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

WITH

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

CHIEF EDITOR:

A. N. AIYAR, B.A., B.L.,

Senior Advocate, Supreme Court,

Chief Editor, 'Income Tax Reports' and 'Company Cases'.

EDITOR:

T. A. RAJ GOPAL, B.A., B.L.,

Advocate, Madras High Court.

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STANDING ORDERS FOR SUGAR FACTORIES IN U. P.

*Notification No. 5436 (ST) XXXVI-A—208(ST)-58, dated Lucknow, October 3, 1958.**

Whereas in the opinion of the Governor of Uttar Pradesh it is necessary so to do for securing public convenience, for maintaining supplies and services essential to the life of the community and for maintaining employment;

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 supersession of Government Order No. 6380 (ST) XXXVI-A—73 (ST)-54, dated October 31, 1957, the Governor is pleased to order that with effect from the date of publication of this notification every vacuum pan sugar factory in Uttar Pradesh shall observe for a period of one year in the first instance, the Standing Orders governing the conditions of service, appended hereto, in respect of the employment of its workmen.

2. Any person contravening the provisions of the aforesaid orders shall be liable to punishment under section 14 of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947).

3. The Governor is further pleased to order under section 19 of the said Act that the notice of this order shall be given by publication in the official *Gazette*.

ANNEXURE

STANDING ORDERS

Governing the conditions of employment of workmen in vacuum pan Sugar Factories of Uttar Pradesh

A. Definitions

In these Standing Orders, unless there is anything repugnant in the subject or context:

"Workmen" means any person (including an apprentice) employed by a factory, to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied, but does not include any such person.

(*i*) Who is employed mainly in a managerial or administrative capacity; or

(*ii*) Who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensum or exercises either by the nature of the duties attached to the office or by reason of the power vested in him, functions mainly of a managerial nature.

2. "Manager" means the manager of a factory or the acting manager for the time being, or the secretary or the acting secretary for the time being or any other officer vested with authority regarding observance and execution of these Standing Orders.

3. "Management" means the managing director of a factory, the managing agent or managing agents, proprietor or proprietors, a partner or partners or such other person or persons or body or bodies of persons having authority to manage the affairs of a factory.

*U.P. Govt. Gaz. Extry. 3-10-'58, p. 1.

4. "Masculine" includes the feminine except where specifically a distinction has been drawn.

5. "Season" means the period commencing from the date when the crushing commences till the date when crushing ends. Provided that for those departments which are not in operation when crushing begins and which continue in operation after crushing ends, the "Season" so far as it affects the workmen in those departments, shall commence with the date the department commences operation and shall end when the department ceases to be operated.

B. Classification of workmen

1. Workmen shall be classed as:

(*i*) Permanent.
(*ii*) Seasonal.
(*iii*) Temporary.
(*iv*) Probationers.
(*v*) Apprentices, and
(*vi*) Substitutes.

(*i*) A "permanent workman" is one who is engaged on work of a permanent nature, lasting throughout the year and has completed his probationary period:

Provided that the workmen who are already permanent in terms of second proviso to Standing Orders (B) (1) (i) of the Standing Order enforced under G. O. No. 2124 (ST) (iv)/XVIII, dated October 1, 1951, with *ipso facto* to be covered by the above definition of "permanent workmen."

(*ii*) A "Seasonal workman" is one who is engaged only for the crushing season:

Provided that if he is a retainer, he shall be liable to be called on duty at any time in the off-season and if he refuses to join or does not join, he shall lose his lien as well as his retaining allowance. However, if he submits a satisfactory explanation of his not joining duty, he shall only lose his retaining allowance for the period of his absence.

(*iii*) A "Temporary workman" is one who is engaged for work of a temporary or casual nature or to fill in a temporary need of extra hands on permanent or temporary posts.

(*iv*) A "probationer" is one who is provisionally employed for a period, to be specified by the management at the time of employment to fill a permanent vacancy or a new post of permanent nature and who may be confirmed at the completion of that period, if his services are found satisfactory. The probationary period shall not exceed six months:

Provided that if no period of probation is specified by the management at the time of employment the period of probation shall be deemed to be six months. Provided further that if after the expiry of the probationary period no orders are passed by the management, the probationer shall be deemed to have been confirmed.

(*v*) An "apprentice" is a learner who may be given a nominal allowance during the course of his training, to be fixed by the management concerned. The period of his apprenticeship will be such as may be fixed in the scheme approved by the Government.

(*vi*) A "substitute" is one who is employed in place of a permanent or a seasonal workman, who is temporarily absent on leave or otherwise.

2. (*a*) Every workman on enrolment shall sign the enrolment form "A".

(*b*) At the time of taking appointment every monthly rated workman will be given an Engagement Memo in form "B" and every daily rated workman will be given Engagement Memo as in form "C".

(*c*) (i) Every permanent workman shall be given a permanent ticket as in form "D".

(*ii*) Every seasonal workman will be given a ticket as in form "E".

(*iii*) Every temporary workman will be given a ticket as in form "F".

(*iv*) A probationer will be given a ticket as in form "G"

(*v*) Every apprentice will be given a ticket as in form "H".

(*vi*) Every substitute workman will be given a ticket as in form "I".

(*d*) The ticket shall be surrendered by a workman at the time he ceases to be employed or if his classification is changed. Should a workman lose or at the time he ceases to be employed fail to deliver his ticket he shall be liable to pay a sum of annas 2 for the cost thereof.

C. Notices: Mode of Publicity

All notices concerning workmen shall be posted on the Notice Board maintained for such purposes. A true copy of such notices shall also be kept in the notice Register maintained for the purpose and one such copy shall be sent to the Secretary of the registered union of workmen.

D. Notification to workmen of periods and Hours of work, Holidays, pay days and Shifts.

1. The periods and hours of work for all classes of workmen shall be posted on the Notice Board of a factory.

2. Notices specifying the days observed by a factory as holidays and pay days shall be posted as required by the Factories Act, 1948, and the Payment of Wages Act, 1936, respectively.

3. (*a*) Every workman shall be given a wage slip as in form "J". The wage slip shall contain the following information:

(1) Number of days worked.
(2) Total basic wages earned (distinction should be made between basic wage and dearness allowance wherever necessary).
(3) Other allowances (including over-time to be specified).
(4) Gross earnings.
(5) Deductions, if any.
(6) Net amount payable.

Every workman shall be allowed to retain the wage slip issued to him.

(*b*) In cases where wages are distributed in the morning, wage slips shall be distributed to workmen not later than the middle of the day previous to the day fixed for the distribution of wages, and where wages are distributed in the afternoon, not later than the forenoon of the day on which the wages are distributed:

Provided that wage slips may be distributed at any time before the time fixed for payment to workmen other than permanent workmen.

(c) Any objections as to the correctness of the amount payable to a workman shall be enquired into at once so that there may be no delay in payment at the time fixed.

(d) If for any reason, it is not possible to conclude the enquiry into the objections before the time fixed for payment, the objection shall be registered and the amount shown on the wage slip paid to the workman at the time fixed for payment and if the objection is subsequently found correct, the balance payable to the workman concerned shall be paid within six days of the date of his objection:

Provided that were an objection has been registered and custom exists of taking receipt from the workman, no final receipt for payment shall be taken until such time as the objection has been enquired into and disposed of.

4. Any wages due to a workman but not paid on the usual pay day on account of their being unclaimed shall be paid by a factory on such day fixed in each week for payment of unclaimed wages, as may be notified to the workman and following the date on which a substantiated claim was presented by the workman or, on his behalf, by his nominated representative or legal heir:

Provided that such claim is submitted within six months from the date on which the wages become due to the workman. If the workman is unable to present himself, the factory shall, if requested by him in writing to do so send his pay to him by money order at his cost:

Provided secondly that if any objection as to the correctness of the amount payable to a workman is made on his behalf by a nominated representative or legal heir it should be enquired into at once, to enable payment at the time fixed and if for any reason it is not possible to enquire into the objection before the time fixed for payment, the objection shall be registered and the amount shown payable to the workman shall be paid to his representative or legal heir at the time fixed for payment. If the objection is found correct the difference between the amount actually payable to the workman and that already paid shall be paid within six days of the date of his objection.

5. Shifts and hours of work for various categories of workmen shall be regulated in accordance with the provisions of the Factories Act, 1948, and shall be notified from time to time. If, however, there are any collective agreements or awards for regulating shift working they shall be adhered to in so far as they are not inconsistent with the Factories Act, 1948.

E. *Closure or Reopening of a Factory or a Department or a Section of Department of a Factory*

Notice for closure and reopening—As far as possible, a notice will be given in advance of the approximate date of closure or reopening of a factory or any department or section of a department of a factory except as provided in Standing Order J(1).

Notice of commencement of the season—The Manager shall intimate in writing the date of commencement of the crushing season of a factory to the Labour Commissioner, the Regional Conciliation Officer of the area and to all registered trade unions of its workmen and also publish the date in the local newspapers. A copy of the general notice shall be posted on the Notice Board. Intimation will be given by the management to each individual workman by registered post at least 10 days in advance informing him of the date on which he has to report himself for duty. Such intimation may be sent through messenger to workmen available locally and an acknowledgment obtained from them in the peon book. In case the workman does not join his duties within seven days of the date notified to him he shall lose his lien on the appointment.

F. *Attendance and Late Coming*

1. All workmen shall be at work at the time fixed and notified to them. Any workman attending late shall be liable to be shut out and treated as absent.

In case of late attendance in the first meeting, a workman, if reporting for duty after 10 minutes may be shut out and treated as absent but only for the particular half day for which he could not take up his job punctually. In the second meeting he shall not be shut out but shall work and get his wages for the half day if no substitute has been appointed in his place for the whole day.

2. The wages of a workman absent during the working hours shall be liable to be deducted in accordance with the provisions of the Payment of Wages Act, 1956.

G. *Leave Conditions, Procedure and Authority to Grant*

(i) *Leave*—All Vacuum Pan Sugar Factories of the State shall give the following leave to their workmen other than those governed by the U.P. Shops and Commercial Establishments Act, 1947—

(a) Leave admissible under the Factories Act, 1948.

(b) Casual and sick leave as detailed below:

Permanent Workmen

Casual Leave	6 days in a year.
Sick Leave	10 days in a year.

Seasonal Workmen

Casual Leave—To be calculated at the rate of half day for every month of the crushing season during which a workman is on the rolls of the factory. A period exceeding 15 days in any month should be counted as full month for this purpose.

Sick Leave—To be calculated at the rate of half day for every month of the crushing season during which he is on the rolls of the factory. A period exceeding 15 days in any month should be counted as full month for this purpose. This will be in addition to the casual leave.

Explanation—Month—for this purpose will mean a period of 30 days commencing from the date the crushing starts:

Provided that the leave allowed under this order shall be treated as the minimum to be allowed by each sugar factory. If leave allowed by a factory other than festival holidays, weekly rest days, leave with wages under the Factories Act, exceeds 16 days, the factory will not be required to grant any additional leave by way of casual leave or sick leave as provided in this order:

Provided also that the casual and sick leave will not be carried over to the next year nor the workmen be entitled to any wages in lieu of unavailed sick leave. Application for sick leave will not be rejected if it is made in accordance with the provisions of these Standing Orders:

Provided further that seasonal workmen who are required to work in the off-season, be allowed proportionate benefits of sick and casual leave for the period of their employment in the off-season.

Explanation—If any factory is already granting to its workmen any leave (other than weekly rest days, festival holidays, leave with wages under the Factories Act) which exceeds 16 days as admissible under this sub-clause, the same will not be curtailed.

2. Those classes of employees of Vacuum Pan Sugar Factories to whom the provisions of the Factories Act do not apply shall get leave according to the U. P. Shops and Commercial Establishments Act, 1947.

3. Any workman who desires to obtain leave of absence shall apply through his Head of the Department to the Manager or to any such officer appointed for the purpose by the Manager, whose name shall be duly notified on the notice board.

4. If the leave sanctioned to a workman is within the period of leave with pay admissible to him, the leave will be treated as leave with pay, otherwise the management may grant leave with or without pay at their discretion.

5. Grant of leave during the season shall depend on the exigencies of work and shall be at the discretion of the Manager.

6. Application for leave for more than three days will be made at least 15 days before the commencement of the leave. Applications for leave for less than three days must be made at least 24 hours before the commencement of the leave:

Provided that the above limits for making applications will not apply when the leave is required on medical grounds or due to death or serious illness in the family or grave domestic complications or any other urgent matter, in which case the applications for leave may be made on the same day.

7. All such applications, except in case of emergencies, should be made during office hours and in Form "K". If a workman so chooses, he may send his application for leave by registered post or through registered trade union of which he is a member and the trade union will send it to the Manager through its peon book and obtain an acknowledgment.

8. If the leave applied for is of an urgent nature, i.e., it is to commence on the date of the application or within three days thereof, the application for such leave shall be considered without any delay, and the orders passed thereon will be communicated to the person presenting the application. If the leave asked for is granted, a leave pass in Form "L" shall be issued to the workman. In case an application for such leave for more than three days is sent through the registered trade union or by registered post is not acknowledged by the Management or no orders are communicated to the applicant or the union at least 24 hours before the commencement of the leave, it would be presumed that the leave has been granted.

9. A record of leave showing leave due, leave sanctioned, absence without leave, etc., shall be maintained in accordance with the provisions of the rules framed under section 83 of the Factories Act, 1948.

10. If a workman desires an extension of the period of his leave, he shall make an application in writing to the Manager before the period of his originally sanctioned leave expires and the Manager shall immediately on receipt of such application, inform the workman in writing by registered post, at the address recorded by him, whether the extension of leave applied for has been sanctioned, and if so, for what period, or whether the extension applied for has not been sanctioned. However, an extension of leave shall be granted only on medical grounds or in cases of death in the family or any other urgent ground:

Provided that if extension is asked for by a workman on the ground of his illness or illness of any of his family members the workman shall, if so required by the Manager by a notice in writing, submit a medical certificate signed by a registered medical practitioner, Vaidya or Hakim, stating the cause of absence and the period for which the worker is, in the opinion of such medical practitioner, Vaidya or Hakim, unable to attend to his work.

11. The application for extension of leave shall be made by a workman sufficiently in advance by registered post so that reply may reach him before the date of expiry of the period of leave. In case the application for extension of leave has not been made by the workman sufficiently in advance and it is not possible for the management to grant him leave or inform him of their decision in time the period between the termination of leave and the receipt of the reply to his application by the workman shall be treated as leave without pay unless the management is satisfied that the delay in the application was due to some unavoidable reasons.

12. If a workman remains absent beyond the period of leave originally granted or subsequently extended, such absence will be treated as misconduct under Standing Order M 7(*a*).

13. A workman who has not availed of the privilege or casual leave accruing to him during crushing season shall get wages in lieu of such unavailed period of leave. For the privilege and casual leave accruing to a workman during the off-season he shall get wages in lieu of such leave only if it is refused by the management:

Provided that if a workman so desires the period of his unavailed leave shall be carried forward in accordance with the provisions of section 79(5) of the Factories Act, 1948.

H. Holidays: Procedure and authority to Grant

Workmen shall be allowed the following festival holidays with wages in each calendar year:

Republic Day...	1 day.
Holi	2 days.
Independence Day	1 day.
Nag Panchmi	1 day.
Raksha Bandhan	1 day.
Janma Ashtami	1 day.
Mahatma Gandhi's Birthday	1 day.

Dashehra	4 days.
Dewali	2 days.
Kartik Ashnan	1 day.
Guru Nanak's Birthday	1 day.
Id	1 day.
Moharram	1 day.

The Raza and Buland Sugar Company Limited, district Rampur, shall allow the following festival holidays with wages to its workmen instead of Kartik Ashnan and Nag Panchmi:

Alvida or Barawafat whichever falls in the off-season.

In addition, the management shall allow such number of other holidays as may be necessary to make as the total number of holidays equal to the number of holidays granted by a factory to its workmen in the calendar year 1947:

Provided that the total number of holidays during the crushing season shall not be less than the number of holidays allowed in 1947:

Provided secondly, that if owing to exigencies of work the management is unable to give leave on one of the holidays, the workmen will be entitled to overtime wages for the day:

Provided thirdly, that if Moharram and Id holidays fall during the crushing season, a factory may treat these holidays as sectional holidays for Muslims only:

Provided fourthly, that if any holiday falls on a rest day, additional payment of one day's wages be made to the workmen.

A list of holidays admissible under this Standing Order indicating the dates on which each holiday will be observed, shall be prepared by the management before the close of the preceding calendar year in consultation with the registered trade unions and/or the Regional Conciliation Officer of the areas concerned and shall be posted on the notice board of the factory for the information of workmen.

Explanation—"Wage" for the purposes of this Standing Order means the consolidated wage, exclusive of any overtime earnings and bonus for the full day immediately preceding the festival holiday or holidays, under this order.

I. Liabilities to Search and Entry into Premises by Certain Gates

1. No workman shall enter or leave the factory's premises except by the gate or gates provided for the purpose.

2. If any workman is in possession of any articles which he desires to carry with him during the working hours, he shall show them and get them marked by the gate-keeper or a clerk when entering the factory.

3. All male workmen shall be liable on leaving the factory premises to be searched by the gateman and all female workmen shall be liable to be detained by the gateman for search by the female searcher, if he suspects that any workman who is so detained is in wrongful possession of the property belonging to the factory. No search shall be made except in the presence of two other persons of the same sex as the suspected workman. The gateman will offer himself for search before making the search.

J. Temporary Stoppage of Work and Playing-off of Workmen for Technical or Trade reasons

1. The management of a factory may at any time or times in the event of a fire, catastrophe, breakdown of machinery or stoppage of the power supply, epidemic, riot, civil commotion or shortage of raw materials or any other cause beyond the control of the management, stop any machine or machines or department or departments wholly or partially for any period or periods without notice. In the event of a stoppage of any machine or department under this order during working hours, the workman affected, shall be notified by a notice put up on the notice board as soon as practicable as to when the work will be resumed and whether they are to remain or leave the factory.

2. Any workman played-off under the above order shall be considered as temporarily unemployed and the question of compensation wages for the period of such unemployment will be determined by the State Government. Whenever practicable, a reasonable notice of resumption of normal working shall be given and all workmen played-off under the above order who present themselves for work within three days of resumption of normal working shall be given work.

3. The management of a factory may, in the event of a strike affecting either wholly or partially, any one or more departments of the factory close down either wholly or partially such department or departments and any of the department or departments affected by such closing down and for any period or periods. The fact of such closure shall be notified by a notice put upon the notice board as soon as practicable. The workmen concerned shall also be notified by a general notice, prior to the resumption of work, as to when work will be resumed.

4. The Manager shall have the authority to play-off workmen by an immediate notice if he feels that stoppage which might be due to the strike or certain breakdown, will be of an appreciable duration.

5. After the close of a season the management may send the permanent workmen on compulsory leave for a period not exceeding two months if the season was of less than 90 days' duration:

Provided that in exceptional circumstances beyond the control of the management, e.g. breakage of machinery, disease in sugarcane and abnormally short season due to short supplies of cane, etc. the aforesaid period of compulsory leave may, with the express previous written permission of the Labour Commissioner, U. P., previously obtained, be exempted by the management up to a maximum of six months:

Provided further that during the period of compulsory leave the workmen concerned shall not be asked to vacate the quarters or deposit the materials supplied to them by the factory for private use and if any house rent was paid to any workman in lieu of quarters he will continue to receive it.

Provided further that during the period of compulsory leave the workmen concerned shall be entitled to fifty per cent. of their consolidated wages. In addition, every workman living beyond ten miles of the factory will be entitled to single fare from the factory to the place of his residence going on compulsory leave and also for returning to the factory for resuming work. The fare will be given according to the class to which the workman concerned belongs in accordance with the rules of the factory, and shall be paid within one month of the expiry of the period of compulsory leave.

At least a week's written notice shall be given to the workmen concerned before sending them on compulsory leave. In such notice the names of the workmen to proceed on compulsory leave and the dates of its commencement and termination shall be specified. In sending the workmen on compulsory leave, the junior-most shall first be sent. The management may make exceptions to this on grounds of efficiency by recording their reasons in writing.

To every workman sent on compulsory leave, a guarantee shall be given by mentioning in the notice that he will be re-employed if he returns on the termination of such leave. If for unavoidable reasons, he is unable to resume duties on the date fixed, he shall send a prior intimation to the factory by a registered letter or telegram. For any good cause shown, the sending of such prior intimation may be waived by the management. In no case shall an order of dismissal of a workman be passed by the management before the expiry of one week from the date ordered for resumption of duty, after the compulsory leave.

Explanation—A season will be deemed to be "abnormally short" if crushing operations in a factory last for less than eighty per cent. of the standard number of days of crushing assumed and/or announced by Government or by any other statutory authority before the start of the season.

K. Special Conditions Governing Employment of Seasonal Workmen

1. A seasonal workman who has worked or, but for illness or any other unavoidable cause, would have worked under a factory during the whole of the second half of the last preceding season will be employed by the factory in the current season.

Explanation—Unauthorized absence during the second half of the last preceding season of a workman who has not been validly dismissed under these Standing Orders and of a workman who has been re-employed by the management in the current season, shall be deemed to have been condoned by the management.

2. Every seasonal workman who worked during the last season will be put on his old job whether he was in the "R" shift or in any of the usual shifts.

However, if the exigencies of work so require, the management may transfer a workman from one job to another or from one shift to another, including the "R" shift, so however, that the number of workmen so transferred does not exceed five per cent. of total number of the employees of the factory and that the wages and status of such workmen is not affected in any way.

3. Where owing to trade reasons or other reasons necessary, for a *bona fide* lay off, as given in Standing Order J, it becomes necessary for a factory so to do, it may discharge seasonal workmen before the close of the season with the previous permission of the State Labour Commissioner, or if he so directs, of a Deputy Labour Commissioner and after paying such compensation to the discharged workmen, as may be determined by the authority granting the permission.

L. Termination of Employment

1. The employment of a workman, permanent, or seasonal, may be terminated in the following cases:

(*a*) Genuine retrenchment;
(*b*) Infirmity and disability and (incompetence);
(*c*) Misconduct.

Provided that before terminating the services of a seasonal workman on grounds (*a*) and (*b*) the management shall give 15 days' notice of their intention to do so during the season. It shall not be permissible to give such a notice till 15 days after the commencement of the season and during that period the workman concerned shall have the right to represent his case to the State Labour Commissioner. The aforesaid notice shall then remain in suspense pending final decision in the matter by the State Labour Commissioner:

Provided also that the provision regarding retrenchment on grounds (*a*) and (*b*) laid down in the preceding proviso shall not apply to permanent workmen who will be governed in the matter of retrenchment by the Industrial Disputes (Amendment) Act, 1953.

Note.—No new hand shall be employed on a retrenched post.

2. A seasonal or permanent workman desirous of leaving the factory's service shall give seven day's and fifteen day's notice respectively in writing to the Manager. The wages due to such workman shall be paid on the day the notice expires and in any case, within two days of the expiry of the notice.

3. No notice will be necessary for termination of services of temporary/casual workman at the end of the period for which he was engaged.

4. The reasons for the termination of service shall be given by the Manager in the notice referred to in the first proviso to clause (1) above.

5. Unless he has qualified for getting notice under section 6-N of the U. P. Industrial Disputes Act, 1947, the employment of a probationer, substitute temporary or apprentice workman may be terminated by the Manager without any notice or any payment in lieu of notice.

6. Where the employment of a workman is terminated by the management the wages earned by him shall be paid before the expiry of the second working day following the day on which his employment was terminated, in accordance with the provisions of the Payment of Wages Act, 1936, subject to the provisions made under sub-clause (8) of this Standing Order.

7. A probationer, substitute temporary or apprentice workman may leave the service of the factory without notice. The wages due to such workman shall be paid within two days of a demand being made.

8. In all cases of discharge or resignations or dismissal, the workman shall have to get his clearance slip from the department or departments concerned, testifying that nothing belonging to the factory is due on him. In case of a workman failing to return any of the property belonging to the factory which has been lent to him or issued to in his name, the cost of such articles shall be deducted from his wages, as provided in the Payment of Wages Act, 1936.

9. If the termination of a workman's services is the subject-matter of an industrial dispute he shall be allowed to live in the factory quarter allotted to him till the dispute is finally decided.

M. Suspension or Dismissal for Misconduct pending enquiry into alleged Misconduct and Acts or Omissions which constitute Misconduct

1. The following acts or omissions shall be treated as misconduct:

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

(*b*) Unjustifiably striking work either singly or with others or inciting others to do the same.

(*c*) Theft, fraud, or dishonesty in connection with the factory's business or property or the property belonging to workmen, cane-growers and the factory contractors.

(*d*) Taking or giving bribes or any illegal gratifications whatsoever.

(*e*) Habitual absence without leave.

(*f*) Habitual late attendance.

(*g*) The collection, or canvassing for the collection, of any moneys for purposes not authorized by the Manager within the factory premises.

(*h*) Habitual breach of any provision of these Standing Orders.

(*i*) Engaging in trade within the factory premises.

(*j*) Drunkenness or gambling or riotous or disorderly behaviour in factory premises.

(*k*) Gross or habitual negligence or neglect of work.

(*l*) Frequent repetition of any act or omission for which fine may be imposed under the Payment of Wages Act, 1936.

(*m*) Smoking in the factory premises in places where smoking is prohibited.

(*n*) Wilful damage to work in process or to any other property of the factory.

(*o*) Failure to observe safety regulations contained in the Schedule and other safety instructions, unauthorized removal, interference with or damage to machinery guards, fencing and other safety devices installed in the factory.

(*p*) Distributing or exhibiting inside the factory premises any newspapers, handbills, pamphlets or posters without the previous sanction of the Manager.

(*q*) Refusal to work on another machine of the same type or work of similar nature not affecting the salary or status.

(*r*) Holding meetings inside the factory premises without the previous sanction of the Manager.

(*s*) Disclosing to any unauthorized person or persons any information in regard to the working or process of the factory which comes into the possession of a workman during the course of work, the disclosure of which causes or is likely to cause harm to the business or reputation of the factory.

(*t*) Sleeping whilst on duty.

(*u*) Malingering or deliberate delaying of production.

(*v*) Not reporting to the factory Doctor of the contagious diseases, particularly venereal diseases from which any workman might be suffering.

(*w*) Threatening or intimidating any workman or other employee of the factory within its premises.

(*x*) Any act subversive of discipline:

Provided that no act or omission covered under sub-clauses (*g*), (*p*) and (*r*) above will constitute a misconduct if it is in accordance with any existing practice.

2. Any workman who is found by the Manager/Management after proper enquiry, to be guilty of misconduct will be liable to be dismissed subject to the provision of clause M (4) or alternatively to be suspended for a period not exceeding seven days.

3. The order of suspension shall be in writing and may take effect immediately on communication thereof to the workman concerned. Such order shall set out in detail the alleged misconduct and the workman shall be given an opportunity of explaining the charge alleged against him. If on enquiry the order is confirmed or modified, the workman shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the workman shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

4. No order of dismissal shall be made unless the workman concerned is informed of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and a proper enquiry has been made by the manager. The workman concerned may require an officer of the union to represent his case in such enquiry.

5. In awarding punishment under this Standing Order, the Manager shall take into account the gravity of the misconduct and the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist.

6. All orders of dismissal shall be made in writing and shall contain full reasons in support of findings.

7. A workman may be fined or alternatively given a censure or warning notice if found guilty of any of the undernoted acts of omissions; but the offence, if habitual, shall be treated as misconduct in which case the workman shall be liable to be dismissed or alternatively to be suspended for a period not exceeding seven days.

(*a*) Late attendance or absence from duty without leave or without sufficient cause.

(*b*) Neglect of work.

(*c*) Entering or leaving the factory premises except by the gates provided for the purpose.

(*d*) Absence without leave or without sufficient cause from appointed place of work or machine.

(*e*) Breach of any rules or instructions for the maintenance and running of any department and maintaining cleanliness.

(*f*) Expectorating or otherwise committing a nuisance within the factory premises.

(*g*) Failure to wear tight-fitting clothing whenever required.

(*h*) Chewing of sugarcane, drinking sugar juices, syrups, molasses massecuites, and eating factory sugar and products during working hours as also using of factory sugar or products for preparing tea beverages or eatables, etc., in the factory premises.

8. No fines shall be imposed except in accordance with the provisions of the Payment of Wages Art, 1936, and by an officer authorized to impose fines under the said Act.

9. No fines shall be imposed unless the workman concerned has been given an opportunity of explaining the act or omission alleged against him in accordance with the provisions of the Payment of Wages Act, 1936.

10. All fines realized shall be credited to a special "fines fund" and shall be utilized only for purposes beneficial to the workmen of the factory, approved under the Payment of Wages Act, 1936.

11. Censure or warning notices shall be in writing and shall only be issued by the Manager or an officer whose name shall have been duly notified by the management through a notice posted on notice board and after the workman concerned is being given an opportunity, explaining the act or omission alleged against him.

12. If misconduct is alleged against a workman, the Manager may summarily suspend such workman for a period which shall not exceed four days without sufficient reasons, pending the enquiry :

Provided that the workman shall be paid for the suspension period in the event of the alleged misconduct not being proved.

N. Means of redress for workman against Unfair Treatment or Wrongful Exaction on the part of the Management.

All complaints arising out of his employment (including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent or servant) shall be submitted by a workman or on his behalf by a registered Union, of which he is a member, to the Manager or such other officer or officers as may be appointed in this behalf by the management by a notice posted on the notice board. The Manager or such other officer or officers shall personally investigate the complaint at such times and places as he or they may fix and the complainant workman (or the registered Union of which he is a member) shall have the right to be present at such investigation. Where the complainant alleges unfair treatment or wrongful exaction on the part of his employer or his agent or servant, a copy of the orders finally made shall be supplied to the complainant. In other cases, the decision of the investigating officer, and the action, if any, taken by him shall be intimated to the complainant :

Provided that complaints relating to (*a*) assault or abuse, by any person holding a supervisory position, or (*b*) refusal of an application for urgent leave shall be enquired into without avoidable delay by the Manager or such other officer or officers as he may appoint.

O. Decision of Manager to be Final, subject to Right of Appeal

The decision of the Manager on any question arising out of, in connexion with, or incidental to these orders, shall be final, provided that the workman aggrieved by the Manager's decision, shall have the right of appeal within seven days of the Manager's decision to the Management, who shall pass orders on the appeal within twenty-one days of its being made. This does not preclude the workman from seeking redress through the machinery set up by Government for the purpose.

P. Power to make Bye-laws

1. Except to the extent of making bye-laws or rules, not inconsistent with these Standing Orders, for the maintenance or running of any departments or for maintaining cleanliness, a factory will not rescind, add to, or otherwise alter these Standing Orders without the previous written consent of the Government of Uttar Pradesh.

2. All bye-laws or rules made by a factory under these Standing Orders shall be posted on the notice board and copies thereof shall be sent to the State Labour Commissioner and the Secretary to Government, Uttar Pradesh, Labour Department.

Q. Copy of Standing Orders to be posted on the Notice Board

1. A copy of these orders in English and in Hindi shall be posted on the Notice Board.

2. In case of any doubts regarding interpretation, the English version of these orders shall be taken to be authoritative.

R. Procedure regarding Notices

All notices required to be posted under these Standing Orders shall be in English and Hindi and shall be kept in legible and clean condition and copies thereof shall be sent to the Labour Commissioner, U. P., Kanpur.

S. Issue of Service Book

A service book as prescribed under these Standing Orders shall be maintained by the Management for every permanent workman and seasonal workman in which will be recorded the particulars of workman concerned, the date of commencement of service, promotions, appointments, warnings, the workman's next of kin, rate of pay and grade.

A copy of the service book shall be issued to the workman concerned and it shall be the duty of such workman to deposit the copy of his service book with the Time Keeper in the first week of every month to have each and every entry made in the original entered in the copy supplied to him at the time of signing the original. The Time Keeper shall return the said copy to the workman after completing the entries within one week of its being deposited and within a fortnight from the receipt of his service book the workman should file his objection, if any, against the entries made therein.

This book must be signed by the workman concerned or marked with his left thumb-impression certifying that he accepts the conditions of employment contained in these Standing Orders of the factory.

In the event of the copy of such service book being lost by the workman concerned, he will have to pay a sum of Annas eight for the price of the new copy to be supplied to him.

T. Issue of Service Certificate

Every permanent and seasonal workman shall be entitled to a service certificate as given in form "C" at the time of his leaving service.

U. Continuance of Existing Facilities

No workman shall get less than Rs. 55 per month as his wage or any other statutory minimum wage fixed by the Government from time to time.

The wages payable to a worker be calculated on the basis of 30 days in a month.

A factory shall also continue to give every workman all the existing facilities, allowances and concessions in addition to the wages payable to him:

Provided that nothing in these Standing Orders shall be deemed to apply to an apprentice.

V. Reporting of Injury

A workman should inform immediately the Time Keeper and officer incharge of section any injury sustained by him while on duty and then it will be the duty of the Time Keeper to report it to the authority concerned of the factory.

W. Failure on the part of a workman to observe or perform

Any of the terms and conditions of the agreement entered into by him with the management of the factory under Rule 3 (VI) of the Rules Regulating the use of the buildings financed out of the Housing Account of Fund for Labour employed in the U. P. Sugar and Power Alcohol Industries will entitle the owner of the factory to evict him for his quarter and to recover the rent due from his wages in the manner prescribed under the U. P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950.

In case of dispute with the owner of the factory the decision of the Housing Board shall be final and binding on both the parties.

THE SCHEDULE

[See *Standing Order M(Q)*]

SAFETY REGULATIONS

1. Workmen are required to observe strictly the Safety Regulations of the factory. Any workman who is found to be wilfully disregarding these and/or taking unnecessary risks which might involve personal danger, or danger to others of damage to plant, buildings, etc., will be liable to dismissal.

2. All cases of injury or illness arising out of, or in the course of employment, must be reported at once to the Time Keeper or the factory Doctor.

3. Machinery, on getting out of order, shall be immediately stopped by the workman incharge of such machinery, who shall report the circumstance at once to his superior.

4. Except in the fulfilment of their duties, workmen shall not interfere with anything in the factory such as railway lines and points, buildings, or their fittings, plants, machinery, tools, implements, stores, materials, etc. in any stage of use or manufacture nor shall they operate or assist to operate without authority machines other than their own. No unauthorized person shall interfere in any way with the electrical plant or connections.

5. Machinery shall not be cleaned when in motion. No guards or fences shall be removed from any machinery in motion. Guards and fences when removed for any purpose must, in every case, be replaced before the machinery is started.

Name of Factory

No.

FORM "A"

ENROLMENT FORM

[*Standing Order B-2(a)*]

Serial no.

Name Father's name

Caste Age Years

Months Education

Home Address: Village Thana

P. O. District

Local address: House no. Room no.

Name of House owner

Road Mohalla

Present employment (if employed)

Previous employment

Name of employer	Address	Duration	Capacity	Reason for leaving
1.				
2.				
3.				
4.				

Post desired

Other posts he can fill

References

Name	Father's name	Department	Capacity	Ticket	Number
1. Factory's Workman					

Name	Father's nam	Address	Occupation
2. Outsider.			
3. Ditto			

Signature or left thumb-impression of witness.

Date

Signature or left thumb-impression of Applicant.

I, , son of caste , of in , district do hereby accept employment with Messrs. on the terms and conditions of service prescribed in the Standing Orders of the said mill as for the time being in force and do hereby agree to abide by them.

(Sd.)

Left thumb-impression

At

Date

In presence of :

(1)

(2)

The workman named above is hereby employed on the terms and conditions hereinbefore mentioned.

At (Sd.)

Date *Designation*

Name of Factory

Number

FORM "B"

ENGAGEMENT MEMO. FOR MONTHLY PAID WORKMAN

[*Standing Order B-2(b)*]

Name Father's name

Caste Village

District Postal address

Designation Department

Rate of pay

Registered no.

Class of workman

Shift

Appointing authority

Date

Manager.

Name of Factory

Number

FORM "C"

ENGAGEMENT MEMO. FOR DAILY RATED WORKMAN

[*Standing Order B-2(b)*]

Name Father's name

Caste Village

District Postal address

Designation Department

Date of engagement on daily wages basis

Registered no. Rate of daily wage

If previously employed by the factory.

Date Time-keeper Foreman or mate

Factory Manager.

Name of Factory

Number

FORM "D"

TICKET FOR PERMANENT WORKMAN

[*Standing Order B-2(c) (i)*]

Ticket no.

Name has been entered in the Workers' Register/Muster Roll as a permanent workman of the factory as a

in the Department.

Date *Manager.*

Name of Factory

Number

FORM "E"

TICKET FOR SEASONAL WORKMAN

[*Standing Order B-2(c) (ii)*]

Ticket no.

Name is a seasonal workman in Department of the factory.

Date *Signature of the Manager.*

Name of Factory
Number

FORM "F"

TICKET FOR TEMPORARY WORKMAN
[*Standing Order B-2(c) (iii)*]

Ticket no.

Name is a temporary workman of the factory in the Department. As per Standing Order 165 he is liable to be discharged from service without notice or compensation in lieu of notice.

Date *Signature of the Manager.*

Name of Factory
Number

FORM "G"

TICKET FOR PROBATIONER
[*Standing Order B-2(c) (iv)*]

Ticket no.
Name is a probationer in Department of the factory.

Date *Signature of the Manager.*

Name of Factory
Number

FORM "H"

TICKET FOR APPRENTICES
[*Standing Order B-2(c)(v)*]

Ticket no.
Name is an apprentice in Department of the factory.

Date *Signature of the Manager.*

Name of Factory
Number

FORM "I"

TICKET FOR SUBSTITUTE WORKMAN
[*Standing Order B-2(c) (vi)*]

Ticket no.
Name is a substitute workman in Department of the Factory.

Date *Signature of the Manager.*

Name of Factory
Number

FORM "J"

WAGE SLIP
[*Standing Order D (3)*]

Period to which the Wage Slip relates
Name of Department.
Father's name
Ticket no.
Rate of pay
(*a*) Basic
(*b*) Dearness allowance
(*c*) Other allowance
Total
Overtime earned during the month
Number of days present during the period
Number of days absent during the period
Deductions, if any
Total wages payable after deductions, if any

Date *Manager.*

Name of Factory
Number

FORM "K"

[APPLICATION FOR LEAVE]

[*Standing Order G* (7)]

No.
Name of the applicant
Department
Ticket no.
Date of application
Number of days for which leave is asked for
Date of joining
Reasons for leave
Address for postal communication
Period of service in the factory
"Havala" (if any) for the wages of the
to of Rs. in favour
of ticket no. of department

Date *Signature or left thumb impression of workman.*

Received application for leave from

Time
Date

Designation of Receiving Officer.
(Name of the factory).

Name of Factory...	*Name of Factory...*	*Name of Factory...*
....	....	....
No... Date...	No... Date...	No... Date...
FORM L	**FORM L**	**FORM L**
LEAVE PASS	**LEAVE PASS**	**LEAVE PASS**
Standing Order G(8)	*Standing Order G(8)*	*Standing Order G(8)*
(Office copy)	(Time-Keeper's copy)	(Workman's copy)
Name in full...	Name in full...	Name in full...
T. no...	T. no...	T. no...
of... Department has	of... Department has	of... Department has
been given leave from...	been given leave from...	been given leave from...
....	....	....
to... for...	to... for...	to... for...
...days.	...days.	...days.
"Havala", if any for the	"Havala", if any for the	"Havala", if any, for the
wages for the month of...	wage for the month of...	wages for the month of...
in favour of...	in favour of...	in favour of...
T. no...	T. 1o...	T. no...
of... Department.	of... Department.	of... Department.
Manager. *Departmental Head.*	*Manager.* *Departmental Head.*	*Manager.* *Departmental Head.*

Name of Factory...	*Name of Factory...*	*Name of Factory...*
No... Date...	No... Date...	No... Date...
FORM M	FORM M	FORM M
SUMMARY DISMISSAL OR SUSPENSION ORDER	SUMMARY DISMISSAL OR SUSPENSION ORDER	SUMMARY DISMISSAL OR SUSPENSION ORDER
(*Standing Order M*) (Office copy)	(*Standing Order M*) (Time-keeper's copy)	(*Standing Order M*) (Workman's copy)
Name in full...	Name in full...	Name in full...
Ticket no...	Ticket no...	Ticket no...
Department has been...	Department has been...	Department has been...
*(*a*) Summarily dismissed without notice and without compensation in lieu of notice.	*(*a*) Summarily dismissed without notice and without compensation in lieu of notice.	*(*a*) Summarily dismissed without notice and without compensation in lieu of notice.
*(*b*) Suspended for... days... for...	*(*b*) Suspended for... days... for...	*(*b*) Suspended for... days... for...
Which is an offence under Standing Order no...	Which is an offence under Standing Order no...	Which is an offence under Standing Order no...
*Strike out which is not applicable.	*Strike out which is not applicable.	*Strike out which is not applicable.
Departmental Head Manager.	Departmental Head Manager.	Departmental Head Manager
Length of service of workman...	Length of service of workman...	Length of service of workman... ....
Record of punishments during previous six months.	Record of punishments during previous six months.	Record of punishments during previous six months
(*a*) Fines...	(*a*) Fines...	(*a*) Fines... ....
(*b*) Suspension...	(*b*) Suspension...	(*b*) Suspension... ....
Date of investigation by the Manager...	Date of investigation by the Manager...	Date of investigation by the Manager...
Whether workman was present at investigation...	Whether workman was present at investigation...	Whether workman was present at investigation...
Case against workman brought by...	Case against workman brought by...	Case against workman brought by...
Names and occupations of persons present at the enquiry...	Names and occupations of persons present at the enquiry	Names and occupations of persons present at the enquiry... ....
Reasons for order...	Reasons for order...	Reasons for order...
Manager.	*Manager.*	*Manager.*

Name of Factory...	*Name of Factory...*	*Name of Factory...*
No... Date...	No... Date...	No... Date...
FORM N	FORM N	FORM N
FINES ORDER	FINES ORDER	FINES ORDER
(*Standing Order M*)	(*Standing Order M*)	(*Standing Order M*)
(Office copy)	(Time-Keeper's copy)	(Workman's copy)
Name in full...	Name in full...	Name in full...
Ticket no... of the...	Ticket no... of the...	Ticket no... of the...
Department has been fined Rs... nP... for... which is an offence for which fines can be imposed under the Payment of Wages Act.	Department has been fined Rs... nP... for... which is an offence for which fines can be imposed under the Payment of Wages Act.	Department has been fined Rs... nP... for... which is an offence for which fines can be imposed under the Payment of Wages Act.
*...	*...	*...
†...	†...	†...
*Space for signature of officer imposing fines.	*Space for signature of officer imposing fines.	*Space for signature of officer imposing fines.
†Here insert the designation of officer.	†Here insert the designation of officer.	†Here insert the designation of officer.

The Name of factory...
No...

FORM O

(SERVICE CERTIFICATE)

Standing Order

Ticket no... Date...
Name... Department...
Home address...
... ...
Identification Marks...
... ...
Date of joining... Date of termination of Employment...
... ...
Reasons... *Resigned/Retrenched/Service terminated.*

Remarks...
Conduct...
Work...

Manager.

Service Book for permanent/seasonal workman

of Sri...
S/o...
Employee of (Factory)
... ...
In... Department.
Ticket no...

Please note this carefully in your own interest

1. That the Standing Orders statutorily applicable to the factory are binding both on the employer and workmen.

2. The Service Book should be got filled up by the employer in time to keep it up-to-date. This is the responsibility of the workmen concerned as also of the employer.

3. Details of censure and warning, suspension and fine orders passed should be entered in the Service Book within fifteen days of occurrence.

4. A copy of the Service Book shall be kept with the employee concerned, and details of entries also maintained with the employer.

5. In the event of this Service Book being lost, the workman will have to pay a sum of annas eight for price of another Service Book.

6. The workman should, from time to time, notify to the management all informations necessary to enable the Service Book being kept up-to-date.

7. The entries on page 3 should be renewed or reattested at least every five years and the signatures in the end should be dated.

Particulars of Employee

1. Name...
2. Father's name...
3. Address (Local)...
4. Address (Permanent)...

... ...

5. Date of birth...
6. Date of appointment...
7. Qualifications...
8. Personal marks of identification...

... ...

Signature or left thumb-impression of the employee. *Signature of the Head of Office or Factory.*

Left-thumb Impression or signature of witness.

Particular of Service

Serial no.	Name of post and Department	Promotions and Demotions	Date of joining	Date of discharge	Grade	Pay	Other monthly cash allowances	Manager's initials with date	Remarks
1	2	3	4	5	6	7	8	9	10

1.* *Serial no...*

2. *Serial no. in register of adult/child worker woman*

3. *Period for which leave is accounted for*

from... to...

Month	Sickness and accident	Interruptions: Earned leave under the Factories Act, U. P. Shops and Commercial Establishment Act, 1947	Interruptions: Casual leave	Interruptions: Sick leave	Lockout or legal strike	*Involuntary employment	Absent without permission but with reasonable cause	Leave due from: Earned leave under the Factories Act/Shops Act	Leave due from: Casual leave	Leave due from: Sick leave	Days actually worked in the month	Balance brought forward	Leave earned during period in column no. 3	Total	Date of application for leave	Date, period and nature of leave allowed	Remuneration paid amount and date	No. of days of earned leave carried forward	Discharged workers: Date of discharge	Discharged workers: Date of payment and amount paid in lieu of leave due	Discharged workers: Signature of the official making entries	Discharged workers: Signature or L. T. I. of the workman	Remarks
4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27

To be inserted in red ink and signed by authority empowered to impose censure, warning or other kinds of punishments.

Date	Nature of punishment	Amount of fines imposed if any	Signature or L. T. I. of employee	Initial of authority	Remarks
1	2	3	4	5	6

Declaration and nomination form

1. Name (in block capitals)...
2. Surname...
3. Caste...
4. Sex...
5. Religion...
6. Husbands' name... (for married women only).
7. Marital status... (whether bachelor, spinster, married widow or widower).
8. Marks of identification...
9. Permanent address...

village... , thana...

taluk/sub-division... , district...

Dy. Syr...

I, hereby nominate the person/s mentioned below to receive the amount standing to my credit in the event of my death before that amount has become payable, or having become payable has not been paid and direct that the said amount shall be distributed among the said persons in the manner shown below against their names :

Name and address of the nominee or nominees	Nominee's relationship with the member	Age of nominee	Amount or share of accumulations in the fund to be paid each nominee	Contingencies on the happening of which the nomination shall become invalid
1	2	3	4	5

Signature or Left thumb-impression of the workman...

Employees' Provident Funds Scheme, 1952—Amendment.

Notification No. G. S. R. 970 dated New Delhi, the 11th October, 1958.*

In exercise of the powers conferred by sub-section (1) of section 7 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby makes the following further amendment in the Employees' Provident Funds Scheme, 1952, namely :—

In paragraph 28 of the said Scheme, for the proviso to sub-paragraph (2), the following proviso and explanation shall be substituted, namely :—

"Provided that where the whole or any part of such accumulations consists of investments in Government securities, the authority making the transfer to the Fund shall transfer those Securities at the price for which they were actually purchased or transfer a sum epuivalent to such price. In case, however, the whole or any part of such accumulations is invested in National Savings Certificates or National Plan Savings Certificates, the appreciated value of such certificates at the time of the transfer will be taken into account in determining the amount of the accumulations to be transferred, provided that the difference between the face value of such certificates and their appreciated value at the time of the transfer has already been credited to the accounts of the subscribers.

Explanation.—The total amount of provident fund accumulations includes interest thereon and the authority in charge of the Fund shall

* Gaz. of India, 18-10-'58, Pt. II, Sec. 3 (i), p. 950.

transfer in cash any balance of interest on investments which happens to be undistributed on the date of the transfer, or realised or realisable for the period prior to the registration of the securities in the name of the Central Board of Trustees, Employees' Provident Fund."

The Industrial Disputes (Banking Companies) Decision Amendment Act, 1958.

ACT NO. 38 OF 1958.

[Received the assent of the President on October 6, 1958]

An Act further to amend the Industrial Disputes (Banking Companies) Decision Act, 1955.

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

1. *Short title.*—This Act may be called the Industrial Disputes (Banking Companies) Decision Amendment Act, 1958.

2. *Amendment of section 3.*—In the Industrial Disputes (Banking Companies) Decision Act, 1955, in section 3, after sub-section (4), the following sub-section shall be inserted, namely :—

"(5) Notwithstanding anything contained in the foregoing provisions of this section, the Central Government may, from time to time by notification in the Official Gazette, make in lieu of the adjustment of the dearness allowance recommended in clause 1 (*e*) of Chapter XI of the Report of the Bank Award Commission, such adjustment thereof as it thinks fit for any period subsequent to the 31st December, 1957, with reference to the rise or fall, as compared to 144 (1944 - 100), of the average all-India cost of living index for any period immediately preceding that period ; and upon the issue of such notification the adjustment of dearness allowance so made for any period shall be deemed to have been recommended in clause 1 (*e*) of the Report of that Commission :

Provided that any adjustment so made shall, so far as may be, bear to the rise or fall of the cost of living index the same ratio as is indicated between the adjustment of dearness allowance and the rise or fall of the cost of living index in the formulae recommended in that clause."

U. P. Factories Rules, 1950—Amendments.

*Notification No. 5475 (SM)/XXXVI-A—1250 (SM)-57, dated November 6, 1958.**

Whereas the State Government considers it expedient to make the following amendments to the U. P. Factories Rules, 1950, in order to give effect to the purposes of the Factories Act, 1948 (Act No. LXIII of 1948).

*U.P. Gaz., 15-11-'58, Pt. I-A, p. 1895.

Now, therefore, in exercise of the powers conferred by section 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. 1428(SM)/XXXVI-A—1250 (SM)-57, dated June 18, 1958, as required by section 115 of the said Act.

These amendments shall come into force with effect from January 1, 1959:

AMENDMENTS

1. *For* the existing rules 123 and 125 of the Rules, *substitute* the following:

"123. (*a*) The manager of every factory shall maintain a bound Inspection Book as described below and shall be responsible for its production on demand by an Inspector or a Certifying Surgeon irrespective of the fact whether the manager is present in the factory at the time of the inspection or not. The manager shall also be responsible for any damage to, loss of, or tampering with the Inspection Book.

The Inspection Book shall be of the size 13" × 8½". It shall contain at least 180 sheets. Every fourth sheet thereof shall be serially numbered and the two unnumbered sheets, between each two serially numbered sheets, shall have a vertical perforated straight line on the left-hand side at a margin of 1".

It shall also contain in the beginning at least six copies each of Form Nos. 1, 4, 6, 8 and 9 prescribed under these rules. Form No. 1, shall be kept posted up to date and Form No. 4, shall be filled in every year or whenever there is change of manager or occupier. All exemptions granted to the factory shall be posted in Form No. 6 and entries in Form Nos. 8 and 9 shall be made periodically according to the relevant rules.

(*b*) In case the Inspection Book containing the remarks passed by an Inspector or a Certifying Surgeon is lost, the manager of the factory shall within a week report in writing the loss of Inspection Book to the Chief Inspector and the Inspector Incharge of the region stating the circumstances in which it has been lost and shall immediately start maintaining a new Inspection Book."

"125. A note of all defects and irregularities discovered at the time of inspection by an Inspector, or a Certifying Surgeon, shall be prepared by him, in triplicate, in the Inspection Book maintained under Rule 123, giving reference to relevant sections of the Act and Rules, the breach of which has been committed. He shall detach the two copies on the unnumbered perforated pages for sending one to the Chief Inspector and retaining the other for record in his office. The original on the numbered pages shall be left intact in the Inspection Book."

2. *Renumber* the existing rule 126(*a*) as rule 126 and delete sub-rule (*b*) thereof.

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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.

3 1
6
2 5
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[IN THE CALCUTTA HIGH COURT.]

BHARAT BOARD MILLS LTD.

v.

REGIONAL PROVIDENT FUND COMMISSIONER AND OTHERS.

Bose, J.

February 28, 1957.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTIONS 16(1)(B), 16(2) AND 19-A—SECTIONS 16(2) AND 19-A, WHETHER IMPUGN ARTICLES 14 AND 19(1)(G) OF CONSTITUTION—DATE OF ESTABLISHMENT OF FACTORY—RUNNING FACTORY TAKEN OVER BY NEW CONCERN—CLOSURE OF FACTORY FOR BRIEF PERIODS—WHETHER CHANGES DATE OF ESTABLISHMENT.

Section 19-A of the Employees' Provident Funds Act, 1952, lacks the element of reasonableness and abridges and violates the fundamental right guaranteed by article 19(1)(g) of the Constitution and as such is void under article 13(2) of the Constitution. The section being severable from the rest of the Act, the entire Act is not rendered void by reason of the invalidity of the section.

Section 16(2) of the Act, which empowers the Central Government to grant exemption to a class or group of factories from the operation of the Act under certain circumstances, does not impugn either article 14 or article 19(1)(g) of the Constitution.

The date of establishment of a factory for the purpose of section 16(1)(b) of the Act is the date when the factory started its manufacturing process. The fact that a new company or concern subsequently takes over or acquires the factory does not shift the date of establishment of the factory to the date of its taking over or acquisition. Nor does the fact that a *factory ceased production for a certain time and resumed production after certain brief intervals result in extinction of the old factory and establishment of a new factory.*

Civil Revision Case No. 1047 of 1956.

A. K. Dutt and *B. B. Mukherjee* for the petitioner.

N. C. Chakraborty, D. N. Basu and *A. K. Mukherjee* for the opposite parties.

JUDGMENT

This is an application under article 226 of the Constitution for an appropriate writ directing the respondents to rescind or withdraw certain orders made by the Regional Provident Fund Commissioner, West Bengal, and the Central Provident Fund Commissioner, New Delhi, and to forbear from giving effect to such orders and also to cancel certain notices of demand issued under the Bengal Public Demands Recovery Act in Certificate Case No. 14 E. P. F. of 1954 and 1955 in the Court of Certificate Officer, 24 Parganas.

The case of the petitioner is that it is a company registered under the Indian Companies Act. On 29th June, 1950, a certificate of incorporation was granted by the Registrar of Joint Stock Companies, West Bengal, and the petitioner commenced business from 31st July, 1950. The business of the petitioner company consists in the manufacture and dealing of all kinds of board, paper and pulp including pulp board, card board and straw board, etc. The petitioner holds licences under the West Bengal Factories Rules and on the 28th September, 1951, the Chief Inspector of Factories, West Bengal, allotted a registration number to the petitioner company being No. 347...........T.P./X. By a deed of agreement dated the 12th October, 1950, the petitioner purchased machinery from India Paper and Board Mills Company and by a deed of sale dated the 13th October, 1950, the petitioner purchased a one storied brick built house with lands measuring about 17 bighas being premises No. 71 Satgachi Road at Dumdum in the district of 24 Parganas. On the 7th June, 1951, and 4th October, 1952, certain awards made by the Industrial Tribunal in respect of certain disputes between India Paper and Board Mills Company and the petitioner company, and their employees represented by India Paper and Board Mills Workers' Union were published in the Calcutta Gazette and by such awards the petitioner company was treated as a new concern. By a letter dated the 15th October, 1952, written by the Regional Provident Fund Commissioner, West Bengal, the Managers of all factories in West Bengal to which the Employees' Provident Funds Act, 1952, applies were directed to comply

ith the provisions of the paragraphs 33 and 36(1) of the Employees' rovident Funds Scheme, 1952. On the 10th November, 1953, the Regiol Provident Fund Commissioner, West Bengal, addressed another tter to the manager of the petitioner company pointing out that ie petitioner's factory came within the purview of the Employees' rovident Funds Act and the Scheme framed thereunder, and the anager was, therefore, requested to comply with the provisions f the Scheme. On the 6th May, 1954, the petitioner made an enquiry om the respondent No. 1 as to whether the contributions payable nder the Employees' Provident Funds Act were free from income-tax. n the 19th May, 1954, the Accounts Officer, Provident Fund, informed ie petitioner that the question of obtaining any concurrence of the icome-tax authorities did not arise in the case of the petitioner. On 1th June, 1954, the petitioner company made a representation to the espondent No. 1, requesting him to keep the question of contribution i abeyance as the petitioner company had remained closed for about 4 ionths from the 1st April, 1952. On the 15th June, 1954, the respondent Io. 1 turned down this proposal. On the 10th July, 1954, the petiioner company was again informed by the Accounts Officer that the ontributions and other charges for the period from 1st November, 1952, o 31st March, 1954, had not been paid till then, by the petitioner ompany and the petitioner company was requested to clear the arrears orthwith. On 7th August, 1954, the petitioner company made a further epresentation for keeping the question of contributions in abeyance n the ground that the petitioner had suffered financial loss and was, herefore, not in a position to pay the contributions and other charges is asked for. On the 31st August, 1954, the Deputy Secretary to the Government of West Bengal informed the petitioner that no company could be granted exemption on the ground of financial stringency, and inder section 16(2) of the Employees' Provident Funds Act, it is only a class of factory which could be exempted on the grounds specified in iection 16 (2) of the Act. On 8th September, 1954, the petitioner company made a representation to the Deputy Minister, Labour Department, Government of India and on the same day the petitioner iddressed another letter to the Deputy Minister praying for personal representation with all papers and documents, to prove the *bona fides* of the prayer made by the petitioner. It appears that on a complaint of the Provident Fund Inspector before the Court of the Sub-Divisional Officer, Barrackpore, certain criminal proceedings were started for contravention of the provisions of the Employees' Provident Funds Act and the Scheme framed thereunder, which was registered as Criminal Case No. C. 776/27/36 of 1954.

The said criminal case was started, for the petitioner company not submitting returns prescribed under the Employees' Provident Funds Scheme, and for not remitting the contributions and other charges payable in respect of the period from 1st November, 1952, to 31st March, 1954. In the meantime, a certificate case was also started under the Bengal Public Demands Recovery Act for realisation of a sum of Rs. 5,505 from the petitioner company. The petitioner filed objections thereto under section 9 of the Bengal Public Demands Recovery Act. On the 2nd May, 1955, the Certificate Officer rejected the application filed by the petitioner company under section 9 on the ground that the application was time barred. The petitioner thereupon preferred an appeal before the Additional District Magistrate, 24-Parganas, Alipore, against the said order of the Certificate Officer dated the 2nd May, 1955. On the 23rd June, 1955, the Additional Collector, 24-Parganas, allowed the appeal and sent back the records of the case to the Certificate Officer for consideration of the objection filed by the petitioner under section 9 of the Bengal Public Demands Recovery Act in accordance with law. In the meantime, on the 26th February, 1955, the Under-Secretary to the Government of India informed the petitioner that under section 16(2) of the Employees' Provident Funds Act, exemption could be granted only to a class of factories and not to any individual factory. Thereafter, on the 28th November, 1955, the petitioner requested the respondent No. 1 to allow the petitioner to pay the arrears of contributions by instalments but on the 2nd of March, 1955, the respondent No. 1 wrote back regretting his inability to agree to the proposals for instalments. On the 10th March, 1955, the petitioner made a representation to the Under-Secretary to the Government of India, Ministry of Labour, New Delhi, but on the 21st April, 1955, the said representation was also turned down. Thereafter, on the 22nd September, 1955, the petitioner made a representation to the Central Provident Fund Commissioner, New Delhi, requesting the latter to withdraw the case against the petitioner. On the 6th October, 1955, the case which was remanded to the Certificate Officer by the Appellate Court was taken up for hearing and upon taking evidence the Certificate Officer came to the conclusion that the notice under section 7 of the Act had been properly served and on that ground he rejected the application of the petitioner under section 9 of the Act. The petitioner, thereupon, preferred another appeal against the said order of the Certificate Officer and such appeal came up for hearing on the 20th December, 1955. Various points were argued at the hearing of the appeal but the Additional District Magistrate allowed the appeal on the ground that notice under section 7 was not properly served and the records of the case were again sent back to the Certificate Officer with a direction to issue a fresh notice under section 7 of the Act. On the 22nd February, 1956, the petitioner filed another objection under section 9 of the Act after a fresh notice under section 7 as directed by the Appellate Court had been served upon the petitioner company. On the 23rd of March, 1956, the petitioner's objection under section 9 of the Act was heard in part and the case was adjourned till 24th April, 1956.

In the meantime, on the 2nd December, 1955, the Central Provident Fund Commissioner, New Delhi, informed the petitioner that the petitioner company could not be exempted from the provisions of the Employees' Provident Funds Act as a mere change of ownership would not affect the date of the establishment of the factory for the purpose of the Act and the petitioner company was accordingly requested to comply with the provisions of the Act and the Scheme. On the 19th January, 1956, a letter in the same strain was written by the Central Provident Fund Commissioner to the petitioner. Thereafter, certain further representations were made to the respondents but the respondents did not accede to such representations.

The present Rule was thereafter obtained on the 18th April, 1956. The Certificate Officer, 24-Parganas, has filed a counter-affidavit wherein all the facts relating to the certificate case started against the petitioner company have been set out and it is pointed out in this affidavit that the second objection of the petitioner company filed under section 9 of the Act denying liability was heard in part on the 23rd March, 1956, and as a report of the requiring officer was necessary, such report was called for and the case was adjourned till the 24th April, 1956, but in the meantime the petitioner approached this Court under article 226 and obtained the present Rule and informed the Certificate Officer about this fact on the 27th April, 1956.

The Senior Provident Fund Inspector appointed under the Employees' Provident Funds Act has also affirmed an affidavit, in opposition to the application and it is stated in this affidavit that upon proper investigation made into the affairs of the petitioner company, it has been ascertained that the factory which was originally established by the India Paper and Board Mills Company was continued by the petitioner company after it had purchased the said factory and no new factory had been established by the petitioner after it commenced business in 1950. It is stated in this affidavit that as the date of establishment of the factory was some time in the year 1936, the petitioner could not be granted exemption from the operation of the provisions of the Employees' Provident Funds Act and the scheme made thereunder. It is further pointed out in this affidavit that the proper remedy of the petitioner is to approach the Central Government for determination of the question whether the petitioner's factory is an infant factory within the meaning of section 16 of the Act and the petitioner has no right to invoke the jurisdiction of article 226 of the Constitution for determination of any such question which involves decision on disputed facts. It is not necessary to deal any further with this counter-affidavit filed on behalf of the respondents Nos. 1, 3, 4 and 5.

It has been contended by Mr. Arun Kumar Dutt, the learned advocate for the petitioner, that section 19-A of the Employees' Provident Funds Act infringes article 19 (1)(g) of the Constitution and, as such, is void under article 13 of the Constitution.

Section 19-A is as follows :—

"*Power to remove difficulties.* — 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 argued that the provisions in this section 19-A vest an uncontrolled and arbitrary power in the Government to make a subjective determination of the various matters specified in clauses (i) and (iv) of the section without giving the owner of the factory any opportunity of a hearing or without giving such owner opportunity to make representation against or to prefer an appeal against any adverse order made by the Government. Accordingly, the provision is an unreasonable restriction on the fundamental right of the petitioner as guaranteed under article 19(1)(g) of the Constitution. It appears to me that this contention is not without force. The order of the Government is made final under the provisions of this section. There is no provision for any appeal or representation by the party aggrieved by the order. The Government is not required to disclose its reasons for making any order. The matter is, therefore, left to the subjective satisfaction of the

Government. There are no means of checking whether the order is arbitrary or *mala fide* or not. Further, unless it can be established that the Government has acted outside the four corners of the statute or in excess of its jurisdiction, recourse to the Civil Court by the aggrieved party is barred inasmuch as the order of the Government is, as I have pointed out already, made conclusive by the terms of the section. There is no specific procedure laid down for making the determination. The Government may or may not give the owner of the factory an opportunity of hearing before making the order. So the party owning the factory or having interest in the factory is left entirely at the mercy of the Government. It appears to me, therefore, that the section lacks the element of reasonableness and abridges and violates the fundamental right guaranteed by article 19 (1) (g) of the Constitution and as such is void under article 13(2) of the Constitution.

Mr. Amiya Kumar Mukherjee, the learned advocate appearing for the respondents Nos. 1, 3, 4, and 5 has, however, pointed out that the section 19-A is the only section in the Employee's Provident Funds Act which enables a party aggrieved to approach the Government and make representations for redress and the Government can thus take up the matter and resolve the doubt or difficulty. According to Mr. Mukherjee, section 19-A is a beneficial provision and not an unreasonable restriction and but for this provision the Act would become arbitrary inasmuch as section 1(3) makes the provisions of the Act applicable to all factories. That may be so, but, in my view, for the reasons which I have already stated before, the section does appear to be an unreasonable provision which restricts the right conferred by article 19(1)(g) and, therefore, should be regarded as unconstitutional.

In the case of *Raghubir Singh* v. *Court of Wards, Ajmer*, A.I.R. 1953 S.C. 373, the Supreme Court made the following observations:

"When a law deprives a person of possession of his property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can on no construction of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a Civil Court."

In the case of *Dwarka Prosad* v. *State of Uttar Pradesh*, A.I.R. 1954 S. C. 224, it was held that a law or order which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business cannot but be held to be unreasonable. In this case it was further held that clause 3(2)(b) of the Uttar Pradesh Coal Control

Order, 1953, which gave an unrestricted power to the State Controller to make exemptions and which do not provide for any check or any method of obtaining redress if the Controller acted arbitrarily or from improper motives was void. Following these principles laid down by the Supreme Court I hold that section 19-A of the Act is void under article 13 (2) of the Constitution. But, as it appears to me that this section is severable from the rest of the Act, the entire Act is not rendered void by reason of the invalidity of this section.

This section 19-A being invalid, the argument advanced by Mr. Amiya Kumar Mukherjee on the authority of the case reported in *Annamalai Mudaliar* v. *Regional Provident Fund Commissioner*, A.I.R. 1955 Mad. 387, to the effect that the question whether the petitioner is the owner of an infant factory or not can be determined only by the Government under section 19-A and this Court cannot go into any such question, loses its force.

The next point that has been argued by Mr. Dutt is that section 16 (2) of the Act violates article 14 of the Constitution and as such it is void. The line of argument advanced in support of this proposition is not easy to follow. Section 16 of the Act may be set out hereunder:

"16—*Act not to apply to factories belonging to Government or Local Authority and also to infant factories.*—

(1) This Act shall not apply to—

(a) any factory belonging to the Government or a local authority, and

(b) any other factory, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.

Explanation.—For the removal of doubts, it is hereby declared that the date of the establishment of a factory shall not be deemed to have been changed merely by reason of a change of the premises of the factory.

(2) If the Central Government is of opinion that having regard to the financial position of any class of factories or other circumstances of the case, it is necessary or expendient, so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt that class of factories from the operation of this Act for such period as may be specified in the notification."

The argument of Mr. Dutt is that this clause in section 16 (2) empowers the Government to grant exemption to a class or group of factories but it does not enable the Government to exempt an individual factory from the operation of the Act even though there may be good grounds for excluding a particular factory from the operation of

the Act. It has been repeatedly pointed out by the Supreme Court that any law providing for classification is permissible provided the classification is on a reasonable or rational basis. Furthermore, unless an actual classification is made on the ground of financial position or other circumstances in relation to a group of factories carrying on a particular kind of industry as specified in Schedule I to the Act, it is not possible to say whether article 14 of the Constitution has been infringed or not. If section 16 (2) of the Act has empowered the Government to grant exemption in case of any individual factory, then it appears to me that such a provision would become more exposed to challenge or attack on the ground that it enabled the Government to single out an individual at their own sweet-will and pleasure and exempt it from the operation of the Act. It appears to me, therefore, that section 16 (2) cannot be impugned as infringing article 14 of the Constitution. Mr. Dutt has drawn the attention of the Court to certain decisions of the Supreme Court and the High Courts reported in *State of West Bengal* v. *Anwar Ali Sarkar*, A.I.R. 1952 S.C. 75; *Lachman Das* v. *State of Bombay*, A.I.R. 1952 S.C. 235; *Ram Prasad Narayan Sahi* v. *The State of Bihar*, A.I.R. 1953 S.C. 215; *Harnam Singh* v. *Regional Transport Authority, Calcutta Region*, A.I.R. 1954 S.C. 190; *Sree Meenakshee Mills Ltd.* v. *A. V. Vishvanatha Sastri*, A.I.R. 1955 S.C. 13; *Budhan Chaudry* v. *State of Bihar*, A.I.R. 1955 S.C. 191 and several others in support of his argument on article 14 but as these cases turnd on their special facts it is not necessary to deal with them in any detail.

A further ground on which Mr. Dutt has attacked the validity of sub-clause 2 of section 16 of the Act is that it violates article 19 (1) (g) of the Constitution. It is pointed out that the expression "other circumstances of the case" is vague and indefinite and the Government may take into consideration arbitrarily any "circumstance" which the Government may choose. Moreover, the whole thing is left to the uncontrolled subjective determination of the Government and the Government is also empowered to grant exemption for any period it pleases. So, according to Mr. Dutt, this is an unreasonable provision and should, therefore, be declared void.

I do not, however, think that this provision can be condemned on the ground that it infringes article 19 (1) (g). I fail to see how this provision can be said to restrict or abridge in any way the right conferred by article 19 (1) (g) of the Constitution. The provision has been enacted for the benefit of the factories. It enables the Government to grant temporary reliefs to a particular class of factories carrying on a particular industry. The business of a particular industry mentioned in the schedule may for some reason become dull or the said business may suffer financial loss or stringency for a particular period. In such a case the Government may be approached for granting temporary reliefs to this class of industry and the Government may upon consideration of all the circumstances of the case grant exemption to the group of factories engaged in the particular industry. How such a provision can be regarded as unreasonable, it is difficult to follow. It is true that the words "other circumstances of the case" do vest a wide discretion in the Government but there is no reason to presume that this power conferred on the Government will be abused by the Government while exercising this power. If it can be established that the Government has acted arbitrarily in any case, such arbitrary act can be challenged in a court of law inasmuch as an arbitrary exercise of discretion is no exercise at all. For all these reasons I am unable to hold that this provision violates article 19 (1) (g) of the Constitution. Mr. Dutt has drawn the attention of the Court to the case reported in *Bidi Supply Company* v. *The Union of India*, 1956 S.C.R. 267, but that case is distinguishable on facts.

It is next argued by Mr. Dutt that section 19-A being unconstitutional and being thus out of the way, the petitioner can ask this Court to determine the question whether the petitioner's factory is an infant factory or not within the meaning of section 16 (1) (b) of the Act and the contention of Mr. Dutt is that the petitioner's factory comes within the purview of section 16 (1) (b) and is, therefore, exempt from the operation of the Act. I have already set out in extenso the provisions of section 16 in an earlier part of this judgment.

It is submitted by Mr. Dutt that the petitioner company obtained the certificate of incorporation on the 29th June, 1950, and commenced business on the 31st July, 1950. A particular registered number was allotted to the factory, which the petitioner purchased from the India Paper and Board Mills Co., on the 28th September, 1951, by the Chief Inspector of Factories, West Bengal. The number given was 347-T. P./X. Prior to that on the 12th October, 1950, the petitioner purchased the machinery from the India Paper Board Mills Co., and on the 13th October, 1950, it purchased the brick-built house and land on No. 71 Satgachi Road, Dum Dum, from the said India Paper and Board Mill Company. The premises number was subsequently changed to 74, Nagendra Nath Road, Dum Dum. The petitioner company did not purchase the goodwill of the India Paper and Board Mill Company, nor did they take over the liabilities of the said company. Furthermore,

the awards of the Industrial Tribunals which decided certain disputes between the employees of the factory and the previous and the present owners of the factory treated the petitioner company as a new concern and in the circumstances it should be held that the date of the establishment of the factory is sometime in 1950 when the petitioner took over charge of the running of the factory. This is the line of argument, addressed by Mr. Dutt, but I am unable to accept this contention as correct. The term 'factory' has been defined in section 2 (g) as follows:

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

The expression manufacture has been defined in section 2 (ia) as follows:

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

Now it is an admitted fact that the company, India Paper and Board Mills Ltd., started production after the establishment of the factory some time in the year 1936. There is nothing to show that the production stopped at any time prior to 12th May, 1950. It appears from the counter-affidavit of the Senior Provident Fund Inspector that the petitioner company is running the factory since 12th May, 1950, although the actual sale in its favour took place in October, 1950. After the purchase by the petitioner there were no doubt some breaks in the continuity of the production but there is no doubt that this factory ran into production in 1936 and it is this identical factory which is still manufacturing goods though the ownership of the factory has changed hands in the meantime. The petitioner is, of course, a new concern since 29th June, 1950, but the factory continues to be the same. In my view, the date of establishment of a factory is the date when the factory starts its manufacturing process. The fact that a new company or concern subsequently takes over or acquires the factory does not shift the date of the establishment of the factory to the date of it taking over or acquisition; nor does the fact that the factory had ceased to produce goods for a certain time and resumed production after certain brief intervals result in extinction of the old factory and establishment of a new factory. I, therefore, hold that there is no substance in this point of Mr. Dutt. See the unreported decision of the Bombay High Court—*Chagganlal Textile Mills Private*

Ltd. v. *P. A. Bhaskar*, Misc. Appln. No. 289 of 1956, judgment of Tendolkar, J., dated 5th November, 1956.

A further point was taken by Mr. Dutt to the effect that the requisition pursuant to which the certificate proceedings were started against the petitioner under the Bengal Public Demands Recovery Act, 1913, read with section 8 of the Employees' Provident Funds Act, 1952, was an invalid requisition, and, therefore, the certificate proceedings were without jurisdiction. It was submitted by Mr. Dutt that an industry engaged in the manufacture of paper being a controlled industry (as defined in section 2 (d) of the Act), the appropriate Government in relation to a factory engaged in a controlled industry, is the Central Government (section 2(a) of the Act) and so the requisition issued under the signature of the Joint Secretary to the Government of West Bengal was not in order in the absence of delegation of power under section 19 of the Act and so the certificate proceedings initiated on the strength of such a requisition were bad and without jurisdiction. It appears that in the present case the requisition was issued some time in July, 1954, and the certificate case was initiated on 18th August, 1954. Mr. Amiya Kumar Mukherjee has produced before this Court a notification dated 12th June, 1954, to show that the delegation as contemplated by section 19 of the Act was made in favour of the State of West Bengal. After this Mr. Dutt has not pressed this point any further.

Mr. Chakraborty, the learned Senior Government Pleader, has argued that the petitioner having pursued the remedies provided by the Bengal Public Demands Recovery Act cannot suddenly turn round and have recourse to the remedy provided by article 226 of the Constitution. According to Mr. Chakraborty the adoption of the alternative remedy as prescribed in the Bengal Public Demands Recovery Act precludes the petitioner from having recourse to the extraordinary remedy provided by article 226 of the Constitution. Mr. Chakraborty has relied on two Bench decisions of this Court reported in *Abanindra Kumar Maity* v. *A. K. Majumdar*, A.I.R. 1956 Cal. 273 and *Kanai Lal* v. *Collector of Land Customs, Calcutta*, 60 C. W. N. 1042. In the first mentioned case, it was laid down by a Special Bench of this Court that although the existence of an alternative remedy is not an absolute bar to the entertainment or maintenance of an application under article 226 of the Constitution, still if a party had availed himself of the alternative remedy he could not after having exhausted those remedies or gone a certain way in its pursuit switch round to article 226 of the Constitution and start a fresh line of proceeding under that provision. In the last mentioned case, it was held that while the existence of an alternative remedy is not an absolute bar, if a party has availed himself of the ordinary remedies provided for by special Act, he cannot thereafter turn round and begin once again from the bottom by challenging the original order under article 226 of the Constitution. In this case a party had availed himself of the right of appeal given by the Land Customs Act and had also availed himself of the right of revision given by the same Act. It was thereupon held that he could not be allowed to renew his attack on the order of the Collecter of Customs in another claim by means of an application under article 226 of the Constitution. Mr. Chakraborty has also referred to the decisions of the Supreme Court reported in *Veerappa Pillai* v. *Raman and Raman Ltd.*, A.I.R. 1952 S.C. 192; *K. S. Rashid and Son* v. *Income-tax Investigation Commission*, A.I.R. 1954 S.C. 207, and to the unreported decision of Sinha, J., in *Kalipada Bhattacharjee* v. *Ganendra Nath Bhowmick*, Civil Revn. Case No. 3595 of 1956, judgment dated 29th January, 1957.

Mr. Dutt has on the other hand placed reliance on the cases reported in *Romesh Thappar* v. *State of Madras*, A.I.R. 1950 S.C. 124; *Rashid Ahmed* v. *The Municipal Board of Kairana*, A.I.R. 1950 S.C. 163; *The State of Bombay* v. *The United Motors India Ltd.*, A.I.R. 1953 S.C. 252; *Himmatlal Harilal* v. *State of Madhya Pradesh*, A.I.R. 1954 S.C. 430; *Rakhaldas Mukherjee* v. *S. P. Ghosh*, A.I.R. 1952 Cal. 171; *Buddhu* v. *Municipal Board, Allahabad*, A.I.R. 1952 All. 753 and *Chairman Budge Budge Municipality* v. *Mangru Mia*, A.I.R. 1953 Cal. 433.

I do not think it necessary to prolong this judgment by detailed discussion of these cases as in my view the question as to whether the adoption of alternative remedy as prescribed in the Public Demands Recovery Act precludes the petitioner from invoking the jurisdiction of this Court under article 226 of the Constitution should be decided on the special facts of the case before me. Different cases have taken different views on this point and no hard and fast rule can be laid down as to when a party should be forced to have recourse to the alternative remedy and when not. In the case before me the certificate proceedings were started against the petitioner on 18th August, 1954. On 1st April, 1955, the petitioner filed its first objection under section 9 of the Public Demands Recovery Act denying liability on the ground that no notice under section 7 of the Act had been served upon the petitioner. On 2nd May, 1955, the Certificate Officer disallowed the objection on the ground that the application filed by the petitioner under section 9 was time barred. An appeal was preferred against this order and such appeal was ultimately allowed and the certificate case was remanded to the Certificate Officer for consideration of the question whether the notice had been duly served. On 27th July, 1955, the records were received back by the Certificate Officer. On 6th October, 1955, the Certificate Officer again heard the petitioner and dismissed the objection filed under section 9. Another appeal was preferred against this order of dismissal and such appeal was allowed. Thereafter, fresh notice under section 7 was served upon the petitioner according to the direction of the appellate authority and the petitioner filed a fresh objection under section 9 denying the liability on 2nd February, 1956. On 23rd March, 1956, this fresh objection of the petitioner was heard by the Certificate Officer and as a report of the requiring officer was found necessary, such report as called for and the case was adjourned till 24th April, 1956. On 18th April, 1956, the petitioner obtained the present Rule. It is thus clear that the petitioner has already gone through the procedure prescribed by the Bengal Public Demands Recovery Act and it had to approach the appellate authority twice and was successful on each occasion before the appellate authority. Certain points which have been urged before this Court were also urged in course of these certificate proceedings and the judgment of the appellate authority is made an annexure to the petition. It was after filing the second objection under section 9 that the petitioner has been advised to have recourse to article 226 of the Constitution. Already a long time had elapsed in pursuing the remedies provided by the Bengal Public Demands Recovery Act as the petitioner company thought that it was not likely to get proper redress at the hands of the Certificate Officer who had already dealt with the matter before on several occasions, it was thought proper to invoke the jurisdiction of this Court under article 226. The question of constitutionality about some of the provisions of the Employees' Provident Funds Act have been raised in this case and as there are also questions affecting the fundamental rights of the petitioner the petitioner was advised to have these points decided by this Court instead of by the Certificate Officer. If the petitioner had availed himself of the provisions of appeals and revisions as provided in the Bengal Public Demands Recovery Act and then had come to this Court, it might be said, as was said in the cases reported in *Kanai Lal* v. *Collector of Land Customs, Calcutta*, 60 C.W.N. 1042, cited above, that it was not open to the petitioner to come to this Court after exhausting all the remedies under the Public Demands Recovery Act.

Mr. Chakraborty has also argued that in respect of the criminal case which is pending against the petitioner for contravention of the provisions of the Employees' Provident Funds Act and the scheme made thereunder, the petitioner should have invoked the criminal revisional

jurisdiction of this Court and the petitioner's approach to this Court invoking the jursdiction under article 226 is nothing but an abuse of process of the Court. But it is to be noted that no specific relief has been asked for in this application so far as the criminal proceedings pending before the Barrackpore Court is concerned. In the circumstances, I am not prepared to throw out this application on the ground that the petitioner by pursuing the remedies provided in the Bengal Public Demands Recovery Act has precluded itself from having recourse to article 226 of the Constitution.

It has also been contended on behalf of the opposite parties that the notice as required under order 27-A of the Code of Civil Procedure should have been given to the Attorney-General for India as a substantial question of law as to the interpretation of the Constitution is involved in this case. Order 27-A, Rule 1 is as follows:

"In any suit in which it appears to the Court that any such question as is referred to in clause 1 of article 132 read with the article 147 of the Constitution is involved, the Court shall not proceed to determine that question until after notice has been given to Attorney-General for India if the question of law concerns the Central Government and to the Advocate-General of the State if the question of law concerns the State Government."

Rule 2 of Order 27-A provides that the Court may at any stage of the proceedings order that the Central Government or a State Government shall be added as a defendant in any suit involving any such question if the Attorney General, or the Advocate-General as the case may be, whether upon receipt of notice under Rule 1 or otherwise applies for such addition and the Court is statisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

It is clear that this provision was intended to apply to suits. An application under article 226 of the Constitution is, however, not a suit. But it is to be noted that section 141 of the Code states that the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction. It has been held by this Court that the jurisdiction which the High Court exercises under article 226 of the Constitution is a special and limited jurisdiction. It is not a revisional jurisdiction, nor is it an appellate jurisdiction. The High Court also does not exercise any jurisdiction of superintendence under article 226 as it does under article 227 of the Constitution: *Chairman, Budge Budge Municipality* v. *Mangru Mia*, A.I.R. 1953 Cal. 433. Neither Order 27-A nor section 141 of the Code, therefore, apply literally to proceedings under article 226 of the Constitution. Furthermore, the scope and implications of article 19 and article 14 of the Constitution of India have been the subject of several decisions of the Supreme Court and the scope and implication of these two articles are now well-known. So it cannot be said now that, merely because in considering the question whether a particular statute offends against the Constitution, article 19 (1) (g) and article 14 have to be referred to, for finding out whether the provisions of the Constitution are violated by the impugned statute, there is substantial question as to the interpretation of the Constitution involved in this case.

This Court had occasion to decide similar questions about the constitutionality of statutes of the Union Legislature in the past but no notice on the Attorney-General was insisted on, nor was any such notice given in proceedings under article 226 of the Constitution. It is further to be noted that in the present proceedings the Union of India has been made a party and the Central Provident Fund Commissioner and the Regional Provident Fund Commissioner are also parties to this proceeding. All these parties have bean represented before me by Mr. Amiya Kumar Mukerjee. In the circumstances, it appears to me that no notice to the Attorney-General is necessary assuming that the provisions of Order 27-A of the Code are applicable to this case.

In view, however, of my finding that the petitioner has not been able to make out any ground for exemption from the operation of the provision of the Employees' Provident Funds Act, 1952, or the Scheme framed thereunder, this petition must fail. The Rule is accordingly discharged but there will be no order as to costs.

The petitioner says that he intends to prefer an appeal against this order and prays that the operation of this order be stayed for six weeks.

Let the operation of this order remain stayed for six weeks, as prayed for.
