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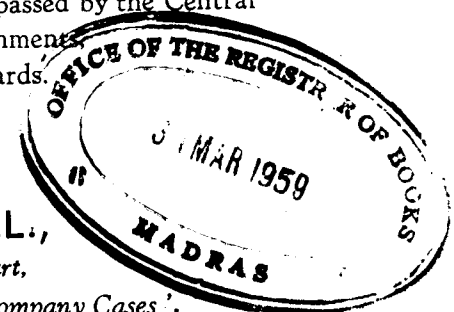
The Acts, Ordinances, Rules and Notifications passed by the Central
Government and the State Governments,
and Reports of Cases and Awards.

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Bonus in Sugar Factories in U.P.

Notification No. 4728 (ST)/XXXVI-A—219(ST)-57, dated Lucknow, September 13, 1958.*

WHEREAS the sub-committee constituted under Order 5 of Government notification no. 987(ST)/XXXVI-A—219(ST)-57, dated February 15, 1958, to examine the cases of sugar factories claiming exemption from payment of bonus prescribed in Order 2 of the said notification, has submitted its report to Government;

AND WHEREAS the recommendations of the sub-committee have been generally accepted by the State Government;

NOW, THEREFORE, in exercise of the powers conferred by section 3 of the U. P. Industrial Disputes Act, 1947 (U. P. Act no. XXVIII of 1947) and in continuation of Government notification no. 987(ST)/XXXVI-A—219(ST)-57, dated February 15, 1958, as amended by Government notification no. 4404 (ST)-XXXVI-A, dated August 18, 1958, the Governor is pleased to make the following order and to direct with reference to section 19 of the said Act that notice of this order be given by publication in the official *Gazette*.

Order

1. (a) The following vacuum pan sugar factories are exempted from the payment of bonus to their employees for the crushing season 1956-57:

- (1) Dhampur Sugar Mills, Dhampur, district Bijnor.
- (2) Balrampur Sugar Mills, Ltd., Balrampur, district Gonda.
- (3) Ganesh Sugar Mills, Anandnagar, district Gorakhpur.
- (4) Laxmi Devi Sugar Mills Ltd., Chhitauni, district Deoria.
- (5) Vishnu Pratap Sugar Works (Private) Ltd., Khadda, district Deoria.
- (6) Mahabir Sugar Mills Ltd., Siswabazar, district Gorakhpur.
- (7) Kanpur Sugar Works Ltd., Padrauna Factory Branch, Padrauna, district Deoria.
- (8) Kanpur Sugar Works Ltd., Kathkuiyan Factory Branch, Kathkuiyan, district Deoria.
- (9) Ishwari Khetan Sugar Mills Ltd., Laxmiganj, district Deoria.
- (10) Maheshwari Khetan Sugar Mills (Private) Ltd., Ramkola, district Deoria.
- (11) Sri Anand Sugar Mills Ltd., Khalilabad, district Basti.
- (12) R. B. Lachhmandass Sugar and General Mills (Private) Ltd., Jarwal Road, district Bahraich.
- (13) M. M. Sugar Mills (Private) Ltd., Munderwa, district Basti.

(b) The following vacuum-pan sugar factories shall pay by way of bonus for the crushing season 1956-57, the amount shown against their names:

Serial no.	Name of factory	Amount
		Rs.
1.	Neoli Sugar Factory, Neoli, district Etah	80,000
2.	Punjab Sugar Mills Ltd., Ghughli, district Gorakhpur	11,233

* U. P. Gaz., Extry., 13-9-'58, p-1.

Serial no.	Name of factory	Amount
3.	Saraya Sugar Mills (Private) Ltd., Sardarnagar, district Gorakhpur	1,03,300
4.	Dewan Sugar and General Mills, Sakhotitanda, district Meerut	44,100
5.	Kamlapat Moti Lal Sugar Mills, Motinagar, district Faizabad	48,900
6.	Cawnpore Sugar Works Ltd., Gauribazar, district Deoria	34,000
7.	Sri Sitaram Sugar Co., Ltd., Baitalpur, district Deoria	37,600
8.	Deoria Sugar Mills Ltd., Deoria	39,300

2. Payment of bonus to their employees by the factories mentioned in order 1 (b) above shall be made within six weeks of this order and in accordance with the provisions contained in orders 1, 3 and 4 of Government notification no. 987(ST) XXXVI-A—219(ST)-57, dated February 15, 1958.

3. This order shall remain in force for a period of one year in the first instance and the period may, if necessary, be extended from time to time.

Assam Factories Rules, 1950—Amendments

Notification No. GLR. 10/58, dated the 10th August, 1958*

In exercise of the powers conferred by Section 112 of the Factories Act 1948 (LXIII of 1948), the Governor of Assam is pleased to make the following amendments in the Assam Factories Rules, 1950, the same having been previously published as required under Section 115 of the said Act.

AMENDMENTS

Rule 13: Powers of Inspectors.—After rule 13 add the following rule 13-A.

"13 A: Qualification of an Inspector.—No person shall be appointed as an Inspector for the purposes of the Act unless he possesses the qualifications hereunder:—

(a) he must not be less than 23 years or more than 35 years of age.

(b) he must have—

(i) had a good general education up to Intermediate standard of a recognised university;

(ii) secured a degree, or diploma equivalent to a degree of a recognised university, in any branch of Engineering, Technology or Medicine and preferably with practical experience of at least two years in a workshop or a manufacturing concern of good standing and in the case of Medical Inspector an experience of at least 2 years in a public hospital or factory medical department or alternatively a diploma in Industrial medicine.

(c) Where for a particular post special knowledge, to deal with special problems, is required, the Government may, in addition to the basic qualifications, prescribe appropriate qualifications for such a post."

Rule 56: Pressure Plant.—The existing rule 56 shall be reworded as follows:—

* Assam Gaz., 17-9-'58., Pt. II A, p. 2875.

'Rule 56: Pressure Plant.—(1) Every plant or machinery other than the working cylinders of prime movers used in a factory, and operated at a pressure greater than atmospheric pressure,

(a) of good construction, sound material, adequate strength, and free from any patent defect;

(b) properly maintained in safe condition;

(c) fitted with:—

(i) a suitable safety valve or other effective device to ensure that the maximum permissible working pressure of the vessel shall not be exceeded;

(ii) a suitable pressure gauge easily visible and designed to show, at all times, the correct internal pressure in lbs. per square inch, and marked with a prominent red mark at the safe working pressure of the vessel;

(iii) a suitable stop valve or valves by which the vessel may be isolated from other vessels or source of supply of pressure;

(iv) a suitable drain cock or valve at the lowest part of the vessel for the discharge of condensed liquid.

(d) thoroughly examined by a competent person:—

(i) externally, once in every period of six months, to ensure general condition of the vessel and the working of its fittings, and

(ii) internally, once in every period of twelve months to ensure condition of the walls, seams and ties, both inside and outside the vessel, soundness of the parts of the vessel, and the effects of corrosion. If by reason of construction of the vessel, a thorough internal examination is not possible, this examination may be replaced by a hydraulic test which shall be carried out once in every two years: Provided that the vessels in continuous processes which cannot be frequently opened, the period of internal examination may be extended to four years,

(iii) hydraulically tested at intervals of not more than four years provided that in respect of pressure vessels with thin walls such as sizing cylinders made of copper or any other non-ferrous metal periodic hydraulic test may be dispensed with on the condition that the requirements laid down in clause (2) are fulfilled:

Provided that it shall be sufficient for the purposes of clause (c) if the safety valve, pressure gauge and stop valve are mounted on a pipe line immediately adjacent to the vessel and where there is a range of two or more similar vessels in a plant served by the same pressure lead, only one set of such mountings need be fitted provided they cannot be isolated.

2. (a) In respect of pressure vessels of thin walls such as sizing cylinders made of copper or any other non-ferrous metal the safe working pressure shall be reduced at the rate of 5 per cent. of the original working pressure for every year of its use after the first five years and no such cylinder shall be continued to be used for more than twenty years after it was first taken into use.

(b) If no information as the date of construction, thickness of walls and safe working pressure is available, the age of the sizing cylinder shall be determined by the competent person in consultation with the Chief Inspector from any other particulars available with the manager.

(c) Every new and second hand cylinder of thin walls to which repairs, which may affect its safety, have been carried out, shall be tested before use to at least one and a half times its working pressure.

(3) Every vessel other than part of a prime mover operated at a pressure greater than atmospheric pressure, and not so constructed as to withstand with safety the maximum permissible working pressure at the source of supply, or the maximum pressure which can be obtained in the pipe connecting the vessel with any other source of supply shall be fitted with a suitable reducing valve or other suitable automatic device to prevent the safe working pressure of the vessel being exceeded.

(4) In cases owing to the nature of the process or the action of the contents of the vessel, a pressure gauge or safety valve or both cannot work reliably, a tested and reliable working thermometer with a sufficient large scale, on which shall be clearly marked the maximum permissible temperature in the vessel or pyrometers or rupture discs in addition to the pressure gauge and safety valve may be fitted as may be directed by the Chief Inspector.

(5) If during thorough examination, doubt arises as to the ability of vessel to work safely until the next examination provided for in these rules then the competent person shall enter in the register prescribed a reasoned statement, to authorise the vessel for further work subject to a lowering of pressure or to more frequent inspection or subject to both of these requirements.

(6) No vessel which has undergone alterations or repairs shall be taken into use unless it is thoroughly examined by a competent person.

(7) A report of the result of every examination made shall be completed in the prescribed Form No. 8 and signed by the person making the examination, and shall be kept available for perusal by an Inspector at any time while the vessel is in service.

(8) No vessel which has previously been used shall be taken into use in any factory for the first time in the factory until it has been examined and reported in accordance with these rules and no new vessel shall be taken into use unless there has been obtained from the maker of the vessel, or from a competent person a certificate specifying the maximum permissible working pressure thereof and stating the nature of the tests to which the vessel and its fittings (if any) have been subjected, and the certificate is kept available for perusal by an Inspector, and the vessel is so marked as to enable it to be identified, to which the certificate relates.

(9) Where the report of any examination under this rule specifies conditions for securing the safe working of a vessel, the vessel shall not be used except in accordance with these conditions.

(10) The competent person making the report of any examination under this rule, shall within seven days of the completion of the examination, send to the Inspector a copy of the report in every case where the maximum permissible working pressure is reduced, or the examination shows that the part cannot continue to be used with safety unless certain repairs are carried out immediately or within a specified time.

(11) The requirements of this rule shall be in addition to and not in derogation of the requirement of any other Act, rules or regulations.

(12) Nothing in this rule shall apply to:—

(a) Any vessel which comes within the scope of the Indian Boilers Act.

(b) Metal bottles or cylinders used for the storage or transport of compressed gases or liquified or dissolved gases under pressure.

FORM No. 8

(Prescribed under Rule 56)

The existing form may be reworded as below—

Report of examination of pressure vessel

1. Name of occupier (or Factory)
2. Situation and address of factory.
3. Name, description and distinctive number of pressure vessel.
4. Name and address of manufacturer.
5. Nature of process in which it is used.
6. Particulars of vessel—
 - (a) Date of construction
 - (b) Thickness of walls
 - (c) Date on which the vessel was first taken into use.
 - (d) Safe working pressure recommended by the manufacturer.
 (The history should be briefly given, and the examiner should state whether he has seen the last previous report).
7. Date of last hydraulic test (if any) and pressure applied.
8. Is the vessel in open, or otherwise exposed to weather or to damp?
9. What parts (if any) were inaccessible?
10. What examination and tests were made? (Specify pressure if hydraulic test was carried out).
11. Condition of vessel. (State any defects materially affecting the safe working pressure or the safe working of the vessel).
12. Are the required fittings and appliances provided in accordance with the rules for pressure vessels?

External

Internal

13. Are all fittings and appliances properly maintained and in good condition?
14. Repairs (if any) required, and period within which they should be executed and any other condition which the person making the examination thinks it necessary to specify for securing safe working.
15. Safe working pressure, calculated from dimensions and from the thickness and other data ascertained by the present examination, due allowance being made for conditions of working if unusual or exceptionally severe. (State minimum thickness of walls measured during the examination).
16. Where repairs affecting the safe working pressure are required, state the working pressure:—
- (a) Before the expiration of the period specified in (14).
- (b) After the expiration of such period if the required repairs have not been completed.
- (c) After the completion of the required repairs.
17. Other observations
- I certify that on.....the pressure vessel described above was thoroughly cleaned and (so far as its construction permits) made accessible for thorough examination and for such test as were necessary for thorough examination and that on the said date, I thoroughly examined this pressure vessel, including its fittings, and that the above is a true report of my examination.

Signature.....
 Qualification.....
 Address.....

 Date.....

If employed by a Company or Association, give name and address

Rule 94: Dangerous operation.—The following item shall be added after item 9 of the list of dangerous operations, namely:—

A. "10. Manufacture of Pottery."

The following schedule shall be added as Schedule X after Schedule IX under rule 94, namely:

SCHEDULE X

Manufacture of Pottery

1. *Definitions:* For the purpose of this Schedule—

(a) "Pottery" includes earthenware, stoneware, porcelain, china tiles any other articles made from clay or from clay or from a mixture containing clay and other materials such as quartz, flint, feldspar and gypsum.

(b) "Efficient exhaust draught" means localised ventilation effected by mechanical or other means for the removal of dust or fume so as to prevent it from escaping into the air of any place in which work is carried on. No draught shall be deemed efficient which fails to remove effectively dust or fume generated at the point where dust or fume originates.

(c) "Fettling" includes scalloping, towing, sand papering, sand sticking, brushing or any other process of cleaning of pottery ware in which dust is given off.

(d) "Leadless glaze" means a glaze which does not contain more than one per cent. of its dry weight of a lead compound calculated as lead monoxide.

(e) "Low solubility glaze" means a glaze which does not yield to dilute hydrochloric acid more than five per cent. of its dry weight of a soluble lead compound calculated as lead monoxide when determined in the manner described below:

A weighed quantity of the material which has been dried at 100° C and thoroughly mixed shall be continuously shaken for one hour at the common temperature with 1,000 times its weight of an aqueous solution of hydrochloric acid containing 0.25 per cent. by weight of hydrogen Chloride. This solution shall thereafter be allowed to stand for one hour and then filtered. The lead salt contained in the clear filtrate shall then be precipitated as lead sulphide and weighed as lead sulphate.

(f) "Ground or powdered flint or quartz" does not include natural sands.

(g) "Potter's shop" includes all places where pottery is formed by pressing or by any other process and all places where shaping, fettling or other treatment of pottery articles prior to placing for the biscuit fire is carried on.

2. *Efficient exhaust draught—*

The following processes shall not be carried on without the use of an efficient exhaust draught—

Sub-Clause (i)—All processes involving the manipulation or use of a dry and unfritted lead compound.

Sub-Clause (ii)—The fettling operations of any kind, whether on greenware or biscuit, provided that this shall not apply to the wet fettling, and to the occasional finishing of pottery articles without the aid of mechanical power.

Sub-Clause (iii)—The sifting of clay dust or any other material for making tiles or other articles by pressure, except where :

(a) this is done in a machine so enclosed as to effectually prevent the escape of dust ; or

(b) the material to be sifted is so damp that no dust can be given off.

Sub-Clause (iv)—The pressing of tiles from clay dust, an exhaust opening being connected with each press ; this clause shall also apply to the pressing from clay dust of articles other than tiles, unless the material is so damp that no dust is given off.

Sub-Clause (v)—The fettling of tiles made from clay dust by pressure, except where the fettling is done wholly on, or with damp material ; this clause shall also apply to the fettling of other articles made from clay dust, unless the material is so damp that no dust is given off.

Sub-Clause (vi)—The process of loading and unloading of saggars where handling and manipulation of ground and powdered flint, quartz, alumina or other materials are involved.

Sub-Clause (vii)—The brushing of earthenware biscuit, unless the process is carried on in a room provided with efficient general mechanical ventilation or other ventilation which is certified by Inspector of Factories as adequate, having regard to all the circumstances of the case.

Sub-Clause (viii)—Fettling of biscuit ware which has been fired in powdered flint or quartz except where this is done in machines so enclosed as to effectually prevent the escape of dust.

Sub-Clause (ix)—Ware cleaning after the application of glaze by dipping or other process.

Sub-Clause (x)—Crushing and dry grinding of materials for pottery bodies and saggars, unless carried on in machines so enclosed as to effectively prevent the escape of dust or is so damp that no dust can be given off.

Sub-Clause (xi)—Sieving or manipulation of powdered flint, quartz, clay grog or mixture of these materials unless it is so damp that no dust can be given off.

Sub-Clause (xii)—Grinding of tiles on a powder driven wheel unless an efficient water spray is used on the wheel.

Sub-Clause (xiii)—Lifting and conveying of materials by elevators and conveyors unless they are effectively enclosed and so arranged as to prevent escape of dust into the air in or near to any place in which persons are employed.

Sub-Clause (xiv)—The preparation or weighing out of flow material, lawning of dry colours, colouring dusting and colour blowing.

Sub-Clause (xv)—In mould making unless the bins or similar receptacles used for holding Plaster of Paris are provided with suitable covers.

Sub-Clause (xvi)—The manipulation of calcined material unless the material has been made and remains so wet that no dust is given off.

3. Each of the following processes shall be carried on in such a

manner and under such conditions so as to secure effectual separation from one another, and from other wet processes :—

(a) Crushing and dry grinding or sieving of materials, fettling, pressing of tiles, drying of clay and greenware, loading and unloading of saggars.

(b) All processes involving the use of a dry lead compound.

4. No glaze which is not a leadless glaze or a low solubility glaze shall be used in a factory in which pottery is manufactured.

5. No woman or young person shall be employed or permitted to work in any of the operations specified in clause 2, or at any place where such operations are carried on.

6. The potter's wheel (Jolly and Jigger) shall be provided with screens or so constructed as to prevent clay scrapings being thrown off beyond the wheel.

7. (1) All practical measures shall be taken by damping or otherwise to prevent dust arising during cleaning of floors.

(2) Damp saw-dust or other suitable material shall be used to render the moist method effective in preventing dust rising into the air during the cleaning process which shall be carried out after work has ceased.

8. The floors of potters' shops, slip houses, dipping houses and ware cleaning rooms shall be hard, smooth and impervious and shall be thoroughly cleaned daily by a moist method by an adult male.

9. *Medical examination.*—(1) All persons employed in any process included under clause 2 shall be examined by the Certifying Surgeon within 7 days preceding or following the date of their first employment in such process ; thereafter all persons employed in any process included under clause 2 (i) and (xiv) shall be examined by the Certifying Surgeon once in every three calendar months, and those employed in any process included in clause 2 (ii) to (xiii) and (xv) and (xvi) once in every 12 months by the Certifying Surgeon. Records of such examinations shall be entered by the Certifying Surgeon in the Health Register and Certificate of fitness granted to him under clause 10.

(2) If at any time the Certifying Surgeon is of opinion that any person employed in any process included in clause 2 is no longer fit for employment on the ground that continuance therein would involve damage to his health, he shall cancel the certificate of fitness granted to that person.

(3) No person whose certificate of fitness has been cancelled shall be re-employed unless the Certifying Surgeon after examination again, certifies him to be fit for employment.

10. *Certificate of fitness.*—A person medically examined under clause 9 and found fit for employment shall be granted by the Certifying Surgeon a certificate of fitness in Form 5 and such certificate shall be in the custody of the manager of the factory. The certificate shall be kept readily available for inspection by any Inspector and the person granted such a certificate shall carry with him while at work, a token giving reference to such certificate.

11. Protective equipment.—(1) The occupier shall provide and maintain suitable overalls and head coverings for all persons employed in process included under clause 2.

(2) The occupier shall provide and maintain suitable aprons of a waterproof or similar material, which can be sponged daily, for the use of the dippers, dippers assistants, throwers, jolly workers, casters, mould makers and filter press and pug mill workers.

(3) Aprons provided in pursuance of clause 11 (2) shall be thoroughly cleaned daily by the wearers by sponging or other wet process. All overalls and head coverings shall be washed, cleaned and mended at least once a week and this washing, cleaning or mending shall be provided for the occupier.

(4) No person shall be allowed to work in emptying sacks of dusty materials, weighing out and mixing of dusty materials and charging of ball mills and blungers without wearing a suitable and efficient dust respirator.

12. Washing facilities.—(1) The occupier shall provide and maintain, in a cleanly state and in good repair for the use of all persons employed in any of the processes specified in clause 2, a wash place under cover, with either—

(a) (i) a trough with smooth impervious surface fitted with a waste pipe without plug, and of sufficient length to allow at least two feet for every five such persons employed at any one time, and having a constant supply of clean water from taps or jets above the trough at intervals of not more than two feet; or

(ii) at least one tap or stand pipe for every five such persons employed at any one time, and having a constant supply of clean water, the tap or stand pipe being spaced not less than 4 feet apart; and

(b) A sufficient supply of clean towels made of suitable material changed daily, with sufficient supply of nail brushes and soap.

13. Time allowed for washing.—Before each meal and before the end of the day's work, at least ten minutes, in addition to the regular meal times, shall be allowed for washing to each person employed in any of the processes mentioned in clause 2.

14. Mess-room.—(1) There shall be provided and maintained for use of all persons remaining within the premises during the rest intervals, suitable mess-room providing accommodation of 10 square feet per head and furnished with—

(i) a sufficient number of tables and chairs or benches with back rest;

(ii) arrangements for washing utensils;

(iii) adequate means for warming food;

(iv) adequate quantity of drinking water.

(2) The room shall be adequately ventilated by the circulation of fresh air and placed under the charge of a responsible person and shall be clean.

15. Food, drinks, etc., prohibited in work-rooms.—No food, drink, pan and supari, or tobacco shall be brought into, or consumed by any worker in, any work-room in which any of the processes mentioned in

clause 2 are carried on and no person shall remain in any such room during intervals for meals or rest.

16. Cloak-room, etc.—There shall be provided and maintained for the use of all persons employed in any of the processes mentioned in clause 2—

(a) a cloak-room for clothing put off during working hours and such accommodation shall be separate from any mess-room;

(b) separate and suitable arrangements for the storage of protective equipment provided under clause 11.

17. These regulations shall not apply to a factory in which any of the following articles, but no other pottery, are made—

(a) unglazed or salt glazed bricks and tiles, and

(b) architectural terra-cotta made from plastic clay and either unglazed or glazed with a leadless glaze only.

18. Exemption.—If in respect of any factory the Chief Inspector of Factories is satisfied that all or any of the provisions of this Schedule are not necessary for the protection of the persons employed in such factory, he may by a certificate in writing exempt such factory from all or any of such provisions, subject to such conditions as he may specify therein. Such certificate may at any time be revoked by the Chief Inspector without assigning any reasons.

B. The following item shall be added as item No. 11 after the proposed item No. 10 of the list of dangerous operations:

“11. Manufactures in chemical works and processes incidental thereto.”

The following shall be added as Schedule XI after the proposed Schedule X under rule 94:

SCHEDULE XI

Manufactures in chemical works and processes incidental thereto

Applications.—These Rules shall apply to all manufactures and processes incidental thereto carried on in chemical works. These Rules shall be in addition to and not in derogation of any provisions of the Factories Act or any other rules made thereunder or of any other Act or Rules.

Definitions

Chemical works means any factory or such parts of any factory as are named in Schedule I to these Rules.

Breathing Apparatus means (1) a helmet of face-piece with necessary connections by means of which a person using it in a poisonous, asphyxiating or irritant atmosphere breathes ordinary air, or (2) any other suitable apparatus approved in writing by the Chief Inspector.

Life-belt means belt made of leather or other suitable materials which can be securely fastened round the body, with a suitable length of rope attached to it, each of which is sufficiently strong to sustain the weight of a man.

Efficient exhaust draught means localised ventilation effected by mechanical or other means for the removal of gas, vapour, fume, or dust to prevent it from escaping into the air of any place in which work is carried out.

Surgeon means a Certifying Surgeon appointed under Section 10 of the Factories Act, 1948.

Suspension means suspension by written certificate in the Health Register, signed by the Surgeon, from employment in any process mentioned in the certificate.

Bleaching powder means the bleaching powder commonly called chloride of lime.

Chlorate means chlorate or perchlorate.

Caustic means hydroxide of potassium or sodium.

Caustic pot means a metal pot fixed over a furnace of flue and surrounded by brickwork, such as is commonly used for concentrating caustic liquor, whether such pot be used for concentrating or boiling caustic or other liquor.

Chrome process means the manufacture of chromate or bichromate of potassium or sodium, or the manipulation, movement or other treatment of these substances in connection with their manufacture.

Nitro or Amino process means the manufacture of nitro or amino derivatives of phenol and of benzene or its homologues, and the making of explosives with the use of any of these substances.

Exceptions.—If the Chief Inspector is satisfied in respect of any factory or any process that, owing to the special conditions or special methods of work, or by reason of the infrequency of the process or for other reasons all or any of the requirements of these Rules are not necessary for the protection of persons employed in any factory or process, he may by order in writing (which he may in his discretion revoke) exempt such factory or process from all or any of the provisions of these Rules subject to such conditions as he may by such order prescribe.

Part I Applying to all the works in Schedule I

GENERAL

1. *Housekeeping.*—(a) Every part of the ways, works, machinery and plant shall be maintained in a clean and tidy condition.

(b) Any spillage of materials shall be cleaned up without delay.

(c) Floors, platforms, stairways, passages and gangways shall be kept free of temporary obstructions.

(d) There shall be provided easy means of access to all parts of the plant to facilitate cleaning, maintenance and repairs.

2. *Improper use of chemicals.*—(a) No chemicals or solvents shall be used by workers for any purposes apart from the processes for which they are supplied.

(b) Workers shall be instructed on the possible dangers arising from such misuse. These instructions shall further be displayed in bold letters in prominent places in the different sections.

3. *Storage of Food.*—(a) No food, drink, tobacco, pan or similar article shall be stored or consumed on or near any part of the plant.

Testing.—(b) Workers shall be instructed on the possible dangers arising from the testing of materials, or of the use for drinking purposes of any vessel used in, or in connection with, the manufacture of chemicals. These instructions shall further be displayed in bold letters in prominent places in the different sections.

4. *Process Hazards.*—Before commencing any large-scale experimental work, or any new manufacture, all possible steps shall be taken to ascertain definitely all the hazards involved both from the actual operations and the chemical reactions. The properties of the raw materials used, the final products to be made, and any by-products arising during manufacture, shall be carefully studied and provisions shall be made for dealing with any hazards including effects on workers, which may arise during manufacture.

The design of the buildings and plant shall be based on information so obtained.

5. *Unauthorised Personnel.*—(a) Unauthorised persons shall not be permitted to enter any section of factory or plant where there are special dangers.

Visitors.—(b) Visitors shall be provided, where necessary, with suitable safety equipment and shall be accompanied round dangerous plant by a responsible official.

6. *Instrument.*—All instruments such as pressure gauges, thermometers flow meters and weighing machines shall be tested at regular intervals by a competent person, and records of these tests shall be kept in a registre

7. *Cocks and Valves.*—Suitable valves shall be provided in all service lines at sufficiently short intervals for convenience in blanking off, etc. All cocks and valves shall be operated at least once a month, and tested periodically by a competent person, and records of these tests shall be kept in a register. A plan of all service installations shall be kept readily available for perusal.

8. *Manholes.*—No manhole shall be opened for entry until effective fencing has been erected round it.

9. *Emergency Instructions.*—Simple and special instructions shall be framed to ensure that effective measures will be carried out in cases of emergency, to deal with escapes of inflammable, poisonous or deleterious gases, vapours, liquids, or dusts. These instructions shall further be displayed in bold letters in prominent places in the different sections. All workers shall be trained and instructed in the action to be taken in such emergencies, and in the general hazards of their employment.

10. *Protection of Reaction Mixtures.*—Suitable arrangements shall be made to ensure that no foreign matter of any sort can fall into reaction mixtures.

11. *Electrical Apparatus.*—Electrical plant, fittings and conductors shall, if exposed to a damp or corrosive atmosphere, be adequately protected. Periodic tests shall be carried out on all circuits.

12. *Place of Work.*—(a) Workers shall only be allowed in those places in which they have been given orders to work.

(b) In dangerous sections of a factory, the number of workers shall be kept to minimum compatible with the process.

13. *Packing Storage and Transport of Chemicals.*—Chemicals shall be packed and stored in containers suitable for the purpose and of adequate strength for storage or transport. All such containers shall be suitably labelled so that they will be stored and transported in such a manner as to

ensure that, in the event of a spillage, they will neither produce a reacting mixture, nor cause the development of toxic or fire risks in contact with other products in its vicinity, or with walls, floors, or dust thereon.

Fire and Explosion Risks

14. Site.—(a) Buildings and plant shall be sited with due regard to the dangers which may arise from the processes involved, and in particular shall be spaced at distances which are deemed safe for the fire and explosive risks connected with the processes in adjacent buildings. Due consideration shall be given to the effect of any processes carried out in adjacent factories.

Isolation of Buildings.—(b) Where special dangers exist, separate buildings shall be used for the different parts of a process. They shall be spaced at sufficient distances apart and shielded to prevent damage to each other in the event of fire or explosion, and shall be safeguarded by the provision of suitable blow-out panels or roofs. Where the risk of fire or explosion is considerable, the building shall be divided by blast or protective screen walls.

Fire Resistance.—(c) No combustible materials shall be used in the erection of working buildings, unless there are special reasons necessitating their use, when they shall be rendered fire-resistant. The roof shall be of light fire-resistant construction and floors shall be of impervious fire-resistant material and shall be regularly maintained in such condition.

15. Dangers of Ignition (including lighting installation.)—(a) No internal combustion engine, and no electric motor or other electric equipment, capable of generating sparks or otherwise causing combustion shall be installed or used in a building or danger zone. Electric conductor shall be fitted with screwed steel conduit.

(b) All hot exhaust pipes shall be installed outside a building and other hot pipes shall be suitably protected.

(c) Portable electric hand lamps shall not be used unless of an intrinsically safe type, and portable electric tools connected by flexible wires shall not be used, unless of the flame-proof type.

(d) Where an inflammable atmosphere may occur the soles of footwear worn by workers shall have no metal on them, and the wheels of trucks or conveyors shall be of conducting non-sparking materials. Adequate precautions shall be taken to prevent the ignition of explosive or inflammable substances by sparks emitted from locomotives or other vehicles operated in the factory or on public lines.

(e) No electric arc lamp, or naked light, fixed or portable, shall be used, and no person shall have in his possession any match or any apparatus of any kind for producing a naked light or spark in or on, or about any part of the factory where there is liability to fire or explosion from inflammable gas, vapour or dust and all incandescent electric lights in such parts shall be in double air tight glass covers.

(f) Prominent notices in the language understood by the majority of the workers and legible by day and by night, prohibiting smoking, the use

of naked lights, and the carrying of matches or any apparatus for producing a naked light or spark, shall be affixed at the entrance of every room or place where there is the risk of fire or explosion from inflammable gas, vapour or dust. In the case of illiterate workers, the contents of the notices shall be fully and carefully explained to them when they commence work in the factory for the first time and again when they have completed one week in a factory.

Non-sparking Tools.—(g) A sufficient supply of spades, scrapers and pails made from non-sparking materials shall be provided for the use of persons employed in cleaning out or removing residues from any chamber, still, tank, or other vessel where an inflammable or explosive danger may occur.

NOTE.—(The risk is not always obvious and may arise, for example, through the production of hydrogen in acid tanks).

16. Static Electricity.—(a) All machinery and plant, particularly, pipe lines and belt drives, on which static electricity is likely to accumulate shall be effectively earthed. Receptacles for inflammable liquids shall have metallic connections to the earthed supply tanks to prevent static sparking. Where necessary, humidity shall be controlled.

(b) Mobile tank wagons shall be earthed during filling and discharge, and precautions shall be taken to ensure that earthing is effective before such filling or discharge takes place.

Lightning condition.—(c) Lightning protection apparatus shall be fitted where necessary, and shall be maintained in good condition.

17. Process heating.—The method providing heat for a process shall be as safe as possible and where the use of naked flame is necessary, the plant shall be so constructed as to prevent any escaping inflammable gas, vapour, or dust coming into contact with the flame, or exhaust gases, or other hot agency likely to cause ignition. So far as practicable, the heating medium shall be automatically controlled at a pre-determined temperature below the danger temperature.

18. Escape of Materials.—(a) Provision shall be made in all plant, sewers, drains, flues, ducts, culverts and buried pipes to prevent the escape and spread of any liquid, gas, vapour, fume or dust likely to give rise to fire or explosion, both during normal working and in the event of accident on emergency.

(b) If escape occurs, such substances shall be removed expeditiously and efficiently at the point of liberation. The effluent shall be trapped and rendered safe outside the danger area.

19. Leakage of inflammable Liquids.—(a) Provision shall be made to confine by means of bund walls, sumps, etc., possible leakages from vessel containing inflammable liquids.

(b) Adequate and suitable fixed fire fighting appliances shall be installed in the vicinity of such vessels.

20. Cleaning of Empty Containers.—(a) All empty containers which have held inflammable liquids, and metal containers which have held sulphuric acid shall be rendered permanently safe as soon as practicable,

and shall not be repaired or destroyed until such cleaning has been completed.

Storage of Combustible Materials.—(b) Combustible and inflammable materials shall not be stored in close proximity to chemicals which are liable to cause ignition.

(c) Rubbish shall be removed from buildings without delay and placed in special metal containers provided with close fitting lids. The contents shall be removed daily and suitably dealt with. Waste products containing inflammable or explosive materials shall not be placed on rubbish heaps but shall be destroyed in an appropriate manner.

21. Installing of Pipe Lines for Inflammable Liquids.—All pipe lines for the transport of inflammable liquids shall be protected from breakage, shall be arranged so that there is no risk of mechanical damage from vehicles and shall be so laid that they drain throughout without the collection of deposits at any part. All flanged joints, bends and other connections shall be regularly inspected. Cocks and valves shall be so constructed that explosive residues cannot collect therein. The open and closed positions of all cocks and valves shall be clearly indicated on the outside.

22. Packing of Reaction Vessels.—Packing and jointing materials for reaction vessels (including covers, manhole covers, and exhaust pipes) and in pipe lines and high or low temperature insulating materials shall not contain material which are combustible or which react with the products of the plant.

23. Safety Valves.—Every still and every closed vessel in which gas is evolved or into which gas is passed, and in which the pressure is liable to rise to a dangerous degree, shall have attached to it a pressure gauge, and a proper safety valve or other equally efficient means to relieve the pressure, maintained in good condition. Nothing in these Rules shall apply to metal bottles or cylinders used for the transport of compressed gases.

24. Vigorous or delayed reactions.—Suitable provision, such as automatic and distant control shall be made for controlling the effects of unduly vigorous or delayed reactions. Automatic flooding or blanketing shall be provided for in the event of an accident.

25. Examination testing and repair of plant.—Examination, testing and repair of plant parts which have been in contact with explosive and inflammable material, or which is under pressure, shall only be carried out under proper supervision.

26. Alarm Systems.—(a) Gravity or pressure feed systems of supplying inflammable materials to the various parts of the buildings or plant shall be fitted with alarm systems, automatic cut-offs or other devices to prevent overcharging or otherwise endangering the plant.

(b) The amount of inflammable material taken into a building in bulk containers at any one time shall be kept as low as practicable.

(c) Adequate steps shall be taken to prevent the escape of inflammable and explosive vapours from any container into the atmosphere of any building.

Gas, Vapour, Fume or Dust Risks

27. Escape of Gases, etc.—(a) Effective steps shall be taken to prevent the escape of dangerous gases, vapours, fumes or dust from any part of the plant, by the total enclosure of the process involved or by the provision of efficient exhaust draught. Effective arrangements shall be made to ensure that in the event of failure of the control measure provided in compliance of the foregoing, the process shall stop immediately.

(b) In the event of any such escape, provision shall be made to trap the materials and render them safe.

28. Danger due to effluents.—(a) Adequate precautions shall be taken to prevent the mixing of effluents which may cause dangerous or poisonous gases to be evolved.

(b) Effluents which may contain or give rise in the presence of other effluents to such gases shall be provided with independent drainage system to ensure that they may be trapped and rendered safe.

29. Staging.—(a) Staging shall not be erected over any open vessel unless the vessel is so constructed and ventilated to prevent the emission of vapour or fumes about such staging.

(b) Where such staging is provided to give access to higher levels in large plants, effective means shall be provided at all levels with direct means of access to the outside of the room or building and thence to ground level.

(c) Such staging shall be fitted with suitable handrails and toeboards and the floors and staging shall be impervious and easily cleaned.

30. Instructions as regards risk.—Before commencing work, every worker shall be fully instructed on the properties of the materials they have to handle, and of the dangers arising from any gas, fume, vapour, or dust which may be evolved during the process. Workers shall also be instructed in the measures to be taken to deal with such an escape in the event of emergency.

31. Breathing apparatus.—(a) There shall be provided in every factory where dangerous gas or fume is liable to escape sufficient supply of:

(i) Breathing apparatus of an approved make for the hazards involved.

(ii) Oxygen and suitable means of its administration, and

(iii) Life-belts.

The breathing apparatus and other appliances required by this Rule shall—(i) be maintained in good order and kept in an ambulance room or in some other place approved in writing by the Chief Inspector and (ii) be thoroughly inspected once every month by a competent person, appointed in writing by the occupier, and a record of their condition shall be entered in a book provided for that purpose, which shall be produced when required by an Inspector.

(b) Workers shall be trained, and given a periodic refresher course in the use of breathing apparatus and respirators.

(c) Respirators shall be kept properly labelled in clean dry light-proof cabinets, and if liable to be affected by fumes, shall be protected by suitable

containers. Respirators shall be dried and cleaned after use and shall be periodically disinfected.

32. Treatment of persons.—In every room or place wherever required in writing by the Chief Inspector there shall be affixed the official cautionary notice regarding gassing and burns. Such notices shall be legible by day and by night and shall be printed in the language understood by the majority of the workers.

33. Personal protective equipment.—(a) Suitable protective clothing shall be provided for the use of operatives—(i) when operating valves or cocks controlling fluids which by their nature, pressure or temperature would be highly dangerous if a blow-out occurred or when cleaning chokes in systems containing such fluids if pressure is likely to exist behind the chokes, (ii) when there is danger of injury by absorption through the skin during the performance of normal duties or in the event of emergency, (iii) whenever there is the risk of injury in handling corrosive substances, hot or cold articles and sharp or rough objects, and (iv) when there is the risk of poisonous materials being carried away on their clothes.

(b) There shall be provided for the use of all persons employed in the processes specified in Schedule II to these Rules an adequate supply of suitable protective equipment including gloves, overalls, and protective footwear, and of goggles and respirators. Respirators shall be of a type approved in writing by the Chief Inspector.

(c) Protective equipment shall be provided and stored in the appropriate place for use during abnormal conditions or in an emergency.

(d) Arrangements shall be made for the proper and efficient cleaning of all such protective equipment.

34. Cloak Rooms.—There shall be provided and maintained for the use of all persons employed in the processes specified in Schedule II to these Rules a suitable Cloak room, for clothing put off during working hours and a suitable place separate from the cloak room, for the storage of overalls or working clothes. The accommodation so provided shall be placed in the charge of a responsible person, and shall be kept clean.

35. Special Bathing Accommodation.—(a) There shall be provided for the use of all persons employed in the processes specified in Schedule III to these Rules separate sanitary conveniences and sufficient and suitable bathing facilities, which shall be to the satisfaction of the Chief Inspector.

(b) A bath register shall be kept containing the names of all persons employed in these processes and an entry of the date when each person takes a bath.

36. Entry into Vessels.—(a) Before any person enters, for any purpose except that of rescue, any absorber, boiler, culvert, drain, flue, gas purifier, sewer, still, tank, tower, vitriol chamber or other place where there is reason to apprehend the presence of dangerous gas or fume, a responsible person appointed in writing by the occupier for the purpose, shall personally examine such place and shall certify in writing in a book kept for the purpose either that such place is isolated and sealed from every source of such gas or fume and is free from danger, or that it is not so isolated and sealed and free from danger. No person shall enter any such

place which is certified not to be so isolated and sealed and free from danger unless he is wearing a breathing apparatus, and (where there are no cross stays or obstructions likely to cause entanglement) a life-belt, the free end of the rope attached to which shall be left with a man outside whose sole duty shall be to keep watch and to draw out the wearer if he appears to be affected by gas or fume. The belt and rope shall be so adjusted and worn that the wearer can be drawn up head foremost through any manhole or opening.

(b) A person entering for the purpose of rescue any such place for which a clearance certificate has not been issued shall wear a breathing apparatus and a life-belt in the manner specified.

37. Examination and repair of plant.—Where poisonous materials are likely to be present the examination and repair of plant and piping shall only be done under the supervision of a competent person, and after the plant and piping has been thoroughly cleaned and ventilated. When opening vessels and breaking joints in pipe lines, respirators, goggles and protective clothing shall be worn to the extent required by the competent person.

38. Storage of acid Carboys.—Carboys containing nitric acid or "mixed" acid shall be stored in open sided sheds detached from other buildings, and placed on a flooring of sandstone, brick, or other suitable inorganic materials. A passageway shall be provided and kept free from obstruction between every four rows of such carboys. An ample supply of water shall be available for washing away spilt acid and all precautions shall be taken to prevent workers being exposed to fumes.

Corrosive or Deleterious Substances Risks

39. Buildings.—All buildings and plant shall be sited with due regard to possible dangers from accidental liberation or splashing of corrosive and deleterious liquids, and shall be so designed as to facilitate thorough washing and cleaning. The construction of staging and other parts of buildings shall be carried out with materials impervious and resistant to corrosion so far as practicable.

40. Leakage.—(a) All plant shall be so designed and constructed as to obviate the escape of corrosive liquid. Where necessary, separate buildings, rooms, or protective structures shall be used for the dangerous stages of the process and the buildings shall be so designed as to localise any escape of liquid.

(b) Catch pits, bund walls, or other suitable precautions shall be provided to restrict the serious effects of such leakages. Catch pits shall be placed below joints in pipe-lines where there is danger involved to maintenance and other workers from such leakage.

(c) Passages and work-stations shall not be situated directly below any part of plant where there is risk of escape of dangerous liquid. Access to such parts shall, so far as practicable, be prohibited, and danger notices shall be affixed at suitable points.

41. Precautions against escape.—Adequate precautions shall be taken to prevent the escape of corrosive or deleterious substances and means shall be provided for rendering safe any such escape.

42. *Drainage.*—Adequate drainage shall be provided and shall lead to special treatment tanks where deleterious material shall be neutralised or otherwise rendered safe before it is discharged into ordinary drains or sewers.

43. *Covering of Vessels.*—(a) Every fixed vessel or structure containing any dangerous material, and not so covered as to eliminate all reasonable risk of accidental immersion in it of any portion of the body of a worker, shall be so constructed that there is no foothold on the top or the sides.

(b) Such vessel shall, unless its edge is at least three feet above the adjoining ground or platform, be securely fenced to a height of at least three feet above such adjoining ground or platform.

(c) No plank or gangway shall be placed across or inside any such vessel, unless such plank or gangway is at least 18 inches wide, and is securely fenced on both sides by rails spaced at 9 inches apart to a height of at least 3 feet, or by other equally efficient means.

(d) Where such vessels adjoin and the space between them, clear of any surrounding brick or other work, is either less than 18 inches in width or is 18 or more inches in width, but is not securely fenced on both sides to a height of at least three feet, secure barriers shall be so placed as to prevent passage between them.

Provided that paragraph (b) of this Rule shall not apply to—

(i) Saturators used in the manufacture of Sulphate of Ammonia, and

(ii) that part of the sides of brine evaporating pans which require raking, drawing or filling.

44. *Ventilation.*—Adequate ventilation shall be provided and maintained at all times in rooms or buildings where dangerous gas, vapour, fume or dust may be evolved.

45. *Means of Escape.*—Adequate means of escape from rooms or buildings in the event of a leakage of corrosive liquids shall be provided and maintained.

46. *Treatment of Personnel.*—In all places where (strong acids or dangerous) corrosive liquids are used :—

(a) There shall be provided for use in an emergency—

(i) adequate and readily accessible means of drenching with cold water persons, and the clothing of persons, who have become splashed with such liquid ;

(ii) adequate special arrangements to deal with any person who has been splashed with poisonous material that can be absorbed through the skin.

(iii) a sufficient number of eye-wash bottles, filled with distilled water or other suitable liquid, kept in boxes or cupboards conveniently situated and clearly indicated by a distinctive sign which shall be visible at all times.

(b) Except where the manipulation of such corrosive liquids is so carried on as to prevent risk of personal injury from splashing or otherwise, there shall be provided for those who have to manipulate such liquids sufficient and suitable goggles and gloves or other suitable protection for the eyes and hands. If gloves are provided they shall be collected, examined, and cleansed at the close of the day's work and shall be repaired or renewed when necessary.

47. *Maintenance.*—(a) Before any examination or repairs are carried out on plant or pipe lines, a competent person shall issue a clearance certificate permitting such examination or repairs.

(b) Adequate precautions shall be taken to liberate any pockets of gas or liquid which may have been formed in pipe lines, and which may cause corrosive spray at the point where dismantling takes place.

48. *Washing Facilities.*—(1) There shall be provided and maintained in every factory for the use of employed persons adequate and suitable facilities for washing which shall include soap and nail brushers or other suitable means of cleaning and facilities shall be conveniently accessible and shall be kept in a clean and orderly condition.

(2) If female workers are employed, separate washing 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. The entrance to such facilities shall bear conspicuous notice in the language understood by the majority of the workers "For Women Only" and shall also be indicated pictorially.

49. *Mess-Room facilities.*—In every factory there shall be provided and maintained for the use of those remaining on the premises during the rest intervals, suitable and adequate mess-room or canteen accommodation which shall be furnished with sufficient tables and chairs or benches with back rests and where sufficient drinking water is available.

50. *Ambulance Room.*—(a) In every factory in which more than 250 persons are employed on the processes to which these Rules apply there shall be provided and maintained in good order an Ambulance Room.

The Ambulance Room shall be a separate Room used only for the purpose of treatment and rest. It shall have a floor space of not less than 100 square feet, and smooth, hard and impervious walls and floor, and shall be provided with ample means of natural and artificial lighting. It shall contain all the items shown in Schedule IV.

Where persons of both sexes are employed, arrangement shall be made at the Ambulance Room for their separate treatment.

The Ambulance Room shall be placed under the charge of a qualified nurse or other person trained in First Aid, who shall have always be readily available during working hours, and shall keep a record of all cases of accidents or sickness treated in the room.

(b) In every factory there shall be provided and maintained in good condition a suitably constructed ambulance van for the purpose of removal of serious cases of accidents or sickness, unless arrangements have been made with hospital or other place in telephonic communication with the factory for obtaining such a carriage immediately when required.

51. Medical Personnel.—There shall be whole time Medical Officer in every factory employing 250 persons or more.

52. Medical Examination.—In a chrome process or in a nitro or amino process :—

(a) A Health Register containing the names of all persons employed in the process shall be kept in a form approved by the Chief Inspector.

(b) No person shall be newly employed for more than 14 days without a certificate of fitness granted after examination by the Certifying Surgeon, by a signed entry in the Health Register.

(c) Every person employed in the process shall be examined by the Certifying Surgeon once in each calendar month (or at such other intervals as may be prescribed in writing by the Chief Inspector) on a date or dates of which due notice shall be given to all concerned.

(d) Every person so employed shall present himself at the appointed time for examination by the Certifying Surgeon as provided in (b) and (c) of this Rule.

(e) The Certifying Surgeon shall have power of suspension as regards all persons employed and no person after suspension shall be employed without written sanction from the Surgeon entered in the Health Register.

53. Duties of Workers.—Every person employed shall—

(a) report to his foreman any defect in any fencing, breathing apparatus, appliance or other requisite provided in pursuance of these rules, as soon as he becomes aware of such defect;

(b) use the articles, appliances or accommodation required by these rules for the purpose for which they are provided;

(c) wear the breathing apparatus and life-belt where required under rule 36(a) and (b).

54. No person shall—

(a) remove any fencing provided in pursuance of rule 43 unless duly authorised; or

(b) stand on the edge or on the side of any vessel to which rule 43 applies;

(c) pass or attempt to pass any barrier erected in pursuance of rule 43;

(d) place across or inside any vessel to which rule 43 applies any plank or gangway which does not comply with that Regulation or make use of any such plank or gangway while in such position;

(e) take a naked light or any lamp or matches or any apparatus for producing a naked light or spark into, or smoke in any part of the works where there is liability to explosion from inflammable gas, vapour or dust;

(f) use a metal spade, scraper or pail when cleaning out or removing the residues from any chamber, still, tank or other vessel which has contained sulphuric acid or hydrochloric acid or other substance which may cause evolution of arseniuretted hydrogen;

(g) remove from a First Aid box or cupboard or from the Ambulance room any First Aid appliance or dressing except for the treatment of injuries in the works.

SCHEDULE I

Chemical Works means any works or that part of a work in which—

1. The manufacture or recovery of any of the following is carried on—

(a) Carbonates, chromates chlorates, oxides or hydroxides of potassium, sodium iron, aluminium, cobalt, nickel, arsenic, antimony, zinc or magnesium.

(b) Ammonia and the hydroxide and salts of ammonium.

(c) Sulphurous, sulphuric, nitric, hydrochloric, hydro-fluoric, hydriodic, hydrosulphuric, boric, phosphoric, oxalic, arsenious, arsenic, lactic, acetic, tartaric or citric acids and their metallic or organic salts, and

(d) Cyanogen compounds.

2. A wet process is carried on—

(a) For the extraction of metal from ore or from any by-product or residual material; or

(b) In which electrical energy is used in any process of chemical manufacture.

3. Alkali waste or the drainage therefrom is subject to any chemical process for the recovery of sulphur, or for the utilisation of any constituent of such waste or drainage.

4. Carbon bisulphide is made or hydrogen sulphide is evolved by the decomposition of metallic sulphides or hydrogen sulphide is used in the production of such sulphides.

5. Bleaching powder is manufactured or chlorine gas is made or is used in any process of chemical manufacture.

6. (a) Gas tar or coal tar or any compound product or residue of such tars is distilled or is used in any process of chemical manufacture.

(b) Synthetic colouring matters or their intermediates are made.

7. Refining of crude shale oil or any process incidental thereto is carried out.

8. Nitric acid is used in the manufacture of nitro-compounds.

9. Explosives are made with the use of nitro-compounds.

SCHEDULE II

1. A nitro or amino process (overalls or suits of working clothes and protective footwear).

2. Grinding raw materials in a chrome process (overall suits).

3. The crystal department and in packing in a chrome process (protective coverings).

4. Packing in a chrome process (respirators).

5. Any room or place in which chlorate is crystallised ground or packed (clothing of woollen material and boots or overshoes, the soles of which have no metal on them.)

6. Any room in which caustic is ground or crushed by machinery (goggles and gloves or other suitable protection for the eyes and hands).

7. Bleaching powder chambers, or in packing charges drawn from such chambers (suitable respirators).

8. Drawing off of molten sulphur from sulphur pots in the process of carbon disulphide manufacture (overalls, faceshields, gloves and footwear of fireproof material).

SCHEDULE III

1. A nitro or amino process.
2. The crystal department and the packing room in a chrome process.
3. The process of distilling gas or coal tar (other than blast furnace tar) and any process of chemical manufacture in which such tar is used.

SCHEDULE IV

- (i) a glazed sink with hot and cold water always available.
 (ii) a table with a smooth top.
 (iii) means for sterilising instruments.
 (iv) a couch.
 (v) a stretcher.
 (vi) Two buckets or containers with close-fitting lids.
 (vii) Two rubber hot water bags.
 (viii) A kettle and spirit stove or other suitable means of boiling water.
- (ix) Twelve plain wooden splints, 36" x 4" x 1/4".
 (x) Twelve plain wooden splints, 14" x 3" x 1/4".
 (xi) Six plain wooden splints, 10" x 2" x 1/2".
 (xii) Three woollen blankets.
 (xiii) One pair artery forceps.
 (xiv) One bottle of brandy.
 (xv) Two medium size sponges.
 (xvi) Three hand towels.
 (xvii) Two kidney trays.
 (xviii) Four carbolic soaps.
 (xix) Two glass tumbler and two wine glasses.
 (xx) Two clinical thermometers.
 (xxi) Graduated measuring glass with teaspoon.
 (xxii) One eye bath.
 (xxiii) One bottle (2 lbs.) carbolic lotion 1 in 20.
 (xxiv) Two chairs.
 (xxv) One screen.
 (xxvi) One electric hand torch.
 (xxvii) An adequate supply of antitetanus serum.
 (xxviii) Two first aid boxes, each containing (a) 24 small sterilized dressings (b) 12 medium size sterilized dressings (c) 12 large size sterilized dressings, (d) 12 large size sterilized burn dressings, (e) 12 half ounce packets sterilized cotton wool, (f) One snake bite lancet, (g) One pair scissors, (h) Two (1 oz.) bottles of potassium permanganate crystals, (i) One (4 oz.) bottle containing a two per cent. alcoholic solution of iodine, (j) One (4 oz.) bottle of salvolatile having the dose and mode of administration indicated on the label, (k) 1 copy of the first aid leaflet issued by the Chief Adviser Factories, Government of India.

PART II

Applying to works or parts thereof in which—

- I. Caustic pots are used; or
- II. Chlorate or bleaching powder is manufactured; or

III. (a) Gas tar or coal tar is distilled or is used in any process of chemical manufacture; or

(b) A nitro or amino process is carried on; or

(c) A chrome process is carried on; or

IV. Crude shale oil is refined or processes incidental thereto are carried on; or

V. Nitric acid is used in the manufacture of nitro compounds.

VI. The evaporation of brine in open pans and the stoving of salt are carried on; or

VII. The manufacture or recovery of hydro-fluoric acid or any of its salts is carried on; and

VIII. Work at a furnace where the treatment of zinc ores is carried on.

1. *Entry of gas tar or coal tar still.*—Before any person enters a gas, tar or coal tar still for any purpose except that of rescue, it shall be completely isolated from adjoining tar stills, either by disconnecting—

(a) the pipe leading from the swan neck to the condenser worm or

(b) the waste gas pipe fixed to the worm and or receiver; and in addition, blank flanges shall be inserted between the disconnected parts and the pitch discharge pipe or cock at the bottom of the still shall be disconnected—

2. *Entry into bleaching powder Chambers.*—No person shall enter a chamber for the purpose of withdrawing the charge of bleaching powder unless and until—

(i) The chamber is efficiently ventilated; and

(ii) The air in the chamber has been tested and found to contain not more than 2.5 grains of free chlorine gas per cubic foot.

A register containing details of all such tests shall be kept in a form approved by the Chief Inspector of Factories.

3. *Special Precautions for nitro and amido processes.*—In a nitro or amido process—

(a) If crystallised substances are broken or any liquor agitated by hand, means shall be taken to prevent, as far as practicable, the escape of dust or fume into the air of any place in which any person is employed. The handles of all implements used in the operations shall be cleansed daily.

(b) Cartridges shall not be filled by hand except by means of a suitable scoop.

(c) Every drying stove shall be efficiently ventilated to the outside air in such a manner that hot air from the stove shall not be drawn into any workroom.

(d) No person shall enter a stove to remove the contents until a free current of air has been passed through it.

(e) Every vessel containing nitro or amido derivatives of phenol or of benzene or its homologues shall, if steam is passed into or around it, or if the temperature of the contents be at or above the temperature of boiling water, be covered in such a way that steam or vapour shall be discharged into the open air at a height of not less than 25 feet from the ground or the working platform, and at a point where it cannot be blown back again into the workroom.

4. *Precautions during caustic grinding, etc.*—(a) Every machine used for grinding or crushing caustic shall be enclosed; and

(b) Where any of the following processes are carried on:—

- (i) Grinding or crushing of caustic;
 - (ii) Packing of ground caustic;
 - (iii) Grinding, sieving, evaporating or packing in a chrome process;
 - (iv) Crushing, grinding or mixing of material or cartridge filling in a nitro or amido process;
- an efficient exhaust draught shall be provided.

5. *Chlorate Manufacture.*—(a) Chlorate shall not be crystallised ground or packed except in a room or place not used for any other purpose, the floor of which room or place shall be of cement or other smooth, impervious and incombustible material, and shall be thoroughly cleansed daily.

(b) Wooden vessel shall not be used for the crystallisation of chlorate, or to contain crystallised or ground chlorate; provided that this Regulation shall not prohibit the packing of chlorate for sale into wooden casks or other wooden vessels.

6. *Restrictions on the employment of young persons and women.*—(a) Persons under 18 years of age and women shall not be employed in any process in which hydro-fluoric acid fumes or ammoniacal vapours are given off or in any of the following operations:—

- (i) evaporation of brine in open pans;
- (ii) stoving of salt;
- (iii) work at a furnace where the treatment of zinc ores is carried on; and
- (iv) the cleaning of workrooms where the process mentioned in (iii) is carried on.

(b) No person under 18 years of age shall be employed in a chrome process or in a nitro or amido process or in a process in which the following materials are used or where the vapour of such materials is given off:

Carbon bisulphide, chloride of sulphur, benzene, carbon tetrachloride, trichlorethylene, any carbon chlorine compound, or any mixture, containing any of such materials.

7. *Every person employed.*—

Duties of employees.—(a) In a process to which rule 33 apply shall wear the protective clothing, footwear, respirators, goggles or gloves provided under rule 33 and shall deposit overalls or suits or working clothing so provided, as well as clothing put off during working hours, in the places provided under rule 34.

(b) In processes to which rule 35 applies shall carefully wash the hands and face before partaking of any food or leaving the premises;

(c) in any processes to which part II of these rules applies shall use the protective appliances supplied in respect of any process in which he is engaged.

THE PUNJAB MATERNITY BENEFIT (AMENDMENT) ACT, 1958.

PUNJAB ACT NO. 27 OF 1958*

[Received the assent of the Governor on October 8, 1958]

An Act to amend the Punjab Maternity Benefit Act, 1943.

Be it enacted by the Legislature of the State of Punjab in the Ninth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Punjab Maternity Benefit (Amendment) Act, 1958.

2. *Amendment of section 4 of Punjab Act VI of 1943.*—In section 4 of the Punjab Maternity Benefit Act, 1943 (hereinafter referred to as the principal Act),—

(a) in sub-section (1), for the words “thirty days” the words “forty-two days” shall be substituted;

(b) after sub-section (3), the following sub-sections shall be added, namely:—

“(4) A woman shall, in addition to the maternity benefit to which she is entitled under the foregoing sub-sections, be allowed by her employer leave for a maximum period of one month in case of her illness arising out of pregnancy or confinement or premature termination of pregnancy on payment of half the rate of maternity benefit specified in sub-section (1) or at the rate of twelve annas a day whichever is greater.

(5) A medical bonus of twenty-five rupees shall be payable to a woman entitled to maternity benefit under sub-section (1) if no prenatal confinement and post-natal care is provided by her employer free of charge.

(6) A woman, on her request, shall, without reduction in her wages, be employed on light work, during a period of one month immediately before her proceeding on leave under sub-section (1).

(7) Every nursing mother having a child below one year of age shall, after every three hours of work, be allowed by her employer a nursing break of twenty minutes.”

3. *Amendment of section 5 of Punjab Act VI of 1943.*—In section 5 of the principal Act,—

(a) in clause (a) of sub-section (1), for the words “one month” the words “forty-two days” shall be substituted; and

(b) in clause (i) of sub-section (3), for the words “thirty days” and the words “one month” the words “forty-two days” shall be substituted.”

Assam Welfare Officers (Recruitment and Conditions of Service) Rules, 1952—Amendments.

Notification No. GLR. 516/57/II, dated 14th October, 1958.**

In exercise of the powers conferred by section 112 read with section 49(2) of the Factories Act, 1948 (Act LXIII of 1948), the Governor of Assam is pleased to make the following amendments to the Welfare Officers

*Punjab Gaz., Extry., 18-10-'58, p. 1757.

**Assam Gaz., 22-10-'58, Part II-A, p. 3249.

(Recruitment and Conditions of Service) Rules, 1952, the same having been previously published as required by section 115 of the said Act :

AMENDMENTS

1. For rule 3 of the said rules, substitute the following :—

"3—*Number of Welfare Officers.*—There shall be one Welfare Officer for Factories employing between 500 to 2,000 workers per day. Where the number of workers exceed 2,000, there shall be an additional Welfare Officer for every additional two thousand workers or fraction thereof over 500. Where there are more than one Welfare Officer, one of them shall be called the Chief Welfare Officer and the others Assistant Welfare Officers."

2. In rule 4 of the said rules, add the following as a further proviso :—

"Provided further that, while preference shall be given to those having a diploma, the State Government may grant exemption in suitable cases until such time as better facilities in the matter of training in social science are made available throughout the country."

3. For sub-rule (1) of rule 5 of the said rules, substitute the following :—

"(1) That the post shall be advertised in two newspapers having wide circulation in the State and one of them should be an English newspaper."

4. In rule 6 of the said rules, add the following as a new sub-rule :—

"(3) The basic pay of a Welfare Officer shall not be less than Rs. 200 per mensem."

5. For rule 7 of the said rules, substitute the following :—

"7. *Duties of Welfare Officers.*—The duties of Welfare Officers shall be—

(i) to establish contacts and hold consultation with a view to maintaining harmonious relations between the factory management and workers ;

(ii) to maintain a liaison regarding grievances of workers and to interpret labour policies to workers in a language they can understand ;

(iii) to watch industrial relations with a view to using his influence in the event of a dispute arising between the factory management and workers and to help to bring about a settlement by persuasive efforts ;

(iv) to receive complaints about wages and advise the factory management about employment matters ;

(v) to advise on fulfilment by the concerned departments of the factory management of obligations, statutory or otherwise, concerning the application of the provisions of the Factories Act, 1948 and the rules thereunder ;

(vi) to promote relations between the concerned departments of the factory and workers which will bring about productive efficiency as well as amelioration in the working conditions and to help workers to adjust and adapt themselves to their working environments ;

(vii) to encourage the formation of Works and Joint Production Committees, Co-operative Societies and Safety-First and Welfare Committees and to supervise their work ;

(viii) to advise on provision of welfare facilities such as housing facilities, food-stuffs, social and recreational facilities, sanitation, advise on individual personal problem and education of children ;

(ix) to encourage provision of amenities, such as canteens, shelters for rest, creches, adequate latrine facilities, drinking water, sickness and benevolent Scheme payments, gratuity payments and leave ;

(x) to advise the factory management on questions relating to training of new starters, apprentices, workers on transfer and promotion, instructor and supervisors, supervision and control of notice-board and information bulletins, to further education of workers and to encourage their attendance at Technical Institutes ; and

(xi) to organise and supervise labour welfare work under the guidance of the management."

Rate of Emigrant Labour Cess.

*Notification No. S.O. 2049, dated New Delhi, the 30th September, 1958**

In exercise of the powers conferred by sub-section (3) of section 5 of the Tea Districts Emigrant Labour Act, 1932 (22 of 1932), the Central Government hereby determines that the rate of Emigrant Labour Cess to be levied under the said section in respect of the entry into Assam of each assisted emigrant shall be rupees eight for the year commencing on the 1st October, 1958 and ending on the 30th September, 1959.

Works Committees to be Established in Certain Establishments in Madras State

(G.O. Ms. No. 3852, Industries, Labour and Co-operation, 7th October, 1958.)†

In exercise of the powers conferred by sub-section (1) of section 3 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Madras hereby requires every employer in respect of an industrial establishment situated in the Kanyakumari district and Shencottah taluk of the Tirunelveli district in which 100 or more workmen are employed or have been employed on any day in the preceding twelve months, to constitute a Works Committee in accordance with the provisions of the said sub-section and in the manner prescribed in the relevant rules made under the said Act.

Employees' State Insurance Act—Exemptions

I

CERTAIN CATEGORIES OF CASUAL WORKERS

(G.O. Ms. No. 3836, Industries, Labour and Co-operation, 6th October, 1958.)‡

In exercise of the powers conferred by section 88 of the Employees' State Insurance Act, 1948 (Central Act XXXIV of 1948), the Governor of Madras is pleased to exempt for a further period of one year with effect

*Gaz. of India, Extry., Pt. II, Sec. 3(ii), p. 1071.

†Fort St. Geo. Gaz., 29-10-58, Pt. I, p. 1820.

‡Ibid, p. 1822.

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 out-side 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 fifteen 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 fifteen days in a calendar month and was not carried on for more than sixty 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.

II

CASHEW PROCESSING FACTORIES.

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (Central Act XXXIV of 1948), the Governor of Madras hereby exempts the factories which are carrying on cashew processing and are situate in any area in which Chapters IV and V of the said Act are in force, from the operation of the said Act, except Chapter V-A thereof, for a further period of three months from 1st October 1958.

The Industrial Disputes (West Bengal Amendment) Act, 1958.

*West Bengal Act XVII of 1958**

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 22nd September, 1958.]

An Act to amend the Industrial Disputes Act, 1947, in its application to West Bengal.

Whereas it is expedient to amend the Industrial Disputes Act, 1947, in its application to West Bengal, for the purpose and in the manner hereinafter appearing;

It is hereby enacted in the Ninth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. *Short title.*—This Act may be called the Industrial Disputes (West Bengal Amendment) Act, 1958.

*Cal. Gaz. Extry., 22-9-'58.

2. *Amendment of Act XIV of 1947 in its application to West Bengal.*—The Industrial Disputes Act, 1947 (hereinafter referred to as the said Act), shall, in its application to West Bengal, be amended as stated below.

3. *Amendment of section 7A.*—In clause (a) of sub-section (3) of section 7A of the said Act, after the words "High Court" the words "or a District Judge or an Additional District Judge" shall be inserted.

Cotton Textile Industry declared Public Utility Service in U. P.

*Notification No. 6455 (TD)/XXXVI-A-91 (TD)-49 dated October 10, 1958**

Whereas the Governor of Uttar Pradesh is satisfied that the public emergency and public interest so requires:

Now, therefore, in exercise of the powers conferred by clause (iv) of sub-section (q) of section 2 of the U.P. Industrial Disputes Act, 1947 (U.P. Act no. XXVIII of 1947 and in continuation of Government notification no. 2040 (TD)/XXXVI-A-91 (TD)-1948, dated the 15th April, 1958, the Governor is pleased to declare the Cotton Textile Industry and every undertaking connected with the manufacture or distribution of cotton textile to be a Public utility service for the purposes of this Act, for a further period of six months with effect from October 22, 1958.

The Governor is further pleased to direct with reference to section 19 of the U. P. Industrial Disputes Act, 1947, that notice of this notification shall be given by publication in the official *Gazette*.

U. P. Trade Unions Regulations, 1927—Amendments.

Notification No. 607 (M)/(ii)/XXXVI(B)-65(M)-58.

dated October 14, 1958.†

Whereas the State Government consider it expedient to amend the U. P. Trade Unions Regulations, 1927, in order to give effect to the provisions of the Indian Trade Unions Act, 1926 (Act no. XVI of 1926);

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 29 of the said Act, the Governor of Uttar Pradesh is pleased to make the following amendments to the aforesaid Regulations, the same having been previously published in notification no. 607(M)XXXVI(B)—65(M)-58, dated May 26, 1958, as required by section 30 of the said Act:

AMENDMENTS

(1) (i) In Regulation 22 (1) and 22 (2), for the words "annas eight" substitute the word and figure "Re. 0.50"

(ii) In Regulation 22 (4) for the words "annas two" and "annas eight" substitute the word and figure "Re. 0.12" and "Re. 0.50" respectively.

(2) In column nos. 2 and 4 of Schedule III of Form "A" appended to the said Regulations, for the words "Rs. a. p." substitute the words "Rs. nP."

(3) In Columns 2 and 4 of Form I appended to the said Regulations, for the words "Rs. a. p." substitute the words "Rs. nP."

*U.P. Gaz., 18-10-'58, Part I, p. 1183. †Ibid, 25-10-'58, Pt. I.A, p. 1778.

U. P. Factories Rules, 1950—Amendments

Notification No. 4363(SM)/XXXVI-A—1130(SM)-57.

dated October 23, 1958*

Whereas the State Government considers it expedient to make the following amendments to the Uttar Pradesh Factories Rules, 1950, in order to give effect to the purposes of the Factories Act, 1948.

Now, therefore, in exercise of the powers conferred by sections 19, 43, 50 and 112 of the said Act, the Governor of Uttar Pradesh, is pleased to make the following amendments to the aforesaid Rules, the same having been previously published in notification no. 20(SM)/XXXVI-A—1130(SM)-57 dated April 19, 1958, as required by section 115 of the said Act:

AMENDMENTS

- (1) (i) For clause (a) of rule 41, the following shall be substituted :
“(a) where the number of workers does not exceed 50—one seat”,
(ii) clause (b) shall be omitted, and
(iii) the existing clause (c) (d) and (e) shall be renumbered as (b) (c) and (d) respectively.
- (2) For rule 65, substitute the following :
“65. Facilities for storing clothes—All Engineering Workshops, Iron and Steel Works, Chemical Factories, Oil Mills and Motor Garages, covered by the Act, and
(i) employing 20 or more workers at a time and using power in the manufacturing process ; or
(ii) employing 50 or more workers at a time and not using power in the manufacturing process shall provide facilities for storing clothing not used during working hours. Such facilities shall include the provisions of separate rooms, pegs, lockers or such other arrangements for drying of wet clothes as may be approved by the Chief Inspector.”
- (3) (i) Delete item ‘A’ of rule 66 and renumber the existing items ‘B’ and ‘C’ as ‘A’ and ‘B’ respectively.
(ii) In the so renumbered item ‘A’ of rule 66, for the word ‘ten’ occurring after the words “number of persons employed exceed” substitute the word “nineteen”.
(iii) After the so renumbered item ‘B’ of rule 66, add the following as new item ‘C’.
“C—The provisions of section 45 shall not apply to the factories working with less than—
(i) Twenty workers with the aid of power ; or
(ii) Fifty workers without the aid of power on any day, provided that First Aid box, having the minimum contents as indicated below is maintained in such factories and a person trained in First Aid is readily available to give First Aid treatment.
(a) Three medium size sterilized dressings.
(b) One (1 oz.) bottle containing two per cent alcoholic solution of iodine.
(c) One (1 oz.) bottle of potassium permanganate crystals.
(d) One snake-bite lancet.
(e) One pair of scissors”.

*U. P. Gaz. 1-11-'58, Pt. I-A, p. 1799.

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.

[IN THE KERALA HIGH COURT.]

C. I. ABRAHAM

v.

INDUSTRIAL TRIBUNAL NO. II, ERNAKULAM.

M. S. Menon, J.

June 11, 1958.

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF DISPUTE BETWEEN EMPLOYER AND WORKMEN—TRIBUNAL IMPEACHING INDEPENDENT CONTRACTOR AS PARTY AND MAKING AWARD AGAINST INDEPENDENT CONTRACTOR—VALIDITY OF AWARD.

A reference of an industrial dispute between A and its workmen was made by the appropriate Government to an Industrial Tribunal under section 10(1) of the Industrial Disputes Act, 1947. The workmen desired to implead B, an independent contractor working for A, as a party to the dispute and the Tribunal directed that the contractor be so impleaded. The final award passed by the Tribunal exonerated A and directed B, the independent contractor, to give certain reliefs to the workmen. Held, that though an Industrial Tribunal has the right to implead necessary and proper parties as parties to the proceedings, the Act does not enable the Tribunal to enlarge the ambit or alter the character of the dispute referred to it. The Tribunal had, therefore, no jurisdiction to treat the industrial dispute as if it were a dispute between the independent contractor and his workmen and make an award.

O. P. No. 461 of 1957.

V. K. K. Menon, C. M. Ramachandra Menon and C. S. Padmanabha Iyer for the petitioner.

*T. C. N. Menon, N. Gangadhara Menon and Government Pleader
for the respondent.*

JUDGMENT.

By a notification dated the 5th May, 1956, the Government of Travancore-Cochin withdrew an industrial dispute from the Industrial Tribunal, Trivandram, and referred it for adjudication to the Industrial Tribunal, Ernakulam. The notification was published in the Travancore-Cochin Gazette dated the 8th May, 1956. It reads as follows:

"Whereas Government are of opinion that an Industrial Dispute exists between the management of Messrs. Parry and Company, Cochin and their workmen represented by the Cochin Pandakasala Thozhilali Union, Mattanchery in respect of matters mentioned in the annexure to this order, And whereas the said dispute had been referred for adjudication to the Industrial Tribunal, Trivandrum, by order L4-3040-55-DD

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dated 2nd April, 1955, and is pending adjudication, And whereas since then an Industrial Tribunal, Ernakulam has been constituted,

And whereas in the opinion of Government it is expedient to refer the said industrial dispute for adjudication by the Industrial Tribunal, Ernakulam.

Now therefore in exercise of the powers conferred by section 10(1)(c) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the General Clauses Act (Central Act X of 1897) Government hereby withdraw the said industrial dispute from the Industrial Tribunal, Trivandrum and refer the said dispute for adjudication to the Industrial Tribunal, Ernakulam.

ANNEXURE

1. Are the workers entitled to any bonus from 1952 onwards. If so, what should be the quantum of bonus to be paid?
2. Are the workers entitled to any holidays with wages.
3. Are the workers entitled to one month's pay as gratuity for every year of service on the termination of service.
4. "Whether the wage cut effected by the company on 6th November, 1954, and 10th November, 1954, in the wages to the workers engaged in mixing dynamite be restored?
5. Is the action of the company in discharging workers with long service and engaging new workers in their place on 8th February, 1955, justifiable? To what reliefs are these discharged workers entitled?
 - (i) if the discharge is justifiable?
 - (ii) if the discharge is not justifiable?
6. Are the above workers who are kept out of employment entitled to any interim relief pending adjudication. If so, to what extent?"

The Industrial Tribunal, Ernakulam, passed its award on 24th September, 1957, and the same was published in the Kerala Gazette dated the 15th October, 1957. Of the six issues mentioned in the annexure to the notification of the 5th May, 1956, issue No. 5 alone was pressed before the Tribunal.

In the opening paragraph of the award the Tribunal said:

"After the statement of the parties, the president of the Pandikasala Thozhilali Union moved this Court by M. P. 46/56/ dated 30th July, 1956, for impleading the General Shipping and Forwarding Service as a party to the dispute. After notice to the parties and hearing their objections, the General Shipping and Forwarding Service was impleaded as the 'additional opposite party' as per the order on M. P. 46/56 on 20th September, 1956. The General Shipping and Forwarding Service is represented by its proprietor Mr. C. I. Abraham";

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in paragraph 9 :

"They are workers under the contractor (General Shipping and Forwarding Service) and the company (Parry and Company, Ltd.) had not discharged any one of them and no relief is available against the company";

and in paragraph 10 :

"The workmen concerned were not given work from 8th February, 1955, by the contractor (General Shipping and Forwarding Service). The justifiability or otherwise of the refusal of employment has to be considered next."

The Tribunal then found that the refusal of employment by the General Shipping and Forwarding Service was not justified and concluded the award as follows :

"The contractor (General Shipping and Forwarding Service) will give employment to all the workmen concerned according to availability of work not only in the godown at Palluruthy under the Parry and Company, but in other establishments also where work is available under the contractor (General Shipping and Forwarding Service). As compensation each worker will be paid Rs. 100. The contractor (General Shipping and Forwarding Service) will pay Rs. 200 towards expenses of the Union. I pass the award on terms and conditions given above. The names of all the workmen concerned are given as 'annexure'. The award will become enforceable after thirty days of its publication in the Government Gazette."

It is clear from the order of reference that what was referred was a dispute between Messrs. Parry and Company Limited and their workmen, and it is clear from the award that what was decided was a dispute between the General Shipping and Forwarding Service and their workmen. The contention of the petitioner, the proprietor of the General Shipping and Forwarding Service, is that the Tribunal has no jurisdiction whatsoever to give such an award in pursuance of the reference made by the order of the 5th May, 1956.

The only provision pressed into service by counsel for the 2nd respondent in support of the award is section 18 of the Industrial Disputes Act, 1947, which provides that an award which has become enforceable shall be binding on

(a) all parties to the industrial dispute ; and

(b) all other parties summoned to appear in the proceedings as parties to the dispute unless the Tribunal records the opinion that they were so summoned without proper cause.

There is no section in the Industrial Disputes Act, 1947, which expressly empowers a Tribunal to add parties to the proceedings. In

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P. G. Brookes v. *The Industrial Tribunal, Madras*, [1953] 5 F.J.R. 376. the Court said:

"But in our view such power is necessarily implied in section 18 of the Act. Clause (b) of section 18 will not have any meaning unless the Tribunal has power to add parties. Under that clause an award is binding on all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board or Tribunal, as the case may be, records the opinion that they were so summoned without proper cause. Clause (a) deals with all parties to the industrial dispute. Clause (b) refers to all other parties summoned to appear as parties in the dispute. This necessarily implies that parties other than the original parties to an industrial dispute can be summoned as parties to the proceedings."

and "We should think that clause (b), though apparently wide in terms, is intended to take in only necessary or proper parties".

To the same effect is the decision in *Radhakrishna Mills Ltd v. The Special Industrial Tribunal, Madras*, [1953] 5 F.J.R. 699.

That a necessary or proper party to a dispute referred for adjudication can be summoned at the instance of one of the parties or *suo motu* by the Tribunal and that the award eventually passed will be binding on the party so summoned unless the Tribunal records that the said party was summoned without proper cause is a proposition that is not disputed by the petitioner. The contention of the petitioner—a contention with which I agree—is that there is nothing in section 18 which can possibly be construed as authorising a Tribunal to enlarge the ambit or alter the character of a dispute referred for adjudication under section 10 (1) (c) of the Industrial Disputes Act, 1947.

What can be referred by the appropriate Government is an industrial dispute which in its opinion exists or is apprehended and what was referred in this case was an industrial dispute which existed at the time of the reference between Messrs. Parry and Company Limited and their workmen, the only issue now material—issue No. 5—being worded in the order of reference as follows:

"Is the action of the company in discharging workers with long service and engaging new workers in their places on 8th February, 1955, justifiable. To what reliefs are these discharged workers entitled—

(i) if the discharge is justifiable?

(ii) if the discharge is not justifiable?"

As already pointed out what the Tribunal has done is to exonerate Messrs. Parry and Company Limited, from all liability and proceed to pass an award as if the issue referred was:

"Is the action of the General Shipping and Forwarding Service

in discharging workers with long service and engaging new workers in their places on 8th February, 1955, justifiable? To what reliefs are these discharged workers entitled—

(i) if the discharge is justifiable?

(ii) if the discharge is not justifiable?"

It is common ground that the General Shipping and Forwarding Service are independent contractors and it should follow that the award passed has to be quashed as one passed without jurisdiction. I decide accordingly, though in the circumstances of the case without any order as to costs.

In the award the Tribunal has directed that the petitioner should give employment to all the workmen concerned according to availability of work "not only in the godown at Palluruthy under the Parry & Company, but in other establishments also where work is available under the contractor." Counsel for the 2nd respondent conceded quite frankly that this portion of the award cannot be sustained under any of the provisions of the Industrial Disputes Act, 1947. His only submission was that the remaining portion of the award can be sustained and does not suffer from the same infirmity.

I make it clear that nothing in this judgment will in any way preclude the Government, if so advised, from referring the dispute between the petitioner and his workmen for adjudication hereafter under section 10 of the Industrial Disputes Act, 1947.

[IN THE BOMBAY HIGH COURT.]

DEWLI AND OTHERS

v.

STATE INDUSTRIAL COURT, NAGPUR.

J. R. Mudholkar and S. P. Kotval, JJ.

July 10, 1958.

CONDITIONS OF SERVICE—RETIREMENT—RETIREMENT BY AGREEMENT WITH REPRESENTATIVE TRADE UNION—AGREEMENT WHETHER BINDING ON WORKMEN WHO ARE NOT MEMBERS OF UNION—WHETHER FALLS WITHIN DEFINITION OF RETRENCHMENT—REMEDY OF AGGRIEVED WORKMEN—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(OO)—C. P. AND BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947, SECTION 16.

The management entered into an agreement with a representative trade union of workmen by which workmen who had completed 30 years of service or over were to be retired from service. Certain workmen who were not members of the trade union and who were retired under the agreement

questioned the bona fides of the agreement and contended that they were not bound by the same. The petitions by these workmen to the Labour Commissioner under section 16 of the C. P. and Berar Industrial Disputes Settlement Act, 1947, were dismissed on the ground that the workmen had been retired from service and had not been retrenched. The State Industrial Court, on revision, disagreed with the view of the Labour Commissioner but held that the workmen were not entitled to reinstatement.

Held, that retirement of workmen on reaching the age of superannuation must, in order that it may fall outside the definition of 'retrenchment' in section 2(OO) of the Industrial Disputes Act, 1947, comply with two requirements, (i) that there must be a stipulation on the point of retirement in the contract of employment and (ii) the stipulation must be in regard to the age of superannuation. As there was no contract of employment in the cases of the workmen retired and the agreement between the trade union and the management cannot be treated as a contract of employment, the action taken against the workmen must be treated as retrenchment, and, where such retrenchment has been effected without complying with the provisions of law an application under section 16 of the C. P. and Berar Act would lie and the workmen would in appropriate cases be entitled to reinstatement.

Special Civil Application No. 117 of 1958.

V. P. Sathe for the petitioner.

N. L. Abhyankar and K. M. Joshi for the respondents.

JUDGMENT

J. R. MUDHOLKAR, J.—This order will also govern Special Civil Applications Nos. 118 of 1958, 119 of 1958, 120 of 1958 and 121 of 1958.

The petitioners in all these cases were employed in the Empress Mills at Nagpur. All of them have been retired from service upon the ground that they have completed 30 years service or over on the 1st September, 1956. This was done in pursuance of an agreement arrived at between the Rashtriya Mill Mazdoor Sangh on the one hand and the Central India Spinning, Weaving and Manufacturing Company Ltd., respondent No. 3 on the other. Under this agreement each of the petitioners was paid 15 days basic wages and dearness allowance per completed year of service as compensation and in addition one month's salary in lieu of notice.

The petitioners contend that the agreement was *mala fide*, that it was entered into by a union of which they were not members and that each of them was fit and healthy and able to work in a satisfactory manner. They also allege that while implementing the agreement a number of persons who have completed more than 30 years service have actually been permitted to continue in service despite the agreement

According to Shri Sathe, learned counsel for the petitioners, this is not a case of retirement at all but is a case of retrenchment and as the proper procedure laid down in that regard in Chapter V-A of the Industrial Disputes Act, 1947, has not been followed, the petitioners are entitled to reinstatement.

The petitioners had made applications to the Labour Commissioner under section 16 of the C. P. and Berar Industrial Disputes Settlement Act, 1947, but those applications were dismissed by the Assistant Labour Commissioner on the ground that the petitioners were retired from service and had not been retrenched. The petitioners thereupon preferred revisions before the State Industrial Court, which while disagreeing with the view taken by the Assistant Labour Commissioner on the question of the petitioners having been superannuated held all the same that the petitioners though retrenched could not obtain the relief of reinstatement under section 16 of the Act.

It seems to us that both the Assistant Labour Commissioner as well as the State Industrial Court were in error in rejecting the applications of the petitioners under section 16 of the C. P. and Berar Industrial Disputes Settlement Act. There is no doubt that the discharge of the petitioners from service cannot be regarded as retirement at all and in law amounts to retrenchment as defined in section 2(oo) of the Industrial Disputes Act, 1947. That definition is as follows:—

'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman ; or
- (b) retirement of the workman on reaching the age of superannuation, if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill-health.

According to the learned Assistant Labour Commissioner the case of each of the petitioners fell under clause (b) of this definition. We would point out that under this clause two things are necessary. One is that in a contract of employment between the employer and the employee there must be a stipulation on the point of retirement and the second thing is that the stipulation must be with regard to the age of superannuation. By the expression 'the contract of employment' the Legislature clearly refers to the original contract of employment whereunder an employee was accepted in service by the employer. There is

no pleading here that in the original contract of employment in the case of any of the petitioners there was a stipulation with regard to the retirement of the employee. The Assistant Labour Commissioner has relied upon an agreement arrived at between the Union and the respondent No. 3 and held that that agreement deals with the matter of retirement. In the first place, an agreement of this kind does not fulfil the requirements of clause (b) because it is not between the employer on the one hand and the employee on the other and is not a contract of employment at all. Secondly, it does not specify the age of superannuation but only says that persons who have worked for more than 30 years will be retired from service. That is quite different from superannuation which means 'causing a person to retire on account of age'. For these reasons we have no doubt that none of the petitioners could be said to have been superannuated.

Shri Abhyankar then says that they must be deemed to have retired voluntarily from service because they actually accepted the compensation which was offered to them by the respondent No. 3. Now, here the fact is that the petitioners, after the order of retirement was served on each of them, made applications to the Assistant Labour Commissioner under section 16 of the C. P. and Berar Industrial Disputes Settlement Act and after the dismissal of their applications they preferred revision applications before the State Industrial Court. It was only after the dismissal of their revision applications that they accepted the compensation. It is possible that they did so in the belief that no further remedy was available to them, and in point of fact no remedy was available to them under the Industrial Disputes Act. These being the circumstances in which the petitioners accepted the compensation it is not open to the respondent No. 3 to say that the petitioners have retired voluntarily.

The definition of retrenchment which we have quoted above is a very wide one and it includes every kind of termination of service of a workman otherwise than as a punishment inflicted by way of disciplinary action, or voluntary retirement or retirement by reason of having reached the age of superannuation or retirement on the ground of continued ill-health. The case of none of the petitioners falls within any of these exceptions. Therefore, it follows that each of the petitioners was retrenched from service.

Retrenchment can only be effected in the manner laid down in Chapter V-A of the Industrial Disputes Act, 1947. Section 25-F lays down conditions precedent to retrenchment of a workman. Section 25-G lays down the procedure for retrenchment. Under this provision the employer shall ordinarily retrench the workman who was the last

person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman. It is common ground that the provisions of this section have not been complied with. In fact, that is also the finding of the State Industrial Court. That being the position, each of the petitioners was entitled to make an application under section 16 of the C. P. and Berar Industrial Disputes Settlement Act to the Assistant Labour Commissioner for reinstatement.

We cannot accept the view of the State Industrial Court that the applications did not lie to the Assistant Labour Commissioner for reinstatement under section 16 of the Act. The reason given by it is that where the complaint of a workman is non-compliance with the provisions of section 25-G of the Industrial Disputes Act, 1947, his remedy lies elsewhere than before the Assistant Labour Commissioner. We find no warrant for this view in the Industrial Disputes Settlement Act. Under this Act, where a workman is dismissed, discharged, removed or suspended from service in contravention of the Act or of a standing order or for a fault or misconduct committed by the employee more than six months prior to the date of such dismissal, discharge, etc., he can make an application under section 16 of the Act for reinstatement. Now, the Standing Orders of the respondent No. 3 must, by virtue of the provisions of section 25-G of the Industrial Disputes Act, 1947, be deemed to be subject to the provisions of Chapter V-A of that Act. Therefore, it would follow that a workman could not be discharged from service (of course, otherwise than as a punishment inflicted by way of disciplinary action), without complying with the provisions of section 25-G, Chapter V-A of the Industrial Disputes Act. Where the complaint is that the provisions of section 25-G contained in that Chapter have not been complied with, the Assistant Labour Commissioner surely will have jurisdiction to entertain an application under section 16 of the C. P. and Berar Industrial Disputes Settlement Act.

For these reasons we hold that the petitioner in each case is entitled to be reinstated.

Now, section 16 (3) (i) of the Act entitles each of the petitioners to back wages as from the date of discharge from service. In the instant cases, there has been a considerable delay on the part of the petitioners in coming to this Court with the writ petition. The revision applications were dismissed by the State Industrial Court on 26th August, 1957. The petitions were made to this Court on 12th February, 1958, that means 5 months and 17 days after the order of the State Industrial Court. We think that one month and 17 days should have been quite sufficient for filing the petitions and the delay of four months was

inexcusable. Accordingly, we direct that while calculating back wages none of the petitioners will be allowed any back wages for the period between 12th October, 1957, and 12th February, 1958.

Before parting with the cases, there are two points on which we would like to make some observations. One is that while making an agreement on behalf of the workers the unions as well as the employers will do well to bear in mind that the agreement must be in conformity not only with the provisions of the general law but also in conformity with the provisions of the C. P. and Berar Industrial Disputes Settlement Act, 1947. They should be careful not to make an agreement which contravenes the provisions of any law and in particular the Acts which we have referred to above.

The second point on which we would like to make some observations is that this is a case where the Union clearly appears to have disregarded the interests of the workers. Apparently the Union did not very much bother about them because they were not members of the Union. No doubt, the law allows a recognised Union to enter into certain types of agreements with the employer, which agreements would be binding even on non-members. Where such is the case there is a very heavy duty resting on the Union concerned as well as the employer to see to it that the interests of the workers who do not belong to the recognised Union are well protected. It is also their duty to see that the workers are not discriminated against. Here, we find from the evidence of Panthaki, the Factory Manager, that a number of workers who, though they had served for more than 30 years, were still retained and allowed to work. It is possible that that was because they were members of the Union which had negotiated the agreement. Even if that were not so, the action of the employer in continuing in employment some workers whose cases fell within the so-called agreement appears to be highly discriminatory. In our view, an agreement of this kind is not binding on the workers.

Finally, we would like to add that since the petitioners have already withdrawn amounts of compensation awarded to them under the agreement it will be open to the employer to set off the amounts so paid by them to the petitioners against the back wages due to them.

Costs of these petitions will be borne by the respondent No. 3.

[IN THE ANDHRA PRADESH HIGH COURT.]

P. LAKSHMIAH NAIDU

v.

THE STATE.

Sanjeeva Row Nayudu, J.

July 18, 1958.

FACTORY—WORKING HOURS—OVERTIME—CASUAL OVERTIME PAID FOR AT RATES PRESCRIBED IN FACTORIES ACT—WHETHER CONTRAVENTION OF PROVISIONS REGARDING HOURS OF WORK—FACTORIES ACT, 1948 SECTIONS 59, 63, 64 AND 92.

FACTORIES ACT, 1948, SECTION 117—EFFECT—PROSECUTION FOR CONTRAVENTION OF ACT—PROOF OF MENS REA—WHETHER ESSENTIAL.

The casual overtime employment of labour which has been paid for in compliance with the provisions of section 59 of the Factories Act, 1948, cannot be regarded as an offence under the Act.

Section 117 of the Act requires that before a prosecution lies under the Act for the contravention of the provisions of the Act, it must be proved that the contravention was intentional and done knowingly.

Criminal Revision Petition No. 162 of 1957.

K. Jayachandra Reddy for the petitioner.

Public Prosecutor for the State.

JUDGMENT

The petitioner herein is the manager of a rice mill at Rajampet known as Sri Seetharamanjaneya Rice Mill which is admittedly a factory within the meaning of section 2 (m) (i) of the Factories Act of 1948. The petitioner was convicted for contravening section 63 of the Factories Act in that he allowed nine adult male workers to carry on work in the factory on 23rd June, 1956, beyond time. The Chief Inspector of Factories, P. W. 1, inspected this factory on that day at 8-20 p.m. and found the nine adult workers working in the factory. The petitioner was accordingly charged under section 92 of the Factories Act, for contravention of section 63 thereof, by allowing 9 workers to work beyond the usual time fixed.

The petitioner contends that he was only taking work from these workmen from 7-45 p.m. to 8-20 p.m., as a special case, in order to complete the rice hulling work undertaken on behalf of D.W. 2.

The simple point for consideration is, whether the petitioner has committed any offence, and if so, under what provision of law he could be convicted. Section 92 provides that where there is any contravention

of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder the occupier and manager of the factory shall each be guilty of an offence and shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to Rs. 500 or with both.

The learned Judicial 1st Class Magistrate who tried the case was of the opinion that no exemption has been granted by the State Government to the Rice Mills under section 64 of the Act and as rule 84 of the rules framed by the State Government under this section had not exempted rice mills generally, the petitioner cannot take advantage of this section, that as he allowed workers to work in his factory beyond the schedule of timings specified in exhibit P-2 there has been a violation of the mandatory provisions contained in section 63 and hence the petitioner is shown to have contravened the said section. So holding, he sentenced the petitioner to a fine of Rs. 20 and in default to suffer simple imprisonment for a period of three weeks. The point for consideration is, whether the order of the learned Judicial 1st Class Magistrate could be supported under the provisions of the Factories Act.

It is true that section 63 of the Act provides that no adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory. But the petitioner contends that section 59 of the Act makes provision for payment of overtime. Section 59 of the Act runs as follows:—

“Extra wages for overtime:—(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in a week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(2) Where any workers in a factory are paid on a piece rate basis, the State Government in consultation with the employer concerned, and the representatives of the workers shall, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of wages of those workers.

(3)

(4)

(5) The State Government may make rules prescribing:

(a) the manner in which the cash equivalent of the advantages accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and (b) the registers that shall be

maintained in a factory for the purpose of securing compliance with the provisions of this section."

His contention is that as section 59 recognises the payment of extra wages for overtime work and as there is no prohibition in the Act against taking casual overtime on any particular day, sections 59 and 63 should be read together and that it must have been in the contemplation of the Legislature that taking casual overtime work which is compensated by extra wages, is not illegal.

The point is not quite clear. The learned Public Prosecutor contends that section 64 is the section which should grant exemptions from the operation of various other sections set out in the sub-sections of this section and that as section 54 which provides nine hours work a day and section 51 which provides for a maximum of 48 hours in a week, are included in these sub-sections, specific exemption must be obtained from the operation of these rules before payment of overtime wages or employment of overtime work could be regarded as legal and proper. I am not convinced that section 64 is intended to cover cases of casual overtime also. If that be the case there would certainly have been rules framed by the State Government providing for specific cases in respect of specific factories, the extent of overtime work that could be taken and other details. As it is, there appears to be no such provision. In my opinion, section 64 would appear to apply to cases of regular employment of labour over and above the maximum prescribed in sections 51 and 54 of the Act. This is not such a case.

In the absence of a specific provision in the Act prohibiting employment of labour beyond the period prescribed in casual cases, it would be difficult to conclude that the petitioner specifically contravened any rule or section of the Act. It is a recognised principle of interpretation of statutes that when two provisions are mutually contradictory, they should be interpreted and read together so as to obviate the apparent inconsistency. Taking all the facts of the case into consideration and reading all the relevant sections of the Act, I am clearly of the opinion, that casual overtime employment of labour which has been paid for in compliance with section 59 could not be regarded as an offence under the Act.

It is further contended by the learned counsel that section 117 of the Act which runs as follows:

"No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act"

is a complete answer to the present prosecution. He contends that

there is no *mens rea* in this case, that the petitioner *bona fide* believed that he could employ casual labour overtime in emergencies and that he has maintained in the usual course of business an overtime register Ex. D-4, wherein the casual overtime payments made to labourers as such are entered and that he honestly believed that what he was doing was not contravening any provisions of the Act and that, therefore, even if for the sake of argument it is conceded that some provision of law has been violated, it could not have been intentional or done knowingly and that, therefore, the prosecution in this case does not lie. I am in entire agreement with this argument of the learned counsel. In either view of the matter the prosecution fails, and accordingly I set aside the conviction and sentence and allow this revision. The fine if collected will be paid back to the petitioner.

[IN THE PATNA HIGH COURT.]

BANKIM CHANDRA CHAKRAVARTY AND ANOTHER

v.

REGIONAL PROVIDENT FUND COMMISSIONER AND OTHERS.

V. Ramaswami, C. J. and Choudhary J.

February 11, 1958.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTIONS 1(3), 19-A, SCHEDULE I—APPLICABILITY OF ACT—DETERMINATION OF TOTAL NUMBER OF PERSONS EMPLOYED—EMPLOYEES DRAWING MORE THAN RS. 300 PER MONTH—WHETHER TO BE INCLUDED—MANUFACTURE OF INCANDESCENT LAMPS—WHETHER FALLS WITHIN SCHEDULE I—REMOVAL OF DOUBTS BY CENTRAL GOVERNMENT UNDER SECTION 19-A—SCOPE OF —WHETHER INCLUDES DISPUTES RAISED BY PARTIES.

In arriving at the total number of fifty or more persons for the purposes of section 1(3) of the Employees' Provident Funds Act, 1952, all employees, whether drawing more or less than Rs. 300 as their basic wages per month, should be taken into account.

The manufacture of incandescent lamps will fall within both item 3 (electrical, mechanical or general engineering products) and item 4 (iron and steel) of Schedule I of the Act.

Section 19-A of the Act envisages a direction by the Central Government when any difficulty arises in giving effect to the provisions of the Act, and, if any doubt arises as to the matters referred to in that section in the mind of the authority who has to deal with the matter. If that authority does not feel any difficulty or has no doubt about any of the matters referred

to in the section, there is no scope for any direction to be given by the Central Government at the instance of a party who may raise a dispute over the matter. The question of any dispute being raised by a party concerned is foreign to the section. ANNAMALAI MUDALIAR & BROS. v. REGIONAL PROVIDENT FUND COMMISSIONER, MADRAS [1955] 8 F.J.R. 111, dissented from.

Miscellaneous Judicial Case No. 694 of 1958.

B. C. Ghosh and A. C. Mitra for the petitioners.

Government Pleader for the opposite parties.

JUDGMENT

CHOUHDARY, J.—The facts giving rise to the presentation of this writ application are as under ;

Petitioner No. 1 is a shareholder in the Dhalbhum Trades and Industries Ltd., petitioner No. 2, a company registered under the Indian Companies Act, 1913 (hereinafter to be referred to as the company), and the Managing Director of the firm of B. Chakravarty & Co. (Private) Ltd., which are the managing agents of the company. It appears that the company was required to submit monthly returns and deposit the contributions and administrative charges as provided by the Employees' Provident Funds Act, 1952 (hereinafter to be referred to as the Act), read with the provisions of the Employees' Provident Funds Scheme, 1952 (hereinafter to be referred to as the Scheme). As it was not regular in submitting the monthly returns and depositing the contributions, notices were issued to it from time to time for complying with the requirements, and it appears that subsequently the company made the deposits up to November, 1953. The deposits for the months of December, 1953, to May, 1954, were, however, not made, and monthly returns for the months of January to May, 1954, were not submitted. Consequently, a complaint was filed against petitioner No. 1 and cognizance was taken by the learned Sub-divisional Magistrate of offences under section 14 of the Act read with paragraph 76 of the Scheme and petitioner No. 1 was put on trial. He was convicted by the trial court, but on appeal the learned Additional Sessions Judge acquitted him because he held that sanction for the prosecution had not been given by any competent authority as required by the law and that the prosecution being in respect of more than three offences of the same kind committed within the space of twelve months, the trial was in contravention of section 234 of the Code of Criminal Procedure. On the merit of the case, however, he definitely held that the facts disclosed in the case attracted the provisions of the Act and the Scheme as

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there were fifty or more persons employed in the company and it engaged in an industry specified in Schedule I of the Act. As the petitioners failed to deposit the contributions for subsequent periods, the Regional Provident Fund Commissioner, opposite party No. 1, filed fifteen petitions of complaint under section 14 of the Act read with paragraph 76 of the Scheme for the period from June, 1954 to July, 1955. Some of the cases are pending before the Sub-divisional Officer, opposite party No. 2, and the others are pending before Mr. P. N. Sen, Magistrate, 1st class, opposite party No. 3. It is also alleged that opposite party No. 1 is demanding contributions for subsequent periods also. In those circumstances the petitioners filed the present application under article 226 of the Constitution of India for issue of an appropriate writ to quash the criminal proceedings pending before the opposite party Nos. 2 and 3, and to restrain opposite party No. 1 from demanding or realising any contribution. The application has been opposed by the learned Government Pleader on behalf of opposite party No. 1 who has shown cause by filing a counter affidavit.

The company, namely petitioner No. 2, as the statement in the application shows, is carrying on business at Ghatsila in the district of Singhbhum in manufacture of high pressure incandescent lamps, besides mines, fisheries, hat, etc.

On behalf of the petitioners Mr. Ghosh has contended that the provisions of the Act do not apply to this company. In support of this contention he has drawn our attention to section 1(3) of the Act which runs as follows :

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

It is contended that the petitioner-company is not engaged in any industry specified in Schedule I of the Act and that less than fifty persons are employed in it and, as such, under the above section, the Act has no application to the petitioner-company. On the above contention, two questions have to be determined, namely, (1) whether there are fifty or more persons employed in the company and (2) whether it is engaged in any industry specified in Schedule I of the Act.

So far as the question of there being fifty or more persons employed

in the company is concerned, reliance has been placed on behalf of the petitioners on Annexures "A", "B" and "C" attached to the petition. Annexure 'A' is a letter, written by the Inspector, Employees' Provident Funds, Bihar, to the petitioner-company, dated the 14th of November, 1952, inviting its attention to sub-section (3) of section 1 of the Act and asking it to give, month by month, the number of employees on rolls, inclusive of clerical staff, watch and ward, etc., drawing Rs. 300 or less per month as basic wage from October, 1951, to October, 1952. It is contended with respect to this letter that by this letter the Inspector wanted the company to give the number of only those employees who were drawing Rs. 300 or less per month as basic wages. In reply to that letter, therefore, the company wrote on the 28th of November, 1952, giving the number of the employees who were drawing less than Rs. 300 per month as basic wage and the figures so given for the period from October, 1951, to October, 1952, showed that the number of such employees had always been less than fifty. This is Annexure "B". Annexure "C" is dated the 16th February, 1955, by which again the petitioner company raised the point that the Act did not apply to it as it did not employ fifty or more persons in its business and it gave figures for the period from December, 1953, to January, 1955, showing that the employees engaged in the business including the number of casual labourers had always been less than fifty. In this letter, however, it was stated that the list submitted in November, 1952, included all persons employed casually or on a permanent basis. But in paragraph 10 of the writ petition the petitioners have made specific statements that the petitioner-company did not employ at any time, fifty or more persons other than those who have been described as excluded employees. It is also stated in paragraph 12 of that petition that the reply that was sent, namely, Annexure "B" gave a full list of the employees whose basic wages did not exceed Rs. 300 per month, and in paragraph 13 it is stated that likewise in the letter, Annexure "C", the figures for the period from December, 1953, to January, 1955, were given. The use of the word "likewise" in this paragraph makes it perfectly clear that the figures given in the letter related to the employees whose basic wages did not exceed Rs. 300 per month as has been stated in paragraph 12 of the petition referred to above. In a rejoinder filed on behalf of the petitioners it has been stated that the petitioners made it clear in Annexure "C" that the list submitted in November, 1952, included all persons employed casually or on permanent basis, and on this statement in Annexure "C" Mr. Ghosh has contended that the list given in that

document included all employees drawing more or less than Rs. 300. In face of the statements referred to above in the writ petition itself, it is not possible to accept the contention of Mr. Ghosh and it must be held that the figures given in those letters related to only those employees who were drawing Rs. 300 or less as basic wages.

It was then contended by Mr. Ghosh that the employees, who were drawing more than Rs. 300 as their basic wages, are, under paragraph 2(f) of the Scheme, excluded employees, and, therefore, they must be excluded from making the total number of fifty or more persons as employees for the purpose of section 1(3) of the Act. The argument is based on confusion. A plain reading of the above section makes it perfectly manifest that for the purpose of the application of the Act to a particular factory, all employees, whether drawing more or less than Rs. 300 as their basic wages taken together, must be 50 or more persons. Thus where the number of all such employees is less than fifty, then only the provision of the Act is inapplicable. In my view, therefore the employees drawing more than Rs. 300 as their basic wages must be taken into account for the purpose of reaching the number of fifty or more.

It has then been contended by Mr. Ghosh that in the present case there is no material on the record to show that the employees engaged in the petitioner company were fifty or more. The judgment of the learned Additional Sessions Judge, which is annexure (g) to the counter affidavit, shows that the learned judge took the view that fifty or more persons were employed in that company. Even after this finding, the petitioners do not make any statement in their writ petition as to the total number of such employees. It was for them to have brought on the record materials on which they wanted to base their prayer for an issue of writ, and, if they have failed to do so, it may be assumed that there must have been fifty or more employees engaged in the company.

The next question is whether the petitioner company is engaged in any industry specified in Schedule I of the Act. As already stated the petitioner company manufactures high pressure incandescent lamps. Item 3 of Schedule I of the Act is electrical, mechanical or general engineering products, and item 4 of that schedule is iron and steel. It is contended on behalf of the opposite party that the business in which the petitioner company is engaged comes both under items 3 and 4 referred to above. In my opinion, the expression "electrical, mechanical or general engineering products" is wide enough to include high pressure incandescent lamps. Moreover, by item (16) of the Explanation appended to the above schedule, it has been laid down that the expres-

sion "electrical, mechanical or general engineering products" includes hurricane lanterns. It has, therefore, been argued on behalf of the opposite party that the business of the petitioner company is included in the terms "hurricane lanterns". It has also been argued on their behalf that the business comes under the above item 4 of the schedule namely, "Iron and steel", which term, as I will presently show while dealing with another point, includes any manufactured products of iron and steel. The argument is, in my opinion, well founded and must prevail. Lamp means, according to the Webster's Dictionary, a vessel with a wick used for the combustion of oil or other inflammable liquid to produce artificial light, and by extension, any or various vessels, instruments, or devices for producing light or heat, as, an arc lamp, an incandescent lamp, a safety lamp, whereas lantern means something inclosing a light, and protecting it from wind, rain, etc., sometimes portable, as a closed vessel or case of horn, perforated tin, glass, oiled paper, or other material, having a light within. Thus, it appears that the word "lantern" is a case inclosing a light, whereas a "lamp" is a vessel with oil and wick for giving light. In my opinion, therefore, the term "hurricane lanterns" used in item (16) of the Explanation of Schedule I of the Act includes incandescent lamps in manufacturing which the petitioner company is engaged. Apart from that the expression "incandescent lamps" can also be included in the term "any manufactured products of iron and steel" referred to above. That being the position, the petitioner company must be held to be engaged in an industry specified in Schedule I of the Act. In that view of the matter the contention of Mr. Ghosh that section 1(3) of the Act is not applicable to the petitioner company on the ground referred to above must fail.

The next point taken in support of the application is that no sanction for prosecution has been given by any competent authority and, therefore, the same is bad in law. Section 14 (3) of the Act lays down that no Court shall take cognizance of any offence punishable under this Act or under any scheme except on a report in writing of the facts constituting such offence made with the previous sanction of such authority as may be specified in this behalf by the appropriate Government, by an Inspector appointed under section 13. In this case the sanction for prosecution for the period after the 30th November, 1954, has been given by Sri B. P. Singh, I.A.S., and for the period before that date by Sri S. Neelakanthan, Deputy Secretary, Ministry of Labour, Government of India, and the complaints have been lodged by the Regional Provident Fund Commissioner, opposite-party No. 1. It is contended on behalf of the petitioners that

the industry in which the petitioner company is engaged not being a controlled industry, Sri S. Neelakanthan had no authority to accord sanction for the prosecution. As section 14 (3) quoted above provides for the sanction to be given by an authority as may be specified in this behalf by the appropriate Government, it has to be seen whether or not in this case Sri S. Neelakanthan was authorised to give sanction by the appropriate Government. Section 2 (3) defines "appropriate Government" to mean (i) in relation to a factory engaged in a controlled industry or in an industry connected with a mine or an oilfield the Central Government, and (ii) in relation to any other factory, the State Government. Section 2 of the Industries (Development and Regulation) Act, 1951, declares that it is expedient in the public interest that the Union should take under its control the industries specified in the first Schedule and in that Schedule item (4) is iron and steel and item (31) is hurricane lanterns. Explanation 1 to that schedule says that in item (4), iron and steel shall include any manufactured product of iron and steel. I have already held that the business in which the petitioner company is engaged comes under these two items and is, therefore, a controlled industry. That being the position, the appropriate Government authorising any person to give sanction is the Central Government.

By notification No. P.F. 516 (28) published in the Gazette of India, dated the 19th of July, 1952, at pages 1130-1 in Part II, section 3, the Central Government in exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act appointed Shri B. P. Singh, I.A.S., Bihar, to be an Inspector for the State of Bihar for the purposes of the said Act and of any Scheme made thereunder in relation to factories engaged in controlled industries and industries connected with mine or an oilfield. This is annexure (a) to the counter affidavit. By notification No. P.F. 516 (55) published in the Gazette of India, dated the 29th November, 1952, at page 1750, the Central Government, in pursuance of section 14 of the Employees' Provident Funds Act, specified the Commissioner for the Employees' Provident Funds appointed under sub-paragraph (1) of paragraph 19 of the Employees' Provident Funds Scheme, 1952, as the authority for the purpose of the said sub-section (annexure (b) to the counter affidavit) and by notification No. P.F. 516 (175) published in the Gazette of India, dated the 10th April, 1954, at page 149 (annexure (c) to the counter affidavit) Sri S. Neelakanthan, Deputy Secretary, Ministry of Labour was appointed as Central Provident Fund Commissioner, Employees' Provident Funds Scheme at New Delhi with effect from the 1st April,

1954, until further orders. Later on, on the 30th of November, 1954, the Central Government, by notification published in Part II, Section 3 of the Gazette of India, dated the 4th December, 1954, directed that the powers exercisable by it as the appropriate Government under sub-section (3) of section 14 of the said Act to specify the authority to issue the sanction referred to in the said sub-section shall also be exercisable within each of the States specified in the Schedule annexed thereto by the respective Government of each such States and Bihar is one of those States (annexure (d) to the counter affidavit). Thereafter, on the 10th of October, 1955, by notification published in the Bihar Gazette, on the 2nd of November, 1955, the Government of Bihar specified the Secretary to Government of Bihar, Labour Department, as the authority for the purposes of sub-section (3) of section 14 in respect of factories engaged in a controlled industry or in an industry connected with a mine or an oilfield (annexure (f) to the counter affidavit). From these notifications therefore, it is manifest that the sanction for prosecution given in the present case is perfectly valid and the point taken by Mr. Ghosh has no substance.

The third point taken by Mr. Ghosh in support of the application is that the petitioners have all along been raising a dispute as to whether the provisions of the Act were applicable to the petitioner company, but the same has not been settled by the Central Government as required by section 19A of the Act. This section reads as follows:—

“If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to—(i) whether a factory is engaged in any industry specified in Schedule I; or (ii) whether fifty or more persons are employed in a factory; or (iii) whether three years have elapsed from the establishment of a factory; or (iv) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer, the Central Government may, by order, make such provision or give such direction not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final.”

It is submitted that by the letters referred to above the petitioners have raised the point that fifty or more persons were not employed in the company and that it is not engaged in any industry specified in Schedule I of the Act and, as such, it was incumbent on the Central Government to give directions in that regard. I, however, am unable to agree with this contention. The section, in my opinion, envisages a direction by the Central Government when any difficulty arises in giving effect to the

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provisions of the Act, and, if any doubt arises as to the matters referred to in that section in the mind of the authority who has to deal with the matter. If that authority does not feel any difficulty or has no doubt about any of the matters referred to in the section, there is no scope for any direction to be given by the Central Government at the instance of a party who may raise a dispute over the matter. The question of any dispute being raised by the party concerned is foreign to the section.

Mr. Ghosh, however, in support of his contention has relied on the cases of *Ram Lal-Gura Mal Textile Mills v. Regional Provident Fund Commissioner, Punjab* [1957] 12 F.J.R. 115 and *Annamalai Mudaliar and Bros. v. Regional Provident Fund Commissioner, Madras*, [1955] 8 F.J.R. 111. So far as the first case is concerned, I do not think that it is of any assistance to the petitioners and, in my opinion, it supports the contention of the opposite party. In that case a writ application was made by certain mills for issue of a writ in the nature of *mandamus* directing the Government not to enforce the provisions of the Act against them. It appears that the Regional Provident Funds Commissioner, Punjab, called upon the mills to deposit the employees and employers' shares of contributions and administrative charges from May, 1954, onwards. The mills objected to make this deposit on the ground that their employees were less than fifty. On inspection of the books produced by the mills, the Inspector came to the conclusion that the petitioner's mills were governed by the Act and the Regional Provident Funds Commissioner called upon them to deposit the required contributions and administrative charges failing which proceedings were to be taken against them under the provisions of the Scheme and the Act. The mills then represented their case to the Central Government under section 19A of the Act, but the Central Government informed them to comply with the provisions of the Act as the strength of the employees in the factory was more than fifty persons. The petitioner thereafter made a writ application and put forward a grievance, that the Central Government did not give any opportunity to them under section 19A of the Act to prove that the number of employees in their factory during the relevant period was less than fifty. The contention was rejected and it was held that that section did not provide for an inquiry into the matter and did not lay down that the factory was to be given an opportunity to present its case to the Central Government. It was further held that the above section merely enables the Government in case of difficulty or doubt to issue certain directions which are to be considered final and that in that case the Central Government did not consider that there

was any difficulty or doubt in giving effect to the provisions of the Act. The writ application was, accordingly, dismissed. The other case however, fully supports the contention of Mr. Ghosh. In that case it was held that the Employees' Provident Funds Act, 1952, provides for a specific machinery in section 19A for the determination of a dispute as to whether certain factory is a factory within the scope of section 1(3) of the Act. Rajagopalan, J. (as he then was), relying on section 19A of the Act observed that neither the Act nor the Scheme vest any power in the first respondent to adjudge a dispute should one arise, whether the factory is one to which the Act applied, that is, whether it is a factory within the scope of section 1(3) of the Act and that the order of the Central Government not having been sought, the High Court was justified in issuing a writ. With utmost respect to his Lordship, I am unable to persuade myself to accept the correctness of that decision. His Lordship has decided the point by reading something into the section which is not there. The section, as already stated, does not contemplate any dispute raised by the parties concerned, and, in that view of the matter, there is no point in referring the matter to the Central Government for a direction unless the authority concerned feels a doubt or finds a difficulty as provided in the section.

Lastly, it has been contended that the petitioner no. 1, at any rate, could not be prosecuted. The argument has been put forward in ignorance of the provisions of section 14A of the Act. Sub-section (1) of that section states that if the person committing an offence under this Act or the Scheme made thereunder is a company, every person, who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Petitioner no. 1, who is a resident of Ghatsila, where the company is located, on his own showing is the managing agent of petitioner no. 2, the company. That being so, he is, under the above section, liable for prosecution.

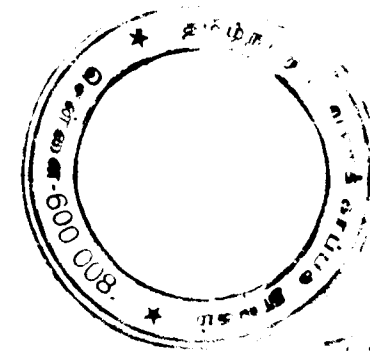
The application fails on a preliminary ground as well. As already stated, there have been fifteen prosecutions lodged against the petitioners, but they have made only one writ application for quashing all those fifteen prosecutions. A Bench of this Court in *Bishwaranjan Bose v. The Honorary Secretary, The Ramakrishna Mission, Vivekanand Society, Jamshedpur* (M. J. C. 187 of 1957), decided on the 24th of January, 1958) has held that a joint application for quashing several orders is not maintainable. In that case four teachers whose services

(To be reprinted)

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had been dispensed with by four different orders made one writ application for quashing those orders. It was held that the application was not maintainable. The same view has been taken in other courts also, for example, *Sri Shanmuga Rajeswara Sethupathi, Rajah of Ramnad v. State of Madras* (A.I.R. 1957 Mad. 570), *Mandir Thakar Dawara, Dhuri v. State of Pepsu* (A.I.R. 1955 Pepsu 158) and *Inder Singh v. State of Rajasthan* (A.I.R. 1954 Rajasthan 185).

For the reasons given above, there is no merit in the application, which is, accordingly, dismissed with costs. Hearing fee Rs. 100.



JL
1958-15-8

