

REGD. NO. M 5376
VOL. XIV—PART III

1st APRIL 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

CHIEF EDITOR:

A. N. AIYAR, B.A., B.L.,

*Senior Advocate, Supreme Court,
Editor, 'Income Tax Reports' and 'Company Cases'.*

EDITOR:

T. A. RAJ GOPAL, B.A., B.L.,
Advocate, Madras High Court.

Mode of citation of Reports [1957-58] 14 F.J.R.

Annual Subscription : Rs. 32 only (Foreign : 50 sh.)

Single parts are not sold separately.

Non-receipt of parts must be intimated within 15 days of the due date.

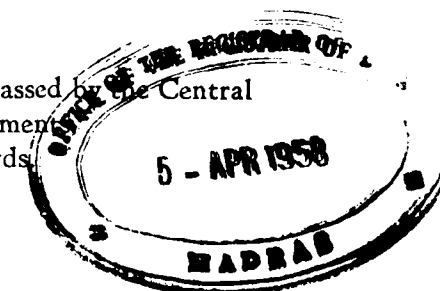
LAWS OF INDIA PRIVATE LTD..

NAGAR

::

::

MADRAS-17.



THE
INDIAN FACTORIES JOURNAL

VOL. XIV]

1ST APRIL, 1958.

[PART III

CONTENTS

	PAGE
STATUTES SECTION (73—156)	
CENTRAL	
The Payment of Wages Amendment Act, 1957	... 151
BOMBAY	
Cotton Ginning and Pressing Factories (Bombay Amendment) Act, 1957	... 139
Industrial Employment (Standing Orders) Bombay (Amendment) Act, 1957	... 141
KERALA	
The Kerala Factories Rules, 1957	73
UTTAR PRADESH	
Bonus in Sugar Factories in U. P. for 1957-58	... 148

REPORTS OF CASES

CUMULATIVE TABLE OF CASES REPORTED (Parts I to III)

SUPREME COURT	
*Chintaman Rao v. State of Madhya Pradesh	... 103
Ganesh Flour Mills Co., Ltd. v. Their Workmen	... 1-1
Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate.	... 2-41
HIGH COURTS	
*Aruna Mills Ltd. v. Industrial Court, Bombay	... 90
Asher Textiles Ltd., Tiruppur v. Industrial Tribunal, Coimbatore	... 1-31
*Bhupendra Cement Works v. Industrial Tribunal, Punjab	... 96
Corporation of the City of Nagpur v. N. H. Majumdar	... 1-17
Maharaj Weaving Mills v. State of Punjab	... 1-37
*Provincial Transport Service Co. v. N. H. Majumdar	... 83
*Waman Balkrishna Bokare v. Collector of Central Excise, Nagpur	... 88

AWARD

Kanaiyalal Paramdutt v. Rajnagar Mills Co., Ltd.	... 1-14
--	----------

CUMULATIVE INDEX TO REPORTS OF CASES (Parts I to III)

Bombay Industrial Relations Act, 1946, section 42—Notice of change—Employer altering number of workmen working a machine—No change in total number of workmen—Whether change—Notice, whether necessary.	... 1-14
---	----------

*Asterisks denote cases reported in this part. Bold figures indicate part number.

TL
V802/11111
128660
MSB

	PAGE
*—Sections 78, 79—Reference of dispute to Labour Court by parties—Disputes regarding 'change', meaning of—Employee claiming clerical scale of wages—Whether demand for 'change'—Interpretation of award of settlement—Right of employer to approach Labour Court—Limitation ...	90
Bonus —Computation of available surplus profits—Principles—Money blocked up in foreign country—Whether should be excluded—Bad debts—Deduction of, from gross profits ...	1-1
Closure —Dispute regarding retrenchment compensation on closure—Whether Industrial dispute—Whether can be referred to Industrial Tribunal—Industrial Disputes Act, 1947, sections 2(k), 2(oo) 25FF ...	1-37
C. P. & Berar Industrial Disputes Settlement Act, 1947, section 39 —Reference of industrial dispute to Industrial Court—Factual existence of dispute—Conditions stipulated for reference of dispute—Whether matters questionable in Court of law ...	1-17
*— Section 16(5) —Revision of order of Labour Commissioner—Powers of State Industrial Court—When decision of Labour Commissioner may be entered with ...	83
* Factories Act, 1948, Section 2(1) —'Worker', definition of—Whether includes independent contractor or employee of independent contractor—'Worker' and contractor distinguished—Sattedars employed to manufacture bidis—Whether 'workers' ...	103
Industrial dispute —Parties—Employees retiring before reference of dispute whether included—Whether award can be made in favour of such persons—C.P. & Berar Industrial Disputes Settlement Act, 1947, section 2(10) ...	1-17
*—Reference of dispute to Industrial Tribunal—Question whether dispute is 'individual dispute' or 'industrial dispute'—Decision of—Proper forum—Reference of dispute regarding dismissed workmen—Validity—Appeal regarding sanction of Tribunal under section 33 pending before Court—Whether bar to reference of dispute as to merits of dismissal. ...	96
Industrial Disputes Act, 1947, Section 33 —Application for permission under section 33—Whether should state nature of punishment—Scope of decision by Tribunal—Duty of Tribunal to give permission when there is no victimisation and misconduct is proved. ...	1-31
— Section 2(k) —'Industrial Dispute'—Scope of definition of—'Any person' meaning of—Whether includes persons who are not workmen—Tests—Dispute regarding termination of service of doctor of tea estate—Dispute taken up by workmen of estate—Whether 'industrial dispute'. ...	2-41
Industry —Meaning of—Municipality—Governmental and commercial activities—Applicability of Industrial Disputes Law to commercial activities—Tests to determine whether activity falls within definition of 'industry'—C. P. & Berar Industrial Disputes Settlement Act, 1947, section 2(14) ...	1-17
* Reinstatement —Effect—Employee re-instated on appeal against dismissal—Subsequent termination of service under contract of service—Whether valid—Rights of employer ...	88

*Asterisks denote cases reported in this part. Bold figures indicate part number.

SCHEDULE VII.

GENERATING PETROL GAS FROM PETROL.

1. *Prohibition relating to women and young persons.*—No woman or young person shall be employed or permitted to work in or shall be allowed to enter any building in which the generating of petrol gas from petrol is carried on.

2. *Flame-traps.*—The plant for the generating of petrol gas from petrol and associated piping and fittings shall be fitted with at least two efficient flame-traps so designed and maintained as to prevent a flash back from any burner to the plant. One of these traps shall be fitted as close to the plant as possible. The plant and all pipes and valves shall be installed and maintained free from leaks.

3. *Generating building or room.*—All plants for generating petrol gas from petrol erected after the coming into force of the provisions specified in this Schedule, shall be erected outside the factory building proper in a separate well ventilated building (hereinafter referred to as the "generating building"). In the case of such plant erected before the coming into force of the provisions specified in the Schedule there shall be no direct communications between the room where such plants are erected (hereinafter referred to as "the generating room") and remainder of the factory building. So far as practicable, all such generating rooms should be constructed of fire-resisting materials.

4. *Fire extinguishers.*—An efficient means of extinguishing petrol fires shall be maintained in an easily accessible position near the plant for generating petrol gas from petrol.

5. *The plant to be approved by Chief Inspector.*—Petrol gas shall not be manufactured except in a plant for generating petrol gas the design and construction of which has been approved by the Chief Inspector.

6. *Escape of petrol.*—Effective steps shall be taken to prevent petrol from escaping into any drain or sewer.

7. *Prohibition relating to smoking, etc.*—No person shall smoke or carry matches, fire or naked light or other means of producing a naked light or spark in the generating room or building or in the vicinity thereof and a warning notice in the language understood by the majority of the workers shall be posted in the factory prohibiting smoking and carrying of matches, fire or naked light or other means of producing naked light or spark into such room or building.

8. *Access to petrol or container.*—No unauthorised person shall have access to any petrol or to a vessel containing or having actually contained petrol.

9. *Electric fittings.*—All electric fittings shall be of flame proof construction and all electric conductors shall either be enclosed in metal conduits or be lead-sheathed.

10. *Construction of doors.*—All doors in the generating room or building shall be constructed to open outside or to slide and no door shall be

locked or obstructed or fastened in such manner that it cannot be easily and immediately opened from the inside while gas is being generated and any person is working in the generating room or building.

II. *Repair of containers.*—No vessel that has contained petrol shall be repaired in a generating room or building and no repairs to any such vessel shall be undertaken unless live steam has been blown into the vessel and until the interior is thoroughly steamed out or other equally effective steps have been taken to ensure that it has been rendered free from petrol or inflammable vapour.

SCHEDULE VIII.

Cleaning or smoothing of articles by a jet of sand, metal shot or grit or other abrasive propelled by a blast of compressed air or steam.

1. *Definition.*—For the purpose of the Schedule :—

"Sand blasting" means the blasting of any articles by a jet of sand, metal shot, grit or other abrasive.

2. *Sand blasting to be done in enclosed chamber.*—Sand blasting shall not be done in any room except in an enclosed chamber or cabinet in which no other work is performed and at which efficient means are provided, arranged and maintained to prevent the escape of dust to the outside of such chamber or cabinet.

3. *Prohibition relating to employment of women and young persons.*—No woman or young person shall be employed or permitted to work at any operation of sand blasting.

4. *Protective equipment.*—(1) Unless he is wearing a suitable protective helmet and gauntlets ;

(a) No person shall be employed or permitted to work at blasting in the open air or work within thirty feet of sand blasting apparatus in operation in the open air ; and

(b) no person shall be employed or permitted to work or allowed in a sand blasting chamber whilst the sand blasting apparatus is in operation.

(2) The occupier of the factory shall provide and maintain in good condition all helmets, overalls and gauntlets that are necessary to comply with the requirements of this Schedule.

(3) Every protective helmet shall carry the distinguishing mark of the person by whom it is to be used and shall be provided with a sufficient supply of pure air for breathing and ventilation, together with suitable arrangements to permit the escape of the expired air.

(4) No person shall wear a protective helmet that has been worn by another person unless such protective helmet shall have been thoroughly disinfected.

(5) All persons engaged in sand blasting while at work shall wear the protective equipment provided under the provisions of this paragraph.

SCHEDULE IX.

LIMING AND TANNING OF RAW HIDES AND SKINS AND PROCESSES INCIDENTAL THERETO.

1. *Cautionary notices.*—(1) Cautionary notices as to anthrax in the form specified by the Chief Inspector shall be affixed in prominent positions in the factory where they may be easily and conveniently read by the persons employed.

(2) A copy of warning notice as to anthrax in the form specified by the Chief Inspector shall be given to each person employed when he is engaged, and subsequently if still employed, on the first day of each calendar year.

(3) Cautionary notices as to the effects of chrome on the skin shall be affixed in prominent positions in every factory in which chrome solutions are used and such notices shall be so placed as to be easily and conveniently read by the persons employed.

(4) Notices shall be affixed in prominent places in the factory stating the position of the "First Aid" box or cupboard and the name of the person in charge of such box or cupboard.

(5) If any person employed in the factory is illiterate effective steps shall be taken to explain carefully to such illiterate person the contents of the notice specified in sub-paragraph 1, 2 and 4 and if chrome solutions are used in the factory the contents of the notice specified in sub-paragraph 3.

2. *Protective clothing.*—The occupier shall provide and maintain in good condition the following articles of protective clothing :—

(a) Waterproof foot-wear, leg coverings, aprons and rubber gloves for persons employed in processes involving contact with chrome solutions including the preparation of such solutions.

(b) Protective foot-wear, aprons and gloves for persons employed in the handling of hides or skins other than in processes specified in clause (a) :

Provided that gloves shall not be required for persons fleshing by hand or where there is no risk of contact with lime, sodium sulphide or other caustic liquor.

3. *Washing facilities, mess-room and cloak-room.*—There shall be provided and maintained in a clean state and in good repair for the use of all persons employed,

(a) a trough with a smooth impervious surface fitted with a waste pipe without plug, and of sufficient length to allow of at least two feet for every ten persons employed at any one time, and having a constant supply of water from taps or jets above the trough at intervals of not more than two feet ; or

(b) at least one wash basin for every ten such persons employed at any one time fitted with a waste pipe and plug and having a constant supply of water ; together with, in either case, a sufficient supply of nail brushes, soap or other suitable cleansing materials, and clean towels.

(c) a suitable mess-room, adequate for the number remaining on the premises during the meal intervals, which shall be furnished with (1) sufficient tables and benches and (2) adequate means for warming food and for boiling water ;

The mess-room shall (1) be separate from any room or shed in which hides or skins are stored, treated or manipulated, (2) be separate from the cloak-room and (3) be placed under the charge of a responsible person.

(d) suitable accommodation for clothing not worn during working hours with adequate arrangements for drying the clothing, if wet. The accommodation so provided shall be placed under the charge of a responsible person.

4. *Food, drinks, etc., prohibited in work-rooms.*—No food, drink, pan and supari or tobacco shall be brought into or consumed by any worker in any work-room or shed in which hides or skins are stored, treated or manipulated.

5. *First aid arrangements.*—The occupier shall (a) arrange for an inspection of the hands of all persons coming into contact with chrome solutions to be made twice a week by a responsible person ;

(b) provide and maintain sufficient supply of suitable ointment and impermeable water-proof plaster in a box readily accessible to the worker and used solely for the purpose of keeping the ointment and plaster.

SCHEDULE X.

EXTRACTION OF CASHEW OIL, ROASTING OF CASHEW-NUTS AND SHELLING AND TREATING OF ROASTED CASHEW NUTS.

1. *Application.*—These provisions shall apply to all factories in which roasting or scrubbing or shelling of cashew-nuts or extracting oil from cashewnuts is carried on.

2. *Declaration of operations as dangerous.*—Roasting, scrubbing and shelling of cashewnuts and extracting oil from cashewnuts are declared to be dangerous operations when carried on in any factory.

3. *Prohibition of employment of women, adolescents and children.*—(i) No child shall be employed in any of the operations specified in clause 2.

(ii) No woman or adolescent shall be employed in any of the operations specified in clause 2 except in the shelling of cashewnuts.

4. *Protective measures.*—(i) The occupier shall provide free of cost and maintain in good condition for use of all persons engaged in roasting nuts, scrubbing nuts or extracting oil from nuts :—

(a) Suitable rubber gloves or cloth gloves of durable quality for both hands.

(b) Suitable sandals and stockings with some oil proof putties for both legs.

(c) Sufficient quantity of wet kaolin.

(d) Sufficient quantity of cocoanut oil.

(e) Suitable aprons of durable quality and of sufficient length to cover the body from neck down to knees and of breadth to cover both shoulders, having ribbons at neck and waist for fastening the aprons.

(f) Face masks of oil cloth.

(g) Any other material which, in the opinion of the Chief Inspector of Factories shall be necessary for the protection of the workers.

(ii) The occupier shall provide free of cost and maintain in good condition for the use of all persons engaged in shelling cashewnuts :—

(a) Sufficient quantity of cocoanut oil.

(b) Sufficient quantity of wet kaolin.

(c) Any other material or appliance which in the opinion of the Chief Inspector of Factories shall be necessary for the protection of the workers.

5. *Wearing of gloves, sandals and stockings.*—All persons engaged in any of the processes named in clause 2 shall, while at work in these processes, make use of the materials and appliances provided under clause 4.

6. *Food and drink.*—(i) No food or drink shall be brought into any room in which any of the operations specified in clause 2 is carried on.

(ii) No food or drink shall be consumed in any room in which any of the operations specified in clause 2 is carried on.

7. *Shells, ashes and oil of cashewnuts.*—(i) Shells, ashes or oil of cashewnuts shall not be stored in any room in which workers are employed and shall be removed at least twice a day to any pit or enclosed place in the case of shells and ashes and to closed containers kept in a separate room in the case of oil.

(ii) No worker shall be allowed to handle shells or oil of cashewnuts in any processes within the factory premises without using the protective measures provided under clause 4 above.

8. *Floors and seating equipments.*—(i) The floor of every room in which any person is employed on any of operations specified in clause 2 shall be of hard, smooth and even surface.

(ii) The floors shall be kept clean and in good condition.

(iii) Work-benches and mattresses or planks used for sitting shall be cleaned regularly and kept free from cashewnut oil.

9. *Smoke or gas produced by roasting cashewnuts or due to other processes carried on.*—(i) Where smoke or gas is produced in the operation of roasting provision shall be made for removing the smoke or gas through a chimney of sufficient height and capacity and by such other arrangements as are necessary to prevent the gas or smoke escaping into the air or any place in which workers are employed.

(ii) In no case shall a chimney be less than thirty feet in height. But, for factories in congested areas, the height of the chimney shall not be less than fifty feet. The Chief Inspector of Factories, in consultation with the Chairman of the Municipality within or near which the factory is situated and the Director of Public Health shall decide whether an area is congested or not.

(iii) The above clauses shall apply also to other processes such as extracting of oil from burnt shells, burning of cashew shells, etc., which produce smoke.

(iv) The Chief Inspector shall be the final authority to decide what shall be the minimum height of any chimney which would satisfy the requirements of clause (i) and (ii) above.

10. *Medical Examination.*—(1) The person so employed shall be medically examined by a Certifying Surgeon within 14 days of his first employment in such process and thereafter shall be examined by the Certifying Surgeon at intervals of not more than twelve months, and a record of such examinations shall be entered by the Certifying Surgeon in the Health Register in Form No. 17.

(2) A Health Register in Form No. 17 containing the names of all persons employed in the processes named in clause 2 shall be kept.

(3) No person after suspension shall be employed unless the Certifying Surgeon after re-examination, again certified him to be fit for employment.

11. *Mess rooms.*—(a) There should be provided and maintained for the use of all persons employed in processes specified in rule 1, a suitable rest room furnished with sufficient tables and chairs or benches;

(b) Separate lockers shall be provided where food, etc., shall be stored by workers before it is consumed in the rest room.

12. *Washing facilities.*—Where roasting, scrubbing and shelling of cashewnuts or extracting oil from cashewnuts or cashew shells is carried on, there shall be provided and maintained in a clean and good repair washing facilities with a sufficient supply of soap, cocoanut oil, nail brushes and towels at the scale of one tap or stand pipe for every 10 workers and the taps or stand pipes shall be spaced not less than 4 feet apart.

13. *Time allowed for washing.*—Before each meal and before the end of the day's work at least ten minutes, in addition to the regular meal times, shall be allowed for washing, to such person employed in processes specified in rule 1.

14. The Chief Inspector of Factories may grant exemption from the operation of clauses 4, 5, 6, 8, 11, 12 and 13 to the extent he deems suitable where he is satisfied that their observance is not necessary for safeguarding the health of the workers.

SCHEDULE XI.

DYEING, STENCILLING AND PAINTING OF MATS, MATTINGS AND CARPETS IN COIR AND FIBRE FACTORIES.

1. *Application.*—These provisions shall apply to all coir factories in which stencilling or painting of mats or mattings or carpets is carried on, and to all coir and fibre factories in which dyeing of yarns (other than cotton yarns) and fibre is carried on.

2. *Declaration of operations as dangerous.*—Stencilling and painting of mats, mattings and carpets and dyeing of yarns (other than cotton yarns)

and fibre are declared to be dangerous operations when carried on in any coir factory.

3. *Prohibition of employment of women and young persons.*—No woman or young person shall be employed or permitted to work in any of the operations specified in clause 2.

4. *Protective measures.*—The occupier shall provide free of cost and maintain in good condition for use of all persons engaged in operations specified in clause 2:—

(a) Suitable rubber gloves of durable quality for both hands.

(b) Rubber boots of durable quality for both legs.

(c) Goggles.

(d) Any other material or appliance which in the opinion of the Chief Inspector, shall be necessary for the protection of workers.

5. *Wearing of gloves, boots and goggles.*—All persons engaged in any of the operations specified in clause 2 shall, while at work in these processes, make use of the materials and appliances provided under clause 4.

6. *Food and drink.*—(i) No food or drink shall be brought into any room in which any of the operations specified in clause 2 is carried on.

(ii) No food or drink shall be consumed in any room in which any of the operations specified in clause 2 is carried on.

7. *Floor of work-rooms.*—The floor of every room in which any of the operations specified in clause 2 is carried on shall be—

(a) of cement or similar materials so as to be smooth and impervious to water;

(b) maintained in sound condition; and

(c) provided with suitable and adequate arrangements for drainage.

8. *Washing facilities.*—(i) The occupier shall provide and maintain for the use of all persons employed in operations specified in clause 2, suitable washing facilities consisting of:—

(a) A masonry or steel water tank capable of holding sufficient water and having taps at the rate of one tap for every ten persons employed at any one time. The floor around the tank and below the taps shall be cement plastered and maintained in sound and clean condition. Suitable and adequate arrangements for drainage shall be provided around the tanks and the taps.

(b) Sufficient supply of nail brushes, soap or other suitable cleansing materials and clean towels.

(2) The facilities so provided shall be placed under the charge of a responsible person and shall be kept clean.

9. *Medical Examination.*—(1) The person so employed shall be medically examined by a Certifying Surgeon within 14 days of his first employment in such process and thereafter shall be examined by the Certifying Surgeon at intervals of not more than twelve months, and record of such examinations shall be entered by the Certifying Surgeon in the Health Register in Form No. 17.

(2) A Health Register in Form No. 17 containing the names of all persons employed in the processes named in clause 2 shall be kept.

(3) No person after suspension shall be employed unless the Certifying Surgeon after re-examination, again certifies him to be fit for employment.

10. *Exemptions.*—The Chief Inspector may grant exemption from the operation of clauses 4, 5, 6, 7 and 8 to the extent he deems suitable where he is satisfied that their observance is not necessary for safeguarding the health of the operatives.

SCHEDULE XII.

CELLULOSE SPRAYING.

1. *Application.*—The provisions of this Schedule shall apply to all factories or parts of factories in which the spraying of cellulose ester paints, or lacquers is carried on.

2. *Prohibition of the employment of children and adolescents.*—No child or adolescent shall be employed in any factory on the operation specified in paragraph 1 above.

3. *Exhaust draughts.*—An efficient exhaust draught shall be provided by mechanical means for the process specified in paragraph 1. The draught shall operate on the vapour given off in the process as near as may be at the point of origin so as to prevent it (as far as practicable under the atmospheric conditions usually prevailing) from escaping into the air of any place in which work is carried on. The draught shall be maintained working for a period of at least five minutes after the cessation of the operation :

Provided that the Chief Inspector may grant exemption from these provisions if he is satisfied that due to the casual nature of the operation they are not necessary to secure the health of the workers.

4. *Position of spray operators.*—Arrangements shall, as far as practicable, be made so as to render it unnecessary for the person operating the spray to be in a position between a ventilating outfit and the article being sprayed.

SCHEDULE XIII.

GRAPHITE POWDERING.

1. *Application.*—The provisions of this Schedule shall apply to all factories or parts of factories in which the grinding and sieving of graphite and the processes incidental thereto are carried on.

2. *Prohibition of employment of women, children and adolescents.*—No woman, child or adolescent shall be employed in any factory upon any of the operations specified in paragraph 1 above.

3. *Medical certificates and examinations.*—(1) No person shall be employed in any factory for more than fifteen days in the year upon any of the operations specified in paragraph 1 above unless a special certificate of fitness in Form No. 27, granted to him by a Certifying Surgeon appointed under section 10, is in the custody of the manager of the factory.

(2) The Inspector of Factories may require that any person in respect of whom a certificate referred to in sub-paragraph 1 has been granted shall carry with him while at work a token giving reference to such certificate.

(3) Every person so employed shall be medically examined by a certifying surgeon at intervals of not more than six months and a record of such examinations shall be entered in the special certificate granted under sub-paragraph (1).

(4) If at any time a Certifying Surgeon is of opinion that any person is no longer fit for employment upon any of the operations specified in paragraph 1 above he shall cancel the special certificate of fitness granted to that person.

(5) No person whose special certificate of fitness has been cancelled shall be employed upon any of the operations specified in paragraph 1 above unless a Certifying Surgeon again certifies him to be fit.

4. *Exhaust draughts.*—Provision shall be made for removing the dust produced in any of the operations specified in paragraph 1 above by means of an efficient exhaust draught so contrived as to operate on the dust as closely to the point of origin as possible :

Provided that where the provision of an exhaust draught is not reasonably practicable the Inspector may require—

(a) respirators of a type approved by him to be provided and maintained in a clean and efficient condition by the occupier and worn by every person working under such conditions ; and

(b) the damping of floors, apparatus and material to prevent the raising of dust.

5. *Floors and work-benches.*—(1) The floor of every room in which any person is employed upon any of the operations specified in paragraph 1 above shall be of cement or other impervious material.

(2) The top of every work-bench in every such room shall be of impervious material.

(3) The said floors and work benches shall be kept clean and in good condition.

(4) The Inspector may, by order in writing, require the said floors and work benches to be kept wet in such manner as he may deem suitable, in order to reduce dust.

6. *Washing facilities.*—The occupier shall provide and maintain in a clean state and in good repair for the use of persons employed upon any of the operations specified in paragraph 1 above either (a) a trough with smooth impervious surface fitted with a waste-pipe without plug, and of sufficient length to allow at least two feet for every five such persons employed at any one time, and having a constant supply of water from taps or jets above the trough at intervals of not more than two feet, or (b) at least one lavatory basin for every five such persons employed at any one time, fitted with a waste-pipe and plug having a constant supply of water, together

with, in either case a sufficient supply of nail brushes, soap or other suitable cleaning material and clean towels.

7. *Food, drink and tobacco.*—No food, drink, *pansupari* or tobacco shall be brought into, or consumed in, any room in which any person is employed upon any of the operations specified in paragraph 1 above.

8. *Protective clothing.*—Adequate protective clothing such as overalls in a clean condition shall be provided by the occupier to every person employed upon any of the operations specified in paragraph 1 above.

9. *Exemptions.*—The Chief Inspector may exempt any factory or part of a factory from the provisions of paragraphs 4 to 7 to the extent he deems suitable, if he is satisfied that their observance is not necessary for safeguarding the health of the operatives.

SCHEDULE XIV.

PRINTING PRESS AND TYPE FOUNDRIES—CERTAIN LEAD PROCESS CARRIED ON THEREIN.

1. *Exemption.*—Where the Chief Inspector is satisfied that all or any of the provisions of this Schedule are not necessary for the protection of persons employed he may by certificate in writing exempt any factory from all or any of such provisions subject to such conditions as he may specify therein. Such certificate may at any time be revoked by the Chief Inspector.

2. *Definitions.*—In these regulations—

“Lead material” means material containing not less than 5 per cent. of lead.

“Lead process” means—

- (a) the melting of lead or any lead material for casting and mechanical composing;
- (b) the recharging of machines with used lead material; or
- (c) any other work including removal of dross from melting pots, cleaning of plungers; and
- (d) manipulation, movement or other treatment of lead material.

“Efficient exhaust draught” means localized ventilation effected by heat or mechanical means for the removal of gas, vapour, dust or fumes so as to prevent them from escaping into the air of any place in which work is carried on. No draught shall be deemed efficient which fails to remove gas, vapour, fume or dust at the point where they originate.

3. *Exhaust draught.*—None of the following process shall be carried on except with an efficient exhaust draught:—

- (a) melting lead material or slugs;
- (b) heating lead material so that vapour containing lead is given off; or unless carried on in such a manner as to prevent free escape of gas, vapour fumes or dust into any place in which work is carried on; or unless carried on in electrically heated and thermostatically controlled melting pots.

Such exhaust draught shall be effected by mechanical means and so contrived as to operate on the dust, fume, gas or vapour given off as closely as may be at its point of origin.

4. *Prohibition relating to women and young persons.*—No woman or young persons shall be employed or permitted to work in any lead process.

5. *Separation of certain processes.*—Each of the following process shall be carried on in such a manner and under such conditions as to secure effectual separation from one another and from any other process:—

- (a) melting of lead or any lead material;
- (b) casting of lead ingots;
- (c) mechanical composing.

6. *Container for dross.*—A suitable receptacle with tightly fitting cover shall be provided and used for dross as it is removed from every melting pot. Such receptacle shall be kept covered while in the workroom near the machine except when the dross is being deposited therein.

7. *Floor of workroom.*—The floor of every work-room where lead process is carried on shall be—

- (a) of cement or similar material so as to be smooth and impervious to water;
- (b) maintained in sound condition; and
- (c) shall be cleansed throughout daily after being thoroughly damped with water at a time when no other work is being carried on at the place.

8. *Mess Room.*—There shall be provided and maintained for the use of all persons employed in a lead process and remaining on the premises during the meal intervals, a suitable mess room which shall be furnished with sufficient tables and benches.

9. *Washing facilities.*—There shall be provided and maintained in a cleanly state and in good repair for the use of all persons employed in a lead process.

(a) a wash place with either—

(i) a trough with smooth impervious surface fitted with a waste pipe without plug, and of sufficient length to allow at least two feet for every five such persons employed at any one time and having a constant supply of water from taps or jets above the trough at intervals of not more than two feet; or

(ii) at least one wash basin for every five such persons employed at any one time, fitted with a waste pipe and plug and having an adequate supply of water laid on or always readily available; and

(b) a sufficient supply of clean towels made of suitable material renewed daily with a sufficient supply of soap or other suitable cleaning material.

10. *Medical Examination.*—(a) Every person employed in a lead process shall be examined by the certifying surgeon within 14 days of his first employment in such processes and thereafter shall be examined by the certifying surgeon at intervals of not more than three months, and a record of such examinations shall be entered by the Certifying Surgeon in the special certificate of fitness in Form No. 27.

(b) A Health Register containing names of all persons employed in any lead process shall be kept in Form No. 17.

(c) No person shall after suspension be employed in a lead process without the written sanction from the Certifying Surgeon, entered in the Health Register.

11. *Food, drinks, etc., prohibited in workrooms.*—No food, drink, pan and supari or tobacco shall be consumed or brought by any worker into any work room in which any lead process is carried on.

Rules prescribed under section 88.

123. *Notification of accidents.*—(1) When any accident or occurrence specified in the Schedule takes place in a factory, the manager of the factory, shall forthwith send notice thereof by telephone, special messenger or telegram to the Inspector and to the Chief Inspector and if the accident is fatal, or of such a serious nature that it is likely to prove fatal notice as aforesaid shall also be sent to:—

- (a) the District Magistrate,
- (b) the Officer-in-charge of the nearest Police Station, and
- (c) the relatives of the injured or deceased person.

(2) The notice so given shall be confirmed by the Manager of the factory to the above mentioned authorities within 12 hours of the occurrence by sending to them a written report in the prescribed Form No. 18.

(3) When any accident takes place in a factory which causes such bodily injury as prevents the injured person from working during a period of 48 hours immediately following the accident, the Manager of the factory shall send notice thereof to the authorities specified in sub-rule (1), a written report in Form No. 18, within 24 hours of the expiry of 48 hours after the occurrence of the accident.

SCHEDULE.

1. Accidents which cause—

- (a) death to any person,
- (b) such bodily injury as prevents or will probably prevent the person injured from working for a period of 48 hours immediately following the accident.

2. The following classes of occurrences, whether or not they are attended by personal injury or disablement.

(a) Bursting of a vessel used for containing steam under pressure greater than atmospheric pressure other than plant which comes within the scope of the Indian Boilers Act, 1923 (Act V of 1923).

(b) Collapse or failure of crane, derrick, winch, hoist or other appliances used in raising or lowering persons or goods, or any part thereof, or the overturning of crane.

(c) Explosion or fire causing damage to any room or place in which persons are employed or fire in rooms of cotton pressing factories when a cotton opener is in use.

(d) Explosion of a receiver container used for the storage at a pressure greater than atmospheric pressure of any gas or gases (including air) or any liquid or solid resulting from the compression of gas.

(e) Collapse or subsidence of any floor, gallery, roof, bridge, tunnel, chimney, wall or building forming part of a factory or within the compound or curtilage of factory.

Rule prescribed under sub-section (1) of section 89.

124. *Notice of poisoning or decease.*—A notice in Form No. 19 should be sent forthwith both to the Chief Inspector and to the Certifying Surgeon, by the Manager of a factory in which there occurs a case of lead, phosphorus, mercury, manganese, arsenic, carbon bisulphide or benzene poisoning, or poisoning by nitrous fumes, or by halogens or halogen derivative of the hydro-carbons of the aliphatic series; or of chrome ulceration, anthrax, silicosis, toxic anaemia, toxic jaundice, primary epitheliomatous cancer of the skin, or pathological manifestations due to radium or other radio active substances or X-rays.

CHAPTER X.

SUPPLEMENTAL.

Rule prescribed under sub-section 1 of section 107.

125. *Procedure in appeals.*—(1) An appeal presented under section 107 shall lie to the Chief Inspector, or in cases where the order appealed against, is an order passed by that officer to the State Government or to such authority as the State Government may appoint in this behalf and shall be in the form of a memorandum setting forth concisely the grounds of objection to the order and bearing court-fees stamp in accordance with Article VI of the Schedule II to the T. C. Court Fees Act, 1125 (Act 11 of 1125); or Article II of Schedule II to the Court Fees Act, 1870 as the case may be and shall be accompanied by a copy of the order appealed against.

(2) On receipt of the memorandum of appeal, the appellate authority shall, if it thinks fit or if the appellant has requested that the appeal should be heard with the aid of assessors, call upon the body declared under rule (3) to be representative of the industry concerned to appoint an assessor within a period of 14 days. If an assessor is nominated by such body, the appellate authority shall appoint a second assessor itself. It shall then fix a date for the hearing of the appeal and shall give due notice of such date to the appellant and to the Inspector whose order is appealed against and shall call upon the two assessors to appear upon such date to assist in the hearing of the appeal.

(3) (i) The appellant shall state in the memorandum presented under sub-rule (i) whether he is a member of one or more of the following bodies:—

1. The Travancore Chamber of Commerce.
2. The Alleppey Chamber of Commerce.
3. The Trivandrum Chamber of Commerce.
4. The Travancore Combined Planters' Association.
5. The Central Travancore Planters' Association.

6. The Indian Planters' Association of Kerala.
7. The Kannan Devan Planters' Association.
8. The India Tea Planters' Association, Travancore.
9. The Mundakayam Planters' Association.
10. The Association of Planters of Travancore.
11. South India Cashewnut Manufacturers' Association.
12. The Travancore Coir Mats and Matting Manufacturers' Association, Alleppey.
13. The Oil Mill Owners' Association, Alleppey.
14. The Cochin Chamber of Commerce.
15. The Indian Chamber of Commerce, Mattancherry.
16. The United Planters' Association of Southern India.
17. The Oil Merchants' Association, Cochin.
18. The Merchants' Association, Trichur.
19. The Calicut Chamber of Commerce.
20. The Malabar Chamber of Commerce.
21. The West Coast Industrialists Association, Kozhikode.

(ii) The body empowered to appoint the assessor shall :—

(a) If the appellant is a member of one of such bodies, be that body ;

(b) If he is a member of two such bodies, be the body which the appellant desires should appoint such assessor, and

(c) If the appellant is not a member of any of the aforesaid bodies or if he does not state in the memorandum which of such bodies he desires should appoint the assessor, be the body which appellate authority considers as the best fitted to represent the industry concerned.

(4) An assessor appointed in accordance with the provisions of sub-rules (2) and (3) shall receive for the hearing of the appeal, a fee to be fixed by the appellate authority, subject to a maximum of fifty rupees per diem. He shall also receive the actual travelling expenses. The fees and travelling expenses shall be paid to the assessors by Government, but where the assessors have been appointed at the request of the appellant and the appeal has been decided wholly or partly against him the appellate authority may direct that the fees and travelling expenses of the assessors shall be paid in whole or in part by the appellant.

Rule prescribed under sub-section 1 of section 108

126. Display of notices.—The abstract of the Act and of the Rules required to be displayed in every factory shall be in Form No. 20.

Rule prescribed under section 110.

127. Returns.—The Manager of every factory shall furnish to the Chief Inspector or other Officer appointed by the State Government in this behalf the following returns, namely :—

(1) *Annual return.*—On or before the 31st January of each year an annual return in Form No. 21 to the Chief Inspector of Factories with a copy to the Director of Statistics.

(2) *Annual return of holidays.*—Before the end of each year, a return giving notice of all the days on which it is intended to close the factory during the next ensuing year to the Chief Inspector of Factories with copies to the Director of Statistics and the Inspector of Factories concerned. This return shall be submitted whether the factory is or is not working during the year preceding the year to which the return relates :

Provided that State Government may dispense with this return in the case of any specified factory or any class of factories or of factories in any particular area :

Provided further that the annual return of holidays shall be dispensed with in case of all factories :—

- (a) which regularly observe Sundays as holidays, or
- (b) which regularly observe a fixed day in the week as a holiday, or
- (c) which observe holidays according to a list approved by the Chief Inspector of Factories :

Provided further, that where the Manager of any factory, makes any departure from such a holiday or list of holidays as aforesaid, prior intimation shall be given to the Chief Inspector.

(3) *Half yearly return.*—The Manager of every factory shall furnish to the Chief Inspector on or before the 31st July and 31st January of each year, a half yearly return in Form No. 22, with a copy to the Director of Statistics.

(4) *Leave with wages—Annual return.*—The manager of every factory shall furnish to the Chief Inspector, not later than the 31st January of the year subsequent to that to which it relates, a return in Form No. 23, with a copy to the Director of Statistics.

(5) *Compensatory holidays—Annual return.*—The manager of every factory shall furnish to the Chief Inspector, not later than 31st January of the year subsequent to that to which it relates, a return in Form No. 24, with a copy to the Director of Statistics.

(6) *Canteen—Annual return.*—The manager of every factory, notified by the State Government, wherein more than two hundred and fifty workers are ordinarily employed shall furnish to the Chief Inspector not later than 31st January of the year subsequent to that to which it relates, a return in Form No. 30, with a copy to the Director of Statistics.

(7) *Creche—Annual return.*—The manager of every factory wherein more than fifty women workers are ordinarily employed and providing a creche shall furnish to the Chief Inspector, not later than 31st January of the year subsequent to that to which it relates, a return in Form No. 29, with a copy to the Director of Statistics.

(8) *Shelters, Rest Rooms and Lunch Rooms.*—The manager of every factory wherein more than 150 workers are ordinarily employed shall furnish to the Chief Inspector not later than 31st January of the year subsequent to that to which it relates a return in Form No. 31, with a copy to the Director of Statistics.

(9) *Accidents—Annual Return.*—The manager of every factory shall furnish to the Chief Inspector, not later than 31st January of the year

subsequent to that to which it relates, a return in Form No. 32, with a copy to the Director of Statistics.

(10) *Return regarding closure of factory.*—The occupier or manager of every factory shall report to the Inspector any intended closure of the factory or any section or department thereof immediately it is decided to do so, intimating the reason for the closure, the number of workers likely to be affected by the closure and the probable period of the closure. An intimation should also be sent to the Inspector as soon as the factory or the section or department of the factory, as the case may be, starts working again.

In the case of a factory in which work is carried on only during certain period or periods of the year, the manager shall, if so required by the State Government or if the State Government so directs, through the Chief Inspector, submit the annual or half-yearly returns within fifteen days after the close of that period or after the close of the last of those periods in the year as the case may be.

Rule prescribed under section 109.

128. Service of notice.—The despatch by post under registered cover of any notice or order shall be deemed sufficient service on the occupier, owner or manager of a factory of such notice or order.

Rules 129 to 134 prescribed under section 112.

129. Information required by the Inspector.—The occupier, owner or manager of a factory shall furnish any information that an inspector may require for the purpose of satisfying himself whether any provision of the Act has been complied with or whether any order of an inspector has been duly carried out. Any demand by an inspector for any such information, if made during the course of an inspection, shall be complied with forthwith if the information is available in the factory, or, if made in writing shall be complied with within seven days of receipt thereof.

130. Muster Roll.—The manager of every factory shall maintain a muster roll of all the workers employed in the factory in Form No. 25 showing (a) the name of each worker, (b) the nature of his work, (c) the daily attendance of the worker, and (d) date of entry into service.

131. Register of accidents and dangerous occurrences.—The manager of every factory shall maintain a Register of all accidents and dangerous occurrences which occur in the factory in Form No. 26 showing the

- (a) Name of injured persons (if any).
- (b) Date of accident or dangerous occurrence.
- (c) Date of report on Form No. 18 to inspector.
- (d) Nature of accident or dangerous occurrence.
- (e) Date of return of injured person to work.
- (f) Number of days of absence from work of injured person.

132. Maintenance of inspection book.—The manager of every factory shall maintain a bound inspection book containing the following particulars and shall produce it when so required by the inspector or Certifying Surgeon:—

- (a) the exemptions granted or availed of by the factory in Form No. 33,
- (b) the particulars of rooms in the factory in Form No. 35, and
- (c) the particulars of lime-washing, colour-washing, painting, varnishing or tarring, as the case may be, in Form No. 7.

133. Particulars of rooms.—The particulars of measurements of each room in the factory in which workers are employed shall be entered in Form No. 35.

134. Posting of certain notice in work-rooms.—(1) The maximum number of workers who may be employed in each work-room or work-hall shall be posted prominently by means of a notice painted on the internal wall in each such room or hall. When determining the maximum number of persons permissible in addition to the breathing space required to be provided by section 16(2), floor space of 25 square feet in the case of existing factories and 36 square feet in factories built after the commencement of the Act, shall also be provided for each worker working at any one time in the room, but such floor space shall be exclusive of the space occupied by machinery, fixtures and materials in the room.

(2) The Chief Inspector may, for reasons to be recorded in writing, relax the provisions of this rule to such extent as he may consider necessary, where in his opinion, such relaxation can be made having regard to the health of the persons employed in any room.

135. The Travancore-Cochin Factories Rules, 1952 and the Madras Factories Rules, 1950, in their application to the territories referred to as Malabar District in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), are hereby repealed.

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

FORM No. 1.

(Prescribed under rule 3)

Application for permission to construct, extend or take into use
any building as a Factory.

1. Applicant's Name.
 " Calling.
 " Address.
2. Full name and Postal address
of the Factory.
3. Situation of the Factory.
 District.
 Taluk.
 Town or village.
 Nearest Police Station.
 Nearest Railway Station.
4. Particulars of plant to be
installed.

Signature of Applicant

Date

NOTE :—This application shall be accompanied by the following documents:—

- (a) A flow chart of the manufacturing process supplemented by a brief description of the process in its various stages.
- (b) Plans, in duplicate, drawn to scale, showing—
 - (i) the site of the factory and immediate surroundings including adjacent buildings and other structures, roads, drains, etc., and
 - (ii) the plan, elevation and necessary cross-sections of the various buildings, indicating all relevant details relating to natural lighting, ventilation and means of escape in case of fire. The plans shall also clearly indicate the position of the plant and machinery, aisles and passage ways.
- (c) Such other particulars as the Chief Inspector may require.

FORM No. 2.

(Prescribed under rules 4 and 12.)

APPLICATION FOR REGISTRATION AND GRANT OR RENEWAL OF LICENCE FOR
THE YEAR.....AND NOTICE OF OCCUPATION SPECIFIED IN SECTIONS 6
AND 7 (TO BE SUBMITTED IN TRIPLICATE.)

1. Full name of the factory with factory
licence number if already registered from
before.
2. (a) Full postal address and situation of the
factory.
(b) Full address to which communications
relating to the factory should be sent.
3. Nature of manufacturing process/processes.
(a) Carried on in the factory during the last
twelve months (in the case of factories al-
ready in existence).
(b) To be carried on in the factory during the
next twelve months (in the case of all
factories).
4. Names and values of principal products
manufactured during the last twelve
months.
5. (i) Maximum number of workers proposed
to be employed on any one day during the
year.
(ii) Maximum number of workers employed on
any one day during the last twelve months.
(iii) Number of workers to be ordinarily em-
ployed in the factory.
6. (i) Nature and total amount of power (H.P.)
installed or proposed to be installed.
(ii) Maximum amount of power (H.P.) pro-
posed to be used.
7. Full name and residential address of the
person who shall be the manager of the
factory for the purposes of the Act.
8. Full name and residential address of the
occupier:—
 - (i) The proprietor of the factory in case of
private firm/proprietary concern.
 - (ii) Directors in case of a public limited lia-
bility company/firm.
 - (iii) Where a Managing Agent has been
appointed the name of Managing Agents
and Directors thereof.

FORM No. 2—(contd.)

- (iv) Share-holders in case of a private company where no Managing Agents have been appointed.
- (v) The Chief Administrative Head in case of a Government or local fund factory.
9. Full name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93.
10. In the case of a factory constructed or extended after the date of the commencement of the Rules—
- (a) Reference number and date of approval of the plans for site whether for old or new building and for construction or extension of factory by the State Government/Chief Inspector.
- (b) Reference number and date of approval of the arrangements, if any, made for the disposal of trade waste and effluents and the name of the authority granting such approval.
11. Amount of fee Rs..... (Rupees)
- (i) paid in.....Treasury on.....
vide chalan number.....(enclosed).
- (ii) transmitted by crossed Cheque No.....
Postal Order
- dated.....on the.....Bank
of the.....Post Office
drawn in favour of the Chief Inspector of Factories.
- Signature of occupier.....
- Date.....
- Signature of Manager.....
- Date.....
- NOTE:—1. This form should be completed in ink in block letters or typed.
2. If power is not used at the time of filling up this form, but is introduced later, the fact should be communicated to the Chief Inspector immediately.
3. If any of the persons named against Item 8 is minor the fact should be clearly stated.

FORM No. 2—(contd.)

4. In the case of a factory, where under the proviso to sub-sections (2) and (3) of section 100, a person has been nominated as the occupier, information required in Item 8 should be supplied only in respect of that person.
5. In the case of a factory where a managing agent or agents have been appointed as occupiers under the Indian Companies Act, 1913 (VII of 1913) information required in Item 8 should be supplied only in respect of that person or persons.

FORM No. 3.

[Prescribed under rule 3 (4)]

CERTIFICATE OF STABILITY.

- (1) Name of the Factory.
- (2) Village, Town and District in which the Factory is situated.
- (3) Full postal address of the Factory.
- (4) Name of the occupier of the Factory.
- (5) Nature of manufacturing process to be carried on in the Factory.
- (6) Number of floors on which workers will be employed.

I certify that I have inspected the building in which..... is housed and examined the various parts including the foundations as shown in the complete plans approved by the Chief Inspector in his letter No....., dated.....with special reference to the machinery, plant, etc., that have been installed. I am of opinion that the building has been constructed/extended in accordance with the plans approved by the Chief Inspector in his letter No.....dated....., that it is structurally sound and that its stability will not be endangered by its use as a factory for the manufacture of.....for which the machinery, plant, etc., installed are intended.

(Signature).

Name, designation and qualifications.

FORM No. 4

(Prescribed under rule 5)

REGISTRATION AND LICENCE TO WORK A FACTORY.

Licence No..... Fee Rs.....

Registration No.....

Licence is hereby granted to.....
 valid only for the premises described below for use as a factory employing
 not more than.....persons on any one day during the year and
 using motive power not exceeding.....H. P. subject to the provisions
 of the Factories Act, 1948, and Rules made thereunder.

The licence shall remain in force till the 31st day of December, 195 ..

NAME OF THE FACTORY.....

DESCRIPTION OF THE LICENCED PREMISES.

The licensed premises shown on plan No.....
 dated.....are situated in.....
 District.....and consist of.....
 Dated.....195 ..

*Chief Inspector of Factories,
 Kerala.*

RENEWALS.

	Date of renewal.	Fee for renewal.	Date of expiry.	Signature of Chief Inspector of Factories.
1.	...	...	...	...
2.	...	...	...	...
3.	...	...	...	...
4.	...	...	...	...

AMENDMENTS.

Amended to		Additional Fee.	Signature of Chief Inspector of Factories.
Install Horse Power.	Employ maximum No. of workers.		
1.	...	...	...
2.	...	...	...
3.	...	...	...
4.	...	...	...
5.	...	...	...

TRANSFERS.

Name of the person to whom transferred.	Name of the Factory.	Signature of Chief Inspector of Factories.
1.	...	...
2.	...	...
3.	...	...
4.	...	...
5.	...	...

FORM No. 5

(Prescribed under rule 14)

CERTIFICATE OF FITNESS.

1. Serial No..... Serial No.....
 Date..... Date
2. Name..... I hereby certify that I have
 3. Father's name..... personally examined (name)
 4. Sex.....
 5. Residence..... Son/daughter of
6. Date of birth, if available residing at
 and/or
 certified age
7. Physical fitness
8. Descriptive marks..... who is desirous of being employed
 in a factory, and that his/her age, as
 nearly as can be ascertained from
 my examination, is.....years, and
 9. Reason for— that he/she is fit for employment in
 (1) refusal of certificate. factory as an adult/child.

 or
 (2) certificate being re- His/Her descriptive marks are.....
 voked.....

Thumb
impression.Thumb
impression.

Initials of

Certifying Surgeon

Certifying Surgeon

NOTE :—Exact details of cause of physical disability should be clearly
 stated.

FORM No. 6

(Prescribed under rule 22)

HUMIDITY REGISTER.

Department.....

Hygrometer.....

Distinctive mark or number.....

Position in department.....

READING OF HYGROMETER.

Date, Year, Month, Day.	Between 7 & 9 A.M.		Between 11 A.M. and 2 P.M. (but not in the rest period.)		Between 4 & 5-30 P.M.		If no humi- dity in- sert none.	Remarks.
	Dry bulb.	Wet bulb.	Dry bulb.	Wet bulb.	Dry bulb.	Wet bulb.		
1st								
2nd								
3rd								
4th								
5th								
6th								
7th								
8th								
9th								
10th								
11th								
12th								
13th								
14th								
15th								
16th								
17th								
18th								
19th								
20th								
21st								
22nd								
23rd								
24th								
25th								
26th								
27th								
28th								
29th								
30th								
31st								

(Signed).....

Certified that the above entries are correct.

(Signed).....

FORM No. 7

(Prescribed under rule 16)

RECORD OF LIME WASHING, PAINTING, ETC.

Part of Factory, e.g., name of room.	Parts lime washed, painted, varnished or oiled, e.g., walls ceiling, wood work, etc.	Treatment, whether lime washed, painted, varnished or oiled.	Date on which lime washing, painting, varnishing or oiling was carried out (according to English calendar.)			Remarks.
			Date.	Month.	Year.	
1	2	3	4	5	6	7

Signature of Manager.

FORM No. 8

(Prescribed under rule 74)

REPORT OF EXAMINATION OF PRESSURE VESSEL.

1. Name of occupier (or factory).
2. Situation and address of factory.
3. Name, description and distinctive number of pressure vessel.
4. Nature of process in which it is used.
5. Date of construction (the history should be briefly given and the examiner should state whether he has seen the last previous report).
6. Date of last hydraulic test (if any) and pressure applied.
7. Is the vessel in the open, or otherwise exposed to weather or to damp?
8. What parts (if any) were inaccessible?
9. What examination and tests were made?
10. Condition of vessel (state any defects materially affecting the safe working pressure or the safe working of the vessel)

}	External.
}	Internal.
11. Are the required fittings and appliances provided in accordance with the Rules for pressure vessels?
12. Are all fittings and appliances properly maintained and in good condition?
13. Repairs (if any) required, and period within which they should be executed and any other condition which the person making the examination thinks it necessary to specify for securing safe working.

FORM No. 8—(contd.)

14. Safe working pressure, calculated from dimensions and from the thickness and other data ascertained by the present examination due allowance being made for conditions of working unusually or exceptionally severe.
15. Where repairs, affecting the safe working pressure are required, state the working pressure---
 - (a) Before the expiration of the period specified in (13).
 - (b) After the expiration of such period if the required repairs have not been completed.After the completion of the required repairs.
16. Other observations.

I certify that on.....the pressure vessel described above was thoroughly cleaned and (so far as its construction permits) made accessible for thorough examination and for such tests as were necessary for thorough examination and that on the said date, I thoroughly examined this pressure vessel including its fittings, and that the above is true report of the examination.

Signature.....

Qualification

Address.....

Date.....

If employed by a Company or Association, give name and address.....

FORM No. 9

(Prescribed under rule 103)

REGISTER OF COMPENSATORY HOLIDAYS.

Sl. No.	Number in the register of workers.	Name.	Group or Relay No.	No. and date of exempting order.	Year.	Weekly rest days lost due to the exempting order in				Date of compensatory holidays given to				Lost rest days carried to the next year.		Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
						January to March.	April to June.	July to September.	October to December.	January to March.	April to June.	July to September.	October to December.			

FORM No. 10.

(Prescribed under rule 104)

OVERTIME MUSTER ROLL FOR EXEMPTED WORKERS—MONTH ENDING.....19

[illegible]

FORM NO. 11

(Prescribed under rule 106)

NOTICE OF PERIODS OF WORK FOR ADULT WORKERS.

[illegible]

Date on which this notice is first exhibited

19

(Signed).

Mariage...

FORM No. 12.
(Prescribed under rule 107)
REGISTER OF ADULT WORKERS.

Serial No.	Name.	Fathers's/ Mother's name.	Residential address of the worker.	Nature of work.	Letter of group as in form.	Number of relays if working in shifts.	No. and date of certificate if an adolescent.		Remarks.
							No. of certificate and date.	Token number giving reference to the certificate.	
1	2	3	4	5	6	7	8	9	10

INDIAN FACTORIES JOURNAL (STATUTES)

[Vol. XIV

1958-59]

FORM No. 13.*(Prescribed under rule 112.)***NOTICE OF PERIODS OF WORK FOR CHILD WORKERS.**

Name of Factory.....Place.....District.....

KERALA FACTORIES RULES, 1957

Periods of work.	Children						Description of group.	Nature of work.
	Total number of children employed.							
	A		B		C			
Groups.							Group letter.	
Relays.	1	2	1	2	1	2		
From							A	
To							B	
							C	

Date on which this notice is first exhibited.....19 .

(Signed).....

Manager.

FORM No. 14.

(Prescribed under rule 113)

REGISTER OF CHILD WORKERS.

Serial No.	Name.	Father's/ Mother's Name.	Resi- dential address of the worker.	Date of birth.	Date of first employ- ment.	No. of certifi- cate and its date.	Token No. giving refer- ence to cer- tificate.	Letter of groups as in Form.	No. of relay, if working in shifts.	Remarks.
1	2	3	4	5	6	7	8	9	10	11

106

INDIAN FACTORIES JOURNAL (STATUTES)

[Vol. XIV

FORM No. 15.

(Prescribed under rule 114)

REGISTER OF LEAVE WITH WAGES.

Name of Factory..... Adult/Child.....

Serial No.
 Department.....
 Serial No. in the Register of Adult/
 Child workers.....
 Date of entry into service.....
 Name
 Father's/Mother's Name.....
 Date of Discharge.....
 Date and amount of payment made in lieu of
 leave due.....

1958-59]

KERALA FACTORIES RULES, 1957

Calendar year of service.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Wage period from..... to.....																		
Wages earned during the wage period.																		
No. of days of work per- formed.																		
No. of days of lay off.																		
No. of days maternity of leave.																		
No. of days of leave enjoyed.																		
Total of Cols. 4 to 7.																		
Balance of leave from preceding year																		
Leave earned during the year mentioned in Col. 1.																		
Leave to credit.																		
Total of Cols. 9 and 10.																		
Whether leave in accordance with scheme under section 79 (5) was refused.																		
Leave enjoyed from..... to.....																		
Balance of leave to credit.																		
Normal rate of wages.																		
Cash equivalent of advantage accruing through concessional sale of food grains and other articles.																		
Rate of wages for the leave period (Total of Cols. 15 and 16.)																		
Remarks.																		

107

FORM No. 16.

(Prescribed under rule 115 (r))

LEAVE BOOK.

Shall be the same as "Register of Leave with Wages" (Form No. 15), but shall be made out separately for each worker on a thick bound sheet.

FORM No. 17.

(Prescribed under rule 14.)

HEALTH REGISTER.

In respect of persons employed in occupations declared to be dangerous operations under section 87. Name of Certifying Surgeon:—

(a) Mr..... From..... To.....
 (b) Mr..... From..... To.....
 (c) Mr..... From..... To.....

Sl. No.	Works No.	Name of worker.	Sex.	Age (last birth day.)	Date of employment on present work.	Date of leaving or transfer to other work.	Reason for leaving, transfer or discharge.	Nature of job or occupation.	Raw material or bye-product handled.
1	2	3	4	5	6	7	8	9	10

FORM No. 17—(Contd.)

Dates of Medical Examination by Certifying Surgeon.						If suspended from work, state period of sus- pension with detailed reasons.	Re-certified fit to resume duty on.....(with sig- nature of Certi- fying Surgeon).	If certificate of unfitness or sus- pension issued to worker.	Signature with date of Certifying Surgeon.
Result of Medical Examination.									
11						12	13	14	15

NOTE.—(i) Column 8. Detailed summary of reasons for transfer or discharge should be stated.

(ii) Column 11. Should be expressed as fit/unfit/suspended.

FORM No. 18.

(PRESCRIBED UNDER RULE 123)

*Notice of Accident or Dangerous Occurrence.**(See instructions below)*

1. Name of Occupier (or Factory).
2. Address of works where accident or dangerous occurrence happened.
3. Nature of industry.
4. Branch or Department and exact place where the accident or dangerous occurrence happened.
5. Injured person's name and address.
6. (a) Sex, (b) Age (last birthday) and (c) Occupation of injured person. (a)... (b)... (c)...
7. Date and hour of accident or dangerous occurrence.
8. Hour at which he started work on day of accident.
9. (a) Cause or nature of accident or dangerous occurrence. (a)
 (b) If caused by machinery—
 (i) Give name of the machine and part causing the accident, and (b) (i)
 (ii) State whether it was moved by mechanical power at the time. (b) (ii)
 (c) State exactly what injured person was doing at the time. (c)
10. Nature and extent of injuries (*e.g.*, fatal, loss of finger, fracture of leg, scald, scratch followed by sepsis).
11. If accident is not fatal, state whether injured person was disabled for 48 hours or more.
12. Name of Medical Officer in attendance on injured person.

I certify that to the best of my knowledge and belief the above particulars are correct in every respect.

Signature of Occupier or Manager.....

Date of despatch of report.....

NOTE:—To be completed in legible hand writing or preferably type written.

This space to be completed by Inspector of Factories:

District..... Date of receipt.....
 Accident No. Industry No. Causation No.....
 Sex (M., W., B., or G.)
 Other particulars (*e.g.* fatal, leg injury, arm injury, etc.)
 Date of investigation.
 Result of investigation.

NOTIFICATION OF ACCIDENTS.

EXTRACT FROM THE FACTORIES ACT, 1948.

(Section 88).

Where in any factory an accident occurs which causes death or which causes only bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the Manager of the factory shall send notice thereof to such authorities and in such form and within such time, as may be prescribed.

EXTRACT FROM THE KERALA FACTORIES RULES, 1957.

(Rule 123).

When any accident or occurrence specified in the Schedule takes place in a factory the Manager of the factory shall forthwith send notice thereof by telephone, special messenger or telegram to the Inspector and to the Chief Inspector and if the accident is fatal, or of such a serious nature that it is likely to prove fatal notice as aforesaid shall also be sent to—

- (a) the District Magistrate,
- (b) the officer-in-charge of the nearest Police station, and
- (c) the relatives of the injured or deceased person.

(d) The notice so given shall be confirmed by the manager of the factory to the above mentioned authorities within 12 hours of the occurrence by sending to them a written report in the prescribed Form No. 18.

SCHEDULE.

1. Accidents which cause—

- (a) death to any person;
- (b) such bodily injury as prevents or will probably prevent the person injured from working for a period of 48 hours immediately following the accident.

2. The following classes of occurrences, whether or not they are attended by personal injury or disablement:—

(a) Bursting of a boiler or vessel used for containing steam under pressure greater than atmospheric pressure other than plant which comes within the scope of the Boilers Act, 1923 (C.A. V of 1923).

(b) Collapse or failure of a crane, derrick, winch, hoist or other appliance used in raising or lowering persons or goods, or any part thereof or the overturning of a crane.

(c) Explosion or fire causing damage to any room or place in which persons are employed.

(d) Explosion of a receiver or container used for the storage at a pressure greater than atmospheric pressure of any gas or gasses (including air) or any liquid or solid resulting from the compression of gas.

(e) Collapse or subsidence of any floor, gallery, roof, bridge, tunnel, chimney, wall or building forming part of a factory or within the compound or curtilage of factory.

FORM No. 19.

(Prescribed under rule 124).

To be filled in by the Chief Inspector

No. of case.....

Remarks.....

NOTICE OF POISONING OR DISEASE.

(See instructions below).

Factory
particulars.

1. Name of factory.
2. Address of factory.
3. Address of office or private residence of occupier.
4. Nature of industry.

Person
affected.

5. Name and Works Number of patient.
6. Address of patient.
7. Sex and age of patient.
8. Precise occupation of patient.
9. Nature of poisoning or disease from which patient is suffering.

General
particulars.

10. Has the case been reported to the Certifying Surgeon.

Signature of Factory Manager.....

Dated.....

NOTICE OF POISONING OR DISEASE.

EXTRACT FROM THE FACTORIES ACT, 1948.

(Section 89).

Where any worker in a factory contracts any disease specified in the Schedule, the Manager, of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

EXTRACT FROM THE KERALA FACTORIES RULES, 1957.

(Rule 124).

A notice in Form No. 19 should be sent forthwith both to the Chief Inspector and to the Certifying Surgeon, by the Manager of a factory in which there occurs a case of lead, phosphorus, mercury, manganese, arsenic, carbon bisulphide or benzene poisoning; or poisoning by nitrous fumes, or by halogens or halogen derivatives of the hydrocarbons of the aliphatic series, or of chrome ulceration, anthrax, silicosis, toxic anaemia, toxic jaundice, primary opitheliomatous cancer of the skin, or pathological manifestations due to radium or other radio-active substances or X-rays.

FORM No. 20.

(Prescribed under rule 126).

ABSTRACT OF THE FACTORIES ACT, 1948 AND THE KERALA FACTORIES RULES, 1957

(To be affixed in a conspicuous and convenient place at or near the main entrance of the factory).

Interpretation.

"Factory" means any premises including the precincts thereof:—

(i) wherein ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Indian Mines Act, 1923 (IV of 1923), or a railway running shed.

"Worker" means a person employed, directly or through any agency whether for wages or not in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to or connected with the manufacturing process, or the subject of the manufacturing process.

"Manufacturing process" means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or pumping oil, water or sewage, or generating, transforming or transmitting power, or printing by letter-press, lithography, photogravure or other similar work or book-binding, or constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels.

Working hours, holidays, intervals for rest, etc.

1. *Hours of work.*—(Adults). Sections 51 and 54. No adult worker shall be required, or allowed, to work in a factory for more than 48 hours in any week and for more than 9 hours in any day.

2. *Relaxation of hours of work.*—(Adults). Section 64. The ordinary limits on working hours of adults may be relaxed in certain special cases, e.g., workers engaged on urgent repairs in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory; in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest; in work which for technical reasons must be carried on continuously throughout the day, in making or supplying articles of prime necessity which must be made or supplied every day; in a manufacturing process which cannot be carried on except during fixed seasons, or at times dependent on the irregular action of natural forces; in engine rooms or boiler houses or in attending to power plant or transmission machinery.

Except in the case of urgent repairs, the relaxation shall not exceed the following limits:

(i) the total number of hours of work in any day shall not exceed ten;

(ii) the total number of hours of over-time work shall not exceed 50 for any one quarter;

(iii) the spreadover inclusive of intervals for rest shall not exceed 12 hours in any one day.

In the case of any or all adult workers in any factory, the ordinary limits on working hours of adults may be relaxed, for a period or periods not exceeding in the aggregate 3 months in any year, to enable the factory to deal with an exceptional press of work.

3. *Payment for over-time.*—Section 59. Where a worker works in a factory for more than 9 hours in any day or for more than 48 hours in any week he shall in respect of over-time work, be entitled to wages at the rate of twice his ordinary rate of wages.

4. *Exemption of supervising staff.*—Section 64. Chapter VI of the Act—working hours of adults—does not apply to persons holding positions of supervision or management or employed in a confidential position in a factory.

5. *Weekly holiday.*—(Adults) Section 52. No adult worker shall be required or allowed to work in a factory on the first day of the week, unless he has, or will have, a holiday for a whole day on one of the three days immediately before or after the said day, and the manager of the factory has, before the said day or the substituted day, whichever is earlier, delivered a notice at the office of the inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

Where a worker in a factory as a result of exemption from the ordinary provision relating to weekly holidays, is deprived of any of the weekly holidays, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

6. *Intervals for rest.*—(Adults). Sections 55 and 56. The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed 5 hours before he has had an interval for rest of at least half an hour and that inclusive of his interval, for rest they shall not spread over more than 10½ hours in any day or, with the permission of the Chief Inspector in writing, 12 hours.

7. *Prohibition of double employment.*—Sections 60, 71 and 99. No child or, except in certain circumstances an adult worker, shall be required or allowed to work in any factory on any day on which he has already been working in any other factory.

If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child, or the person having custody of or control over him or obtaining any direct benefit from his wages shall be punishable with fine, which may extend to Rs. 50 unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

8. *Prohibition of employment of children under 14.*—Section 67. No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

9. *Hours of work.*—(Children) Section 71. No child shall be employed or permitted to work in any factory for more than 4½ hours in any day. The periods of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over for more than 5 hours each and each child shall be employed in only one of the relays.

The provision relating to weekly holidays shall also apply to child workers and no exemption from this provision may be granted in respect of any child.

10. *Prohibition of employment of women.*—Section 66. No woman shall in any circumstances be employed in any factory for more than 9 hours in any day or between the hours of 7 P. M. and 6 A. M.

*Leave with Wages.*11. *Leave with wages.*—Sections 79, 80 and 83 and rules.

Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year leave with wages for a number of days calculated at the rate of —

(i) if an adult, one day for every twenty days of work performed by him during the previous calendar year,

(ii) if a child, one day for every 15 days of work performed by him during the previous calendar year.

For the above purpose any days of lay-off by agreement or contract or as permissible under the Standing Orders; in the case of female workers maternity leave for any number of days not exceeding twelve weeks; and the leave earned in the year prior to that in which the leave is enjoyed; shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but a worker shall not earn leave for these days.

The period of leave shall be exclusive of all holidays which may occur during or at either end of the period of leave.

For the leave allowed to him, a worker shall be paid at a rate equal to the daily average of his total full time earning, exclusive of any overtime earnings, and bonus but inclusive of dearness allowance and the cash equivalent of any advantage accruing by the sale, by the employer, of food grains and other articles at concessional rates for the days on which he worked during the month immediately preceding his leave.

A worker whose service commences otherwise, than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (i) or as the case may be, clause (ii) of sub-section (1) of section 79 if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

If a worker entitled to leave with wages is discharged from the factory before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave he quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable in respect of the leave not taken and such payment shall be made before the expiry of the second working day after the day on which his employment is terminated.

The manager shall maintain a leave with wages register in the prescribed Form No. 15 and shall provide each worker with a book called the "Leave Book" in the prescribed Form No. 16. The leave book shall be the property of the worker and the manager or his agent shall not demand it except to make entries and shall not keep it for more than a week at a time. If a worker loses his leave book, the manager shall provide him with another copy on payment of five naye paise and shall complete it from his record. Each worker shall be provided with an attendance card in Form No. 28.

Health.

12. *Cleanliness.*—Section 11. Except in cases specially exempted all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases in a factory shall be kept white-washed or colour washed. The white-washing or colour washing shall be carried out at least once in every period of fourteen months. The floors of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or some other method.

13. *Disposal of wastes and effluents.*—Section 12. Effective arrangements shall be made in every factory for the disposal of wastes and effluents due to the manufacturing process carried on therein.

14. *Ventilation and temperature.*—Section 13. Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom adequate ventilation for the circulation of fresh air and such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health.

15. *Over crowding.*—Section 16. Unless exemption has been granted there shall be in every workroom of a factory in existence on 1st April, 1951, at least 350 cubic feet and of a factory built after the date at least 500 cubic feet of space for every worker employed therein and for this purpose no account shall be taken of any space which is more than 14 feet above the level of the floor of the room.

16. *Lighting.*—Section 17. In every part of a factory where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial or both.

17. *Drinking water.*—Section 18. In every factory effective arrangements shall be made to provide and maintain at suitable points, conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

In every factory wherein more than 250 workers are ordinarily employed the drinking water shall, during the hot weather be cooled by ice or other effective methods. The cooled drinking water shall be supplied in every canteen, lunch room, and rest room and also at conveniently accessible points throughout the factory.

18. *Latrines and urinals.*—Section 19 and Rules. In every factory sufficient latrine and urinal accommodation of the prescribed type (separate enclosed accommodation for male and female workers) shall be provided conveniently situated and accessible to workers at all times while they are at the factory. Every latrine shall be under cover and so partitioned off as to secure privacy and shall have a proper door and fastenings. Sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

19. *Spittoons.*—Section 20. In every factory, there shall be provided a sufficient number of spittoons of the type prescribed in convenient places and they shall be maintained in a clean and hygienic condition. No person shall spit within the premises of a factory except in the spittoons

provided for the purposes. Whoever spits in contravention of this provision shall be punishable with fine not exceeding five rupees.

Safety.

20. *Fencing of machinery.*—Section 21. In every factory, dangerous parts of machines, e.g., every moving part of a prime mover and every fly-wheel connected to a prime mover, etc., etc., shall be securely fenced by safeguards of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use.

21. *Work on or near machinery in motion.*—Section 22. No woman or child shall be allowed in any factory to clean, lubricate or adjust any part of the machinery while that part is in motion, or to work between moving parts, or between fixed and moving parts of any machinery which is in motion.

22. *Employment of young persons on dangerous machinery.*—Section 23. No young person shall work at any machine declared to be dangerous unless he has been fully instructed as to the dangers arising in connection with the machines and the precautions to be observed and has received sufficient training in work at the machine or is under adequate supervision by a person who has thorough knowledge and experience of the machine.

23. *Casing of new machinery.*—Section 26. In all machinery driven by power and installed in any factory after 1-4-1949 every set screw, belt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger; all spur, worm and other toothed or friction gearing which does not require frequent adjustment while on motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

Whoever sells or lets on hire or as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with these provisions, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

24. *Prohibition of employment of women and children near cotton openers.*—Section 34. No woman or young person shall unaided by another person, lift, carry or move by hand or on head, any material, article, tool or appliance exceeding the following limits:—

Adult female	...	65 lb.
Adolescent male	...	65 lb.
Adolescent female	...	45 lb.
Male child	...	35 lb.
Female child	...	30 lb.

25. *Protection of eye.*—Section 35. Effective screens or suitable goggles shall be provided for the protection of persons employed in or in the vicinity of processes which involve risk of injury to the eyes from particles or fragments thrown off in the course of the process or which involve risk of injury to the eyes by reason of exposure to excessive light.

26. *Precautions in case of Fire.*—Section 38. Every factory shall be provided with adequate means of escape in case of fire for the person employed therein. The doors affording exit from any room shall unless, they are of the sliding type, be constructed to open outwards. Every window, door or other exit affording a means of escape in case of fire, other than the means of exit in ordinary use, shall be distinctively marked. Effective and clearly audible means of giving warning in case of fire to every person employed in the factory shall be provided. Effective measures shall be taken to ensure that wherein more than twenty workers are ordinarily employed in any place above the ground floor, or wherein explosive or highly inflammable materials are used or stored, all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such case.

Welfare.

27. *Washing facilities.*—Section 42. In every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein. Such facilities shall include soap and nail brushes or other suitable means of cleaning and the facilities shall be conveniently accessible and shall be kept in a clean and orderly condition.

If female workers are employed separate facilities shall be provided and so enclosed or screened that the interior are not visible from any place where persons of the other sex work or pass.

28. *Facilities for storing and drying clothing.*—Section 43 and Rules. In the case of certain dangerous operations, e.g., lead processes, liming and tanning of raw hides and skins, etc., suitable places for keeping clothing not worn during working hours and for the drying of wet clothing shall be provided and maintained.

29. *Facilities for sitting.*—Section 44. In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

30. *First Aid and Ambulance Room.*—Section 45. There shall in every factory be provided and maintained so as to be readily accessible during all working hours first aid boxes or cup-boards equipped with the prescribed contents. All such boxes and cup-boards shall be kept in the charge of a responsible person who is trained in first aid treatment and who shall always be available during the working hours of the factory.

In every factory wherein more than 500 workers are employed there shall be provided and maintained an ambulance room of the prescribed size and containing the prescribed equipment. The ambulance room shall be in charge of a qualified medical practitioner assisted by at least one qualified nurse and such other staff as may be prescribed.

31. *Canteens.*—Section 46 and Rules. In specified factories wherein more than 250 workess are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. Food,

drink and other items served in the canteen shall be sold on a non-profit basis and the prices charged shall be subject to the approval of a canteen managing committee which shall be appointed by the manager and shall consist of an equal number of persons nominated by the occupier and elected by the workers. The number of elected workers shall be in the proportion of 1 for every 1000 workers employed in the factory provided that in no case shall there be more than 5 or less than 2 workers in the committee. The committee shall be consulted from time to time on to the quality and quantity of food stuffs to be served in the canteen, the arrangement of the menu, etc., etc.

32. *Shelters, rest rooms and lunch rooms.*—Section 47. In every factory wherein more than 150 workers are ordinarily employed, adequate and suitable shelter, or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them shall be provided and maintained for the use of workers.

33. *Creches.*—Section 48 and rules. In every factory wherein more than 50 women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women. The creche shall be adequately furnished and equipped and in particular there shall be one suitable cot or a cradle with the necessary bedding for each child, at least one chair or equivalent seating accommodation for the use of the mother while she is feeding or attending to her child and a sufficient supply of suitable toys for elder children.

There shall be in or adjoining the creche a suitable washroom for the washing of the children and their clothing. An adequate supply of clean clothes, soap, and clean towels shall be made available for each child while it is in the creche. At least half a pint of clean pure milk shall be available for each child on every day it is accommodated in the creche and the mother of such a child shall be allowed in the course of her daily work suitable intervals to feed the child. For children above two years of age, there shall be provided, in addition, an adequate supply of wholesome refreshment. A suitably fenced and shady open air play-ground shall also be provided for the other children.

34. *Welfare officers.*—Section 49. In every factory wherein 500 or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

Special provisions.

35. *Dangerous operations.*—Section 87 and rules. Employment of women, adolescents and children is prohibited or restricted in certain operations declared to be dangerous, e.g., manufacture of aerated water, electroplating, manufacture, and repair of electric accumulators, glass manufacture, grinding or glazing of metals, manufacture and treatment of lead and certain compounds of lead, generating petrol gas from petrol, sandblasting and liming and tanning of raw hides and skins, extraction of cashew oil, roasting and shelling of cashewnuts, certain operations in coir and fibre factories, cellulose spraying, graphite powdering and certain lead processes in printing processes and type foundries.

36. *Notice of accidents.*—Section 88 and rules. Where in any factory an accident occurs which causes death or which causes bodily injury by reason of which the person injured is prevented from working for a period of 48 hours or more immediately following the accident or which, though not attended by personal injury or disablement is of one of the following types:—

(i) Bursting of a vessel used for containing steam under pressure greater than atmospheric pressure other than plant which comes within the scope of the Indian Boilers Act.

(ii) Collapse or failure of a crane, derrick, winch, hoist or other appliances used in raising or lowering persons or goods, or any part thereof, or the overturning of a crane.

(iii) Explosion or fire causing damage to any room or place in which persons are employed, or fire in rooms of cotton pressing factories, where a cotton-opener is in use.

(iv) Explosion of a receiver or container used for the storage at a pressure greater than atmospheric pressure of any gas or gases (including air) or any liquid or solid resulting from the compression of gas.

(v) Collapse or subsidence of any floor, gallery, roof, bridge, tunnel, chimney, wall or building forming part of a factory or within the compound or curtilage of factory.

The manager of the factory shall forthwith send notice thereof to the Inspector and the Chief Inspector. If the accident is fatal or of such a serious nature that it is likely to prove fatal, notice shall also be sent to the District Magistrate and the Officer-in-Charge of the nearest police station.

37. *Notice of certain diseases.*—Section 89 and rules. Where any worker in a factory contracts any of the following diseases, the manager of the factory shall send notice thereof forthwith both to the Chief Inspector and the Certifying Surgeon.

Lead, phosphorus, mercury, manganese, arsenic, carbon-bisulphide or benzene poisoning; or poisoning by nitrous fumes, or by halogens or halogen derivatives of the hydrocarbons of the aliphatic series; or of chrome ulceration, anthrax, silicosis, toxic-anaemia, toxic jaundice, primary epitheliomatous cancer of the skin, or pathological manifestations due to radium or other radio-active substances or X-rays.

38. *No charge for facilities and conveniences.*—Section 114. No fee or charge shall be realised from any worker in respect of any arrangements or facilities to be provided or any equipments or appliances to be supplied by the occupier under the provisions of the Act.

39. *Powers of inspectors.*—Sections 9 and 82. Inspectors have power to inspect factories any time and may require the production of registers, certificates, etc., prescribed under the Act and the Rules.

Any inspector may institute proceedings on behalf of any worker to recover any sum required to be paid by an employer under the provisions relating to leave with wages, which the employer has not paid.

40. *Obligations of workers.*—Sections 97 and 111. No worker in a factory—

(i) shall wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein.

(ii) shall wilfully and without any reasonable cause do anything likely to endanger himself or others, and

(iii) shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purpose of securing the health or safety of the workers therein.

If any worker employed in a factory contravenes any of these provisions or any rule or order made thereunder he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Rs. 100 or with both.

If any worker employed in a factory contravenes any provision of the Act or any rules or orders made thereunder imposing any duty or liability on workers he shall be punishable with fine which may extend to Rs. 20.

41. *Certificates of fitness.*—Sections 68, 70 and 98. No child who has completed his fourteenth year or an adolescent shall be required or allowed to work in any factory unless a certificate of fitness granted with reference to him is in the custody of the Manager of the factory and such child or adolescent carries, while he is at work a token giving a reference to such certificate. Any fee payable for such a certificate shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

An adolescent who has been granted a certificate of fitness to work in a factory as an adult and who while at work in a factory carries a token giving reference to the certificate shall be deemed to be an adult for all the purposes of the provisions of the Act relating to the working hours of adults and the employment of young persons. An adolescent who has not been granted a certificate of fitness to work in a factory as an adult shall, notwithstanding his age, be deemed to be a child for all the purposes of the Act.

Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself a certificate granted to another adolescent to work in a factory as an adult, or who having procured such a certificate knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 50 or with both.

42. *Registers, Notices and Returns.*—Sections 61, 63, 72, 74, 79, 80 and 110. A Register of adult workers in the prescribed Form No. 12 and a register of child workers in the prescribed Form No. 14 shall be maintained by the Manager of every factory.

A notice of periods of work for adults and a notice of periods of work for children in the prescribed Forms Nos. 11 and 13 shall be correctly maintained and displayed in every factory. No adult worker or child shall be required or allowed to work in any factory otherwise than in accordance with their respective notices of periods of work displayed in the factory. The owners, occupiers or managers of factories shall submit the prescribed periodical returns to the Inspector regularly.

FORM No. 21.

(Prescribed under sub-rule (1) of Rule 127.)

ANNUAL RETURN.

year ending 31st December, 195 .

Name of Factory.....

Name of Occupier.....

Name of Manager.....

1. District.

2. Postal Address.

3. Nature of Industry.

4. *Average number of workers employed daily.

Men.

Women.

Adolescents—

Male.

Female.

Children—

Male.

Female.

5. Normal hours worked per week.

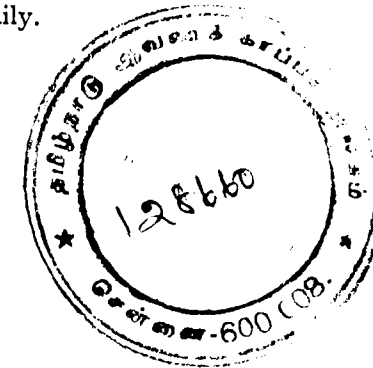
Men.

Women.

Children.

6. Number of days worked in the year.

*The average daily number should be calculated by dividing the aggregate number of attendances on working days by the number of working days in the year. In reckoning attendances, attendances by temporary as well as permanent employees should be counted, and all employees should be included, whether they are employed directly or under contractors. Attendances on separate shifts (e. g., night and day shifts) should be counted separately. Days on which the manufacturing processes were not carried on should not be treated as working days. Partial attendance for less than half a shift of working day should be neglected and attendance for half a shift or more should be treated as full attendance.



FORM No. 21.—(contd.)

7. *What rest intervals were given to adults?
8. Were rest intervals given to children?
9. Were week-days sometimes substituted for Sunday as weekly holidays?
10. The number of workers exempted from the provisions of sections—

51

52

54

55

56

*Enter "one hour", "two half hours", "one half hour" or "none" as the case may be. If none of these categories applied to all the adult employees, enter the category applicable to the majority of adult employees. Where the majority received an interval exceeding one hour, enter "one hour".

Certified that the information furnished above is, to the best of my knowledge and belief, correct.

Date:

Signature of Manager.

FORM No. 22.

(Prescribed under sub-rule 3 of rule 127)

HALF YEARLY RETURN

(Period ending 30th June 195 /31st December, 195)

Name of Factory.

Name of Occupier.

Name of Manager.

1. District.

2. Postal address.

3. Nature of industry.

4. *Average number of workers employed daily—

Men.

Women.

Adolescents—

Male.

Female.

Children—

Male.

Female.

5. Number of days worked during the half year ending 30th June, 195 /31st December, 195 .

Signature of occupier.

Signature of manager.

*The average daily number should be calculated by dividing the aggregate number of attendances on working days by the number of working days during the half year. In reckoning attendances, attendance by temporary as well as permanent employees should be counted and all employees should be included whether they are employed directly or under contractors. Attendance on separate shifts (e.g., night and day shifts) should be counted separately. Days on which the factory was closed, for whatever cause, and days on which the manufacturing processes were not carried on should not be treated as working days.

"Partial attendance for less than half a shift of working day should be neglected and attendance for half a shift or more should be treated as full attendance".

Certified that the information furnished above is, to the best of my knowledge and belief, correct.

Date:

Signature of manager.

FORM No. 23.

(Prescribed under sub-rule 4 of rule 127).

LEAVE WITH WAGES—ANNUAL RETURN.

For the year ending 31st December, 19 .

Name of Factory.

Name of Occupier.

Name of Manager.

District.

Postal address.

Nature of industry.

Total number of persons employed during the year.

Men.

Women.

Children.

Number of persons who were eligible for leave during the year.

Men.

Women.

Children.

Number of persons who were granted leave during the year.

Men.

Women.

Children.

Number of persons who gave notice not to avail themselves of leave during the year.

Men.

Women.

Children.

Certified that the information furnished above is, to the best of my knowledge and belief, correct.

Date :

Signature of manager.

FORM No. 24.

(Prescribed under sub-rule 5 of rule 127.)

COMPENSATORY HOLIDAYS—ANNUAL RETURN.

For the year ending 31st December, 19 .

Name of Factory.

Name of Occupier.

Name of Manager.

1. District.
 2. Postal address.
 3. Nature of industry.
 4. No. of workers exempted from section 52 of the Factories Act.
- Men.
- Women.
5. Number of persons who received holidays in the—
 - (1) same month.
 - (2) following month.
 - (3) third month.

Certified that the information furnished above is to the best of my knowledge and belief, correct.

Date.

Signature of manager

FORM No. 27.

(Prescribed under Schedules VI and XIV to rule 122.)

SPECIAL CERTIFICATE OF FITNESS.

(In respect of persons employed in operations involving use of lead compounds.)

Serial No.....

Date.....

I hereby certify that I have personally examined.....
.....son of.....
residing at.....who is desirous
of being employed as.....in the
.....and that his age as
nearly as can be ascertained from my examination, is.....
years, and that he is, in my opinion, fit for employment at work involving
the use of lead compounds. His descriptive marks are :

Left
thumb impression
of person examined.

Certifying Surgeon.

I certify that I examined the person mentioned above on.	I extend the certificate until.	Signature of Certifying Surgeon.	Note of symptoms of lead poisoning (if any).

FORM No. 28

[Prescribed under rule 115 (3)]

ATTENDANCE CARD.

Name of Factory.....

Serial No.....Department.....

Name of worker.....

Father's or Mother's Name.....

Permanent Address.....

Local Address.....

Date of commencement of
employment.Signature or thumb
impression of worker.*Date of termination of
employment.

*Note :—To be entered only when employment is terminated.

ENTRIES ON THE REVERSE SIDE

Month of.....19.....

1	2	3	4	5	6	7	8
9	10	11	12	13	14	15	16
17	18	19	20	21	22	23	24
25	26	27	28	29	30	31	

Signature or initials of the
Manager or Time Keeper.

FORM No. 29.

[Prescribed under sub-rule (7) of rule 127]

ANNUAL RETURN—CRECHE.

(Year ending 31st December, 19...)

1. Industry.
2. Name of factory.
3. Number of women workers normally employed.
4. Number of children admitted in the Creche.
5. Average daily attendance of children at the Creche—
 - (a) 2 years and below.
 - (b) Above 2 years.
6. Details of facilities provided with regard to—
 - (a) Milk.
 - (b) Food.
 - (c) Clothes.
 - (d) Toys.
 - (e) Medical Aid.
 - (f) Others.
7. Details of staff employed—
 - (i) Doctors—
 - (a) Males.
 - (b) Females.
 - (ii) Nurses.
 - (iii) Teachers.
 - (iv) Ayahs.
 - (v) Sweepers.
8. General Remarks.

Date.....

Signature of Manager.

FORM No. 30.
(Prescribed under sub-rule (6) of rule 127).

ANNUAL RETURN—CANTEEN.

(Year ending 31st December, 19)

Industry.	Name of Industry.	No. of workers normally employed daily.	Type of canteen.				No. of workers patronising canteen normally (daily).	Whether issues are below cost price. If so, state items provided below cost price.	Items of expenditure borne by employer, if any. Details regarding items and amount subsidised should be given.	Remarks.
			Providing cooked food and refreshments, etc.	Providing cooked food only.	Providing refreshments and tea only.	Providing tea only.				
1	2	3	4	5	6	7	8	9	10	11

Dated.....

Signature of Manager.

FORM No. 31.

(Prescribed under sub-rule (8) of rule 127).

ANNUAL RETURN—SHELTERS, REST ROOMS AND LUNCH ROOMS.....

(Year ending 31st December, 19).

1. Industry.
2. Name of Factory.
3. Number of workers normally employed.
4. Average daily attendance of workers at the shelter, rest room or lunch room.
5. Details of facilities provided with regard to drinking water.
6. Details of accommodation, furniture and other equipment provided.
7. General Remarks.

Dated.....

Signature of Manager.

FORM No. 32.

ACCIDENTS ANNUAL RETURN.

[Prescribed under rule 127(9).]

(For the year ending 19 .)

1. Name of Factory.
Address of Factory.
2. Number of accidents or dangerous occurrences which took place during the year.
3. Number of persons—
(a) Killed—
Men.
Women.
Children.
(b) Injured—
Men.
Women.
Children.
4. Number of non-fatal accidents in which the workers returned to work.
5. Number of man-days lost on account of absence due to injury in the case of persons who returned to work.

Certified that the information furnished above is, to the best of my knowledge and belief, correct.

Dated.....

Signature of Manager.

FORM No. 33.

[Prescribed under rule 132.]

Section or rule from which exemption is granted.	Subject dealt with.	Extent of and reason for exemption.	By whom given.	Date and number of order.	Remarks.
1	2	3	4	5	6

FORM No. 34.

[Prescribed under section 22(1).]

REGISTER OF SPECIALLY TRAINED WORKERS.

Name of factory.....

Serial No.	Name.	Father's or Mother's Name.	Qualification and experience.	Nature of work done.	Date of supply of tight fitting dress.	Remarks.

(Prescribed under rules I 32 and I 33.)

PARTICULARS OF ROOMS IN THE FACTORY.

[illegible]

Signature of Occupier or Manager.

" I hereby require that in the event of my death before resun
the balance of my pay due for the period of leave with wages no
of shall be paid to.....who is my.....
.....and resides at.....
.....

Signatur

Name of worker.....

Address of worker.....

Name and address of witness.....

Signature of witness.....

Name and address of witness.....

Signature of witness.....

APPENDIX I.

SCHEDULE.

[Referred to in rule 5 (1).]

Quantity of h. p. installed (maximum h. p.).	Maximum number of persons to be employed on any day during the year.					
	20	50.	100.	250.	500.	Above 750.
Nil	Rs. 10	Rs. 25	Rs. 50	Rs. 125	Rs. 250	Rs. 500
10	25	50	60	150	300	600
50	50	75	100	250	500	1,000
100	100	125	150	375	750	1,500
Above 100	150	200	250	500	1,000	2,000

**COTTON GINNING AND PRESSING FACTORIES
(BOMBAY AMENDMENT) ACT, 1957.**

BOMBAY ACT No. XX OF 1958.

[Received the assent of the President on the 12th February, 1958.]*

An Act to amend the Cotton Ginning and Pressing Factories Act, 1925,
in its application to the State of Bombay.

Whereas it is necessary to provide for the fixation of reasonable rates of charge for the ginning and pressing of cotton in certain areas, and for that purpose to amend the Cotton Ginning and Pressing Factories Act, 1925, in its application to the State of Bombay; It is hereby enacted in the Eighth Year of the Republic of India as follows:—

1. *Short title and extent.*—This Act may be called the Cotton Ginning and Pressing Factories (Bombay Amendment) Act, 1957.
(2) It extends to the whole of the State of Bombay.

2. *Amendment of long title and preamble of Act XII of 1925.*—In the Cotton Ginning and Pressing Factories Act, 1925 (hereinafter referred to as "the said Act"), in its application to the State of Bombay, in the long title and preamble, after the word "factories" the words and brackets "(including the fixation of reasonable rates of charge for the ginning and pressing of cotton in certain areas, and for matters connected therewith)" shall be inserted.

3. *Insertion of new section 5B in Act XII of 1925.*—After section 5A of the said Act, in its application to the State of Bombay, the following new section shall be inserted, namely:—

"5B. *Power to regulate rates for ginning and pressing in certain areas.*—(1) If the State Government is of opinion that it is necessary so to do, for the purpose of securing the ginning or pressing of cotton in any local area at reasonable rates of charge, it may by an order published in the *Official Gazette* direct that no owner or person in charge of any cotton ginning factory or cotton pressing factory in such local area shall—

(i) charge or cause to be charged, for the ginning or pressing (or both) of cotton rates in excess of such maxima as may be fixed by the rate fixing committee of such local area under sub-section (6); or

(ii) without reasonable excuse refuse to accept or cause to be so refused, cotton tendered by any person for ginning or pressing if the tenderer is prepared to pay charges at rates lawfully leviable; or

(iii) impose as a condition precedent to the acceptance of cotton for ginning or pressing tendered by any person for the purpose, surrender of cotton seed or lint in whole or in part in lieu of the charges lawfully leviable:

Provided that where a cotton ginning factory or cotton pressing factory carries on the process of ginning or pressing cotton exclusively for its owner or person in charge as part of his normal trade, the State Government may exempt such factory from the operation of clauses (ii) and (iii) subject to such conditions as may be prescribed.

(2) There shall be appointed a rate fixing committee in each local area specified in the notification under sub-section (1), which shall consist of—

*Bom. Govt. Gaz., 19-2-58, Pt. IV, p. 89.

- (a) the Collector or Deputy Commissioner of the District;
- (b) two representatives of the growers of cotton of such local area;
- (c) two representatives of the owners of cotton ginning or cotton pressing factories in the local area;

(d) one person (not being a Government servant) who possesses special knowledge of, or experience in, the ginning and pressing of cotton or of the cotton trade, to be nominated by the Collector or Deputy Commissioner of the district in consultation with the State Government.

(3) The Collector or Deputy Commissioner shall be the Chairman of the Committee.

(4) The representatives referred in to clauses (b) and (c) of sub-section (2) shall be appointed in such manner as may be prescribed.

(5) The term of office of the non-official members of the committee, the manner in which the members may resign and casual vacancies filled up, and the procedure regarding the work of the committee shall be such as may be prescribed.

(6) Every rate fixing committee shall fix the maximum rates for ginning or pressing cotton within its local area, having regard to such matters as may be prescribed.

(7) If any person gins or presses cotton at a rate exceeding the rate fixed by the committee under the provisions of this section or contravenes the provisions of any order made under sub-section (1) he shall on conviction, be punished with fine which may extend to Rs. 500."

4. *Amendment of section 13 of Act XII of 1925.*—In section 13 of the said Act, in its application to the State of Bombay, in sub-section (1), after clause (b), the following new clause shall be inserted, namely:—

"(c) (i) prescribing the manner in which the representatives referred to in clauses (b) and (c) of sub-section (2) of section 5B shall be appointed, and

(ii) prescribing the term of office of the members of the committee, the manner of their resigning and filling up of casual vacancies and the procedure regarding the work of the committee under sub-section (5) of that section; and

(iii) the matters which a rate fixing committee should have regard to when arriving at the maximum rate for the ginning or pressing of cotton within its local area."

5. *Consequential.*—(1) Section 2B of the said Act, in its application to the Vidarbha region, and section 2B of the said Act, in its application to the Hyderabad area, of the State of Bombay, and section 3E of the said Act, in its application to the Saurashtra area of the State of Bombay, shall be deleted:

Provided that any committee constituted and functioning in the Vidarbha region or the Hyderabad area of the State of Bombay, immediately before the coming into force of this Act shall be deemed to be duly constituted, and any rates fixed by such committee or, as the case may be, the Government for ginning or pressing cotton under section 2B or section

3E so deleted shall be deemed to be duly fixed, under the provisions of section 5B of the said Act until a new committee is appointed and new rates are fixed by such committee under the provisions of the said section 5B.

(2) In section 7 of the said Act,—

(a) in its application to the Vidarbha region, and the Hyderabad area of the State of Bombay, the figure and letter "2B" shall in each case be deleted;

(b) in its application to the State of Bombay, after the figure and letter "5A" the figure and letter, "5B" shall be inserted.

(3) in section 13, in its application to the Saurashtra area of the State of Bombay, clause (aj) shall be deleted.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) (BOMBAY AMENDMENT) ACT, 1957.

BOMBAY ACT NO. XXI OF 1958*.

[Received the assent of the President on the 13th February, 1958.]

An Act to amend the Industrial Employment (Standing Orders) Act, 1946, in its application to the State of Bombay.

Whereas it is expedient to amend the Industrial Employment (Standing Orders) Act, 1946, in its application to the State of Bombay, for the purposes hereinafter appearing; It is hereby enacted in the Eighth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957.

(2) It extends to the whole of the State of Bombay.

(3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint in this behalf.

2. *Amendment of long title of Act XX of 1946.*—In the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as "the said Act") for the long title the following shall be substituted, namely:—

"An Act to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay."

3. *Amendment of preamble of Act XX of 1946.*—In the preamble of the said Act, for the portion beginning with the words "to require" and ending with the words "by them", the words "to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay, and for certain other matters" shall be substituted.

*Bom. Govt. Gaz. Ety., 21-2-58, Pt. IV, p. 92.

4. *Amendment of section 1 of Act XX of 1946.*—In sub-section (3) of section 1 of the said Act, for the words "one hundred" the word "fifty" shall be substituted.

5. *Amendment of section 2 of Act XX of 1946.*—In section 2 of the said Act,—

(a) before clause (a), the following new clause shall be inserted, namely:—

"(1a) 'amendments' means in relation to the model standing orders, any amendments proposed to such orders under section 3 and includes any alterations, variations or additions proposed thereto;"

(b) in clause (d), for sub-clause (iii), the following shall be substituted, namely:—

"(iii) in any other industrial establishment—

(a) any person responsible to the owner for the supervision and control of the industrial establishment;

(b) where a person who, for the purpose of fulfilling a contract with the owner of the industrial establishment, employs workmen on the premises of the establishment for the execution of the whole or any part of any work which is ordinarily part of such establishment them in relation to such workmen, the owner of the industrial establishment;"

(c) in clause (e), sub-clause (iv) shall be deleted;

(d) after clause (e), the following shall be inserted, namely:—

"(ee) 'model standing orders' means standing orders prescribed under section 15;

(ef) 'modification' includes in relation to a standing order, any alteration, variation, addition or deletion in, or to, such order;"

6. *Insertion of new section 2A in Act XX of 1946.*—After section 2 of the said Act, the following section shall be inserted, namely:—

"2A. *Application of model standing orders to every industrial establishment.*—Where this Act applies to an industrial establishment, the model standing orders for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the *Official Gazette* appoint in this behalf:

Provided that nothing in this section shall be deemed to affect any standing orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957."

7. *Amendment of section 3 of Act XX of 1946.*—In section 3 of the said Act,—

(a) for sub-section (1), the following shall be substituted, namely:—

"(1) Within six months from the date on which the model standing orders apply to any industrial establishment under section 2A, the employer or any workmen employed therein may submit to the Certifying Officer five copies of the draft amendments for adoption in such industrial establishment.

Provided that no amendment which provides for the deletion or omission of any rule in the model standing orders relating to any matter set out in the Schedule shall be submitted under this section."

(b) sub-section (2) shall be deleted;

(c) in sub-section (3), for the words "draft standing orders" the words "draft amendments" shall be substituted;

(d) in sub-section (4), for the words "draft of standing orders" the words "draft of amendments" shall be substituted;

(e) for the marginal note, the marginal note "Submission of amendments" shall be substituted.

8. *Deletion of section 4 of Act XX of 1946.*—Section 4 of the said Act shall be deleted.

9. *Amendment of section 5 of Act XX of 1946.*—In section 5 of the said Act,—

(a) in sub-section (1),—

(i) after the words "as may be prescribed" the words "or the employer, as the case may be," and after the word "workmen", where it occurs for the third time, the words "or employer" shall be inserted;

(ii) for the words "draft standing orders" the words "draft amendments" shall be substituted;

(b) in sub-section (2),—

(i) after the words "giving the employer" the words "the workmen submitting the amendments" shall be inserted;

(ii) the words "or addition to" shall be deleted;

(iii) for the words "the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act" the words, brackets and figures "the draft submitted under sub-section (1) of section 3 is necessary," shall be substituted;

(c) in sub-section (3),—

(i) for the words "certify the draft standing orders" the words "certify the draft amendments" shall be substituted;

(ii) for the words "certified standing orders" the words "model standing orders together with copies of the certified amendments thereof" shall be substituted;

(d) in the marginal note, for the words "standing orders" the word "amendments" shall be substituted.

10. *Amendment of section 6 of Act XX of 1946.*—In section 6 of the said Act,—

(a) in sub-section (1), for the portion beginning with the words "confirm the standing orders" and ending with the words "certifiable under this Act" the words "confirm the amendments either in the form certified by the Certifying Officer or after further modifying the same as the appellate authority thinks necessary" shall be substituted;

(b) in sub-section (2),—

(i) for the words "unless it has confirmed without amendment the standing orders" the words "unless it has confirmed without further modifications the amendments" shall be substituted;

(ii) for the words "by copies of the standing orders" the words "by copies of the model standing orders together with the amendments" shall be substituted.

11. *Amendment of section 7 of Act XX of 1946.*—In section 7 of the said Act and in the marginal note thereto, after the words "standing orders" the words "or amendments" shall be inserted.

12. *Amendment of section 8 of Act XX of 1946.*—In section 8 of the said Act,—

(a) after the words "all standing orders" the words "or model standing orders together with all the amendments" shall be inserted;

(b) in the marginal note, after the words "standing orders" the words "and model standing orders together with all certified amendments" shall be inserted.

13. *Amendment of section 9 of Act XX of 1946.*—In section 9 of the said Act,—

(a) after the words "standing orders" the words "or model standing orders together with all the amendments" shall be inserted;

(b) in the marginal note, after the words "standing orders" the words "and model standing orders together with all certified amendments" shall be inserted.

14. *Amendment of section 10 of Act XX of 1946.*—In section 10 of the said Act,—

(a) in sub-section (1),—

(i) after the words "standing orders", at both the places where they occur, the words "or the amendments" shall be inserted;

(ii) after the words "came into operation" the following shall be added, namely:—

"and where model standing orders have not been amended as aforesaid, the model standing orders shall not be liable to such modification until the expiry of one year from the date on which they were applied under section 2A";

(b) for sub-section (2), the following shall be substituted, namely:—

"(2) Subject to the provisions of sub-section (1), an employer, workman or any prescribed representatives of workmen desiring to modify the standing orders or the model standing orders together with the amendments, as finally certified under this Act, or the model standing orders applied under section 2A, as the case may be, shall make an application to the Certifying Officer in that behalf, and such application shall be accompanied by five copies of the standing orders, or the model standing orders, together with all amendments thereto as certified under this Act or model standing orders in which shall be indicated the modifications proposed to be made and where such modifications are proposed to be made by agreement between the employer and workmen a certified copy of the agreement shall be filed along with the application";

(c) in sub-section (3), for the words "standing orders" the word "amendments" shall be substituted.

15. *Amendment of section 12 of Act XX of 1946.*—In section 12 of the said Act,—

(a) for the words "standing orders as finally certified under this Act" the words "standing orders or the model standing orders, or model standing orders with all the amendments as finally certified under this Act, as the case may be," shall be substituted;

(b) in the marginal note, for the words "standing orders" the words "standing orders, etc.," shall be substituted.

16. *Amendment of section 13 of Act XX of 1946.*—In section 13 of the said Act,—

(a) in sub-section (1),—

(i) for the words and figure "who fails to submit draft standing orders as required by section 3, or who modifies his standing orders" the words "who modifies the standing orders, model standing orders or amendments" shall be substituted;

(ii) for the word and figures "section 10" the words "the provisions of this Act" shall be substituted;

(iii) for the words "shall be punishable" the words "shall on conviction, be punished" shall be substituted;

(b) in sub-section (2), for the words "the standing orders finally certified under this Act for his industrial establishment shall be punishable" the words "the standing orders, model standing orders or the amendments, as finally certified under this Act for his industrial establishment, as the case may be, shall, on conviction, be punished" shall be substituted;

(c) after sub-section (2), the following new sub-sections shall be inserted, namely:—

"(2A) Whoever contravenes the provisions of this Act or of any rule made thereunder in cases other than those failing under sub-section (1) or sub-section (2), shall, on conviction, be punished with fine which may extend to one hundred rupees and in the event of such person being previously convicted of an offence under this Act, with fine which may extend to two hundred rupees and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(2B) The Court convicting an employer under sub-section (1) or sub-section (2) may direct such employer to pay such compensation as it may determine to any workman directly and adversely affected by the modification or contravention of the standing orders, model standing orders or amendments, as the case may be.

(2C) The compensation awarded under sub-section (2B) may be recovered as if it were a fine and if it cannot be so recovered, the person by whom it is payable shall be sentenced to imprisonment of either description for a term not exceeding three months as the Court thinks fit."

17. Amendment of section 13-A of Act XX of 1946.—In section 13-A of the said Act, after the words “standing order” and in the marginal note thereto after the words “standing orders” the words “model standing order or amendment” shall be inserted; and after the word “workman” the words “or any prescribed representatives of workmen” shall be inserted.

18. Amendment of section 15 of Act XX of 1946.—In section 15 of the said Act, in sub-section (2),—

(a) in clause (a), after the words “standing orders” the words “or amendments” shall be inserted;

(b) in clause (d), for the words “copies of standing orders entered in the register of standing orders” the words and figure “copies of standing orders or model standing orders together with all the amendments filed in the register under section 8” shall be substituted.

19. Amendment of Schedule to Act XX of 1946.—In the Schedule appended to the said Act,—

(a) in the heading—

(i) for the word, figures, brackets and letter “sections 2 (g) and 3 (2)” the word, figure and letter “section 2A” shall be substituted;

(ii) after the words “Standing Orders” the words “model standing orders and amendments” shall be inserted;

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

“ 10A. Age for retirement or superannuation.”

20. Consequential.—In the said Act, in its application to the Saurashtra area of the State of Bombay, in section 7, sub-section (2) inserted by the Industrial Employment Standing Orders (Saurashtra Amendment) Act, 1953, shall be deleted; and section 7 (1) shall be renumbered as section 7 of the said act :

Provided that any model standing orders in respect of any industrial establishment referred to in the said sub-section (2) of section 7 deleted as aforesaid, and in operation on the date of the coming into force of this Act, shall be deemed to be the model standing orders prescribed under section 15 of the said act and applied to the industrial establishment under section 2A; and the provisions of the said Act shall apply thereto as they apply to the model standing orders duly applied under the said section 2A.

21. Savings.—Nothing in this Act shall be deemed to affect any industrial establishment in respect of which the appropriate Government is the Central Government.

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

“ STATEMENT OF OBJECTS AND REASONS.

Bill No. LIV of 1955 amending the Industrial Employment (Standing Orders) Act, 1946, was passed by the former State Legislature of Bombay in September, 1955. The Bill was assented to by the President, and was also published as an Act. That Act was to come into force on the date to be

notified by the State Government; and it was intended to bring it into force as soon as revised model standing orders and consequential amendments to rules, had been settled. Meanwhile, the Industrial Employment (Standing Orders) Act, 1946, was itself amended by Parliament, and those amendments by the Central Act being later than the Bombay amendments, they would prevail over the Bombay amendments in so far as the latter are inconsistent with them; and consequently, it is not feasible now to bring the Bombay amendments into force by notification. Because of this difficulty, the provisions of the Bombay amendments are proposed to be re-enacted with some modification, and applied throughout the new State. The more important modifications are contained in clauses 1, 5, 20 and 21 of the Bill. The following notes on clauses explain the provisions of the Bill :—

Clause 1.—The Bombay amendments extend to the pre-Reorganisation State of Bombay only. It is now intended that the proposed legislation should extend throughout the new State.

Clauses 2, 3, 6, 7 and 9.—Experience has shown that certification of standing orders under the Industrial Employment (Standing Orders) Act, 1946, takes a long time; and that in the meanwhile workmen are left without the protection of any standing orders applicable to them. The model standing orders prescribed under the Act serve only as a model and, unlike the model standing orders notified by Government under the Bombay Industrial Relations Act, 1946, have no binding effect. It is, therefore, proposed that power should be taken to make model standing orders applicable initially to all establishments covered by the Act and, thereafter, to permit the employers and workmen to submit within six months thereafter, draft amendments to the model standing orders according to the requirements of each individual establishment. The Certifying Officer will, after consulting the other party, decide whether any modification to such draft amendments are necessary, and then certify the draft amendments with or without modification. The new provision is calculated to reduce the work on all sides, and expedite the process of certification of standing orders. Standing Orders which are already certified, will remain unaffected and will continue to apply.

Clause 4.—The Bombay Industrial Relations Act, 1946, provides for certification of standing orders in respect of all establishments employing 20 or more workmen, which are covered by that Act, whereas the Industrial Employment (Standing Orders) Act is applicable to establishments employing one hundred workmen or more. It is proposed that the latter Act should be made applicable to all establishments employing fifty workmen or more, and thus extend the provisions of that Act to a larger number of workmen.

Clause 5 (b).—The definition of the term “employer” is proposed to be enlarged. Where an owner of an industrial establishment enters into a contract with a person for doing any work then in relation to the workmen employed by the contractor the owner of the establishment would be the employer. Section 2(d) (iii) of the Industrial Employment (Standing Orders) Act was amended for this purpose but the Bombay amendments are applicable only in areas of the former State of Bombay. As it is intended to

extend this to the whole of the present State of Bombay, these provisions have been re-enacted.

Clause 14.—Section 10 is proposed to be amended in order to permit modification of model standing orders, with or without amendment, on an application by the employer or workmen, after a specified period.

Clause 16.—The Act does not at present provide for a penalty for contravention of the provisions of the Act or of the Rules made thereunder, other than those falling in sub-sections (1) and (2) of section 13. A new sub-section is, therefore, being added to remedy this defect. Provision is also made to authorise the Court to require an employer to pay adequate compensation to the workman directly or adversely affected by contravention or an illegal modification of the standing orders, for which the employer may have been convicted.

Clause 19.—It is proposed that in all standing orders a suitable provision should be made for the age for retirement or superannuation of workmen. A new item "Age for retirement or superannuation" is, therefore, being added to the Schedule to the Act.

Clause 20.—The Principal Act has been amended by the Saurashtra Act, VIII of 1953, in its application to the Saurashtra area of the State of Bombay, by the addition of sub-section (2) to section 7 of the Principal Act. Since the above legislation is intended to extend to the whole of the new State, the amendment made by the Saurashtra Act is being deleted, model standing orders prescribed by the former Saurashtra Government being at the same time saved.

Clause 21.—Industrial establishments for which the Central Government is the appropriate Government under the Principal Act, are excluded from the purview of the above legislation."

Bonus in Sugar Factories in U. P. for 1956-57

*Notification No. 987(ST)/XXXVI-A-219(ST)-1957, dated Lucknow, 15th February, 1958.**

Whereas, on the recommendations of the State Tripartite Labour Conference (Sugar), held on September 21, 1957, a Committee was constituted in Labour (A) Department notification no. 5713(ST)/XXXVI-A-219(ST)-57, dated October 30, 1957, to investigate and to report to the State Government, on the question of payment of bonus for the year 1956-57 to the workers of vacuum pan sugar factories in the State.

And whereas the said Committee has now submitted its report on the subject;

And whereas, the said Committee has succeeded in bringing about an agreement in regard to the payment of bonus for the year 1956-57 between the representatives of the employers and workmen and has made recommendations on the subject accordingly which have been accepted by the State Government;

*U. P. Gaz., Extry., 15-2-58, p. 2.

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

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

ORDER

1. Subject to the provisions of order 2 all vacuum pan sugar factories in the State named in the Annexure, shall pay—

(a) to all such persons employed in or under them as were so employed in the crushing season 1956-57, and,

(b) to all such persons, employed in or under them in the crushing season 1956-57 as may not be now employed under them ; the amount by way of bonus for the year 1956-57 shown against their names in column 3 of the Annexure :

Provided that the amount of bonus payable to an employee under this order for the aforesaid crushing season does not exceed three months' wages of such employees in that year ;

Provided further that any amount paid as interim or advance bonus for the crushing season 1956-57 will be adjustable against the amount of bonus payable for the said crushing season under this order, but a factory shall not be entitled to recover any amount already paid by it to its employees towards bonus for the said crushing season, if such payment is in excess of the amount payable under this order.

2. Where a factory claims that it has suffered losses or made such meagre profits during the year 1956-57 as to make it unreasonable for it to pay the amount of bonus payable under this order, it will have a right to represent its case to the Sub-Committee referred to in order 5.

3. The bonus due shall be paid to all employees of the factory who drew their salaries and wages from the factory during the crushing season 1956-57 and shall be distributed in proportion to each employee's earnings during the said crushing season.

4. If any person who was an employee of a factory in the year 1956-57 is not in its employment and has died, his legal heir shall be paid the bonus which would have been payable to the employee if he had been in service or alive.

5. A Sub-Committee consisting of Sri O. N. Misra, I. A. S., Labour Commissioner, Uttar Pradesh, as Chairman and Sri K. N. Pande, M. P., c/o Zila Chini Mill Mazdoor Federation, Padrauna, district Deoria and Sri D. R. Dani, Upper Ganges Sugar Mills, Seohara, district Bijnor as, members shall examine and recommend to Government the cases of factories claiming exemption from payment of bonus under order 2, and

(i) a sugar factory claiming exemption under order 2 may apply to the Chairman of the Sub-Committee, so as to reach its application to the Chairman before March 10, 1958, for consideration of its case, and

(ii) the Sub-Committee shall report its findings to the State Government for appropriate orders within a period of six weeks from the date of publication of this notification.

6. Payment of bonus to their employees by factories not covered by order 2 above shall be made within six weeks of the publication of this order and by the other factories within such time as may be fixed thereafter.

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

8. Any person who contravenes any provisions of this order shall be liable to prosecution under section 14 of the U. P. Industrial Disputes Act, 1947.

ANNEXURE.

VACUUM PAN SUGAR FACTORIES IN UTTAR PRADESH

Serial number.	Name of factory.	Amount of bonus to be paid.
1	2	3
		Rs.
1.	The Ganga Sugar Corporation Ltd., Deoband	... 1,79,500
2.	R. B. Narain Singh Sugar Mills, Lakhasar	... 1,09,100
3.	The Amritsar Sugar Mills Co., Rohana Kalan	... 1,51,500
4.	The Upper Doab Sugar Mills, Shamli	... 2,62,300
5.	Sir Shadilal Sugar and General Mills Ltd., Mansurpur	... 2,59,700
6.	The Upper India Sugar Mills Ltd., Khatauli	... 1,71,500
7.	The Dhampur Sugar Mills, Dhampur	... 80,800
8.	The Upper Ganges Sugar Mills, Seohara	... 3,36,400
9.	The Diwan Sugar and General Mills, Sakhotitanda	... 44,100
10.	The Daurala Sugar Works, Daurala	... 1,71,600
11.	The Ram Laxman Sugar Mills, Mohiuddinpur	... 85,300
12.	The Jaswant Sugar Mills, Meerut	... 1,68,000
13.	Modi Sugar Mills, Modinagar	... 1,04,200
14.	The Simbholi Sugar Mills, Simbholi	... 1,74,300
15.	The L. H. Sugar Factories and Oil Mills Ltd., Kashipur	... 52,300
16.	The Neoli Sugar Factory, Neoli	... 97,800
17.	The Kundan Sugar Mills, Amroha	... 2,14,500
18.	The Ajudhia Sugar Mills, Raja-ka-Sahaspur	... 1,81,500
19.	The S. B. Sugar Mills, Bijnor	... 1,54,100
20.	The Lord Krishna Sugar Mills, Saharanpur	... 1,71,600
21.	The Mawana Sugar Works, Mawana	... 1,07,300
22.	The Pannijee Sugar Mills, Bulandshahr	... 1,54,200
23.	The Buland Sugar Co., Ltd., Raza Factory, Rampur	... 1,49,700
24.	The Buland Sugar Co., Ltd., Buland Factory, Rampur	... 1,57,800
25.	The Kesar Sugar Works, Baheri	... 1,84,700
26.	The H. R. Sugar Factory, Bareilly	... 1,09,200
27.	The L. H. Sugar Factories and Oil Mills Ltd., Pilibhit	... 2,32,500
28.	The Hindustan Sugar Mills, Golagokaran Nath	... 3,93,700
29.	The Carew & Co., Rosa	... 49,500
30.	The Oudh Sugar Mills, Hargaon	... 3,63,400
31.	Lakshmi Sugar Mills Ltd., Maholi	... 1,78,900
32.	The Lakshmi Sugar and Oil Mills, Hardoi	... 2,10,800

1	2	3
		Rs.
33.	Shree Janki Sugar Mills Co., Doiwala	... 30,700
34.	The Govind Sugar Mills, Aira	... 50,400
35.	The Mahalakshmi Sugar Mills, Iqbalpur	... 96,100
36.	The Kamalapat Motilal Sugar Mills, Motinagar	... 48,900
37.	The Seksaria Biswan Sugar Factory Ltd., Biswan	... 78,900
38.	Ramchander & Sons Sugar Mills, Bara Banki	... 88,100
39.	The Nawabganj Sugar Mills Co., Ltd., Nawabganj	... 92,800
40.	The Balrampur Sugar Co., Ltd., Tulsipur Factory	... 81,800
41.	The Balrampur Sugar Co., Ltd., Balrampur Factory	... 40,000
42.	The Sakseria Sugar Mills Ltd., Bhabhnan	... 34,200
43.	R. B. Lachhman Das Mohanlal & Sons Sugar Mills, Jarwal Road...	49,200
44.	The Burhwal Sugar Mills, Burhwal	... 41,000
45.	The Basti Sugar Mills Co., Ltd., Waltairganj Factory	... 40,600
46.	The Basti Sugar Mills Co., Ltd., Basti Factory	... 44,700
47.	The M. M. Sugar Mills, Munderwa	... 34,300
48.	The Ganesh Sugar Mills, Anandnagar	... 41,700
49.	The Lakshmi Devi Mills Ltd., Chittauni	... 12,700
50.	The Vishnu Pratap Sugar Mills, Khadda	... 12,200
51.	The Mahabir Sugar Mills, Siswa Bazar	... 31,000
52.	The United Provinces Sugar Co., Ltd., Seorahi	... 42,000
53.	The Shanker Sugar Mills, Captainganj	... 43,500
54.	The Diamond Sugar Mills Ltd., Pipraich	... 40,900
55.	The Saraya Sugar Factory, Sardarnagar	... 2,06,600
56.	The Cawnpore Sugar Works Ltd., Gauribazar Factory	... 34,000
57.	Sri Sita Ram Sugar Co., Baitalpur	... 37,600
58.	The Ishwari Khetan Sugar Mills Ltd., Lakshmiganj	... 14,600
59.	The Maheshwari Khetan Sugar Mills, Ramkola	... 32,800
60.	The Ramkola Sugar Mills Co., Ramkola	... 81,000
61.	The Cawnpore Sugar Works Factory Branch, Padrauna	... 32,200
62.	The Cawnpore Sugar Works Factory Branch, Kathkuiyan	... 12,200
63.	The Punjab Sugar Mills Co., Ltd., Ghughli	... 33,700
64.	The Purtabpore Sugar Co., Ltd., Mairwa	... 34,700
65.	The Deoria Sugar Co., Ltd., Deoria	... 39,300
66.	The Ratna Sugar Mills Co., Ltd., Shahganj	... 39,500
67.	The Anand Sugar Mills, Khalilabad	... 14,300
		71,50,000

THE PAYMENT OF WAGES (AMENDMENT) ACT, 1957

No. 68 OF 1957*

[Received the assent of the President on 28th December, 1957]

An Act further to amend the Payment of Wages Act, 1936.

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

1. *Short title and commencement.*—(1) This Act may be called the Payment of Wage (Amendment) Act, 1957.

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

*Gaz. of India, Extry., 30 12-1957, Pt. II, Sec-1, p. 981.

2. *Amendment of section 1.*—In section 1 of the Payment of Wages Act, 1936 (hereinafter referred to as the principal Act),—

(i) in sub-section (5), for the words "the Act", the words "this Act" shall be substituted; and

(ii) in sub-section (6), for the words "two hundred rupees", the words "four hundred rupees" shall be substituted.

3. *Amendment of section 2.*—In section two of the principal Act,—

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

'(i) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948';

(ii) in clause (ii)—

(1) for item (c), the following item shall be substituted, namely:—

"(c) inland vessel, mechanically propelled";

(2) after item (f), the following item shall be inserted, namely:—

"(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on"; and

(iii) for clause (vi), the following clause shall be substituted, namely:—

'(vi) "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

(a) any remuneration payable under any award or settlement between the parties or order of a court;

(b) any remuneration to which the person employed is entitled in respect of over time work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from

the computation of wages by a general or special order of the State Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).'

4. *Amendment of section 3.*—In section 3 of the principal Act, in clause (a) of the proviso, for the words, brackets, letter and figures "clause (e) of sub-section (1) of section 9 of the Factories Act, 1934", the words, brackets, letter and figures "clause (f) of sub-section (1) of section 7 of the Factories Act, 1948" shall be substituted.

5. *Amendment of section 7.*—In section 7 of the principal Act,—

(i) in sub-section (1), the *Explanation* shall be re-numbered as *Explanation I*, and after the *Explanation* as so re-numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation II.*—Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:—

(i) the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);

(ii) the reduction to a lower post or time scale or to a lower stage in a time scale; or

(iii) suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette."

(ii) in sub-section (2), for clause (d), the following clause shall be substituted, namely:—

"(d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette"; and

(iii) for clause (k), the following clause shall be substituted, namely:—

"(k) deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance

Corporation Act, 1956, or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government; ”.

6. *Amendment of section 14.*—In section 14 of the principal Act, in sub-section (1), for the words, brackets and figures “sub-section (1) of section 10 of the Factories Act, 1934”, the following shall be substituted, namely:—
“sub-section (1) of section 8 of the Factories Act, 1948”.

7. *Amendment of section 17.*—In section 17 of the principal Act,—
(i) in sub-section (1)—

(a) for the words, brackets and figures “An appeal against a direction made under sub-section (3) or sub-section (4) of section 15”, the following shall be substituted, namely:—

“An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of section 15, or against a direction made under sub-section (3) or sub-section (4) of that section”;

(b) for the words “the direction”, the words “the order or direction” shall be substituted;

(c) for clause (b), the following clause shall be substituted, namely:—

“(b) by an employed person or any official of a registered trade union authorised in writing to act on his behalf, if the total amount of wages claimed to have been withheld from the employed person or from the unpaid group to which the employed person belonged exceeds fifty rupees, or ”; and

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (2) of section 15, or a direction made under sub-section (3) or sub-section (4) of that section shall be final.”

8. *Insertion of a new section 17A.*—After section 17 of the principal Act, the following section shall be inserted, namely:—

“17A. *Conditional attachment of property of employer or other person responsible for payment of wages.*—(1) Where at any time after an application has been made under sub-section (2) of section 15 the authority, or where at any time after an appeal has been filed under section 17 by an employed person or any official of a registered trade union authorised in writing to act on his behalf the court referred to in that section, is satisfied that the employer or other person responsible for the payment of wages under section 3 is likely to evade payment of any amount that may be directed to be paid under section 15 or section 17, the authority or the court, as the case may be, except in cases where the authority or court is of opinion that the ends of justice would be defeated by the delay, after giving the employer or other person an opportunity of being heard, may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is, in the opinion of the authority or

court, sufficient to satisfy the amount which may be payable under the direction.

(2) The provisions of the Code of Civil Procedure, 1908, relating to attachment before judgment under that Code shall, so far as may be, apply to any order for attachment under sub-section (1).”

The following is the Statement of Objects and Reasons appended to the Bill:

“STATEMENT OF OBJECTS AND REASONS

By the enactment in 1936 of the Payment of Wages Act, it was intended to ensure that—

(i) wages actually disbursable to workers covered by the Act are disbursed within the prescribed wage-period; and

(ii) employees get their full wages without any deductions which are not specially authorised by the law.

The working of the Act has shown that the Act requires to be amended in certain respects. It is also considered desirable to extend the benefit of the Act to a larger category of persons. The important proposals relate to raising the wage limit from Rs. 200 a month to Rs. 400, extension of the Act to construction industry and revision of the definition of the term “wages”. The reasons for the amendments are, wherever necessary, given in the notes on clauses attached to this Bill.

NOTES ON CLAUSES

Clause 2 (ii).—The existing wage limit of two hundred rupees was fixed in 1936. The pattern of the earnings of the wage groups intended to be protected by the Act has since undergone considerable change. Accordingly it is proposed to apply the Payment of Wages Act to a person who is employed on wages not exceeding four hundred rupees a month in any establishment covered by the Act.

Clause 3 (ii).—Construction industry which employs a large number of workers has assumed great importance during recent years owing to the large hydro-electric and power schemes that are under construction. The workers in the construction industry engaged in the construction and maintenance of roads, bridges, canals, buildings, or in operations connected with irrigation, navigation or supply of water or generation, transmission and distribution of electricity or any other form of power stand in need of protection.

Clause 3 (iii).—The existing definition of the term “wages” has given rise to certain practical difficulties particularly in regard to interpretation of certain words used in the definition. In some cases the High Courts have ruled that the word “wages” did not mean “potential wages” but “wages earned”. Now-a-days the terms of payment under contracts of employment are frequently modified by the awards of Tribunals or by the terms of binding settlements. The wages revised statutorily through adjudication, arbitration, conciliation or similar statutory process should

also be deemed to be wages for purposes of the Act. The definition of "wages" has accordingly been recast and made comprehensive and clear.

Clause 5 (i).—The question whether reduction in wages, consequent upon any punishments imposed like suspension, stoppage of increments, reduction to lower post or scale, etc., would be deductions authorised under the Payment of Wages Act has been a subject of conflicting rulings, by courts of law. The intention of Government has been that the deductions consequent upon punishments under service rules should be authorised deductions under the Act. It is, therefore, intended to make it clear that any deduction in wages consequent upon imposition of punishments under the service rules will be authorised deductions under the Act.

Clause 5 (ii).—Under section 7 (2) (d) of the Payment of Wages Act, deductions for house-accommodation can be made only when the accommodation is supplied by the employer. Under the Subsidised Industrial Housing Scheme of the Government of India, State Governments construct tenements which are let out to industrial workers on suitable rents. To enable easy collection of rent of such tenements, it is proposed to amend the Act to enable deduction of rents in such cases from the wages of the concerned workers.

Clause 5 (iii).—With the nationalisation of life insurance business it has been considered desirable to allow deduction of insurance premia from the wages of employees, at their written authorisation and necessary provision to this effect has been made.

Clause 5 (iv).—The amendment proposed will enable workers to subscribe to Government securities like the National Plan Loan, National Cash Certificates, and deposits in Post Office Savings Banks in pursuance of savings schemes.

Clause 7.—Dismissal of a claim by an authority was not considered as a "direction" under section 15 and therefore it is proposed to make a provision for an appeal against an order dismissing a claim.

Clause 8.—Recovery in execution of a direction made by an authority under the Act takes a long time. Arrears of wages also do not get sufficient priority in case the concern is wound up. To safeguard the workers' interests in such cases it is proposed to empower the authority to order conditional attachment of the property of the employer or other person responsible for the payment of wages, pending disposal of the application, unless the employer or other person deposits with the authority an amount sufficient to satisfy the claim or gives security for a like amount."

that the Government would realise that there was no risk of the peace being disturbed or production being hampered by the dispute raised by the workmen demanding a higher salary for the manager, for, being normal men, the workmen were not likely to suffer the privations of a strike to enforce their demand for a cause of this nature. The Government must be left to decide this primary question for itself, and therefore the Government must be left to decide in each case whether the workmen had sufficient interest in the dispute. If Government thought that the workmen had no such interest as would lead them to disturb industrial peace by strike or otherwise if the dispute was not ended, the Government might not in its discretion refer the dispute for adjudication by a Tribunal. It must be left free to decide as it thinks best in the interest of the country. It is not for the Court to lay down rigid principles of interest which interfere with the Government's discretion, for that might defeat the object of the Act. If the Government feels that the dispute is such that it might lead to the disruption of industrial peace, it is the policy of the Act that it should exercise its powers under it to prevent that. Assume a case in which the workmen raised a dispute without having what the Court considers sufficient interest to make it an industrial dispute and, therefore, on the matter coming to the Court the dispute was held not to be an industrial dispute. Upon that the Government's hands would be tied and it would not be able to have that dispute resolved by the processes contemplated in the Act. Suppose now that, the workmen then go on strike and industrial peace is disturbed and production hampered. The object of the Act would then have been defeated. And why? Because it was said that it was not a dispute in which the workmen were interested and, therefore, not a dispute which was capable of being adjusted under the provisions of the Act. It would be no answer to say that the workmen would not go on strike in such a case. If they would not, neither would the Government refer the dispute for adjudication under the Act and it would not be necessary for the Court to decide whether the workmen were interested in the dispute or not or whether the dispute was an industrial dispute or not. Therefore, I think that it is not necessary to say that a dispute is an industrial dispute within the meaning of the Act only when workmen are interested in it. Such a test of an industrial dispute would make it justiciable by Courts and also introduce a rigidity in the application of the Act which is incompatible with the fast changing concepts it has in view and so defeat the object of the Act. It is enough to assume that, as normal men, workmen would not raise a

dispute or threaten industrial peace on account of it unless they are interested in it.

I wish however to make it clear, should any doubt exist as to this, that I do not intend to be understood as saying that the question whether a dispute is an industrial dispute or not is never justiciable by Courts of law and that a dispute is an industrial dispute only if the Government says so. Such a larger question does not arise in this case. All that I say is that it is not a condition of an industrial dispute that workmen must be interested in it and no question of interest falls for decision by a Court if it can be called upon to decide whether a dispute is an industrial dispute or not. The question of interest can only be of practical value in that it helps the Government to decide whether a dispute should be referred for adjudication or not.

Then it is said that if workmen were allowed to raise a dispute concerning a person who was not a workman, then it would be possible for such a person to have his dispute with the employer adjudicated through the workmen. This case was put. Suppose the manager wanted his salary to be increased but could not make the employer agree to his demand, he could then instigate the workmen and make them raise a dispute that his salary should be increased and if such a dispute is an industrial dispute and the award goes in favour of the workmen then the result would be that the Act could be used for settling disputes between the manager and his employer, a dispute which the Act did not intend to concern itself with. So it is said that the words "any person" in section 2(k) cannot include an employee who is not a workman. I am unable to agree. First, in interpreting an Act, the Court is not entitled to assume that persons would use its provisions dishonestly. The words in the Act cannot have a different meaning than their natural meaning because otherwise there would be a possibility of the Act being used for a purpose for which it was not meant. The remedy against this possibility is provided in the Act, in that it has given complete freedom to the Government not to refer such a dispute. It is not necessary to meet a somewhat remote apprehension that the Act may be used for purposes other than those for which it was meant, to construe its language in a manner different from that which it plainly bears. Lastly, in doing this, many cases like those earlier mentioned including the present, which are clearly cases of industrial disputes would have to be excluded in the attempt to prevent by interpretation a remote apprehension of a misuse of the Act. This would do more harm than good.

I have, therefore, come to the conclusion that a dispute concerning a person who is not a workman may be an industrial dispute within

section 2(k). As it has not been said that the dispute with which we are concerned is for any other reason not an industrial dispute, I hold that the Industrial Tribunal had full jurisdiction to adjudicate that dispute and should have done so.

I would, therefore, allow the appeal and send the case back to the Industrial Tribunal for adjudication in accordance with law.

BY THE COURT.—In view of the opinion of the majority, the appeal is dismissed. But there will be no order as to costs.

[IN THE BOMBAY HIGH COURT.]

PROVINCIAL TRANSPORT SERVICE CO.

v.

N. H. MAJUMDAR AND ANOTHER.

Mudholkar and Kotval, JJ.

September 2, 1957.

C.P. & BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947,
SECTION 16(5)—REVISION OF ORDER OF LABOUR COMMISSIONER—
POWERS OF STATE INDUSTRIAL COURT—WHEN DECISION OF LABOUR
COMMISSIONER MAY BE INTERFERED WITH.

It is not open to the State Industrial Court, under section 16(5) of the C.P. and Berar Industrial Disputes Settlement Act, 1947, to reassess the evidence in a matter which has been decided by the Labour Commissioner. The revisional powers can be exercised to set aside the decision of the Labour Commissioner only if any evidence has been ignored or if the decision of the Labour Commissioner is perverse. Where the Labour Commissioner has considered all the evidence and has come to a conclusion which does not appear to be unreasonable, though it may be one with which the State Industrial Court may not agree, it is not open to the Industrial Court to set aside that conclusion and substitute it by its own.

Special Civil Application No. 144 of 1957.

E. J. Moharir for the applicant.

C. S. Dharmadhikari for respondent No. 2.

JUDGMENT.

MUDHOLKAR, J.—This is a petition under articles 226 and 227 of the Constitution for quashing and setting aside the order of the State Industrial Court passed in revision setting aside the order of the Assistant Labour Commissioner.

The relevant facts are briefly as follows: Respondent No. 2 was in the employment of the petitioner from 7th February, 1952. He was challaned by the police for an offence under section 304A of the Indian Penal Code alleged to have been committed by him on 9th February, 1953. He was found guilty of the offence and was sentenced to undergo rigorous imprisonment for a period of six months. In appeal, the conviction of respondent No. 2 was maintained but the sentence was reduced to a fine of Rs. 150 or in default to rigorous imprisonment for a period of three months. Thereafter, the petitioner terminated the services of respondent No. 2 by giving him one month's salary in lieu of notice. This was on 9th May, 1955. Respondent No. 2 received the salary but he moved the Assistant Labour Commissioner under section 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, for his re-instatement. The Assistant Labour Commissioner dismissed the application. Thereupon, he preferred an application for revision before the State Industrial Court which granted it and directed the petitioner to re-instate respondent No. 2.

It was contended on behalf of respondent No. 2 before the Assistant Labour Commissioner that the action taken against him by the petitioner did not amount to a mere termination of his services by giving him a notice but to a dismissal on the ground that he was taking a leading part in the Trade Union activities. It was also contended on his behalf that the fault, i.e., the rash and negligent driving, committed by him, was condoned by the petitioner. On all these points the Assistant Labour Commissioner, after considering all the material adduced before him, came to certain conclusions of fact adverse to respondent No. 2. The State Industrial Court, however, has reversed those conclusions. The question which we must first consider, therefore, is whether it is open to the State Industrial Court sitting in revision to reverse the conclusions of fact arrived at by the Assistant Labour Commissioner.

The provision which confers revisional powers on the State Industrial Court is section 16(5) of the C. P. and Berar Industrial Disputes Settlement Act. That section and the provision thereto read as follows:

"An application for revision made within the prescribed time, but no appeal, shall lie to the State Industrial Court against the decision of the Labour Commissioner, but no order passed by him shall be called in question in any civil or criminal Court or made a subject of an industrial dispute:

Provided that the State Government may by notification direct that an order passed by the Labour Commissioner in any class of industrial dispute referred to in sub-section (1) shall be final."

It may be mentioned that no notification has been made by the State Government declaring the order of the Labour Commissioner passed in cases of this kind final. It will be clear from this provision that the Legislature did not intend to confer wide powers, such as those that a court of appeal has, upon the State Industrial Court but deliberately limited those powers to the exercise of a revisional jurisdiction. An appeal has been stated by Lord Davey in *Ponnamma v. Arumogam* [1905] A.C. 383, at p. 390 to be a proceeding in which the question is whether the order of the Court from which the appeal is brought was right on the materials which that Court had before it. From this it would follow that an appellate Court has the power to go not only into the questions of law but has also the power to go into the questions of fact. Such power would further enable the appellate Court to review or re-assess the entire evidence and come to its own conclusions. The Legislature, by saying that no appeal shall lie to the State Industrial Court, clearly indicated that it did not want to confer powers of such wide amplitude upon the State Industrial Court. There is no further indication as to what were the precise limits of the powers which could be exercised by the State Industrial Court in revision. We have, therefore, to go upon the general principle.

In *Ballentine's Law Dictionary* it is stated that the word 'revision' in local assessment proceedings refers to the fact that the Board may be called upon to review that which has been done, and to make the proceedings conform to the law. In *Rajeshwar v. Deshrath*, A.I.R. [1943] Nag. 176, a Full Bench of the Nagpur High Court had to consider the question whether the High Court can enter into questions either of law or of fact, such as limitation, or whether a transaction is a loan or a deposit in a Small Cause Court revision, and if so when and to what extent. The learned Judges came to the conclusion that under section 25 of the Provincial Small Cause Courts Act there should be no interference in revision by the High Court with the judgment of a Small Cause Court on a question either of fact or of law even though the decision may appear to be erroneous, unless the conclusion of the Small Cause Court is one which no Judge acting judicially could reasonably reach.

Section 25 of the Provincial Small Cause Courts Act reads as follows:

"The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit."

No doubt, the precise powers of the High Court in the matters arising out of Small Cause Court cases have been set out in section 25 of

the Provincial Small Cause Courts Act, but those of the State Industrial Court have not been set out in section 16 of the C. P. and Berar Industrial Disputes Settlement Act, nor in any other provision thereof. Even so, we think that the general concept that the revisional power is only limited to satisfying the revisional authority of the legality or the correctness of the order passed by the subordinate Tribunal should apply to a case where the statute does not expressly set out the ambit of the revisional powers. It may not be necessary to circumscribe those powers to the same extent as has been done by the Nagpur High Court with regard to the powers of the High Court under section 25 of the Provincial Small Cause Courts Act. All the same we will have to place some limit on those powers. It would, therefore, be reasonable to hold that the Legislature did not intend to confer greater powers on the revisional Court than to satisfy itself about the legality or the correctness of an order of the subordinate Tribunal. Upon this view, it would not be open to the State Industrial Court to re-assess the evidence and to come to its own conclusion upon it. If any evidence has been ignored or if a decision has been given perversely by the Labour Commissioner, the matter would stand on a different footing. But where the Labour Commissioner has considered all the evidence and has come to a conclusion which does not appear to be unreasonable, though it may be one with which the revisional authority may not agree, it would not be open to that authority to set aside that conclusion and substitute it by its own.

Apart from that, we are satisfied that the conclusions of the State Industrial Court that the action taken by the management against respondent No. 2 was vindictive and that it amounted to a dismissal are not borne out by the material on record. While dealing with this matter, the Court observed thus in paragraph 6 of its order:

"It appears to me that the management subsequently became inimical on account of his taking active part in the disputes between the management and the Union or members thereof and they took advantage of the fact of conviction of the applicant in a criminal case to get rid of him after a lapse of 8 months after the decision of the case by the Additional Sessions Judge and nearly 1½ years after the case had been decided by the original Court, the Court of the Magistrate 1st Class, Warora. The action on the part of the management does not appear to me *bona fide*."

There is no evidence on record to show that respondent No. 2 was taking an active part in trade union activities, apart from his bare statement in evidence that he re-affirmed all that he had stated in the application to the Assistant Labour Commissioner. The conclusion of

the State Industrial Court to the effect that there was condonation of the lapse on the part of respondent No. 2 by the petitioner is also without any basis. With regard to this the Court has observed thus in para. 5 of its order:

"The only real charge against the applicant was about his negligently driving the bus on 9th February, 1953, but even for this charge, the applicant was punished by stopping him from running on the line for 3 months and 21 days as would appear from his explanation and the allegations in the applications which have been confirmed by him in his evidence on oath."

There is no evidence to show that respondent No. 2 was punished in any way. On the other hand, though respondent No. 2 was not allowed to run the bus on the line for over 3 months for reasons of public safety, he was actually paid his entire salary for that period. The State Industrial Court has further observed in the same paragraph:

"Even assuming that they had not punished him, it is clear that in spite of the knowledge that the applicant had been convicted and fined, they contemplated taking no action against him and they had thus condoned the misconduct of rash and negligent driving."

There is no basis for this conclusion either. No doubt, there was some delay in taking action against respondent No. 2 but that was occasioned by the fact that the management of the petitioner did not have a copy of the appellate judgment in which the sentence passed on respondent No. 2 was reduced. It had actually asked respondent No. 2 to produce the copy and the delay in its production was caused by respondent No. 2 himself. It was, therefore, clear that there was no condonation either.

In these circumstances, we allow the petition, quash the order of the State Industrial Court and restore that of the Assistant Labour Commissioner. Costs in this Court will be borne by respondent No. 2.

[IN THE BOMBAY HIGH COURT.]

WAMAN BALKRISHNA BOKARE

v.

COLLECTOR OF CENTRAL EXCISE, NAGPUR.

Mudholkar and Tambe, JJ.

June 27, 1957.

REINSTATEMENT—EFFECT—EMPLOYEE REINSTATED ON APPEAL
AGAINST DISMISSAL—SUBSEQUENT TERMINATION OF SERVICE UNDER
CONTRACT OF SERVICE—WHETHER VALID—RIGHTS OF EMPLOYER.

Where an employee who had been dismissed is reinstated on appeal against his dismissal, there is nothing to prevent the employer from terminating his services in accordance with the terms of his contract of service after such reinstatement.

Where an employee is directed to be reinstated and on the same date he is also served with a notice terminating his services in accordance with his contract of service, and there is nothing in the notice to indicate that the termination of service is in any way connected with his prior dismissal, it cannot be contended that the termination of service amounts to punishment for the misconduct for which he was originally dismissed.

Miscellaneous Petition No. 156 of 1956.

V. L. Prabhune for the petitioner.

W. K. Sheorey for the State.

JUDGMENT.

MUDHOLKAR, J.—The petitioner was appointed as a temporary Inspector of Central Excise by the Collector, Central Excise, Bombay, on 1st March, 1949, and was on probation. After completion of the probationary period he was placed in the regular time-scale for the post. On 11th April, 1953, he was served with an order of the Collector dismissing him from service. He appealed from that order to the Central Board of Revenue. His appeal was allowed and he was reinstated in his post immediately. The decision of the Board of Revenue was communicated to the petitioner on 29th November, 1954. On the same date a notice terminating his services within one month was served upon him. From the date of the expiry of the period stated in the notice, the petitioner ceased to function in his post.

He has now come up to this Court under article 226 of the Constitution on the ground that the action taken against him amounts to his removal or dismissal from service and as such the provisions of article 311 of the Constitution are attracted. It is pointed out on his behalf

that he was not given any opportunity of being heard before the afore-said action was taken against him. In our opinion, there is no substance in this argument.

The petitioner's service was of a contractual nature. One of the terms of the contract is that the petitioner has to give the following declaration before he takes up his appointment:

"I understand that my appointment under Government is temporary and that my service may be terminated at any time after notice for a period of not less than one month but without any reason being assigned. I agree that if I wish to resign my appointment, I shall give notice in writing for a period of not less than one month, of my intention to resign."

We may mention that nothing has been set out in the notice for terminating the petitioner's services. Therefore, the notice conforms to one of the terms of the contract.

It is, however, argued by Shri Prabhune on behalf of the petitioner that we must take into consideration the previous action taken against the petitioner and read the notice along with the order of dismissal from service which was passed by the Collector on 11th April, 1953. According to him, if the two are read together, the inference is irresistible that the action taken against the petitioner was of a disciplinary nature and that the termination of his service amounts to a punishment, and, as such, the provisions of article 311 of the Constitution are attracted. He refers to pages 485-486 of Basu's Commentary on the Constitution under the head "Discharge in terms of contract or conditions of service" and relies upon the view expressed by the learned author that where the intention is to punish an employee for some misconduct, the contractual power cannot be used to discharge him without complying with the requirements of article 311(2) of the Constitution. As the learned author points out, there is a divergence of views in the High Courts as to the applicability of article 311(2) of the Constitution, where services have been terminated by resort to a term in the contract, and where reasons also have been given for the termination of services. It is not necessary for us to consider the two views because in the instant case it cannot be said that any stigma attaches against the petitioner by reason of the termination of his service. As already pointed out the notice does not give any reason for the termination of the petitioner's services. It may be that for certain reasons the Collector had taken action against the petitioner earlier and dismissed him from service, but that order having been set aside and the petitioner having been reinstated, the matter must be considered to have ended there. None of

the cases cited in Basu's Commentary goes to the length of saying that where an employee was dismissed at a prior time but his dismissal was set aside and he was reinstated his services could not be terminated by resort to a term in the contract. The right of an employer to enforce a term in the contract is not in any way taken away because that employer sometime before that thought it fit to dismiss the employee for some misconduct. We may reiterate that the alleged misconduct is not set out as a ground for termination of the services nor can we read anything of that kind in the notice itself.

For these reasons, we dismiss the petition. There will be no order as to costs. The outstanding amount of security will be refunded to the petitioner.

[IN THE BOMBAY HIGH COURT.]

ARUNA MILLS LTD.

v.

INDUSTRIAL COURT, BOMBAY AND OTHERS.

Chainani and Tambe, JJ.

October 11, 1957.

BOMBAY INDUSTRIAL RELATIONS ACT, 1946, SECTIONS 78, 79—REFERENCE OF DISPUTE TO LABOUR COURT BY PARTIES—DISPUTES REGARDING 'CHANGE', MEANING OF—EMPLOYEE CLAIMING CLERICAL SCALE OF WAGES—WHETHER DEMAND FOR 'CHANGE'—INTERPRETATION OF AWARD OR SETTLEMENT—RIGHT OF EMPLOYER TO APPROACH LABOUR COURT—LIMITATION.

Where there are two separate awards or settlements in regard to the wage scales of clerks and the wage scales of other employees, the claim by an employee that he should be paid according to the scale applicable to clerks and not the scale according to which he is being paid, amounts to asking the management for a 'change' in his wages and the refusal of the management to accede to the claim would result in an industrial dispute which can be referred to a Labour Court under section 79 of the Bombay Industrial Relations Act, 1946. The fact that the employee did not send copies of his claim to the Labour Commissioner or the Labour Officer, as required by the Rules, will not lead to the conclusion that the employee did not ask for a 'change'.

Under section 79 of the Act it is open both to the employer and the employee to approach the Labour Court for the settlement of a dispute which falls within the provisions of section 78 and the period of limitation specified in section 79(3) of the Act applies both to the employer as well as the employee.

Special Civil Application No. 1564 of 1957.

N. A. Palkhvala and V. B. Patel for the management.

M. A. Rane for the respondents.

JUDGMENT.

CHAINANI, J.—The petitioner is a public limited company running a cotton textile mill at Ahmedabad. In 1948 the Industrial Court made an award known as the Standardisation Award, by which the wages of all employees, including assistant stampers, but excluding clerks, were fixed. In 1949 the Industrial Court made another award fixing the wages of clerks. Subsequently, on 22nd June, 1949, there was an agreement between the Textile Labour Association, Ahmedabad, which is a representative Union, and the Ahmedabad Mill Owner's Association by which the wages of clerks were revised. Respondents Nos. 6 to 11 in this petition, who are the only contesting respondents and to whom I will hereafter refer as the respondents, are employed as assistant stampers in the mill run by the petitioner. Since 1948, they were being paid wages fixed for assistant stampers by the Standardisation Award. On 20th March, 1956, respondent No. 6, through a Union, wrote a letter exhibit 19 to the petitioner. In paragraph 5 of that letter he stated that although the duties performed by him were of a clerical nature since seven years, he was not being paid wages in accordance with the agreement arrived at in 1949, by which the wages of clerks were revised. He also stated that the nature of his work had been changed after he had made a complaint about proper wages not being paid to him to the manager. The petitioner replied to respondent No. 6 on 17th April, 1956, and in its reply it denied that respondent No. 6 was a clerk or that he was entitled to the wages of a clerk. On 20th April, 1956, the petitioner made an application to the Labour Court, purporting to be an application under sections 78 and 79 of the Bombay Industrial Relations Act, in which they asked for an interpretation of the Standardisation Award and the agreement regarding clerks arrived at in 1949 and for a decision on the question whether the respondents and one other person Gangadas, who was also working as an assistant stamper were entitled to the benefits of the agreement regarding clerks arrived at on 22nd June, 1949. The respondents contended that the application was not

maintainable, as the petitioner was not entitled to approach the Labour Court under section 78 of the Act. This contention was accepted by the Labour Court, which accordingly dismissed the application made by the petitioner. On appeal by the petitioner, the Industrial Court confirmed the decision of the Labour Court. The petitioner has, therefore, filed the present special civil application, in which the petitioner has prayed that the orders passed by the Labour Court and the Industrial Court should be set aside and that the Labour Court should be asked to decide the application made to it by the petitioner on merits.

The relevant part of section 78 of the Bombay Industrial Relations Act provides as follows:

"(1) A Labour Court shall have power to—

A. decide—

(a) disputes regarding—

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III and matters arising out of such change ; "

The explanation to this section provides that a dispute falling under clause (a) of para. A of sub-section (1) shall be deemed to have arisen, if within the period prescribed under the proviso to sub-section (4) of section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso. Sub-section (4) of section 42 provides that an employee desiring a change in respect of (iii) an industrial matter specified in Schedule III, shall make an application to the Labour Court: provided that no such application shall lie unless the employee has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period. Item (5) in Schedule III to the Act is as follows: "Construction and interpretation of awards, agreements and settlements". Reading these provisions together, it is clear that a Labour Court has power to decide disputes relating to the construction and interpretation of awards and agreements. In view of the explanation to section 78, such an industrial dispute with regard to the construction of an award and or agreement shall be deemed to have arisen, if, after an employee has requested the employer for a change, no agreement is arrived at between the parties in respect of that matter within the prescribed period.

The first question to be determined, therefore, is whether there was a dispute in regard to the interpretation of the Standardisation Award and the agreement regarding clerks arrived at in 1949. The Industrial Court in its order has observed that respondent No. 1 (present respondent

No. 6) had raised a dispute alleging that he was entitled to be paid the scales fixed under this agreement (dated 22nd June, 1949) and in the letter dated 20th March, 1956, had complained to the company about it. The Industrial Court, therefore, evidently took the view that there was a dispute between the parties regarding the interpretation of the award and the agreement regarding clerks. Mr. Rane, who appears on behalf of the respondents, has strenuously argued that there was no dispute within the meaning of the Act, as respondent No. 6 had in his letter dated 20th March, 1956, (exhibit 19) not asked for any change. There is no substance in this argument. In paragraph 3 of his letter dated 20th March, 1956, (exhibit 19) respondent No. 6 had stated that, although for seven years clerical work was taken from him, he had been designated as an assistant stamper and paid wages as such. In paragraph 5 of his letter, he had stated that he had, therefore, approached the Manager-cum-Salesman to grant him salary gradation as per clerical agreement and that he had been told that his case would be considered in the following month. In paragraph 6 it was stated that after he had complained to the manager, there was a change in the nature of work assigned to him. In paragraph 7 he stated that he felt aggrieved by this action of the mills and in paragraph 8 he asked for his grievances being enquired into. In reply to this letter, the petitioner stated that respondent No. 6 was being paid correct wages as fixed under the award. There was, therefore, clearly a dispute between the petitioner and respondent No. 6 as to whether respondent No. 6, who was working as an assistant stamper, was entitled to wages fixed for clerks by the agreement of 22nd June, 1949, or those fixed for assistant stampers by the Standardisation Award. Mr. Rane has contended that the letter of respondent No. 6 was only a letter of request and not a letter asking for a change within the meaning of sub-section (4) of section 42. This argument again cannot be accepted, for in his letter respondent No. 6 had clearly stated that he had asked the manager to pay him the wages of a clerk. He had, therefore, asked for a change in his wages.

The proviso to sub-section (4) of section 42 states that an approach to the employer for a change should be made in the prescribed manner. Sub-rule (1) of rule 53 provides that a copy of the application made to the employer shall be forwarded to the Commissioner of Labour and also to the Labour Officer for the local area. Respondent No. 6 had not sent copies of his letter to the petitioner, to these officers. Mr. Rane has, therefore, urged that as the prescribed procedure had not been followed, respondent No. 6 cannot be said to have asked for a change within the meaning of sub-section (4) of section 42. It is, however,

clear from his letter that he had asked for a change in his wages. It will be difficult to hold that he had not asked for a change, merely because he did not send copies of his letter to the Commissioner of Labour and the Labour Officer, as he ought to have done under the rules.

In paragraph 9 of the written statement filed by the respondent in the Labour Court it was denied that the agreement of 22nd June, 1949, did not apply to the respondents. Their contention, therefore, was that they were entitled to wages in accordance with this agreement. The respondents further stated in the same paragraph that respondent No. 6 "alone had asked for scales under the clerical agreement by reason of his duties" and that "this dispute" did not affect the other opponents. They, therefore, admitted that there was a dispute between the petitioner and respondent No. 6. The statement that this dispute did not affect the other respondents is inconsistent with their contention that their wages should have been regulated by the agreement of 1949. In paragraph 7 it was stated that the respondents denied that they were paid wages "on legal and proper interpretation of the award" or that they were "covered by the Standardisation Award" or "that they could not be legally covered by the clerks agreement dated 22nd June, 1949". It is, therefore, obvious that there was a dispute at least between respondent No. 6 and the petitioner in regard to the interpretation of the Standardisation Award and the agreement in regard to clerks reached in 1949 and that this dispute affected the other respondents also.

The next question to be considered is whether the petitioner could approach the Labour Court for the settlement of this dispute. There is nothing in section 78, which prevents an employer from approaching the Labour Court. Sub-section (1) of section 79 provides that proceedings before a Labour Court in respect of disputes falling under clause (a) of paragraph A of sub-section (1) of section 78 shall be commenced on an application made by any of the parties to the dispute. The parties to an industrial dispute are the employer on the one hand and the employee or the employees on the other. Section 79 gives a right to either of the parties to the dispute to approach the Labour Court. On a plain reading of this section, it must, therefore, be held that the petitioner could make an application to the Labour Court for the settlement of the dispute. Sub-section (2) of section 79 states that every application under sub-section (1) shall be made in the prescribed form and manner. Rule 71 provides that every application under sub-section (1) of section 79 shall be made in Form P. The relevant portion of Form P is as follows :

"Name of the employer/registered union/ employee/Labour Officer
.....Applicant."

This form, therefore, also provides for an application being made to the Labour Court by an employer.

Sub-section (3) of section 79 lays down a period of limitation for making applications to the Labour Court. It provides for a period of three months from the date of the employee concerned having approached the employer under the proviso to sub-section (4) of section 42. The Industrial Court seems to have taken the view that this sub-section lays down a period of limitation only for the employees and not for the employer. This view does not appear to be correct. The sub-section will apply when either party makes an application to the Labour Court. If the employer wishes to approach the Labour Court, he must also make the application within three months after the employee has made an application to him for a change under sub-section (4) of section 42.

The Industrial Court has also referred to the fact that there is no provision in the Act corresponding to sub-section (4) of section 42, stating that an employer desiring a change shall apply to the Labour Court. The effect of this is that it is not obligatory on the employer to approach the Labour Court before he makes a change. But we have not been able to find any provision in the Act or the Rules, which prevents an employer from approaching the Labour Court under section 78 of the Act, after a dispute has arisen.

Another reason given by the Industrial Court in support of its view is that an employer can act upon his own interpretation of the award and leave it to the employee to approach the Labour Court. That is undoubtedly true. But if an employer acts on his own interpretation or makes a change, it might give rise to disputes and create discontent amongst the workers. In order to avoid this contingency, an employer may prefer to approach the Labour Court to get the dispute resolved rather than to act on his own interpretation. One of the objects of the Act, as stated in the preamble, is to make provision for the settlement of 'industrial disputes'. We must, therefore, interpret the provisions of the Act in a manner, which would promote its objects. It would certainly be more conducive to the maintenance of industrial peace, if, in case there is a dispute as to the correct interpretation of an award, agreement or a settlement, the employer, before acting on his own interpretation, approaches the Labour Court and obtains a decision as to its correct interpretation.

In any case, sub-section (1) of section 79 clearly shows that the Legislature intended to give the right to approach the Labour Court to both the parties, i.e., the employer and employees.

The view taken by the Industrial Court and the Labour Court was, therefore, wrong. Accordingly, we set aside the order passed by the Labour Court confirmed in appeal by the Industrial Court and direct that the Labour Court should hear the application made by the petitioner on its merits and then dispose of it in accordance with law. The petitioner should get its costs from respondents Nos. 6 to 11.

We may also observe that the attitude adopted by respondents Nos. 6 to 11 in this case seems to us to be very unfair. Respondent No. 6 himself raised a dispute by complaining first orally and thereafter in writing that he was not being paid his proper wages, to which he was entitled either under the award or under the agreement of 1949. Respondents Nos. 7 to 11 in their written statement in the Labour Court also contended that they were entitled to receive the wages fixed for the clerks. When, however, the petitioner tried to obtain a settlement of the dispute, respondents Nos. 6 to 11 objected to it. They themselves did not make an application to the Labour Court for resolving the dispute. There is, therefore, force in the argument advanced on behalf of the petitioner that the object of these respondents was either to harass the petitioner by filing a number of applications before the Payment of Wages Authority or to raise a dispute, keep it unresolved and thereby create a cause for agitation and discontent amongst the workers. Such an attitude is unreasonable and does not reflect credit on these respondents.

[IN THE PUNJAB HIGH COURT.]
BHUPENDRA CEMENT WORKS

v.

INDUSTRIAL TRIBUNAL, PUNJAB AND OTHERS.

Gosain, J.

February 19, 1958.

'INDUSTRIAL DISPUTE'—REFERENCE OF DISPUTE TO INDUSTRIAL TRIBUNAL—QUESTION WHETHER DISPUTE IS 'INDIVIDUAL DISPUTE' OR 'INDUSTRIAL DISPUTE'—DECISION OF—PROPER FORUM—REFERENCE OF DISPUTE REGARDING DISMISSED WORKMEN—VALIDITY—APPEAL REGARDING SANCTION OF TRIBUNAL UNDER SECTION 33 PENDING BEFORE COURT—WHETHER BAR TO REFERENCE OF DISPUTE AS TO MERITS OF DISMISSAL.

Held, (i) that the question whether a dispute referred to an Industrial Tribunal is an 'industrial dispute' or an 'individual dispute' is one of fact which should be decided by the Tribunal on the evidence adduced before it. The question cannot be decided by the High Court on a petition for a writ under article 226.

(ii) It is settled law that a workman, who has been dismissed prior to the reference to an Industrial Tribunal of the industrial dispute regarding his dismissal, continues to be a workman for the purposes of the Industrial Disputes Act, 1947, and the dispute referred would be an 'industrial dispute'.

(iii) Even if the question whether permission should or should not have been granted by the Industrial Tribunal under section 33 of the Act for the dismissal of certain workmen is sub judice, there is nothing preventing the Government from making a reference as to the merits of the dismissal for decision by an Industrial Tribunal.

Civil Writ No. 942 of 1957.

D. C. Gupta for the management.

Anand Sarup and H. L. Sibal, for the opposite parties.

JUDGMENT

The Labour Department of the Punjab Government by its notification No. 1579/C/Lab. 57/1774, dated 1st February, 1957, referred to the Industrial Tribunal, Punjab, Jullundur, for adjudication an alleged dispute between Messrs. Associated Cement Companies Limited, Bhupendra Cement Works, Surajpur, and its workers. The dispute referred to in the notification was as follows:

"Whether the dismissal of the following workmen is justified and if not whether they should be re-instated and compensated for the period of unemployment:

- (1) Mehnga Ram, Bar Bender.
- (2) Janak Raj Soni, Store-clerk.
- (3) Vishwa Nath Bali, Painter.
- (4) Daulat Singh, Motor-driver.
- (5) Malik Ram Khanna, Turner."

On 20th February, 1957, the aforesaid Company presented an application raising certain preliminary objections to the aforesaid reference. The objections mainly were: (1) that the workmen in question did not fall within the definition of the term as given in the Act and as a consequence thereof it could not be said that any industrial dispute had

arisen, (2) that the dispute in question could not be termed as an "industrial dispute" as it was a dispute only between the individual workers and the Company and not between the union of workers and the Company, (3) that the employees in question had been discharged after obtaining requisite permission from the Labour Appellate Tribunal and although the Lucknow Bench of the Allahabad High Court had quashed the said order of the Labour Appellate Tribunal, the matter was still *sub judice* in the Supreme Court and the appeal of the Company on the point had been duly admitted by the Supreme Court. It appears that the Industrial Tribunal did not decide the preliminary objections as it was found necessary to record evidence of the parties before deciding them. The parties put in their respective claims and statements before the Industrial Tribunal and on the 6th April, 1957, issues were framed by the Tribunal. The case was adjourned to 6th June, 1957, for recording of the evidence of the Company, but, on that date the management requested for an adjournment on the ground that their attorney Shri Ranga Rao had fallen ill. The case was consequently adjourned to 17th July, 1957, but could not be taken up on that date as the Presiding Officer was on leave. It was adjourned to 17th August, 1957, but the management on that date also prayed for adjournment on the ground that their chief witness, Mr. Mohan, was ill. The case was adjourned to 13th September, 1957, but on that date again the attorney of the Company stated that he had not brought the evidence and submitted that the Tribunal should first decide the point of jurisdiction. The Tribunal did not agree to the adjournment and the Company produced one witness Shri A. R. Mohan and then closed their case. The case was adjourned to 30th September, 1957, for the evidence of the workmen and it appears that an application was then made by the Company that the preliminary objections should first be decided. The Tribunal passed an order on the 13th September, 1957, that it was not desirable to pass piece-meal orders and he would decide the whole case by one award. The petitioners, Messrs. Associated Cement Companies Limited, Bhupendra Cement Works, Surajpur, filed the present petition on 24th September, 1957, under article 226 of the Constitution of India praying for the issuance of a number of directions, orders and writs detailed in paragraph No. 22 of their petition. They impleaded the Industrial Tribunal, Punjab, Shri Avtar Narain Gujral, the State of Punjab, and the five employees as respondents. Detailed written statements were filed by the respondents in respect of the allegations made by the petitioners. Although, in the petition, the reference by the Punjab Government had been assailed on a large number of grounds

Mr. Dalip Chand Gupta, learned counsel appearing for the petitioners confined his arguments to four points only, which are as under ;

(1) That the dispute referred to the Tribunal was a dispute between the Company on the one hand and certain individual workers on the other and for that reason it could not be termed as an industrial dispute capable of being referred to the Industrial Tribunal under section 10 the Industrial Disputes Act.

(2) That the workmen had been discharged from service on 23rd April, 1955, and were no longer in the employment of the Company as on the date of reference. They did not fall within the definition of workmen as given in the Act before its amendment in the year 1956 and the dispute could not fall within the definition of "industrial dispute" as given in the original Act of 1947 before its amendment in 1956.

(3) That although the Industrial Tribunal, before whom disputes were then pending, had refused permission to the Company under section 33 of the Act to discharge the employees aforesaid, the Labour Appellate Tribunal had accorded such permission and the discharge had been made under the permission of the Labour Appellate Tribunal. The order of the Lucknow Bench of the Allahabad High Court quashing the order of the Labour Appellate Tribunal was under appeal before the Supreme Court and the matter must, therefore, be treated as *sub judice* and should not be decided by the Industrial Tribunal.

(4) That in any case a direction or order should be issued to the Industrial Tribunal to decide the preliminary objections before it enters upon the reference.

Regarding the first point the main contention of Mr. Gupta is that the dispute is only of five individuals and cannot be termed as an industrial dispute. In para. 13 of the written statement of the Labour Commissioner, which is duly supported by an affidavit, it is stated that the Bhupendra Cement workers Union, Surajpur, has been representing the cause of the workers for re-instatement from the very beginning and before the present reference was made the parties were called for a conciliation by the Labour Commissioner and Conciliation Officer, Punjab, *vide* letter No. ID/PT/10-57/18124, dated the 12th December, 1956. This contention has also been raised by the workers. The petitioners do not admit the correctness of the aforesaid allegations of the Labour Commissioner and it is, therefore, a case where evidence will be necessary to decide the facts. Both parties have already taken pleas on this point before the Labour Tribunal and the matter will be appropriately decided by the Tribunal after recording all the evidence produced by the parties. If the Tribunal ultimately comes to the conclu-

sion that the dispute does not fall within the ambit of the definition of "industrial dispute", it will obviously record an order refusing to proceed with the reference. I cannot, at this stage, decide the matter as the decision rests upon a question of fact depending upon evidence to be led by the parties for and against their contentions.

Regarding the second point the contention of Mr. Gupta is that the workmen mentioned above do not fall within the ambit of the definition of "workmen" as given in the original Act previous to its amendment by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act No. 36 of 1956), and that the dispute in question does not fall within the definition of "industrial dispute" as given in section 2(k) of the original Act. Mr. Gupta relies for this argument on a ruling of the Allahabad High Court in *Pharat Glass Factory v. M. P. Vidyarthi and others*, [1957] 1 L.L. J. 212, and another ruling of the Calcutta High Court in *Bilash Chandra Mitra v. Balmer Lawrie and Co., Ltd.*, [1953] 5 F.J.R. 73. In my opinion, however, the point is concluded by the judgment of the Supreme Court in *Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan* [1957] 11 F.J.R. 298. Their Lordships of the Supreme Court in that case relied upon a previous decision of the Federal Court reported in *Western India Automobile Association v. Industrial Tribunal, Bombay*, [1949] 1 F.J.R. 97, and held :

"The question whether a dismissed employee is an 'employee' within the meaning of section 2(10) of the Central Provinces and Berar Industrial Disputes Act (XXIII of 1947), must be held to be concluded by the decision of the Federal Court in [1949] 1 F.J.R. 97. The definition of 'industrial dispute' in section 2(12) of Act XXIII of 1947, which is in *pari materia* with the definition in section 2(k) of the Industrial Disputes Act, must be held to be wide enough to include a claim for re-instatement of a dismissed employee."

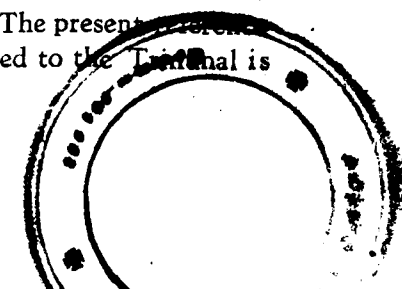
In *The Hindustan Times Ltd., New Delhi v. The Chief Commissioner, Delhi, and others* [1957] 12 F.J.R. 105, this Court also took the same view and Falshaw, J., following the aforesaid Federal Court and Supreme Court cases held :

"The fact that the employee was dismissed before the dispute in respect thereof arose does not in itself make the dispute not an industrial dispute for purposes of the Act. Such an employee is a "workman" within the meaning of the definition in section 2(s) and the dispute is an industrial dispute."

I understand that the aforesaid judgment of Falshaw, J., has recently been upheld in the Letters Patent appeal against the same which was heard recently by the Circuit Bench at Delhi. As the records of the Letters

Patent Appeal have not yet reached Chandigarh I could not have the advantage of persuing that judgment. I am unable to hold that the workmen aforesaid did not fall within the ambit of the Act and that the industrial dispute in question did not fall within the ambit of this definition as given in the original Act. Moreover I feel that the present dispute is really between the Company on the one hand and the present workers of the Company on the other. The worker's Union can certainly take up the dispute that five of their workmen had been wrongly dismissed and it would be a dispute falling within the ambit of an "industrial dispute".

On the third point the main contentions of the learned counsel for the petitioners were that in the year 1955 disputes were pending in the Industrial Tribunal as between the Company and its workers. The Company wanted to discharge the five workers mentioned above and for this purpose they made an application to the Tribunal under section 33 of the Act soliciting permission of the Tribunal to dismiss the workers. The Industrial Tribunal did not accord the permission and gave an award. The Company went in appeal to the Labour Appellate Tribunal and the said Tribunal on 17th March, 1955, set aside the order of the Industrial Tribunal refusing permission regarding the dismissal of the employees. The employees were dismissed on the 23rd April, 1955. On 12th September, 1955 the workers (respondents Nos. 4 to 8) filed in the Allahabad High Court petitions under article 226 of the Constitution of India praying for a writ of *certiorari* to issue quashing the order of the Labour Appellate Tribunal, dated 17th March, 1955. The petitions of Mehnga Ram, Janak Raj Soni, Vishwa Nath and Daulat Singh were accepted by the Lucknow Bench of the Allahabad High Court and the orders of the Labour Appellate Tribunal according permission for their dismissal were quashed. The petition of Malik Ram Khanna, however, was dismissed. The Company as well as Malik Ram Khanna filed petitions for leave to appeal to the Supreme Court and the Allahabad High Court granted the requisite leave. The company has filed appeals in the Supreme Court in respect of respondents Nos. 4 to 7 and Malik Ram Khanna has filed an appeal in the Supreme Court in respect of the dismissal of his petition. These appeals are still pending in the Supreme Court and I am told will take a pretty long time to be heard and disposed of. Mr. Gupta urges that the matter being *sub judice* in the Supreme Court the Punjab Government should not have made the reference in question and the Tribunal should not proceed to decide the same. I am unable to agree with this contention. The present reference is on the merits of dismissal and the dispute referred to the Tribunal is as under :—



"Whether the dismissal of the following workmen is justified and if not whether they should be re-instated and compensated for the period of unemployment."

This matter is evidently not before the Supreme Court. The Supreme Court is only concerned with the point as to whether permission to discharge the workers could or could not be granted under section 33 of the Act. The grounds of dismissal and the respective merits of each of the grounds have to be determined by the Tribunal and this matter cannot certainly be said to be *sub judice*. Even if permission is granted to dismiss employees, a dispute can still be raised as to whether the dismissal is justified on its merits and whether the workers should be re-instated and compensated for the period of unemployment. The ruling reported as *Management of Ambi's Cafe v. Thangavelu*, [1957] 12 F.J.R. 269, lends support to this view.

Regarding the fourth point I have already given a complete history of the proceedings before the Industrial Tribunal. It appears that the company realized the fact that the preliminary objections could not be decided without recording evidence of the parties and although it originally desired in its written statement the decision of the preliminary objections earlier than the rest of the matters, it did not press the point before the Industrial Tribunal till in September 1957. By that time the company's evidence had been closed and the evidence of the workmen only remained to be examined. The request of the Company in this respect was much belated and was rightly rejected. The Company has already examined its entire evidence on the merits also and the evidence of the workers would also have finished by this time if the Company had not obtained a stay order from this Court. The decision of the preliminary objections depends upon evidence on the points as to whether the Union of workers has taken up the dispute and as to whether there had been attempts for conciliation of the matter by the conciliation officer. I do not, therefore, feel inclined to issue any directions to the Tribunal that the decision of the preliminary objections be made earlier than the decision of the rest of the matters on merits. The case has already been pending before the Tribunal for about a year and it is in the interest of both the parties that it should be decided finally at as early a date as possible.

Lastly, Mr. Gupta contended that the Industrial Tribunal at present trying the case has already expressed its opinion and that the case should now be transferred to some other Tribunal. In my opinion the Industrial Tribunal has not made any expression of opinion which is likely to prejudice its decision in the matter and I am unable to accept the request for transfer of the case. Moreover, the reference having been made by

the Punjab Government to a particular Tribunal, I have no power to withdraw the case from that Tribunal and to refer it to another Tribunal.

In the result I dismiss this petition with costs.

[IN THE SUPREME COURT OF INDIA.]

CHINTAMAN RAO AND ANOTHER

v.

STATE OF MADHYA PRADESH.

B. P. Sinha, Jafer Imam and K. Subba Rao, JJ.

February 18, 1958.

FACTORIES ACT, 1948, SECTION 2(l)—'WORKER', DEFINITION OF—WHETHER INCLUDES INDEPENDENT CONTRACTOR OR EMPLOYEE OF INDEPENDENT CONTRACTOR—'WORKER' AND CONTRACTOR DISTINGUISHED—SATTEDARS EMPLOYED TO MANUFACTURE BIDIS—WHETHER 'WORKERS'.

The term "employed" in the definition of "worker" in section 2 (l) of the Factories Act, 1948, involves three ingredients, viz., (i) the employer, (ii) the employee, and (iii) the contract of employment. The employer is one who employs, i.e., engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. The definition does not include an independent contractor. The scheme of the Factories Act also indicates that the definition of 'worker' covers only a person who enters into a contract of service under the management and does not include an independent contractor or his servants who are not under the control and supervision of the management: *DHRANGADHARA CHEMICAL WORKS, LTD. v. STATE OF SAURASHTRA* [1957] 11 F.J.R. 439, applied.

Persons designated as 'sattedars' who are only independent contractors, the agreement between whom and the management is that the sattedar should receive tobacco from the management and supply them rolled into bidis for a certain consideration and over whom the management has no control as to the place or manner or work, do not fall within the definition of 'worker' in the Act. Nor do the persons employed by such sattedars to do the work of the sattedars, between which persons and the management there is no privity of contract, fall within the definition.

Criminal Appeal No. 93 of 1955.

N. C. Chatterjee (Rameshwar Nath with him) for the management.

I. N. Shroff for the State.

JUDGMENT.

The following Judgment of the Court was delivered by

SUBBA RAO, J.—This appeal by special leave is directed against the Order of the High Court of Judicature at Nagpur and raises the question of construction of some of the provisions of the Factories Act, (LXIII of 1948) (hereinafter referred to as the Act). Before posing the questions raised it would be convenient and useful at the outset to state the facts either found by the High Court or admitted by the parties.

Messrs. Brijlal Manilal and Company is a bidi factory situated in Sagar. The 1st appellant, Chintamanrao, is the managing-partner of the firm while the 2nd appellant, Kantilal, is its active manager. The company manufactures bidis. The process of manufacture, so far as is relevant to the question raised, is carried out in two stages.

The first stage: The management enters into a contract with independent contractors, known as *sattedars*, for the supply of bidis locally. The documents embodying the terms of the contract entered into by the *sattedars* were not produced in the case. But the terms of the contract are not in dispute. The management supplies tobacco to the *sattedars* and in some cases bidi leaves. Some of the *sattedars* maintain a small factory where they get bidis manufactured by engaging coolies. Others give tobacco and bidi leaves to outsiders who prepare bidis in their houses. After bidis are rolled in, the *sattedars* collect the bidis so manufactured and take them to the factory directly or through coolies where they are sorted and checked by the workers in the factory. The selected or approved bidis are separately packed in bundles of 10 and 25 and taken by the *sattedars* or the coolies in gauze trays to *tandul* and left there. The rejected bidis, commonly known as *chhant* are again rebundled by the *sattedars* and delivered to the factory. The management pays the *sattedars* the cost of the manufacture of bidis after deducting therefrom the cost of tobacco supplied to them. Thereafter the second stage of the process of the manufacture begins in the factory. It is carried out exclusively by the labourers employed in the factory. It consists of warming of bidis to give taste, wrapping them in tissue papers, labelling and finally bundling them in the *pudas*. The finished product is then marketed. From the aforesaid description of the dual process of manufacture of bidis it is manifest that a *sattedar* is only an independent contractor, who undertakes to do a specific job of work, i. e., the supply of bidis, directly or indirectly through his coolies, by manufacturing them either in his own factory or by entrusting the work to third parties, at a price to be paid by the management after

delivery and approval. He (*sattedar*) or his coolies neither work in the appellants' factory nor are they subject to the supervision or control of the appellants. The coolies or the third parties, to whom the work of making of bidis is entrusted by the *sattedars*, are employed by the *sattedars* and are paid by them. None of them works in the factory though they bring bidis to the factory for delivery in accordance with the terms of the contract. It may also be pointed out that the factory employs workers who are under the direct control and supervision of the factory management and who attend to the second part of the process of manufacture described above.

On December 9, 1952, Sri B. V. Desai, the Inspector of Factories, Madhya Pradesh, Nagpur, visited the factory at 5-30 p. m. At the time of his inspection he found the following persons in the factory:

1. Pirkaksha, son of Amir.
2. Abdul Sagir, son of Sk. Alam.
3. Deviprasad, son of Uddam.
4. Ramshankar, son of Mulchand.
5. Gopal, son of Mulchand.
6. Nirpat, son of Bhagirath.
7. Ramchand, son of Gyan.
8. Gotiram, son of Lila.
9. Basodi, son of Gulu.

Of the aforesaid persons, Deviprasad, Nirpat and Gotiram are *sattedars* and the rest are coolies employed by the *sattedars*. The Inspector found the first seven persons sorting out bidis and packing them into bundles of 10 and 25 in the premises and the last two bringing the bidis to the room in *jali* for warming. The said facts are practically admitted by some of the aforesaid persons, who gave evidence in the case, and they explained that they came to the factory on that day for delivering the bidis manufactured by them to the factory.

Thereafter, the Chief Inspector of Factories filed a complaint in the Court of the Judge-Magistrate, Sagar, against the appellants for violation of the provisions of sections 62 and 63 of the Act, under the former for failure to maintain the register of adult workers with all the prescribed entries duly filled in and under the latter for allowing the workers to work in the factory without making beforehand the entries of their attendance in the register of adult workers. The Judge-Magistrate, Sagar, held that the appellants contravened the provisions of the aforesaid sections and on that finding convicted them under section 92 of the Act and directed them to pay a fine of Rs. 50 and Rs. 25 respectively. On appeal, the Second Additional Sessions Judge, Sagar, confirmed the conviction of the 2nd appellant for contravening the

provisions of sections 62 and 63 but set aside that of the 1st appellant in regard to section 62 but confirmed the conviction for contravening section 63 of the Act. The revision petition filed by the appellants in the High Court of Judicature at Nagpur was dismissed. As aforesaid, with special leave of this Court, this appeal was filed against the order of the High Court.

The conflicting contentions of the parties may briefly be stated. The learned counsel for the appellants contends that a sattedar is an independent contractor, who undertakes to do a specific job of work for other persons without submitting himself to their control, and that he or his employee is not a worker within the definition of section 2(l) of the Act and therefore the appellants are not under duty to comply with the conditions of sections 62 or 63 in respect of them. Whereas the learned counsel for the State argues that the definition of the word 'worker' is comprehensive enough to take in all persons who work in the factory, whether employed by the factory or not.

The answer to the question raised turns upon the construction of the relevant provisions of the Act. They read:

"Section 62. *Register of adult workers:*

(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing—

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shifts, the relay to which he is allotted;

(e) such other particulars as may be prescribed;

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

Section 63. *Hours of work to correspond with notice under section 61 and register under section 62.*

No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

Section 92. *General penalty for offences.*

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to seventy-five rupees for each day on which the contravention is so continued.

Section 2(l) 'Worker' means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process.

Section 2(m) "Factory" means any premises including the precincts thereof—

(i) Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,.....

Section 2(n) "occupier" of a factory means the person who has ultimate control over the affairs of the factory,....."

The gist of the aforesaid provisions relevant to the question raised may be stated thus: The manager of a factory—factory is defined under the Act as the premises wherein a specified number of workers are working and in any part of which a manufacturing process is carried on, with or without the aid of power—shall maintain a register of adult workers working in the factory, showing the necessary particulars mentioned in section 62 of the Act. No adult worker shall be required or allowed to work in any such factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory. If there is any contravention of the said provisions, the occupier, who is defined as a person who has ultimate control over the affairs of the factory, and the manager are guilty of offences punishable under the Act.

Admittedly the names of the 9 persons, stated *supra*, were not entered in the register of adult workers maintained by the factory. Neither any notice of the periods of work allotted to them was displayed in the factory nor any entries made beforehand against their names in the register of adult workers of the factory. The appellants, therefore, would have certainly contravened the provisions of the Act, if, in fact, the said persons were workers in the factory as defined under the Act.

This takes us to the consideration of the definition of the term 'worker' under the Act. 'Worker' is defined to mean a person employed, directly or through any agency, whether for wages or not, in any manufacturing process. It is and it cannot be disputed that the making of bidis is a manufacturing process. But is a sattedar a person 'employed', directly or through agency within the meaning of definition "employed". The concept of employment involves three ingredients: (1) employer (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. Can it be said that a sattedar is employed by the management of the factory to serve under it? There is a well understood distinction between a contractor and a workman and between contract for service and contract of service. In Stroud's *Judicial Dictionary* (Third Edition, Volume 1, page 616), the distinction between a contractor and a workman is brought out in bold relief in the following manner:

"Of course, every person who makes an agreement with another for the doing of work is a contractor, in a general sense; but as used in Workmen's Compensation Act, 1897 (60 & 61 Vict., c. 37), section 4 "contractor" and 'WORKMAN' have come to have a more restricted and distinctive meaning, and "contractor" means 'one who makes an agreement to carry out certain work specified, but not on a contract of service'."

The same idea is repeated in a different terminology thus:

"A 'contractor' is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons, without submitting himself to their control in respect to the details of the work."

There is, therefore, a clear-cut distinction between a contractor and a workman. The identifying mark of the latter is that he should be under the control and supervision of the employer in respect of the details of

the work. This Court in *Dhrangadara Chemical Works Ltd. v. State of Saurashtra* [1957] 11 F.J.R. 439, in the context of the definition of "workman" under the Industrial Disputes Act (XIV of 1947) made the following observations at page 442:

"The essential condition of a person being a workman within the terms of this definition is that he should be *employed* to do the work in that industry, that there should be, in other words, an employment of his by the employer and that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus *employed* there can be no question of his being a workman within the definition of the term as contained in the Act."

Elaborating the point further, Bhagwati, J., who delivered the judgment on behalf of the Court, proceeded to state:

"The test which is uniformly applied in order to determine the relationship is the existence of a right of control in respect of the manner in which the work is to be done."

After considering the case-law on the subject the learned Judge re-stated the principle at page 444 thus:

"The principle which emerges from these authorities is that the *prima facie* test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in *Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd., and another* ([1947] 1 A.C. 1, 23). 'The proper test is whether or not the hirer had authority to control the manner of execution of the act in question'."

After noticing the subsequent trend of decisions wherein it is observed that the test of control is not one of universal application, the learned Judge expresses his view thus:

"The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer....."

There is no reason why the test laid down by this Court in the context of the definition of 'workman' under the Industrial Disputes Act of 1947 cannot be invoked or applied for ascertaining whether a person is a 'worker' under the Act. If the test be applied, it is not possible to hold that sattedars in the present case, having regard to the nature of the work undertaken by them and the terms whereunder their

services were engaged, are "workers" within the meaning of the definition under the Act. It has been established in the present case that the sattedar is only an independent contractor and the agreement between the management and the sattedar is only that the sattedar should receive tobacco from the management and supply them rolled in bidis for consideration. He is not under the control of the factory management and he can manufacture bidis wherever he pleases. It is immaterial to the management whether he makes the bidis in his own factory or distributes tobacco to different individuals for making bidis under a separate agreement entered into by him with them. The management cannot regulate the manner of discharge of his work. His liability is discharged by his supplying bidis and delivering them in the factory. The terms of the contract between the management and the sattedar, as disclosed in the evidence, do not enjoin on the latter to work in the factory. His only obligation is to deliver bidis at the factory. That would be an obligation imposed on any contractor who undertakes to supply and deliver the goods to the other party. We, therefore, hold that the sattedars in this case were not employed by the management as workers but were only independent contractors who performed their part of the contract by making bidis and delivering them at the factory.

If the sattedars, i.e., three out of the nine persons found at the factory, were not workers within the meaning of the Act, can it be said that the other persons, who were coolies employed by the sattedars to enable them to keep up their contract with the management of the factory, were workers as defined under the Act? A "worker" under the definition means a person employed, directly or through any agency. The words 'directly or through any agency' indicate that the employment is by the management directly or through some kind of employment agency and in either case there is a contract of employment between the management and the persons employed. Admittedly the coolies were not employed by the management; there was no privity of contract between them and the management. It is not disputed that the coolies were not employed by the sattedars for or on behalf of the management of the factory. They were employed by the sattedars on their own account and they paid them for the work extracted from them. On the aforesaid facts it is obvious that the coolies were not employed by the management directly nor were they employed by the management through the agency of sattedars. If so, it follows that coolies employed by the sattedars are not workers within the meaning of the definition in the Act.

The evidence discloses a third category of persons who took some part in the manufacturing process of bidis. They were the persons to whom the sattedars distributed tobacco for making bidis in their respective homes. It does not appear from the evidence that any one of the nine persons found in the factory belongs to that category. That apart, those persons cannot, in any sense of the term, be called the persons employed by the management directly or through any agency.

That that should be the construction of the provisions of section 2(1) of the Act is re-inforced by other relevant provisions of the Act. Chapter 6 is headed "Working hours of Adults". Section 51 prescribes the weekly hours of work for a worker. Section 52 provides that no adult worker shall be required or allowed to work in a factory on the first day of the week and if he is made to work on that day for the substitution of another holiday in its place. Section 53 gives compensatory holiday to a worker who is made to work on a regular holiday. Section 54 fixes the daily hours of work and section 55 intervals for rest. Section 56 limits the spread-over of period of work for an adult worker to 10½ hours in a day, including the intervals for rest. Sections 57, 58 and 59 deal with night shifts, prohibition of overlapping shifts and extra wages for overtime. Section 60 prohibits double employment i.e., employment of the same worker in a factory on any day on which he has already been working in any other factory. Section 61 enjoins on the management of the factory to display and maintain the notice of periods of work for adults, showing clearly for every day the periods during which the adult workers may be required to work and directs that the said notice shall be such that the workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 55, 56 and 58 of the Act. Section 62, for breach of which provisions the prosecution was launched in the present case, imposes a duty on the manager of every factory to maintain a register of adult workers, showing the name of each adult worker in the factory, the nature of his work, the group, if any, in which he is included, where his group works on shifts, the relay to which he is allotted and such other particulars as may be prescribed. Section 63 directs that the hours of work of an adult worker should correspond with the particulars given in the notice under section 61 and the register under section 62. Section 92 constitutes the contravention of any of the provisions of the Act or any rules made thereunder an offence punishable with imprisonment or fine or with both. The scheme of the aforesaid provisions indicates that the workmen in the factory are under the direct supervision and control of the management. The conditions of service are statutorily

regulated and the management is to conform to the rules laid down at the risk of being penalised for dereliction of any of the statutory duties. The management obviously cannot fix the working hours, weekly holidays, arrange for night shifts and comply with other statutory requirements, if the persons like the sattedars, working in their factories and getting their work done by others or through coolies, are workers within the meaning of the Act. It is well nigh impossible for the management of the factory to regulate their work or to comply with the mandatory provisions of the Act. The said provisions, therefore, give a clear indication that a worker under the definition of the Act is a person who enters into a contract of service under the management and does not include an independent contractor or his coolies or servants who are not under the control and supervision of the employer.

There is a conflict of decisions between the Allahabad and the Nagpur High Courts on the construction of section 2(l) of the Act. A Divisional Bench of the Nagpur High Court in *Provincial Government, Central Provinces and Berar v. Robinson*, I.L.R. [1947] Nagpur 43, considered the scope of the definition of the word "worker" in the Factories Act. There the facts were: On 10th November, 1943, a new battery of boilers was being erected on the premises of the Jubbulpore Electric Supply Co., in order to supply energy to the new Ordnance Factory at Khamaria. The work of erection was entrusted to Messrs. Babcock and Wilcox of Calcutta. The persons who were employed by Messrs. Babcock and Wilcox were found working in the premises of the Electric Supply Co., in contravention of the provisions of the Factories Act. The question was whether the employees of an independent contractor were workers as defined under section 2(l) of the Act. Pollock, J., who delivered the judgment of the Division Bench, stated at page 44 thus:

"The definition of 'worker' is a very wide one, and it is wide enough, in our opinion, to include persons employed in repairing machinery or putting up new machinery, even if such a machinery is not in actual use at the time."

It may be noticed that no contention was raised in that case that the persons found in the factory were not the employees of Jubbulpore Electric Supply Co. The only question raised and decided was whether the persons employed in repairing the machinery or putting up new machinery were persons engaged in any manufacturing process or any work incidental to or connected with it. The question now raised was not before the learned Judges, and therefore, there was no occasion for them to express an opinion thereon. The fact that if this question was raised and

[To be reprinted]

F.J.R.]

CHINTAMAN RAO V. STATE OF MADHYA PRADESH

113

decided in the way we did, the conclusion of the learned Judges would have been different cannot make the said decision an authority on a point not raised or decided upon by the learned Judges.

Another Bench of the Nagpur High Court in *The State v. Jiwabhai*, I.L.R. [1953] Nagpur 67, gave a wide connotation to the word "employed" under section 66(1)(b) of the Factories Act. The learned Judges observed that the word "employed", in their opinion, did not only connote employed on wages but also being occupied or engaged in some form of activity. If the learned Judges meant by that observation that if a person is found engaged in some form of activity in a factory, irrespective of whether there was any contract of employment or not between him and the employer, he is a worker, we should express our respectful dissent from the said observation. But, on the other hand, if they had only emphasized on the fact, which is obvious from the provisions of section 2(l), that the employment need not be for wages, the statement is unobjectionable.

The decision in *State v. Shri Krishna Prasad Dar*, [1953] 5 F.J.R. 683, need not be considered in detail as the learned Judges therein accepted the same interpretation that we have placed on the provisions of section 2(l) of the Act and came to the conclusion, on the facts of that case, that the persons therein were not workers of the factory.

We, therefore, hold that neither the sattedars nor the coolies found by the Inspector to be working in the factory were not workers, as they were not employed by the factory.

As they were not workers, the non-inclusion of their names in the register of adult workers or the absence of any entries in regard to them in the said register would not constitute an offence under section 92 of the Act.

Before leaving this case we would like to make one observation. Our decision is not intended to lay down a general proposition that under no circumstances a sattedar can be considered to be a worker within the meaning of its definition in the Act. Whether a particular person, under whatever designation he may be known, is a worker or not under the Act depends upon the terms of the contract entered into between him and the employer. In the case before us no attempt has been made by the prosecution to establish that the sattedars were employed by the management for doing work in the factory. The uncontradicted evidence is that they were independent contractors who came to the factory to deliver the bidis or sent their coolies to do the same. Our decision is, therefore, confined to the facts of this case.

In the result we allow the appeal and set aside the convictions of the appellants under section 92 of the Act and the sentences imposed upon them. The fines, if paid, will be refunded.

ONLY A FEW COPIES LEFT

DIGEST OF COMPANY CASES

Being a Digest of Cases on Company Law
Reported from Earliest Times to Date

by

A. N. AIYAR, B.A., B.L.,

Chief Editor : Income Tax Reports, Company Cases etc.

&

T. A. RAMACHANDRAN, B.A., B.L.,

Editor : Income Tax Reports & Company Cases.

This book will prove a useful companion volume to
A. N. AIYAR'S 'PRINCIPLES OF INDIAN COMPANY LAW'

Price Rs. 25-00

Post & Pack. Rs. 3-00

THE WEALTH-TAX ACT

(Fully annotated with critical notes)

BY

A. N. AIYAR, B.A., B.L.,

*Chief Editor : Income Tax Reports ; Company Cases ;
Indian Factories Journal & Sales Tax Cases.*

Price Rs. 6/- only.

Postage Re. 1/- Extra.

Order your Copies now

COMPANY LAW INSTITUTE OF INDIA (PRIVATE) LTD.,
Thyagarayanagar, MADRAS-17.

Printed and Published by T. A. Venkataraman, at the Company Law Institute Press,
21, Thyagaraya Road, Thyagarayanagar, Madras-17 : 1-4-1958.

