REGD. NO. M 5376
VOL. XIV—PART VIII 15th JUNE, 1958.

INDIAN FACTORIES JOURNAL

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

WITH

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

CHIEF EDITOR:
A. N. AIYAR, B.A., B.L.,
Senior Advocate, Supreme Court,
Editor, 'Income Tax Reports' and 'Company Cases'.

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

Mode of citation of Reports [1958–59] 14 F.J.R.

Annual Subscription: Rs. 32 only (Foreign: 50 sh.)
Single parts are not sold separately.
Non-receipt of parts must be intimated within 15 days of the due date.

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FORM U.

(See Rule 58)

REGISTER OF NON-FATAL ACCIDENTS FOR THE YEAR 19............

Serial No.	Date of information	Date of accident	Name of workman injured	Name of the employer	Nature of injury: Permanent	Nature of injury: Temporary	Amount of compensation and monthly wages: Lump sum	Amount of compensation and monthly wages: Half monthly	Date of disposal	Remarks
1	2	3	4	5	6	7	8	9	10	11

By registered post.

FORM V.

(*See* Rule 63)

Whereas I have received information that (1)................................ a workman employed by you in (2)...................has died as the result of an accident arising out and in the course of his employment, I hereby require you in accordance with section 10 A of the Workmen's Compensation Act, 1923 (VIII of 1923) to submit to me within thirty days of the receipt of this notice the enclosed Form with the particulars required in paragraphs 1, 2 and 3 and the particulars required in either paragraph 4 or 5 duly filled in. In the event of your admitting liability to pay compensation, the necessary deposit must, under section 10 A (2) of the said Act, be made within thirty days of the receipt of this notice.

Commissioner for Workmen's Compensation.

Dated..................................

(1) Insert name of workman.

(2) Insert name of establishment.

FORM W.

(*See* Rule 64)

1. In reply to your notice dated the............19......which was received by me on the...........19......it is submitted that.. (1)...........residing at...........a workman over/under 15 years of age employed in...........(2)...........met with an accident on the...........19...... as a result of which he died on the...........19...... The monthly wages of the deceased amounted to Rs........................

2. The circumstances in which the deceased met with his death were as follows :—

3. The deceased left the following dependants (3).

*4. I admit liability to pay as compensation, on account of the deceased's death, the amount of Rs..................which was/will be deposited with you on/before the...................................

5. I disclaim liability to pay compensation on account of the deceased's death on the following grounds.

Employer.

Note : (1) Insert name of workman.

(2) Insert name of establishment.

(3) Insert names and addresses where known.

* One of these paragraphs to be struck out.

Kerala Maternity Benefit Rules, 1958.

*Notification No. L3-18217/58/L&LAD Dated, Trivandrum, 17th April, 1958.**

In exercise of the powers conferred by section 20 of the Kerala Maternity Benefit Act, 1957 (Act 19 of 1957) Government of Kerala hereby make the following rules, the same having been previously published as required by sub-section (4) of the said section.

1. These rules may be called the Kerala Maternity Benefit Rules, 1958.

2. In these rules, "the Act" means the Kerala Maternity Benefit Act, 1957.

3. (1) The notice to be given by a woman to her employer under sub-section (1) of section 5 of the Act shall be in Form A annexed to these rules.

(2) For the purposes of sub-section (3) of section 5 of the Act, the fact that a woman has been confined shall be proved by the production of a certified extract from a birth register or a certificate signed by a certifying surgeon or a registered Medical Practitioner or a qualified midwife.

(3) For the purposes of section 6 of the Act the miscarriage of a woman may also be proved by the production of a certificate signed by a Surgeon or Medical Practitioner.

(4) For the purposes of section 7 of the Act the illness of a woman arising out of pregnancy or confinement shall be proved by the production of a certificate singed by a Certifying Surgeon or a registered Medical Practitioner.

(5) For the purposes of section 8 of the Act a certificate signed by a Certifying Surgeon or a registered Medical Practitioner or a qualified midwife shall be produced. The person issuing such certificate shall state therein that the woman concerned has utilised his/her services before or during or after confinement and shall also state the period during which the woman concerned has been under his/her medical attention.

(6) For the purposes of section 9 of the Act, the death of a woman may be proved either by the production of a certificate to that effect from a Certifying Surgeon or from a registered Medical Practitioner or by the production of a certified extract from a death register.

(7) For the purposes of sub-rules (1) to (5) the qualifications to be possessed by a midwife shall be notified by the Government.

(8) The certificate to be issued under section 6 of the Act and under sub-rules (3) and (4) shall be in Form 'B' and under sub-rules (2) and (5) shall be in Form 'C' and under sub-rule (6) shall be in Form 'D' annexed to these rules.

4. (1) The woman entitled to the benefits under section 6 or 7 or 8 of the Act shall send the certificate specified in section 6 of the Act or prescribed in sub-rule (3) or (4) of rule 3 as the case may be, to the employer with a notice in Form E annexed to these rules within seven

*Ker. Gaz. 29-4-'58, Pt. I, sec. IV, P. 1.

days of availing herself of the leave and shall send the certificate prescribed in sub-rule (5) of rule 3 to the employer along with a notice in Form F before the expiry of seven days from the date of confinement.

Provided that non-compliance of the procedure laid down in the sub-rule shall not disentitle a woman to the benefits if she is found to be illiterate.

(2) The amount of benefits payable under sections 6 and 7 for the period up to the production of the certificates prescribed in sub-rules (3) and (4) of rule 3 shall be paid by the employer to the woman within forty-eight hours of the production of such certificate and the amount due for the subsequent period shall be paid punctually each week in arrear.

(3) The amount payable under section 8 shall be paid within forty-eight hours of the production of the certificate prescribed in sub-rule (5) of rule 3.

5. (1) An appeal against the orders of an Inspector under sub-section (2) of section 11 of the Act shall lie to the Labour Commissioner or such authority as the Government may by notification in the Gazette appoint in this behalf. The appellate authority after giving both parties an opportunity of being heard shall either reject the application or decide in any manner it deems fit.

(2) All appeals under sub-rule (1) shall be in the form of a memorandum setting forth concisely the grounds of objections to the order bearing court fee stamps in accordance with the law relating to Court fees in force for the time being and shall be accompanied by a certified copy of the order appealed against duly signed by the appellant or on his behalf by a duly authorised agent or legal practitioner. An appeal shall be considered valid only if submitted within two months from the date of the order appealed against.

(3) On receipt of the memorandum of appeal, the appellate authority may if it thinks fit appoint an assessor within two weeks to assist in the disposal of the appeal. It shall then fix a date for the hearing of the appeal and shall give due notice of such date to the appellant and to the Inspector whose order is appealed against.

6. Every Inspector shall have power, within the local limits of his jurisdiction—

(a) to require the production of, and to examine, such records as are maintained in the factory or plantation, or establishment, and

(b) to make such enquiries as may be necessary for the purpose of ascertaining whether the provisions of the Act or the rules made thereunder, have been or are properly carried out:

Provided that he shall not require any employer to answer any question or to give any evidence tending to criminate himself.

7. (1) An Inspector shall at each inspection of factory or plantation or establishment satisfy himself—

(a) that due action has been taken on every notice given under sub-rule (1) of rule 3 and under sub-rule (1) of rule 4;

(b) that the muster roll prescribed in rule 14 is correctly maintained;

(c) that the amount of maternity benefit and other benefits have been correctly calculated and paid within the time prescribed;

(d) that provision of section 21 of the Act has been complied with.

(2) The Inspector shall issue orders in writing to the employer asking for the correction of all irregularities under the Act noticed by him and shall institute prosecutions for breaches of law whenever deemed necessary.

(3) The Inspector shall keep a file of the records of his inspection and shall indicate in a diary the work done by him under the Act.

8. (1) The payment of any amount against the claim under sections 5, 7 and 8 of the Act shall be made by the employer to the woman worker concerned or if the woman is dead, to the person who undertakes the care of the child if the child is living and if the child is dead, to the persons nominated by her in the notice given under sub-rule (1) of rule 3 or under sub-rule (1) of rule 4 as the case may be, and if there is no such person, to her legal representative.

(2) The payment of any amount against the claim under section 6 shall be made by the employer to the woman worker concerned or if the woman is dead, to the persons nominated by her in the notice given under sub-rule (1) of rule 4 and if there is no such person, to her legal representative.

(3) Whenever the payment referred to in sub-rules (1) and (2) is made a receipt shall be obtained by the employer in Form G annexed to these rules.

9. The person who claims the maternity benefits under sections 5, 7 and 8 as the person who has undertaken the care of the child referred to in sub-rule (1) of rule 8 shall give the undertaking to take care of the child in writing to the employer.

10. The employer on receipt of notice under sub-rule (1) of rule 3 or under sub-rule (1) of rule 4 for benefits together with the proof specified in sub-section (1) of section 6 or prescribed in sub-rules (2), (3), (4) and (5) of rule 3 as the case may be, shall give the worker an acknowledgment within forty-eight hours in Form H annexed to these rules.

11. When a worker is not eligible to receive any of the benefits claimed for, the employer shall intimate the fact to the worker in Form I annexed to these rules within 48 hours after the receipt of the notice under sub-rule (1) of rule 3 or under sub-rule (1) of rule 4 stating clearly the reasons for the non-payment of the benefit. A copy of this reply shall be sent to the Inspector also within the time stipulated above.

12. Records relating to the payment of benefits under the provisions of the Act or these rules shall be preserved for a period of two years from the date of their preparation.

13. Every employer of women in a factory or plantation or establishment shall before the 31st January, every year furnish to the Inspector specified in this behalf by the Government by notification in the Gazette an annual return in Form J annexed to these rules for the year ending on the 31st day of December immediately preceding.

14. (1) Every employer in a factory or plantation or establishment in which women are employed shall prepare and maintain a muster roll in Form K annexed to these rules and shall enter therein the names and particulars of all women workers in the factory or plantation or establishment:

Provided that entries in columns 5 to 19 shall be made within forty-eight hours of the receipt of notices prescribed under sub-rule (1) of rule 3 or under sub-rule (1) of rule 4 are received.

(2) All entries in the muster-roll shall be made in ink and maintained up-to-date and it shall be made available for inspection by the Inspector on the premises during the working hours.

(3) The employer may enter in the muster-roll such other particulars as may be required for any other purpose.

15. (1) Any employer who contravenes the provisions of rule 14 shall be punishable with fine which may extend to fifty rupees.

(2) Any person who:

(a) wilfully obstructs an Inspector in the exercise of his powers or the performance of his duties under these rules, or

(b) fails to produce on demand (i) the muster-roll, or (ii) the notices given under sub-rule (1) of rule 3 or under sub-rule (1) of rule 4.

(iii) the receipts for the benefits paid or any other document necessary to enable an Inspector to ascertain whether the provisions of the Act and these rules have been complied with or not, or

(c) fails to submit any return or to preserve any records as required by these rules, or

(d) fails to acknowledge receipt of the notices from the worker under rule 10, or

(e) fails to give intimation regarding non-eligibility of worker for benefits under rule 11 shall be punishable with fine which may extend to fifty rupees.

ANNEXURE

FORM A

[*See* under sub-rule (1) of rule 3]

I, daughter*/wife of....................employed in.......................... department*/section*/group No...........of factory*/establishment*/plantation hereby give notice that*/I expect to be confined within 4 weeks immediately following the date of this notice and that I will absent myself from work with effect from.................*/I gave birth to a child on........

2. For the purpose of rule 8 (1) I hereby nominate..............(here enter name and address of the nominee) to receive maternity benefit due to me in case of my death.

3. A copy of a certified extract from a birth register*/A certificate signed by..........................(name of the person who issued the certificate may be given) is enclosed.

Given this date.......................

Signature/Thumb impression.

Signature of Attestor in case the woman affixes thumb impression.

Address..

....

....

To

The employer,

....(name of factory/establishment/plantation) and full address.

* Strike out when not applicable.

FORM B

[*See* sub-rule (8) of rule 3]

CERTIFICATE OF ILLNESS */MISCARRIAGE

This is to certify that I have examined Smt....................daughter*/wife of ....employed in.....................factory*/establishment*/plantation at.......................in the district of..............on........... and found her suffering from.................She is/has been carrying........... ....months. I recommend.....................days of absence from work from....................

Signature, qualification and designation of Certifying Surgeon/Medical Practitioners/Midwife.

FORM C

[*See* sub-rules (2) & (8) of rule 3]

CERTIFICATE OF CONFINEMENT

This is to certify that Smt.................................daughter/wife of ....employed in.................factory/establishment/plantation had utilised my services before or/and during or/and after confinement and that she gave birth to a child on..........................She has been under my medical attention from..............to.................

Place

Date

Signature, qualification and designation of Certifying Surgeon/Medical Practitioner/Midwife.

FORM D.

[*See* Sub-Rule (8) of Rule 3]

CERTIFICATE OF DEATH

This is to certify that Smt................................daughter/wife of ....employed in factory/establishment/plantation expired on.........................before/during/after confinement. The child died on.......... ..../survives her.

Place — Signature, qualifications and designation of certifying Surgeons/Registered Medical Practitioners.

Date

FORM E.

[*See* Sub-Rule (1) of Rule 4]

I.......................wife/daughter of...........................employed in ....department/group*/No........Section of Factory*/ plantation*/establishment hereby give notice that I am suffering from/suffered miscarriage on....................with effect from...........and that I may be granted leave with effect from the above date till.........as provided under section 6*/7.

2. For the purpose of sub-rule (1) of rule 8 I hereby nominate........ (name and address of the nominee) to receive allowance due to me in case of my death.

3. The required certificate signed by.......................(here enter the name and designation of the person who signed the certificate) is enclosed.

Given this date..............

Signature/thumb impression.

Signature of attestor in case of woman affixes thumb impression.

Address..
....

To

The employer (name etc.)

FORM F.

[*See* Sub-rule (1) of Rule 4]

I, wife/daughter of.................employed in Department/Section Group No. of....................factory/establishment/plantation hereby give notice that I gave birth to a child on...................................

2. I have utilised the services of....................(here enter name and address of the person who attended her) before/during/after my confinement.

3. For the purpose of sub-rule (1) of rule (8) I have hereby nominate ....(here enter name and full address of nominee) to receive the bonus due to me in case of my death.

Given this day.....................

Signature/thumb impression.

Signature of attestation in case of woman affixes thumb impression.

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

To

The employer.

..........................(name of factory/establishment/plantation.)

FORM G.

[*See* Rule 8(3)]

FORM OF RECEIPT

Name of factory or plantation or establishment............................
I...............................the undersigned woman worker.......................
......../*who has undertaken the care of the child of woman worker......
....................../*the nominee of woman worker......................./*the legal representative of..............woman worker in the factory/*plantation/ *establishment at..........................Taluk received benefits under section 5/*6/*7/*8 of the Kerala Maternity Benefit Act, 1957, from the employer of the factory/*plantation/*establishment referred to above as detailed below :—

*Rs............being the advance before confinement paid on..............

*Rs............being the *1st/*2nd/*3rd instalment of maternity benefit after confinement paid on.......................

*Rs...........being the *1st/*2nd/*3rd instalment of allowance for miscarriage paid on.....................................

*Rs...........being the *1st/*2nd/*3rd instalment of illness allowance paid on..

*Rs...........being the bonus paid on..

*My / 's confinement took place on...

...............'s death took place on.........................in.............................

consequence I,..........................being the person who has undertaken the care of her child.......................... *being her nominee ...... being her legal representative have received the aforesaid amount as prescribed in sub-rules (1) and (2) of rule 8 of the Kerala Maternity Benefit Rules, 1958.

*woman worker

Signature or left thumb impression of

*the person who has undertaken the care of the child of the woman worker
*the nominee of the woman worker
*the legal representative of the woman worker

*Strike out when not applicable.

FORM H.

[*See* Rule 10.]

FORM OF RECEIPT TO THE WORKER.

Received on.......................a notice No...........Dated............... together with.....................(here enter the kind of proof produced) from Smt...employed in the ....department/*section/*group No. ...... of this factory/*plantation/*establishment. The matter is receiving the *attention of the management.*

Date.................. Signature of Manager or Occupier.

Place...................

*Strike out when not applicable.

FORM I.

[*See* Rule 11.]

FORM OF NOTICE TO BE GIVEN TO WORKER WHO IS NOT ELIGIBLE TO RECEIVE MATERNITY BENEFIT

Referring to her application No.....................dated...................... Smt.......................................is informed that she is not eligible to receive maternity benefit/*allowance for miscarriage/*allowance for illness/ * bonus for the following reasons :—

....

....

....

Date............................. Signature of Manager or Occupier.

Name of Factory/Plantation/Establishment.

Place.........................

To

Smt...

Copy to : Inspector.....................................

FORM J.

[*See* Rule 13.]

ANNUAL RETURN FOR THE YEAR ENDING 31ST DECEMBER 195......

(to be submitted to the Inspector before 31st January)

Name of Factory/Plantation/Establishment.................................

PART I

Name of Occupier	Name of Manager	Total No. of women employed during the year	No. of women who worked for a period of not less than 150 days
1	2	3	4

No. of women who claimed maternity benefit under section 5(1)	No. of women who were refused permission for absence during 4 weeks before the expected day of delivery	No. of women who were granted permission to absent on account of notice of confinement	Total number of women who received maternity benefit
5	6	7	8

No. of women to whom maternity benefit rejected	No. of women who actually received maternity benefit and the total amount	No. of women died		No. of other persons to whom payment of maternity benefit was made under section 9 and the total amount
		Before delivery	After delivery	
9	10	11(a)	11(b)	12

No. of expectant women dismissed while working	No. of women to whom payment of maternity benefit made on the order of the Inspector	Remarks
13	14	15

NOTE: 1. Where possible separate figures should be shown in respect of Clerical and Supervisory Staff and other workers.

2. Full particulars of each case and reason for action taken under headings (6), (9) and (13) should be given.

PART II

Number of women who applied for leave for miscarriage	Number of women to whom leave for miscarriage rejected	Total amount paid as leave allowance under section 6	Number of women who applied for leave for illness under section 7
(1)	(2)	(3)	(4)

Number of women to whom leave for illness rejected	Total amount paid as leave allowance under Section 7	Number of women who applied for bonus under Section 8
(5)	(6)	(7)

Number of women to whom claim for bonus rejected	Total amount paid as bonus	Remarks
(8)	(9)	(10)

NOTE: Full particulars of each case and reason for action taken under headings (2), (5) and (8) should be given.

FORM K

[*See* Rule 14 (1)]

Muster Roll...

Address...

Name of Factory/Plantation/Establishment...

Name of woman and date of admission to employment	Name of husband or father	Name of work or Department or Section in which employed	Ticket or departmental number
1	2	3	4

Period during which employed From......to.........	Period during which not employed From......to.........	Date of discharge if any	Date of giving notice of pregnancy under section 5(1)
5	6	7	8

Date of giving notice of delivery under section 5(1) with the proof of delivery	Name of person nominated	Date of production of proof of death if any	Date of advance of maternity benefit paid: Date	Amount
9	10	11	12(a)	12(b)

Dates of subsequent payments of maternity benefit: Dates	Amount	Date of receipt of application for leave for miscarriage under rule 4(1) with the required certificate	Payment of allowance for miscarriage: Date	Amount
13(a)	13(b)	14	15(a)	15(b)

Date of receipt of application for leave for illness under rule 4 (1) with the required certificate	Payment of Allowance for illness		Date of receipt of application for payment of bonus under rule 4 (1) with the required certificate
	Date	Amount	
16	17(a)	17(b)	18

Payment of bonus		Remarks
Rate	Amount	
18(a)	18(b)	19

C. P. & Berar Industrial Disputes Settlement Rules, 1949-Amendments.

*Notification No. CPA. 1357-I, dated Bombay, 21st May, 1958.**

In exercise of the powers conferred by section 61 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (Central Provinces and Berar Act No. XXIII of 1937), and of all other powers enabling it in this behalf, the Government of Bombay hereby amends the Central Provinces and Berar Industrial Disputes Settlement Rules, 1949, as follows namely :—

In the said Rules,—

(1) for rule 5, the following rule shall be substituted, namely :—

" 5. An application for registration as a recognised union under section 3(1) or section 7-A(1) shall be made to the Registrar in Form 'C'."

(2) after rule 14, the following new rule shall be inserted, namely :—

" 14-A. The public notice as required by section 12 shall be given by the Registrar in Form G(1), G(2) or G(3), as may be appropriate, by publication at his office in the *Official Gazette*." ;

(3) in Form C,—

(*a*) for the words, figures and brackets " Section 3(1) and " the following shall be substituted, namely :—

" Sections 3(1) and 7A(1) and " ;

(*b*) for the words, figures and brackets " in section 3(1) " the following shall be substituted, namely :—

" under $\frac{\text{*section 3(1)}}{\text{*section 7A(1)}}$ " ;

(*c*) for the words " by the Registrar of Trade Unions for the Province of Central Provinces and Berar " the following shall be substituted namely :—

" by the Registrar of Trade Unions under the said Act ";

*Bom. Gaz., 29-5-58, Part IVB, p. 535.

(*d*) at the end the following foot-note shall be added, namely :—

" *Strike off whichever not required ";

(4) after Form G, the following new Forms shall be inserted namely :—

" FORM G(1).

(Sections 3 and 12 and rule 14A.)

BEFORE THE REGISTRAR OF RECOGNISED UNIONS UNDER THE CENTRAL PROVINCES AND BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947.

NOTICE.

In the matter of the recognition of.......................................as a Recognised Union under sub-section (2) of section 3 of the Act.

Whereas..has applied to the Registrar under section 3 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, for registration as a recognised union for the purposes of the said Act for the industry..in the local area of...;

Now, therefore, a public notice as required by sub-section (1) of section 12 of the said Act is hereby given that the said application will come up before the Registrar for enquiry after the expiry of 15 days from the date of the publication of this notice in the *Official Gazette*. All employers or associations of employers and employees or their representatives or Unions in the said Industry in the said local area, whose interests are likely to be affected by the recognition of the said Union, may present their objections in writing to the Registrar before the expiry of the aforesaid period of 15 days.

Place :

Dated the day of 195 .

Registrar of Recognised Unions under the Central Provinces and Berar Industrial Disputes Settlement Act, 1947.

FORM G(2).

(Sections 7 and 12 and rule 14A.)

BEFORE THE REGISTRAR OF RECOGNISED UNIONS UNDER THE CENTRAL PROVINCES AND BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947.

NOTICE.

In the matter of cancellation of certificate of recognition of.............. a Recognised Union under sub-section (2) of section 3 of the Act.

Whereas ....has applied to the Registrar under section 7 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, for the cancellation of the certificate of recognition of the above named union granted to it under sub-section (2) of section 3 of the Act, for the purposes of..industry in the local area of..............................;

Now, therefore, a public notice as required by sub-section (1) of section 12 of the said Act is hereby given that the said application will come up before the Registrar for enquiry after the expiry of 15 days from the date of the publication of this notice in the *Official Gazette*. All employers or associations of employers and the employees or their representatives or unions, in the said industry in the said local area whose interests are likely to be affected by the cancellation of the certificate of recognition of the said Union, may present their objections in writing to the Registrar before the expiry of the aforesaid period of 15 days.

Place : Registrar of Recognised Unions under the Central Provinces and Berar

Dated the day of 195 Industrial Disputes Settlement Act, 1947.

FORM G(3).

(Sections 7A and 12 and rule 14A.)

BEFORE THE REGISTRAR OF RECOGNISED UNIONS UNDER THE CENTRAL PROVINCES AND BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947.

NOTICE

In the matter of the recognition of..
as a Recognised Union under sub-section (2) of section 3 read with sub-section (2) of section 7A of the Act, in place of the existing Recognised Union, namely...

Whereas the... has applied to the Registrar under section 7A(1) of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, for being recognised under section 3 read with section 7A of the said Act in.......................... industry in the local area of... in the place of the already registered Recognised Union, namely...............;

Now, therefore, a public notice as required by sub-section (1) of section 12 of the said Act is hereby given that the said application will come up before the Registrar for enquiry after the expiry of 15 days from the date of the publication of this notice in the *Official Gazette*. All employers or associations of employers and employees or their representatives or unions in the said industry in the said local area, whose interests are likely to be affected by the recognition of the said Union in supersession of the recognition already granted to............................Union, may present their objections in writing to the Registrar before the expiry of the aforesaid period of 15 days.

Place : Registrar of Recognised Unions under the Central Provinces and Berar

Dated the day of 195 Industrial Disputes Settlement Act, 1947."

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indicated by it. The retrospectivity may have its repercussions on the capacity of the industry to pay we need not say anything more in regard to the same. We have already dealt with it above.

Re: 10. Ground No. 10 talks of the authority of the Wage Board to fix scales of pay for a period of 3 years, subject to review by the Government by appointing another Wage Board at the end of that period. We are not concerned with such fixation of the period for the simple reason that the Board has not in terms done so. The only authority which it had was to fix the rates of wages and submit its decision in respect thereof to the Government. Any pious hope expressed that the decision should be subject to review or revision by the Government by appointment of another Wage Board after the lapse of 3 or 5 years was not a part of its decision and we need not pause to consider the effect of such fixation of the period, if any, because it has in fact not been done.

Re: 11. The last ground talks of the Wage Board being handicapped for want of cost of living index. This ground also cannot avail the petitioners for the simple reason that the decision of the Wage Board itself referred in clause 24 thereof to the all-India cost of living index number published by the Labour Bureau of the Government of India (O Base 1944: 100) and fixed the dearness allowance in relation to the same. These statistics were available to the Wage Board and it cannot be said that the Wage Board was in any manner whatever handicapped in that respect.

On a consideration of all the grounds of attack thus levelled against the validity and the binding nature of the decision of the Wage Board, we have, therefore, come to the conclusion that the said decision cannot be sustained and must be set aside.

The petitions will, therefore, be allowed and the petitioners will be entitled to an order declaring that section 5(1)(a)(iii) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act No. 45 of 1955), is *ultra vires* the Constitution of India and that the decision of the Wage Board dated April 30, 1957, is illegal and void.

As regards the costs, in view of the fact that the petitioners have failed in most of their contentions in regard to the constitutionality of the Act, the fairest order would be that each party should bear and pay its own costs of these petitions.

Civil Appeals Nos. 699-703 of 1957.

These Civil Appeals are directed against the decision of the Wage Board and seek to set aside the same as destroying the very existence of the newspaper establishments concerned and infringing their fundamental rights. Special leave under article 136 of the Constitution was granted by this Court in respect of each of them, subject to the question of maintainability of the appeals being open to be urged.

These appeals are also covered by the Judgment just delivered by us in petition No. 91 of 1957 and others, and the appellants would be entitled to a declaration in each one of them that the decision of the Wage Board is *ultra vires* the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act No. 43 of 1955), and, therefore, void and inoperative.

In view of the conclusion thus reached, we feel it unnecessary to consider whether the appeals would be maintainable under article 136 of the Constitution. The appellants having substantially succeeded in their respective petitions under article 32 of the Constitution, the question has now become purely academic and we need not spend any time over the same.

The result, therefore, is that there will be no orders in these appeals save that all the parties thereto shall bear and pay their own costs thereof.

[IN THE CALCUTTA HIGH COURT.]

CO-OPERATIVE MILK SOCIETIES UNION LTD.

v.

STATE OF WEST BENGAL AND OTHERS.

P. B. Mukharji, J.

March 3, 1958.

CO-OPERATIVE SOCIETY—INDUSTRIAL DISPUTE BETWEEN CO-OPERATIVE SOCIETY AND ITS EMPLOYEES—WHETHER GOVERNED BY PROVISIONS OF CO-OPERATIVE SOCIETIES ACT—WHETHER CAN BE REFERRED TO INDUSTRIAL TRIBUNAL UNDER INDUSTRIAL DISPUTES ACT, 1947.

Though the Bengal Co-operative Societies Act, 1940, contains special provisions for the settlement of disputes arising in co-operative societies, it is clear from the definition of 'dispute' in the Act that these provisions are not intended to cover 'industrial disputes' arising between a co-operative society and its employees. Such 'industrial disputes' will be governed by the provisions of the Industrial Disputes Act, 1947, and can be referred by the appropriate Government to an Industrial Tribunal for adjudication.

Application under article 226 of the Constitution.

P. K. Sen Gupta for the management.

S. C. Sen and *S. K. Acharyya* for the respondents.

JUDGMENT.

P. B. MUKHARJI, J.—This is an application under article 226 of the Constitution. It raises the short but interesting point whether the dispute of the workers of a co-operative society with their employers can be referred to an Industrial Tribunal under the Industrial Disputes Act. Statutory conflict between the Bengal Co-operative Societies Act, 1940, and the Industrial Disputes Act, 1947, was debated at the Bar. Which statute should prevail is the problem posed. It is a point of first impression.

Its determination may be prefaced by a short account of some simple facts. The applicant is the Co-operative Milk Societies Union Ltd., a society registered under the Bengal Co-operative Societies Act. The respondents are the Fourth Industrial Tribunal, the Co-operative Milk Employees' and Workers' Union which is a registered trade union under the Indian Trade Unions Act, 1926, and the Government of West Bengal. The object of this society is promotion of the common interest of its members in accordance with the co-operatvie principles like thrift, self-help, mutual aid among persons of moderate means with needs and interests common among its members, for the betterment of conditions of living and better methods of production. The Co-operative Milk Employees' and Workers' Union is a trade union formed by the servants of the applicant society. By an order, dated the 25th April, 1957, the Government constituted the Fourth Industrial Tribunal and referred to it certain disputes mentioned in that order between the applicant society and its servants for adjudication by the Tribunal. The disputes actually referred for adjudication are : (1) wages and wage scales, and (2) dearness allowance.

The only objection of the applicant is that the Industrial Tribunal has no jurisdiction to try a dispute between a co-operative society registered under the Co-operative Societies Act and its workmen. The argument is that the Bengal Co-operative Societies Act of 1940 is a special statute relating to co-operative societies, the object of which, as appearing in the preamble, is *inter alia* :

"To make further provision for the formation and working of co-operative societies and for the promotion of thrift, self-help and mutual aid among persons of moderate means with needs and interests in common to the end that better conditions of living and better methods of production and business may thereby result."

It is contended that this Act makes a special provision for settlement of disputes of this particular type of societies formed for these particular objects. Section 86 of the Bengal Co-operative Societies Act, 1940, provides:

"Any dispute touching the business of a co-operative society (other than a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society) or of the liquidator of a society shall be referred to the Registrar if the parties thereto are among the following, namely:—

(a) the society, its managing committee, any past or present officer, agent or servant or the liquidator of the society; or

(b) a member, past member or person claiming through a member, past member or deceased member of the society; or

(c) a surety of a member, past member or a deceased member of the society, whether such surety is or is not a member of the society; or

(d) any other co-operative society or the liquidator of such society."

On the basis of this section it is urged that the dispute within the meaning of section 86 of the Act shall be referred to the registrar. Therefore, the registrar is said to be the only authority to which reference of the dispute can be made and the Industrial Tribnnal under the Industrial Disputes Act has no jurisdiction to entertain such a reference in respect of such a dispute.

Section 87 of the Act thereafter goes on to provide:

"(1) On receipt of a reference under section 86 the registrar shall, subject to the rules—

(a) decide the dispute himself; or

(b) transfer it for disposal to any person authorised by the State Government to exercise the powers of the registrar in this behalf; or

(c) refer it for disposal to one or more arbitrators to be appointed by the registrar.

(2) Subject to the rules, the registrar may withdraw any reference transfered or referred under sub-section (1) and may deal with it himself in the manner provided in such rules."

On the basis of these two sections 86 and 87 it is also contended that the persons who can settle a dispute in a co-operative society under this Act is either the registrar himself or a person to whom the registrar transfers the dispute for adjudication, provided that person is authorised by the State Government to exercise the powers of the registrar in that behalf, or one or more arbitrators appointed by the Registrar of Co-operative Societies. It is, therefore, said that there is no scope

for a reference to some other authority like Industrial Tribunal under a different statute like the Industrial Disputes Act.

The argument is further fortified by reliance on the doctrine of *generalia specialibus non derogant.* It is argued that the Bengal Co-operative Societies Act, 1940, is the special statute exclusively dealing with co-operative societies and disputes in relation thereto. Mr. Sen Gupta, appearing on behalf of the applicant, contends that the Industrial Disputes Act is a general Act dealing with industrial disputes generally. Therefore, his argument is that a general statute dealing with industrial disputes generally should not be allowed to override specific provisions relating to settlement of dispute in respect to specific organisations like co-operative societies registered under the Bengal Co-operative Societies Act, 1940, which makes a special provision in this respect. There is considerable force in that argument and it requires a careful analysis not only because of the importance of the problem raised but also because this is a case of first impression.

Normally, I would be prepared to hold in this case that disputes relating to co-operative societies were not intended to be referred to an Industrial Tribunal under the Industrial Disputes Act. The principle of co-operative societies is, as the name implies, one of co-operation and working together. The dominant idea is a common share in a common pool and the notion of employer and an employee is far less marked than it is in other establishments. As the preamble of the statute clearly indicates, the whole idea is to promote thrift, self-help and mutual aid among persons of moderate means with common ends and interests. It was not intended for big industries with large questions of labour involved. But this general attitude to co-operative societies under the Bengal Co-operative Societies Act, 1940, cannot be allowed to override conclusions that might be reached on a proper interpretation of the sections of the Act. It is, therefore, necessary to interpret the relevant provisions of the Bengal Co-operative Societies Act.

Sections 86 and 87 of the Bengal Co-operative Societies Act, 1940, appear in Chapter IX of that statute under the chapter heading "settlement of disputes". There is no doubt that they provide a complete self-contained code for settlement of disputes. But the kind of dispute that is intended to be referred to the registrar has to be determined by the actual language used in section 86 of the Act. It is not any and every dispute that is to be referred to the registrar under section 86. There is a limitation of the kind of dispute which can be referred to the registrar. The significant words limiting the nature and type of dispute is contained in the expression "touching the business of a co-operative society" in section 86 of the Act. It is, therefore, clear that the dispute has to touch the business of the co-operative society. Now a co-operative society can do many kinds of business which may certainly include business of industrial nature. Can a dispute between the co-operative society and its workmen be said to be a dispute touching the business of a co-operative society? Strictly speaking, dispute between a co-operative society and its workmen does not relate to the actual business of a co-operative society and therefore does not touch the business of the co-operative society. Consequentially, however, a dispute between the co-operative society and its workmen may ultimately touch or affect the business of the co-operative society. I am inclined to think that the remote and the consequential result should not be included within the expression "any dispute touching the business of a co-operative society." I am persuaded to accept that construction by the further consideration of the fact that a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society is expressly excluded from the purview of registrar's jurisdiction by this section 86 of the Act. Legislature therefore did not intend that dispute regarding disciplinary action by the society against its paid servant should be settled by the registrar. But then this singular exclusion of dispute regarding disciplinary action might be argued to impliedly include all other disputes such as industrial disputes, on the principle of *expressio unius est exclusio alterius*, specially when section 86(a) of the Act expressly refers to the society and its servant as disputing parties.

But the key to the solution of this problem appears in the definition of the word "dispute" in section 2(j) of the Bengal Co-operative Societies Act, 1940, which provides: "dispute" means any matter capable of being the subject of civil litigation and includes a claim in respect of any sum payable to or by a co-operative society whether such claim be admitted or not."

The limitation in that definition is "capable of being the subject of civil litigation." Now here the dispute referred to the Industrial Tribunal is "wages and wage scales and dearness allowance". Wages, wage scales and dearness allowance do not appear to be fit or proper matters capable of being the subject of civil litigation. What will be the wage scale in an establishment cannot appropriately be the subject of a civil litigation. What should be the general wages or what should be the dearness allowance equally do not appear to be matters capable of being the subject of civil litigation. In that view, it appears that the express limitation of the 'dispute' in the Bengal Co-operative Societies Act excludes the present disputes which have been referred to the

Industrial Tribunal from being the subject of settlement by the registrar of the co-operative societies.

But the difficulties of the interpretation do not end here. "Dispute" as defined in section 2(j) of the Bengal Co-operative Societies Act is expressly said to include "a claim in respect of any sum payable to or by a co-operative society, whether such claim be admitted or not". Now a sum payable to or by a co-operative society surely can be the subject of a civil litigation and therefore it appears difficult to appreciate why that was specially included. It has therefore been argued by Mr. Sen Gupta that a claim for a particular wage or dearness allowance is ultimately a claim for a sum payable by a co-operative society and hence is a dispute within the meaning of the Bengal Co-operative Societies Act.

In interpreting the expression "a claim in respect of any sum payable to or by a co-operative society" appearing in section 2(j) of the Bengal Co-operative Societies Act, 1940, I am of the opinion that the claim for fixing wages and wage scales generally and dearness allowances cannot be described as a "claim in respect of any sun which is payable." The question of "payability" of "a sum" in the context of that particular definition seems to be individual debt or individual sum of money and does not appear to include claims for a general wage scale and dearness allowance as a matter of collective bargain between labour and employer.

I am, therefore, of the opinion on a proper construction of the definition of the word "dispute" in section 2(j) of the Bengal Co-operative Societies Act that neither of the two conditions: (1) "subject of civil litigation" and (2) "any sum payable" is satisfied in the present dispute which has been referred to the Industrial Tribunal.

I have given the most anxious thought to the argument based on the doctrine of conflict between general statutes and special statutes. It is necessary to say here that the definition of the word "dispute" in the Bengal Co-operative Societies Act was amended by section 2 of the First Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947, being West Bengal Act XII of 1947, by introducing the words "whether such claim be admitted or not". Now that Act became law, by receiving the assent of the Governor-General and publication in the Calcutta Gazette, on the 12th February, 1948. The Industrial Disputes Act however became law on the 11th March, 1947. It is therefore clear that the amendment of the definition of the word 'dispute' in the Bengal Co-operative Societies Act was made subsequent to the passing of the Industrial Disputes Act. I draw from this the necessary conclusion that if the Legislature wanted to exclude disputes between a co-operative society under the Bengal Co-operative Societies Act and its workmen from the operation of the Industrial Disputes Act, 1947, then it would have said so expressly when it was making those amendments. Not having done so I can only come to this conclusion that it was not intended that an industrial dispute between a co-operative society and its workmen should come under section 86 of the Bengal Co-operative Societies Act. I, therefore, hold on a proper interpretation that the Industrial Disputes Act is the special statute relating to the settlement of all industrial disputes whether they relate to co-operative societies or other establishments. From that point of view and from the point of view of industrial disputes the Industrial Disputes Act is the special statute and the Bengal Co-operative Societies Act is the general statute. So long as the dispute is industrial within the meaning of the words "industrial dispute" under the Industrial Disputes Act, that Act has the exclusive jurisdiction. The preamble to the Industrial Disputes Act says that it makes "provision for the investigation and settlement of industrial disputes and for certain other purposes." The questions relating to wages and wage scales and dearness allowance of this Co-operative Milk Societies' Union Ltd., satisfy the definition of an industrial dispute as enacted in the Industrial Disputes Act. In coming to that conclusion I am also fortified by the fact that there are many large co-operative societies which are much bigger than many of the smaller industrial establishments and I see no reason why settlement of industrial disputes should not therefore be left to the care of the Industrial Disputes Act.

The Supreme Court in *D.N. Banerjee* v. *P. R. Mukherjee*,(1952) 4 F.J.R. 443, applied the Industrial Disputes Act to a municipality under the Bengal Municipal Act. It was held there that the definitions in the Industrial Disputes Act included also disputes that might arise between municipalities and their employees in branches of work analogous to the carrying out of a trade or a business. On a parity of reasoning I should hold, and I do, that so long as the dispute is an industrial ditpute it is governed by the Industrial Disputes Act, although the industrial dispute is between a co-operative society under the Bengal Co-operative Societies Act and its workmen and notwithstanding provisions for settlement of disputes in sections 86 and 87 of the Bengal Co-operative Societies Act.

Learned counsel for the applicant then raised an argument on the basis of conflict between exclusive State and concurrent Federal Legislative jurisdictions. The Bengal Co-operative Societies Act is a State Act, the subject coming under entry 32 of the State List 2 of the 7th Schedule of the Indian Constitution. The Industrial Disputes Act

is a Federal Act. It does not come under any of the exclusive entries in List 1 of the Union List of the 7th Schedule of the Constitution but comes under entry 22 of List 3 of Concurrent List of the 7th Schedule of the Indian Constitution relating to "trade unions; industrial and labour disputes". I have given reference to the entries in the Constitution List, although strictly speaking both these Acts were prior to the Constitution and, therefore, the Government of India Act, 1935, is applicable to them. But it makes no difference because on this point the Legislative Lists under the Government of India Act make the same provision as the Legislative Lists in the Constitution. Where these three Lists come into conflict, the general principle is List 1 has priority over Lists 3 and 2 and List 3 has priority over List 2. No doubt it is true that the Legislature of a State has the exclusive power to make laws for the State in respect of any of the matters enumerated in List 2 of the 7th Schedule and as such the legislative competence of the State Legislature of Bengal in passing the Bengal Co-operative Societies Act is unquestioned. So far as the concurrent List 3 is concerned, the Constitution provides that notwithstanding anything in clause 3 of article 246, Parliament, and subject to clause 1 of article 246, the Legislature of any State have the power to make laws in respect of any matters enumerated in List 3. From that point of view the power of the Federal Legislature to enact the Industrial Disputes Act is also unquestioned. The preference or the overriding effect of the federal statute over the State statute in the concurrent field of legislation is ensured by article 254 of the Constitution which provides that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list, then, subject to the provisions of clause 2 of article 254 the law made by Parliament whether passed before or after the law made by the Legislature of such State or the existing law shall prevail and the law made by the Legislature of the State shall to that extent be repugnant and void. The applicant's position therefore does not improve by reference to the respective legislative competence of Parliament and State Legislature. In this respect the only case where the State law prevails in the State over the Federal law is when it has been reserved for the consideration of the President and has received the President's assent. This result is expressly produced by sub-clause (2) of article 254 which provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. That position, however, does not arise here. When argument was made at the Bar on this particular point, I pointed out to the learned counsel for the applicant that from one point of view the whole of this branch of the argument was irrelevant because according to the construction that I have adopted of both the Bengal Co-operative Societies Act and the Industrial Disputes Act there is no repugnancy or conflict at all. I shall prefer to adopt, where possible, a construction which harmonises statutes within the respective legislative competence of the State Legislature and Federal Parliament to the one that creates a conflict or repugnancy.

It remains now for me to conclude with reference to the question whether such construction, which I have reached, is within the policy of these respective statutes. Policies of statutes are relevant for their proper construction. But within the broad framework of the main purpose and policy of the statute construction is largely fundamentally and primarily a matter of interpretation of the words used in the statutes. Ideas of policy gathered from extraneous sources, extraneous to the text of the statute and its preamble, are neither conclusive nor convincing if the actual language subject to interpretation leaves no room for doubt. It may just as well be that though on a construction the result is that industrial disputes between the co-operative society under the Bengal Co-operative Societies Act and its workmen comes under the Industrial Disputes Act, it may not have been intended in fact to happen.

Co-operative Societies are a subject of great social importance in the context of Indian economic development. Special provisions are, therefore, made in the statute which mark them out from other establishments, joint stock companies and institutions. I have already referred to the preamble and a brief reference to other provisions of the statute will make the picture clearer. The control of the State Government over the co-operative societies is large and extensive. Although some of the provisions of the Bengal Co-operative Societies Act may have a familiar ring of the analogous provisions of the Indian Companies Act a bare scrutiny even cannot fail to show their fundamental difference. Section 24 of the Bengal Co-operative Societies Act gives power to the State Government to depute its servant to manage the affairs of a Co-operative Society. Section 39 restricts the Society's power to lend. Section 40 restricts Society's powers to transact business

with non-members. Debts due to Co-operative Societies are specially made a first charge under section 47 of the Act. The investments of the Co-operative Society are not free but limited as provided under sections 55 and 56 of the Act. What is more important is the provision contained in section 57 of the Act which limits distribution of profits. In fact, it is said there that no distribution of profit shall be made in the case of a Co-operative Society with unlimited liability. It is also provided there that save as expressly laid down in that section, no part of the funds of a Co-operative Society shall be divided by way of dividend and bonus or otherwise among its members. Section 64 of the Act protects the share or interest of a member from attachment. Section 68 puts restriction on transfer of share or interest. Section 129 of the Act gives the registrar power to enforce performance of obligations. Section 133 of the Act bars jurisdiction of civil and revenue courts. I have already referred to sections 86 and 87 of the Act, which make special provision for settlement of disputes under the aegis of the registrar. Elaborate rules have been framed under section 140 of the Act. Rule 54 provides for minimum paid staff to be employed by Co-operative Society. Rules 119 to 128 provide for settlement of disputes and appointment of arbitrators.

It may very well be an arguable thesis from these provisions that the inarticulate policy under the Co-operative Societies Act was to have its disputes settled not under the Industrial Disputes Act but under its own scheme. On the construction, however, that I have made, I have come to the conclusion that even if that be so, that policy has not been articulated in the language of the Act or its relevant sections, and from that point of view it will be for the Legislatures concerned, both State and Federal, to apply their attention to any possible change in the law in order to put the Co-operative Society on the footing that they wished it to be placed. But this court is not concerned with such policy which the words and language of the text of the statute have failed to effectuate.

For these reasons, the application must fail. I, therefore, discharge the rule and dismiss this application but make no order as to costs.

[IN THE CALCUTTA HIGH COURT.]

MADAN GURANG AND OTHERS

v.

STATE OF WEST BENGAL AND OTHERS.

P. B. Mukharji, J.

March 6, 1958

INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 10(1) AND 12(5)—REFERENCE OF INDUSTRIAL DISPUTE TO TRIBUNAL—DISCRETION VESTED IN APPROPRIATE GOVERNMENT—WHETHER COURT CAN INTERFERE WITH DISCRETION BY WRIT—CONSTITUTION OF INDIA, ART. 226.

Neither under the Constitution, nor under any law, nor under any procedure for writs can any writ issue to compel the appropriate Government to make a reference of a dispute to an Industrial Tribunal under section 10(1) of the Industrial Disputes Act, 1947, when the Government is of opinion and is satisfied that no such reference should be made. Reference of a dispute is entirely discretionary with the Government and the High Court cannot substitute its own judgment for that of the Government under section 10(1) of the Act, read with section 12(5).

Application under article 226 of the Constitution of India.

A. K. Dutta and *Binoy Kumar Sarkar* for the petitioners.

JUDGMENT.

P. B. MUKHARJI, J.—This is an application under article 226 of the Constitution by three workmen. It is a novel application. Its main purpose is to secure a *mandamus* to compel the Government to make a reference of an industrial dispute to an Industrial Tribunal.

The prayers in the petition seek for the issue of a writ of *mandamus* calling upon the Government to recall, rescind and withdraw the order made in Memo. No. 416 I. R. dated the 8th February, 1957. That order is contained in a letter. The letter concludes by saying: "Under the circumstances Government do not like to intervene in the matter any further."

The applicants now seek for a constitutional writ of *mandamus* to compel the Government to intervene. In this letter, which is described as an order, the Government states that an enquiry was made into the industrial dispute between M/s. Alkali and Chemical Corporation of India, Ltd. and Their Workmen. It says further that it transpires that,

"Sri Dandasi was transferred from the Fire Station to the Salt Dissolving Plant and not to the yard as alleged by the Union. *The transfer was necessary as the management reorganised the Fire Station on a*

more efficient line. Your allegation that the transfer amounted to demotion has not been found to be correct.

Sri Madan Gurang, the Security Darwan, was dismissed for gross negligence of duty which he committed by leaving the gate unguarded without permission from any higher authority.

Sri Bejoy Patra was charge-sheeted for taking the company's lorry out of the factory without driving licence. Moreover, he has been found to be responsible for the loss of a tyre which was in the lorry when he took it out. From the evidence produced by different witnesses it has been established that Sri Patra is guilty of the charges made against him."

On these reasons, sufficiently recorded, the Government refused to intervene further in the matter. The only intervention by the Government could have been a reference of the matter to the Industrial Tribunal. The argument on behalf of the applicants is that the Government has usurped the jurisdiction to decide the industrial dispute and allocated the guilt. It is contended that this jurisdiction the Government does not passess. Therefore, the matter must be referred to the Industrial Tribunal.

There are many answers to this application. A reference to the Industrial Tribunal is made under section 10 of the Industrial Disputes Act. The opening words of that section so far as they are material for the purposes of this application are:

"Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute" etc.

Three consequences follow from this language of the section. First it is clear from the words of the statute that the power to refer the dispute is in the appropriate Government. The appropriate Government is the only referring authority. Secondly, the opinion that is conclusive whether there should be an order for reference or not is the opinion of the appropriate Government. Thirdly, the Government has the discretion to refer or not to refer a dispute either to a Board, or to a Court of Inquiry or to a Tribunal. This discretion follows from the use of the word "may" in section 10 which I have quoted. I am, therefore, satisfied for these reasons that the Government cannot be compelled by a constitutional writ of *mandamus* to make a reference of a dispute.

It has been contended on behalf of the applicants for the Rule that there were proceedings before the Labour Commissioner, West Bengal. Therefore, section 12(5) of the Industrial Disputes Act should be applied. Now, that provision of the statute says:

"If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, or Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

I should have thought that this statutory provision was entirely against the applicants' contention.

In the context of section 12 the report is the report of the Conciliation Officer. When the Conciliation Officer cannot reach a settlement after the investigation made by him, he sends a report to the appropriate Government setting forth the steps he had taken for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereon together with a full statement of such facts and circumstances and the reasons on account of which in his opinion a settlement could not be arrived at.

Now, section 12(5) of the Industrial Disputes Act makes some points abundantly clear. The first is that the Government considers a report of the Conciliation Officer failing to reach a settlement.

Secondly, it is clear that if the appropriate Government is satisfied on such report of the Conciliation Officer that there is a case for reference, it may make such a reference. The authority to be satisfied is the appropriate Government and not this Court or any other institution. Then, again, the word used is "may" and not "must". Reference of a dispute to an Industrial Tribunal is entirely discretionary with such Government and this Court will not in that field of discretion issue a writ of *mandamus* under article 226 of the Constitution to compel the appropriate Government to make such a reference.

Thirdly, and that is the case which is challenged in the present application, where the appropriate Government does not make a reference, the only obligation upon the Government is to record and communicate its reasons for not making the reference. The Government in this case has done so. Rightly or wrongly it has given the reasons for not making the reference. It is not an usurpation of jurisdiction of the Tribunal by the Government. It is a discharge of the Government's own mandatory obligation under section 12(5) of the Industrial Disputes Act by stating the reasons for not making the reference. After all, under section 10 the Government alone can refer a dispute. The Government has to be satisfied in some form or other that it is a dispute which should be referred. It is its opinion that counts under section 10. It is alone the referring authority. Section 12(5) of the Act makes it compulsory for the Government to record and communicate the reasons for not making the reference. The Government has done so in this case in the letter of the 8th February, 1957, I see nothing wrong in the Government's stating its reasons for not making the reference. Those reasons may be right or wrong, but this Court is not the authority under article 226 of the Constitution to sit in judgment over the merits or the reasons which have impelled the Government not to take any further step in the matter. The Government in this case says in that letter that an enquiry was made into the dispute. It gives the results of that enquiry with reasons. The report of the Conciliation Officer need not be produced as such by the Government because the statute does not say so. The statute only casts an obligation on the Government to state the reasons for not making the reference and communicate them to the parties. The Government has complied with that statutory requirement in this case.

I am, therefore, satisfied that neither under the Constitution, nor under any law, nor under any procedure for writs should any Rule issue to compel the Government to make a reference of a dispute to an Industrial Tribunal when the Government is of opinion and is satisfied that no such reference should be made. This Court will not substitute its own judgment for that of the Government by reason of section 10 of the Industrial Disputes Act read with section 12 of the same Act. The Supreme Court decsion in the *State of Madras* v. *C. P. Sarathy*, [1952] 4 F.J.R. 431, is also against the applicants' contention,

I, therefore, dismiss this petition summarily without issuing a Rule.

[IN THE SUPREME COURT OF INDIA.]

MATHURDAS KANJI AND OTHERS.

v.

LABOUR APPELLATE TRIBUNAL AND OTHERS.

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

April 7, 1958.

BONUS—AGREEMENT BETWEEN EMPLOYER AND GOVERNMENT PROVIDING FOR PAYMENT OF BONUS TO EMPLOYER—RIGHT OF WORKMEN EMPLOYED BY EMPLOYER TO SUCH BONUS—INTERPRETATION OF AGREEMENT—SUBSEQUENT INTERPRETATION BY GOVERNMENT—WHETHER RELEVANT.

BONUS—INCENTIVE BONUS—AWARD OF—PRINCIPLES—WHETHER LINKED WITH PROFITS—CLAIM WITHOUT EVIDENCE OF PROFITS MADE BY EMPLOYER.

An agreement between the employer and the Government, by which the employer had to clear and transport foodgrains from ports by engaging workmen, provided that if the work done exceeded a certain figure in 24 hours, the employer would be given additional payment of annas 4 per ton. It also provided that if the work done fell below a certain figure within 24 hours, the employer would have to forego annas 8 per ton. The workmen employed by the employer claimed that they were entitled to the additional payment of annas 4 per ton which the employer might receive from the Government. The Industrial Tribunal allowed the claim. On appeal, the Labour Appellate Tribunal decided that the workmen could not claim on the basis of the agreement between the employer and the Government, but, directed the payment of incentive bonus of 45 per cent. of the amount received as bonus by the employer subject to the deduction of any penalties or deductions imposed by the Government. On further appeal by the employer to the Supreme Court, Held :

(*i*) *that on the terms of the agreement the workmen were not entitled to any part of the bonus payable to the employer and that any subsequent elucidation by the Government that the bonus was intended to be passed on to the workmen would not affect the terms of the agreement* ; *and*

(*ii*) *that incentive bonus, like any other kind of bonus, can be claimed only when it is shown that the industry concerned has earned profits and as there was no evidence that the employers made any profits, the workmen were not entitled to any incentive bonus.*

Civil Appeal No. 20 of 1956.

M. C. Setalvad, (*P. N. Bhagwati* and *I. N. Shroff* with him) for the **appellants.**

JUDGMENT.

The following Judgment of the Court was delivered by

SUBBA RAO, J.—This appeal by special leave is directed against the decision and order of the Labour Appellate Tribunal of India, Bombay, dated the 18th May, 1955, modifying the order of the Industrial Tribunal dated the 31st August, 1953. The appellants were Government contractors for clearing and transporting of imported foodgrains. They entered into three agreements with the Government—the first and the second appellants on the 5th February, 1952, and the third appellant on the 1st November, 1951—for clearing the cargo at prescribed rates. The three agreements contained similar terms. The said agreements provided that if the rate of discharge on a ship exceeded 1,500 tons per 24 hours and no shed demurrage was incurred, the Government was liable to pay to the appellants remuneration at the prescribed rates *plus* a bonus of As. 4 per ton, and if the rate of discharge fell below 900 tons per 24 hours or shed demurrage was incurred, Government was liable to pay to the appellants remuneration at the prescribed rates less As. 8 per ton. The appellants, for the purpose of carrying out their part of the contracts, employed workmen through muccadums (i.e., gang leaders) on piece rate basis for the purpose of clearing, filling and handling foodgrains, flour and other food stuffs and loading the same for transport. The total number of workmen empolyed for the said purpose aggregated to about 2,500 and the appellants carried out the work in three shifts. In March, 1952, disputes arose between the appellants 1 and 2 and the workmen employed by them. The second and third respondents, two unions representing the workmen, demanded for an increase in wages and also put forward a claim for payment of bonus of As. 4 per ton which the appellants might receive from the Government. On the 24th March, 1952, a settlement was arrived at between the appellants 1 and 2 and the workmen, in and by which the said appellants agreed to pay to the workmen, with effect from 25th March, 1952, wages which were considerably higher than the wages which the appellants 1 and 2 were paying before. Though the third appellants were not a party to the said settlement, they also paid the increased wages to the workmen employed by them. The settlement, however, did not cover the claim of the workers to the bonus of As. 4 per ton. As the dispute to that extent was not settled, the Central Government, holding that an industrial disputre existed between the appellants and the respondents regarding payment of 'incentive bonus', referred the said dispute for adjudication to the Industrial Tribunal consisting of Shri S. H. Naik as the sole member. The Industrial Tribunal held, mainly on the basis of a letter written by the Government in September, 1951, that the intention of the Government in granting a bonus of As. 4 per ton to the appellants was that they should pass it on to the labour. It also sustained the claim on equitable considerations, namely, that the employees who were all temporary workmen, not entitled to gratuity, provident fund and other benefits, should get incentive bonus, when dock workers in the Port Trust and stevedore workers under the Dock Labour Board were getting it. On those grounds, among others, the Tribunal directed the appellants to pay to the workmen concerned incentive bonus referred to in Clause 7 (2) of the agreements with effect from 1st November, 1951, and further directed that the arrears should be paid within two months from the date on which the award became enforceable. The appellants carried the matter by way of appeal to the Labour Appellate Tribunal of India. The said Appellate Tribunal, on the materials placed before them, held that in the agreements entered into between the Government and the appellants there was no term to the effect that the bonus of As. 4 per ton was to be passed on to the labour concerned in the work. But, having regard to all the circumstances of the case they were of the view that whatever might have been the strict legal rights of the workmen to the said incentive bonus of As. 4 per ton, it was an addition which they in justice ought to share with the labour, provided the labour had helped them in earning the incentive bonus. They expressed the view that the workmen could claim 45 per cent. of the incentive bonus received by the appellants from the Government, but, that was subject to the deduction of such penalties as the Government might have imposed or might impose on the contractors for which penalties the workmen were directly responsible. They also evolved a procedure for the disbursement of the employees' share of the bonus in the following manner :

(i) " Notice shall be given by advertisement calling upon the workmen who claim to be entitled to this bonus to submit their claims with all available evidence within three months of the date of the advertisement. The claims are to be sent to the Conciliation Officer, Central, at his address at Bombay."

(ii) " The Conciliation Officer after receiving such applications will decide after hearing both the parties, upon the individual claims, and will come to a conclusion as to whether the applicant is entitled to bonus, and if so, as to his earnings during the relevant period for the purpose of ascertaining his pro rata share of bonus."

(iii) " After the Conciliation Officer has decided as to who are entitled to the bonus and has ascertained the individual earnings, he

shall work out pro rata the amount of bonus payable, and the contractors shall pay the amounts so found by the Conciliation Officer."

(iv) " All the applications received by the Conciliation Officer after the period of three months shall be barred from consideration."

In this appeal the appellants question the correctness of the said Order.

The learned Attorney-General, appearing for the appellants, contended that the workman have no claim to a share in the bonus under the terms of the agreements entered into by the appellants with the Government, and that that apart, the respondents were not entitled to any bonus as the necessary condition giving rise to a claim for bonus, namely, that the business should have made profits, was neither pleaded nor established before the Tribunal. The first question turns upon the terms of the agreements. The three agreements are couched in similar terms. It would, therefore, be sufficient if we consider the terms of Exhibit 'A', the agreement that was entered into between the Union of India and the first appellant. The agreement was only between the Union of India and the first appellant and the workmen were not parties to it. The appellants entered into separate agreements with the workmen through muccadums on piece rate basis. Clause 7 of the agreement dealt with remuneration. It provided for the payment of remuneration to the first appellant at specified rates per ten tons in respect of grains arriving in bulk or loose and for grains arriving in bags. Note two to the said clause of the agreement, on the basis of which rival contentions were advanced, read as follows :

" Bonus of 4 annas per ton will be paid to the contractors in addition to the rates given at A(i) and B(i) above if the rate of discharge on a ship exceeds 1,500 tons per 24 hours and no shed demurrage is incurred. A penalty of annas 8 per ton will be charged from them if the rate of discharge falls below 900 tons per 24 hours or shed demurrage is incurred unless the Regional Director (Food) Bombay is satisfied that the shortfall in discharge or shed demurrage was for reasons beyond the contractors' control."

Note 3 may usefully be extracted as it would throw some light on the construction of the terms of the agreement. It was as follows :

" If the contractors have to pay a rate higher than Rs. 4-2-0 per 10 tons to their labour for stacking of bags, the excess amount actually paid to labour for stacking over the rate of Rs. 4-2-0 per 10 tons and upto a maximum of Rs. 4-8-0 per 10 tons would be paid by Government on production of a certificate by the contractor from the Labour Conciliation Officer, Bombay, that the amount has actually been paid to labour. The contractors undertake to keep the rate within Rs. 4-2-0 per 10 tons as far as possible."

A fair reading of the terms of the agreement indicates that the bonus of annas 4 per ton provided in Note 2 was really an additional remuneration agreed to be paid to the first appellant in case the rate of discharge on a ship exceeded 1,500 tons per 24 hours and no shed demurrage was incurred. Equally, he was liable to a penalty of annas 8 per ton if the rate of discharge fell below 900 tons per 24 hours or shed demurrage was incurred. In the happening of either of the contingencies, it was the first appellant that would be benefited or incur the penalty, as the case may be. The said bonus and the penalty were the corresponding benefit and burden which were to go to the appellant alone. If the contention of the workmen should prevail, the benefit should go to the employees and the burden should be borne by the employer. The terms of the agreement, unless they indicate a clear intention to the contrary, should be so construed that bonus as well as penalty should be received or incurred by the employer on the happening of one or other of the two contingencies. The said term was conceived only in the interest of the parties to that contract and it was to the effect that if the discharge was above the average and if no demurrage was incurred, the Government agreed to pay him bonus, but if the discharge was below the average or if the Government incurred the demurrage, the contractor was made to suffer. The interest of the employees was not in the picture at all. This view is further strengthened by the circumstance that Note 3 provided for higher rate of payment for stacking of bags, in case the labour was paid higher rate, indicating thereby that the parties to the contract, whenever they intended to provide for the claims of the workers, expressly did so. Though in the tenders submitted by the appellant, as required by the Government, the rates paid to the workmen were given, presumably for the purpose of fixing the rates payable to the contractors, it was not mentioned in the agreement that either the entire bonus of annas 4 per ton or a share therein should be passed on to the workers. If that was the intention of the parties, one would expect a specific term to that effect in the agreement. The absence of any such term is a clear indication that the bonus was intended for the sole benefit of the appellant to induce him to discharge his duties under the agreement efficiently without causing any loss to the Government. Further, there will be difficulties in working out the terms of the bonus clause, if it was intended for the benefit of the workmen. Admittedly the company did not keep a record containing the names of the workmen, their identity, the work they had done and the remuneration which they received for their services: for they were engaged through muccadums, who supplied labour and received payment. In the case of a fluctuating body of labourers, it was not likely that the parties would have agreed to provide for the payment of bonus, which would necessarily be subject to deductions for penalty incurred and depend upon the contribution made by the individual members of the body. Realising that no such scheme of bonus could be gathered from the terms of the agreement, an attempt was made to establish before the Tribunal that the Government, subsequent to the agreement, engrafted a new condition on the terms of the agreements to pass on the bonus to the workmen. Exhibit 'U 10' was a letter, dated the 14th February, 1952, written by the Conciliation Officer (Central) to the appellants, wherein it was pointed out that the Ministry of Food and Agriculture, Government of India, had informed the Conciliation Officer that the contractors were required to pay the amount of bonus of annas 4 to the labour and that the agreement should be taken to be subject to the above condition. If the payment of the bonus of annas 4 to the workmen was not a term in the agreement, the mere fact that, subsequent to the agreement, the Government, thought that the bonus of annas 4 per ton mentioned in the agreement should go to the workmen would not conceivably make it a term of the contract, unless the other parties to the contract agreed to the additional term. Admittedly the appellants did not agree to any such new term. In the circumstances, on the construction of the express terms of the contract, we have no hesitation to hold that the bonus of annas 4 mentioned in Note 2 of the agreement was part of an integrated scheme of additional remuneration vouchsafed to the appellants in case they complied with the conditions laid down in the agreement and the workmen employed by the appellants had no right to the same. As we have already pointed out, the other two agreements entered into by the Central Government with the second and the third appellants were similar in terms and what we have stated about the first agreement would equally apply to the construction of the terms of the said two agreements. If so, it follows that the workmen were not entitled either to the bonus under Note 2 to the agreement or to any share therein.

The next question is whether the workmen are entitled to claim incentive bonus *dehors* the agreements. The Appellate Tribunal gave to the workmen a share of the bonus earned by the appellants under the terms of the agreement on the ground that social justice required that the employees, who were all piece rate workers, and had no steady and continuous flow of income and not entitled to gratuity, provident fund and other benefits, should get a share in the incentive bonus. The learned Attorney-General contended that the respondents claimed bonus only under the terms of the agreement entered into between the Central Government and the appellants and therefore the Tribunal was not justified in giving relief to them on a different basis. He further argued that the workmen were not entitled to bonus, whether incentive or otherwise, unless the appellants' business made profits, and in this case there was neither an allegation much less proof that the appellants made profits during the years in question.

The concept of the word 'bonus' has been succinctly defined and the circumstance under which it is to be paid to the workmen has been clearly laid down by this Court in *Muir Mills Co. Limited* v. *Suti Mills Mazdoor Union, Kanpur*, [1955] 7 F. J. R. 483. Various definitions of the word 'bonus' were culled out from authoritative text-books and quoted in the judgment with approval. They accepted the definition of 'bonus' as cash payment made in addition to wages as a stimulus to extra work and efficiency by the labour. But to enable the labour to earn the bonus, the following conditions are laid down at page 487 of the case cited above:

(1) " when wages fall short of the living standard and

(2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production."

In the words of Bhagwati, J., "The demand for bonus becomes an industrial claim when either or both these conditions are satisfied."

Bonus schemes vary with the conditions obtaining in different industries. Though bonus is a cash payment made to the workmen in addition to the wages, it is no longer considered as an *ex gratia* payment. The claim, if raised, becomes an industrial dispute and the award made thereon is binding on the employer as well as the employee. One of the categories of bonus is described as 'incentive bonus'. The name indicates that it is given as a cash incentive to greater effort on the part of the labour. But the essential condition for the payment of incentive bonus just like any other kind of bonus, is that the industry concerned must earn profits part of which is due to the contribution which the workmen made in increasing production.

The first-question is whether, in the case of workmen engaged on piece rate basis, there is any scope for awarding incentive bonus. If the wages of the workmen were fixed and paid on piece rate basis, they would earn more if they worked more and, therefore, the argument proceeded, that it was neither just nor equitable to award payment of any further incentive bonus to workmen.

Though the incentive to work may be implicit in the system of piece rate work, it may be contended that other devices or adventitious aids may be conceived and implemented to speed up the pace and to induce the labour to put up extra effort. We do not propose to express our opinion in this case on the said question, as, even if payment of

incentive bonus was legally permissible in the case of piece rate work, the workmen would be entitled to it only if the appellants made profits in the business. But in this case the contesting respondents did not claim incentive bonus linking it with profits. There was no allegation at any stage of the proceeding that the appellants made profits due to the contribution which the workmen made in increasing the production. There was also no evidence placed before the Tribunals or before us to prove that the appellants earned profits. In the circumstances, the workmen were not entitled to incentive bonus claimed by them. In the result, the appeal is allowed, but, in the circumstances, without costs.

[IN THE SUPREME COURT OF INDIA.]

SAURASHTRA SALT MFG. CO.

v.

BAI VALU RAJA AND OTHERS.

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

April 28, 1958.

WORKMEN'S COMPENSATION—ACCIDENT ARISING 'IN THE COURSE OF EMPLOYMENT'—MEANING OF—ACCIDENT OCCURRING WHILE WORKMAN IS ON PUBLIC TRANSPORT ON PUBLIC WAY--WHETHER IN THE COURSE OF EMPLOYMENT—LIABILITY OF EMPLOYER—WORKMEN'S COMPENSATION ACT, 1923, SECTION 3(1).

For determining whether an accident to a workman took place "in the course of his employment" so as to make his employer liable for compensation under the Workmen's Compensation Act, 1923, as a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. This rule, however, is subject to the theory of notional extension of the employer's premises so as to include an area which a workman passes and repasses in going to and leaving the actual place of work and there may be some reasonable extension in both time and place, and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises, depending on the facts and circumstances of each case. When a workman is on a public road or a public place or on a public transport, he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. Therefore, his employer is not liable under the Act for death or injury arising out of an accident while a workman is on a public transport in a public way after leaving his place of work.

Civil Appeal No. 368 of 1956.

A. V. Vishwanatha Sastri for the management.

Purshottam Tricumdas for the respondents.

JUDGMENT

The following Judgment of the Court was delivered by

IMAM, J.—Special leave to appeal was granted in this case upon the appellant giving an undertaking not to claim any refund of the compensation moneys already paid in pursuance of the order dated the 31st of January, 1953, passed by the Commissioner for Workmen's Compensation at Junagadh and to pay in any event the respondents their costs of the appeal.

The appellant is the Saurashtra Salt Manufacturing Co. It employs workmen both temporary and permanent. The salt works of the appellant is situated near a creek opposite to the town of Porbandar. There are at least two ways to go to the salt works from the said town, one an over land route nearly 6 to 7 miles long and the other *via* the creek which has to be crossed by a boat. At the Porbandar end of the creek is the Asmavati Ghat and the creek can be crossed from there at point A to the other side at point B which is on a sandy piece of land. Those crossing the creek from point A alight from the boat at point B. From point B, after traversing the sandy area, one can reach the salt jetty of the salt works and the salt works itself. On the sandy area near point B there is also a public footpath which goes to the salt works at point D, the distance being 1¼ mile. It is unnecessary to refer, for the purpose of this case, to the overland route although this route is clearly indicated in the map, Ext. 35, which was prepared by H. V. Vaishnav who was appointed a Commissioner to prepare the map in this case.

When the appeal had been heard for some time it was thought necessary by this Court to have findings recorded on two questions (1) whether there was any arrangement between the appellant and the ferry-walas or *kharvas* for its workmen to be ferried to and from the salt works and, if so, what were the terms thereof and (2) whether the arrangement, if any, applied also to the casual workmen of the type in question in these proceedings, whether they were proceeding to the salt works or returning therefrom. This Court also ordered that a map or plan was to be prepared showing the site of the creek, the sandy patch and the salt works together with the area and surroundings of the town of Porbandar with reference thereto. The above-mentioned map, Ex. 35, was prepared accordingly.

In the evening of the 12th of June, 1952, a boat carrying certain workmen, who had been employed that day by the appellant, while

crossing the creek from point B to point A capsized due to bad weather and overloading. The accident took place when the boat had practically reached point A of the map, Ext. 35. As the result of the accident some of the workmen were drowned resulting in 7 cases for compensation being filed under the Workmen's Compensation Act. Of these, one was dismissed and compensation was awarded to the dependents of the drowned workmen in the other cases.

The Commissioner for Workmen's Compensation found that the accident arose out of and in the course of the employment of the workmen. Accordingly, he awarded compensation. The appellant appealed to the High Court of Saurashtra (now the High Court of Bombay). The High Court, after an elaborate discussion of the law, came to the same conclusion and dismissed the appeal with costs. In the appeal before us it was urged on behalf of the appellant that although the compensation had been paid to the dependents of the drowned workmen and the appellant did not seek a refund of the same and the appellant must pay the costs of the respondents even in the event of success, it was essential for the appellant to have a decision whether in the circumstances disclosed in this case, in law, the appellant was liable to pay any compensation.

Although from the town of Porbandar there are two ways of going to and returning from the salt works of the appellant, it was not disputed in the High Court that the usual and the ordinary way to go to and return from the salt works was *via* the creek to be crossed at points A and B. The deceased workmen were not regular workmen employed by the appellant for whom quarters are provided near the salt works. In determining the question whether the accident, resulting in the drowning of the workmen, arose out of and in the course of their employment, for the purposes of this appeal, it is unnecessary to consider which route a workman ought to take to go to and return from the salt works, in order to determine whether the appellant was liable to pay compensation to the dependents of the drowned workmen. It is also unnecessary to consider whether the workmen were on temporary employment as they were workmen within the definition of "workman" in the Workmen's Compensation Act.

As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.

It is unnecessary for the purposes of this appeal to refer to the various decisions in England and in India explaining the aforesaid theory because even if on such a basis a workman may be regarded as being in the course of his employment at point B either while on his way to the salt works or returning from it, the question for our decision is whether he was still in the course of his employment when he was on his journey between points A and B of the map, Ext. 35. While the case was in the High Court attention of the learned Judges was drawn to the failure of the Commissioner for Workmen's Compensation to examine witnesses to prove an alleged arrangement between the appellant and the *kharvas* (ferry-walas) for the carrying of the workmen of the appellant by boat across the creek to enable them to be ferried to and from the salt works. The learned Judges of the High Court at first were inclined to order a remand for the recording of this evidence, but, having regard to the view which they took of the recent decisions of the House of Lords in England, they thought it unnecessary to have such evidence recorded. In their opinion, on the material as already on the record, it must be held that the accident arose out of and in the course of the employment of the deceased workmen. In this Court, as already stated, we considered it necessary to have evidence taken in this connection and findings recorded thereon. The finding, on the evidence so recorded, is quite clear that there was no arrangement between the appellant and the *kharvas* to ferry to and from the salt works, across the creek, any workman of the appellant. According to the evidence workmen of the salt works are charged by the *kharvas* when they cross the creek in their boats. The only concession made by them on their own account is not to make such a charge in the case of any person who is a *kharva*—a fellow casteman. It is also clear from the evidence on the record, both before and after remand, that the boats ferried across the creek are used by the public, every one of whom has to pay the charge for being ferried across the creek with the exception of a person of the *kharva* caste. To reach point A on the map a workman has to proceed in the town of Porbander *via* a public road. A workman then uses at point A a boat, which is also used by the public, for which he has to pay the boatman's dues, to go to point B. From point B to the

salt works there is an open sandy area 450 to 500 feet long and 200 to 250 feet wide. This sandy area is also open to the public. From this sandy area there is a footpath going to the salt jetty, point C, and a foot-track going to the salt works, point D. There is no question that the foot-track going to the salt works is a public way. The footpath from the sandy area to the salt jetty, point C, may or may not be used by the public. For the purpose of this case it may be assumed that a workman must necessarily use that footpath if he has to go to the salt jetty and from there to the various salt pans and salt reservoirs within the area of the salt works. It is well settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends upto point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable.

The appeal is accordingly allowed and the order of the Commissioner for Workmen's Compensation directing the appellants to pay compensation is set aside. The appellant, however, will pay the costs of the respondents of this appeal and will not be entitled to recover the compensation money already paid. Each party will bear and pay its own costs on the proceedings on remand as ordered by this Court on the 9th of October, 1957.

[IN THE BOMBAY HIGH COURT.]

GANPATLAL MULCHANDJI JOSHI

v

FIRST CIVIL JUDGE, CLASS I, NAGPUR AND ANOTHER

Chainani and Badkas, JJ.

February 4, 1958.

PAYMENT OF WAGES ACT, 1936, SECTION 2(VI), 15—'WAGES', DEFINITION OF—WHETHER INCLUDES MATERNITY BENEFIT PAYABLE UNDER MATERNITY BENEFIT ACT—AUTHORITY UNDER PAYMENT OF WAGES ACT, 1936—JURISDICTION TO DEAL WITH CLAIM FOR MATERNITY BENEFIT.

The amount payable to a worker on account of maternity benefit under a Maternity Benefit Act does not fall within the definition of 'wages' in section 2(vi) of the Payment of Wages Act, 1936, and, therefore, the authority constituted under section 15 of that Act has no jurisdiction to deal with a claim for maternity benefit.

Special Civil Application No. 306 of 1957.

M. N. Phadke for the petitioner.

D. R. Bhagade for respondent 2.

JUDGMENT

CHAINANI, J.—The petitioner is the manager of a bidi factory at Gondia in the Bhandara district. Respondent No. 2, whom I will hereafter refer to as the respondent, was one of the workers employed in that factory. During the period of her employment she gave birth to a child. Thereafter, she made an application to the Authority constituted under the Payment of Wages Act, 1936, (IV of 1936), for an order directing the petitioner to pay maternity benefit to her as provided in the C. P. Maternity Benefit Act, 1930. The petitioner contended before the Authority that the petitioner's factory was not a factory within the meaning of the word "factory" given in the Maternity Benefit Act, and that consequently, the respondent was not entitled to any benefit under this Act. Another objection raised by the petitioner was that the amount claimed by the respondent was not "wages" within the definition of this term given in the Payment of Wages Act. These contentions were not accepted and an order was made, directing the petitioner to pay Rs. 28, on account of maternity benefit, to the respondent. Against this order, the present special civil application has been filed.

Mr. Phadke, who appears on behalf of the petitioner, has raised the same points, which had been urged on behalf of the petitioner before the

Payment of Wages Authority, and these are that the petitioner's factory is not a factory to which the provisions of the Maternity Benefit Act apply, and that the maternity benefit payable under this Act is not "wages" within the meaning of this word given in the Payment of Wages Act. It seems to us that the petition must succeed on the second ground, which has been urged by Mr. Phadke. Consequently, it is not necessary for us to decide the other point, which has also been urged by Mr. Phadke, that the petitioner's factory is not a factory within the meaning of the Maternity Benefit Act. We have been referred to a number of cases in which different views, which are not easy to reconcile, have been expressed with regard to the definition of the term "wages" given in the Payment of Wages Act. We do not think that it is necessary to refer to these cases, because the question arising in the present case can, in our opinion, be determined by a consideration of the definition of "wages" given in the Act itself and the provisions of the Maternity Benefit Act. Clause (b) of section 2 of the latter Act defines "benefit" to mean benefit as provided by this Act. Section 3 lays down that no employer shall employ a woman in any factory during the four weeks immediately following the day of her delivery and that no woman shall work in any factory during this period. Sub-section (1) of section 4, which provides for the payment of maternity benefit, states that every woman employed in the factory shall be entitled to the payment of maternity benefit at the rate of her average daily earnings calculated on the total wages earned during a period of three months preceding the day of her confinement or at the rate of eight annas a day, whichever is less, for the actual days of her absence for the period immediately preceding her confinement and for four weeks immediately following her confinement. Sub-section (2) of this section states that the maximum period for which any woman shall be entitled to the payment of maternity benefit shall be eight weeks. Sub-section (1) of section 5 provides that any woman entitled to maternity benefit, who is pregnant, may give a notice to her employer, stating that she expects to be confined within one month next following, or in case she has been delivered of a child, stating that she is confined, that her maternity benefit may be paid to her, and that she will not work in any employment during the period for which she receives maternity benefit. Sub-section (2) of this section states that after receiving the notice, the employer shall permit the worker to absent herself from the factory from the day following the date of the notice in the former case and from the day of her delivery in the latter case, until four weeks after the day of delivery. A contravention of the provisions of the Act is made an offence under section 9 of the Act. It will be seen from these provisions that the amount payable under this Act is referred to as "benefit" and not as "wages". The distinction between the two words is emphasised in sub-section (1) of section 4, which lays down that the amount of maternity benefit is to be calculated on the basis of the wages earned by the worker concerned during the period of three months preceding the date of her confinement. The Act does not also say that the period for which maternity benefit is payable should be treated as leave or that the worker should be paid leave salary or wages during this period. The payment to be made to her is described as benefit and not as wages or leave salary. The intention of the Legislature, therefore, clearly was that it should not be regarded as wages.

The term "wages" is defined in clause (vi) of section 2 of the Payment of Wages Act. The relevant portion of it is as follows:

"'Wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of the contract of employment, expressed or implied, were fulfilled, be payable,......................to a person employed in respect of his employment.....................but does not include—

(a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the State Government.""

Wages, therefore, mean remuneration, which an employer is liable to pay, if the terms of the contract of employment are fulfilled. In other words, they are payments made by an employer for services rendered. Under section 4 of the Maternity Benefit Act, the benefit is payable for (a) the actual days of absence during four weeks immediately preceding the confinement, and (b) four weeks immediately following the confinement. During the second period the employer is prohibited by section 3 from employing the worker, while for the first period the employer is bound to permit her to remain absent, if she gives the notice referred to in section 5. It, however, appears that under section 4, she will be entitled to receive the maternity benefit during the first period, even if she absents herself without having previously given such notice or without even having informed the employer. She can, therefore, claim the benefit, even if she remains absent without the permission of the employer. This amount is, therefore, payable to her even if she does not fulfil the terms of her employment. It is also possible to argue that in view of the provisions of section 3 that no employer shall employ a woman during the period of four weeks following the day of delivery, the contract of employment is suspended during this period. As, therefore, the amount of maternity benefit is payable even if the terms of

employment are not fulfilled, it cannot be said to be wages within the meaning of this term given in the Payment of Wages Act.

The term "wages" is also defined in the Workmen's Compensation Act, 1923. It is defined as inclding any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer or a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment. In this Act, benefit is specifically included in the definition of "wages". There is no similar provision in the Payment Wages Act. On the other hand, clause (a) in the definition excludes from the term "wages" the value of medical attendance or other amenity. This also suggests that the Legislature did not intend that maternity benefit, payable when a woman worker is delivered of a child, should be regarded as wages.

In our opinion, therefore, the amount claimed by the respondent on account of maternity benefit was not wages within the meaning of the Payment of Wages Act. The Authority constituted under this Act had, consequently, no jurisdiction to make an order directing the petitioner to pay this amount. The order passed by that Authority is accordingly set aside and the application made by the respondent to that Authority will be dismissed. There will be no order as to costs.

[IN THE BOMBAY HIGH COURT.]

R. S. REKCHAND GOPALDAS MOHOTA SPG. & WVG. MILLS PRIVATE LTD.

v.

LAXMAN DAU AND OTHERS.

Chainani and Badkas, JJ.

January 15, 1958

INDUSTRIAL COURT—JURISDICTION—COURT EMPOWERED TO ADJUDICATE UPON "PROPRIETY OR LEGALITY" OF ORDER OF EMPLOYER—WHETHER INCLUDES RIGHT TO ORDER RE-INSTATEMENT OF DISMISSED EMPLOYEE WITH BACK WAGES—C. P. & BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947, SECTION 23 AND RULE 36.

Under section 23 of the C. P. and Berar Industrial Disputes Settlement Act, 1947, read with rule 36 of the Rules made under the Act, a District Industrial Court has jurisdiction to hear and adjudicate upon "the propriety or legality of an order passed by an employer under the Standing Orders". This jurisdiction does not extend to the ordering of re-instatement and *payment of back wages to an employee who has been dismissed by the employer under the Standing Orders, because, such orders imposing financial and other obligations and liabilities on the employer cannot be made in the absence of any provision in the Act empowering the Court to do so. The proper authority who has jurisdiction to order re-instatement and payment of compensation is the Labour Commissioner acting under section 16(3) of the Act.*

Special Civil Application No. 272 of 1957.

A. S. Bobde and *N. A. Athalye* for the petitioner.

S. G. Kukde for respondent 1.

JUDGMENT.

CHAINANI, J.--The facts giving rise to this special civil application are that respondent No. 1 (whom I will hereafter refer to as the respondent, as he is the only contesting respondent in this case) was employed in the mills of the petitioners. His services were terminated with effect from 1st December, 1953, on the ground that he had remained absent from duty without leave. The respondent then made an application to the District Industrial Court under section 23 of the C. P. and Berar Industrial Disputes Settlement Act, 1947, (XXIII of 1947), read with rule 36 of the rules made under this Act, in which he prayed that his discharge order should be declared illegal and that he should be re-instated by the petitioners. The District Industrial Court made an order for the re-instatement of the respondent. No order was, however, passed in regard to the payment of his back wages. Both the petitioners and the respondent appealed to the State Industrial Court. That Court agreed with the view taken by the District Industrial Court that the order terminating the services of the respondent was wrong. The order of re-instatement of the respondent was, therefore, confirmed and a futher order was passed in his favour directing the petitioners to pay him his wages from 17th June, 1954, to the date of his re-instatement. Against this order passed by the State Industrial Court, the present special civil application has been filed.

Mr. A. S. Bobde, who appears on behalf of the petitioners, has urged that the Industrial Court had no power to direct the re-instatement of the respondent or the payment of his back wages to him. It seems to us that this contention of Mr. Bobde must be accepted. The application of the respondent purports to have been made under section 23 read with rule 36(c) of the rules. Section 23 of the Act provides that the Provincial Government may constitute a District Industrial Court to determine such industrial disputes and to deal with such other industrial matters under the provisions of the Act as may be prescribed

Rule 36 provides that the District Industrial Court shall have jurisdiction to hear and adjudicate upon :

"(a)......

(b) the propriety or legality of an order passed by an employer under the Standing Order ;

(c) the application and interpretation of Standing Orders;

(d) the legality or illegality of any strike or lock-out or of any change of which notice has been given or which has taken place upon an application by any employer or employee concerned or by the Labour Officer under section 41 provided the question concerns an industry exclusively within the local area of the Court's jurisdiction."

The other clauses in this rule are not material. The application made by the respondent would fall both under clause (b) and under clause (d). Under these clauses, the District Industrial Court can adjudicate upon the propriety or legality of the order of dismissal passed against an employee, that is to say, it can decide whether on the facts of the case the order passed was proper and whether it was legal or illegal i.e. contrary to the provisions of the Act, the Rules or the Standing Orders. But the power to adjudicate upon or decide these matters would not include the power to order re-instatement or direct the payment of compensation. Such orders imposing financial and other obligations and liabilities upon the employer cannot be passed in the absence of any provision in the Act empowering the Court to pass such orders. It is also not necessary for the Court to possess these powers for the purpose of deciding whether the order challenged is proper and legal. The fact that the District Industrial Court is empowered to decide whether the order of dismissal was proper and legal would not, therefore, enable it to order re-instatement of the employee dismissed or payment of compensation to him. The reason why there is no provision in the Act or in the rules empowering the Industrial Court to pass such orders evidently is that the Act provides separate machinery for obtaining relief of this kind. Sub-section (2) of section 16 of the Act states that an employee, who has been dismissed, may apply to the Labour Commissioner for reinstatement and payment of compensation for loss of wages. Sub-section (3) of the section empowers the Labour Commissioner, after such enquiry as may be prescribed, to direct that the employee shall be reinstated and/or that he should be paid compensation, in case he comes to the conclusion that the dismissal was wrongful. The Legislature has, therefore, constituted a special Tribunal under section 16 for giving relief of this kind to employees who have been wrongfully dismissed. It is not

[To be reprinted]

likely that the Legislature could have intended that two different Tribunals constituted under the same Act should both have the power to entertain applications for and to grant relief of this kind.

We are accordingly of the opinion that the District Industrial Court, and consequently the State Industrial Court in appeal from an order made by the District Industrial Court on an application made under rule 36, has no power to direct reinstatement of an employee, who has been dismissed, or to order the payment of compensation to him. This view is also in accordance with that taken by my learned brother and Mudholkar, J. in *Anna Saheb* v. *The Syndicate of Nagpur*, Special Civil Application No. 70 of 1957, decided by Mudholkar and Badkas JJ., on August 13, 1957 (Unreported). In that case, the application had been made to the Industrial Court under clause (d) of rule 36 read with section 41 of the Act. Mudholkar, J., in his judgment observed: " All the same, the relief of reinstatement must be confined to those provisions which permit such a relief being granted and it cannot be regarded that reinstatement has now become a relief which could be awarded by any Tribunal and in every case of wrongful dismissal. The reinstatement being merely a creation of the statute could only be claimed by complying with the particular provisions of the statute which provide for making a reinstatement. Under the local Act not only reinstatement but compensation also could be granted by the Labour Commissioner alone under section 16. The State Industrial Court has no jurisdiction to grant either relief."

The application is, therefore, allowed. The orders passed by the District Industrial Court and the State Industrial Court are set aside and the application made by the respondent is dismissed. The rule will accordingly be made absolute. Mr. Bobde has, however, informed us that even though the petitioners have succeeded in the present application, they are willing to take back the respondent in service, provided he produces a certificate of fitness from the Civil Surgeon, Akola. There will be no order as to costs.

Printed and Published by T. A. Venkataraman, at the Company Law Institute Press, 21, Thyagaraya Road, Thyagarayanagar, Madras-17 : 15-6-1958.