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THE KERALA INDUSTRIAL EMPLOYMENT (STANDING ORDERS) RULES, 1958.

LABOUR AND LOCAL ADMINISTRATION DEPARTMENT (LABOUR)

*Notification No. D. Dis. 11328/57/L&LAD dated, Trivandrum,
8th May, 1958.**

In exercise of the powers conferred by section 15 of the Industrial Employment (Standing Orders) Act, 1946, (Central Act XX of 1946), the Government of Kerala hereby make the following rules, the same having been previously published as required by sub-section (1) of the said section namely:—

1. (i) These rules may be called the Kerala Industrial Employment (Standing Orders) Rules, 1958.
(ii) These rules extend to the whole of the State of Kerala.
2. In these rules unless the context otherwise requires,--
(a) "Act" means the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946).
(b) "Form" means a form set out in Schedule II appended to these Rules.
(c) "Section" means a Section of the Act.
(d) Words and expressions not defined in these rules shall have the meaning assigned to them under the Act.
3. The model Standing Orders for the purposes of the Act shall be those set out in Schedule I appended to these Rules.
4. An application for certification of Standing Orders shall be made in Form I.
5. The prescribed particulars of workmen, for the purposes of sub-section (3) of section 3 of the Act shall be :
 1. Total number employed ;
 2. Number of permanent workmen ;
 3. Number of temporary workmen ;
 4. Number of casual workmen ;
 5. Number of badlis or substitutes ;
 6. Number of probationers ;
 7. Number of apprentices ;
 8. Name of the trade union or trade unions, if any, to which the workmen belong ;
 9. Remarks.
6. As soon as may be after he receives an application under rule 4 in respect of an industrial establishment, the Certifying Officer shall—

*Kerala Gaz., 20-5-58, Pt. I, sec. IV, p. 1.

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

(a) Where there is a trade union of the workmen, forward a copy of the draft Standing Orders to the Trade Union together with a notice in Form II ;

(b) Where there is no such trade union, forward a copy of the Draft Standing Orders together with a notice in Form II to a representative of the workmen elected at a meeting convened for the purpose by an officer authorised by the Certifying Officer after previous notice of not less than ten days.

(c) The Trade Union or the representative of the workmen of an industrial establishment may submit objections to the Draft Standing Orders to the Certifying Officer in duplicate.

7. Where, in the opinion of the Certifying Officer it is not possible to follow the procedure prescribed in rule 6, he shall require the employer to publish a copy of the draft Standing Orders and a notice in Form III on the notice board of the establishment.

8. A group of employers in similar industrial establishments desirous of submitting joint draft Standing Orders shall through a person authorised in this behalf by the group or their association if any—

(i) submit a list of employers constituting the group with the name and address in full of each establishment ;

(ii) submit a declaration signed by each of the employers forming the groups that they will abide by the conditions laid down in the draft Standing Orders submitted by the group.

(iii) submit separate statement in the form prescribed in rule 5 in respect of each establishment ; and

(iv) as soon as any particular industrial establishment leaves the group the authorised person or the association referred to above shall notify the fact to the Certifying Officer within seven days from the day on which the industrial establishment leaves the group. Such industrial establishment shall continue to be governed by the group Standing Orders already certified, until such time as it submits separate draft Standing Orders of its own to the Certifying Officer and these are duly certified.

9. When a new industrial establishment joins a group of industrial establishments formed in accordance with the procedure laid down in rule 8, it shall be governed by the Standing Orders of the group it joins and it shall notify the fact to the Certifying Officer within seven days.

10. Standing Orders certified in pursuance of sub-section (3) of section 5 or sub-section (2) of section 6 of the Act shall be authenticated by the signature and seal of office of the Certifying Officer or the appellate authority, as the case may be, and shall be forwarded by such officer or authority within a fortnight of authentication by registered letter posted to the employer and to the Trade Union, or, as the case may be, the representative of the workmen elected in pursuance of rule 6.

11. Where the procedure prescribed in rule 7 is followed, a copy of the Standing Orders approved for the establishment shall be published on

the notice board of the industrial establishment within three days of the receipt of the certified Standing Orders by the employer.

12. The register required to be maintained by section 8 of the Act shall be in Form IV and shall be properly bound and the Certifying Officer shall furnish a copy of Standing Orders approved for an industrial establishment to any person applying therefor on payment of a fee of rupee one a copy.

13. Files relating to appeals under the Act shall be preserved for three years.

14. After the expiry of the period of three years mentioned in rule 13, the records may be destroyed either by tearing or by burning in the presence of an officer authorised by the Certifying Officer for the purpose, provided, however, that records of a secret or confidential nature shall be destroyed only by burning.

The records destroyed by tearing may be sold or disposed of in such manner as the Certifying Officer thinks fit.

15. Every industrial establishment shall maintain a register showing the date of appointment of each workman and other details as shown in Form V and every workman should be allowed to look into it at least once a year :

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

16. *Repeal.*—The Travancore-Cochin Industrial Employment (Standing Orders) Rules, 1952 and the Madras Industrial Employment (Standing Orders) Rules, 1947, in their application to the territories referred to as Malabar District in Section 5 (2) of the States Reorganisation Act, 1956 (Central Act 37 of 1956), are hereby repealed :

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

SCHEDULE I.

MODEL STANDING ORDERS

1. These orders shall come into force on.....
2. Classification of workmen :
 - (a) Workmen shall be classified as—
 1. Permanent
 2. Probationers
 3. Badlis or substitutes
 4. Temporary

5. Casual
6. Apprentices

(b) A "Permanent workman" is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the Industrial establishment, including breaks due to sickness, accident, leave, lockout, strike (not being an illegal strike) or involuntary closure of the establishment.

(c) A "Probationer" is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his old permanent post.

(d) A "Badli" is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.

(e) A "Temporary" workman is a workman who has been engaged on a temporary basis for work which is of a temporary duration or is likely to be finished within a limited period.

(f) A "Casual" workman is a workman whose employment is of a casual nature.

(g) An "Apprentice" is a learner who is paid an allowance during the period of his training.

3. *Tickets*.—(1) Every workman shall be given a permanent ticket unless he is a probationer, temporary, substitute, casual worker or apprentice.

(2) Every permanent workman shall be provided with a departmental ticket showing his number, and shall, on being required to do so, show it to any person authorised by the Manager to inspect it.

(3) Every substitute shall be provided with a "substitute" card on which shall be entered the days on which he has worked in the establishment, and which shall be surrendered if he obtains permanent employment.

(4) Every temporary workman shall be provided with a 'temporary' ticket which he shall surrender on his discharge.

(5) Every casual worker shall be provided with a 'casual' card on which shall be entered the days on which he has worked in the establishment.

(6) Every apprentice shall be provided with an 'apprentice' card, which shall be surrendered if he obtains permanent employment.

4. *Publication of working time*.—The periods and hours of work for all classes of workers in each shift shall be exhibited in English, Malayalam and if more than 20 per cent. of the total workmen speak any other language in that language also on Notice Boards maintained at or near the main entrance of the Establishment and at the time-keeper's office, if any.

5. *Publication of holidays and pay days*.—Notices specifying (a) the days observed by the establishment as holidays and (b) pay days shall be posted on the said Notice Boards.

6. *Publication of wage rates*.—Notices specifying the rates of wages payable to all classes of workmen and for all classes of work shall be displayed on the said notice boards. A list specifying the number of workmen working in each category shall also be displayed on the Notice Board along with the notice specifying the rate of wages.

7. *Shift Working*.—Shifts shall be regulated in accordance with clause 1 of section 58 of the Factories Act, 1948. More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, the workmen shall be liable to be transferred from one shift to another. No shift working shall be discontinued without one month's notice being given prior to such discontinuance, provided that no such notice will be necessary, if as a result of the discontinuance of the shift, no permanent employee will be discharged. If as a result of discontinuance of the shift working, any permanent workmen are to be discharged, they shall be discharged having regard to the length of their service in the establishment, those with the shortest term of service being discharged first. If shift working is restarted, a week's notice thereof shall be given by posting a notice at the main entrance to the establishment and the time-keeper's office, if any, and the workmen discharged as a result of the discontinuance of the shift, shall, if they present themselves at the time of the restarting of the shift, have preference in being re-employed, having regard to the length of their previous service under the establishment, those with the longest term of service being re-employed first.

8. *Attendance and late coming*.—All workmen shall be at work at the establishment at the times fixed and notified under paragraph 4. Workmen attending late up to a period of half an hour shall be admitted for work and such workmen are liable to the deductions provided for in the Payment of Wages Act, 1936.

9. *Absence without permission*.—Any workman who after presenting his ticket, card or pass leaves his proper place or places of work during any period of the working hours without permission or without any sufficient reason shall be liable to be treated as absent for such period.

If however, he leaves the premises of the industrial establishment during working hours without permission, he shall be liable to be treated as absent for the whole day in case his absence commences before the recess period and for half a day in case his absence commences after the recess period.

If the workman is absent from the premises of the industrial establishment with the permission of the head of the department, his wages for the actual period of absence only shall be liable to be deducted.

The deductions from wages to be made for the periods of absence under this order shall be made in accordance with the provisions of the Payment of Wages Act, 1936.

10. *Leave*.—(1) Leave with wages will be allowed as provided for in Chapter VIII of the Factories Act, 1948 (Central Act LXIII of 1948), in the case of workmen employed in factories and in the case of those employed in

plantations leave with wages shall be allowed as provided for in Chapter VI of the Plantations Labour Act, 1951 (Central Act LXIX of 1951). Other holidays shall be in accordance with law, contract, customs and usages.

(2) A workman who desires to obtain leave of absence shall apply to the manager, who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof he shall apply to the Manager at least one day prior to the expiry of the first spell of leave. The Manager shall send a written reply either granting or refusing the extension of leave to the workman if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.

(3) If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a) returns within 8 days of the expiry of the leave and (b) explains to the satisfaction of the manager his inability to return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be kept on the substitute list.

11. Casual leave.—A workman may be granted casual leave of absence with or without pay not exceeding ten days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but when this is not possible, the head of the department shall, as soon as may be practicable, be informed in writing of the absence and the probable duration of such absence in writing of the absence from and of the probable duration of such absence.

12. Entrance and exit through the proper gate.—The workmen shall not enter or leave the premises of the industrial establishment except by the gate or gates, appointed for the purpose.

13. Search by the gatemen.—All male workers shall be liable on leaving the premises of the industrial establishment to be searched by the gateman and all female workers shall be liable to be detained by the gateman for search by the female searcher, if acting without malice, the gateman suspects that any worker is in wrongful possession of property belonging to the industrial establishment, provided, that no search shall be made except in the presence of two other persons of the same sex as the suspected worker.

14. Payment of unclaimed wages.—(1) Any wages due to a workman but not paid on the usual pay day on account of their being unclaimed shall

be paid by the employer on such unclaimed wage pay day in each week, as may be notified to the workman, following the date on which a substantiated claim was presented by the workman, or on his behalf by his legal representative, provided that such claim is submitted within three years from the date on which the wages became due to the workman.

(2) All workmen will be paid wages on a working day before the expiry of the seventh or the tenth day after the last day of the wage period in respect of which the wages are payable according as the total number of workmen employed in the establishment does not or does exceed one thousand.

15. Stoppage of work.—(1) The employer may, at any time in the event of fire, catastrophe, break-down of machinery or stoppage of power supply, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the establishment, wholly or partially, for any period or periods without notice.

(2) In the event of such stoppage during working hours, the workmen affected shall be notified by notices put upon the notice board in the departments concerned, or at the office of the Manager, as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The workmen shall not ordinarily be required to remain for more than one hour after the commencement of the stoppage. If the period of detention does not exceed one hour, the workmen so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workmen so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the stoppage. In the case of piece-rate workers, the average daily earnings for the previous month shall be taken to be the daily wage. No other compensation will be admissible in case of such stoppages. Wherever practicable, reasonable notice shall be given of resumption of normal work and all workmen laid off who present themselves for work when the normal working is resumed shall have prior right of reinstatement.

(3) In cases where workmen are laid off for short periods on account of failure of plant or temporary curtailment of production compensation shall be paid to the workmen laid off in accordance with the conditions laid down in sections 25 A to 25 E of the Industrial Disputes Act, 1947. Where however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof provided that no retrenchment of workman shall be made except under conditions relating to retrenchment as provided in sections 25F, 25FF, 25FFF, 25G and 25H of the Industrial Disputes Act, 1947:

Provided that such termination of service shall not affect the period of employment of those workmen for the purpose of section 4 of the Kerala Maternity Benefit Act, 1957 (Act 19 of 1957) if they rejoin service within a period of sixty days.

(4) In the event of a strike affecting either wholly or partially any section or department of the establishment the employer may subject to the provisions of the Industrial Disputes Act, 1947 or any Rules made thereunder close down either wholly or partially such section or department and

any other section or department affected by such closing down and for any period or periods. The fact of such closure shall be notified by notices put on the notice board in the section or department concerned and in the time-keeper's office, if any, as soon as practicable. The workmen concerned shall also be notified by a general notice, prior to resumption of work, as to when work will be resumed.

16. Termination of Employment.—(1) Except where the contract of service otherwise provides the employment of a permanent workman shall not be terminated without giving one month's notice in writing either by the employer or the workman in the case of monthly-rated workmen and two weeks' notice in the case of other workmen or one month's or two weeks' pay, as the case may be, in lieu of notice. The reasons for the termination of service shall be recorded in writing and shall be communicated to the workman, if he so desires at the time of discharge.

(2) No temporary workman, whether monthly-rated, weekly-rated or piece-rated and no probationer or substitute shall be entitled to any notice or pay in lieu thereof if his services are terminated, but the services of a temporary workman shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in Paragraph 17.

(3) Where the employment of any workman is terminated the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(4) No retrenchment of workmen shall be made except as provided under sections 25F, 25FF, 25FFF, 25G and 25H of the Industrial Disputes Act, 1947.

17. Disciplinary action for misconduct.—(1) A workman may be fined up to two per cent. of his wages in a month for any of the following acts and omissions, namely :—

.....

Note.—Specify the acts and omissions which the employer may notify with the previous approval of the Government or of the prescribed authority in pursuance of Section 8 of the Payment of Wages Act, 1936.

(2) A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

(3) The following acts and omissions shall be treated as misconduct:—

(a) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.

(b) Theft, fraud or dishonesty in connection with the employer's business or property.

(c) Wilful damage to or loss of employer's goods or property.

(d) Taking or giving bribes or any illegal gratification.

(e) Habitual absence without leave or absence without leave for more than ten days.

(f) Habitual late attendance.

(g) Habitual breach of any law applicable to the establishment.

(h) Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline.

(i) Habitual negligence or neglect of work.

(j) Frequent repetition of any act or omission for which a fine may be imposed to a maximum of two per cent. of the wages in a month.

(k) Striking work or inciting others to strike work with another or others in contravention of any lawful and reasonable order of a superior.

(l) Striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.

(m) Engaging in trade within the premises of the industrial establishment.

(n) Habitual breach of any rules or instructions for the maintenance and running of any department or the maintenance of the cleanliness of any portion of the premises of the industrial establishment.

(4) No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the Manager of the establishment or where there is no Manager, of the employer is required in every case of dismissal and when circumstances appear to warrant it, the Manager or the employer may institute independent enquiries before dealing with charges against a workman.

(5) An order of suspension shall be in writing and may take effect immediately on delivery to the workman. Such order shall set out in detail the alleged misconduct and the workman shall be given an opportunity of explaining the circumstances alleged against him. If on enquiry the order is confirmed the workman shall be deemed to have been absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

(6) In awarding punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the Manager shall be supplied to the workman concerned.

18. Complaints.—All complaints arising out of his employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent or servant shall be submitted by a workman or on his behalf by a union of which he is a member, to the Manager or such other officer or officers as the employer may appoint. The manager or such

other officer or officers shall personally investigate the complaint at such times and places as he or they may fix and the complainant-workman or the union shall have the right to be present at such investigation. Where the complainant alleges unfair treatment or wrongful exaction on the part of his employer or his agent or servant, a copy of the order finally made shall be supplied to the complainant if he asks for one. In other cases the decision of the investigating officer and the action, if any, taken by him shall be intimated to the complainant:

Provided that complaints relating to—

- (1) assault or abuse by any person holding a supervisory position; or
- (2) refusal of an application for urgent leave shall be enquired into without avoidable delay by the Manager or such other officer or officers as he may appoint.

19. Certificate on termination of service.—When any probationer or permanent workman is summarily dismissed, suspended, or discharged, or leaves the service of the industrial establishment or is granted leave of absence he shall except in cases of general retrenchment, closing down of departments, strike or lockout, be given a written order in the form prescribed by the employer.

Every permanent employee shall be entitled to a service certificate at the time of leaving the service, dismissal or discharge.

20. Liability of manager.—The Manager of the establishment shall personally be held responsible for the proper and faithful observance of the Standing Orders.

21. Exhibition of Standing Orders.—A copy of these orders in English, Malayalam and if more than 20 per cent. of the total speak any other language, in that language also shall be pasted at the Manager's Office and on a notice board maintained at or near the main entrance to the establishment and shall be kept in a legible condition.

SCHEDULE II

FORM I

(Rule 4)

The Industrial Employment (Standing Orders) Act, 1946,
(Act No. XX of 1946)—Section 3

To
The Certifying Officer (Labour Commissioner),
Kerala State, Trivandrum.

Sir,

Under the provisions of Section 3 of the Industrial Employment (Standing Orders) Act, 1946, I enclose five copies of the Draft Standing Orders proposed by me for adoption in

(Name)

(Place)

(Postal address)

.....
an Industrial establishment owned/controlled by me, with the request that

these orders may be certified under the terms of the Act. I also enclose a statement giving the particulars prescribed in Rule 5 of the Kerala Industrial Employment (Standing Orders) Rules, 1958.

I am, etc.,

(Signature)

Manager/Employer.

FORM II

[Rule 6 (a)]

Notice Under Section 5 of the Industrial Employment
(Standing Orders) Act, 1946 (Act No. XX of 1946)

Trivandrum,

.....195...

Office of the Certifying Officer (Labour Commissioner),
Kerala State, Trivandrum.

I,.....Certifying Officer, Kerala State, forward herewith a copy of the Draft Standing Orders proposed by the Employer for adoption in the (Name and place) Industrial establishment and submitted to me for certification under the Industrial Employment (Standing Orders) Act, 1946. Any objections which the workmen may desire to make to the Draft Standing Orders should be submitted to me within fifteen days from the receipt of this notice.

Seal

Certifying Officer.

To

The Secretary,

.....Union.

Representative elected
Under Rule 6(b)

Name :

Occupation :

Industrial Establishment :

FORM III

(Rule 7)

NOTICE

The employer of the (name of the industrial establishment) has submitted to the certifying officer the appended draft Standing Orders proposed by him for adoption in his industrial establishment. Any objections which any workman in the establishment desires to make to the draft Standing Orders should be submitted to me within fifteen days from the date of publication of this notice. If no objections are received within fifteen days from the date of publication of this notice, it will be deemed that the workmen have no objections to make.

Place.....

Dated.....

Certifying Officer.

FORM IV
Industrial Employment (Standing Orders) Act, 1946
(Section 8 and Rule 12)

REGISTER—PART I.
INDUSTRIAL ESTABLISHMENT.

S. No.	Date of despatch of the copy of Standing Orders authenticated under Section 5 for the first time.	Date of filing appeal.	Date and nature of decision.	Amendments made on appeal, if any.	Date of the despatch of the copy of the Standing Orders as settled on appeal.	Any notice subsequently given or received of any amendment.	Result.

PART II.
(Should contain the authenticated copy of the Standing Orders)

FORM V
The Kerala Industrial Employment (Standing Orders) Rules, 1957, (Rule 15.)

Name and full address.	Date of employment and pay.	Date of promotion.	Leave other than casual leave taken.	Description of punishment awarded and reason.	Date of discharge.

MADRAS CATERING ESTABLISHMENTS ACT, 1958.

MADRAS ACT NO. XIII OF 1958.*

[Received the assent of the President on July 1, 1958.]

An Act to provide for the regulation of conditions of work in catering establishments and for certain other purposes in the State of Madras.

Whereas it is expedient to provide for the regulation of conditions of work in catering establishments and for certain other purposes in the State of Madras ;

Be it enacted in the Ninth Year of the Republic of India as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Madras Catering Establishments Act, 1958.

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

(3) (a) It shall come into force on such date as the State Government may, by notification, appoint—

(i) in the City of Madras ;

(ii) in all the municipalities constituted under the Madras District Municipalities Act, 1920, (Madras Act V of 1920), and under the Travancore District Municipalities Act, 1116, (Travancore Act XXIII of 1116); and

(iii) in all areas within the jurisdiction of—

(a) panchayats classified as Class I Panchayats under clause (a) of sub-section (1) of section 5 of the Madras Village Panchayats Act, 1950, (Madras Act X of 1950); and

(b) panchayats constituted under the Travancore-Cochin Panchayats Act, 1950, (Travancore-Cochin Act II of 1950).

(b) The State Government may, by notification, direct that this Act shall come into force in any other area on such date as may be specified in such notification.

2. Definitions.—In this Act, unless the context otherwise requires—

(1) “catering establishment” means a restaurant or residential hotel ;

(2) “child” means a person who has not completed fourteen years of age ;

(3) “day” means the period of twenty-four hours beginning at midnight :

Provided that in the case of an employee whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning from the time when such employment commences ;

(4) “employee” means the person employed in, and in connexion with, any catering establishment, but does not include a member of the employer’s family ;

* Fort St. George Gaz., 9-7-58, Pt. IV-B, p. 59

(5) "employer" means a person owning or having charge of the business of a catering establishment and includes the manager, agent or other person acting in the general management or control of a catering establishment ;

(6) "family" in relation to an employer means the husband or wife, son, daughter, father, mother, brother or sister of such employer who lives with him and is dependent on him ;

(7) "Inspector" means an Inspector appointed under section 20 for the area ;

(8) "leave" means leave provided for in section 12 ;

(9) "period of work" means the time during which an employee is at the disposal of the employer ;

(10) "registration certificate" means a certificate showing the registration of a catering establishment ;

(11) "residential hotel" means any premises in which the business of providing dwelling accommodation and supply of meals to any member of the public or a class of the public is carried on ;

(12) "restaurant" means any premises in which is carried on the business of the supply of refreshments or meals to the public or a class of the public for consumption on the premises ;

(13) "spread over" means the period between the commencement and the termination of the work of an employee on any day ;

(14) "week" means the period of seven days beginning at midnight on Saturday or on such other day as may be specified for a particular area or for a particular class of catering establishments by the prescribed authority ;

(15) "young person" means a person who has completed fourteen years of age but has not completed eighteen years of age.

3. *Exemptions.*—(1) The provisions of this Act except section 21 and section 22 shall not apply to any catering establishment in which only members of the employer's family are employed.

(2) The provisions of sections 7 to 11 shall not apply to the persons occupying positions of management in catering establishments.

(3) The State Government may, by notification, exempt either permanently or for any specified period, any catering establishment or class of catering establishments or any person or class of persons to which or to whom this Act applies, from all or any of its provisions, subject to such conditions as the State Government deem fit.

4. *Registration of catering establishments.*—(1) Within the period specified in sub-section (3), every employer shall send to the Inspector a statement in such form together with such fees, as may be prescribed.

(2) On receipt of the statement and the fees, the Inspector shall, on being satisfied about the correctness of the statement, register the catering establishment in such manner as may be prescribed in the register of catering establishment maintained for the purpose and shall issue, in the prescribed form, a registration certificate to the employer. The

registration certificate shall be prominently displayed at the catering establishment.

(3) The statement under sub-section (1) shall be sent within thirty days from the date on which this Act comes into force in the case of catering establishment existing on such date, and within thirty days from the date of commencement of work in the case of any new catering establishment.

(4) A registration certificate shall be valid for a financial year and shall be renewed from financial year to financial year on payment of such fees as may be prescribed.

5. *Change to be communicated to Inspector.*—It shall be the duty of an employer to notify to the Inspector, in the prescribed form, any change in respect of any information contained in his statement under section 4 within seven days after the change has taken place. The Inspector shall on receiving such notice and on being satisfied about its correctness, make the change in the register of catering establishments in accordance with such notice and shall amend the registration certificate or issue a fresh registration certificate, if necessary.

6. *Removal of catering establishments from the register.*—An employer closing a catering establishment shall, within ten days of his doing so, notify to the Inspector in writing of such closure. The Inspector shall, on receiving such notice and on being satisfied about its correctness, remove such catering establishment from the register of catering establishment and cancel the registration certificate.

7. *Daily and weekly hours of work in catering establishments.*—(1) No young person shall be required or allowed to work in any catering establishment for more than five hours in any day.

(2) No other employee shall be required or allowed to work in any catering establishment for more than nine hours in any day or for more than forty-eight hours in any week :

Provided that, subject to the payment of overtime wages, the total number of hours of work including overtime shall not exceed ten hours in any day and the total number of hours of overtime work shall not exceed fifty hours in any quarter.

8. *Extra wages for overtime work.*—Where an employee works in any catering establishment for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of such overtime work, be entitled to wages at twice the ordinary rate of wages.

Explanation.—For the purposes of this section, the expression 'ordinary rate of wages' means the basic wages plus such allowances including the cash equivalent of the advantage accruing through concessional sale to employees of foodgrains and other articles, as the employee is for the time being entitled to, but does not include a bonus.

9. *Interval for rest.*—The period of work of an employee each day shall be so fixed that he shall not have to work continuously for more

than five hours before he has had an interval for rest of at least half an hour.

10. Spread over.—The periods of work of an employee shall be so arranged that along with his intervals for rest they shall not spread over more than fourteen hours in any day:

Provided that the number of intervals for rest for an employee in any day shall not exceed two.

11. Holidays.—(1) Every employee shall be allowed in each week a holiday of one whole day.

(2) Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January and the 15th August and five holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any catering establishment.

(3) (a) Notwithstanding any contract to the contrary, no deduction shall be made from the wages of any employee on account of any holiday allowed to him under sub-section (1) or sub-section (2).

(b) Every employee shall be paid wages at the ordinary rates of wages as defined in the *Explanation* to section 8 for each of the holidays allowed to him under sub-section (2).

(4) Where an employee works on any holiday allowed under sub-section (2), he shall, at his option, be entitled—

(a) to wages at twice the ordinary rate of wages as defined in the *Explanation* to section 8 for such day, or

(b) to wages at the ordinary rate of wages defined as aforesaid for such day and to avail himself of a substituted holiday with wages on any other day.

12. Leave with wages.—(1) Every employee who has worked for a period of not less than 240 days in a catering establishment during a calendar year shall be allowed in the subsequent calendar year, leave with wages for a number of days calculated—

(i) in the case of an adult, at the rate of one day for every 20 days of work performed by him during the previous calendar year;

(ii) in the case of a young person, at the rate of one day for every 15 days of work performed by him during the previous calendar year.

Explanation 1.—The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at the beginning or at the end of the period of leave.

Explanation 2.—For the purpose of this sub-section—

(a) any days of lay-off, by agreement or contract or as permitted under the Standing Orders of the catering establishment concerned;

(b) in the case of a female employee authorised absence for maternity purposes for any number of days not exceeding twelve weeks; and

(c) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the employee has worked for the purpose of computation of the period of 240 days but not for earning leave.

(2) An employee whose service commences otherwise than on the first day of January shall be entitled to leave calculated in accordance with sub-section (1), if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

(3) If an employee is discharged or dismissed from service during the course of the year, he shall be entitled to leave with wages at the rate laid down in sub-section (1) even if he has not worked for the entire period specified in sub-section (1) or sub-section (2) entitling him to earn leave.

(4) In calculating leave under this section, any fraction of leave of half a day or more shall be treated as one full day's leave and any fraction of less than half a day shall be omitted.

(5) If an employee does not in any calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, 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 a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a young person.

(6) An application by an employee for the whole or any portion of the leave allowed under sub-section (1) or sub-section (2), shall be in writing and ordinarily be made reasonably in advance of the date on which he wishes his leave to begin.

(7) If the employment of an employee who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the employer before he has taken the entire leave to which he is entitled or if having applied for leave he has not been granted such leave, or if the employee quits his employment before he has taken the leave, the employer shall pay him the amount payable under section 13 in respect of the leave not taken and such payment shall be made, where the employment of the employee is terminated by the employer, before the expiry of the second working day after such termination and where the employee quits his employment, on or before the next pay day.

(8) The leave not availed of by an employee shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

13. Wages during leave period.—For the leave allowed to him under section 12 an employee 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 wages and bonus but inclusive of dearness allowance and the cash equivalent of the meals and tiffin supplied to the employee free of charge.

14. Payment in advance in certain cases.—An employee who has been granted leave for a period exceeding four days shall, before his leave begins, be paid the wages due for the period of the leave allowed.

15. Mode of recovery of unpaid wages.—Any wages required to be paid by an employer but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (Central Act IV of 1936).

16. Application of the Payment of Wages Act, 1936, to catering establishments.—(1) Notwithstanding anything contained in the Payment of Wages Act, 1936 (Central Act IV of 1936) (hereinafter in this section referred to as the said Act) the State Government may, by notification, direct that, subject to the provisions of sub-section (2), the said Act or any of the provisions thereof or the rules made thereunder shall apply to all or any class of employees in catering establishments to which this Act applies.

(2) On the application of the provisions of the said Act to any catering establishment under sub-section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of the provisions of the said Act within the local limits of his jurisdiction.

(3) The State Government may, by like notification, cancel or vary any notification issued under sub-section (1).

17. Prohibition of employment of children.—No child shall be required or allowed to work in any catering establishment.

18. Prohibition of employment of women or young persons during night.—No woman or young person shall be required or allowed to work whether as an employee or otherwise in any catering establishment between the hours of 9 p.m. and 5 a.m.

19. Notice of discharge or dismissal.—(1) No employer shall dispense with the services of an employee employed continuously for a period of not less than six months, except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice, provided however that such notice shall not be necessary where the services of such employee are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose.

(2) (a) Any employee discharged, dismissed or retrenched may appeal to such authority and within such time and in such manner as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that the employer did not retrench him in good faith.

(b) The appellate authority, may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the appellate authority shall be final and binding on both the parties, not be liable to be questioned in any Court of Law and be given effect to within such time as may be specified in the order of the appellate authority.

20. Appointment of Inspectors.—(1) The State Government may by notification, appoint such persons or such class of persons as they think fit to be Inspectors for the purposes of this Act within such local limits as the State Government may specify.

(2) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

21. Powers and duties of Inspectors.—Subject to any rules made by the State Government in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any place which is, or which he has reason to believe, is a catering establishment;

(b) make such examination of the premises and of any prescribed registers, records and notices and take on the spot or elsewhere the evidence of such person as he may deem necessary, for carrying out the purposes of his Act; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

22. Employer to produce registers, records, etc., for inspection.—Every employer shall, on demand, produce for inspection of an Inspector, all registers, records and notices required to be kept under and for the purposes of this Act.

23. Penalties.—(1) Any employer who contravenes any of the provisions of sections 4, 5, 6, 7, 9, 10, 11 and 12 or fails to pay wages or compensation in accordance with any order of the appellate authority passed under clause (b) of sub-section (2) of section 19 shall, on conviction, be punishable with fine which, for a first offence, may extend to one hundred rupees and, for a second or any subsequent offence shall not be less than one hundred rupees or more than two hundred and fifty rupees.

(2) (a) Any employer who fails to reinstate an employee in accordance with any order of the appellate authority passed under clause (b) of sub-section (2) of section 19 shall, on conviction, be punishable with fine which may extend to one hundred rupees.

(b) Any employer, who after having been convicted under clause (a), continues to fail to reinstate an employee in accordance with the order mentioned in that clause shall, on conviction, be punishable for each day after

the previous date of conviction, during which he continues so to offend, with fine which may extend to twenty rupees.

(c) Any Court trying an offence punishable under this sub-section may direct that the whole or any part of the fine realised from the accused shall be paid by way of compensation to the person who, in its opinion, has been injured by such failure.

(3) Whoever contravenes any other provision of this Act or any of the rules made under this Act shall, on conviction, be punishable with fine which may extend to fifty rupees.

(4) Any compensation required to be paid by an employer under clause (b) of sub-section (2) of section 19 but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (Central Act IV of 1936).

24. Procedure.—(1) No court shall take cognizance of any offence under this Act or any rule made thereunder except on a complaint made by, or with the previous sanction in writing of, an Inspector.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the Second Class shall try any offence punishable under this Act or any rule made thereunder.

25. Limitation of prosecution.—No court shall take cognizance of an offence punishable under this Act or any rule made thereunder unless the complaint is made within six months from the date on which the offence is alleged to have been committed or within six months from the date of its coming to the knowledge of the Inspector, whichever is later.

26. Onus as to age.—(1) When any question arises under this Act whether any person is under a certain age or not, the burden shall be on the employer concerned to prove that such person is not under such age.

(2) A declaration by a Government medical officer not below the rank of a Civil Assistant Surgeon that he has personally examined a person employed and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that person.

27. Saving of certain rights and privileges.—(1) Nothing contained in this Act shall affect any rights or privileges which an employee in any catering establishment is entitled to on the date this Act comes into force, under any other law, contract, custom or usage applicable to such catering establishment or any award, settlement or agreement binding on the employer and the employee in such catering establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

(2) If any question arises whether the rights or privileges aforesaid are more favourable to an employee than those to which he would be entitled under this Act or whether all or any of the provisions of this Act apply to a catering establishment or to a person employed therein, it shall be decided by the Commissioner of Labour and his decision thereon shall be final and not be liable to be questioned in any Court of Law.

28. Indemnity.—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

29. Power to make rules.—(1) The State Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) the registers and records to be maintained in a catering establishment for the purposes of examination by Inspectors and of securing compliance with the provisions of this Act;

(c) the form of notices to be exhibited in the premises of the catering establishment by the employer and the manner of exhibiting such notices;

(d) the manner in which the cash equivalent of the meals and tiffin supplied to employees free of charge is to be computed;

(e) matters relating to the health of employees in, and the sanitation of, a catering establishment.

(3) The powers to make rules conferred by this Act is subject to the conditions of the rules being made after previous publication.

(4) All rules, notifications and orders made under this Act shall, as soon as possible after they are made, be placed on the table of both the Houses of the Legislature and shall be subject to such modifications by way of amendment or repeal as the Legislative Assembly may make within fourteen days on which it actually sits either in the same session or in more than one session.

30. Certain enactments not to apply to catering establishments.—On and from the date of the commencement of this Act, the Weekly Holidays Act, 1942 (Central Act XVIII of 1942), the Factories Act, 1948 (Central Act LXIII of 1948), and the Madras Shops and Establishments Act, 1947 (Madras Act XXXVI of 1947), shall not apply to catering establishments:

Provided that anything done under the said enactments which could have been done under this Act if it had been in force at the relevant time shall be deemed to have been done under this Act.

Minimum Wages for Tobacco Industry in Bombay.

Notification No. MWA. 1557-J dated Bombay, 11th June, 1958.*

In exercise of the powers conferred by sub-section (2) of section 5 read with clause (b) of sub-section (1) of that section of the Minimum Wages Act, 1948 (XI of 1948), and after consulting the Advisory Board and in supersession of the former Government of Madhya Pradesh, Labour Department, Notification, No. 564-451-XXIII, dated the 23rd February, 1956, the Government of Bombay hereby revises the minimum rates of wages in respect of the employment in any tobacco (including bidi making) manufactory in the Vidarbha region of the State of Bombay as mentioned in the Schedule hereto annexed and directs that this notification shall come into force with effect from 1st July, 1958.

SCHEDULE

Subject to the other provisions of this Schedule, the revised minimum rates of wages payable to employees per thousand bidis (when leaves are supplied by the employer) shall be as follows :—

Area. (1)	Revised rate in Rs. (2)
(i) Nagpur District	1.69
(ii) Bhandara District	1.62
(iii) Chanda, Akola, Buldhana, Yeotmal, Amravati and Wardha Districts	1.56

2. For all bidis in which 7 chataks or more of tobacco mixture is used and for those bidis which are known as "Hathnakhun" bidis, there shall be an increase of 12 naye paise per 1,000 bidis in the rates mentioned above in all the areas.

3. It shall be within the discretion of the employer to decide which are "chhat" bidis or bad bidis, up to 5 per cent. of the bidis prepared by an employee. If the employer decides that any bidis are "chhat" or bad, the "chhat" or bad bidis up to 5 per cent. shall be destroyed forthwith by the employee and whatever tobacco is recovered from them shall be retained by the employer. If, however, the employer wants to retain these "chhat" or bad bidis, he shall pay full wages for the same to the employee.

4. If "chhat" or bad bidis are more than 5 per cent. but less than 10 per cent. and if there is any dispute between the employer and the employee as to whether the "chhat" is done properly or not, equal number of representatives of the employer and the employees shall inspect the "chhat" bidis between 5 per cent. to 10 per cent. and decide whether the "chhat" is done properly or not. If there is any difference of opinion among the representatives of the two sides, the majority opinion shall prevail. If the opinion is equally divided and the employer wants to retain the "chhat" bidis, he shall pay wages for "chhat" bidis between 5 per cent. to 10 per cent. at half the rates fixed above. If the employer does not want to retain these bidis, the employee shall destroy them forthwith.

*Bom. Gaz., 19-6-58, Pt. IV-A, p. 466.

5. The employer shall nominate his representatives and the employees shall elect their representatives.

6. In the case of "chhat" above 10 per cent. the employee shall be entitled to full wages. It shall, however, be open to the employer to take suitable action against the employee if the "chhat" is more than 10 per cent. for 6 continuous working days in a calendar month.

7. The "chhat" shall be made once in a day only, at any premises within a distance of not more than 2 miles from the premises where bidis are manufactured.

Explanation.—For the purposes of this Schedule the expression "employer" includes his thekedar, contractor or agent, as the case may be.

Madras Factories Rules, 1950—Amendments.

*(G.O. Ms. No. 2551, Industries Labour and Co-operation, 1st July, 1958.)**

In exercise of the powers conferred by sections 29 (2) and 112 of the Factories Act, 1948 (Central Act LXIII of 1948), the Governor of Madras hereby makes the following amendments to the Madras Factories Rules, 1950, published with the late Development Department notification dated the 15th March 1950, at pages 103 to 178 of the Rules Supplement to Part I of the *Fort St. George Gazette*, dated the 25th April 1950, as subsequently amended, the same having been previously published as required by section 115 of the said Act :—

AMENDMENTS.

In rule 55-A of the said rules—

(1) in sub-rule (1)—

(a) for the words "taken in use", the words "taken into use" shall be substituted ;

(b) for the words "for the inspection", the words "for inspection" shall be substituted ;

(2) in sub-rule (4)—

(a) in item (iii), for the words "Distinguishing number of mark" the words "Distinguishing number or mark" shall be substituted ;

(b) for items (v) and (vi), the following items shall be substituted, namely :—

"(v) Date and number of the certificate relating to any test and examination made under sub-rules (1) and (8) together with the name and address of the person who issued the certificate.

(vi) Date of each periodical thorough examination made under clause (a) (iii) of sub-section (1) of section 29 of the Act and sub-rule (7) and by whom it was carried out";

*Fort St. Geo. Gaz., 16-7-58, Rules Sup. to Part. I, p. 273.

(c) in item (vii), after the words "lifting tackle", the words "made under sub-rule (6)" shall be inserted;

(3) in sub-rule (6)—

(a) in the opening paragraph, for the words "claims" and "State Government", the words "chains" and "Chief Inspector" shall respectively be substituted;

(b) in the proviso, the word "above" shall be omitted;

(4) in sub-rule (7)—

(a) in item (vi), for the words "screw thread or parts", the words "screw threaded parts" shall be substituted;

(b) item (ix) shall be omitted;

(c) in the last paragraph, for the words "claims" and "for the purpose", the words, brackets and figure "chains" and "in accordance with sub-rule (4)" shall respectively be substituted;

(5) in sub-rule (8)—

(a) for the word "tested", the word "re-tested" shall be substituted;

(b) the following words, brackets and figure shall be added at the end, namely:—

"and particulars entered in the register kept in accordance with sub-rule (4)";

(6) after sub-rule (8), the following sub-rule shall be inserted, namely:—

"(9) 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."

W. Bengal Factories (Welfare Officers) Rules — 1950, Amendments.

Notification No. 3193L.W./LW/IR-40/57 dated 17th September, 1957.*

In exercise of the power conferred by sub-section (2) of section 49 of the Factories Act, 1948 (LXII of 1948), the Governor is pleased to make the following amendments in the West Bengal Factories (Welfare Officers) Rules, 1950, issued under Labour Department notification No. 4020Lab., dated the 24th July, 1950, the same having been previously published as required under section 115 of the said Act:

AMENDMENTS

In the said rules:

(1) In rule 7, for the words "is or may be", substitute the words "before the coming into force of these rules, was already"; and

(2) in the first proviso to rule 7, for the words "six years", substitute the words "eight years".

*Cal. Gaz., Extry., 4-2-1958, Pt. 1, p. 379.

[IN THE MADRAS HIGH COURT.]

S. PALANIAPPA MUDALIAR

v.

ADDL. FIRST CLASS MAGISTRATE, KULITTALAI AND OTHERS.

Balakrishna Ayyar, J.

April 17, 1958.

FACTORIES ACT, 1948, SECTION 2(l)—'WORKER', DEFINITION OF—'EMPLOYED', MEANING OF—NECESSITY OF CONTROL AND SUPERVISION BY OWNER OF FACTORY—PERSON OVER WHOM OWNER HAS NO CONTROL OR SUPERVISION, WHETHER 'WORKER'.

The word "employed" in the definition of 'worker' in section 2(l) of the Factories Act, 1948, means something more than merely doing some work inside a factory. There must in addition be the element of the relationship of master and servant between the owner and the worker, indicated by a certain amount of supervision or control exercised by the owner over the worker.

A person working for the owner of an establishment on the conditions "come when you like, go when you like, work when you like, stop when you like, work as fast as you can, work as slow as you like, work on what you like or not at all", cannot be said to be 'employed' by the owner of the establishment and will not fall within the definition of 'worker' in section 2(l) of the Factories Act, 1948.

Case law discussed.

Writ Petitions Nos. 1165 to 1167 of 1956.

M. K. Nambiyar and T. R. Sangameswara Aiyar for the petitioner.

G. Ramanujam for Addl. Government Pleader for the respondents.

JUDGMENT.

The petitioner in all these cases is the same and he is the owner of a weaving concern in Karur. He has put up a thatched shed where he has installed a certain number of hand-looms. On these, towels and bed-sheets are manufactured. His office staff consists only of two clerks and they are the only permanent members of his establishment. The residents of the neighbourhood when they have time on their hands and when they feel inclined to do so go to the petitioner's shed where they are supplied with yarn. These they weave into towels and bed-sheets and they are paid at certain agreed rates for the articles they so weave. These persons come in when they like and go out when they like. In other words, they work on the premises only when it suits them to do so. The principal occupation of the residents of Karur is agriculture and weaving is only their spare time occupation. They accept work only according to the time they are able to spare from

their agricultural avocations. No one is required to attend on any fixed day. In fact, they are free not to come at all. There are about a hundred similar establishments in Karur and a person who works in one establishment is at liberty to work in any other establishment.

In 1955 the petitioner took out a licence for his premises under the Factories Act because he was threatened with prosecution if he failed to do so. All the establishments in Karur which are engaged in weaving towels and bed-sheets formed an association called the Karur Weaving and Knitting Factory Owners' Association. This association submitted memorials to the Chief Inspector of Factories and to the Government of Madras to exclude their establishments from the operation of the Factories Act, but these memorials were rejected.

Thereafter, the Inspector of Factories began to insist on the observance of the rules framed under the Factories Act and the Payment of Wages Act, 1936. The petitioner protested that his concern did not fall under the purview of either of these Acts. But the Inspector of Factories ignored his protests and laid a complaint against him in the Court of the Additional First Class Magistrate, Kulittalai, for violation of rule 103 framed under the Factories Act, the allegation being that he had failed to maintain a muster roll in the prescribed form. The petitioner was also prosecuted under rule 105 on the ground that he had failed to keep a bound inspection book containing the particulars prescribed in form No. 79. He was also prosecuted for violation of rule 79 read with section 61, for violation of rule 80 read with section 62, for violation of rule 87 read with section 83, for violation of rules 34 and 36 read with section 18, and, for violation of rules 40 and 62 read with sections 19 and 42. He was further prosecuted for violation of rule 6-A of the Madras Payment of Wages Rules and rule 8 of the same rules, the gravamen of the charges being that he failed to display notices specifying the maximum and minimum rates of wages payable to different classes of workers and the days on which the wages would be paid to them. Yet another prosecution launched against him was under rule 5 of the Madras Maternity Benefit Rules, the charge being that he had failed to maintain a separate muster roll of women workers.

These petitions have been filed for the issue of appropriate writs or directions restraining the Inspector of Factories, Tiruchirapalli, the Chief Inspector of Factories, Madras, and the State of Madras, from enforcing the provisions of the Factories Act, the Payment of Wages Act and the Madras Maternity Benefit Act against the petitioner.

The first question that has to be decided in these petitions is whether the persons working in the establishment of the petitioner are

workers within the meaning of the Factories Act, 1948. Section 2(m) of the Factories Act defines "factory" in these terms:

"factory" means any premises including the precincts thereof.—

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

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a railway running shed".

Then we have got section 2 (l) which defines a "worker" as follows:

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

There was no controversy as regards two facts: It was common ground that power was not being used at the premises of the petitioner; it was also common ground that there were days on which more than twenty persons were working on the premises of the petitioner. The controversy turned on the meaning of the word "employed" occurring in clause (l) of section 2. The contention of the State was that the persons who worked on the premises of the petitioner were persons "employed" within the meaning of that definition. The petitioner controverted that position. A number of cases were cited before me and I shall at once refer to them.

The earliest of these is reported in *State Government, M. P. v. Jiwa Bhai*, A.I.R. 1953 Nag. 1721. The facts there were as follows: The owner as also the manager of a rice mill were prosecuted for contravention of various provisions of the Factories Act. When the mill in question was inspected on 10th January, 1951, by the Inspector of Factories he found that (1) the register of workers was not properly maintained, (2) three women were found working after 7 p. m., and (3) the mill was working 13½ hours instead of 10½ hours. So far as the three women were concerned the judgment shows:

"Two of the three women in question are the wives of two of the factory workers and the third woman is the daughter of another factory worker. They had, it appears, brought food to these workers;

and while they were consuming it, the three women deputised for them by placing *dhan* in the mill."

It was contended on behalf of the owner and manager of the mill that those women were not acting as employees of the mill but were only doing what may be called a good turn for their male relatives. A Bench of the Nagpur High Court took the view that these women must be considered to be employed in the factory. According to the learned Judges the word "employed" does not only connote employed on wages but also being occupied or engaged in some form of activity. This view is in consonance with the spirit of the Factories Act which strictly inhibits "the employment of women in a factory after 7 p.m. and before 6 a.m.". With respect I find it difficult to agree with the view that these women can be considered to be persons employed within the meaning of the word in clause (1) of section 2 of the Factories Act.

As will presently appear, the word "employed" means different things in different places. But, it seems to me that in the context of the Factories Act the word "employed" means something more than doing some work inside the factory; there must be in addition at least one further element. There must be some sort of agreement between the person doing the work and the manager or the owner of the factory. The women in the Nagpur case were really in the position of volunteers and I find it difficult to agree that a volunteer can be considered to be "employed" in the factory. If the view of the learned Judges of Nagpur High Court were correct, even a person who trespasses into a factory and there does any work of his own choosing would be a person employed within the meaning of clause (1) of section 2 even though the management may not be aware of his being on the premises and if they had known, would have disapproved of his presence in the place.

The next case is reported in the *State v. Alisaheb*, A.I.R. 1955 Bom. 209. The respondent before the High Court was a manager of a factory called Pistol Bidi factory. On 13th September, 1952, the Junior Inspector of Factories visited the premises and found 110 persons working there. He also found that various registers required to be maintained under the Factories Act were not maintained. He also found that sufficient drinking water as required by the rules had not been provided. He also found that the names of certain persons who were allowed to work in the factory were not shown in the register of workers. Following the decision of Bavdekar, J. the learned Magistrate acquitted the accused. The State appealed. The controversy before the High Court was whether it was necessary that the relationship of master and servant should exist before a person could be said to be employed within the definition of clause (1) of section 2 of the Factories Act. Dixit, J., observed:

"On the whole, therefore, I am inclined to take the view that the expression 'employed' as used in section 2(1) does not necessarily involve the relationship of master and servant. It may be that if one is employed upon the basis of wages, then in that case, there may be a relationship of master and servant, but there are other conceivable cases in which there may not be a relationship of master and servant and yet such persons would be workers." That view was concurred in by Vyas, J.

The third case is reported in *Annamalai Mudaliar and Bros. v. Regional Provident Fund Commissioner*, [1955] 8 F.J.R. 111. That case was in respect of a weaving concern in Karur similar to that of the petitioner here. Rajagopalan, J. observed at page 115:

"What would be the position if these principles were applied to the facts in issue in this case? The owner of the factory had really no control over the time taken by the worker to complete the work the latter had undertaken to do for the remuneration specified. The worker was under no obligation to attend on any particular day or at any particular hour. It is no doubt true that the worker had to do his work within the precincts of the factory, and I presume the hours of work in the factory would be regulated under the Factories Act. But even during those hours no compulsion could be brought to bear upon the worker to do the work. Further, as in *Smith's case*, L.R.1911 A.C. 188 at 192-193, the owner of the factory was under no obligation to provide work for any given worker on any given day, that is, the owner was under no obligation to provide for a reasonable continuity of service or the work. These features would appear to militate against the existence of a jural relationship of master and servant."

It is possible to say in respect of this case that it was given under the Employees Provident Funds Act and that the definition of "employee" in that Act which runs as follows:

"'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"

is different from the definition of "worker" in clause (1) of section 2 of the Factories Act. But if we read the two definitions side by side it will be found that from the point of view from which we are now examining the matter, there is only one important difference between the two definitions. The Employees' Provident Funds Act requires that the person should be employed for wages whereas the definition in the

Factories Act does not require that he should be employed for wages. But the word "employed" is common to both the definitions and the decision of Rajagopalan, J. is important as showing how the word "employed" should be construed not merely in relation to that Act but in similar situations.

I shall now refer to the decision in *Abdul Kader Sahib v. State of Madras*, [1956] 10 F.J.R. 158. There Rajagopala Ayyangar, J. had to deal with a case under the Industrial Disputes Act. The material facts there were as follows. The petitioner was an exporter of beedies. He used to purchase tobacco and store them in his godowns. This tobacco and the other raw materials required for making beedies, he used to hand over to some contractors in pursuance of written arrangements. These contractors were at their own expense and risk to manufacture beedies or cause them to be manufactured with the materials supplied by the petitioner. These contractors engaged certain employees for manufacturing beedies. The persons engaged by the contractor made claims for increased wages, etc., on the petitioner who denied his liability. The matter was then taken to the Labour Officer who reported to Government that the dispute was an industrial dispute which might be referred for adjudication. Rajagopala Ayyangar, J. ruled that the reference was incompetent because the workers were not the employees of the petitioner. His decision is accurately summarised in the head-note:

"The existence of a relationship of employer and employee is necessary before there can be any industrial dispute between them within the meaning of the Industrial Disputes Act. Where the proprietor of a company employs contractors to manufacture and supply goods to him out of the raw materials provided by him the responsibility and cost of employing labour, etc., being on the contractor, though the licence for the trade, etc., stood in the name of the proprietor, there is no relationship of employer and employee between the proprietor and the labourers employed by the contractor and as such a reference to arbitration of a claim by the workers for increased wages, etc., from the proprietor is without jurisdiction."

The next case I shall refer to is reported in *Massey Harris Ferguson Ltd. v. Piper*, [1956] 2 All E.R. 722. In that case the appellants were the occupiers of a factory which was subject to the regulations for the generation, etc., of electrical energy. The appellants engaged a firm of contractors to paint the walls and crane work in the bay of the factory. Before the painter employed by the contractors started the work he asked a crane driver employed by the appellants whether the electric power was turned off. The crane driver, not knowing that the switch near the bay had been disconnected, turned it into the "off" position

and informed the painter that the power was switched off. The painter came into contact with the trolley wires and was electrocuted and killed. The appellants were prosecuted under section 133 of the Act of 1937 on the ground that they had contravened regulation I of the Regulations of 1908. The relevant statutory provision ran as follows:

"Where the Minister of Labour and National Service is satisfied that any manufacture, machinery.....used in factories is of such a nature as to cause risk of bodily injury to the persons employed, or any class of those persons, he may, subject to the provisions of this Act, make such special regulations as appear to him to be reasonably practicable and to meet the necessity of the case."

The appellants contended that they were not liable because the regulations were made only for the benefit of persons employed by the occupier of the factory and that there had been no danger to the servants of the occupier. The Court overruled the objection and dismissed the appeal. They held that the word "persons employed" included *persons engaged in the work* and not only persons employed by the occupier of the factory. If I may say so with respect this decision in the context of the regulations and the facts is undoubtedly right. The Court held that the benefit of the Regulations was available to all persons lawfully occupied in working inside the premises of the factory. The manifest purpose of the regulation makes the meaning of the word plain.

The case reported in *Dhrangadhara Chemical Works v. State of Saurashtra*, [1957] 11 F.J.R. 439, arose under the Industrial Disputes Act. The appellants in that case were lessees of certain salt works in the former State of Dhrangadhara. Certain persons described as agarias worked for the appellants. In that locality the salt is manufactured not from sea water but from rain water which soaking down into the ground becomes impregnated with saline matter. The entire area is parcelled out into plots called pattas and each agaria is allotted a patta. If the patta is extensive it is allotted to two agarias who work as partners. The agarias then undertake the manufacture of salt.

"The agarias work themselves with their families on the pattas allotted to them. They are free to engage extra labour but it is they who make the payments to these labourers and the appellants have nothing to do with the same. The appellants do not prescribe any hours of work for these agarias. No muster roll is maintained by them nor do they control how many hours in a day and for how many days in a month the agarias should work. There are no rules as regards leave or holidays. They are free to go out of the works as they like provided they make satisfactory arrangements for the manufacture of salt." (P. 441)

In 1950 disputes arose between the agarias and the appellants as to the conditions of their employment. The Government of Saurashtra referred the dispute to the Industrial Tribunal. The appellants contended that the status of the agarias was that of independent contractors and not of workmen and that in consequence the State was not competent to refer their disputes for adjudication. The Court held that the agarias were workmen within the meaning of the term as defined in the Industrial Disputes Act, and not independent contractors. The Court ruled:

"The *prima facie* test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. The correct method of approach therefore would be to consider whether having regard to the nature of the work there was due control and supervision by the employer.

A person can be a workman even though he is paid not per day but by the job. If a person is a worker and not a contractor it makes no difference that his work is piece-work. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status."

In *Modern Match Industries v. Labour Appellate Tribunal I, Madras*, [1957] 13 F.J.R. 202, which was a case under the Industrial Disputes Act, Rajagopalan, J. reaffirmed the conclusion he himself had come to in an earlier decision and which has already been referred to:

"In my opinion, unless the relationship of master and servant is proved, a person who claims to be a workman within the meaning of section 2(s) of the Act cannot be said to be employed within the meaning of that clause; and, as I said, if he was not employed, he would not be a workman as defined by that clause."

One last case remains to be referred, and, this is the decision of the Supreme Court in Criminal Appeal No. 93 of 1955.* The first appellant before the Supreme Court was the managing partner of a firm which manufactured beedies. The second appellant was the manager of the factory. The management used to deliver tobacco and in some cases beedi leaves to certain persons called Sattedars. Some of these Sattedars maintained small factories of their own. Some others handed over tobacco and

* *Chintaman Rao v. State of Madhya Pradesh*, Supra p. 103.

beedi leaves to outsiders who rolled beedies in their houses. The Sattedars collected the beedies and delivered them at the factory. On 9th December, 1952, the Inspector of Factories inspected the factory of the appellants and found nine persons working there. Seven of them were sorting beedies and packing them into bundles while the last two were bringing in the beedies for being warmed. The Chief Inspector prosecuted the appellants for contravention of sections 62 and 63 of the Factories Act in that they had failed to maintain the register of adult workers, etc. The Magistrate convicted the appellants and the conviction was confirmed in appeal. A revision petition filed in the High Court failed. The appellants went on special leave to the Supreme Court. The Supreme Court set aside the convictions and held that Sattedars were independent contractors and not workmen within the meaning of the Factories Act:

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

The principal ground on which that conclusion was rested was that the Sattedars were not under the control or subject to the supervision of the manager of the factory.

I may here make one general observation on the decisions that have been rendered under the Industrial Disputes Act. In that Act the word "workman" is defined as follows:

"'Workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward,.....and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with....."

The word "industry" is defined in clause (j) as meaning "any business, trade, undertaking, manufacture or calling of employers and includes any calling, service employment, handicraft or industrial occupation or avocation of workmen." A comparison of the definition of "worker" in the Factories Act and "workman" in the Industrial Disputes Act will show that the words are not used in the same sense. From one point of view the definition of "worker" in the Factories Act is wider because it includes persons who may not be receiving wages. In another sense the definition of "workman" in the Industrial Disputes Act is wider because it includes persons employed in any industry whereas in order to be a worker within the meaning of the Factories Act he must be employed in any manufacturing process or in cleaning

the machinery used in a manufacturing process or the premises in which a manufacturing process is carried on or other work incidental to manufacturing process. In other words, before a person can be a worker within the meaning of the Factories Act there must be some connection between him and a manufacturing process. That requirement does not exist in the Industrial Disputes Act. I am mentioning this merely to show that one must be careful before applying the decisions given under the Factories Act to decisions given under the Industrial Disputes Act and vice versa.

An examination of these decisions confirms what one was inclined to suspect at the outset, *viz.*, that "employed" is a word with a varying content of meaning and that it signifies different things in different places. When we say, for instance, that the persons in a village are employed in agriculture we mean that agriculture is their principal occupation. On the other hand, when we say that X is employed by Y we ordinarily imply that Y remunerates X for his services and that he has a certain measure of control over his time and skill and labour. But the degree and extent of control may be nominal or extensive. When for instance a surgeon is employed by a municipality the municipality may require him to work between certain hours or on so many days a week, but it cannot tell him how he should treat a particular patient or how he should perform a particular surgical operation. That would be entirely in the judgment of the surgeon and the municipality can give him no directions in that regard. But, because of that we cannot say that the surgeon is not employed by the municipality. At the other extreme there would be the case of a soldier who is employed by Government. In his case control goes to the utmost extent possible. He can be told not only what he should do, but how he should do it. He can be told how many buttons there should be on his shirt, how he should roll his patties and how he should hold his gun. In between lie infinite grades of control and supervision. But a certain amount of supervision or control is necessarily implied in the connotation of the word "employed".

Now, as I said before, we have to consider the meaning of the word "employed" in the Factories Act. The employment there referred to is in connection with a manufacturing process which is carried on in a factory. Such process normally call for a large measure or co-ordination between various sections inside a factory and between various individual workers even inside the same section. Otherwise it may happen that the plant lies idle or that workmen are left with nothing to do. The management in a factory may therefore properly require that certain hands should do some particular

work and not some other work. The management may also have to tell the hands how they are to do that work. The workers will have to be guided by the directions given by those placed in supervisory positions whether the directions relate to a manufacturing process or to cleaning the machinery or to doing any other work incidental to or connected with the manufacturing process. Regard being had to actualities a worker in a factory is normally liable to constant and close supervision.

What is the position in the present case? Even apart from the various statutes, statutory rules and notifications regarding holidays, hours of work and the like, the petitioner here cannot require any of the persons using the facilities on his premises to work between particular hours. He cannot require any one of them even to attend on any particular days. The worker can come any day he likes, work as long as he likes or as short as he likes and go away. He may work fast or he may work slow. The petitioner cannot tell him that he should work on towels and not on bed-sheets or vice versa. If the worker so pleases he can work on towels though the petitioner would prefer him to work on bed-sheets. And, more important of all, the petitioner cannot prevent anybody from working for a competing manufacturer. Come when you like, go when you like, work when you like, stop when you like, work as fast as you like, work as slow as you like, work on what you like or not at all, that is the position of the workers *vis-a-vis* the petitioner. Such person cannot, in my opinion, be said to be "employed" by the petitioner within the meaning of clause (l) of section 2 of the Factories Act.

The learned Additional Government Pleader contended that as the petitioner has been prosecuted before a Magistrate it would be open to him to raise before the Magistrate all these contentions and that therefore this Court will not be justified in issuing the writs prayed for. This consideration may have justified the dismissal of the petitions at the stage of admission. This objection may have been good as a preliminary point, but, since the entire matter has been argued, I do not think that it would be right to dismiss the petitions on this ground at this stage.

So far as W.Ps. Nos. 1166 and 1167 are concerned, one other comment has to be made. W.P. No. 1166 of 1956 is directed against the prosecution instituted under the Payment of Wages Act. Now, in the Payment of Wages Act "factory" is defined as in clause (j) of section 2 of the Factories Act, 1934. That definition runs as follows:

" 'factory' means any premises including the precincts thereof whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is

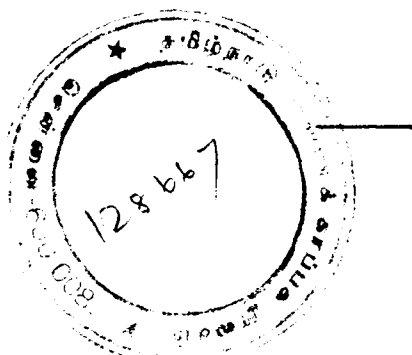
ordinarily so carried on, but does not include a mine subject to the operation of the Indian Mines Act, 1923."

I would draw attention to the fact that in order to fall within this definition it is necessary that the manufacturing process should be carried on with the aid of power. In the instant case it is common ground that the looms installed by the petitioners are handlooms and not driven by power.

The prosecution covered by W.P. No. 1167 of 1956 is under the Madras Maternity Benefit Act. In that Act also the word "factory" is defined in the way in which it is defined in the Factories Act of 1934.

Prima facie therefore it would appear that the petitioner stands outside those two Acts. The learned Additional Government Pleader however pointed out that since the Factories Act of 1934 has been replaced by the Factories Act of 1948, by reason of section 8 of the General Clauses Act of 1897 (Central) we should have regard to the definition in the later Act and if we do that the case of the petitioner would fall within the scope of the Payment of Wages Act and the Madras Maternity Benefit Act. The differences between the Factories Act of 1934 and the Factories Act of 1948 including the definition of the word factory are so numerous and so important that I doubt whether it would be proper without enquiry into each case when and as it arises to carry over the definition of factory in the later Act into enactments which incorporate by reference to the definition in the earlier Act. Since however it is possible to dispose of these petitions on the grounds I have already given it is not necessary for me to express any final opinion on the matter I have just mentioned.

In my opinion the persons working on the premises of the petitioner are not persons "employed" within the meaning of that word in clause (1) of section 2 of the Factories Act. It follows that the petitioner is entitled to the reliefs he has prayed for. The rule *nisi* is in every case made absolute. The petitioner will get his costs. Advocate's fee, one set, Rs. 250.



[IN THE MADRAS HIGH COURT.]

STATE OF MADRAS

v.

K. N. PADMANABHA IYER AND OTHERS.

Rajamannar, C. J. and Ramachandra Iyer, J.

March 26, 1958.

WRIT—JURISDICTION ON HIGH COURT—REFERENCE OF INDUSTRIAL DISPUTE TO INDUSTRIAL TRIBUNAL—WHETHER ADMINISTRATIVE ACT—WHETHER WRIT OF PROHIBITION CAN ISSUE TO INDUSTRIAL TRIBUNAL—CONSTITUTION OF INDIA, ART. 226.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10(1)—REFERENCE OF DISPUTE TO INDUSTRIAL TRIBUNAL—REFERENCE AFTER CLOSURE OF BUSINESS—SUBJECT MATTER OF REFERENCE ARISING BEFORE CLOSURE—VALIDITY OF REFERENCE.

Though an executive act by itself cannot be quashed by a writ of certiorari, if, by virtue of such an administrative act, a quasi-judicial Tribunal, like the Industrial Tribunal, is vested with jurisdiction to proceed with an adjudication which will certainly be a proper subject matter for a writ of certiorari at a later stage, it will be open to the High Court, under the powers conferred on it by article 226 of the Constitution, to issue a writ in the nature of a writ of prohibition prohibiting the quasi-judicial Tribunal from proceeding with the adjudication in pursuance of the administrative order of the Government if the High Court is convinced that the administrative act is illegal or ultra vires.

The power of the appropriate Government to make a reference under section 10(1) of the Industrial Disputes Act, 1947, must be determined with reference not to the date on which it is made but the date on which the right which is the subject matter of the dispute arises, and the machinery provided under the Act would be available for working out the rights which accrued prior to the closure of a business notwithstanding that the reference is made after the closure: PIPRAICH SUGAR MILLS v. PIPRAICH SUGAR MILLS MAZDOOR UNION [1957] 11 F.J.R. 262, followed.

Writ Appeal No. 11 of 1954.

Additional Government Pleader for the State.

V. Thyagarajan, M. A. Rajagopalan and M. A. Srinivasan for the management.

JUDGMENT.

This is an appeal against the judgment of Govinda Menon, J., disposing of an application under article 226 of the Constitution filed by one K. N. Padmanabha Iyer in the following circumstances. The joint

family to which the said Padmanabha Iyer belonged was running a hotel called Lakshmi Cafe at No. 311, Mint Street, George Town, Madras. On behalf of the workers of the said cafe, the Madras City Hotel Workers Association put up a number of demands to the management relating to wages, dearness allowance, holidays, leave facilities, bonus, gratuity, provision of room for taking tiffin, etc. There were attempts at reconciliation by the Labour Officer, but the attempts did not succeed. On 2nd May, 1952, the proprietor of the cafe addressed the Labour Officer that owing to a slump in the business and high cost of foodstuffs, the business was running at a loss. There was also considerable trouble from the workers and therefore he had decided to close down the cafe section of the business from the 8th May and requested the permission of the Labour Officer to do so. Eventually, on 1st July, 1952, the business of the cafe was closed down. On 28th January, 1953, the Government passed an order G.O.Ms. 397, Development Department, in and by which in exercise of the powers conferred on them by section 10(1)(c) of the Industrial Disputes Act, 1947, they directed the industrial dispute which had arisen between the workers and management of the Lakshmi Cafe, Madras, to be referred for adjudication to the Industrial Tribunal, Madras. In the annexure to the order they gave the list of the items of dispute between the parties. The list is as follows:

- (1) Fixation of scales of wages for different categories of employees.
- (2) Fixation of the quantum of dearness allowance in the place of boarding and lodging.
- (3) Fixation of number of days for sick leave with wages in a year.
- (4) Fixation of the quantum of bonus for the years 1947, 1948, 1949, 1950 and 1951.
- (5) Fixation of the quantum of gratuity.
- (6) Whether the closure of the hotel in July 1952 and the discharge of workers are justified and if not, to what relief the discharged workmen are entitled?

Thereupon Padmanabha Iyer, a member of the joint family which was running the hotel, filed the petition above referred to under article 226 of the Constitution for the issue of a writ quashing the order of reference of the first respondent dated 28th January, 1953, and the proceedings before the Industrial Tribunal, Madras, in pursuance of the said order of the Government. In the counter affidavit filed on behalf of the Government it was, *inter alia*, stated that there was no *bona fide* closure of the business and that the business was actually being conducted. Govinda Menon, J., before whom the writ petition came on

for hearing, after considering the report of a Commissioner who had been specially appointed to find out if the closure was really genuine, held that there was a *bona fide* closure of the business and that the management had not closed down the business with a view to victimise the workmen and force them to accept their own terms. The learned Judge also took the view that in view of his finding that there had been a *bona fide* closure of the business in July 1952, the order of the Government referring the matter to the Industrial Tribunal in January 1953 when the business was not in existence was bad because on the date of the reference it could not be said that there was a dispute between the workmen and the management of the business. He therefore quashed the order of Government. The State of Madras is the appellant before us and the learned Additional Government Pleader has challenged the correctness of this view.

We may mention that at the outset the learned Government Pleader put forth a technical objection to the maintainability of the petition under article 226 to quash the order of reference made by the Government, on the ground that such an order was administrative in its nature and a writ of *certiorari* would not lie to quash an administrative or executive act. It cannot be denied that there is force in this contention. But, in our opinion, this technical objection should not be allowed to prevail so as to deny this Court an opportunity to interfere if the justice of the case calls for such interference. It is true that an executive act by itself cannot be quashed by a writ of *certiorari*; but if by virtue of such an administrative act a quasi-judicial Tribunal like the Industrial Tribunal is vested with jurisdiction to proceed with an adjudication which certainly will be proper subject matter of a writ of *certiorari* at a later stage, then it would be open to this Court, under the powers conferred on it by article 226 of the Constitution, to issue a writ in the nature of a writ of prohibition prohibiting the quasi judicial Tribunal, that is, the Industrial Tribunal, from proceeding with the enquiry in pursuance of the administrative order of the Government, if, this Court is convinced that the executive act is illegal or *ultra vires*. We therefore overrule the preliminary objection and shall proceed with the case as if the petitioner had prayed for an appropriate writ in the circumstances, that is, a writ of prohibition and not a writ of *certiorari* which happened to be mentioned specifically in the petition, though there was an omnibus prayer for the passing of any other order which may appear just to this Court in the circumstances.

On the main point the matter is concluded by the recent decision of the Supreme Court in *P. S. Mills Ltd. v. P. S. Mills Mazdoor Union*, [1957] 11 F.J.R. 626. In that case it was held by the Supreme Court

construing a section of the U.P. Industrial Disputes Act corresponding to section 10 of the Industrial Disputes Act, 1947, that the power of the State to make a reference must be determined with reference not to the date on which it is made but the date on which the right which is the subject matter of the dispute arises, and the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business. In that case the reference was made at a time when the business had been closed; but the reference was in respect of a claim which arose when the business was working. Following that decision we must hold that the ground on which Govinda Menon, J., quashed the order of the Government was wrong.

Our attention was drawn to the fact that in the judgment of Venkatarama Ayyar, J., who delivered the judgment on behalf of the Supreme Court there is an approval of the very judgment of Govinda Menon, J., against which this present writ appeal has been filed. That approval is contained in the following passage:

"The view therefore expressed in *Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras*, [1951] 3 F.J.R. 420 and *K. N. Padmanabha Aiyar v. State of Madras*, [1953] 11 F.J.R. 257, that the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or found that the closure is real and *bona fide*, any dispute arising with reference thereto would, as held in *K. N. Padmanabha Aiyar v. State of Madras*, [1953] 11 F.J.R. 257, fall outside the purview of the Industrial Disputes Act."

It is obvious that this approval cannot certainly mean that they were approving of a proposition which is opposed to the very decision in that case. It appears to be clear to us that the learned Judge's attention was not drawn to the fact that in the case before us, though the reference was made at a time when the business had been closed down, the dispute arose when the industry was in existence, that is, when the business was running.

Mr. V. Thyagaraja Aiyar appearing for the management drew our attention to the fact that one of the items referred by the Government cannot really be said to remain after the finding of the learned Judge, Govinda Menon, J., that the closure of the business was *bona fide*. Item 6, as already mentioned, relates to the propriety of the closure. We agree with him. The Tribunal will not proceed to adjudicate as regards that item of dispute in view of the finding of this Court. Otherwise the Industrial Tribunal will have jurisdiction to proceed with the inquiry in

accordance with the order of the Government. It was represented to us by Mr. Thyagaraja Aiyar that some of the other items have since become academic in view of the closure of the business, as, for instance, fixing the number of days for sick leave. That, however, will not deprive the Industrial Tribunal of jurisdiction to proceed with the inquiry on the reference. It can be represented to the Tribunal by the management that some of the items have really become academic and have no practical significance.

In the result, we allow the appeal and dismiss the application filed by the management. The Industrial Tribunal will go on with the inquiry and make an adjudication having regard to the observations made by us in this order. There will be no order as to costs.

[IN THE MADRAS HIGH COURT.]

METTUR INDUSTRIES LTD.

v.

A. R. VARMA AND OTHERS.

Balakrishna Ayyar, J.

May 2, 1958.

STANDING ORDERS—SCOPE OF—TERMINATION OF SERVICE—STANDING ORDERS PROVIDING FOR TERMINATION BY NOTICE—ENQUIRY BEFORE TERMINATION, WHETHER NECESSARY.

INDUSTRIAL TRIBUNAL—JURISDICTION—WHETHER BOUND BY EXISTING LAWS—WHETHER BOUND BY STANDING ORDERS—INDIVIDUAL DISPUTE AS TO TERMINATION OF SERVICE—WHETHER TRIBUNAL CAN IGNORE STANDING ORDERS AND GIVE RELIEF.

TERMINATION OF SERVICE—TERMINATION ON NOTICE IN ACCORDANCE WITH STANDING ORDERS—NO ENQUIRY HELD—INDUSTRIAL TRIBUNAL DIRECTING RE-INSTATEMENT FOR NON-COMPLIANCE WITH PRINCIPLES OF NATURAL JUSTICE—VALIDITY OF ORDER OF TRIBUNAL.

The certified Standing Orders of an establishment form part of the contract between the management and every one of its employees and take the place of the Service Rules relating to Government Servants. Where the Model Standing Orders prescribed under the Act as also the Standing Orders of an establishment make a clear distinction between termination of employment simpliciter and termination of employment as a punishment for misconduct, prescribing only a period of notice in the former case and an enquiry in the latter, the management has the right to terminate the services of a workman by giving him the notice prescribed and there is no occasion for an enquiry or

the application of principles of natural justice on such termination of employment. There is no scope for the application of the principles of natural justice where the rights of the parties are provided for and determined by statutes, rules framed under the statutes, or other statutory instruments.

Industrial Tribunals and Courts, being creatures of statute, have no powers or authority whatever except those conferred by the relevant statutes which have been passed from time to time. The internal discipline of an industrial establishment is in the hands of the management and a Labour Court can interfere only where the statute permits it to do so. It may be that a Labour Court or Tribunal can, notwithstanding prior agreements between the parties, direct higher wages to be paid or more amenities to be provided, but, where the dispute relates to a particular individual and the question is whether he has been improperly dealt with, that question must be determined within the framework of the existing agreements and the existing rules. Though employees can demand that the Standing Orders should be amended, till they are amended they hold the field and any disputes that arise in individual cases must be disposed of in accordance with the Standing Orders as they happen to be at the relevant time. The Labour Court or Tribunal cannot ignore the Standing Orders.

Case law discussed.

Writ Petition No. 110 of 1958.

M. K. Nambiyar for the petitioners.

B. Lakshminarayana Reddi, G. Ramanujam and Addl. Govt. Pleader for the respondents.

JUDGMENT.

The Mettur Industries Ltd. is the petitioner. The first respondent, A. R. Varma, was employed in the petitioner's mills in Mettur Dam as a weaving production clerk. On 28th November, 1956, the petitioner dismissed the first respondent on the charge that he had been found sleeping on three occasions while on duty on the night of 22nd November, 1956. During the enquiry held against him the first respondent handed over to the enquiring officer a letter, a copy of which is Ex. A to which reference will be made presently. At the time the order of dismissal was passed, an industrial dispute between the workmen and the management of the petitioner was pending. So the petitioner filed an application under section 33(2) of the Industrial Disputes Act before the Labour Court for the approval of the action which the petitioner had taken. The first respondent, Varma, also filed a complaint under section 33-A of the Industrial Disputes Act alleging that the petitioner had contravened the provisions of section 33 of the Act. The Labour

Court heard both the petitions together and in an award dated 13th March, 1957, held, that the dismissal of the first respondent was unjustified and that he should be re-instated with full back pay and continuity of service. Against this award of the Labour Court the petitioner applied for special leave to appeal to the Supreme Court. That application was dismissed on 24th May, 1957. The petitioner, therefore, had no option but to comply with the award which had been made on 13th March, 1957. The first respondent was therefore re-instated on 13th July, 1957.

The management, however, felt that the continuance in service of Varma who had sent a letter of the kind he had would be prejudicial to the interests of the concern, and, exercising the powers they had under Standing Order 18(a) of the Standing Orders of the mill, they terminated the services of Varma. An industrial dispute was raised about this which the Government by an order dated 24th September, 1957, referred to the Labour Court, Coimbatore, for disposal. The question referred was :

"Whether the termination of the services of clerk Sri A. R. Varma on 13th July, 1957, is justified and to what relief and security of service he is entitled to?"

On 30th December, 1957, the Labour Court pronounced the award directing that Varma should be re-instated.

This petition has been filed for the issue of an appropriate writ to quash this order of the Labour Court.

In the affidavit filed in support of the petition the petitioner urged that the Labour Court had overlooked the distinction between termination of service under Standing Order 18(a) and dismissal. The Labour Court was wrong in assuming that before the service of Varma could be terminated under Standing Order 18(a) he should have been given an opportunity of making his representations. The Tribunal had no jurisdiction to interfere with the order of the management terminating the services of Varma in the absence of evidence either of *mala fides* or unfair labour practice.

In the counter affidavit, which he filed, Varma stated that the petitioner did not implement the award dated 13th March, 1957, even after the Supreme Court had dismissed the petition for special leave to appeal to it. At his instance the National Textile Employees' Union, Mettur Dam, informed the Labour Officer of Salem, that the award had not been implemented. Merely to avoid prosecution the petitioner permitted Varma to join duty on 13th July, 1957. In the afternoon of the same day he was served with a notice terminating his services under Standing Order 18(a). I now quote from his affidavit :

"I submit that the reasons assigned in the notice of termination dated 13th July, 1957, are unfounded and untenable. I submit that the order of termination of my service is unjust, arbitrary and against all principles of natural justice besides being illegal. I also submit that the petitioner's conduct is thoroughly *mala fide* and provides a glaring instance of the most intolerable type of unfair labour practice. The management neither framed any charge against me nor gave an opportunity to explain the charge. I further submit that re-instating me in the morning to avoid criminal prosecution and discharging me in the evening is a *mala fide* one. I state that Standing Order 18(a) of the petitioner's mill is unjust, and illegal, since it offends elementary principles of natural justice recognised by any democratic country."

Later, in paragraph 6 of his counter affidavit, Varma took the further point:

"I also submit that it was held by Courts that the Tribunal has got supervising jurisdiction in the case of discharge under standing orders."

The decision of the Labour Court was correct and the petition therefore ought to be dismissed.

It is now necessary to refer to the letter which Varma handed over on 28th November, 1956, to the Officer who held the enquiry against him on the charge that he had been found sleeping when on duty on the night of 22nd November, 1956. Sometime before 26th March, 1955, Varma had complained to the Salem District Textile Employees' Union that Sadler, an officer in the employ of the Mettur Industries Ltd., had abused him and insulted him when on duty. On receipt of the complaint the Secretary of the Union wrote to the manager of the Mettur Industries Ltd., complaining of the conduct of Sadler and charging him with "an ulterior motive of colour and nationality discrimination." The Secretary of the Union further stated:

"I am afraid that such an action and behaviour on the part of an European staff towards an Indian staff cannot in the least be tolerated as it affects the self-respect of a man, leave alone his position, status, etc."

A letter of apology with an assurance that there would be no recurrence of such incidents was asked for. The Secretary sent copies of this letter to the British High Commissioner, the British Trade High Commissioner, New Delhi, the Labour Minister, Union Government, the Home Ministry, Union Government, New Delhi, the Chief Minister, the Labour Minister, Madras and several others.

In the letter dated 28th November, 1956, Varma stated that for a long time there had been misunderstandings and differences of opinion

between Sadler and another employee of the mill called Nigli. When Nigli heard of the incident about which Varma complained to the Union and in consequence of which the Secretary of the Union sent out the letter dated 26th March, 1955, he advised Varma to take very strong objection to Sadler's attitude. The letter continues:

"I was not very particular to develop it to such a magnitude. Seeing my attitude and also the attitude of Mr. V. G. Narasimham our Secretary who advised me not to develop it, Mr. Nigli mobilised all the staff of our shift against Mr. Sadler and forced me to this extent through the secretary and made him to take up the matter very seriously, giving a picture that it affected the very prestige of the Indian staff. The secretary complied with and did accordingly."

Subsequently, so it is stated in the letter, Nigli advised Varma to file a defamation suit against Sadler assuring him that one Healey had promised to give the necessary financial assistance to prosecute the suit. So he filed a suit. Subsequently he came to realise what motives had impelled Nigli and so he did not prosecute the suit. In the penultimate paragraph of the letter Varma stated:

"In the presence of Mr. C. T. Paul, and Mr. R. V. A. Kannan and Mr. Subbarayan he asked me why I did not shoe Mr. Sadler when he abused me. You can very well ask the persons about this for confirmation."

The letter ends:

"I regret very much for being a tool to Mr. Nigli and for having conducted myself against Mr. Sadler to develop the unhappy incident to such a colossal magnitude, to bring to the notice of the Governments concerned."

The case of the petitioners is that it terminated the service of Varma because it realised that the continuance in service of Varma, who had sent the sort of letter he had would be greatly prejudicial to the interests of the concern.

Before proceeding further it is desirable to advert to the main features of the Industrial Employment (Standing Orders) Act, 1946, on the basis of which the Standing Orders of the petitioner company have been framed. The preamble to the Act recites that it is expedient to require employers in industrial establishment to define with sufficient precision the conditions of employment under them and to make the said conditions known to the workmen employed by them. Section 3 of the Act requires an employer to submit to a Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in his establishment. Sub-section (2) enacts:

"Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model Standing Orders have been prescribed, shall be, as far as is practicable, in conformity with such model."

On receipt of the draft under section 3, the Certifying Officer is required to send a copy to the trade union concerned, or, if there is no trade union, to the workmen concerned and invite their objections. Under sub-section (2) to section 5 the Certifying Officer is given power to decide whether the draft Standing Orders required modification in any respect in order that they may be certifiable under the Act. Section 6 provides for appeals from the decision of the Certifying Officer. Section 7 enacts that Standing Orders shall come into operation on the expiry of thirty days from the date indicated in the section. Section 9 requires that the text of the Standing Orders as finally certified shall be prominently displayed by the employer in English and in a language understood by the majority of the workmen. Sub-section (1) of section 10 runs :

"Standing Orders finally certified under this Act shall not, except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modification thereof come into operation."

Section 12 prohibits the reception of oral evidence to vary or add to the terms of the Standing Orders as certified. The Schedule to the Act enumerates matters to be provided for in the Standing Orders framed under the Act. Eleven items are so enumerated. Of these, only items 8 and 9 are here relevant.

Item 8: "Termination of employment, and the notice thereof to be given by employer to workmen."

Item 9: "Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct."

Under the rule-making powers conferred by the Act the Central Government have framed rules, and Schedule I of the rules contains model standing orders. Model order 13 (1) runs as follows :

"For terminating employment of a permanent workman, notice in writing shall be given either by the employer or the workman—one month's notice in the case of monthly-rated workmen and two weeks notice in the case of other workmen; one month's or two weeks' pay, as the case may be, may be paid in lieu of notice."

Order 13 (2) deals with temporary workmen, probationers and *badlis*. It is stated that these categories of persons shall not be entitled to any notice or pay in lieu thereof if their services are terminated. Then

follows a provision that even the services of a temporary workman shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in paragraph 14. And then follows Order 14 which provides for disciplinary action for misconduct.

The point that has to be emphasised here is that the model Standing Orders themselves make an unmistakable distinction between termination of employment *simpliciter* and termination of employment as a punishment for misconduct. In the former case no enquiry is necessary. All that a permanent employee is entitled to is a notice in writing or payment of wages in lieu of notice. In the case of termination of employment as a punishment a regular enquiry has to be held. Standing Order 18 (a) of the petitioner company runs as follows :

"The employment of any permanent workman may be terminated by fourteen days' notice or by payment of fourteen days' wages in lieu of notice. If he draws on a piece rate basis the 14 days' wages shall be computed on the average daily earnings of such workman for the days actually worked during the previous wage period. The reasons for the termination of service shall be recorded in writing and shall be communicated to the workman, if he so desires, at the time of discharge."

When the language of Standing Order 18 (a) is compared with the language of Model Standing Order 13 (1) it will be found that the former is an adaptation of the latter with one important variation. Standing Order 18 (a) requires that the reasons for the termination of service shall be recorded in writing. Further, if the workman so desires, a copy of it shall be communicated to him at the time of the discharge. Standing Order 20 specifies what acts or omissions would be treated as misconduct.

I have already stated that the preamble to the Industrial Employment (Standing Orders) Act, 1946, explicitly recites that it is expedient to require employers to define with precision the conditions of employment under them. Reading the Act as a whole it is clear that the Standing Orders form part of the contract between the management and every one of its employees. They take the place of the service rules relating to Government servants.

One reason which the Labour Court gave for making the award complained of is this :

"Thus, this is a case, in which, in my opinion, the management has by passed the rules of natural justice. They have been lulled into a false security by the provisions contained in Standing Order 18(a)." (See paragraph 24). In paragraph 27 the Labour Court added :

"Thus, taking all circumstances in this case, I think the termination in this manner of the services of Sri A. R. Varma cannot be justified. In other words, I am definitely of opinion that to take steps against Varma on the strength of his letter dated 28th November, 1956, he must be given an opportunity to explain himself and then, if the management is satisfied that they should proceed against him, then there is time enough to consider what action they should take. So, in this case, even the principles of natural justice have not been observed by the management, and it falls strictly within the mischief of the ruling reported in [1954] 2 L.L.J. 822 already referred to by me."

It seems to me that there is no scope for the application of the principle of natural justice to a relationship of the kind we are now concerned with, where the rights of parties are provided for and determined by statutes, rules framed under the statutes and other statutory instruments. The Model Standing Orders framed by Government as also the Standing Orders of the petitioner company make a distinction between the discharge or dismissal of a worker as a punishment for misconduct and the termination of his services otherwise than as a measure of punishment. It is only in the former case that an inquiry is necessary. No inquiry is necessary in the latter case. The Labour Court does not appear to have kept in mind the difference between items 8 and 9 in the Schedule to the Act, Industrial Employment (Standing Orders), Act of 1946 and the Standing Orders framed in respect of these two items. The Labour Court also appears to have ignored the rights which the management have under the statute, the rules framed under the statute and its own Standing Orders. I do not consider that the principles of natural justice can be invoked to set aside something properly done in the exercise of a lawful power.

In paragraph 15 of its award, the Labour Court observed: "Now, regarding the power vested in the management to take action under the Standing Orders, it goes without saying that they do possess such a power. It necessarily follows that they are entitled to invoke the provisions contained in Order 18-A of the Standing orders."

But then in paragraph 24 the Labour Court observed:

"They (the management) have been lulled into a false security by the provisions contained in Standing Order 18(a)." I have some difficulty in understanding these two observations. Mr. Lakshminarayana Reddi who appeared for Varma vigorously argued that Standing Order 18(a) itself is invalid. I do not quite know whether the Labour Court was trying to say something like that. But, if it was, it would be clearly wrong because, as has been explained, these

provisions are in conformity with and validly framed under the powers conferred by the Industrial Employment (Standing Orders) Act.

Not merely that, before measures like the Industrial Disputes Act were enacted, an employer could terminate the service of any employee by giving him the customary notice. Even now it is open to an employer and a particular employee to enter into a contract that the duration of the service shall be a certain number of years. At the end of the stipulated period the employment will terminate unless as the result of a fresh contract a further term is agreed. Similarly, it is open even now to an employer to agree with a particular employee that he will be bound to give him, so many weeks' or so many months' notice subject always to the minimum period prescribed by the Act and it is open to an employer to enter into such an engagement with as many persons as are willing to accept employment on those terms. Standing Order 18(a) merely incorporates a general condition applicable to all the employees who enter the service of this particular company, and, if that condition is valid as I consider it is, the management can insist on taking action in pursuance of it. There is thus no question of the management being lulled into any sense of false security. To the extent that the Labour Court thought that Standing Order 18(a) conferred only a false security it was it seems to me clearly making an error.

In paragraph 16 the Labour Court quoted from [1951] 2 L.L.J. 320, a case decided by the Labour Appellate Tribunal, this observation:

"The question, therefore, is whether this Tribunal in exercise of its supervisory jurisdiction, is entitled to know whether or not the conduct of the manager was arbitrary."

The Labour Court whose award is now being challenged apparently thought that it too possessed a supervisory jurisdiction in matters of this kind. That view of its is manifestly erroneous. The Labour Court—and in fact the Labour Appellate Tribunal too—are the creatures of statute and they have no power or authority whatever except those conferred by the relevant statutes which have been passed from time to time. When a civil Court appoints a guardian for the person of a minor or a lunatic, or a manager for the administration of his estate, the Court retains certain powers of control and supervision over the person it has so appointed. But the position of a Labour Court is in no wise similar. Neither employees nor employers are in relation to the Labour Court its wards. The internal discipline of an industrial establishment is in the hands of the management and the Labour Court can interfere only where the statute permits it to do so. It has no powers whatever except those which can be traced to a statute, to a statutory rule or a statutory instrument.

Though the Labour Court does not expressly record such a finding its observations in various paragraphs suggest that in its view the action of the management in this particular case was not *bona fide*. Thus in paragraph 26 the Labour Court states :

"But I had on more than one occasion pointed out that the managements should not be actuated by the grievances they have got against the Union when taking action against a particular worker for his individual misdemeanour."

There is absolutely no evidence to support the theory in this case that the management decided to terminate the services of Varma because of the grievances it had against the Union to which he belonged. On the letters that passed the management was entitled to take the view that it would be undesirable in the interests of the concern to keep Varma any longer in its employ.

In the case reported in *Municipal Corporation, Bombay v. Labour Appellate Tribunal*, [1957] 14 F.J.R. 114, the facts were these. The second respondent before the Bombay High Court was an employee of the Bombay Municipal Corporation. On 16th August, 1955, the B.E.S.T. Undertaking received a report from a Sub-Inspector of Police, that the second respondent had been seen coming out of a lane opposite Parel railway workshop and that he and another person were attempting to throw stones at the Undertaking's bus at about 3-50 a.m. The second respondent and his companion picked up two big stones from a heap on seeing a bus coming up. They were poised to throw the stones when the Sub-Inspector rushed towards them. Thereupon the two persons dropped the stones and pretended that they were not engaged in doing anything unlawful. The second respondent and his companion were prosecuted, but acquitted by the Presidency Magistrate. The management then took action under its Standing Orders and terminated the services of the second respondent. A dispute was raised, but the Labour Court refused to interfere. The appeal which the second respondent took to the Industrial Court failed. He then went up in second appeal to the Labour Appellate Tribunal. This Tribunal reversed the order passed by the Industrial Court and the Labour Court and directed that the second respondent be re-instated with effect from the date of discharge. Against that order a writ petition was filed in the Bombay High Court. A Bench of that Court held, (I quote from the head-note):

"The Standing Orders of a concern *inter alia* provided for dismissal or discharge of a workman after proper enquiry for an act of misconduct. It also provided for termination of the services of a workman for reasons to be stated in writing. The service of a workman of the concern was determined for an act prejudicial to the interests of the concern. The

order determining the services was passed without proper enquiry as provided for in the relevant Standing Orders for dismissal of a workman. Negating the contention that the discharge order was bad as one passed without proper enquiry, held, that the discharge in the circumstances could be considered only as termination and not dismissal. Hence, the order terminating the services though passed without inquiry must be held to be proper and justified under the relevant Standing Orders of the concern."

The case reported in *Waman Balkrishna Bokare v. Collector of Excise*, [1958] 14 F.J.R. 88, is also in point. The head-note of the case runs as follows :

"Where an employee who had been dismissed is re-instated on appeal against his dismissal, there is nothing to prevent the employer from terminating his services in accordance with the terms of his contract of service after such re-instatement. Where an employee is directed to be re-instated and on the same date he is also served with a notice terminating his services in accordance with his contract of service, and there is nothing in the notice to indicate that the termination of service is in any way connected with his prior dismissal, it cannot be contended that the termination of service amounts to punishment for the misconduct for which he was originally dismissed."

At page 90 the learned Judge distinctly says :

"The right of an employer to enforce a term in the contract is not in any way taken away because that employer sometime before that thought it fit to dismiss the employee for some misconduct."

To the same effect is the case reported in *Provincial Transport Services, Nagpur v. Asst. Labour Commissioner, Nagpur*, [1958] 14 F.J.R. 140, the head-note of which reads as follows :

"Where there is a term in the contract between the employer and the employees by virtue of which the employer is entitled to exercise his right of terminating the services of the employees after giving them one month's notice or paying them one month's salary in lieu of notice, and the operative part of an order terminating the services of an employee indicated that his services were terminated in exercise of this right, the fact that the employer charge-sheeted the employee for misconduct and held an inquiry before issuing the order would not make the order one of discharge or dismissal for misconduct."

One other case that I would refer to in this connection is reported in *D. L. Rupchandani v. Western Railway*, [1958] 1 L.L.J. 456. The second paragraph of the head-note reads as follows :

"Even if there might be allegations of misconduct against an employee, if they are not made the basis of termination of service or, in

other words, they are abandoned—no stigma could attach to the employee by reason of such termination — and the termination does not amount to dismissal or removal unless of course it becomes dismissal or removal on the basis of other criterion laid by the Supreme Court, viz., that the employees had been deprived, by reasons of the termination, of any benefit that he had earned."

In respect of *Nagpur Electric Light and Power Co. v. Shreepathirao*, [1958] 1 M.L.J. short notes 53 (C. A. 5/58), * I find this summary:

"On a true construction of the standing orders of the company it must be accepted that the respondent was governed by them. In view of the fact that he was covered by these standing orders and his discharge had been effected under the appropriate orders, the orders of the company would also be legal and effective."

I have not been able to see a report of the case, but, the summary given above does suggest that standing orders cannot be ignored and that they are binding and effective between the parties.

In the light of these decisions this writ petition would have to be allowed.

Mr. Lakshminarayana Reddi, the learned advocate for the first respondent, however argued that a Labour Court is entitled to ignore the Standing Orders. This is how he developed his argument. The workers in an establishment and the management may have come to an agreement about the rates of wages and other conditions of employment. Nevertheless, it will be open to the workers to insist that these terms should be altered in their favour and raise an industrial dispute over it and should they do so the Tribunal to which the question is referred under the Industrial Disputes Act can ignore the agreement between the parties and award better terms. In support of this argument he referred to *Baktavatsalu Naidu v. Chrome Leather Co.*, [1949] 1 F.J.R. 84. He also laid special emphasis on the various passages quoted by Horwill, J., from Ludwig Teller and a publication of the I. L. O. called "Conciliation and Arbitration in Industrial Disputes" on page 88 of the report. This argument involves a misconception. It assumes that whenever a dispute is raised the Labour Court or the Tribunal is entitled to ignore all the agreements and engagements that have been entered into between the parties, however lawful they may be. But this is not so at all. When the dispute relates to the scale of wages or other terms of employment applicable to the employees generally or to a class of them, the Tribunal by its award can notwithstanding any prior agreements between the parties direct that higher wages should be paid or more amenities should be provided. But, where the dispute relates to a particular individual and the question is whether he has been improperly dealt

* Since reported, see *supra* p. 199.

with, then that question must be determined within the framework of the existing agreements and the existing rules. Employees can raise a dispute and ask that the Standing Orders be amended. But till the Standing Orders are amended they hold the field and any disputes that may arise in individual cases must be disposed of in accordance with the Standing Orders as they happen to be at the relevant time. I do not consider that the Labour Court can ignore the Standing Orders.

Mr. Lakshminarayana Reddi next said that notwithstanding the provisions of Standing Order 18 (a) the management cannot terminate the services of an employee except for misconduct. I can find no support for this argument anywhere. The decisions I have already referred to are authorities for quite the contrary position. The general position is this: leaving out of account situations created by strikes and lock-outs a management can put an end to the employment of a worker in the following ways: (1) By dismissing him for misconduct. In that case a fair and proper enquiry will have to be held and the worker concerned given an adequate and reasonable opportunity of defending himself. (2) By retrenchment, that is to say, by his services being terminated, on the ground that the staff is surplus to the requirements. *Vide* the decision of the Supreme Court in *Barsi Light Railway Co. Ltd v. Joglekar and Others*, [1957] 11 F.J.R. 317, where their Lordships held:

"retrenchment as defined in section 2 (oo) and as used in section 25F has no wider meaning than the ordinary accepted connotation of the word: it means *the discharge of surplus labour or staff* by the employer for any reason whatsoever, otherwise than as a punishment."

Where workers are retrenched they will be entitled to compensation in the manner provided for by the statute. (3) Lay off. This would be so to speak temporary retrenchment. (4) Termination in conformity with the conditions of the contract between the parties.

All these are recognised and lawful forms of termination of services and I am not prepared to accept the contention of Mr. Lakshminarayana Reddi that once a person becomes an employee he becomes an employee for ever.

Mr. Lakshminarayana Reddi finally contended that by virtue of section 7 and item 1 of the Second Schedule of the Industrial Disputes Act, the Labour Court could examine the propriety or legality of an order passed by an employer under the Standing Orders and that the present case was a victimisation and unfair labour practice and in consequence subject to review by the Labour Court. This is how part of this aspect of the matter was presented before the Labour Court. I quote paragraph 15 of the award:

"It is common ground that though certain reasons are adumbrated in this letter which led the management to come to a decision to terminate the services of this worker, Sri Varma, there was no show-cause notice, charge, or inquiry held. It is this aspect, viz., that a worker has been sent out of job, which the Union considers as a capital punishment, without any sort of charge or enquiry that is relied upon by the union, in support of their contention that there is clear victimisation or unfair labour practice."

This again is another way of saying that Varma was entitled to an inquiry before his services were terminated under Standing Order 18(a). But, as I have tried to explain, under the Standing Order, the management was entitled to terminate the services of Varma by giving him the prescribed notice or wages in lieu of notice. Besides, as I already stated, there is no evidence at all to support the contention that Varma was being victimised. He was not being punished for what he did somewhere else and which the management did not like. Nor was he being punished as a sort of reprisal for what the Union or someone else did.

Mr. Lakshminarayana Reddi repeatedly complained that the termination of the services of Varma amounted to unfair labour practice. But did not explain in what respect it was unfair. His argument would require me to hold that practically every case of discharge of an employee would amount to unfair labour practice. Such a view cannot be supported. The power of the Labour Court to examine the propriety or legality of an order made under the Standing Orders is not sufficient to justify its interference in a case of this kind.

Rule nisi made absolute. No costs.

[IN THE CALCUTTA HIGH COURT.]

BRIJ MOHAN BAGARIA

v.

N. C. CHATTERJEE AND OTHERS.

Sinha, J.

February 27, 1958.

'INDUSTRY'—MEANING OF—WHETHER INCLUDES PROFESSION DEPENDENT ON INTELLECTUAL SKILL—LAWYERS EMPLOYING SUBORDINATE STAFF—WHETHER 'INDUSTRY'—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(j).

Though the definition of the term 'industry' in section 2(j) of the Industrial Disputes Act, 1947, is of wide import and includes any calling, read in the context and scheme of the Act, it does not include the case of a person who carries on a profession dependent upon his own intellectual skill, e.g., a doctor or a lawyer practising his profession, even though they may be employing persons as clerks and other subordinate staff. Where, however, a doctor or a lawyer conducts a business, as for example, manufacture of pharmaceuticals or the publication of legal literature, such business will fall within the definition of 'industry'.

As the profession of a lawyer or a doctor does not fall within the definition of 'industry' there cannot be any 'industrial dispute' between him and the staff employed by him which would fall within the scope of the Act.

HARI PRASAD v. A. D. DIVELKAR [1957] 11 F.J.R. 317 applied.

Matter No. 209 of 1957 under article 226 of the Constitution of India.

JUDGMENT.

SINHA, J.—The petitioner Brij Mohan Bagaria is an attorney practising in this Court. He has been practising as such for the last 18 years and at the present moment has a large establishment at his office situate at No. 6, Old Post Office Street, consisting of 6 qualified assistants, 2 articled clerks, about 42 ordinary clerks and 14 others described as 'subordinate staff'. I mention this because in a reference made by the Government of West Bengal to which I shall presently refer, it has been stated that an industrial dispute exists between Messrs. B. M. Bagaria, 6, Old Post Office Street, Calcutta, and their employees as represented by B. M. Bagaria's Employees' Union, 45 Bow Bazar Street, Calcutta, and in an order made by the First Labour Court the learned judge has described the petitioner as a 'company'. In this application, the petitioner has alleged that he is an attorney practising in this Court and the employees are his employees. This fact is not denied. It appears,

however, that the employees of the petitioner have grouped themselves into an Union known as 'B. M. Bagaria Employees' Union' and have been conducting themselves as if the calling of a solicitor is an 'industry' as defined in the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). In or about November, 1956, the Union submitted a charter of demand, demanding increment of basic salary, dearness allowance, etc. The only affidavit-in-opposition filed herein is by the Secretary of the Union and it is stated therein that the charter of demand was issued because, while the business of the petitioner was a flourishing one, the basic salary paid to the clerical and subordinate staff fell far below the middle class and working class living index respectively and did not even reach the bare subsistence level. The petitioner alleges that the employees, by their concerted action, tried to create a deadlock in the office and employed pressure tactics and even resorted to threats of assault. This, of course, is not admitted on behalf of the Union. It is, however, a fact that on the 18th March, 1957, the employees resorted to a pen-down strike. Thereupon, the petitioner served charge-sheets on some of the employees and after enquiry terminated the services of some of them. According to the Secretary of the Union, this was an instance of victimisation for participating in a lawful pen-down strike which was conducted in a manner permitted by law. The Union approached the Labour Department of the Government of West Bengal and conciliation proceedings were started. It is alleged that the attempts to settle the matter by conciliation failed. On the 10th July, 1957, an order was made by the Government of West Bengal under section 10 of the Act, referring the alleged industrial dispute for adjudication by a Labour Court constituted under section 7 of the said Act. The relevant part of the order of reference is set out below:

"Whereas an industrial dispute exists between Messrs. B. M. Bagaria, 6 Old Post Office Street, Calcutta, and their employees as represented by B. M. Bagaria's Employees' Union 45, Bow Bazar Street, Calcutta-12, relating to the undermentioned issues in matters specified in the second schedule of the Industrial Disputes Act, 1947 (XIV of 1947) the Governor is pleased hereby to refer the said dispute to the First Labour Court.....for adjudication....."

ISSUES:

1. Is the dismissal of Sri Debendra Nath Mitra and of 16 other workers (as per list enclosed herewith) by the management justified?
2. What relief are they entitled to?

The petitioner thereupon made an application sometime in August, 1957, before the First Labour Court for its decision on the preliminary point as to whether the petitioner was carrying on an 'industry' and,

therefore, whether his employees were workmen as defined in the Act, and whether the alleged dispute between the petitioner and his employees constituted an industrial dispute within the meaning of that Act, which could be referred to adjudication under section 10 of the Act. The said Court took it up as a preliminary point and by its judgment dated the 10th September, 1957, has decided against the petitioner, and has held that the instant dispute is an industrial dispute and that the order of reference was valid. This Rule was issued on the 28th November, 1957, upon the respondents to show cause why the order of reference and proceedings taken thereunder should not be quashed by a writ in the nature of *certiorari* and why the First Labour Court, respondent No. I, should not be restrained by a writ of prohibition from proceeding to entertain the reference or decide the same.

It is obvious that the point that is involved in this case is as to whether the calling of a solicitor can be characterised as an 'industry' within the meaning of the Industrial Disputes Act and whether the employees of the petitioner can be described as 'workmen' within the meaning of the said Act, and whether the alleged dispute between the petitioner and his employees can be said to be an industrial dispute, such as can be the subject-matter of a reference under section 10 of the Act. It does appear that the parties have been proceeding to a certain extent upon the footing that the Industrial Disputes Act applies, otherwise I do not see the basis for some of the happenings enumerated above. However, the question has now come to a focus and must be decided. Section 2(j) of the said Act defines the word 'industry' and means, any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The word 'industrial dispute' has also been defined in section 2(k) of the Act, but, of course, it is based upon the definition of 'industry' because there must exist an industry before there can arise in it an industrial dispute which *inter alia* includes any dispute or difference between the employers 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. It thus appears that the definition of the word 'industry' in the Act is very wide. It includes any business or calling. If we are to decide the matter literally, there can be no doubt that the profession or business of a solicitor is a calling. Similarly, the profession of a doctor or a barrister or a pleader would be a 'calling' and indeed no profession or business could be said to be outside its scope. The question is how are we to construe the provisions of this Act? A similar problem arose in a case in which section 2(o) of the Act was involved. In the case of

Hari Prasad v. A. D. Divelkar, [1957] 11 F.J.R. 317, the question arose as to what meaning was to be given to the word 'retrenchment'. That word has been defined in the Act to mean the termination by the employer of the services of a workman for 'any reason whatsoever', otherwise than as a punishment inflicted by way of disciplinary action, with certain exceptions. The question was whether if a business had been *bona fide* closed, then could there arise any question of retrenchment of the staff? It was argued that the words 'for any reason whatsoever' would include such a state of affairs. Indeed, if literally construed, it would. S. K. Das, J., said as follows :—

"There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the Legislature; our task is to get at the intention as expressed in the statute.....When a portion of the staff or labour force is discharged as surplusage in a running or continuing business, the termination of service which follows may be due to a variety of reasons, e.g., for economy, rationalization of industry, installation of a new labour-saving machinery, etc., the Legislature in using the expression 'for any reason whatsoever' says in effect :

"It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is 'retrenchment'.....In the absence of any compelling words to indicate that the intention was even to include a *bona fide* closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned counsel for the respondent."

The learned Judge relied on two earlier decisions of the Court, the first being *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Ltd. Mazdoor Union*, [1957] 11 F.J.R. 262, wherein it was held that it could not be doubted that the entire scheme of the Act assumes that there was in existence an industry and then proceeds to provide for various steps being taken when a dispute arose in that industry. The second decision relied on was *Burn & Co. Ltd., Calcutta v. Their Workmen*, [1957] 11 F.J.R. 217, where it was held that the object of labour legislation was firstly to ensure fair terms to the workmen, and secondly, to prevent disputes between employers and employees so that production might not be adversely affected and the larger interests of the public might not suffer. In view of these observations, it was held that it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition, termination of service of all workmen by the employer even when the

business itself ceases to exist. In other words, it was held that where a statute defines a certain expression, then if the expression can be given an extended meaning or a restricted one, the proper rule of interpretation would be to consider the ordinary use of that expression in the context of the Act and the scheme thereof. Therefore, when 'industry' has been defined to include all callings, it is necessary to consider the context and the scheme of the Act to discover whether it was intended to include all callings within its amplitude or callings of a particular description only. It will, therefore, be relevant to investigate as to what is the ordinary meaning of 'industry' and what is the scheme of the Act and its context. In doing so, we cannot escape looking into cases decided in foreign countries which have passed through the birth-pangs of an industrial revolution, such as we are going through at the present moment. One of the leading cases on the subject, which has always been followed and has been quoted with approval by the Supreme Court, is a decision of the High Court of Australia: *The Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation*, 26 Comm. L.R. 508. The very same question arose there, viz., what was the meaning of the word 'industrial dispute.' It was stated as follows (page 550) :

"Approaching the construction of that placitum to these considerations, what is the material upon which the mind of the court should operate in order to mark out the ambit of the expression 'industrial disputes'? We apprehend that mere etymology is misleading. The claimant says that 'industrial' means simply relating to 'industry' in the abstract, whether it be in the exercise of trade, commerce, science or learned professions. Nor can the matter be determined by any theory of convenience or balanced considerations framed by a Judicial Tribunal either on its own views of fairness and appropriateness or on the speculation of economic or social thinkers.....

In Australia in 1900 the language of industrialism was precisely that of England. Some advance, it is true, had been made here in remedial legislation beyond that of the Imperial Parliament but the industrial structure, its terminology and its conflicts were similar, and the evils to be guarded against or cured were identical. The very expression 'industrial dispute' was in use in both countries and meant the same language in protean form. From a careful examination of English Official Records from 1894 to 1914 and the perusal of works of economic and municipal history, as well as the common knowledge of Australian history, the conclusion is reached that the respondent's contentions are not well-founded.....

The concept may be thus formulated: industrial disputes occur

when, in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants or desires, those engaged in co-operation dispute as to the basis to be observed, by the parties engaged, respecting either a share of the product or any other terms and conditions of their co-operation. This formula excludes the two extreme contentions of the claimant and the respondents, respectively. It excludes for instance, the legal and medical profession, because they are not carried on in any intelligible sense by the co-operation of capital and labour and do not come within the sphere of industrialism."

It was also held that in order to constitute an 'industrial dispute' it was not necessary that the undertaking in which the parties to the dispute were engaged should be an industry, trade or business carried on for profit. A Municipal or Shire Council, Municipal Trusts or Municipal Corporations might come within the definition. The learned judges have quoted Gomme on Principles of Local Government, page 153, as saying that providing for cemeteries may be an industry. Professor MacGregor in his work, "*The Evolution of Industry*", page 210, is quoted, as being of the opinion that post office and the coinage, even though nationalized, may be industries. In a House of Lords case—*National Association of Local Government Officers v. Bolton Corporation*, [1943] A. C. 166, it was held that a dispute as to the conditions of service of officers of a municipal corporation was a 'trade dispute', Lord Wright said as follows :

"Section 11 of the Act of 1919 shows that 'trade' is used as including 'industry' because it refers to a trade dispute in the industry of agriculture. Same inference appears from the short title.

It is described as an Act to provide for the establishment of an Industrial Court in connection with trade disputes. Trade and industry are thus treated as interchangeable terms. Indeed "trade" is not only in the etymological or dictionary sense but in legal usage a term of the widest scope. It is connected originally with the word "trade" and indicates the way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may also mean a skilled craft. It is true that it is often used in contrast with a profession. A professional worker is not ordinarily equally a tradesman....."

A similar question arose and was decided in *D. N. Banerji v. P. R. Mukherji*, [1952] 4 F.J.R. 443. In that case the question was as to whether an industrial dispute could arise between municipalities and their employees. Chandrasekhara Aiyar, J., said as follows :

"In the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an

undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools, etc., and for making profits. The concept of industry in this ordinary sense applies even to agriculture, horticulture, pisciculture and so on and so forth. It is also clear that every aspect of the activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry when we have regard, for instance, the rights and duties of master and servant, or of a Government and its Secretariat or the members of the medical profession working in a hospital. It would be regarded as absurd to think so; at any rate the layman unacquainted with advancing legal concepts of what is meant by industry would rule out such a connotation as impossible. There is nothing, however, to prevent a statute from giving the word 'industry' and the words 'industrial dispute' a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity. It is obvious that the limited concept of what industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that disputes arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in the manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour has now to be determined more from the stand point of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily, and this is why every civilised Government has thought of the machinery of Conciliation Officers, Boards, and Tribunals for effective settlement of disputes."

The learned Judge pointed out that municipalities carry out many functions which partake of the nature of an industry. It may and often does supply power and light to the inhabitants of a municipality and if such public utility services, when carried on by private companies or corporations, be industries, there is no reason why, if a statutory Corporation took it up, it would cease to be an industry. The learned Judge further pointed out that the position would be different if the services rendered were of a different kind, e.g., the running of a charitable hospital or dispensary for the aid of the poor. The learned Judge concluded that the definition in the Act included disputes that might

arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or business and left open the question whether disputes arising in relation to the purely administrative work fell within the ambit or not. It is this case which has been strongly relied upon by the respondents. I do not think, it has laid down any principle different from that laid down in the two cases referred to above. Indeed, the learned Judge relies on those cases for the purposes of his decision. All that the learned Judge has stated is that the concept of what constitutes industry or industrial dispute is a changing one. In view of such changing circumstances in the life of a nation, Legislature can well include within such definitions matters which have hitherto been acknowledged to be beyond their meaning. But I am aware of no case where the calling of a doctor or a lawyer has been held to be an industry. Indeed, in a recent case which has not yet been reported, the Supreme Court has held that the calling of a doctor would not come within such a definition. My attention has been drawn to a case decided by the Labour Tribunal, *Shri Vishuddananda Saraswati Marwari Hospital v. Its Workmen*, [1952] 4 F.J.R. 295. It was held there that a charitable hospital is to be included within the word, 'undertaking' in the definition of an 'industry' as defined under section 2 (j) of the Act. It is doubtful as to whether this decision is correct in view of the observations made by Aiyar, J., referred to above. The next case referred to is a Division Bench of the Bombay High Court, *Hospital Mazdoor Sabha v. State of Bombay*, [1957] 13 F.J.R. 473. The question there was as to whether the activity of Government in connection with a hospital constitutes an 'undertaking' within the meaning of the expression as used in the Act. Chagla, C. J., said as follows :

"Now, when we look at the definition of 'industry', it is not confined to an activity of a commercial character. Nor does it import necessarily a profit motive or the employment of capital. Industry is not only any business or trade or manufacture, but it is also an undertaking or calling of employers, and no expression could have been used with a wider import and connotation than the expression 'undertaking'. Undertaking is nothing more than any work or project which a person might engage in. Work or project may have no commercial implications. It might not be engaged in with the object of making profit. It might be engaged in from the motives of philanthropy and even so it would be an undertaking in the wider sense in which that expression is used in the definition of 'industry'."

With respect, I think that the learned Chief Justice was giving an interpretation to the word 'industry' far in excess of what has hitherto been accepted. The learned Chief Justice referred to the case of

Federated States School Teachers' Association, Australia v. The State of Victoria & Others, 41 Comm. L. R. 569, where it was held that the educational activities of the States did not constitute an industry. In that case Knox, C.J., said as follows :

"Can it be said that the educational activities of the States constitute an industry? So far as the matter is one of fact, we would say that they cannot. They bear no resemblance whatever to an ordinary trade, business or industry. They are not connected directly with or attendant upon, the production or distribution of wealth; and there is no co-operation of capital and labour in any relevant sense, for a great public scheme of education is forced upon the communities of the States by law."

Isaacs, J., however, differed from the majority decision and held that the running of services is as much a production of wealth as the making or manufacturing of commodities.

In the case of *Bengal Club Ltd. v. Santi Ranjan Somaddar*, [1957] 12 F.J.R. 309, I had to consider whether the Bengal Club, a well-known club in Calcutta, could be said to be carrying on an industry. Relying upon an unreported decision of the Court of Appeal in the case of *India Paper Pulp Co. Ltd. v. The Indian Paper Pulp Workers' Union*. I held that it was an industry. The reason was that a club of this description had its business side. For example, it provided food and drink and accommodation to its members and also carried on the business of an eating house or catering.

From the above cases, the following principles can be deduced :

(1) When the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the Legislature. Our task is to get at the intention as expressed in the statute.

(2) But an expression even though defined in the statute must be read in its context. It is true that an artificial definition may include a meaning different from, or in excess of, the ordinary acceptance of the word which is the subject of definition; but, there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning was intended.

(3) But in considering the ordinary meaning of a word, we have to read it in the context of the particular statute which defines it, the scheme of the statute and the particular evil which the statute is intended to remedy.

(4) An industrial dispute occurs when, in relation to operations in which capital and labour are contributed in co-operation for the

satisfaction of human wants or desires, those engaged in co-operation dispute as to the basis to be observed by the parties engaged, respecting either a share of the product or any other terms or conditions of their co-operation.

(5) In order to constitute an industrial dispute it is not necessary that the undertaking in which the parties to the dispute are engaged should be carried on for profit, or for the production of wealth or commodities.

(6) An industry, which when carried on by private persons would be an industry cannot cease to be so if it is carried on by the Government or by a statutory corporation.

(7) Every aspect of activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood.

(8) There is nothing, however, to prevent a statute from giving the word 'industry' and the words 'industrial dispute' a wider and more comprehensive import in order to meet the requirements of rapid industrial progress.

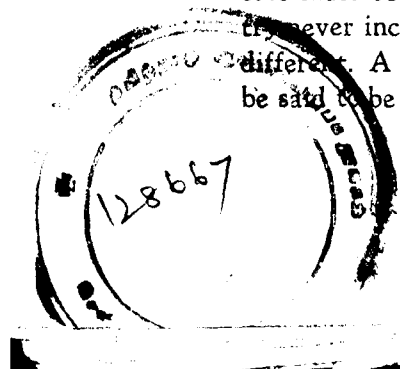
(9) The limited concept of what industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industries into consideration.

(10) Previously it was thought that an industry must be connected directly or indirectly with the production or distribution of wealth and there must be co-operation of capital and labour. It has now been modified to the extent that the profit motive has been eliminated and the expression 'capital' is to be used in an extended sense.

Applying these principles to the facts and circumstances of the present case we find as follows: Under section 2 (j) of the Act, the word 'industry' means any undertaking or calling of employers. If it is given a very wide and literal meaning, then it will include every undertaking or any calling and would necessarily include that of a solicitor and his profession. But the word has to be construed in the context of the Act and the scheme of it. Can it be said that in such a case there is co-operation of labour and capital to produce wealth or services? In my opinion, however extended the meaning to be given to the expression 'industry' 'industrial dispute' or to the expression 'undertaking' or 'calling', we cannot include within their concept the case of an individual who carries on a profession, dependent upon his own intellectual skill. Every case must be decided upon its own facts. It cannot be said that an industry never includes persons with intellectual skill. The question is slightly different. A doctor, if he carries on the business of a nursing home, may be said to be carrying on an industry or if he carries on a manufacturing

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laboratory, that would certainly be an industry, but, in so far as he carries on his profession in the ordinary sense, namely, an avocation which is entirely dependent upon his own intellectual attainments and the skill of his hands, it has never been construed to be an industry, and, as such, it would not be governed by the provisions of the Industrial Disputes Act. Similarly, the profession of a lawyer, in so far as the normal avocations of lawyers are concerned, which is dependent upon his own intellectual attainment and the skill with which he conducts the cases entrusted to him by his clients, that has never been construed as an industry in the sense in which it is used in the Act. But a lawyer under certain circumstances may be carrying on an industry. For example, if a lawyer carries on a business of publication of legal literature, that would be a different matter altogether. Similarly, in the case of an attorney the normal avocations of an attorney are entirely dependent upon his own intellectual attainments and individual skill with which he acts for his clients. In doing so, he may employ many assistants and a large number of staff, but, that, to my mind, makes no difference, because it is not the largeness or smallness of the staff that is decisive of the question. But an attorney's profession can be turned into an industry under certain circumstances. For example, if he carries on an investment business. In the present case, however, it has nowhere been mentioned, and it is not the case of the respondents that the petitioner carries on anything more than his normal avocation as an attorney. The issue was expressly raised before the Industrial Court and statements were filed, but nothing has been stated to suggest that the petitioner carries on his professional calling in any way excepting in the normal manner in which an attorney carries on his profession or calling. The only reason which is being suggested to describe his professional calling as an 'industry' is that it is a 'calling' and all callings have been included in the definition of the word 'industry' in the Act. It has further been stated that the petitioner employs a large number of persons. It is further stated that the staff put in clerical and/or manual work and are, therefore, workmen within the meaning of the Act. It is lastly stated that the petitioner earns his fees with the help of the labour and skill of his employees combined with his own skill, labour and capital. In my opinion, these grounds are not sufficient to hold that the calling of the petitioner constitutes an industry within the meaning of the Act. As I have stated above, it is open to the Legislature to include such callings within the scope of the Act. But, until that is done, the calling of a solicitor carrying on his normal avocation



cannot be called an industry within the meaning of the word as used in the Act.

That being so, there was neither an industry in the present case, nor an industrial dispute, nor can the employees of the petitioner be described as workmen as defined under the Act. The reference of a dispute between the petitioner and his employees never constituted an industrial dispute and, as such, could not be referred for adjudication under the Act in exercise of powers given under section 10 of the Act.

The rule must, therefore, be made absolute and the order of reference, dated July 10, 1957, a copy of which is Ex. B to the petition, must be set aside and quashed and a writ of *certiorari* issued therefor quashing the said order and all proceedings had thereunder. There will be a writ of prohibition directing the respondents not to proceed with the adjudication.

There will be no order as to costs.

