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INDIAN FACTORIES JOURNAL

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

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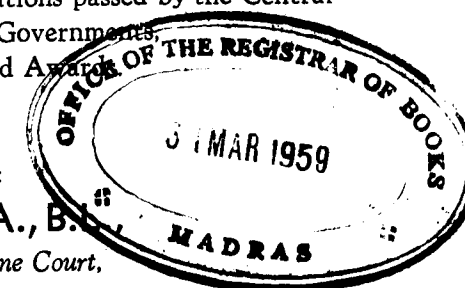
The Acts, Ordinances, Rules and Notifications passed by the Central
Government and the State Governments,
and Reports of Cases and Awards

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MYSORE EMPLOYEE'S STATE INSURANCE COURT RULES, 1952—AMENDMENTS

Notification No. LLH 140 LBW 57, dated Bangalore, 10th June, 1958.†

In exercise of the powers conferred by sub-section (1) of Section 96 of the Employees' State Insurance Act, 1948 (Central Act XXXIV of 1948), the Government of Mysore hereby makes the following amendments to the Mysore Employees' State Insurance Court Rules, 1952, the same having been previously published in Notification No. LLH 140 LBW 57, dated the 13th March, 1958, as required by the same sub-section of the said section, namely :—

Amendment.

In the Mysore Employees State Insurance Court Rules, 1952.—

(1) In sub-rule (1) of Rule 1, for the words "Short title and commencement" the words "Short title, extent and commencement" shall be substituted.

(2) After sub-rule (1) of Rule 1, the following shall be substituted as sub-rule (2) *viz.*,

"(2) They shall extend to the whole of the State of Mysore".

(3) Sub-rule (2) of Rule 1 shall be renumbered as sub-rule (3) and shall be substituted as follows :—

"(3) They shall come into force on such date as Government may by notification in the *Mysore Gazette*, appoint."

(4) In sub-rule (1) of Rule 17 and the proviso to the said sub-rule for the words "twelve months", the words "three years" shall be substituted.

(5) After Rule 47 of the said Rules, the following shall be added, *viz.*, "48. Repeal and Savings.

(1) The Madras Employees' Insurance Court Rules, 1951, as in force in the Madras area,

(2) The Hyderabad Insurance Court Rules, 1955, as in force in the Hyderabad area,

(3) The Coorg Employees' Insurance Court Rules, 1950, as in force in the Coorg District,

(4) The Bombay Employees' Insurance Court Rules, 1951, as in force in the Bombay area,

are hereby repealed :

Provided that the provisions of Section 6 of the General Clauses Act, 1897 (Central Act X of 1897) shall be applicable as regards such repeal :

Provided further that anything done or any action taken under any of the repealed rules shall be deemed to have been done or taken under the corresponding provisions of these rules."

BIHAR FACTORIES RULES, 1950—AMENDMENTS

*Notification No. II/FI-1075/58-L.—11988, dated the 15th July, 1958**

In exercise of the powers conferred by the Factories Act, 1948 (LXIII of 1948), the Governor of Bihar is pleased to make the following amendments to the Bihar Factories Rules, 1950, the same having been previously published as required under section 115 of the said Act.

†Mys. Govt. Gaz., 19-6-58, Pt-IV-IC, p. 1843.

*Bihar Gaz., 3-7-58, Pt. II, p. 2621

AMENDMENTS

1. In rules 4, 7 and 12 of the Bihar Factories Rules, 1950 (hereinafter referred to as the said Rules), for the words and figure "Form no. 3", the words and figure "Form no. 2" shall be substituted.

2. After rule 78 of the said Rules, the following rules shall be inserted, namely:—

78A. *Computation of the cash equivalent of concessional sale of foodgrains, etc.*—The cash equivalent of the advantage accruing through the concessional sale to worker of foodgrains and other articles shall be computed at the end of every wage period fixed under the provisions of the Payment of Wages Act, 1936 (IV of 1936).

78B. *Cash equivalent of concessional sale of foodgrains allowed for overtime work.*—For the purpose of computing cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles, the difference between the value of foodgrains and other articles at the average rates prevailing during the wage period in the nearest market, in which such worker worked overtime and value of foodgrains and other articles supplied at concessional rates, shall be calculated and allowed for the number of overtime hours during which he worked overtime.

Note.—This rule shall not apply to any Railway Factory, whose alternative method of computation has been approved by the State Government.

3. After rule 87 of the said Rules, the following rule shall be inserted, namely—

87A. *Calculation of cash equivalent of the advantages accruing through concessional sale of foodgrains in respect of worker proceeding on leave.*—The cash equivalent of the advantage accruing through the concessional sale of foodgrains and other articles payable to workers proceeding on leave shall be the difference between the value at the average rates in the nearest market prevailing during the month immediately preceding his leave and the value at the concessional rates allowed of foodgrains and other articles he is entitled to.

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

4. For sub-rule (1) of rule 88 of the said Rules, the following sub-rule shall be substituted, namely:—

(1) The Manager shall provide each worker with a book in form no. 15 (hereinafter called the Leave Book). The Leave Book shall be the property of the worker and the Manager or his agent shall not demand it except for making the relevant entries therein whenever necessary, and shall not keep it for more than a week, at a time.

5. For rule 89 of the said Rules, the following rule shall be substituted, namely:—

89. *Medical Certificate.*—If any worker is absent from work due to his illness and he wants to avail himself of the leave with wages due to him to cover the whole or part of the period of his illness under clause (7) of section 79 of Chapter VIII, he shall, if required by the Manager, produce a medical certificate signed by a registered medical practitioner or by a registered or recognised Vaid or Hakim stating the cause of the absence and the period

for which the worker is in the opinion of such medical practitioner, unable to attend to his work, or other reliable evidence to prove that he was actually sick during the period for which the leave is to be availed of.

6. For rule 91 of the said Rules, the following rule shall be substituted, namely:—

91. *Notice by worker.*—Before or at the end of every calendar year, a worker, who may be required to avail of leave in accordance with sub-section (8) of section 79, may give notice to the Manager of his intention not to avail himself of the leave with wages falling due during the following calendar year. The Manager shall make an entry to that effect in the Leave with Wages Register and in the Leave Book of the worker concerned.

7. Sub-rules (1) and (3) of rule 92 of the said Rules shall be omitted and sub-rules (2) and (4) shall be re-numbered as sub-rules (1) and (2).

8. For rule 93 of the said Rules, the following rule shall be substituted, namely:—

93. *Payment of wages, if the worker dies.*—If a worker dies before he resumes work, the balance of his pay due for the period of leave with wages not availed of shall be paid to his nominee within one week of the intimation of the death of the worker. For this purpose, each worker shall submit a nomination in Form no. 32 duly signed by himself and attested by two witnesses. The nomination shall remain in force until it is cancelled or revised by another nomination.

9. For Forms nos. 2 and 3, appended to the said Rules, the following Form shall be substituted, namely:—

FORM NO. 2

Application for registration and grant or renewal of License for the year—and notice of occupation specified in sections 6 and 7 (to be submitted in triplicate).

1. Full name of the factory with factory licence number, if already registered from before.

2. (a) Full postal address and situation of the factory.

(b) Full address to which communications relating to the factory should be sent.

3. Nature of manufacturing process/processes—

(a) carried on in the factory during the last twelve months (in the case of factories already in existence);

(b) to be carried on in the factory during the next twelve months (in the case of all factories).

4. Names and values of principal products manufactured during the last 12 months.

5. (i) Maximum number of workers proposed to be employed on any one day during the year.

(ii) Maximum number of workers employed on any one day during the last 12 months.

(iii) Number of workers ordinarily employed during the last 12 months.

(iv) Number of workers proposed to be ordinarily employed during the year for which license is to be obtained.

6. (i) Nature and total amount of power (H.P.) installed or proposed to be installed,
(ii) Maximum amount of power (H.P.) proposed to be used.
7. Full name and residential address of the person who shall be the Manager of the factory for the purpose of the Act.
8. Full name and residential address of the occupier—
(i) The proprietor of the factory in case of private firm/proprietary concern,
(ii) Directors in case of a public limited liability company/firm.
(iii) Where a Managing Agent has been appointed the name of Managing Agents and Directors thereof.
(iv) Shareholders in case of a private company where no Managing Agents have been appointed.
(v) The Chief Administrative Head in case of a Government or local fund factory.
9. Full name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93.
10. In the case of a factory constructed or extended after the date of the commencement of the Bihar Factories Rules, 1950—
(a) Reference number and date of approval of the plans for site whether for old or new building and for construction or extension of factory by the State Government/Chief Inspector.
(b) Reference number and date of approval of the arrangements, if any, made for the disposal of trade waste and effluents and the name of the authority granting such approval.
11. Amount of fee Rs.....(rupees.....)—
(i) paid in.....Treasury on....., vide Chalan no.....(enclosed);
(ii) transmitted by Crossed Cheque/Postal Order no.....dated.....on the.....Bank of the...../Post Office drawn in favour of the Chief Inspector of Factories.
Signature of occupier.....
Date.....
Signature of Manager.....
Date.....

Note.—1. This form should be completed in ink in block letters or typed.

2. If power is not used at the time of filling up this form, but is introduced later, the fact should be communicated to the Chief Inspector immediately.
3. If any of the persons named against item 8 is minor, the fact should be clearly stated.
4. In the case of a factory, where under the proviso to sub-sections (1) and (2) of section 100, a person has been nominated as the occupier, information required in item 8, should be supplied only in respect of that person.
5. In the case of a factory where a Managing Agent or Agents has/have been appointed as occupier(s) under the Indian Companies Act, 1913, (VII of 1913), information required in item 8 should be supplied only in respect of that person or persons.
6. The term "Ordinarily Employed" used in item 5 means the number of workers whose names are ordinarily borne on the register of attendance or muster roll and includes managerial, supervisory and such other staff as come within the definition of the term "worker".

12. In Form no. 10, appended to the said Rules in between the column "overtime earning" and "total earnings", the following column shall be inserted, namely :—

"Cash equivalent of advantage accruing through the concessional sale of foodgrains and other articles".

13. For Forms nos. 15 and 16 appended to the said Rules, the following Form shall be substituted, namely :—

FORM No. 15.

FORM NO. 13.
REGISTER OF LEAVE WITH WAGES

Serial No.....	Name of factory.....	Date of entry into service.....
Department.....		Date of discharge.....
Name.....	Adult/Child	Leave at his credit—
Father's name.....		Earned in the preceding calendar year.....
Serial no. in the Register of Adult/Child Workers.....		Earned during the current year.....
Wages period from.....to.....		Wage paid in lieu of leave—
		Amount.....
		Date.....

[illegible]

14. For Form no. 20, appended to the said Rules, the following Form shall be substituted, namely :—

“FORM NO. 20

Abstract of the Factories Act, 1948 and the Bihar Factories Rules, 1950.
(To be affixed in a conspicuous place at or near the main entrance to the factory.)

INTERPRETATION.

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

WORKING HOURS, HOLIDAYS, INTERVALS FOR REST ETC.

1. *Hours of work (Adult)*—Sections 51 and 54.—No adult worker shall be required, or allowed, to work in a factory for more than 48 hours in any week and for more than nine hours in any day.

2. *Relaxation of hours of work (Adults)*—Section 64.—The ordinary limits on working hours of adults may be relaxed in certain special cases, e.g., workers engaged on urgent repairs; in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory; in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest; in work which for technical reasons must be carried on continuously in making or supplying articles of prime necessity which must be made or supplied every day; in a manufacturing process which cannot be carried on except during fixed seasons, or at times dependent on the irregular action of natural forces; in engine rooms or boiler houses or in attending to power plant or transmission machinery in the printing of newspapers which are held up on account of the break down of machinery, in the loading and unloading of railway wagons, and when a worker is not relieved at the end of the period of his work owing to failure of the reliever to come at the appointed hour.

Except in the case of urgent repairs and a reliever not turning up in time, the relaxation shall not exceed the following limits :—

(i) The total number of hours of work in any day shall not exceed ten.

(ii) The total number of hours of overtime work shall not exceed 50 for any one quarter.

(iii) The spread-over inclusive of intervals for rest shall not exceed 12 hours in any one day.

In the case of any or all adult workers in any factory, the ordinary limits on working hours of adults may be relaxed, for a period or periods not exceeding in the aggregate three months in any year, to enable the factory to deal with an exceptional press of work subject to above-noted conditions.

3. *Payment of Overtime*—Section 59.—Where a worker works in a factory for more than nine hours in any day or for more than 48 hours in

any week he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

Ordinary rate of wages means the basic wages plus such allowances including the cash equivalent of the advantage accruing through the concessional sale to worker of foodgrains and other articles but does not include a bonus.

4. *Weekly Holiday (Adults)*—Section 52.—No adult worker shall be required or allowed to work in a factory on the first day of the week unless he has, or will have a holiday for a whole day on one of the three days immediately before or after the said day, and the Manager of the factory has, before the said day or the substituted day, whichever is earlier, delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and on the day which is to be substituted, and displayed a notice to that effect in the factory :

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

Where a worker in a factory, as a result of exemption from the ordinary provision relating to weekly holidays, is deprived of any of the weekly holidays, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

5. *Intervals for rest (Adults)*—Sections 55 and 56.—The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours before he has had an interval for rest of at least half an hour and that inclusive of his intervals for rest they shall not spread over more than 10½ hours in any day or, with the permission of the Chief Inspector in writing, 12 hours.

6. *Prohibition of double-employment*—Sections 60, 71 and 99.—No child or, except in certain circumstances an adult worker, shall be required or allowed to work in any factory on any day on which he has already been working in any other factory.

If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages shall be punishable with fine, which may extend to Rs. 50 unless it appears to the court that the child so worked without the consent or connivance of such parent, guardian or person.

7. *Prohibition of employment of Children under 14*—Section 67.—No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

8. *Hours of works (Children)*—Section 71.—No child shall be employed or permitted to work in any factory for more than four and half hours in any day and between the hours of 7 p.m. and 6 a.m. The periods of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each and each child shall be employed in only one of the relays.

The provision relating to weekly holidays shall also apply to child workers and no exemption from this provision may be granted in respect of any child.

9. *Prohibition of employment of Women—Section 66.*—No women shall be employed in any factory for more than nine hours in any day or between the hours of 7 p.m. and 6 a.m. They may be allowed to work up to 10 p.m. in special circumstances.

The change of shift of a woman worker shall take place only after a holiday.

LEAVE WITH WAGES.

10. *Annual leave with wages—Section 79.*—(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of—

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

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

Provided that a period of leave shall be exclusive of all holidays which may occur during such or at either end of the period of leave.

(2) A worker, whose service commences otherwise than on the first day of January, shall be entitled to leave with wages at the rate laid down in clause (i) or, as the case may be, clause (ii) of sub-section (1), if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

(3) If a worker is discharged or dismissed from service during the course of the year he shall be entitled to wages in lieu of the leave earned till that date at the rates specified above even if he has not worked for 240 days in that year. If a worker entitled to leave with wages is discharged from the factory before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, he quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable in respect of the leave not taken and such payment shall be made before the expiry of the second working day after the day on which his employment is terminated.

The Manager shall maintain a Leave with Wages Register in the prescribed Form no. 15 and shall provide each worker with a book called the 'Leave Book' in the prescribed Form no. 16. The Leave Book shall be the property of the worker and the Manager or his agent shall not demand it except to make entries of the dates of holidays or interruptions in service and shall not keep it for more than a week at a time. If a worker loses his Leave Book, the Manager shall provide him with another copy on payment of one anna and shall complete it from his record.

HEALTH.

11. *Drinking Water—Section 18.*—In every factory effective arrangements shall be made to provide and maintain at suitable points, conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

In every factory, wherein more than 250 workers are ordinarily employed, the drinking water shall, during the hot weather, be cooled by ice or other effective methods. The cooled drinking water shall be supplied in every canteen, lunch room and rest room and also at conveniently accessible points throughout the factory.

12. *Latrines and Urinals—Section 19 and Rules.*—In every factory sufficient latrine and urinal accommodation of the prescribed type (separate enclosed accommodation for male and female workers) shall be provided conveniently situated and accessible to workers at all times while they are at the factory. Every latrine shall be under cover and so partitioned off as to secure privacy and shall have a proper door and fastening. Sweepers shall be employed whose primary duty it would be to keep the latrines, urinals and washing places clean.

In every factory, wherein more than 250 workers are ordinarily employed, all latrine and urinal accommodation shall be of prescribed sanitary type.

13. *Spittoons—Section 20.*—In every factory, there shall be provided a sufficient number of spittoons of the type prescribed in convenient places and they shall be maintained in a clean and hygienic condition. No person shall spit within the premises of a factory except in the spittoons provided for the purpose. Whoever spits in contravention of this provision shall be punishable with fine not exceeding five rupees.

SAFETY

14. *Work on or near Machinery in motion—Section 22.*—No woman or child shall be allowed in any factory to clean, lubricate or adjust any part of the machinery while that part is in motion, or to work between moving parts, or between fixed and moving parts of any machinery which is in motion.

15. *Employment of Young Persons on Dangerous Machinery—Section 23.*—No young person shall work at any machine declared to be dangerous unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and has received sufficient training in work at the machine or is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

16. *Prohibition of employment of Women and Children near Cotton Openers—Section 27.*—No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.

17. *Excessive Weights—Section 34.*—No woman or young person shall unaided by another person, lift, carry or move by hand, or on head any material, tool or appliance exceeding the following limits:—

Adolescent male—65 lbs.

Adolescent female—45 lbs.

Male child—35 lbs.

Female child—30 lbs.

18. *Protection of Eyes—Section 35.*—Effective screens or suitable goggles shall be provided for the protection of persons employed in or in the vicinity of processes which involve risk of injury to the eyes from

particles or fragments thrown off in the course of the process which involve risk of injury to the eyes by reason of exposure to excessive light.

WELFARE

19. Washing facilities—Section 42.—In every factory adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein. Such facilities shall include soap and nail brushes or other suitable means of cleaning and the facilities shall be conveniently accessible and shall be kept in a clean and orderly condition.

If female workers are employed, separate facilities shall be provided and so enclosed or screened that the interiors are not visible from any place where persons of the other sex work or pass.

20. First-Aid and Ambulance Room—Section 45.—There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents. All such boxes and cupboards shall be kept in the charge of a responsible person who is trained in first aid treatment and who shall always be available during working hours of the factory. The number of first-aid boxes shall not be less than one for every 150 workers ordinarily employed.

In every factory wherein more than 500 workers are employed there shall be provided and maintained an ambulance room of the prescribed size and containing the prescribed equipment. The ambulance room shall be in charge of a qualified medical practitioner assisted by at least one qualified nurse and such other staff as may be prescribed.

21. Canteen—Section 46 and Rules.—In specified factories wherein more than 250 workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. Food, drink and other items served in the canteen shall be sold on a non-profit basis and the prices charged shall be subject to the approval of a Canteen Managing Committee which shall be appointed by the Manager and shall consist of an equal number of persons nominated by the occupier and elected by the workers. The number of elected workers shall be in the proportion of one for every 1,000 workers employed in the factory, provided that in no case shall there be more than five or less than two workers on the Committee. The Committee shall be consulted from time to time as to the quality and quantity of food-stuffs to be served in the Canteen, the arrangement of the menus, etc.

22. Shelters, Rest Rooms and Lunch Rooms—Section 47.—In every factory wherein more than 150 workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them shall be provided and maintained for the use of the workers.

23. Creches—Section 48 and Rules.—In every factory wherein more than 50 women workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women. The creche shall be adequately furnished and equipped and in particular there shall be one suitable cot or a cradle with the necessary bedding for each child, at least one chair or equivalent

seating accommodation for the use of the mother while she is feeding or attending to her child and a sufficient supply of suitable toys for older children.

There shall be in or adjoining the creche a suitable wash-room for the washing of the children and their clothing. An adequate supply of clean clothes, soap and clean towels shall be made available for each child while it is in the creche. At least half a pint of clean pure milk shall be available for each child on every day it is accommodated in the creche and the mother of such a child shall be allowed in the course of her daily work suitable intervals to feed the child. For children above two years of age, there shall be provided in addition an adequate supply of wholesome refreshment. A suitably fenced and shady open air playground shall also be provided for the older children.

24. No charge for facilities and conveniences—Section 144.—No fee or charge shall be realised from any worker in respect of any arrangements or facilities to be provided or any equipments or appliances to be supplied by the occupier under the provisions of the Act.

25. Obligations of Workers—Sections 97 and 111.—No worker in a factory—

(i) shall wilfully interfere with or mis-use any appliance, convenience or other thing provided in a factory for the purpose of securing the health, safety or welfare of the workers therein;

(ii) shall wilfully and without any reasonable cause do anything likely to endanger himself or others, and

(iii) shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purpose of securing the health or safety of the workers therein.

If any worker employed in a factory contravenes any of these provisions or any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Rs. 100 or with both.

If any worker employed in a factory, contravenes any provisions of the Act or any rule or orders made thereunder imposing any duty or liability on workers he shall be punishable with fine which may extend to Rs. 20.

26. A notice of periods of work for adults and a notice of periods of work for children in the prescribed Forms nos. 11 and 13 shall be correctly maintained and displayed in every factory. No adult worker or child shall be required or allowed to work in any factory otherwise than in accordance with their respective notices of periods of work displayed in the factory."

15. For Form no. 31, appended to the said Rules, the following Form shall be substituted, namely :—

" FORM NO. 31

ACCIDENT ANNUAL RETURN.

Year .

1. Name and address of the factory
2. Accidents during the year—
 - (a) No. of accidents—

Fatal
Non-fatal

(b) Fatal—

Men
Women
Children

(c) Non-fatal—

Men
Women
Children

3. Non-fatal accidents in which workers returned to work during the year.

(a) Accidents occurring during the year—

Number
Man-days lost

4. Non-fatal accidents during the year in which worker did not return to work—

Number
Man-days lost during the year

5. Number of occurrences specified in the Schedule to rule 96 which took place during the year.

Certified that the informations furnished above are to the best of my knowledge and belief correct.

Date.....

Signature of Manager"

.....

16. For Form no. 32, appended to the said Rules, the following forms shall be substituted, namely:—

"FORM NO. 32

I hereby require that in the event of my death before resuming work, the balance of my pay due for the period of leave with wages not availed of, shall be paid to.....who is my.....and resides at.....

1. Witness—

2. Witness—

Signature or thumb impression of the worker.

Date.....195 ..

Kerala Employees' State Insurance Courts Rules, 1958.

Notification No. D. Dis. 766/57/L&LAD., dated Trivandrum, 13th September, 1958.*

In exercise of the powers conferred by sub-section (1) of section 96 of the Employees' State Insurance Act, 1948, (Central Act XXXIV of 1948), and in supersession of all rules on the subject the Government of Kerala hereby make the following rules the same having been previously published as required by the said sub-section namely:—

CHAPTER I

1. *Short title and commencement.*—(1) These Rules may be called the Kerala Employees' Insurance Courts Rules, 1958.

2. They extend to those scheduled areas to which the Act has been or may hereafter be applied under the Constitution.

(3) They shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

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

(a) "Act" means the Employees' State Insurance Act, 1948 (XXXIV of 1948);

(b) "Court" means an Employees' Insurance Court constituted under Section 74;

(c) "Form" means a form appended to these rules;

(d) "Section" means section of the Act;

(e) All other words and expressions used herein and not defined shall have the meanings respectively assigned to them by the Act.

CONSTITUTION OF EMPLOYEES' INSURANCE COURTS

3. *Composition of the Court and place of sitting.*—(1) A Court shall ordinarily consist of one Judge; Provided that the State Government may, after consultation with the Corporation by notification in the official Gazette appoint two or more Judges to a Court for any particular proceeding or class of proceedings and for such period as may be specified in the notification.

(2) Subject to the provisions of rule 6, a Court shall sit at such place or places and at such time as the State Government may, after consultation with the Corporation, from time to time specify.

4. *Constitution of the Presiding Officer of a Civil or Criminal Court as a Court.*—The State Government may constitute the Presiding Officer of any Civil or Criminal Court or Industrial Tribunal or Labour Court in the State as a Court for the purpose of the Act and such Presiding Officer shall thereupon discharge the functions of the Court in addition to his own duties.

5. *Distribution of business where there are more Courts than one.*—Where more than one Court is constituted for the same local area, the State Government may, after consultation with the Corporation by a general or special order, distribute business among them.

6. *Fixing of time of sitting etc., where there is one Court for two or more local areas.*—(1) Where one Court is constituted for two or more local areas, the Court shall, subject to the approval of the State Government, appoint

*Ker. Gaz., 23-9-58, Pt. I, Sec. iv, p. 1

the time at which the Court shall sit in respect of each local area or in respect of any class of proceedings under the Act.

(2) A notice of the time appointed under sub-rule (1) (shall be published in such manner as the State Government may, from time to time, direct.

7. *Procedure where there are more Judges than one.*—(1) Where more than one Judge has been appointed to a Court, the State Government shall specify their rank and precedence.

(1) The senior Judge for the time being shall, from time to time, make such arrangements as he thinks fit, for the distribution of business of the Court among the Judges thereof.

(3) When two or more Judges, sitting together, differ on any question the opinion of the majority of such Judges shall prevail; where there is no majority, the opinion of the senior most Judge shall, unless the State Government otherwise directs prevail.

8. *Abolition etc., of a Court.*—The State Government may with the consent of the Corporation, by notification in the Official Gazette abolish any Court or by a like notification alter the jurisdiction of any Court.

CONDITIONS OF SERVICE OF JUDGES, ETC.

9. *Appointment, salaries, allowances, etc.*—(1) The State Government may, appoint a person qualified under Section 74 of the Act to be a Judge of a Court.

(2) A Judge shall receive such salary and allowances as the State Government may, after consultation with the Central Government, from time to time, determine.

(3) A Judge shall receive dearness allowance, and other allowances, at such rates and subject to such conditions as are applicable to officers of the State Government of a corresponding rank stationed at the same place. A Judge shall be entitled to leave and leave salary under the leave rules which may from time to time be applicable to other State Government servants of similar status and drawing similar emoluments.

(4) A Judge shall be entitled to travelling allowance for journeys performed on official business in accordance with the scale applicable to the class of officers to which in the opinion of the State Government such Judge belongs.

(5) A Judge shall be subject to such other conditions of service, as the State Government may, after consultation with the Central Government determine.

(6) Notwithstanding anything contained in sub-rules (2) to (5) the pay, allowances, and other conditions of service of a Judge, if he is a person already in the service of the Government, shall be such as the State Government may with the approval of the Central Government, by a general or special order, from time to time, determine.

(7) When the State Government confers the powers of a Court on the Presiding Officer of a Civil or Criminal Court, or any Industrial Tribunal or Labour Court the Presiding Officer may be paid such additional allowance as the State Government may after consultation with the Central Government, determine.

10. *Appointment of other officers and subordinate staff.*—(1) The State Government may, with the consent of the Corporation, appoint such ministerial officers and other subordinate staff as may be necessary for the exercise and performance of the powers and duties conferred and imposed on Court by or under the Act.

(2) The ministerial officers and the subordinate staff of a Court shall exercise such powers and discharge such duties as the Judge, or, if there are more Judges than one, the senior Judge, may, subject to any order of the State Government, from time to time, direct.

(3) The ministerial officers and the subordinate staff of a Court shall be subject to such conditions of service and draw such salaries and other emoluments and receive such benefits as may be fixed by the State Government after consultation with the Central Government.

ADMINISTRATIVE CONTROL AND COURT SEAL

11. *Administrative control of the High Court.*—A Court shall be subject to the administrative control and superintendence of the High Court, and shall.

(a) keep such registers, books and accounts as the High Court may, from time to time, prescribe; and

(b) comply with such requisitions as may be made by the High Court or the State Government for submission of service records, returns and statements, in such forms and in such manner as the authority making the requisition directs.

12. *Seal.*—A Court shall keep a seal of such size, dimensions and design as the State Government may direct.

CHAPTER II

PROCEDURE AND EXECUTION OF ORDERS

13. *Application.*—(1) Every proceeding under Section 75 shall be instituted by the presentation of an application to the Court.

(2) Every such application shall be verified in the same manner as a pleading in a Civil Court and shall be accompanied by two copies thereof.

(3) An application under Section 77 shall be presented in Form I, shall be duly stamped in accordance with these rules, and shall contain the following particulars:

(i) the name of the Court in which the application is brought;

(ii) the full name including the father's name description including age, occupation and place of residence of the applicant;

(iii) the full name including the father's name description including age, occupation and place of residence of the opposite party so far as they can be ascertained;

(iv) where the applicant or the opposite party is a minor or a person of unsound mind, a statement to that effect and the full name, age, occupation and address of his or her next friend or guardian;

(v) the facts constituting the cause of action and the date when it arose;

(vi) the facts showing that the Court has jurisdiction;

(vii) particulars giving the address within the jurisdiction of the Court at which notice or summons may be served on the applicant; and
(viii) the relief which the applicant claims.

(4) The Court may summarily reject an application if it is not in accordance with sub-rule (2).

14. Production of documents.—(1) When any application is based upon a document, the document shall be appended to the application.

(2) Any other document which any party desires to tender in evidence shall be produced at or before the first hearing.

(3) Any document which is not produced at or within the time specified in sub-rule (2) or (1), as the case may be, shall not, without the permission of the Court, be admissible in evidence on behalf of the party who should have produced it.

(4) All such documents shall be accompanied by an accurate list thereof prepared in the manner prescribed in Form 2.

(5) Nothing in this rule shall apply to any document which is produced for the purpose of cross-examining a witness or is handed to a witness to refresh his memory.

15. Register of applications.—All applications shall be entered in a Register in Form 3 called the Register of Proceedings. Such entries shall be serially numbered for every calendar year according to the order in which the applications are presented.

16. Place of suing.—In cases not falling under sub-section (1) of Section 76, a proceeding against any person shall be instituted in the Court within the local limits of whose jurisdiction:—

(a) the opposite party or each of the opposite parties where there are more than one, at the time of commencement of the proceedings, actually and voluntarily resides, or carries on business, or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the commencement of the proceeding, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the opposite parties who do not reside, or carry on business or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arose.

17. Limitation.—(1) Every application to the Court shall be brought within twelve months from the date on which the cause of action arose or as the case may be the claim became due:

Provided that the Court may entertain an application after the said period of twelve months if it is satisfied that the applicant had sufficient reasons for not making the application within the said period.

(2) Subject as aforesaid the provisions of Parts II & III of the Indian Limitation Act, 1908 (IX of 1908), shall so far as may be apply to every such application.

18. Application presented to wrong Court.—(1) Where on receiving an application it appears to the Court that it should be presented to another Court, it shall return it to the applicant after endorsing upon it the dates of

the presentation and return, the reason for returning it and the name of the Court to which it should be presented.

(2) Where it appears to the Court at any stage subsequent to the presentation of an application, that the application should have been presented to another Court in the same State, the first mentioned Court shall send the application to the Court empowered to deal with it and shall inform the applicant and the opposite party, if he has received a copy of the application under rule (19), accordingly.

(3) The Court to which an application is transferred under sub-rule (2) may continue the proceeding as if the previous proceeding or any part of it had been taken before it, if it is satisfied that the interests of the parties will not thereby be prejudiced.

19. Issue of Summons.—(1) On receiving an application, the Court shall, ordinarily within three days thereof, cause to be sent to the party from whom the applicant claims relief (hereinafter referred to as the 'opposite party'), a summons in Form 4 or Form 5, as the case may be, to appear and answer the application on a day, not later than fifteen days from the date of issue of such summons:

Provided that no such summons shall be issued when the opposite party has appeared at the presentation of the application and admitted the applicant's claim.

(2) A copy of the application shall also be sent along with the summons under sub-rule (1).

20. Service of Summons or notice.—(1) A summons or notice may, on payment of the required fee, be sent by the Court by which it is issued, either by registered post or in such other manner as the Court thinks fit.

(2) Where the Court is satisfied that there is reason to believe that the opposite party is avoiding service or that for any reason the summons or the notice cannot be served in the ordinary way the Court shall order the summons or the notice to be served by affixing a copy thereof in some conspicuous place in the Court house, and also upon some conspicuous part of the house in which the opposite party is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit and such service shall be as effectual as if it had been made on the opposite party personally.

(3) Where a summons or notice is served under sub-rule (2), the Court shall fix such time for the appearance of the opposite party as the circumstances of the case may require.

21. Additional matters in the Summons.—The Court shall determine at the time of issuing the summons, whether it shall be for the settlement of the issues only and/or for the final disposal of the application, and the summons shall contain a direction accordingly, the Court may also call upon the parties to produce upon the date any evidence which they wish to tender.

22. Written statement.—(1) The opposite party may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence along with the document on which he relies and an accurate list thereof in Form 2.

(2) Every such written statement shall be verified in the same manner as a pleading in a Civil Court and shall be accompanied by two copies thereof.

(3) In every written statement submitted under sub-rule (1) the opposite party shall deal specifically with each allegation of fact alleged by the applicant, of which he admits or does not admit or denies the truth. The written statement must also contain all matters which show that the application is not maintainable and all such grounds of defence as, if not raised, would be likely to take the applicant by surprise or would raise issue of fact not arising out of the application as for instance, fraud, undue influence or coercion, release, payment, performance or facts showing illegality of the transaction.

23. Failure in present written statement called for by the Court.—Where any party from whom a written statement is required fails to present the same within the time prescribed by the Court, the Court may pronounce judgment against him or make such order in relation to the proceedings as it thinks fit.

24. Framing of issues.—(1) At the first hearing of the application after the summons is served, the Court shall, after considering the application and the written statement, if any, or after such examination of the parties or any person or any document as may appear necessary, ascertain upon what material proposition of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues upon which the right decision appears to depend.

In recording the issues, the Court shall distinguish between those issues which in its opinion concern points of fact and those which concern points of law.

(3) The Court may, in like manner, at any time before passing its final order add to, strike out from or in any way amend the issues on such terms as it may think fit.

25. Order where parties are not at issue.—Where at any hearing of the case it appears that the parties are not at issue on any question of law or of fact the Court may at once pronounce its final order.

26. Appearance of parties and consequences of non-appearance.—(1) On the day fixed in the summons for the opposite party to appear and answer, the parties shall be in attendance at the Court in person or by their respective legal practitioners or any other person authorised under section 79 and the application shall then be heard unless the hearing is adjourned by the Court.

(2) When neither party appears when the application is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the opposite party appears and the applicant does not appear when the application is called on for hearing, the Court shall make an order that the application be dismissed unless the opposite party admits the claim or part thereof in which case the Court shall make an order against the opposite party upon such admission and where part only of the claim has been admitted, it shall dismiss the case so far as it relates to the remainder.

(4) Where the applicant appears and the opposite party after receiving the summons fails to appear when the application is called on for hearing, the Court may proceed *ex-parte*.

(5) Where the application is wholly or partly dismissed under sub-rule (2) or (3), the applicant may within thirty days of such dismissal apply in Form 6 for an order to set the dismissal aside and the Court shall, if it is satisfied that he was prevented from appearing when the proceeding was called on for hearing due to any sufficient cause make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and may proceed with the case or appoint a day for proceeding with the same:

Provided that no order under this sub-rule shall be made in respect of an application which is dismissed under sub-rule 3 unless notice of the application has been served in Form 7 on the opposite party.

(6) In any application in which an *ex-parte* order has been passed against the opposite party, he may within thirty days from the date of such order apply in Form 6 to the Court which passed the order, to set it aside and if the Court is satisfied that he was prevented from appearing when the proceeding was called on for hearing due to any sufficient cause, it shall after serving notice thereof to the applicant in Form 7 make an order setting aside the order upon such terms as to cost or otherwise as it thinks fit and may proceed with the hearing of the case or appoint a day for proceeding with the same.

27. Summoning of witnesses.—(1) At any time after the framing of issues, the Court may call upon the parties to produce their evidence in support of the issues.

(2) The Court may, on the application of either party, issue a summons in Form 8 to any witness directing him to attend or to produce any document.

(3) The Court may, before summoning any witness on application under sub-rule (2), require that his reasonable expenses to be incurred in attending the Court, be deposited with it.

28. Grant of time and adjournment of hearing.—(1) The Court may, if sufficient cause is shown, at any stage of the application, grant time to the parties or to any of them, and may, from time to time, adjourn the hearing of the application.

(2) In every such adjournment the Court shall fix a day not exceeding fifteen days from the date on which such adjournment is made for the further hearing of the application and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that when the hearing of the evidence has once begun, the hearing of the application shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

29. Right to begin proceeding.—The applicant has the right to begin unless the opposite party admits the facts alleged by the applicant and contends that either in point of law or on some additional facts alleged by the opposite party, the applicant is not entitled to the relief which he seeks, in which case the opposite party has the right to begin.

30. *Statement and production of evidence.*—(1) On the day fixed for the hearing of the application or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

31. *Method of recording evidence.*—The evidence of each witness shall be taken down in writing by the Judge or where there is more than one Judge, by the junior Judge in the language of the Court, not ordinarily in the form of question and answer, but in that of a narrative, and when completed, shall be read over or translated, where necessary, in the presence of such Judge to the witness, and such Judge shall, if necessary, correct the same and sign it.

32. *Recall of a witness.*—The Court may at any stage of a proceeding recall any witness who has been examined and may (subject to the law of evidence for the time-being in force) put such questions to him as the Court thinks fit.

33. *Inspection by Court.*—The Court may at any stage of proceeding inspect any property or thing concerning which any question may arise.

34. *Pronouncement of order.*—The Court, after the application has been heard, shall pronounce its final order in open Court, either at once or on some future day, of which due notice shall be given to the parties.

35. *Signing of order.*—The final order shall be dated and signed in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save in the case of clerical or arithmetical mistake arising from any accidental slip or omission.

36. *Statement of decision on each issue.*—In cases in which issues have been framed, the Court shall state its finding or decision, with the reason therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the case.

37. *Compromise of suit.*—Where it is proved to the satisfaction of the Court that a case has been adjusted wholly or in part by any lawful agreement or compromise, or where the opposite party satisfies the applicant in respect of the whole or any part of the subject matter of the case, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a final order in accordance therewith so far as it relates to the case.

38. *Finality of Order.*—Save as provided in section 82 the order of a Court shall be final and binding upon the parties.

COSTS, DECREE, ETC.

39. *Costs.*—(1) The costs of and incidental to the application shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the case shall be no bar to the exercise of such powers.

(2) Where the Court directs that any cost shall not follow the event, the Court shall state its reasons in writing.

40. *Contents of the decree.*—(1) A decree in Form 9 shall be prepared in conformity with the order made by the Court; it shall contain the number of the application, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the proceeding.

(2) The decree shall also state the amount of costs incurred in the proceeding and by whom and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

41. *Certified copies of order, decree etc. to be furnished.*—(1) Certified copies of the final order, decree or any other order or matter or record shall be furnished to the parties on application to the Court and at their expense.

(2) If any party requires copies of any order, decree or any other matter on record made by or furnished to the Court, as the case may be, to be supplied to him within forty-eight hours of the submission of an application therefor to the Court, he shall pay an additional fee of two rupees for each such copy.

(3) If any party applies for copies of any order, decree or any other matter on record made by or furnished to the Court, as the case may be, after the expiry of twelve months from the date of such making or furnishing, as the case may be, he shall pay an additional searching fee of two rupees.

EXECUTION

42. *Execution.*—(1) Any person in whose favour a decree order has been passed shall, within one year from the date of the decree/order, apply in Form 10 to the Court which made the order for its execution.

(2) On such application being made, the Court shall send the same together with necessary record to a Civil Court of competent jurisdiction, for its execution and such Civil Court shall have the same power in executing such decree/order as if it had been passed by it.

43. *Communication of fact of execution or otherwise.*—The Civil Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution or where that Court fails to execute the same and the circumstances attending such failure.

CHAPTER III

FEES AND COSTS

44. *Fees.*—(1) The fee payable on an application in respect of any matter referred to in section 75 shall be two rupees.

(2) Subject to the provisions hereafter mentioned in this rule, the fee payable in respect of any other application except a written statement called for by the Court under these rules shall be annas eight.

Provided that the fee for an application for obtaining a copy or translation of any document on record or statement, order or decree presented to or made before or by the Court, as the case may be, shall be annas two only.

(3) The fee for copies of any document on record, or, statement or order of decree shall be such as may from time to time be determined by the State Government after consultation with the Central Government.

(4) The fee for any authorisation for the appearance of any person under section 79 on behalf of any of the parties in a case shall be one rupee.

(5) The fee for filing certified copies of any document in a Court shall be eight annas.

(6) All fees referred to in this rule and rule 41 shall be collected by means of court-fee stamps used in ordinary Courts and no documents which ought to bear stamp under these rules shall be of any validity unless and until it is properly stamped :

Provided that where any such document is through mistake or inadvertence received, filed or used in a Court without being properly stamped, the Court may, if it thinks fit, order that such document be stamped as it may direct and on such document being stamped accordingly the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

(7) No document requiring a stamp under this rule shall be acted upon in any proceeding in a Court until the stamp has been cancelled.

45. *Payment of costs of services of summons, etc.*—(1) The cost of service of summons or notices or the expenses of the witnesses in any case or the fee payable in respect of any matter not referred to in the preceding rule shall be such amount as may be specified in each case by the Court ; and such amount or any other sum of money payable under these rules shall be paid in such manner and within such time as it may specify therefor :

" Provided that in fixing the cost of service of summons or notices of the scale expenses of witnesses, regard shall be had to such costs of service and scale of expenses prescribed under the Code of Civil Procedure, 1908, for the guidance of Civil Courts."

(2) Any amount which is left over after meeting the expenses, if any, for which it was intended, shall be returned by the Court to the party by whom or on whose behalf the amount was originally paid into the Court.

(3) The Court shall maintain proper accounts of the amount received and disbursed under sub-rule (1).

46. *Fees and costs of poor persons.*—The Court may, whenever it thinks fit, receive and register proceedings instituted under the Act and applications made under these rules, by persons who are paupers, and may issue summons or notices on behalf of such persons, without payment or on a part payment of the fees and costs mentioned in rules 44 and 45.

CHAPTER IV

MISCELLANEOUS

47. *Provisions in the Code of Civil Procedure, 1908 (V of 1908), etc to apply.*

In respect of matters relating to procedure or admission of evidence for which no specific provision is made in these rules, the provisions of the Code of Civil Procedure, 1908 (V of 1908), including the Rules made thereunder and the Indian Evidence Act, 1872 (I of 1872), shall, so far as may be, apply to proceedings under the Act.

FORM I

(RULE 13)

In the Employees' Insurance Court at.....
A. B. (add description and residence).....Applicant.

.....against

C. D. (add description and residence).....Opposite Party.

Other particulars of the application specified in rule 123.....
.....

Date.....

Signature of the applicant.

(Verification by the applicant) :

The statement of facts contained in this application is to the best of my knowledge and belief true and correct.

Signature.

Date.....

.....

FORM 2
(Rules 14 & 22)

List of documents produced by applicant
opposite party
(Title) e.g. Description, subject, name of the Court, No., etc.

No.	Description of document.	Date, if any, which the documents bear.	Signature of party or pleader or any authorised representative.
(1)	(2)	(3)	(4)

FORM 3
REGISTER OF PROCEEDINGS (RULE 15)
Employees' Insurance Court at.....
Register of proceedings in the year 19

Date of presentation of application.	No. of proceeding.	Name.	Description.	Place of residence.	Name.	Description.	Place of residence.	Particulars.	Amount or value, if any.	When the cause of action accrued.	Day for parties to appear.	Applicant.	Opposite party.	Date.	For Whom.	For what, or amount.	Date of decision of appeal, if any.	Judgment in appeal.	Date of application.	Against whom.	For what, and amount of money.	Amount of costs.	Date of order transferring to another civil court..... at.....	Other Remarks if any.
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FORM 4
(Rule 19)*Summons for disposal of proceedings*

(Title)

To

(Name, description and place of residence)

Whereas.....has instituted proceedings against you for.....
you are hereby summoned to appear in this Court in person or by
 authorised agent duly instructed and able to answer all material questions
 relating to the case, or who shall be accompanied by some person able to
 answer all such questions at.....O'clock in the.....noon on the
day of.....19.....to answer the claim, and as the day
 fixed for your appearance is appointed for the final disposal of the proceed-
 ings, you must be prepared to produce on that day all the witnesses upon
 whose evidence and all the documents upon which you intend to rely in
 support of your defence.

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

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

*Notice :—*1. Should you apprehend your witnesses will not attend of their
 own accord, you can have a summons from this Court to compel the
 attendance of any witness, and the production of any document that
 you have a right to call on the witness to produce, on applying to the
 Court and on depositing the necessary expenses.
 2. If you admit the claim, you should pay the money into Court
 together with the costs of the proceedings, to avoid execution of the
 decree, which may be against your person or property or both.

FORM 5
(Rule 19)*Summons for settlement of Issues*

To

(Name, description and place of residence)

Whereas.....has instituted proceedings against you
 for.....you are hereby summoned to appear in
 the Court in person, or by an authorised agent duly instructed, and able to
 answer all material questions relating to the proceedings, or who shall be
 accompanied by some person able to answer such questions at.....
 O'clock in the.....noon, on the.....day
 of.....19.....to answer the claim and you are directed
 to produce on that day all the documents upon which you intend to rely
 in support of your defence.

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

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

Court.

*Notice :—*1. Should you apprehend your witnesses will not attend of their
 own accord, you can have a summons from this Court to compel the
 attendance of any witness and the production of any document that
 you have a right to call on the witness to produce, on applying to the
 Court and on depositing the necessary expenses.
 2. If you admit the claim, you should pay the money into Court together
 with the costs of the suit, to avoid execution of the decree, which may
 be against your person or property, or both.

FORM 6
(Rule 26)
(Title)

Subject :—Application for setting aside the.....order.
 ex parte

The.....above-named states as follows :—
 (The grounds of applications should be stated.)

Date.....

Signature of the applicant.

Verification by
the applicant.

The statement of facts contained in the application is to the best of
 my knowledge and belief true and correct.

Place

Signature.

Date

FORM 7
(Rule 26)*General Form*
(Title)

To

Whereas the above-named.....
 has made application to this Court that.....
 You are hereby warned to appear in this Court in person or by a pleader
 duly instructed at.....O'clock in the.....noon, on the
 day of.....19.....to show cause against the applica-
 tion failing wherein, the said application will be heard and determined
ex-parte.

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

Court.

FORM 8
(Rule 27)*Summons to witness*
(Title)

To

Whereas your attendance is required to.....on
 behalf of the.....in the above proceedings, you are hereby
 required (personally) to appear before this Court on the.....
 day of.....19.....at.....O'clock in the.....noon
 and to bring with you (or to send to this.....Court).....

A sum of Rs.....being your travelling and other expenses and subsistence allowance for one day, is deposited with this Court and will be tendered to you on the day you appear before the Court. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908 (V of 1908).

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

- Notice:—1. If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.
2. If you are detained beyond the day aforesaid, a sum of Rs.....will be tendered to you for each day's attendance beyond the day specified.

FORM 9
(Rule 40)

Decree in case

(Title)

Claim for

This case coming on this day for final disposal before.....in the presence of.....for the applicant and of.....for the opposite party, it is ordered and decreed that.....and that the sum of Rs.....be paid by the.....to the.....on account of the costs of this suit, with interest thereon at the rate of.....per cent. per annum from this date to the date of realisation.

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

Costs of suit		Court.	
	Rs. A. P.		Rs. A. P.
1. Stamp for application		Stamp for power	
2. Stamp for power		Stamp for written statement	
3. Stamp for exhibits		Pleader's fee	
4. Pleader's fee		Subsistence for witnesses	
5. Subsistence for witnesses		Service of summons and notices	
6. Commissioner's fee		Commissioner's fee	
Service of summons and notices			
Total		Total	

FORM 10

(Rule 42)

Application for the execution of a decree.

In the court of.....decree-holder, hereby apply for execution of the decree herein below set forth:—

Number of proceeding.	Name's of party/ies.	Date of decree.	Whether any appeal preferred from decree.	Payment or adjustment made, if any.	Previous application if any with date and result.	Amount with interest due upon the decree or other relief together with particulars of any cross decree.	Amount of costs, if any awarded.	Against whom to be executed.	Made in which the assistance of the Court is required.
1	2	3	4	5	6	7	8	9	10
III of 1949.	A. B. Applicant. C. D. Opposite party.	November, 11th, 1949.	No.	None.	Rs. 72-4 recorded on application, dated the 19th April, 1949.	Rs. 314-8-2 principal. 1/4 [interest at 6 per cent. per annum, from date of order till payment.]	Rs. As. P. ... Total	As awarded in the decree Subsequently incurred	Against the opposite party C. D. (When attachment and sale of movable property is sought). I pray that the total amount of Rs.....(together with interest on the principal sum up to date of payment) and the cost of taking out this execution, be realised by attachment and sale of the opposite party's movable property as per annexed list and paid to me. (When attachment and sale of immovable property is sought). I pray that the total amount of Rs.....(together with interest on the principal sum up to date of payment) and the costs of taking out this execution be realised by the attachment and sale of the opposite party's immovable property specified at the foot of this application and paid to me.

I.....declare that what is stated herein is true to the best of my knowledge and belief.

Signed.....

Decree Holder.

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

The Working Journalists (Fixation of Rates of Wages) Act, 1958

ACT NO. 29 OF 1958*

[Received the assent of the President on 16th September, 1958.]

An Act to provide for the fixation of rates of wages in respect of working journalists and for matters connected therewith.

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Working Journalists (Fixation of Rates of Wages) Act, 1958.

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

(a) “Committee” means the Committee constituted under section 3;

(b) “prescribed” means prescribed by rules made under this Act;

(c) “Wage Board” means the Wage Board constituted under the Working Journalists Act by notification No. S.R.O. 1075 of the Government of India in the Ministry of Labour, dated the 2nd May, 1956;

(d) “Wage Board decision” means the decisions of the Wage Board published in the Gazette of India Extraordinary, Part II, Section 3, dated the 11th May, 1957;

(e) “wages” means wages as defined in the Industrial Disputes Act, 1947;

(f) “Working Journalists Act” means the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955;

(g) words and expressions used but not defined in this Act, and defined in the Working Journalists Act, shall have the meanings respectively assigned to them in that Act.

3. *Constitution of Committee.*—(1) For the purpose of enabling the Central Government to fix rates of wages in respect of working journalists in the light of the Judgment of the Supreme Court, dated the 19th day of March, 1958, relating to the Wage Board decision, and in the light of all other relevant circumstances, the Central Government shall, by notification in the Official Gazette, constitute a Committee consisting of the following persons, namely:—

(i) an officer of the Ministry of Law not below the rank of Joint Secretary, nominated by the Central Government, who shall be the Chairman of the Committee,

(ii) three persons nominated by the Central Government from among the officers of each of the Ministries of Home Affairs, Labour and Employment and Information and Broadcasting,

(iii) a chartered accountant nominated by the Central Government.

(2) If for any reason a vacancy (other than a vacancy by reason of temporary absence) occurs in the office of the Chairman or any other member of the Committee, the Central Government may appoint another person in accordance with the provisions of sub-section (1) to fill the vacancy, and the inquiry before the Committee may be continued from the stage which had been reached when the vacancy arose.

(3) The Central Government may appoint a Secretary to the Committee, and may also provide the Committee with such other staff as may be necessary.

*Gaz. of India, Extry., 16-9-58, Pt. II, Sec. I., p. 183.

(4) The Secretary shall perform such functions of a ministerial or other nature as the Committee or the Chairman thereof may assign or delegate to him.

4. *Functions of Committee.*—(1) The Committee shall, by notice published in such manner as it thinks fit, call upon newspaper establishments and working journalists and other persons interested in the Wage Board decision to make such representations as they may think fit as respects the Wage Board decision and the rates of wages which may be fixed under this Act in respect of working journalists.

(2) Every such representation shall be in writing and shall be made within such period not exceeding thirty days, as the Committee may specify in the notice, and shall state—

(a) the specific grounds of objection, if any, to the Wage Board decision,

(b) the rates of wages which, in the opinion of the person making the representation, would be reasonable, having regard to the capacity of the employer to pay the same or to any other circumstance, whichever may seem relevant to the person making the representation in relation to his representation,

(c) the alterations or modifications, if any, which, in the opinion of the person making the representation, should be made in the Wage Board decision and the reasons therefor.

(3) The Committee shall take into account the representations aforesaid, if any, and after examining the materials placed before the Wage Board and such further materials as have since been obtained by or made available to it under this Act, make such recommendations, as it thinks fit, to the Central Government for the fixation of rates of wages in respect of working journalists, whether by way of modification or otherwise, of the Wage Board decision; and any such recommendation may specify, whether prospectively or retrospectively, the date from which the rates of wages should take effect.

(4) In making any recommendations to the Central Government, the Committee shall have regard to all the matters set out in sub-section (1) of section 9 of the Working Journalists Act.

(5) The Committee may, if it thinks fit, take up for consideration separately groups or classes of newspaper establishments, whether on the basis of regional classification or on any other basis, and make recommendations from time to time in regard to each such group or class.

5. *Powers of Committee.*—(1) Subject to the provisions contained in sub-section (2), the Committee may exercise all or any of the powers which an industrial tribunal, constituted under the Industrial Disputes Act, 1947, exercises for the adjudication of an industrial dispute referred to it and shall, subject to the provisions contained in this Act and the rules, if any, made thereunder, have power to regulate its own procedure.

(2) Any representations made to the Committee and any documents furnished to it by way of evidence, shall be open to inspection on payment of such fee as may be prescribed, by any person interested in the matter.

(3) If in the course of any inquiry it appears to the Committee that it is necessary to examine any accounts or documents or obtain any statements

from any person, the Committee may authorise any officer of the Central Government (hereinafter referred to as the authorised officer) in that behalf; and the authorised officer shall, subject to the directions of the Committee, if any, examine the accounts or documents or obtain the statements from the person.

(4) The authorised officer may, subject to the directions of the Committee, if any, exercise all or any of the powers which an industrial tribunal may exercise under sub-section (2) or sub-section (3) of section 11 of the Industrial Disputes Act, 1947.

(5) Nothing in sub-section (1) of section 54 of the Indian Income-tax Act, 1922, or in any corresponding provision in any other law for the time being in force relating to the levy of any tax shall apply to the disclosure of any of the particulars referred to therein in any report made to the Committee by an authorised officer.

(6) Any information obtained by an authorised officer in the exercise of any of his powers and any report made by him shall, notwithstanding anything contained in this Act, be treated as confidential, but nothing in this sub-section shall apply to the disclosure of any such information or report to the Central Government or to a court in relation to any matter concerning the execution of this Act.

(7) The authorised officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

6. Power of Central Government to enforce recommendations of Committee.—(1) As soon as may be, after the receipt of the recommendations of the Committee, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit,—

(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit:

Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing, or

(b) refer the recommendations or any part thereof to the Committee, in which case the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit.

(3) Every order made by the Central Government shall be published in the Official Gazette together with the recommendations of the Committee relating to the order, and the order shall come into operation on the date of publication or on such date, whether prospectively, or retrospectively, as may be specified in the order.

7. Working journalists entitled to wages at rates not less than those specified in the order.—Subject to the provisions contained in section 11, on the coming into operation of an order of the Central Government, every working journalist shall be entitled to be paid by his employer wages

at a rate which shall in no case be less than the rate of wages specified in the order.

8. Review of order of Central Government.—The Central Government may, at any time after the expiry of three years from the date of the order passed by it under this Act, if it is of opinion that circumstances require that the rates of wages specified in the order should be revised, constitute a Wage Board as provided in section 8 of the Working Journalists Act, and where a Wage Board is so constituted, the provisions of the Working Journalists Act shall apply thereto.

9. Recovery of money due to working journalists.—(1) Where any amount is due under this Act to a working journalist from an employer, the working journalist may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government, or such authority as the State Government may specify in this behalf, is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a working journalist from an employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under section 7 of the Industrial Disputes Act, 1947, and the said Act shall have effect in relation to the Labour Court as if the question so referred were a matter specified in the Second Schedule to that Act which has been referred to the Labour Court for adjudication.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference, and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).

10. Authentication of orders, letters, etc., of the Committee.—All notices, letters, authorisations, orders or other documents to be issued or made by the Committee under this Act may be authenticated by the Chairman or the Secretary thereof or any other officer authorised by the Committee in this behalf and any notice, letter, authorisation, order or other document so authenticated shall be presumed to have been duly issued or made by the Committee.

11. Effect of Act on Working Journalists Act, etc.—(1) Sections 8, 10, 11, 12 and 13 of the Working Journalists Act shall have no effect in relation to the Committee.

(2) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a working journalist entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the working journalist shall continue to be entitled to the more favourable benefits in respect of that matter,

notwithstanding that he receives benefits in respect of other matters under this Act.

(3) Nothing contained in this Act shall be construed to preclude any working journalist from entering into any agreement with an employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.

12. Vacancies, etc., not to invalidate proceedings of Committee.—No act or proceeding of the Committee shall be invalid merely by reason of the existence of any vacancy among its members or any defect in the constitution thereof.

13. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

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

(a) the manner in which notices under this Act may be published;

(b) the procedure to be followed by the Committee in the exercise of its powers under this Act;

(c) the powers and functions of the Committee which may be delegated to any of its members;

(d) the fees to be paid for inspection of documents furnished to the Committee.

14. Repeal and saving.—(1) The Working Journalists (Fixation of Rates of Wages) Ordinance, 1958, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had commenced on the 14th day of June, 1958.

Employees' State Insurance—Exemptions

*Notification No. SIA. 1558-I, dated 27th September, 1958.**

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Government of Bombay hereby exempts from the operation of the said Act, except Chapter V-A thereof, every factory—

(a) which is situate in any area in which Chapters IV and V of the said Act are in force; and

(b) which is exclusively engaged in one or more of the manufacturing processes specified in column (1) of the Table annexed hereto or any other manufacturing process which is incidental to or connected with any of the aforesaid processes, or in any other manufacturing process carried on in a seasonal factory, of the nature referred to in clause (12) of section 2 of the said Act,

for the period from 1st October, 1958, till 30th September, 1959, subject to the conditions specified in the corresponding entry in column (2) of the said Table.

*Bom. Govt. Gaz. 9-10-'58, Pt. IV-A, p. 715.

TABLE

Name of Manufacturing Process. (1)	Conditions. (2)
1. Re-drying unmanufactured leaf tobacco tobacco.	...
2. Rice Milling	...
3. Cold storage	...
4. Salt Manufacture	...
5. Oil Mills	...
	Provided that the process of oil milling is subsidiary to any other manufacturing process which is seasonal and so long as the number of employees engaged in oil milling is less than fifty.

Employees' State Insurance—Exemptions

*Notification No. SIA. 1758-I, dated Bombay 30th September, 1958.**

In exercise of the powers conferred by section 88 of the Employee's State Insurance Act, 1948 (XXXIV of 1948), the Government of Bombay is pleased to exempt for a further period of one year with effect from 1st October, 1958, from the provisions of the said Act, except Chapter V-A thereof:—

(a) any person employed directly by a principal employer or through an immediate employer on loading or unloading outside the factory or on loading or unloading of goods or material going out of or coming in at the factory gates or sidings, provided that if such person is employed directly by the principal employer continuously (but for breaks due to weekly or other holidays) for more than 15 days (including such holidays), the exemption will cease from 16th day of the employment by the same principal employer;

(b) any person employed on work which is not ordinarily the work of the factory but is of a casual nature, that is to say, work which is not ordinarily carried on for more than 15 days in a calendar month and was not carried on for more than 60 days in the preceding calendar year:

Provided that any employee who is generally employed on any work other than that specified in (a) or (b) above shall continue to be covered under the Act irrespective of his temporary employment on the said work;

Provided further that, notwithstanding this exemption, any employee so exempted, shall continue to be entitled to such benefits under the Act to which he might have qualified on the basis of contributions paid before the date from which he gets exempted,

*Bom. Govt. Gaz., 1-10-'58, Pt. IV-A, p. 729.

Employee's State Insurance Act — Exemption

Notification No. LLH 359 LBW 58, dated Bangalore, 30th September, 1958*.

In exercise of the powers conferred by Section 88 of the Employees' State Insurance Act, 1948 (Central Act 34 1948), the Government of Mysore hereby exempts for the period of one year with effect from 1st October, 1958, up to and inclusive of 30th September 1959 from the operation of the said Act, except Chapter V-A thereof—

(a) any person employed directly by a principal employer or through an immediate employer on loading or unloading outside the factory or on loading or unloading of goods or material going out of or coming in at the factory gates or sidings provided that if such person is employed directly by the principal employer continuously (but for breaks due to weekly or other holidays) for more than 15 days (including such holidays), the exemption will cease from the 16th day of the employment by the same principal employer;

(b) any person employed on work which is not ordinarily the work of the factory but is of a casual nature, that is to say, work which is not ordinarily carried on for more than 15 days in a calendar month and was not carried on for more than 60 days in the preceding calendar year:

Provided that any employee who is generally employed on any work other than that specified in (a) or (b) above shall continue to be covered under the Act irrespective of his temporary employment in the said work:

Provided further that, notwithstanding, this exemption any employee so exempted, shall continue to be entitled to such benefits under the Act to which he might have qualified on the basis of contributions paid before the date from which he gets exempted.

Iron & Steel Industry Declared Public Utility Service in Bihar

Notification No. III/DI-6023/58-L.—15290, dated
4th September, 1958*.

Whereas the Governor of Bihar is satisfied that public interest requires that "Iron and Steel" industry should be declared to be a public utility service:

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor of Bihar hereby declares "Iron and Steel" industry to be a public utility service for the purpose of the said Act for a further period of six months with effect from the 15th September, 1958.

*Mysore Gaz., 9-10-58, Pt. IV-1 C, p. 3519.

[IN THE MYSORE HIGH COURT.]

M. C. SHANTHAMALLAPPA

v.

M. D. CHANDAPPA SHETTY

S. R. Das Gupta, C. J., and Sreenivasa Rau, J.

December 20, 1957.

WORKMEN'S COMPENSATION ACT, 1923, SECTIONS 3 AND 30—FINDING OF COMMISSIONER—FINDING ON FACTS—INTERFERENCE BY HIGH COURT ON APPEAL—CLAIM FOR COMPENSATION—ONUS ON CLAIMANT—"ARISING OUT OF" EMPLOYMENT—MEANING OF—WHETHER WORKMAN SHOULD BE ENGAGED IN POSITIVE ACTIVITY—MERE PRESENCE IN DISCHARGE OF DUTY—WHETHER SUFFICIENT.

A decision of the Commissioner for Workmen's Compensation is liable to be interfered with by the High Court only when a substantial question of law is involved in the appeal. The finding of a Commissioner that an accident arose out of and in the course of employment is prima facie a finding of fact which cannot be interfered with unless the finding is perverse or founded on gross misappreciation of the evidence. Where the Commissioner, after weighing all the evidence before him, comes to the conclusion that the version of the accident put forward by the employer was wholly improbable and not creditworthy, though the employer's witnesses had given a cogent and consistent version supported by the dying declaration of the deceased workman, the Commissioner would be acting within his province in doing so and his finding should not be interfered with.

Though the burden lies on the claimant to make out the necessary ingredients necessary to sustain his claim to compensation under the Workmen's Compensation Act, 1923, it cannot be contended that so long as the possibility of the accident having arisen outside the scope of employment cannot be excluded the claimant must fail.

There is nothing in section 3 of the Act which requires that it should be shown that the workman was engaged in some positive activity at the time of the accident and that the accident was related to such activity. That the workman was present at the spot at the time of the accident, if the presence is attributable to the discharge of his duty, is enough to show that the accident arose out of his employment.

Miscellaneous Appeal No. 7 of 1957.

V. Krishnamurthy for the appellant.

C. B. Motaiya for the respondent.

JUDGMENT

N. SRINIVASA RAU, J.—The appellant was the owner of a motor lorry. The respondent is the father of one Annayya who died on

19th March, 1956, in consequence of injuries sustained by him when the lorry had been taken out for bringing a load of stones. The respondent claimed compensation as a dependent of Annayya under the Workmen's Compensation Act on the ground that the fatal accident arose out of and in the course of Annayya's employment as a cleaner of the lorry under the appellant. It was contended by the appellant that Annayya had not been his employee and that the accident had not arisen out of and in the course of employment. The Commissioner for Workmen's Compensation, however, upheld the claim and awarded compensation on the basis that Annayya was getting monthly wages of Rs. 60.

In this appeal, though the appellant challenged the correctness of the Commissioner's finding that Annayya was a workman under the appellant and the quantum of compensation awarded, the learned counsel for the appellant has not pressed these two points and has confined his arguments to the question whether the accident arose out of and in the course of employment.

It is not disputed that the fatal accident occurred while the lorry had been taken out to the neighbourhood of a place called Thrukarahatti for transporting stones. The version put forward on behalf of the appellant was that Annayya who had accompanied the lorry went away from the spot where the loading was taking place saying that he wanted to answer calls of nature, that he returned without being noticed either by the driver or the labourers who had gone along with the lorry to do the loading, that he got underneath the lorry and went to sleep there, that the driver and the labourers, shouted for Annayya to take him along with them, after the work of loading was over, that Annayya did not make his appearance, that they thought he would join the lorry at a shop situated nearby at the roadside that the driver started the lorry on the return journey when some obstruction was felt and they heard the cries of Annayya whom they found injured by one of the wheels of the lorry passing over a part of his body.

According to the respondent the injuries must have occurred while Annayya tried to start the engine handle when, owing to some mischance, the lorry moved forward and hit Annayya. The Commissioner disbelieved the version put forward by the appellant, thought that the probabilities were in favour of the respondent's version, but, holding that it was not possible to state the exact manner in which the injuries were caused to Annayya, still opined that the circumstances of the case showed that Annayya suffered a fatal injury by doing something in his capacity as the cleaner of the lorry and that the accident, therefore, arose out of and in the course of Annayya's employment.

The Commissioner's decision is liable to be interfered with only when a substantial question of law is involved in the appeal. The above finding of the Commissioner, viz., that the accident arose out of and in the course of Annayya's employment is *prima facie* a finding of fact.

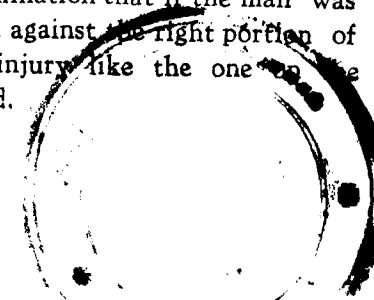
It is urged by the learned advocate for the appellant that the Commissioner has grossly misappreciated the evidence adduced by the appellant in totally rejecting it even though the appellant's witnesses have given a cogent and consistent version and that version is supported by the dying declaration of the deceased and is not inconsistent with the medical evidence in regard to the injuries and that even otherwise as the burden lay upon the claimant to establish that the accident arose out of and in the course of employment of the deceased and as no evidence has been adduced by the respondent the claim has to fail.

It is no doubt true that, according to the material on record, the only persons present on the scene were the driver of the lorry and the labourers and that all of them have spoken in support of the appellant's version. It is also true that the dying declaration of the deceased recorded on the same day by a Magistrate supports the version. But this does not however mean that that version had to be accepted without scrutiny by the Commissioner.

The accident occurred in the early part of the afternoon and the loading of stones did not occupy much time. The Commissioner has taken the view that it was very unlikely in these circumstances that the deceased would have thought of going to sleep or would have chosen the space underneath the lorry as a place for taking rest or that the shouting of the driver and of the labourers would not have aroused him from his sleep.

He has also borne in mind the fact that the driver's mind would naturally be exercised in avoiding the consequences to himself of the accident and the fact that his fellow employees would be sufficiently interested to support a version which would exonerate the driver. He has also taken the view that the dying declaration of the deceased exonerating the driver must have been induced in the same circumstances.

He refers to the deceased's statement that the driver did not observe the deceased creeping under the lorry as a tell-tale statement, as the deceased could not have known whether the driver did or did not notice that act. As regards the medical evidence, the Medical Officer examined as P.W. 7 has no doubt stated in cross-examination that if the man was lying under the lorry and the wheel pressed against the right portion of the body when the wheels moved, an injury like the one on the deceased's body could also have been caused.



But he has stated in examination-in-chief that if the hind wheel of the lorry had passed over the abdomen there would have been injuries to other organs also. A question was raised in the course of arguments as to the admissibility of the witness's evidence as he was not the doctor who treated the deceased soon after the accident or conducted the *post mortem* examination and as his evidence is based upon the contents of the *post mortem* certificate granted by the doctor who conducted the examination.

If the evidence is inadmissible it cannot be taken into consideration at all. If, on the other hand, it has to be treated as the evidence of an expert interpreting the data furnished by the *post mortem* certificate such evidence was part of the evidence which the Commissioner had to take into consideration in arriving at his own conclusion.

It may also be mentioned that the claimant, in the course of his evidence, has stated that the deceased told him that the lorry dashed against him when, after he started the lorry using the starter the lorry moved, that he was hit by the bumper on the right side of the lorry and that he was told (presumably by the driver of the appellant) that he should not mention these facts to the authorities or others and that he would be looked after by the appellant.

The Commissioner has not referred to this part of the claimant's deposition, but all this was material available to him, and, if the Commissioner, after weighing all this evidence came to the conclusion that the version put forward by the appellant was wholly improbable and not creditworthy, it appears to me that he was entirely within his province in doing so and I see nothing in the nature of perversity or gross misappreciation of evidence in such a conclusion being arrived at.

It is contended, however, by the learned advocate for the appellant that, even if the appellant's version should fall to the ground, the respondent cannot succeed unless he discharges the burden that lies upon him to show that the accident arose out of and "in the course of" his son's employment. It has already been mentioned above that the only persons present at the time of the occurrence were the driver and the labourers and in the very nature of things the respondent has not been able to adduce any positive evidence as to the manner in which the accident occurred except the statement made to him by his son which has been referred to above.

The statute (The Workmen's Compensation Act) does not itself raise any presumption in the matter and it follows that when a claim is made under the Act, the burden lies upon the claimant to make out the necessary ingredients. In this case, the claimant has to establish that the accident arose in the course of the deceased's employment as also that it

arose out of the employment. The finding of the Commissioner that the deceased was employed by the appellant as a cleaner and that he was working in that capacity on the date of the accident has not been challenged at the time of arguments before us. Thus the fact that the accident arose in the course of the deceased's employment must be regarded as having been established. The question for consideration is whether the accident "arose out of the employment".

The learned advocate for the appellant has drawn our attention to certain passages in *Halsbury's Laws of England*, (Lord Hailsham Edition, Vol. 34). They are:

"The burden of proof both that the accident arose out of and in the course of the employment rests in the first place upon the workman or his dependants....."

"If the proved facts give rise to conflicting inferences of equal probability, so that the choice between them can only be arrived at by what amounts to a guess, then such a guess, though called an inference, arrived at in favour of the applicant will be set aside."

"The words 'arising out of the employment' mean that, during the course of the employment, injury has resulted from some risk incident to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered."

"Where the workman, though during a time when the course of his employment is subsisting, does something entirely for his own purposes and thereby incurs a risk which causes an accident, he is not entitled to compensation."

"If the workman goes outside the sphere of his employment as defined by his employer he is not generally entitled to compensation if he sustains an accident whilst thus acting."

"If a workman sustains an accident whilst he is doing an act which is within his sphere of employment, the mere fact that he has acted negligently or failed to adopt the safest method of working will not deprive him of compensation. Where, however, whether from recklessness or from any other reason a workman does something which it was no part of his employment to do, and thereby incurs a risk to which he was neither required nor authorised to expose himself an accident so caused will not arise out of the employment."

The above extracts may be taken as substantially representing the rules that govern the matter, but what is suggested on the strength of these passages is that as long as the possibility of the accident having arisen outside the scope of employment cannot be excluded the claimant has to fail. It is difficult to see any warrant for such a suggestion in

the above passages. It is next contended that if the probabilities are equally balanced, even then the claimant has to fail.

This, no doubt, is supported by the above passages, and, indeed, logically follows the proposition that the initial burden rests on the claimant. In this connection the learned advocate for the appellant has drawn our attention to the decision reported in *Steel Products Ltd. v. Amelda*, A.I.R. 1951 Cal. 145. That was a case in which it was found that the workman, a fitter, after measuring something on an almirah, went apparently outside to start work, fell down and was taken to the hospital and according to the medical evidence it turned out to be a case of cerebral thrombosis with progressive cerebral oedema.

It could not, however, be stated whether the fall preceded the attack of cerebral thrombosis or whether the attack caused the fall. In the latter case the death could not be regarded as due to an accident as there was nothing to connect the attack with what the workman was doing. In the former case, the onset of the attack might be due to fall which occurred out of what he was doing as an employee. The Court held that, as the facts were entirely consistent with both the possibilities and it was quite impossible to say which of those two alternatives was the more probable, the claim had to fail.

It is suggested by the learned advocate for the appellant that the accident which occurred in the case on hand is consistent with both the claimant's version and the employer's version and that on the basis of the principle indicated in the above decision the claimant has to fail. It may at once be stated that no question of two equally possible versions arises in this case since it has been found that the appellant's version is not true. The only question, therefore, is whether, apart from that version, the circumstances of the case justify the inference that the accident arose out of the employment.

The learned advocate has also relied on two decisions reported in *Bender v. Owners of Steamship Zent*, [1909] 2 K.B. 41, and *Marshall v. Owners of Steamship Wild Rose*, [1909] 2 K.B. 46. In the first case, the chief cook and baker of a steamship was lost overboard. The weather was fine at the time, the ship was steady and there was a four feet rail and bulwark all round. There was no suggestion that any portion of the man's duty would lead him to a position of danger on the ship. It was held that there was no evidence which would enable the Court to draw the necessary inference that the accident causing death arose 'out of' as well as 'in the course of' the employment. In the other case, the second engineer of a ship who had gone out on deck for a breath of fresh air was missed at midnight.

The next morning he was found drowned. It has held that though the accident occurred in the course of the deceased's employment, it had not been established that it arose out of his employment since there was nothing to indicate that his duty would take him to the place where the accident must have occurred. It is suggested on the strength of these two cases that in the present case also no evidence has been let in by the claimant to show that the accident is attributable to anything done by the deceased in connection with his employment.

It is seen, however, that in each of these cases the circumstances indicated that the duties of the workman did not normally expose him to the risk which resulted in the fatal accident. In the case on hand, the point for consideration is whether the workman's presence at the place of accident was normally attributable to his duties.

On the other hand, the learned advocate for the respondent has relied upon the decision reported in *Vishram Yesu v. Dadabhoy Hormasji and Co.*, A.I.R. 1942 Bom. 175. That was a case in which a khalasi employed on a barge went to sleep at night on one of the hatches in the barge and when his companion woke up he has found to be missing and later on his body was discovered in the dock where the barge had been stationed. It was in evidence that the khalasis had to sleep either in the rooms allotted to them by the employers when there was no work at night or on the hatches when there was work at night.

It was held that the accident arose out of the employment since the deceased was at a place where he was discharging his duties to his employers. This apparently has reference to the fact that the khalasi was sleeping in the hatch and not in a room since he had to be ready for work during the course of the night. The learned advocate has also referred to the case reported in *Astley v. R. Evans & Co. Ltd.*, [1911] 1 K.B. 1036. That was a case in which the brakesman of a train that was running buffer to buffer with another train towards a siding point endeavoured to climb from the truck in which he was riding on to the brake van of the train in front of his train and in doing so fell and was killed. It was urged for the employer that in trying to climb on to the brake van of the train in front the workman was doing something which he was not called upon to do in the course of his employment and had needlessly exposed himself to a risk.

This contention was not accepted. An examination of the decision shows that it turned upon the view taken by the learned Judges on to the question whether the particular act was reasonable or not and in fact one of the Judges took a different view. The learned advocate, however, relies on this decision for the enunciation of some principles by Fletcher Moulton, L. J. The passage reads as follows ;

"What then is the proper presumption in the case of death which is due to the dangers of the employment and which occurs to a person who is engaged in it, but, where, from the nature of the case, no direct evidence can possibly be obtained as to the events immediately preceding the accident? In my opinion, the principle that we ought to apply to the presumption in such a case is, that where the workman is shewn to have been engaged in his employer's work and nothing else during the period prior to the accident, and the accident occurs by reason of his doing an act which is consistent with his still continuing to be doing that work, the proper presumption is that he did what led to the accident in continuing his employer's work and not that he had ceased to do his employer's work and had commenced to do something for his own purposes. In other words, where the workman is engaged in his employer's work up to his death and the last acts known are consistent with the continuance of that work, the onus is upon the person who alleges a cessation of his work for his employer to prove it."

This, if I may say so with respect, is a fair and reasonable rule, based as it is on the principle of continuity and it is in no way inconsistent with the principles referred to earlier. Relying on the above passage it is suggested for the respondent that as the deceased went with the lorry in the discharge of his duties it must be presumed even in the absence of any evidence on the claimant's side that the accident occurred when the deceased was discharging his duties to his employer and that, as the appellant's version as to the circumstances of the accident is disbelieved, the presumption stands un rebutted.

In the light of the above discussion, it appears to me that the circumstances of the case leave no room for doubt that the accident must be regarded as having occurred while the deceased was discharging his duty as a workman. He was a cleaner attached to the lorry. No evidence has been given in the case as to what the exact duties of a cleaner are. But the evidence adduced on both sides makes it clear that his work consisted not merely of cleaning the lorry but of acting as a handyman accompanying the lorry. Indeed, the position taken up by both the counsels in the course of arguments was that the duties of a cleaner of a lorry were analogous to those of a conductor in a passenger vehicle. It was, therefore, part of the duty of the deceased to be in the lorry whenever it was on the road and to be by its side to do whatever work was entailed in the work of transport. The deceased went from Mercara to the spot where the stores had to be loaded and stayed by the side of the lorry after arriving at the spot in the discharge of his duty.

It is not disputed that the injuries are attributable to some mis-chance associated with the working of the lorry. Even if the particular circumstances under which the accident occurred and the

injuries were sustained are not established, it is beyond doubt that the deceased sustained the injuries when he was present on the spot in discharge of his duty as a workman. In other words, the accident "arose out of" his employment. It appears to me that it is not necessary to establish, as suggested by the learned advocate for the appellant, that it should be shown that the workman was engaged in 'doing' something.

There is no basis in principle or in the wording of the section for the proposition that the workman should be engaged in some positive activity at the time of the accident and that the accident should be related to such activity. The presence of the workman on the spot at the time of the accident, if such presence itself was attributable to the discharge of his duty is enough to show that the accident arose out of his employment. It will be remembered that in *Vishram Yesu v. Dadabhoy Hormasji & Co.*, A.I.R. 1942 Bom. 175, the khalasi was sleeping on one of the hatches so as to be ready for work whenever the need for it should occur in the night. It was held that his location on the hatch in those circumstances must be regarded as in the discharge of his duty as a workman. The same principle is found illustrated in the observations of Farwell, L. J., in *Marshall v. Owners of Steamship Wild Rose*, [1909] 2 K.B. 46, mentioned above:

"If an ordinary sailor is a member of the watch and is on duty during the night and disappears, the inference might fairly be drawn that he died from an accident arising out of his employment. But if, on the other hand, he was not a member of the watch, and was down below and came upon deck when he was not required for the purpose of any duty to be performed on the deck and disappeared without knowing anything else, it seems to me that there is absolutely nothing from which any court could draw the inference that he died from an accident arising out of his employment."

The presence of the deceased in the proximity of the lorry when it had been taken there for the purpose of loading stones could not be attributed to anything other than the discharge of his duty and in the absence of any credible evidence that at the time of the accident the deceased was engaged in anything outside the scope of his employment, the accident must be held to have arisen out of his employment.

There is thus no reason to interfere with the decision of the Commissioner. This appeal is accordingly dismissed with costs.

S. R. DAS GUPTA—C. J. —I agree.

[IN THE ANDHRA PRADESH HIGH COURT.]

COMMERCIAL & INDUSTRIAL BANK, HYDERABAD

v.

AUTHORITY, PAYMENT OF WAGES ACT.

Satyanarayana Raju, J.

January 21, 1958.

HYDERABAD SHOPS & COMMERCIAL ESTABLISHMENTS ACT, 1951, SECTION 4(I)(G)—EXEMPTIONS—"ESTABLISHMENTS IN BANKS", MEANING OF—CLERICAL ESTABLISHMENTS IN BANKS, WHETHER EXEMPTED.

PAYMENT OF WAGES ACT, 1936, SECTION 15—APPLICATION TO HYDERABAD SHOPS & COMMERCIAL ESTABLISHMENTS ACT, 1951—NOTIFICATION APPOINTING "AUTHORITY"—WHETHER NECESSARY TO CONFER JURISDICTION ON "AUTHORITY"—NOTIFICATION ISSUED AFTER FILING OF PETITION BEFORE "AUTHORITY"—EFFECT.

Section 4(1)(g) of the Hyderabad Shops & Commercial Establishments Act, 1951, which exempts "establishments in banks" from the scope of the Act exempts only establishments such as canteens, restaurants, etc., which may be functioning within the premises of a bank and does not exempt the clerical establishment of a bank.

Under section 37-A of the Act a notification appointing the "authority" to hear and decide disputes and claims arising out of deduction from wages or delay in payment of wages to persons employed in establishments covered by the Act is a necessary condition to the exercise of jurisdiction by the "authority". Where there was no such notification at the time when an application was entertained by an "authority", a subsequent notification appointing such "authority" would not cure the want of jurisdiction.

Writ Petition No. 39 of 1956.

Y. Sivarama Sastri for the petitioner.

Addl. Government Pleader and G. P. Joshi for the respondents.

ORDER

This is an application under article 226 of the Constitution of India, for the issue of writs of *certiorari* and prohibition to quash the order of "the Authority under the Payment of Wages Act", dated 21st February, 1956, and for a direction or order prohibiting the said Authority from further enquiring into the petition filed by respondents 2 to 7 before him.

The Commercial and Industrial Bank, Ltd., was registered as a joint stock company in the year 1352-F under the Hyderabad Companies Act of 1320-F. The first respondent is the Authority under the Payment of Wages Act, 1936, having been appointed as such under a notification

issued by the Hyderabad Government on 14th September, 1956, published in the Official Gazette, on 27th September, 1956. Respondents 2 to 7 were employees of the petitioner bank.

On 20th July, 1955, the Reserve Bank of India served a notice on the petitioner bank refusing to give a licence, which, according to the petitioner, had resulted in the Bank ceasing to transact banking business. On 1st August, 1955, the petitioner bank served notice on its employees (respondents 2 to 7) giving them intimation of its intention to terminate their services subject to the payment of a month's salary. Respondents 2 to 7 thereupon filed a petition before the Labour Commissioner, Hyderabad, seeking his interference alleging that there was a retrenchment by the bank. The Labour Department initiated conciliation proceedings which finally resulted in an agreement between the parties on 27th September, 1955. Pursuant to the said agreement, the petitioner bank issued fresh notice on 28th September, 1955, intimating respondents 2 to 7 that their services should be treated as terminated with effect from the afternoon on 27th September, 1955. On 24th October, 1955, respondents 2 to 7 filed a petition before the 1st respondent under section 37-A read with section 2 (5) of the Hyderabad Shops and Establishments Act (X of 1951), as amended by Act XXX of 1952 seeking an order for payment of Rs. 41-14-6 towards their wages in respect of the period from 28th to 30th September, 1955. On this petition being presented before him, the 1st respondent called upon the petitioner bank to show cause as to why the prayer of respondents 2 to 7 be not allowed. By means of a counter filed on 16th November, 1955, the petitioner bank took objection to the jurisdiction of the 1st respondent to entertain the petition. In an interim order, dated 15th February, 1956, the 1st respondent repelled the objection raised by the petitioner bank to his jurisdiction and directed the parties to adduce their contentions on the merits. On the said order being communicated to the petitioner bank, the bank filed the above writ petition for the reliefs enumerated above.

Mr. Sivarama Sastry appearing for the petitioner bank has raised two contentions before me: (i) that the Hyderabad Shops and Establishments Act does not apply to the Bank establishments, and (ii) that the 1st respondent had no jurisdiction to entertain the petition on the date on which it was presented having regard to the fact that there was no notification designating him as the "authority" under section 37-A of the Act.

For an appreciation of the first of the above contentions, it is necessary to read the preamble and the relevant provisions of the Hyderabad Shops and Establishments Act (hereinafter referred to as the Act). The preamble states that the Act has been made for the regulation of

conditions of work in shops, commercial establishments, restaurants theatres and other establishments and for certain other purposes. 'Commercial establishment' has been defined in section 2 (5) as follows:

" 'Commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency or which is a clerical department of a factory or industrial undertaking, or which is an insurance company, Joint Stock Company, Bank, broker's office or exchange and includes such other establishment as the State Government may by notification declare to be a commercial establishment for the purpose of this Act."

The definition of 'Establishment' is contained in section 2 (8) of the Act which reads:

" 'Establishment' means a shop, commercial establishment, restaurant, eating house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purpose of this Act."

Section 4 of the Act exempts certain persons and establishments from the operation of the Act and the material provision reads:

" 4 (1) Nothing contained in this Act shall apply to—

(a) to (f).....
(g) establishments in Banks."

Relying upon this exemption made in favour of "establishments in Banks", counsel for the petitioner has argued that respondents 2 to 7 who are part of the clerical establishment in the bank are not entitled to claim the benefits of the Act. Section 2(5) mentions 'bank' as being within the definition of 'commercial establishment' and section 2(8) defines 'establishment' as meaning commercial establishment. Therefore, banks are clearly establishments as defined in section 2(8). Learned counsel for the petitioner argues that section 4(1)(g) contains a specific exemption in favour of "establishments in banks" and that, therefore, this provision must prevail. If an establishment comprehends within its scope a bank, the provision in section 4(1)(g) must be read as 'bank in banks' which certainly makes no sense. It is well settled that an interpretation clause of a comprehensive character is not to be taken as strictly defining what the meaning of a word must be under all circumstances but merely as declaring what things may be comprehended within the term where the circumstances require that they should. Applying this well-known canon of construction to the instant case and having regard to the intention of the Legislature which is broadly stated in the preamble of the Act, clause (1)(g) of section 4 must be understood as applying to establishments such as canteens, restaurants, co-operative

societies, stores, etc., which may be functioning within the premises of a bank. If the intention of the Legislature were to exempt the clerical establishments in banks from the operation of the Act, clause 1 (g) would not have read as "establishments in banks". It is no doubt true that the argument advanced by the learned counsel for the petitioner is plausible, but, taking an overall view of the expressed intention of the framers of the Act in the preamble and the language employed in clause (1)(g) of section 4, I have come to the conclusion that clerical establishments in banks are not excluded from the benefits of the Act.

Coming to the second of the contentions raised by the learned counsel for the petitioner, it is necessary to note that the Shops and Establishments Act when it was originally enacted did not contain section 37-A. It was added by Act XXX of 1952, published in the Gazette Extraordinary, dated 25th July, 1952. Section 37-A makes the provisions of section 15 of the Payment of Wages Act applicable *mutatis mutandis* to claims arising out of deductions from wages payable under the Hyderabad Shops and Establishments Act and provides that the reference to an Inspector under section 15 of the Payment of Wages Act shall be deemed to be a reference to the Inspector appointed under the Hyderabad Act. The unamended Act no doubt contained a provision, viz., section 46 which empowered the State Government, by notification, to authorise any officer or authority subordinate to them to exercise any one or more of the powers vested in them by or under this Act. It is common ground that the State Government did not make any notification under section 46 authorising any officer or authority to exercise those powers. A notification was made by the Hyderabad Government only on 14th September, 1956, which was published in the Official Gazette on 27th September, 1956. It reads:

"Hyderabad Government Gazette, dated 27th September, 1956 (page 1157).

Labour Department Notifications (under H. S. & E. Act),
No. L/114/56/62. dated 14th September, 1956.

In exercise of the powers conferred by section 37-A of the Hyderabad Shops and Establishments Act, 1951 (X of 1951), read with section 15 of the Payment of Wages Act, 1936 (IV of 1936), the Rajpramukh hereby appoints the Labour Commissioner, and the Deputy Labour Commissioner, who have been notified as Commissioners for Workmen's Compensation (under Labour Department, Notifications No. 129, dated 31st August, 1951, Gazette part I. D., dated 27th September, 1951, page 944 and No. 172, dated 2nd October, 1952, Gazette Extraordinary No. 167, dated 28th October, 1952, page 1117) to be the "Authorities" to

hear and decide all claims arising out of deductions from the wages or delay in payment of wages of persons employed in establishments situated at the places wherein the provisions of the Hyderabad Shops and Establishments Act (X of 1951) have been brought into force."

Now, it has to be noted that the application filed by respondents 2 to 7 before the 1st respondent was on 24th October, 1955. As has been already noted, the amending Act was published in the Gazette on 25th July, 1952, and the notification was made on 14th September, 1956, i.e., four years after the amending Act was incorporated in the statute. During these four years and even prior thereto, there was no notification made under the Shops and Establishments Act authorising any officer to exercise the powers vested in the Government under that Act and it was during the pendency of the application filed by respondents 2 to 7 that this notification empowering the Labour Commissioner and the Deputy Labour Commissioner to be the authorities to hear and decide all claims under the Act, was issued. Having regard to the fact that on the date on which the petition was presented before the 1st respondent, there was no notification authorising him to hear and decide the claims arising out of the Shops and Establishments Act, he had no jurisdiction to entertain the petition as is clear from the language employed in section 37-A that such a notification is an essential condition for the exercise of the jurisdiction by the 1st respondent.

Here it is necessary to deal with the contention raised by Mr. Chowdary, the learned Government Pleader on behalf of the respondents. According to him, the petition was presented and was pending on the file of the 1st respondent and though on the date the 1st respondent passed the interim order the notification required under section 37-A had not been made, it would only have the result of invalidating the interim order but it would not affect the competence of the first respondent to deal with the petition, as, during the pendency of the petition, the necessary authority was conferred on him by means of the notification referred to above. The difficulty in accepting this contention lies in the fact that the 1st respondent on the date on which he entertained the petition had no jurisdiction to do so and the subsequent notification would not confer that jurisdiction which he initially lacked, firstly, because in a matter like this there can be no retrospective vesting of jurisdiction, and, secondly, because the notification itself made no reference to pending applications. The second contention raised by the learned counsel for the petitioner must, therefore, be accepted. If so, there is patent want of jurisdiction on the part of the 1st respondent to deal with the petition presented by respondents 2 to 7 on 24th October,

1955. If the above conclusion is correct, this writ petition must succeed. A writ of prohibition will issue restraining the first respondent from dealing with the petition. The petitioner will have his costs from the respondents. Advocate's fee Rs. 100.

[IN THE INDUSTRIAL TRIBUNAL, BIHAR.]

GHAMANDI RAI AND OTHERS

v.

RAMESHWAR JUTE MILLS LTD.

Shri A. Hasan

August 26, 1958.

LAY-OFF—LAY-OFF CAUSED BY STRIKE IN A DEPARTMENT—WORKMEN, WHETHER ENTITLED TO COMPENSATION FOR LAY-OFF—INDUSTRIAL DISPUTES ACT, 1947, SECTION 25E(iii).

Under section 25E(iii) of the Industrial Disputes Act, 1947, a workman is not entitled to any lay-off compensation if the lay-off is due to strike or slowing down of production on the part of workmen in another part of the establishment. Therefore, where lay-off is caused in a jute mill on account of the stay-in-strike of the workers in the beaming section, the workers laid off will not be entitled to any compensation for the lay-off.

Miscellaneous Case No. 90 of 1957 under section 33A of the Industrial Disputes Act, 1947.

R. N. Sharma and A. K. Dey for the workmen.

P. C. Lodha for the management.

AWARD

This is a petition under section 33A of the Industrial Disputes Act by the 11 complainants who are employees of the opposite party, the management of Rameshwar Jute Mills, Ltd. It is alleged that the petitioners were laid off from 16th August, 1957, without any justification. The management did not follow the procedure as prescribed by the Industrial Disputes Act or the provisions laid down in the Certified Standing Orders of the Company. It is said that all this was done during the pendency of adjudication proceeding before the Tribunal and it amounted to the change of the service conditions of the petitioners to their prejudice. As the management did it without the permission of the Tribunal it was guilty of the contravention of section 33 of the Industrial Disputes Act. The causes for stoppage of work are said to be not beyond the control of the management. According to the complainants the act of the management in laying off the workers amounted to infliction of punishment upon them in the shape of loss of wages and

other benefits and, therefore, the management was guilty of the breach of the provisions of law and liable for it.

The opposite party in its written show cause contended that the stoppage of work in the factory was the result of a stay-in-strike resorted to by the beamers in the beaming section. Thus it was contended that the stoppage of the work was under circumstances beyond the control of the management and as such the lay-off was legal and justified. It was further stated that in the circumstances of the case the provisions of section 33A of the Industrial Disputes Act were not attracted and the complaint petition itself was *mala fide* and not maintainable.

So far as the preliminary objection to the maintainability of the application is concerned it has to be disposed of at once. If the lay off was avoidable as alleged by the union undoubtedly the management committed breach of the provision of section 33 of the Industrial Disputes Act in enforcing the lay-off and thus altering the service conditions of the workmen to their prejudice. Thus, on the allegations made in the petition of complaint there was breach of the provisions of section 33 of the Industrial Disputes Act and the petition was maintainable.

Coming to the case on its merits it would appear from section 25E of the Industrial Disputes Act that a workman is not entitled to any lay-off compensation if it is due to strike or slowing down of production on the part of workmen in another part of the establishment [*Vide sec. 25E (iii) of the Industrial Disputes Act*]. In this case it is the defence of the management that the beamers by their stay-in-strike brought the work in the Beaming Section and other sections as well to a standstill and therefore the management was compelled to lay off these petitioners along with others. It is not disputed that the work in the Beaming Section came to a standstill for want of spools. The question to be considered is whether the responsibility for the shortage of spools was on the management or on the beamers. It is the case of the management that at the relevant time the beamers went on stay-in-strike and thus stopped the work in the Beaming Section. The contention of the Union is that spools used to be supplied to the beamers by winders or sweepers. It is rather unfortunate that mere supply of spools should have been the bone of contention between the parties and responsible for such unhappy consequences. It is the contention of the management that the Beamers themselves stopped work by refusing to take spools from the Winding Section which they used to take. Perhaps it would have been wiser on the part of the management to avert the situation by arranging for one or two spool coolies for supply of spools till the dispute was finally settled by negotiation instead of allowing the

whole mill to come to a stand-still. It is obvious that the plague spot was not here but somewhere else and these were the ugly symptoms exhibiting themselves in day to day work. But, all the same, the evidence on the record disclosed as found in the Misc. Case No. 104/57 on the same subject that the beamers by refusing to take the spools and by insisting on the resumption of the old practice of the supply of spools by spool coolies brought the work to a stand-still. That being so under section 25E(iii) the management could not be made liable for the lay-off compensation claimed and I am unable to grant them any relief.

(IN THE LABOUR COURT, RANCHI.)

TATANAGAR FOUNDRY CO., LTD.

THEIR WORKMEN.

Shri Gobind Mohan Mishra.

August 31, 1958.

TERMINATION OF SERVICE—TERMINATION IN ACCORDANCE WITH STANDING ORDERS FOR OVER-STAYING LEAVE—WORKMAN OVER-STAYING SICK LEAVE AND NOT COMPLYING WITH DIRECTIONS OF MEDICAL AUTHORITIES—TERMINATION, WHETHER JUSTIFIED—WHETHER ENTITLED TO REINSTATEMENT.

A workman who had been in service for some time was found to be suffering from non-infectious leprosy and he was directed by the medical authorities to report regularly at the clinic. He was granted leave from time to time but, after the expiry of the leave, he neither attended work nor did he apply for extension of the leave. The workman did not comply with the directions of the medical authorities. The management, in accordance with the standing orders, struck off his name from the muster-roll. After two years, the workman applied for reinstatement: Held, that in the circumstances, the action of the management was justified and that the workman was not entitled to any relief.

Reference No. 5 of 1958.

S. K. Chaudhury for the management.

S. C. Patnaik and S. S. Chaudhury for the workman.

AWARD.

This industrial dispute has been referred for adjudication to this Court under section 10(1) of the Industrial Disputes Act, 1947, by order of the Government of Bihar in their Labour Department notification no. III/D1-6024/58-4119, dated the 13th March, 1958. The point of dispute as specified in annexure 'A' to the said notification is as follows:

"Whether the discharge of the following two workmen was justified? If not, to what relief they are entitled?"

- (1) Shri D. N. Khaskil, T. no. 2476 and
- (2) Shri Bikram, T. no. E/277. "

At the very outset it may be mentioned that soon after conclusion of the hearing of this case it was brought to my notice by both sides that Shri Bikram, one of the two workmen referred to above is dead. A petition was also filed by Shri S. S. Chaudhury, General Secretary of the Tatanagar Foundry Worker's Union, Jamshedpur representing the workmen in this case that Shri Bikram had died and hence his case may be dropped. In this circumstance, the case of Shri Bikram must be dropped and it is not necessary to set out the facts of the case relating to him.

As regards the other workman involved in this case, namely, Shri D. N. Khaskil, it is stated in the written memorandum submitted on behalf of the workmen that he was an old employee of the Tatanagar Foundry Company, Ltd., Jamshedpur (hereinafter referred to as the Company) and had rendered faithful service to that Company for more than a decade but as he was attacked by a serious disease and the Company made no arrangement for expert treatment so he had no other option but to go on leave and to get himself treated elsewhere. As the treatment continued for years so it could not be possible for him to turn up in time and join his duties but as soon as he recovered from his illness he rushed up to join his duty but the Company did not allow him to do so. The workman then approached the Tatanagar Foundry Workers' Union which took up the matter with the management but with no fruitful result. The said Union then requested the Assistant Labour Commissioner, Jamshedpur, for intervention and a conciliation proceeding was held but as the Company did not agree to take him back in service the present reference was made.

On behalf of the management it is alleged that the present reference is not an industrial dispute and in fact no such dispute was ever raised between the parties and that this Court has no jurisdiction to adjudicate this case. As regards merits, it is admitted by the management that Shri D. N. Khaskil was in their employ but it is alleged that he was suffering from non-infectious leprosy from sometime before 1951 and he had been asked by the Company's Medical Officer to attend the Leprosy Clinic under the Rotary Club, Jamshedpur. The workman did not carry out this instruction till the 13th December, 1954, when the Company's Medical Officer, considering that he would now be suffering from infectious leprosy, made him unfit for work from that date. On being declared unfit Shri Khaskil applied for leave on medical ground

from the 23rd December, 1954, to the 20th June, 1955. The leave was granted to him. After the expiry of that leave he again applied for extension thereof till the 17th December, 1955, which was also allowed. After the 17th December, 1955, Shri Khaskil did not join his duties nor did he apply for extension of leave. In fact, no information regarding him was received by the Company thereafter. Therefore, according to the Company's Service Rules and Standing Orders his name was struck off the rolls on and from the 26th December, 1955. For about two years thereafter the Company did not receive any information whatsoever regarding Shri Khaskil. On the 24th December, 1957, Shri Khaskil submitted an application to the Company requesting the latter to take him back in service. The Company could not consider the appeal of Shri Khaskil due to the fact that he was suffering from leprosy and had refused to go under treatment when it had been offered to him. Moreover, it is contended by the management that Shri Khaskil being away from the Company for a long time without any information or application for leave had been rightly dealt with under the Company's Standing Orders and Service Conditions and was not entitled to be reinstated in service.

Exhibit E/1 is a copy of the letter dated the 19th November, 1952, from the Medical Officer of Health, Tisco Health Department, Jamshedpur, addressed to the Works Manager, Tatanagar Foundry Works Limited, in which it was stated that Shri D. N. Khaskil and some other workmen had been absent from the Leprosy Clinic for some time. It was, therefore, requested in that letter that the said workmen should be asked to attend the Leprosy Clinic regularly every week otherwise their disease would increase and it might turn infectious and make the workmen unfit for work. Similar letters were written in respect of Shri D. N. Khaskil and other workmen by the Medical Officer of Health to the General Manager, Tata Nagar Foundry Company Ltd., on the 1st January, 1954, the 2nd October, 1954, and the 31st March, 1955, (copies Exts. E/2, E/3 and E/4 respectively). These letters show that Shri D. N. Khaskil had been referred by the Company to the Leprosy Clinic under the Tisco Health Department, Jamshedpur, for treatment of leprosy, but he did not attend the clinic regularly. No evidence has been adduced on behalf of the workmen to deny these facts. Exhibit D/3 is an extract from the Medical Unfit Register showing that Shri D. N. Khaskil was declared unfit from the 13th December, 1954, and that from the 23rd December, 1954, to the 20th June, 1955, he was on medical leave which was further extended to the 17th December, 1955. Exhibit D/3 further shows that Shri D. N. Khaskil was discharged on

the 26th December, 1955, due to long absence. These facts are corroborated by the entries in the Muster Roll for the months of December 1954, June 1955 and December 1955 (*vide* extract Ex. D/4). These facts also have not been disputed on behalf of the workmen at the time of hearing. As has already been said above according to the case of the management Shri D. N. Khaskil was discharged on the 26th December, 1955, because after the 17th December, 1955, he did not join his duties nor did he make any prayer for extension of leave. It is not the case of the workmen that Shri D. N. Khaskil made any application for extension of leave after the 17th December, 1955. If he wanted to continue in service it was his duty to apply for extension of leave from time to time till he became fit for service. In his application dated the 24th December, 1957, made to the Company (copy Ex. A) Shri D. N. Khaskil admitted that he was discharged due to illness and was unfit for 4 years. But he has given no reason why he did not apply for extension of leave during the period he was unfit nor has he given any medical proof of his present fitness. According to clause 12(d) of the 'Standing Orders' and Service Conditions of the Company any employee overstaying leave or absent for 6 days or more without permission is liable to be struck off the Muster Roll. It would thus appear that the discharge of Shri D. N. Khaskil on the 26th December, 1955, was, in the above circumstances, in accordance with the aforesaid clause in the Standing Orders and Service Conditions of the Company. Therefore, it cannot be said that the discharge of Shri D. N. Khaskil by the Company was not justified.

In view of my above finding the question as to whether Shri D. N. Khaskil is entitled to any relief does not arise according to the term of reference. Even if it is assumed that the question whether Shri D. N. Khaskil is entitled to any relief does arise even in spite of my above finding I would hold that he is not entitled to any relief because as has been said above the action of the Company in discharging him was perfectly in accordance with the Standing Orders and was due entirely to the laches of the workman concerned.

As regards the objections on points of law raised by the management in their written statement and already referred to above, it has been contended by the learned lawyer appearing on behalf of the management that it is admitted by the workman concerned in Ext. A that he had been discharged due to illness and was unfit for 4 years. This obviously shows that not only before the orders of discharge but even for several years after the order of discharge the workman was admittedly unfit for service. In Ex. A the workman alleged that he was fit for duty at the time of making that application and, therefore,

he requested the management to consider his case favourably and take him back in service. The dispute in this case, according to the management was, therefore, not regarding the discharge of the workman concerned but regarding the question as to whether he should be re-instated in service or not. At the time when the question of reinstatement was agitated the workman concerned was not in the employ of the company and as such, according to the management, the present dispute cannot be said to be an industrial dispute so as to invoke the jurisdiction of this Court under the Industrial Disputes Act. It must be conceded that from Ext. A as well as the letter Ex. I, written by the General Secretary of the Tatanagar Foundry Workers' Union to the management, it appears that the real question that was agitated on behalf of the workmen was of his reinstatement. But it is needless to say that the question of reinstatement of the workman concerned would necessarily involve the question as to whether his discharge by the Company, in the particular circumstances of his case, was justified or not. It is also true that the workman concerned was not in the employ of the Company at the time when the question of his reinstatement was agitated either by the workman himself or by the Union. But, section 2(s) of the Industrial Disputes Act, as now amended, clearly provides that the expression "workman" under the Industrial Disputes Act includes a dismissed or discharged workman whose dismissal or discharge has led to an industrial dispute. In the circumstances, I have no hesitation in holding that for the purposes of this dispute Shri D. N. Khaskil must be held to be a workman within the meaning of that expression as used in the Industrial Disputes Act. It is clear from Exs. 1 and 4, the copies of letters addressed by the General Secretary of the Tatanagar Foundry Workers' Union to the management as well as the Assistant Commissioner of Labour, Jamshedpur, that the case of Shri D. N. Khaskil was taken up with the management as well as with the Assistant Commissioner of Labour by the Union of the workmen of the Company. It is an established principle of law that the dispute of an individual workman with the management may become an industrial dispute if the case of that individual workman is taken up by the workers in general or union of workers. It is thus evident from what has been stated above that the present dispute is an industrial dispute and cognizable as such by this Court. I would, therefore, overrule the objection of Mr. Chaudhury that this Court has no jurisdiction to decide the present reference. But, as I have already found, on merits, it cannot be said that the order of discharge of Shri D. N. Khaskil was not justified and consequently he cannot be entitled to any relief.

It may not be out of place to mention here that after the hearing of this case had commenced it was given out by the management

that if the workman concerned produced a certificate from a competent medical authority, say from the Government Leprosy Clinic, Purulia, to the effect that he was now free from leprosy the management would consider to give him a job in the company. On behalf of the workmen also it was suggested to give some time to enable the workman to obtain such certificate so that the case might be amicably settled between the parties. The case was adjourned several times at the request of both sides and particularly at the request on behalf of the workmen in order to give the workman an opportunity to obtain the aforesaid certificate of fitness, but the applicant failed to produce any certificate of fitness. The case is, therefore, disposed of on the materials on record as indicated above.

[IN THE PUNJAB HIGH COURT.]

ORIENTAL TEXTILE FINISHING MILLS

v.

STATE OF PUNJAB AND OTHERS.

Gosain, J.

July 31, 1958.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33-A—COMPLAINT BY AGGRIEVED WORKMAN—JURISDICTION OF TRIBUNAL—WHETHER TRIBUNAL CAN DECIDE ON MERE CONTRAVENTION OF SECTION 33—DECISION ON MERITS OF COMPLAINT, WHETHER NECESSARY.

On a complaint under section 33-A of the Industrial Disputes Act, 1947, the Industrial Tribunal has not only to decide whether the provisions of section 33 of the Act have been contravened but also to adjudicate upon the merits of the complaint. An Industrial Tribunal cannot, therefore, order reinstatement of a dismissed workman only because the dismissal was contrary to the provisions of section 33. The Tribunal will also have to decide whether the dismissal was justified on its merits.

Civil Writ No. 1154 of 1957.

Bhagirath Dass and R. Sachar for the management.

Anand Swaroop for the workman.

ORDER.

The Punjab Government by their notification No. 1200-C-Lab-57/219771, dated the 25th September, 1957, referred to the Labour Court, Amritsar, an industrial dispute between the Oriental Textile Finishing Mills, Chheharta, on the one hand and the workers of the said Mills on the other. During the pendency of the dispute the management of the Mills dismissed an employee of theirs, Shri Krishan Lal, respondent No. 3.

The aforesaid employee filed a complaint in the Labour Court under Section 33-A of the Industrial Disputes Act, 1947, claiming that he had been wrongfully dismissed, without previous permission of the Labour Court. By its award dated the 27th November, 1957, published in the Punjab Government Gazette dated the 13th December, 1957, the Labour Court held that the complainant, Krishan Lal, would be deemed to have never been dismissed or discharged and would be entitled to full wages for the period for which he was not given any work. The management of the Mills have come up to this Court under article 226 of the Constitution of India and have prayed for the issuance of an appropriate writ quashing the said award.

The main allegation of the petitioners is that the Labour Court was bound to go into the merits of the dismissal and could not pass an order of reinstatement of the dismissed employee simply on the ground that the employee had been dismissed without previous permission of the Labour Court or that he had not been paid one month's wage as required by proviso to sub-section (2) of section 33 of the said Act. No one represented the Punjab State before me and the petition was opposed only by Krishan Lal, respondent No. 3.

Section 33-A of the Industrial Disputes Act provides:

"Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a (Labour Court, Tribunal or National Tribunal) any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such (Labour Court, Tribunal or National Tribunal) and on receipt of such complaint that (Labour Court, Tribunal or National Tribunal) shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly."

The complaint filed under this section has to be adjudicated upon by the Tribunal or Labour Court as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act. It is not in my opinion sufficient for the Labour Court or Tribunal to quash the dismissal under this section on the short ground that the dismissal has been made contrary to the provisions of section 33. When a complaint under section 33-A is made, the Labour Court or Tribunal is bound to go into two matters, namely:

(1) Whether the dismissal has been made contrary to the provisions of section 33 of the Act, and

(2) Whether the dismissal is unjustified on its merits.

It appears that the object of section 33-A is to avoid multiplicity of proceedings. Instead of Government making an independent reference and calling upon the Tribunal to adjudicate upon that reference, a mere summary procedure is provided by which the workman himself, if he objected to the dismissal can go to the Tribunal and ask the Tribunal to adjudicate upon the dispute between himself and his employer. The fact that the Legislature treats the complaint as if it were a dispute referred to or pending before it, goes to show that the jurisdiction of the Tribunal is not limited merely to consider the question of the contravention of section 33 but to decide on the substantive dispute between the employer and the workman with regard to the dismissal of the workman. When a workman is dismissed in contravention of section 33 of the Industrial Disputes Act, he has two remedies namely :—

(1) To invoke the provisions of section 31 of the Act and to take proceedings against the employer under the same and,

(2) To make the complaint under section 33-A of the Act.

If he chooses to invoke the provisions of section 31 only an employer can be convicted on the short ground that he has contravened the provisions of section 33. If, however, the workman chooses to avail of the provisions of section 33-A, the Tribunal will certainly be bound not merely to find that there has been contravention of section 33 but also to adjudicate upon the merits of the dismissal. If section 33-A only meant that the Tribunal would order re-instatement of the workman on the short ground that he had been dismissed in contravention of section 33, the language of the section would have been entirely different and as plain as the language of section 31 is. It would not be necessary in that case to treat the complaint as an industrial dispute referred to the Tribunal. In *Batuk K. Vyas v. Surat Borough Municipality and Others*, [1952] 4 F.J.R. 471, a Division Bench of the Bombay High Court in a somewhat similar case observed :

"The functions of the Tribunal acting under section 33A in adjudicating upon the dispute and the functions under section 31 of a Criminal Court considering the violation of section 33 are different and the two Tribunals approach the matter from entirely different aspects. A criminal Tribunal trying the employer who is prosecuted for violating section 33 would confine itself to the sole question as to whether there was a breach of the law. The Industrial Tribunal's functions under section 33A are different and much wider. Apart from the breach of the law under section 33 for which a penalty is provided, the Tribunal would be concerned with the question as to whether on merits the employer was justified in discharging the petitioner or changing the conditions of service to his prejudice."

Their Lordships of the Supreme Court in the *Automobile Products of India Ltd. and others v. Rukmaji Bala and others*, [1955] 7 F.J.R. 716 observed at page 723 as under :

"It is also clear that under section 33-A of the 1947 Act the authority is to adjudicate upon the complaint "as if it were a dispute referred to or pending before it" and under section 23 of the 1950 Act the authority is to decide the complaint "as if it were an appeal pending before it". These provisions quite clearly indicate that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate reliefs."

From the above it appears that the Tribunal has not really decided the complaint in a manner warranted by law and this is a patent error which vitiates the award. I would therefore order that an appropriate writ be issued quashing the award and enjoining upon the Labour Court to adjudicate the dispute on merits. In the peculiar circumstances of the case I leave the parties to bear their own costs.

[IN THE MADRAS HIGH COURT.]

"TAMIL NADU", MADURAI

v.

THEIR WORKING JOURNALISTS AND OTHERS.

Balakrishna Ayyar, J.

September 9, 1958.

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF DISPUTE BETWEEN WORKERS AND MANAGEMENT—TRIBUNAL DECIDING DISPUTE BETWEEN SECTION OF WORKERS AND MANAGEMENT—AWARD, WHETHER VALID.

CONDITIONS OF SERVICE—TERMINATION OF SERVICE BY NOTICE—COMMON LAW RIGHT OF EMPLOYER—WHETHER ABRIDGED BY STATUTE—TERMINATION OF SERVICE FOR REPLACEMENT BY HIGHLY QUALIFIED WORKMAN—REPLACEMENT ON AWARD OF HIGHER WAGES TO WORKMEN—WHETHER JUSTIFIED—RIGHT OF LABOUR COURTS TO INTERFERE.

LABOUR COURTS—JURISDICTION—RIGHT TO REINSTATE OR AWARD RELIEF IN CASES OF 'WRONGFUL DISMISSAL'—WHETHER INCLUDES RIGHT TO INTERFERE WITH WRONGFUL TERMINATION OF SERVICE—INDUSTRIAL DISPUTES ACT, 1947, SCHEDULE II, ITEM 3—MEANING OF.

Where the dispute referred to an Industrial Tribunal under section 10(1) of the Industrial Disputes Act, 1947, is stated in the order of reference to be

between the workers of A and the management of A, the Tribunal has no jurisdiction to adjudicate and make an award on the dispute between the working journalists of A and the management of A, and such an award is liable to be quashed for lack of jurisdiction even though the management got an opportunity of presenting its case before the Tribunal and suffered no prejudice.

The common law right of an employer to terminate the services of any of his employees on giving him the customary notice or wages in lieu of notice has not been abridged or abrogated by any statute so far. The Model Standing Orders appended to the Industrial Employment (Standing Orders) Act, 1936, which provide for termination of employment and the notice to be given thereof, only confirm the existence of such right. Where the services of a workman are terminated by the employer so that a better qualified person may be employed in his place, the provisions in the Industrial Disputes Act, 1947, regarding lay-off, retrenchment, or transfer or closure of an undertaking do not apply. Nor is it a case of dismissal for misconduct. The employer is fully entitled to do so within the framework of the existing statute, rules and regulations and the Labour Courts cannot interfere with the action of the employer.

The fact that the employer terminated the services of the workman because he was compelled to pay higher wages by an award cannot prevent the employer from employing persons with higher qualifications who may be available at the higher rates of wages. The management is the proper judge as to the standard of qualifications or efficiency required for its business or the manner in which it should change over to highly trained employees, and the Labour Courts should not interfere with the discretion of the employer in such matters.

The second schedule to the Industrial Disputes Act, 1947, enumerates matters which are within the jurisdiction of Labour Courts and item 3 of the Schedule reads "Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed". The Labour Courts have, therefore, jurisdiction only to interfere in cases of wrongful dismissal and not in cases where there has been no dismissal or where the dismissal was not wrongful. The wrongful termination of the services of a workman (e.g., termination without giving notice or wages in lieu of notice), will not amount to wrongful dismissal so as to entitle the Labour Court to award reinstatement of the workman.

Writ Petition No. 184 of 1958.

V. Thiagarajan for the petitioner.

Mohan Kumaramangalam, K. V. Sankaran and G. Ramanujam for the respondents.

ORDER.

This is a petition for the issue of an appropriate writ to quash the order made by the Labour Court, Madurai, in I.D. No. 1 of 1957.

The material facts are these: The petitioner is the management of a Tamil daily newspaper called *Tamil Nadu*, which is being published from Madurai from about 1951. Three individuals named Ponnuswami, Subramanian and Ramiah, were working as proof readers in the *Tamil Nadu*. Two of them have studied in the fourth form and the third in the sixth form. On 20th December, 1955, Central Act 45 of 1955, called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, came into force. Under section 8 of the Act, the Central Government constituted a Wage Board for fixing the rates of wages of working journalists in accordance with the provisions of the Act. The decision of the Wage Board was published on 11th May, 1957. According to the scheme adopted by the Board the *Tamil Nadu* was classified as an "E" class newspaper. The Wage Board directed that persons employed as proof readers in an "E" class newspaper should be paid an initial salary of Rs. 90 besides certain allowances. In its application to the *Tamil Nadu* these directions meant that the management would have to pay each of these three individuals in all Rs. 138-12-0 per month. This was very much more than these persons had been actually receiving.

The Wage Board defined the functions of a proof reader in these terms:

"Proof reader is a person who checks up printed matter or proof with edited copy to ensure strict conformity of the former with the latter. Factual discrepancies, slips of spelling, grammar and syntax may also be discovered by him and either corrected or got corrected."

On 20th June, 1957, the management served a notice, Ex. W. 5, on Subramanian. The notice set out the duties of a proof reader as defined by the Wage Board, and, went on:

"These functions can be exercised by a person who is adequately qualified. We find that you do not possess the required qualification for a proof-reader. We therefore find your services are unnecessary and superfluous for the work and we are terminating your services with effect from 21st June, 1957. You will be paid three months wages in lieu of notice and also gratuity for two months worked out at 15 days average pay."

On the same day a notice in similar terms was served on Ponnuswami, Ex. W. 6. On 15th May, 1957 the *Tamil Nadu* issued an office order Ex. M. 10, to Ramiah in these terms:

"Proof reader Ramiah, is transferred with immediate effect to Visalakshi Achakam, Madurai."

This Achakam, it was explained to me, is another printing concern under the management of the petitioner. On Ex. M. 10, a note appears in Tamil which may be translated as follows:

"He intimated that he would state his final decision after returning from 'oor'."

On 20th May, 1957, Ramiah signed at the bottom of Ex. M. 10. Apparently it was intended to be acknowledgment of the receipt of the order. The same day Ramiah wrote Ex. W. 3 to the management protesting against his transfer and sent a copy of his protest to the General Secretary of the Madras Union of Journalists. On 21st May, 1957, he handed in a joining report at the Visalakshi Achakam (Ex. M. 11). On 22nd May, 1957, he applied for casual leave for two days on the ground that he was not feeling well in "body and mind" (Ex. M. 12). On 24th May, 1957, he applied for two more days' casual leave (Ex. M. 13). On 27th May, 1957, he applied for leave till 1st June, 1957 (Ex. M. 14). Along with Ex. M. 14 he sent a medical certificate in which it was stated that he was suffering from "pyuria" and required rest and attention for one week. On 3rd June, 1957, he applied for further leave from 2nd June, 1957, to 16th June, 1957, (Ex. M. 15) (16th July, 1957, appearing in the copy of Ex. M. 15 that has been given to me is apparently a clerical error for 16th June 1957). Along with Ex. M. 15 Ramiah sent a certificate from a medical practitioner to say that he was suffering from influenza.

On 20th June, 1957, the management wrote Ex. W. 16 to Ramiah as follows:

"We find that you are affected by ill-health continuously and you are not fit physically also for any work in our press. Ever since you joined duty here you have not rendered service on account of ill-health. We are, therefore, hereby constrained to terminate your services on the ground of continued absence on account of ill-health from 21st June, 1957, Ex. W. 16."

The management appointed three others in the place of Ponnuswami, Subramanian and Ramiah. Of these one is a B.A., with a first class in Tamil, a second is a B. A. and F. L. and the third is a B.A. and B.L.

Ponnuswami, Subramanian and Ramiah complained that the termination of their services was unlawful. Their case was taken up by the Madras Union of Journalists, and, certain conciliation proceedings were initiated. On 15th July, 1957, the Labour Officer, Madurai, reported to Government that efforts at settlement had failed. On 4th September, 1957, the Government passed an order in their Department

of Industries, Labour and Co-operation, bearing G. O. Ms. No. 2924, referring the matter for adjudication by the Labour Court at Madurai. The notification begins:

"Whereas the Government are of opinion that an industrial dispute has arisen *between the workers* and the management of *Tamil Nadu*, Madurai, in respect of matters mentioned in the annexure to this Order;

and whereas, in the opinion of the Governor of Madras, it is necessary to refer the said dispute for adjudication;" etc.

The questions set out in the annexure to the notification read as follows:—

"(1) Whether the discharge of V. Ponnuswami, and R. Subramanian, proof-readers, is justified and to what relief they are entitled;

(2) Whether the transfer of L. Ramiah to Visalakshi Achakam and his subsequent discharge are justified and to what relief he is entitled."

On 12th February, 1958, the Labour Court, Madurai, passed an award finding that the discharge of Ponnuswami and Subramanian was not justified and that they were entitled to be reinstated with back wages. In respect of Ramiah it found that his transfer to the Visalakshi Achakam was not a *bona fide* one because the transfer was prompted by the desire of the management to avoid giving him the benefits of the decision of the Wage Board. The Court directed that he too should be reinstated with back wages from the date of exhibit W. 16, the order terminating his services.

The present petition has been filed by the management for issue of a writ to quash the order embodying these directions of the Labour Court.

The first contention of Mr. Thyagarajan, the learned advocate for the petitioner, may be thus summarised. Unlike an ordinary civil Court a labour Court has no general, much less inherent, jurisdiction in any class of matter. Beyond those which can be derived from or traced to sections 7, 10, 14 and 15 of the Industrial Disputes Act, a Labour Court has no power or authority whatever. Before it can acquire jurisdiction in any particular case an industrial dispute must be referred to it by the appropriate Government and its jurisdiction is limited to the disputes so referred. If say, questions X and Y are referred to the Labour Court it will have no power or jurisdiction to adjudicate on dispute Z. If the disputes referred to it are between A and B, it cannot adjudicate on a dispute between B and C. In the present case, the order of the Government very specifically recites that the parties to the dispute were the *workers of Tamil Nadu* on the one side and the *management of Tamil Nadu* on the other. As a matter of actual fact, however, the workers of *Tamil Nadu* were never before the Labour Court. The

only persons before the Labour Court were a small section of the workers of *Tamil Nadu* and consisting of the working journalists on that paper, and, these working journalists were represented not by anybody on behalf of the workers of *Tamil Nadu* but by the Madras Union of Journalists. The working journalists of *Tamil Nadu* cannot be equated to the workers of *Tamil Nadu*; a part is not the whole.

In the award which the Labour Court passed it set out the array of parties as follows:—

Between: Working Journalists of *Tamil Nadu*, represented by the Madras Union of Journalists, Madras: Petitioners

and The Management of *Tamil Nadu*, Madurai: Respondent.

The claim statement before the Labour Court was filed not by the workers of *Tamil Nadu* at all but by the General Secretary of the Madras Union of Journalists on behalf of the working journalists of *Tamil Nadu*. In effect, therefore, the position is that while the dispute which Government referred to the Labour Court was between A and B, the adjudication was between C and B, A being the workers of *Tamil Nadu*, B the management and C the working journalists of *Tamil Nadu*, represented by the Madras Union of Journalists.

On the other side, Mr. Mohan Kumaramangalam explained that an examination of the papers leading up to the order of reference which the Government made would show that all through the claim of Ponnuswami, Subramanian and Ramiah had been espoused by the Union of Journalists. In the report which the Labour Officer, Madurai made to Government on 15th July, 1957, he made it plain that the dispute was between the working journalists and the management of *Tamil Nadu* and that at the conciliation proceedings which he held the Working Journalists were represented by the General Secretary of the Madras Union of Journalists and by a member of its executive committee. The dispute which the Government intended to refer to the Labour Court was the dispute reported on by the Conciliation Officer. The recital in the order of the Government that the dispute was between the workers of *Tamil Nadu* and the management of *Tamil Nadu* is only an unimportant error.

I have no means of determining whether the statement in the G.O. that the dispute was between the workers of *Tamil Nadu* and the management of *Tamil Nadu* was the result of an accidental or inadvertent slip or error, or whether the order was phrased that way deliberately and advisedly. In any case, even if it was a mistake, it was for the Government to rectify the mistake, and, they should have been invited to do so before the adjudication started.

It may be thought that as the management got an opportunity of presenting its case before the Labour Court it has suffered no prejudice. But, when the matter relates to jurisdiction, the question of prejudice becomes irrelevant. Let us suppose that a Second Class Magistrate tries and convicts a person of murder. The Magistrate may have heard and considered evidence fully, fairly and carefully and reached a conclusion to which no exception could possibly be taken. None the less the conviction would be void on the ground that he had no jurisdiction. Where there is no jurisdiction the plea that there has been no prejudice will not avail. On this ground alone the order of the Labour Court is liable to be quashed.

But this is not all. Under the common law an employer is entitled to terminate the services of any of his employees on giving him the customary notice or wages in lieu of notice. This right can be abridged or abrogated only by contract, statute or other rule of law. In many cases employees enter into contracts with their employers in which the term or duration of their engagement is fixed. In such cases when the stipulated period ends the relationship of employer and employee would end automatically without need for notice. Sometimes, such contracts provide that even during the currency of the contract the engagement can be terminated by either party giving to the other notice. In such a case if the employer gives the notice specified in the agreement to the employee he will be entitled to terminate his services. Where, however, the management employs a large number of persons the terms and conditions under which the services of any employee can be terminated are frequently incorporated in the standing orders issued by the management. They take the place of individual contracts. The matter is now placed on a statutory footing by the Industrial Employment (Standing Orders) Act, 1946. Section 3 of the Act requires employers to whom the Act applies to submit to the Certifying Officer five copies of the draft standing orders which they propose to issue. Section 4 specifies the conditions which have to be satisfied before those standing orders can be certified. Generally speaking section 5 requires the Certifying Officer to hear the employers and the workmen in respect of what they may have to say as regards the draft standing orders and finally he has to certify them with such modifications as he considers fit to make. Section 6 provides for appeals. Section 7 indicates the date from which the standing orders take effect. The schedule to the Act sets out matters that have to be provided for in standing orders. Items 8 and 9. of that schedule read as below:

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

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

It will be noticed that item 8 speaks of termination of employment and notice thereof to be given by an employer and workmen. This entry would be entirely meaningless if an employer did not have the right to terminate the employment of any of his employees by giving him notice in the manner provided for in the standing orders. It will be noticed that those two entries make a distinction between termination of employment by the issue of notice and dismissal for misconduct.

I now go to the Industrial Disputes Act, 1947. Section 25-C confers on workmen a right to compensation when they are laid off, that is to say, when the employer cannot give them work for short periods. Section 25-F prescribes the conditions which must be satisfied before an employer can retrench a workman. The word "retrenchment" has been held by the Supreme Court in *Barsi Light Railway case*, [1957] 11 F.J.R. 317, as meaning the discharge of surplus labour or staff by the employer otherwise than as a punishment. Section 25-FFF and section 25-FFF provide for compensation to workmen where an undertaking is transferred from one to another or when an undertaking is closed down.

If it is not a case of lay-off or retrenchment or the transfer of an undertaking or the closing down of an undertaking but a case where an employer proposes to dismiss a workman for misconduct, then various rules provide that he should hold an enquiry which should conform to the principles of natural justice.

The cases of Ponnuswami, Subramanian and Ramiah do not fall into any of these categories. There was no specific written contract between the management of the *Tamil Nadu* on the one hand and either Ponnuswami or Subramanian or Ramiah on the other. Nor does it appear that the management of *Tamil Nadu* had framed any standing orders under the Industrial Employment (Standing Orders) Act. These are not cases of lay-off or of retrenchment or transfer of an undertaking or closure of an undertaking. Nor again were these cases of dismissal for misconduct.

Sub-section (1) of section 41 of the Madras Shops and Establishments Act, 1947, directs that no employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of notice. Sub-section (2) of section 41 gives the person employed a right of appeal to the prescribed authority.

It was admitted before me that the cases of Ponnuswami, Subramanian and Ramiah do not come under this Act.

The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, amends the Industrial Disputes Act in its application to working journalists in certain particulars. But, in this Act too I can see nothing taking away the power of an employer to terminate the services of an employee by giving him the customary or prescribed notice. In fact, in none of the statutes shown to me during the arguments—except the Madras Shops and Establishments Act which has no application here—can I discover anything—subject, of course, to what I have said about lay-off, retrenchment, dismissal and other matters—which takes away the power of an employer to terminate the services of any employee by giving him reasonable notice. On the other hand, the Legislature had inserted item 8 in the schedule to the Industrial Employment (Standing Orders) Act, 1946, relating to the termination of employment and the notice thereof to be given by employer and workmen and that necessarily postulates that both employers and employees have a reciprocal right to terminate their engagement on notice. If there were no such right the entry would make no sense.

I put aside the case of Ramiah for the time being. So far as Ponnuswami and Subramanian are concerned, the matter is plainly one in which the management of the *Tamil Nadu* that is to say the employer of these persons terminated their services and replaced them by others who, in its judgment, were more suitable for the work. This the management was fully entitled to do within the frame-work of the existing statute, rules and regulations. That being so, I find it difficult to see how the Labour Court could have ordered their reinstatement. Even a Labour Court cannot tell a person that he cannot do what in law he is entitled to do.

The second schedule to the Industrial Disputes Act of 1947 enumerates matters within the jurisdiction of Labour Courts. Item 3 of that schedule reads:

"Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen *wrongfully dismissed*."

The expressions "termination of service", "discharge from service" and "dismissal from service" have acquired a fairly definite connotation. Whatever scope there may be for argument about the expressions "discharge from service" or "termination of service", "dismissal from service" means something very different, and, under item 3 the Labour Court would have jurisdiction to order reinstatement only in case of workmen *wrongfully dismissed*. Where there has been no dismissal or where the dismissal was not wrongful, the Labour Court

has no jurisdiction whatever to order reinstatement. As I explained before, an employer is entitled to terminate the services of any employee by giving him notice and replace him by another whom he considers more competent. That would not be a case of wrongful dismissal which will give the Labour Court jurisdiction to interfere.

Ponnuswami and Subramanian gave evidence to say that when they were served with orders terminating their services they made representations to the management and that they were then told that the management did not want to pay them the new scales of pay fixed by the Wage Board, that if they wanted to continue in service they might resign and that they would then be re-employed as clerks but however would be allowed to do the duties of proof readers as before. The Labour Court accepted the evidence of these individuals as it was entitled to. From that evidence the Labour Court also concluded that the management was not prepared to pay these persons the scales of pay recommended by the Wage Board and, that too is a conclusion which the court was entitled to reach.

But that conclusion, however, is not sufficient to dispose of the matter or to support the order made by the Labour Court. I am not suggesting that any employer or in fact any one is entitled or even should be permitted to circumvent or evade compliance with legal obligations—whether those obligations be in respect of wages due to labour or taxes due to Government or honest service to the public. Far from that. But, granting all this, an employer is entitled to say: We are now required to pay wages at such and such rates. For that money we can get persons with superior qualifications or with more advanced training. So we propose to terminate the services of the old hands and take in a more qualified or better lot. This may work hardship on people who have been long in service. None the less the management is entitled to say that.

On this aspect of the matter, the Labour Court made certain comments. One was that the chief proof reader, Nataraja Pillai, was retained in service, that he had studied only up to the III Form and though he claimed that he has obtained the title of Vidwan, that was from a Trichy institute which was not recognised by the Government and which institution had become defunct. On this comment it is enough to say that no management is under an obligation to send out all its old hands; much less is it required to do so simultaneously. If it decides to replace old hands by others more highly trained it is open to it to adopt a phased programme and make the change-over gradual. In fact, if large changes have to be made the inevitable hardship would be reduced if the change is spread over a time and is suitably phased. The

order and the stages in which the change should be effected is entirely a matter within the discretion of the management.

In dealing with the case of Ramiah the Labour Court made certain observations which may be conveniently referred to here. It pointed out that Ramiah had studied up to the IV Form and worked as proof reader for a year and three months in *Dhinacheithi*, a Tamil daily and for two years in *Arunan*, a bimonthly before he joined the *Tamil Nadu*. Ramiah also deposed that he was subjected to a test by the management before he was recruited as a proof reader and that even thereafter he was given tests two or three times in all of which he was successful. On this evidence the Labour Court concluded that Ramiah must have been an efficient man and that, therefore, there was no need to replace him. But surely it is not for the Labour Court to determine what standard of efficiency will suffice, it is for the management to decide that. The running of the concern is not vested in the Labour Court.

So far Parliament has passed no Act prohibiting employers from taking steps which would increase the quality of their services to the public. In respect of certain kinds of employment the law prescribes that no person shall be employed to discharge the duties of a post unless he possesses certain minimum qualifications, general or technical as the case may be. Subject to that minimum it is for the employer to decide what higher standard he will insist on. The Labour Court cannot say you have got on like this for five years, you must get on like this indefinitely. It is not difficult to visualise where such a line will take us. Let us suppose that there is a shop-keeper who trades in a small way with the assistance of a clerk who has been only a few years in school. His business expands or he seeks to expand his business and wants to replace his clerk by another who knows some English or to keep accounts. If the view of the Labour Court were right the shop-keeper cannot do that. Again, let us suppose that a school is started in a small village with a number of untrained teachers. The management, if the reasoning of the Labour Court were right, would be precluded from replacing the untrained teachers it started with by trained hands. It would be precluded from replacing teachers who have passed only say the School Final Examination by others who have taken degrees. A private nursing home which starts with doctors who possess minimum qualifications will be barred indefinitely from replacing them by others who may have received advanced training in the most up-to-date methods in outside countries. I am not suggesting that a school or shop or nursing home is a factory but they will serve

to illustrate my meaning. Enforcement of ideas of this kind would stifle all progress.

Mr. Mohan Kumaramangalam advanced an argument with reference to the conditions of service in Government. He pointed out that Government prescribes certain minimum standards of qualification for entering into Government service but that once a man is recruited he is not replaced merely because some one with superior qualifications is available. That is no doubt so. But there is no analogy between conditions in Government service and conditions in private employment. Conditions in Government service are governed by a complex code consisting of constitutional provisions, statutory enactments, rules framed under statutes and a large mass of rulings and precedents. Besides, there used to be certain traditions about what is done and what is just not done which in particular instances gave even more effective protection than rules and regulations. There is no justification for the transfer *en masse* of the provisions relating to Government service into what is called the private sector. There are also important differences in other respects. The theory is that the whole time of a Government servant is at the disposal of the Government. But, that theory does not apply to private employment. Again, there are regulations about overtime and various other matters which exist in the private sector but which do not exist in various sections of Government service. Finally, on the economic plane there is a vital difference. Governments can levy taxes, employers in the private sector cannot; if a private employer were to content himself with standards of courtesy, carefulness, cost, quality and efficiency with which some departments of Government appear to be pleased, it will not be long before he finds himself in the bankruptcy court.

The position of Ramiah is different from that of the other two. His services were not terminated by the *Tamil Nadu* since he was transferred from *Tamil Nadu* to Visalakshi Achakam. Now, within certain limits which are not very clearly defined, even a private employer has the right to transfer an employee from one branch of his business to another, and, even from one business to another. Thus, for example, a bank may transfer one of its clerks from its office in Mount Road to an office in Broadway and the employee will not be heard to say that the transfer is illegal or improper. But then, if a private employer who has a trade say in hides and skins and also another trade say in drugs and medicines transfers an employee from the drugs business to the hides and skins business, the position would probably be different and the employee entitled to complain. A good deal depends among other things upon the nature of the post to which he is transferred. In the present case there

is evidence that *Tamil Nadu* is a daily newspaper, but not the Visalakshi Achakam. But that is not sufficient to conclude the matter. Without more evidence than is available it is not possible to record a conclusion on the question whether his transfer was justified or not.

I shall, however, assume that the transfer was not justified. In that case the position of Ramiah would be that of a person whose services in *Tamil Nadu* had been wrongly terminated. The termination would be wrongful because he was not given notice or wages in lieu of notice. Still it would not be a case of wrongful dismissal within the meaning of item 3 to the second schedule of the Industrial Disputes Act.

I have already recorded the view that a management is entitled to terminate the services of its employees in order that it may replace them by others who in its view possess superior qualifications. The management of the *Tamil Nadu* was entitled to terminate the services of Ramiah by giving him the usual notice. But it did not do that, instead it offered him another post which he did not take. In the circumstances, what Ramiah is entitled to is wages in lieu of notice together with such gratuity or bonus as he may have earned. He is not entitled to be reinstated.

One other matter remains to be referred to. Visalakshi Achakam terminated the services of Ramiah because he was continuously absent on one ground or other. He produced medical certificates in support of two of his applications for leave. The management, in the circumstances, could have properly said that they did not want to keep a man whose health was so poor, and, on that ground terminated his services.

It was, however, argued that the subsequent conduct of Ramiah could not be taken notice of at all. To that proposition I am not willing to subscribe. I shall explain why, by a simple illustration. Let us take the case of say a head accountant in a Taluk office. He is transferred to another post. Let us also suppose that the transfer was improper. But, it is found that in the new post which he joined he misappropriated Government money. Can it be said that his subsequent conduct cannot be taken notice of and that he should be reinstated in his former post as head accountant? This illustration will suffice to dispose of this argument.

In the result, the writ petition is allowed, but, in the circumstances of the case, without costs.

