REGD. NO. M 5376
VOL. XIV—PART X 15th JULY, 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.

LAWS OF INDIA PRIVATE LTD.,
YANAGAR :: :: MADRAS-17.

3594

THE
INDIAN FACTORIES JOURNAL

VOL. XIV] 15TH JULY, 1958. [PART X

CONTENTS

PAGE

STATUTES SECTION (pp. 297—320)

KERALA

MYSORE

UTTAR PRADESH

REPORTS OF CASES

CUMULATIVE TABLE OF CASES REPORTED (Parts I to X)

SUPREME COURT

HIGH COURTS

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

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

THE KERALA PAYMENT OF WAGES (UNCLAIMED AMOUNTS) RULES, 1958.

*Notification No. 29552/L5/58-2, dated Trivandrum, 5th June, 1958.**

In exercise of the powers conferred by section 26 of the Payment of Wages Act, 1936 (Central Act IV of 1936), the Government of Kerala hereby make the following rules the same having been previously published as required by sub-section (5) of the said section :—

1. *Short title.*—These rules may be called the Kerala Payment of Wages (Unclaimed Amounts) Rules, 1958.

2. *Definitions.*—In these rules, unless there is anything repugnant in the subject or context—

(a) " the Act " means the Payment of Wages Act, 1936 (Central Act IV of 1936).

(b) " the Authority" means the Authority appointed under section 15, sub-section (1) of the Act.

(c) " Section " means a section of the Act.

(d) " Financial Year " means the year commencing on the 1st day of April; and " Treasury " means any Government Treasury.

3. *Amounts unclaimed for three years to be credited to the State Government.*—Where any worker to whom an amount is directed to be paid under section 15 or any person entitled to claim it on his behalf fails to draw it from the authority within a period of three years from the date on which the amount is deposited with or received by the authority for payment to the worker concerned, it shall, at the end of the financial year in which the said period of three years expires, be treated as unclaimed deposit and credited to the State Government by book adjustment by the Comptroller, for the *essential benefit of any person who may duly establish his claim thereto.*

4. *List of amounts unclaimed to be posted in the office of the authority every year.*—(i) In the month of January each year, a list showing the amounts which at the end of the financial year will be due for being credited to the State Government under rule 3 and the names of persons to whom the said amounts are payable shall be put up in the office of the Authority and on the notice board of the factory or the industrial establishment concerned.

(ii) If the said amounts are not claimed by any person before the 25th March, in that year, the authority shall treat the said amounts as unclaimed deposits and take action to credit the amounts to the State Government in the accounts for that year by book adjustment to be made by the Comptroller.

(iii) In the month of April following, the authority shall furnish to the Comptroller, Trivandrum, a statement of all amounts creditable to the

*Kerala Gaz., 17-6-58, Pt. I, sec. IV, p. 1.

State Government showing separately the said amounts in serial order and the names of persons to whom they were payable.

5. *Refund.*—If any person proves to the satisfaction of the authority that he is entitled to any amount credited to the State Government, under rule 3, the authority shall make an application in Travancore Financial and Account Code, Form 68 to the Comptroller, Trivandrum, for the refund of the said amount and the Comptroller shall order the refund of the said amount to the authority after verifying that it had been credited to State Government under rule 3.

6. *Repeal.*—The Travancore-Cochin Payment of Wages (Unclaimed amounts) Rules, 1952 and the Madras Payment of Wages (Unclaimed amounts) Rules, 1949, in their application to the territories transferred from the State of Madras to the State of Kerala are hereby repealed:

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

The Kerala Payment of Wages (Procedure) Rules, 1958.

*Notification No. 29552/L5/58-3, dated, Trivandrum, 5th June, 1958.**

In exercise of the powers conferred by section 26 of the Payment of Wages Act, 1936 (Central Act IV of 1936), the Government of Kerala hereby make the following rules the same having been previously published as required by sub-section (5) of the said section.

1. *Short Title.*—These rules may be called the Kerala Payment of Wages (Procedure) Rules, 1958.

2. *Definitions.*—In these rules, unless there is anything repugnant in the subject or context—

(*a*) "the Act" means the Payment of Wages Act, 1936 (Central Act IV of 1936);

(*b*) "appeal" means an appeal under Section 17;

(*c*) "the Authority" means the authority appointed under sub-section (1) of section 15;

(*d*) "the Court" means the court mentioned in sub-section (1) of section 17;

(*e*) "employer" includes the persons responsible for the payment of wages under section 3;

(*f*) "Section" means a section of the Act;

(*g*) "Form" means a form appended to these Rules;

(*h*) words and expressions defined in the Act shall be deemed to have the same meaning as in the Act.

*Kerala Gaz., 17-6-58, Pt I, Sec. IV, p. 1.

3. *Form of application.*—Applications under sub-section (2) of section 15 by or on behalf of an employed person or group of employed persons shall be made in duplicate in Form A, Form B or Form C as the case may be, one copy of which shall bear such Court-fee as may be prescribed.

4. *Authorization.*—The authorization to act on behalf of an employed person or persons, under section 15 shall be given by a certificate in Form D, shall be presented to the Authority hearing the application and shall form part of the record.

5. *Permission to appear.*—Any person desiring the permission of the Authority to act on behalf of any employed person or persons shall present to the Authority a brief written statement explaining his interest in the matter, and the Authority shall record an order on the statement, which in the case of refusal shall include reasons for the order, and shall incorporate it in the record.

6. *Presentation of documents.*—(1) Applications or other documents relevant to an application may be presented in person to the Authority at any time during hours to be fixed by the Authority, or may be sent to him by registered post.

(2) The Authority shall at once endorse, or cause to be endorsed, on each document the date of the presentation or receipt as the case may be.

7. *Refusal to entertain application.*—(1) The Authority may refuse to entertain an application presented under rule 6, if after giving the applicant an opportunity of being heard, the Authority is satisfied, for reasons to be recorded in writing that—

(*a*) the applicant is not entitled to present an application, or

(*b*) the application is barred by reason of the provisions in the proviso to sub-section (2) of section 15; or

(*c*) the applicant shows no sufficient cause for making a direction under section 15.

(2) The Authority may refuse to entertain an application which is insufficiently stamped or is otherwise incomplete and, if he so refuses, shall return it at once with an indication of the defects. If the application is presented again after the defects have been made good, the date of representation shall be deemed to be the date of presentation for the purposes of the provisos to sub-section (2) of section 15.

8. *Appearance of parties.*—(1) If the application is entertained, the Authority shall call upon the employer by a notice in Form E to appear before him on a specified date together with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

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

(3) If the applicant fails to appear on the specified date the Authority may dismiss the application :

Provided that an order passed under sub-rule (2), or sub-rule (3) may be set aside and the applicant reheard on good cause being shown within one month of the date of the said order, notice being served on the opposite party of the date fixed for rehearing.

9. *Record of proceedings.*—(1) The Authority shall in all cases enter the particulars indicated in Form F and at the time of passing orders shall sign and date the Form.

(2) In a case where no appeal lies, no further record shall be necessary.

(3) In a case where an appeal lies, the authority shall record the substance of the evidence and shall append it under his signature to the record of direction in Form F.

10. *Signature on forms.*—Any form, other than a record of direction which is required by these rules to be signed by the Authority, may be signed under his direction and on his behalf by an officer subordinate to him appointed by him in writing for this purpose.

11. *Exercise of powers.*—In exercising the powers of a civil Court conferred by section 18 the Authority shall be guided in respect of procedure by the relevant orders of the first Schedule of the Code of Civil Procedure, 1908, with such alterations as the Authority may find necessary, not affecting their substance, for adapting them to the matter before him, and save where they conflict with the express provisions of the Act or these Rules.

12. *Appeals.*—(1) An appeal shall be preferred in duplicate in the form of memorandum one copy of which shall bear the prescribed Court-fee, setting forth concisely the grounds of objection to the direction and shall be accompanied by a certified copy of that direction.

(2) When an appeal is lodged a notice shall issue to the respondent in Form G.

(3) The Court after hearing the parties and after such further enquiry, if any, as it may deem necessary, may confirm, vary, or set aside the direction from which the appeal is preferred, and shall make an order accordingly.

13. *Inspection of documents.*—Any employed person, or any employer or his representative, or any person permitted under sub-section (2) of section 15 to apply for a direction, shall be entitled to inspect any application, memorandum of appeal, or any other document filed with the Authority or the Court, as the case may be, in a case to which he is a party, and may obtain copies thereof on payment of such fees as may be prescribed.

14. *Repeal.*—The Travancore-Cochin Payment of Wages (Procedure) Rules, 1952 and the Madras Payment of Wages (Procedure) Rules, 1937 in their application to the territories transferred from the State of Madras to the State of Kerala are hereby repealed :

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

Provided further that any order made or action taken under in the former Malabar District shall be deemed to have been made or taken under the corresponding provisions of these rules.

FORM A

Form of Individual Application

[*See sub-section (2) of Section 15 of Payment of Wages Act*]

IN THE COURT OF THE AUTHORITY APPOINTED UNDER THE PAYMENT OF WAGES ACT

(CENTRAL ACT IV OF 1936)

for..............................area

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

Between

A. B. C.,..
(through the legal practitioner...
....
an official of...
which is a registered trade union).

Applicant

and

X.Y.Z...

Opposite party.

The applicant states as follows :—

I, A. B. C., is a person employed in/on the factory/railway/industrial establishment entitled and resides at

The address of the applicant for the service of all notices and processes is..................................

2. X. Y. Z., the opposite party, is the person responsible for the payment of his wages under Section 3 of the Act, and his address for the service of all notices and processes is..............

3. (1) The applicant's wages have not been paid for the following wage-period(s) (give dates).

or a sum of Rs..........................has been unlawfully deducted from his wages of................................(amount) for the wage-period(s) which ended on (give date(s)).

(2) (Here give any further claim or explanation).

4. The applicant estimates the value of the relief sought by him at the sum of rupees....................

5. The applicant prays that a direction may be issued under sub-section (3) of section 15 for................................

(a) Payment of his delayed wages as estimated or such greater or lesser amount as the Authority may find to be due

or refund of the amount illegally deducted.

(b) Compensation amounting to

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

Signature or thumb-impression of the employed person or legal practitioner or official of a registered trade union duly authorised.

FORM B

Form of Group of Application

[*See sub-section* (2) *of Section 15 and Section 16 of the Payment of Wages Act, 1936*]

IN THE COURT OF THE AUTHORITY APPOINTED UNDER THE PAYMENT OF WAGES ACT (CENTRAL ACT IV OF 1936).................FOR AREA

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

Between

A. B. C., and (state number)..others, (through...a legal practitioner/ an official of,..which is a registered trade union).

Applicants

and

X. Y. Z...

Opposite party

The applicants state as follows :

1. The applicants whose names appear in the attached schedule are persons employed in/on the factory/railway/industrial establishment entitled.

The address of the applicants for service of all notices and processes is...................................

2. X. Y. Z., the opposite party, is the person responsible for the payment of wages under section 3 of the Act, and his address for the service of all notices and processes is....................

3. The applicants' wages have not been paid for the following wage-period (s) :—

4. The applicants estimate the value of the relief sought by them at the sum of rupees...

5. The applicants pray that a direction may be issued under sub-section (3) of Section 15 for—

(a) Payment of the applicants' delayed wages as estimated..or such greater or lesser amount as the Authority may find to be due.

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

The applicants certify that the statement of facts contained in this application is to the best of their knowledge and belief accurate.

Signature or thumb-impressian of two of the applicants or legal practititoner, or an official of a registered trade union duly authorised.

SCHEDULE

Name of applicants :—

1.
2.
3.
4.
*

FORM C

Form of application by an Inspector or person permitted by the authority or authorized to Act......

[*See sub-section* (2) *of Section 15 and Section 16 of the Payment of Wages Act*]

IN THE COURT OF THE AUTHORITY APPOINTED UNDER THE PAYMENT OF WAGES ACT (CENTRAL ACT IV OF 1936)

FOR................................AREA

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

Between

A. B. C. (designation)......................an Inspector under the Payment of Wages Act or a person permitted by the authority/authorized to act under sub-section (2) of section (15)

Applicant

and

X. Y. Z.—

The opposite party

The applicant states as follows:—

1. X. Y. Z., the opposite party, is the person responsible under the Act for the payment of wages to the following person (s) :—

(1)

(2)

(3)

*

*

2. His address for the service of all notices and processes is:—

3. The wages of the said person (s) due in respect of the following wage period (s) have not been paid/have been subjected to the following illegal deductions :—

4. The applicant estimates the value of the relief sought for the person (s) employed at the sum of Rs...

5. The applicant prays that a direction may be issued under sub-section (3) of section 15 for—

(a) Payment of the delayed wages as estimated or such greater or lesser amount as the Authority may find to be due. (Or Refund of the amount illegally deducted).

(b) Compensation amounting to Rs..

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

Signature.

FORM D

[See sub-section (2) of section 15 of the Payment of Wages Act and Rule 4].

CERTIFICATE OF AUTHORIZATION.

I/We employed person(s) hereby authorize a legal practitioner/an official of which is a registered trade union to act on my/our behalf under section 15 and section 17 of the Payment of Wages Act (Central Act IV of 1936) in respect of the claim against.. on account of the delay in payment of/illegal deductions from my/our wages.

for..

Witnesses (1)	Signature (1)
(2)	(2)
(3)	(3)
(4)	(4)
*	*
*	*
*	*

I accept the authorization.

Legal practitioner/
Official of a registered trade union.

FORM E

[See sub-section (3) of section 15 of the Payment of Wages Act and Rule 8]

NOTICE FOR THE DISPOSAL OF APPLICATION

To

Whereas under the Payment of Wages Act, 1936 (Central Act IV of 1936), a claim against you has been presented to me in the application of which a copy is enclosed, you are hereby called upon to appear before me either in person or through any person duly instructed, and able to answer all material questions relating to the application, or who shall be accompanied by some person able to answer all such questions on the day of . 19 at o'clock in the forenoon/afternoon to answer the claim; and as the day fixed for your appearance is appointed for the final disposal of the application, you must be prepared to produce on that day all the witnesses upon whose evidence, and the documents upon which you intend to rely in support of your defence.

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

Given under my hand and seal, this day of..............................19...

Seal.

Authority.

FORM F

[See sub-section (3) of section 15 of the Payment of Wages Act and Rule 9]

RECORD OF DIRECTION

(1) Serial Number...

(2) Date of the application...

(3) Name or names, parentage, address, or addresses of the applicants or some or all of the applicants belonging to the same unpaid group.........

(4) Name and address of the employer—

(5) Amount claimed—

(a) as delayed wages: Rs..................................

(b) as deducted from wages: Rs..........................

(6) Plea of the employer and his examination (if any)....................

(7) Finding, and in the case of a direction under sub-section (3) or (4) of section 15, a brief statement of the reasons therefor.

(8) Amount awarded: Rs.

(a) Delayed wages................................

(b) Deducted wages.............................

(9) Compensation awarded...

(10) Penalty imposed...

(11) Costs awarded to—

(i) Court-fee charges...

(ii) Pleaders' fee...

(iii) Witnesses expenses...

Signed..........................

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

Note:—In cases where an appeal lies attach on a separate sheet the substance of the evidence.

FORM G

(See section 17 of the Payment of Wages Act and Rule 12)

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL UNDER SECTION 17 OF THE PAYMENT OF WAGES ACT, 1936 (CENTRAL ACT IV OF 1936).

Appeal from the decision of the Authority for the area, dated the day of 19 .

To

Respondent.

Take notice that an appeal of which a copy is enclosed, from the decision of the Authority for area has been presented by X. Y. Z. (and others), and registered in this Court, and that the .... day of.........19........., has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and the seal of the Court, this day of..............
19...........

Seal of the Court *Judge.*

Certain Transport Industries declared Public Utility Service in Mysore

*Notification No. LLH 149 ILD 58, dated Bangalore, 27th June, 1958.**

Whereas the Government of Mysore are satisfied that public interest requires the declaration of the Transport Industry for the carriage of passengers carried on by the Bangalore Transport Service of the Government Road Transport Department in the State to be a Public Utility Service.

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (*n*) of section 2 of the Industrial Disputes Act, 1947, the Government of Mysore are hereby pleased to declare the said Transport Industry for the carrying of passengers carried on by the Bangalore Transport Service of the Government Road Transport Department as a Public Utility Service for the purpose of the said Act for a further period of six months from 29th June, 1958.

U. P. Factories Rules, 1950—Amendments

Notification No. 21(SM) XXXVI-A-1019(SM)-57, dated June 13, 1958.†

Whereas the Governor considers it expedient to make the following rules in order to give effect to the purposes of the Factories Act, 1948 (Act no. LXIII of 1948).

Now, therefore, in exercise of the powers conferred by section 112 of the same Act, the Governor of Uttar Pradesh is pleased to make the following amendments to the U.P. Factories Rules, 1950, the same having been previously published for suggestions and objections, as required by section 115 of the Act, in notification no. 696(SM)/XXXVI-A—1019(SM)57, dated September 11, 1957:

AMENDMENTS.

1. *For* the existing Form no. 4 entitled "Notice of occupation for Registration and Grant or Renewal of Licence" appended to the said rules, *Substitute* the annexed Form no. 4.

2. After rule 55 of the rules *add* a new rule as 55-A as under:

"55-A. (1) No lifting machine and no chain, rope or lifting tackle, except fibre rope or a fibre rope sling, shall be taken into use in any factory unless it is has been tested and all parts have been thoroughly

*Mys. Gazette, 3-7-58, Pt. IV IC, p. 2132.

†U. P. Gaz., 21-6-58, Pt. I-A, p. 1028.

examined by a competent person and certificate to that effect, specifying the safe working load or loads, has been obtained from that person and is kept available for inspection".

2. (*a*) Every jib-crane, which is so constructed that the safe working load varies with raising or lowering of the jib, shall have attached thereto either an automatic indicator of safe working loads or an automatic jib-angle indicator and a table indicating the safe working loads at the corresponding inclinations of the jib, or corresponding radii of the load.

(*b*) A table showing the safe working loads of every kind and size of chain, rope or lifting tackle in use, and, in the case of a multiple sling, the safe working loads at different angles of the legs, shall be posted in the store-room or place where, or in which, the chains, ropes or lifting tackles are kept, and in prominent positions on the premises; and no rope, chain or lifting tackle, not shown in the table, shall be used. However, the foregoing provisions of this paragraph shall not apply in respect of such lifting tackle in the safe working load thereof, or in the case of a multiple sling, the safe working load at different angles of the legs, is plainly marked upon it.

(3) The register to be maintained under clause (*a*)(iii) of sub-section (1) of section 29 of the Act shall be—

(i) Name of occupier of the factory.

(ii) Address of the factory.

(iii) Distinguishing number or mark, if any, and description sufficient to identify the lifting machine, chain, rope, multiple sling or the lifting tackle.

(iv) Date when the lifting machine, chain, rope, or multiple sling or lifting tackle was first brought into use in the factory.

(v) Date and number of the certificate relating to any test and examination made under sub-rules (1) and (7) together with the name and address of the person who issued the certificate.

(vi) Date of each periodical through examination made under clause (*a*)(iii) of sub-section (1) of section 29 of the Act and sub-rule (6) and name and designation of the person by whom it was carried out.

(vii) Date of annealing or other heat treatment of the chain and other lifting tackle made under sub-rule (5) and name and designation of the person by whom it was carried out.

(viii) Particulars of any defects affecting the safe working load found at any such through examination or after annealing and of the steps taken to remedy such defects.

The register shall be kept readily available for inspection.

(4) All rails on which a travelling crane moves and every track on which the carriage of a transporter or runway moves, shall be of proper size and adequate strength and have an even running surface and every such

rail or track shall be properly laid, adequately supported and properly maintained.

(5) All chains and lifting tackle, except a rope sling, shall, unless they have been subjected to such other heat treatment as may be approved by Chief Inspector of Factories, be effectively annealed under the supervision of a competent person at the following intervals:

(i) All chains, slings, rings, hooks, shackles and swivels used in connection with molten metal or molten slag or when they are made of half inch bar or smaller, once at least in every six months.

(ii) All other chains, rings, hooks, shackles and swivels in general use, once at least in every twelve months:

Provided that chains and lifting tackle not in frequent use shall subject to the Chief Inspectors approval, be annealed only when necessary. Particulars of such annealing shall be entered in a register prescribed under sub-rule (3).

(6) Nothing in the foregoing sub-rule (5) shall apply to the following classes of chains and lifting tackles:

(i) Chains made of malleable cast iron.

(ii) Plate link chains.

(iii) Chains, rings, hooks, shackles and swivels made of steel or of any non-ferrous metal.

(iv) Pitched chains, working on sprocket or pocketed wheels.

(v) Rings, hooks, shackles and swivels permanently attached to pitched chains, pulley blocks or weighing machines.

(vi) Hooks and swivels having screw threader parts or ball bearing or other case hardened parts.

(vii) Socket shackles secured to wire ropes by white metal capping.

(viii) Bordeaux connections.

(ix) Any chain or lifting tackle which has been subjected to the heat treatment known as "normalizing" instead of annealing.

Such chains and lifting tackle shall be thoroughly examined by a competent person once at least in every twelve months, and particulars entered in the register kept in accordance with sub-rule (3).

(7) Every lifting machine, chain, rope and lifting tackle, except a fibre rope or fibre rope sling, which has been lengthened altered or repaired by welding or otherwise, shall, before being again taken into use, be adequately re-tested and re-examined by a competent person and a certificate of such test and examination be obtained and particulars entered in the register kept in accordance with sub-rule (3).

(8) No person under 18 years of age and no person who is not sufficiently competent and reliable shall be employed as driver of a lifting machine, whether driven by mechanical power or otherwise, or to give signals to a driver."

3. *Delete* Rule 75 of the rules relating to overlapping shifts.

4. After column 10 in Form no. 10 appended to the said rules add the following new column 11, renumbering the existing columns 11 and 12 as 12 and 13 respectively :—

" 11—Cash equivalent to the advantage accruing through the concessional sale of food-grains and other articles."

5. *For* the existing rule 104 *substitute* the following :

104. "*Medical certificate*—If any worker is absent from work due to his illness and he wants to avail himself of the leave with wages due to him to cover the whole or a part of the period of his illness under the provisions of clause (7) of section 79, he shall, if required by the manager, produce a medical certificate signed by a registered medical practitioner or by a registered or recognised Vaid or Hakim, stating the cause of the absence and the period for which the worker is, in the opinion of such medical practitioner unable to attend to his work, or other reliable evidence to prove that he was actually sick during the period for which the leave is to be availed of."

6. For the existing Forms nos. 14 and 15 substitute the annexed Forms no. 14 and 15.

7. In the title of Chapter VIII *for* the words and figures "Leave with wages Sections 83 and 112" *substitute* the words and figures "Leave with wages (Sections 80, 83, and 112)."

8. For sub-rule (1) of rule 107 the following shall be substituted ;

" 107 (1) *Payment of wages if the worker dies*—Where a worker dies before he resumes work, the balance of his pay due for the period of leave with wages not availed of, shall be paid to his nominee within one month of the receipt of intimation of the death of the worker".

9. In Form No. 16 of the existing rules the words " with wages not availed of " shall be inserted between the words " Leave " and 'Shall'.

10. In Form No. 20 of the said rules,

(1) In the definition of the term " factory " under the heading " Interpretation " *for* the words, figures and brackets ' Indian Mines Act, 1923 (IV of 1923)', substitute the words, figures and brackets 'Mines Act, 1952 (XXXV of 1952).'

(2) In the definition of the term 'manufacturing process' under the heading " Interpretation " *for* the words " printing by letter press, lithography, photogravure, or other similar work or book binding which is carried on by way of trade or for purposes of gain or incidentally to another business so carried on" the words " composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding " shall be substituted.

(3) In paragraph 1, under the heading " Working Hours, Holidays, Intervals for rest, etc." *substitute* a semicolon (;) *for* the fullstop after the words 'in any day' and add the words " provided that, subject to the previous approval of the Chief Inspector of Factories, the daily maximum specified in section 54 may be exceeded in order to facilitate the change of shifts ".

(4) (*a*) In paragraph 2 regarding " Relaxation of hours of work (adults) section 64 ", the words " throughout the day " occurring between the words 'continuously' and 'in making or supplying articles' shall be deleted.

(*b*) For the fullstop (.) after the words " transmission machinery " a semicolon (;) shall be substituted and the words " in the printing of newspapers, which are held up on account of the break down of machinery; in loading or unloading of Railway wagons," shall be added thereafter.

(5) In paragraph 6 regarding Intervals for rest (adults) section 55 and 56 add the following proviso at the end : " Provided that the State Government, or subject to the control of the State Government, the Chief Inspector of Factories may by written order, and for the reasons specified therein, exempt any factory in such a way that the total number of hours put in by a worker without an interval, does not exceed six".

(6) In paragraph 9, regarding 'Hours of work (children), section 71', *for* the words and the figures " and between the hours of 7 p.m. and 6 a.m.' substitute the words and figures " and ; during the night, which shall mean a period of at least twelve consecutive hours including the period between 10 a.m. and 6 a.m.

(7) In paragraph 10 regarding 'Prohibition of employment of women, section 66,' after the figure and letters '6 a.m.' the words 'and there shall be no change of shifts except after a weekly holiday or any other holiday' shall be added.

(8) For para. 11 regarding "Leave with wages section 79, 80 and 83, and rules " the following shall be substituted.

" 11—*Annual leave with wages sections* 79, 80, 82 *and* 83—Every worker, who has worked for a period of 240 days or more in a factory during a calendar year, shall be allowed during the subsequent calender year leave with wages for a number of days calculated at the rate of—

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

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

Any days of lay off, by agreement or contract or as permissible under the standing orders maternity leave for any number of days not exceeding twelve weeks in the case of a female worker, and leave earned in the year prior to that in which leave is enjoyed, shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more but he shall not earn leave for these days :

Provided that a period of leave shall be exclusive of all holidays whether occurring during or at either end of the period of leave. A worker, whose service commences otherwise than on the 1st day of January shall be entitled to leave with wages at the rate as laid down in clause (i) or (ii) above, as the case may be, if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

If a worker is discharged or dismissed from service during the course of the year, he shall be entitled to leave with wages calculated at the rate as laid down above, even if he has not worked for the entire period as specified in clauses (i) and (ii) above entitling him to earned leave.

In calculating leave under section 79 half a day or more shall be treated as one full day and fraction of less than half shall be omitted.

If a worker does not in any calendar year take the whole of the leave admissible to him any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year:

Provided that the total number of days of leave that may be carried forward to the succeeding year shall not exceed 30 in the case of an adult and 40 in the case of a child:

Provided further that a worker, who has applied for leave with wages but has not been given such leave shall be entitled to carry forward the unavailed leave without any limit.

A worker may at any time apply for leave with wages but not less than fifteen days before the date on which he wishes his leave to begin, to take all leave or any portion thereof allowable to him during the calendar year:

Provided that the application shall be made not less than thirty days before the date on which a worker wishes his leave to begin if he is employed in a public utility service as defined in clause (*n*) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947).

Provided further that the number of times in which the leave may be taken during any year shall not exceed three.

If a worker wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if his application for leave is not made within the time specified above.

Where the employment of a worker, who is entitled to leave, is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable under section 80 in respect of the leave not taken and such payment shall be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination and where a worker who quits his employment on or before the next pay day.

For the leave allowed to him under section 79, a worker shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he worked during the month immediately preceding his leave, exclusive of any overtime and bonus, but inclusive of dearness

allowance and the cash equivalent to the advantage accruing through the concessional sale to the worker of foodgrains and other articles.

A worker, who has been allowed leave for not less than four days in the case of an adult, and five days, in the case of a child, shall before his leave begins, be paid the wages due for the period of leave allowed.

The Manager shall maintain an account of the leave with wages in a register which shall be on the prescribed Form No. 14 and shall provide each worker with a book called the 'Leave book', on the lines of Form No. 15. The leave book shall be the property of the worker and the Manager or his agent shall not demand it except to make entries of the dates of leave or interruptions in service and shall not keep it for more than a week at a time, if a worker loses his leave book the Manager shall provide him with another copy on payment of four annas and shall complete it from his record.

Any sum required to be paid by an employer, for leave with wages, but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (Act No. IV of 1936)."

(9) For paragraph 21 regarding "Work on or near machinery in motion, section 22" the following shall be substituted:

"**21.** *Work on or near machinery in motion section 22.*—No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery."

(10) For the caption of paragraph 40 *substitute*

"*Powers of Inspectors, Section 9*"

(11) The following sentence in paragraph 40 shall be deleted:

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

(12) In paragraph 42, regarding "Certificates of fitness, sections 68, 70 and 98", the following shall be added after the first sentence of the second sub-paragraph:—

"Provided that no such adolescent, who has not attained the age of seventeen years, shall be employed or permitted to work in any factory during night.

Explanation:—'Night' for the purposes of this sub-paragraph means a period of at least twelve consecutive hours which shall include the period of at least seven consecutive hours falling between 10 p.m. and 7 a.m."

11. For the heading of rule 76 the following shall be substituted :—
"Overtime—Section 59 (5)"

12. In rule 76 renumber the existing sub-rules (1) and (2) as sub-rules (3) and (4) and *add* the following as sub-rules (1) and (2) :

"(1) For the purposes of section 59, the cash equivalent to the advantage accruing through the concessional sale to a worker of foodgrains and other articles during any wage period shall be computed by deducting :

(*a*) the total amount of the price payable at the concessional rates for the maximum quantity of foodgrains admissible to a standard family, as defined in Explanation 1 to sub-section (4) of the said section,

(*b*) from the total amount of the price payable for the same quantity of foodgrains and other articles at the average market rates which shall be determined either on the basis of the retail prices for such food grains and other articles prevailing in the nearest market or according to the rates published by the Labour Commissioner, for the different weeks of the wage period, in the table relating to the Consumers Price Index Number for working classes at Kanpur.

(2) The computation of the cash equivalent to such advantage in the manner indicated in sub-rule (1) above, shall be made for every wage period :

Provided that sub-rules (1) and (2) shall not apply to any Federal Railway factory whose alternative method of computation has been approved by the State Government."

13. For rule 105 the following shall be substituted :—

"105. The cash equivalent to the advantage accruing through the concessional sale of foodgrains and other articles, payable to the workers proceeding on leave, shall be the difference between the value at the average market rates, prevailing during the month immediately preceding his leave and the value at the concessional rates of foodgrains and other articles to which he is entitled.

For the purpose of the cash equivalent, monthly average market rates of foodgrains and other articles shall be computed at the end of every month.

The average market rates shall be determined in accordance with the cost of living indices published from time to time by the Labour Commissioner, Uttar Pradesh :

Provided that if retail prices for any particular centre are not published by the Labour Commissioner, Uttar Pradesh, retail prices prevailing in the main market in that centre, or, if there is no market in the centre, the nearest market, shall be taken into account for this purpose."

FORM No. 4

(RULE 14)

Notice of occupation for registration and grant or renewal of licence

Written notice prescribed under sections 6 and 7(i) of the Factories Act, 1948

(1) Full name of the factory and its licence number, if already registered	________
(2) (*a*) Postal address and situation of the factory including police station, tahsil and district ...	________
(b) Address to which communications relating to the factory should be sent	________
(3) Nature of manufacturing process/processes ...	________
(*a*) carried on in the factory during the last twelve months (in the case of factories already in existence)	________
(*b*) to be carried on in the factory during the next twelve months (in case of all factories)	________
(4) Names and values of the principal products manufactured during the last twelve months	________
(5) (*a*) Maximum number of workers proposed to be employed on any one day during the year ...	________
(*b*) Maximum number of workers employed in any one day during the last twelve months...	________
(*c*) Number of workers to be employed in the factory	________
(6) (*a*) Nature and total amount of power (H. P.) installed or proposed to be installed ...	________
(*b*) Maximum amount of power (H. P.) proposed to be used	________
NOTE :—If power is not proposed to be used originally but is introduced later, the fact should be immediately communicated to the Chief Inspector of Factories.	
(7) In the case of a factory constructed or extended after the date of the commencement of the rules—	
(i) Reference number and date of approval of the plans for site, whether for old or new building and for construction or extension of factory, by the State Government/Chief Inspector ...	________
(ii) Reference number and date of approval of the arrangements, if any, made for the disposal of trade waste and effluents and the name of the authority granting such approval	________

(8) Full name, father's name and residential address of :

(i) the person who shall be Manager of the factory for the purposes of the Act ... ____________

(ii) the occupier of the factory ... ... ____________

(a) the Proprietor of the factory if it is a private firm or proprietary concern ... ... ____________

(b) the Directors of the factory if it is a limited company or firm ... ... ____________

(c) where Managing Agents have been appointed, the name of Managing Agents and their Directors ... ... ____________

(d) share-holders in case of a private company where no Managing Agents have been appointed ... ... ____________

(e) the Chief Admistrative Head of the factory if it is owned by Government or a public authority ... ... ____________

(9) If the factory is covered by the provisions of section 93 of the Factories Act (Act LXIII of 1948), full name, father's name, and address of the owner of the premises or buildings in which the factory is situated ... ... ____________

(10) Date on which the Manager assumed charge ... ____________

(11) Date on which the occupier occupied the premises or will occupy the premises ... ... ____________

(12) Amount of fee Rs. (Rs.....................) paid in————Treasury on————vide chalan no.............................(enclosed) ... ____________

Full signature of occupier____________

Full signature of Manager____________

Full signature of owner, if any____________

NOTES :—(1) This form should be completed in ink in block letters or typed.

(2) If any of the persons named against item (8) is minor the fact should be clearly stated.

(3) In the case of a factory where a Managing Agent or Agents have been appointed as occupiers under the Indian Companies Act, 1913 (VII of 1913), information required in item (8) should be supplied in respect of that person or persons.

———

FORM No. 14

(Rule 102)

LEAVE WITH WAGES REGISTER

NAME OF FACTORY..........................

Serial No..............................

Department..............................

Serial No. in the Register of Adult/Child workers..............................

Date of entry into service..............................

Adult/Child

Name..............................

Father's name..............................

Date and amount of payment made in lieu of leave due..............................

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

NOTE—Separate page will be alloted to each worker.

FORM 15

(Rule 103)

LEAVE BOOK

Serial No.......................

Department.......................

Serial No. in the register of Adult Child workers.......................

Date of entry into service.......................

.......................Adult Child

Name.......................

Father's name.......................

Date of discharge.......................

Date and amount of payment made in lieu of leave due.......................

NAME OF FACTORY.......................

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

NOTE—To be printed on a thick sheet in folder form.

Minimum Wages for Tile Industry in Kerala.

*Notification No. L1. 22102/58/L & LAD Dated, Trivandrum, 12th May 1958.**

In exercise of the powers conferred by clause (a) of sub-section (1) of Section 3 read with clause (iii) of sub-section (1) of Section 4 of the Minimum Wages Act, 1948 (Central Act XI of 1948) and after considering the advice of the committee appointed under Clause (a) of sub-section (1) of Section 5 of the said Act, the Government of Kerala hereby fix the minimum rates of of wages as specified in the schedule hereto annexed which shall be payable to the employees employed in tile industry mentioned thereunder.

This notification shall come into effect on 26-5-1958.

SCHEDULE

(a) Basic wages of Men workers.

	Category	Quilon and Feroke areas (Quilon, Kozhikode and Cannanore Districts)	Alwaye Area. (Ernakulam, & Alleppey Districts)	Trichur area (Trichur, Palghat and Kottayam Districts)
		Rs.	Rs.	Rs.
	Class A			
1.	Masons	2·00	1·75	1·62
2.	Carpenters	2·00	1·75	1·62
3.	Blacksmiths	2·00	1·75	1·62
4.	Engine Drivers	2·00	1·75	1·62
	Class B			
1.	Electricians	1·75	1·50	1·37
2.	Fitters	1·75	1·50	1·37
3.	Mechanics	1·75	1·50	1·37
4.	Turners	1·75	1·50	1·37
5.	Planers	1·75	1·50	1·37
6.	Kiln Foreman	1·75	1·50	1·37
	Class C			
1.	Wheel Turners	1·50	1·25	1·12
2.	Die Pullers or Slab placers in Revolving Press	1·50	1·25	1·12
3.	Trimmers in Quilon area (men)	1·50	...	...
4.	Kiln Setters and Drawers	1·50	1·25	1·12
5.	Burners who are responsible for kiln firing	1·50	1·25	1·12
	Class D			
1.	Garblers	1·25	1·00	0·87
2.	Trimmers in areas other than Quilon	...	1·00	0·87

* Kerala Gaz., 20-5-58, Pt. I, p. 1565.

3. Slab beaters or polishers	1·25	1·00	0·87
4. Tile Receivers	1·25	1·00	0·87
5. Firewood cutters	1·25	1·00	0·87
6. Trolley Turners	1·25	1·00	0·87
Class E			
1. Headload workers	1·00	0·87	0·75
2. Tile Conveyers	1·00	0·87	0·75
3. Slicers	1·00	0·87	0·75
4. Firing Helpers	1·00	0·87	0·75
5. Pug Mill workers etc.	1·00	0·87	0·75

N. B. The Basic wages of women workers of the D. and E. categories shall be 25 nP. less than the corresponding wages of men workers in each area.

(*b*) *Dearness Allowance.*

A flat rate of dearness allowance for all workers irrespective of sex or grade shall be paid at the rate of 1 nP. for every 2 points in the cost of living index for each area in excess of 200. For the purpose of computing the dearness allowance the cost of living index of Quilon shall be followed for the Quilon District, that of Kozhikode for the Kozhikode and Cannanore Districts, that of Alwaye for the Ernakulam and Alleppey Districts, that of Trichur for the district of Trichur and Palghat and that of Kottayam for the Kottayam District. The D. A. is to be paid along with the wage calculated on the latest published figures of the cost of living index for each area and such rates shall continue to be in force until a new figure is published.

Adolescents shall be paid ¾ of the basic wage and dearness allowance of adults.

These minimum wage rates shall supersede the prevailing rates of wages which have been fixed by awards, conciliation settlement, etc. But in cases, where any category of workers in any area are actually in receipt of higher wages than the statutory minimum wages fixed, they shall continue to get the benefit of the higher wages.

NOTE:—For the purpose of fixing minimum wages the State has been divided into three regions as follows:—

1. The Quilon and Feroke areas covering the administrative districts of Quilon, Kozhikode and Cannanore.

2. The Alwaye area comprising the Ernakulam and Alleppey Districts.

3. The Trichur area covering the districts of Trichur, Palghat and Kottayam.

[IN THE BOMBAY HIGH COURT.]

OUDH SUGAR MILLS LTD.

v.

REGIONAL PROVIDENT FUND COMMISSIONER, BOMBAY.

Mudholkar and Tambe, JJ.

March 7, 1957.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 1(3)—SCOPE OF—ESTABLISHMENT CARRYING ON SCHEDULED AS WELL AS NON-SCHEDULED INDUSTRY—EMPLOYING LESS THAN 50 PERSONS IN SCHEDULED INDUSTRY—WHETHER ACT APPLIES.

A vegetable ghee factory employed about 250 persons out of which about 30 persons were employed in the manufacture of metal containers for packing the products. When the Employees' Provident Funds Act, 1952, came into force, the authorities under the Act required that all the persons employed in the factory should be made members of the Employees' Provident Fund, though at that time the Act was not applicable to the oil industry. This was on the ground that the factory manufactured metal containers and the manufacture of metal containers fell within the explanation of "Electrical, mechanical or general engineering products" to which the Act was applicable. On a writ petition under article 226 of the Constitution by the employer to quash the directions of the authorities: Held, *that the Act applies only to an establishment on the premises of which (i) a manufacturing process is carried on, (ii) in any industry engaged in the manufacture of any of the scheduled products, and (iii) in which fifty or more persons are employed and that all these three conditions must co-exist. As the number of persons employed in the manufacture of scheduled products in this factory was only 30, the Act was not applicable to the factory.*

[*Their Lordships differed on the question whether the Act did not apply when the principal object of an industry did not fall within the First Schedule of the Act, even if certain scheduled articles are manufactured for being used in that industry only*].

Miscellaneous Petition No. 335 of 1955.

M. R. Bobde for the petitioner.

M. A. Adhikari for the respondent.

JUDGMENTS.

MUDHOLKAR, J.—This is a petition under article 226 of the Constitution for the issue of an appropriate writ to the Regional Provident Fund Commissioner, Bombay, prohibiting him from recovering from the petitioner contribution towards the provident fund under the Employees' Provident Funds Act, 1952.

The admitted facts are as follows: The petitioner is a public limited company registered under the Indian Companies Act. It carries on business of manufacturing hydrogenated vegetable oil named 'Vanasada' and its by-products, such as soap, oil-cakes, etc., at Akola under the name and style of "Berar Oil Industries." It commenced manufacturing its products on 11th October, 1948. It also manufactures and makets its vegetable oil after completing all the processes at Akola whereafter the oil is tinned in tin containers of certain sizes. The aforesaid tin containers are fabricated by the petitioner in the precincts of the oil factory. These tin containers are used only for the purpose of packing vegetable oil and are not used for any other purpose. They are not sold separately nor are the customers charged separately for the price of the tins. The fabrication of these containers commenced on 13th October, 1948. Only 31 workers are engaged in this work while on 1st November, 1952, 211 workers were working on the manufacture of oil and its by-products.

The Central Government framed a scheme under section 5 of the Employees' Provident Funds Act, 1952, which came into force partly on 2nd September, 1952 and partly on 6th October, 1952. Under this scheme an employer is required to contribute 6 1/2 per cent. of the total wage bill every year as the employer's contribution towards the fund and 3 per cent. as the administrative charges on the total contribution of the employer and the employees.

Certain correspondence ensued between the petitioner and the respondent with respect to the liability of the petitioner to make contribution towards the provident fund. Eventually, by a letter dated 8th August, 1955, the respondent called upon the petitioner to deposit its contribution and incidental charges as required by the scheme. It is stated in the petition that the total amount came to Rs. 34,000 for this period and this fact is not denied in the return. It may be mentioned that this contribution is in respect of the workers employed in the oil industry, *i.e.*, not only in respect of the persons who are employed in the fabrication of tin containers but also in respect of the workers who are employed solely for the production of vegetable oil. The petitioner has not deposited the amount and has alleged that as a result of this demand it is faced with proceedings for the recovery of this amount under section 8 of the Act. The petitioner disputes its liability to pay the amount and has, therefore, come up to this Court for the issue of an appropriate writ to the respondent restraining him from taking any further action.

The application of the Act is provided for in sub-section (3) of section 1 thereof, which reads as follows:

"Subject to the provisions contained in section 16, it applies in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed, but the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to all factories employing such number of persons less than fifty as may be specified in the notification and engaged in any such industry".

The expressions, "factory", "industry" and "employee" are defined in the Act. Factory as defined means:

"any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power."

Industry as defined means:

"any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4."

Employee means:

"any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of a factory, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the factory."

In Schedule I as amended by Act 37 of 1953 it is stated: "Any industry engaged in the manufacture......of any of the following namely :—

Cement.
Cigarettes.
Electrical, mechanical or general engineering products.
Iron and Steel.
Paper.
Textiles.................."

Then there is the Explanation which contains 25 items, one of which is "drums and containers". It will thus be seen that for the application of the Act, the unit must be a factory. It must be engaged in any industry. The industry must be one which is specified in Sch. I and that industry must employ 50 or more persons. From the Schedule it will be seen that the industry itself must be engaged in the manufacture of any of the scheduled products. The word 'manufacture' is also defined thus in section 2, as amended by Act 37 of 1953:

"Manufacture means making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal."

Reading all these provisions together it would appear that the Act applies to a unit on the premises of which (i) a manufacturing process is carried on (ii) in any industry engaged in the manufacture of any of the schedule products and (iii) in which fifty or more persons are employed. Thus all the three conditions must co-exist. From this it follows that the process must relate to the industry itself. It also follows that if any of these conditions does not exist, the Act would not apply. As already stated it is an admitted position that the industry in question is the production of edible oil. This industry was not at the relevant time included in the Schedule though we understand that it has subsequently been so included. It would therefore appear that the Act would not apply to this industry.

It is however argued on behalf of the respondent that 'drums and containers' are admittedly being manufactured within the precincts of the factory and as these articles are included in the schedule the Act must apply to this unit. It is to be borne in mind that though the petitioner manufactures drums and containers it is not engaged in a business of manufacturing these articles in the sense that its object is not to trade in these articles but its object is only to use these containers for enabling it to carry on its business of producing and marketing vegetable oil. If it may be put that way, this is only a process in the business of manufacturing and selling vegetable oil and what is produced is only an intermediate product. The Act applies where the final product is within the Schedule I not where only an intermediate product is in the schedule.

The word "industry" as already stated has been defined to mean a specified industry. What we have therefore to ascertain is, what was the industry in which the unit was engaged and not merely what was manufactured by the unit for the purpose of its industry. A unit may manufacture a number of things some of which may fall within the schedule. But if that was not the main or the dominant purpose of the industry, it would make no difference. In other words, where while carrying on an industry certain products are produced, not with the object of marketing them separately but with the object of using them in the industry itself, then the production of those articles cannot result in the engagement in an industry of producing these articles. The word 'industry' should be understood in the sense in which it is understood in the business community. If the industry, as here, is the production of edible oil, then all the intermediate products which are produced for carrying on that industry cannot be regarded as separate industries.

Therefore, the mere fact that any of these products was included in the schedule will not bring the Act into operation.

No doubt this Act is a piece of social legislation and must receive benevolent construction. It is however to be noticed that it was not the intention of the Legislature to make this Act applicable to each and every factory or industry as is the case with the Factories Act or with the Industrial Disputes Act. This Act was made specifically applicable to certain industries only. Power has been conferred on the Central Government for increasing the ambit of the Act by enabling them to issue a notification under section 1 (3) of the Act for applying it to other industries. Where such is the case, the question of benevolent construction would not come in. In the circumstances, therefore, it is clear that the demand made by the Regional Provident Fund Commissioner, Bombay, is not legal and it is therefore necessary that a writ should issue. In this view it is not necessary to consider separately the petitioner's contention regarding its liability to pay 3 per cent. in respect of administrative charges. We would, therefore, allow the petition with costs. Counsel's fee Rs. 100. The outstanding amount of deposit is ordered to be refunded to the petitioner.

TAMBE, J.—I agree with my learned brother in the conclusion reached, *viz.*, that this petition should be allowed. However, with utmost respect to my learned brother, I do not find myself in agreement with the view taken by him that where the principal object of an industry does not fall within the meaning of the First Schedule of the Act then even if certain scheduled articles for being used in that industry only are manufactured, the provisions of the Act are not attracted. In my view, the determining factor is whether in any part of a factory any manufacturing process is going on and whether the manufactured article is such which falls within the meaning of the First Schedule. But to attract the Act this alone is not sufficient. The number of persons employed in the unit engaged in the manufacture of such article must be fifty or more.

Section 1 (3) of the Act provides that the provisions thereof apply to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed. Now, 'factory' is defined in section 2, clause (g), of the Act. This definition has already been reproduced above. From this definition it will be clear that the manufacturing process of scheduled article need not go on in the entire premises of the factory but it may go on in any portion of it. Further, the word 'manufacture' has been defined in section 2, clause (ia). This definition has also been reproduced above. Looking to this definition it will be seen that the word "manufacture" will include making of goods even for the use of the factory itself. These definitions read together, in my opinion, would show that if in any part of a factory an article which falls within the ambit of the First Schedule is manufactured, though not for the purposes of marketing it, and if the number employed in that process is fifty or exceeds fifty, then the provisions of the Act would be attracted. But, in the instant case, it is not in dispute that the labour employed in the unit engaged in manufacturing drums and containers is only 31. The provisions of the Act therefore are not attracted to the instant case.

The learned counsel for the opponent, however, places reliance on a decision of the Travancore-Cochin High Court in O.P. No. 78 of 1953, dated 2nd February, 1954. The facts in this case were that one part of a factory was engaged in manufacture of articles that fell within the First Schedule of the Act, the number of employees in that unit of the factory was only 33, the manufacture carried on in the other part of the factory did not fall within the First Schedule of the Act, and the total number employed in both these units exceeded fifty. It was held that as the factory was carrying on the manufacturing process in one part of it which fell within the First Schedule and as the total number of employees exceeded fifty, the provisions of the Act were attracted. With utmost respect to the learned Judge I find myself unable to agree with this view. In arriving at the conclusion the learned Judge observed that the unit for determining the application of the Act is the total number of the employees in the factory and not only those engaged in the manufacture of the scheduled article. In my view, for reasons stated above, when one of the units of the factory is engaged in the manufacture of an article which falls within the First Schedule of the Act, the provisions of the Act are attracted only to that unit if the other condition, namely that the employees employed in that unit are fifty or more, is fulfilled. In my view, the clause "in which fifty or more persons are employed" used in section I(3) of the Act governs or qualifies the phrase "industry specified in Schedule I" used therein and not the word "factories".

[IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA.]

BARINDRA NATH KOLAY

v.

CALCUTTA PORT COMMISSIONERS.

Shri A. Das Gupta.

April 23, 1958.

DISMISSAL—DISMISSAL ON RECEIPT OF ADVERSE POLICE REPORT—WHETHER JUSTIFIED—ENQUIRY BY MANAGEMENT BEFORE DISMISSAL—WHETHER NECESSARY—VALUE OF POLICE REPORT.

CONDITIONS OF SERVICE—PROBATIONER—RIGHT OF MANAGEMENT TO DISMISS—CONFIRMATION OF PROBATIONER—WHETHER MATTER FOR ADJUDICATION BY INDUSTRIAL TRIBUNAL.

The general rule that an inquiry must be held before an employer dismisses a workman is subject to exceptions. Where the Commissioners of a Port receive an adverse report about a workman from the Police Department and dispense with the services of the workman in the interests of the Port, it is not necessary that an inquiry should be held by the employers before taking any action against the workman, because, any amount of evidence adduced at a private enquiry cannot undo the police report.

Confirmation of a workman is the exclusive function of management and Industrial Tribunals have no jurisdiction to investigate into any dispute relating to confirmation of a workman unless and until it is proved that the management is actuated by an ulterior motive in not confirming the workman. The termination of the services of an unconfirmed workman on receipt of an adverse Police report is therefore justified

Complaint under section 33-A of the Industrial Disputes Act, 1947.

P. K. Dutta for the workman.

K. B. Bose and *N. M. Das Gupta* for the Port Commissioners.

AWARD.

The present application under section 33-A of the Industrial Disputes Act has been filed by Shri Barindra Nath Kolay, an ex-employee under the Port Commissioners, complaining that he had been wrongfully discharged during the pendency of the main adjudication proceedings with effect from 4th November, 1957, in violation of the principles of natural justice and without any express permission from the Tribunal as contemplated by section 33 of the Act.

The application is opposed by the Port Commissioners, Calcutta. It transpired at the hearing that Shri Barindra Nath Kolay was appointed as a temporary clerk from 4th January, 1954 to 30th April, 1954. On expiry of the term his services were terminated with effect from 1st May, 1954, and he was again appointed against a permanent vacancy with effect from 26th May, 1954, and continued in the employment of the Port Commissioners till 4th November, 1957. As he was in continuous service, he was given the normal time scale increments and was permitted to apply for membership to the contributory provident fund. As was the practice of the Port Commissioners, a report was called for from the police when the confirmation of Shri Kolay was due. The police report which is dated 17th September, 1956, was adverse against Shri Kolay. It comes over the signature of the Deputy Inspector-General of Police, I.B., C.I.D., West Bengal and reads as follows:

"I am to say that he (subject) is considered unsuitable due to his connection with subversive organisation."

On receipt of the police report the Port Commissioners, in the interest of the Port, decide to dispense with the services of Shri Kolay and accordingly issued a notice dated 31st October, 1957/2nd November, 1957, to Shri Kolay over the signature of the Chief Mechanical Engineer terminating his services with effect from 4th November, 1957, and he was granted one month's salary as *ex gratia* payment. Annexure B to the written statement of the Port Commissioners is a copy of the notice. To dislodge the police report, the complainant has filed as many as 13 certificates of good conduct from respectable gentlemen of his village and its neighbourhood. These certificates are Exhibit W/1 series. The complainant belongs to the village Khosalput in the district of Howrah but had to live for a good portion of the day during the period he was in the employment of the Port Commissioners. Connection with subversive organisation is carried on secretly so much so that even the members of the family such as parents, brothers, wife, cannot know of the subversive activities of a man. The police is the competent authority to report about the character of each and every citizen living within its jurisdiction and it is presumed that all such reports are based on proper investigation although confidential. There may be cases where police reports are based on the information received from unscrupulous designed persons. But such cases are very rare. We are not here to scrutinise the police report or to assess its value. The only question that arises in the present case is whether the Port Commissioners had actually any unfair motive and were guilty of unfair labour practice. So long as the police report against Shri Kolay is there, the Port Commissioners in the interest of the Port's safety cannot brush it aside and permit Shri Kolay to continue in service in the teeth of the police report against him which must have priority over all other considerations. It is true that in the notice terminating the services of Shri Kolay there was no specific reference to the police report and it is true that the Port Commissioners waited for about a year after receipt of the police report to take a final decision. Shri K. B. Bose urged that the authorities in their anxiety that termination of Shri Kolay's services might not in any way affect him for all time to come decided not to refer to the police report in the notice. Shri K. B. Bose's contention is not altogether without any substance. No satisfactory explanation was however offered for the delay in the Port Commissioners' taking the decision but whatever might have been the reason for the delay, the fact remains that the police has not changed its decision and the Port Commissioners did not act hastily.

The police report has a presumptive value about its correctness. No rigid principle can be laid down that an employer must hold an investigation against the worker before he proposes to take disciplinary action against him. General rule of enquiry laid down by Tribunals from time to time is undoubtedly subject to exception and the present case comes under one such exception. In the case of *Bihar Fire Bricks and Potteries Ltd.*, (1953) I L.L.J. 49), the Labour Appellate Tribunal appear to have accorded its aproval to dismissal of the workmen on the report of the Superintendent of Police and Inspectpr of Police that the workmen had been in the active list of suspects. A departmental enquiry in the present case would be without any value, for private enquiry could not undo the police report. No amount of evidence adduced in a departmental enquiry or in an enquiry before a Tribunal can undo a police report. Any person aggrieved by the police report can only dislodge it in the constitutional way provided under the law. In the present case, the mere absence of enquiry by the employers in the stereotyped form does not in any way affect the position.

Apart from all these questions, Shri K. B. Bose urges that the services of a temporary worker can be terminated without any notice and that termination of the services of a temporary worker is not hit by section 33 of the Industrial Disputes Act. A temporary worker in the strict sense of the term is one who is employed for a specific period or for any specific work of a temporary nature and his services are terminated on the expiry of the stipulated period or on completion of the work for which he was employed. The complainant was admittedly appointed against a permanent vacancy and it is nobody's case that he was appointed for any specified period. He might be called a probationer rather than a temporary worker. The Port Commissioner's case is that he was not confirmed and there is nothing to show that he was confirmed. Confirmation of a workman is the exclusive function of management and the

Tribunal has no jurisdiction to investigate into any dispute over confirmation of a workman unless and until it is proved that the management is actuated by ulterior motive in not confirming him. In the present case, there is no such suggestion and in fact the whole trouble arose when the employers intended to confirm the complainant. It has been authoritatively decided by the Labour Appellate Tribunal in the cases of *Upper Ganges Valley Electricity Supply Company Ltd,* and *Karam Chand Thapar,* reported in [1953] 4 F.J.R. respectively at page 488 and page 365, that the services of a probationer can be terminated without notice at any time during the period of probation if the employer is not satisfied with his work or conduct or progress. In the present case, after receipt of the police report, the Port Commissioners could not be satisfied with the character and conduct of the complainant. The Port Commissioners instead of dismissing the complainant outright, discharged him not only with a month's notice but also with a month's salary. The action of the Port Commissioners does not accordingly call for any interference.

The next point for consideration is whether the Port Commissioners contravened the provisions of section 33 in terminating the services of the complainant. It is not disputed that the Port Commissioners did not obtain any permission from this Tribunal as contemplated by section 33 of the Act. After what have decided on the merits, I do not propose to enter into the controversy on this point. Even assuming that the provisions of section 33 were contravened, such contravention did not make the action of the Port Commissioners void. Such contravention gave jurisdiction to this Tribunal to investigate into the subject-matter of the complaint and may expose the Port Commissioners to criminal prosecution provided in the statute. I have carefully considered the complaint of Shri Kolay on the merit and my decision is that it must be rejected. In this view of the case I do not propose to express myself as to whether there has been any contravention of section 33 of the Industrial Disputes Act, 1947. This is my award.

[IN THE BOMBAY HIGH COURT.]

MADHYA PRADESH MINERAL INDUSTRY ASSOCIATION

v.

REGIONAL LABOUR COMMISSIONER (CENTRAL), NAGPUR

Tambe and Kotval, JJ.

October 25, 1957.

MINIMUM WAGES ACT, 1948, SCHEDULE—ENTRY IN SCHEDULE RELATING TO "EMPLOYMENT IN STONE BREAKING AND CRUSHING IN MINES"—MEANING OF—WHETHER INCLUDES ORE BREAKING AND CRUSHING IN MANGANESE MINING—"STONE", WHETHER INCLUDES ORE.

The State of Madhya Pradesh included in the Schedule to the Minimum Wages Act, 1948, the entry "employment in stone breaking or in stone crushing operations carried on in mines" and thereby the Act became applicable to such employment. On the question whether persons employed in breaking or crushing ore in manganese mining would be covered by this entry, Held, *(i) that it could not be contended that the entry did not cover persons employed in manganese mining on the ground that the employment was in mining and not in stone breaking and crushing; and (ii) that the word "stone" includes manganese ore, and, therefore, breaking and crushing of manganese ore would be covered by the entry.*

Miscellaneous Petition No. 476 of 1956.

A. S. Bobde for the petitioner.

W. B. Pendharkar for the respondent.

JUDGMENT.

KOTVAL, J.—In this petition is raised a question of importance to the manganese mining industry. The question raised relates to the applicability of the provisions of the Minimum Wages Act, 1948, to persons employed in stone breaking and stone crushing operations carried on at the mines. The petition is moved at the instance of a limited liability, non-profit-making company registered under section 26 of the Indian Companies Act. The petitioner claims to represent its 65 associated members owning 230 manganess mines, and, since the question raised is one of the applicability of the Act to the industry as a whole, we have permitted the petitioner to move the petition though no right special to the petitioner has been shown to be infringed. Moreover, the respondents did not object at the hearing to the petitioner being allowed to represent its members without any particular injury, or infringement of right being made out.

The facts upon which the petition is founded lie within a short compass. The Minimum Wages Act (XI of 1948) came into force on 15th March, 1948. Section 2(b) read with section 3 of the Act gives the Central Government the power to make notifications in regard to any scheduled employments in mines to which the Act should apply, but, the President, acting under his powers under article 258 of the Constitution, has delegated his powers to the State Government by a notification No. S.R.O. 2052, dated 11th December, 1951. Acting under that delegation, the then State of Madhya Pradesh (now represented by the State of Bombay, respondent No. 2) issued a notification No. 352-257-XXIII on 30th March, 1952, adding an entry in the Schedule to the Act and so the provisions of the Act came to be applied to "employment in stone breaking or in stone crushing operations carried on in mines". It was the petitioner's case that in pursuance of this notification,

"respondent No. 1 has now threatened large scale prosecution on the footing that the Act is made applicable to the manganese mining industry and his officers have been purporting to inspect various mines of the petitioner's members and point out alleged contraventions of the Act."

Before we state the question that is raised, it would be appropriate to refer to certain provisions of the Minimum Wages Act. Sub-section (1) of section 3 of the Act runs as follows:

"3. Fixing of minimum rates of wages--(1) The appropriate Government shall, in the manner hereinafter provided,—

(a) fix the minimum rates of wages payable to employees employed—

(i) in an employment specified in Part I of the Schedule at the commencement of this Act, before the 31st day of December, 1954;

(ii) in an employment specified in Part II of the Schedule at the commencement of this Act, before the 31st day of December, 1954;

Provided that the appropriate Government may, instead of fixing minimum rates of wages under this sub-clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof; and

(iii) in an employment added to Part I or Part II of the Schedule by notification under section 27, before the expiry of one year from the date of the notification;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary."

The word 'employer' is defined in section 2 (e) as follows:

"'employer' means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26,—

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (LXIII of 1948), as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages."

'Scheduled employment' is defined in section 2(g) as follows:

"'scheduled employment' means an employment specified in the schedule, or any process or branch of work forming part of such employment."

Entry No. 8 in Part I of schedule A appended to the Act was in the following terms:

"Employment in stone breaking or stone crushing."

By a notification No. 352-257-XXIII, dated 30th March, 1952, however, the then State Government of Madhya Pradesh fixed the minimum rates of wages in respect of this particular employment, mentioned as "employment in stone breaking or in stone crushing operations carried on in the mines". It may here be stated that the *vires* of this notification, though challenged in the petition, was not challenged before us, and, therefore, the only question that remains is one of interpretation of the relevant provisions of the entry introduced by the notification we have reproduced above.

It will be noticed that nowhere in the Act is the word 'employment' as such defined, but what was submitted on behalf of the petitioner was that reading the new entry in Schedule A along with the definition of 'employer' in section 2(e) and the definition of 'scheduled employment' in section 2(g), the application of the entry would necessarily be limited to the particular business or occupation of stone breaking or stone crushing as an occupation. In other words what was argued was that so far as any person was employed by an employer whose principal business was manganese mining, even though the employee may actually be breaking or crushing stones, he would still be employed in the mining industry and not in stone breaking or stone crushing. It was urged that what the Court should look at is the substantial category of employment and not to the process that may be involved in it.

Now, the definition of the word "employer" would bring within its ambit any person, who, directly or through another person, or whether on behalf of himself or any other person, employs one or more employees in any scheduled employment, and the subsequent clauses (i) to (iv) of the definition also refer back to the definition of 'scheduled employment' in section 2(g) and the definition of 'scheduled employment' in section 2(g) once again refers back to Schedule A. Therefore, it appears to us that the petitioner cannot derive much assistance from a reference to section 2(e) and 2(g) because in any event those definitions are with reference to the particular employment mentioned in the Schedule.

Turning to the entry, what is contended is that those persons, who are engaged in stone breaking and stone crushing in mines, are really employed in manganese production and not in stone crushing or stone breaking as an employment. The entry refers to the particular trade, occupation or business of stone breaking or stone crushing, and it is urged that it cannot possibly be held that those employees, who are really engaged in the production of manganese, can be said to have employment in stone breaking or stone crushing.

We have already indicated that the word 'employment' is nowhere defined in the Act, and, therefore, we can only turn to consider the ordinary meaning of the word. In the *Shorter Oxford Dictionary* the word 'employment' is defined as follows:

"The action of employing; the state of being employed." No doubt, there is a secondary meaning attached to the expression and that is "that on which (one) is employed; business; occupation; a commission." Having regard to the intention of the statute and to its object, to which

we shall presently advert, it seems to us that the word 'employment' used in the entry was used in its most general sense of "the action of employing or the state of being employed" and not with reference to any particular trade, business or occupation.

We would also point out that in preceding entries in Part I of Schedule A, *i.e.*, entries 1 to 6, the word "any" always qualifies the particular occupation or business referred to in those entries where the particular occupation was intended to emphasized, for instance, "any woollen carpet making or shawl weaving establishment"; "any tobacco manufactory"; "any oil mill" and so on, but in the disputed entry the words are not employment in any stone breaking or stone crushing operations, but the words used are "employment in stone breaking or in stone crushing operations". It is impossible to avoid the generality of the terms of this clause. If it had been intended to limit the operation of the clause to any particular trade or industry or any particular operations, it would have been so indicated.

The expression "employment" is not conterminous with "business", and it seems to us that in a particular business there may be several classes or categories of employment. For instance, in the business of manganese mining there may be several categories of employments, *e.g.*, diggers, persons transporting manganese either by trolley or by head loads, shot-firers, watchmen, Sardars or Supervisors, engineers and persons employed in stone crushing or stone breaking after the ore is out of the mine. The intent of the law appears to be to provide for payment of minimum wages to this last named category of employment in whatever business it may be.

Then it was urged that the entry merely refers to stone breaking or stone crushing, and that if employees are engaged in breaking or crushing manganese ore, that would not amount to breaking up or crushing up any stones. It was urged that manganese ore cannot be "stone" within the meaning of the entry. Here again, the word has not been defined, and we can, therefore, only turn for guidance to the general meaning of the word. The word "stone" has been defined in the *Shorter Oxford Dictionary* as "a piece of rock or hard mineral substance (other than metal) of a small and moderate size". Therefore, a piece of pure metal would not partake of the nature of a stone, nor, in our opinion, would a small piece of stone containing some quantity of metal or mineral, for that reason, cease to be a stone. In the case before us it may be that in most of the pieces which have been broken or crushed, there is a considerable amount of an element or metal, viz., manganese. The pieces that are being broken up would none the less be stones although containing some element or metal. We are of the opinion that the word 'stone' includes pieces of manganese ore. Any other interpretation of the word "stone" in the entry would lay the door open for a set of definitions which would make the entry almost impossible to apply in most of the cases for which the Legislature intended to provied.

The Minimum Wages Act is obviously a piece of social legislation passed with the beneficient object of ameliorating the conditions of the worker in stated employments and assuring to him a minimum wage. It behoves us to bear in mind this intention of the Legislature in our duty to interpret the statute and so "to suppress the mischief and advance the remedy" contemplated by the law. The word "employment" and the word "stone" occuring in the disputed entry are nowhere defined, and having regard to the intent and purpose of the statute, it seems to us that the construction we have placed above is the correct one.

Mr. A. S. Bobde, on behalf of the petitioner then referred to a decision in *Oudh Sugar Mills* v. *Regional Provident Fund Commr.*, [1957] 14 F.J.R. 401 to which one of us (Mr. Justice Tambe) was a party. That was a decision wherein the only question was whether the manufacture of tin containers fell within the entry "electrical, mechanical or general engineering products" contained in the Schedule to the Employees' Provident Funds Act, and while Mr. Justice Mudholkar took the view that in interpreting the entry it is the principal object of the industry that should be considered and only a process which is related to the principal object of the industry can come under the Schedule, my learned brother held that in order to fall within the entry in the Schedule a manufacturing process need not be one which goes on in the entire premises of the factory, but it may go on in any portion of it and yet be held to be one which falls within the Schedule. If the view that my learned brother took in that case were to be applied in the present case, it would be contrary to the contentions of the petitioner, but we do not think that that decision applies here. It cannot be a safe guide to the decision of the question before us because the provisions of the two statutes are not in *pari materia*.

In the result, therefore, the petition fails and is dismissed with costs. The rule is discharged.

[IN THE MADRAS HIGH COURT.]

PARAMOUNT FILMS OF INDIA LTD.

v.

STATE OF MADRAS.

Rajagopalan, J.

April 15, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10(1)(C)—REFERENCE OF DISPUTE TO INDUSTRIAL TRIBUNAL—WHETHER ADMINISTRATIVE OR JUDICIAL ACT—WHETHER WRIT LIES AGAINST ORDER OF REFERENCE.

An order made by the appropriate Government under section 10(1)(c) of the Industrial Disputes Act, 1947, is only an administrative act and is therefore outside the purview of correction by the issue of a writ.

Writ Petition No. 370 of 1957.

N. C. Raghavachari for the management.

JUDGMENT.

This is a petition under article 226 of the Constitution for the issue of a writ of *certiorari* to set aside a reference made by the Government under section 10 (1) (c) of the Industrial Disputes Act, 1947.

It has been consistently held by this Court that an order under section 10(1)(c) of the Act is only administrative in its scope and is therefore outside the purview of correction by the issue of a writ of *certiorari*. There cannot be a writ of prohibition either directed to the Industrial Tribunal. It is open to the petitioner to raise the question he has raised here, that there was in law no industrial dispute at all for adjudication even as a preliminary issue, by the Industrial Tribunal. The Industrial Tribunal has to decide such a jurisdictional issue in the first instance. If the Industrial Tribunal arrives at a wrong decision, the aggrieved person will be entitled to challenge the validity of such a decision by an application for the issue of a writ of *certiorari*. As I said, the order the petitioner seeks to avoid is the order of reference under section 10(1)(c) of the Industrial Disputes Act, 1947, and for that no application for the issue of a writ of *certiorari* can lie.

The petition is dismissed.

[IN THE KERALA HIGH COURT.]

TRAVANCORE SUGARS & CHEMICALS LTD.

v.

STATE OF KERALA AND ANOTHER

Vaidialingam, J.

December 16, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTON 10(1)—REFERENCE OF DISPUTE BY APPROPRIATE GOVERNMENT—WHETHER ADMINISTRATIVE OR JUDICIAL ACT—WHETHER WRIT CAN ISSUE TO QUASH ORDER OF REFERENCE—REMEDY OF AGGRIEVED PARTY.

WRIT—INDUSTRIAL TRIBUNAL—JURISDICTION TO DECIDE WHETHER MATTER REFERRED IS INDUSTRIAL DISPUTE—WRIT CAN ISSUE ONLY AFTER DECISION ON JURISDICTION—REMEDY OF AGGRIEVED PARTY—CONSTITUTION OF INDIA, ART. 226.

The appropriate Government is only acting in its administrative capacity when referring an industrial dispute under section 10(1) of the Industrial Disputes Act, 1947, and Courts cannot canvass the order of reference very closely to see if there was any material before the Government to support its order unless, ex facie, *on admitted facts, the Court can come to a decision one way or the other and finally dispose of the matter once for all. The remedy of an aggrieved party lies in challenging the decision or award of the Tribunal and showing that what was referred by the Government was not an "industrial dispute" as defined in the Act and that the Tribunal had no jurisdiction to make the award. Case law discussed.*

An Industrial Tribunal has jurisdiction to decide whether the matter referred to it under section 10(1)(c) of the Act is an industrial dispute at defined in the Act or not, and no writ of prohibition can be issued to a Tribunal at the stage where it has not yet considered that question. It will be open to the aggrieved party to pursue the appropriate remedy open to it from the decision of the Tribunal on the question of jurisdiction.

Original Petition No. 7 of 1956 under article 226 of the Constitution.

G. B. Pai and *Govindan Nair* for the management.

Advocate General for the State.

JUDGMENT

VAIDIALINGAM, J.—This is an application under article 226 of the Constitution of India by Messrs. Travancore Sugars and Chemicals Ltd., Management of the Pamba River Factory, Thiruvella, praying that this Court be pleased (a) to call for the records of the case and to quash the order of refernce No. L. Dis 4270 of 1956 dated the 30th October, 1956 (produced along with the affidavit and marked "A" for identification), by the issue of a writ of *certiorari* or other appropriate writ, order

or direction, or, in the alternative, to issue a writ directing the 2nd respondent to forbear from proceeding with the enquiry in pursuance of the Notification Ex. A.; and (b) to pass such other and further writs, orders or directions as are deemed just and proper in the circumstances of the case.

The 1st respondent is the State of Kerala represented by the Labour Secretary to Government, Trivandrum and 2nd respondent is the Industrial Tribunal, Alleppey.

Ex. A referred to above is the order dated 30th October, 1956, of the former Government of Travancore-Cochin referring a dispute as an industrial dispute for adjudication to the Industrial Tribunal, Alleppey, which is the 2nd respondent in this application. The said order runs as follows:

"Government of Travancore-Cochin

Labour Department

No. L. Dis. 4270/56/DD. Dated, Trivandrum, 30-10-1956

ORDER

Whereas, the Government are of opinion that an Industrial Dispute exists between the Management of the Pamba River Factory, Thiruvella, represented by the General Manager and the boatmen of the above concern represented by the Dakshinabharatha Navika Thozilali Union, Pulikeezh, Thiruvella, in respect of matters mentioned in the annexure to this order,

And whereas, in the opinion of the Government it is necessary to refer the said Industrial Dispute for adjudication,

Now therefore, in exercise of the powers conferred by section 10(1)(c) of the Industrial Disputes Act of 1947 (Central Act XVI of 1947), the Government hereby direct that the said industrial dispute be referred for adjudication to the Industrial Tribunal, Alleppey.

By Order of His Highness the Raj Pramukh

G. Bhaskaran Nair,

Labour Secretary

Addl. Secretary to Govt.

Government Secretariat,

Development Department.

ANNEXURE

Are the boatmen entitled to bonus from the factory and if so what should be the quantum of bonus and what is the period for which it is payable?

Are the boatmen entitled to unemployment wages for the periods of involuntary unemployment with retrospective effect from the year 1954?

Are the boatmen entitled to waiting charges for the periods exceeding 12 hours they are made to wait at the cane loading points or at the factory boat basin and if so, at what rate?

Are the boatmen entitled to get refund of the amounts deducted from their wages by the management of the Pamba River Factory during the years 1952 to 1954 ?

Sd..................................

Assistant Secretary."

It will be seen that the prayer in the application is either to issue a writ of *certiorari* or other appropriate writ quashing the order of reference, Ex. A, or, in the alternative, to issue a writ directing the industrial Tribunal, the 2nd respondent from proceeding with the Inquiry in pursuance of the Notification, Ex. A. The alternative prayer should be understood as asking for a writ of prohibition prohibiting the 2nd respondent from proceeding with the enquiry on the basis of Ex. A.

The substantial contention raised in the affidavit filed in support of the application is that there is no relationship of employer and employee between the applicants and the boatmen referred to in Ex. A and that the boatmen are not 'workmen' within the meaning of that expression as defined in section 2 clause (s) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947). According to the petitioners, the order of reference, Ex. A itself is bad in view of the fact that the very foundation for the existence of a dispute, namely, the employer-employee relationship is non-existent as such, and hence the decision of the State to refer to adjudication is without jurisdiction and is an act outside the scope of authority given to them under the Industrial Disputes Act, 1947. There are several matters referred to in the affidavit to show that, according to the petitioners, the boatmen cannot be considered to be 'workmen' under section 2(s) of the Act.

The State of Kerala has filed a counter-affidavit traversing the material allegations of the applicant and in particular, has also challenged the position taken up by the petitioner that the boatmen are not 'workmen'.

In paragraph 5 of the counter-affidavit it is stated that in making the order of reference, Government cannot be deemed to act as a judicial body and that the reference is made by the Government only in the exercise of its administrative powers. It is further stated in paragraph 6 that the question as to the relationship between the parties as constituting or not constituting the relationship of employer-employee, is a pure question of fact, the decision of which has to be left to the exclusive jurisdiction of the Indusrrial Tribunal and, therefore, the application is premature and has to be dismissed on that sole ground.

It is further reiterated in paragraph 7 that the reference under section 10(1) of the Industrial Disputes Act is only an administrative act of the Government and no writ can be issued in respect of such an act. There are other statements made in the counter-affidavit controverting the position taken up by the applicant in his application.

At the beginning itself, I indicated to the learned Advocate-General appearing for the State and to Mr. G. B. Pai, learned counsel appearing for the petitioner, that before going into the merits of the case, arguments may be confined as to whether the jurisdiction of this Court can be invoked at this stage and I have heard arguments only on this preliminary point of jurisdiction. The question as to whether the boatmen referred to in Ex. A are workmen or not, as to whether there is the relationship of employer and workmen in this case, has neither been argued nor considered by me in these proceedings. I am making this quite clear so that any incidental reference to this question in this judgment should not be understood even in the slightest degree as an adjudication on this point.

It will be seen from Ex. A that the Government are of opinion that an industrial dispute exists between the Management of the Pumba River Factory and the boatmen of the said concern and that in the opinion of the Government, it is necessary to refer the said industrial dispute for adjudication. The notification further states that in exercise of the powers conferred by section 10(1)(c) of the Industrial Disputes Act, 1947; the Government directs that the said industrial dispute be referred for adjudication to the Industrial Tribunal. It contains also the points on which adjudication is to be given by the Tribunal. I am not considering those points, because it is unnecessary at this stage. 'Industrial dispute' has been defined under section 2(k) as meaning any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment, or with the conditions of labour, of any person. The term 'workman' has been defined in section 2(s). The contention of the learned counsel, Mr. G. B. Pai, is that the Government has got power to refer only an industrial dispute which will come within the definition in section 2(k) of the Act. One of the types of industrial disputes under the said definition will be a dispute or difference between the employers and workmen. Unless the relationship of employer and workmen is established, the dispute will not become an industrial dispute under the Act. In this case, the Management has been all along contending that there is no such relationship between the management and the boatmen referred to in Ex. A. The boatmen referred to in Ex.A are also not 'workmen' under the definition of section 2(s) of the Act. The order of reference is bad and without jurisdiction, as the very foundation for the existence of an industrial dispute, namely, the employer-employee relationship is non-existent in this case and, as such, the Government has no jurisdiction under the Act to refer the dispute for adjudication. The Government cannot by a wrong interpretation of the facts of the case get jurisdiction when they have none under the Act. Therefore, the order of the Government, Ex. A, is one passed without jurisdiction and as such, must be quashed by the issue of a writ of *certiorari*. So ran the argument of Mr. G. B. Pai. In the alternative, the learned counsel contended that even if the order of the Government could not be quashed by a *certiorari* proceedings on some ground or other, still a writ of prohibition has been asked for to stop further proceedings before the Industrial Tribunal, because the Tribunal will have no jurisdiction at all to conduct an enquiry on the basis of a reference made by the Government which itself is without jurisdiction.

The learned Advocate-General appearing for the State, on the other hand, contended that the order of the Government, exhibit A passed under section 10(1) of the Act, is an administrative order not amenable to be quashed by proceedings by way of *certiorari* under article 226 of the Constitution. He also contended that the alternative relief of writ of prohibition also cannot issue against the 2nd respondent, because the question sought to be raised in these writ proceedings regarding the absence of a relationship of employer-employee, is essentially a matter for the 2nd respondent to go into and give a decision. Those are all essential questions of fact and exclusively within the jurisdiction of the Tribunal to be gone into and adjudicated upon. The Tribunal has got full jurisdiction over such matters and it cannot be said that the Tribunal is acting in any way without jurisdiction and, as such, no writ of prohibition either can issue.

After hearing the arguments of both the learned Advocate-General and Mr. G. B. Pai, I am of the view that the learned Advocate-General is well founded in his contentions on both the points.

The circumstances under which writs of *certiorari* and prohibition can be issued have been very elaborately dealt with by their Lordships of the Supreme Court in the decision reported in *Hari Vishnu* v. *Ahmed Ishaque*, [1955] 7 F.J.R. 521. Mr. Justice Venkatarama Ayyar, who delivered the leading judgment of the Court, after an exhaustive review of the case law, observes at page 528 as follows:

"......both writs of prohibition and *certiorari* have for their object the restraining of inferior courts from exceeding their jurisdiction, and they could be issued not merely to courts but to all authorities exercising judicial or quasi-judicial functions. But there is one fundamental distinction between the two writs, and that is what is material for the

present purpose. They are issued at different stages of the proceedings. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court for a writ of prohibition, and on that, an order will issue forbidding the inferior court from continuing the proceedings. On the other hand, if the court hears that cause or matter and gives a decision, the party aggrieved would have to move the superior court for a writ of *certiorari*, and on that, an order will be made quashing the decision on the ground of want of jurisdiction.

It might happen that in a proceeding before the inferior court a decision might have been passed, which does not completely dispose of the matter, in which case it might be necessary to apply both for *certiorari* and prohibition—*certiorari* for quashing what had been decided, and prohibition for arresting the further continuance of the proceeding. Authorities have gone to this extent that in such cases when an application is made for a writ of prohibition and there is no prayer for *certiorari*, it would be open to the court to stop further proceedings which are consequential on the decision. But if the proceedings have terminated, then it is too late to issue prohibition, and *certiorari* for quashing is the proper remedy to resort to. Broadly speaking, and apart from the cases of the kind referred to above, a writ of prohibition will lie when the proceedings are to any extent pending and a writ of *certiorari* for quashing after they have terminated in a final decision."

According to Mr. G. B. Pai, the Government will get jurisdiction under section 10(1) only if it is an industrial dispute as defined in the Act, and one of the essential elements that will go to make up an industrial dispute is that such a dispute or difference must be between employers and workmen. Unless the relationship of employer and workmen is established, there is no industrial dispute and the Government does not get any jurisdiction to refer under section 10(1).

It is in considering this contention that the question arises as to whether the Government, in referring a dispute under section 10(1), acts under its administrative powers, or whether it acts in a judicial or in a quasi-judicial capacity; and the further question will arise whether a writ of prohibition can issue against the Tribunal. According to Mr. G. B. Pai, the jurisdiction of the Tribunal depended on a valid reference under section 10(1)(c) of the Act and the reference could be valid only if there was a dispute which in fact, and in law amounted to an industrial dispute. In this case, the Government have committed an error both in fact and in law in holding that there is an employer-employee relationship and on this mistaken assumption, they have made the reference which is incompetent in law. Once it is established that there is no relationship of employer-employee in this case, there is no industrial dispute and the reference itself is without jurisdiction, and therefore, the order of the Government has to be quashed.

Mr. G.B. Pai relies upon the decision of the Supreme Court in *Newspapers Ltd.* v. *State Industrial Tribunal,* [1957] 12 F.J.R. 129, and in particular, the observations of their Lordships at page 139. According to him, the observations of their Lordships make it clear that a party has a right to satisfy the Court that what was referred by the Government was not an industrial dispute at all and that is what he is attempting to do in this case. I am not able to accept the contention of the learned counsel based on these observations of the Supreme Court. It must be remembered, in that case, their Lordships were considering the validity of an award passed by an Industrial Tribunal on the basis of a reference by the U.P. Government. The controversy in that case was as to whether a dispute between an employer and a single workman falls within the definition of industrial dispute as used in the U.P. Act. In that case a lino-typist was dismissed from service by the appellant company. His case was not taken up by any union of workers of the company, nor by any of the unions of workmen employed in similar trades. But it was taken up by the U.P. Working Journalists Union with which the lino-typist had no connection whatsoever. The U.P. Government made a reference to the Industrial Tribunal on the ground that there was an industrial dispute between the appellant therein and its workmen. The State Industrial Tribunal decided in favour of the lino-typist and the said order was confirmed on appeal by the Labour Appellate Tribunal. An application under article 226 for quashing the said order was dismissed by the Allahabad High Court and the question came up before the Supreme Court on a certificate under article 133 clause 1 (c) of the Constitution.

The main contention before their Lordships was that the order of the Industrial Tribunal should be set aside inasmuch as there was no industrial dispute within the meaning of that expression as used in the U.P. Industrial Disputes Act, 1947, (Act XXVII of 1947), and that consequently the U.P. Government had no power to make the reference in question. Their Lordships after considering the scheme of the Act and the interpretation given to the corresponding phrase 'trade dispute' in English Law and 'industrial dispute' in Australian law and the leading decisions bearing on the point, came to the conclusion that the decided cases to the extent that they take a contrary view, *i.e.,* an individual dispute comprised an industrial dispute must, unless there is something peculiar as to facts, be held to have been wrongly decided

It is after arriving at this conclusion that their Lordships say as follows:

"In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an 'industrial dispute' at all and, therefore, the jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge. *The State of Madras* v. *C. P. Sarathy* [1952] 4 F. J. R. 431."

It will be seen that their Lordships were not at all dealing with a question as to the stage at which a reference made by the Government can be challenged and found to be bad. In that case, reference had been made and an award also had been passed which was confirmed by the Labour Appellate Tribunal and by the High Court. It was in proceedings initiated under article 226 after the award had been made, that this question was gone into and considered. In my opinion, their Lordships are only reiterating the view expressed in their previous decision in the *State of Madras* v. *C. P. Sarathy* [1952] 4 F.J.R. 431, on which the learned Advocate-General very strongly relies. That decision will be dealt with by me when dealing with the contentions of the learned Advocate-General.

These observations, in my opinion, make it very clear that the Government in making a reference under the Industrial Disputes Act is acting only in the exercise of its administrative powers. Notwithstanding that the reference by the Government is under its administrative powers, their Lordships emphasized, that a party has got a right to show that what was referred was not an industrial dispute at all, and, therefore, the jurisdiction of the Industrial Tribunal to make the award based upon such a reference can be questioned. The reference to their Lordships' previous decision makes this position quite clear.

Therefore, I am not able to accept the contention of Mr. G. B. Pai that the said decision lays down that a party is entitled to challenge the reference itself at this stage.

Mr. G. B. Pai referred to two decisions of the Madras High Court one of Mr. Justice Rajagopalan in *Radhakrishna Mills* v. *State of Madras,* [1956] 9 F.J.R. 125, and the other of Mr. Justice Rajagopala Ayyangar in *Abdul Kader Sahib* v. *State of Madras,* [1956] 10 F.J.R. 158. Mr. Justice Rajagopalan in the decision reported in *Radhakrishna Mills* v. *State of Madras,* [1956] 9 F.J.R. 125, had to deal with an application for a writ of *certiorari* to quash a reference made by the State of Madras under section 10(1)(c) of the Industrial Disputes Act. One of the points raised in the application was that a dispute between an individual worker and the management was not an industrial dispute as defined under section 2(k) of the Act.

From the reports, it is seen, that the workers' union contended that none of the questions raised in the application could be investigated in *certiorari* proceedings, as the order of reference under section 10(1)(c) by the Government was an administrative act to correct which, no writ of *certiorari* could issue. The learned Judge relied upon the passage from the judgment of the learned Chief Justice of the Supreme Court in the decision reported in *The State of Madras* v. *C. P. Sarathy* [1952] 4 F.J.R. 431, and accepted the contention of the workers' union and held that the order of reference by the State cannot be quashed.

It is further seen that the applicants before the learned Judge amended their prayer and asked for a writ of prohibition against the Industrial Tribunal. The learned Judge negatived the contention that there was no industrial dispute and held that the Tribunal has jurisdiction to proceed with the enquiry. Nevertheless, the learned Judge again considered the question as to the validity of the reference under section 10(1)(c). The learned Judge observes at page 128 as follows:

"The next question is, was the reference under section 10(1)(c) valid. The extreme contention, that the validity of what was an administrative act, done no doubt in the exercise of a statutory power conferred on the Government under section 10(1)(c), could not be questioned even for deciding whether a writ of prohibition could issue to the Industrial Tribunal, has to be rejected. What I have to consider is whether the Tribunal had jurisdiction to adjudicate the industrial dispute referred to it. If it had no jurisdiction, a writ of prohibition could issue even as a writ of *certiorari* could issue to quash an award of the Tribunal if it had acted without jurisdiction. Absence of an industrial dispute would obviously be sufficient to negative jurisdiction. The validity of the order of reference is open to examination by this Court to decide whether the Tribunal had jurisdiction. There was an industrial dispute in this case, as I have already pointed out."

It is on the passage extracted above, that Mr. G. B. Pai relies very strongly to show that the validity of a reference can be canvassed even at this stage in these proceedings. *Prima facie*, these observations may appear to support the contention of Mr. G. B. Pai. But it will be seen that in the next paragraph dealing with the contention of the workers' union on this point, the learned Judge observes that it is not necessary for him to pronounce any opinion on the soundness or otherwise of the

contention of the workers' union to dispose of the questions at issue in the proceedings before the learned Judge. The learned Judge further observes that in that case, an industrial dispute did exist and further held that it is left to the discretion of the Government to refer the dispute for adjudication under section 10(1) and the Government has to be satisfied about the same. Of the factual existence of the industrial dispute and of the expediency of referring that dispute, the learned Judge says, the Government is the sole judge. Dealing with the contention of the absence of notice by Government, the learned Judge held that the issue of an order under section 10(1)(c) itself is an administrative act and does not amount to a judicial or quasi-judicial determination of the rights of any of the parties and the failure to give notice to the parties does not vitiate the exercise of statutory power vested in the Government by section 10(1)(c) of the Act. The quotation extracted above will only show that the learned Judge was considering the question from the point of view of issuing a writ of prohibition to the Tribunal.

I have dealt with this judgment fairly, because the learned counsel, Mr. G. B. Pai, placed very great reliance on this judgment. In my opinion, the observations relied upon by the learned counsel in this judgment, have to be read in its context and with further reasoning of the learned Judge as to the administrative character of an order under section 10(1)(c). The judgment of the learned Judge taken in its entirety does not, in my opinion, lead to the conclusion that the Court can interfere as such with a reference made under section 10(1)(c) by the Government. Anyhow, it is unnecessary for me to deal more with this decision, as the learned Judge himself has explained the scope of this judgment in a later decision of his reported in *Kaleswari Handloom Factory* v. *State of Madras* [1957] 13 F.J.R. 171. The learned Judge has dealt with this point more fully in the latter judgment and restricted the scope of his decision in *Radhakrishna Mills* v. *State of Madras*, [1956] 9 F.J.R. 125. In fact, the learned Advocate-General places very great reliance on this latter judgment of Mr. Justice Rajagopalan in *Kaleswari Handloom Factory* v. *State of Madras*, [1957] 13 F.J.R. 171, and I will deal with that decision in due course.

The next decision relied upon by Mr. G. B. Pai is that of Mr. Justice Rajagopala Ayyangar in *Abdul Kader Saheb* v. *State of Madras*, [1956] 10 F.J.R. 158. The application before the learned Judge was under article 226 for the issue of a writ of prohibition directing the Industrial Tribunal therein to forbear from proceeding with an enquiry in pursuance of a reference made by the State Government under section 10(1)(c). The contention raised before the learned Judge was that there was no relationship of employer-employee between the parties and, as such, there was no industrial dispute and in consequence, the reference made by the Government cannot be sustained. The learned Judge at page 160 observes as follows:

"It does not need much argument to show that under the Industrial Disputes Act the existence of the relationship of employer and employee is necessary before there can be any industrial dispute, and existence of an industrial dispute is necessary before there can be any valid reference by Government of such dispute to an Industrial Tribunal. When the petitioner proved that in the present case there was no such relationship between the petitioner and the workers who were impleaded as third respondent, the Government in their counter-affidavit stated in paragraph 2 that 'if there does not exist such a relationship (that is as employer and employee) his contention that there was no industrial dispute and that the reference made by the Government as if there was such a dispute was without jurisdiction may be correct."

Nothing more has been brought before me either by the Government or by the workers to whom notices have been issued in this writ petition to show that the relationship between the petitioner and the workers was that of an employer and employee. In these circumstances, I am clearly of the opinion that the reference of the alleged dispute to the Industrial Tribunal is without jurisdiction and the reference is quashed."

Naturally, Mr. G. B. Pai strongly urged the acceptance of this decision as laying down the principle that if the Court is satisfied about the absence of the relationship of an employer and employee it can quash the order of Government making the reference and thus put an end to the proceedings here itself. In my view, the decision of Mr. Justice Rajagopala Ayyangar is only one of those extreme cases where *ex facie*, on admitted facts, a Court can immediately come to a conclusion one way or the other and finally dispose of the matter once for all even at the stage of a reference under section 10(1)(c). It is further seen that the applicant was able to satisfy the learned Judge there about the non-existence of the relationship of employer and employee in that particular case, and the workers who were parties before the learned Judge and the Government stated that if there was no such relationship as employer and employee, the applicant's contention about the validity of the reference by Government as being without jurisdiction may be correct. Evidently, the parties had nothing more to say on that matter excepting the materials then placed before the learned Judge. In fact, the learned Judge himself says that nothing more was brought to his notice either by the Government or by the workers to

whom notices had been issued to show that the relationship between the petitioner and the workers there was that of an employer and employee. It is under these circumstances that the learned Judge held the reference itself as being without jurisdiction. But it will be seen that the question of the stage at which the matter could be interfered with was neither argued by any party nor considered by the learned Judge. In fact, even the application itself was not to quash an order of reference but only to issue a writ of prohibition forbearing the Tribunal from proceeding with the enquiry. Therefore this judgment will not help Mr. G. B. Pai.

In so far as the case before me is concerned, the matter is entirely different. The State and the Management are not agreed as to the existence or non-existence of the relationship of employer and employee in this matter. According to the Management, there is no such relationship, but according to the State, there is such a relationship. But the most curious feature is that the persons who will be vitally interested in opposing the contention of the management, namely, the boatmen represented by the Dakshina Bharatha Navika Thozhilali Union referred to in Ex. A have not been made parties in this application. Therefore, it is not possible to know what their contention is going to be. Before Mr. Justice Rajagopala Ayyangar, the workers were also parties and actively took part in the writ proceedings before the learned Judge. It is in that connection, that the learned Judge observes that the workers there have not placed any further material before the Court to controvert the statements of the applicants therein. As I am not going into the merits of the contentions of the Management, I am not dealing with this matter any further. It is enough to state that Government does not accept the contention of the Management about the absence of the employer and employee relationship.

Therefore, the circumstances existing before Mr. Justice Rajagopala Ayyangar do not exist before me. Mr. G. B. Pai referred to a decision of Mr. Chagla, Chief Justice, and Mr. Justice Desai of the Bombay High Court in *F. T. and R. Co.* v. *K. P. Krishnan*, A.I.R. 1956 Bombay 273. That decision relates to a converse case as to whether a *mandamus* can issue when the Government refuses to make a reference under section 12(5) of the Industrial Disputes Act and that decision has no bearing on the point under consideration. In fact, the learned Chief Justice at page 275 of the reports refers to the decision of the Supreme Court in *The State of Madras* v. *C. P. Sarathy*, [1952] 4 F.J.R. 431, and observes that the Supreme Court was emphasising the wide powers of the Government to refer a dispute under section 10(1) in the interest of industrial peace and they would have supported the order of refusal to make a reference, if it had been stated to be in the cause of industrial peace. But, in the absence of such evidence, the learned Judges were not inclined to grant such an absolute power in the Government to refuse to make a reference under section 12(5). Therefore, this decision does not in any way help the contentions of Mr. G. B. Pai.

The two other decisions referred to by Mr. G. B. Pai are those of the Patna High Court reported in *New India Assurance Co. v. Central Government*, [1955] 8 F.J.R. 326, and *South Bihar Sugar Mills Ltd. v. State of Bihar and Others*, [1956] II L. L. J. 500. The decision of Ramaswami and Sarjoo Prosad, JJ., in *New India Assurance Co. v. Central Government* [1955] 8 F.J.R. 326, again related to the question whether a dispute between an individual workman and a management can be an industrial dispute or not within the meaning of the Act. The Central Government had referred the industrial dispute under section 10(1)(c) of the Act for adjudication by the Tribunal. An application for the issue of a *certiorari* to call up the records of proceedings pending before the Tribunal and for quashing the same on the ground that there was no jurisdiction on the part of the Central Government to make the reference was made to the High Court. The main contentions urged before the High Court was on the question as to whether a dispute between an individual workman and the Management can be an industrial dispute. There appears to have been no dispute on the facts and the whole decision related to the interpretation of the Act. The Government, the management, the employee and the employee's association were all parties in the writ proceedings. Absolutely no controversy about facts arose before the learned Judges and the controversy centred round only the various sections of the Industrial Disputes Act. The learned Judges, on an interpretation of the Act, and on the admitted facts, came to the conclusion that the dispute does not fall within the expression 'industrial dispute' as defined in section 2(k) of the Act and in consequence, the learned Judges further held that the proceedings initiated under section 10(1) were without jurisdiction and that the reference made by the Government under section 10(1) also was beyond its jurisdiction and *ultra vires*. It will be seen that even in this case, the application related to only challenging the record of the proceedings before the Tribunal and for quashing the same and in view of the facts being beyond controversy, the learned Judges quashed the proceedings before the Tribunal on the ground that the reference by the Government itself was one without jurisdiction. Even here, the stage for the issue of the writ was not considered and the question of issuing a writ quashing the order of the Government itself was not separately considered.

In the decision of the Patna High Court reported in *South Bihar Sugar Mills Ltd. v. State of Bihar & Others*, [1956] II L. L. J. 500, a similar question appears to have arisen. That was also a case of an individual dispute; and the same question as in *New India Assurance Co. v. Central Government*, [1955] 8 F.J.R. 326, arose in this case also. The application was for quashing the reference of the Government and also for prohibiting the Tribunal from proceeding with the enquiry in consequence of the reference made by the Government. Even there, the management, the Government, the employee and the workers' Union were all represented before the Court. The facts were not in dispute and it was again a case of interpreting the sections of the Act. The learned Judges followed their previous decision in *New India Assurance Co. v. Central Government*, [1955] 8 F.J.R. 326, and came to the conclusion that there is no industrial dispute as defined in section 2(k). In this view, the learned Judges prohibited the Tribunal from proceeding with the inquiry. But the learned Judges held that they cannot quash the reference made by the State Government.

In my opinion, the two Patna decisions relied upon by Mr. G. B. Pai do not advance his case any further. All parties, namely, the Government, the management, the employee and the employees' union were parties before the High Court in both the decisions and there was no controversy about the facts and as such, no facts required to be investigated. The only question was about the interpretation of the Act. These two cases again are only instances where parties were able to satisfy the Court even *ex facie* that the reference by the Government cannot be sustained under the clear terms of the Act.

It will be further seen that in the decision reported in *South Bihar Sugar Mills Ltd. v. State of Bihar and Others*, [1956] II L. L. J. 500, the application was for quashing the notification of the Government making a reference and also for issue of a writ of prohibition against the Tribunal from proceeding with the enquiry consequent on the reference by the Government. It was contended on behalf of the State that the order of reference made by the Government is an administrative act and not amenable for being corrected under *certiorari* proceedings. No decision was given on this point as will be seen from the judgment of Mr. Justice Sinha at page 503:

"I am, however, not called upon in the present case to decide as to whether the action of the State Government, in referring the dispute to the Tribunal under section 10(1) of the Act, is merely an administrative act, or a judicial or a quasi-judicial act, because this application can be disposed of without deciding that question."

The learned Judges also observe that in *New India Assurance Co.* v. *Central Government*, [1955] 8 F.J.R. 326, the question as to the nature of the act of the State Government in making the reference was not raised. Mr. Justice Sinha further says:

"I would, therefore, refrain from deciding the question as to whether the State Government in referring the dispute, under section 10(1) of the Act, was acting in a judicial or quasi-judicial capacity or its action in so referring was merely an administrative act."

Therefore, it will be clearly seen that the learned Judges never adverted to the question as to whether a writ can issue against the order of the State Government making a reference. It is also finally seen that the learned Judges appear to realise the force of this contention as will be seen from their observation at page 503:

"In the present case, even though this Court may not be in a position to quash the reference made by the State Government by issuing a writ of *certiorari*, there is no doubt that this Court can issue a writ of prohibition by quashing the proceedings before the Tribunal, which has no jurisdiction to proceed with the reference and adjudicate upon the rights of the parties."

In this view, and in view of the admitted facts before the learned Judges, the Court there issued a writ of prohibition to the Industrial Tribunal.

On the other hand, the learned Advocate-General contends that whatever may be the view taken by the Government, it has got the jurisdiction to refer the dispute as an industrial dispute, once it is satisfied that there is an industrial dispute, with all its implications. Notwithstanding the reference, it is open to the petitioners to contend before the Tribunal that there is no industrial dispute and, as such, challenge its jurisdiction to go into the matter. But that is something totally different from saying that the order of the Government itself must be quashed or the proceedings before the Tribunal must be stopped forthwith even now.

32. The learned Advocate-General very strongly relies upon the judgment of the Supreme Court in *The State of Madras* v. *C. P. Sarathy*, [1952] 4 F.J.R. 431. In that case, the proceedings started by way of charge-sheeting the 1st respondent there for failure to implement certain terms of award made by the Industrial Tribunal under the Act. An objection was raised by the 1st respondent before the magistrate that the latter has no jurisdiction to proceed with the inquiry because the award, in the non-compliance of which the prosecution was based, was *ultra vires* and also void on the ground that the reference by the Government under section 10 of the Act was itself not in accordance

with the provisions of the Act. The magistrate declined to deal with the objection and proceedings were initiated by the 1st respondent under article 226 for quashing the proceedings which were before the magistrate. The Madras High Court accepted the contentions of the respondent and quashed the proceedings. The State of Madras took up the matter to the Supreme Court and contended that the question whether there existed an industrial dispute when the Government made the reference, was an issue of fact which the High Court had no jurisdiction to negative at the preliminary stage even before evidence was recorded by the magistrate. Their Lordships held that the Government had jurisdiction to make the reference and that the award made in consequence of that reference was also binding on the respondent therein. Then follows the significant observation of their Lordships at page 440:

"This is, however, not to say that the Government will be justified in making a reference under section 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry......... ....But, it must be remembered that in making a reference under section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters."

These observations, if I may say with respect, forcibly bring out the view of their Lordships that the Government is acting only in its administrative jurisdiction when exercising powers under section 10(1) of the Industrial Disputes Act and Courts cannot canvass the order of reference very closely to see if there was any material before the Government to support its conclusion, as would be the case if the Government's order of reference was a judicial or quasi-judicial determination. If I may say so again with respect, their Lordships sufficiently safeguard the right of a party who wants to impugn the award passed upon such a reference; and that is the right of the party aggrieved in challenging the award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act and that in consequence the Tribunal had no jurisdiction to make the award.

Therefore, in any award that may be passed on a reference made by the Government, the party is entitled to challenge not only the award as such but also the basis of the award namely, the order of reference by the Government.

Their Lordships have referred with approval to this decision in their later decision reported in *Newspapers Ltd.* v. *State Industrial Tribunal*, [1957] 12 F.J.R. 129; A.I.R. 1957 S.C. 539, already referred to. The learned Advocate-General also relied upon the judgment by Mr. Justice Rajagopalan in *K. Motor Service Ltd.* v. *State* [1957] 12 F.J.R. 389. In that case, the applicants wanted to have a decision from the High Court on the question as to whether there was an industrial dispute as defined in the Act to justify a reference by the Government to the Tribunal for adjudication. The learned Judge rejected the application on the ground that the validity of the reference under section 10(1)(c) by the Government cannot be challenged in an application for the issue of a writ of *certiorari* because, in making the order of reference, Government was only doing a ministerial or administrative act. The learned Judge observes at page 390:

"It has been held in more cases than one that despite the fact that the validity of the reference itself cannot be challenged by an application for the issue of a writ of *certiorari* to quash the order of reference, the question whether a given dispute is an industrial dispute has yet to be decided.

It is primarily for the Industrial Tribunal to decide that issue. If there is no industrial dispute at all as defined by the Act, the Industrial Tribunal would obviously have no further jurisdiction to adjudicate any dispute."

The learned Judge further stated that no writ of prohibition or *mandamus* can issue, as the Tribunal has jurisdiction to decide the question whether an industrial dispute existed.

The learned Advocate-General further very strongly relied upon the latest judgment of Mr. Justice Rajagopalan reported in *Kaleswari Handloom Factory* v. *State of Madras*, [1957] 13 F.J.R. 171; 70 Law

Weekly 865. In that decision the learned Judge has, as already mentioned, explained the scope of his previous decision in *Radhakrishna Mills* v. *State of Madras*, [1956] 9 F.J.R. 125, and he has specifically stated that in the earlier decision he did not consider the stage at which those matters are to be considered. In the latest case, the point was as to whether the High Court can go into the question about the validity of a reference of the Government under section 10(1) even at the initial stage and as to whether a writ of prohibition can issue as against the Industrial Tribunal. Before the learned Judge, the applicants very strongly relied upon his previous judgment reported in *Radhakrishna Mills* v. *State of Madras*, [1956] 9 F.J.R. 125, as also the judgment of Mr. Rajagopala Ayyangar reported in *Abdul Kader Sahib* v. *State of Madras*, [1956] 10 F.J.R. 158. The learned Judge has considered the scope of those two decisions and laid down the principles to be borne in mind in deciding a matter at that preliminary stage.

The State of Madras had made a reference under section 10(1) to the Industrial Tribunal for enqiuring into an industrial dispute and in consequence of that reference, the Industrial Tribunal was beginning to start the inquiry.

The applicants challenged the jurisdiction of the State Government to refer the dispute and they contended that the weavers there, were not workmen, as defined by section 2(s) of the Act. In consequence, they contended that what was referred for adjudication was not an industrial dispute as defined under section 2(k). As stated earlier, the application was for issue of a writ of prohibition restraining the Tribunal from proceeding with the inquiry. The respondents therein including the Government contended that it was not the stage when a writ of prohibition can issue as regards the Tribunal.

The learned Judge referred with approval to his previous judgment in *K. Motor Service Ltd.* v. *State*, [1957] 12 F.J.R. 389, already referred to. Regarding his decision in *Radhakrishna Mills* v. *State of Madras*, [1956] 9 F.J.R. 125, the learned Judge states (at page 867 of the Law Weekly Report, that he was not concerned in that case, with the stage at which a writ of prohibition could issue. The learned Judge further says that there is really no conflict between the views recorded by him in his previous decisions. After refering to the judgment of Mr. Justice Rajagopala Ayyangar in *Abdul Khader Sahib* v. *State of Madras*, [1956] 10 F.J.R. 158, the learned Judge observes:

"In each fo these cases the decision was based on the finding that the dispute that was referred under section 10(1)(c) of the Act for adjudication by the Tribunal was not an industrial dispute at all as defined by section 2(k) and that, therefore, the Tribunal had no jurisdiction to proceed with the adjudication. Neither Rajagopala Ayyangar, J, nor I had occasion then to determine whether the Tribunal itself had jurisdiction to decide whether the dispute that was referred to it for adjudication was an industrial dispute. It is true that in each of these cases the Court examined the facts pleaded and proved by affidavits and came to the conclusion that what had been referred was not an industrial dispute. But, I can look upon neither decision as having a direct bearing upon the question, whether this Court has exclusive jurisdiction even in proceedings under article 226 of the Constitution to decide whether what was referred was an industrial dispute, and whether the Industrial Tribunal has no jurisdiction to try even as a preliminary issue the question whether what was referred was an industrial dispute."

Dealing with the contention that the jurisdiction of the Tribunal depended on a valid reference under section 10(1)(c) of the Act and that the reference could be valid only if there was a dispute which in fact and in law amounted to an industrial dispute and that the Tribunal had no jursidiction to adjudicate on the validity of the reference under section 10(1)(c) the learned Judge held :

"The jurisdiction of this Court, even in proceedings under article 226 of the Constitution to decide, where it is necessary to do so, whether a given dispute is an industrial dispute cannot be doubted. That does not necessarily imply that the Industrial Tribunal has no jurisdiction to try such an issue should it become necessary to do so in the proceedings before it. In my opinion the Tribunal had that jurisdiction. If it comes to a right conclusion that it is an industrial dispute, it has jurisdiction to proceed further with the adjudication of that dispute. If, however, it comes to the conclusion that the dispute is not an industrial dispute, it can have no jurisdiction to proceed any further. As a statutory Tribunal whose jurisdiction is to be sought within the terms of the statute which created it, it cannot give itself jurisdiction by deciding wrongly such a jurisdictional issue. If the Tribunal wrongly decides such a question, the error can be corrected by appropriate proceedings under article 226 of the Constitution."

The learned Judge further observes :

"With reference to an industrial dispute, an error in the assumption of jurisdiction by the Industrial Tribunal could be proved by showing that the decision of the Tribunal on the jurisdictional issue, whether the dispute that was referred to it for adjudication was an industrial dispute was erroneous.......................

If I am right in my view that the Industrial Tribunal has jurisdiction to decide whether the dispute referred to it was an industrial dispute as defined by section 2(k) and as incidental thereto decide whether the weavers represented by their Union, the third respondent in the proceedings before me, were workmen as defined by section 2(s) of the Act, it should be obvious that no writ of prohibition can issue to restrain the exercise of that jurisdiction."

After referring to the observations of the Supreme Court in *Hari Vishnu* v. *Ahmed Ishaque*, [1955] 7 F.J.R. 521, regarding the scope of writs of *certiorari* and prohibition, the learned Judge observes at page 178 as follows :

"On the application of these principles it should be clear that, if an Industrial Tribunal wrongly decided the jurisdictional issue and comes to the conclusion that the dispute is an industrial dispute when it is not, the aggrieved party can ask for the issue of a writ of prohibition to restrain the Industrial Tribunal from proceeding further in the matter. The aggrieved party can also ask for a writ of *certiorari* to quash the proceedings so far taken resulting in the erroneous decision, that what was referred was an industrial dispute."

The learned Judge again at page 179 observes :

"There is nothing in the scheme of the Industrial Disputes Act which denies jurisdiction to the Industrial Tribunal to decide whether the dispute referred to it for adjudication is an industrial dispute. In the circumstances of this case, where the truth of the facts alleged by the petitioner and at least not admitted by respondents has yet to be investigated, the Industrial Tribunal would appear to be the appropriate forum for such investigation. It has jurisdiction to undertake such investigation and to decide upon proof of the materials placed before it, the question at issue."

The learned Judge rejected the contention of the counsel for the petitioner that the Tribunal had no jurisdiction to go into the validity of a reference under section 10(1)(c) of the Act and observed as follows at page 179:

"Despite the order of reference under section 10(1)(c) an Industrial Tribunal has jurisdiction—in fact, it will be its duty—to decide, if required to do so, whether the dispute that was referred under section 10(1)(c) was an industrial dispute within the meaning of section 2(k) of the Act."

The learned Judge has also quoted from Halsbury's *Laws of England*, III Edition, Vol. II, paragraphs 218 and 219 to the effect that prohibition goes as soon as the inferior Tribunal proceeds to apply a wrong principle of law when deciding a fact on which jurisdiction depends and that in any event, where the jurisdiction of the inferior court depends on the judicial determination of the facts the order does not lie until the Court has wrongfully given its jurisdiction.

To quote Bailey, Vol. II, *Law of Jurisdiction*, at page 668:

"Prohibition cannot be made the drag-net by means of which all controverted and litigated questions between individual suitors may be brought into Court and tried and determined, for its office, as we repeat, is to prevent the exercise by a Tribunal possessing judicial powers or jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance. It is a preventive rather than remedial process."

I have quoted fairly *in extenso* from the judgment of Mr. Justice Rajagopalan in *Kaleswari Handloom Factory* v. *State of Madras*, [1957] 13 F.J.R. 171; 70 Law Weekly, 865, as, if I may say so with respect, the learned Judge has very exhaustively dealt with the jurisdiction to be exercised by Courts in the matter of issue of writs of prohibition. I respectfully agree with the reasoning of the learned Judge on all points covered by that decision.

There is only one more decision cited by the learned Advocate-General and that is the decision of the Supreme Court in *D.C. Works Ltd.* v. *State of Saurashtra*, [1956] 11 F.J.R. 439. Thequestion before their Lordships was as to the interpretation of the expression "workman" as defined in section 2(s) of the Industrial Disputes Act. At page 445 their Lordships observe:

"The question whether the relationship between the parties is one as between employer and employee or between master and servant is a pure question of fact."

The reasoning of the learned Judges show that this is a question which the Industrial Tribunal has jurisdiction to decide.

The following passage in paragraph 116 of Halsbury's *Laws of England*, III Edition, Vol. XI at page 59, also brings out the true functions of inferior Tribunals:

"The jurisdiction of an inferior Tribunal may depend upon the fulfilment of some condition precedent (such as notice) or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the inferior Tribunal has to try, and the determination whether it exists or not is logically and temporally prior to the determination of the actual question which the inferior Tribunal has to try. The inferior Tribunal must itself decide as to the collateral fact; when, at the inception of an inquiry by a Tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the Tribunal has to make up its mind whether it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not..............an inferior Tribunal cannot, by a wrong decision with regard to a collateral fact, give itself a jurisdiction which it would not otherwise possess or deprive

itse lf of a jurisdiction which it otherwise would possess. If it purports to do so, it may be restrained or compelled (as the case may be) by an order of prohibition or *mandamus*...................."

I may also state that Mr. G. B. Pai referred to the decision of Mr. Justice Subramania Ayyar in *S. V. Oil Co.* v. *Industrial Tribunal*, [1952] 4 F.J.R. 101, which, I am informed, has been confirmed on appeal by a Division Bench. But that was also an instance of a dispute in respect of a single individual. The application itself was for quashing the proceedings pending before the Tribunal and in that case also a decision depended really on an interpretation of the Act. In view of the admitted facts, and learned Judge held that the reference was *ultra vires* and the proceedings started by the Tribunal were also *ultra vires*. The said decision is similar to the decisions relied upon by Mr. G. B. Pai and discussed earlier in the judgment, and it does not take us any further.

On a consideration of the principles laid down by the decisions of the Supreme Court in *Madras State* v. *C. P. Sarathy*, [1952] 4 F.J.R. 431, and *Newspapers Ltd.* v. *State Industrial Tribunal*, [1957] 12 F.J.R. 129, it follows that the State, in making a reference under section 10(1)(c) of the Act, is acting only in its administrative jurisdiction and a reference so made, cannot be challenged in proceedings by way of writ of *certiorari*. To the same effect is the judgment of Mr. Justice Rajagopalan in the decision reported in *K. Motor Service Ltd.* v. *State*, [1957] 12 F.J.R. 389, and further confirmed by the learned Judge in his later judgment in *Kaleswari Handloom Factory* v. *State of Madras* [1957] 13 F.J.R. 171.

In this case, the parties before me are at variance on the question of the existence or non-existence of the relationship of employer and employee. The boatmen, or the Union referred to in Ex. A are not parties to these proceedings. Therefore, it is not possible for me, *ex facie*, to decide as in the Patna cases and in the case decided by Mr. Justice Rajagopala Ayyangar, that the order Ex. A is in any way beyond the jurisdiction of the Government and as such, no writ of *certiorari* can issue quashing that order as prayed for. Then the question arises whether the alternative prayer for the issue of a writ of prohibition against the Tribunal can be granted.

The Supreme Court in the decision in *Hari Vishnu* v. *Ahmed Ishaque*, [1955] 7 F.J.R. 521, has laid down the principles as to when a writ of prohibition can be issued. Mr. Justice Rajagopalan in *Kaleswari Handloom Factory* v. *State of Madras* has also very exhaustively dealt with the principles regarding the issue of a writ of prohibition. The decision of the Supreme Court in *D. C. Works Ltd.* v.

State of Saurashtra, [1956] 11 F.J.R. 439, clearly indicates that it is within the jurisdiction of the Tribunal to decide this question about the existence or otherwise of the employer and employee relationship. There is nothing in the Act which denies jurisdiction to the Tribunal to decide these questions. As already stated, there is keen controversy on this point between the Government and the management. But parties who will also be vitally interested in a decision on this question namely, the boatmen represented by the Dakshina Bharatha Navika Thozhilali Union referred to in Ex. A are not parties in these proceedings. As observed by Mr. Justice Rajagopalan, the management can pursue the appropriate remedies avaliable to them in law from any decision that may be given by the Tribunal on this jurisdiction issue. Therefore the prayer for the alternative relief of the issue of the writ of prohibition against the 2nd respondent cannot also issue in the circumstances of this case.

Reference may also be made to another judgment of Mr. Rajagopalan reported in *Paramount Films of India Ltd., Madras Branch* v. *State of Madras* [1957] 14. F.J.R. 417. There the application was for issuing a writ of *certiorari* to quash the order of reference made by the State of Madras under section 10(1)(c) of the Act. The learned Judge in rejecting that application stated that an order under section 10(1)(c) is only an administrative order and, therefore, outside the purview of correction by the issue of a *certiorari*. The learned Judge also stated that a writ of prohibition either cannot be issued to the Industrial Tribunal. The learned Judge further observes:

"It is open to the petitioner to raise the question he has raised here, that there was in law no industrial dispute at all for adjudication even as a preliminary issue by the Industrial Tribunal. The Industrial Tribunal has to decide such a jurisdictional issue in the first instance...... ....As I said, the order the petitioner seeks to avoid is the order of reference under section 10(1)(c) of the Industrial Disputes Act, 1947, and for that no application for the issue of a writ of *certiorari* can lie."

I respectfully agree with the reasoning contained in this judgment.

In the result, this application fails even on the preliminary point and is dismissed with costs of the 1st respondent State fixed at Rs 50. The rule *nisi* issued by this Court on 14th November, 1956, is discharged.

As mentioned at the beginning of this judgment, this application is disposed of only on the question of jurisdiction. The other question, namely, as to the existence or non-existence of the employer and employee relationship and as to whether the boatmen referred to in Ex. A, are workmen and as to whether the dispute referred by the Government under Ex. A is an industrial dispute within the meaning of section 2(k) of the Act, are not at all even considered in this judgment.

The question as to whether the boatmen referred to in Ex. A are workmen within the definition in section 2(s) of the Act and the further question whether there is the relationship of employer and employee in this case so as to make the dispute an industrial dispute within the meaning of that definition in section 2(k) of the Act will be decided as preliminary issues by the Industrial Tribunal, the 2nd respondent herein. The Tribunal will direct the parties to file statements and also adduce evidence oral and documentary strictly limited only to this question in the first instance. The Tribunal will decide and give a finding on these points in the first instance and adjourn the hearing, consequent upon its decision on these points, for a month.

[IN THE PUNJAB HIGH COURT.]

METRO MOTORS PRIVATE LTD.

v.

REGIONAL PROVIDENT FUND COMMISSIONER, PUNJAB AND OTHERS.

A. N. Bhandari, C. J., and Dulat, J.

April 11, 1958.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 1 (3)—APPLICABILITY OF ACT—MOTOR CAR SHOP WITH SERVICE STATION—WHETHER 'FACTORY' — BODY BUILDING WORKSHOP EMPLOYING LESS THAN 50 PERSONS IN SEPARATE PREMISES—WHETHER ACT APPLIES TO BOTH PREMISES AS ONE FACTORY.

The petitioners had a shop for the sale of motor cars and attached there to was a service station where cars were serviced and repaired. They also had, about half a mile from these premises, a workshop where bodies for trucks and buses were made by carpenters and about 15 persons were employed. The Employees' Provident Fund authorities sought to apply the provisions of the Employees' Provident Funds Act, 1952, to the petitioners treating both the premises as one 'factory'. On a petition for a writ against the authorities: Held, *(i) that the shop and service station would not come within the purview of the Act as no manufacturing process was carried on there and (ii) that the workshop by itself fell within the definition of 'factory' as defined in the Act as the building of bodies was a manufacturing process but the Act would not apply as the number of persons employed therein was less than 50.*

Civil Writ No. 1 of 1957.

B. R. Tuli for the management.

L. D. Kaushal, Dy. Advocate-General. for the respondents.

JUDGMENT

DULAL, J.—The Regional Provident Fund Commissioner, Punjab, sent a notice to the petitioner-company, Metro Motors Private Ltd., demanding contribution to the Employees' Provident Fund Scheme, and the petitioner thereupon obtained a rule from this Court for the quashing of that notice and for prohibiting the Regional Provident Fund Commissioner from recovering the amount, the ground taken being that the petitioner-company was not running any factory covered by the provisions of the Employees' Provident Funds Act, 1952.

The relevant facts are these: The Metro Motors Private Ltd., have a shop for the sale of motor cars and attached to that shop is a service-station where motor-cars are serviced as well as repaired. About half a mile from these premises is a workshop owned by this company and in that workshop bodies for trucks and buses are made by carpenters and other persons employed by the company. The petitioner's case is that neither their shop, where cars are sold, nor the attached service-station, where cars are serviced and repaired, nor the other premises, where bodies for trucks and buses are made, is really a factory as no manufacturing process is carried on at any of these places and further that, in any case, at none of these places is the number of persons employed fifty or more than fifty.

It is admitted before us that before the Employees' Provident Funds Act, 1952, can apply, it has to be shown that there is in existence a factory engaged in an industry specified in Schedule I to the Act in which factory fifty or more persons are employed. The sole question, therefore, is whether any such factory is in existence in the present case, and this depends on the interpretation of the provisions of the Act already referred to.

Before entering on this matter it is convenient to dispose of one preliminary question raised on behalf of the respondents. It was said that section 19A of the Employees' Provident Funds Act, 1952, contemplates that in case of difficulty or doubt in connection with the existence of a factory employing fifty or more persons, the Central Government is authorised to decide the matter and that decision is final, and since in this case the Central Government has not had opportunity of considering the matter the present writ petition is, premature. It was, however, conceded that this does not debar the petitioners from seeking a remedy under article 226 of the Constitution. It is also clear that the dispute between the parties now is not as to facts but only as to the interpretation of the statute governing the entire matter and the ends of justice would not be furthered by postponing the decision in the hope of seeking a direction by the Central

Government. It is, of course, admitted that even if the view of the Central Government were against the petitioner's contentions and in accordance with the view taken by the respondents, the petitioners would still be entitled to have that decision examined in this Court if, as is the case here, the decision is to turn on the interpretation of the Act itself. The present, therefore, is clearly not a case in which we should refuse relief to the petitioners merely because they might conceivably have gone to the Central Government in the first instance.

Regarding the merits of the dispute, it is contended on behalf of the petitioners that as far as the main shop is concerned only cars are sold and serviced and repaired there and no manufacturing process is at all carried on and those premises, therefore, cannot be called a factory, much less a factory engaged in any scheduled industry. This is largely conceded, and it is otherwise too clear that at the petitioners' shop no manufacturing process is carried on. There remains the second premises half a mile from the shop where it is admitted that bodies for buses and trucks are made. Mr. Tuli contends that the making of these bodies with the help of carpenters is not really a manufactuing process. The contention is, however, untenable, for the carpenters and other workmen employed are quite clearly making bodies from out of appropriate material and it is difficult to describe the process except as the manufacture of such bodies. The expression "manufacture" is defined in the Act itself in section 2 as "making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal", and the process of making bodies for trucks and buses is clearly such a process.

"Factory" in section 2 is defined as "any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarly so carried on, whether with the aid of power or without the aid of power". In view of this definition, it is clear that these particular premises form a factory. On these premises, however, no more than 15 persons have ever been employed, and this fact is admitted. The respondent's contention is that not only the persons employed there are to be counted, but along with them the persons employed by the petitioners at their shop and service-station must be counted, and the argument is that the shop and the service-station, although admittedly half a mile away, should be deemed to be in the precincts of the same premises in which the manufacturing of bodies for buses, etc., goes on. It is not suggested that there is any connection between the two premises except that of ownership, and in view of the definition of a "factory" mentioned in section 2 of the Act, it seems to me impossible to agree that the petitioners' shop, where cars are sold should be held to form one premises along with the factory half a mile away. The only case bearing on a similar question cited before us, being *Oudh Sugar Mills Limited* v. *Regional Provident Fund Commissioner, Bombay,* [1957] 14 F.J.R. 401, is against the respondent's contention. To me, therefore, it appears that the only factory in existence is the premises and the precincts of it where bodies for buses and trucks are made, and since it is clear that in that factory and on those premises fifty or more persons have never been employed, the Employees' Provident Funds Act can have no application.

On the above view it is unnecessary to consider whether the manufacturing of bodies for buses and trucks is at all an industry mentioned in Schedule I to the Act, although such is the petitioner's contention. I feel satisfied that the petitioner-company is not running any factory employing fifty or more persons and the Employees' Provident Funds Act of 1952, therefore, does not apply. This petition must, therefore, be allowed and the rule issued in this case made absolute. In the circumstances of the case, however, the parties should be left to their own costs.

A. N. BHANDARI, C. J.—I agree.

Printed and Published by T. A. Venkataraman, at the Company Law Institute Press, 21, Thyagaraya Road, Thyagarayanagar, Madras-17: 15-7-1958.