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# INDIAN FACTORIES JOURNAL



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

WITH

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



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THE
# INDIAN FACTORIES JOURNAL

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## THE INDUSTRIAL DISPUTES (BIHAR AMENDMENT) ACT, 1957.

(BIHAR ACT VIII OF 1958)*.

*[Received the assent of the President on March 7, 1958.]*

An Act to amend the Industrial Disputes Act, 1947, in its application to the State of Bihar.

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

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

(2) It shall come into force at once.

2. *Amendment of the First Schedule to Act XIV of 1947.*—In the First Schedule to the Industrial Disputes Act, 1947 (XIV of 1947), the following item shall be added, namely:—

"11. Oxygen and Acetylene."

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

*Notification No. 1265(ST)/XXXVI-A—102(ST)-57 dated March 27, 1958.*†

In exercise of the powers conferred by section 23 of the U.P. Industrial Disputes Act, 1947 (U. P. Act no. XXVIII of 1947), the Governor of Uttar Pradesh is pleased to make the following amendments in the U.P. Industrial Disputes Rules, 1957, published with notification no. 1465-(ST)XXXVI-A—(102)(ST)-57, dated May 20, 1957:

AMENDMENTS.

1. In sub-rule (1) of rule 8—

(i) between the word "and" and the words "shall be delivered", the words "copies thereof" shall be inserted; and

(ii) the words "in triplicate", occurring between the words "post" and "to the authorities", shall be deleted.

2. In rule 10—

(i) between the words "the" and "Labour Court", wherever occurring, the word "Board" shall be inserted; and

(ii) for the word "or" wherever occurring between the words "Labour Court" and "Tribunal" comma shall be substituted.

3. In sub-rule (2) of rule 16—

(i) for the words "such an application must be supported by an affidavit stating the cause of his absence" the following shall be substituted:

"The Labour Court, Tribunal or an Arbitrator may require the party to file an affidavit stating the cause of absence"; and

*Bihar Gaz., Extry., 5-4-58, p. 2.
†U.P. Gaz., Extry., 27-3-58, p. 1.

(ii) between the words "affidavit" and "shall be filed" commas and the words "if any" shall be inserted.

4. In rule 40—

(1) *add* the following proviso at the end of sub-rule (1):

"Provided that no officer of a federation of unions shall be entitled to represent the parties unless the federation has been approved by the Labour Commissioner for this purpose".

(2) after sub-rule (2) *add* the following as sub-rules (3) to (8):

"(3) An application for approval of a federation of unions for representing the parties before a Board, Labour Court and Tribunal shall be made in Form XX to the Labour Commissioner:

Provided that no federation of unions shall be entitled to apply for approval unless a period of two years has elapsed since its formation.

(4) On receipt of an application under sub-rule (3) above, the Labour Commissioner may, after making such enquiries, as he deems fit, approve the federation or reject the application. In case a federation is approved its name shall be notified in the official *Gazette* otherwise the applicant shall be informed of the position in writing by the Labour Commissioner.

(5) The Labour Commissioner or the Registrar of Trade Unions, Uttar Pradesh, may at any time before or after a federation has been approved, call for such information from the federation as he considers necessary and the federation shall furnish the information so called for.

(6) Every approved federation shall—

(*a*) intimate to the Labour Commissioner and to the Registrar of Trade Unions, Uttar Pradesh, in Form XXI every change in the address of its Head Office and in the Members of the Executive (including its office-bearers) within seven days thereof; and

(*b*) submit to the Labour Commissioner and to the Registrar of Trade Unions, Uttar Pradesh, by December 31, every year a list of the Unions affiliated to it in Form XXII:

(7) The Labour Commissioner may, at any time and for reasons to be recorded in writing, withdraw the approval granted to a federation under sub-rule (4) above.

(8) A party aggrieved by the order of the Labour Commissioner under sub-rule (4) or (7) may within one month from the date of the receipt of such order prefer an appeal before the State Government, whose decision in the matter shall be final and binding."

5. After rule 43 *add* the following as new rules 44 and 45:

"44. *Intimation of strikes and lock-outs.*—An intimation of the strike or lock-out, referred to in sub-section (3) of section 6-S, shall be given in Form XXIII and be delivered personally or forwarded by registered post to the State Government, the Labour Commissioner and the Conciliation Officer of the area concerned.

45. *Notices of strikes and lock-outs.*—(1) The notice of strikes, referred to in sub-section (1) of section 6-S, shall be given—



(*a*) Where there is a registered trade union of workmen, by the President or Secretary of such union or by an office-bearer of the federation of unions, approved under sub-rule (4) of rule 40, to which such union is affiliated; and

(*b*) Where there is no registered trade union of workmen, by at least seven representatives of workmen duly authorized in this behalf at a general meeting specifically held for the purpose.

(2) The notice, referred to in sub-rule (1) above, shall be given to the Manager and/or the Chief Executive Officer of the industrial establishment and shall be delivered personally or by registered post. Copies of such notice shall be delivered simultaneously, either personally or by registered post, to the State Government, the Labour Commissioner and the Conciliation Officer of the area concerned.

(3) The notice of lock-outs, referred to in sub-section (2) of section 6-S, shall be given by the Manager and/or the Chief Executive Officer of the industrial establishment to the President or Secretary of the trade union of workmen of such establishment and where there is no such union by affixing it on the notice board of the establishment at a conspicuous place. Copies of such notice shall be delivered simultaneously, either personally or by registered post to the State Government, the Labour Commissioner and the Conciliation Officer of the area concerned."

6. At the top of Form II, *for* the figure "5(4)" *substitute* the figures "5-A(5)"

7. At the top of Form III, *for* the figures "5(5)" *substitute* the figures "5-A(6)".

8. At the top of Form V, *for* the figure "4" *substitute* the figure "5"

9. *Substitute* the following *for* Form VI:

FORM VI

(Section 5-C and rule 10)

REGISTERED ACKNOWLEDGEMENT DUE

SUMMONS

No............................

Before the Conciliation Board........./Labour Court.........../Industrial Tribunal..................

Conciliation Board/Adjudication Case no...........of 19........

To

(1) The Manager,

..................................

(2) The Secretary,

..................................

Whereas an industrial dispute between..................and its workman/
workmen has been referred to This Board under clause 3 of G. O. No. 738
This Labour Court/Industrial Tribunal, under
(ST)/XXXVI-A—112 (ST)-1957, dated December 31, 1957
section 4-K of the U. P. Industrial Disputes Act, 1947 (U. P. Act no.
XXVIII of 1947) *vide* G. O. No..................dated.................... you
are hereby summoned to appear before the Board/Labour Court/Industrial
Tribunal in person or through a duly authorized representative in accor-
dance with rule 40 of the U. P. Industrial Disputes Rules, 1957, on the
..................day of..................at......................a.m./p.m. to answer all
material questions relating to the said dispute and you are directed to
produce on that day all the books, papers and other documents and things
in your possession or under your control in any way relating to the matter
under enquiry and investigation. Your written statements, if any, should
also be presented to the Board/Labour Court/Industrial Tribunal in duplicate
on the date specified above.

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

................................

*Dated*..................195......

*Chairman, Conciliation Board*
*Presiding Officer/Registrar*
*Labour Court/Industrial Tribunal.*

10. In Form VII *for* the words "a copy/certified copy", occurring between the words "the undersigned for" and "of the marginally noted", *substitute* the words, "a certified copy".

11. In Form XIV after the word "Tribunal" *add* the words "Chairman, Conciliation Board".

12. After Form XIX *add* the following as new Form XX, XXI, XXII and XXIII.

## FORM XX

[Section 6-I(3) and rule 40(3).]

APPLICATION FOR APPROVAL OF A FEDERATION

To

The Labour Commissioner, U. P.,
Post Box No. 220,
Kanpur.

Sir,

1. We hereby apply under rule 40(3) of the U. P. Industrial Disputes Rules, 1957, for the approval of Federation under the name of..............

2. The address of the Head office of the Federation is.................



3. The Federation came into existence on the..............day of........ 19..........................as per resolution passed in a general meeting of the representatives of the Constituent Unions held on..............19..............
(copy enclosed).

4. The list of persons who participated in the above general meeting is given below:

| Serial number | Names of the participants | Name of the Constituent Union of which they are members | Residential address | Remarks |
|---|---|---|---|---|
| | | | | |

5. The list of members of the Executive Committee including the office bearers of the Federation is also given below:

| Serial number | Name | Designation in Executive | Age | Address | Occupation | Date of appointment | Remarks |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

6. A list of registered trade unions affiliated to the Federation is also given below:

| Serial number | Name of the Union | Registration number | Date of Registration | Name of the | | No. of affiliation | Date of affiliation | Remarks |
|---|---|---|---|---|---|---|---|---|
| | | | | President | Secretary | | | |

7. Two neatly typed or printed copies of the Constitution (Rules) of the Federation are also enclosed*.

Yours faithfully,

*Date*.......................... *Signature of the President*......................

*Signature of the Secretary*..................

*All enclosures should be duly signed by the Secretary of the Federation under its official seal.

## FORM XXI.

[Section 6-I (3) and Rule 40(6)(a)]

PART A

*Intimation of change of address of the head office of an approved Federation*

Name of the Federation..........................................

Number and date of notification under which approved................

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

Dated This..............day...........of...........

Notice is hereby given that the head office of above mentioned Federation has been removed from..............................................and is now situated at............................(City or Town or District). w.e.f..............

*Dated*.......................... *Signature of the Secretary.*

PART B

*Intimation of change in the Executive Committee of an approved Federation*

The following changes in the Executive Committee of the above-named Federation have been made on....................................................

PARTICULARS OF EXECUTIVE COMMITTEE MEMBERS RELINQUISHING OFFICE

| Name | Office held | Date of relinquishing | Office | Remarks |
|---|---|---|---|---|

PARTICULARS OF NEW EXECUTIVE COMMITTEE MEMBERS APPOINTED

| Name | Age | Designation in Executive | Address | Occupation | Date of appointment | Remarks |
|---|---|---|---|---|---|---|

*Signature of the Secretary.*



To

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

(2) The Register of Trade Unions, U. P.,
Kanpur.

## FORM XXII

[Section6-I (3) and Rule 40 (6) (b)]

LIST OF THE UNIONS AFFILIATED TO THE FEDERATION.

Name of the Federation.......................................

As required by rule 40(6) (b) of the U.P., Industrial Disputes Rules, 1957, the names of Unions affiliated to the above-named Federation as on 31st December, 19..........................are given below :

| Serial number | Name of Union | Registration number | Date of Registration | Name of | | | No. of affiliation | Date of affiliation | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| | | | | President | Secretary | Treasurer | | | |

*Signature of the Secretavy.*

Seal of the Federation.

To

1. The Labour Commissioner, U.P.,
Post Box No. 220,
Kanpur.

2. The Registrar of Trade Unions,
Uttar Pradesh,
Kanpur.

# FORM XXIII.

[Section 6-S (3) and Rule 44]

INTIMATION OF STRIKE/LOCK-OUT

| Name of undertaking and industry | Station and District | Normal working strength | No. of workers involved — Directly | Indirectly | Strike or lock-out | If strike, please state whether it is directed organised or controlled by some union, if so give the name of the union | Date and hour of commencement of strike or lock-out | Cause/demand if any giving rise to strike lock-out | Was notice of strike or lock-out as required under section 6 (S) given; if so on what date and for what period | Any other information, relevant to the strike/lock-out |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |



[IN THE CALCUTTA HIGH COURT]

## BIRENDRA KUMAR CHATTERJEE AND OTHERS

*v.*

## RELIANCE JUTE MILLS CO., LTD.

*Lahiri and Mitter, JJ.*

August 23, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 33, 33A—CONTRAVENTION OF SECTION 33—TRANSFER OF DISPUTE TO ANOTHER TRIBUNAL—EFFECT—WHETHER COMPLAINT UNDER SECTION 33A LIES TO SECOND TRIBUNAL—DISPUTE CONCERNING MANUAL WORKERS ONLY—CLERICAL WORKERS, WHETHER "CONCERNED IN DISPUTE".

INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 10, 20 (3), 33—REFERENCE OF DISPUTE TO INDUSTRIAL TRIBUNAL—DATE OF COMMENCEMENT OF PROCEEDINGS BEFORE TRIBUNAL—WHEN ORDER OF REFERENCE BECOMES EFFECTIVE.

*Where an industrial dispute which had been referred to an Industrial Tribunal under section 10 of the Industrial Disputes Act, 1947, is transferred to another Industrial Tribunal, the previous order of reference comes to an end and a new order of reference comes into existence by the order of transfer. Under section 33A of the Act, an application can be made by the aggrieved workman only to the Tribunal before which the proceedings were pending at the time of contravention of section 33. Therefore, where there is a transfer of the industrial dispute from one Tribunal to another, no complaint under section 33A will lie to the second Tribunal in respect of a contravention of section 33 which occurred during the pendency of proceedings before the first Tribunal.*

*An order of the State Government does not become effective and complete until it is authenticated in the manner laid down in article 166 (2) of the Constitution of India. Even if an order was passed by the Minister for Labour directing the reference of an industrial dispute to an Industrial Tribunal, the order is effective only from the date when the order is signed by the Secretary or Joint Secretary to the Government and not from any earlier date.*

*Where the industrial dispute referred to an Industrial Tribunal concerned the manual workers who had been retrenched and the compensation to which they were entitled, the clerical workers of the concern cannot be said to be workmen " concerned in the dispute " for the purposes of section 33 of the Act.*

Civil Revision Case No. 1500 of 1957.

*M. N. Saha* and *Bijoy Bose* for the workmen.

*Niren De, D. K. Bose* and *J. K. Ghose* for the management.

## JUDGMENT

LAHIRI, J.—This is a rule under article 227 of the Constitution at the instance of 32 clerical employees of Reliance Jute Mills Co., Ltd., against an award made by the Second Industrial Tribunal, Calcutta, rejecting their application under section 33-A of the Industrial Disputes Act on the ground that it had no jurisdiction to deal with that application. The facts which are material for the determination of this case may be briefly stated as follows:

As a result of closing down of 301 looms of the Reliance Jute Mills Co., Ltd., a large number of mechanical workers of that mill were retrenched and, at the instance of the retrenched mechanical workers, an industrial dispute was raised and it was referred to the Seventh Industrial Tribunal by Order No. 3452-Dis/D/7L/5/55 bearing the date 7th August, 1956, and signed by the Joint Se-retary to the Government of West Bengal on the 10th of August, 1956. By Order No. 4168-Dis/D/7L-5/55, dated the 17th September, 1956, the State Government, in supersession of the previous order, referred the dispute to the Second Industrial Tribunal. On the 27th September, 1956, the petitioners filed an application before the Second Industrial Tribunal alleging that they had been discharged by the opposite party on the 8th of August, 1956, during the pendency of the proceedings before the Seventh Industrial Tribunal, without express permission in writing of the Seventh Industrial Tribunal and, as such, the opposite party had contravened the provisions of section 33 of the Industrial Disputes Act. The application filed by the petitioners was under section 33-A of the aforesaid Act. Against the application filed by the petitioners two preliminary points were raised on behalf of the opposite party. The first point was to the effect that the industrial dispute between the petitioners and the opposite party had been referred to the Seventh Industrial Tribunal not on the 7th August, 1956, but on the 10th August, 1956, on which date the order of reference was actually signed by the Joint Secretary. The second objection was on the ground that the Second Industrial Tribunal, before which the application under section 33-A had been filed, had no jurisdiction to deal with it, inasmuch as the act alleged against the opposite party had been committed at the time when the proceeding was pending before the Seventh Industrial Tribunal. The learned Judge of the Second Industrial Tribunal has upheld the second objection raised on behalf of the opposite party but has overruled the first. Against that order the petitioners have obtained the present rule.

On behalf of the petitioners it is contended that when an industrial dispute is transferred from one Tribunal to another the order of



transfer confers on the transferee Tribunal all powers which vested in the original Tribunal. It is contended that the power to deal with an application under section 33-A vested in the Seventh Industrial Tribunal to which the reference had been made by the State Government, and, with the transfer of the reference from the Seventh Tribunal to the Second Tribunal by the order, dated 17th September, 1956, the power to deal with the application under section 33-A had also been transferred. This argument seemed to be very attractive at first sight, but on closer scrutiny, it is found to be without substance. The Industrial Disputes Act, as it applies to Bengal, does not contain any provision enabling the State Government to transfer a reference from one Tribunal to another but the power is exercised by the State Government under section 21 of the Indian General Clauses Act. The actual words by which the transfer was made are as follows:

"..............whereas under the Government of West Bengal, Labour Department, Order No. 3452-Dis/D/7L-5/55, dated the 7th August, 1956, the said dispute was referred to the Seventh Industrial Tribunal.................and whereas it is expedient that the said reference should be withdrawn and the said dispute should be referred to another Industrial Tribunal.................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, and in supersession of the aforesaid Order No. 3452-Dis/D/7L-5/55, dated the 7th August, 1956, the Governor is pleased hereby to refer the said dispute to the Second Industrial Tribunal....................."

The plain effect of this order is to cancel the previous order of reference and to make a fresh order under section 10 of the Industrial Disputes Act. The Second Industrial Tribunal derived its jurisdiction under the second order of reference, dated the 17th September, 1956. It is not as if a pending case is transferred from one Tribunal to another, but the true position is that the previous order of reference came to an end with the order of withdrawal, dated the 17th September, 1956, and a new reference came into existence by the order of transfer made on that date. Section 33-A provides that if "an employer contravenes the provisions of section 33 during the pendency of proceedings before the Tribunal, and employee aggrieved by such contravention may make a complaint in writing in the prescribed manner to such Tribunal." The word "such" has reference to the Tribunal before which the proceedings were pending. In the present case upon the allegations made by the petitioners in the application under section 33-A the act alleged against the opposite party was committed on the 8th August, 1956, on which date the proceedings were pending before the Seventh Industrial Tribunal. Consequently the Second Industrial Tribunal which derived its jurisdiction to deal with the reference under the order of the State Government, dated the 17th of September, 1956, had no jurisdiction to entertain the application filed by the petitioners. The view taken by the learned Judge of the Industrial Tribunal on this point appears to be correct.

Mr. De, appearing for the opposite parties, has also contended that the learned Judge of the Second Industrial Tribunal was wrong in overruling the point that the first order of reference was really made not on the 7th of August, 1956, but on the 10th of August, 1956. The learned Judge of the Industrial Tribunal has held that the order was passed by the Minister-in-charge of the Labour Department to the Government of West Bengal on the 7th of August, 1956, though it was actually signed by the Joint Secretary on the 10th of August, 1956. According to the learned Judge, the order became effective on the date on which the order was passed by the Minister-in-charge of the Labour Department and the fact that it was signed on a later date by the Joint Secretary, did not prevent the order from becoming effective from the 7th of August, 1956. Mr. De has pointed out that the order passed by the State Government could not become complete till it was actually authenticated in the manner contemplated by article 166(2) of the Constitution. Article 154 of the Constitution provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 166(2) provides that orders and other instruments, made and executed in the name of the Governor, shall be authenticated in such manner as may be specified in rules to be made by the Governor. With regard to the authentication the following rule was made by the Governor of West Bengal:

"In exercise of the powers conferred by clause 2 of article 166 of the Constitution of India and in supersession of all previous rules made in this behalf, the Governor is pleased to make the following rules:

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

(2) "Save in cases where an officer has been specially empowered to sign an order..............of the Government of West Bengal, every such order or instrument shall be signed by either a Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary to the Government of West Bengal and such signature shall be deemed to be the proper authentication of such orders.............."



This is Rule No. 2256 A.R., dated the 25th August, 1951. The combined effect of clause (2) of article 166 of the Constitution and the aforesaid rule is that the order of the State Government does not become effective and complete till it is authenticated in the manner contemplated by the Constitution. In the present case, the date of signature of the Joint Secretary was the 10th August, 1956. We are accordingly unable to hold that the order, of first reference became effective before the date on which it was authenticated according to article 166(2) of the Constitution, that is, before the 10th August, 1956. It is true that in the order, dated the 17th September, 1956, the previous order is referred to as an order, dated the 7th August, 1956, but this wrong reference in the second order will not make the first order constitutionally valid before the 10th August, 1956. We accordingly hold that the order of first reference became valid and effective on the 10th August, 1956, on which date it was signed by the Joint Secretary. Accordingly, the act complained against the opposite party took place before the pendency of any reference before any Industrial Tribunal. Mr. De has also invited our attention to section 20, sub-section (3), of the Industrial Disputes Act which defines pendency of a proceeding before a Tribunal. This section provides that a proceeding before a Tribunal shall be deemed to have commenced on the date of the reference of the dispute for adjudication and shall be deemed to have been concluded on the date on which the Award becomes enforceable. In view of the fact that the order of reference under section 10 of the Industrial Disputes Act was signed on the 10th August, 1956, we hold that the date of the reference of the dispute for adjudication to the Seventh Industrial Tribunal was the 10th of August, 1956. Accordingly, we hold, in disagreement with the learned Judge of the Industrial Tribunal that the application of the petitioners is liable to be thrown out on the ground that the acts alleged therein do not constitute a contravention of section 33-A of the Industrial Disputes Act.

Another point came into prominence in course of argument before this Court. It appears that as a result of the closing down of 301 looms, certain mechanical workers of the opposite party were retrenched and it was at their instance that an industrial dispute was raised and referred by the State Government to the Industrial Tribunal. The petitioners who are clerical employees did not raise the industrial dispute which was referred to the Industrial Tribunal. According to the allegations made by the petitioners they were discharged from service by the opposite party on the 8th August, 1956. Thereupon two applications under section 33-A were filed before the Industrial Tribunal, one by the petitioners which gave raise to Case No. 149 of 1956 and the other was Case No. 150

of 1956 which was started by one Kshitish Chandra Sarkar and 14 others all of whom were mechanical workers. The mechanical workers who started Case No. 150 of 1956 did not press their application but the petitioners who were applicants in Case No. 149 and who were clerical employees of the opposite party, pressed their claim and it is they who have obtained the present rule, The questions that were referred by the State Government to the Industrial Tribunal for adjudication in the order of reference are these:

"1. Whether the management are justified in closing down 301 looms and thereby discharging a large number of workers.

2. Whether the workmen thus involved are entitled to retrenchment and/or compensation."

The question therefore arises whether the petitioners are workmen "concerned in the dispute" within the meaning of section 33 of the Industrial Disputes Act. Upon the facts alleged it is quite clear that they did not take any part in raising the industrial dispute and it is quite clear that the industrial dispute was raised by the mechanical workers who started Case No. 150 of 1956.

Mr. Saha appearing on behalf of the petitioners has contended that the petitioners were also workmen concerned in the dispute because their discharge was consequential to the closing down of 301 looms and the retrenchment of the mechanical workers. We are not, however, prepared to accept this contention as correct. Sections 33 and 33-A afford statutory protection against victimisation during the pendency of an industrial dispute before a Tribunal. In the case of *Automobile Products of India Ltd.* v. *Rukmaji Bala*, [1955] 7 F.J.R. 716, Das, J., made the following observations:

"The object of section 22 of the 1950 Act like that of section 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the subject-matter of pending proceedings against victimisation by the employer on account of their having raised industrial disputes or their continuing the pending proceedings."

In the present case it cannot be said that the petitioners were victimised by the employer by retrenchment on account of their having raised an industrial dispute or on account of their continuing the industrial dispute before the Industrial Tribunal. We are unable to hold, therefore, that the petitioners are persons "concerned in the dispute" within the meaning of section 33 of the Industrial Disputes Act.

The same conclusion can also be reached from another point of view. Mr. De appearing on behalf of the opposite party pointed out that the Tribunal had made its final award on the dispute which was



referred to it for adjudication and that award was published in the Calcutta Gazette, Extraordinary, on the 1st April, 1957. By that award the Tribunal has held that the employer was justified in closing down 301 looms on economic grounds and that it was also justified in discharging the workers. It has also awarded compensation to the retrenched workers under section 25-F of the Industrial Disputes Act. Mr. De contended that as a result of this final order in favour of the employer, the application filed by the petitioners under section 33-A has become infructuous. If the petitioners are parties to the industrial dispute, they are bound by the award, with the result that they cannot press the application under section 33-A and this Rule has become infructuous after the publication of the award on the 1st April, 1957. In order to get rid of this difficulty Mr. Saha contended that the petitioners are not parties to the industrial dispute and as such they are not bound by the award. If they are not parties to the industrial dispute, it is difficult to see how they can be persons concerned in the dispute within the meaning of section 33. The petitioners cannot have it both ways. They cannot be permitted to say that for the purpose of continuing the application under section 33-A they are concerned in the dispute and for the purpose of avoiding the effect of the final award they are not parties to the industrial dispute. Upon the facts appearing on the record of the case, however, we are inclined to hold that the petitioners are not persons concerned in the dispute within the meaning of clause (a) of section 33 and therefore they have no right to maintain an application under section 33A of the Industrial Disputes Act.

For the reasons given above, we are unable to interfere with the order passed by the Second Industrial Tribunal. This Rule must accordingly be discharged.

In the circumstances of this case we direct that the parties should bear their respective costs in this Court.

MITTER, J.—I agree.

[IN THE KERALA HIGH COURT.]

## BETHANY RUBBER ESTATE

*v.*

## INDUSTRIAL TRIBUNAL, QUILON AND OTHERS.

*M. S. Menon and Varadaraja Iyengar, JJ.*

March 20, 1958.

WAGE SCALE—MINIMUM WAGES FIXED UNDER MINIMUM WAGES ACT, 1948—EFFECT—WHETHER PRECLUDES RAISING OF 'INDUSTRIAL DISPUTE' BY WORKMEN—CLAIM BY WORKMEN FOR HIGHER WAGE—WHETHER CAN BE REFERRED AS 'INDUSTRIAL DISPUTE' TO INDUSTRIAL TRIBUNAL—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(K) AND 10(1).

*The fact that the minimum rates of wages payable to certain workmen has been fixed under the Minimum Wages Act, 1948, does not mean that there can be no 'industrial dispute' regarding the proper wages to be paid to those workmen. If the workmen do not accept the minimum rates of wages fixed under the Act and ask for more, then there will be an 'industrial dispute' which can be referred for adjudication to an Industrial Tribunal by the appropriate Government under section 10(1) of the Industrial Disputes Act, 1947.*

Original Petition No. 32 of 1958.

*K. P. Abraham* for the management.

*Government Pleader* and *M. M. Abdul Kadir* for the respondents.

### JUDGMENT.

M. S. MENON, J.—The petitioner is a Superintendent of the Bethany Rubber Estate, Ranni. The first respondent is the Industrial Tribunal, Quilon, the second the Rani Plantation Labour Union, and the third, The State of Kerala.

Certain disputes between the Management of the Rubber Estate and their workmen were referred for adjudication under the Industrial Disputes Act, 1947. The third of the five issues referred was in the following terms:

"Should the time rate of system of payment of wages to the workers now prevalent in the Estate be changed?"

The Tribunal considered the question in paragraphs 22 to 25 of the award dated 30th September, 1957, and found the issue in favour of the workmen.

The minimum rates of wages payable to such workmen had been fixed under the Minimum Wages Act, 1948 (Act XI of 1948), and the contention of the petitioner is that as a result the reference of issue No. 3 for adjudication by the Government under section 10 of the Industrial Disputes Act, 1947 (Act XIV of 1947), and the award of the Tribunal thereon are without jurisdiction and should be set aside. Paragraph 7 of the affidavit in support of the petition states the contention as follows:



"The finding on issue No. III of the Award being *ultra vires* of the provisions of the Minimum Wages Act (Act XI of 1948), and the reference itself being *ultra vires* of the powers of the Government the above Original Petition is filed to quash the finding on issue No. III of the Award passed by the Industrial Tribunal in Industrial Dispute No. 5 of 1957 and all proceedings relating thereto by the issue of a writ of *certiorari* and to stay the implementation of the Award in respect of the finding on issue No. III by a writ of prohibition and/or by any other appropriate Writ or Order".

We see no merit whatsoever in the contention urged by the petitioner. The fact that minimum rates of wages payable to the employees concerned had been fixed under the Minimum Wages Act, 1948, cannot possibly mean that there can be no "industrial dispute" regarding the proper wages to be paid to those employees within the meaning of that expression as defined in section 2(k) of the Industrial Disputes Act, 1947. A contention similar to the one urged before us was raised and negatived in *South India Estate Labour Relations Organisation by its Secretary, representing the managements of the 180 Estates* v. *The State of Madras and Others*, [1953] 5 F.J.R. 648.

The Madras High Court summarised the contention as follows:

"The contention of Mr. K. Kajah Aiyar, learned advocate for the petitioner is that the Industrial Disputes Act, 14 of 1947, is a statute dealing with Industrial Disputes in general whereas the Minimum Wages Act, 11 of 1948, deals with one of the topics comprised therein; the fixation of wages in the trades specified in Part 1 of the Schedule to the Act; that, being a later enactment dealing with a particular matter, Act 11 of 1948 supersedes *eo extanti* the earlier enactment, Act 14 of 1947; and that fixation of wages cannot, therefore, be a matter of reference under the latter Act. The question for determination then is whether Act 14 of 1947 can be held to have been repealed by implication by Act 11 of 1948."

and emphasised the "vital differences between the two enactments, both as regards their purpose and their scope". It then pointed out that the "law does not favour repeal by implication", quoted with approval Maxwell's statement:

"The language of every enactment must be construed as far as possible in accordance with the terms of every other statute, which it does not in express terms modify or repeal". (Interpretation of Statutes 10th Edition, p. 160), and said:

"So construing the two statutes the position that emerges might thus be stated. The object of the Act 11 of 1948 is to ensure the payment of living wages to workmen. The fixation is made from the point of view of the workmen. The capacity of the employer does not enter into the calculation. It may be that he cannot afford to pay at the rate fixed and may even be obliged to close down; but so long as he continues to employ, he cannot pay less. *Vide* section 22. A rate fixed under those conditions has to be the 'minimum', and that is why its determination is entrusted to administrative authorities. After wages are fixed under Act 11 of 1948 it may happen that the workmen are content to accept them, in which case no further question would arise. But if they do not accept it and ask for more, then there is an industrial dispute; and under section 10 of Act 14 of 1947, the Government gets jurisdiction to refer it for adjudication by a Tribunal".

In view of our conclusion that the reference and the award suffer from no infirmity as alleged by the petitioner, it is unnecessary to consider the contention of the second respondent to the effect that the petitioner is precluded from rising the question of implied repeal before us in view of the fact that he did not raise it before the Tribunal but chose to submit to its jurisdiction and take a decision.

The petition fails and is hereby dismissed with costs. Advocate's fee Rs. 100 to respondents 1 and 3 togther and a like amount to respondent No. 2.

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[IN THE SUPREME COURT OF INDIA.]

BALA SUBRAHMANYA RAJARAM

*v.*

B. C. PATIL AND OTHERS.

*Syed Jafer Imam, K. Subba Rao and Vivian Bose, JJ.*

March 19, 1958.

BONUS—NATURE OF—BONUS PAYABLE AS CONDITION OF SERVICE AND BONUS AWARDED BY INDUSTRIAL TRIBUNAL—DISTINCTION BETWEEN —BONUS AWARDED BY TRIBUNAL—WHETHER 'WAGES'—WHETHER WORKMAN CAN PROCEED BEFORE PAYMENT OF WAGES AUTHORITY FOR RECOVERY OF BONUS—PAYMENT OF WAGES ACT, 1936, SECTIONS 2(vi) AND 15.

*Bonus which has been awarded by an Industrial Tribunal as a result of an adjudication under the Industrial Disputes Act, 1947, cannot be said to be in fulfilment of the terms of contract of employment and does not fall within the definition of 'wages' in section 2 (vi) of the Payment of Wages Act, 1936. Consequently, the Authority under the Payment of Wages Act has no jurisdiction to entertain any petition under section 15 of the Act in respect of such bonus.*

F. W. HEILGERS & CO. *v.* N. C. CHAKRAVARTHI AND OTHERS [1949] F.C.R. 356; 1 F.J.R. 123, *applied.*

Civil Appeals Nos. 35 and 36 of 1954.

*R. J. Kolah, B. Narayanaswami, J. B. Dadachanji, S. N. Andley* and *Rameshwar Nath* for the appellant.

*H. N. Sanyal, D. H. Buch, N. P. Nathwani, R. H. Dhebar* and *Naunit Lal* for the respondents.

JUDGMENT.

The following Judgment of the Court was delivered by

BOSE, J.—These appeals arise out of petitions made to the Bombay High Court under article 226 for writs of *certiorari.*

The appellant is the Manager of the Tata Mills Limited, which carries on business in the manufacture and sale of textile goods in Bombay and as such is responsible for the payment of wages under the Payment of Wages Act, 1936.

The first respondent was the Authority under the Payment of Wages Act at the times material to these appeals. The sixth respondent is the present Authority. The Authority is entrusted with the duty of deciding cases falling within the purview of the Act.

The second, third, fourth and fifth respondents are employees in the Mills.

A dispute arose about a claim made by the operatives of the Mills for a bonus for the year 1948. This was referred to the Industrial Court at Bombay which made an award on 23rd April, 1949, and awarded a bonus equivalent to four and a half months' wages subject to certain conditions of which only the sixth is material here. It runs as follows:

"Persons who are eligible for bonus but who are not in the service of the Mill on the date of the payment shall be paid in one lump sum by the 30th November, 1949. In such cases, claims in writing should be made to the Manager of the Mill concerned."

Those operatives who made a claim before the date fixed above were duly paid but payment was refused to the third respondent, who applied much later, on the ground that the condition subject to which the award was made was not fulfilled.

The third respondent, thereupon, made an application before the first respondent, the Authority under the Payment of Wages Act.

Similar claims were made by the second, fourth and fifth respondents for a bonus for the year 1949. The Industrial Court awarded a bonus equal to two months' wages and in the sixth condition put the date as 31st December, 1950.

By this time Labour Appellate Tribunals came into existence, so both sides filed appeals against the award to the Labour Appellate Tribunal of Bombay. The appeals failed and the award was upheld.

After that, the matter followed the same pattern. Respondents 2, 4 and 5 applied for their bonus after 31st December, 1950. The Mills refused to pay and these respondents applied to the first respondent, the Authority under the Payment of Wages Act.

The two sets of claims, that is to say, the claim of the third respondent for a bonus for the year 1948 and the claims of the second, fourth and fifth respondents for bonuses for the year 1949, were heard together.

The appellant contested these applications on two grounds. He questioned the jurisdiction of the Authority to entertain the petitions made to it. He also contended that, in any event, as the condition subject to which the award was made, namely, an application on or before 30th November, 1949, was not fulfilled, the claim for a bonus did not lie.

The first respondent held that it had jurisdiction and, after hearing the parties on the merits, decreed the various claims.



The appellant thereupon filed writ petitions in the High Court. They were heard and dismissed by Coyajee, J.

An appeal was then filed in the same High Court and heard by the Chief Justice and Bhagwati, J. They held that the questions raised were covered by an earlier decision of theirs in another case dated 11th March, 1952, and, following that decision, dismissed the appeals without hearing further arguments, as counsel on both sides agreed that the matter was covered by the earlier decision.

The appellant then applied for a certificate for leave to appeal here. This was granted by Chagla, C.J. and Dixit, J., on 2nd February, 1953.

The first question that we have to decide is whether the first respondent had jurisdiction to entertain the petitions made to him as the Authority under the Payment of Wages Act. This depends on whether these bonuses are "wages" within the meaning of the definition in section 2(vi) of the Act.

The scope of the Authority's jurisdiction is set out in section 15 of the Act. It is to hear and decide

(1) all claims arising out of deduction from wages, and

(2) all claims regarding delay in the payment of wages.

Therefore, unless these bonuses are "wages" within the meaning of the Act, the Authority will have no jurisdiction.

The definition of "wages" in section 2(vi) of the Act is long and complicated but, leaving aside the clauses in it that are not material for our present purpose, it runs—

"'wages' means all remuneration.....................which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include....................."

and then five matters that are not included are set out.

Now consider this clause by clause. "Wages" means *all* remuneration." Is bonus a remuneration? We think it is. Remuneration is only a more formal version of "payment" and payment is a re-compense for service rendered.

Now it is true that bonus in the abstract need not be for services rendered and in that sense need not be a remuneration; for example, there is a shareholder's bonus in certain companies, and there is a life insurance bonus and so forth. But that is not the kind of bonus contemplated here because the kind of remuneration that the definition contemplates is one that is payable

"in respect of his employment or of work done in such employment."

Therefore, the kind of bonus that this definition contemplates is one that is remuneration for services rendered or work done. Accordingly, it is a "remuneration" and as the definition includes *all* remuneration of a specified kind, we are of opinion that bonus of the kind contemplated here falls within the clause that says it must be "remuneration".

Next comes a clause that limits the kind of remuneration, for, though the opening words are "*all* remuneration" the words that follow limit it to all remuneration of the kind specified in the next clause, that is, to remuneration

"which would be payable if the terms of the contract of employment, express or implied, were fulfilled."

Now the question is whether the kind of bonus contemplated by this definition must be a bonus that is payable *as a clause of the contract of employment.* We think it is, and for this reason.

If we equate "bonus" with "remuneration", the definition says clearly enough that the bonus must be such that it is payable "if the terms of the contract are fulfilled", that is to say, it will not be payable if the terms are not fulfilled.

Now, we can understand a position where a statute declares that whenever the terms of the contract of employment are fulfilled the bonus shall be payable; equally, we can envisage a situation in which an employer engages to pay a bonus should the terms of the contract of employment be fulfilled, by a separate and independent agreement that is not part of the contract of employment. In either case, the matter could be said to fall within this part of the definition. But we can see no way in which a bonus can be said to be payable if and when the terms of the contract of employment are fulfilled outside these two cases (namely, legislation, or a separate contract that is not part of the contract of employment), except when it is payable by reason of a term, express or implied, in the contract of employment itself. In any event, if there are such cases, the present is not one of them, for the bonus here is payable under an award of an Industrial Court and has nothing to do with the fulfilment or otherwise of the terms of the contract of employment, except indirectly.

It was argued that as an Industrial Court can direct payment of bonus should an industrial dispute arise in that behalf, the matter falls



within the definition. But does it? One of the matters that an Industrial Court might take into consideration before awarding a bonus is whether all the terms of the contract of employment have been duly fulfilled and it is possible that such a Court might refuse to award a bonus in cases where the terms were not fulfilled, but it would not be bound by such a consideration and its right to make an award of bonus is not conditional on the fulfilment of the terms of the contract of employment, whereas, under the definition, that is an essential ingredient. Therefore, even if due fulfilment of the terms of the contract of employment was to be one of the reasons for the award, the bonus so awarded would not be payable because the terms of the contract had been fulfilled but because of an industrial dispute and because, in order to settle it, the Court awarded the bonus.

It is not necessary to analyse the definition any further (except for one clause) because, even if all the other ingredients are present, the clause we have just considered would exclude a bonus of the kind we have here, that is to say, a bonus awarded by an Industrial Court.

The clause we have yet to examine is this:

"and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable."

It was contended that the words "and includes any bonus" stand by themselves and that the words that follow must be disregarded when bonus is under consideration because they relate only to "additional remuneration" and not to "bonus".

Now, it may be possible to say that the words "of the nature aforesaid" only govern the words "additional remuneration" and that they do not apply to "bonus", with the result that the inclusion clause "and includes any bonus, etc." would refer to two separate things, namely,

(1) bonus and

(2) other additional remuneration of the nature aforesaid.

In our opinion, the clause means—

(1) "bonus.........which would be so payable", and

(2) "other additional remuneration of the nature aforesaid which would be so payable."

If that is correct, then the words "which would be *so payable*" throw us back to the earlier part of the definition and we reach the position that the kind of bonus that is included by the inclusion clause is the kind that would be payable "if the terms of the contract of employment, express or implied, are fulfilled."

There is another reason for reaching this conclusion. The opening words of the definition make it clear that "wages" means remuneration that is payable when the terms of the contract of employment are fulfilled. Therefore, that is something certain. One knows ahead of time that if the terms of the contract are fulfilled, then the bonus is payable. It may be that the exact amount has yet to be determined but the fact that bonus is payable and can be claimed as soon as the terms of the contract are fulfilled is a matter that can be predicated beforehand, that is to say, even before the terms of the contract are fulfilled, or indeed, even before the work has started if the contract is made that far ahead. But that is not the case when bonus is awarded by an Industrial Court, for there it is impossible to say ahead of time whether bonus will be awarded or not; indeed, at the time the contract is entered into, it would be impossible to say whether such a claim could be laid at all because a difference of opinon between one worker and his employer about the right to bonus would not necessarily lead to an industrial dispute. When an Industrial Court awards a bonus, independent of any contract, it does so only if there is an available surplus for a distribution of bonus and the amount of the award would depend on the extent of the surplus available for that purpose. Therefore, the fulfillment or otherwise of the terms of the contract of employment is not an essential ingredient of an award of an Industrial Court.

In *F. W. Heilgers & Co.* v. *N. C. Chakravarthi & others*, [1949] 1 F.J.R. 133, the learned Judges of the Federal Court held that a bonus not payable under a contract of employment does not fall within the definition of "wages" in section 2(vi) of the Payment of Wages Act, as it stood before the amendment in 1957. We are concerned with the old definition here and not the amended one, so the present case is, in our opinion, covered by that authority.

It is true that no bonus had been awarded in *Heilgers' case* and that therefore there was no ascertained sum, whereas there is one in the present case, or rather a sum that is ascertainable, but that was only one of the grounds on which the learned Judges proceeded. They held that in order to bring a particular payment under the definition of "wages", two things are necessary—

"(1) a definite sum, and

(2) a contract indicating when the sum becomes payable";

and they said—

"It is obvious that unless there is an express provision for paying a stipulated sum, the definition will not cover such a payment."

The bonus in the present case is not payable because of a contract but because of the award of an Industrial Court. Therefore, according



to the Federal Court, it is not "wages" within the meaning of the Payment of Wages Act.

In 1957 the definition was amended and the following was added:

"'wages' means......and includes

..........................................................................................

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

..........................................................................................

but does not include—

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of remuneration payable under the terms of employment........"

The change would have been unnecessary had the law been otherwise under the old definition; nor is it possible to say that the clause was added by way of abundant caution because the Federal Court decided otherwise in 1949. In view of this amendment, and in view of the Federal Court's decision, we do not feel justified in taking a different view, especially as we think the decision was right.

The learned Judges of the Bombay High Court tried to distinguish the Federal Court's judgment on the ground that no bonus had been declared there and so there was no ascertained sum, but, as we have pointed out, the *ratio* of the decision covers the present case and, in any case, that is our view quite apart from their conclusion.

On this view, it is not necessary to consider the other points that were argued because, if the definition of "wages", as it stood before the amendment, is not wide enough to include a bonus of the kind we have here, namely, one payable under an award of an Industrial Court, then, the Authority under the Payment of Wages Act had no jurisdiction to entertain the petitions made under section 15 of the Act.

The appeals are allowed with costs. The decisions of the learned High Court Judges are set aside and also the decrees of the Authority under the Payment of Wages Act. There will be only one set of costs.

[IN THE SUPREME COURT OF INDIA.]

## KASTURI & SONS PRIVATE LTD.

*v.*

## N. SALIVATEESWARAN AND ANOTHER.

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

March 19, 1958.

WORKING JOURNALISTS (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1955, SECTION 17—AUTHORITY ACTING UNDER SECTION 17—JURISDICTION OF—WHETHER CONFINED TO DETERMINATION OF AMOUNT CLAIMED UNDER VALID AWARD OR ORDER—WHETHER CAN GO INTO MERITS OF CLAIM OF EMPLOYEE—APPOINTMENT OF INDUSTRIAL TRIBUNAL AS AUTHORITY UNDER SECTION 17—WHETHER ENLARGES JURISDICTION.

*Neither the State Government, nor the Authority appointed under section 17 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, has been clothed with powers to go into the merits of a claim by a working journalist against his employer. The scope of the enquiry contemplated by section 17 of the Act is very limited and is confined to the investigation of the narrow point as to what amount is actually due to be paid to the working journalist under a decree, award or other valid order obtained by him after establishing his claim in that behalf. The fact that the Authority is also an Industrial Tribunal under the Industrial Disputes Act, 1947, or an Authority under the Payment of Wages Act, 1936, will not enlarge the powers of the Authority under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.*

Petition No. 249 of 1956 under article 32 of the Constitution of India.

*R. Ramamurthi Aiyar* and *B. K. B. Naidu* for the management.

*Purshottam Tricumdas, P. Ramaswamy* and *I. N. Shroff* for the respondent.

*Y. Kumar* for the Intervener.

*Attorney-General of India* to assist the Court.

### JUDGMENT.

The following Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This is an application under article 32 of the Constitution. The petitioner is a private limited company having its registered office at No. 291, Mount Road, Madras. The company is the proprietor of a daily newspaper called "The Hindu" which is



published at Madras and has a large circulation in India and abroad. The shareholders of the company are all citizens of India. The first respondent, Shri N. Salivateeswaran, is a journalist of Bombay and he has been supplying news to various newspapers and journals one of which was the Hindu. The supply of news by the first respondent to the Hindu was under an agreement under which he was being paid a fixed monthly honorarium. Contrary to the advice and instructions of the petitioner, the first respondent left India for Zurich on 1st May, 1956. The petitioner thereupon relieved him of his duties and terminated with effect from 1st March, 1956, the arrangement under which he was supplying news to the Hindu. He returned to India in July, 1956 and requested the petitioner to reconsider its decision; but the petitioner did not think that any case for reconsideration had been made out. Thereupon the first respondent made an application to the Labour Minister of the State of Bombay under section 17 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act 45 of 1955), hereinafter referred to as the Act. On receiving this application the State of Bombay nominated Shri M. R. Meher, I. C. S. (Retired), second respondent, as the Authority under section 17 of the act for the purpose of enquiry into the first respondent's application and requested him to examine the claim made by the first respondent and, in case he was satisfied that any money was due, to issue a certificate for that amount to the Collector of Bombay for further action as provided under section 17. A copy of the application was served on the petitioner by order of the second respondent; and a covering letter addressed to the petitioner called upon him to file his written statement in reply to the first respondent's claim.

By his application the first respondent had claimed a sum of Rs. 1,57,172-8-0 from the petitioner. In his written statement, the petitioner disputed the whole of the claim made by the first respondent and traversed all the material allegations made by him in support of his claim. The petitioner also contended that the second respondent had no jurisdiction to go into the matters arising from the first respondent's application. It was also urged by the petitioner alternatively that, even if the second respondent had jurisdiction to deal with the matter, he had the discretion to decline to consider the matter and leave it to be tried in the ordinary Courts. The petitioner requested the second respondent to exercise his discretion and direct the first respondent to establish his claim in the appropriate civil Court. The petitioner's written statement was filed on 18th October, 1956.

The second respondent decided to deal with the question of jurisdiction as a preliminary issue. He heard both the parties on this preliminary issue and, by his order dated 12th November, 1956, he recorded his conclusion that he had jurisdiction to deal with the matter and that it was unnecessary to direct the first respondent to establish his claim in the ordinary civil Court. Accordingly, the matter was adjourned to 1st December, 1956, for hearing on the merits. It is this order which is challenged by the petitioner before us by his present petition under article 32 of the Constitution.

The petitioner's case is that section 17 of the Act provides only for a mode of recovery of any money due to a working journalist. It does not empower the State Government or the Authority specified by the State Government to act as a forum for adjudicating upon the merits of the disputed claim. That being so, the second respondent has no jurisdiction to deal with the merits of the first respondent's claim made against the petitioner. In the alternative, the petitioner contends that if section 17 confers jurisdiction on the State Government or the Authority specified by the State Government to adjudicate upon disputed claims mentioned in the said section, the said section would be *ultra vires* and void. On these alternative pleas, two alternative reliefs are claimed by the petitioner. The first relief claimed is that a writ in the nature of the writ of prohibition or other suitable writ or direction be issued restraining the second respondent from exercising any powers under section 17 of the Act and proceeding with the enquiry into the application filed by the first respondent and forwarded to him by the State Government and issue him a certificate. The other relief claimed is that this Court should be pleased to order and direct that section 17 of the Act is *ultra vires* and void on the grounds set out in the petition.

It would be necessary and convenient to construe section 17 of the Act first and detrmine its true scope and effect. The larger question about the *vires* of this Act and the validity of the decision of the Wage Board set up by the Central Government under section 8 of the Act have been considered by us in the several petitions filed by several employers in that behalf before this Court. We have held in those petitions that, with the exception of section 5(1)(a)(iii) which deals with the payment of gratuity to employees who voluntarily resign from service, the rest of the Act is valid. That is why the question about the *vires* of section 17 need not be considered in the present petition over again. The main point which remains to be considered, however, is: Does section 17 constitute the State Government or the Authority specified by the State Government into a forum for adjudicating upon the merits of the claim made by a newspaper employee against his employer under any of the provisions of this Act? Section 17 provides:



"Where any money is due to a newspaper employee from an employer under any of the provisions of this Act, whether by way of compensation, gratuity or wages, the newspaper employee may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government or such Authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

It is clear that the employee's claim against his employer which can form the subject-matter of an enquiry under section 17 must relate to compensation awardable under section 4 of the Act, gratuity awardable under section 5 of the Act, or wages claimable under the decision of the Wage Board. If the employee wishes to make any other claim against his employer, that would not be covered by section 17. As the marginal note shows, the section deals with the recovery of money due from an employer.

The employee contends that the process of recovery begins with the making of an application setting out the claim and ends with the actual recovery of the amount found due. On this construction, the dispute between the employee and his employer in regard to any claim which the employee may make against his employer would fall to be determined on the merits right up from the start to the issue of the certificate under this section. In other words, if a claim is made by the employee and denied by the employer, the merits of the claim together with the other issues that may arise between the parties have to be considered under this section. On this argument section 17 provides a self-contained procedure for the enforcement of the claims covered by it.

On the other hand, the case for the petitioner is that the section provides for a procedure to recover the amount due from an employer, not for the determination of the question as to what amount is due. The condition precedent for the application of section 17 is a prior determination by a competent Authority or the Court of the amount due to the employee from his employer. It is only if and after the amount due to the employee has been duly determined that the stage is reached to recover that amount and it is at this stage that the employee is given the additional advantage provided by section 17 without prejudice to any other mode of recovery available to him. According to this view, the State Government or the Authority specified by the State Government has to hold a summary enquiry on a very narrow and limited point: Is the amount which is found due to the employee still due when the employee makes an application under section 17, or, has any amount been paid, and, if yes, how much still remains to be paid? It is only a limited enquiry of this type which is contemplated by section 17. Within the scope of the enquiry permitted by this section are not included the examination and decision of the merits of the claim made by the employee. When the section refers to the application made by the employee for the recovery of the money due to him, it really contemplates the stage of execution which follows the passing of the decree or the making of an award or order by an appropriate Court or Authority. In our opinion, the construction suggested by the petitioner should be accepted because we feel that this construction is more reasonable and more consistent with the scheme of the Act.

It is significant that the State Government or the specific Authority mentioned in section 17 has not been clothed with the normal powers of a Court or a Tribunal to hold a formal enquiry. It is true that section 3, sub-section (1) of the Act provides for the application of the Industrial Disputes Act, 1947, to or in relation to working journalists subject to sub-section (2); but this provision is in substance intended to make working journalists workmen within the meaning of the main Industrial Disputes Act. This section cannot be read as conferring on the State Government or the specified Authority mentioned under section 17 power to enforce attendance of witnesses, examine them on oath, issue commission or pass orders in respect of discovery and inspection such as can be passed by the Boards, Courts or Tribunals under the Industrial Disputes Act. It is obvious that the relevant provisions of section 11 of the Industrial Disputes Act, 1947, which confer the said powers on the Conciliation Officers, Boards, Courts and Tribunals cannot be made applicable to the State Government or the specified Authority mentioned under section 17 merely by virtue of section 3(1) of the Act.

In this connection, it would be relevant to remember that section 11 of the Act expressly confers the material powers on the Wage Board established under section 8 of the Act. Whatever may be the true nature or character of the Wage Board—whether it is a legislative or an administrative body—the Legislature has taken the precaution to enact the enabling provisions of section 11 in the matter of the said material powers. It is well-known that, whenever the Legislature wants to confer upon any specified Authority powers of a civil Court in the matter of holding enquiries, specific provision is made in that behalf. If the Legislature had intended that the enquiry authorised under s. 17 should include within its compass the examination of the merits of the employee's claim against his employer and a decision on it, the Legislature would undoubtedly have made an appropriate provision conferring on



the State Government or the specified Authority the relevant powers essential for the purpose of effectively holding such an enquiry. The fact that the Legislature has enacted section 11 in regard to the Wage Board but has not made any corresponding provision in regard to the State Government or the specified Authority under section 17 lends strong corroboration to the view that the enquiry contemplated by section 17 is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employee after establishing his claim in that behalf. We are reluntant to accept the view that the Legislature intended that the specified Authority or the State Government should hold a larger enquiry into the merits of the employee's claim without conferring on the State Government or the specified Authority the necessary powers in that behalf. In this connection, it would be relevant to point out that in many cases some complicated questions of fact may arise when working journalists make claims for wages against their employers. It is not unlikely that the status of the working journalist, the nature of the office he holds and the class to which he belongs may themselves be matters of dispute between the parties and the decision of such disputed questions of fact may need thorough examination and a formal enquiry. If that be so it is not likely that the Legislature could have intended that such complicated questions of fact should be dealt with in a summary enquiry indicated by section 17.

Section 17 seems to correspond in substance to the provisions of section 20, sub-section (1) of the Industrial Disputes (Appellate Tribunal) Act, 1950, which has now been repealed. Under this section, any money due from an employer under any award or decision of an Industrial Tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision. It is clear that the proceedings under section 20, sub-section (1) could commence only if and after the workman had obtained an award or decision in his favour. We are inclined to think that the position under section 17 is substantially similar.

In this connection we may also refer to the provisions of section 33-C of the Industrial Disputes Act (14 of 1947). Sub-section (1) of seotion 33-C has been added by Act 36 of 1956 and is modelled on the provisions of section 17 of the present Act. Section 33-C, sub-section (2), however, is more relevant for our purpose. Under section 33-C, sub-section (2), where any workman is entitled to receive from his employer any benefit which is capable of being computed in terms of money, the amount at which such benefit may be computed may, subject to any rules made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined should be recovered as provided for in sub-section (1). Then follows sub-section (3) which provides for an enquiry by the Labour Court into the question of computing the money value of the benefit in question. The Labour Court is empowered under this sub-section to appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court, and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case. These provisions indicate that, where an employee makes a claim for some money by virtue of the benefit to which he is entitled, an enquiry into the claim is contemplated by the Labour Court, and it is only after the Labour Court has decided the matter that the decision becomes enforceable under section 33C (1) by a summary procedure.

It is true that, in the present case, the Government of Bombay has specified the authorities under the Payment of Wages Act and the Industrial Disputes Act as specified authorities under section 17 to deal with applications of newspaper employees whose wages are less than Rs. 200 per month or more respectively; but there can be no doubt that, when the second respondent entertained the first respondent's application, he was acting as the specified Authority under section 17 and not as an Industrial Tribunal. It is clear that, under section 17, the State Government would be entitled to specify any person it likes for the purpose of holding an enquiry under the said section. The powers of the Authority specified under section 17 must be found in the provisions of the Act itself and they cannot be inferred from the accidental circumstance that the specified Authority otherwise is a member of the Industrial Tribunal; since there is no provision in the Act which confers on the specified Authority the relevant and adequate powers to hold a formal enquiry, it would be difficult to accept the position that various questions which may arise between the working journalists and their employers were intended to be dealt with in a summary and an informal manner without conferring adequate powers on the specified Authority in that behalf. The second respondent himself was impressed by this argument but he was inclined to hold that the necessary power could be assumed by him by implication because he thought that, in the absence of such implied power, his jurisdiction under section 17 could not be effectively exercised. In our opinion, this approach really begs the question. If the Legislature did not confer adequate powers on the specified Authority under section 17, a more reasonable inference would



be that the nature and scope of the powers under section 17 is very limited and the Legislature knew that, for holding such a limited and narrow enquiry, it was unnecessary to confer powers invariably associated with formal and complicated enquiries of a judicial or quasi-judicial character. We must, accordingly, hold that the second respondent had no jurisdiction to entertain the first respondent's application at this stage.

It appears from the order made by the second respondent that he took the view that, though he had jurisdiction to deal with the application, it would have been open to him to refuse to exercise that jurisdiction and to direct the first respondent to establish his claim in the ordinary civil Court. He, however, thought that he need not exercise that power in the present case. We are satisfied that the second respondent was in error in both these conclusions. If he had jurisdiction to deal with this matter under section 17, it is difficult to appreciate how, in the absence of any provision in that behalf, he could have directed the first respondent to establish his claim in the ordinary civil Court. Such an order would clearly have amounted to the second respondent's failure to exercise jurisdiction vested in him. Besides, if section 17 had really given him discretion in this matter as assumed by the second respondent, on the merits of this case it would obviously have been a case which should have been referred to the ordinary civil Court. This, however, is now a matter of purely academic interest.

The question which still remains to be considered is: What would be the proper order to make on the present petition in view of our conclusion that the second respondent had no jurisdiction to entertain the first respondent's application. The present petition purports to invoke our jurisdiction under article 32 of the Constitution and it was a valid and competent petition in so far as it challenged the *vires* of section 17 itself; but, once section 17 is held to be valid and in order, the competence of the petition under article 32 is naturally open to serious jeopardy. No question about the fundamental rights of the petitioner is involved and his grievance against the order passed by the second respondent cannot be ventilated by a petition under article 32. This position is fairly conceded by the learned counsel for the petitioner. He however, argued that, if we construe section 17 in his favour and hold that the second respondent had no jurisdiction to entertain the first respondent's application, his purpose would be effectively served even though technically his petition may ultimately be dismissed on the ground that it is not competent under article 32 of the Constitution. In our opinion, there is considerable force in this contention. We would, accordingly, hold that the second respondent has no jurisdiction to entertain the first respondent's application; but, since the petition itself is not competent under article 32, we would direct that the petition fails on this technical ground and must be dismissed. There would be no order as to costs.

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[IN THE PATNA HIGH COURT.]

SITALPORE SUGAR WORKS LTD., GARAUL

*v.*

STATE OF BIHAR AND OTHERS.

*Ramaswami, C. J., and Raj Kishore Prasad, J.*

September 10, 1957.

MISCONDUCT—PUNISHMENT BY MANAGEMENT—REFERENCE OF DISPUTE TO INDUSTRIAL TRIBUNAL—JURISDICTION OF TRIBUNAL—WHETHER CAN GO INTO MERITS OF CASE AND INTERFERE WITH PUNISHMENT—OBJECTION TO JURISDICTION OF TRIBUNAL NOT RAISED BEFORE TRIBUNAL—WHETHER CAN BE RAISED BEFORE HIGH COURT ON WRIT PETITION.

*In order to protect an employee against vindictive or capricious action on the part of the management, it is open, under the Industrial Disputes Act, 1947, to an Industrial Tribunal to examine the findings of the management on a charge of misconduct under the Act or the standing orders to assure itself that there is evidence to support the findings. If the Tribunal finds that it ought not to interfere with the findings of the management that the charge was proved, even then the Tribunal must next consider whether it should interfere with the punishment awarded by the management. The Tribunal has the absolute discretion to decide what punishment, in the circumstances of each case, should be meted out to the guilty workman. Under the Industrial Disputes Act, 1947, the question whether the dismissal of a workman was proper, or, whether such a discharged workman should be re-instated in service, or, whether compensation would be an adequate and appropriate relief, is a matter within the discretion of the Tribunal alone and cannot be challenged on the ground of alleged illegality by a writ petition under article 226 of the Constitution.*

*An objection to the jurisdiction of an Industrial Tribunal on the ground that one of the parties to the dispute is a not a 'workman' as defined in the Industrial Disputes Act, 1947, must be taken before the Industrial Tribunal itself and cannot be entertained for the first time by the High Court in an application under article 226 or article 227 of the Constitution.*



Miscellaneous Judicial Case No. 110 of 1957.

*A. B. N. Sinha* and *Ramji Sharan* for the management.

*Government Advocate, Ranen Roy, Tara Kumar Das* and *L. S. Sinha* for the respondents.

JUDGMENT.

RAJ KISHORE PRASAD, J.—The applicant, Sitalpore Sugar Works, Ltd., Garaul, Muzaffarpur, moves for a writ in the nature of *certiorari* to quash the award of respondent 2, Chairman, Industrial Tribunal, Bihar, dated the 29th November, 1956, annexure 'C' to the applicant's affidavit, in respect of respondents 3 to 7.

The applicant is a public limited company, and it carries on the business of manufacture of sugar from sugarcane and it owns a vacuum pan sugar factory at Garaul. On the 21st January, 1955, a notification, annexure 'A' to the petitioner's affidavit, was issued by respondent 1, the State of Bihar, referring an industrial dispute between the managements of seven different sugar factories in the State of Bihar and their workmen including the petitioner's factory, and its workmen, including respondents 3 to 7 also, to the adjudication of respondent 2. This notification was, however, superseded by a second notification, which was issued by the State of Bihar, respondent 1, on the 12th March, 1955, which is annexure 'B' to the petitioner's application. By this notification, issued in exercise of the powers conferred by section 7 read with sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Act XIV of 1947), hereinafter referred to as the "Act", the number of factories involved was reduced by two and, the industrial dispute referred to the matters specified in annexure 'A' to the notification which was to the following effect:

"Whether the workmen named in annexure 'B' are entitled to re-instatement with compensation or any other relief?"

In this industrial dispute, the petitioner and its workmen, respondents 3 to 7, were also concerned, and, their dispute was referred to respondent 2, who was constituted one-member Industrial Tribunal for adjudication of this dispute.

The Industrial Tribunal, respondent 2, gave its award on the 29th November, 1956, which is annexure 'C' to the petitioner's affidavit, with respect to respondents 3 to 7 also. It set aside the punishment of dismissal from service inflicted by the management, the petitioner, on each of these respondents and gave its directions which it thought fit and proper in respect of each of them.

The petitioner, by his application, under articles 226 and 227 of the Constitution, has obtained a rule from the High Court against the respondents to show cause why the directions of the Tribunal, in respect of respondents 3 to 7, be not quashed by an appropriate writ, on the ground that they are illegal and contrary to the certified Standing Orders which applied to the respondents 3 to 7.

I will deal with the three sets of workmen who are respondents 3 to 7 separately hereafter.

*Respondents 3 to 5: (1) Mohmamad Islam, (2) Ram Briksh, Fitter, and (3) Ram Narain.*

The case of these three workmen has been dealt with by the Tribunal in paragraph 16 of its award. The petitioner dismissed them from service for their absence on the 1st of March, 1953, and for participation in an illegal strike. The Tribunal, on the materials before it, came to the conclusion that these three workmen no doubt, were present in the demonstration, but there was no satisfactory evidence that they took any leading part in the demonstration, and, as such, they could not be penalised for their mere presence in the crowd; and, even their presence in the crowd itself would have been only a matter of speculation, but for their explanation (Ex. P). The Tribunal, therefore, considered that the punishment of dismissal inflicted on them in the circumstances was too severe. The Tribunal, however, took the view that their conduct in defying the authority of the management and absenting themselves deliberately under a plan to paralyse the work in the factory has to be taken notice of; and, accordingly, the Tribunal directed that they should be re-instated but without compensation with effect from the date the award becomes enforceable, but the period of their employment would not cause any break in their service and would be treated as leave without pay.

Mr. A. B. N. Sinha, in support of the Rule, has argued that on the finding of the Tribunal that these three workmen took part in an illegal strike, and, that they absented themselves on the 1st March, 1953, their re-instatement was not proper and legal. Mr. Sinha has, therefore, contended that their dismissal was in accordance with the certified Standing Orders of the Company, which governed both the parties, and, as such, the Tribunal's award granting them re-instatement was unwarranted and unjustified.

There are separate Standing Orders for Employees and for Operatives. What acts or omissions shall be treated as misconduct with regard to a strike has been defined in clause L1(b) of the Standing Orders for Employees, and, the same has also been defined in clause M1 (b) of the Standing Orders for Operatives. Clause L of Standing Orders for Employees corresponds to clause M of Standing Orders for Operatives. Mr. Sinha conceded that to the present workmen, Standing



Orders for Operatives would apply. Clauses M(1) (b), M(2), M(4) and M(5), on which reliance has been placed by the parties, and, which are material for our purpose, may be quoted below:

"M. Suspension or Dismissal for Misconduct pending enquiry into alleged Misconduct and the acts or omissions which constitute Misconduct.

1. The following acts or omissions shall be treated as misconduct:—

.....................................................................................

(b) Striking work either singly or with others or inciting others to strike work in contravention of the provisions of the Industrial Disputes Act, 1947, or any other enactment or Rule in force, for the time being.

.....................................................................................

2. Any operative who is adjudged by the Manager or Management on examination by the man if present, and of the facts, if absent, to be guilty of misconduct is liable to be summarily dismissed under the Standing Order M 4 or alternatively to be suspended for a period not exceeding 7 days. He may also be liable to reduction in or forfeiture of privileges (including leave and holidays) provided for operatives by the mills, subject to the Payment of Wages Act.

.....................................................................................

4. No order of dismissal shall be made unless the operative concerned is informed of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

5. In awarding punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct and the previous record, if any, of the operative and any other extenuating or aggravating circumstances that may exist.

....................................................................................."

With regard to the charge against these three workmen of having taken part in an illegal strike, the case of the petitioner is that the State of Bihar, in exercise of its powers conferred by sub-clause (vi) of clause (n) of section 2 of the Act issued a notification on the 27th October, 1952, which is annexure 'D' to the petitioner's application, declaring the sugar industry in the State of Bihar to be a Public Utility Service for a period of six months from the 1st November, 1952. The strike, which took place on the 1st March, 1953, in the factory of the petitioner, was illegal, because it took place without any previous notice to the applicant or the manager of the factory, and, as such, it was an illegal strike as provided in section 22(a) of the Act; and, the Standing Orders for operatives M(1)(b) read with clause M(2) provides that striking work, either singly or with others in contravention of the provisions of the Act amounted to misconduct of the workman for which the person guilty of such misconduct was liable to be summarily dismissed under clause M4 of the Standing Orders for Operatives. The petitioner, therefore, contended that the Tribunal, in granting the re-instatement to these three workmen, obviously, overlooked the relevant provisions of the Certified Standing Orders for Operatives, and, therefore, his decision was vitiated. Mr. Sinha has further contended that the direction of the Tribunal, that the period of their unemployment would not cause any break in their service, and, that it would be treated as leave without pay, is also illegal and in contravention of the provisions of the Act.

Mr. Sinha, in support of his argument, relied on sections 2(q) and 2 (eee) of the Act, which define "strike" and "continuous service".

"Strike" has been defined in section 2(q) as below :

"2. *Definitions* :--In this Act, unless there is anything repugnant in the subject or context,--

..........................................................................................

(q) 'strike' means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment ;"

.........................................................................................."

"Continuous service" has been defined by section 2(eee) of the Act as below :

"2. *Definitions* :--In this Act, unless there is anything repugnant in the subject or context,--

..........................................................................................

(eee) 'continuous service' means 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 illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman ;"

.........................................................................................."

Section 22 of the Act deals with "Prohibition of strikes and lock-outs". Section 22(1)(a), with which we are concerned, is in the following terms:

"22. Prohibition of strikes and lock-outs.--(1) No person employed in a public utility service shall go on strike in breach of contract --

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking ; or



.........................................................................................."

Mr. Sinha, therefore, argued relying on section 2(q) read with section 22(1)(a) of the Act that the cessation of their work by and absence of these workmen on the 1st March, 1953, and their joining in the strike was obviously illegal and this act of theirs under clause M1(b) of the Standing Orders for Operatives amounted to misconduct for which under clause M4 of these Standing Orders, they were liable to be dismissed, and, therefore, they had rightly been dismissed by the petitioner.

Mr. Sinha, further, argued relying on section 2 (eee) of the Act that interruption in service due to an illegal strike cannot amount to and does not mean "continuous service" and, therefore, the Tribunal's direction to treat the unemployed period of these workmen as continuous service is illegal being in contravention of section 2(eee) of the Act.

Mr. Ranen Roy, however, in reply to the last contention of Mr. Sinha, submitted that section 2(eee) was introduced in 1953 which applied to Chapter VA which deals with "Lay-off and retrenchment", and, which was introduced along with section 2 (eee), for the first time, in 1953 by Act 43 of 1953, and, therefore, section 2(eee) will not apply to the present case, because "Strikes and Lock-outs" are dealt with in Chapter V in which one of the sections is section 22.

In my opinion, even if section 2(eee) applies even then, it does not help the petitioner here, rather it goes against it.

From the definition of "continuous service" in section 2(eee) of the Act, it appears that it not only means uninterrupted service, but it also includes service which may be interrupted merely on account of the reasons given therein, and, one of such reasons is "a strike, which is not illegal". Reading, therefore, section 2 (q) along with section 2(eee), it is clear that if a strike is not illegal, then in that case interruption in service of a workman merely on account of such a strike, which is not illegal, will be considered to be "continuous service".

What is "illegal strike" has been defined in section 24 of the Act, according to which a strike shall be illegal if (i) it is commenced or declared in contravention of section 22 or section 23 ; or (ii) it is continued in contravention of an order made under sub-section (3) of section 10 of the Act.

In the present case, however, there is no finding of the Tribunal that the strike was illegal. The Tribunal has simply found that these three workmen were merely present in the crowd, and, that there was no satisfactory proof of their having taken any leading part in the demonstration. It has further observed that:

"Even if the strike was illegal, as pointed out on behalf of the abour, mere participation in an illegal strike could not be a ground for dismissal."

The Tribunal has further mentioned that none of the witnesses examined on behalf of the management did name any of these three workmen as being responsible for any act of indiscipline in the crowd; and, as a matter of fact, they were not named by any of the witnesses of the management at all, and that but for their explanation (Ex. P.) their presence in the crowd itself would have been only a matter of speculation. In these circumstances, it cannot be held that these three workmen took part in an illegal strike within the meaning of Standing Orders for operatives under Clause M1(b) so as to be liable to the punishment of dismissal provided in clause M2 of the Standing Orders. The argument of Mr. Sinha was based on the assumption that the Tribunal had found that these three workmen took part in an illegal strike, but the foundation of this argument disappears on a correct reading of the award itself. In my opinion, therefore, there is no substance in the contention of Mr. Sinha that these workmen had been rightly dismissed by the managment, and, that the Tribunal's direction that these workmen would be reinstated, and, the period of their unemployment would not cause any break in their service, and, that it would be treated as leave without pay was illegal. It may be mentioned here that it was within the discretion of the Tribunal to consider, on the materials before it, and, in the circumstances of the case, whether dismissal of these three workmen was proper or as to what punishment should, in the circumstance of the case, be inflicated on these workmen, taking into consideration the gravity of the misconduct. In my opinion, therefore, the award of the Tribunal with respect to these three workmen cannot be challenged on the ground of the alleged illegality at all.

*Respondent No. 6 : A. Wahid.*

The case of A. Wahid has been dealt with by the Tribunal in paragraph 8 of its award. The charge against him was that he was guilty of habitual absence from duty, in that, on one occasion he was absent from duty from the 22nd February, 1954 to the 4th April, 1954 without leave, and, again on another occasion from the 6th May, 1954, when he left the station without permission and sent an application praying for five months' leave a day earlier, but before that application could be dealt with, he left the station without permission, and, only on notice of termination of his service on that account he wrote back saying that he was entitled to one months' notice or pay on the termination of his service. According to the management, it acted *bona fide* and, the punishment meted out by it to him in dismissing him from service, in the circumstances, was quite justified. Another charge against him was of misconduct. It was alleged that in a dispute between his two sons-in-law, one of whom was named James, this workman repeatedly told the manager that he would see James when he went outside the factory compound, and, this utterance amounted to misconduct.

The Tribunal, on the materials on the record, regarding the first charge that he was guilty of habitual absence from duty, found that this workman availed of the leave on the oral orders of the manager, and therefore, he was absolved from this charge of habitual absence from duty. But, on the second charge of misconduct, the Tribunal found that in view of the fact that the dispute between the two sons-in-law of the workman did not occur in the factory premises and that no overt act in that incident is assigned to this workman, it was difficult to support the punishment inflicted by the management on this workman. The Tribunal, however, came to the conclusion that the utterance of the workman before the manager that he would see James when he went out of the factory was undoubtedly an act of impertinence, but the Tribunal took the view that this incident has also to be considered in the light that he was speaking so in respect of his own son-in-law which shows that it was merely an outburst of anger, and he never meant to carry that utterance into execution. The Tribunal further found that no enquiry was held in the case of this workman before passing the order of dismissal as required by clause M 4 of Standing Orders for Operatives. Taking all these circumstances into consideration, the Tribunal considered that the order of dismissal passed against this workman was unjustified, and, therefore, it set it aside and held that the workman was entitled to re-instatement, and, for the period of his idleness he was allowed 50% of his wages, and his absence was directed not to cause any break in his service.

The first ground taken by Mr. Sinha for attacking the validity of this part of the award is that the Tribunal had no jurisdiction to entertain the dispute regarding A. Wahid, because he was not a "workman" within the meaning of the Act. He relied on section 2(s) of the Act which defines "workman" as below:

"'workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government."

This objection of want of jurisdiction of the Tribunal was, however, not taken before the Tribunal, and, it was not raised either in the written statement or in the written argument submitted by the petitioner. Mr. Ranen Roy, who appeared for the workman, as well as the learned Government Advocate, who appeared for respondents 1 and 2, therefore, contended that this plea of want of jurisdiction in the Tribunal to decide the dispute in respect of A. Wahid, respondent 6, should not be entertained at this stage by this Court on an application under article 226 or article 227, when no foundation for it was laid before the Tribunal itself. In my judgment, this objection taken on the part of the respondents is correct, and must be upheld.

The High Court cannot allow this point to be taken for the first time here, when no such plea was taken earlier before the Tribunal, whose jurisdiction is challenged now. It is well settled by the decision of the Supreme Court in *United Commercial Bank Ltd.* v. *Secretary, U. P. Bank Employees' Union* ([1952] 4 F.J.R. 292), that where the question of jurisdiction is not a pure question of law, but it is mingled with facts, a party cannot be allowed to raise it for the first time in an appeal to the Supreme Court from the decision of the Appellate Tribunal. In my opinion, the *ratio* of the case will apply *a fortiori* here also. The point as to jurisdiction was not taken by the petitioner before the Tribunal. Had it been raised, the Tribunal could have investigated whether the respondent Wahid was a "workman" within the Act.

As regards the contention of Mr. Sinha, for the petitioner, that this workman was guilty of misconduct in view of Standing Orders for Employees, it was conceded that this workman was Tally Clerk from May, 1951, getting a salary of Rs. 100 per month, and, therefore, he was governed by Standing Orders for employees. Mr. Sinha relied on Standing Orders for Employees on clause L1(e), which is as follows:

"L. Suspension or Dismissal for Misconduct pending enquiry into alleged Misconduct and the acts or omissions which constitute Misconduct.

1. The following acts or omissions shall be treated as misconduct:

..................................................................................................

(e) Habitual absence without leave or absence without leave for more than three consecutive days."

It was conceded by the petitioner that the case of Wahid was a case of dismissal, and not termination of service. The charge of the management that he was found guilty of habitual absence from duty was found not proved, because the Tribunal found that the main cause of annoyance to the management was the quarrel which took place between the two sons-in-law of this workman, who were living in the factory's quarters, and, probably on a complaint by one of his sons-in-law, named James, the manager called Wahid to explain. Wahid was examined before the Tribunal on the 18th August, 1955, and, he was also cross-examined by the petitioner, and, after a consideration of the materials the Tribunal accepted the evidence of Wahid that he was given oral orders by the manager, to go on leave pending written orders, and, the manager, though examined in this case, did not speak a word contrary to it. The charge of the management, therefore, that he was guilty of habitual absence from duty, and, therefore he was liable to be dismissed, had not been found proved.



Mr. Sinha, for the management, further contended that award of compensation only was more appropriate relief which should have been granted to the respondent Wahid, and, as such, his re-instatement with the direction that his absence will not cause any break in his service was unjustified and not proper. In my opinion, this contention is not well founded.

The Tribunal had absolute discretion in the matter to maintain the punishment of dismissal inflicted by the Management on Wahid or to set it aside and to pass such order or give such directions as it it liked in the circumstances of the case, and, in view of the gravity of the offence. Such a discretion could not be interfered with on a writ application.

Mr. Ranen Roy relied on a decision of the Supreme Court in *United Commercial Bank Ltd.* v. *Secretary U. P. Bank Employees Union* ([1952] 4 F. J. R. 292), in which it was held that whether a discharged employee is to be re-instated in service, or whether compensation would be an adeqate relief, is a matter for the discretion of the Tribunal and when it has exercised it in any particular way, it will not be interfered with in appeal unless there are reasons for such interference. In my opinion, the above principles will all the more apply to a writ application.

I may mention that the common law right of an employer to discharge or dismiss an employee, or what is popularly known in some countries as "the right to hire and fire", has been subjected to statutory restrictions. Some such restrictions are to be found in the Act under consideration.

In order to protect an employee against vindictive or capricious action on the part of the management, it is open, under the Act, to the Tribunal to examine the findings of the management on the charge of misconduct under the Act or the Standing Orders to assure itself that there is evidence to support the finding. If the Tribunal finds that it ought not to interfere with the findings of the management that the charge has been proved, even then the Tribunal must next consider whether it should interfere with the punishment awarded by the management. The Tribunal, therefore, has the absolute discretion to decide what punishment, in the circumstances of each particular case, should be meted out to the guilty workman. Under the Act, the question whether dismissal of the workman was proper, or, whether such a discharged workman should be re-instated in service or whether compensation would be an adequate and appropriate relief, was a matter of discretion for the Tribunal alone. If the Tribunal is of opinion that the punishment is so unjust that remedy is called for in the interest of justice, it can, after scrutiny of the circumstances and materials placed before it, decide what the appropriate punishment should be. The Tribunal considered the workman's re-instatement and wages at 50% for the period of his idleness and his absence not to cause any break in service to be proper, and, with this discretion the High Court therefore, cannot interfere, and finds no reason for interference with the exercise of that discretion. In my judgment, therefore, the award of the Tribunal with regard to this workman also cannot be challenged on the ground of the alleged illegality.

*Respondent No. 7: Ram Briksh, Planner.*

His case has been dealt with by the Tribunal in paragraph 6 of its award. The charge against this workman was that he was neither retrenched nor discharged, but he was asked to join his duties in the season which he did not do and left the employment voluntarily. The workman examined himself, and he stated that when there was an assault on Faujdar Singh, he, apprehending assault, absented himself on and from the 8th June, 1953, and went away from the factory. He admitted that he left the factory on the 8th June, 1953, without permission. He further admitted in his cross-examination that he received a letter dated the 24th July, 1953, from the management on the 4th August, 1953, to rejoin, but he sent a reply to it. He was asked to report himself to duty which he never did, and, ultimately, his name was struck off from the register with due notice to him. The Tribunal, after a consideration of the materials, came to the conclusion that the management gave opportunities to this workman to join his duties but, for reasons best known to him, he absented himself for a long period without any satisfactory reason. The Tribunal, therefore, came to the conclusion that it was a case of gross carelessness of this workman, and, therefore, it was a fit case for his re-instatement, and, accordingly, he directed re-employment of this workman from the current season. Mr. Sinha contended that the charge of the management was that this employee was guilty of habitual absence without leave or absence without leave



for more than three consecutive days and as provided by Standing Orders for Employees, clause L 1(e), quoted earlier, this act of the workman amounted to misconduct for which he was liable to even dismissal, but in his case only his name had been struck off from the register, and, therefore, his employment had been terminated, and, such a termination of his employment was justified by Standing Orders. He referred to Standing Orders for Employees, clause K(3) which corresponds to clause L(3) of the Standing Orders for Operatives, and, both are in the same terms. Standing Orders for operatives, clause L(3), which deals with termination of employment is in these terms:

"L. Termination of Employment.

..........................................................................................

(3) The reasons for the termination of service shall be recorded by the manager and shall be communicated to the operative if he so desires at the time of discharge, unless such communication in the opinion of the manager may directly or indirectly lay the mills and the manager or person signing the communication open to criminal or civil proceedings at the instance of the operative or otherwise."

Mr. Sinha challenged this part of the award on the ground that the order of the Tribunal was perverse, and, therefore, it was liable to be set aside. In my opinion, no doubt, the management, with the knowledge and experience of the problems, which confronted it in the day to day working of the concern, ordinarily, ought to have the right to decide what the appropriate punishment should be, but its decision is liable to be reversed if the Tribunal is of the opinion that the punishment is so unjust that remedy is called for in the interest of justice. In my opinion in the circumstances of the case, it cannot be said either that the order of the Tribunal is perverse, or, that it exercised discretion illegally in ordering re-employment of this workman from the current season, in view of its finding that the case of this workman was not a case of misconduct but a case of only gross carelessness. In my opinion, therefore, the award of the Tribunal with respect to this workman also cannot be said to be illegal or not in accordance with the provisions of the law.

For the reasons given above, in my judgment, the award of the Tribunal, annexure 'C' cannot be said to be illegal, and, therefore, it cannot be quashed on the grounds urged by the petitioner.

In the result, the application fails, and, the Rule is discharged as no case has been made out for issuing any writ either under article 226, or article 227, of the Constitution, for quashing the award of the Tribunal dated the 29th November, 1956, in respect of respondents 3 to 7.

The application is, accordingly, dismissed. The petitioner will pay Rs. 200 as costs to respondents 3 to 7 only.

RAMASWAMI, C.J.—I agree.

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[IN THE SUPREME COURT OF INDIA.]

WORKMEN OF ASSAM CO., LTD.

*v.*

ASSAM CO., LTD.

*N. H. Bhagwati, J. L. Kapur and A. K. Sarkar, JJ.*

March 31, 1958.

BONUS—COMPUTATION OF DISTRIBUTABLE SURPLUS PROFITS—PRINCIPLES—RETURN ON PAID UP AND WORKING CAPITAL—WHETHER CAN BE INCREASED IN THE CASE OF SPECIAL INDUSTRIES—TEA INDUSTRY—AWARD OF BONUS ON BASIS OF EFFICIENCY OF WORKMEN—WHETHER JUSTIFIED.

*The distributable surplus of profits on the basis of which bonus is determined and distributed to the workmen has to be ascertained after providing from the gross profits for (i) depreciation, (ii) rehabilitation, (iii) return at 6 per cent. on the paid up capital, (iv) return on the working capital at a lesser but reasonable rate, and (v) for an estimated amount in respect of the payment of income-tax. Where special circumstances exist, it is permissible to increase the return on the paid up capital or the return on the working capital, as for example in the case of industries connected with agriculture, like the tea industry, but such increased return should not be allowed in order to give the management some other relief (e.g., rehabilitation allowance) where the computation of that other relief has not been possible because it was not claimed or because figures had not been supplied by the management.*

*An arrangement by which the bonus payable to the workmen is made dependent on the units allotted to each workman on the basis of his efficiency and experience would be perfectly justified.*

Civil Appeal No. 34 of 1957.

*C. B. Aggarwala* (*K. P. Gupta* with him) for the workmen.

*P. K. Goswami* (*S. N. Mukherjee* and *B. N. Ghosh* with him) for the management.



JUDGMENT.

The following Judgment of the Court was delivered by

KAPUR, J.—In this appeal brought by special leave against the order of the Labour Appellate Tribunal, Calcutta, dated 31st August, 1955, the controversy between the parties is confined to the question of bonus. The appellants are the workmen including members of the Indian staff and artisans employed by the respondent, the Assam Co., Ltd., a company incorporated in the United Kingdom and engaged in tea industry in the State of Assam. The appellants claimed bonus for the years 1950, 1951, and 1952 at the rate of 6 months' wages per year. The respondent offered to the Indian Staff excluding the artisans Rs. 51,061 as bonus for 1950, Rs. 48,140 for 1951 and Rs. 15,493 for 1952 which works out at 2·3% of the net profit for the year 1950, 3·1% for the year 1951 and 3·9% for the year 1952. This dispute was referred to the Industrial Tribunal by a notification of the Assam Government dated August 27, 1953.

The Industrial Tribunal allowed depreciation as given in the company's balance-sheets for the three years and allowed as return on the paid up capital and on the reserve 7% and 5% respectively and held the artisans also to be entitled to bonus. For the purpose of mode of payment the Industrial Tribunal accepted the "unit scheme" under which the company had been paying bonus since the year 1926. It was of the opinion that the scheme was fair and rational and gave incentive to industrial efficiency and to production.

Both the appellants and the respondent appealed against this order, the former as to the correctness of the accounts, the amount of the return on capital and reserves and the "unit scheme" and again claimed six months' wages per year as bonus. The latter appealed against the percentages allowed on the capital and the reserves and claimed 10% and 8% respectively as a fair return. It objected to the inclusion of the artisans amongst the workmen eligible for bonus and also to the application of what is known as the Bombay Formula to tea industry.

The Labour Appellate Tribunal varied the Tribunal's award and allowed depreciation at the rate allowable under the Indian Income-tax Act, confirmed 7% on the paid up capital but raised the return on the reserves from 5% to 6% in order to meet the claim of the company for rehabilitation which though not claimed before the Industrial Tribunal, was put forward before it as a basis for increase in return on reserves. In this Court the appellants again repeated their objection to the amount of depreciation, the return on capital and on reserves and to the "unit scheme" but were prepared to confine their claim to two months' wages as bonus. Counsel for the respondent objected to the applicability of the Formula to an industry like the tea industry, his contention being that circumstances and considerations applicable to the textile industry cannot apply to tea industry which, being connected with agriculture, is affected by various factors which must be taken into consideration in the matter of depreciation, return on capital and return on reserves.

The principles on which the ascertainment of the surplus on the basis of which bonus becomes determinable and distributable have been laid down by this Court in *Sree Meenakshi Mills* v. *Their Workmen* ([1958] 13 F.J.R. 399). The formula there laid down is :

"Distributable surplus has to be ascertained after providing from the gross profits for (1) depreciation, (2) rehabilitation, (3) return at 6 per cent. on the paid up capital, (4) return on the working capital at a lesser but reasonable rate, and (5) for an estimated amount in respect of the payment of income-tax."

Under this formula the depreciation allowable in cases arising under the Industrial Disputes Act is the normal depreciation including shift depreciation. We did not understand counsel for the respondent to contend that there was anything in the Formula which was wrong in principle but that it had to be adjusted to suit the circumstances of the tea industry. No circumstances, were, however, given by him which would make it unfair to apply the formula nor were any figures or particulars furnished for varying it in regard to depreciation.

The Industrial Tribunal allowed 7% return on capital as against 6% held allowable under the formula. Its reasons for this increase were :

"That the tea industry here may have often to face various adverse circumstances—more adverse than those that may come upon other industries and may have more risks than other industries. It may however be noted that the company in the instant case is more than a century old one fairing well all through and has thus been so far a prosperous one and on a sound footing and as such it is expected to have built up a substantial reserve."

The Labour Appellate Tribunal maintained this higher rate of return on capital on the ground "of its being exposed to greater risks than any other industry..........................................................namely weather, pests in the plants and gradual deterioration of the soil over which no man has any control". These additional risk factors are no doubt present in an industry connected with agriculture like the tea industry and, in our opinion, they justify the giving of a higher rate of return on capital.



[*To be reprinted*]



Instead of 4% allowed by the formula the Industrial Tribunal fixed the return on reserves at 5% on the ground of its "being sufficient to guard the interests of the company" but the Labour Appellate Tribunal increased it to 6% to meet replacements and rehabilitation charges since the "usual method of calculating these charges is not possible in the present case" and "we are to see that the industry does not suffer for want of replacement and rehabilitation funds and must provide such funds in some other way, namely, by allowing a return on the working capital at higher rates". In the absence of any claim in the respondent's written statement for rehabilitation or any figures for determining this amount, this extra one per cent. is insupportable. It is not a case where a claim could not be made or figures could not have been given at the proper stage. The additional one per cent. cannot therefore be allowed. In our opinion the reasons given by the Industrial Tribunal sufficiently support the giving of 5% on the reserves as being fair considering the risks of the tea industry which is exposed to various adverse circumstances and elements. The Industrial Tribunal has not acted unreasonably nor in disregard of any accepted principles in calculating the return on reserves at 5% and we see no cogent reason for varying this rate.

The respondent has, since 1926, been paying bonus to its employees according to a scheme called the "unit scheme" which according to the Industrial Tribunal has the merit of being more rational and gives incentive to industrious habits and efficiency leading to more production. The Labour Appellate Tribunal did not go into the merits of the scheme but ordered payment according to it. Under this scheme units are credited to each workman, taking into consideration the importance of the job he holds, the wages he gets and the number of years he has been employed in that particular job. The value of units so awarded thus vary commensurate with considerations of efficiency and experience. The establishment is divided into twelve categories and the Medical Staff into three each based on the relative importance of the nature of work done by a workman. Thus, in the descending order of their importance, the jobs are classified as: 1. Head Mohori; 2. Head Clerk; 3. Divisional Mohori; 4. Land Mohori; Hazaria Mohori; 5. Kamjari Mohori; 6. Godown Mohori; 7. 2nd Tea House Mohori; 2nd Kerani; 2nd Hazaria Mohori; 8. 2nd Godown Mohori; 9. Gunti Mohori; 10. 3rd Tea House Mohori; 11. Mondal; 12. Apprentices:

Units would thus be awarded to workmen in the particular category they are in and the more qualified the worker the better his work and the higher his wage, the higher the number of units he would be entitled to. The amount available for distribution as bonus is divided by the aggregate number of units of all the workmen participating in the scheme and each worker would be entitled to a multiple of the amount payable on one unit and the units to his credit. It appears to us that the estimate of the Industrial Tribunal as to the suitability of the scheme was fully justified and payment of bonus in accordance with

[To be reprinted]



this scheme will not only result in fair distribution of bonus but would also lead to improvement in the quality and quantity of work. This scheme is not to be confused with production bonus though it has the merit of combining the fair distribution of the surplus available and the maintenance of efficiency in the establishment.

Taking the figures on the basis of the award made by the Industrial Tribunal we find that Rs. 7,64,608, would be the surplus for the year 1950, Rs. 77,823 for 1951 and a deficit of Rs. 10 lacs for the year 1952. The total sum available for three years will be nil. On the basis of the claim which counsel for the appellant has made before us, *i.e.*, two months' wages, we find that the amount of bonus required for the members of the staff for the year 1950 will be one-sixth of Rs. 4,63,095, and for the year 1951 one-sixth of Rs. 4,83,893, and for 1952 one-sixth of Rs. 5,31,202, which works out to Rs. 77,182 for 1950, Rs. 80,647 for 1951 and Rs. 88,533 for 1952. The amounts required for the artisans further increase these figures. No doubt on the calculations which have now been made the appellant may justify the claim of two months' bonus for the year 1950 but the same cannot be said in regard to the claim for the years 1951 and 1952 because of the available surplus which is only Rs. 77,823 for 1951 and there is a deficit of about 10 lacs of rupees for the year 1952. Taking all these figures into consideration, we are of the opinion that the amounts awarded by the Industrial Tribunal are fair and proper. As the Labour Appellate Tribunal allowed depreciation and rehabilitation on an erroneous basis, we would set aside the order of the Labour Appellate Tribunal and would restore that of the Industrial Tribunal with this modification that the respondent shall make available the additional amount required for payment of the proportional bonus to the artisans.

The appeal is, therefore, allowed to this extent, the order of the Labour Appellate Tribunal set aside and the award of the Industrial Tribunal restored with this modification that the respondent shall also provide an additional amount for these three years for payment to the artisans of proportionate bonus on the basis of the "Unit System". As neither of the parties have succeeded in their main contentions, the fair order in regard to costs should be that the parties do bear their respective costs throughout.

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