stopped. According to Mr. Sukhadwala, Dye and Bleach Superintendent of the Model Mills Ltd., the workers had asked several times that three persons should work the machine, but the

management always kept only two men to work the machine. On the 19th of December, 1955, he had been told by one Sharma that the workers were asking for three men to work each calender machine and he told them that they should not stop work and at that the workers said that unless three men were given to work on each machine, they would not start work. Reference to other evidence is unnecessary. It is sufficient to state that, on the evidence already referred to, on the 19th of December, 1955, there was a dispute or difference connected with an industrial matter arising between the employer and the employee. The dispute as to whether three persons or two persons should work a calender machine was certainly a matter relating to work and was, therefore, an industrial matter within the definition of that expression as given in the Act. There can, therefore, be no question that there was cessation of work by the respondents in consequence of an industrial dispute. It is also clear, from the material on the record, that the cessation of work was the result of a combination and was a concerted refusal because even such of the respondents as were not employed to work a calender machine on the 19th of December, 1955, ceased to work in order to show sympathy and lend support to those respondents who were deputed to work a calender machine on that date. Indeed, there is a clear finding by the State Industrial Court that the action of those workers who were not allotted to work a calender machine on the 19th of December, 1955, amounted to a strike. The State Industrial Court having failed to refer to the relevant provisions of the Act and the material on the record thus erred in law in holding that the cessation of work by the workers employed to work a calender machine was not a strike as defined in the Act. It is clear, therefore, that those who were employed to work a calender machine and those who were not so employed, had gone on strike within the meaning of that word as defined in the Act. The question which remains to be considered is whether the strike by them was an illegal strike. So far as the respondents who were not working a calender machine are concerned, their strike was undoubtedly an illegal strike. So far as the respondents who were allotted to work a calender machine are concerned, their strike would also be an illegal strike as stated in section 40(1)(c) of the Act even if it were to be assumed that their employer had not carried out the provisions of any Standing Order or had made an illegal change. It had not been established, however, that the order passed by the management was contrary to the provisions of any Standing Order. It is unnecessary to decide whether in fact there had been a change in any industrial matter on the part of the employer of the respondents because, even if it be assumed that there had been a change—and an illegal change

at that—the strike would be illegal if it was commenced or continued merely because the employer had made an illegal change. Section 40(1)(c) of the Act makes this quite clear.

In our opinion, the entire approach to the principal questions arising in the case by the State Industrial Court was quite wrong and contrary to the provisions of the Act. The State Industrial Court erred in law in setting aside the orders of dismissal passed by the appellant against those respondents who were not employed to work a calender machine when, on its own findings, they had gone on strike as also in the case of the respondents who were deputed to work a calender machine because their act amounted to an illegal strike. Under the provisions of the Standing Orders of the Model Mills Ltd., all the respondents were guilty of misconduct. The appellant had acted within his jurisdiction, under the Standing Orders, in dismissing them. There was no justification for the respondents to go on an illegal strike.

In the result, we are of the opinion, that all the nine respondents, having gone on an illegal strike, were rightly dismissed by the appellant. The appeals are accordingly allowed and the orders of the State Industrial Court are set aside and that of the Assistant Labour Commissioner are restored. There will, however, be no order for costs.

[IN THE SUPREME COURT OF INDIA.]

BRITISH INDIA ELECTRIC CONSTRUCTION CO., LTD.

v.

THEIR WORKMEN.

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

November 13, 1957.

AWARD—INTERPRETATION OF—AWARD PRESERVING “EXISTING ADVANTAGE”—EFFECT OF—WORKMEN ENJOYING HIGHER SCALE OF DEARNESS ALLOWANCE—AWARD FIXING LOWER SCALE—WHETHER AWARD CONTINUES HIGHER SCALE.

The award of the First Engineering Tribunal, West Bengal, considered the demands of the workmen in the Engineering industry and prescribed the rates of dearness allowance to be paid to the workmen. These rates were much lower than the rates which had been adopted by some of the concerns (the Bengal Chamber of Commerce scale) which rates had also been considered by the Tribunal. The Tribunal made a reservation in the award that the award “will not affect adversely any other kind of existing advantage

by this award”. A concern which had been adopting the Chamber of Commerce scale froze the rate of dearness allowance paid by it as it was already in excess of the award rates. The workmen contended that the reservation in the award was intended to keep alive for them the benefit of the Chamber scale and that they should continue to be paid in accordance with the rates which would become payable under the Chamber scale. This contention was accepted by the Industrial Tribunal and on appeal by the Labour Appellate Tribunal. On appeal by the management by special leave, Held: that the Industrial Tribunal, having in the first instance negatived the claim of the workmen to the Chamber scale of dearness allowance and having awarded much lower rates, intended only to prevent the workmen who were being paid at higher rates from being deprived of the more generous treatment and the reservation in the award quoted above must, on a proper reading of the entire award, have reference only to “existing advantage” of a kind other than dearness allowance. The claim of the workmen was therefore negatived.

Decision of the Labour Appellate Tribunal of India in BRITISH INDIA ELECTRIC CONSTRUCTION CO., LTD. v. THEIR WORKMEN [1955] 10 F.J.R. 106, *reversed.*

Civil Appeal No. 369 of 1956.

M. C. Setalvad (S. N. Mukherjee and B. N. Ghosh, with him) for the management.

N. C. Chatterjee for the respondents.

JUDGMENT.

The Judgment of the Court was delivered by

SINHA, J.—This appeal by special leave is directed against the decision of the Labour Appellate Tribunal, dated 13th September, 1955, modifying the award dated 29th June, 1954, of the Third Industrial Tribunal of Calcutta, in respect of an industrial dispute between the appellant-company and its workers.

The facts and circumstances leading up to this appeal are as follows: The appellant is an engineering company incorporated in India with its head-office in Calcutta. It is under the Managing Agency of Balmer Lawrie & Co., Ltd., which manages a number of other concerns also. Prior to 19th March, 1947, the appellant used to pay dearness allowance to its workmen at a flat rate of Rs. 20 per month plus food concession, cost-of-living bonuses, etc. The practice of the appellant company has been to regulate the wages including basic pay plus dearness allowance, by issuing circulars from time to time. One such circular is dated 18th February, 1947, issued by the managing agents aforesaid, replacing the

system of dearness allowance then prevailing with a consolidated monthly cash allowance based on the Bengal Chamber of Commerce Middle Class cost-of-living figures as published from time to time. The new system was to come into force from 1st March, 1947. Industrial disputes were apprehended in a large number of engineering concerns. The Government of West Bengal referred those disputes, between 119 engineering firms specified in the order of reference and their workmen, to an Industrial Tribunal. In that reference, the appellant and its workmen were also parties. The award given by this Tribunal, which will hereinafter be referred to as the First Award, was published in the *Calcutta Gazette Extraordinary*, bearing the date 3rd July, 1948. The award was to be effective from 1st April, 1948, for one year. The award fixed the dearness allowance payable to workmen of those engineering concerns at the following rates:

<i>Pay Range</i>	<i>Dearness Allowance</i>
Up-to Rs. 50	Rs. 25
From Rs. 51 to Rs. 100	Rs. 35
From Rs. 101 to Rs. 150	Rs. 40
From Rs. 151 to Rs. 200	Rs. 45
From Rs. 201 and above	Rs. 50

It will, thus, be seen that the Tribunal did not accede to the claim made on behalf of the workmen, of a minimum dearness allowance of Rs. 45 per month. The minimum they fixed at Rs. 25 per month, and then prescribed a graduated scale of dearness allowance subject to a maximum of Rs. 50 per month. The Tribunal also took notice of the fact that some of the engineering firms which were members of the Bengal Chamber of Commerce, were paying dearness allowance at higher rates than those prescribed by the award. The Tribunal fixed the minimum scale but did not in any way affect the higher rate of dearness allowance actually paid by some of the firms aforesaid. In order to safeguard the interests of the workmen of such firms which were more generous to their workmen, the award contained the following reservations:

"Where the existing minimum basic pay plus dearness allowance in a particular firm is higher than the minimum basic pay plus dearness allowance fixed by this award, the total remuneration of the present employees will not be adversely affected by this award. Where the existing total remuneration is more but the minimum basic pay is less than that fixed by this award, the basic pay should be increased to the minimum fixed, and the dearness allowance reduced by the same amount, keeping the total remuneration unaltered. This is necessary for the purpose of calculating the contribution to the Provident Fund and calculating gratuity.

We desire that the rules for holidays and leave should be standardized by all the firms as soon as possible, in order to eliminate one of the important causes of labour trouble. If, however, any firm has already announced leave and holidays for the current year at a scale more liberal than what the award provides, the right to such leave and holidays should not be affected by this award. Further, leave at credit of any person under the existing leave rules of a firm will not lapse in spite of any provision as to leave contained in this award.

This award will not affect adversely any other kind of existing advantage which the employees of a firm may be enjoying in excess of the benefits given by this award, unless an express provision has been made in this award concerning such advantage."

As a matter of fact, at the time of the publication of the award, the appellant was paying dearness allowance to its general and clerical staff at the factory, at the following rates based on the then current Bengal Chamber of Commerce Middle Class cost-of-living index of 311-32:

70 per cent. on the first 100 rupees.
35 per cent. on the second 100 rupees, and
17½ per cent. on the remainder of salary.

The appellant was also paying dearness allowance at the flat rate of Rs. 43 per month to its subordinate staff at the factory. It is, thus, clear that the appellant used to pay to its workers at rates much higher than those fixed by the award.

Soon after the publication of the award, in July, 1948, the appellant, through its managing agents, Balmer Lawrie and Company Ltd., issued a letter in these terms:

"21st August, 1948.

To

All Works Managers (B. I. E. C. Co., Ltd.)
Dearness Allowance—Bengal Chamber Scale.

Please note that the above scale does not apply to Clerical Staff at Works covered by the Engineering Trades Tribunal Award.

There will, therefore, be no increase in the Dearness Allowance paid to Clerical Staff at Works, all of whom are at present on a scale considerably in excess of that laid down by the Tribunal."

The appellant, thus, gave an unequivocal notice to all its employees concerned, through the Works Manager, that the current rate of dearness allowance which was considerably in excess of the dearness allowance prescribed by the award aforesaid, shall not be increased so as to be on the same level with the rate of dearness allowance prescribed by the Bengal Chamber of Commerce, which will hereinafter be referred to as

the 'chamber scale', for the sake of brevity. The result of the letter aforesaid, quoted above, dated 21st August, 1948, was that the rate of dearness allowance was freezed at the scale at which it stood at the date. Even after 1st April, 1949, on which date the award had ceased to be operative, the appellant continued to pay its employees at the same enhanced rate of dearness allowance though it was not legally bound to do so. At the same time, the appellant did not increase the rate of dearness allowance after that date even though the cost-of-living index rose higher and the 'chamber scale' called for payment at a higher percentage as dearness allowance. On 25th February, 1949, the Labour Commissioner, West Bengal, addressed a letter to the Works Manager of the appellant-company, drawing its attention to the demands of the workers' Union, for increased dearness allowance according to the 'chamber scale'. He also pointed out that though the award had no force after 31st March, 1949, except as a recommendation on the question of dearness allowance, the appellant might reconsider its position and see if it could adjust the allowance with the rise in the cost of living. That letter was answered by the appellant's letter dated 11th March, 1949, to the effect that the appellant could find no reasons for modifying its conclusions already conveyed to the Government in its previous letters. The Government, thereafter, made a second reference to an Industrial Tribunal on the question of dearness allowance between sixtyfour engineering firms including the appellant, and their workmen. The award of the second Tribunal was published in the Calcutta Gazette Extraordinary, in September, 1950. It will be referred to hereafter as the 'Second Award'. It fixed the dearness allowance for all categories of employees on the following scale :

<i>Pay Range</i>	<i>Dearness Allowance</i>
Upto Rs. 50	Rs. 31
From Rs. 51 to Rs. 100	Rs. 42
From Rs. 101 to Rs. 150	Rs. 48
From Rs. 151 to Rs. 200	Rs. 54
From Rs. 201 upwards	Rs. 60

As compared to the First Award, the Second Award, in all the pay ranges, allowed a higher rate of dearness allowance.

Before the Industrial Tribunal which gave the Second Award, the 'chamber scale' was being insisted upon by the employees. The Tribunal went carefully into the matter and made the following observations giving reasons why they did not recommend that scale for all employees :

"The Bengal Chamber of Commerce scheme is meant essentially for commercial establishments which employ middle class clerical

employees and subordinate (menial) staff and have nothing to do with such manual labour as is employed in manufacturing concerns. Commercial establishments ordinarily employ a much lesser number of persons than manufacturing concerns like engineering firms. What can be done in respect of a smaller personnel doing an entirely different type of work in commercial offices cannot necessarily be done in respect of a large number of employees—manual, clerical and otherwise, working in engineering concerns. The cost of production must necessarily be a big factor for consideration in dealing with engineering firms as distinguished from pure mercantile firms. We are of opinion that the conditions of service on the basis of the Bengal Chamber of Commerce scheme cannot be reasonably applied to engineering firms which have to function in a competitive market and have to sell their products to consumers in this country and abroad. We have come to the conclusion that we should not make any distinction between the factory office and the head office attached to engineering firms. It has been pointed out to us that the Bengal Chamber of Commerce scheme of dearness allowance is actually being applied in the head offices of some engineering concerns. We have no desire to interfere with the policy of those concerns who have chosen to be generous, but we are unable to compel any one to be equally generous and we think our task is to determine the minimum standard applicable to all concerns, leaving it open to individual concerns to pursue a more liberal policy if they so desire. Where a more liberal policy is already being pursued as regards dearness allowance, we shall direct that the existing scale of dearness allowance, whether based on the Bengal Chamber of Commerce scheme or anything else, shall not be reduced. We are unable to direct that generally speaking the Bengal Chamber of Commerce scheme of dearness allowance should be adopted for clerical employees in the head office, the factory office, or the factory of any engineering firm or for the manual workers, skilled or unskilled, working under it."

It is noteworthy that even after the Second Award came into operation, the appellant company was paying to its employees dearness allowance at a rate higher than that fixed by the Second Award. At pages 19-20 of Part 2 of the paper book are set out the names of the 58 employees of the company on the clerical staff, as in April, 1954, showing their basic pay, dearness allowance actually being paid to them, and the dearness allowance as it would work out at the rates prescribed by the Second Award. Comparing the two rates of dearness allowance, we find that in every case, the dearness allowance actually paid by the appellant to its clerical staff, was considerably higher than that prescribed by the Second Award. In aggregate, the figure monthly paid

by way of dearness allowance, came to Rs. 4,063 omitting annas, whereas, the aggregate figure at the rate given by the Second Award would come to Rs. 2,616. Thus, the company was paying by way of dearness allowance Rs. 1,447 more than the prescribed rate of dearness allowance. It may also be added that the workers of the appellant company did not, in terms, raise the question during the pendency of the proceedings before the Second Tribunal aforesaid that the 'chamber scale' was a part and parcel of their conditions of service, and, as such, they were entitled to that scale in all respects. Naturally, therefore, the Second Award did not deal with that aspect of the matter. It only considered as stated above, the desirability and feasibility of making that scale applicable to all grades of employees, irrespective of other considerations.

During the currency of the Second Award, an event of great importance occurred, as will presently appear, which created further complications and differences between the appellant and its employees. The Indian Galvanizing Company (1926) Limited is one of the engineering firms managed by Messrs. Balmer Lawrie and Co., Ltd., with its head office at Calcutta. In 1949, the Government of West Bengal had made a reference of the disputes between that company and its employees to an Industrial Tribunal. It gave its award which was published officially in August, 1951. On the question of dearness allowance, the Industrial Tribunal considered the rates paid by the company as compared to the rates prescribed by the Second Award. It considered the rates actually paid by the company, which were the same as in the present case, to be fair, and naturally, directed the dearness allowance to be continued to be paid according to the existing scale. But the workmen preferred an appeal to the Appellate Tribunal which allowed the appeal by its decision dated 16th October, 1952, holding that the 'chamber scale' had become one of the conditions of service as a matter of interpretation of the First Award with particular reference to the reservations made therein, as set out herein above. This interpretation gives rise to the main controversies which we have to determine in the present case. It decided that the dearness allowance according to the 'chamber scale' was an "existing advantage" within the meaning of the last paragraph of the reservations made in the First Award. It directed the Indian Galvanizing Company aforesaid to pay to its clerks employed in the factory, dearness allowance according to that scale with retrospective effect from August, 1948. From this award an application for special leave to appeal to this Court was dismissed *in limine* on 17th April, 1953.

The course of events, as summarized above, had its repercussions on the relations between the appellant and certain of its employees who

made similar demands in respect of dearness allowance and claimed that the "chamber scale" should be applicable to them also. On this question, the parties differed and on representations made to the Government of West Bengal, it referred the dispute to the Third Industrial Tribunal in October, 1953. The matters referred to the Tribunal for adjudication were "dearness allowance with date of giving effect thereto." The said Tribunal made its award on 29th June, 1954, which was officially published in July, 1954. The Tribunal held, on the basis of the decision aforesaid, in the case of the Indian Galvanizing Company Limited, that the claim of the workmen for dearness allowance on the 'chamber scale' was well-founded in view of the reservations made as aforesaid, and that that scale had become a condition of service. It further held that the employees at the factory were entitled to be paid dearness allowance according to the 'chamber scale' linked with the rise in the cost-of-living index. The Tribunal also rejected the contention of the company that the workmen, not having raised this question at the time of the Second Award, could not agitate the matter at the time of the Third Award. The Tribunal further held that the subordinate staff and various categories of the employees at the factory, were entitled to the same scale of dearness allowance. As to the date from which the 'chamber scale' of dearness allowance, thus adjudicated in favour of the employees, should be paid, the Tribunal held that the company's financial condition was not such as to bear the additional burden of arrears on the 'chamber scale' from August, 1948; hence, it directed that the 'chamber scale' of dearness allowance should be paid from the date of the third reference, namely, 26th October, 1953.

Three appeals were filed from the said Third Award. They were all heard together and disposed of by a single judgment dated 13th September, 1955, by the Labour Appellate Tribunal. The Appellate Tribunal dismissed the company's appeal directed against the award in so far as it had ordered payment of dearness allowance on the 'chamber scale'. On the other hand, it allowed the workmen's appeals, directing, *inter alia*, that the 'chamber scale' of dearness allowance shall be payable from August, 1948. Against the decision aforesaid, of the Labour Appellate Tribunal, the appellant moved this Court and obtained special leave to appeal.

On this appeal, the learned counsel for the appellant urged that the Tribunals below erred in interpreting the First Award in so far as they held that the last paragraph of the 'reservations' aforesaid, meant to include dearness allowance at the 'chamber scale' as an "existing advantage". Secondly, it was urged that the workmen, not having specifically pleaded before the Second Engineering Tribunal that the 'chamber scale

was a condition of their service, could not urge it at the time of the third reference; and thirdly, that in any view of the matter, the appellant was at liberty to alter the rate of dearness allowance after the expiry of the First Award, that is to say, from 1st April, 1949, as had been done by the usual circular dated 21st August, 1948.

It is manifest that if the first argument relating to the interpretation of the reservation in the last paragraph set out above, raised on behalf of the appellant, is well-founded, no other question will require determination by this Court in this appeal. The Labour Appellate Tribunal, while discussing the effect of the reservations aforesaid, made the following observations (9 F.J.R. at p. 99):

"The first of the aforesaid two reservations does not, in our opinion, lend support to the claim of the factory clerical staff now made either in respect of the wage-scales, grades or dearness allowance. It only preserved intact the total emolument they were actually getting at the time when the award was made. The claims can only be supported on the basis of the second reservation."

According to the Appellate Tribunal, the claim to dearness allowance on the 'chamber scale' was an "existing advantage" which was being enjoyed by the employees and which was not to be adversely affected by the First Award. The reason for this conclusion of the Appellate Tribunal may best be stated in its own words as follows:

"The claim for dearness allowance, however, stands on a different footing. Dearness allowance according to the scales of the Bengal Chamber of Commerce was at that time an 'existing advantage'. The fact that many engineering firms which were parties to the reference were paying at these scales was noticed by the Tribunal and the Tribunal did not expressly make any other provision in its award respecting that advantage. We, therefore, hold that this claim comes within the saving."

The question is whether this interpretation by the Appellate Tribunal, of what it calls the second reservation, is correct. It has to be recalled that the First Award, in terms, did not make the 'chamber scale' applicable to the workmen as had been claimed by them. The award prescribed a much lower scale of dearness allowance, but, at the same time, it did not intend to deprive the workmen of the benefit of a more generous treatment which was being accorded by some of the engineering firms including the appellant. After having prescribed a graduated scale of dearness allowance with reference to the pay range, as set out above, and after having definitely negatived the claim of the workmen to dearness allowance on the 'chamber scale', the award proceeded to make certain reservations. The first reservation, as

rightly pointed out by the Appellate Tribunal, was concerned with conserving the total emoluments actually enjoyed by the employees. In the last paragraph, the reservation to the effect that "this award will not affect adversely any other kind of existing advantage which the employees of a firm may be enjoying" must, on a proper reading of the entire award, have reference to 'existing advantage' of a kind other than those dealt with in the preceding paragraphs. One of the preceding paragraphs had specifically dealt with the question of dearness allowance. Hence, dearness allowance could not come within the purview of the reservation in respect of "other kind of existing advantage". This expression may have reference to emoluments other than basic salary and dearness allowance. Perhaps, it may have reference to other advantages like housing allowance, supply of free electricity, medical relief, etc. The whole history of the industrial dispute relating to dearness allowance, as set out above and covered by the first two awards, is against the interpretation given to the reservation aforesaid, by the Tribunals below. Besides, if clause (3) refers to dearness allowance as suggested by the respondents, clause (1) would really be redundant since its provisions would, by necessary implication, be covered by clause (3) itself. As already stated, soon after the publication of the First Award, the appellant notified that there would be no further increase in dearness allowance on the basis of the 'chamber scale' in view of the fact that the dearness allowance actually paid to the workmen was considerably in excess of what had been prescribed by the First Award. That notice was given effect to and dearness allowance was paid to the workmen accordingly, which they received without any protest. When there was a second reference to the Engineering Tribunal, resulting in the Second Award as aforesaid, no such controversy was raised by the workmen who must have known all the time that the 'chamber scale' of dearness allowance was not being enjoyed by them. Thus, the workmen themselves understood the First Award in the same sense in which the appellant understood it and gave effect to it. It is not correct to interpret the reservation in the last paragraph as having any reference to dearness allowance. The alternative argument, urged by the learned counsel for the respondents before us, was that clause (1) of the reservations as quoted above, itself protected the respondents' right to have dearness allowance linked up with the 'Chamber' Index of the cost-of-living. But this argument, in our opinion, is not well-founded on a reasonable construction of the first paragraph aforesaid. It cannot be said that it has any reference to the 'chamber scale' of dearness allowance.

Clearly, this reservation has been made with a view to ensuring that the total remuneration payable to a workman after giving effect to the dearness allowance fixed by the First Award, should not be less than the total emoluments already being paid to him. In other words, the first paragraph is meant so to adjust the proportion between the minimum basic pay and the enhanced dearness allowance fixed by the award as not to prejudicially affect the total emoluments already being enjoyed by the workmen of a particular concern. This reservation had to be made in view of the fact that a large number of firms were concerned with the First Award and the Tribunal was anxious to ensure that every workman enjoyed the benefit of the enhanced dearness allowance; and that those workmen who enjoyed the benefit of higher emoluments, were not adversely affected by the new scale of dearness allowance. The adjustment contemplated by the first clause of the reservations, was also necessary as is clearly mentioned therein, for the purpose of calculating contributions to provident fund and gratuity. This reservation does not make even an indirect reference to the 'chamber scale' of dearness allowance. The alternative argument, thus, has no force. It must, therefore, be held that the Tribunals below were in error in basing their award on the question of dearness allowance and directing the appellant to pay it on the 'chamber scale' either from the date of the First Award or from the date of the third reference.

In view of our conclusion on the first contention raised on behalf of the appellant, it is not necessary to consider and pronounce upon the other contentions. The appeal is, accordingly, allowed with costs throughout.

[IN THE BOMBAY HIGH COURT.]

RAMBHADHAN DARIYAN

v.

SECOND LABOUR COURT, BOMBAY AND ANOTHER.

Shah and Gokhale, JJ.

January 9, 1957.

CONSTITUTION OF INDIA, ART. 227—WRIT—JURISDICTION OF HIGH COURT—WHEN INTERFERENCE WITH ORDER OF LOWER TRIBUNAL WOULD BE JUSTIFIED.

'STRIKE'—WORKMEN RESORTING TO 'GO-SLOW' TACTICS—WHETHER AMOUNTS TO STRIKE—BOMBAY INDUSTRIAL RELATIONS ACT, 1946 SECTION 3(36).

The powers of the High Court under article 227 of the Constitution of India do not extend to the re-consideration of the evidence led before the lower Tribunal and coming to a different conclusion on facts from that of the lower Tribunal unless there is an error patent on the face of the record.

Though every kind of go-slow action need not necessarily result in there being a strike, the real test, as laid down by the definition of 'strike' in section 3(36) of the Bombay Industrial Relations Act, 1946, is whether there is a total or partial cessation of work by the employees in an industry, and that cessation of work must be brought about by the workmen acting in combination or in a concerted refusal or a refusal under a common understanding of workmen to continue to work or to accept work. Where the Labour Court comes to the conclusion that the refusal by the workmen to do their normal work falls within the definition of 'strike', the decision cannot be challenged by an application under article 227 of the Constitution.

Special Civil Application No. 3328 of 1956.

K. T. Sule with Madan Phadnis for the workman.

S. P. Mehta for the management (respondent No. 2).

JUDGMENT.

GOKHALE, J.—This is an application under article 227 of the Constitution challenging the decision of the Second Labour Court, Bombay, declaring that the operatives of the mills of the second respondent-company excluding the watchmen and boiler attendants had resorted to an illegal strike from 15th October, 1956, onwards.

The petitioner is an employee of the Calico Dyeing & Printing Mills Private Ltd., which is the second respondent in this application. He is a member of the Bombay Reshim Mazdoor Union, a Trade Union duly

registered under the Indian Trade Unions Act. On 22nd October, 1956, the second respondent-company filed an application, being application No. 540 of 1956, in the Labour Court at Bombay pointing out that its workmen were having a concerted and continuous 'go-slow' in their work which would amount to an illegal strike, and, therefore, requesting the Labour Court to grant a declaration against the workers. On the same date that this application was filed, the advocate for the company made an application to the Labour Court stating that the applicants wanted to "reconsider the position" and, therefore, the Court should withhold passing orders for further proceedings. On 24th October, 1956, another application was made to the Labour Court stating that as there was a technical defect in the application, the Court should grant the applicants leave to withdraw the application with liberty to file a fresh application. The learned Judge of the First Labour Court granted the company permission to withdraw the application with liberty to file a fresh application. Then, on the same day, the second respondent-company filed another application being application No. 545 of 1956, in the Labour Court seeking a declaration that certain actions on the part of the operatives of the company from 15th October, 1956, to the date of the filing of the application amounted to an illegal strike. This was an application under sections 78 and 79 read with section 97 of the Bombay Industrial Relations Act, 1946. This application was resisted by the operatives on a number of grounds. But the Second Labour Court, as I have already stated, granted a declaration to the applicants that the operatives of the mills excluding the watchmen and boiler attendants had resorted to an illegal strike. That is why the petitioner has approached this Court under article 227 of the Constitution.

Mr. Sule, the learned counsel for the petitioner, has urged several contentions before us as to why we should interfere with the decision of the Labour Court. In the first instance, he contends that the lower Court had no jurisdiction to grant a declaration declaring the action of the workers as an illegal strike under section 78 of the Bombay Industrial Relations Act, 1946. We propose to deal with this contention subsequently, and, in our opinion, it is not necessary to decide this question as we propose to modify the wording of the order so as to make it conform with the provisions of section 78 of the Bombay Industrial Relations Act.

Then Mr. Sule contends that the Labour Court had no power to grant permission to the second respondent-company to withdraw the prior application filed by the company on 22nd October, 1956, with liberty to file a fresh application, and Mr. Sule submits that this could not have been done without notice to the petitioner and other workers. It is true that on the record there does not seem to be any notice given

to the workers when this order allowing the second respondent-company to withdraw the application with liberty to file a fresh application was made on 24th October, 1956. It is Mr. Sule's contention that as no notice was given the workers were not aware of this order and when they were served with notice about the present application, they raised a point about the earlier order and their contention was negated by the Labour Court. In our opinion, Mr. Sule is not entitled to raise this contention at the stage of this application under article 227 of the Constitution. When the workers came to know about the order of the Labour Court allowing the second respondent-company to withdraw the application with liberty to file a fresh application, Mr. Sule's client should have made a substantive application to this court making a grievance about such an order. That having not been done, in our opinion, Mr. Sule is not entitled to raise this contention in this application.

Mr. Sule's main grievance against the decision of the learned Labour Court Judge is that on merits he has come to the conclusion that the action of the operatives of the second respondent-company amounted to an illegal strike. According to Mr. Sule, what the company was really aggrieved against was that the workers were indulging in what is described as a "go-slow action", the result of which was that there was a lessening of the tempo of the work but there was not either a total or even a partial cessation of work. Mr. Sule contends that the Standing Orders which are admittedly operating in this concern make a distinction between a 'strike' and a 'slow-down' of work. A strike is a misconduct and so is slow-down of work. That is undoubtedly so under Standing Order 23 to which Mr. Sule referred. Mr. Sule contends that what the operatives really did was to slow down the work and that could not amount to even a partial cessation of work which would be necessary in case the action of the workers was to constitute a strike. Now, the Bombay Industrial Relations Act, 1946, defines a 'strike' in section 3(36) as follows:

" 'strike' means a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, when such cessation or refusal is in consequence of an industrial dispute".

According to Mr. Sule, even assuming that there was a reduction in the production of the mills as a result of the go-slow action, that would not amount to a partial cessation of work. According to Mr. Sule, there could be a complete cessation of work in a concern when all the workers stop working. There might also be a partial cessation of work, according to Mr. Sule when there is a complete stoppage of work in a department

or the stoppage may not be for the whole day but for a part of the day in a department. But the mere fact, according to Mr. Sule, that the workers do not continue the tempo of work at a uniform level does not necessarily mean that they are indulging in a strike. In our opinion, it is true that every kind of go-slow action need not necessarily result in there being a strike. The real test, as laid down in the definition, is whether there is a total or partial cessation of work by the employees in an industry and that cessation of work must be brought about by the operatives acting in combination or in a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work. Now, in this case, the learned Labour Judge has considered the oral evidence on the record and he has believed the evidence of the manager, Mr. Mehta, of the second respondent-company. Relying on that evidence, the Labour Court has given a finding that on and from 15th October, 1956, the workers had stopped work. He has also found that the workers were provided with normal work but they were responsible for refusing to do the normal work. This is a finding of fact which Mr. Sule is not entitled to challenge in this application under article 227 of the Constitution.

Mr. Sule has drawn our attention to certain portions of the judgment of the lower court which would seem to show that on certain dates the workers may not have been furnished with the normal material. Now, this evidence was undoubtedly before the lower court. The tabulated statements, which formed a part of the lower court's judgment, showing the actual production in yards per working day and percentage fall in production in this factory, show that during the relevant period in several departments there was a fall in the production to the extent of cent per cent. on a day and from 21 to 90 per cent. on other days. It is true that during the relevant period in some departments the reduction in the production is as low as 10 per cent. But, taking into consideration the entire evidence on the record, the learned Judge has found that the workers had stopped work and though they were provided with normal work they refused to do the normal work and failed to give the normal production. It may be that this Court might have come to a different conclusion on this evidence on the record. But the powers of this Court under article 227 are limited to the correction of errors of the lower Courts on the face of the record. We do not think that we are entitled to re-appreciate the evidence and differ from the conclusions on facts of the lower court. That being so, we must uphold the conclusion of the lower court that there was an illegal strike.

Mr. Sule also pointed out that there is some difference between the wording of the factory notice, dated 19th October, 1956, and the wording

of the application filed by the second respondent-company. Mr. Sule points out that whereas in the notice, dated 19th October, 1956, the company stated that the operatives had started "a systematic, concerted continuous go-slow" since the morning of 19th October, 1956, in the application they referred to the notice giving a warning to the operatives to desist from intermittent stoppage of the work and consequent go-slow. This, says, Mr. Sule is obviously an improvement of their case by the second respondent company. Now, we take it that Mr. Sule urged this point before the Labour Court for its consideration. It may be that in an appeal an improvement of his case by the plaintiff might stand on a somewhat different footing. But this Court cannot interfere with the decision of the Labour Court on such a ground in the exercise of its jurisdiction under article 227 of the Constitution.

Then Mr. Sule, as we have already stated, quarrelled with the fact that the Lower Court granted a declaration that the strike was an illegal strike, though, according to Mr. Sule, the Labour Court could only hold a strike to be illegal and could not grant a declaration. In this connection, Mr. Sule has drawn our attention to section 78 of the Bombay Industrial Relations Act, 1946, and sub-section (1)A(c) of that section empowers the Labour Court to decide whether a strike is illegal under the Act. Under section 79(2) the application to the Labour Court has to be made in the prescribed form and manner. Mr. Sule also relies on the provisions of section 103 and he says that that section shows that it is only the Industrial Court which can declare a strike to be illegal, while the Labour Court can only give a finding about the illegality of a strike. Mr. Sule also points out the provisions of section 99 under which the State Government may make a reference to the Industrial Court for a declaration whether any proposed strike, lock-out, closure or stoppage is illegal. Relying on these provisions, Mr. Sule says that the order of the Labour Court declaring that the strike was illegal is clearly erroneous. In our opinion, it is not necessary, as we have already stated, to go into this question, because we propose to modify the order of the Labour Court so as to convert it into a finding that the strike is an illegal strike.

Mr. Sule also urged that the order of the Labour Court was vague since it declared that "the operatives of the mills of the applicant-company excluding the watch-men and boiler attendants had resorted to an illegal strike from 15th October, 1956 onwards". It is true that, in substance in the application, the second respondent-company had prayed for a declaration that certain actions on the part of the operatives from 15th October, 1956, to the date of the filing of the application amounted to an illegal

strike. We, therefore, propose to clarify the order of the Labour Court so as to confine the finding to the period between 15th October, 1956, to 24th October, 1956, when the second application was filed.

Mr. Sule also finally made a grievance about the form of the order on the ground that the evidence shows that in some departments even though the workers had resorted to go-slow action, the loss in the production was as low as 10 per cent. and Mr. Sule relies on the observation in the judgment of the lower court that "the declaration of the illegal strike must not be construed as extending to workers in those departments on those days". Mr. Sule also urged that admittedly during this period there were holidays on some days and the operatives should not be penalised for stoppage of work during those days. In our opinion, it is not necessary to make any modifications in the order of the Labour Court on this and similar grounds, because individual workers who might be affected by this order will have their remedy when action is proposed to be taken against them.

No other points were urged and the result is that this application substantially fails. We, however, modify the order of the Labour Court so that it will read as follows:

"In the result it is hereby held that the operatives of the mills of the applicant-company excluding the watchmen and the boiler attendants had resorted to an illegal strike from 15th October, 1956, to 24th October, 1956. No order as to costs."

The rule will, therefore, be discharged. There will be no order as to costs in this application.

