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JSTRIAL DISPUTES, EMPLOYEES' INSURANCE,
AYMENT OF WAGES, PROVIDENT FUNDS,
LAW REGULATING WORK IN MINES, ETC.,

WITH

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

1 - MAY 1958
MADRAS

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THE KERALA MINIMUM WAGES RULES, 1958.

Notification No. L1-4834/57/L&LAD *dated, Trivandrum, 25th February, 1958**.

In exercise of the powers conferred by section 30 of the Minimum Wages Act, 1948 (Central Act XI of 1948) the Government of Kerala hereby make the following Rules the same having been previously published as required under sub-section (1) of the said section, namely :—

CHAPTER I.

PRELIMINARY.

1. *Short title and extent.*—(1) These rules may be called the Kerala Minimum Wages Rules, 1958.

(2) They extend to the whole of the State of Kerala.

2. *Interpretation.*—In these rules, unless the context otherwise requires—

(a) 'Act' means the Minimum Wages Act, 1948 (Central Act XI of 1948);

(b) 'Authority' means the Authority appointed under sub-section (1) of section 20;

(c) 'Board' means the Advisory Board appointed under section 7;

(d) 'Chairman' means the Chairman of the Advisory Board, or the Committee as the case may be, appointed under section 9;

(e) 'Committee' means a Committee appointed under clause (a) of sub-section (1) of Section 5 and includes a sub-committee appointed under that section;

(f) 'Form' means a form appended to these Rules;

(g) 'Inspector' means a person appointed as Inspector under section 19;

(h) 'Registered Trade Union' means a trade union registered under the Indian Trade Unions Act, 1926 (XVI of 1926);

(i) 'Section' means a section of the Act; and

(j) All other words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

CHAPTER II.

MEMBERS AND STAFF AND MEETINGS OF THE BOARD AND COMMITTEE.

3. *Term of office of the members of the Committee.*—The term of office of the members of the Committee shall be such as in the opinion of the Government is necessary for completing the enquiry into the scheduled employment concerned and the Government may, at the time of the constitution of the Committee fix such terms and may, from time to time, extend it as circumstances may require.

4. *Term of office of members of the Board.*—(1) Save as otherwise expressly provided in these rules, the term of office of a non-official member of the Board shall be two years commencing from the date of his nomination ;

*Kerala Gaz., 4-3-58. Pt. 1, Sec. IV, p. 1.

Provided that such member shall, notwithstanding the expiry of the said period of two years, continue to hold office until his successor is nominated;

(2) A non-official member of the Board nominated to fill in casual vacancy shall hold office for the remaining period of the term of office of the member in whose place he is nominated;

(3) The official members of the Board shall hold office during the pleasure of the Government.

5. *Travelling allowance.*—A non-official member of the Committee, or the Board shall be entitled to draw travelling and halting allowances for any journey performed by him in connection with his duties as such member at the rates admissible to the members of the Legislative Assembly.

6. *Staff.*—(1) The Government may appoint a Secretary to the Committee or the Board, and such other Staff as it may think necessary, and may fix the salaries and allowances payable to them and specify their conditions of service;

(2) (i) The Secretary shall be the Chief Executive Officer of the Committee, or the Board, as the case may be. He may attend the meetings of such Committee, or Board but shall not be entitled to vote at such meetings;

(ii) The Secretary shall assist the Chairman in convening meetings and shall keep a record of the minutes of such meetings and shall take necessary measures to carry out the decisions of the Committee, or the Board as the case may be.

7. *Eligibility for renomination of the members of the Committee and the Board.*—An out-going member shall be eligible for renomination for the membership of the Committee, or the Board, of which he was a member.

8. *Resignation of the Chairman and members of the Committee, and the Board and filling of casual vacancies.*—(1) A member of the Committee or the Board other than the Chairman may by giving notice in writing to the Chairman resign his membership;

(2) The Chairman may resign by letter addressed to the Government;

(3) When a vacancy occurs or is likely to occur in the membership of the Committee or the Board, the Chairman shall submit a report to Government immediately. Government shall then take steps to fill the vacancy.

9. *Cessation and restoration of membership.*—(1). If a member of the Committee or the Board fails to attend three consecutive meetings, he shall, subject to the provisions of sub-rule (2), cease to be a member thereof;

(2). A person, who ceases to be a member under sub-rule (1) shall be given intimation of such cessation by a letter sent to him by registered post within fifteen days from the date of such cessation. The letter shall indicate that if he desires restoration of his membership, he may apply therefor within thirty days, from the receipt of such letter. The application for

restoration of membership, if received within the said period, shall be placed before the Committee or the Board, as the case may be, and if a majority of members present at the next meeting is satisfied that the reasons for failure to attend three consecutive meetings are adequate, the member shall be restored to membership immediately after a resolution to that effect is adopted.

10. *Disqualification.*—(1) A person shall be disqualified for being nominated as, and for being a member of the Committee, or the Board, as the case may be;

(i) if he is declared to be of unsound mind by a competent Court; or

(ii) if he is an undischarged insolvent; or

(iii) if before or after the commencement of the Act, he has been convicted of an offence involving moral turpitude;

(2) If any question arises whether a disqualification has been incurred under sub-rule (1) the decision of the Government thereon shall be final.

11. *Meetings.*—The Chairman may, subject to the provisions of rule 12, call a meeting of the Committee or the Board, as the case may be, at any time he thinks fit:

Provided that on a requisition in writing from not less than one-half of the members or not less than two-thirds of the representatives of the employers or of the employees, as the case may be, the Chairman shall call a meeting within a period of fifteen days from the date of receipt of such requisition.

12. *Notice of meetings.*—(1) The Chairman shall fix the date, time and place of every meeting and a notice in writing containing the aforesaid particulars along with a list of business to be conducted at the meetings shall be sent to each member by registered post at least fifteen days before the date fixed for such meeting:

Provided that in the case of an emergent meeting, notice of seven days only may be given to every member.

13. *Chairman.*—(1) The Chairman shall preside at the meetings of the Committee or the Board as the case may be;

(2) In the absence of the Chairman at any meeting the members shall elect from amongst themselves one member, by a majority of votes, who shall preside at such meeting.

14. *Quorum.*—No business shall be transacted at any meeting unless at least one-third of the members are present:

Provided that if at any meeting less than one-third of the members are present, the Chairman may adjourn the meeting to a date not later than seven days from the date of the original meeting and it shall thereupon be lawful to dispose of the business at such adjourned meeting irrespective of the number of members present.

15. *Disposal of business.*—All business shall be considered at a meeting of the Committee or the Board, as the case may be, and shall be decided by the majority of the votes of the members present and voting. In the event of an equality of votes, the Chairman shall have a casting vote:

Provided that the Chairman may, if he thinks fit direct that any matter shall be decided by the circulation of necessary papers and securing written opinion of the members:

Provided further that no decision on any question which is referred under the first proviso shall be taken unles supported by not less than a two-thirds majority of the members.

16. *Method of voting.*—Voting shall ordinarily be by show of hands but if any member asks for voting by ballot, or if the Chairman so decides, the voting shall be by secret ballot and shall be held in such manner as the Chairman may decide.

17. *Proceedings of the meeting.*—(1) The proceedings of each meeting showing *inter alia* the names of the members present thereat shall be forwarded to each member and to the Government as soon after the meeting as possible and in any case, not less than seven days before the next meeting.

(2) The proceedings of each meeting shall be confirmed with such modifications, if any, as may be considered necessary at the next meeting.

CHAPTER III.

SUMMONING OF WITNESSES BY THE COMMITTEE OR THE BOARD AND PRODUCTION OF DOCUMENTS.

18. *Summoning of witness and production of documents.*—(1). A Committee or the Board may summon any person to appear as a witness in the course of an enquiry. Such summons may require a witness to appear before it on a date specified therein and to produce any books, papers or other documents and things in his possession or under his control relating in any manner to the enquiry;

(2) A summons under sub-rule (1) may be addressed to an individual or an organisation of employers or a registered trade union of workers;

(3) A summons under this rule may be served—

(i) in the case of an individual, by being delivered or sent to him by registered post;

(ii) in the case of an employers' organisation or a registered trade union of workers, by being delivered or sent by registered post to the Secretary or other principal officer of the organisation or union, as the case may be;

(4) The provisions of the Code of Civil Procedure, 1908, relating to the summoning and enforcement of the appearance of witnesses and the production of documents shall, so far as may be, apply to proceedings before a Committee or the Board;

(5) All books, papers and other documents or things produced before a Committee, or the Board in pursuance of summous under sub-section (1) may be inspected by the chairman and independent members, and also by such parties as the chairman may allow with the consent of the other party; but the information obtained therefrom shall not be made public:

Provided that nothing contained in this rule shall apply to a disclosure of any such information for the purpose of a prosecution under section 193 of the Indian Penal Code (Central Act XLV of 1860).

19. *Expenses of witnesses.*—Every person who is summoned and appears as a witness before the Committee or the Board shall be entitled to an allowance for expenses incurred by him in accordance with the scale for the time being in force for payment of such allowance to witnesses appearing in civil courts in the State.

CHAPTER IV

COMPUTATION AND PAYMENT OF WAGES, HOURS OF WORK AND HOLIDAYS

20. *Mode of computation of the cash value of wages.*—The average retail prices at the nearest market for the period of three months immediately preceding the month for which the wages are to be computed shall be taken into account in computing the cash value of wages paid in kind and of concessions in respect of essential commodities supplied at concession rates. This computation shall be made in accordance with such directions as may be issued by the Government from time to time.

21. *Time and conditions of payment of wages and the deductions permissible from wages.*—(1) (i) The wage period with respect to any scheduled employment for which wages have been fixed shall not exceed one month and the wages of a worker in such employment shall be paid on a working day—

(a) in the case of establishments in which less than one thousand persons are employed, before the expiry of the seventh day, and

(b) in the case of other establishments, before the expiry of the tenth day after the last day of the wage period in respect of which the wages are payable;

(ii) Where the employment of any person is terminated by or on behalf of the employer or due to the acceptance of the employee's resignation, the wages earned by him shall be paid before the expiry of the second working day after the day on which his employment is terminated;

(iii) The wages of an employed person shall be paid to him without deduction of any kind except those authorised by or under these rules.

Explanation.—(1) Every payment made by the employed person to the employer or his agent shall for the purpose of these rules, be deemed to be a deduction from wages.

(2) Deductions from the wages of a person employed in a scheduled employment shall be of one or more of the following kinds, namely:—

(i) fines in respect of such acts and omissions on the part of the employed persons as may be specified by the Government by general or special order in this behalf;

(ii) deductions for absence from duty;

(iii) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(iv) deductions for house accommodation supplied by the employer, or the Government or anv authority notified by the Government for providing housing accommodation ;

(v) deduction for such amenities and services supplied by the employer as the Government, may, by general or special order authorise;

Explanation.—The word 'amenities and services' in this clause do not include the supply of tools and protectives required for the purposes of employment.

(vi) deductions for recovery of advances or for adjustment of over-payments of wages:

Provided that such advances do not exceed an amount equal to wages for two calendar months of the employed person and, in no case shall the monthly instalment of deduction exceed one-fourth of the wages earned in that month.

(vii) deduction of income-tax payable by the employed person ;

(viii) deductions required to be made by order of a Court or other competent authority;

(ix) deductions for subscriptions to and for repayment of advances from any Provident Fund to which the Provident Funds Act, 1925 (Central Act XIX of 1925) or the Employees' Provident Fund Act, 1952 (Central Act XIX of 1952) applies or any recognised Provident Fund as defined in section 58A of the Indian Income Tax Act, 1922, or any Provident Fund approved in this behalf by the Government during the continuance of such approval;

(x) deductions for payment to Co-operative Societies or to a Scheme of Insurance approved by the Government;

(xi) deductions for recovery or adjustment of amounts other than wages, paid to the employed person in error or in excess of what is due to him;

Provided that the prior approval of the Inspector or any other officer authorised by the State Government in this behalf is obtained in writing before making the deductions, unless the employee gives his consent in writing to such deductions.

(3) Any person desiring to impose a fine on an employed person or to make a deduction for damage or loss caused by him shall explain to him personally and also in writing the act or omission or the damage or loss in respect of which the fine or deduction is proposed to be imposed or made and give him an opportunity to offer an explanation in writing and also to be heard in person, if he so desires (in the presence of another person). The fine shall be levied or the deduction ordered after due consideration of the explanation offered (in writing or in person as the case may be). The amount of the said fine or deduction shall also be intimated to him.

(4) (i) The total amount of fine which may be imposed under sub-rule (3) shall not exceed in any one wage period, an amount equal to half anna in the rupee of the wages payable to the employed person in respect of such wage period.

(ii) The total amount of deduction for damage or loss ordered under sub-rule (3) shall not exceed the cost of replacing the article damaged or lost on the date of passing the order of recovery, or the book value of the article whichever is less. Where the amount of deduction exceeds an amount equal to one-third of the wages payable to the employed person in respect of a wage period, the deduction shall be made in instalments in such a way that the amount of each instalment does not exceed one-third of the average wages payable to him between one instalment and the other.

(iii) All realizations under clause (i) and all deductions under clause (ii) shall be recorded in a register maintained in forms I, II and III as the case may be. A return in Form III shall be submitted annually by the employer:

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of an establishment gives in respect of any or all the employed persons in that establishment the particulars required in the forms prescribed under this sub-rule he may, by order in writing direct that such roll or register shall to the corresponding extent be maintained in place of and be treated as the register of that establishment required to be maintained under this sub-rule.

(5) All realisations from fine shall be applied only to such purposes which are beneficial to the persons employed in the scheduled employment as are generally approved by the Government in this behalf.

(6) Nothing in this rule shall be deemed to affect the provisions of the Payment of Wages Act, 1936, the Madras Shops and Establishments Act, 1947 and the Travancore-Cochin Shops and Establishments Act, 1125.

22. *Display of notices.*—Notice in Form IV containing—

(i) extracts from Act (Sections 11, 12, 14, 15, 16, 17 and 20), and Rules (Chapter IV and Rules 31, 32 and 35);

(ii) the minimum rates of wages; and

(iii) name and address of the Inspector; shall be displayed in English and in the language understood by the majority of the workers in the employment at such places as may be selected by the Inspector and shall be maintained in a clean and legible condition.

23. *Weekly holidays.*—(1) Unless otherwise permitted by the Government, no worker shall be required or allowed to work in a Scheduled employment, on the first day of the week (hereinafter referred to as the said day) except when he has or will have a holiday for the whole day on one of the three days immediately before or after the said day. Every worker who shall be required or allowed to work in a scheduled employment on the said day shall be paid wages equal to his average daily wages during the week he has last worked;

Provided that the weekly holiday may be substituted by another day:

Provided further 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.

(2) Where in accordance with the provision of sub-rule (1), any worker works on the said day and has had a holiday on one of the three days immediately preceding it, the said day shall for the purpose of calculating his weekly hours of work, be included in the preceding week.

Explanation.—For the purposes of this rule week shall mean a period of seven days beginning at mid-night on Saturday night.

(3) Nothing in this rule shall be deemed to affect the provisions of the Madras Shops and Establishments Act, 1947 and the Travancore-Cochin Shops and Establishments Act, 1125.

24. *Number of hours of work which shall constitute a normal working day for employments other than plantations.*—(1) The number of hours which shall constitute a normal working day shall be—

(a) in the case of an adult 9 hours,

(b) in the case of a child, 4½ hours.

(2) The period of work of an adult worker each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(3) The period of work of an adult worker shall be so arranged that inclusive of his intervals for rest under sub-rule (2), they shall not spread over more than ten and a half hours in any day:

Provided that the Inspector may, for reasons to be specified in writing, increase the spreadover to twelve hours.

(4) The number of hours of work in the case of an adolescent shall be the same as that of an adult or a child according as he is certified to work as an adult or a child by a competent medical practitioner approved by the Government.

(5) The provisions of sub-rules (1) to (4) shall, in the case of workers in agricultural employment, be subject to such modifications as may, from time to time, be notified by the Government.

(6) No child shall be employed or permitted to work for more than 4 1/2 hours on any day.

(7) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948.

25. *Number of hours of work which shall constitute a normal working day for employment in plantations.*—(1) The number of hours which shall constitute a normal working day for employment in plantations shall be:

(a) in the case of an adult, 9 hours;

(b) in the case of an adolescent, 6 hours and 40 minutes;

(c) in the case of a child, 4 1/2 hours.

(2). The period of work of an adult worker each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(3) The period of work of an adult worker shall be so arranged that inclusive of his intervals for rest under sub-rule (2) they shall not spread over more than twelve hours including the time spent in waiting for work on any day.

(4) The period of work of an adolescent each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(5) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948 and the Plantations Labour Act, 1951.

26. *Cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day.*—(1) The following shall be cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day:

(a) tempest, fire, rain, breakdown of machinery or stoppage of or any cut in the supply of power, epidemic, civil commotion or other cause beyond the control of the employer;

(b) refusal to work;

(c) strike or stay-in strike.

(2) In the case of interruption brought about by tempest, fire, rain, breakdown of machinery, epidemic, civil commotion or other natural causes beyond the control of the employer, the employee who has already started work for the day shall be paid wages at half the minimum rates of wages fixed for a normal working day if the interruption occurs at any time before the interval for midday rest. If the interruption occurs after the interval for midday rest he shall be paid wages for a full normal working day.

(3) If by reason of stoppage of or any cut in the supply of power, effected by the Government, an employer is prevented on any working day from giving work to his employees for a full normal working day, the employees shall receive wages for such day in the proportion the number of hours he worked bears to the number of hours constituting the normal working day.

27. *Number of hours of overtime.*—The total number of hours of overtime a worker shall be required or allowed to work in any employment shall not exceed fifty for any one quarter.

Explanation.—'Quarter' means a period of three consecutive months begininng on the 1st of January, the 1st of April, the 1st of July or the 1st of October.

28.—*Extra wages for overtime.*—(1) When a worker works in an employment for more than nine hours on any day or for more than forty eight hours in any week, he shall, in respect of overtime work, be entitled to wages—

(a) in the case of employment in Agriculture, at one and a half times the ordinary rate of wages ;

(b) in the case of any other scheduled employment at double the ordinary rate of wages;

Explanation.—The expression "ordinary rate of wages" means the basic wages *plus* such allowances including the cash equivalent of the advantages accruing through the concessional sale to the person employed of food grains and other articles as the person employed is for the time being entitled to but does not include a bonus.

(2). A register showing overtime payments shall be kept in Form V. Overtime work shall be entered up in the register before the expiry of 24 hours from the commencement of such work :

Provided that if the Inspector is of opinion that any muster roll or register maintained as part of the routine of an establishment gives in respect of any or all the employed persons in that establishment the particulars required in the form prescribed under this sub-rule 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 Overtime Register for workers in that establishment.

(3) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948.

29.—*Form of registers and records.*—(1) A register of Wages shall be maintained by every employer and kept in such form as may be notified by the Government and shall include the following particulars :—

(a) the minimum rates of wages payable to each employed person;

(b) the number of days for which each employed person worked over-time for each wage-period;

(c) the gross wages of each person employed for each wage-period;

(d) all deductions made from wages, with an indication, in each case, of the kinds of deductions mentioned in sub-rule (2) of rule 21 ;

(e) the wages actually paid to each person employed for each wage-period and the date of payment.

(2) Wage slips containing the aforesaid particulars and such other particulars as may be notified by the Government shall be issued by every employer to every person employed by him at least a day prior to the disbursement of wages.

(3) Every employer shall get the signature or the thumb impression of every person employed on the wage book and wage slips at the time of payment of wages.

(4) Entries in the wage books and wage slips shall be authenticated by the employer or any person authorised by him in this behalf.

(5) A muster roll shall be maintained by every employer and kept in Form VI :

Provided that if the Inspector is of opinion that any muster roll or register maintained as part of the routine of an establishment gives in respect of any or all the employed persons in that establishment the particulars required in the forms prescribed under this sub-rule 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 muster roll of workers in that establishment.

30. The registers, records and notices maintained as exhibited under the provisions of these rules shall always be available at or as near as practicable, to the site of employment and shall be produced or caused to be produced for inspection, at all reasonable hours by any Inspector having jurisdiction over the establishment.

CHAPTER V

CLAIMS UNDER THE ACT

31. *Application.*—An application under sub-section (2) of section 20 or sub-section (1) of section 21 by or on behalf of an employed person or group of employed persons shall be made in duplicate in Forms VII and VIII as the case may be.

32. *Authorisation.*—The authorisation to act on behalf of an employed person or persons under sub-section (2) of section 20 or sub-section (1) of section 21 shall be given in Form IX by an instrument which shall be presented to the Authority hearing the application and shall form part of the record.

33. *Appearance of parties.*—(1) If an application under sub-section (2) of section 20 or section 21 is entertained, the Authority shall serve upon the employer by registered post a notice in Form X to appear before him on a specified date with all relevent documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the Authority may hear and determine the application *ex parte.*

(3) If the applicant or his representative fails to appear on the specified date, the Authority may dismiss the application.

(4) An order passed under sub-rule (2) or sub-rule (3) may be set aside on sufficient cause being shown by the defaulting party within one month of the date of the said order, and the application shall then be re-heard after service of notice on the opposite party on the date fixed for re-hearing in the manner specified in the sub-rule (1).

CHAPTER VI

SCALE OF COSTS IN PROCEEDINGS UNDER THE ACT.

34. *Costs.*—(1) The Authority, for reasons to be recorded in writing, may direct that the costs of any proceedings pending before it shall not follow the event.

(2) The costs which may be awarded shall include—

(i) expenses incurred on account of court fees;

(ii) expenses incurred on subsistence money to witnesses; and

(iii) pleader's fees to the extent of ten rupees provided that the Authority in any proceeding, may reduce the fees to a sum not less than five rupees or for reasons to be recorded in writing increase it to a sum not exceeding twenty-five rupees.

(3) Where there are more than one pleader or more than one applicant or opponent the Authority may subject as aforesaid, award to the successful party or parties such costs as it may deem proper.

35. *Court fees.*—The Court fee payable in respect of proceedings under section 20 shall be—

(i) for every application to summon a witness—One rupee in respect of each witness;

(ii) for every application made by or on behalf of an individual or by or on behalf of a group of individuals—one rupee :

Provided that the Authority may, if in its opinion, the applicant is a pauper exempt him wholly or partly from the payment of such fees:

Provided further that no fee shall be chargeable,

(a) from persons employed in Agriculture; or

(b) in respect of an application made by an Inspector.

36. *Saving.*—These rules shall not apply in relation to any scheduled employment in so far as there are in force rules applicable to such employment, which in the opinion of the State Government, make equally satisfactory provisions for the matters dealt with by these rules and such opinion shall be final.

37. *Repeal.*—The Travancore-Cochin Minimum Wages Rules, 1951 and the Minimum Wages (Madras) Rules, 1953 as in force in the Malabar District referred to in sub-section (2) of section 5 of the S. R. Act, 1956 (37 of 1956) are hereby repealed :

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

FORM I.

REGISTER OF FINES.

[Rule 21(4)]

Employer..............................

Serial No.	Name.	Father's/Husband's name.	Sex.	Department.	Nature and date of the offence for which fine imposed.	Whether workman showed cause against fine or not. If so, enter date.	Rate of wages.	Date and amount of fine imposed.	Date on which fine realised.	Remarks.
1	2	3	4	5	6	7	8	9	10	11

FORM II.

[*Rule* 21(4)]

REGISTER OF DEDUCTIONS FOR DAMAGE OR LOSS CAUSED TO THE EMPLOYERS BY THE NEGLECT OR DEFAULT OF THE EMPLOYED PERSON

..............................Employer..............................

Serial No.	Name.	Father's/Husband's name.	Sex.	Department.	Damage or loss caused with date.	Whether worker showed cause against deduction, if so, enter date.	Date and amount of deduction imposed.	Number of instalments if any.	Date on which total amount realised.	Remarks.
1	2	3	4	5	6	7	8	9	10	11

FORM III.

[*Rule* 21(4)]

DEDUCTION FROM WAGES.

Return for the year ending the 31st December..............................

1. Name of the employer and postal address..............................
2. Total number of persons employed :—Adults..............................
   Children..............................
3. Total wages paid..............................
4. Number of cases and amounts realised as :—

No. of cases.		Amount.	
(a) Fines ...	...	...	...
(b) Deductions for damage or loss	...	...	...
(c) Deductions for breach of contract	...	...	...

5. Disbursements from Fine Fund :—

	Amount.	Purpose.
	Rs.	

Dated..................19 .

Signature..............................

Designation..............................

FORM IV.

(*See* Rule 22)

NOTICE

Extract from the Act and Rules made thereunder.

(Extract from the Act)

11. *Wages in kind.*—(1) Minimum Wages payable under this Act shall be paid in cash.

(2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the official Gazette, authorise the payment of minimum wages either wholly or partly in kind.

(3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the official Gazette, authorise the provision of such supplies at concession rates.

(4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

12. *Payment of minimum rates of wages.*—(1) Where in respect of any scheduled employment a notification under section 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorised within such time and subject to such conditions as may be prescribed.

(2) Nothing contained in this section shall affect the provisions of the Payment of Wages Act, 1936 (IV of 1936).

14. *Overtime.*—Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

(2) Nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act, 1948 (LXIII of 1948) in any case where those provisions are applicable.

15. *Wages of worker who works for less than normal working day.*—If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:

Provided, however, that he shall not be entitled to receive wages for a full normal working day—

(i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and

(ii) in such other cases and circumstances as may be prescribed.

16. *Wages for two or more classes of work.*—Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

17. *Minimum time rate wages for piece work.*—Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages not less than the minimum time rate.

20. *Claims.*—(1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the over-time rate under section 14 to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1) may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amount become payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under the Act, direct—

(i) in the case of a claim arising out of a payment of less than the minimum rates of wages the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees,

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered—

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) shall have all the powers of the Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of section 195, and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

EXTRACTS FROM THE RULES.

CHAPTER IV

COMPUTATION AND PAYMENT OF WAGES, HOURS OF WORK AND HOLIDAYS.

20. *Mode of computation of the cash value of wages.*—The average retail prices at the nearest market for the period of three months immediately preceding the month for which the wages are to be computed shall be taken into account in computing the cash value of wages paid in kind and of concessions in respect of essential commodities supplied at concession rates. This computation shall be made in accordance with such directions as may be issued by the Government from time to time.

21. *Time and conditions of payment of wages and the deductions permissible from wages.*—(1) (i) The wage period with respect to any scheduled employment for which wages have been fixed shall not exceed one month and the wages of a worker in such employment shall be paid on a working day—

(a) in the case of establishments in which less than one thousand persons are employed, before the expiry of the seventh day, and

(b) in the case of other establishments, before the expiry of the tenth day after the last day of the wage period in respect of which the wages are payable.

(ii) Where the employment of any person is terminated by or on behalf of the employer or due to the acceptance of the employee's resignation, the wages earned by him shall be paid before the expiry of the second working day after the day on which his employment is terminated ;

(iii) The wages of an employed person shall be paid to him without deduction of any kind except those authorised by or under these rules.

Explanation.—Every payment made by the employed person to the employer or his agent shall for the purpose of these rules, be deemed to be a deduction from wages.

(2) Deductions from the wages of a person employed in a scheduled employment shall be of one or more of the following kinds, namely :—

(i) fines in respect of such acts and omissions on the part of the employed persons as may be specified by the Government by general or special order in this behalf ;

(ii) deductions for absence from duty ;

(iii) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default ;

(iv) deductions for house accommodation supplied by the employer, or the Government or any authority notified by the Government for providing housing accommodation ;

(v) deduction for such amenities and services supplied by the employer as the Government, may, by general or special order authorise ;

Explanation.—The word 'amenities and services' in this clause do not include the supply of tools and protectives required for the purposes of employment.

(vi) deductions for recovery of advances or for adjustment of over-payments of wages :

Provided that such advances do not exceed an amount equal to wages for two calendar months of the employed person and, in no case shall the monthly instalment of deduction exceed one-fourth of the wages earned that month.

(vii) deduction of income-tax payable by the employed person ;

(viii) deductions required to be made by order of a court or other competent authority ;

(ix) deductions for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (Central Act XIX of 1925) or the Employees' provident funds Act, 1952 (Central Act, XIX of 1952) applies or any recognised provident fund as defined in section 58A of the Indian Income Tax Act, 1922 or any provident fund approved in this behalf by the Government during the continuance of such approval ;

(x) deductions for payment to Co-operative Societies or to a Scheme of Insurance approved by the Government ;

(xi) deductions for recovery or adjustment of amounts other than wages, paid to the employed person in error or in excess of what is due to him :

Provided that the prior approval of the Inspector or any other officer authorised by the State Government in this behalf is obtained in writing before making the deductions, unless the employee gives his consent in writing to such deductions.

(3) Any person desiring to impose a fine on an employed person or to make a deduction for damage or loss caused by him shall explain to him personally and also in writing the act or omission or the damage or loss in respect of which the fine or deduction is proposed to be imposed or made and give him an opportunity to offer an explanation in writing and also to be heard in person if he so desires (in the presence of another person). The fine shall be levied or the deduction ordered after due consideration of the explanation offered (in writing or in person as the case may be). The amount of the said fine or deduction shall also be intimated to him.

(4) (i) The total amount of fine which may be imposed under sub-rule (3) shall not exceed in any one wage period, an amount equal to half anna in the rupee of the wages payable to the employed person in respect of such wage period;

(ii) The total amount of deduction for damage or loss ordered under sub-rule (3) shall not exceed the cost of replacing the article damaged or lost on the date of passing the order of recovery, or the book value of the article whichever is less. Where the amount of deduction exceeds an amount equal to one-third of the wages payable to the employed person in respect of a wage period, the deduction shall be made in instalments in such a way that the amount of each instalment does not exceed one-third of the average wages payable to him between one instalment and the other;

(iii) All realizations under clause (i) and all deductions under clause (ii) shall be recorded in a register maintained in forms I, II and III as the case may be. A return in Form III shall be submitted annually by the employer:

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of an establishment gives in respect of any or all the employed persons in that establishment the particulars required in the form prescribed under this sub-rule he may, by order in writing direct that such roll or register shall to the corresponding extent be maintained in place of and be treated as the register of that establishment required to be maintained under this sub-rule.

(5) All realisations from fine shall be applied only to such purposes which are beneficial to the persons employed in the scheduled employment as are generally approved by the Government in this behalf.

(6) Nothing in this rule shall be deemed to affect the provisions of the Payment of Wages Act, 1936, the Madras Shops and Establishments Act, 1947 and the Travancore-Cochin Shops and Establishments Act, 1125.

22. *Display of notices.*—Notice in Form IV containing—

(i) extracts from Act (Sections 11, 12, 14, 15, 16, 17 and 20), and Rules (Chapter IV and Rules 31, 32 and 35);

(ii) the minimum rates of wages; and

(iii) name and address of the Inspector, shall be displayed in English and in the language understood by the majority of the workers in the employment at such places as may be selected by the Inspector and shall be maintained in a clean and legible condition.

23. *Weekly holidays.*—(1) Unless otherwise permitted by the Government, no worker shall be required or allowed to work in a Scheduled employment, on the first day of the week (hereinafter referred to as the said day) except when he has or will have a holiday for the whole day on one of the three days immediately before or after the said day. Every worker who shall be required or allowed to work in a scheduled employment on the said day shall be paid wages equal to his average daily wages during the week he has last worked;

Provided that the weekly holiday may be substituted by another day:

Provided further 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.

(2) Where in accordance with the provision of sub-rule (1), any worker works on the said day and has had a holiday on one of the three days immediately preceding it, the said day shall for the purpose of calculating his weekly hours of work, be included in the preceding week.

Explanation.—For the purposes of this rule week shall mean a period of seven days beginning at mid-night on Saturday night.

(3) Nothing in this rule shall be deemed to affect the provisions of the Madras Shops and Establishments Act, 1947, and the Travancore-Cochin Shops and Establishments Act, 1125.

24. *Number of hours of work which shall constitute a normal working day for employments other than plantations.*—(1) The number of hours which shall constitute a normal working day shall be—

(a) in the case of an adult 9 hours,

(b) in the case of a child, 4½ hours.

(2) The period of work of an adult worker each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(3) The period of work of an adult worker shall be so arranged that inclusive of his intervals for rest under sub-rule (2) they shall not spread over more than ten and a half hours in any day:

Provided that the Inspector may, for reasons to be specified in writing, increase the spread over to twelve hours.

(4) The number of hours of work in the case of an adolescent shall be the same as that of an adult or a child according as he is certified to work as an adult or a child by a competent medical practitioner approved by the Government.

(5) The provisions of sub-rules (1) to (4) shall, in the case of workers in agricultural employment, be subject to such modifications as may, from time to time, be notified by the Government.

(6) No child shall be employed or permitted to work for more than 4½ hours on any day.

(7) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948.

25. *Number of hours of work which shall constitute a normal working day for employment in plantations.*—(1) The number of hours which shall constitute a normal working day for employment in plantations shall be:

(a) in the case of an adult, 9 hours;
(b) in the case of an adolescent, 6 hours and 40 minutes;
(c) in the case of a child, 4 1/2 hours.

(2) The period of work of an adult worker each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(3) The period of work of an adult worker shall be so arranged that inclusive of his intervals for rest under sub-rule (2) they shall not spread over more than twelve hours including the time spent in waiting for work on any day.

(4) The period of work of an adolescent each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(5) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948 and the Plantations Labour Act, 1951.

26. *Cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day.*—(1) The following shall be cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day—

(a) tempest, fire, rain, breakdown of machinery or stoppage of or any cut in the supply of power, epidemic, civil commotion or other cause beyond the control of the employer;
(b) refusal to work;
(c) strike or stay-in strike.

(2) In the case of interruption brought about by tempest, fire, rain, breakdown of machinery, epidemic, civil commotion or other natural causes beyond the control of the employer, the employee who has already started work for the day shall be paid wages at half the minimum rates of wages fixed for a normal working day if the interruption occurs at any time before the interval for mid-day rest. If the interruption occurs after the interval for mind-day rest he shall be paid wages for a full normal working day.

(3) If by reason of stoppage of or any cut in the supply of power, effected by the Government, an employer is prevented on any working day from giving work to his employees for a full normal working day, the employees shall receive wages for such day in the proportion the number of hours he worked bears to the number of hours constituting the normal working day.

27. *Number of hours of over-time.*—The total number of hours of over time a worker shall be required or allowed to work in any employment shall not exceed fifty for any one quarter.

Explanation.—"Quarter" means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October.

28. *Extra wages for over-time.*—(1) When a worker works in an employment for more than nine hours on any day or for more than forty-eight hours in any week, he shall, in respect of over-time work, be entitled to wages—

(a) in the case of employment in Agriculture, at one and a half times the ordinary rate of wages;

(b) in the case of any other scheduled employment at double the ordinary rate of wages.

Explanation.—The expression "ordinary rate of wages" means the basic wages *plus* such allowances including the cash equivalent of the advantages accruing through the concessional sale to the person employed of food grains and other articles as the person employed is for the time being entitled to but does not include a bonus.

(2) A register showing over-time payments shall be kept in Form V. Over-time work shall be entered up in the register before the expiry of 24 hours from the commencement of such work:

Provided that if the Inspector is of opinion that any muster roll or register maintained as part of the routine of an establishment gives in respect of any or all the employed persons in that establishment the particulars required in the form prescribed under this sub-rule 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 over-time register for workers in that establishment.

(3) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948.

29. *Form of registers and records.*—(1) A register of wages shall be maintained by every employer and kept in such form as may be notified by the Government and shall include the following particulars:

(a) the minimum rates of wages payable to each employed person;

(b) the number of days for which each employed person worked over-time for each wage-period;

(c) the gross wages of each person employed for each wage period;

(d) all deductions made from wages, with an indication, in each case, of the kinds of deductions mentioned in sub-rule (2) of rule 21;

(e) the wages actually paid to each person employed for each wage-period and the date of payment.

(2) Wage slips containing the aforesaid particulars and such other particulars as may be notified by the Government shall be issued by every employer to every person employed by him at least a day prior to the disbursement of wages.

(3) Every employer shall get the signature or the thumb impression of every person employed on the wages book and wage slip at the time of payment of wages.

(4) Entries in the wage books and wage slips shall be authenticated by the employer or any person authorised by him in this behalf.

(5) A muster roll shall be maintained by every employer and kept in Form VI:

Provided that if the Inspector is of opinion that any muster roll or register maintained as part of the routine of an establishment, gives in respect of any or all the employed persons in that establishment the particulars required in the forms prescribed under this sub-rule 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 muster roll of workers in that establishment.

30. The registers, records and notices maintained as exhibited under the provisions of these rules shall always be available at or as near as practicable, to the site of employment and shall be produced for inspection, at all reasonable hours by any Inspector having jurisdiction over the establishment.

31. *Application.*—An application under sub-section (2) of section 20 or sub-section (1) of section 21 by or on behalf of an employed person or group of employed persons, shall be made in duplicate in Forms VII and VIII as the case may be.

32. *Authorisation.*—The authorisation to act on behalf of an employed person or persons, under sub-section (2) of section 20 or of sub-section (1) of section 21 shall be given in Form IX by an instrument which shall be presented to the authority hearing the application and shall form part of the record.

35. *Court fees.*—The Court fee payable in respect of proceedings under section 20 shall be—

(i) for every application to summon a witness--One rupee in respect of each witness;

(ii) for every application made by or on behalf of an individual or by or on behalf of a group of individuals—One rupee:

Provided that the authority may, if in its opinion, the applicant is a pauper exempt him wholly or partly from the payment of such fees;

Provided further that no fee shall be chargeable—

(a) from persons employed in agriculture; or

(b) in respect of an application made by an Inspector.

Rate of Minimum Wages

Rate

Name of Employment

1

2

3 etc.

Name and address of Inspector

Name:

Address:

FORM V

[Rule 28 (2)]

OVER-TIME REGISTER FOR WORKERS.

Month ending.........................195 .

Sl. No.	Name	Father's/Husband's Name	Sex	Designation and Department	Dates on which over-time worked	Extent of over-time on each occasion	Total over-time worked or production in case of piece workers	Normal hours	Normal rate	Over-time rate	Normal earnings	Over-time earnings	Total earnings	Date on which over-time payments made
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

FORM VI

[*Rule 29 (5)*]

MUSTER ROLL.

Name of Establishment.........................Place.........................

Sl. No.	Name.	Father's/ husband's name.	Sex.	Nature of work.	For the period ending.........................														Remarks.
					1	2	3	4	5										

FORM VII

[FORM OF APPLICATION BY AN EMPLOYEE UNDER SECTION 20 (2)].

(*Rule 31*)

In the Court of the Authority appointed under the Minimum Wages Act, 1948 (Central Act XI of 1948), for..........................area.

Application No..............of 19..............

(1) ....

(2) .... Applicant (s)

(3) ....

(through..........................a legal Practitioner............................ official of..Union which is a registered Trade Union)

Address..................................

Versus

(1) ....

(2) .... Opponent (s)

(3) ....

Address.......................................

The applicant (s) above-named beg (s) respectfully to submit as follows:—

(1) that....................

(2) that....................

The applicant (s) has (have) been paid wages at less than the minimum rate of wages than (have) not been paid remuneration for days of rest or for work done on such days of rest.

The applicant (s) estimate (s) the value of the relief sought by him (them) at the sum of Rs.................

The applicant (s) pray (s) that a direction may be issued under sub-section (3) of section 20 for:—

(a) Payment of the difference between the wages due according to the minimum rate of wages fixed by Government and the wages actually paid and

(b) Compensation amounting to Rs..............

The applicant (s) beg (s) leave to amend or add to or make alterations in the application if any and when necessary.

Date..........................

Signature or *thumb impression of the employee (s), legal practitioner or official of a registered Trade Union duly authorised.

*When the application is by a group of employees the thumb impression or signatures of two of the applicants need be put to the application and a full list of applicants should be attached to the application.

The applicant (s) do (es) solemnly declare that what is stated above is true to the best of his (their) knowledge, belief and information.

The verification is signed at..............................on........................ day of............................19...............

Signature or thumb impression of the employee (s) or legal practitioner or official of a registered Trade Union duly authorised.

FORM VIII

[FORM OF APPLICATION BY AN INSPECTOR OR PERSON ACTING WITH THE PERMISSION OF THE AUTHORITY UNDER SECTION 20(2)].

(Rule 31)

In the Court of the Authority appointed under the Minimum Wages Act, 1948 (Central Act XI of 1948), for.. area.

Application No....................of 19....................

(1) ....Applicant.

Address..

Versus.

(1) ....Opponent.

Address..

The applicant above-named begs respectfully to submit as follows:—

(1) that..................................

(2) that.....................................

The opponent is bound to pay wages at the minimum rate of wages fixed by Government but he has paid less wages to the following employees:—

(1) ....

(2) ....

(3) ....

The Applicant estimates the value of relief sought for the employees at the sum of Rs.................

The applicant prays that a direction may be issued under sub-section (3) of section 20 for:—

(a) Payment of the difference between the wages due according to the minimum rate of wages fixed by Government and the wages actually paid; and

(b) Compensation amounting to Rs.......................

The applicant begs leave to amend or add to or make alterations in the application if and when necessary.

Date..............................

Signature..

The applicant does solemnly declare that what is stated above is true to the best of his knowledge, belief and information. This verification is signed at...............................on.. day..............19...............

FORM IX.

[FORM OF AUTHORITY IN FAVOUR OF A LEGAL PRACTITIONER OR ANY OFFICIAL OF A REGISTERED TRADE UNION REFERRED TO IN SECTION 20 (2)]

(Rule 32)

In the Court of the Authority appointed under the Minimum Wages Act, 1948 (Central Act XI of 1948), for...........area.

Application No. ....of 19..............

(1)..

(2).. Applicant(s)

(3)..

Versus.

(1)..

(2).. Opponent(s)

(3)..

I hereby authorise Mr.. a legal practitioner/an official of the registered Trade Union of................. ....to appear and Act on my behalf in the above-described proceeding and to do all things incidental to such appearing and acting.

Date........................

Signature or thumb impression of the employee.

FORM X.

[FORM OF SUMMONS TO THE OPPONENT TO APPEAR BEFORE THE AUTHORITY WHEN AN APPLICATION UNDER SUB-SECTION (2) OF SECTION 20 OR UNDER SECTION 21 IS ENTERTAINED]

(*Rule 33*)

(TITLE OF THE APPLICATION)

To

....

(Name, description and place of residence)

WHEREAS..............................has made the above-said application to me under the Minimum Wages Act, 1948 (Central Act XI of 1948), you are hereby summoned to appear before me in person or by a duly authorised agent, and able to answer all material questions, relating to the application, or who shall be accompanied by some person able to answer all such questions, on the............................day of.. 19......, at ....O'clock in the..................noon, to answer the claim, and as the day fixed for the appearance is appointed for the final disposal of the application, you must be prepared to produce on that day, all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the application will be heard and determined in your absence.

Date. *Signature of the Authority.*

Minimum Wages for Bidi-Making in West Bengal

*Notification No. 707L. W./LW/2W-109/57, dated 13th March, 1958.**

Whereas by the Government of West Bengal notification No. 1606Lab., dated the 13th March, 1951, read with notification No. 966Lab., dated the 31st March, 1952, the minimum rates of wages payable to the employees employed in tobacco (bidi-making) manufactories in the State of the West Bengal were fixed;

And whereas the Governor, upon a review, under clause (b) of sub-section (1) of section 3 of the Minimum Wages Act, 1948 (XI of 1948), of the said minimum rates of wages, considers it necessary to review the same;

Now, therefore, in exercise of the power conferred by clause (b) of sub-section (1) of section 3 read with sub-section (2) of section 5 of the Minimum Wages Act, 1948 (XI of 1948), the Governor, after considering the advice of the Committee appointed by notification No. 1457Lab., dated the 18th April, 1955, to enquire into the conditions prevailing in employment in tobacco (bidi-making) manufactories in West Bengal and to advise the State Government in making revision of the minimum rates of wages fixed in respect of such employment, is pleased hereby to revise the minimum

* Cal. Gaz., 3-4-58, Pt. I, p. 917.

rates of wages payable to employees employed in tobacco (bidi-making) manufactories in the State of West Bengal as specified in the schedule below :—

SCHEDULE

Basic wages and dearness allowance.—The following shall be the minimum rates of wages and dearness allowance payable to the employees in tobacco (bidi-making) manufactories within the limits of municipalities and Sub-divisional Headquarters of the districts specified below and two miles thereof. Both the time-rates and piece-rates for the employees outside the above limits shall be 12 naye paise less than the rates prescribed below :—

A. TIME-RATES.

Districts.	Monthly rates of pay.			Daily rates of pay.		
	Basic wage.	Dearness allowance.	Total.	Basic wage.	Dearness allowance.	Total.
	Rs.	Rs.	Rs.	Rs. nP.	Rs. nP.	Rs. nP.
Calcutta ...	28	26	54	1.08	1.00	2.08
24-Parganas ...	28	26	54	1.08	1.00	2.08
Howrah ...	28	26	54	1.08	1.00	2.08
Hooghly ...	28	26	54	1.08	1.00	2.08
Burdwan ...	28	24	52	1.08	0.92	2.00
Nadia ...	28	24	52	1.08	0.92	2.00
Murshidabad (except Dhulian, Aurangabad and Nimtita).	28	24	52	1.08	0.92	2.00
West Dinajpur ...	28	24	52	1.08	0.92	2.00
Jalpaiguri ...	28	24	52	1.08	0.92	2.00
Darjeeling ...	28	24	52	1.06	0.92	2.00
Cooch Behar ...	28	22	50	1.08	0.84	1.92
Malda ...	28	22	50	1.08	0.84	1.92
Birbhum ...	28	22	50	1.08	0.84	1.92
Midnapore ...	28	22	50	1.08	0.84	1.92
Bankura ...	28	22	50	1.08	0.84	1.92

B. PIECE-RATES.

Districts.	Rate per 1000 bidis.
	Rs. nP.
Calcutta	2.25
24-Parganas	2.12
Howrah	2.25
Hooghly	2.12
Burdwan	2.06
Nadia	2.06
Murshidabad (except Dhulian, Aurangabad and Nimtita).	2.06
West Dinajpur	2.06
Jalpaiguri	2.06
Darjeeling	2.06
Cooch Behar	2.00
Malda	2.00
Birbhum	2.00
Midnapore	2.00
Bankura	2.00
Dhulian, Aurangabad and Nimtita ...	1.50

2. The prevailing wage rates in all the districts being calculated on piece-rate basis per 1,000 bidis no worker shall be asked to work on daily-rate basis unless he himself so desires.

3. The piece-rate shall remain uniform for any quantity of bidis manufactured above or below 1,000 bidis.

4. The rate shall correspond to the cost of living index for the month of the notification, as declared by the Authority appointed under section 2(C) of the Act. Piece-rates of wages will undergo an automatic revision both upward and downward when there will be rise or fall of complete 10 points in the cost of living index.

5. The rates of wages for the employees who will work in their own premises shall be 12 naye paise less than the rates prescribed above. No employee who usually works in the premises of the manufacturer will be made to work in his own premises unless he himself so desires.

6. Change, both upward and downward in the minimum wages, shall be on the following rates:—

District.	Amount in naye paise per point in the cost of living index.
	nP.
Calcutta	2.5
24-Parganas	2.5
Howrah	2.5
Hooghly	2.0
Burdwan	2.0
Nadia	2.0
Murshidabad (except Dhulian, Aurangabad and Nimtita).	2.0
West Dinajpur	2.0
Jalpaiguri	2.0
Darjeeling	2.0
Cooch Behar	2.0
Malda	2.0
Birbhum	2.0
Midnapore	2.0
Bankura	2.0
Dhulian, Aurangabad and Nimtita ...	2.0

Sugar Industry declared Public Utility Service in Punjab.

Notification No. 953/646-C-Lab-58/9381, dated 27th March, 1958.*

Whereas the Governor of Punjab is satisfied that public interest so requires;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Governor of Punjab is pleased to declare the sugar industry and every undertaking connected with the manufacture of sugar in the State of Punjab to be a public utility service for the purposes of the said Act for a period of six months with effect from the date of publication of this notification in the official Gazette.

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* Punjab Govt. Gaz., Extry., 28-3-58, p. 684.

Employees' State Insurance—Contribution & Benefit Periods.

*Notification No. Ins. 1-22(1)/58, dated the 26th February, 1958**

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

set	First contribution period		First benefit period	
	Begins on midnight of	Ends on midnight of	Begins on midnight of	Ends on midnight of
A.	1-3-1958	26-7-1958	29-11-1958	25-4-1959
B.	1-3-1958	27-9-1958	29-11-1958	27-6-1959
C.	1-3-1958	31-5-1958	29-11-1958	28-2-1959

(ii) In pursuance of the proviso to Section 47 of the Employees' State Insurance Act, 1948 (34 of 1948), the condition regarding minimum number of twelve contributions payable during a contribution period for entitlement to sickness benefit during the corresponding benefit period is hereby waived for the first contribution period only in respect of the insured persons in the areas specified in the schedule below who are allotted set C and for whom the first contribution period begins on 1st March, 1958, and ends on 31st May, 1958.

SCHEDULE

The areas within the revenue limits of villages Alanpur, Khatupura, Dundri and Chak-chaipura of Tehsil Sawai-Madhopur of Sawai-Madhopur District in Rajasthan.

Employees' State Insurance—Notification.

Notification No. S.O. 351, dated the 19th March, 1958.‡

In pursuance of sub-section (1) of section 86 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby authorises the Director General of the Employees' State Insurance Corporation to institute prosecutions or accord previous sanction to prosecutions under the said Act.

Employees' StateInsurance Extended to certain areas in U.P.

Notification No. S.O. 352, dated the 24th March, 1958‡.

In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Govern-

* Gaz. of India, 8-3-1958, Pt. IV, p. 37.

‡Gaz. of India, 29-3-58, Pt. II, sec. 3 (ii), p. 228.

ment hereby appoints the 30th day of March, 1958, as the date on which the provisions of Chapter IV (except sections 44 and 45 thereof, which have already been brought into force), Chapter V and Chapter VI (except sub-section (1) of section 76 and sections 77, 78, 79 and 81 thereof, which have already been brought into force), of the said Act shall come into force in the following areas of the State of Uttar Pradesh, namely:--

1. The areas within the limits of the Aligarh municipality.

2. The areas within the municipall imits of Hathras.

3. The areas within--

(i) the municipal limits of Shikohabad,

(ii) the revenue villages of Nizampur, Garhuma and Ubati situated in Pargana and Tehsil Shikohabad in the district of Mainpuri.

4. The areas within the municipal limits and cantonment limits of Bareilly, and the revenue village of Clutterbuckganj, in Pargana, Tehsil and district of Bareilly.

Payment of Wages (Amendment) Act, 1957, brought into force.

*Notification No. S.O. 353, dated the 19th March, 1958**.

In exercise of the powers conferred by sub-section (2) of section 1 of the Payment of Wages (Amendment) Act, 1957 (68 of 1957), the Central Government hereby appoints the 1st day of April, 1958, as the date on which the said Act shall come into force.

Employees' Provident Funds Act—Notification.

*Notification No. S. O. 359, dated the 24th March, 1958.**

In exercise of the powers conferred by section 19 of the Employees' Prvident Funds Act, 1952 (19 of 1952), the Central Government hereby directs that the powers exercisable by it as the appropriate Government under the Explanation to sub-clause (iv) of clause (f) of paragraph 2 of the Employees' Provident Funds Scheme, 1952, to specify the authority to declare a person as an apprentice, shall also be exercisable within each of the States specified in the Schedule annexed hereto by the Government of that State.

SCHEDULE

1. Andhra Pradesh
2. Assam
3. Bihar
4. Bombay
5. Kerala
6. Madhya Pradesh
7. Madras
8. Mysore
9. Orissa
10. Punjab

*Gaz. of India, 29-3-58, Pt. II, sec. 3(ii), p. 229.

11. Rajasthan
12. Uttar Pradesh
13. West Bengal

Employees' State Insurance—Exemptions.

I

*Notification No. 1557 (ST)/XXXVIA—403-55, dated March 22, 1958.**

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (Act No. XXXIV of 1948), the Governor of Uttar Prdesh is pleased to exempt for the period from March 30, 1958 to January 21, 1959, from all the provisions except Chapter VA of the said Act, every factory which is situated in the areas mentioned hereunder and wherein ten or more persons are not employed or were not employed at any time during the preceding twelve months by the principal employer directly or by or through an immediate employer, even though twenty or more persons are or were working in the premises:

1. The areas within the limit of the Aligarh Municipality.

2. The areas within the municipal limits of Hathras.

3. The areas within—

(i) the municipal limits of Shikohabad.

(ii) revenue villages of Nizampur, Garhuna and Ubati situated in pargana and tahsil Shikohabad in district Mainpuri.

4. The areas within—

(i) the municipal limits and cantonment limits of Bareilly.

(ii) revenue village of Clutterbuckganj, in pargana, tahsil and district of Bareilly.

(iii) Izatnagar in pargana, tashil and district Bareilly.

II

Notification No. 1559 (ST)/XXXVIA—440-54, dated March 24, 1958.†

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (Act No. XXXIV of 1948), the Governor of Uttar Pradesh hereby exempts from the operation of the said Act, except Chapter VA thereof every factory—

(1) which is situated within—

(a) the limits of the Aligarh Municipality.

(b) the areas within the municipal limits of Hathras.

(c) the areas within—

(i) the municipal limits and cantonment limits of Bareilly,

(ii) the revenue village of Clutterbuckganj in pargana, tahsil and district of Bareilly.

(iii) Izatnagar in pargana, tahsil and district Bareilly.

(d) the areas within—

(i) the municipal limits of Shikohabad.

(ii) revenue villages of Nizampur, Garhuna and Ubati situated in pargana and tahsil Shikohabad in district Mainpuri.

* U. P. Gaz. 29-3-58, Pt. I, p. 323. †Ibid. p. 324.

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

The exemption in all factories carrying on the said processes (except cashew processing) is hereby granted for the period from March 30, to September 30, 1958, and exemption to factories carrying on cashew processing for the period from March 30 to 31, 1958, subject to the conditions specified in the corresponding entry in column (2) of the said Table:

TABLE

Name of manufacturing process		Conditions
1. Redrying manufactured leaf tobacco.		...
2. Rice milling	...	...
3. Cold storage	...	...
4. Salt manufacture	...	...
5. Ice manufacture	...	...
6. Cashew processing	...	...
7. Oil milling	...	Provided that the process of oil miling is subsidiary to any other manufacturing process which is seasonal and also for so long as the number of employees engaged in oil milling is less than 50.

Minimum Wages Act—addition to Part I of Schedule.

*Notification No. L1-4683/57/ L & LAD, dated 26th, March 1958**

In exercise of the powers conferred by section 27 of the Minimum Wages Act, 1948 (Central Act XI of 1948) and in supersession of Notification No. L1-4683/57/L & LAD. dated 30-4-1957 the Government of Kerala hereby declare their intention to add " employment in banks " to Part I of the schedule to the said Act in its application to the State so that the schedule shall be deemed to be amended as follows :—

In part I of the schedule to the said Act, the following shall be added as item 24, namely :—

" 24. Employment in Banks ".

Notice is hereby given that the above proposal will be taken into consideration after a period of 3 months from the date of publication of this notification in the Gazette and that any objection or suggestion that may be received from any person with respect to the said proposal before the expiry of the period specified above will be considered by the Government.

* Kerala. Gaz., 1-4-1958, Pt.I, p. 992.

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 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.

[IN THE BOMBAY HIGH COURT.]

MUNICIPAL CORPORATION OF BOMBAY AND ANOTHER

v.

LABOUR APPELLATE TRIBUNAL OF INDIA AND ANOTHER.

Shah and Gokhale, JJ.

February 6, 1957.

TERMINATION OF SERVICE—DISMISSAL FOR MISCONDUCT AND TERMINATION OF CONTRACT OF SERVICE DISTINGUISHED—TERMINATION OF SERVICE IN ACCORDANCE WITH STANDING ORDERS—NECESSITY OF FORMAL ENQUIRY—BOMBAY INDUSTRIAL RELATIONS ACT, 1946.

APPELLATE TRIBUNAL—JURISDICION—NECESSITY OF SUBSTANTIAL QUESTION OF LAW—RIGHT TO INTERFERE WITH DECISIONS OF LABOUR COURT AND INDUSTRIAL COURT ON FACTS—INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950, SECTION 7.

INDUSTRIAL TRIBUNAL—RESTRICTED JURISDICTION—FAILURE OF PARTY TO BRING LACK OF JURISDICTION TO NOTICE OF TRIBUNAL—EFFECT—WHETHER BAR TO PETITION FOR WRIT TO QUASH AWARD.

"RETRENCHMENT"—MEANING OF—TERMINATION OF CONTRACT OF SERVICE—WHETHER RETRENCHMENT—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(OO).

CONSTITUTION OF INDIA, ART. 226—APPLICATION FOR WRIT TO QUASH AWARD OF INDUSTRIAL TRIBUNAL—NATURE OF RELIEF—WHETHER HIGH COURT CAN ORDER REMAND TO TRIBUNAL.

Under the Bombay Industrial Relations Act, 1946, and the standing orders framed thereunder, there is a distinction between dismissal or discharge from Service ordered by an employer for misconduct of the employee and the termination of the contract of employment which may be effected by the employer or by the employee. Before an order in the nature of discharge or dismissal can be passed, the employee must be given an opportunity of showing cause and submitting his explanation at a formal enquiry and provision has been made for appeals from the order of the inquiry officer. But, the mere termination of service is not dismissal or discharge from service and that termination can take place by notice in the manner prescribed by the standing orders.

X8mR, N4.6?1 N58.14.4

The jurisdiction of the Labour Appellate Tribunal under the Industrial Disputes (Appellate Tribunal) Act, 1950, is a restricted jurisdiction. Where the Labour Court and the Industrial Court have arrived at the conclusion that the termination of the service of a workman was a termination of the contract of employment, it is not open to the Labour Appellate Tribunal to hold that the termination was a dismissal or discharge for misconduct.

The parties before a Tribunal are expected to assume that the Tribunal is conscious of the limits of its jurisdiction and will not overstep those limits. Therefore, the fact that a party did not bring to the notice of the Tribunal the limitations on its jurisdiction is no bar to the lack of jurisdiction being made a ground for a petition for a writ to quash the award of the Tribunal.

In the exercise of the jurisdiction of the High Court under article 226 of the Constitution, no substantive or effective order of the nature of an order of remand can be passed by the Court. If the High Court is satisfied that the inferior Tribunal has passed an order which it was incompetent to pass, the High Court will only quash the order.

"Retrenchment" as defined in section 2 (oo) of the Industrial Disputes Act, 1947, means the discharge of surplus labour or staff and does not include termination of the contract of employment for other causes: Decision of Supreme Court in BARSI LIGHT RAILWAY *v.* K. N. JOGLEKAR, [1957] 11 F.J.R. 317, *applied.*

Special Civil Applications Nos. 3577 and 3578 of 1956.

H. M. Seervai for the Corporation.

D. S. Nargolkar for respondent No. 2.

128661

JUDGMENT.

SHAH, J.—This is an application by the Municipal Corporation of Greater Bombay and the General Manager of the Bombay Electric Supply and Transport Undertaking of the Bombay Municipal Corporation, requesting this Court to issue a writ in the nature of a *certiorari* or other writ, direction or order under article 226 of the Constitution or an order or direction in exercise of its powers of superintendence under article 227 of the Constitution against the Labour Appellate Tribunal, calling for the records of the case relating to an order dated 13th November, 1956, in Appeal (Bom.) No. 289 of 1956 and after making enquiries and looking into the legality thereof to set aside and quash the decision and order of the Labour Appellate Tribunal.

The facts which give rise to this application are these: The second respondent was an employee of the Bombay Municipal Corporation. On 16th August, 1955, the B.E.S.T. Undertaking received a report from one

Joshi, Sub-Inspector of Police, Bhoiwada Police Station, that the second respondent was seen coming hurriedly out of Chamar Baug Lane, opposite Parel railway workshop, and that he and another person were attempting to throw stones at the Undertaking's bus at about 3-50 a.m., that the second respondent and his companion on seeing a bus picked up two big stones from a heap of stones on the road and were poised to throw the stones at the vehicle when the Sub-Inspector rushed towardes them; that thereupon the second respondent and his companion dropped the stones and pretended to make an appearance that they were not engaged in doing anything unlawful, that the Sub-Inspector stopped them and questioned them with a view to ascertain what they were doing, and that the second respondent and his companion gave their names and informed the Sub-Inspector that they were employees of the B.E.S.T. Undertaking, and they apologised for their conduct. Sub-Inspector Joshi then arrested them and made enquiries against them and charge-sheeted them. At the trial the second respondent and his companion were acquitted of the charge by the learned Presidency Magistrate. In the meanwhile, after receiving the report from Sub-Inspector Joshi, the management of the Undertaking 'issued a show cause notice' to the second respondent. That notice set out the report made by Sub-Inspector Joshi and called upon the second respondent to show cause why in view of his behaviour prejudicial to the working of the Undertaking, the services of the second respondent should not be terminated. A detailed written explanation was filed by the second respondent, and it was submitted by him that he had been arrested on mere suspicion. He suggested that the management of the Undertaking was taking action against him because of his 'trade union activities'. The Transportation Engineer of the Undertaking held an inquiry and found that there was no reason why Sub-Inspector Joshi should have made a false report against the second respondent and that no ground had been made out which justifed him in disbelieving the report of Sub-Inspector Joshi. The Transportation Engineer observed that the 'behaviour' of the second respondent at the material time and place and that he had lost confidence in the second respondent. Having regard to the circumstance that the second respondent had been on previous occasions suspended for wilful disobedience and insubordination to his superiors and having regard to the conduct charged against him the Transportation Engineer held that the second respondent was not a fit person to be retained on the Undertaking's establishment and directed that the service of the second respondent do stand determined with effect from 1st October, 1955. Against the order passed by the Transportation Engineer an appeal was preferred to the General Manager. The General Manager agreed with the findings of

the Transportation Engineer and accepted the view that the case was a fit one for terminating the services of the second respondent on the ground of prejudicial behaviour, the latter having forfeited the confidence of the Undertaking.

Thereafter, an application was submitted to the Labour Court, Bombay, under sections 42(*4*) and 78(*1*)A(*a*)(*i*) and (iii) of the Bombay Industrial Relations Act, 1946, praying for an order that the action taken by the Undertaking "of discharge" against the second respondent was illegal and improper and for reliefs of re-instatement and compensation. Before the Labour Court evidence was led by both the parties, and that Court held that there was material before the Transportation Engineer and the General Manager to create reasonable suspicion against the second respondent. The Labour Court also observed that throwing stones and 'similar subversive activities were getting rampant and strict action even on reasonable suspicion' could be taken by the Undertaking. The Court also held that the action taken against the second respondent was justified by Standing Order No. 26 and that action was not taken with a view to victimise the second respondent for his 'trade union activities'. In the view of the Labour Court the Order discharging the second respondent from service could not be held to be improper, but the Undertaking was liable under the circumstances of the case to pay to the second respondent retrenchment compensation at the rate prescribed in section 25F of the Industrial Disputes Act within one month from the date on which the order was passed. It may be observed that the order of the Labour Court was somewhat inconsistent. Having observed that the order was passed under Standing Order No. 26, the Lobour Court committed an error in characterising the order as one of discharge.

Against the order passed by the Labour Court an appeal was preferred to the Industrial Court by the second respondent and his companion who had simultaneously preferred an application before the Labour Court challenging the order passed against him. The Industrial Court held that the order of the management of the Undertaking was *bona fide* and was passed after giving the respondent and his companion full opportunity of showing cause why action should not be taken, and was not passed with any ulterior motive, and that it was not arbitrary or harsh and the action taken under the Order did not amount to any unfair labour practice. The Industrial Court was of the view that the General Manager and the inquiry officers having come to the conclusion that the conduct of the second respondent was prejudicial to the interest of the Undertaking, an order directing re-instatement of the second respondent could not be passed. The Industrial Court observed:

"As the view taken by the inquiry officers that the appellants (the second respondent and his companion) were guilty of the prejudical behaviour complained of is reasonable, the order terminating the services of the appellants (the second respondent and his companion) under Standing Order No. 26, was not improper and ought not to be interfered with."

In arriving at that conclusion the Industrial Court observed that it could not agree with the view of the Labour Court that the second respondent and his companion may not have assembled with the intention of throwing stones at the Undertaking's vehicles. In any event, the Industrial Court observed on the evidence that the behaviour of the second respondent and his companion was 'prejudicial to the Undertaking'. The Industrial Court also considered the argument advanced on behalf of the second respondent that the termination of the service of the second respondent after giving one month's notice was ineffective having regard to the judgment of this Court in *Hospital Mazdoor Sabha* v. *Bombay State*, [1957] 13 F.J.R. 473. The Industrial Court observed that the case had no application to cases of termination of employment and applied only to those cases where there had been retrenchment from service of surplus staff, and that in refusing to order re-instatement the Labour Judge was within his right and the exercise of that discretion could not be interfered with by the Appellate Court. On the view so expressed the Industrial Court confirmed the order passed by the Labour Court.

Against that order an appeal was preferred to the Labour Appellate Tribunal at Bombay. In appeal the Labour Appellate Tribunal addressed themselves to only one question, whether the order passed by the Undertaking amounted to punishment imposed upon the employee, and observed: "There can be no doubt, upon the facts, that this is a case where a punishment has been imposed upon a workman". They then proceeded to observe: "Punishment by discharge is recognised by Standing Order 21, clause 1, sub-clause (f). Under Standing Order No. 23 a charge-sheet setting out clearly the circumstances appearing against the persons to be proceeded against, followed by an inquiry in which full opportunity was given to such persons to defend themselves, was necessary". They also observed that the only evidence against the second respondent and his companion consisted of a report from a Police Inspector about something of which he himself had no direct knowledge and it was difficult in the circumstances to hold that the unsupported report of the Inspector proved the misconduct of the second respondent and his companion. The Tribunal concluded by observing that they

were unable to accept the reasoning of the Industrial Court that the evidence of the Sub-Inspector was not necessary as action was being taken under Standing Order 26. In their view, punishment was being imposed upon the second respondent and his companion for misconduct and the management could not be permitted to avoid the necessity of an inquiry under Standing Order 23 by purporting to act under Standing Order 26. On the view taken by them the Labour Appellate Tribunal reversed the order passed by the Industrial Court and the Labour Court and directed that the second respondent be re-instated in his post with effect from the date of his discharge. Against that order this application has been filed under articles 226 and 227 of the Constitution.

Before I deal with the contentions which have been advanced, I may briefly refer to certain provisions of the Bombay Industrial Relations Act, 1946, and the Standing Orders framed thereunder. Under section 35 of the Act every employer is required to submit for approval to the Commissioner of Labour in the prescribed manner draft Standing Orders regulating the relations between him and his employees with regard to industrial matters set out in Schedule 1; and Schedule 1 to the Act refers among other items to termination of employment including notice to be given by employer and employee, and punishment including warning, censure, fine, suspension or dismissal for misconduct, suspension pending enquiry into alleged misconduct and the acts or omissions which constitute misconduct. Provision is made in sub-sections (2), (3), (4) and (5) of section 35 for inquiry by the Commissioner of Labour and the ultimate settlement of Standing Orders. Section 36 provides for an appeal against an order of the Commissioner of Labour settling the Standing Orders and review is permitted under section 37. By section 38 Standing Orders settled under the foregoing provisions cannot be altered for a period of one year from the date on which they come into operation. By section 40 the Standing Orders are determinative of the relations between the employer and the employee in regard to all industrial matters specified in Schedule I. Pursuant to section 35 of the Industrial Relations Act the B.E.S.T. Undertaking has framed certain Standing Orders. There is no dispute that these Standing Orders were duly framed and have been sanctioned by the Commissioner of Labour and were at the relevant date in operation. Standing Order 20 sets out the acts or omissions on the part of an employee which amount to misconduct. It is unnecessary to set out for the purpose of this application the various grounds which constitute misconduct. Standing Order 21 provides for punishment which may be inflicted for any misconduct of which an employee may be found guilty. Standing Order 23 states that an employee charged with misconduct of a nature which is likely to lead to the imposition of penalties mentioned in (e) to (h) or suspension for a period exceeding seven days under Standing Order 21 (1) (d), shall be given a charge-sheet in writing clearly setting forth the circumstances appearing against him and requiring explanation and the date and time at which the case would be heard. It also sets out the procedure to be followed by the inquiry officer. Standing Order 25 provides for the procedure for termination of service with the Undertaking. That termination has to be by a notice in writing to the employee concerned setting out the reasons for termination of employment, except in certain cases specified therein. Termination of service is contemplated to take place at the instance either of the employer or the employee.

It is clear from these provisions that the Act and the Standing Orders have made a distinction between dismissal or discharge from service which may be ordered by the employer for misconduct of the employee and termination of the contract of employment, which may be effected by the employer or the employee. Before an order in the nature of discharge or dismissal can be passed the employee must be given opportunity of showing cause and submitting his explanation at a formal enquiry. Provision is also made for appeals being filed against the order of the inquiry officer. But mere termination of service is not dismissal or discharge from service and that termination can take place by notice in the manner prescribed by Standing Order 26.

Under the common law governing the relations of employers and employees, an employer is entitled to terminate the services of his employee, unless under a binding contract security of tenure of service is conferred. An employer at best may be liable to pay to his employee damages for wrongful termination of employment, but normally he cannot be compelled to retain an employee whom he does not desire to retain in his employment. Certain statutory provisions have, however, been made which have considerably altered the common law which governs the relations of an employer and employee. By article 310 of the Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State, but, by article 311 a person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State cannot be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. To this

extent the authority of the State to take action against the employee or to remove him from service has been restricted. Similarly, the right of an employer to dismiss or discharge an employee has been restricted by the Standing Orders framed under the Bombay Industrial Relations Act. Under the Standing Orders framed by the B.E.S.T. Undertaking it is expressly provided that for imposing the penalty of dismissal or discharge from service an inquiry under Standing Order 23 is obligatory. But no such provision has been made for termination of the contract of service of an employee of the Undertaking when action is taken under Standing Order 26. It is evident that in the Standing Orders a distinction has been made between dismissal for misconduct or discharge for misconduct and termination of employment. In *Shyam Lal* v. *The State of Uttar Pradesh and the Union of India*, [1955] 1 S.C.R. 26, their Lordships of the Supreme Court pointed out that a compulsory retirement under the Civil Services (Classification, Control and Appeal) Rules, did not amount to dismissal or removal within the meaning of article 311 of the Constitution, and, therefore, did not fall within the provisions of the said article. It was pointed out that dismissal or removal was a punishment and involved loss of benefit already earned. The officer, dismissed or removed, did not get pension which he has earned. On compulsory retirement the officer would be entitled to the pension that he has earned and there was no diminution of the accrued benefit. Removal, like dismissal, no doubt brought about a termination of service but every termination of service did not amount to dismissal or removal. They also pointed out that the action of removal taken against an employee was founded and justified on some ground personal to the officer and it involved the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer; but in the case of compulsory retirement there was no such element of charge or imputation and the only two requirements for compulsory retirement were provided by the rules that the officer had completed twenty-five years' service and that it was in the public interest to dispense with his further services. In the present case the Management of the B.E.S.T. Undertaking terminated the services of the second respondent for behaviour prejudicial to the interests of the Undertaking. No order dismissing the second respondent from service or discharging him from service was passed. It is true that the form of the order terminating employment is not always decisive of the true nature of the order. If an order in form terminating employment is passed merely to camouflage an order dismissing or discharging from employment, the Labour Court may be entitled to come to the conclusion, having regard to the circumstances in which the order was passed, that the requisite formalities not having been followed the order was unlawful and cannot be given effect to. But, in the present case, the Labour Court appears to have held that the order complained of was passed *bona fide* under Standing Order 26 terminating the employment of the second respondent and with that order the Industrial Court agreed.

The Labour Appellate Tribunal, under the provisions of section 7 of the Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950), is entitled to entertain an appeal from any award or decision of an Industrial Tribunal if the appeal involves a substantial question of law and in respect of certain other matters. Evidently the jurisdiction which is conferred by section 7 upon the Labour Appellate Tribunal under section 7(*i*)(*a*) is a restricted jurisdiction. Mr. Seervai, on behalf of the petitioners, has urged that the Labour Appellate Tribunal has in disagreeing with the findings of fact of the Industrial Court exercised jurisdiction which is not vested in them by law. It was urged that when the Labour Court and the Industrial Court held that the order passed against the second respondent was an order determining his employment under Standing Order 26 it was not open to the Appellate Tribunal to come to a conclusion "upon the facts that the case was one where a punishment had been imposed upon a workman". (Evidently the management of the Undertaking did not purport to impose any punishment upon the second respondent. They purported to pass an order determining the employment under Standing Order 26 and the Labour Court and the Industrial Court held that by the order the contract of employment of the second respondent was determined, and no punishment was imposed). The conclusion of the Industrial Court that the order was one of determination of employment, was binding upon the Labour Appellate Tribunal, and that Tribunal was not entitled to reappreciate the facts and hold that the order must be deemed to have been passed under Standing Order 21(i)(f) and that the failure to deliver a charge-sheet setting out the circumstances appearing against the second respondent and the failure to hold an inquiry contemplated by Standing Order 23 vitiated the proceedings of the inquiry officer. The Labour Appellate Tribunal has held that the order passed against the second respondent was an order of discharge and that order of discharge could not be sustained on the evidence which was placed before the inquiry officer, especially having regard to the fact that the Police Sub-Inspector was not examined before the inquiry officer and that the second respondent was acquitted by the Magistrate in the criminal case filed against him. In the view of the Labour Appellate Tribunal the management could not be permitted to avoid the necessity of an inquiry under Standing Order 23 by purporting to act under Standing Order 26. The Labour Appellate Tribunal appears to have held that the order passed by the Undertaking was under Standing Order 21 and it was not an order passed under Standing Order 26. In so holding, in our view, the Labour Appellate Tribunal overstepped the limits of their jurisdiction which are defined by section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, and have assumed jurisdiction which was not vested in them by law. The Labour Appellate Tribunal had to accept the findings of fact and to consider such of the arguments as properly arose in the appeal. The Labour Appellate Tribunal having arrogated jurisdiction which it was not possessed of, the order passed by that Tribunal is liable to be set aside.

It was urged by Mr. Nargolkar for the second respondent that the contention that the Labour Appellate Tribunal had arrogated to themselves jurisdiction which they did not possess was not advanced before the Tribunal, and relying upon the judgment of this Court reported in *Gandhinagar Motor Transport Society* v. *State of Bombay* [1953], 55 *Bom L. R.* 922, counsel urged that it was not open to the petitioners in this application to raise that contention. We are unable to accept the contention of Mr. Nargolkar. The parties before the Labour Appellate Tribunal may be expected to assume that the Tribunal is conscious of the limits of its jurisdiction, and will not overstep those limits. Whether the Tribunal does transgress the limits of its jurisdiction can only be ascertained after the judgment is delivered by the Tribunal and not before. It may appear a little out of place on the part of a litigant to remind a judicial Tribunal that restrictions have been placed upon its authority by the Legislature, and it would be wrong for the Tribunal to transgress those limits. The principle of the case to which our attention has been invited has, in our judgment, no bearing whatever on this case. That was a case in which the State Government of Bombay had entertained an appeal against the order of the State Transport Authority when by Statute the order was declared final and conclusive. At the hearing before the State Government no objection about jurisdiction was raised and the party affected by the ultimate order took the chance of obtaining a favourable decision. After the Government decided the matter an application was filed in this Court for an order under article 227 of the Constitution and this Court held that a question of jurisdiction of a Tribunal can be raised, on a petition for a writ under article 226 of the Constitution of India, before the High Court only if the objection as to the jurisdiction was taken before that Tribunal. In that case there was complete want of jurisdiction in the Government which purported to hear an appeal against the order of the State Transport Authority but no objection in that behalf was taken before the Government at the hearing of the appeal. In the present case the Labour Appellate Tribunal was invested with jurisdiction to hear appeals, but in the exercise of its jurisdiction its powers were restricted. In our judgment, by failing to remind the Tribunal of what the Tribunal must always be conscious it cannot be said that the petitioners have disabled themselves from making a grievance in this application that the Tribunal has entertained an appeal in a case which did not raise a substantial question of law.

It was also urged by Mr. Nargolkar that the Labour Appellate Tribunal considered only one contention of the second respondent and did not consider the other contentions which were raised by him and the second respondent should, therefore, be permitted, even if this Court holds that the Labour Appellate Tribunal was in error in setting aside the judgment of the Industrial Court on the grounds on which it has purported to do, to be heard in this application as if it is an appeal on the contentions raised by the second respondent before the Labour Appellate Tribunal. We do not think we will be justified in permitting that procedure to be followed. If the second respondent is so advised he may request the Labour Appellate Tribunal to hear his appeal against the order passed by the Industrial Tribunal on the other questions raised by him. We express no opinion on the question whether such an application may lie to the Labour Appellate Tribunal, especially having regard to the provisions of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956.

Mr. Nargolkar also contended that the order passed by the Labour Court and the Industrial Court holding that the order of termination of service was valid cannot be sustained because no provision was made for payment of retrenchment compensation to the second respondent at the time of the passing of the order; and in support of that contention Mr. Nargolkar relied upon the provisions of section 25-F of the Industrial Disputes Act, and a judgment of this Court, reported in *Hospital Mazdoor Sabha* v. *Bombay State*, [1957] 13 F.J.R. 473. It was urged that payment of retrenchment compensation under section 25-F to an employee before determining his employment was a condition precedent and if no retrenchment compensation was paid the order determining the employment must be regarded as ineffective. In support of that contention the case cited above was relied upon. It is true that in that case it was held that failure to comply with the condition with regard to the payment of compensation to an employee at the time of his retrenchment under section 25-F (*b*) of the Industrial Disputes Act, 1947, gives to the

employee the right to challenge his retrenchment and to contend that his services were not legally and effectively terminated. It was observed in that case that the definition of the expression "retrenchment" as given in section 2(oo) of the Industrial Disputes Act, 1947, meant termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. In so holding the Court followed the judgment of this Court in *K. N. Joglekar* v. *Barsi Light Railway* (1955), 57 *Bom. L.R.* 448, in which it was observed that the word "retrenchment" had the widest import, and whatever the reason for the termination may be, it would constitute retrenchment as defined by the Industrial Disputes Act, 1947. If these were the only judgments of this Court which had a bearing on the meaning of the expression "retrenchment" we would have been bound to hold that the determination of employment of the second respondent even for behaviour prejudicial to the business of the B. E. S. T. Undertaking must be regarded as retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act and failure to pay retrenchment compensation to the second respondent before termination of his employment by the B. E. S. T. Undertaking rendered the order ineffective. But the judgments of this Court in *K. N. Joglekar's case* and *Hospital Mazdoor Sabha's case* do not hold the field. *K. N. Joglekar's case* was taken in appeal to the Supreme Court in Civil Appeal No. 105 of 1956, that appeal was decided on 27th November 1956, and their Lordships have definitely rejected the view taken by this Court that the expression "retrenchment" defined in section 2(oo) had a wider connotation. Their Lordships have observed :—

"We hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in section 2(oo) and used in section 25-F has no wider meaning than the ordinary, accepted connotation of the word: it means the *discharge of surplus labour or staff* by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and *bona fide* closure of business as in the case of Shri Dinesh Mills Ltd., or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company."

It is clear from these observations that in their Lordships' view the "retrenchment" meant discharge of surplus labour or staff and did not mean termination of the contract of employment for other causes. The judgment of this Court in *Hospital Mazdoor Sabha's case* on which strong reliance was placed by Mr. Nargolkar, must, therefore, be regarded as overruled. The termination of employment of the second respondent by the B. E. S. T. Undertaking for reasons already mentioned cannot be regarded as retrenchment in the light of the test laid down by their Lordships of the Supreme Court; and if it is not retrenchment it cannot be said that failure to comply with the condition of payment of compensation at the time of termination of employment affects the validity or legality thereof.

Mr. Nargolkar also contended that Standing Order 26, contemplated termination of service which may amount to retrenchment; and if under the Industrial Disputes Act, there is liability to pay retrenchment compensation termination of service without payment of such compensation contemplated by Standing Order 26 will be inconsistent with the provisions of the Act. On that hypothesis Mr. Nargolkar urged that Standing Order 26 was invalid. We are not called upon to consider in this case whether Standing Order 26 is invalid in respect of retrenchment of surplus employees of the Undertaking in so far as it permits retrenchment without payment of retrenchment compensation. In the present case we are only concerned to decide whether for the termination of employment of the second respondent for the reasons given by the Undertaking it was necessary that an inquiry should have been held in the manner provided by Standing Order 23; and we are of the view that no such inquiry was required before the order could be passed terminating the employment of the second respondent.

Mr. Nargolkar finally urged that as the Labour Appellate Tribunal had not given its decision on all the questions raised in the appeal, we should remand the case with a direction that the Appellate Tribunal should proceed to hear and dispose of the other contentions sought to be raised by the second respondent. It must however be observed that the Labour Appellate Tribunal has ceased to function in respect of all matters, except those which were pending on 1st September, 1956. By the Industrial Disputes (Amendment and Miscellaneous Provisions) Act (XXXVI of 1956), the Industrial Disputes (Appellate Tribunal) Act, 1950), is repealed. By sub-section (2) of section 33, "notwithstanding such repeal, (a) if, immediately before the commencement of this section, there is any appeal or other proceeding pending before the Appellate Tribunal constituted under the said Act, the appeal or other proceeding shall be decided and disposed of by the Appellate Tribunal as if the said Act, had not been repealed by this Act." Mr. Nargolkar says that the Labour Appellate Tribunal decided the appeal after 1st September, 1956, the date on which section 33 of the Industrial Disputes Act was brought into operation and as that appeal was pending before the Labour Appellate Tribunal, this Court is competent to direct, notwithstanding the repeal

of the Industrial Disputes (Appellate Tribunal) Act, by Act XXXVI of of 1956, and the consequent extinction of that Tribunal, to hear and dispose of the appeal as it falls within section 33 (2) (a). Normally, in exercise of the jurisdiction of this Court under article 226 of the Constitution no substantive or effective order of the nature of an order of remand is passed by this Court. If this Court is satisfied that an inferior Tribunal has passed an order which it was incompetent to pass or if for some adequate reasons, interference by this Court is justified, this Court only quashes the order and does not proceed to pass any effective consequential order. It may be open to the parties concerned to apply to the Tribunal to resuscitate the proceedings in which the impugned order was passed and to proceed to dispose of the proceedings. In the present case we do not propose to decide the question whether notwithstanding the repeal of the Industrial Disputes (Appellate Tribunal) Act, 1950, by reason of section 33 (2) (a) of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the proceedings may be regarded as pending before the Labour Appellate Tribunal. If so advised, the second respondent may make an application and we have no doubt that the Labour Appellate Tribunal will deal with the same according to law.

On the view taken by us, the order passed by the Labour Appellate Tribunal on 13th November 1956, in Appeal (Bom.) No. 289 of 1956, is quashed. Having regard to the circumstances of the case, there will be no order as to costs of this petition.

Special Civil Application No. 3578 of 1956.

This Special Civil Application is companion to the principal application No. 3577 of 1956. The facts which give rise to this petition are identically the same as the facts in the principal application and for reasons already set out by us in the judgment in the principal application we make the rule absolute and quash the order passed by the Labour Appellate Tribunal on 13th November, 1956. There will be no order as to costs.

[IN THE PUNJAB HIGH COURT.]

PUNJAB DISTILLING INDUSTRIES LTD., KHASA

v.

INDUSTRIAL TRIBUNAL, PUNJAB AND OTHERS.

Grover, J.

February 27, 1958.

INDUSTRIAL DISPUTE—REFERENCE TO TRIBUNAL—MATTERS COVERED BY AWARD STILL IN FORCE—WHETHER CAN BE REFERRED TO TRIBUNAL—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 10 AND 19.

INDUSTRIAL DISPUTE—WITHDRAWAL OF CERTAIN DEMANDS BY WORKMEN—WITHDRAWAL INCORPORATED IN AWARD—EFFECT—WHEN WORKMEN CAN RAISE FRESH DISPUTE ON WITHDRAWN DEMANDS.

If the matters of dispute referred to an Industrial Tribunal under the Industrial Disputes Act, 1947, are the subject matter of previous awards which are still in force, the reference of the same matters of dispute would be illegal and cannot be dealt with by the Industrial Tribunal: BRITISH INDIA CORPORATION *v.* INDUSTRIAL TRIBUNAL, PUNJAB [1957] 13 F.J.R. 352, *followed.*

Where the workmen withdraw certain demands and the withdrawal is incorporated in the final award with the result that the existing conditions were accepted as binding for the time being by both the parties, the analogy of withdrawal of reliefs in a civil suit will apply and the workmen cannot make a further claim in respect of the same matter till the award has been terminated under section 19(6) of the Industrial Disputes Act, 1947.

Civil Writ No. 214 of 1957.

B. R. Tuli for the management.

Anand Sarup and *F. C. Mittal* for the respondents.

JUDGMENT.

This is a petition under article 226 of the Constitution in which the question is whether the Industrial Tribunal can proceed to decide the dispute referred to it by the Punjab Government by notification dated 9th January, 1957. It is alleged in the petition that respondent No. 2, the Distillery Mazdoor Union, put forward several demands on 1st December, 1952, and by mutual agreement an Arbitration Board was constituted of which the Deputy Commissioner, Amritsar, was the Chairman and Pandit Amar Nath Vidyalankar and S. Joginder Singh Chawla were the members. This Board gave an award on 4th March, 1953. According to this award the minimum wages of the labour were

to be increased as set out in the award and the existing facilities as already provided by the Company to the workers were to continue. The wages for the strike period were to be paid at the rate of 50 per cent. only of the pay to the permanent workers. The increase in wages was to be effective from 26th December, 1952. All other points mentioned in the notice of the workers were dropped. On the 6th November, 1953, the demands were repeated by the workers and were referred by the Government to the Second Industrial Tribunal by a notification dated 25th February, 1954, (Reference No. 3 of 1954). During the pendency of the reference another dispute arose as to whether the wages should be paid to the workers affected by lock-out in the distillery for the entire period of the lock-out. This was also referred to the same Tribunal by the Government on 20th March, 1954 (Reference No. 7 of 1954). The Tribunal gave the awards in both the references in May 1955. Both the parties were dissatisfied with the awards and lodged appeals before the Labour Appellate Tribunal at Lucknow. These appeals were decided on 1st June, 1956. The Appellate Tribunal by mutual consent of the parties, confirmed the awards as modified to the extent mentioned in the order of the Tribunal. After this the Mazdoor Union made demands once again by a notice dated 12th October, 1956, and the aforesaid disputes were referred to the Industrial Tribunal by a notification dated 9th January, 1957. The case of the petitioner-company is that the previous awards were still in operation and the disputes which had been dealt with in those awards could not again be referred to the Tribunal in view of the provisions of section 19 and other relevant provisions of the Industrial Disputes Act, 1947.

According to section 19(3) of the Act an award is to remain in operation for a period of one year from the date on which it becomes enforceable. Sub-section (6) of section 19 provides that notwithstanding the expiry of period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award. The contention raised on behalf of the petitioner-company is that the period specified in sub-section (3) of section 19 had not expired when the reference in question was made and, secondly, no notice had been given by the Mazdoor Union to terminate the award which of course could only be done on the expiry of the period prescribed by sub-section (3). It is contended that if the disputes which have been referred now were covered by the previous awards then there could be no valid reference and the Tribunal was debarred from proceeding to adjudicate upon the disputes. There can be no doubt that in view of the decision in *British India Corporation* v. *Industrial Tribunal, Punjab*, [1957] 13 F.J.R. 352, if the disputes now referred were the subject matter of the previous awards, the reference of the same disputes would be illegal. It is, therefore, necessary to decide whether any of the items of dispute which have been referred by the notification dated 9th January, 1957, were in effect the subject matter of the previous reference and awards. First of all, items 1 to 8 of the present reference may be considered. They relate to emoluments of permanent and daily workers including the question of annual increment and grades. It is apparent that items 4 to 8 involved details with regard to various types of employees whether they are semi-skilled, skilled, etc., or peons, clerks, typists, etc. In the previous award given in Reference No. 3 of 1954, vide Annexure 'B', these matters were substantially covered by items 3 and 4. It is true that the aforesaid items at the previous stage were not stated in the same detailed manner as they have been set out at the subsequent stage, but what has to be seen is whether the previous disputes substantially covered the matter which has now been referred. In my opinion items 3 and 4 of the previous award fully covered items 1 to 8 of the present reference. In the award itself the decision was in the following terms:

"In view of the present position of the Company and the present salary including dearness allowance being paid, and the present cost of living, these demands are withdrawn by the workmen for the present."

Before the Labour Appellate Tribunal a settlement was arrived at between the parties and as a result thereof the Appellate Tribunal ordered that the appeal for the reopening of demands 2 to 7 and 9 to 17 stood dismissed subject to the legal rights open to both the parties as they may be considered advisable. The items which are now being considered were included in demands 2 to 7, and it has to be seen what is the effect of the legal rights of both the parties being left open. It is submitted on behalf of the respondents that the award given by the Industrial Tribunal did not decide anything about items 3 and 4, and the Appellate Tribunal also gave no decision and left the legal rights of the parties open. The argument is that the workers withdrew their demands relating to those items for the time being and that they were not debarred from raising them again whenever they desired. I find no force in the argument that the Industrial Tribunal on the previous occasion did not give any award with regard to items 3 and 4. The demands covered by these items were withdrawn by the workmen and this matter was incorporated in the award with the result that the salaries and allowances, etc., which were being paid at that time were accepted as binding for the time being on both the parties. I fail to see how the analogy or the principle which

underlies the withdrawal of a certain relief or a suit will not apply to these proceedings. In *Burn & Co.* v. *Their Employees*, [1956] 11 F.J.R. 217, while considering the provisions of section 19(3) and section 19(6) of the Act, their Lordships of the Supreme Court have observed that although section 11, Civil Procedure Code, is in terms inapplicable to industrial disputes, but the principle underlying it expressed in the maxim, "*interest reipublicae ut sit finis litium*", is founded on sound public policy and is of universal application, and there are good reasons why this principle should be applicable to decisions of Industrial Tribunals also. As a matter of fact, in the case before the Supreme Court the question was how far an adjudication lost its force when repudiated under section 19(6) and their Lordships observed as follows:

"Now, if we are to hold that an adjudication loses its force when it is repudiated under section 19(6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it, either party will treat it as a mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour."

The language used in the order of the Appellate Tribunal simply leaves the parties to their legal rights and that does not mean that it is open to the workers to reopen the matter even before the period prescribed by section 19(3) has expired and without compliance with section 19(6) of the Act. According to the decision of the Supreme Court in *Burn & Co.'s case*, after the period of one year has expired and if there has been a repudiation under section 19(6) then also the award is liable to be modified only by change in circumstances. That stage has not yet arrived and even if there is any substantial change in circumstances it will not entitle the workers to have a fresh award from the Tribunal at present.

Coming now to the other items, they may be disposed of in the following manner in the light of the observations made above:

(a) Item 9 of the present reference relates to additional increments to be given to workmen due to their past services. This item does not seem to be covered by any of the previous items referred and decided.

(b) Items 10 and 11 of the present reference relate to classification of workmen and fixing them in various grades and adding the increments after doing so. This again is a matter which was covered by the general item 3 which related to graded scales of pay and the regular annual increment. The matter of classification and fixing in various grades could have been raised and decided on the previous occasion and was, therefore, covered by that item.

(c) Item 12 relates to guarantee of additional benefits admissible to workmen under the existing arrangements. This matter was covered by item 9 at the previous stage. The Tribunal gave an award with regard to item 9 and the same was not disturbed by the Appellate Tribunal. This item is, therefore, covered by the previous award.

(d) As regards item 13 of the present reference, it has not been shown to me that it was the subject-matter of adjudication at any previous stage.

(e) Item 14 of the present reference is whether the workmen who have put in more than 3 month's service should be made permanent and whether their past services should be made continuous. This was directly covered by item 2 of the previous award on which an adjudication was made by the Tribunal, which was not disturbed by the Appellate Tribunal.

(f) Items 15 to 18 relate to Provident Fund. At the previous stage the question of Provident Fund was covered by item 13 which was— "All the workers should be made members of the Provident Fund Scheme after completion of a year's service and the Provident Fund Rules should be brought on the level of the Government Scheme." The decision of the Industrial Tribunal with regard to this was that the management agreed to allow the benefit of provident fund to all permanent workmen who completed five years' continuous service.

It is conceded by Mr. Mittal on behalf of the workers that item 16 of the present reference is directly covered by the decision previously given.

It is clear that item 17 of the present reference would also be covered.

So far as items 15 and 18 are concerned, they do not seem to be covered by the previous reference and adjudication.

(g) Items 19 and 20 are clearly not covered by any of the items at the previous stage.

(h) As regards item 21 of the present reference it is submitted by the learned counsel for the Company that the same was covered by the decision in Reference No. 7, according to which the lock-out was found justified. In the award of the Tribunal dated 5th May, 1955, it was held that the lock-out which was declared on 22nd December, but lifted on 23rd December was justified and that the workers were not entitled to any wages for the period of the lock-out. This was affirmed by the Tribunal subject to legal rights of the parties being left open in future. Item 21 also relates to continuity of service. Section 2(eee) of the Act

defines "continuous service" as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not legal, or a lock-out or a cessation of work which is not due to any fault on the part of the workmen. The decision in Reference No. 7 may affect adjudication of this item, but it cannot be said that item 21 of the present reference was directly covered by the dispute decided by the Industrial Tribunal in the previous reference.

(i) It has not been shown how item 22 of the present reference is covered in any manner by the previous awards.

(j) As regards item 23 of the present reference, it is directly covered by item 6 decided in Reference No. 3, and it is so conceded by Mr. Mittal who appears on behalf of the Mazdoor Union.

Mr. Anand Sarup on behalf of the State has referred to the reply filed by the State in which it is stated in paragraph 11(c) that according to the allegation of the workers the Company has made huge profits and the same has changed the circumstances since the date of the previous award. This can provide no escape from the provisions of section 19(3) and (6), and if the Government considered that since the award has been made there has been a material change in the circumstances, it could take action under section 19(4), which admittedly has not been done in the present case.

In the result this petition is allowed to the extent that the respondents are directed not to proceed with the adjudication of items 1 to 8, 10, 11, 12, 14, 16, 17 and 23 out of the matters referred by the notification dated 9th January, 1957. In the circumstances of the case the parties will bear their own costs in this Court.

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[IN THE INDUSTRIAL COURT, BOMBAY.]

AMBADAS EKNATH

v.

NARSINGGIRJI MILLS CO., LTD., SHOLAPUR.

Shri M. R. Meher.

August 21, 1957.

INDUSTRIAL TRIBUNAL—PROCEDURE—EVIDENCE TENDERED IN SEALED COVER—CONSIDERATION OF.

RETRENCHMENT—MEANING OF—TERMINATION OF CONTRACT OF SERVICE UNDER STANDING ORDERS—WHETHER RETRENCHMENT—ENQUIRY, WHETHER NECESSARY—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(OO).

It is not permissible for an Industrial Tribunal to take into consideration evidence tendered in a sealed cover which the other party had no opportunity to see or contradict.

The termination of the services of an employee on the ground that his retention would be detrimental to the interest of the concern, is not retrenchment as defined in section 2(oo) of the Industrial Disputes Act, 1947, and does not attract the provisions of Chapter V-A of the Act. Where such termination of service is bona fide *under the standing orders of the concern, it is not necessary that the management should hold any enquiry before terminating service.*

Case law discussed.

Appeal (IC) No. 169 of 1957.

N. V. Phadke for the workman.

B. Narayanaswami for the management.

ORDER.

This is an appeal against an order of the Judge, Second Labour Court, Bombay, dismissing an application filed by the appellant, an ex-fitter in the Narsinggirji Manufacturing Company Limited, Sholapur in which he prayed for a decision that the order of discharge passed against him by the management was illegal and improper, that he had been retrenched without following the rule of seniority and that the Company could not retrench him unless workers who were junior to him were retrenched. He, therefore, asked for the relief of reinstatement with-compensation.

2. The Company by its written statement replied that the appellant was charge-sheeted on 20th July, 1956, under standing order 21(*k*) for

assaulting a worker named Shri Dnyanoba Kondiba, but as action under standing order 22 was not possible and as the appellant's retention in the service was fraught with risk, he was discharged under standing order 19(*a*) giving the reason that his services were not required. He was given a month's pay in lieu of notice and retrenchment compensation.

3. Now the facts are that the appellant and Shri Vithal Bhagwan were jointly charged for assaulting Shri Dnyanoba Kondiba in the department on 20th July, 1956. Though the incident of assault by the appellant and Shri Vithal Bhagwan occurred in the presence of several workers there were not many who were willing to give evidence in the presence of the appellant and Shri Vithal Bhagwan. In the circumstance, the management discharged the appellant and Shri Vithal Bhagwan giving a month's wages in lieu of notice under standing order 19(*a*) and retrenchment compensation. The Company sent this amount by money order with a covering letter. The appellant accepted this amount.

4. The learned Labour Judge was of the view that the appellant was not retrenched, that it was not the case of the appellant or of the Company that the post in which the appellant worked was abolished, which could only be done by giving a notice of change to the representative Union. The discharge was not, therefore, by way of retrenchment. The management, possibly relying on the view taken by the Bombay High Court in the case of *K. N. Joglekar* v. *the Barsi Light Railway Co. Ltd.*, (57 Bom. L.R. 448), that the word "retrenchment" had the widest import, and whatever the reason for the termination may be, it would constitute retrenchment as defined in the Industrial Disputes Act gave the appellant retrenchment compensation as well as a month's wages in lieu of notice. The learned Labour Judge observed that the decision in the *Barsi Light Railway case* had been overruled by the Supreme Court [1956] 11 F.J.R. 317, and the appellant was fortunate to have got retrenchment compensation in addition to wages in lieu of notice. He further came to the conclusion that the Company had found it undesirable or risky to the proper maintenance of discipline in the Company to retain the appellant in the service, that such a discharge could only be challenged if it was actuated by motives of victimisation or want of *bona fides* on the part of the management and there was no such allegation. He, therefore, came to the conclusion that the discharge should not be interfered with. It appears, however, from the decision that the learned Judge also went into the merits and examined the evidence some of which had been recorded in the absence of the appellant and which was produced in a sealed cover (Ex. 31).

5. Shri Phadke who appeared for the appellant has urged that there has been a serious irregularity in that the learned Labour Judge took into consideration the contents of the evidence produced before him in a sealed cover, which evidence was not shown to the other side. Shri Narayanaswamy who has appeared for the Company has not attempted to support the procedure followed by the learned Judge but he has argued that the order of the Labour Judge could be supported without taking into consideration that evidence. It seems to me that it was not permissible to take into consideration evidence tendered in a sealed cover which the other party had no opportunity to see or contradict. I, therefore, exclude that evidence from consideration but I have come to the conclusion, after excluding from consideration that evidence, that the order of the learned Labour Judge dismissing the application should be up-held.

6. As regards the contention that the appellant was discharged without following the rule of seniority the learned Judge has rightly observed that the appellant was not discharged by way of retrenchment. It has been urged by Shri Phadke that the order of discharge operated as one of retrenchment and, therefore, the rule of discharging the juniormost person ought to have been followed. He has relied on the decision of the Bombay High Court in the case of the *Hospital Mazdoor Sabha* v. *The State of Bombay*, [1957] 13 F.J.R. 473, but as pointed out in a later decision of the High Court in the case of the *Municipal Corporation, Greater Bombay and another* v. *Labour Appellate Tribunal of India and another*, [1957] 14 F.J.R. 114, the view taken in the *Hospital Mazdoor Sabha* case no longer holds the field in view of the decision of the Supreme Court in the *Barsi Light Railway Co. Ltd. and another* v. *Joglekar (K. N.) and Others*, [1957] 11 F.J.R. 317. The appellant was not retrenched but he was discharged from service under standing order 19(*a*) because, it was considered detrimental to the interests of the Company to retain him in service.

7. Then it has been urged by Shri Phadke that the management was bound to hold an inquiry into a misconduct under standing order 22. As the management did not purport to dismiss the appellant for misconduct, in my opinion, such an inquiry was not necessary. In the case of *Gauri Ambu and Others* v. *Phoenix Mills Ltd., Bombay*, (1949 I.C.R., 1), Shri K. C. Sen, the then President of the Industrial Court, observed:

"Then there may be cases in which an operative is guilty of some act which does not amount to misconduct as defined in Standing Order No. 21, for instance, an offence for which he has been convicted or a case of serious moral turpitude, or such a glaring case of negligence as

makes it dangerous for the management to keep him any longer in employment, where action under Standing Order No. 19 may be justified. Mr. Shah has mentioned the case of actual misconduct in respect of which no evidence may be forthcoming, none of the operatives being willing to depose against the guilty man, and in such case effective action under Standing Order No. 22 may not be possible. In such cases it may be proper for the management to act under Standing Order No. 19, provided there is some evidence showing the probability of the operative in question being guilty, and provided further that the management are justified in thinking that the retention of such a person in service is fraught with risks which must be avoided or eliminated in the interests of the industry or undertaking in question."

Also, in the case of *Buckingham and Carnatic Co. Ltd.*, [1952] 3 F.J.R. 265 at p. 276) it was observed by the Labour Appellate Tribunal:

"Although the Standing Order empowers the Manager to terminate the services of operatives by 15 days' notice or in lieu thereof on payment of 15 days' wages without assigning any reason, a Tribunal would, as we have already said, be entitled to know the reason behind the termination of the service under this Standing Order in order to judge whether the act of the Manager was *bona fide* or was with an ulterior motive, or his conduct was arbitrary, or he had acted with unnecessary harshness or there was victimisation or unfair labour practice."

In the case of *D.B.R. Mills Ltd., Hyderabad*, (1952 L.L.J. Vol. II, 300), the Labour Appellate Tribunal observed:

"Under standing order 19 it is a question of terminating the employee's services after giving him due notice or paying him in lieu of notice. Standing Order 22 has application to quite a different class of cases where misconduct is involved and it is intended to impose a punishment upon the employee. It has been suggested before us that there is no material difference between discharge and dismissal, for, in both cases it means termination of employment. There is however a substantial difference between the two. In the case of discharge it is nothing more than a termination of service which gives the employee the right to his full provident fund and his gratuity and any other benefits to which he may be entitled. In the case of dismissal an employee would be deprived of quite a number of benefits. It is also incorrect to say that action under standing order 19 is confined only to cases of discharge proceeding from reasons other than an employee's alleged misconduct, for the language of standing order 19 makes it clear that the reason including the termination of service may be so serious that a communication thereof might directly or indirectly lay the company and the manager or the person signing it open to criminal or civil proceedings at the instance of the operative. The fact remains that when a question of discharge arises under standing order 19 no charge sheet or enquiry is indicated by the standing order, whereas under standing order 22 no order of dismissal can be made unless the operative concerned is informed in writing of the alleged misconduct, and is given an opportunity to explain the circumstances alleged against him and a proper enquiry has been held. We agree that a discharge under standing order No. 19 could be challenged if the discharge proceeded from any *mala fides* on the part of the company or any victimization or unfair labour practice..........."

In view of these decisions it is clear that the management was not bound to hold an inquiry under Standing Order 22, particularly when it was found that witnesses were unwilling, through fear, of giving evidence openly against the appellant. In this connection it is also relevant to cite the decision of the Bombay High Court in the case of the *Municipal Corporation, Greater Bombay, and another* v. *Labour Appellate Tribunal of India and another*, referred to above. In that case the services of a workman of the B. E. S. T. Undertaking were terminated for an act prejudicial to the interests of the Undertaking. The Labour Court and the Industrial Court refused to interfere with the order of the management. The Labour Appellate Tribunal reversed this decision taking the view that the management could not be permitted to avoid the necessity of an inquiry under standing order 23 by purporting to act under standing order 26 (these are the corresponding standing orders in the B. E. S. T.). In the writ proceeding the High Court set aside the order of the Labour Appellate Tribunal on the ground that it had no jurisdiction to interfere with the order passed by the Labour Court and the Industrial Court. In that case their Lordships observed :

"It is clear from these provisions that the Act and the standing orders have made a distinction between dismissal or discharge from services which may be ordered by the employer for misconduct of the employee and termination of the contract of employment, which may be effected by the employer or the employee..............In the present case the management of the B. E. S. T. Undertaking terminated the services of the second respondent for behaviour prejudicial to the interests of the undertaking. No order dismissing the second respondent from service or discharging him from service was passed. It is true that the form of the order terminating employment is not always decisive of the true nature of the order. If an order in form terminating employment is passed merely to camouflage an order dismissing or discharging from employment, the Labour Court may be entitled to come to the conclusion having regard to the circumstances in which the order was passed, that the requisite formalities not having been followed the order was unlawful and cannot be given effect to. But in the present case the Labour Court appears to have held that the order complained of was passed *bona fide* under standing order 26 terminating the employment of the second respondent, and with that order the Industrial Court agreed."

Now, in the present case the order of the management is not challenged on the ground that it was *mala fide* or prompted by motives of victimisation. Shri Dhairyawangir Dhanrajgir, a partner of the Managing Agents of the company, has given evidence in the case. He has stated that he charge-sheeted the appellant for striking Shri Dnyanoba Kondiba, a worker in the drawing department of the company with a knife. Shri Dnyanoba Kondiba sustained deep wounds. He examined Shri Dnyanoba in the hospital while the man was in bed and allowed the appellant to cross-examine Shri Dnyanoba. Exhibit 32 shows that Shri Dnyanoba implicted the appellant. The appellant admitted before the Labour Court that he was allowed to cross-examine Shri Dnyanoba. Exhibit 22 is the explanation of the appellant in the inquiry. Shri Dhairyawangir has stated that he examined three other witnesses but not in the presence of the appellant as they were afraid to give evidence in his presence. As the witnesses were afraid to give evidence before the appellant Shri Dhairyawangir preferred to discharge the appellant under standing order 19. The management was justified in taking the view that the continuance of the appellant in employment was fraught with risk to the maintenance of discipline in the undertaking. Shri Phadke complained that while the Labour Judge took into consideration evidence which was produced in a sealed cover against the appellant, he refused to take into consideration the evidence of Shri Dnyanoba Kondiba in the criminal case against the appellant on the charge of injuring Shri Dnyanoba with a knife. In the peculiar circumstances of the case and to see whether this evidence which is tendered throws any light on the case I have allowed Shri Phadke to produce that evidence. From that evidence it is seen that Shri Dnyanoba did not say that the appellant stabbed him but he said that some one gave the name of the appellant. The record shows that the Police Prosecutor was permitted to cross-examine Shri Dnyanoba and it appears that he was treated as a hostile witness. In the circumstances I do not see how this evidence can help the appellant. It may be noted that the criminal case against the appellant for stabbing Shri Dnyanoba was compounded.

8. For the foregoing reasons I have come to the conclusion that the order discharging the appellant was justified The appeal is dismissed.

[IN THE BOMBAY HIGH COURT.]

PROVINCIAL TRANSPORT SERVICES, NAGPUR

v.

ASST. LABOUR COMMISSIONER, NAGPUR AND OTHERS.

Mudholkar and Kotval, JJ.

August 21, 1957.

DISCHARGE—TERMINATION OF SERVICE ON ONE MONTH'S NOTICE—TERMINATION PRECEDED BY CHARGE-SHEET AND ENQUIRY INTO MISCONDUCT—WHETHER TERMINATION CAN BE DEEMED TO BE DISMISSAL FOR MISCONDUCT—TERMS OF ORDER TERMINATING SERVICE, HOW FAR DECISIVE.

Where there is a term in the contract between the employer and the employees by virtue of which the employer is entitled to exercise his right of terminating the services of the employees after giving them one month's notice or paying them one month's salary in lieu of notice, and the operative part of an order terminating the services of an employee indicated that his services were terminated in exercise of this right, the fact that the employer charge-sheeted the employee for misconduct and held an enquiry before issuing the order would not make the order one of discharge or dismissal for misconduct; SHYAM LAL *v.* STATE OF UTTAR PRADESH [1955] 1 S.C.R. 26 *applied.*

Special Civil Application No. 216 of 1957.

N. L. Abhyankar and *E. J. Moharir* for the petitioner.

S. P. Oke for respondents 2 to 4.

ORDER.

MUDHOLKAR, J.—This is a petition under article 226 of the Constitution by the Provincial Transport Services challenging the order of the Assistant Labour Commissioner, Nagpur, dated 19th July, 1957, overruling the petitioner's contention that the Assistant Labour Commissioner had no jurisdiction to entertain the application made under section 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, by respondents Nos. 2 to 4.

The relevant facts are briefly these: Respondents Nos. 2 and 3 and Nago Fakira, the husband of respondent No. 4, who is now dead, were in the service of the Provincial Transport Services, Nagpur. An enquiry was held against these three persons on a charge of misconduct. It was found by the general manager that these persons were guilty of misconduct. He, however, ordered that their services should be terminated by giving each of them one month's salary in lieu of notice. Thereafter, these persons made a joint application to the Assistant Labour Commissioner alleging that they were wrongfully dismissed from service and that they were thus entitled to re-instatement. According to the petitioner, the Assistant Labour Commissioner had no juridisction to deal with the application of respondents Nos. 2 and 3 and the husband of respondent No. 4 because they were not dismissed from service or discharged from service by way of punishment but their services had been terminated by giving them one month's salary in lieu of notice. It would appear that the actual contention of the petitioner was that the termination of services of these three persons was in pursuance of a term of the contract of employment, though it is conceded that this has not been put in such clear terms in the objection to the jurisdiction of the Assistant Labour Commissioner raised on behalf of the petitioner. We may point out that even before the Assistant Labour Commissioner three documents were filed which are said to be copies of the contracts of service entered into between the petitioner on the one hand and the employees concerned on the other. It may be that because the point was not raised in very clear terms the Assistant Labour Commissioner did not apply his mind to it. Another point which was taken on behalf of the petitioner before the Assistant Labour Commissioner was that the latter had no jurisdiction to go into the merits of the order of the General Manager in which he gave his finding that each of the three persons was guilty of misconduct. According to the Assistant Labour Commissioner he could go into the merits of the question for ascertaining whether the action taken against the employees was in accordance with law or otherwise.

It may be mentioned that the matter arose prior to the amendment of section 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947. Sub-section (2) of section 16 which is relevant reads thus:

"If on such reference being made, the Labour Commissioner, after such inquiry as may be prescribed, finds that the dismissal, discharge, removal or suspension was in contravention of any of the provisions of this Act or in contravention of Standing Order made or sanctioned under this Act, he may direct that the employee be re-instated forthwith or by a specified date or paid such sum not exceeding five hundred rupees by way of compensation as the Labour Commissioner may determine with due regard to the loss of wages................."

It is clear from this provision that the jurisdiction of the Labour Commissioner to grant any of the reliefs specified in sub-section (2) of section 16 arises only in cases of dismissal, discharge, removal or suspension of an employee, and then again only where such dismissal etc. was

(a) in contravention of any of the provisions of the Central Provinces and Berar Industrial Disputes Settlement Act or (b) in contravention of the Standing Orders made or sanctioned under the Act.

It is common ground that no standing orders have yet been sanctioned in respect of the petitioner's undertaking, and so if there was any dismissal, discharge or removal, the question for decision would be whether it was in contravention of any of the provisions of the Act. We may point out that the provisions of the Act would, in this connection, mean section 42 of the Act and Entry No. 3 in Schedule II of the Act.

Before us it was pointed out on behalf of respondents Nos. 2 to 4 that the order on the preliminary objection raised by the petitioner was passed by the Assistant Labour Commissioner without hearing these respondents. Shri Oke states that had he been called upon to reply to the objection, he would have contended that the engagement of respondents Nos. 2 and 3 and the husband of respondent No. 4 was not on the basis of any express term in the contract and further that the contents of the three documents, which have been filed by the petitioner here and of which copies had been filed before the Assistant Labour Commissioner, were not explained to these persons and that they were not aware as to the terms and conditions embodied in those documents. These are questions which have necessarily to be considered by the Assistant Labour Commissioner before coming to a decision on the question whether the termination of the services of respondents Nos. 2 to 4 by the petitioner was in pursuance of an express term in the contract of employment.

Shri Oke relied before us upon a decision of a Division Bench of this Court in *Municipal Corporation, Bombay* v. *Labour Appellate Tribunal*, [1957] 14 F.J.R. 114, in which it was observed:

".........It is true that the form of the order terminating employment is not always decisive of the true nature of the order. If an order in form terminating employment is passed merely to camouflage an order dismissing or discharging from employment, the Labour Court may be entitled to come to the conclusion, having regard to the circumstances in which the order was passed, that the requisite formalities not having been followed the order was unlawful and cannot be given effect to."

Shri Oke points out that in the instant case the charge of misconduct had actually been framed against respondents Nos. 2 and 3 andthe husband of respondent No. 4 and the General Manager of the petitioner found that that charge had been established. He also points out that the General Manager has observed in his order:

"It is thus clear that the explanations are absolutely unsatisfactory and the employees are liable to be dealt with and punished for their misconduct.

As referred to above, the police have put up criminal case against these three employees for theft and it is pending. The company has lost confidence in them.

It clear that this is a case of misconduct on the part of the three employees........"

Shri Oke says that from these observations it would be clear that the actual action taken was by way of punishment and therefore the termination of services amounts to a dismissal. Since that is so, according to the learned counsel, the Assistant Labour Commissioner had, indubitably jurisdiction to entertain the application of these persons. He admits that the operative part of the order of the petitioner was that the services of respondents Nos. 2 and 3 and the husband of respondent No. 4 be terminated by giving them one month's salary in of lieu notice, but according to him, this was merely a camouflage, and what was actually done was to punish these persons by dismissing them from service. In our opinion, what is really material is not the antec edent enquiry made by the employer for satisfying himself whether he should continue in service as employee or not, but what is the actual action taken by him in pursuance of the opinion formed by him. It has been pointed out by the Supreme Court in *Shyam Lal* v. *The State of Uttar Pradesh and the Union of India*, [1955] 1 S.C.R. 26, that where an imputation or charge is not in terms made a condition for the exercise of the power of compulsory retirement, the action taken cannot be regarded as punitive. In that case also, it may be pointed out, a formal enquiry was held against a Government servant with regard to certain allegations for his compulsory retirement before action was taken under the Civil Services (Classification, Control and Appeal) Rules, he was also given a notice to show cause and thereafter action was taken by the Government under Note 1 to article 465-A stating merely that he would be compulsorily retired from service as from a particular date. The operative order only stated this and nothing more. In the present case also the actual order passed with respect to each of the employees only states that his service had been terminated and that one month's salary was to be given in lieu of notice. No doubt, the order also stated that the employee concerned was entitled to know the reasons for the termination of his services and that he could obtain a copy of the finding regarding this if he wanted to have that copy. This fact, however, would not warrant the conclusion that the action taken by the petitioner was merely a camouflage.

A perusal of the documents filed by the petitioner would show that where punitive action is to be taken against a particular employee, the petitioner is not required to give notice or one month's salary in lieu of notice while in the instant case this provision was not availed of at all. If these documents are proved, this would be a circumstance to show that the action taken by the petitioner was not by way of punishment but was in pursuance of an alleged term of the contract enabling the petitioner to terminate the services of an employee by giving him notice or by paying him one month's salary in lieu of notice.

What the Assistant Labour Commissioner has, therefore, to find out is whether there was a term in the contract between the petitioner on the one hand and each of the employees on the other by virtue of which the former was entitled to exercise his right of terminating the services of the employees after giving them one month's notice or paying them one month's salary in lieu of notice. If the Assistant Labour Commissioner finds that there was such a contract, then clearly the case would fall outside section 16 of the Act and he would have no jurisdiction to deal with it.

We quash the order of the Assistant Labour Commissioner and remit the matter to him for being dealt with according to law. We would point out to him that it will be necessary for him to hear respondents Nos. 2 to 4 on the question of jurisdiction.

We, however, make no order as to costs in this proceeding.

The original documents filed by the petitioner are directed to be returned.

[IN THE CALCUTTA HIGH COURT.]

HARENDRANATH BOSE AND OTHERS

v.

JUDGE, SECOND INDUSTRIAL TRIBUNAL AND OTHERS.

Sinha, J.

November 27, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10—REFERENCE OF DISPUTE FOR ADJUDICATION—DISCRETION OF GOVERNMENT—INTERFERENCE BY COURTS—TRANSFER OF DISPUTE FROM ONE TRIBUNAL TO ANOTHER—WHETHER PERMISSIBLE.

INDUSTRIAL TRIBUNAL—JURISDICTION—ADEQUACY OF COMPENSATION FOR RETRENCHED WORKERS REFERRED—WHETHER TRIBUNAL CAN GO INTO LEGALITY OF RETRENCHMENT—LACK OF JURISDICTION NOT BROUGHT TO NOTICE OF TRIBUNAL—WHETHER CAN BE GROUND FOR QUASHING AWARD IN PETITION FOR WRIT.

The reference of an industrial dispute for adjudication under section 10 of the Industrial Disputes Act, 1947, is not a matter of right. A discretion has been given to the Government and the act is a purely administrative act. Whether a particular dispute should be referred under section 10 or not is entirely for the Government to decide and the Courts should not interfere unless mala fides *are clearly established.*

Where the matter referred for adjudication to an Industrial Tribunal relates to the adequacy of the gratuity or compensation paid to certain retrenched workmen, it is not open to the Tribunal to go into the question of the legality of the retrenchment.

Though the appropriate Government may have the right to fill up a vacancy in a Tribunal under section 8 of the Industrial Disputes Act, 1947, and thereby a dispute may be tried by the new member of the Tribunal, the Government has no right to transfer a dispute which is being heard by a Tribunal to another Industrial Tribunal.

Even if there was any defect in the jurisdiction of the Industrial Tribunal which makes an award under the Industrial Disputes Act, 1947, it is not open to the aggrieved party to question the award in a petition for writ under article 226 of the Constitution unless the lack of jurisdiction was raised before the Tribunal.

Civil Revision Case No. 481 of 1957.

N. C. Chakravarty for the workmen.

Banamali Das, S. M. Sanyal, J. Majumdar and *S. C. Bose* for the respondents.

JUDGMENT.

SINHA, J.—This is an application wherein there are 44 petitioners previously employed by Messrs. Rallis India Ltd., formerly known as Messrs. Ralli Brothers Limited, together with Rallis India Limited Employees' Union.

The facts are shortly as follows :

The said Company is a very well known concern carrying on business in Calcutta for many years past. At one time they were employing more than 600 workmen in their Calcutta branch. From 1953 onwards, the company found their Calcutta concern running at a loss. Sometime in April, 1954, the company retrenched some of the employees in its Calcutta establishment as well as at Kantapukur, Cossipore and some other out-stations. The retrenchment however was strongly opposed and had to be abandoned. Ultimately, in 1955, the Board of Directors finally decided to close the Calcutta establishment entirely with effect from the 31st May, 1955. At this stage however the Minister for Labour, West Bengal intervened and the Board of Directors agreed to give effect to a scheme, the foundation of which was that all unprofitable activities were to be abandoned and only the minimum staff retained to continue departments which under present conditions could be expected to pay their way. This entailed, apart from the closure of the Cossipore and the upcountry jute and seeds organisation, the entire cessation of trading in jute and shellac and the closure of the printing press. The departments which were to be retained would be those trading in gunnies, cotton, bones, piece-goods, machinery general exports and imports and ancillary departments, *e.g.*, accounts, shipping, etc. Under the scheme, the maximum clerical and subordinate staff which could be employed is 208. Although previous to this, conciliation proceedings had commenced, the matter was taken up at the ministerial level and there is on record correspondence between the Company and Ministry of Labour negotiating the terms upon which the Company could be induced to carry on its business rather than entirely terminate it. In the background of these facts, it will be easier to understand the two notices served by the Company upon its workmen. The first is dated the 5th February, 1955, annexure 'D' to the petition, whereby it was announced that the entire Calcutta branch will be closed on and from the 31st May, 1955, and that the staff would be paid compensation, provident fund, retiring gratuity, etc. The second notice is dated the 12th of February, 1955, which is annexure 'E' to the petition. This letter referred to the notice dated the 5th February, 1955 and mentioned taht the Company was approached by the Ministry of Labour and it had been decided to retain certain employees comprising of 208 workmen, so

that the employment of the remaining staff was to cease as previously notified on the 31st of May, 1955. The selection was based on certain principles mentioned in the said annexure which, it is said, was submitted to the Minister and approved. Even with regard to these 208 employees, they were only to be retained on new terms of service to be agreed upon. The short reason was as follows :

The company found it unprofitable to carry on business in its Calcutta establishment and its ancilliaries, and it decided to close them altogether. This would have resulted in the mass dismissal of a large number of employees. The Government, therefore, took the matter in hand and induced the company to continue its business in Calcutta, but upon such reduced scale and under such circumstances as would make it profitable for them to remain in business. The Company made it clear that it would be impossible to carry on the business unless they had liberty to choose their own avenue of business and to choose the number of men that they could employ. The net result was that 208 workmen found employment but the others were thrown out. These workmen and their Union raised disputes which formed the subject matter of conciliation proceedings. An application was made before this Court by 114 workmen upon the ground, that although conciliation proceedings had failed the disputes were not being referred to adjudication under the Industrial Disputes Act, nor was Government giving any reasons therefor under section 12(5) of the said Act. That application upon which a Rule was issued, was disposed of by my order dated the 5th of September, 1955. A copy of the order is annexure A1 to the affidavit-in-opposition affirmed by P.A.C. Pulo. I found that there could be no doubt that the Government had not referred the disputes for adjudication nor had it given any reason. It was represented however on behalf of Government that the question was still under consideration and in due time Government would either refer the matter to adjudication or given reasons for not referring the matter, if there was no reference. In view of this representation, I found no further utility in going on with the matter at that stage. What I said exactly was as follows :

"In view of this, I think that this application does not call for any further consideration except recording the admission by the State that the State Government has not considered the matter yet and when it does so, it will give reasons and communicate them. It is to be expected that it will do so within a reasonable time. It will then be open to the parties to move the Court in the way that they may be advised."

On the 17th January, 1956, the State Government by its Order No. 219-Dis./D./11 L-13-55, dated the 17th January, 1956, referred an industrial dispute between the Company and its employees represented by

Rallis India Limited Employees Union, to the Seventh Industrial Tribunal constituted under the Industrial Disputes Act, for adjudication. At that time the Seventh Industrial Tribunal was Mr. B. K. Bhattacharjee. The dispute that was referred was as follows:

"Whether gratuity and compensation offered to the employees of the said company retrenched after May, 1955, are adequate and justified?

If not, what should be the amount of gratuity and compensation?"

That the Government decided not to refer any other disputes for adjudication is clear from letters, dated 6th/7th April, 1955, and 11th April, 1955, being Exs. P and Q to the affidavit of Mr. Pulo, and a letter, dated the 10th of April, 1956, being Ex. J. to the petition. In this last mentioned letter, addressed by the Government to the Secretary of the Rallis India Limited Employees' Union, reasons were given why only the issue as to gratuity and compensation had been referred and no other dispute. It is mentioned there that the retrenchment that had taken place was fair and in conformity with the provisions of section 25G of the Industrial Disputes Act. It was further stated that the allegation of favouritism in selection had been examined and rejected. In the pleadings filed before the Tribunal, the workmen again raised the question of unfair retrenchment, that is to say, section 25G of the said Act. It was urged on behalf of the Company that in view of the order of adjudication it was no longer possible to raise the point of unfair retrenchment and consideration of section 25G of the Act was wholly inappropriate. On the 16th April, 1956, the Tribunal, Mr. Bhattacharjee made an order the relevant part whereof is as follows:

"The company has agreed that in order to show clearly the cases where deviation has been made from the principle laid down in section 25G of the Act, a statement will be filed within a fortnight from today, showing all the employees concerned categorywise and giving the date of entry in service of each and specifying the grounds on which deviation in each case is sought to be justified."

On the 30th April, 1956, and the 3rd of May, 1956, applications were made by the Company stating that there was no agreement on its behalf to furnish particulars as mentioned above, and it was contended that in view of the reference order and in the background of the facts stated above, the consideration of section 25G of the Act would be wholly inappropriate and beyond the jurisdiction of the Tribunal. The application was of course contested by the workmen. On the 5th of May, 1956, an order was made by the Tribunal stating that the reasons given by Government in its letter, dated the 10th April, 1956, after the reference had been made was not binding on the Tribunal, it being within its jurisdiction to decide if any question about section 25G pertinently arose in the case. The Tribunal however did not decide the point at that stage but held that the company should be ready at the hearing with the particulars, when the question would be decided. In or about May, 1956, Mr. B. K. Bhattacharjee ceased to be any longer in the employ of the State Government, having been sent on deputation to the Central Government. On or about 2nd of August, 1956, Government reconstituted the Tribunal and by its Order No. 3662-Dis., dated the 2nd August, 1956, referred the identical industrial dispute to the reconstituted Seventh Industrial Tribunal. The Order itself contained a statement that Mr. B. K. Bhattacharjee had ceased to be in the employ of the State Government and that the Industrial Tribunal had been reconstituted on the 16th July, 1956. The reconstituted Tribunal consisted of Mr. B. L. Sarkar. Before the reconstituted Tribunal, the parties adopted their former pleadings. By Order No. 3931-Dis., dated the 4th of September, 1956, the Government withdrew the dispute from the Seventh Tribunal altogether and referred the identical dispute to the Second Industrial Tribunal for adjudication. The relevant part of the order is as follows:

"Whereas an industrial dispute exists between M/s. Rallis India Ltd., Ralli House, 16, Hare Street, Calcutta, and their employees represented by Rallis India Limited Employees' Union, 16, Hare Street, Calcutta-1, regarding matters specified in the schedule below;

And whereas under Government of West Bengal, Labour Department Order No. 3662-Dis., dated the 2nd August, 1956, the said dispute was referred to the Seventh Industrial Tribunal constituted under Notification No. 3061-Dis./D/12 L-8/56, dated the 16th July, 1956, for adjudication;

And whereas it is expedient that the said reference should be withdrawn and the said dispute should be referred to another Industrial Tribunal constituted under section 7 of the Industrial Disputes Act, 1947 (XIV of 1947);

Now therefore in exercise of the powers conferred by section 10 of the said Act read with section 21 of the General Clauses Act, 1897 (X of 1897) and in supersession of the aforesaid Order No. 3361-Dis., dated the 2nd August, 1956, the Governor is pleased hereby to refer the said dispute to the Second Industrial Tribunal constituted under Notification No. 3930-Dis./D/12 L-5/54."

The Second Tribunal before whom the matter came up for hearing was Mr. G. P. Mukherjee, respondent No. 1. The said Tribunal entered into the adjudication and after hearing the parties made its award, dated the

14th of November, 1956. It *inter alia* held that regard being had to the order of reference, it was not open to the Tribunal to apply the provisions of section 25G of the said Act. Consequently, it refused to grant permission to the workmen to adduce evidence upon that point. By its award, the Tribunal has held that the compensations paid or offered to be paid to the workmen by the Company were fully adequate and justified.

This rule was issued on the 21st of February, 1957, calling upon the respondents to show cause why an appropriate writ should not issue setting aside the orders complained of in the petition and why the respondents Nos. 3 and 4 should not be directed to refer the entire dispute to a Tribunal and for other reliefs.

Mr. Chakravarty appearing on behalf of the petitioners took the following points:

(1) That the State had no jurisdiction to withdraw the reference from the Seventh Tribunal and refer it to the Second Tribunal and that the orders of reference dated the 2nd August, 1956, and 4th September, 1956, are both invalid.

(2) That the State Government in refusing to refer the other items of dispute (other than the question of compensation) to adjudication failed to exercise jurisdiction in accordance with law and acted *mala fide*.

(3) That the Government failed to record reasons for not doing so as required by section 12(5) of the Industrial Disputes Act.

(4) That the Tribunal should have considered section 25G of the Industrial Disputes Act and should have allowed evidence to be led upon the points.

The last point may be disposed of at once. Section 25G of the said Act deals with the procedure for retrenchment and has given legislative recognition to the principle "last come, first go". This is preceded by section 25F which lays down the condition precedent to retrenchment of workmen. It will appear from the facts stated above that Government did consider the question as to whether retrenchment was justified or whether the principle of "last come, first go" had been followed and it is after considering these questions that the Government came to the conclusion that it will not disturb the question of retrenchment but refer to adjudication only the question of adequacy of compensation. Under section 10, it is for Government to consider and come to an opinion whether any industrial dispute exists or is apprehended, and even then it has a discretion as to whether it will refer any dispute or not. This is purely an administrative discretion and the Court will not disturb or interfere in the exercise of such rights unless *mala fides* have been clearly established (See *State of Madras* v. *C. P. Sarathy*, [1952] 4 F.J.R 431. In my opinion, no *mala fides* at all have been established in this case. It seems to me that the Government has been doing the best it can for the workmen concerned, and it is amply clear that no trace of *mala fides* can be attributed to its action in this respect. The order of adjudication consequently proceeds on the assumption that the retrenchment is justified. It is not open to the Tribunal under the order of reference to consider whether the workmen concerned were properly retrenched or not. If this were not so, it would give rise to curious results. Suppose the Tribunal came to the conclusion that the workmen were not properly retrenched. Could it order their re-instatement? Obviously, the only jurisdiction being to decide upon the adequacy of the gratuity or compensation, no such order could be made. In my opinion, the Tribunal correctly decided that it had no jurisdiction to consider the legality or otherwise of the retrenchment and rightly excluded evidence on this point.

I now come to the main argument in the case, namely, the point No. 1. Before dealing with the point, it would be necessary to keep in mind the following facts. So far as the first reference was concerned, namely to Mr. B. K. Bhattacharjee, that came to an end not by reason of any withdrawal but because Mr. Bhattacharjee ceased to be in the employ of the State Government and went on deputation to the Central Government as a member of the Election Commission. That would bring into operation section 8 of the Act. Under section 8(2), if for any reason a vacancy occurs in a Tribunal, it is open to the Government to fill the vacancy. When Mr. Bhattacharjee was transferred to the employ of the Central Government there was obviously a vacancy and the order, dated the 2nd August, 1956, appears to be perfectly in order. In fact, the order recited the fact that Mr. Bhattacharjee had ceased to be in the employ of the State Government and that is why the second reference was being made. The position is, however, quite different when we come to the third order of reference. Mr. B. L. Sarkar who was the incumbent to the Seventh Industrial Tribunal did not cease to be in office, or in other words, there was no vacancy, and section 8 of the Act did not come into operation. Therefore, there is no reason why the matter should be withdrawn from Mr. Sarkar and referred to Mr. Mukherjee and no reason has been advanced. It is stated on behalf of the petitioners that because Mr. Bhattacharjee expressed an opinion adverse to Government stating *inter alia* that he was not bound by the letter, dated the 16th April, 1956, and that the Company should file particulars under section 25G, etc., the Government withdrew the reference from the Seventh Industrial Tribunal and entrusted it to the Second Industrial Tribunal. This, in my view, is without substance. It might have applied to the transfer from Mr. Bhattacharjee to Mr. Sarkar, but it cannot explain the transfer from Mr. Sarkar to Mr. Mukherjee. The transfer from Mr. Bhattacharjee to Mr. Sarkar has been well explained as having been necessitated owing to a vacancy occurring by the fact that Mr. Bhattacharjee ceased to be in the employ of the State Government. Therefore, there is nothing in the point of *mala fides* as set out in paragraph 22 of the petition. As I have stated above, the withdrawal of the case from Mr. Sarkar and refering it to Mr. Mukherjee is under a different basis altogether. Section 8 does not come into the picture. Therefore, the question is whether Government has any power to withdraw a pending reference from one Tribunal, and transfer it to another Tribunal. In other words, if there is a reference to one Tribunal and the Tribunal enters into the reference and is going on with it, can Government, in the midst of the proceeding, suddenly transfer it to another Tribunal and act in a way which completely wipes off the previous proceedings and requires the new Tribunal to start afresh. This precise question has been considered by a Division Bench of the Patna High Court in *D. N. Ganguly and others* v. *State of Bihar*, A.I.R. (1956) Pat. 449. It was held by Ramaswami, J., (as he then was) with the concurrence of Das, C. J., that there was no express provision in the said Act either under section 10 or any other section of the Act, empowering the State Government to withdraw a reference after it has been made to the Industrial Tribunal. It was further held that the State Government had also no implied power to cancel or withdraw a reference which had already been made to an Industrial Tribunal under the provisions of section 10 of the Act. The learned Judge examined all the relevant provisions of the Act and pointed out that the section granted a power to the State Government to refer an industrial dispute to a Tribunal for adjudication and similarly a statutory duty was cast upon the Tribunal to hold its proceedings expeditiously and submit its award to the State Government. The learned Judge pointed out that there is no express provision either under section 10 or any other section in the Act, empowering the State Government to withdraw a reference after it has been made to an Industrial Tribunal. As I shall presently point out, regard being had to a decision of the Supreme Court, it is perhaps no longer open to say that Government cannot cancel a reference. In this case however there has been no cancellation of the reference. The order, dated the 4th of September, 1956, itself states that the reference should be "withdrawn" and referred to another Tribunal. The order mentions section 21 of the General Clauses Act. That ground was also dealt with in the Patna

case above mentioned. Section 21 of the General Clauses Act lays down that where a power is conferred to issue notifications or orders, then it implies power to add, amend, vary or rescind the same. The learned Judges however pointed out that section 21 of the General Clauses Act merely granted a power to the State Government to vary or rescind an order which had already been made. But section 21 of the General Clauses Act only embodies a rule of construction which should be applied if the construction cannot be arrived at or determined with reference to the context or subject matter of the particular statute. It was held that the context and subject matter of the Industrial Disputes Act made it clear that the State Government should have no implied power of cancelling a reference which had already been made. Das, C. J., (as he then was) pointed out that assuming that section 21 gives such power, it could not be used in such a way as to nullify the other provisions of the Industrial Disputes Act. In my opinion also, Government has not the power, expressed or implied, under the Act to withdraw a pending reference from one Tribunal and to transfer the same to another Tribunal. Where a vacancy occurs, it can proceed under section 8(2) of the Act, but otherwise, upon a reference having been made, Government has no longer a power to interfere with its proceedings except to exercise such powers as have been expressly granted to it under the Act. As I have already said, regard being had to a Supreme Court decision it must perhaps be conceded that there is a power of cancellation of the whole reference. A withdrawal, however, is not a cancellation. Cancellation means that the reference has come to an end, whereas withdrawal means the transfer of a subsisting reference.

The *Strawboard Manufacturing Company Ltd.* v. *Gutta Mill Workmen's Union*, [1953] 4 F.J.R. 456, was a case in which there was a reference of a dispute by the Government of Uttar Pradesh and the adjudicator was directed to conclude the adjudication proceedings and submit an award not later than the 5th of April, 1950. The adjudicator made an award, but after the expiry of the time fixed. After delivery of the award, Government extended the time so as to make the award within time. The question was whether the Government had the power to do so. Das, J., (as he then was) said as follows:

"In the circumstances, if the State Government took the view that the addition of those two issues would render the time specified in the original order inadequate for the purpose it should have cancelled the previous notification and issued a fresh notification referring all the issues to the adjudicator and specifying a fresh period of time within which he was to make his award."

What happened was that the Government, after having referred to adjudication, made a further order referring additional issues. Das, J., held that the proper course would have been to cancel the previous notification and issue a fresh notification referring all the issues to the adjudicator specifying a fresh period of time. This case has been referred to in the Patna case cited above, but the learned Judges held that each case must be read in its context. The case certainly turned upon the fact that the original reference had itself prescribed a time-limit and when the time-limit expired the reference came to an end. However, as I have already pointed out, the Supreme Court has held that cancellation of a reference was possible. It certainly is an *obiter* but as it involves a principle, it is binding upon me. In the present case however I am not called upon to decide the question of cancellation. The point is whether there can be a withdrawal and/or transfer. In my opinion, therefore, the order, dated 2nd August, 1956, was quite in order, but the order of withdrawal dated 4th September, 1956, was incompetent.

But the question is, assuming that there was any defect in the jurisdiction of the Tribunal, can such a question be raised in this application by the petitioners? The fact is that they, being aware of such defect of jurisdiction, did not take it before the Tribunal at all. The result was that the issue was not raised and the Tribunal was never called upon to decide it. Under the circumstances, the petitioners cannot be permitted to take this point before this Court in writ petition. *Manak Lal* v. *Dr. Prem Chand Singhir*, A.I.R. [1957] S.C. 425, was a case under the Bar Councils Act. A Bar Council Tribunal was appointed to make inquiry into the alleged misconduct of the appellant who was an Advocate of the Rajasthan High Court. The Chairman of the Tribunal had appeared for the opposite parties in the criminal proceedings out of which the misconduct proceedings arose and the appellant raised the question of bias before the High Court, although before the Tribunal he did not take the objection. The Supreme Court held that the Chairman ought never to have acted as a member of the Tribunal, but that no relief could be given to the appellant, in as much as he had failed to take the point of jurisdiction before the Tribunal and must be taken to have waived it. Reference may be made to another Supreme Court decision *Pannalal Binjraj* v. *Union of India and others*, A.I.R. [1957] S.C. 397 at 412, where it was held that failure to object to the jurisdiction of an Income-tax Officer to whom a case had been transferred, renders future objection under article 226, untenable.

The nearest case, however, is a Bombay decision, *Gandhinagar Motor Transport Society* v. *State of Bombay*, A.I.R. 1954 Bom. 202. In this case, the decision of the Government against an order of the Regional Transport Officer was challenged on the ground that Government had no jurisdiction to sit in appeal over the decision of the State Transport Authority. The petitioner raised no objection to the jurisdiction of Government when it heard the matter, but was content to have it heard. It was held by Chagla, C.J., that under such circumstances no relief could be granted in an application under article 226 of the Constitution. The learned Chief Justice relied on the English Case of *Rex* v. *Williams Philips Ex parte*, [1914] 1 K.B. 608, and said as follows:

"That fact that the petitioner did not challenge the jurisdiction of the Government did not by consent or waiver confer jurisdiction upon the Government. As we have already pointed out, the question is not that if the Government's decision was without jurisdiction it became a competent decision merely because the petitioners did not object to the jurisdiction. But the question is whether the petitioners not having challenged the jurisdiction of the Government this court will will give them relief by exercising its very special and discretionary jurisdiction." Rowlatt, J., in a very short judgment emphasises the fact that the rule that the courts of England have adopted is a very salutary rule. This is what he says:

"It is a very salutary rule that a party aggrieved must either shew that he has taken his objection at the hearing below or state on his affidavit that he had no knowledge of the facts which would enable him to do so."

We see no reason why in this particular case we should not give effect to this rule."

Reference may also be made to *Abanindra Kumar Maity* v. *A. K. Majumdar & others*, 60 C.W.N. 299, *Satya Narayan Transport Co. Ltd.*, v. *Secretary, State Transport Authority*, 61 C.W.N. 726 and *Ram Mohan* v. *State of West Bengal*, 61 C.W.N. 779. That being the position in law, the petitioners are precluded from putting forward the defect of jurisdiction of the Tribunal at this stage and in this application. Coming to the second point, I consider it to be of no substance at all. If there is any case in which the Government can be said to have acted perfectly *bona fide*, it is this case. The affairs of the company, which had an enormous business at one time, came to such a pass that it was about to close its doors altogther. It was by dint of the efforts of the Government in its department of labour that the tragedy was averted.

The only allegations of *mala fide* that are alleged in the petition are to be found in paragraph 22 and ground C in paragraph 29. The first allegation is as regards the withdrawal of the reference from the Seventh

Tribunal to the Second Tribunal. We have already seen that the petitioners are precluded from challenging the order of withdrawal in this application and it is unnecessary and profitless to deal with this allegation. The second allegation is not an allegation of *mala fides* at all. The Government has refused to refer any other dispute to adjudication, for reasons set out in the letter of the Joint Secretary to the Government of West Bengal, dated 11th April, 1955 (Annexure Q to affidavit in opposition). Reference may also be made to a letter by the same officer, dated 6th/7th April, 1955 (Annexure 'P' to the a/o). It is clear therefore that Government considered every aspect of the matter and was satisfied that the principles laid down in section 25G of the Industrial Disputes Act had been followed and that no other disputes needed to be referred to adjudication save the issue of compensation to workmen whose services have been terminated. A reference of an industrial dispute for adjudication under section 10 of the Industrial Disputes Act is not a matter of right. A discretion has been given to Government and the act is a purely administrative act. Whether a particular dispute should be referred under section 10 or not is entirely for Government to decide and the Courts should not interfere unless *mala fides* are clearly established. This also deals with point No. 3, because it fully appears that the provisions of section 12(5) of the Industrial Disputes Act has been followed and reasons have been given in writing as to why no other disputes were referred for adjudication.

Apart from these points, Mr. Chakrabartty tried to take me through the award, in an attempt to prove that the gratuity had not been properly calculated. I am unable to see why not. In any event, this is not an appeal court in that sense. Simply because there is an error is not sufficient for asking for relief. There must be an error apparent on the face of the proceedings. There is no such error as is apparent on the face of the award.

The result is that all the points taken have failed and the application must be dismissed. The rule is discharged, interim orders, if any, vacated. There will be no order as to costs.

This will be without prejudice to any other right of action that the petitioners may have.

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