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INDIAN FACTORIES JOURNAL

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

WITH

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

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Government Order regarding Permanent Conciliation Board in U. P.

Notification No. 3736 (ST)/XXXVI-A—136 (ST)-57, dated July 15, 1958. *

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

Now, therefore, in exercise of the powers conferred by clause *(d)* of section 3 of the U. P. Industrial Disputes Act, 1947 (U.P. Act no. XXVIII of 1947), the Governor of Uttar Pradesh is pleased to make the following order and to direct, with reference to section 19 of the said Act, that notice of this Order be given by publication in the official *Gazette*.

ORDER

1. There shall be a Permanent Conciliation Board, with headquarters at Lucknow, for the settlement of industrial disputes between the State-owned Undertakings, the U.P. Co-operative Bank Ltd. (including its branches), the U. P. Co-operative Federation Ltd. (including its branches), and the Co-operative Milk Supply Unions (including their branches), in Uttar Pradesh and their workmen. The Board shall consist of—

(i) a Chairman, who shall be appointed by the State Government from amongst its officers; and

(ii) two Members—one to represent each of the parties to the dispute—who shall be appointed by the Chairman on the recommendations of each party:

Provided that if the member or members representing any party or parties fail to attend any meeting or proceeding of the Board, the Chairman shall be competent to hold the proceeding of the Board notwithstanding the absence of such member or members.

Reference of disputes to Conciliation Board

2. Notwithstanding anything contained in G.O. no. 738 (ST) XXXVI-A—112 (ST)-57, dated December 31, 1957, an application for the settlement of an industrial dispute between the parties referred to in clause 1 above, may be made before the Conciliation Board in Form A, given in the Schedule to this Order—

(i) in the case of a workman—

(a) by an officer of a Union of the concern of which he is a member; or by an officer of a Federation of Unions to which such union is affiliated; or

(b) where no Union of workmen exists, by five representatives of workmen employed in the concern, duly elected in this behalf by a majority of the workmen employed in that concern at a meeting held for the purpose; and

(ii) in the case of an employer by the Head of an undertaking by whatsoever name he may be designated:

Provided that no application shall be entertained by the Board if it is in respect of any dispute arising more than six months prior to the date of the application or if the dispute has already been the subject of proceedings before the Board:

* U. P. Gaz., Extry, 15-7-58, p. 4.

Provided further that, notwithstanding anything contained in the foregoing proviso, the Chairman of the Board may entertain an application if he is satisfied that the applicant had sufficient cause for not making the application earlier.

3. No dispute between the parties referred to in clause 1 above, shall be referred to the Board unless the same has previously been referred to, and considered, by the Works Council in accordance with the procedure laid down in G.O. no. 3735 (ST) XXXVI-A—136 (ST)-57, dated July 15, 1958 and the Works Council has failed to bring about a settlement thereof.

4. Notwithstanding anything contained in clause 3, the State Government may—

(i) refer any dispute relating to the parties, referred to in clause 1 above, to the Board for investigation and settlement; or

(ii) either of its own motion or on an application made to it in this behalf, suspend or quash the proceedings of any dispute pending before the Board if the public interest so warrants.

Functions of the Board

5. (1) When a dispute is referred to the Board, it shall endeavour to bring about a settlement of the dispute and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and just settlement thereof, and may do all such things as it thinks fit for purposes of bringing about an amicable settlement.

(2) If the Board is successful in bringing about an amicable settlement between the parties, it shall prepare a memorandum stating the terms of settlement arrived at, and the Chairman of the Board shall send copies thereof to the State Government in the Labour (A) Department and the administrative department concerned, the applicant and the Head of the undertaking to which the dispute relates, as soon as possible.

(3) Where no amicable settlement can be reached on one or more than one matter, the Chairman of the Board shall, as soon as possible after the close of the proceeding send to the State Government in the Labour (A) Department for their consideration and orders, a full report setting forth the steps taken by the Board for ascertaining the facts, and circumstances relating to the dispute and for bringing about an amicable settlement.

(4) The Memorandum under sub-clause (2) above shall be signed by the Chairman and such member or members as may be present and shall also be signed by the parties to the dispute.

Transaction of business

6. No business shall be transacted at any meeting of the Board in the absence of the Chairman or against his consent or any direction given by him.

Place and time of hearing

7. The sittings of the Board shall be held at such times and places as the Chairman may fix and the Chairman shall inform the parties of the same in such manner as he thinks fit.

Proceedings before the Board

8. The proceedings before the Board shall be held in public:

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

Inclusion of other undertakings

9. Where the Conciliation Board is of the opinion that any question involved in a dispute or matter referred to it affects or is likely to affect other State undertakings, it shall implead in the proceedings before it every such undertaking or undertakings or branches thereof as are likely to be affected and where there is a registered Trade Union covering the majority of workmen, such trade union also.

Power to refer additional matters to the Board for settlement

10. Where any dispute or matter is pending before the Board, the State Government may, by order in writing, refer any other dispute or matter that may arise between the same parties, to the Board for settlement.

Payment of expenses to witnesses

11. The party or parties calling a witness in any proceeding or enquiry before the Board shall pay such expenses to him as the Chairman of the Board may direct.

Election of workers

12. Every Head of the undertaking to which this order applies shall allow meetings of workers of his undertaking for electing their representatives for the purposes of clause 2(i)(*b*) above:

Provided that the Head of the undertaking shall have full discretion as regards the exact place or places where such meeting or meetings may be held:

Provided further that the Head of the undertaking may regulate the time of such meeting or meetings in such a way that there shall be the least disturbance to the working of the undertaking;

Provided also that the time and place so fixed shall not deprive any worker or workers of the whole or part of the rest period to which he/they is/are entitled.

Leave to workmen to attend meetings of the Board

13. (1) The Head of the undertaking shall permit at least two workmen at a time to be absent for such period as may be necessary for prosecuting or conducting an enquiry before the Board concerning his undertaking. During such absence the workmen concerned shall be allowed full wages for the period of absence.

(2) At his discretion the Chairman may direct that the workmen concerned shall be allowed T. A. and D. A. by the undertaking at the rates admissible to them under the rules in force in the undertaking.

Date of commencement and operation of the order

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

SCHEDULE

FORM A

(CLAUSE 2)

Form of application for reference of an industrial dispute to the Chairman, Permanent Conciliation Board for State-owned Undertakings

Before the Chairman, Permanent Conciliation Board for State-owned Undertakings—

Applicant :

Full name of the workman, registered trade union of workmen or registered federation of trade unions of workmen, making the application.

Full postal address :

versus

Opposite party :

Full name of the employer

Full postal address :

in the matter of an industrial dispute between

The applicant respectfully submits that :

(1) an industrial dispute exists between the parties mentioned above in respect of the matters specified herein below :

(i)

(ii)

(iii)

(iv)

(v)

(2) that this matter was referred to the Works Council of the undertaking but no settlement could be arrived at, or

that the subject-matter of dispute does not fall within the purview of the Works Council.

(3) that the actual date on which the cause of action in respect of the dispute specified above arose is day of (months) (Year).

(4) that the time lapsing between the date on which the cause of action arose and the date of this application is

Years months days.

(5) that the circumstances responsible for this lapse of time between the date on which cause of action arose and the date of making this application are as follows :

The applicant, therefore, requests that the matter(s) of dispute specified above may be referred to the Permanent Conciliation Board for settlement. The following reliefs are sought :

(1)

(2)

(3)

Signature or thumb-impression of the applicant (in case of a Union being the applicant, the name and designation of the Officer signing on behalf of the Union should be specified).

Date of making application.

The applicant does solemnly hereby declare that the statements made in the preceding paragraphs are true to the best of his knowledge, belief and information.

This verification is signed at on dated day of 19 .

Signature or thumb-impression of the applicant.

WEST BENGAL PAYMENT OF WAGES RULES, 1958

*Notification No. 2392 L. W./LW/1R-21/57, dated 8th July, 1958.**

In exercise of the power conferred by sub-section (2) of section 26 of the Payment of Wages Act, 1936 (IV of 1936), the Governor is pleased to make the following rules, the same having been previously published as required under sub-section (5) of the said section :

1. *Title.*—These rules may be called the West Bengal Payment of Wages Rules, 1958.

2. *Application.*—These rules shall apply to factories and also to the industrial establishments to which the provisions of the Act have been or may be extended by notification under sub-section (5) of section 1 of the Act.

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

(*a*) "the Act" means the Payment of Wages Act, 1936 (IV of 1936);

(*b*) "the Authority" means the authority appointed under sub-section (1) of section 15 of the Act ;

(*c*) "the Chief Inspector of Factories" means the Chief Inspector of Factories appointed under sub-section (2) of section 8 of the Factories Act, 1948 (LXIII of 1948) ;

(*d*) "the Labour Commissioner" means the Labour Commissioner as defined in rule 2 of the Bengal Industrial Disputes Rules, 1947 ;

(*e*) "the Court" means the court mentioned in sub-section (1) of section 17 of the Act;

(*f*) "deduction for breach of contract" means a deduction made in accordance with the provisions of the proviso to sub-section (2) of section 9;

* Cal. Gaz , 17-7-1958, Pt. I, p. 2195.

(g) "deduction for damage or loss" means a deduction made in accordance with the provisions of clause (c) of sub-section (2) of section 7;

(h) "factory" means a factory as defined in section 2 of the Factories Act, 1948 (LXIII of 1948);

(i) "industrial establishment" means an industrial establishment as defined in section 2 of the Act;

(j) "form" means a form appended to these rules;

(k) "Inspector" means the Inspector authorised by or under section 14 of the Act;

(l) "person employed" excludes all persons to the payment of whose wages the Act does not apply;

(m) "section" means a section of the Act;

(n) "paymaster" means an employer or other person responsible under section 3 of the Act for the payment of wages.

4. *Register of fines.*—(1) In any factory or industrial establishment in respect of which the employer has obtained approval under sub-section (1) of section 8 to a list of acts and omissions in respect of which fines may be imposed, the paymaster shall maintain a Register of Fines in Form I.

(2) At the beginning of the Register of Fines there shall be entered serially numbered the approved purpose or purposes on which the fines realised are to be expended.

(3) When any disbursements are made from the fines realised, an entry of the amount so expended shall be made in the Register of Fines, and a voucher or receipt in respect of the amount shall be affixed to the register. If more than one purpose have been approved the entry of the disbursement shall also indicate the purpose for which it is made.

5. *Register of deductions for damage or loss.*—In every factory or industrial establishment in which deductions for damage or loss are made, the paymaster shall maintain the register required by sub-section (2) of section 10 in Form II.

6. *Register of Wages.*—In every factory or industrial establishment, the paymaster shall maintain a Register of Wages in such form as he finds convenient including, *inter alia*, the following particulars:—

(a) the rate of wages of each person employed;

(b) the gross wages earned by each person employed for each wage-period;

(c) all deductions made from those wages, with an indication in each case of the clause of sub-section (2) of section 7 under which the deduction is made;

(d) the wages actually paid to each person employed for each wage-period;

(e) date of payment.

7. *Maintenance of registers.*—(1) The registers required by rules 4, 5, 6 and 18 shall be maintained in the English language.

(2) All entries in the registers shall be made in ink, shall be legible and shall be maintained up to date.

(3) All registers for the preceding three calendar years shall be preserved and be available in the factory or industrial establishment as the case may be, for examination by the Inspector.

8. *Weights and measures.*—(1) All weights, measures or weighing machines which are used in checking, or ascertaining the wages of persons employed in any factory or industrial establishment shall be examined at least twice a year by an Inspector who may prohibit the use of any weight, measure or weighing machine which he finds to register incorrectly.

(2) If the Inspector considers that any action should be taken under the Indian Penal Code (XLV of 1860), he may seize the article in question and shall record his opinion and send it to the District Magistrate for such action as he may think fit.

9. *Notice of dates of payment.*—The paymaster shall display, in a conspicuous place at or near the main entrance of the factory or industrial establishment, a notice in English and in the language of the majority of the persons employed therein, specifying for not less than one month in advance, the wage-period and the date or dates on which wages are to be paid.

10. *Prescribed authority.*—(1) The Chief Inspector of Factories shall be the authority competent in respect of factories and docks, wharfs and jetties to approve, under sub-section (1) of section 8, acts and omissions in respect of which fines may be imposed, and under sub-section (8) of section 8, the purposes on which the proceeds of fines shall be expended.

(2) The Labour Commissioner shall be the authority competent in respect of industrial establishments other than docks, wharfs and jetties to approve, under sub-section (1) of section 8, acts and omissions in respect of which fines may be imposed, and under sub-section (8) of section 8, the purposes on which the proceeds of fines shall be expended.

11. *Applications in respect of fines.*—Every employer requiring the power to impose fines in respect of any acts and omissions on the part of employed persons shall send to the Chief Inspector of Factories or the Labour Commissioner, as the case may be,—

(a) a list, in English, in duplicate, clearly defining such acts and omissions;

(b) in cases where the employer himself does not intend to be the sole person empowered to impose fines, a list, in duplicate, showing those appointments in his factory or industrial establishment of which the incumbents may pass orders imposing fines and the departments or sections in respect of which the incumbent of each such appointment may impose fine.

12. *Approval of list of acts and omissions.*—The authority appointed under rule 10 on receipt of the list prescribed in clause (a) of rule 11 may, after such enquiry as he considers necessary, pass orders either—

(a) disapproving the list,

(b) approving the list either in their original form or as amended by him, in which case such list shall be considered to be an approved list:

provided that no order disapproving or amending the list shall be passed nnelss the employer shall have been given an opportunity of showing cause orally or in writing why the list as submitted by him should be approved.

13. *Posting of list of acts and omissions.*—The employer shall display at or near the main entrance of the factory or industrial establishment a copy each in English and Bengali, together with a literal translation thereof, in the language of the majority of persons employed therein, of the list approved under rule 12.

14. *Persons authorised to impose fines.*—No fine shall be imposed by any person other than an employer, or a person holding an appointment named in the list submitted under clause (b) of rule 11.

15. *Procedure in imposing fines and deductions.*—Any person desiring to impose a fine on an employed person or to make a deduction for damage or loss shall explain personally to the said person the act or omission, or damage or loss, in respect of which the fine or deduction is proposed to be imposed and the amount of the fine or deduction, which it is proposed to impose, and if any such employed person has any explanation to offer in this behalf, he shall hear the employed person in the presence of at least one other person.

16. *Information to paymaster.*—The person imposing a fine or directing the making of a deduction for damage or loss shall at once inform the paymaster of all particulars, so that the register prescribed in rule 4 or rule 5 may be duly completed.

17. *Deductions for breach of contract.*—(1) No deduction for breach of contract shall be made from the wages of an employed person who is under the age of fifteen years or is a woman.

(2) No deduction for breach of contract shall be made from the wages of any employed person unless:—

(*a*) there is provision in writing forming part of the terms of the contract of employment requiring him to give notice of the termination of his employment; and—

(*i*) the period of this notice does not exceed fifteen days or the wage period, whichever is less; and

(*ii*) the period of this notice does not exceed the period of notice which the employer is required to give of the termination of that employment;

(*b*) this rule has been displayed in English and in the language of the majority of the employed persons at or near the main entrance of the factory or industrial establishment and has been so displayed for not less than one month before the commencement of the absence in respect of which the deduction is made;

(*c*) a notice has been displayed at or near the main entrance of the factory or industrial establishment giving the names of the persons from whom the deduction is proposed to be made, the number of days' wages to be deducted and the conditions (if any) on which the deduction will be remitted:

Provided that where the deduction is proposed to be made from all the persons employed in any departments or sections of the factory or industrial establishment, it shall be sufficient, in lieu of giving the names of the persons in such departments or sections, to specify the departments or sections affected.

(3) No deduction for breach of contract shall exceed the wages of the persons employed for the period by which the notice of termination of service given falls short of the period of such notice required by the contract of employment.

(4) If any conditions have been specified in the notice displayed under clause (c) of sub-rule (2), no deduction for breach of contract shall be made from any person who has complied with these conditions.

18. *Advances.*—(1) An advance of wages not already earned shall not, without the previous permission of an Inspector, exceed an amount equivalent to the wages earned by the employed person during the preceding two calendar months, or if he has not been employed for that period, an amount equivalent to the wages he is likely to earn during the two subsequent calendar months.

(2) The advance may be recovered in instalments by deductions from wages ordinarily spread over not more than twelve months. No instalment shall exceed one-third, or where the wages for any wage-period are not more than twenty rupees, one-fourth, of the wages for the wage-period in respect of which the deduction is made.

(3) The amount of all advances sanctioned and the repayments thereof shall be entered in a register in Form III.

19. *Annual Return.*—In respect of every factory or industrial establishment the paymaster shall submit a return in Form IV so as to reach the Chief Inspector of Factories or the Labour Commissioner, as the case may be, not later than the 31st of January following the end of the calendar year to which it relates.

20. *Costs.*—(1) Where the Authority or the Court, as the case may be, directs that any costs shall not follow the event, he shall state his reasons for so doing in writing.

(2) The costs which may be awarded shall include—

(*a*) the charges necessarily incurred on account of court-fees;

(*b*) the charges necessarily incurred on subsistence money to witnesses; and

(*c*) pleaders's fees which shall ordinarily be Rs. 10 provided that the Authority or the Court, as the case may be, in any proceedings, may reduce the fee to a sum not less than Rs. 5 or increase it to a sum not exceeding Rs. 30.

(3) When a party engaged more pleaders than one to defend a case, he shall be allowed one set of costs only.

21. *Fees for copies of documents.*—The Authority or the Court, as the case may be, may fix fees on the payment of which any person entitled to do so may obtain copies of any documents filed with the Authority or the Court, as the case may be:

Provided that the Authority or the Court, as the case may be ,may, in consideration of the poverty of the applicant, grant copies free of cost.

22. *Other fees.*—The fee payable in respect of proceedings under the Act shall be—

(*i*) For every certificate of authorisation—One rupee.

(*ii*) For every application to summon a witness—

(*a*) for the first witness mentioned in the application—Fifty naye paise,

(*b*) for each subsequent witness in the application—Twenty-five naye paise.

(*iii*) For every other application made by or on behalf of an individual person before the Authority—Fifty naye paise.

(*iv*) For every other application made by or on behalf of an unpaid group before the Authority—Twenty-five naye paise for each member of the group, subject to a maximum of five rupees:

(*v*) For every appeal lodged with the Court—Five rupees:

Provided that the Authority or the Court may, in consideration of the poverty of the applicant, reduce or remit this fee:

Provided further that no fee shall be chargeable in respect of an application presented by an Inspector.

23. *Manner of Payment of amount directed to be paid under section 15.*—(1) Any amount directed to be paid under section 15 may be deposited with the Authority along with a statement in Form V.

(2) When any deposit is made under sub-rule (1), the Authority shall grant a receipt for the amount so deposited in Form VI and this receipt shall be a sufficient discharge in respect of any amount deposited with him:

Provided that the saidreceipt in Form VI may, be signed under the direction of the Authority and on his behalf by any officer subordinate to him appointed by him in writing for this purpose.

(3) Any sum deposited with the Authority under sub-rule (1), or recovered under sub-section (5) of section 15 shall, on application, be paid by the authority to the person entitled thereto.

24. *Abstracts*—The abstracts of the Act and of the rules made thereunder to be displayed under section 25 shall be in Form VII.

25. *Penalties*—Any breach of rules 4, 5, 6, 7, 8, 9, 11, 13, 15, 16, 10 and 19 of these rules shall be punishable with fine which may extend to two hundred rupees.

FORM I

[*See* rule 4(1)]

REGISTER OF FINES

.....................Factory or Industrial Establishment..................

Serial No.	Name.	Token or ticket number of the worker or father's or husband's name.	Depart-ment.	Act or omission for which fine imposed.	Wages payable during wage-period.	Date and amount of fine imposed.	Date on which fine realised.	Remarks.
1	2	3	4	5	6	7	8	9

NOTE.—A title page should be attached to each register showing the acts and omissions for which fines may be imposed.

FORM II

[*See* rule 5]

REGISTER OF DEDUCTIONS FOR DAMAGE OR LOSS CAUSED TO THE EMPLOYER BY THE NEGLECT OR DEFAULT OF THE EMPLOYED PERSONS

.....................Factory or Industrial Establishment.................

Serial No.	Name.	Token or ticket number of the worker or father's or husband's name.	Depart-ment.	Damages or loss caused.	Date and amount of deduction imposed.	No. of instalments, if any	Date on which total amount realised.	Remarks.
1	2	3	4	5	6	7	8	9

FORM III

[*See* rule 18(3)]

REGISTER OF ADVANCES MADE TO EMPLOYED PERSONS

..................Factory or Industrial Establishment.....................

Serial No.	Name.	Token or ticket number of the worker or father's or husband's name.	Department.	Date and amount of advance made.	Date and amount of each instalment by which the advance is repaid.	Remarks.
1	2	3	4	5	6	7

FORM IV

(*See* rule 19)

Annual Return under the West Bengal Payment of Wages Rules
For the year ending 31st December, 19...............

1. (*a*) Name of the factory or industrial establishment and postal address.....................

(*b*) Industry.....................

2. Number of days worked during the year...............

3. *(*a*) Average daily number of persons employed during the year—Adults...................Children...............

* The average daily number of persons is obtained by dividing the aggregate numbers of attendances during the year by the number of working days. Include only those persons who receive less than Rs. 400 a month.

"Paymaster" means an employer or other person responsible under section 3 of the Act for payment of wages.

(b) Gross amount paid as remuneration to these persons including deductions under section 7(2) was....................of which the amount due to bonus is..................................and that due to money value of concessions is.................

4. Total wages paid including deductions under section 7(2) on the following accounts :—

(a) Basic Wages including overtime.................

(b) Dearness and other allowance in cash...........

(c) Arrears of pay in respect of the previous years paid during the year..............

5. Number of cases and amount realised as—

	No. of cases.	Amount.
(a) Fines.......................		
(b) Deductions for damage or loss..............		
(c) Deduction for breach of contract..............		

6. Disbursements from the fine funds—

	Purpose.	Amount.
(a)		
(b)		
(c)		
(d)		

7. Balance of fines fund in hand at the end of the year.................

Date.......................

Signature of Paymaster.

Designation.

FORM V

[See rule 23(1)]

Form for deposit

The sum of Rs.................... (Rupees....................) is hereby presented for deposit in accordance with the direction issued on........... (date) in the matter of an application No........................of 19........... filed by.....................(Applicant) against................. (Opposite party).

Signature of the depositor.

Date....................

FORM VI

[See rule 23(2)]

Receipt

Name of depositor.......................

Name of payee.......................

Number of application........................ of 19......

Name of applicant.......................

Name of opposite party.......................

Date of direction.......................

Amount deposited—Rupees....................

Date of deposit....................

Authority,

Payment of Wages Act, West Bengal

FORM VII

(*See Rule* 24)

Abstract of the Payment of Wages Act, 1936, and the rules made thereunder

Whom the Act affects

1. The Act applies to the payment of wages to persons in this factory or industrial establishment receiving less than Rs. 400 a month.

2. No employed person can give up by contract, or agreement, his rights under the Act.

Definition of Wages

3. "Wages" means all remuneration payable to an employed person on the fulfilment of his contract of employment.

It includes bonus and any sum payable for want of a proper notice of discharge.

It excludes—

(a) the value of house accommodation, supply of light, water, medical attendance, or other amenity or of any service excluded by the Central Government or the State Government;

(b) the employer's contribution to a pension or provident fund;

(c) travelling allowance, or concession or other special expenses entailed by the employment;

(d) any gratuity payable on discharge.

Responsibility for and method of payment

4. The manager of the factory or industrial establishment is responsible for the payment under the Act of wages to persons employed under him, and any contractor employing persons is responsible for payment to the persons he employs.

5. Wage-periods shall be fixed for the payment of wages at intervals not exceeding one month.

6. Wages shall be paid on a working day within seven days of the end of the wage-period (or within ten days if 1,000 or more persons are employed).

The wages of a person discharged shall be paid not later than the second working day after his discharge.

7. Payments in kind are prohibited.

Fines and deductions

8. No deductions shall be made from wages except those authorised under the Act. (*See* paragraphs 9-15 below.)

9. (1) Fines can be imposed only for such acts and omissions as the employer may, with the previous approval of the Chief Inspector of Factories, or the Labour Commissioner, as the case may be, specify by a notice displayed at or near the main entrance of the factory or industrial establishment and after giving the employed person an opportunity for explanation.

(2) Fines—

(*a*) shall not exceed three naye paise in the rupee;

(*b*) shall not be recovered by instalments, or later than sixty days of the date of imposition;

(*c*) shall be recorded in a register and applied to such purposes beneficial to the employed persons as are approved by the Chief Inspector of Factories or the Labour Commissioner, as the case may be;

(*d*) shall not be imposed on a child.

10. (*a*) Deductions for absence from duty can be made only on account of the absence of the employed person at times when he should be working, and such deductions must not exceed an amount which is in the same proportion to his wages for the wage-period, as the time he was absent in that period is to the total time he should have been at work.

(*b*) If ten or more employed persons, acting in concert, absent themselves without reasonable cause and without due notice, the deduction for absence may include wages for eight days in lieu of notice, but—

(1) no deduction for breaking a contract can be made from a person under 15 or a woman,

(2) there must be a provision in writing which forms part of the contract of employment requiring that a specific period of notice of intention to cease work not exceeding fifteen days or the period of notice which the employer has to give to discharge a worker, must be given to the employer and that wages may be deducted in lieu of such notice,

(3) the above provision must be displayed at or near the main entrance of the factory or industrial establishment,

(4) no deduction of this nature can be made until a notice that this deduction is to be made has been posted at or near the main entrance of the factory or industrial establishment,

(5) no deduction must exceed the wages of the employed person for the period by which the notice he gives of leaving employment, is less than the notice he should give under his contract.

11. Deductions can be made for damage to or loss of goods expressly entrusted to an employed person or for loss of money for which he is required to account, where such damage or loss is due to his neglect or default.

Such deduction cannot exceed the amount of the damage or loss caused and can be made only after giving the employed person an opportunity for explanation.

12. Deduction can be made, equivalent to the value thereof, for house accommodation supplied by the employer, or by Government or any housing

board set up under any law and for amenities or services (other than tools and raw materials) supplied by the employer, provided these are accepted by the employed person as a part of the terms of his employment and have in the case of amenities and services been authorised by order of Government.

13. (*a*) Deductions can be made for the recovery of advances, or for adjustment of over payment of wages.

(*b*) Advances made before the employment began can only be recovered from the first payment of wages for a complete wage-period but no recovery can be made of advances given for travelling expenses before employment began.

(*c*) Advances of unearned wages can be made at the paymaster's discretion during employment but must not exceed the amount of two months' wages without the permission of an Inspector.

These advances can be recovered by instalments, ordinarily spread over not more than twelve months and the instalments must not exceed one-third, or if the wages are not more than Rs. 20, one-fourth of the wages for any wage-period.

14. Deductions can be made for subscription to and for repayment of advances from any recognised provident fund.

15. Deductions can be made for payments to co-operative societies approved by the State Government or for payment of insurance premia, subject to any conditions imposed by the State Government.

16. Deductions can be made with the written authorisation of the person employed, for payment of premium on life insurance policy to the Life Insurance Corporation of India or for purchase of securities of the Central Government or the State Government or for being deposited in Post Office Savings Bank.

Inspections

17. An Inspector can enter on any premises, and can exercise powers of inspection (including examination of documents and taking of evidence) as he may deem necessary for carrying out the purposes of the Act.

Complaints of deductions or delays

18. (1) Where irregular deductions are made from wages, or delays in payment take place, an employed person can make an application in the prescribed form within six months to the Authority appointed by the State Government for the purpose. An application delayed beyond this period may be rejected unless sufficient cause for the delay is shown.

(2) Any legal practitioner, official of a registered trade union, Inspector under the Act, or other person acting with the permission of the Authority, can make the complaint on behalf of an employed person.

(3) A single application may be presented by, or on behalf of, any number of persons belonging to the same factory or industrial establishment the payment of whose wages has been delayed.

Action by the Authority

19. The Authority may award compensation to the employed person in addition to ordering the payment of delayed wages or the refund of illegal deductions.

If a malicious or vexatious complaint is made, the authority may impose a penalty not exceeding Rs. 50 on the applicant and order that it be paid to the employer.

Appeal against the Authority

20. An appeal in the prescribed form against an order or a direction made by the Authority may be preferred, within thirty days (in Calcutta to the Court of Small Causes) to the District Court:—

(*a*) by the paymaster if the total amount directed to be paid exceeds Rs. 300;

(*b*) by an employed person, if the total amount of wages withheld from him or his co-workers, exceeds Rs. 50;

(*c*) by a person directed to pay a penalty for a malicious or vexatious application.

Punishments for breaches of the Act.

21. Any one delaying the payment of wages beyond the due date, or making any unauthorised deduction from wages is liable to a fine up to Rs. 500, but only if prosecuted with the sanction of the Authority or the Appellate Court.

22. The paymaster who,—

(1) does not fix a wage-period, or

(2) makes payment in kind, or

(3) fails to display at or near the main entrance of the factory or industrial establishment this Abstract in English and in the language of the majority of the employed persons, or

(4) breaks certain rules made under the Act, is liable to a fine not exceeding Rs. 200.

A complaint to this effect can be made only by the Inspector, or with his sanction.

U. P. Payment of Wages (Procedure) Rules, 1958.

Notification No. 3440(SM)/XXXVI-A—1121(SM)-57, dated 20th August, 1958. *

In exercise of the powers conferred by sub-section (1) of section 26 of the Payment of Wages Act, 1936 (Act no. IV of 1936), the Governor of Uttar Pradesh is pleased to make the following Rules, the same having been previonsly published with notification no. 3780(*i*)-(*SM*)/*XXXVI-A—1121*(*SM*)-57, dated January 10, 1958, as required by sub-section (5) of section 26 of the said Act and the objections and suggestions thereto having been considered:

RULES

1. *Short title.*—These rules may be called the U. P. Payment of Wages (Procedure) Rules, 1958.

* U. P. Gaz., 30-8-1958, Pt. 1-A, p. 1495

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

(*a*) "Act" means the Payment of Wages Act, 1936 (IV of 1936);

(*b*) "Appeal" means an appeal under section 17 of the Act;

(*c*) "Authority" means the authority appointed under sub-section (1) of section 15 of the Act;

(*d*) "Court" means the Court mentioned in sub-section (1) of section 17 of the Act;

(*e*) "Employer" includes the person responsible for the payment of wages under section 3;

(*f*) "Section" means a section of the Act;

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

(*h*) Words and expressions defined in the Act shall be deemed to have the same meaning as in the Act.

3. *Form of application.*—Applications under sub-section (2) of section 15 by, or on behalf of, an employed person, or group of employed persons, shall be made in duplicate in Form A, Form B or Form C, as the case may be, one copy of which shall bear such court-fee as may be prescribed.

4. *Authorization.*—The authorization to act on behalf of an employed person or persons, under section 15, shall be given by a certificate in Form D and shall be presented to the authority hearing the application and shall form part of the record.

5. *Permission to appear.*—Any person seeking the permission of the Authority to act on behalf of any employed person or persons shall present to the Authority a brief written statement explaining his interest in the matter, and the Authority shall record an order on the statement, giving reasons in the case of refusal and shall incorporate the same in the record.

6. *Presentation of documents.*—(1) Applications or other documents relevant to an application may be presented in person to the Authority at any time during hours to be fixed by the Authority, or may be sent to him by registered post.

(2) The Authority shall at once endorse, or cause to be endorsed, on each document the date of the presentation or receipt, as the case may be.

7. *Refusal to entertain application.*—(1) The Authority may refuse to entertain an application presented under rule 6, if after giving the applicant an opportunity of being heard, the Authority is satisfied, for reasons to be recorded in writing that—

(*a*) the applicant is not entitled to present an application, or

(*b*) the application is barred for the reasons given in the proviso to sub-section (2) section 15, or

(*c*) the application does not disclose sufficient cause for making a direction under section 15.

(2) The Authority may refuse to entertain an application which is insufficiently stamped or is otherwise incomplete and, if he so refuses, shall return it at once with an indication of the defects. If the application is presented again after the defects have been removed, the date of the subsequent presentation shall be deemed to be the date of presentation for the purpose of the proviso to sub-section (2) of section 15.

8. *Appearance of parties.*—(1) If the application is entertained, the Authority shall call upon the employer by a notice in Form E to appear before him on a specified date together with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the Authority may proceed to hear and determine the application *ex-parte*.

(3) If the applicant fails to appear on the specified date, the Authority may dismiss the application :

Provided that an order passed under sub-rule (2) or sub-rule (3) may be set aside and the application re-heard on good cause being shown within one month of the date of the said order, notice being served on the opposite-party of the date fixed for re-hearing.

9. *Record of proceedings.*—(1) The Authority shall in all cases enter the particulars indicated in Form F and at the time of passing orders shall sign and date the Form.

(2) In a case where no appeal lies no further record shall be necessary.

(3) In case where an appeal lies, the Authority shall record the substance of the evidence and shall append it under his signature to the record of direction in Form F.

10. *Reasons for postponement of hearing to be recorded.*—If the Authority is unable to dispose of an application at one hearing, he shall record the reasons, which necessitate postponement.

11. *Signature on forms.*—Any form, other than a record of direction which is required by those rules to be signed by the Authority may be signed under his direction and on his behalf by any officer subordinate to him appointed by him in writing for this purpose.

12. *Exercise of powers.*—In exercise of the powers of a Civil Court conferred by section 18 the Authority shall be guided in respect of procedure by the relevant orders of the first Schedule of the Code of Civil Procedure, 1908, with such alterations as the Authority may find necessary, not affecting their substance, for adapting them to the matter before him, and save where they conflict with the express provisions of the Act or these rules.

13. *Appeals.*—(1) An appeal shall be preferred in duplicate in the form of a memorandum, one copy of which shall bear the prescribed court-fee, setting forth concisely the grounds of objection to the direction and shall be accompanied by a certified copy of that direction.

(2) When appeal is lodged, a notice shall be issued to the respondent in Form G.

(3) The court after hearing the parties and after such further enquiry, if any, as it may deem necessary may confirm, vary, or set aside the direction from which the appeal is preferred, and shall make an order accordingly.

14. Where an application under sub-section (2) of section 15, or an appeal under sub-section (1) of section 17, is entertained or preferred, the Authority or the court in case it holds that the employer is liable to refund or pay any money to the employed person, shall order the employer or other person responsible for the payment of the amount, to make payment direct to the employed person concerned.

15. *Inspection of documents.*—Any employed person, or any employer or his representative, or any person permitted under sub-section (2) of section 15 to apply for a direction, shall be entitled to inspect any application, memorandum of appeal, or any other document filed, with the Authority or the Court, as the case may be, in a case to which he is a party, and may obtain copies thereof on payment of such fees as may be prescribed.

FORM A

FORM OF INDIVIDUAL APPLICATION

[(*See* sub-section (2) of section 15 of the Payment of Wages Act]

In the Court of the Authority appointed under the Payment of Wages Act (IV of 1936) for area.

Application no. of 19.

Between Applicant

(Through $\frac{\text{a Legal Practitioner}}{\text{an official of}}$ of

which is a registered trade union)

And Opposite-party.

The applicant states as follows :

1. is a person employed $\frac{\text{in}}{\text{on}}$ the $\frac{\text{factory}}{\text{Industrial Establishment}}$ entitled and resides at

The address of the applicant for the service of all notices and processes is

2. the opposite-party, is the person responsible for the payment of his wages under section 3 of the Act, and his address for the service of all notices and processes is

3. (1) The applicant's wages have not been paid for the following wage period(s) (give dates) or a sum of Rs. has been unlawfully deducted from his wages of (amount) for the wage period(s) which ended on [give date(s)]

(2) (Here give any further claim or explanation)

4. The applicant estimates the value of the relief sought by him at the sum of Rupees

5. The applicant prays that a direction may be issued under sub-section (3) of section 15 for :

(*a*) Payment of his delayed wages as estimated or such greater or lesser amount as the Authority may find to be due,

or

refund of the amount illegally deducted.

(*b*) Compensation amounting to

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

Signature or thumb-impression of the employed person, or legal practitioner, or official of a registered trade union duly authorised.

FORM B

FORM OF GROUP APPLICATION

[*See* sub-section (2) of section 15 and section 16 of the Payment of Wages Act]

In the Court of the Authority appointed under the Payment of Wages Act (IV of 1936) for area.

Application no. of 19 .

Between and (state the number) others, applicants :

(Through $\frac{\text{a legal practitioner}}{\text{an official}}$ of which is a registered trade union).

And Opposite party.

The applicants state as follows :

1. The applicants whose names appear in the attached schedule are persons employed $\frac{\text{in}}{\text{on}}$ the $\frac{\text{factory}}{\text{Industrial Establishment}}$ entitled

The address of the applicants for service of all notices and processes is

2. the opposite-party, is the person responsible for the payment of wages under section 3 of the Act, and his address for the service of all notices and processes is

3. The applicants' wages have not been paid for the following wage-period(s)

4. The applicants estimate the value of the relief sought by them at the sum of Rupees

5. The applicants pray that a direction may be issued under sub-section (3) of section 15 for :

(*a*) Payment of the applicants' delayed wages as estimated or such greater or lesser amount as the Authority may find to be due.

(*b*) Compensation amounting to

The applicants certify that the statement of facts contained in this application is to the best of their knowledge and belief accurate.

Signature or thumb-impression of two of the applicants, or legal practitioner, or an official of a registered Trade Union duly authorised.

SCHEDULE

Names of applicants—

1.
2.
3.
4.
5.

FORM C

FORM OF APPLICATION BY AN INSPECTOR OR PERSON PERMITTED BY THE AUTHORITY OR AUTHORISED TO ACT.

[*See* sub-section (2) of section 15 and section 16 of thePayment of Wages Act].

IN THE COURT OF THE AUTHORITY APPOINTED UNDER THE PAYMENT OF WAGES ACT, FOR AREA

Application no. of 19 .

Between

(designation) an Inspector under the Payment of Wages Act (or a person $\frac{\text{permitted by the Authority}}{\text{authorised}}$ to act under sub-section (2) of section 5 Applicant,

And the opposite-party.

The applicant states as follows :

1. the opposite-party is the person responsible under the Act for the payment of wages to the no. of person (s).

2. His address for the services of all notices and processes is

3. The wages of the said person (s) due in respect of the following wage period (s)

have not been paid
have been subjected to the following illegal deductions.

4. The applicant estimates the value of the relief sought for the persons(s) employed at the sum of Rs.

5. The applicant prays that a direction may be issued under sub-section (3) of section 15 for:

(a) Payment of the delayed wages as estimated or such greater or lesser amount as the Authority may find to be due or refund of the amount illegally deducted.

(b) Compensation amounting to

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

Signature.

FORM D

CERTIFICATE OF AUTHORIZATION

I/We employed person(s) hereby authorize a legal practitioner/an official of which is a registered Trade Union to act on my/our behalf under section 15, and section 17 of the Payment of Wages Act (IV of 1936), in respect of the claim against

on account of the delay in payment of / illegal deductions from my/our wages for

Witnesses(1)	*Signature*(1)
(2)	(2)
(3)	(3)
(4)	(4)
(5)	(5)

I accept the authorization.

Signature

Legal Practitioner

Official of a registered Trade Union.

FORM E

NOTICE FOR THE DISPOSAL OF APPLICATION

To,

WHEREAS under the Payment of Wages Act, 1936 (IV of 1936), a claim against you has been presented to me in the application of which a copy enclosed, you are hereby called upon to appear before me either in person or by any person duly instructed, and able to answer all material questions relating to the application, or who shall be accompanied by some person able to answer all such questions, on the day of 19 at o'clock in the fore/afternoon to answer the claim, and as the day fixed for your appearance is appointed for the final disposal of the application, you must be prepared to produce on that day all the witnesses upon whose evidence, and the document upon which you intend to rely in support of your defence

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

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

SEAL. *Authority.*

FORM F

RECORD OF DIRECTION

(1) Serial number

(2) Date of the application

(3) Name or names, parentage, address or addresses of the applicants or some, or all of the applicants belonging to the same unpaid group

(4) Name and address of the employer

(5) Amount claimed—

(a) As delayed wages Rs.

(b) As deducted from wages Rs.

(6) Place of the employer and his examination (if any)

(7) Finding, and, in the case of a direction under sub-section (3) or (4) of section 15, a brief statement of the reason therefor

(8) Amounts awarded—

(a) Delayed wages Rs.

(b) Deducted wages Rs.

(9) Compensation awarded Rs.

(10) Penalty imposed Rs.

(11) Costs awarded to—

(*i*) Court-fee charges

(*ii*) Pleader's fee

(*iii*) Witnesses' expenses

Signed

Dated

Note—In cases where an appeal lies attach on a separate sheet the substance of the evidence.

FORM G

Notice to respondent of the day fixed for the hearing of the appeal under section 17 of the Payment of Wages Act, 1936.

Appeal from the decision of the Authority for the area, dated the day of 19 .

To

Respondent,

Take notice that an appeal of which a copy is enclosed, from the decision of the Authority for area has been presented by (and others) and registered in this Court and that the day of 19 , has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by your-self, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

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

Seal of the Court. *Judge.*

[IN THE BOMBAY HIGH COURT.]

AHMEDABAD MILL MAJDOOR MANDAL

v.

DISTRICT JUDGE, AHMEDABAD AND ANOTHER

Chainani and *Tarkunde*, *JJ*.

April 24, 1958.

AGREEMENT—INTERPRETATION OF—AGREEMENT BETWEEN MANAGEMENT AND WORKMEN LAYING DOWN TERMS OF SERVICE OF CLERKS—AGREEMENT PRESCRIBING WAGES OF CATEGORIES BETWEEN CLERKS AND OPERATIVES—WORKMEN EMPLOYED IN SUCH CATEGORIES—WHETHER ENTITLED TO BENEFIT OF AGREEMENT.

Res Judicata—CONSTRUCTIVE *Res Judicata*—WHETHER APPLICABLE TO CLAIMS UNDER PAYMENT OF WAGES ACT, 1936—FAILURE TO MAKE LAWFUL CLAIM—WHETHER BAR TO CLAIM FOR SUBSEQUENT WAGE-PERIODS.

PAYMENT OF WAGES ACT, 1936—AUTHORITY ACTING UNDER—JURISDICTION OF—RIGHT TO DETERMINE CATEGORY OF WORKMAN IN ACCORDANCE WITH AGREEMENT BETWEEN EMPLOYER AND WORKMEN.

A registered agreement between the Millowners' Association and the Textile Labour Association provided in clause (2) that the agreement "shall apply to all clerks employed in the local mills...... ". Clause (5) of the agreement made special provision "for employees who occupy the position lower than that of a ful-fledged clerk but higher than that of an operative." Clause (8) provided for overtime payment for clerks under certain circumstances. Certain workmen employed as cut-lookers and to whom the provisions of clause (5) would apply claimed that they should be paid in accordance with that clause and also overtime wages in accordance with clause (8). The management claimed that under clause (2) the agreement applied only to clerks and, therefore, these workmen, who were not clerks, could not claim any benefits under the agreement. Held, *that as special provision had been made in clause (5) of the agreement for workmen of the category of cut-lookers, the workmen were entitled to claim the benefits of that clause. They were, however, not entitled to the benefit of clause (8) which was confined to clerks.*

The principle of constructive res judicata *cannot be applied to claims under the Payment of Wages Act, 1936, so as to prevent a workman, who, out of ignorance or oversight, fails to make a lawful claim before the Payment of Wages Authority, from making the claim in respect of subsequent wage-periods.*

Where the agreement between the management and the workmen lays down different categories of workmen, it is open to the Payment of Wages Authority to decide the category to which a workman belongs.

Special Civil Applications Nos. 874 and 875 of 1958.

Vithalbhai Patel for the workmen.

P. P. Khambatta for Messrs. Amarchand and Mangaldas for the management.

JUDGMENT

TARKUNDE, J.—These two petitions have been filed by the Secretary of the Ahmedabad Mill Majdoor Mandal on behalf of three workers, Punamchand, Vishnuprasad and Samaldas, who are employees of opponent No. 2. The employees are doing the work of cut-lookers. By an award given on 21st April, 1958, by the Industrial Court in Reference No. 18 of 1947, it was provided that "if there are persons (in Ahmedabad) who are doing cut-looking as well as folding, they should be paid the rate earned by the cut-lookers in Bombay". Subsequent, to the publication of this award, there was a registered agreement dated 22nd June, 1949 between the Ahmedabad Mill Owners' Association on behalf of its local-member mills and the Textile Labour Association, the representative union, relating to the salary, grades promotions and other matters of clerks employed in the textile mills in Ahmedabad. The petitioner claims that the employees represented by him in these proceedings are covered by clause (5) of that agreement and are entitled to wages according to the scale mentioned in that clause. As the wages actually received by the employees were lower than the wages due to them under clause (5) of the agreement, the petitioner applied to the Payment of Wages Authority that the balance of the wages due to the employees during the period from 1st June, 1954 to 1st June, 1955 should be directed to be paid by the employer. From this application Special Civil Application No. 874 of 1958 arises. The petitioners claimed that according to clause (8) of the agreement between the Ahmedabad Mill Owners' Association and the Textile Labour Association mentioned above, these three employees are entitled to a seven hours working day, and that they are entitled to over time wages for the period during which they worked for more than seven hours on any day. On that basis, the petitioner applied to the Payment of Wages Authority for a direction that the employer should be ordered to pay to the three employees overtime wages due to them for overtime work done during the period from 31st June, 1954 to 20th November, 1954. Special Civil Application No. 875 of 1958 arises from this application.

The main contention of the employer was that the three employees concerned in these proceedings were not doing any clerical work, and were, therefore, not covered by the agreement between the Ahmedabad Mill Owners' Association and the Textile Labour Association. The

employer also took the plea that with regard to two of the three employees, namely, Punamchand and Vishnuprasad, the present applications were barred by the principle of *res judicata*. This plea was raised because Punamchand and Vishnuprasad had applied in 1954 to the Payment of Wages Authority for a direction that the employer should pay them wages at the rate of Rs. 42-40 per month, which was the rate at which cut-lookers were to be paid under the award of the Industrial Court in Reference No. 18 of 1947, that being the monthly wage of cut-lookers in Bombay. Punamchand and Vishnuprasad succeeded in these applications and got a direction for payment of wages at the scale applicable to cut-lookers under the award. The plea of the employer in the present proceedings was that these two employees could have claimed wages at the rate mentioned in clause (5) of the agreement between the Ahmedabad Mill Owners' Association and, the Textile Labour Association in the previous proceedings, and, having failed to do so, they are not entitled to make that claim in these proceedings.

At the trial, the parties filed a joint pursis in which the work of the employees has been described. The pursis says that the employees were at the relevant time working as Utarnars. It says that the Utarnars measure the width of cloth, assess the damage of cloth, and fold the cloth. Utarnars do not write anything on paper, book or record, but they are given pencils with which they write daily on the cloth examined by them. They are given two pencils per month, and, when they examine saris and dhoties, they have to write daily on about 750 pieces. On the folded cloth they write the sort number, yardage, and the code numbers of the Utarnars and Chadhavnar. They also make entries with regard to the damage in weaving, finishing, printing, etc. The total damage found by them is about 10 per cent.

The Payment of Wages Authority held that the three employees were not semi-clerks and as such were not covered by the agreement between the Ahmedabad Mill Owners' Association and the Textile Labour Association on which the petitioner relied. The Authority also held that the present applications were barred by *res judicata* in respect of the two employees Punamchand and Vishnuprasad. He, therefore, rejected the applications.

The petitioner went in appeal to the District Judge at Ahmedabad. The learned District Judge confirmed the findings of the Authority under the Payment of Wages Act and dismissed the appeals. On behalf of the employer an argument was advanced before him that the Authority under the Payment of Wages Act had no jurisdiction to entertain these applications, but this argument was rejected by the learned District Judge.

On the question whether the three employees are covered by the agreement between the Ahmedabad Mill Owners' Association and the Textile Labour Association, we are satisfied that they are covered by clause (5) of the agreement, and that in coming to the contrary conclusion the Authority under the Payment of Wages Act and the learned District Judge have misconstrued the terms of the agreement. The learned District Judge has observed that the claim of the employees is based on clause (5) of the agreement, but no reference to the terms of that clause has been made in his Judgment. The learned Judge has considered clause (2) of the agreement and has come to the conclusion that as the employees are not covered by clause (2), they cannot be covered by the agreement at all. Clause (2) is in these terms:

"That this agreement shall apply to all the clerks employed in the local mills, *i.e.*, persons doing clerical work, that is, those who do routine work of writing, copying or making calculations and shall also include compounders and assistant compounders who are qualified and who are employed in the local mills".

Clause (3) deals with the promotions of clerks, and Clause (4) with their pay scales. Clause (4) divides the clerks into three grades: Junior Grade clerks, Senior Grade clerks, and Chief clerks. The lowest pay scale, which applies to Junior Grade clerks, starts at Rs. 60. This is followed by clause (5) which is in the following terms:

"A separate scale for those of the employees who occupy the position lower than that of a full-fledged clerk but higher than that of an operative will be provided as under: Rs. 40-3-70-EB-4-90-5-105. This scale will be applicable in case of ticket-boys, ticket checker, coupons seller, tally boy, scale boy, production checker, thread counter cloth measurer or yard counter, fine reporter, cloth/yarn examiner, department store-men, cut-looker and those others who have not been included above but who can properly fall under the above category."

It is obvious from the terms of clause (5) that the three employees whom the petitioner represents are covered by that clause. The Joint Pursis of the parties shows that they do the work of cut-lookers Moreover two of them were held to be cut-lookers by the Authority under the Payment of Wages Act in previous proceedings against the employer, and it is not denied that the work of the third employee is of the same nature as that of the two who have been held to be cut-lookers. Clause (5) of the agreement says in terms that the scale mentioned therein will be applicable, amongst others to cut lookers. There can, therefore, be no doubt that if we consider the terms of clause (5), the petitioners would be entitled to the scale of wages which they have claimed in the present proceedings.

Mr. Khambatta on behalf of the employer says that clause (2) of the agreement is wholly determinative of its scope and unless an employee falls within the terms of clause (2) he cannot claim to be covered by any part of the agreement including clause (5) thereof. Mr. Khambatta argues that clause (2) says that the agreement applies to all clerks and it further defines a clerk as an employee who does routine work of writing, copying or making calculations. Although the learned District Judge has not referred to the terms of clause (3) of the agreement, it appears that he was also of the view that unless an employee is covered by clause (2), no part of the agreement can apply to him. It appears to us that this view is erroneous. Clause (5) covers some categories of workers to whom clause (2) does not apply. It provides a separate scale of wages to those employees who do not fall within the category of clerks as defined by clause (2). This is obvious from the fact that clause (4) of the agreement divides all the clerks into three categories and provides for them different pay scales, the lowest scale starting with the pay of Rs. 60 per month. Clause (5) provides "a separate scale", starting at Rs. 40 per month, for those employees who occupy the position higher than that of operatives but lower than that of full-fledged clerks. When clause (5) applies in terms to cut-lookers, and when it is established that the three employees in this case are cut-lookers, it would be wrong to hold that the pay scale provided in clause (5) does not apply to them simply because they do not fall within the definition of clerks in clause (2). We must, therefore, hold that the employees in this case are entitled to the pay scale which they claim under the agreement.

The finding that the present applications are barred by the principle of *res judicata* affects only two of the three employees with whom we are concerned. We do not think that in their case the finding is correct. In the former proceedings the question whether the employees are covered by the agreement was never raised. The question was not in issue in those proceedings, and was not in fact decided. Moreover, those proceedings related to the wages of the employees between October 1953 to March 1954, whereas, the present applications are in respect of a period subsequent to June 1954. Mr. Khambatta says that the principle of constructive *res judicata* is properly applicable in such cases, and that if the principle were applied the present applications would be barred in so far as the two employees are concerned. This argument implies that if an employee, through ignorance or over-sight, fails to make lawful claim before the Payment of Wages Authority with respect to a particular wage-period, he would be permanently debarred from making that claim even in respect of a subsequent wage-period. We do not think that it would be right to extend the principle of constructive *res judicata* in the manner urged by Mr. Khambatta. Most of the labour laws seek to protect employees from their ignorance, and to ensure that the benefits sought to be conferred on them are available to them in actual practice. Moreover, under the Payment of Wages Act, section 15 enables an application to be filed before the Authority by either the employee himself or any official of a registered union or any Inspector under the Payment of Wages Act. If an Inspector files an application under section 15 and fails to make a claim to which an employee is lawfully entitled it would be difficult to hold that a subsequent application by the employee himself making the claim in respect of a subsequent wage-period will be barred by the princple of constructive *res judicata.* It, therefore, appears to us that the principle cannot be applied in the present case, and that the present applications are not barred.

In this connection Mr. Khambatta referred us to the decision of the Supreme Court in *Burn & Co. Calcutta* v. *Their Employees,* ([1956]11 F.J.R. 217). In that case their Lordships held that an award of an Industrial Tribunal under the Industrial Disputes Act cannot be re-opended under section 19(6) of the Act except when there has been a material change in the circumstances on which the award was based. Their Lordships pointed out that the rule of *res judicata* enacted under section 11 of the Civil Procedure Code, which does not apply directly to such cases, is based on the well recognised principle "that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated". "This principle", their Lordships observed, "is founded on sound public policy and is of universal application". Obviously, their Lordships were dealing with the principle of direct *res judicata* and not constructive *res judicata.* The case is also clearly distinguishable on facts. It is, therefore, no authority in support of Mr. Khambatta's argument that the present applications are barred by the principle of constructive *res judicata.*

Mr. Khambatta then says that the authority under the Payment of Wages Act had no jurisdiction to entertain the application filed by the petitioner on behalf of the three employees. Mr. Khambatta relies on the decision of this Court in *Anthony Almeda* v. *Taylor* (58 Bom. L.R. 899), which was later explained in the Full Bench decision in *Vishwanath Tukaram* v. *General Manager, Central Railway.* (59 Bom. L.R. 892). It was held in *Almeda's case* that where the employee and the employer rely on two different contracts in respect of the same wage-period, the Authority under the Payment of Wages Act has no jurisdiction to decide which of the contracts regulates the rights of the parties. According to Mr. Khambatta, whereas the employees in this case rely upon the

agreement between the Ahmedabad Millowners' Association and the Textile Labour Association, the employer contends that the agreement does not apply to these employees and that this implies that, according to the employer, the employees are covered by the award of the Industrial Court. Mr. Khambatta says that the said agreement and the said award are two rival contracts relied upon by the employees and the employer respectively, and that according to *Almeda's case,* the Authority under the Payment of Wages Act has no jurisdiction to decide which of the two contracts determine the rights of the employees. Now, it is well settled that the Authority has jurisdsction to decide what are the terms of the contract between the employer and the employee, vide *Sarin* v. *Patil* (53 Bom. L.R. 674). As stated in the aforesaid Full Bench case of *Vishwanath Tukaram,* whereas the Authority cannot determine which was the contract between the parties, it can decide what was the contract between the parties. In the present case, the Authority had to decide whether the employees come under the categories mentioned in the agreement between the Ahmedabad Millowners' Association and the Textile Labour Association. The existence and binding nature of that agreement have not been denied by the employer. The only contention of the employer in this connection has been with regard to the interpretation of that agreement. It cannot, therefore, be said that the employees and the employer are relying in this case on two rival contracts, the existence of which was to be determined by the Authority in deciding the applications filed before it. It, therefore, follows that this case is not covered by *Almeda's case,* because, the dispute between the parties does not relate to the existence of the agreement but to its interpretation.

Out of these two applications, Special Civil Application No. 875 of 1958 relates to the claim of the employees for an over-time wage. In advancing this claim the employees rely on clause (8) of the agreement, which says:

"It is agreed between the parties that over-time payment should be made to the clerks asked to work after working hours, *i.e.,* 7 hours excluding half an hour's recess at the rate as laid down in the Factories Act, 1948."

This clause refers to clerks only and not to those categories of workers which are mentioned in clause (5) of the agreement. Since the employees are not full-fledged clerks, they are not entitled to a seven hours day, and they cannot claim over-time wages on that basis. Therefore, as far as Special Civil Application No. 875 of 1958 is concerned, the decision of the learned District Judge must be confirmed, though on a ground different from the grounds which appealed to the learned District Judge.

In Special Civil Application No. 874 of 1958, we find that the Authority under the Payment of Wages Act has not given a finding on issue No. 3 framed by it, namely, what were the wages payable to the three employees during the period from 1st June, 1954 to 1st June, 1956. Therefore, the case will have to be remanded to him for giving a direction to the employer after deciding that issue.

Accordingly, we set aside the orders of the Authority and the District Judge in Special Civil Application No. 874 of 1958, and remand the case to the Authority for giving a finding on issue No. 3, and deciding the case accordingly. Respondent No. 2 will pay the costs of the petitioner of this application and bear his own costs. Special Civil Application No. 875 of 1958 is dismissed, and the rule discharged. No order as to costs of that application.

[IN THE RAJASTHAN HIGH COURT.]

SADUL TEXTILE MILLS LTD.

v.

THEIR WORKMEN AND ANOTHER.

Wanchoo, C. J., and *Modi, J.*

April 1, 1958.

WRIT—JURISDICTION OF HIGH COURT—DECISION OF INDUSTRIAL TRIBUNAL ON JUSTIFIABILITY OF STRIKE—WHETHER HIGH COURT CAN INTERFERE WITH DECISION—CONSTITUTION OF INDIA, ART. 226.

STRIKE—STRIKE IN CONTRAVENTION OF STANDING ORDERS—STAY-IN STRIKE—STRIKE AFTER INTIMATION THAT MATTER WOULD BE REFERRED TO TRIBUNAL—WHETHER JUSTIFIED.

The question whether a strike was justified or not is not a mere question of fact. It is a mixed question of fact and law, and, if there is an apparent error of law in the decision of an Industrial Tribunal that a strike was justified, the High Court can interfere by a writ under article 226 of the Constitution of India.

A strike in an industrial establishment would be unjustified in the following circumstances:

(a) Where the strike is commenced in contravention of the Standing Orders and where, under the Standing Orders, such a strike would be a misconduct making the workmen liable to dismissal. The strike would be unjustified irrespective of whether any action is taken by the management against the workmen under the Standing Orders or not. It would be per se unjustified.

(b) Where the workmen resort to sit-down strike, whether there is violence or not, even if an ordinary strike may have been justified in similar circumstances.

The Industrial Tribunal held in this case that the strike was unjustified only from the date on which a communication was received by the workmen from the Labour Commissioner to the effect that the matter was being referred to an Industrial Tribunal, even though the Labour Officer had assured the workmen before the strike was commenced that the matter would be so referred. Held, *that the effect of the communication from the Labour Commissioner was not different from that given by the Labour Officer and the strike was unjustified from its commencement.*

Civil Writ Case No. 121 of 1957.

P. N. Dutt for the management.

Badridas Sharma for the workmen.

JUDGMENT

K. N. WANCHOO, C. J.—This is an application under article 226 of the Constitution by Shri Sadul Textile Mills Ltd., Sri Ganganagar, challenging the order of the Industrial Tribunal, Rajasthan, dated 15th April 1957.

The facts which have led to the present petition are these. The applicant is a public limited company having its registered office at Sri Ganganagar and runs a textile mill there. This mill was being supplied electric energy by the Government Power House. In April 1954, the company received a notice from the Collector Sri Ganganagar with respect to certain electric charges due from the company to the Power House for supply of electric energy.

The applicant disputed the correctness of the charges and this matter was fixed before the Collector for decision for the 25th August, 1954. But, on the 15th August, 1954, the company received a telegram from the Government of Rajasthan intimating that if the dues were not paid before the 20th August, 1954, electric supply would be cut off from the 20th of August.

Thereupon a representation was made by the company on the 19th of August protesting against the threatened unjustified disconnection of the power supply and requesting the Government to defer action until the representation of the applicant was decided. The electric supply, however, was cut off on the midnight between the 19th and 20th of August, 1954. The result of this was that the applicant had to lay off its workers of the second and third shifts of the mill on the 20th August, 1954. In the meantime, efforts were made to makes arrangements for supply of power by other means and eventually the major part of the working was re-started within a few days.

Even so, the company had to lay off some workers on account of shortage of power and paid compensation according to the provisions of the Industrial Disputes Act. This led to discontent among the workers and the dispute between the applicant and its workers, who are the first respondent before us, was referred by the Government of Rajasthan for adjudication to the Industrial Tribunal on 1st November, 1954. In the meantime, however, there was trouble in the mill. What happened was that some workers, in order to avoid lay-off, asked for transfer from one shift to another.

The applicant agreed to their request and, in doing so, transferred certain workers who were said to be active in the Labour Union of the mill from one shift to another, on the 11th October, 1954. There was, however, no change in the conditions of service of the workers who were so transferred from one shift to another.

This led to protests and it is said that the Labour Officer intervened. The applicant then promised to retransfer these workers to their original shift as soon as possible; but, in spite of this promise, the workers struck work from the shift beginning at 5 p.m. on 13th October, 1954. The strike took place without giving notice of 14 days as provided by Standing Order No. 23.

The Labour Officer had already intervened in the matter and on the 15th of October, the Labour Commissioner sent a telegram to the Labour Union informing them that the dispute regarding lay-off was recommended to be referred to the Industrial Tribunal and advising the Union to call off the strike immediately. In spite of this telegram, the workers continued their strike till a settlement was arrived at through the efforts of the Labour Officer on 22nd October, 1954, and work was resumed unconditionally on the 22nd of October.

The Government referred the dispute as regards lay-off to the Industrial Tribunal on 1st November, 1954. That matter was decided by the Tribunal in October, 1955, and the applicant's stand in the matter of lay-off was upheld. In the meantime, another dispute arose between the workers and the applicant about the wage for the strike period from 13th to 22nd October, 1954. This dispute was referred in turn to the Industrial Tribunal by the Government on 20th January, 1955. For some reason which is not clear, this dispute was not decided along with the dispute relating to lay-off to which we have already referred. It was eventually decided in April 1957. The two points which were referred to the Tribunal on this occasion were these;

"(1) Whether the strike of the workmen of Shri Sadul Textile Mills Ltd., Sri Ganganagar, from 10th October, 1954 to 22nd October, 1954, was justified ?.

(2) If the answer be in the affirmative, to what relief the workmen are entitled ?"

The Industrial Tribunal came to the conclusion on the first issue that the strike was justified up to 16th October, 1954, when the Labour Commissioner's telegram must have reached the Union, but that it was unjustified thereafter, as that telegram was ignored by the Union. In consequence, the Industrial Tribunal ordered payment on the second issue of full average wages to the workmen only for the 14th, 15th and 16th of October as compensation and no more. The present writ is directed against this order of the Industrial Tribunal.

The contention of the workmen before the Industrial Tribunal was that they had justification for the strike because of the lay-off by the applicant, which was due to its fault is not paying the electric charges in time and that the conduct of the applicant after the lay-off including the transfer of active Union workers from one shift to another was such as to exasperate the workers and justified the strike. It may be mentioned that the strike was not an ordinary strike, but a stay-in-strike.

It has been urged on behalf of the workmen before us that the Industrial Tribunal had jurisdiction to decide the matter and we should not in our extraordinary jurisdiction interfere with the decision of the Industrial Tribunal on the question whether the strike was justified or not as this is a question of fact depending on the circumstances of each case. We are of opinion that this contention has no force. The question whether the strike was justified or not is not a mere question of fact. It is a mixed question of fact and law and if there is an apparent error of law in the judgment of the Tribunal in coming to the conclusion that the strike was justified, this Court would interfere in a case like this.

The contention on behalf of the applicant in this connection is that there are three errors of law apparent on the record in this case and, therefore, this Court should interfere with the order of the Industrial Tribunal and hold that the strike was not justified.

The first error of law which is pointed out is this. According to Standing Order No. 23 (b) of this mill, striking work either singly or with other operatives without giving 14 days previous notice amounts to misconduct. Under Standing Order No. 24 the punishment for misconduct is summary dismissal or suspension. Now, it is clear that no previous notice of 14 days was given in this case by the workers before they struck work.

Their action, therefore, in striking work without notice amounted to misconduct and each and everyone of them was liable to summary dismissal without notice or compensation in lieu of notice under the Standing Orders. The question is whether a strike which thus originates in misconduct can ever be justified. This aspect of the matter was considered by the learned Tribunal, but its bearing on the question of justification of the strike was not appreciated at all. The learned Tribunal has said that no charge of misconduct was framed against the workers on the basis of the strike nor was any inquiry held on such a charge.

That, however, does not, in our opinion, conclude the matter. What the learned Tribunal should have considered was whether a strike without giving 14 days notice as provided by Standing Order No. 23(b) of this mill could be justified at all when every worker taking part in such a strike was guilty of misconduct. We are of opinion that where what is generally known as a lightning-strike like this takes place without notice provided by the Standing Orders and each worker striking work is guilty of misconduct in these circumstances under the Standing Orders, the strike cannot be said to be justified in law at all whatever be the grievances.

The reason why no action was taken for misconduct is that there was a settlement on 22nd October, 1954, between the applicant and the workers on the intervention of the Labour Officer. After such a settlement no action for misconduct was possible at all. But we are of opinion that where a strike takes place without the notice provided in the Standing Orders of a mill and the persons striking are guilty of misconduct under the Standing Orders and liable to summary dismissal, the strike cannot be justified at all.

The matter would have been different if the workers had given the notice provided under the Standing Orders and had then gone no strike. In that case, the circumstances which led to the strike might have been considered. But under the circumstances which appear in this case, the strike was in our opinion *per se* unjustified because it originated in the misconduct of all the workers taking part in it. The learned Industrial Tribunal has not considered this aspect of the matter at all and there is an error of law apparent in the circumstances on the face of the record which would justify us in interfering with the order passed.

The second error of law apparent on the face of the record on which learned counsel for the applicant relies is this. We have already mentioned that this was not an ordinary strike, but a stay-in strike. The learned Tribunal was not unconscious of the difference between an ordinary strike and a stay-in strike for in one part of the judgment it has remarked that a stay-in strike is a more serious matter than an

ordinary strike and requires much greater discrimination before it is resorted to.

But, having said this, the learned Tribunal did not consider the effect of this being a stay-in strike on its justifiability. Now, the nature of stay-in or sit-down strike is described by Ludwig Teller (see the quotation in *Howrah Foundry Works Ltd.* v. *Their Workmen*, [1955] 8 F.J.R. 488) as follows:

"Sit-down strike is defined as occurring whenever a group of employees or others interested in obtaining a certain objective in a particular business forcibly take over possession of the property of such business, establish themselves within the plant, stop its production and refuse access to the owners or to the others desiring to work. Sit-down strike should more accurately be defined as a strike in the traditional sense to which is added the element of trespass by the strikers upon the property of the employer. All the cases have uniformly outlawed the sit-down strike."

"The Fansteel decision has placed a quietus upon further indulgence by labour in the sit-down strike."

The Fansteel decision to which reference is made is *National Labour Relations Board* v. *Fansteel Metallurgical Corporation* (1939) 306 U.S. 240; 83 Law Ed. 627. Learned counsel for workers, however, urged that the incidents which happened in the *Fansteel* case did not happen here and, therefore, though this was a stay-in or sit-down strike, it was not very different from an ordinary strike.

It appears that in the *Fansteel* case when the strikers refused to leave the plant. the employers representatives announced that they were discharged for the seizure and retention of the building. It also appears that the employers had taken the help of the police and a police-man accompanied the employer's representative when the strikers were asked to leave the building.

Learned counsel for the workers submits that in those circumstances, the United States Supreme Court held that participation in a sit-down strike was a good cause for discharge of employees, from which it follows that such a strike can never be justified. Learned counsel, however, urges that in this case the workers were never asked to leave the mill and the police was never called for this purpose and that the workers remained peacefully in the mill all the time.

It is true that there is no evidence on behalf of the applicant that its representative asked the workers to leave the mill or that the police was called in order to support this demand. But we are not prepared to believe that the management invited the strikers to remain in possession of the mill treating it as their own property. It seems to us that if the management did not ask the strikers to leave the mill and did not ask the police to support such a demand, it only shows the weakness of the management; but it does not in our opinion in any way detract from the nature of stay-in strike which has been well defined by Ludwig Teller in the words quoted by us above. We may in this connection refer to certain observations of the United States Supreme Court in the *Fansteel* case at page 253 (Lawyers Edition p. 634):

"For the unfair labour practices of respondent the Act provides a remedy........................But reprehensible as was that conduct of the respondent, there is no ground for saying that it made respondent an outlaw or deprived it of its legal rights to the possession and protection of its property. The employees had the right to strike but they had no license to commit acts of violence or to seize their employer's plant...... ....The seizure and holding of the building was itself a wrong apart from any acts of sabotage. But in its legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an employing company, or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of a labour dispute or of an unfair labour practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society."

"As respondent's unfair labour practices afforded no excuse for the seizure and holding of its buildings, respondent had its normal rights of redress. Those rights, in their most obvious scope, included the right to discharge the wrong-doers from its employ."

It is clear from these observations with which we respectfully agree that even without violence a stay-in or sit-down strike is an invasion of the rights of the employer in the property of the mill and there can be no justification for such a strike. The reason why in this case there was no violence seems to us to be due either to the weakness or forbearance of the employer.

We have little doubt that if the employer had insisted on the removal of the striking workers from the mill, there would have been trouble. In any case, by staging a stay-in strike, the workers committed wrong and put themselves out of Court, even though they might not have actually committed acts of violence or sabotage. By remaining on the property, they practically deprived the employer of his property and also practically stopped him from carrying on his business with the help of others.

Further, a great burden is put on the management, when the striking workers remain inside the mill and in possession of it, to arrange for the protection of the employer's property. There is at the very least an element of trespass upon the property of the employer in the case of a sit-down or stay-in strike and such a strike must therefore in our opinion be always unjustified whatever may be the justification of an ordinary strike in similar circumstances. We are, therefore, of opinion that the learned Tribunal made an error of law apparent on the record.

It did not consider this aspect of the matter in its full implications, particularly in the circumstances that the strike was also a lightning-strike against the provisions of the Standing Orders and all the workers taking part in it were guilty of misconduct. We are of opinion that a stay-in strike of this kind can never be justified at all.

The last point urged on behalf of the applicant again as an error of law apparent on the face of the record is this. The learned Tribunal has held that the strike was unjustified after the 16th and was only justified for three days for the 14th to the 16th and has ordered payment of full wages for these three days only. It is urged that there is no reason worth the name which justified the learned Tribunal in making this distinction and holding that this strike was justified upto the 16th but not after the 16th.

It is said that if the strike was unjustified after the 16th, it was equally unjustified upto the 16th. The reason why the learned Tribunal held that the strike was unjustified after the 16th was that the Labour Commissioner sent a telegram to the Union on the 15th in which he informed the Union that he had recommended to the Government that the dispute as to lay-off be referred to the adjudication of the Industrial Tribunal. The learned Tribunal has held that as soon as this information reached the Union on the 16th, there was no further justification for the strike.

Now it is in evidence that the Labour Officer had intervened even earlier on the matter of lay-off and had assured the workers on the 10th or 11th of October that their grievance as to lay-off was being referred to the Labour Commissioner with the request to move the Government to refer the matter to the Industrial Tribunal. This is more or less exactly what the Labour Commissioner also said in his telegram of the 15th, namely that the Government was being moved to refer the dispute as to lay-off to the Industrial Tribunal.

The only difference between the two is that when the telegram of the Labour Commissioner was received, the matter had moved a step further inasmuch as the Labour Officer could only move the Labour Commissioner, while the Labour Commissioner could move the Government, But in principle we see no difference between the telegram of the Labour Commissioner of the 15th and the assurance of the Labour Officer of the 11th. If the telegram of the 15th was enough to make the strike illegal, the assurance of the Labour Officer on the 11th to the same effect would equally make the strike illegal from the 13th.

It is urged that the Labour Commissioner definitely asked the Union to stop the strike, while the matter of the strike was not seriously under consideration on the 10th or 11th when the Labour Officer intervened. That also, in our opinion, makes no difference. If the real cause of the strike was the discontent over the lay-off, there was no justification for staging a lightning strike on 13th October, 1954, after the Labour Officer had assured the Union that he was moving the Labour Commissioner to move the Government for adjudication of the dispute.

Of course, if anything else happened between the 11th and the 13th of October to justify the strike, that would have been a different matter. All that happened between the 11th and 13th of October, of any importance is the transfer of two of the Union workers from one shift to the other. So far as that is concerned, the learned Tribunal has held that mere transfer from one shift to another without any effect on the conditions of service would not amount to punishment and would not justify a strike.

He, however, was of the view that the timing of the transfer and the fact that one of the workmen, who was transferred, happened to be an important office bearer of the Union might have led the workmen to suspect that this was a device to suppress their protest against the lay-off. The further observations of the learned Tribunal in this connection are these.

"There is no doubt that the immediate cause of the strike was the transfer of these two workmen from shift 'C' to shift 'B' and, however, unreasonable might have been the attitude of the workmen of shift 'B' in refusing to work in spite of the admitted promise of the management to re-transfer the workmen to their original shift, it cannot be said that the reasons for the protest and for the strike were absolutely perverse and unsustainable."

We are of opinion that these observations of the learned Tribunal go to show that there was nothing done by the management between the 11th and the 13th which would justify any reasonable body of workers to stage a strike.

Therefore, if the learned Tribunal is correct in its judgment that the strike was unjustified after the telegram of the Labour Commissioner reached the Union on the 16th, there is no escape from the conclusion

that the strike was unjustified even on the 13th, because the Labour Officer had already assured the workers that he had moved the Labour Commissioner to make a reference to Government for adjudication and nothing had transpired between the 11th and the 13th which would in any way justify any reasonable body of men to strike on the 13th.

We are, therefore, of opinion that in view of the Tribunal's own finding that the strike became unjustified from the 16th of October which has not been assailed before us, there can be no doubt that this strike was unjustified from the very beginning, *i.e.*, from the 13th October.

For the reasons given above, we hold that the strike in this case was unjustified from the beginning to the end and the workers are not entitled to any relief. We, therefore, set aside the order of the Labour Tribunal awarding the payment of full average wages to the workmen for the 14th, 15th and 16th October, 1954. We are, however, of opinion that in the circumstances of the case, as the management did not take steps to dismiss the workers summarily or to have them removed with the help of the police or to ask them to leave the premises when they started the stay-in strike on 13th October, 1954, the parties should bear their own costs. We order accordingly.

[IN THE BOMBAY HIGH COURT.]

JAGANNATH VINAYAK KALE

v.

M. I. AHMADI AND OTHERS.

Desai, J.

February 6, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 8(2)—INDUSTRIAL TRIBUNAL—SINGLE-MEMBER TRIBUNAL—VACANCY IN—WHETHER VACANCY CAN BE FILLED UNDER SECTION 8(2).

WRIT—PETITION FOR WRIT ON GROUND OF LACK OF JURISDICTION OF TRIBUNAL—WHETHER QUESTION OF JURISDICTION SHOULD BE TAKEN BEFORE TRIBUNAL IN FIRST INSTANCE—WHETHER WRIT CAN ISSUE—CONSTITUTION OF INDIA, ART. 226.

Sub-section (2) of section 8 of the Industrial Disputes Act, 1947, applies both to single-member Industrial Tribunals as well as multi-member Tribunals. Where a vacancy occurs in a single-member Tribunal, it will be open to the appropriate Government to appoint another independent person as the Tribunal under section 8(2) of the Act and such person may continue the proceedings from the stage at which it was left by the previous incumbent.

It will not be open to a party to proceedings before an Industrial Tribunal to question the jurisdiction of the Tribunal for the first time in a petition for a writ after having acquiesced in the jurisdiction knowing fully the facts which would have enabled him to raise the question of jurisdiction before the Tribunal itself. (The position is different in the case of an appeal from the decision of the Court of first instance where the question of the jurisdiction of the Court may be raised even at the stage of appeal to the highest Court). But, where the absence of jurisdiction is apparent on the face of the proceedings, the High Court may issue a writ of prohibition in spite of the fact that the party did not raise the question before the Tribunal itself.

Miscellaneous Application No. 356 of 1956 (O. C. J.)

K. T. Sule and *M. M. Vakil* for the petitioner.

M. Mistree and *P. P. Khambatta* for the respondents.

JUDGMENT

K. T. DESAI, J.—The petitioner is an employee of the Mazagaon Dock Limited, respondent No. 3 herein. The petitioner is a member of the Dockyard Labour Union. Respondent No. 1 to the petition is Shri M. I. Ahmadi, who has acted as an Industrial Tribunal under the Industrial Disputes Act, 1947. Respondent No. 2 is the State of Bombay. The petitioner has prayed for the issue of a writ of *certiorari* or a writ in the nature of a writ of *certiorari* or a direction or order and or other appropriate writ under article 226 of the Constitution against respondent No. 1 calling for the record of the proceedings of the reference in (IT) 126 of 1954 and quashing and setting aside the award dated 20th September, 1956, made by respondent No. 1 in so far as it related to the reference (IT) No. 126 of 1954. He has further prayed for a writ of prohibition against respondent No. 1 or a writ in the nature of prohibition or an order or direction and/or other appropriate writ under article 226 of the Constitution of India restraining respondent No. 1 from acting as an Industrial Tribunal in the industrial dispute raised by the said Union.

The facts giving rise to the petition, briefly stated, are as under: On 19th April, 1948, the Government of Bombay in exercise of the powers conferred by section 7 of the Industrial Disputes Act, 1947, was pleased "to constitute an Industrial Tribunal consisting of Mr. Salim M. Merchant, B.A., LL.B., for the adjudication of industrial disputes in relation to which the Central Government is not the appropriate Government in accordance with the provisions of the said Act." By an order, dated 15th September, 1954, the Government of Bombay, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred certain disputes

that had arisen between respondent No. 3 and the workmen employed under it for adjudication to the said Tribunal consisting of Shri Salim M. Merchant. Mr. Merchant, thereafter, proceeded with the matter and a number of meetings were held before him between November, 1954 and July, 1955. The said reference is Reference (IT) No. 126 of 1954. In the beginning of August, 1955, Mr. Merchant was appointed a member of the Labour Appellate Tribunal with the result that his services ceased to be available for the purpose of adjudication of the disputes that had been referred to him as aforesaid. It is stated in the petition that after the services of Mr. Merchant ceased to be available as aforesaid, the hearing of the disputes was adjourned *sine die*. The Dockyard Labour Union, of which the petitioner is a member, thereupon wrote a letter dated 1st September, 1955, to the Honourable the Minister of Labour, Bombay Government, for having the matter transferred to another Industrial Tribunal. On 23rd September, 1955, the Government of Bombay, in exercise of the powers conferred by sub-section (2) of section 8 of the said Act appointed Shri M. I. Ahmadi, respondent No. 1, in place of Shri Salim M. Merchant. On 30th September, 1955, the Assistant Secretary to the Government of Bombay, Development Department, intimated to the General Secretary of the Dockyard Labour Union that "a successor to Shri Salim M. Merchant" had been appointed. Thereafter, on 8th November, 1955, the Secretary of the Industrial Tribunal gave notice *inter alia* to the General Secretary of the Dockyard Labour Union that the matter would be taken up "for further hearing before Shri M. I. Ahmadi, Industrial Tribunal." The further hearing of the disputes before respondent No. 1 commenced on 28th November, 1955, and went on without any objection on the part of the Union or of the petitioner. The Union appeared before the Tribunal and the representatives of the Union were fully heard in the matter. The hearing ended on 28th June, 1956. On 20th September, 1956, respondent No. 1 made his award—Part 1. The award is a lengthy document extending over 120 closely printed pages. The award appears at pages 3895 to 4015 of the Bombay Government Gazette, dated 18th October, 1956. Respondent No. 1 has left certain matters for decision at a later stage and has given his reasons therefor in para 22 of the award. These matters relate to the classification of workmen under various categories in the event of the company and the Union being unable to agree upon the appropriate category in which some of the workmen should be placed. On 25th October, 1956, the petitioner filed the petition herein. A rule was issued by my brother Tendolkar, J., on 5th November, 1956.

The principal question raised before me relates to the validity of the appointment of respondent No. 1 as an Industrial Tribunal. It is contended that the appointment which is made under section 8(2) of the Industrial Disputes Act, 1947, is invalid, and that respondent No. 1 had no jurisdiction to determine any of the disputes purported to have been referred to him.

Section 7 of the Industrial Disputes Act, 1947, which relates to the constitution of Industrial Tribunals provides as under:

"7. (1) The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.

(2) A Tribunal shall consist of such number of independent members as the appropriate Government may think fit to appoint, and where the Tribunal consists of two or more members, one of them shall be appointed as the chairman thereof.

(3) Where a Tribunal consists of one member only, that member and where it consists of two or more members, the Chairman of the Tribunal, shall be a person who—

(a) is or has been a Judge of a High Court; or

(b) is or has been a District Judge; or

(c) is qualified for appointment as a Judge of a High Court:

Provided that no appointment under this sub-section to a Tribunal shall be made of any person not qualified under clause (a) or clause (b) except with the approval of the High Court of the State in which the Tribunal has, or is intended to have, its usual seat.

(4) Where a Tribunal consists of two or more members, every such member (other than the Chairman) shall possess such qualifications as may be prescribed, and where an industrial dispute affecting any banking or insurance company is referred to a Tribunal, one of such members may be a person who, in the opinion of the appropriate Government, has special knowledge of banking or insurance, as the case may be.

(5) A Tribunal, where it consists of two or more members, may act notwithstanding the casual and unforeseen absence of the chairman or any other member, and when the chairman or other member rejoins his office after such absence, the proceedings may be continued before the Tribunal from the stage at which he so rejoins."

Section 8(2) of the said Act provides as under:

"8. (2) If for any reason a vacancy occurs in the office of the Chairman or any other member of a Court or Tribunal, the appropriate Government shall, in the case of a Chairman, and may, in the case of any other member, appoint another independent person, in accordance with the provisions of section 6 or section 7, as the case may be, to fill the

vacancy, and the proceedings may be continued before the Court or the Tribunal so reconstituted from the stage at which the vacancy is filled."

The appointment of respondent No. 1 was challenged in the petition on the ground that respondent No. 1 was not qualified under clause (a) or clause (b) or sub-section (3) of section 7 and that the approval of the High Court of the State of Bombay was not obtained. The said contention has, however, been given up in view of the fact that the approval of the High Court had been secured. The argument that was advanced by Mr. K. T. Sule, the learned advocate for the petitioner, was that section 8(2) under which the appointment of respondent No. 1 was made was not applicable at all to a case where the services of a member constituting a single-member Tribunal ceased to be available. He urged that section 8(2) was applicable only in the case of a multi-member Tribunal. According to him, under section 8(2) if a vacancy occurred in the office of the Chairman or any other member of a multi-member Tribunal, then the appropriate Government could appoint another person to fill the vacancy. According to him, the reference to the Chairman indicated the existence of a multi-member Tribunal. He urged that the words 'any other member' postulated the existence of the Chairman, *viz.*, a multi-member Tribunal. According to him, the only power which the Government had in a case where the Tribunal consisted of a single-member and he ceased to be available was to constitute a fresh Tribunal under the provisions of section 7 of the said Act, and that the Tribunal so freshly constituted would have to hear the matter *de-novo*. It would not be open to such Tribunal to proceed from the stage at which the matter had been left by the previous Tribunal. He urged that if the Tribunal was not duly constituted, it had no jurisdiction to decide any dispute and that any acquiescence or want of objection on the part of the petitioner could not cure the defect and validiate the proceedings before the Tribunal. What I have to determine is whether under section 8(2) the words "a vacancy occurs in the office of the Chairman or any other member..........." necessarily imply that the Tribunal must be one which had a Chairman, *i.e.*, a multi-member Tribunal. Section 8 provides for the filling of vacancies and follows section 5 dealing with the constitution of Boards of Conciliation, section 6 dealing with the constitution of Courts of Inquiry and section 7 dealing with the constitution of Industrial Tribunals. Section 8(1) deals with the vacancy in the office of the Chairman or any other member of a Board *i.e.*, a Board of Conciliation constituted under section 5. Section 8(2) deals with vacancies occurring in the office of the Chairman or any other member of a Court, *i.e.*, a Court of Inquiry constituted under section 6, and in the office of the Chairman or any other member of a Tribunal, *i.e.*, Tribunal constituted under section 7. In my view, all vacancies occurring in the Board of Conciliation, the Court of Inquiry and the Industrial Tribunal are intended to be filled under the provisions of section 8 and the new incumbent or incumbents in office are entitled to proceed from the stage at which the matter was left by the Board of Conciliation, the Court of Inquiry or the Tribunal in which the vacancy had occurred. Under the provisions of section 8(1) if all the members of a Board of Conciliation vacated office, it would be open to the appropriate Government to fill in the vacancies. Similarly under section 8(2) if all the members of a Court of Inquiry vacated their offices, it would be open to the appropriate Government to fill in the vacancies. I do not see any reason why section 8(2) should be so interpreted that in case a member of a single-member Tribunal vacated his office, Government could not fill in the vacancy so caused. The words 'any other member' appearing in section 8(2) mean 'any member other than the Chairman' and are applicable where there is no Chairman by reason of the fact that no Chairman is required to be appointed under the provisions of section 7, the Tribunal being a single-member Tribunal. Section 8 was intended to provide for continuity of proceedings so that proceedings which had taken place before a Board of Conciliation, a Court of Inquiry or a Tribunal may not prove infructuous. The construction which I am putting on section 8(2) found favour with the Division Bench of the High Court of Rajasthan consisting of the Honourable Chief Justice Wanchoo and Justice Dave, in *M.S.U. Mills* v. *Industrial Tribunal*, A.I.R. 1954 Raj. 274. In this case, the Government of Rajasthan, in exercise of the powers conferred upon it by section 7 of the Industrial Disputes Act, 1947, had constituted an Industrial Tribunal of one member on 2nd June, 1953, and had appointed Shri Mehta on it for adjudication of certain industrial disputes referred to the Tribunal. The notification in that case in paragraph 2 provided as under: "The appointment is at present sanctioned for the financial year 1953-54."

The Tribunal so appointed took up adjudication of disputes, but the adjudication work was not finished till the end of the financial year 1953-54, *i.e.*, upto 31st March, 1954. On 2nd June, 1954, Government issued another notification by which the words "the appointment is at present sanctioned for the financial year 1953-54" in the second paragraph of the aforesaid notification were deleted with the result that the Tribunal was intended to function irrespective of the financial year 1953-54. It was contended that the Tribunal ceased to have jurisdiction after 31st March, 1954, and could not further hear the disputes after 2nd June, 1954. Chief Justice Wanchoo, dealing with the matter observed as follows (pp. 277-278):

"........As section 7, Industrial Disputes Act contemplates constitution of the Tribunal under sub-section (1), and appointment of members under sub-section (2), and these are, in our opinion, two steps, though they may be notified in one notification, we cannot agree with the contention of the applicant that the Tribunal also was constituted for a limited duration. The fact that it was a one-member Tribunal could not necessarily make the duration of the Tribunal the same as the duration of the sole member appointed to the Tribunal.

"This would be clear from a reference to section 8(2), Industrial Disputes Act. That sub-section shows that if any vacancy occurs in the office of any member of a Tribunal, the appropriate Government may appoint another independent person to fill the vacancy, and the proceedings may be continued before the Tribunal so reconstituted from the stage at which the vacancy is filled. This sub-section, in our opinion, applies both to one-member Tribunals and multi-member Tribunals. As a matter of fact, section 8 originally had three sub-sections and they have now been replaced on amendment by two sub-sections, but in our view these provide for exactly the same things as before. Sub-section (2) as it originally stood provided that, where a Tribunal consisted of one person only and his services ceased to be available, the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed. This, in our opinion, is also provided by the present sub-section (2) in the case of one-member Tribunals with this difference that now it is left to the appropriate Government to fill the vacancy or not, as the word used in connection with a member is "may" and not "shall". So it is clear that a Tribunal may continue even though its sole member may cease to act for one reason or another, and when the vacancy occurs another person may be appointed in his place, and the Tribunal will then carry on from the stage at which the case was when the vacancy was filled. We have, therefore, no hesitation in coming to the conclusion that the notification of 2nd June, 1954, constituting an Industrial Tribunal did not put any limit on the duration of the Tribunal, though it did limit the duration of the member Shri Mehta to the period ending 31st March, 1954".

Mr. Sule has pressed into service the legislative history in connection with this section. The present section 8 has been incorporated by the Amendment Act XL of 1951 in place of the original section 8. The old section 8 ran as follows:

"(1) If the services of the Chairman of a Board or of the Chairman or other member of a Court or Tribunal cease to be available at any time, the appropriate Government shall, in the case of a chairman and may in the case of any other member appoint another independent person to fill the vacancy, and the proceedings shall be continued before the Board, Court or Tribunal so reconstituted.

(2) Where a Court or Tribunal consists of one person only and his services cease to be available the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed.

(3) Where the services of any member or a Board other than the chairman have ceased to be available, the appropriate Government shall appoint in the manner specified in sub-section (3) of section 5 another person to take his place, and the proceedings shall be continued before the Board so reconstituted."

Mr. Sule urges that under the old section 8, there was an express provision dealing with the matter when the Tribunal consisted of one person only and that by not expressly providing for the same in the new section 8, the Legislature intended to effect a change in the provisions of that section so as not to make the new section applicable in the case of a single-member Tribunal. There is nothing in the Act XL of 1951 or in the Statement of Objects and Reasons in connection with it which would help Mr. Sule. Under the provisions of the old section 8(1) it was provided that in case the services of the chairman of a Court or Tribunal ceased to be available, Government was under an obligation to appoint a person in his place to fill the vacancy. In the case of any other member of a Court or Tribunal, Government had a right, but was under no obligation to appoint a person in his place and stead. In the case, however, of a single-member Court or Tribunal, by sub-section (2) of the old section 8, Government was under an obligation to appoint another independent person in his place. The new section 8(2) does not contain any provision corresponding to the old section 8(2) inasmuch as it was not considered desirable to make it obligatory on Government to appoint a person in place of a member of a Court or Tribunal where such Court or Tribunal consisted only of one person. According to Mr. Sule, by reason of the omission of the old section 8(2) such a change was sought to be effected that Government could not appoint any person to fill in the vacancy where the Court or Tribunal consisted of one member only and the services of such member were not available. There does not seem to be any warrant for this conclusion. The only change effected by the new section 8 is that whereas under the provisions of old section 8 it was obligatory on the Government to appoint a person to fill in the place of a member where the Court or Tribunal consisted of a single member, now it is made optional on the Government so to do.

In view of the construction which I have placed upon section 8, the petstion fails on merits. As there are objections raised to the petition and the same have been argued before me at some length, I will deal with the same.

It is urged by Mr. M. J. C. Mistry, the learned counsel for respondent No. 2, and by Mr. P. P. Khambatta, the learned counsel for respondent No. 3, that the question as regards the jurisdiction of respondent No. 1 was not at any time raised by the petitioner or by the Union of which he is a member or by any other person before the Tribunal consisting of Shri M. I. Ahmadi; that the petitioner and the Union took the chance of obtaining an award in their favour, and that finding that the same is against them, have now sought to question the jurisdiction of Shri Ahmadi, and that the petitioner should not now be permitted in a writ petition to raise such an objection. In support of their contention both the said respondents have relied upon a decision of a Division Bench of our High Court reported in *Gandhinagar Motor Transport Society* v. *State of Bombay*, (1953) 55 Bom. L.R. 922. At page 923 of the said judgment it is observed as follows:

"Now, as we shall presently point out, the English Courts have taken the view, and in our opinion rightly, that before a question of jurisdiction is raised on a petition, objection to jurisdiction must be taken before the Tribunal whose order is be challenged. It is not as if by the petitioner not challenging the jurisdiction of the Tribunal that he confers jurisdiction upon that Tribunal if that Tribunal has no jurisdiction. But what the English Courts have said is that the High Court has been asked to exercise a special jurisdiction, not an ordinary jurisdiction, and the High Court is entitled to know what the Tribunal has to say on the question of jurisdiction which the petitioner wants to agitate before the Court. There is another principle underlying this view, and that is that the Tribunal which is brought before the Court shall itself be given an opportunity to decide that it has no jurisdiction before the High Court is called upon to give its decision. It must be borne in mind that in exercising its jurisdiction under articles 226 and 227 of the Constitution the High Court is not exercising an ordinary jurisdiction. It is always open to a petitioner to assert his rights in a suit properly filed, but when he chooses to assert his rights by calling upon the High Court to exercise its special jurisdiction, the High Court must itself lay down certain principles for the exercise of that jurisdiction and must not make the exercise of that jurisdiction a matter of ordinary occurrence. A suit may well be filed within the period of limitation; the Judge trying the suit does not non-suit the plaintiff because he came to Court towards the end of the period of limitation; but this Court tells the petitioner, "you must come to this Court expeditiously". Equally so a defendant may not raise the question of jurisdiction in the Court of first instance, he may not raise the question of jurisdiction in the appellate Court, he may postpone raising the question of jurisdiction upto the stage of the Privy Council or the Supreme Court; yet if the Court has no jurisdiction the highest Court in the land will allow the point to be raised and decide it in favour of the defendant. But the principle is different when the petitioner comes to this Court for a writ. The Court must tell the petitioner: "It was open to you to raise that point before the Tribunal, whose order you are challenging. You have sat on the fence, you have taken a chance of the Tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ."

At page 924 of the said report a passage from the judgment of Mr. Justice Rowlatt, reported in *Rex* v. *Williams*: *Phillips, Ex-parte*, [1914] 1 K.B. 608, is quoted with approval. The said passage is as follows (p.615):

"......It is a very salutary rule that a party aggrieved must either shew that he has taken his objection at the hearing below or state on his affidavit that he had no knowledge of the facts which would enable him to do so."

I do not find anything in the petition or in the affidavit in support of the petition which would show that the petitioner had no knowledge of the facts which would have enabled him to raise the question of the jurisdiction of the Tribunal before respondent No. 1. My attention has also been drawn to a recent decision of the Patna High Court reported in *National Coal Co., Ltd.* v. *L. P. Dave*, [1956] 10 F.J.R. 255, where a Division Bench of the Patna High Court has taken a similar view. In answer to these authorities, Mr. Sule has drawn my attention to a judgment reported in *Farquharson* v. *Morgan*, [1894] 1 Q.B. 552. In that case Lord Halsbury has observed as follows (pp. 556-557):

"In this case, with every disposition to decline to interfere with the proceedings in the county court on the ground that if it is possible for a person to render himself incapable of applying for a prohibition in such a case as this, the appellant has done so, I feel nevertheless constrained to decide that the writ must issue to prohibit further proceedings on the order of the county court so far as it is applicable to that portion of the award which is in respect of matters outside the Agricultural Holdings Act. It has been long settled that, where an objection to the jurisdiction of an inferior court appears on the face of the proceedings, it is immaterial by what means and by whom the court is informed of such objection. The court must protect the prerogative of the Crown and the due course of the administration of justice by prohibiting the inferior court from proceeding in matters as to which it is apparent that it has no jurisdiction. The objection to the jurisdiction does not in such a case depend on some matter of facts as to which the inferior court may have been deceived or misled, or which it may have unconsciously neglected to observe, and the judge of such court, therefore, must or ought to have known that he was acting beyond his jurisdiction. I find no authority justifying the withholding of a writ of prohibition in such a case. Under these circumstances reluctant as I am to aid the appellant in this case, I am unable to resist the conclusion that the writ ought to issue."

Lopes, L.J., has in that very case drawn attention to the decision of Lord Mansfield in *Buggin* v. *Bennett*, (1767) Burr. 2035, where Lord Mansfield held that the Court was not bound to grant a prohibition to a party who had acquiesced in the proceedings of the Court below, except where the absence of jurisdiction was apparent on the face of the proceedings. At page 559 of that Report Lopes, L.J., has observed as follows:

"The reason why, notwithstanding such acquiescence, a prohibition is granted where the want of jurisdiction is apparent on the face of the proceedings, is explained by Lord Denman in *Bodenham* v. *Ricketts*, (1836) 6 N. &. M. 170, to befor the sake of the public, lest 'the case might become a precedent if allowed to stand without impeachment', and, I will add for myself, because it is a want of jurisdiction of which the court is informed by the proceedings before it, and which the judge should have observed, and of which he himself should have taken notice.

"Now, if it were possible for him to do so, it is abundantly clear that Mr. Farquharson has by his conduct precluded himself from claiming the inter-position of the court in his favour. That he has acquiesced in the proceedings is beyond dispute. I cannot imagine a stronger case of acquiescence.

"But I am of opinion that the award on the face of it discloses a want of jurisdiction. It contains and deals with matters which are not the subject of the Agricultural Holdings Act, matters outside that Act and which cannot be enforced under the 24th section of that Act.

"In such circumstances, most reluctantly, I am compelled to hold that the writ of prohibition must issue."

Mr. Sule has further pointed out to me that the Tribunal is still to function and that if the Tribunal had no jurisdiction to do so, he was entitled to a writ of prohibition preventing the Tribunal from further functioning, and that if for that purpose I came to the conclusion that the Tribunal had no jurisdiction to act, I could not allow the award of the Tribunal to remain unquashed. There is considerable force in the argument of Mr. Sule. If I had come to the conclusion that the absence of jurisdiction was apparent on the face of the proceedings, I would have treated the matter as an exception to the rule laid down by my Lord the Chief Justice and Dixit, J., in the case of *Gandhinagar Transport Society* v. *The State of Bombay* (1953) 55 Bom. L.R. 922, and, in spite of the conduct of the petitioner whereby he had precluded himself from claiming the interposition of the Court, issued the necessary writ.

It is further urged on behalf respondents Nos. 2 and 3 that section 9 of the Industrial Disputes Act, 1947, is a bar to the present proceedings. Section 9 of the said Act provides as under:

"No order of the appropriate Government appointing any person as a member of a Board, Court or Tribunal shall be called in question in any manner."

Mr. Sule has urged that this section is no bar to the Court issuing a writ in a case where the Tribunal has not been duly constituted under the Act and is acting without jurisdiction. He has drawn my attention to a decision of the Punjab High Court reported in *K. R. D. N. Weaving Mills* v. *The State of Punjab*, [1953] 5 F.J.R. 402, where Chief Justice Bhandari and Justice Dulat have held that section 9 does not in any manner debar the High Court from considering the validity of an order appointing any person as a member of a Tribunal in proceedings for a writ under ariticle 226 of the Constitution on the ground that the appointment of the Tribunal was in violation of the provisions of the Industrial Disputes Act, 1947. He has also drawn my attention to other cases under similar provisions contained in other Acts. It is not necessary for me to deal with the various authorities cited by Mr. Sule in view of the fact that the power of the Court to issue a writ under article 226 of Constitution is not disputed where the Tribunal is not duly constituted and is acting without jurisdiction. It is not disputed that if a person who is disqualified is appointed as a member of a Tribunal, section 9 would not cure the defect. What is urged is that section 9 would come into play in the case of an irregularity in the appointment of a Tribunal. The learned counsel for respondent No. 3 has relied upon a case reported in *G. C. Bezbarua* v. *State of Assam*, A.I.R. 1954 Assam 161, where Chief Justice Sarjoo Prosad and Justice H. Deka, have relied upon section 9 for the purpose of curing the defect in the appointment of a member of a Tribunal when the appointment was made under section 8(2). Chief Justice Sarjoo Prosad, has observed as follows (p. 166):

"If Government have the power to constitute the Tribunal, as Government certainly have, and if that power has been in effect exercised, the reference to any irrelevant section in the notification or the omission to refer to any relevant section is hardly material. In fact, the notification need not have referred to any section at all. It is laid down in section 9(1) of the said Act that an order of the appropriate

Government appointing any person as a member of the Board or Tribunal shall not be called in question in any manner. Though the language of the section is somewhat broadly worded and cannot override the powers of this Court to question the appointment of persons not possessing the requisite statutory qualification, the section is at any rate a conclusive answer to the contention that the form of the notification affects the validity of the order appointing Mr. Gohain to constitute the Tribunal."

Relying upon that judgment it is urged that even if an appointment is required to be made under section 7 and is made under section 8 (2) it is a defect in procedure cured by section 9. I find considerable difficulty in accepting this argument. The difference between an appointment under section 7 and an appointment under section 8 is that in the case of an appointment under section 7 the Tribunal would have to proceed *de-novo* as a new Tribunal whilst in respect of an appointment made under section 8 the reconstituted Tribunal would have a right to proceed with the matter from the stage where it had been left by the previous holder or holders of the office. It is not necessary in these procedings to decide the question. I am inclined to take the view that the defect would not be cured by section 9.

There is one more point which was urged before me which remains to be considered. It is that the award is in any event bad to the extent that it gives reliefs which were not asked for and has reduced the basic wage scales. My attention has been called to paragraphs 68, 70 and 77 of the award in this connection. Mr. Sule urged that it appears from paragraph 68 that a semi-skilled workman was under the then existing scales entitled to receive Rs. 1-10-5 under sub item (iii) as shown at page 3969 of the *Gazette*, whereas a semi-skilled workman under Grade I was entitled to receive Rs. 1-9-6 as appears at page 3976 of the *Gazette* which constituted a reduction. He has similarly drawn my attention to what appears at page 3972 of the *Gazette* in connection with the scales for workmen in the skilled category. Sub-item (ii) on that page shows the minimum to be Rs. 2-1-7 whilst at page 3976 in the *Gazette* for skilled workmen in Grade I the minimum is Rs. 2-0-0. He has further invited my attention to page 3972 where it appears that the 6th item shows the minimum for workmen in the skilled category to be Rs. 3-7-2 whilst the minimum provision for the highly skilled workmen at page 3976 is Rs. 3-6-0. There is no substance in this contention. What appear at pages 3969 and 3972 of the *Gazette* are the scales of pay according to each category of workmen as shown by the company while the scales shown at page 3976 relate to the new categories of workmen to be constituted under the provisions of the award. Mr. Sule has failed to satisfy me that any reduction has in fact been made. At page 3982 of the said *Gazette*, however, it has been expressly stated as under:

"If the present wage (including additional pay) of a workman is higher than the wage that he would be entitled to under the prescribed scale and the directions given above, he shall continue to draw that higher wage."

When this was pointed out by Mr. Mistry, Mr. Sule urged that the award would affect future workmen. Mr. Sule has not seriously pressed this contention. The petitioner is, in any event, not entitled to urge such a contention in a writ petition.

[IN THE SUPREME COURT OF INDIA.]

STATE OF BIHAR

v.

D. N. GANGULI AND OTHERS.

T. L. Venkatarama Aiyar, P. B. Gajendragadkar and *A. K. Sarkar, JJ.*

August 22, 1958.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10(1)—REFERENCE OF INDUSTRIAL DISPUTE TO TRIBUNAL—RIGHT OF APPROPRIATE GOVERNMENT TO CANCEL OR SUPERSEDE ORDER OF REFERENCE—APPLICABILITY OF SECTION 21, GENERAL CLAUSES ACT, 1897.

Once a reference of an industrial dispute has been made by the appropriate Government under section 10(1) of the Industrial Disputes Act, 1947, to an Industrial Tribunal, there is no express or implied power in the Government to cancel or supersede the order of reference. Section 21 of the General Clauses Act, 1897, is not applicable to the provisions of section 10(1) of the Act.

[Ther Lordships have not dealt with the power of the Govrenment to amend or add to a reference made under section 10(1) of the Act.]

Civil Appeals Nos. 358 and 359 of 1957. The Judgment of the Patna High Court from which these appeals arose is reported at 10 F.J.R. 205.

J. N. Banerjee (R. C. Prasad, with him) for the State.

B. C. Ghose (P. K. Chatterjee, with him) and *M. C. Setalvad (N.C. Chakravertty* and *B. P. Maheshwari*, with him) for the respondent.

JUDGMENT

The following Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—Where an industrial dispute has been referred to a Tribunal for adjudication by the appropriate Government under section 10(1)(d) of the Industrial Disputes Act, 1947, (XIV of 1947)

can the said Government supersede the said reference pending adjudication before the Tribunal constituted for that purpose? That is the short question which falls to be considered in these two appeals by special leave. The question arises in this way: On 8th October, 1954, by Notification No. III/D1-1602/54-L-15225, the Government of Bihar referred an industrial dispute between the management of the Bata Shoe Co. Ltd., Dighaghat (Patna) and their 31 workmen, mentioned in annexure 'A', in exercise of the powers conferred on the said Government by section 7 read with section 10(1) of the Act. The dispute was whether the dismissal of the workmen in question was justified; if not, whether they were entitled to re-instatement or any other relief. For the adjudication of this dispute, an Industrial Tribunal with Mr. Ali Hassan as the sole member was constituted. This was reference No. 10 of 1954. Then, on 15th January, 1955, by Notification No. III/DI-1601-55 L. 696, a similar industrial dispute between the same Bata Company and its 29 other workmen was referred by the Government of Bihar to the same Tribunal. This was reference No. 1 of 1955. While the proceedings in respect of the two references, which had been consolidated by the Tribunal, were pending before it and had made some progress, the Government of Bihar issued a third Notification No. III/D1-1601/55-L-13028 on 17th September, 1955, by which it purported to supersede the two earlier notifications, to combine the said two disputes into one dispute, to implead the two sets of workmen involved in the two said disputes together, to add the Bata Mazdoor Union to the dispute, and to refer it to the adjudication of the Industrial Tribunal of Mr. Ali Hassan as the sole member. The dispute thus referred to the Tribunal was, "Whether the dismissal of the 60 workmen, mentioned in annexure 'B', was justified or unjustified; and to what relief, if any, those workmen are entitled?" On receipt of this notification, the Tribunal passed an order on 19th September, 1955, cancelling the hearing of the two prior references which had been fixed for 3rd October, 1955, and directing that the files of the said references should be closed.

The Bata Company and its workmen then filed two separate applications before the High Court of Judicature at Patna under articles 226 and 227 of the Constitution and prayed that the last notification should be quashed as being illegal and *ultra vires*. These two applications were numbered as M.J.C. Nos. 546 and 590 of 1955 respectively. On 4th April, 1956, the High Court held that the Government of Bihar had no power or authority to supersede the earlier notifications, allowed both the applications and issued a writ in the nature of *certiorari* quashing the impugned notification of 17th September, 1955, and also a writ in the nature of *mandamus* requiring the Industrial Tribunal to proceed expeditiously with reference-cases Nos. 10 of 1954 and 1 of 1955 and to bring them to a conclusion in accordance with law. Against this order the Government of Bihar applied for and obtained leave from this Court on 26th June, 1956. That is how the two present appeals have come for disposal before us.

In both the appeals, the appellant is the State of Bihar and the respondents are the Bata Company and its workmen respectively. On behalf of the appellant, it is urged before us that the High Court at Patna was in error in holding that the Government of Bihar had no power or authority to set aside the two earlier notifications and to refer the dispute in question for adjudication to the Industrial Tribunal under section 10(1) of the Act.

In order to appreciate the background of the impugned notification, it would be relevant to mention some material facts. It appears that the workmen of the company's factory at Digha formed a union at the close of the last World War. The president of the said union was Mr. John and its general secretary was Mr. Fateh Narain Singh. On 22nd June, 1947, the company entered into a collective agreement with the said union and by mutual consent the Standing Orders and Rules, certified under the Industrial Employment (Standing Orders) Act of 1946, were settled. The union was recognised as the sole and exclusive collective bargaining agency for the workmen of the company. Towards the end of 1954, two groups of the union were formed and rivalry grew between them. One group was led by Mr. Fateh Narain Singh and the other by Mr. Bari. On 22nd January, 1954, the union, through its General Secretary, Mr. Fateh Narain Singh, served on the company a "a slow-down notice" with effect from 24th February, 1954, and on 6th February, 1954, Mr. Bari purporting to act as the president of the union asked his followers to go on strike as from 23rd February, 1954. The demands made by Mr. Fateh Narain Singh gave rise to conciliation proceedings under the Act and ended in the settlement which was duly recorded on 8th February, 1954. In spite of the said settlement some workmen, including the sixty workmen in question who supported Mr. Bari, went on an illegal strike on 23rd February, 1954, although as members of the union they were bound by the settlement. The majority of the workmen were opposed to the strike and in fact on 16th February, 1954, a letter signed by 500 workmen who disassociated themselves from the strike, was received by the company. The company was requested to make suitable arrangements to enable these workmen to attend their duties. The strike succeeded only partially because out of 854 workmen employed in the company's factory at Digha nearly 500

workmen attended the factory in spite of the threats of the strikers. The strike was declared illegal by the appellant under section 23(c) of the Act. Subsequently, the company served the strikers with charge sheets and in the end, 274 workmen, including the sixty workmen in question, were dismissed from service by the company. Thereafter, the union entered into negotiations with the company, as a result of which it was agreed that 110 strikers would be employed by the company in the same manner in which 76 strikers had already been employed by it. It was further agreed that 30 strikers were to remain dismissed and not considered eligible for employment or for any benefits. In regard to the remaining 30 strikers, the company agreed to consider their cases later on for re-employment. During these negotiations, these sixty workmen in question did not make any demand to the management for re-instatement either individually or collectively, nor was their case raised by any other organisation or body of workmen. In the result, so far as the union was concerned the dispute regarding the whole body of strikers who had been dismissed by the company came to an end by virtue of the agreement between the company and the union.

Notwithstanding this agreement, Mr. Sinha, the Conciliation Officer, wrote to the company on 3rd September, 1954, that he desired to hold conciliation proceedings in respect of some of the dismissed workmen. The dispute raised by the sixty workmen was not sponsored by any organisation or body of workmen. In fact the secretary of the union wrote to the Commissioner of Labour on 22nd September, 1954, that he strongly objected to the alleged dispute of sixty workmen being referred to adjudication. It was under these circumstances that the appellant issued the first two notifications on 8th October, 1954. and 15th January, 1955.

On 30th May, 1955, the union made an application before the Tribunal alleging that the majority of the workmen were opposed to the re-instatement of the sixty workmen in question and consequently it had interest in the proceedings before the Tribunal. Two applications were made before the Tribunal by other workmen to be joined to the proceedings on the ground that they were opposed to the re-instatement of the workmen whose cases were pending before the Tribunal. All these applications were rejected by the Tribunal.

It would appear that Mr. Fateh Narain Singh then moved the Department of Labour, Government of Bihar, and it was appatently pursuant to the representation made by him that the third notification was issued by the appellant superseding the first two notifications and referring the whole dispute afresh to the Industrial Tribunal with the union of Mr. Fateh Narain Singh added as a party to the proceedings. That in brief is the genesis of the impugned notification in the present case.

Dr. Bannerjee for the appellant has urged before us that in dealing with the question about the powers of the appropriate Government under section 10(1) of the Act, it would be necessary to bear in mind the facts which led to the cancellation of the first two notifications and the issue of the third impugned notification. He contends that in issuing the third notification the appellant has acted *bona fide* and solely in the interests of fair-play and justice; it came to the conclusion that it was necessary that the union should be heard before the disputes in question are adjudicated upon by the Industrial Tribunal and that it would be more convenient and in the interest of industrial peace and harmony that the dispute should be referred to the Tribunal in a more comprehensive and consolidated form bringing before the Tribunal all the parties interested in it. In our opinion, the *bona fides* of the appellant on which reliance is placed by Dr. Bannerjee are really not relevant for determining the appellant's powers under section 10(1) of the Act. If the appellant has authority to cancel the notification issued under section 10(1), and if the validity of the cancelling notification is challenged on the ground of *mala fides* it may be relevant and material to inquire into the motives of the appellant. But if the appellant has no authority to cancel or revoke a notification issued under section 10(1), the *bona fides* of the appellant can hardly validate the impugned cancellation. That is why, we think, the appellant cannot base its arguments on the alleged *bona fides* of its conduct.

It is conceded by Dr. Bannerjee that the Act does not expressly confer any power on the appropriate Government to cancel or supersede a reference made under section 10(1) of the Act. He, however, argues that the power to cancel or supersede such a reference must be held to be implied, and in support of his argument he relies on the provisions of section 21 of the General Clauses Act, 1897, (X of 1897). Section 21 provides that "where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued". It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject-matter, context, and the effect, of the relevant provisions of the said statute. In other words it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and

material provisions before deciding whether by the application of the rule of construction enunciated by section 21, the appellant's contention is justified that the power to cancel the reference made under section 10(1) can be said to vest in the appropriate Government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, the appellant would not be entitled to invoke the assistance of the said section. We must, therefore, proceed to examine the relevant provisions of the Act itself.

It is clear that the policy of the Act is to secure and preserve good relations between the employers and their workmen and to maintain industrial peace and harmony. It is with this object that section 3 of the Act contemplates the establishment of the Works Committees whose duty it is to promote measures for securing and preserving amity and good relations between the employers and the workmen. If the Works Committee is unable to settle the disputes arising between the employer and his workmen, Conciliation Officers and the Boards of, Conciliation offer assistance to the parties to settle their disputes. Sections 3, 4, 5, 12 and 13 refer to the working of this machinery contemplated by the Act. It is only where the conciliation machinery fails to bring about settlement between the parties that the Act contemplates compulsory adjudication of the industrial disputes by Labour Courts and Tribunals as the last alternative. The appropriate Government is authorised to constitute Labour Courts and Tribunals under and subject to the provisions of section 7 and section 7A respectively. It is in respect cf the compulsory adjudication that under section 10, the appropriate Government is given wide discretion to decide whether or not thedispute between the employer and his employees should be referred to the Board, Court or Tribunal. Section 10(1)(d) provides *inter alia* that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute to a Tribunal for adjudication. The condition precedent for the reference to the industrial tribunal is that the appropriate Government must be satisfied that an Industrial Dispute exists or is apprehended. It is not in every case where the parties allege the existence of an industrial dispute that a reference would be made under section 10(1); it is only where the test of subjective satisfaction of the appropriate Government is satisfied that the reference can be made. Thus it is clear that the appropriate Government is given an important voice in the matter of permitting industrial disputes to seek adjudication by reference to the Industrial Tribunal. But once an order in writing is made by the appropriate Government referring an industrial dispute to the Tribunal for adjudication under section 10(1), proceedings before the Tribunal are deemed to have commenced and they are deemed to have concluded on the day on which the award made by the Tribunal becomes enforceable under section 17A. This is the effect of section 20(3) of the Act. This provision shows that after the dispute is referred to the Tribunal, during the continuance of the reference proceedings, it is the tribunal which is seized of the dispute and which can exercise jurisdiction in respect of it. The appropriate Government can act in respect of a reference pending adjudication before a Tribunal only under section 10(5) of the Act, which authorises it to add other parties to the pending dispute, subject to the conditions mentioned in the said provision. It would therefore be reasonable to hold that except for cases falling under section 10(5) the appropriate Government stands outside the reference proceedings, which are under the control and jurisdiction of the Tribunal itself. Even after the award is made it is obligatory on the appropriate Government under section 17(1) to publish the said award within a period of thirty days from the date of its receipt by the appropriate Government. Sub-section (2) of section 17 says that subject to the provisions of section 17A, the award published under sub-section (1) of section 17 shall be final and shall not be called in question by any Court in any manner whatsoever. Section 19(2) provides that an award shall, subject to the other provisions of section 19, remain in operation for a period of one year from the date on which it becomes enforceable under section 17A. It is true that sections 17A and 19 confer on the appropriate Government powers to modify the provisions of the award or limit the period of its operation but it is unnecessary to refer to these provisions in detail. The scheme of the provisions in Chapters III and IV of the Act would thus appear to be to leave the reference proceedings exclusively within the jurisdiction of the Tribunals constituted under the Act and to make the awards of such Tribunals binding between the parties, subject to the special powers conferred on the appropriate Government under sections 17A and 19. The appropriate Government undoubtedly has the initiative in the matter. It is only where it makes an order in writing referring an industrial dispute to the adiudication of the Tribunal that the reference proceedings can commence; but the scheme of the relevant provisions would *prima facie* seem to be inconsistent with any power in the appropriate Government to cancel the reference made under section 10(1).

The power claimed by the appellant to cancel a reference made under section 10(1) seems also to be inconsistent with some other provisions of the Act. The proviso to section 10 lays down that the appropriate Government shall refer a dispute relating to the public utility service when a notice under section 22 has been given, unless it considers that the notice has been frivolously or vexatiously given, or that it would be inexpedient to refer the dispute. This proviso indicates that in regard to a dispute relating to public utility concerns normally the Government is expected to refer it for adjudication. In such a case if the Government makes the reference it is difficult to appreciate that it would be open to the Government pending the proceedings of the said reference before the Industrial Tribunal to cancel the reference and supersede its original order in that behalf. Section 10, sub-section (2) deals with the case where the parties to an industrial dispute apply to the appropriate Government in the prescribed manner, either jointly or separately, for a reference of the dispute to the appropriate authority, and it provides that in such a case if the appropriate Government is satisfied that the persons applying represent the majority of each party it shall make the reference accordingly. In such a case all that the Government has to satisfy itself about is the fact that the demand for reference is made by the majority of each party, and once this condition is satisfied, the Government is under obligation to refer the dispute for industrial adjudication. It is inconceivable that in such a case the Government can claim power to cancel a reference made under sections 10(2). Indeed in the course of his arguments, Dr. Bannerjee fairly conceded that it would be difficult to sustain a claim for an implied power of cancellation in respect of a reference made under sections 10(2).

There is another consideration which is relevant in dealing with this question. Section 12 which deals with the duties of the Concilation Officer provides in substance that the Conciliation officer should try his best to bring about settlement between the parties. If no settlement is arrived at, the Conciliation Officer has to make a report to the appropriate Government, as provided in sub-sections (4) of section 12. This report must contain a full statement of the relevant facts and circumstances and the reasons on account of which in the opinion of the officer the settlement could not be arrived at. Sub-section (5) then lays down that if, on a consideration of the report, the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such a reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. This provision imposes on the appropriate Government an obligation to record its reasons for not making a reference after receiving a report from the Conciliation Officer and to communicate the said reasons to the parties concerned. It would show that when the efforts of the Concilation Officer fail to settle a dispute, on receipt of the Conciliation Officer's report by the appropriate Government, the Government would normally refer the dispute for adjudication; but if the Government is not satisfied that a reference should be made, it is required to communicate its reasons for its decision to the parties concerned. If the appellant's argument is accepted, it would mean that even after the order is made by the appropriate Government under section 10(1), the said Government was cancel the said order without giving any reasons. This position is clearly inconsistent with the policy underlying the provisions of section 12(5) of the Act. In our opinion, if the Legislature had intended to confer on the appropriate Government the power to cancel an order made under section 10(1), the Legislature would have made a specific provision in that behalf and would have prescribed appropriate limitations on the exercise of the said power.

It is, however, urged that if a dispute referred to the Industrial Tribunal under section 10(1) is settled between the parties, the only remedy for giving effect to such a compromise would be to cancel the reference and to take the proceedings out of the jurisdiction of the Industrial Tribunal. This argument is based on the assumption that the Industrial Tribunal would have to ignore the settlement by the parties of their dispute pending before it and would have to make an award on the merits in spite of the said settlement. We are not satisfied that this argument is well-founded. It is true that the Act does not contain any provision specifically authorising the Industrial Tribunal to record a compromise and pass an award in its terms corresponding to the provisions of O. XXIII, r. 3 of the Code of Civil Procedure. But it would be very unreasonable to assume that the Industrial Tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties. We have already indicated that amicable settlements of industrial disputes which generally lead to industrial peace and harmony are the primary objects of this Act. Settlements reached before the Conciliation Officers or Boards are specifically dealt with by sections 12 (2) and 13(3) and the same are made binding under section 18. There can, therefore, be no doubt that if an industrial dispute before a Tribunal is amicably settled, the Tribunal would immediately agree to make an award in terms of the settlement between the parties. It was stated before us at the bar that innumerable awards had been made by Industrial Tribunals in terms of the settlements between the parties. In this connexion we may incidentally refer to the provisions of section 7(2)(b) of the Industrial Disputes (Appellate Tribunal) Act, 1950, (XLVIII of 1950), which expressly refer to an award or decision of an Industrial

Tribunal made with the consent of the parties. It is true that this Act is no longer in force; but when it was in force, in providing for appeals to the Appellate Tribunal set up under the said Act, the Legislature had recognised the making of awards by the Industrial Tribunals with the consent of the parties. Therefore, we cannot accept the argument that cancellation of reference would be necessary in order to give effect to the amicable settlement of the dispute reached by the parties pending proceedings before the Industrial Tribunal.

In this connexion it may be relevant to refer to some other provisions of the Act, which impose restrictions on the parties during the pendency of the reference proceedings. Under section 10 (3), where an industrial dispute has been referred to an Industrial Tribunal, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connexion with such dispute which may be in existence on the date of the reference. Similarly, under section 33, during the pendency of the proceedings before an industrial tribunal, no employer shall (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings or (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Failure to comply with the provisions of section 33 (1) is made punishable under section 31 of the Act. These provisions show that during the pendency of the proceedings before the Industrial Tribunal the parties to the dispute are expected to maintain *status quo* and not to take any action which would disturb industrial peace or prejudice a fair trial before the Industrial Tribunal. If the power to cancel a reference made under section 10(1) is held to be implied, the proceedings before the Industrial Tribunal can be terminated and superseded at any stage and obligations and liabilities incurred by the parties during the pendency of the proceedings would be materially affected. It is because all these provisions are intended to operate as a self-contained Code governing the compulsory adjudication of industrial disputes under the Act, that section 15 enjoins upon the Industrial Tribunals to hold their proceedings expeditiously and to submit their awards as soon as it is practicable on the conclusion of the proceedings to the appropriate government. Thus time is usually of essential importance in industrial adjudications and so the Act imposes an obligation on the industrial tribunals to deal with their proceedings as expeditiously as possible. If the appropriate Government has by implication the power to cancel its order passed under section 10(1), the proceedings before the Industrial Tribunal would be rendered wholly ineffective by the exercise of such power.

Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate Government should have an implied power to cancel its own order made under section 10(1). If on the representation made by the employer or his workmen the appropriate Government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference under section 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question it is important to bear in mind that power to cancel its order made under section 10(1), which the appellant claims, is an absolute power; it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. If the power claimed by the appellant is conceded to the appropriate Government it would be open to the appropriate Government to terminate the proceedings before the Tribunal at any stage and not to refer the industrial dispute to any other Industrial Tribunal at all. The discretion given to the appropriate Government under section 10(1) in the matter of referring industrial disputes to Industrial Tribunals is very wide; but it seems the power to cance which is claimed is wider still; and it is claimed by implication on the strength of section 21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of section 10(1) of the Industrial Disputes Act.

It would now be necessary to refer to the decisions to which our attention was invited in the course of arguments. For the appellant Dr. Bannerjee has strongly relied on the decision of this court in *Minerva Mills Ltd.* v. *Their Workmen* [1954] 5 F.J.R. 616 He contends that Mahajan, J., who delivered the judgment of the court, has expressly observed in his judgment that from the relevant provisions of the Act 'It could not be held that it was implicit in section 7 that the Government could not withdraw a dispute referred to a Tribunal or make the appointment of a Tribunal for a limited period of time." The argument is that this observation shows that the Government can withdraw a pending reference from one Tribunal and refer it to another Tribunal, and according to the appellant, that is exactly what has been done by it in the present case. In the case of *Minerva Mills Ltd.*, however, the question about the implied power of the appropriate Government to cancel its order made under section 10 did not arise for consideration. The point which was raised by the appellant was that the Government had no power to appoint a Tribunal for a limited duration; and the argument was that if industrial disputes are referred to a Tribunal, all the said disputes must be determined by the said Tribunal and not by any other Tribunal, notwithstanding that the appointment of the original Tribunal was for a limited duration. The first Tribunal in the said case had been appointed on 15th June, 1952, and some industrial disputes had been referred to it. The Tribunal was appointed for one year. During its tenure the Tribunal disposed of some of the disputes referred to it, but four disputes still remained undisposed of. For disposing of these references, a Second Tribunal was appointed on 27th June, 1952. The validity of the constitution of the second Tribunal was impugned by the appellant and it was urged that it is the first Tribunal alone which can and must try the remaining disputes. This argument was rejected by this court, and it was held that it was perfectly competent to the appropriate Government to appoint a Tribunal for a limited duration. It would be noticed that in this case there was no question of cancelling an order made under section 10(1). The said order remained in force, and the only step which the Government took was to make an order constituting a fresh Tribunal to dispose of the references which had not ceen adjudicated upon by the First Tribunal. It was on these facts that this court took the view that it was competent to the Government to refer the said remaining disputes for adjudication to the second Tribunal. Strictly speaking there was no occasion to withdraw any dispute from the First Tribunal; the first Tribunal had ceased to exist; and so there was no Tribunal which could deal with the remaining disputes already referred under section 10(1). That is why the Government purported to appoint a second Tribunal to deal with the said dispute. In our opinion, the decision in the *Minerva Mills Ltd.* cannot be cited in support of the proposition that the appellant has power to cancel the order of reference made by it under section 10(1).

The decision of this court in *Strawboard Manufacturing Co. Ltd.*, v. *Gutta Mills Workers' Union* [1953] 4 F.J.R. 456, is then cited in support of the proposition that the appellant has implied power to cancel its order section 10(1). In this case, the Government of the State of Uttar Pradesh had referred an industrial dispute to the Labour Commissioner on 18th February, 1950, and had directed the Commissioner to make his award not later than 5th April, 1950. While the proceedings were pending before the Commissioner, two additional issues were referred to him. Ultimately, the award was made on 13th April, and it was sought to be validiated by the issue of a notification by the Governor of Uttar Pradesh on 26th April, by which the time for making the award was retrospectively extended upto 30th April, 1950. This Court held that the notification retrospectively extending the period to make the award was invalid. Since the award had been made beyond the period prescribed by the original notification, it was void. It is, however, argued that in dealing with the question of the validity of the award it was observed by Das, J., (as he then was), "In the circumstances, if the State Government took the view that the addition of those two issues would render the time specified in the original order inadequate for the purpose it should have cancelled the previous notification and issued a fresh notification referring all the issues to the adjudicator aud specifying a fresh period of time within which he was to make his award. The State Government did not adopt that course." As we read the judgment, we are not inclined to accept the appellant's assumption that the passage just cited expresses the view accepted by this Court. Read in its context the said passage appears to state the argument urged by Dr. Tek Chand on behalf of the appellant. The appellant appears to have urged in substance that if the State Government thought that the addition of new issues referred to the Commissioner by subsequent notification made it difficult for him to submit his award within the specified time, the Local Government should have cancelled the original reference, made a fresh comprehensive reference and given him requisite time for making his award. Since that was not done, the position could not be rectified by the issue of the impugned notification retrospectively extending the time originally fixed. It is in connection with this argument that the statement on which reliance is placed was apparently made by the learned counsel for the appellant. If that be the true position, no argument can be based on these observations. It is conceded that the question about the power of the appropriate Government to cancel an order of reference made under section 10(1) did not arise for discussion or decision in this case.

The third decision to which reference has been made in support of the appellant's case is the decision of Bishan Narain, J., in *The Textile Workers' Union Amritsar* v. *The State of Punjab and others*, [1957] 12 F.J.R. 246. Bishan Narain, J., appears to have taken the view that the power to cancel an order of reference made under section 10(1) can be implied by invoking section 21 of the General Clauses Act, because he thought that by the exercise of such a power, the appropriate Government may be able to achieve the object of preserving industrial peace and harmony. The judgment shows that the learned Judge was

conscious of the fact that "this conclusion may have the effect of weakening a trade union's power of negotiation and may encourage the individual firms to deal directly with its (their) own workmen but it is a matter of policy with which I have nothing to do in these proceedings." In dealing with the present question, we would not be concerned with any questions of policy. Nevertheless, it may be pertinent to state that on the conclusion which we have reached in the present case there would be no scope for entertaining the apprehensions mentioned by the learned Judge. As we have already indicated, the scheme of the Act plainly appears to be to leave the conduct and final decision of the Industrial Dispute to the Industrial Tribunal once an order of reference is made under section 10(1) by the appropriate Government. We must accordingly hold that Bishan Narain, J., was in error in taking the view that the appropriate Government has power to cancel its own order made under section 10(1) of the Act.

The decision of the Kerala High Court in *Iyyappen Mills (Private) Ltd., Trichur* v. *State of Travancore-Cochin and others*, [1958] 1 L.L.J. 50, is not of much assistance because in this case the learned Judges appear to have taken the view that the first Tribunal before which the industrial dispute was pending had ceased to exist at the material time when the dispute was referred by the Local Government for adjudication to the Second Tribunal. If that be the true position, the conclusion of the learned Judges would be supported by the decision of this court in *Minerva Mills Ltd.*

Then, in regard to the observations made by Sinha, J., in *Harendranath Bose* v. *Second Industrial Tribunal*, [1958] 14 F.J.R. 145, it is clear that the learned Judge was in error in seeking to support his view that the appropriate Government can cancel its order made under section 10(1) by the observations found in the judgment of this court in *Strawboard Manufacturing Co. Ltd.*, [1953] 4 F.J.R. 456. We have already stated that the said observations are really a part of the arguments urged by the appellant before this Court in that case and are not *obiter* observations made by the learned Judge.

The last case to which reference must be made is the decision of Rajamannar, C.J., and Venkatarama Aiyar, J., in *South India Estate Labour Relations Organisation* v. *The State of Madras* [1954] 5 F.J.R. 648. In this case the Madras Government had purported to amend the reference made by it under section 10 of the Act and the validity of this amendment was challenged before the Court. This objection was repelled on the ground that it would be open to the Government to make an independent reference concerning any matter not covered by the previous reference. That it took the form of an amendment to the existing reference and not additional reference is a mere technicality which does not merit any interference in the writ proceedings. The objection was one of form and was without substance. It would thus appear that the question before the Court was whether the appropriate Government can amend the reference originally made under section 10 so far as the new matters not covered by the original reference are concerned, and the Court held that what the appropriate Government could have achieved by making an independent reference, it sought to do by amending the original reference itself. This decision would not assist the appellant, because, in the present case we are not considering the power of the Government to amend, or add to, a reference made under section 10(1). Our present decision is confined to the narrow question as to whether an order of reference made by the appropriate Government under section 10(1) can be subsequently cancelled or superseded by it.

We must, therefore, confirm the finding made by the learned Judges of the High Court at Patna, that the notification issued by the appellant cancelling the first two notifications is in valid and *ultra vires*.

That takes us to the question as to the form in which the final order should be passed in the present appeals. The High Court has purported to issue a writ of *certiorari* against the State Government quashing the impugned notification. It has, however, been held by this Court in *The State of Madras* v. *C. P. Sarathy*, [1952] 4 F.J.R. 431, that in making a reference under section 10(1) the appropriate Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. That being so, we think it would be more appropriate to issue a writ of *mandamus* against the appellant in respect of the impugned notification. We would also like to add that since the first two industrial disputes referred by the appellant under the first two notifications have remained pending before the Tribunal for a fairly long time, it is desirable that the Tribunal should take up these references on its file and dispose of them as expeditiously as possible.

In the result, the appeals fail and must be dismissed with costs.
