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

WITH

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

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THE INDIAN FACTORIES JOURNAL

VOL. XV]

15TH SEPTEMBER, 1958.

[PART II

NOTICE TO SUBSCRIBERS.

It is regretted that the General Index to Vol. XIV could not be despatched with Part I of Vol. XV. The same will be sent along with Part III of Vol. XV on 1st October, 1958.

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THE
INDIAN FACTORIES JOURNAL
STATUTES
VOLUME XV

RAJASTHAN INDUSTRIAL DISPUTES RULES, 1958.

*Notification No. F. 1 (44) LAB/56, dated Jaipur, June 4, 1958.**

In exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the State Government hereby makes the following Rules the same having been previously published, namely :—

PRELIMINARY.

1. Title and application.—(1) These rules may be called the Rajasthan Industrial Disputes Rules, 1958.

(2) They shall come into force on such date as the State Government may by notification in the Official Gazette appoint in this behalf.

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

(a) "Act" means the Industrial Disputes Act, 1947 (14 of 1947);

(b) "Chairman" means the Chairman of a Board or Court or if the Court consists of one person only, such person;

(c) "Committee" means a Works Committee constituted under sub-section (1) of section 3 of the Act;

(d) "Form" means a form in the Schedule to these rules;

(e) "Section" means a section of the Act;

(f) With reference to clause (g) of section 2 it is hereby prescribed that in relation to an industry carried on by or under the authority of a Department of the State Government, the Officer-in-Charge of the Industrial establishment shall be the "employer" in respect of that establishment.

PART I

Procedure for reference of industrial disputes to Board of Conciliation Courts of Enquiry, Labour Courts, Industrial Tribunals or National Tribunals

3. Application.—An application under sub-section (2) of section 10 for the reference of an industrial dispute to a Board, Court, Labour Court, Tribunal or National Tribunal shall be made in form A and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of Rajasthan, Labour Department, Jaipur. The application shall be accompanied by a Statement setting forth :—

(a) the parties to the dispute;

(b) the specific matters in disputes;

(c) the total number of workmen employed in the undertaking affected;

(d) an estimate of the number of workmen affected or likely to be affected by the dispute; and

* Raj. Gaz. 17-7-58, Pt. IV(b), p. 655.

(e) the efforts made by the parties themselves to adjust the dispute.

4. *Attestation of application.*—The application and the statement accompanying it shall be signed

(a) in the case of an employer by the employer himself, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the Corporation ;

(b) in the case of workmen, either by the President and Secretary of State union of the workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

5. *Notification of appointment of Board, Court, Labour Court, Tribunal or National Tribunal.*—The appointment of a Board, Court, Labour Court, or Tribunal together with the names of persons constituting the Board, Court, Labour Court or Tribunal shall be notified in the Official Gazette.

6. *Notice to parties to nominate representative.*—(1) If the Government proposes to appoint a Board, it shall send a notice in form B to the parties requiring them to nominate within a reasonable time persons to represent them on the Board.

(2) The notice to the employer shall be sent to the employer personally, or if the employer is an incorporated company or a body corporate, to the agent, manager or other principal officer of such company or body.

(3) The notice to the workmen shall be sent :—

(a) in the case of workmen who are members of a trade union to the President or Secretary of the trade union; and

(b) in the case of workmen who are not members of a trade union, to any one of the five representatives of workmen who have attested the application made under Rule 3 ; and in this case a copy of the notice shall also be sent to the employer who shall display copies thereof on notice boards in a conspicuous manner at the main entrance to the premises of the establishment.

PART II

ARBITRATION AGREEMENT.

7. *Arbitration Agreement.*—An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in form C and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of Rajasthan, Labour Department, Jaipur, the Labour Commissioner Rajasthan, Jaipur and the Conciliation Officer concerned. The agreement shall be accompanied by the consent, in writing of the arbitrator or arbitrators.

8. *Attestation of the Arbitration Agreement.*—The arbitration agreement shall be signed—

(a) in the case of an employer by the employer himself or when the employer is an incorporated Company or other body corporate, by the agent, manager, or other principal officer of the Corporation ;

(b) in the case of workmen, either by the President and Secretary of a trade union of the workmen or by the five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

PART III

Powers, Procedure and duties of Conciliation Officers, Boards, Courts, Labour Courts, Tribunals and Arbitrators.—

9. *Conciliation proceedings in public utility service.*—The Conciliation Officer, on receipt of a notice a strike or lock-out given under rule 71 or rule 72, shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

10. *Conciliation proceedings in non-public utility service.*—Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

11. The Conciliation Officer may hold a meeting of the representatives of both parties jointly or of each party separately.

12. The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

13. *Place and time of hearing.*—The sitting of a Board, Court, Labour Court, Tribunal or of an Arbitrator shall be held at such times and places as the Chairman or the Presiding Officer or the Arbitrator, as the case may be, may fix and the Chairman, Presiding Officer or Arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit.

14. *Quorum for Boards and Courts.*—The quorum necessary to constitute a sitting of a Board or Court shall be as follows :—

(i) In the case of a Board—		<i>Quorum.</i>
where the number of members is 3	...	2
(ii) In the case of a Court—		
where the number of members is not more than 2		1
where the number of members is more than 2 but less than five		2

15. *Evidence.*—A Board, Court, Labour Court, Tribunal or an Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/him and in such manner as it/he may think fit.

16. *Administration of oath.*—Any member of a Board or Court or Presiding Officer of a Labour Court, Tribunal or an arbitrator may administer an oath.

17. *Summons.*—A summon issued by a Board, Court, Labour Court or Tribunal shall be in Form D and may require any person to produce before it any books, papers or other documents and things in the possession of or under the control of such person in any way relating to the matter under investigation or adjudication by the Board, Court, Labour Court or Tribunal which the Board, Court, Labour Court or Tribunal thinks necessary for the purposes of such investigation or adjudication.

18. Service of summons or notice.—Subject to the provisions contained in Rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal or an arbitrator empowered to issue such notice, summons, process or order, may be served either personally or by registered post.

19. Description of parties in certain cases.—Where in any proceeding before a Board, Court, Labour Court, Tribunal or an arbitrator there are numerous persons arrayed on any side such persons shall be described as follows :—

- (1) All such persons as are members of any trade union or association shall be described by the name of such trade union or association; and
- (2) All such persons as are not members of any trade union or association shall be described in such manner as the Board, Court, Labour Court, Tribunal or Arbitrator, as the case may be, may determine.

20. Manner of service in the case of numerous persons as parties to a dispute.—(1) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court, Tribunal or an arbitrator and such persons are members of any trade union or association, the service of notice on the Secretary, or where there is no Secretary, on the principal officer, of the trade union or association shall be deemed to be service on such person.

(2) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court, Tribunal or an arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court, Tribunal or arbitrator, as the case may be, shall, where personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned.

(3) A notice served in the manner specified in sub-rule (2) shall also be considered as sufficient in the case of such workmen as cannot be ascertained and found.

21. Procedure at the first sitting.—At the first sitting of a Board, Court, Labour Court or Tribunal the Chairman or the Presiding Officer, as the case may be, shall call upon the parties in such order as he may think fit to state their case.

22. Board, Court, Labour Court, Tribunal or arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to proceeding before a Board, Court, Labour Court, Tribunal or arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or arbitrator may proceed as if the party had duly attended or had been represented.

23. Power of entry and inspection.—A Board or Court, or any member thereof or a Conciliation Officer, a Labour Court, Tribunal or any person authorised in writing by the Board, Court, Labour Court or Tribunal in this behalf may, for the purposes of any conciliation, investigation, enquiry or adjudication entrusted to the Conciliation Officer, Board, Court, Labour Court and Tribunal under the Act, at any time between the hours of sunrise and sunset and the case of a person authorised in writing by a Board, Court, Labour Court or Tribunal after he has given reasonable notice, enter

any building, factory, workshop or other place or premises whatsoever, and inspect the same or any work machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject matter of the conciliation, investigation, enquiry or adjudication.

24. Power of Boards, Courts, Labour Courts and Tribunals.—In addition to the powers conferred by the Act, Boards, Courts, Labour Courts and Tribunals shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely :—

- (a) discovery and inspection ;
- (b) granting adjournment ;
- (c) reception of evidence taken on affidavit ;

and the Board, Court, Labour Court or Tribunal may summon and examine any person whose evidence appears to it to be material and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

25. Assessors.—Where assessors are appointed to advise a Tribunal under sub-section (4) of section 7A or by the Court, Labour Court or Tribunal under sub-section (5) of section 11, the Court, Labour Court or Tribunal as the case may be, shall in relation to proceeding before it, obtain the advice of such assessors, but such advice shall not be binding on it.

26. Fees for copies of awards or other documents of Labour Court or Tribunal.—(1) Fees for making a copy of an award or an order of a Labour Court, Tribunal or any document filed in any proceeding before a Labour Court or Tribunal be charged as follows :—

- (a) for the first 200 words or less, 12 annas ;
- (b) for every additional 100 words or fraction thereof, 6 annas

Provided that where an award or order or document exceeds five pages, the approximate number of words per page shall be taken as the basis for calculating the total number of words, to the nearest hundred, for the purpose of assessing the copying fee.

(2) For certifying a copy of any such award or order or document, a fee of Re. 1/- shall be payable.

(3) Copying and certifying fees shall be payable in cash in advance.

(4) Where a party applies for immediate delivery of a copy of any such award or order or document, an additional fee equal to one-half of the fee leviable under this rule shall be payable.

27. Decision by majority.—All questions arising for decision at any meeting of a Board or Court, save where the Court consists of one person, shall be decided by a majority of the votes of the members thereof (including the Chairman) present at the meeting. In the event of an equality of votes the Chairman shall also have a casting vote.

28. Correction of errors.—The Labour Court, Tribunal or arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.

29. Right of representatives.—The representatives of the parties appearing before a Board, Court, Labour Court, Tribunal or an arbitrator shall

have the right of examination, cross-examination and of addressing the Board, Court, Labour Court, Tribunal or arbitrator when an evidence has been called.

30. Proceedings before a Board, Court, Labour Court or Tribunal.—The proceedings before a Board, Court, Labour Court or Tribunal shall be held in public :

Provided that the Board, Court, Labour Court or Tribunal may at any stage direct that any witness shall be examined or its proceedings shall be held *in camera*.

PART IV

REMUNERATION OF CHAIRMAN AND MEMBERS OF COURTS, PRESIDING OFFICERS OF LABOUR COURTS, TRIBUNALS, ASSESSORS AND WITNESSES.

31. Travelling allowance.—The Chairman or a member of a Board or Court or the Presiding Officer or an Assessor of Labour Court or Tribunal if a non-official shall be entitled to draw travelling allowance and halting allowance for any journey performed by him in connection with the performance of his duties, at the rates admissible and subject to the conditions applicable to a Government servant of the first grade under the Rajasthan Travelling Allowance Rules and Audit Accounts, issued by the Government from time to time.

32. Fees.—The Chairman and member of a Board or Court, the Presiding Officer and an Assessor of a Labour Court or Tribunal wherever he is not a salaried officer of Government may be granted such fees as may be sanctioned by the Government in each case.

33. Expenses of witnesses.—Every person who is summoned and duly attends or otherwise appears as a witness before a Board, Court, Labour Court, Tribunal or an arbitrator shall be entitled to an allowance for expenses according to the scale for the time being in force with respect to witnesses in civil courts in this State where the investigation, enquiry, adjudication or arbitration is being conducted.

PART V.

Notice of Change.

34. Notice of change.—Any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall give notice of such intention in Form E.

35. Manner of service of notice of change.—(1) Where there are numerous workmen affected by a notice of change and the majority of such workmen are members of any trade union, the service of notice, by registered post, on the Secretary, or where there is no Secretary on the principal officer of the trade union shall be deemed to be service on all such workmen. The employer shall, at the same time, arrange to exhibit the notice by affixing it to a notice board in the manner specified in sub-rule (2):

Provided that if the Secretary or the principal officer refused to receive the notice or that for any other reason that notice cannot be served on the Secretary or the principal officer in the ordinary way, the exhibition of the

notice in the manner specified in sub-rule (2) shall be deemed to be service on all such workmen.

(2) Where there are numerous workmen affected by a notice of change and the majority of such workmen are not members of any trade union or association the employer shall, where personal service is not practicable, cause the service of any such notice to be made by affixing the same to a notice board at or near the entrance or entrances of the establishment concerned and the notice shall remain so affixed for a period of 21 days. The notice shall be in English, the regional language and the language understood by the majority of the workmen in the establishment concerned.

(3) A copy of the notice shall simultaneously be forwarded by the employer to the Conciliation Officer and the Labour Commissioner, Rajasthan.

PART VI.

Representation of Parties.

36. Form of authority under section 36.—The authority in favour of a person or persons to represent a workman or group of workmen or an employer in any proceeding under the Act shall be in Form F.

37. Parties bound by acts of representative.—A party appearing by a representative shall be bound by the acts of that representative.

PART VII.

Works Committee.

38. Constitution.—Any employer to whom an order made under subsection (1) of section 3 relates shall forthwith proceed to constitute a Works Committee in the manner prescribed in this part.

39. Number of members.—The number of members constituting the Committee shall be fixed so as to afford representation to the various categories, groups and classes of workmen engaged in, and to the sections, shops or departments of the establishment :

Provided that the total number of members shall not exceed twenty :

Provided further that the number of representatives of the workmen shall not be less than the number of representatives of the employers.

40. Representatives of employer.—Subject to the provisions of these rules, the representatives of the employer shall be nominated by the employer and shall as far as possible, be official in direct touch with or associated with the working of the establishment.

41. Consultation with trade unions.—(1) Where any workman of an establishment are members of a registered trade union, the employer shall ask the union to inform him in writing—

(a) how many of the workmen are members of the union ; and

(b) how their membership is distributed among the sections, shops or departments of the establishment.

(2) Where an employer has reason to believe that the information furnished to him under sub-rule (1) by any trade union is false, he may, after informing the union, refer the matter to the Conciliation Officer concerned for his decision and the Conciliation Officer after hearing the parties shall decide the matter and his decision shall be final,

Provided further that the post of the Secretary or the Joint Secretary, as the case may be, shall not be held by a representative of the employer or the workmen for two consecutive years.

52. Term of Office.—(1) The term of office of a workmen's representative on the Committee other than a member chosen to fill a casual vacancy shall be two years.

(2) A member chosen to fill a casual vacancy shall hold office for the unexpired term of his predecessor.

(3) A member who, without obtaining leave from the Committee, fails to attend three consecutive meetings of the Committee shall forfeit his membership.

53. Vacancies.—In the event of workmen's representative ceasing to be a member under sub-rule (3) of rule 52 or ceasing to be employed in the establishment or in the event of his resignation, death or otherwise, his successor shall be elected in accordance with the provisions of this part from the same group, section, shop or department to which the member vacating the seat belonged.

54. Power to co-opt.—The Committee shall have the right to co-opt in a consultative capacity persons employed in the establishment having particular or special knowledge of a matter under discussion, such co-opt member shall not be entitled to vote and shall be present at meetings only for the period during which the particular question is before the Committee.

55. Meetings.—(1) The Committee may meet as often as necessary but not less often than once in three months (a quarter).

(2) The Committee shall as its first meeting regulate its own procedure.

56. Facilities for meeting, etc.—The employer shall provide accommodation for holding meetings of the Committee. He shall also provide all necessary facilities to the Committee. The Committee shall ordinarily meet during working hours of the establishment concerned on any working day and the representative of the workmen shall be deemed to be on duty while attending the meeting.

57. Dissolution of Works Committee.—The Government, or where the power under section 3 has been delegated to any officer or authority under section 39, such officer or authority may, after making such inquiry as it or he may deem fit, dissolve any Works Committee at any time, by an order in writing, if he or it is satisfied that the Committee has not been constituted in accordance with these rules or that not less than two-thirds of the number of representatives of the workmen have, without any reasonable justification failed to attend three consecutive meetings of the Committee or that the Committee has, for any other reason, ceased to function :

Provided that where a Works Committee is dissolved under this rule, the employer may, and if so required by the Government or, as the case may be, by such officer or authority shall, take steps to re-constitute the Committee in accordance with these Rules.

PART VIII.

Miscellaneous.

58. Memorandum of settlement.—(1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form 'H'.

(2) The settlement shall be signed by—

(a) in the case of an employer, by the employer himself or by his authorised agent, or when the employer is an incorporated Company or other body corporate, by the agent, manager or other principal officer of the corporation ;

(b) in the case of workmen, either by the President and Secretary of a trade union of workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

(3) Where a settlement is arrived at in the course of conciliation proceeding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Government and the Labour Commissioner, Rajasthan and to the Conciliation Officer concerned.

59. Complaints regarding change of conditions of service etc.—(1) Every complaint under section 33-A of the Act shall be presented in triplicate in Form I and shall be accompanied by as many copies of the complaint as there are opposite parties to the complaint.

(2) Every complaint under sub-rule (1) shall be verified at the foot by the workmen making it or by some other person proved to the satisfaction of the Labour Court or Tribunal to be acquainted with the facts of the case.

(3) The person verifying shall specify, by references to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(4) The verification shall be signed by the person making it and shall state the date on which it was signed.

60. Application under section 33.—(1) An employer intending to obtain the express permission in writing of the Conciliation Officer, Board, Labour Court or Tribunal as the case may be under sub-section (1) or sub-section (3) of section 33 shall present an application in Form J in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal as the case may be of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form K in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(3) Every application under sub-rule (1) or sub-rule (2) shall be verified at the foot by the employer making it or some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court or Tribunal to be acquainted with the facts of the case.

(4) The person verifying shall specify by reference to the numbered paragraphs of the application, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified.

61. Protected workmen.—(1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer before the 30th September every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to section 33, sub-section (4), recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen.

(3) Where the total number of names received by the employer, under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment under section 33, sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen:

Provided that, where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union, the number of protected workmen allotted to it:

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of 'protected workmen' under this rule, the dispute shall be referred to the Conciliation Officer concerned, whose decision thereon shall be final.

62. Application for recovery of dues.—An application under section 33C shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government, Labour Department, Jaipur.

63. Appointment of Commissioner.—Where it is necessary to appoint a Commissioner under sub-section (3) of section 33C of the Act, the Labour

Court may appoint a person with experience in the particular industry, trade or business involved in the industrial dispute or a person with experience as a judge of a civil court, or as a stipendiary magistrate or as a Registrar or Secretary of a Labour Court or Tribunal constituted under the Act or of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950.

64. Fees for the Commissioner, etc.—(1) The Labour Court shall, after consultation with the parties, estimate the probable duration of the enquiry and fix the amount of the Commissioners' fees and other incidental expenses and direct the payment thereof into the nearest treasury, within a specified time, by such party or parties and in such proportion as it may consider fit. The Commission shall not issue until satisfactory evidence of the deposit into the treasury of the sum fixed is filed before the Labour Court:

Provided that the Labour Court may from time to time direct that any further sum or sums be deposited into the treasury within such time and by such parties as it may consider fit:

Provided further that the Labour Court may in its discretion, extend the time for depositing the sum into the treasury.

(2) The Labour Court may, at any time, for reasons to be recorded in writing vary the amount of the Commissioner's fees in consultation with the parties.

(3) The Labour Court may direct that the fees shall be disbursed to the Commissioner in such instalments and on such dates as it may consider fit.

(4) The undisbursed balance, if any, of the sum deposited shall be refunded to the party or parties who deposited the sum in the same proportion as that in which it was deposited.

65. Time for submission of report.—(1) Every order for the issue of a Commission shall appoint a date, allowing sufficient time, for the Commissioner to submit his report.

(2) If for any reason the Commissioner anticipates that the date fixed for the submission of his report is likely to be exceeded, he shall apply, before the expiry of the said date, for extension of time setting forth grounds thereof and the Labour Court shall take such grounds into consideration in passing orders on the applications:

Provided that the Labour Court may grant extension of time notwithstanding that no application for such extension has been received from the Commissioner within the prescribed time limit.

66. Local investigation.—In any industrial dispute in which the Labour Court deems a local investigation to be requisite or proper for the purpose of computing the money value of a benefit, the Labour Court may issue a Commission to a person referred to in rule 63 directing him to make such investigation and to report thereon to it.

67. Commissioner's report.—The Commissioner after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence together with his report in writing signed by him to the Labour Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the industrial dispute and shall form part of the record of the proceedings in the industrial dispute; but the Labour Court, or, with the permission of the Labour Court, any of the parties to the industrial dispute may examine the Commissioner personally before the Labour Court regarding any of the matters referred to him or mentioned in his report or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Labour Court is for any reason dissatisfied with the proceeding of the Commissioner it may direct such further enquiry to be made as it shall think fit.

68. Powers of Commissioner.—Any Commissioner appointed under these rules may, unless otherwise directed by the order of appointment—

(a) examine the parties themselves and any witnesses whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of enquiry;

(c) at any reasonable time enter upon or into any premises mentioned in the order;

69. Summoning of witnesses etc.—(1) The provisions of the Code of Civil Procedure, 1908 (Act V of 1908) relating to the summoning, attendance examination of witnesses and penalties to imposed upon witnesses, shall apply to persons required to give evidence or to produce documents before the Commissioner under these rules.

(2) Every person who is summoned and appears as a witness before the Commissioner shall be entitled to payment by the Labour Court out of the sum deposited under Rule 64, of an allowance for expenses incurred by him in accordance with the scale for the time being in force for payment of such allowance to witnesses appearing in the civil courts.

70. Representation of parties before the Commissioner.—The parties to the industrial dispute shall appear before the Commissioner, either in person or by any other persons who is competent to represent them in the proceedings before the Labour Court.

71. Notice of strike.—The notice of strike to be given by workmen in a public utility service shall be in Form L.

(2) On receipt of a notice of a strike under sub-rule (1), the employer shall forthwith intimate the fact to the Conciliation Officer having jurisdiction in the matter.

72. Notice of lock-out.—The notice of lock-out to be given by an employer on a public utility service shall be in Form M.

73. Report of lock-out or strike.—The notice of lock-out or strike in a public utility service to be submitted by the employer under sub-section (2) of section 22, shall be in Form N.

74. Report of notice of strike or lock-out.—The report of notice of a strike or lock-out to be submitted by the employer under sub-section (6)

of section 22 shall be sent by registered post or given personally to the Conciliation Officer appointed for the local area concerned, with copy by registered post to :—

(1) The Secretary to the Government, Labour Department, Government of Rajasthan, Jaipur.

(2) The Labour Commissioner, Rajasthan, Jaipur.

(3) The District Magistrate concerned.

75. Register of settlements.—The Conciliation Officer shall file all settlements effected under this Act in respect of disputes in the area within his jurisdiction in a register maintained for the purpose as in Form O.

76. Notice of retrenchment.—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service for not less than one year under him (hereinafter referred to as a 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Government and such notice shall be served on the Government by registered post in the following manner:—

(a) Where notice is given to the workman notice of retrenchment shall be sent within three days from the date on which notice is given to the workman.

(b) Where no notice is given to the workman and he is paid one month's wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and

(c) Where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Government at least one month before such date:

Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of the retrenchment shall be sent to Government within 3 days of the agreement.

77. Maintenance of seniority list of workmen.—(1) The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be posted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

78. Re-employment of retrenched workmen.—(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display of a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time therefor:

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the seniormost retrenched workmen in the list referred to in Rule 77 the number of such seniormost workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen.

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under Rule 77.

79. Penalties.—Any breach of these rules shall be punishable with fine not exceeding fifty rupees.

80. Repeal.—The Industrial Disputes (Central) Rules, 1947, adopted so far in this State are hereby repealed:

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

FORM A

(See Rule 3)

Form of application for the reference of an industrial dispute to a

Board of Conciliation

Court of Enquiry

Labour Court

Tribunal

Under section 10(2) of the Industrial Disputes Act, 1947.

Whereas an industrial dispute is apprehended/exists between

and

and it is expedient that

the matters specified in the enclosed statement which are connected with the dispute investigation and settlement or relevant to the dispute should be referred for enquiry by a Board of Conciliation an application is hereby made under sub-section (2) of section 10 of adjudication

a Court of Enquiry

a Labour Court

a Tribunal

of the Industrial Disputes Act, 1947, that the said matters should be referred to said Dispute.

a Board of Conciliation.

a Court of Enquiry.

a Labour Court.

a Tribunal.

This application is made by the undersigned who have/has been duly authorised to do so by virtue of a resolution (copy enclosed) adopted by a majority of the members present at a meeting of the—held on the —19.....

A statement giving the particulars required under Rule 3 of the Rajasthan Industrial Disputes Rules, 1957, is attached. Dated the.....
Signature of the Applicant (s).....

To

The Secretary to the Government,

Labour Department,

Government of Rajasthan, Jaipur.

Statement required under Rule 3 of the Rajasthan Disputes Rules, 1957, to accompany the form of application prescribed under sub-section (2) of section 10 of the Industrial Disputes Act, 1947—

(a) Parties to the dispute including the names and address of the establishment or undertaking involved.

(b) Specified matters in dispute.

(c) Total number of workmen employed in the undertaking affected.

(d) Estimated number of workmen affected or likely to be affected by dispute.

(e) Efforts made by the parties themselves to adjust the dispute.

FORM B

(See Rule 6)

Whereas an industrial dispute has arisen/is apprehended betweenand.....and it is expedient to refer the said dispute under section 10 of the Industrial Disputes Act, 1947 to a Board of Conciliation for the purpose of investigating the same and for promoting a settlement thereof, you are hereby required to intimate to the undersigned not later than the.....the name(s) and address (es) of one (two) person(s) whom you wish to recommend for appointment as your representative (s) on the said Board.

If you fail to make the recommendation by the date specified above, the Government will select and appoint such person (s) as it thinks fit to represent you.

Secretary to the Government,

Labour Department,

Government of Rajasthan, Jaipur.

FORM C

(See Rule 7)

(Under section 10A of the Industrial Disputes Act, 1947)

between

Names of parties.

Representing employers;

Representing workmen:

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of.....(here specify the name (s) and address (es) of the arbitrator(s))

- (i) Specify matters in dispute.
(ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved.
(iii) Name of the Union, if any representing the workmen in question.
(iv) Total number of workmen employed in the undertaking affected.
(v) Estimated number of workmen affected or likely to be affected by the dispute.

*We further agree that the majority decision of the arbitrators shall be binding on us.

Witnesses.	Signature of the Parties.
(1)	Representing employers.
(2)	Representing workmen.

Copy to:—

- (i) The Conciliation Officer, (here enter office address of the Conciliation Officer in local area concerned).
(ii) The Labour Commissioner, Rajasthan, Jaipur.
(iii) The Secretary to the Government, Labour Department, Government of Rajasthan, Jaipur.

*Where applicable.

FORM D (See Rule 17)

Whereas an industrial dispute between.....and.....has been referred to this Board of Conciliation for investigation and settlement. Court of Enquiry for investigation. Labour Court/Tribunal for adjudication.

under section 10 of the Industrial Disputes Act, 1947, you are hereby summoned to appear before the Board/Court/Labour Court/Tribunal in person on the.....day of.....at.....o' clock in the.....noon to answer all material questions relating to the said dispute and you are directed to produce on that day all the books, papers and other documents and things in your possession or under your control in any way relating to the matter under investigation by this Board/Court/Labour Court/Tribunal.

Dated.....

Chairman/Secretary.

Presiding Officer/Secretary,

Board of Conciliation
Court of Enquiry
Labour Court
Tribunal.

FORM E

(See Rule 34)

Notice of Change to be given by an Employer.

Name of employer.....Address.....
dated the.....day of.....19 .

The Secretary/Principal Officer of the Union, Association/The workman/workmen affected.

In accordance with section 9A of the Industrial Disputes Act, 1947, I/we beg to inform you that it is my/our intention to effect the change/changes specified in the annexure to this letter, with effect from.....

Yours faithfully,

Signature.....

Name.....

Designation.....

Annexure

(Here specify the change/changes intended to be effected.)

FORM F

(See Rule 36)

Before (here mention the authority concerned)

Reference No.....of.....Workmen

Versus

.....Employer.

In the matter of.....I/we hereby authorise Shri/Sarva-shree.....to represent me/us in the above matter.

Dated this.....day of.....19 .

Signature of person(s) nominating the representative.

Accepted

Address

Signature of representative(s)

Address

FORM G

(See Rule 47)

Form of Nomination Paper

Name of Industrial Establishment Group/Section/Shop/Department.

I nominate (here enter the name of the workmen's representative eligible for election) as a candidate for election to the Works Committee. He is eligible as a voter in the constituency for which he is nominated.

Dated..... Signature of Proposer.

I agree to the proposed nomination.

Date..... Signature of Candidate.

Date.....

Attested by: (1)

(to be signed by any two voters belonging to the electoral constituency)

(2)

FORM H

(See Rule 58)

Form of Memorandum of Settlement.

Names of Parties :—

Representing employer(s)

Representing workmen :

Short recital of the case

Terms of settlement.

Witness :

Signature of the Parties.....

(1)

(2)

*Signature of Conciliation Officer/Board of Conciliation.

Copy to :—%(1) Conciliation Officer.

(Here enter the office address of the Conciliation Officer in the local area concerned).

*In cases of settlement effected by Conciliation Officer/Board of Conciliation.

% In cases where settlement are arrived at between the employer and his workmen otherwise than in the course of conciliation proceeding.

(2) The Labour Commissioner, Rajasthan, Jaipur.

(3) The Secretary to Government, Labour Department, Government of Rajasthan, Jaipur.

FORM I

(See Rule 59)

Before the Labour Court/Tribunal.....Complaint under section 33A of the Industrial Disputes Act, 1947.

A.....Complainant(s)

Address :—

Versus

B.....Opposite Party(ies).

Address :—

In the matter of Reference No.....

The petitioner(s) beg/begs to complain that the Opposite Party(ies) has/have been guilty of a contravention of the provisions of section 33 of the Industrial Disputes Act, 1947(14 of 1947) as shown below :—

(Here set out briefly the particulars showing the manner in which the alleged contravention has taken place and the grounds on which the order or act of the Management is challenged.)

The complainant(s) accordingly pray/prays that the Labour Court.

Tribunal

may be pleased to decide the complaint set out above and pass such order or orders thereon as it may deem fit and proper.

The number of copies of the complaint and its annexures required under Rules 59 of the Rajasthan Industrial Disputes Rules, 1957 are submitted herewith.

Signature of the complainant(s).

Dated this.....day of.....195 .

Verification

I do solemnly declare that what is stated in paragraphs.....above is true to my knowledge and that what is stated in paragraphs.....above is stated upon information received and believed by me to be true. This verification is signed by me at on.....day of.....19 .

Signature or Thumb Impression
of the person verifying.

FORM J

(See Rule 60(1))

Before (here mention the Conciliation Officer/Board/Labour Court or Tribunal.

Application for permission under sub-section (1) sub-section (3) of section 33 of the Industrial Disputes Act, 1947 (14 of 1947), in the matter of Reference No.....

A.....Applicant

Address :—

Versus

B.....Opposite party(ies)

Address(es) :—

The above mentioned applicant begs to state as follows.—

(Here mention the action specified in clause (a) of clause (b) of sub-section (1) grounds on which the permission is sought for).

The applicant therefore prays that express permission may kindly be granted to him to take the following action, namely :—

(Here mention the action specified in clause (a).

of clause (b) of

sub-section (1)

sub-section (3)

of section (33)

Signature of the applicant

Dated this.....day of.....195 .

Space for verification.

(Signature of the person verifying.)

Date (on which the verification was signed).....

Place (at which the verification was signed).....

FORM K

(See Rule 60(2))

Before (here mention the Conciliation Officer/Board/Labour Court or Tribunal).

Application under sub-section (2) of section 33 of the Industrial Disputes Act, 1947 (14 of 1947) in the matter of Reference No.....
A.....Applicant.

Versus

B.....Opposite Party (ies).

Address(es) :—

The above mentioned applicant begs to state as follows :—

(Here set out the relevant facts and circumstances of the case).

The workman/workmen discharged/dismissed under clause (b) of sub-section (2) of section 33 has/have been paid wages for one month.

The applicant prays that the Conciliation Officer/Board/Labour Court/Tribunal may be pleased to approve the action taken, namely :—

(Here mention the action taken under clause (a) clause (b) of sub-section (2) of section 33.)

Signature of the applicant.

Dated this.....day of.....19 .

Space for verification.

(Signature of the person verifying).

Date (on which the verification was signed).....

Place (at which the verification was signed).....

*Delete, if not applicable.

FORM L

(See Rule 71)

Form of notices of strike to be given by employee (s) in a public utility service.

Name of Union.....

Name of elected representatives of employees where no trade union exist.

Address.

Dated theday of19 .

To

(The name of the employer).

Dear Sir/Sirs,

In accordance with the provisions contained in sub-section (1) of section 22 of the Industrial Disputes Act, 1947, I/we hereby give you notice

that I propose to call a strike/we propose to go on strike on.....19.....
for the reasons explained in the annexe.

Yours faithfully,

Secretary of the Union.

Representatives of the employees elected at a meeting held on.

ANNEXE

Statement of the case.

Copy to (1) Conciliation Officer.

(Here enter office address of the Conciliation Officer in the local area concerned.)

(2) The Labour Commissioner, Rajasthan, Jaipur.

FORM M

(See Rule 72)

Form of notice of lock-out to be given by an employer carrying on a public utility service.

Name of employer.....Address.....

Dated the.....day of.....19 .

To

(The Secretary of the Union, if any).

Dear Sir,

In accordance with the provisions of sub-section (2) of section 22 of the Industrial Disputes Act, 1947, I/we hereby inform you that it is my/our intention to effect a lock-out with effect from.....for the reasons explained in the annexe.

Yours faithfully,

* Here insert the position which the person who signs the letter holds with the employer issuing this letter.

ANNEXE

Statement of the case

Copy to (1) Conciliation Officer.

(Here enter office address of the Conciliation Officer in the Local area concerned).

(2) The Labour Commissioner, Rajasthan, Jaipur.

FORM-O

(See Rule 75)

REGISTER—PART I

S. No.	Industry.	Parties to the settlement.	Date of settlement.	Remarks.
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*Whether the settlement was effected at the intervention of the conciliation machinery, or by mutual negotiations between the parties, may be indicated here.

PART II

(Should contain one copy each of the settlement in the serial order indicated in Part I).

FORM N

(See Rule 73)

(Form of Report of Strike or Lock-out in a public utility service).

Information to be supplied in this form immediately on the occurrence of a strike or lock-out in a public utility service to the Conciliation Officer in the local area concerned and to the Labour Commissioner, Rajasthan, Jaipur.

Name of undertaking	1	2	3	4	5	6	7	8	9	10	11
Station and District.											
Normal working strength.											
Number of workers involved.											
Strike or lock-out											
Date of commencement of strike or lock-out.											
Cause.											
Was notice of strike or lock-out given, if so, on what date and for what period?											
Is there any permanent agency or agreement in the undertaking for the settlement of disputes between the employer and workmen? If any exist, particulars there of.											
Any other information.											

Note :—Column (3) Give the average number of workmen employed during the month previous to the day on which the strike or lock-out occurred. While reckoning the average, omit the days on which the attendance was not normal for reasons other than individual reasons of particular workmen. Thus days on which strike or lock-out occurs or communal holiday is enjoyed by a large section of workers should be omitted.

Column (4) If say, 200 workers in a factory strike work and in consequence the whole factory employing 1,000 workers has to be closed then 200 should be shown under "directly" and the remaining under "indirectly". If the strike of 200 workers does not affect the working of the other departments of the Factory, the number of workers involved would only be 200, which figure should appear under "directly" and column "indirectly" would be blank.

Column (8) Give the main causes of the dispute as well as the immediate cause that led to the strike or lock-out.

FORM P
(See Rule 76)

Form of notice of retrenchment to be given by an employer under clause (c) of section 25F of the Industrial Disputes Act, 1947.

Name of employer.....Address.....
Dated the.....day of.....19 .

To

The Secretary to Government,
Labour Department,
Government of Rajasthan, Jaipur.

Sir,

Under clause (c) of section 25F of the Industrial Disputes Act, 1947 (14 of 1947), I/We hereby inform you that I/We have decided to reason explained in the annexe.

2. The workmen concerned were given on the***.....19 one month's notice in writing as required under clause (a) of section 25F of the Act. Retrenchment is being effected in pursuance of an agreement, a copy of which is enclosed. The workmen were given on the ***.....19..... one month's pay in lieu of notice, as required under clause (a) of section 25F of that Act.

3. The total number of workmen employed in the industrial establishment is ****.....and the total number of those who will be affected by the retrenchment is given below :—

Category of designation of workmen to be retrenched.	Number of workmen Employed.	To be retrenched.
1	2	3

4. I/We hereby declare that the workman/workmen concerned has/have been/will be paid compensation due to them under section 25F of the Act on.....the expiry of the notice period.

Yours faithfully,

* Here insert the number of workmen.

** Here insert the date.

% Delete the portion which is not applicable.

**** Here insert the total number of workmen employed in the industrial establishment.

%% Here insert the position which the person who signs this letter holds with the employer issuing the letter.

ANNEXE

Copy to :—

1. Conciliation Officer. Here enter office address of the conciliation officer in local area concerned.

2. The Labour Commissioner, Rajasthan, Jaipur.

GOVERNMENT ORDER REGARDING WORKS COUNCILS IN U. P.

*Notification No. 3735 (ST)/XXXVI-A-130 (ST)-57, dated Lucknow
July 15, 1958*.*

WHEREAS it is necessary in the opinion of the State Government so to do for securing the public safety and convenience and the maintenance of public order and supplies and services essential to the life of the community and for maintaining employment;

NOW, THEREFORE, the Governor of Uttar Pradesh, in exercise of the powers conferred by section 3 (b), (c) and (g) of the U. P. Industrial Disputes Act, 1947 (U. P. Act XXVIII of 1947), is pleased to make the following order and to direct, with reference to section 19 of the said Act, that notice of this order be given by publication in the official Gazette:

ORDER

1. (i) Every industrial undertaking owned by the State Government in Uttar Pradesh employing 100 or more workmen, the U. P. Co-operative Bank Ltd. (including its branches), the U. P. Co-operative Federation Ltd. (including its branches), and the Co-operative Milk Supply Unions (including their branches), shall constitute a Works Council composed of the representatives of the management and the workmen.

(ii) The Works Council shall be constituted and shall function in accordance with the rules contained in the annexure to this order.

2. This order shall come into force at once and shall remain in force for a period of one year, with effect from the date of this order, unless withdrawn or cancelled earlier.

ANNEXURE

Objects

1. (i) The objects of the Works Council (hereinafter to be referred as "Council") shall be to provide a recognized means of consultation between the management and the workmen, to promote measures for securing and preserving amity and good relations between them, to prevent friction and misunderstanding and to that end, it may,—

- (a) discuss matters of common interest;
- (b) endeavour to compose differences in respect of such matters;
- (c) advise the management on matters relating to production problems; and
- (d) assist the management in organization of welfare measures and promotion of schemes for the training of workmen.

Functions

2. (1) Subject to the provisions of sub-clause (2), the Council shall be competent to deal with the following matters:

- (i) Measures for improving the efficiency of workmen and for increasing production.
- (ii) Settlement of grievances relating to, or arising out of, the terms and conditions of employment of the workmen.

* U. P. Govt. Gaz., Extry., 15-7-1958, p. 1

(iii) All questions connected with discipline and conduct as between the management and the workmen.

(iv) Hours of work and rest-intervals.

(v) Shift-working otherwise than in accordance with the Standing Orders.

(vi) Withdrawal of any customary concession or privilege.

(vii) Questions of physical welfare and welfare activities, viz., running of canteen, sports activities, amenities to the workers, health and safety measures.

(viii) Suggestions for improvement in methods and in organization of work.

(ix) Training of workmen for higher jobs and in refresher courses.

(x) Any other steps that may be conducive to harmonious relations between the workmen and the management, promotion of welfare activities and increase in efficiency and production.

(2) The Council shall not discuss any question which is covered by an operative agreement between the management and any trade union recognized by Government except by written consent of the trade union concerned, nor shall it discuss general questions relating to Wages, Bonus, Profit sharing, Provident Fund, Pensions and Gratuity.

(3) Where there arises any difference of opinion between the members of the Council about the functions and constitution of the Council, the matter shall be referred to the Chairman, Permanent Conciliation Board for State-owned undertakings whose decision thereon shall be final and binding.

Constitution

3. (1) Subject to the provisions of sub-clause (2), the Council shall consist of—

(a) not less than five and not more than ten representatives of workmen who shall be employees of the undertaking itself; and

(b) the representatives of management not exceeding the number of workmen's representatives.

(2) The number of workmen's representatives on the Council in industrial undertakings employing up to 500 workmen shall be five and in the undertakings employing more than 500 workmen, this number shall increase at the rate of one representative for every 100 workmen or part thereof exceeding 50 subject to a maximum of ten.

4. (1) The representatives of the management on the Council shall be nominated by the Head of the undertaking by whatever name he may be designated and these representatives shall, as far as possible, be officials in direct touch with, or associated with, the working of the undertaking.

(2) The representatives of the workmen shall be—

(a) nominated by the registered trade union of workmen if there is only one union fulfilling the conditions laid down by Government in this behalf;

(b) if there are more than one registered trade unions of workmen fulfilling the conditions laid down by Government in this behalf, the representatives of workmen shall be nominated by all such unions, and they shall be entitled, as far as may be possible, to get representation in proportion to the respective membership in the union concerned of the workmen employed

in the undertaking; and the Registrar of Trade Unions Uttar Pradesh, shall after making such enquiries as he deems fit, determine and certify the respective strength of representation of the Trade Union concerned. The decision of the Registrar shall be final and binding.

(c) If there is no such union in an undertaking, the representatives of workmen shall be elected in a general meeting of the workmen to be convened under the authority of the Labour Commissioner, Uttar Pradesh, by one of his officers. The management shall provide necessary accommodation and other facilities required by the officer appointed by the Labour Commissioner for holding the elections. The results of the election will be declared then and there by the officer holding the election and duly notified in the general notice board of the undertaking and a copy thereof be sent to Government in the Administrative Department concerned, and the Chairman, Permanent Conciliation Board for State-owned Undertakings. Any candidate seeking election shall have a right of appeal to the Labour Commissioner, Uttar Pradesh within three days from the date of the declaration of the results, and the Labour Commissioner shall give his decision after making such enquiries as he deems fit, within fifteen days from the receipt of the representation by him. The decision of the Labour Commissioner shall be final and binding.

(3) The Welfare Officer of the undertaking shall be *ex officio* Adviser to the Council, and be entitled to attend all the meetings without a right to vote thereat.

Office Bearers

5. (i) The Council shall have amongst its office bearers a President and a Secretary.

(ii) The head of the undertaking, or in his absence, the person for the time being in-charge of the undertaking, shall be the President of the Council.

(iii) The Secretary shall be elected by the workmen's representatives on the Council from amongst the quota of workmen's representatives on the Council. The Secretary so elected may nominate one of the worker's representative to the Council to act as Secretary during his absence.

Term of Office

6. (i) The term of office of the members on the Council, other than a member chosen to fill a casual vacancy, shall be one year.

(ii) The member chosen to fill a casual vacancy shall hold the office for the unexpired term of his predecessor.

Vacancies

7. In the event of any vacancy occurring in the Council, it shall be filled in the manner laid down in clause 4.

Disqualifications

8. The Council may disqualify a member from the membership on account of—

(i) absence of any member from three consecutive meetings of the Council unless his absence is condoned by the Council on account of

unavoidable reasons like illness, authorized leave, and temporary duty outside the headquarters.

(ii) suspension under the Standing Orders of the undertaking concerned.

Power to Co-opt

9. The Council shall have the right to co-opt in a consultative capacity such members as it deems fit, provided that the co-opted members are employed in the undertaking and have a particular or special knowledge of the matter under discussion. Such co-opted members shall not be entitled to vote and shall be present at the meetings only for the period during which a particular question is discussed before the Council.

Meetings of the Council

10. (i) The Council may meet as often as necessary, but it shall hold a meeting at least once a month. The responsibility for holding meetings shall be of the management which shall exercise its responsibility through the President of the Council.

(ii) At every monthly meeting, the President shall fix a date for the next monthly meeting subject to the exigency of holding an extraordinary meeting.

(iii) The Secretary shall draw up the agenda for every meeting with prior approval of the President and shall circulate it amongst the other members of the Council at least three days before the date of the meeting. In case of any disagreement between the President and the Secretary about inclusion of any item in the agenda, that item alone shall, along with the note of the Secretary and the comments of the President, be submitted to the Chairman, Permanent Conciliation Board for State-owned undertakings within ten days of disagreement for decision. The Chairman's decision in this behalf shall be final and binding on both the parties.

(iv) The President may, in an emergency, either of his own motion or on a requisition, in writing, received from at least half of the members of the Council, call for an extraordinary meeting. At least two days notice shall be given for such a meeting, specifying the date on which the meeting is desired to be held and the matter(s) which are proposed to be discussed or decided. The meeting shall then be held accordingly.

(v) Notice of the ordinary meeting together with the agenda as approved by the President, or in his absence, the person nominated by him to act as President, shall be circulated amongst the members at least three days before the date of the meeting.

(vi) No business, other than that shown in the agenda, shall be discussed at the meeting, unless the majority of members of either side so desire subject to the consent of the President, if present, or in his absence, the person nominated by him to act as President, as the case may be.

(vii) At every meeting of the Council, the President, if present, or in his absence, the person nominated by him, shall preside.

Quorum

11. At least fifty per cent. of the workers' representatives and one representative of management on the Council shall form the quorum:

Provided that the quorum shall not be deemed to be complete unless the President or the person nominated by him to act as President is present at the meeting.

Procedure

12. (i) When an individual workman desires to bring any question before the Council, he shall do so through one of the workmen's representatives; provided that a registered trade union may forward any general demand of the workmen to the Secretary of the Council at least one week before the meeting of the Council.

(ii) The decision of the Council shall be by a unanimous vote.

13. (i) The minutes of the meeting shall be drawn up in Hindi by the Secretary in the course of the meeting and got approved by the Council before it adjourns and got signed by the Chairman and all the members present.

(ii) Copies of such minutes shall be sent to the Head of the undertaking, to all members of the Council, Chairman, Permanent Conciliation Board for State-owned Undertakings, and Government in the Administrative Department, and shall be treated as strictly confidential.

(iii) On getting a copy of the minutes, the Head of the undertaking shall take necessary action in regard to the implementation of agreed decisions and notify the action taken by him by displaying his orders on the notice board(s) of the undertaking, and send a copy of the same to the Chairman, Permanent Conciliation Board for State-owned Undertakings, and Government in the Administrative Department concerned.

14. The Council of any undertaking employing 500 or more workmen shall have the power to appoint one or more Standing or *ad hoc* sub-committees for dealing with any subject or item falling within the scope of the Council and delegate all or specified powers to such sub-committees.

15. (i) For the time spent at the meetings of the Council, the workmen's representative shall be paid the same wages as would ordinarily be admissible to him for performing his normal duties.

(ii) Members of the Council shall be given permission to attend the meetings of the Council during working hours.

16. The management shall provide accommodation and all other facilities for holding the meetings of the Council.

Unions entitled to nominate representatives for Works Councils in U. P.

Notification No. 4170(ST)/XXXVI-A-136(ST)-57 Dated Lucknow,
August 20, 1958*

In pursuance of sub-clauses 2(a) and (b) of clause 4 of the order published with notification No. 3735(ST)/XXXVI-A-136(ST)-57, dated July 15, 1958, the Governor of Uttar Pradesh is pleased to lay down that only such unions as fulfil the conditions herein mentioned shall be entitled to nominate representatives on the Works Council to be constituted under the said order:

* U. P. Gaz., Exty., 20-8-58, p. 1.

(1) The Union should be of at least one year's standing as a registered Union and should have submitted the annual return to the Registrar of Trade Unions, which must have been accepted by him.

(2) The Union shall maintain a register of members and issue a proper receipt to each member for admission fee, if any, and the prescribed subscription paid by them.

(3) The Union shall enrol new members on an application form alone. The application form shall be properly kept and therein shall be given reference of the entries in the membership register and the serial number of Counter-foil of the receipt of subscription.

(4) The Union shall allow inspection and checking of its records and accounts by an official deputed by the Labour Commissioner, U. P., Registrar of Trade Unions, U. P., and Chairman of the Permanent Conciliation Board for State-owned undertakings.

(5) The Union must have been faithfully complying with its rules (constitution) registered with the Registrar of Trade Unions, U. P.

(6) The Union shall abide by the Code of Discipline adopted at the Indian Labour Conference held at Naini Tal and since then ratified by all the Central Organizations of Labour which is given in the Annexure.

ANNEXURE

CODE FOR DISCIPLINE IN INDUSTRY

I. To maintain discipline in industry—There has to be (i) a just recognition by employers and workers of the rights and responsibilities of either party, as defined by laws and agreements (including bipartite and tripartite agreements arrived at all levels from time to time), and (ii) a proper and willing discharge by either party of its obligations consequent on such recognition.

The Central and State Governments, on their part, will arrange to examine and set right any shortcomings in the machinery they constitute for the administration of labour laws.

TO ENSURE BETTER DISCIPLINE IN INDUSTRY

II. Management and Union(s) agree—(i) that no unilateral action should be taken in connexion with any industrial matter and that disputes should be settled at appropriate level;

(ii) that the existing machinery for settlement of disputes should be utilized with the utmost expediency;

(iii) that there should be no strike or lock-out without notice;

(iv) that affirming their faith in democratic principles, they bind themselves to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration;

(v) that neither party will have recourse to (a) coercion, (b) intimidation, (c) victimization, or (d) go-slow;

(vi) that they will avoid (a) litigation, (b) sit-down and stay-in strikes, and (c) lock-outs;

(vii) that they will promote constructive co-operation between their representatives at all levels and as between workers themselves and abide by the spirit of agreements mutually entered into ;

(viii) that they will establish, upon a mutually agreed basis, grievance procedure which will ensure a speedy and full investigation leading to settlement ;

(ix) that they will abide by various stages in the grievance procedure and take no arbitrary action which would bypass this procedure, and

(x) that they will educate the management personnel and workers regarding their obligations to each other.

III. *Management agree*—(i) not to increase work-loads unless agreed upon or settled otherwise ;

(ii) not to support or encourage any unfair labour practice such as (a) interference with the right of employees to enrol or continue as union members, (b) discrimination, restraint or coercion against any employee because of recognised activity of trade unions, and (c) victimization of any employee and abuse of authority in any form ;

(iii) to take prompt action for (a) settlement of grievances, and (b) implementation of settlements ; awards, decisions and orders ;

(iv) to display in conspicuous places in the undertaking the provisions of this Code in the local language(s) ;

(v) to distinguish between actions justifying immediate discharge and those where discharge must be preceded by a warning, reprimand, suspension or some other form of disciplinary action and to arrange that all such disciplinary action should be subject to an appeal through normal grievance procedure, and

(vi) to take appropriate disciplinary action against its officers and members in cases where enquiries reveal that they were responsible for precipitate action by workers leading to indiscipline.

Union (s) agree—(i) not to engage in any form of physical duress ;

(ii) not to permit demonstrations which are not peaceful and not to permit rowdyism in demonstration ;

(iii) that their members will not engage or cause other employees to engage in any union activity during working hours, unless as provided for by law, agreement or practice ;

(iv) to discourage unfair labour practices such as (a) negligence of duty, (b) careless operation, (c) damage to property, (d) interference with or disturbance to normal work, and (e) insubordination ;

(a) to take prompt action to implement awards, agreements, settlements and decisions ;

(vi) to display in conspicuous places in the union offices, the provisions of this Code in the local language (s), and

(vii) to express disapproval and to take appropriate action against officebearers and members for indulging in action against the spirit of this Code.

orders of a Court which, unless leave to appeal to the Supreme Court is granted, is a final appellate court. Section 30 of the Workmen's Compensation Act on the other hand makes provision for an appeal to this Court from a Tribunal of first instance and if learned counsel's submission be accepted it follows that this Court will have no jurisdiction in a case in which the Commissioner had arrived at an obviously wrong conclusion on a question of law. We do not think that that was the intention of the Legislature. In our opinion, the phrase "substantial question of law" as used in the proviso to section 30 (1) of the Act must be given a wider construction than is to be attributed to it in section 110 of the Civil Procedure Code, and that the phrase should be construed to cover a case such as the present in which the Commissioner has clearly misdirected himself on a question of law. This view is in accordance with the opinion of this Court in *Upper Ganges Electric Employees' Union v. Upper Ganges Valley Electricity Supply Co. Ltd.*, [A. I. R. 1956 All. 491], in which the Court had to consider the meaning of the same phrase as used in section 7(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950.

In our opinion this appeal fails and it is accordingly dismissed.

It is clearly very desirable that the appellant's claim for compensation should be reheard by the Commissioner at as early a date as possible.

[IN THE PUNJAB HIGH COURT.]

KARNAL KAITHAL CO-OPERATIVE TRANSPORT SOCIETY LTD

v.

STATE OF PUNJAB AND ANOTHER.

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

April 18, 1958.

WRIT—WRITS OF *mandamus* AND PROHIBITION—ORDER OF GOVERNMENT REFERRING INDUSTRIAL DISPUTE TO INDUSTRIAL TRIBUNAL—WHETHER WRIT OF *mandamus* CAN ISSUE TO SET ASIDE ORDER—PROPER REMEDY—WRIT OF PROHIBITION AGAINST TRIBUNAL—DECISION OF TRIBUNAL ON QUESTION OF JURISDICTION—WHETHER ESSENTIAL—CONSTITUTION OF INDIA, ART. 226.

In view of the nature of the remedy of a writ of mandamus and the nature of the duty of the appropriate Government to refer an industrial dispute to an Industrial Tribunal under the provisions contained in the Industrial Disputes Act, 1947, a writ of mandamus cannot be issued to set aside an order of the Government making a reference of an industrial dispute to an Industrial Tribunal.

A writ of prohibition can, however, be a proper remedy in such cases, but, such writ will issue only after the question of its jurisdiction has been adjudicated upon by the Tribunal and any party is aggrieved by the decision of the Tribunal.

Letters Patent Appeal No. 22 of 1955.

H. R. Sodhi for the management.

L. D. Kaushal and H. R. Aggarwal for the respondents.

JUDGMENT.

BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether it is within the competence of this Court to set aside an order passed by the State Government referring a certain dispute to an Industrial Tribunal under the provisions of the Industrial Disputes Act, 1947.

The petitioners in this case are the Karnal-Kaithal Co-operative Society, while the respondents are the District Motor Transport Workers' Union.

Certain disputes which had arisen between the parties were settled on the 21st August, 1953, and the 31st October, 1953. Notwithstanding this settlement, the respondents gave to the petitioners a notice of strike under section 22(1) of the statute in which they announced that if their demands were not accepted before the 18th March, 1954, they would be compelled to go on strike and that the petitioners would be held responsible for any consequences which might ensue. The petitioners replied back to say that all the demands put forward by the respondents existed in one form or another during the dispute which had arisen between the parties, that they were considered and thrashed out on previous occasions, that the settlement arrived at between the parties was signed by both the parties and the Conciliation Officer, and that any strike during the subsistence of the settlement would be illegal under section 23 of the Act of 1947. The respondents were unable to concur in this line of reasoning and intimated their desire to proceed on strike on the 16th May, 1954. The petitioners repudiated this fresh notice on facts as well as on law and warned the respondents of the penal consequences which were likely to follow if they proceeded on strike during the subsistence of the agreement. On the 17th June, 1954, while this acrimonious correspondence was going on between the parties, the State Government referred this dispute to the Second Industrial Tribunal at Amritsar under section 10(1)(c) of the Act of 1947. This case was later transferred to the Industrial Tribunal at Jullunder, and on the 15th July, 1954, the latter directed the parties to appear before it on the 21st July, 1954.

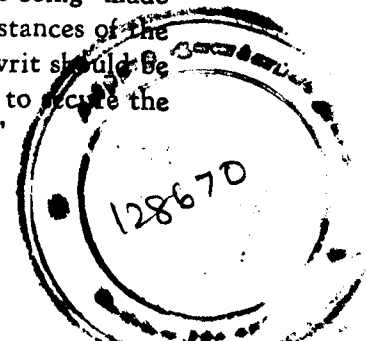
On the 20th July, 1954, the petitioners presented a petition under article 226 of the Constitution in which they asked for two declarations, namely, (1) that during the continuance and operation of conciliation settlement under the Act of 1947 the State Government had no power of reference till the settlement had been terminated according to law; and (2) that the State Government had no power to transfer a proceeding pending before one Industrial Tribunal to another Industrial Tribunal. The learned Single Judge before whom this petition came up for consideration came to the conclusion that the statute confers wide powers on Government to refer industrial disputes to Tribunals and that the question whether an industrial dispute does or does not exist is one for the decision of Government. In this view of the case the learned Judge dismissed the petition. The petitioners appealed.

The learned counsel for the petitioner contends that the order of the State Government referring the present dispute to an Industrial Tribunal was wholly without jurisdiction or in excess of it, and he accordingly prays—(1) that a writ of *mandamus* should issue to the State Government requiring it to recall the reference which has been made to the Industrial Tribunal, or (2) that a writ of prohibition should issue to the Tribunal requiring it to refrain from dealing with the reference. As we are confronted at the outset with a choice of alternatives, we must come to a decision as to which of the two remedies, if any, should be selected in the present case.

The office of the remedy of *mandamus* has been admirably described in *George's Creek Coal & I & Co. v. Allegnay County*, (1882) 59 Md. 255, as follows:

"*Mandamus* is a most valuable and essential remedy in the administration of justice, but it can only be resorted to, to supply the want of some more appropriate ordinary remedy. Its office, as generally used, is to compel corporations, inferior tribunals, or public officers to perform their functions, or some particular duty imposed upon them, which, in its nature, is imperative, and to the performance of which the party applying for the writ has a clear legal right. The process is extraordinary, and if the right be doubtful, or duty discretionary, or of a nature to require the exercise of judgment, or if there be any ordinary adequate legal remedy to which the party applying could have recourse, this writ will not be granted. The application for the writ being made to the sound judicial discretion of the court, all the circumstances of the case must be considered in determining whether the writ should be allowed unless the court is satisfied that it is necessary to secure the ends of justice, or to subserve some just or useful purpose."

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There are four pre-requisites essential to the issue of the writ: (1) whether the petitioner has a clear and specified legal right to the relief demanded by him; (2) whether there is a duty imposed by law on the respondent; (3) whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the respondent; and (4) whether the petitioner has any remedy, other than by way *mandamus*, for the enforcement of the right which has been denied to him. These are the questions but only some of the questions, which are necessary to be decided in every application for *mandamus*.

The first point for decision in the present case is whether the petitioners have a clear and unequivocal right to the relief demanded by them, for *mandamus* is a discretionary writ and will not be granted unless the rights of the petitioner are clear. He must show not only that he has a legal right to have the act performed but that the right is so clear and well-defined as to be free from any reasonable controversy. The writ cannot issue when the right is doubtful, or not complete, or is a qualified one, or where it depends upon an issue of fact to be determined by the respondent. Section 10(1)(c) provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute, or any matter appearing to be connected with or relevant to the dispute, to a Labour Court for adjudication. This section confers no legal right on the petitioner, and imposes no duty on the respondent. *Mandamus* cannot issue to determine academic questions or empty and barren technical rights.

This brings me to the decision of the next question, namely, whether the duty which has been imposed by section 10(1)(c) is of an imperative ministerial character involving no judgment or discretion on the part of the State Government. A ministerial act is one which a public officer is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed. If, therefore, a statute directs a public officer to perform an act in regard to which no discretion is committed to him then that act would be ministerial although depending upon a statute which requires in some degree a construction of its language by the officer concerned. The fact that it is necessary for an executive officer to read and to construe a statute in order to ascertain the precise duty which he is required to perform, would not preclude its coercion by a writ of *mandamus* so long as the duty is plainly prescribed and is equivalent to a positive command. If, however, the duty is not plainly prescribed or if the law confers discretion on the respondent to

do or not to do a certain act as he may choose, the duty must be regarded as involving the exercise of judgment or discretion which cannot be controlled by *mandamus* even though the construction of the officer may be erroneous. This is particularly so when the statute by which the duty is imposed is couched in permissive terms. The use of the expression "may" often indicates that the Legislature did not wish to impose on the person concerned a clear legal duty to act but wished merely to confer a discretion on him to act or not to act as he may choose. In such a case discretion can obviously not be controlled by *mandamus* unless the decision is so manifestly arbitrary and capricious that it cannot be allowed to stand; and the Court is called upon to decide not whether the decision of the authority was right or wrong but whether the decision made in the discharge of a duty imposed by law and the exercise of judgment and discretion, should be compelled to be withdrawn.

The power of the Courts to interfere with the discretion conferred upon Governments and officers has been brought out with admirable clarity in a number of decisions of the Supreme Court of the United States. It will suffice for the purpose of the case to refer only to two cases. In *Decatur v. Paulding*, 10 L. Ed. 559, at p. 568, it was held that *mandamus* could not be awarded to compel the head of one of the executive departments to allow a claim, under one construction of a resolution of Congress, which he had disallowed under another construction, the Court saying:

"The duty required by the resolution was to be performed by him as the head of one of the executive departments of the Government, in the ordinary discharge of his official duties. In general, such duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is from time to time required to act.....If a suit should come before this court which involved the construction of any of these laws, the court certainly would not be bound to adopt the construction given by the head of a department. And if they supposed his construction to be wrong, they would, of course, so pronounce their judgment. But their judgment upon the construction of a law must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of Congress in order to ascertain the rights of the parties in the cause before them. The court could not entertain an appeal from the decision of one of the Secretaries, nor revise his

judgment in any case where the law authorised him to exercise discretion or judgment. Nor can it by *mandamus* act directly upon the officer, and guide and control his judgment or discretion in the matters committed to his care, in the ordinary discharge of his official duties.....The interference of the courts with the performance of the ordinary duties of the executive departments of the Government would be productive of nothing but mischief, and we are quite satisfied that such a power was never intended to be given to them."

In *United States ex rel. Riverside Oil Co. v. Hitch Cock*, 190 U.S. 316, it was sought by *mandamus* to compel the Secretary of the Interior to depart from a decision of his, to the effect that a forest reserve lieu-land selection must be accompanied by an affidavit that the selected land was non-mineral in character and unoccupied, and it was held that his judgment and discretion could not be thus controlled, it being said:

"Congress has constituted the Land Department under the supervision and control of the Secretary of the Interior, a special tribunal with judicial functions, to which is confided the execution of the laws which regulate the purchase, selling and care and disposition of the public lands..... Whether he decided right or wrong is not the question. Having jurisdiction to decide at all, he had necessary jurisdiction, and it was his duty, to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination by *mandamus* or injunction. The Court has no general supervisory power over the officers of the Land Department by which to control their decisions upon questions within their jurisdiction. If this writ were granted we would require the Secretary of the Interior to repudiate and disaffirm a decision which he regarded it his duty to make in the exercise of that judgment which is reposed in him by law, and we should require him to come to a determination upon the issues involved directly opposite to that which he had reached, and which the law conferred upon him the jurisdiction to make. *Mandamus* has never been regarded as the proper writ to control the judgment and discretion of an officer as to the decision of an officer as to the decision of a matter which the law gave him the power and imposed upon him the duty to decide for himself. The writ never can be used as a substitute for a writ of error. Nor does the fact that no writ of error will lie in such a case as this, by which to review the judgment of the Secretary, furnish any foundation for the claim that *mandamus* may therefore be awarded. The responsibility, as well as the power, rests with the Secretary, uncontrolled by the courts."

F.J.R.] KARNAL KAITHAL CO-OP. TPT. SOCY. LTD. v. STATE OF PUNJAB 55

A similar view has been expressed by our own Supreme Court, for, in *State of Madras v. C. P. Sarathy and another*, [1952] 4 F.J.R. 431, while dealing with the powers of Government under section 10(1) of the Industrial Disputes Act, the Court observed as follows:—

"But, it must be remembered that in making a reference under section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as it was a judicial or a quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. The observations in some of the decisions in Madras do not appear to have kept this distinction in view."

The Act of 1947 confers upon the State Government the power, and imposes upon it the duty, to decide for itself, in the exercise of its own judgment and discretion whether an industrial dispute does or does not exist or whether such dispute should or should not be referred for adjudication to a Tribunal. The duty imposed upon the State Government is not of a ministerial character but is one involving judgment and discretion. The State Government is the sole arbiter in deciding whether an industrial dispute exists or is apprehended (*Royal Calcutta Golf Club Mazdur Union v. State of West Bengal* [1956] 12 F.J.R. 324). If, therefore, it comes to a decision in regard to the existence or non-existence of a dispute this decision must be deemed to have been arrived at in a case where the law authorises it to exercise judgment or discretion. It must be deemed to have been arrived at in a case where the Legislature has vested it with jurisdiction. The decision may be wrong, but it cannot be said that by coming to a wrong decision the State Government has attempted to perform an act over which it had no jurisdiction. It had jurisdiction to decide the matter and it has

decided the said matter even though the decision may be held to be erroneous in point of law (*State of Bombay v. Laxmidas Ranchhodas* A.I.R. 1952 Bom. 468). All reasonable presumptions must be drawn in support of the action of the State Government.

Although it is within the competence of the Court to test the validity of an administrative order and to interfere with it if it was passed without jurisdiction, I entertain no doubt in my mind that the decision of the State Government in the present case to refer the dispute which had arisen between the parties to an Industrial Tribunal was neither *mala fide* nor arbitrary nor ministerial. On the other hand, I am satisfied that this decision was made in the exercise of judgment and discretion conferred by law and cannot be controlled by *mandamus*.

Not can it be said that the petitioners have no other legal remedy, adequate to afford the desired relief. It has been held in a long line of authorities which go back to early times that a writ of *mandamus* can be granted only where there is a specific legal right and no other legal remedy adequate to enforce the right. Blackstone stated that a *mandamus* is "a high prerogative writ, of a most.....remedial nature" and "issues in all cases where the party has right to have anything done, and has no other specific means of compelling its performance." (*Blackstone's Commentaries*, Volume III, page 110). Lord Mansfield expressed the view that when there is no specific remedy the Court will grant a *mandamus* that justice may be done (*Rex v. Bank of England*, [1780] 2 Doug. K. B. 524 at 526). This statement was amplified and explained by Lord Esher M. R. in *In re Nathan*, [1884] 12 Q.B.D. 461, where his Lordship observed: "Where there is no specific remedy and by reason of the want of that specific remedy justice cannot be done unless a *mandamus* is to go, then a *mandamus* will go." In the same case Bowen, L. J., observed as follows:

"A writ of *mandamus*, as everybody knows, is a high prerogative writ, invented for the purpose of supplying defects of justice. By Magna Carta the Crown is bound neither to deny justice to anybody, nor to delay anybody in obtaining justice. If, therefore, there is no other means of obtaining justice, the writ of *mandamus* is granted to enable justice to be done. The proceedings, however, by *mandamus* is most cumbrous and most expensive; and from time immemorial, accordingly, the Courts have never granted a writ of *mandamus* where there was another more convenient or feasible remedy within the reach of the subject."

In *In re Barlow*, 30 L. J. Q. B. 271, Hill, J., declared that where there is a remedy equally convenient, beneficial and effectual, a *mandamus* will not be granted by the Court of Queen's Bench. But this is not a rule of law, but a rule regulating the discretion of the Court in granting the writ, and unless the Court can see clearly that there is no other remedy equally convenient, beneficial and effectual, the writ will not be granted. These dicta were cited with approval by Field, J., in *Reg. v. Registrar of Joint Stock Companies*, 21 Q.B.D. 131, 135, who added:

"We have, therefore, to see whether or not there is a remedy equally beneficial with this remedy of *mandamus*. My own opinion is that this prerogative writ is a most inconvenient remedy, though less so than formerly. There is at first a rule that it do issue, and then a return would have to be made to it; and the question to be settled could not be decided without much delay."

These authorities make it quite clear that if a petitioner has a clear legal right to the performance of a particular duty, if he has no other specific legal remedy which is adequate to afford complete relief, and if there would be failure of justice if the aid of this Court is not extended, remedy by way of *mandamus* may be invoked. It is not necessary for us to delve deeply into this question as I am satisfied from the arguments which have been addressed to us that the petitioners have no clear or unequivocal legal right to the relief to which they consider themselves entitled and that the orders passed by Government were passed in the exercise of judgment or discretion and not upon irrelevant and extraneous considerations.

There is another aspect of the matter which needs to be considered. Remedy by way of *mandamus* is in no sense a curative or preventive remedy. *Mandamus* is a positive or remedial process, not a negative or preventive one. It is not the province of *mandamus* to prohibit the passing of an order or to review one which has already been passed, or to undo an act which has already been performed, or to revise action which has already been taken, or to restrain or prevent an improper interference with the rights of petitioners. It is a coercive and not a corrective writ; it stimulates the lethargic into action; it commands performance not desistance. It cannot lie to restrain action and cannot compel the State Government to recall an order of reference which has already been made by it in exercise of the powers conferred by law. It would be wholly improper to invoke the help of this remedy in the present case, for it is contrary to public policy that the work of Government in securing an amicable settlement of disputes should be hampered by *mandamus* except where the departure from the statute is clear beyond dispute or where Government attempts to perform an act

over which it has no jurisdiction whatever. I am unable to hold in the present case that Government has clearly manifested a determination to disobey the law.

But it is contended on behalf of the petitioners that if a writ of *mandamus* cannot be issued to the State Government to withdraw the reference made to the Tribunal, a writ of prohibition should issue to the Tribunal, restraining it from dealing with the reference on the ground that the dispute which has arisen between the parties is not an industrial dispute. There is considerable force in this contention, for the writ of prohibition is designed primarily to prevent a Tribunal possessing judicial or *quasi*-judicial powers from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance.

Two courses are now open to this Court, *viz.*, either to direct the parties to obtain an adjudication on the question of jurisdiction from the Tribunal or to give an adjudication itself.

The learned counsel for the petitioner contends that a Tribunal has no jurisdiction to question the validity of the reference made to it and consequently that this Court should issue a writ of prohibition to the Tribunal itself and should not wait till the Tribunal has given its own decision on the question of its competency. Two authorities have been cited in support of this contention. The first case is reported as *Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras*, [1951] 3 F.J.R. 420. In this case a Division Bench of the Madras High Court doubted whether an Appellate Tribunal has power to declare the reference by Government to be invalid or to hold that the Industrial Disputes Act itself is invalid or otherwise. This remark appears to have prompted the learned Judicial Commissioner of Bhopal in *Hamidia Match Manufacturing Co., Ltd. v. State of Bhopal*, [1954] 6 F.J.R. 328, to express the view that the Tribunal to whom an industrial dispute is referred for adjudication is not at liberty to decide whether the reference is valid or otherwise but is bound to deal with it as it stands. The view taken by the learned Judicial Commissioner appears to me to be wholly misconceived. The jurisdiction of every judicial or *quasi*-judicial Tribunal is derived from and limited by the statute or other instrument by which it has been created, and every judicial or *quasi*-judicial Tribunal has power to determine the boundaries of its own jurisdiction. Indeed it has been said that every such Tribunal should, of its own motion, consider the question of jurisdiction over any matter brought before it even though it is not raised by the parties. Nor is there any substance in the contention that the language of section 15(1) of the Industrial Disputes Act, does not permit the Tribunal to question the validity of a

reference made to it by the State Government. I am of the opinion that question of jurisdiction should be raised before the Tribunal itself and decided by it in accordance with law.

It is a recognized practice of Courts that when a person challenges the jurisdiction of a Tribunal, the Court declines to examine the question until the question has been examined and pronounced upon by the Tribunal itself (*Management of Kadachira Motor Service Ltd. v. State of Madras* [1957] 12 F.J.R. 319). The superior Court should not proceed on the assumption that the Tribunal will go beyond its jurisdiction and should, therefore, refrain from interfering before the inferior Tribunal has had an opportunity of considering whether any of the matter in controversy between the parties fall within its jurisdiction.

The objection in regard to the transfer of the case from one Tribunal to the other remains to be decided. In paragraph 14 of the written statement the State Government explain that they did not order the transfer of the case from one Tribunal to another but only corrected a clerical mistake. There is, in my opinion, no substance in the objection.

For these reasons, I am of the opinion, that the application for the issue of a writ of *mandamus* was incompetent and that the application for the issue of a writ of prohibition was premature. The appeal must, therefore, be dismissed with costs. I would order accordingly.

It would, of course, be open to the petitioners, if they so desire, to raise the question of jurisdiction before the Industrial Tribunal before which the dispute is pending. If the decision of the Tribunal is adverse to the petitioners, it would be open to them to apply again to this Court for the issue of a writ of prohibition.

G. L. CHOPRA J.—I agree.

[IN THE ALLAHABAD HIGH COURT.]

STATE

v.

CHANDRA PRAKASH

D. N. Roy and S. N. Sahai, JJ.

April 8, 1958.

U. P. SHOPS & ESTABLISHMENTS ACT, 1947, SECTIONS 2(6) AND 10—
“EMPLOYER”—DEFINITION OF—WHETHER INCLUDES OWNER OF SHOP
WHEREIN NOBODY IS EMPLOYED—OBSERVANCE OF CLOSE-DAY—WHETHER
APPLIES TO SUCH OWNER.

Though the word ‘employer’, according to its ordinary meaning, signifies a person who employs somebody else, the definition of the word in section 2(6) of the U.P. Shops and Commercial Establishments Act, 1947,

includes the owner of a business whether or not anybody is employed therein. Therefore, the provision contained in section 10 of the Act regarding the observance of a close-day once a week applies to an establishment even when nobody is employed therein.

Government Appeal No. 935 of 1956.

H. N. Seth and J. R. Bhatta for the State.

Gyan Prakash for the respondent.

JUDGMENT.

ROY, J.—This is an appeal by Government against the acquittal of the accused who was charged with infringement of the provisions of section 10 of the United Provinces Shops and Commercial Establishments Act of 1947 and rules 5 and 6 of the rules made under the Act.

The accused is the owner of a commercial establishment engaged in calico printing at Farrukhabad and his business is, to quote his own words, confined to entirely as an exporter abroad. On 20th December, 1953, which was a Sunday, and a close-day for the purposes of the U. P. Shops and Commercial Establishments Act, the establishment was found open and working. The prosecution contended that thereby the accused infringed section 10 of the Act read with rules 5 and 6 of the rules and the infringement was punishable under section 27 of the Act. The accused pleaded on the basis of a letter dated the 18th of December, 1948, from the Chief Inspector of Shops and Commercial Establishments, U.P., to the Secretary of the Calico and Silk Printers, Farrukhabad, that the labour employed by him in the establishment was employed on contract or piece rate system and therefore such an establishment was outside the purview of the Act. That plea found favour with the learned Magistrate; and the learned Magistrate, accordingly, acquitted the accused. In our opinion the view taken by the learned Magistrate was incorrect.

The preamble of the Act recites that it is expedient to make provision for the regulation of hours of work and certain other conditions of employment in shops and commercial establishments. Section 2(3) provides that "commercial establishment" means any premises other than a factory or a shop wherein any trade or business is carried on for profit and includes journalistic and printing establishments and premises in which the business of banking, insurance, dealing in stocks and shares, brokerage or produce exchange is carried on or which are used as theatres, cinemas or for other public amusement or entertainment; and includes the clerical and other establishment of a factory to which the provisions of the Factories Act, 1934, do not apply. That this was a "commercial establishment" besides having been alleged and

proved by the prosecution in this summary trial, was in effect admitted by the accused himself when he said that it is a shop where he carried on business of the export of calico printing abroad. The accused no doubt used the word "factory" for this business, but the mere use of the word "factory" by him will not convert this concern from something other than a "commercial establishment" as contained in the Act. In any event, even if the contention were to prevail that this was a "shop" where trade or business of export abroad was carried on, it will come under the disability stated in section 10 of the Act. That section lays down that every employer shall close his "shop" or "commercial establishment" not included in the Schedule on one day of the week, and such day shall be referred to as the close day. Sub-section (2) of that section provides:—

"Except as provided in the Negotiable Instruments Act, 1881, or any other enactment applying to a shop or a commercial establishment, the choice of a close day shall, subject to the approval of such authority as may be appointed in this behalf, rest with the employer and shall be specified by him in a notice permanently exhibited in a conspicuous place in the shop or commercial establishment:

Provided that where a close day is prescribed in or under the Negotiable Instruments Act, 1881, or other enactment applying to a shop or commercial establishment, such day shall be specified in the notice above referred to."

Sub-clause (3) of the section, however, says that the close day specified under sub-section (2) shall not be altered by the employer except once in a year and any alteration shall take effect only as from 1st January in any year and shall be subject to the approval of such authority as may be appointed under section 10(2).

Provided that the employer shall by affixing a notice in a conspicuous place in the shop or commercial establishment not later than December 15th next preceding give previous intimation of his intention so to alter the close day.

It is, therefore, evident that this section requires that every employer shall close his shop or commercial establishment on one day of the week which shall be called the close day and the choice of a close day shall rest with the employer, subject to the approval of such authority as may be appointed in this behalf and shall be specified by him in a notice permanently exhibited in a conspicuous place in the shop or commercial establishment which shall also exhibit a close day prescribed under the Negotiable Instruments Act or any other enactment applicable to the shop or commercial establishment.

The term "employer" used in section 10 has been defined in section 2(6) of the Act as meaning a person having charge of or owning the business of a shop or commercial establishment and includes the manager or any other person acting in the general management or control of such shop or commercial establishment. There can be no doubt whatsoever that the accused in this case was an "employer" as defined in the Act and the establishment was a "commercial establishment" or a "shop" as envisaged in the Act.

It was urged on behalf of the accused that it is implicit in the word "employer" that somebody should be employed and since no person was employed and those who were found there were only employed on contract or piece rate system, the accused cannot be held to be employer. This argument completely loses sight of the definition of the term "employer" contained in the Act. Undoubtedly the word "employer" according to its ordinary meaning in the English language signifies a person who employs somebody else. But it is competent for the Legislature to enact that in a particular Act the word shall include the owner of a business, whether or not anybody is employed therein and that seems to be the effect of the present definition. If one were to read into the definition, the provision that an employer must employ somebody then we think undoubtedly section 10 would not apply. But we have no doubt whatsoever from the terms of the whole Act that the section was intended to include such a commercial establishment or shop.

In *Emperor v. Mahamed Panwalla* (A.I.R. 1942 Bom. 39) the word "employer" under the Bombay Shops and Establishment Act, 1939, was considered. In that Act the word was defined just in the same terms as under the Act which we have got to deal with. In that case also the argument was advanced that it is implicit in the word "employer" that somebody should be employed. But that argument was repelled and it was held that it was competent for the Legislature to enact that in a particular Act the word shall include the owner of a business whether or not anybody is employed therein. We are in respectful agreement with that view.

It was admitted by the accused in the present case that this commercial establishment or shop was open on Sunday the 20th of December, 1953. It was not pretended that this commercial establishment or shop observed as close day any day other than Sunday. It was, therefore, obvious that the accused infringed the provisions of section 10 of the Act read with rules 5 and 6 of the rules framed under the Act and such an infringement was punishable under section 27 of the Act.

As we have already said, the learned Magistrate was of the view that this establishment came under an exemption because of something having been said by the Chief Inspector of shops and commercial establishments in his letter dated the 18th of December, 1948, to the secretary of the Calico and Silk Printers, Farrukhabad. That letter incidentally mentioned that the labour employed on contract or piece rate system is outside the purview of the Act. If advantage of what was expressed there could be extended to anybody, it could only be extended to the labour employed on contract or piece rate system. What was said in that letter will not be interpreted as meaning that a commercial establishment or shop of this nature will not be governed by the Act and that section 10 of that Act and rules 5 and 6 of the Rules framed under the Act can be violated with impunity.

For reasons stated above we allow this appeal and convict the accused respondent under section 27 of the U. P. Shops and Commercial Establishments Act, 1947, for infringement of section 10 of the Act read with rules 5 and 6 of the Rules framed under the Act. We think this is not a case for a heavy sentence and we sentence the accused to a fine of Rs. 5 only, in default of payment of which he shall undergo one week's simple imprisonment.

[IN THE KERALA HIGH COURT.]

KUNNATH TEXTILES

v.

REGIONAL PROVIDENT FUND COMMISSIONER.

Sankaran, Ag. C.J. and Raman Nayar, J.

January 29, 1958.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 2(g)—FACTORY—
DEFINITION OF—MERE CHANGE IN OWNERSHIP OF FACTORY—WHETHER
BRINGS INTO EXISTENCE A NEW FACTORY.

Having regard to the definition of "factory" in section 2 (g) of the Employees' Provident Funds Act, 1952, the continuance of a factory as the same factory is unaffected by a change of ownership, by whatever form of legal transaction the change is brought about. Therefore, where a factory which was being owned by a limited company of which seven brothers were the shareholders is taken over subsequently as a running concern by a partnership consisting of the seven brothers, it cannot be said that a new 'factory' has come into existence, for the purposes of the Act.

A. S. No. 73 of 1956.

P. V. Krishna Iyer, T. S. Venkateswara Iyer and C. S. Ananthakrishna Iyer for the petitioners.

M. U. Isaac for the respondent,

JUDGMENT.

RAMAN NAYAR, J.—In 1942 one K. T. Paul and his six brothers started a handloom textile factory which they ran until about March, 1948. In January, 1949, the seven brothers formed a private limited company with one of the brothers, by name Cherukutty; as the managing director. This company took the factory on lease and worked it until 1st November, 1953, when it surrendered the lease. The provisions of the Employees' Provident Funds Act, XIX of 1952, were applied to the factory while it was being run by the Eastern Agencies Ltd., and that company was contributing to the Employees' Provident Fund as required by the Act and the scheme framed thereunder. On the termination of the lease of the company, the seven brothers formed themselves into a partnership which they called the "Kunnath Textiles" and they took over the factory which they continued to run with the same employees (although they now choose to call them new workers) making the same goods and with no change whatsoever as to its character. They, however, discontinued sending the returns and making the contributions required by the Act, and when called upon by the Regional Provident Fund Commissioner to comply with the provisions of the Act contended that theirs was an infant factory within the meaning of section 16 of the Act having been established only on 1st November, 1953, and that the provisions of the Act were not applicable to the factory until it came of age on 1st November, 1956. This contention was overruled by the Commissioner by his letter dated 27th August, 1954, on the ground that what had happened was only a mere change in management and not the establishment of a new factory. The firm demanded a hearing. That was given, but the Commissioner adhered to his former view and passed an order to that effect on 5th April, 1955. Thereupon, the firm filed a Writ Petition No. 76 of 1955, for the quashing the aforesaid order of the Commissioner but later withdrew the petition saying that it proposed to move the Central Government for a direction under section 19A of the Act. That, the firm did but the direction it obtained from the Central Government (communicated by a letter, dated 16th October, 1955) was not favourable. It confirmed the view of the Commissioner and required that the factory be brought under the provisions of the Act and of the Scheme framed thereunder with effect from the 1st November, 1953. As a result thereof, the Commissioner it would appear, threatened to recover the contributions due under the provisions of the Revenue Recovery Act. Therefore, the firm, represented by one of its partners, Cherukutty, came forward with the present petition under article 226 of the Constitution seeking an order

prohibiting the Commissioner from taking any steps to recover the contributions. The petition having been dismissed by a single Judge of this Court, the firm has come up on appeal.

From a consideration of the bare facts as stated above it seems to us beyond doubt that the holding of the learned single Judge that no new factory was established on 1st November, 1953, that the factory he was dealing with was the same as the one in respect of which contributions were being made by the Eastern Agencies Ltd., from 1st November, 1952, to 1st November, 1953, that the firm represented by Cherukutty was the employer in relation to that factory, and that the order dated 6th October, 1955, by the Central Government embodied a correct decision, and must be upheld. Although in strict legal theory the Kunnath Textiles is a different legal entity from the Eastern Agencies Ltd., the ownership of the factory was throughout vested in the seven brothers, and, as remarked by the learned single Judge, it is significant that the licence for working the factory has throughout remained in the name of Cherukutty who was the managing director of the Eastern Agencies Ltd., and is now the managing partner of the Kunnath Textiles. The so-called surrender of the lease was only a notional transaction by which the seven brothers in the garb of the Eastern Agencies Ltd., made over the factory as a working concern to themselves in their new garb of the Kunnath Textiles. The factory continued to work as before, with, it is admitted practically the very same employees and there was no interruption in the existence, not even a notional death and rebirth.

It is argued on behalf of the appellant that the lease to the Eastern Agencies Ltd., and the surrender by it were not, as wrongly assumed by the learned single Judge, of the factory as such, but only of the premises and the equipment. That might or might not be so—it is significant that the lease deed has not been produced—but we do not think that it makes any difference. Assuming that the lease was only of the premises and the equipment, and that the surrender was not notional but real, the firm being a different entity from the company, what actually happened as a result thereof was undisputedly that the appellant firm took over the factory as a working concern. That in law the surrender of a lease is not, strictly speaking, a transfer does not alter the position. We are not really concerned with the buildings or the equipment, and that lease of the factory of which they form part changed hands does not affect the identity of the factory. The factory remained the same factory making the same goods and employing the same workers without as much as a day's interruption and in this connection we might draw attention to section 2 (g) of the Act which defines a factory as any premises

in which a manufacturing process is being carried on—a definition the continued and uninterrupted application of which to the premises in question was in no way affected by the alleged surrender—and what happened in fact was not even a change in the management of the factory as stated by the Commissioner but merely a change in the name of its owner and, in law, a change of the personality of the owner. The factory did not stop working. Its workers were not discharged by the Eastern Agencies Ltd., nor, it would appear, reappointed by the Kunnath Textiles, and the firm has produced no evidence whatsoever in support of its repeated assertions that a new factory was started by it on 1st November, 1953, with new employees. Even if there were a discharge and a reappointment we would be inclined to ignore that as mere paper transactions designed to defeat the statute. Having regard to the definition of a factory in section 2 (g) of the Act, it is clear that the continuance of a factory as the same factory is unaffected even by a change of ownership, and it matters little by what means the change is effected, whether by a transfer, or by the death of the previous owner, or by some such transaction as in the present case. Much less can it be affected by a mere change in the name of the owner. By what form of legal transaction the change is brought about is of no consequence; and surely no one can be allowed to evade the law by purporting to deal with only the buildings and equipment of a factory when in fact what is dealt with is the factory as a running concern.

Our attention has been drawn to the explanation to section 16(1) of the Act which, for the removal of doubts, declares that the date of the establishment of a factory is not to be deemed to have been changed merely by reason of a change of the premises of the factory. This was perhaps thought necessary in view of the fact that in section 2(g) "factory" is defined in terms of its premises, and it certainly does not imply that a change other than that of the premises, a mere change in the name of the owner as in the present case, effects a change in the date of the establishment of a factory.

The objection taken on behalf of the Commissioner that the petitioner must first get rid of the order passed by the Central Government in exercise of its powers under section 19-A of the Act—no such relief is claimed in the petition and the Central Government is not a party—before it can seek to stay the hands of the Commissioner seems to us well-founded, but in the view that we have taken of the case on the merits, we think it unnecessary to go into that matter at any length.

We dismiss the appeal with costs. Advocate's fee Rs. 200 (two-hundred).

[IN THE SUPREME COURT OF INDIA.]

D. MACROPOLLO & CO. (PRIVATE) LTD.

v.

THEIR EMPLOYEES' UNION AND OTHERS.

T. L. Venkatarama Aiyar, P. B. Gajendragadkar and

A. K. Sarkar, JJ.

August 18, 1958.

RETRENCHMENT—DISCHARGE OF EMPLOYEES AS PART OF COUNTRY-WIDE SCHEME OF RE-ORGANISATION—WHETHER *mala fides* CAN BE ATTACHED TO SCHEME SIMPLY BECAUSE SOME WORKMEN ARE RETRENCHED—RELEVANCY OF ATTITUDE OF MANAGEMENT TOWARDS TRADE UNION OF EMPLOYEES—MATTERS TO BE TAKEN INTO CONSIDERATION BY LABOUR COURT IN DECIDING JUSTIFIABILITY OF RETRENCHMENT.

The appellant company was carrying on business as distributors of various manufacturers of cigarettes and cigars. Till 1946 their products were sold in Calcutta by their distributor who employed salesmen under him. In 1946, owing to communal riots, the company took over the salesmen under their own employment. In 1954 the management decided, as a measure of economy, on re-organising its sales department and reverting to sales through distributors. The salesmen in the employ of the company were, therefore, retrenched. The retrenchment was effected in various parts of India since 1954 and in 1957 the services of the salesmen in Calcutta area were terminated. On a dispute raised by the salesmen as to the justifiability of their retrenchment, the Labour Court, to which the dispute was referred came to the conclusion that the termination of their services was an unfair labour practice and victimisation for their union activities and ordered their re-instatement with back wages. On appeal by special leave to the Supreme Court, Held, that the decision of the Labour Court was not supported by the evidence before it because:

(i) the Labour Court failed to notice that the retrenchment was not confined to the Calcutta area but was part of a larger scheme of re-organisation and the fact that its implementation would lead to the discharge of some workmen would have no material bearing on the question of the bona fides of the re-organisation;

(ii) even if the management did not look with favour on the formation of the trade union of the workmen, the attitude of the management in the case was not so obstructive or hostile that an inference of *mala fides* can be drawn in regard to the implementation of the scheme of re-organisation; and

(iii) the Labour Court should have taken into consideration the fact that the implementation of the scheme was only to restore the status quo which prevailed before 1946.

The award of the Labour Court was, therefore, set aside and it was held that the discharge of the salesmen was justified and they were not entitled to any relief.

Civil Appeal No. 134 of 1958.

C. K. Daphtary (S. N. Bhattacharjee and P. K. Mukherjee, with him) for the management.

B. Sen (S. N. Mukherjee, with him) for the employees.

JUDGMENT.

GAJENDRAGADKAR, J.—This appeal by special leave arises out of an industrial dispute between the appellant, M/s. D. Macropollo & Co. (Private) Ltd., and respondent No. 1, its workmen as represented by D. Macropollo & Co. (Private) Ltd. Employees' Union. On the 31st of May, 1957, this dispute was referred to the First Labour Court by the Government of West Bengal under sections 7 and 10 of the Industrial Disputes Act, (No. XIV of 1947). The two questions which were referred to the Labour Court were—

(1) Is the termination of services of the fourteen workmen (whose names were given in the reference) justified?; and

(2) What relief were the discharged employees entitled to?

Before the Labour Court, the Employees' Union urged that the discharge of the fourteen employees amounted to an act of victimisation and unfair labour practice. On the other hand, the appellant urged that the discharged employees were not workmen within the meaning of the Act and so the reference made by the Government of West Bengal was invalid. It was also contended by the appellant that the impugned discharge of the fourteen employees was not at all an unfair labour practice; it was in fact a *bona fide* act on the part of the appellant inasmuch as, the said discharge was a part of the scheme of re-organisation of its business adopted by the appellant since 1954. The Labour Court rejected both these contentions. It held that the discharged employees were workmen within the meaning of the Act and so the reference made to it was valid; and it found that the appellant terminated the services of the workmen in question "as a matter of unfair labour practice and thus victimised them for their union activities". In the result, the Court ordered that the twelve workmen should be re-instated together with their back wages. This award was delivered on the 11th October, 1957, and it was duly published by the Government of West Bengal on the 19th October, 1957. It is the validity of this award that is challenged before us by the appellant in the present appeal.

It would be relevant at this stage to refer to the material facts leading to the present dispute. The appellant is a private limited company with its head office at Bombay and its branches in Delhi and Calcutta. The main business of the appellant is the selling agency of various cigarette manufacturing concerns. The appellant is the sole selling agent of Godfrey Phillips, who is one of the said manufacturers. The appellant thus sells cigarettes, cigars, manufactured tobacco and smokers' requisites of other manufacturers. Prior to 1946, in Calcutta the outdoor salesmen who sold cigarettes on behalf of the appellant were in the employ of the appellant's distributor; but in 1946 owing to communal riots this method of distribution and sale had to be terminated. The appellant then took the outdoor salesmen in its direct employment in order to organise them on communal basis in the then prevailing circumstances. These outdoor salesmen had to take a quantity of packets of two brands of cigarettes from the appellant's distributor and sell them to the local *panwalas* and petty dealers. At the end of the day's work, the unsold stock had to be returned by the salesmen to the distributor and the prices recovered by them for the sales effected during the course of the day had to be paid to him. In or about 1954 the appellant came to the conclusion that it was not practicable from business point of view to continue any longer its own outdoor sales department and so the appellant decided to close down the said department, to retrench the outdoor salesmen and to operate through the distributors. Pursuant to this decision, the system of employing outdoor salesmen under the direct employment of the appellant was terminated in Bombay and Delhi in 1954. The appellant realised that the sales were dropping and that the re-organisation of its business had become necessary as a measure of economy. For convenience, however, the re-organisation was brought into force by stages in different places from time to time. The Calcutta area of the appellant's business comprised of Assam, Bihar, Orissa, a part of the State of Uttar Pradesh and the State of West Bengal. The appellant had been terminating the services of its outdoor salesmen in this area since 1954. Salesmen whose services were discharged under this re-organisation of the appellant's business were being employed by the appellant's distributors in their respective areas. This scheme was implemented by the appellant last of all in Calcutta by writing letters of discharge to its fourteen outdoor salesmen on the 7th of February, 1957. These salesmen were informed that their services were terminated as from the 11th February, 1957, and that they would receive one month's salary in lieu of notice and half-month's salary per year of service by way of compensation. The salesmen were also told that the appellant was recommending to its

distributor in Calcutta to give them the first option of employment under him, on terms and conditions to be settled between them *inter se*. The distributor was agreeable to take up in his service the fourteen outdoor salesmen thus discharged by the appellant, but only two of them, S. C. Datta and S. C. Ghose (respondents 2 and 3), approached the distributor and obtained appointments from him. Since the other salesmen did not approach the distributor, he waited for some time and ultimately appointed other persons in the course of the next three months. It is under these circumstances that the respondent-union raised an industrial dispute with the appellant in respect of the termination of services of its fourteen outdoor salesmen. The two salesmen who have been employed by the distributor appeared before the Labour Court and informed the Court that they were not interested in the dispute and that the union was not authorised by them to represent their case before the Court.

The case for respondent No. 1 was that the appellant's plea of reorganisation is not genuine, that there was no economic justification for adopting the said scheme and that the sole object of the appellant in discharging the employees in question was to penalise them for their trade union activities. It appears that the employees of the appellant formed a trade union in July, 1953. Respondent No. 1 urged that the appellant was enraged by the formation of the trade union and it consistently refused to accord recognition to the union. The union presented its "charter of demands" and that provoked the appellant still more. The union tried to approach the appellant with a view to settle its demands but the appellant resisted all such efforts and ultimately issued letters to the employees terminating their services with a view to put an end to the agitation which the union was carrying on against the appellant. The discharge of the employees is thus an unfair labour practice and amounts to victimisation of the employees in question. It is on these contentions that the Labour Court had to consider the two questions, already indicated.

Mr. Daphtary for the appellant has argued that the Labour Court erred in holding that the discharged outdoor salesmen were workmen within the meaning of the Act, and he contends that the finding of the Labour Court that the discharge of the salesmen in question amounts to an unfair labour practice is perverse. He concedes that in an appeal under article 136, it would not be open to him to challenge the correctness or the propriety of a finding of fact recorded by a labour court; but his case is that the said finding is not supported by any legal evidence and is wholly inconsistent with the material produced on the record. It is this latter contention which Mr. Daphtary placed before us in the fore-

front of his arguments. Since we have reached the conclusion that the grievance made by Mr. Daphtary against the said finding recorded by the Labour Court is justified, we do not propose to consider the other question as to whether the discharged outdoor salesmen are workmen within the meaning of the Act.

The first serious infirmity in the decision of the Labour Court arises from its complete misconception about the appellant's case in regard to re-organisation of its business. The award specifically states that the new system was adopted only in Calcutta and was nothing but a colourable device to throw off the fourteen workmen. There is no doubt that this assumption is wholly inconsistent with the evidence in the case and it runs counter to what may reasonably be regarded as a matter of common ground between the parties. The appellant's director, Mr. Phillippou who has been associated with the appellant since 1934 has definitely stated on oath that since 1954 the re-organisation has been introduced by the appellant in all the areas where the appellant's business is carried on, by stages and that the said scheme was implemented last of all in Calcutta. Mr. Phillippou has given reasons why the appellant adopted this re-organisation and has produced documents in support of his statement that the new scheme has been introduced by stages in all other places where the appellant has had its branches. This evidence is not at all controverted by respondent No. 1, and so the present dispute had to be considered in the light of the appellant's case that the discharge of its fourteen outdoor salesmen was in pursuance of a scheme of re-organisation adopted by the appellant in all the places of its business. Instead of dealing with the merits of this part of the appellant's case the Labour Court has assumed that the so-called re-organisation is confined only to Calcutta. It is really surprising that such a patently erroneous assumption should have been made by the Labour Court in view of the evidence adduced before it. Mr. Sen for respondent No. 1 has fairly conceded that this assumption was not at all justified. It is thus clear that the principal reason which weighed with the Labour Court in characterising the scheme as a "colourable device" is entirely unsustainable, and that introduces a very serious infirmity in the conclusion itself. It is indeed unfortunate that though the learned Judge apparently intended to deal with the merits of the re-organisation scheme as adopted by the appellant in respect of all the areas of its business, he forgot about it altogether when recording his final findings and erroneously assumed that the scheme had been introduced only in Calcutta.

In this connection it may be relevant to mention that prior to 1946 the outdoor salesmen in Calcutta were appointed by the appellant's

distributor Ramlal Singh and it was because of the violent communal disturbances that overtook Calcutta in 1946 that the appellant had to appoint salesmen directly with a view to distribute their work in several localities of Calcutta according to their communities. In fact, even at that time the same set of salesmen who were working under Ramlal Singh were appointed or taken over by the appellant for carrying on its business. The effect of implementing the new scheme so far as Calcutta is concerned is simply to restore the *status quo* and leave the salesmen under the sole and direct control of the same distributor Ramlal Singh. In considering whether the implementation of the new scheme was a mere device, the learned Judge ought to have taken into consideration this aspect of the matter which is a special feature of the appellant's business in Calcutta.

The learned Judge has undoubtedly given some reasons in support of his conclusion that the discharge of the fourteen workmen amounts to an unfair labour practice; but we are satisfied that each one of these reasons is entirely unsustainable on facts which cannot be seriously disputed. The learned Judge has commented on the fact that the relationship between the appellant and its employees was not satisfactory since the formation of the employees' union in 1953. The hostility of the appellant to the formation of the union, according to the learned judge, "was demonstrated in the appellant's refusal to attend a conference before the Labour Commissioner to discuss the union's charter of demands dated 19th August, 1954" and he has added that "prior to that, the union's attempts to meet across the table to understand each other's viewpoints in July 1954, proved abortive". We have merely to look at the correspondence which has been produced before the Labour Court to be satisfied that the criticism made by the learned judge against the appellant on this ground is not at all justified. Let us consider some of the relevant correspondence. It appears that on the 15th and 25th of November, 1953, the Vice-president of the union wrote to the appellant setting forth some of the union's demands. On the 30th November, 1953, the director wrote back in reply regretting his inability to meet the Vice-president earlier than the 8th December owing to pressure of work and owing to his indisposition. The Vice-president acknowledged receipt of this letter on the 8th of December and thankfully agreed to meet the director, as suggested by him, that evening. So it would be clear that the director had agreed to meet the union, as desired by it. On the 27th July, 1954, the appellant received from the Vice-president of Respondent No. 1 a statement about some demands of the appellant's employees. The appellant replied to this communication on the 6th August, 1954, made its comments on some of

the demands and requested the Vice-president of the union to furnish to the appellant the names of those whom the union claimed to represent and who had joined the union. The letter stated that the appellant regretted that it had not been supplied with these particulars though the appellant had repeatedly called for them. In his letter on the 19th August, 1954, the Vice-president sincerely thanked the appellant for the sympathetic tone of the letter under reply and requested the appellant to recognise the union and promised to furnish the appellant with the necessary particulars required by the appellant. It is clear that these particulars were not supplied to the appellant until the stage for reference of the dispute to the Labour Court was reached. This letter was accompanied by an annexure ('A') which is described as a charter of the minimum demands. Correspondence on similar lines has been carried on between the parties until 9th of March, 1955, when the appellant gave a detailed reply to the demands made by the union. According to the appellant, "the demands were frivolous and speculative. The Vice-president of the union is employed in the Imperial Tobacco Co., India Ltd., and the alleged dispute has been put forward for the sole purpose of injuring this company by creating disaffection among its workmen when in fact there is no grievance." Thereafter a conference appears to have been held in the presence of the Labour Officer on the 9th March and the 23rd April, 1955. On the 12th May, 1955, the appellant wrote to the Labour Officer recording the main points which the appellant had made at the said conference. It is significant that on the "charter of demands" the union was apparently not able to persuade the State Government to make a reference under the Industrial Disputes Act. However that may be, this correspondence clearly shows that the learned Judge unfortunately made an over-statement when he observed that the appellant was obstinate in the matter of its dealings with its workmen, that the appellant refused to meet the union representative and would not even attend a conference arranged for that purpose. It may be that the appellant did not look with favour on the formation of the union but that is very different from saying that the attitude adopted by the appellant in this matter was so obstructive and hostile that an inference of *mala fide* can be drawn in regard to the implementation of the re-organisation scheme, which came much later in February, 1957.

The learned Judge has then referred to the matter of Mr. Rahman who was discharged by the appellant and then re-employed, and he has observed that since the re-employment of Mr. Rahman was through the efforts of the union, the appellant was displeased with the activities of the union. This conclusion is entirely inconsistent with the evidence

given both by the director of the appellant and Mr. Rahman himself. It is common ground that Mr. Rahman was first discharged and then re-employed in May, 1952, and this was at the intervention of Mr. Rahman's friend, Mr. Bannerjee. Indeed, the respondent No. 1, the union, had not come into existence until July 1953, and it would therefore be patently wrong to hold that the re-employment of Mr. Rahman was due to the efforts of respondent No. 1.

The next circumstance on which the learned judge has relied is what he describes as "invidious discrimination in the matter of distribution of bonus" made by the appellant. The learned Judge has assumed that for bonus the indoor workmen were paid one full month's wages and the outdoor workmen at a flat rate of Rs. 70 only. There is no evidence whatever on the record to justify the statement of the learned Judge that the outdoor workmen were given bonus at a flat rate of Rs. 70 as distinguished from one month's wages paid to the indoor workers in that behalf. We are unable to understand how the learned Judge came to make this erroneous statement. For the appellant detailed statements had been filed in respect of each one of its workmen showing the amount of bonus paid to the workman from 1953 onwards. Indeed, the learned Judge himself has observed in another part of his judgment that the "company granted bonus and that sometimes generously too cannot be much disputed". The statement filed by the appellant as well as the oral evidence given by the witnesses on behalf of respondent No. 1 clearly show that the conclusion of the learned Judge that the appellant was guilty of making invidious discrimination between the indoor workmen and outdoor workmen is entirely unjustified. It may be that the appellant took the view that the indoor workmen worked longer than the outdoor salesmen and so the bonus paid to the two sets of workmen may not exactly be the same; but the disparity in the amounts of bonus paid to the two sets of workmen can be treated as "invidious discrimination" only if it is shown that the disparity is very large and is otherwise not properly explained. On the record as it stands we see no ground to support the very strong finding made by the learned Judge against the appellant in this behalf.

Then, the learned Judge has described the implementation of the scheme in Calcutta in some graphic words by observing that "the company all at once fell upon the workmen with the letter of discharge dated 7-2-1957". Apart from the fact that such unbalanced language is generally out of place in judicial adjudications, on the merits the learned Judge was gravely in error in ignoring the fact that what happened in February, 1957, at Calcutta represented the last phase of the implementation of the scheme of re-organisation adopted by the appellant as early

as 1954. The terms of service of the outdoor salesmen seem to suggest that their services were liable to be terminated after a week's notice. The appellant, however, paid each one of these employees one month's salary in lieu of notice and half-month's salary per year of service by way of gratuity or compensation. If only the learned Judge had not completely lost sight of the basic fact that the appellant's case was that the discharge of the fourteen outdoor salesmen was in pursuance of a larger policy of re-organisation he would not have felt justified in passing the very severe strictures that he has passed against the appellant in this case. It is true that it has been brought out in evidence by respondent No. 1 that at Asansol and Jharia two salesmen were working directly under the appellant and that they had not been placed under any distributor. This circumstance incidentally brings out in bold relief the main fact that in all other places salesmen have been put under distributors by the appellant. In regard to the two places where the old system is still continuing, the director Mr. Phillippou has given a reasonable and satisfactory explanation. The salesman at Jharia is the section salesman and the sales at the place are very small and so the distributor was not willing to engage a man under him. The salesman in Asansol was retained by the company and then transferred to Kharagpur section as a section salesman. The job of the section salesman is to travel from one section to another, according to the programme fixed for him by the supervisor. That is why the services of these salesmen have not been terminated by the appellant. We have no doubt that on the record it must be taken as fully proved that the appellant has adopted the re-organisation scheme and the same has been implemented in all the areas where the appellant's business is conducted, between 1954 to 1957. It would be fantastic to suggest that in adopting this scheme of re-organisation over such a wide area the appellant was actuated by malice against its employees in Calcutta or that the scheme is a mere device adopted by the appellant for the purpose of discharging them.

There is one more point which needs to be considered. The learned Judge has observed in his judgment that the appellant has "got the fundamental right to re-organise their business or close a particular department or section with a view to rationalise or economise their business". As we have already pointed out, the learned Judge has not considered the merits of the re-organisation scheme, though it would appear from the earlier observations in his judgment that he intended so to do. If the re-organised scheme has been adopted by the appellant for reasons of economy and convenience, and it has been introduced in all the areas of its business, the fact that its implementation would lead to the

discharge of some of the employees would have no material bearing on the question as to whether the re-organisation has been adopted by the appellant *bona fide* or not; and so the learned judge was clearly in error in attaching importance to the consequence of re-organisation, in regard to the fourteen salesmen in the present case. Their discharge and retrenchment would have to be considered as an inevitable, though very unfortunate, consequence of the re-organised scheme which the employer, acting *bona fide*, was entitled to adopt. But, apart from this technical or legal aspect, on the merits, the learned Judge has obviously been unfair in assuming that the discharged employees would not have been taken up by the distributor, Ramlal Singh. Ramlal Singh was ill at the time when the evidence was recorded before the learned Judge; but his clerk Mr. Datta has been examined and his evidence clearly shows that the appellant had used its good offices with its distributor, as a result of which Ramlal Singh had agreed to employ all the fourteen workmen discharged by the appellant. Indeed, two of them have already been employed by Mr. Ramlal Singh, and he had to employ several other workmen when he found that the rest of the workmen discharged by the appellant did not offer to work for him. The attitude adopted by the discharged workmen leaves no room for doubt that they wanted to fight for their rights and were not willing to take up the employment under Ramlal Singh, which they thought, may be rightly, was not as secure and safe as their employment under the appellant. The workmen were undoubtedly entitled to fight for what they thought to be their rights, but then it would not be fair to blame the appellant on the ground that no alternative employment was made available by the appellant to its discharged workmen. Thus in our opinion the finding of the learned Judge that the failure of the appellant to secure to its discharged workmen alternative employment on the same or similar terms tends to show that the discharge by the appellant of its workmen was intended to victimise them cannot be accepted as sound.

We have carefully considered the reasons given by the learned Judge in support of his findings that the discharge by the appellant of its fourteen outdoor salesmen amounts to an unfair labour practice and that its plea of re-organisation is nothing but a colourable device to throw off these workmen, and we have felt no hesitation in coming to the conclusion that the said findings are not only not supported by any evidence but are clearly inconsistent with it. That is why we accept Mr. Daphtary's argument that these findings are perverse and must be reversed. In the result, we hold that the discharge of the fourteen outdoor salesmen which was the subject-matter of the reference before the Labour Court is justified and so the workmen are not entitled to any

relief. In view of these findings it is unnecessary to consider the other questions sought to be raised by Mr. Daphtary before us about the status of the discharged workmen. The order passed by the Labour Court is accordingly set aside and the appeal is allowed. In regard to costs, Mr. Daphtary no doubt urged that in view of the result he was entitled to his costs; but, ultimately, he fairly left this matter to our discretion. Having regard to the fact that the twelve outdoor salesmen discharged by the appellant who did not choose to take up employment with its distributor were unemployed during the time the appeal was pending in this Court, we think, we should not direct them to pay the appellant's costs of this appeal. Parties will accordingly bear their own costs in this court.

[IN THE SUPREME COURT OF INDIA.]

WORKMEN OF DAHINGEAPAR TEA ESTATE

v.

DAHINGEAPAR TEA ESTATE

S. R. Das, C. J., N. H. Bhagwati, S. K. Das, K. Subba Rao and

Vivian Bose, J.J.

May 21, 1958.

INDUSTRIAL TRIBUNAL—JURISDICTION—WHETHER CAN DECIDE ABSTRACT QUESTIONS OF LAW—RIGHT TO DECIDE MATTER REFERRED ON THE BASIS OF FACTS PROVED—INDUSTRIAL DISPUTES ACT, 1947, SECTION 10(1) and (4).

CONDITIONS OF SERVICE—CHANGE OF MANAGEMENT—EFFECT OF CHANGE—WHETHER QUESTION WITHIN JURISDICTION OF INDUSTRIAL TRIBUNAL.

Though an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, cannot deal with abstract questions of law such as, whether, on a transfer of management consequent on a sale, the services of workmen are automatically put an end to, it is open to such a Tribunal, on the basis of the facts proved, to decide whether the successor to a business would be justified in refusing to maintain the continuity of service and original terms and conditions of service of some of the workmen of the previous management,

The decision of a Tribunal that such refusal was not justified, based on the findings that

(i) *the business was sold as a running or going concern;*

(ii) *all the manual labourers, as distinguished from members of the staff, were continued in employment on their previous terms with continuity of service;*

(iii) three members of the staff were taken in employment but as new recruits; and

(iv) that there were no trade reason or reasons of efficiency for which the remaining staff members were not taken,

would be a decision within the jurisdiction of the Tribunal which cannot be set aside on appeal.

Civil Appeal No. 32 of 1957.

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

N. C. Chatterjee (B. P. Maheshwari, with him) for the management.

JUDGMENT.

The following Judgment of the Court was delivered by

S. K. DAS, J.—This appeal by special leave may be disposed of on a narrow ground. The material facts are shortly these. Dahingeapar Tea Company Ltd., a company incorporated under the English Companies Act and having its registered office in the City of London owned an extensive tea garden called Dahingeapar Tea Estate comprising an area of about 522 acres under plantation, situate in the sub-division of Jorhat in Assam. That company employed over 800 manual labourers and about 19 or 20 members of the clerical staff. By a memorandum of agreement made on 7th November, 1953, between Dahingeapar Tea Co. Ltd., (hereinafter referred to as the vendor) of the one part and Nikhli Jute Baling Co., Ltd., a company incorporated under the Indian Companies Act and having its registered office in the town of Calcutta (hereinafter called the purchaser) of the other part, it was agreed that the vendor would sell absolutely and the purchaser would purchase as and from 1st January, 1954, all that Dahingeapar Tea Estate comprising the lands described in the Schedule thereto together with all the tea gardens, tea bushes, tea seedlings, tea plants, tea crops, etc., and all appurtenances, machinery, electric installations, fittings and appliances for water supply, hospital equipments, carts, tools, utensils and also the export quota rights and internal rights relating to the sale or production of tea, and benefits of insurance and contracts for the sale of tea produced at the said tea estate as on and from 1st January, 1954, or in connection with the manufacture of tea or the cultivation and maintenance of the tea estate which the purchaser may like to take over free from all encumbrances and liabilities whatsoever and at or for the price of Rs. 9,50,000, subject to the terms and conditions thereafter mentioned. Clause 8 of the said agreement provided that, subject to the payment of the purchase price in the manner therein mentioned and to the payment of the price of the estate, stores and stocks, possession of the Dahingeapar Tea Estate would be given to the purchaser and that in the meantime through its manager and agents the vendor would work and maintain the

planted area in as full and effectual manner as the same had theretofore been worked and cultivated and would not remove from Dahingeapar Tea Estate or cause wilful damage to any furniture, fixtures, fittings, machinery or hospital equipment on the Dahingeapar Tea Estate at the date of the agreement. Clause 9 of the agreement, strongly relied on by the respondent, was as follows:

"The Purchaser shall have the option of taking such members of the staff of the Tea Estate as it shall in its absolute discretion consider useful and sufficient for running the Tea Estate. Such members of the staff shall be given fresh appointment by the Purchaser as on and from the First January one thousand nine hundred and fifty four. Any liability whatsoever for their past services including bonuses, gratuity leave pay, dearness allowances, etc., shall be on the Vendor's account. The Vendor shall also be liable for all the claims whatsoever of the members of the staff not retained by the purchaser including claims for discharges of service, salary, bonuses, gratuity, leave pay, dearness allowance, etc."

Clause 20 of the said agreement stipulated for the delivery to the purchaser on completion of the conveyance of the title deeds and papers in the vendor's possession relating to the Tea Estate and by clause 21 it was agreed that all garden books of account and other books and documents relating to the garden necessary to the purchaser for the purpose of carrying on the said Tea Estate and the garden and not required by the vendor would be handed over by the vendor to the purchaser on completion.

It appears that the facts of this agreement for sale came to the knowledge of the Jorhat Jila Chah Mazdoor Sangha affiliated to the Indian National Trade Union Congress, Assam Branch. The Indian National Trade Union Congress apparently made some representation to the Conciliation Officer and on 21st December, 1953, the Conciliation Officer issued a notice fixing 30th December, 1953, as the date for holding conciliation proceedings and asked the parties to maintain the *status quo* under section 33 of the Industrial Disputes Act.

On 22nd December, 1953, the purchaser issued a notice addressed "to whom it may concern". The notice referred to the agreement for sale and stated that it had been specifically agreed between the vendor and the purchaser that the latter would have absolute discretion to give fresh appointments to any member of the staff it considered fit and proper and that the vendor had undertaken all liabilities in respect of all claims whatsoever of the members of the staff including claims for the discharge of service, salary, bonus, gratuity, leave pay, dearness allowance, etc., to the members of the staff in respect of their past

services. By this notice the purchaser invited applications for different posts and intimated that if any member of the present staff wished to apply, he might do so for fresh appointment under the purchaser. It was made clear that the purchaser would give no preference to anybody of the staff and would not undertake, or give any understanding, to appoint any member of the staff and that the latter must rank with other outside candidates who might be applying for the posts and that the purchaser would appoint persons it, at its absolute discretion, considered fit, and that it retained its right to abolish certain posts or keep any vacancy unfilled.

On 23rd December, 1953, the Sangha, through its Secretary, sent a communication to the manager of the purchaser requesting him to retain all the workmen in service and not to deny them the benefit that they were reasonably entitled to and to allow them the continuity of service. The letter requested the manager to give his most sympathetic consideration to the prayer and not to alter the present wages and conditions of service of the members of the staff. In conclusion the letter referred to other sales in the area where the purchasers had "inherited all liabilities for past services and retained all staff on their then existing wages and amenities."

On 26th December, 1953, a fresh notice was issued by the Conciliation Officer intimating that conciliation proceedings would be held on 30th December, 1953, as previously notified. The Conciliation Officer held conciliation proceedings on 30th December, 1953, and further proceedings were adjourned till 4th January, 1954.

In the evening of the same day, to wit 30th December, 1953, the vendor gave the workmen notice of termination of service with effect from 31st December, 1953. It was stated in that notice that the workmen would "receive all pay and allowances due up to the end of December 1953 together with one month's pay in lieu of notice, and any leave salary due and all provident fund dues."

It will be noted that this notice was given while the conciliation proceedings were actually pending and, accordingly, under section 33 of the Industrial Disputes Act, 1947, it was ineffective and the workmen, in the eye of the law continued to be in employment. In point of fact also, as has been found by the Tribunal, the services of all workmen continued up to 4th January, 1954, on which date the adjourned conciliation proceedings held at Jorhat by the Labour Commissioner himself proved abortive as no agreement could be arrived at as a result of the conciliation proceedings. There is no dispute that eventually the purchaser employed all the manual labourers with continuity of service and also employed three out of the 19 or 20 members of the

clerical staff. The rest of the members of the clerical staff did not apply for re-employment but insisted that they must not only be employed by the purchaser as a matter of course but must be so employed with continuity of service. Apparently their cause was taken up by the Sangha representing the workmen who had actually been taken over by the purchaser.

It was in these circumstances that on 13th January, 1954, the Government, in exercise of its power under section 10 of the Industrial Disputes Act, 1947, as amended, issued notification No. G.L.R. 8/54 dated 11th January, 1954, referring the industrial disputes that had arisen on the matter specified in the Schedule to the notification between (1) the workmen of Dahingepar Tea Estate represented by the Assam Chah Karmachari Sangha, I.N.T.U.C., Dibrugarh, and (2) the outgoing management of Dahingepar Tea Estate, the Dahingepar Tea Co. Ltd., and (3) the incoming management of Dahingepar Tea Estate, the Nikhli Jute Baling Co. Ltd. The disputes which were referred to Shri Uma Kanta Gohain, retired Additional District and Sessions Judge, as the Tribunal constituted under section 7 of the said Act, were formulated in the Schedule to the said notification in the following terms:

"1. Whether the transfer of management of Dahingepar Tea Estate consequent upon the sale of the said Tea Estate by the vendor, Dahingepar Tea Co. Ltd., to the purchaser, Nikhli Jute Baling Co. Ltd. can put an end to the services of the staff of Dahingepar Tea Estate, and whether any agreement between the buyer and the seller of Dahingepar Tea Estate can deprive the members of the staff of their rights of service under the original contracts of service and of continuity of their services?

2. If not—(a) is the outgoing management, the Dahingepar Tea Co. Ltd., justified in proposing to terminate the services of the members of the staff from the time when the management of the garden had changed hands?

(b) Is the incoming management, Nikhli Jute Baling Co. Ltd., justified in refusing to maintain the continuity of service and original terms and conditions of service of the members of the staff of Dahingepar Tea Estate?"

While the reference was pending, a formal indenture was made on 29th January, 1954, whereby the vendor granted, conveyed and transferred unto the purchaser free from all encumbrances and liabilities whatsoever (1) all lands and hereditaments described in the first schedule thereunder written and known as Dahingepar Tea Estate; (2) all buildings, factory godowns, offices, bungalows and labour quarters; (3)

all plant, machinery, electric installations, fittings and appliances for water supply, hospital equipments, carts, tools, utensils, implements, live and dead stock, furniture; (4) all tea plants, tea bushes, tea seedlings, tea crop; (5) all export quota rights and internal rights relating to the sale or production of tea and also the benefits and advantages of contracts for the sale of tea produced at the said Tea Estate on and from 1st January, 1954, and lastly (6) all that the Dahingepar Tea Estate and the business carried on in connection therewith as from 1st January, 1954, to have and to hold all and singular the several properties and premises therein comprised and thereby granted and transferred unto the purchaser on and from 1st January, 1954. By that covenant the vendor covenanted, *inter alia*, that the purchaser would as on and from 1st January, 1954, peaceably and quietly hold, possess and enjoy the said several properties free from all encumbrances and that the vendor would duly pay off its debts and liabilities and would well and sufficiently indemnify and keep indemnified the purchaser from and against all claims and demands on account or in respect thereof.

On 29th June, 1954, the Tribunal made its award. The Tribunal held (1) that the garden was sold as a going concern, (2) that the services of the staff continued up to 4th January, 1954, (3) that retrenchment had not been necessitated by or on account of reasons of trade, for the strength of the staff had actually been increased from 19 or 20 to 23 or 24, and (4) that the transfer could not effect a change in the service conditions of the staff and the agreement between the vendor and purchaser was not binding on the staff. The result of the aforesaid findings was that the purchaser was held to be not justified in refusing to maintain the continuity of the service of the members of the staff of the Dahingepar Tea Estate. The award directed that those of the members of the former staff who had been kept out of service in the garden in question from the time the new management had taken over charge but who would be willing to be re-instated in their former posts on the previous terms and conditions of their service with continuity of their service be re-instated in their former posts. The award further ordered that those of the members of the old staff who had been kept out of service in the garden and have not since taken any employment elsewhere be paid their salaries for the period of their forced unemployment which was caused at the instance of the purchaser.

On 15th July, 1954, a notification under section 17 of the Industrial Disputes Act was issued by the Government directing that the award be published and become enforceable under section 17 (a) on the expiry of 30 days from the date of such publication. The purchaser appealed to the Labour Appellate Tribunal. By their judgment pronounced on

21st September, 1955, the Labour Appellate Tribunal, consisting of two members, allowed the appeal and set aside the award made by the Tribunal, although on somewhat different grounds. Against that decision of the Labour Appellate Tribunal the workmen have filed this appeal with special leave granted by this Court on 6th April, 1956.

On behalf of the appellant workmen, it has been contended that on the sale of the Tea Estate as a going concern, the purchaser could not effect a change in the service conditions of the members of the staff and the agreement between the vendor and purchaser as embodied in clause 9 did not bind the workmen. On the other side, it has been strongly contended on behalf of the respondent that there was no contractual relationship of employer and employee between the discharged members of the staff and the purchaser, and the former, if they have any claim as to retrenchment, etc., must press that claim against the vendor, but they cannot claim to be workmen of the respondent.

We do not think that it is necessary for the purpose of deciding this appeal to determine the larger question as to whether on the transfer of a business as a going concern, the incoming management must always accept the services of the existing workmen under their original contracts of service and with continuity of service. That is a question which must be left to be decided in a more appropriate case.

Now, the first question that arises for consideration in this appeal is this: Was the Government of Assam competent to refer the dispute which arose between the workmen of the Dahingepar Tea Estate, represented by the Assam Chah Karmachari Sangha and the incoming management of the Dahingepar Tea Estate, represented by the Nikhli Jute Baling Company Ltd., as an industrial dispute within the meaning of s. 2 (k) of the Act? On this question the Industrial Tribunal found in favour of the workmen and the President of the Appellate Tribunal affirmed that finding, but the other member, Shri P. R. Mukherji, expressed a contrary view. The President said:—

“The dispute which gives rise to this reference is actually between workmen employed in the Tea Estate on the one hand and their employers, both the outgoing and incoming managements of the estate on the other.....In my view, the definition of industrial dispute, as also the meaning of employer are wide enough to cover the point under consideration in this appeal, not only between the workers and the outgoing management, but also the workers and the incoming management, and between two managements themselves. Accordingly, the reference cannot be said to be invalid, or *ultra vires* of the Industrial Disputes Act.”

On the majority decision of this Court in the *Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate*, [1958] 14 F.J.R. 41. The present dispute is undoubtedly an industrial dispute within the meaning of the Act. That decision lays down that where the workmen raise a dispute as against their employer, the person or persons regarding whose employment or non-employment the dispute is raised need not be, strictly speaking, "workmen" within the meaning of the Act but must be persons in whose employment or non-employment the "workmen" as a class have a direct or substantial interest. In the case before us as between the vendor and the discharged workmen, the latter came within the definition of "workmen" as they were discharged during the pendency of conciliation proceedings. This fact did not, however, make them workmen of the purchaser. Even then they were persons in whose employment or non-employment the actual workmen of the Dahingeapar Tea Estate were directly interested. Therefore, the ratio of the *Western India Automobile Association v. The Industrial Tribunal, Bombay*, [1949] 1 F. J. R. 97, as also of the later decision in workmen of the Dimakuchi Tea Estate (*supra*) applied, and the dispute was clearly an industrial dispute within the meaning of the Act.

That being the position, when a competent reference was made by the Government of Assam for adjudication of the Industrial dispute to a Tribunal constituted under section 7 of the Act, the Tribunal had all the powers given to it under the Act. Under section 10 (1) (c), an industrial dispute is referred to a Tribunal for *adjudication*. Section 10(4) of the Act, as it stood at the relevant time, said :—

"10. (4) Where in an order referring an industrial dispute to a Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points and matters incidental thereto."

We pointed out in *Niemia Textile Finishing Mills Ltd. v. The 2nd Punjab Industrial Tribunal*, [1957] 11 F.J.R. 481. that the functions of Industrial Tribunals while adjudicating upon disputes referred to them for adjudication are quite different from those of arbitration tribunals in commercial matters and on a general survey of the scheme of the Act and with reference to the various provisions thereof, we explained the nature of those functions.

The principal question before us is whether the Industrial Tribunal has exercised its functions in accordance with the provisions of the Industrial Disputes Act, 1947. One of the difficulties in the present case arose out of the somewhat wide and general terms in which question No. 1 was framed. That question consisted of two parts: (i)

whether the transfer of management of the Dahingeapar Tea Estate consequent on its sale as a going concern to the respondent put an end to the services of the members of the staff; and (ii) whether any agreement between the buyer and the seller can deprive the members of the staff of their rights of service under the original contracts and disturb their continuity of service. In our opinion, the Industrial Tribunals could not deal with those questions as mere abstract questions of law; and we doubt if they could answer them as such. Much of the controversy in this case, and perhaps a good part of the difference of opinion between the Industrial Tribunal and the Labour Appellate Tribunal and also between the two members of the latter body *inter se* have arisen by reason of the different stand points from which question No. 1 has been approached. We do not think that it was necessary, and we go further and say that we doubt if it was the function of the Industrial Tribunal, to decide the abstract question of law whether on a transfer of management consequent on a sale the services of workmen—be they members of the staff or labourers—are automatically put an end to. The answer to such an abstract question must depend on diverse circumstances relating to and arising out of the contractual relation between the parties. It may even be doubted if in a contract between two employers—vendor and purchaser—with regard to a going concern, the future services of employees, apart altogether from such rights and obligations as have already accrued with regard to gratuity, bonus etc., can be legally transferred and such a transfer made binding on the employees. Similarly, with regard to the second part of the question also, no answer in the abstract can be given unless the rights and obligations under the original contracts of service and also under the agreement of sale or sale deed are known.

What the Industrial Tribunal did in the present case was to link up the two questions on the basis of the facts admitted or proved in order to answer the main question of the adjudication, which was whether the respondent (Nikhli Jute Baling Co. Ltd.) was justified in refusing to maintain the continuity of service and original terms and conditions of service of some of the members of the staff of Dahingeapar Tea Estate. The Industrial Tribunal answered this question in favour of the workmen and made necessary directions as to re-instatement and payment of salary for the period of forced unemployment. On what findings did the Industrial Tribunal so answer the main question? It found that (a) the tea estate was sold as a running or going concern, with a reservation as the employment of members of the staff; (b) that all the manual labourers as distinguished from members of the staff were continued in employment on their previous terms with continuity of

service ; (c) three members of the staff also were continued in employment but as new recruits, without continuity of service ; and (d) there were no trade reason or reasons of efficiency, etc., for which the remaining 18 or 19 members of the staff were not taken. The Tribunal said :

"It was nobody's case that those members of the staff were guilty of any breach of the service conditions or rules or of any misconduct for which their services were liable to be terminated forthwith or for which they could be deprived of their right of service and of the continuity of their service in the estate concerned in which they were so long serving without any fault."

During the conciliation proceedings the respondents made its position quite clear that it was willing to take 12 members of the staff out of the then existing 16 members on their old scales of pay, but only as new comers on formal petitions for appointment. In other words, the respondent insisted on two conditions: (a) the old members of the staff must make fresh applications and (b) they must come in as new entrants, thereby losing their continuity of service and such other rights as they might have acquired as to gratuity, bonus etc., The Tribunal held that these were unreasonable conditions and further observed :

"In the instant case, the incoming management proposed to disturb the staff members only and not the labour force of the garden. Nothing else would tend to create unrest more than such discrimination would."

On the aforesaid findings arrived at by the Industrial Tribunal, it had jurisdiction to make the order it did, irrespective of any purely legal question as to whether there was any contractual relation of employer and workmen between the respondent and the discharged members of the staff. The Appellate Tribunal did not displace any of the findings arrived at by the Industrial Tribunal, but approached the two questions for adjudication as abstract questions of law—which, in our view, was a fundamentally wrong approach, though the President said in one part of his judgment that an Industrial Tribunal has nothing to do with the decision of an abstract question of law. The President proceeded mainly on this basis: the services of the workmen were terminated by the old management by proper notice, and as they did not, except a few, apply for fresh appointment on the new terms and conditions, there was no contract of service, enforceable in law between the workmen and the two managements in question. This line of reasoning overlooked two essential circumstances ; one was that the notice of discharge was given by the outgoing management during the dispute and pendency of conciliation proceedings and was hit by section 33 of the Act, and the other

was that in spite of the notice all the members of the staff were allowed to continue in service till January 4, 1954. The third circumstance was that the Industrial Tribunal found that the conditions which the incoming management sought to impose were intended to discriminate between "workmen" and most likely to create industrial unrest. The clause in the memorandum of agreement or the sale deed which gave the respondent a discretion to employ or not to employ members of the staff or to give them fresh employment was indeed found by the Appellate Tribunal to be a *bona fide* clause as between the vendor and purchaser ; but the question before the Industrial Tribunal was as to how it would operate against the workmen in the context of the industrial dispute referred to in for adjudication. In the circumstances of the present case the Industrial Tribunal found that it operated to their prejudice, and we are not satisfied that the Appellate Tribunal has given cogent reasons for going behind that finding.

There was a difference between the two members of the Appellate Tribunal as to whether the discharged members of the staff were entitled to retrenchment compensation or not from the outgoing management. In the view which we have taken that question is no longer relevant.

A number of points were discussed and a number of decisions of High Courts and Labour Courts were cited at the bar on the question whether on a transfer of business as a going concern, the incoming management becomes a successor to the outgoing management ; and if so, to what extent the incoming management must recognise the rights of labour already accrued as to gratuity, bonus, etc., and, to continuity of service of such labour as was employed by the outgoing management. In the view we have taken on the facts of this case it is not necessary for us, on this occasion, to express any opinion on those questions or pronounce any opinion on the correctness of any of those decisions.

We prefer to base our decision in this case on this short ground: there was an industrial dispute which was referred to the Industrial Tribunal for adjudication; the reference being competent, the Industrial Tribunal had jurisdiction to make an adjudication, and, in doing so, it could exercise all its functions under the Act, and in the exercise of those functions it came to certain findings on the facts of the present case on which it had jurisdiction to make the order it did; the Appellate Tribunal did not displace those findings of the Industrial Tribunal.

We, accordingly, allow this appeal, set aside the decision of the Labour Appellate Tribunal, and restore the award of the Industrial Tribunal. The appellants will get the costs of this appeal.

[IN THE MADRAS HIGH COURT.]

K. P. SUBBIAH

v.

STATE OF MADRAS AND OTHERS.

Rajagopalan, J.

April 15, 1957.

WRIT—REFERENCE OF DISPUTE TO INDUSTRIAL TRIBUNAL—
WHETHER WRIT OF *certiorari* OR PROHIBITION LIES TO TRIBUNAL—
NATURE OF DISPUTE REFERRED—JURISDICTIONAL ISSUE—TO BE DECIDED
BY TRIBUNAL IN FIRST INSTANCE.

The reference of an industrial dispute to an Industrial Tribunal under the Industrial Disputes Act, 1947, being administrative in its scope, is outside the purview of correction by issue of a writ of certiorari.

Where a reference has been made to a Tribunal, it is for the Tribunal to decide in the first instance whether there is an industrial dispute at all and no writ of prohibition can issue till the Tribunal decides the matter.

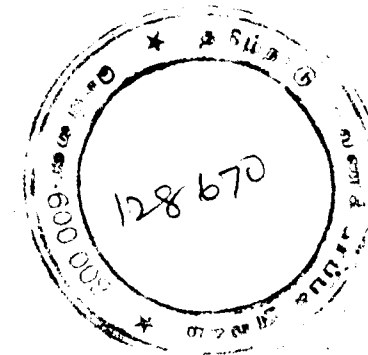
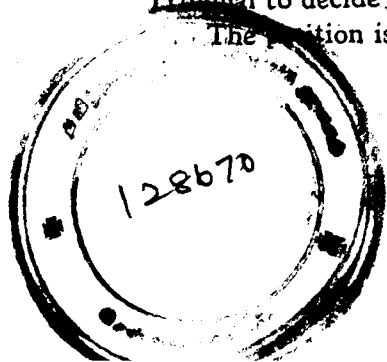
Writ Petition No. 287 of 1957.

R. Gopalaswami Aiyangar for the petitioner.

ORDER

The petitioner applies under article 226 of the Constitution for the issue of a writ of prohibition to restrain the Industrial Tribunal, Madras, from proceeding with the adjudication of the industrial dispute registered as I.D. No. 16 of 1957 on its file. The industrial dispute was taken on file by the Industrial Tribunal on a reference under sec. 10(1)(c) of the Industrial Disputes Act, 1947. That reference being administrative in its scope, is outside the purview of correction by the issue of a writ of certiorari. Since an industrial dispute has been referred and the Industrial Tribunal has jurisdiction to take up the enquiry, there can be no writ of prohibition issued at this stage. It is for the Industrial Tribunal to decide, in the first instance, whether there was an industrial dispute at all. In deciding that question, it may be necessary to decide whether the plea of the petitioner is well founded that the workers are not really "workmen" as defined by the Industrial Disputes Act, 1947. This may be viewed as a jurisdictional issue; but it is still for the Industrial Tribunal to decide that question in the first instance.

The petition is dismissed.



JL

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