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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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The West Bengal Factories (Exemption) Rules, 1958.

*Notification No. 1680L. W./LW/1R-41/57 dated 16th May, 1958.**

In exercise of the power conferred by section 64 of the Factories Act, 1948 (LXIII of 1948), and in supersession of all previous notifications issued in this connection, the Governor is pleased to make the following rules, the same having been previously published as required under section 115 of the said Act :—

1. *Title.*—These rules may be called "The West Bengal Factories (Exemption) Rules, 1958".

2. In these rules—

(*a*) "the Act" means the Factories Act, 1948 ;

(*b*) "section" means a section of the Act ;

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

(*d*) "holiday" includes a compensatory rest period referred to in rule 9 of these rules.

3. (1) The following persons employed in a factory shall, under sub-section (1) of section 64, be deemed to be persons holding positions of supervision or management or persons employed in a confidential position, namely :—

(*a*) Manager,

(*b*) Any other person who, in the opinion of the Inspector, holds a position of supervision or management or is employed in a confidential position.

(2) A record of the names and designations of all persons defined under sub-rule (1) shall be maintained correctly, legibly, in ink, and shall be available in every factory for examination by the Inspector.

4. No adult worker exempted from the provisions of section 51 other than an adult male worker employed under rule 6 on urgent repairs shall be allowed to work for more than 56 hours in any week.

5. Notwithstanding anything contained in these rules no adult worker in respect to whom exemption from the provisions of section 52 has been granted shall be deprived of any holiday due to him in accordance with the provisions of section 53.

6. *Urgent repairs.*—The provisions of sections 51, 52, 54, 55, 56 and 61 shall not apply to adult male workers employed on urgent repairs, on condition that—

(*a*) throughout the full period of such work, a notice, stating the names of the workers employed thereon, shall be displayed and maintained in accordance with the provisions of sub-section (2) of section 108 ;

(*b*) a notice stating fully the nature of the repairs, the time of commencement of work on the same and its probable duration, shall be sent to the Inspector forthwith ;

*Cal. Gaz., 29-5-58, Pt. I, p. 1679.

(c) no worker shall be employed on such work for more than—

(i) ten consecutive days without a holiday for a whole day,

(ii) fifteen hours on any one day,

(iii) thirty-nine hours during any three consecutive days, or

(iv) sixty-six hours during each period of seven consecutive days; and

(d) a statement showing the total number of hours worked each day in the week by each worker shall be sent to the Inspector within thirty-six hours after the completion of the work.

Explanation.—"Urgent repairs" mean—

(a) breakdown repairs to the motive power or plant and machinery of a factory which if not carried out expeditiously would involve danger to human life or safety, or delay in resumption of the main manufacturing process;

(b) breakdown repairs to ships and aircrafts which are essential to enable them to leave port at proper time or continue their normal operations in a sound condition;

(c) breakdown repairs carried out in general engineering works or foundries to the motive power or plant of other factories, collieries, railways, dockyards, harbours, tramways, motor transport, gas works, electrical generating and pumping stations which are necessary to enable such concerns to maintain their services or resume their main manufacturing process with as little delay as possible; and

(d) repairs in connection with a change of motive power, for example, from steam to electricity or vice versa, when such repairs cannot be done without stoppage of the main manufacturing process.

7. *Boiler house and engine room attendants.*—The provisions of sections 51, 52, 54, 55, 56 and 61 shall not apply to adult male workers engaged solely on the work of attending to boilers or prime movers, on condition that—

(a) the manager of the factory shall classify all such workers into groups according to the nature of their work;

(b) a notice showing the group or groups of workers working under the provisions of this rule shall be displayed and maintained in accordance with the provisions of sub-section (2) of section 108;

(c) an attendance register for such workers is maintained in the form appended to these rules and in respect of each such worker the time of commencement of each period of work shall be entered therein beforehand and the time of finishing each period of work shall be entered therein immediately after completion of the period of work;

(d) no such worker shall be employed for more than fourteen consecutive days without a holiday for a whole day; and

(e) no such worker shall be employed so as to work in excess of any of the limits specified in sub-section (4) of section 64.

8. *Maintenance workers and workers employed on despatching or receiving of goods.*—The provisions of sections 51 and 54, shall not apply to adult male workers and the provisions of sections 55, 56 and 61 shall not apply to adult workers who are engaged solely on the maintenance of machinery and plant or on the despatching or receiving of goods on condition that—

(a) the manager of the factory shall classify all such workers into groups according to the nature of their work;

(b) a notice showing the group or groups of workers working under the provisions of this rule shall be displayed and maintained in accordance with the provisions of sub-section (2) of section 108;

(c) an attendance register for such workers is maintained in the form appended to these rules and in respect of each such worker the time of commencement of each period of work shall be entered therein beforehand, and the time of finishing each period of work shall be entered therein immediately after completion of the period of work; and

(d) no such worker shall be employed so as to work in excess of any of the limits specified in sub-section (4) of section 64.

9. *Continuous process.*—The provisions of sections 51, 52, 54, 55 and 56 shall not apply to adult male workers employed in—

(1) iron and steel factories, on the operation of blast furnaces, open-hearth and electric steel plants, electric metal melting plants of the Ajax-Wyatt and Northrupp types and gas fired metal melting plants working on the regenerative principle;

(2) coke-oven plant, on the operation of coke-ovens;

(3) by-product plant, on the recovery and treatment of by-products;

(4) waterworks or pumping stations, as pumping and alum mixing plant operators-turn cocks or valvemen and settling tank watchers;

(5) gas works on the actual production of coal gas;

(6) gas factories, on the production and treatment of carbon dioxide, nitrous oxide, oxygen and acetylene;

(7) ice factories, on the manufacture and handling of ice;

(8) cold storage plant, on the work of attending to the refrigeration machinery;

(9) chemical factories, on the manufacture of sulphuric acid, nitric acid, hydrochloric acid, epsom salt, alum, alumina sulphate, ammonium sulphate, sodium sulphate, ferrous sulphate, sodium chloride, calcium hypochlorite, copper sulphate, hyposulphite of soda, sulphide of soda, caustic soda, nitrate of potash, phosphoric acid, ammonia, liquid chlorine, ether, chloroform, sodium salicylate, sodium tartarate, sodium citrate, potash citrate, potash acetate, potash tartarate, lime sulphur solution, bisulphate of lime, zinc oxide, litharge, red lead, white lead, strychnine, chromates and dichromates, caffeine, ephedrine, atropine, kurchi, porophyllin, dextrine, animal glue (gelatine), white factice, stearate of (zinc and aluminium) and absorbent; and on the sterilisation of surgical dressings on the distillation of coal tar, and the recovery of its by-products;

(10) paper mills, on the work of attending to bamboo preparing plant, grass preparing plant, digesters, breakers, bleaching plant, bleach-making

plant, strainers and washers, beaters papermaking machines, super calender, acid making plant, soda recovery plant, pumping plant, reelers, cutters and power plant ;

(11) electrical generating and distributing stations, on the work of generation and distribution of electrical energy and operation of switch gear ;

(12) glass factories, on the work of charging and attending to the pots or tanks, attending sheet glass-making machines and fully automatic other glass making machines and firing the furnaces ;

(13) sugar factories, using the vacuum-pan system ;

(14) refractory, ceramic, brick, tile and pipe works, on the work of firing and attending kilns ;

(15) distilleries, on fermentation and distillation plant, and breweries on the work of malting and brewing with chemical refrigeration ;

(16) tanning extract factories, on the work of charging and discharging vats and attending to evaporators and finishers ;

(17) Shellac factories, on the solvent and heat-extraction processes of shellac manufacture ;

(18) paint factories, on the work of manufacturing stand oil and chromium oxide ;

(19) asbestos cement product factories, on the work of delivery of asbestos and cement from the piles at the feed end to the delivery and stacking of formed products in the watering chambers ;

(20) engineering factories, on the operation of furnaces using the process of nitriding steel by ammonia gas ;

(21) aluminium factories, on the manufacture of alumina from crushed bauxite, the reduction of alumina to prime aluminium by electrolytic process and calcining and pitch melting in the anode paste plant ;

(22) factories manufacturing hydrogenated vegetable oil, on the work of refining, bleaching, filtering, generation of hydrogen, hydrogenating and deodorising process ;

(23) factories manufacturing furnace black, and

(24) factories manufacturing calcium carbide on the operation of lime kiln and electric furnace, on condition that—

(*a*) on the notice of periods for work required under section 61, the manager shall enter against each group of workers working under the provisions of this rule, the words "Working under the provisions of rule 9 of the West Bengal Factories (Exemption) Rules, 1958";

(*b*) the workers engaged on such work shall ordinarily be employed on daily eight-hour shifts ;

(*c*) no such worker shall be employed for more than fourteen consecutive days without a compensatory rest period of at least twenty-four hours at one time ; and

(*d*) no such worker shall be employed so as to work in excess of any of the limits specified in sub-section (4) of section 64:

Provided that in the absence of a worker who has failed to report for duty, a shift worker may be allowed to work the whole or part of a subsequent shift on condition that (i) the next shift of the shift worker shall not commence before a period of 16 hours has elapsed after the specified stopping time of the shift to which the worker belongs ; and (ii) the circumstances under which the worker is required to work in the subsequent shift shall be noted immediately in the remarks column of the register of adult workers.

10. *Workers engaged in the loading or unloading of railway wagons.*—The provisions of sections 51, 52, 54, 55, 56 and 61 shall not apply to adult male workers who are engaged in loading or unloading railway wagons, on condition that—

(*a*) throughout the full period of such work, a notice, stating the names of the workers employed thereon, shall be displayed and maintained in accordance with the provisions of sub-section (2) of section 108 ;

(*b*) a statement showing the time of commencement of such work and the total number of hours worked each day by each worker shall be sent to the Inspector within thirty-six hours after the completion of the work ;

(*c*) no such worker shall be employed so as to work in excess of any of the limits specified in sub-section (4) of section 64.

11. *Workers engaged in the printing of newspapers.*—The provisions of sections 51, 54, 56 and 61 shall not apply to adult male workers engaged in printing of newspapers, who are held up on account of break down of machinery on condition that—

(*a*) throughout the full period of such work, a notice, stating the names of the workers employed thereon, shall be displayed and maintained in accordance with the provisions of sub-section (2) of section 108 ;

(*b*) a statement showing the time of commencement of such work and the total number of hours worked each day by each worker shall be sent to the Inspector within thirty-six hours after the completion of the work ;

(*c*) no such worker shall be employed so as to work in excess of any of the limits specified in sub-section (4) of section 64.

12. *Rice Mills.*—The provisions of sections 52, 55 and 61 shall not apply to adult workers employed in rice mills using the par-boiling process, on condition that—

(*a*) the manager or occupier of the factory, before he avails himself of this exemption, has served on the Inspector and displayed in the factory a notice, of his intention so to avail himself, and whilst he avails himself of the exemption shall keep the notice so displayed ; and

(*b*) an attendance register for such workers is maintained in the form appended to these rules and in respect of each such worker the time of commencement of each period of work shall be entered therein beforehand and the time of finishing each period of work shall be entered therein immediately after completion of the period of work.

13. *Tea Factories.*—The provisions of sections 55 and 61 shall not apply to adult workers employed in tea factories on condition that—

(*a*) the manager or occupier of the factory, before he avails himself of this exemption, has served on the Inspector and displayed in the factory, a notice of his intention so to avail himself, and whilst he avails himself of the exemption shall keep the notice so displayed ; and

(*b*) an attendance register for such workers is maintained in the form appended to these rules and in respect of each such worker the time of commencement of each period of work shall be entered therein beforehand and the time of finishing each period of work shall be entered therein immediately after completion of the period of work.

14. *Flour Mills.*—The provisions of sections 55 and 61 shall not apply to adult male workers employed in flour mills as sirdars, machinemen (operators and cleaners), shotting-men, mixer-men, oilers, packers and stitchers, flour godown coolies, seal-men and sweepers in the screen room, on condition that—

(*a*) the manager or occupier of the factory, before he avails himself of this exemption, has served on the Inspector and displayed in the factory, a notice of his intention so to avail himself, and whilst he avails himself of the exemption, shall keep the notice so displayed ; and

(*b*) an attendance register for such workers is maintained in the form appended to these rules and in respect of each such worker the time of commencement of each period of work shall be entered therein beforehand and the time of finishing each period of work shall be entered therein immediately after completion of the period of work.

15. *Rubber Factories—Curing by autoclaves.*—The provisions of sections 55 and 56 shall not apyly to adult male workers employed in rubber factories on the work of curing by autoclaves, on condition that—

(*a*) the manager or occupier of the factory, before he avails himself of this exemption, has served on the Inspector and displayed in the factory a notice of his intention so to avail himself, and whilst he avails himself of the exemption, shall keep the notice so displayed ; and

(*b*) an attendance register for such workers is maintained in the form appended to these rules and in respect of each such worker the time of commencement of each period of work shall be entered therein beforehand and the time of finishing each period of work shall be entered therein immediately after completion of the period of work.

16. *Milk Pasteurising Factories.*—The provisions of section 52 shall not apply to adult workers engaged in milk pasteurising factories using a mechanical or electrical process on condition that no worker in such factories shall be employed for more than fourteen consecutive days without a holiday for a whole day.

REGISTER OF ADULT WORKERS

[Rules 7, 8, 12, 13, 14 and 15 of the West Bengal Factories (Exemption) Rules, 1958.]

Name of Factory.......................... For week-ending..........................

1	2	3	4	5	6	7														8	9
Serial No.	Name.	Nature of work.	Group No.	Relay No.	Periods of work.	Actual times of starting and stopping for each period.														Total weekly hours.	Record of transfersfrom one group or relay to another.
						Sunday.		Monday.		Tuesday.		Wednes-day.		Thurs-day.		Friday.		Satur-day.			
						In.	Out	In.	Out	In.	Out	In.	Out	In.	Out	In.	Out	In.	Out		
					1st ...																
					2nd ...																
					3rd ...																
					4th ...																
					1st ...																
					2nd ...																

Central Provinces Industrial Disputes Settlement (Commencement of Certain Amending Provisions and Validation) Act, 1958.

BOMBAY ACT NO. LIX OF 1958*.

[Received the assent of the President on June 1, 1958.]

An Act to bring into force the amendments made by the Madhya Pradesh Industrial Disputes Settlement (Amendment) Act, 1955, to the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, from the date of the commencement of the former Act, and to validate action taken under those provisions.

Whereas the Madhya Pradesh Industrial Disputes Settlement (Amendment) Act, 1955 (hereinafter called "the Amending Act"), amended the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (hereinafter called "the Principal Act"), by incorporating therein certain provisions by way of amendments thereto (hereinafter called "the amending provisions");

And whereas in Special Civil Application No. 340 of 1957, the Bombay High Court, sitting at Nagpur, has held that though the provisions incorporated by the Amending Act have become part of the Principal Act, they have to be read with section 1 of the Principal Act, and consequently, unless and until a notification under sub-sction (3) of section 1 thereof, is issued bringing the amending provisions, or any of them, into force in such area or industry and on such date as may be specified in the notification, they or any of them cannot take effect;

And whereas no such notification has been issued;

And whereas it is necessary to bring the amending provisions into force with retrospective effect from the date of the commencement of the Amending Act, and to validate action taken under the Principal Act as amended by the Amending Act; It is hereby enacted in the Ninth Year of the Republic of India as follows:

1. *Short title.*—This Act may be called the Central Provinces Industrial Disputes Settlement (Commencement of Certain Amending Provisions and Validation) Act, 1958.

2. *Amendments to Central Provinces and Berar Act No. XXIII of 1947 made by Madhya Pradesh Act No. XXI of 1955 to come into force on the date Madhya Pradesh Act XXI of 1955 commenced.*—Notwithstanding anything contained in sub-section (3) of section 1 of the Principal Act, or in any judgment, decree or order of a Court, the amendments incorporated in the Principal Act by the Amending Act (whether by way of amendment to, insertion in, or substitution of, the provisions of the Principal Act), which have not been brought into force by notification issued under sub-section (3) of section 1 of the Principal Act, shall be deemed to have come into force in the Vidarbha area of the State of Bombay on and with effect from the 25th day of November 1955 in relation to the industries to which the Principal Act applied on that date.

*Bom. Govt., Gaz., Extry., 11-6-1958, Pt. IV, p. 266.

3. *Validation.*—Anything done or any action taken (including any appointments made, recognition to unions given, notifications issued, works committees established, disputes referred for arbitration, proceedings instituted, continued or disposed of in arbitration, all appeals filed and disposed of, Wage Boards constituted, references made thereto, proceedings commenced, continued, or disposed of before such Wage Boards, or before the Conciliator, District Industrial Court or State Industrial Court, all appeals filed against the decisions thereof and modifications of decisions made) in the exercise or purported exercise of powers conferred, or in discharge of duties imposed, by or under any of the provisions of the Principal Act as amended by the Amending Act at any time before the commencement of this Act, shall be deemed to have been validly done as if those amending provisions had then been in force; and such thing done or action taken shall not be deemed to have been invalidly done or taken by reason only that when such thing was done or action was taken the said amending provisions had not been brought into force in relation to any industry in the Vidarbha area of the State of Bombay.

THE EMPLOYEES' PROVIDENT FUNDS (AMENDMENT) ACT, 1958.

ACT 22 OF 1958*.

[Received the assent of the President on May 18, 1958.]

An Act further to amend the Employees' Provident Funds Act, 1952.

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

1. *Short title.*—This Act may be called the Employees' Provident Funds (Amendment) Act, 1958.

2. *Amendment of section 2.*—In section 2 of the Employees' Provident Funds Act, 1952, (19 of 1952), (hereinafter referred to as the principal Act), for clause (*a*), the following clause shall be substituted, namely:—

'(*a*) "appropriate Government" means—

(*i*) in relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry, the Central Government; and

(*ii*) in relation to any other establishment, the State Government;'.

3. *Amendment of section 16.* In section 16 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) This Act shall not apply to any establishment until the expiry of three years from the date on which the establishment is, or has been, set up.

* Gaz. of India, Extry., 20-5-58, Pt. II, sec. I, p. 112.

Explanation.—For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.".

THE KERALA PAYMENT OF WAGES (GENERAL) RULES, 1958.

Notification No. 29562/L5/58-1 dated Trivandrum, 5th June, 1958.†

In exercise of the powers conferred by section 26 of the Payment of Wages Act, 1936, (Central Act IV of 1936), the Government of Kerala hereby make the following rules the same having been previously published as required by sub-section (5) of the said section.

1. *Title and extent.*—(1) These Rules may be called "The Kerala Payment of Wages (General) Rules, 1958".

(2) These rules shall apply to the payment of wages to persons employed in (i) factories and (ii) such of the industrial establishments as defined in section 2 of the Payment of Wages Act, 1936, to which the provisions of the Act have been extended by notification under sub-section (5) of section 1 of the Act.

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

(*a*) "the Act" means the Payment of Wages Act, 1936, (Central Act 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, (Central Act LXIII of 1948);

(*d*) "the Chief Inspector of Plantations" means the Chief Inspector of Plantations appointed under sub-section (1) of section 4 of the Plantations Labour Act, 1951, (Central Act LXIX of 1951);

(*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 of the Act;

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

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

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

(*j*) "Paymaster" means an employer or other person responsible under section 3 of the Act for the payment of wages;

†Kerala Gaz., 17-6-58, Pt. I, sec. IV, p. 1.

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

(*l*) "section" means a section of the Act; and

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

SECTION 26(3)(a)

3. *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:

Provided that, in any factory if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the employed persons in that factory the particulars required in the form prescribed under this sub-rule he may by order in writing direct that such muster roll or register shall to the corresponding extent be maintained in the place of and be treated as the Register of Fines of persons employed in that factory:

Provided further that where an industrial establishment has no building the register shall be maintained in the house of the paymaster and produced at the office of the Inspector having jurisdiction when required.

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

(3) When any disbursement is made from the fines realised, a deduct entry of the amount so expended shall be made in the Register of Fines. The vouchers or receipts in respect of the amounts so expended shall be serially numbered and kept separately, the serial number of each voucher or receipt and the amount to which it relates being noted in the remarks column of the register. If more than one purpose for spending the fines has been approved the entry of the disbursement shall also indicate the purpose for which it is made.

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

Provided that, in any factory if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the employed persons in that factory the particulars required in the form prescribed under this rule, he may, by order in writing direct that such muster roll or register shall to the corresponding extent be maintained in the place of and be treated as the register required to be maintained under this rule:

Provided further that where an industrial establishment has no building the register shall be maintained in the house of the paymaster and produced at the office of the Inspector having jurisdiction when required.

5. *Register of Wages.*—A Register of Wages shall be maintained in every factory or industrial establishment and may be kept in such form as the paymaster finds convenient, but shall include the following particulars:—

(*a*) the gross wages earned by each person employed for each wage period;

(*b*) 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;

(*c*) the wages actually paid to each person employed for each wage period:

Provided that where an industrial establishment has no building the register shall be maintained in the house of the paymaster and produced at the office of the Inspector having jurisdiction when required.

6. *Period of maintenance of registers.*—The registers referred to in rules 3, 4, 5 and 17 shall be preserved for a period of twelve months from the date of the last entry noted in them.

SECTION 26 (3) (c)

7. *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 biennially 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 law in force relating to Weights and Measures or 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.

SECTION 26 (3) (d)

8. *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 giving for not less than two months in advance, the days on which wages, will be ordinarily be paid:

Provided that in the case of an industrial establishment which has no building such notice shall be displayed in a conspicuous place in the house of the paymaster and shall be produced when required at the Office of the Inspector having jurisdiction there.

SECTION 26 (3) (e), (f) and (h)

9. *Prescribed authority.*—The Chief Inspector of Factories in the case of factories, the Chief Inspector of Plantations in the case of plantations, and the Labour Commissioner in other cases shall be the authority competent 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 fine shall be expended.

10. *Application in respect of fines.*—Every paymaster in a factory or industrial establishment requiring the power to impose fines in respect of any acts and omissions on the part of employed persons shall send to the authority mentioned in Rule 9,

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

(*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 the incumbents of which may pass orders imposing fines and the class of establishment on which the incumbent of each such appointment may impose fines.

11. *Approval of list of acts and omissions.*—The authority appointed under rule 9 may on receipt of the list prescribed in clause (a) of the preceding rule, after such enquiry as he considers necessary, pass orders either—

(*a*) disapproving the list, or

(*b*) approving the list either in its 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 any list shall be passed unless the paymaster shall have been given an opportnnity of showing cause orally or in writing why the list as submitted by him should be approved.

12. *Posting of list.*—The paymaster shall display at or near the main entrance of the factory or industrial establishment a copy in English, together with a correct translation thereof, in the language of the majority of the persons employed therein, of the list approved under rule 11:

Provided that in the case of an industrial establishment which has no building such notice shall be displayed in a conspicuous place in the house of the paymaster and shall be produced when required at the Office of the Inspector having jurisdiction there.

13. *Persons authorised to impose fines.*—No fines may be imposed by any person other than the employer or a person holding an appointment named in a list submitted under rule 10.

14. *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 propossd to be imposed and the amount of fine or deduction, which it is proposed to impose, and shall hear his explanation. The charge in respect of which it is proposed to impose the fine or deduction, and the explanation of the person concerned shall be reduced to writing, the signature of such person being obtained to the latter.

15. *Information to paymaster.*—The person imposing a fine or directing the making of a deduction for damages or loss shall at once inform the

paymaster of all particulars, so that the register prescribed in rule 3 or rule 4 may be duly completed.

SECTION 26(3)(g)

16. *Deduction 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.

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

(*a*) there is provision in writing forming part of the terms of the contract of employment requiring the employee to give notice of the termination of such employment and the period of notice does not exceed either—

(i) fifteen days or the wage-period, whichever is less; or

(ii) the period of notice which the paymaster 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 :

Provided that in the case of an industrial establishment which has no building such notice shall be displayed in a conspicuous place in the house of the paymaster and shall be produced when required at the office of the Inspector having jurisdiction there; and

(*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 whose wages 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 :

Provided that in the case of an industrial establishment which has no building such notice shall be displayed in a conspicuous place in the house of the paymaster and shall be produced when required at the office of the Inspector having jurisdiction there.

(3) No deduction for breach of contract shall exceed the wages of the person employed for the period by which the notice of termination of services 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 the wages of any person who has complied with those conditions.

SECTION 26 (3) (i)

17. *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, twice the wages he is likely to earn during the subsequent calendar month.

(2) Any advance may be recovered in instalments by deduction from wages, 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 :

Provided that this sub-rule shall not apply to the case of an advance made, in which the employer, either at the instance of or with the consent of the employed person and with the approval of the Chief Inspector of Factories in the case of factories, the Chief Inspector of Plantations in the case of plantations or the Labour Commissioner in all other cases, postpones its recovery for a specified period on exceptional grounds (such as when full work could not be provided for the workers for causes beyond the control of the employer) which in the opinion of the authorities aforementioned merits such postponement.

(3) The amounts of all advances and recoveries shall be entered in a register in Form III :

Provided that in the case of any factory if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the employed persons in that factory the particulars required in the form prescribed under this sub-rule, he may by order in writing direct that such muster roll or register shall to the corresponding extent be maintained in the place of and be treated as, the register required to be maintained under this sub-rule.

SECTION 26 (3) (a)

18. *Annual return.*—Every paymaster of a factory or an industrial establishment shall send a return in Form IV so as to reach the authority appointed under rule 9 not later than the 15th February following the end of the calendar year to which the return relates.

SECTION 26 (3) (j)

19. *Costs.*—(1) Where the authority or the Court as the case may be, directs that any costs shall not follow the event, the reasons for the directions shall be stated in writing by such authority or court.

(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*) pleader's fees which shall ordinarily be Rs. 10 provided that the Authority or Court, as the case may be, may in any proceedings 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 engages more pleaders than one to defend a case, he shall be allowed one set of pleader's fees only.

20. *Copies of documents.*—The Authority or Court, as the case may be, may fix the fees on the payment of which any person entitled to do so may obtain copies of any document filed with such authority or court:

Provided that the authority or the court may in consideration of the poverty of the applicant, grant copies free of cost.

SECTION 26 (3) (k)

21. *Court fees.*—The court fee payable in respect of proceedings under the Act shall be as follows:—

(i) For every application to summon a witness	Four annas in respect of each witness.
(ii) For every other application made by or on behalf of an individual person before the authority.	Eight annas.
(iii) For every other application made by or on behalf of an unpaid group before the authority	Four annas for each member of the group, subject to a maximum of five rupees.
(iv) For every appeal lodged with the Court	Rupees five.

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.

SECTION 26 (3) (l)

22. *Abstract.*—The abstract of the Act and the Rules made thereunder required to be displayed by section 25 shall be in Form V.

SECTION 26 (2)

23. *Notice of occupation.*—Within fifteen days before the commencement of work either for the first time or after each season in any industrial establishment other than a factory, the owner, the proprietor, the managing agent or the occupier of the establishment shall send to the Labour Commissioner a written notice in duplicate in Form VI.

Provided that such notice shall be sent within 30 days of the date of the commencement of these rules in the case of industrial establishments to which the provisions of the Payment of Wages Act become applicable for the first time on the date of commencement of the Rules.

SECTION 26 (4)

24. *Penalties.*—Any contravention of rules 3,4,5,6,8,12,15,18, and 23 of these Rules shall be punishable with fine which may extend to two hundred rupees.

25. *Repeal.*—The Travancore-Cochin Payment of Wages (Factories) Rules, 1952, Travancore-Cochin Payment of Wages (Plantations) Rules, 1952, Travancore-Cochin Payment of Wages (Industrial Establishment) Rules, 1956 and the Madras Payment of Wages Rules, 1937, in their application to the territories transferred from the State of Madras to the State of Kerala are hereby repealed;

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

FORM I

(*See* Rule 3)

REGISTER OF FINES

Name of Factory/Industrial Establishment........................

Serial No.	Name of operative fund	Father's name or ticket number	Department or section or gang	Act or omission for which fine was imposed	Amount of fine	Designation of officer imposing fine	Date on which fine was imposed	Whether workman showed cause against fine or not, if so, enter date	Wages payable*		Total amount of fines	Date or dates on which fines or total fines were recovered	Rem rks
									Amount	Wage period †			
1	2	3	4	5	6	7	8	9	10	11	12	13	14

* By "wages payable" is meant the gross wages earned by a workman; for time workers the wages due for the pay period less deductions for absence from duty; for piece workers the wages due on production—in both cases without deductions for fines or for services rendered by the employer.

† Here enter months if payment is made by the English calendar month. In the case of other pay periods enter "week", "fortnight" or "hapta", as the case may be giving the dates covered by the pay period.

FORM II

(*See* Rule 4)

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

Name of Factory/Industrial Establishment..................................

Serial No.	Name	Father's name or ticket number	Department or section or gang	Damages or loss caused	Amount of deduction imposed	Designation of officer imposing deduction	Date on which deduction imposed	Whether worker showed cause against deduction or not	No. of instalments, if any, in which deduction is proposed to be recovered	Date on which total amount of deduction imposed was realised	Remarks
1	2	3	4	5	6	7	8	9	10	11	12

FORM III

(*See* Rule 17)

REGISTER OF ADVANCES MADE TO EMPLOYED PERSONS.

Name of Factory/Industrial Establishment......................................

Serial No.	Name	Father's name or ticket number	Department or section or gang	Date and amount of advance made	Purpose for which advance made	No. of instalments by which advance to be repaid	Postponents granted	Date on which total amount repaid	Remarks
1	2	3	4	5	6	7	8	9	10

FORM IV.

(*See* Rule 18)

RETURN FOR THE YEAR ENDING 31st DECEMBER 195......
WAGES AND DEDUCTION FROM WAGES

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 (*vide* note below).
   Adult..............children..............
   (b) Gross amount paid as remuneration to those persons including deductions under Section 7 (2)................of which the amount due to bonus is.................and that due to money value of concession is..........................
4. Total wages paid including deductions under section 7(2) on the following accounts:—
   (a) Basic wages including overtime.
   (b) Dearness and other allowances in cash
   (c) Arrears of pay in respect of the previous years paid during the year.
5. No. of cases and amount realised as:—

	Number of cases.	Amount
(a) Fines.		
(b) deductions for damages or loss		
(c) deductions for breach of contract.		

6. Disbursement from the fine fund

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

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

Signature

Designation

N.B.—The average daily number of persons is obtained by dividing the aggregate number of attendances during the year by the number of working days.

FORM V.

(*See* Rule 22)

ABSTRACT OF THE PAYMENT OF WAGES ACT, 1936 (CENTRAL ACT IV of 1936) AND THE RULES MADE THEREUNDER

1. *Whom the Act affects.*—The Act applies to the payment of wages to persons in this factory/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.

3. *Definition of wages.*—"Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

(*a*) any remuneration payable under any award or settlement between the parties or order of a court;

(*b*) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(*c*) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(*d*) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(*e*) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

4. *Responsibility for and method of payment.*—The Manager of the factory/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 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 7 days of the end of the wage-period (or within 10 days if 1000 or more persons are employed). (The wages of a person who is discharged shall be paid not later than the second working day after his discharge).

7. Payments in kind are prohibited.

8. *Fines and deductions.*—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 has, with the previous approval of the Chief Inspector of Factories, Chief Inspector of Plantations or the Labour Commissioner as the case may be, specified by a notice displayed at or near the main entrance of the factory/industrial establishment and after giving the employed person an opportunity for explanation.

(2) Fines:—

(*a*) shall not exceed half an anna in the rupee;

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

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

(*d*) shall not be imposed on persons who are under the age of 15 years.

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 bearing the same proportion to his wages for the wage-period, as the period of his absence bears to the total period during which he should have been at work during the wage-period.

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

1. No deduction for breaking a contract can be made from a person under the age of 15 years.

2. There must be a provision in writing forming part of the contract of employment and requiring the employee to give notice of the termination of such employment, the period of such notice not exceeding either:—

(*i*) fifteen days or the wage period whichever is less; or

(*ii*) the period of notice which the employer is required to give of the termination of that employment.

3. The above provision must be displayed at or near the main entrance of the factory/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 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. Deductions can be made, equivalent to the value thereof, 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 the Government.

13. Deductions can be made for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette.

14. (*a*) Deduction 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 spread over not more than 12 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.

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

16. Deductions can be had for payments to co-operative societies approved by the Government or for payment of any premium on life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, or for the purchase of the securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government subject to any condition imposed by the Government.

17. *Inspections.*—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.

18. *Complaints of deductions or delays.*—(i) 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 Government for the purpose. An application delayed beyond this period may be rejected unless sufficient cause for the delay is shown.

(ii) 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.

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

19. *Action by the Authority.*—The Authority may award compensation to the employed person is 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.

20. *Appeal against the Authority.*—An appeal in the prescribed form against a direction made by the authority may be preferred, within thirty days 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; and

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

21. *Punishments for breaches of the Act.*—Any one delaying the payment of wages beyond the due date, or making any unauthorised deduction from the wages is a liable to 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/industrial establishment this abstract in English and in the language of the majority of the employed persons, or
4. breaks the 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.

FORM VI.

(*See* Rule 23)

NOTICE OF OCCUPATION (APPLICABLE ONLY TO INDUSTRIAL ESTABLISHMENTS)

(TO BE SUBMITTED IN DUPLICATE)

1. Full Name of Industrial Establishment.
2. Full postal address and situation of the Industrial Establishment.
3. Full address to which communications relating to the Industrial Establishment should be sent.
4. Class or group of industrial establishment.
5. Approximate number of persons to be employed in the industrial establishment.
6. The average number of persons employed during the last twelve months.
7. Full name and residential address of the person who shall be the paymaster or Manager of the Industrial establishment for the purpose of the Act.
8. (i) Full name and residential address of proprietor of the industrial establishment in case of private firm.
   (ii) Full names and residential addresses of Directors in the case of private limited liability company.
   (iii) Full names and residential addresses of shareholders in case of a private company.

Signature of occupier

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

Signature of Manager or Paymaster.

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

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

2. If any of the persons named against item 8 above is a minor the fact should be clearly stated.

THE WORKING JOURNALISTS (FIXATION OF RATES OF WAGES) ORDINANCE, 1958

[ORDINANCE NO. 3 OF 1958*]

Promulgated by the President in the Ninth Year of the Republic of India.

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

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore in exercise of the powers conferred by clause (1) of article 123 of the Constitution the President is pleased to promulgate the following Ordinance :—

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

(2) It shall come into force at once.

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

(*a*) "Committee" means the Committee constituted under section 3;

(*b*) "prescribed" means prescribed by rules made under this Ordinance;

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

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

(*e*) "wages" mean wages as defined in the Industrial Disputes Act, 1947;

(*f*) "Working Journalists Act" means the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.

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

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

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

*Gaz. of India, Extry., 14-6-1958, Pt. II, sec. 1, p. 131.

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

(2) The Central Government may appoint a Secretary to the Committee for the performance of such functions as the Committee or the Chairman thereof may assign to him, and may also provide the Committee with such other staff as may be necessary.

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

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

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

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

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

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

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

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

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

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

(3) If in the course of any inquiry it appears to the Committee that it is necessary to examine any accounts or documents or obtain any statements from any person, the Committee may authorise any officer of the Central Government (hereinafter referred to as "the authorised officer") in that behalf; and the authorised officer shall, subject to the directions of the Committee, if any, examine the accounts or documents or obtain the statements from the person.

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

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

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

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

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

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

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

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

7. *Order of Central Government to be binding on all persons concerned.*—Subject to the other provisions contained in section 10, the order of the Central Government on its publication in the Official Gazette shall be binding on all employers and working journalists in relation to whom the order

has been made; and every working journalist shall be entitled to claim wages at a rate which shall, in no case, be less than the rate of wages specified in the order.

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

9. *Recovery of moneys due to working journalists.*—Any money due to a working journalist under any order of the Central Government made under this Ordinance, may be recovered in the same manner as money due under the Working Journalists Act may be recovered under section 17 of that Act.

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

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

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

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

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

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

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

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

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

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

Working Journalists Wage Committee—Notification.

*Notification No. S.O. 1128 dated, New Delhi, the 18th June, 1958**

Whereas the Wage Board constituted under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, by notification No. S.R.O. 1075 of the Government of India in the Ministry of Labour, dated the 2nd May, 1956, gave decisions which were published in the Gazette of India, Extraordinary, Part II, Section 3, dated the 11th May, 1957 (the said decisions being hereinafter referred to as "the Wage Board decision");

And whereas for the purpose of enabling the Central Government to fix rates of wages in respect of working journalists in the light of the judgment of the Supreme Court, dated the 19th day of March, 1958, relating to the Wage Board decision, and in the light of all other relevant circumstances, the Central Government constituted a Committee under sub-section (1) of section 3 of the Working Journalists (Fixation of Rates of Wages) Ordinance, 1958 (the said Committee being hereinafter referred to as "the Committee");

Now, therefore, in pursuance of sub-section (1) of section 4 of the said Ordinance, the Committee by this notice calls upon newspaper establishments and working journalists and other persons interested in the Wage Board decision to make, within a period of thirty days from the date of this notice such representations as they may think fit as respects the Wage Board decision and the rates of wages which may be fixed under the said Ordinance in respect of working journalists.

Every such representation shall be in writing and shall state—

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

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

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

*Gaz. of India (Extry.), 18-6-'58, Pt. II, sec. 3 (ii), p. 719.

The representation shall be addressed to the Secretary to the Committee at his official address, namely, Ministry of Law, Room No. 102, First Floor, North Block, Secretariat, New Delhi and shall reach him within the aforesaid period of thirty days.

Registration and Licencing of Industrial Undertakings Rules, 1952—Amendment.

Notification No. G.S.R. 386/IDRA/30/2/58, dated the 6th May, 1958.*

In exercise of the powers conferred by section 30 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby makes the following amendments in the Registration and Licensing of Industrial Undertakings Rules, 1952, the same having been previously published as required by sub-section (1) of the said section, namely:—

In rule 10 of the said rules, for the brackets and words "Finance, Iron and Steel, (Labour) and Production," the words "Finance, Steel, Mines and Fuel and Labour and Employment" shall be substituted.

Minimum Wages (Central Advisory Board) Rules, 1949—Amendment.

Notification No. G.S.R. 394, dated the 10th May, 1958†.

In exercise of the powers conferred by section 29 of the Minimum Wages Act, 1948 (11 of 1948), the Central Government hereby makes the following amendment to the Minimum Wages (Central Advisory Board) Rules, 1949, the same having been previously published, as required by the said section namely:—

In Rule 15 of the said Rules, for the words "Central and Provincial Government" the words, "Central Government and Administrations of the Union territories" shall be substituted.

Employees' Provident Funds Scheme, 1952—Amendment.

Notification No. G.S.R. 482 dated the 5th June, 1958‡.

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

In the said Scheme in clause (kkk) of paragraph 2, after the word "pepper" the words "or a coffee curing establishment" shall be inserted.

2. This amendment shall be deemed to have come into force on the 30th day of November, 1957.

* Gaz. of India 17-5-58, Pt. II, sec. 3 (i), p. 257.
† Gaz. of India, 17-5-58, Pt. II, sec. 3 (i), p. 275.
‡ Gaz. of India, 14-6-58, Pt. II, sec. 3 (i), p. 396.

Mysore Minimum Wages Rules, 1951—Amendment.

*Notification No. LLH 15 MNW 57, dated Bangalore, 14th May, 1958.**

In exercise of the powers conferred by section 30 of the Minimum Wages Act, 1948, (Central Act XI of 1948), the Government of Mysore hereby makes the following amendment to the Mysore Minimum Wages Rules, 1951, the draft of the said amendment having been previously published in Notification No. LLH 15 MNW 57, dated 15th December, 1957, as required by the said Section.

AMENDMENT.

In the said Rules after sub-rule (1) of rule 25 of the Mysore Minimum Wages Rules, 1951, the following proviso shall be inserted:—

"Provided that no employee shall be required or allowed by any employer (*a*) to work on any day inclusive of overtime, for more than ten hours, (*b*) to work overtime for more than fifty hours in any continuous period of ninety days."

THE PUNJAB SHOPS AND COMMERCIAL ESTABLISHMENTS (AMENDMENT) ORDINANCE, 1958.

*Punjab Ordinance No. 3 of 1958.***

AN ORDINANCE TO AMEND THE PUNJAB SHOPS AND COMMERCIAL ESTABLISHMENTS ACT, 1958,

Promulgated by the Governor of Punjab in the Ninth year of the Republic of India.

Whereas both Houses of the Legislature of the State of Punjab are not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Punjab is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Punjab Shops and Commercial Establishments (Amendment) Ordinance, 1958.

(2) It shall come into force on the 1st June, 1958.

2. *Amendment of section 9 of Punjab Act 15 of 1958.*—After the second proviso to section 9 of the Punjab Shops and Commercial Establishments Act, 1958, the following proviso shall be added, namely:—

"Provided further that the State Government may, by notification in the official Gazette, fix such other opening and closing hours in respect of any establishment or class of establishments, for such period and on such conditions, as may be specified in such notification."

* Mys. Govt. Gaz., 22-5-58, Pt. IV-IC, p. 1518.

** Punjab Gazette Extry., 30-5-58, p. 1061.

Rule 36 provides that the District Industrial Court shall have jurisdiction to hear and adjudicate upon:

"(a)......

(b) the propriety or legality of an order passed by an employer under the Standing Orders;

(c) the application and interpretation of Standing Orders;

(d) the legality or illegality of any strike or lock-out or of any change of which notice has been given or which has taken place upon an application by any employer or employee concerned or by the Labour Officer under section 41 provided the question concerns an industry exclusively within the local area of the Court's jurisdiction."

The other clauses in this rule are not material. The application made by the respondent would fall both under clause (b) and under clause (d). Under these clauses, the District Industrial Court can adjudicate upon the propriety or legality of the order of dismissal passed against an employee, that is to say, it can decide whether on the facts of the case the order passed was proper and whether it was legal or illegal i.e. contrary to the provisions of the Act, the Rules or the Standing Orders. But the power to adjudicate upon or decide these matters would not include the power to order re-instatement or direct the payment of compensation. Such orders imposing financial and other obligations and liabilities upon the employer cannot be passed in the absence of any provision in the Act empowering the Court to pass such orders. It is also not necessary for the Court to possess these powers for the purpose of deciding whether the order challenged is proper and legal. The fact that the District Industrial Court is empowered to decide whether the order of dismissal was proper and legal would not, therefore, enable it to order re-instatement of the employee dismissed or payment of compensation to him. The reason why there is no provision in the Act or in the rules empowering the Industrial Court to pass such orders evidently is that the Act provides separate machinery for obtaining relief of this kind. Sub-section (2) of section 16 of the Act states that an employee, who has been dismissed, may apply to the Labour Commissioner for reinstatement and payment of compensation for loss of wages. Sub-section (3) of the section empowers the Labour Commissioner, after such enquiry as may be prescribed, to direct that the employee shall be reinstated and/or that he should be paid compensation, in case he comes to the conclusion that the dismissal was wrongful. The Legislature has, therefore, constituted a special Tribunal under section 16 for giving relief of this kind to employees who have been wrongfully dismissed. It is not likely that the Legislature could have intended that two different

Tribunals constituted under the same Act should both have the power to entertain applications for and to grant relief of this kind.

We are, accordingly, of the opinion that the District Industrial Court, and, consequently, the State Industrial Court in appeal from an order made by the District Industrial Court on an application made under rule 36, has no power to direct reinstatement of an employee, who has been dismissed, or to order the payment of compensation to him. This view is also in accordance with that taken by my learned brother and Mudholkar, J., in *Anna Saheb* v. *The Syndicate of Nagpur*, Special Civil Application No. 70 of 1957, decided by Mudholkar and Badkas, JJ., on August 13, 1957 (unreported). In that case, the application had been made to the Industrial Court under clause (d) of rule 36 read with section 41 of the Act. Mudholkar, J., in his judgment observed: "All the same, the relief of reinstatement must be confined to those provisions which permit such a relief being granted and it cannot be regarded that reinstatement has now become a relief which could be awarded by any Tribunal and in every case of wrongful dismissal. The reinstatement being merely a creation of the statute could only be claimed by complying with the particular provisions of the statute which provide for making a reinstatement. Under the local Act not only reinstatement but compensation also could be granted by the Labour Commissioner alone under section 16. The State Industrial Court has no jurisdiction to grant either relief."

The application is, therefore, allowed. The orders passed by the District Industrial Court and the State Industrial Court are set aside and the application made by the respondent is dismissed. The rule will accordingly be made absolute. Mr. Bobde has, however, informed us that even though the petitioners have succeeded in the present application, they are willing to take back the respondent in service, provided he produces a certificate of fitness from the Civil Surgeon, Akola. There will be no order as to costs.

[IN THE PUNJAB HIGH COURT.]

MODERN TEXTILE MILLS PRIVATE LTD.

v.

STATE OF PUNJAB AND OTHERS.

Gosain and Grover, JJ.

April 11, 1958.

INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(K), 10, 33A—SCOPE OF SECTION 33A—COMPLAINT UNDER SECTION 33A—WHETHER 'INDUSTRIAL DISPUTE'—WHETHER CAN BE REFERRED TO ANOTHER TRIBUNAL.

Section 33A of the Industrial Disputes Act, 1947, only means that when an employer contravenes the provisions of section 33 of the Act during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention has got the right to make a complaint in writing to that *Tribunal and that complaint is to be adjudicated upon as if it were a dispute referred to or pending before the Tribunal. The fiction of law involved in the section cannot be taken farther than the limits prescribed in the section itself and cannot make the complaint an "industrial dispute" capable of being referred by the appropriate Government under section 10(1) of the Act to another Tribunal.*

Therefore, a complaint which has properly been made to an Industrial Tribunal under section 33A cannot, on the abolition of the Industrial Tribunal, be referred by the appropriate Government under section 10 of the Act to another Industrial Tribunal.

Civil Writs Nos. 337, 353, 388, 503 and 504 of 1956.

Bhagirath Dass for the petitioners.

L. D. Kaushal, Dy. Advocate-General and *Anand Swaroop* for the respondents.

JUDGMENT.

By means of Notification No. 6667-SLP-54/34846, dated the 10th December, 1954, industrial dispute existing between the textile mills and factories and other allied textile factories including embroidery, lace-making, printing and finishing, situated in the district of Amritsar including Chheharta on the one hand and the workers of the textile industry on the other were referred under section 10 of the Industrial Disputes Act to the Second Industrial Tribunal, Punjab, Amritsar. The dispute related to five items which were specified in the aforesaid notification. On the 18th of March, 1955, one of the items of dispute was withdrawn by means of a notification of the aforesaid date and was referred separately to the same Tribunal by means of another notification of the same date. While the disputes were pending before the aforesaid Tribunal, the Modern Textile Mills, Verka; the Kailash Textile Mills, Amritsar; Messrs. Ram Lal Gura Mal Textile Mills, Chheharta and the Indian Wollen Textile Mills, Chheharta took some action with regard to the employees in contravention of section 33 of the Act and the worker's union filed complaints to the Tribunal under section 33A of the Act. By means of two notifications No. 1788-C-LP-56/19345 and No. 1778-C-LB-56/19347 issued on the 14th of May, 1956, and appearing in the Punjab Gazette dated the 15th of May, 1956, the Punjab Government amended the previous three notifications dated the 10th of December, 1954, and 18th of March, 1955, so as to exclude the reference for adjudication of the matters in dispute concerning all textile mills and factories and other allied textile factories including embroidery, lace-making, printing and finishing, situated in the district of Amritsar, including Chheharta, except relating to the matters in dispute concerning certain factories specified in the notifications. As a result of the aforesaid modification the disputes with regard to the Indian Woollen Textile Mills, Modern Textile Mills, Kailash Textile Mills and Messrs. Ram Lal Gura Mal Textile Mills were excluded from the reference. The term of the Second Industrial Tribunal, Punjab, later came to an end with the result that the Punjab Government, by its notification dated the 28th of June, 1956, reconstituted the Second Industrial Tribunal, Punjab, Amritsar, and, on the 5th of July, 1956, issued a notification No. 4715-E-L-55/948 which provided as under:

"Under section 10(1) (c) of the Industrial Disputes Act, 1947, the Governor of Punjab is pleased to direct that the Tribunal now constituted under Notification No. 4715-C-LP-56/653, dated the 28th June, 1956, shall hear and dispose of all the references including complaints under section 33A of the said Act made to the previous Tribunal constituted under Notification No. 7444-S/5096-C-LP-55/19038 dated the 23rd July, 1955 and which have remained undisposed of on the 30th June, 1956."

The obvious effect of this notification was that the complaints which were originally made under section 33A of the Act were referred by the Punjab Government to the Industrial Tribunal as if they were "industrial disputes" capable of being referred under section 10 of the Act. The mills in respect of which the complaints had been made submitted to the Tribunal that the complaints could not be treated as industrial disputes and the Punjab Government had no jurisdiction to refer them to the Tribunal under section 10 of the Act. The Tribunal repelled the said objection and found that the complaints had been properly referred as disputes and that the Tribunal had the jurisdiction to decide the same. Five petitions have been made to this Court under article 226 of the Constitution of India and they are as under:

(1) By the Modern Textile Mills—Civil Writ No. 337 of 1956.

(2) By Messrs. Ram Lal Gura Mal Textile Mills, Chheharta—Civil Writ No. 388 of 1956.

(3) By the Kailash Textile Mills—Civil Writ No. 353 of 1956.

(4) Two petitions by the Indian Woollen Textile Mills—Civil Writs Nos. 503 and 504 of 1956.

In all these petitions same point arises for decision, namely, whether a complaint under section 33A of the Act can be treated as "industrial dispute" for the purposes of a reference under section 10 of the Act. This judgment will dispose of all the five petitions.

"Industrial dispute" is defined in section 2(k) of the Act as under:

"'Industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

It has been held that an individual dispute of one or more workers with the employers cannot fall within the definition of "industrial dispute" inasmuch as it remains only an individual dispute. If, however, the trade union or the workers' union or a majority of the workers of the employers take up the cause of the individual workers, the dispute automatically becomes an industrial dispute and is then capable of being referred under section 10 of the Act to an Industrial Tribunal. In *D. N. Banerji* v. *P. R. Mukherjee and others*, [1953] 4 F.J.R. 443, it was observed by their Lordships of the Supreme Court as under:

"The words 'industrial dispute' convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests—such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays and so on. Even with reference to a business that is carried on, we would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned as wrongful. But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when as often happens, it is taken up by the trade union of which he is a member, and there is a concerted demand by the employees for redress. Such trouble may arise in a single establishment or a factory. It may well arise also in such a manner as to cover the industry as a whole in a case where the grievance, if any, passes from the region of individual complaint into a general complaint on behalf of all the workers in the industry. Such widespread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular bnsiness becomes a large scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between the particular employer and workman."

Mr. Bhagirath Das, learned counsel for the petitioners, contends that the complaints at the most amounted only to individual disputes because they concerned individual workers on the one hand and the employers on the other. The matters covered by the complaints had never been taken up by the workers' union or trade union or even a majority of the workers of the employers and, the complaints, therefore, were nothing more than individual disputes and could not possibly fall within the definition of "industrial dispute." It is, however, contended on behalf of the respondents that section 33A of the Act specifically lays down that the complaints shall be adjudicated as if they were disputes referred to or pending before the Tribunal, and that the complaints must, therefore, be treated as industrial disputes capable of being referred under section 10 of the Act. Section 33A is in the following terms:—

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

Properly interpreted, the section only means that when the employers contravene the provisions of section 33 during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention has got the right to make a complaint in writing to *that*

Tribunal and that complaint is to be adjudicated upon as if it were a dispute referred to or pending before *the* Tribunal. The section does not, however, turn the dispute actually into an industrial dispute. The Tribunal is required to adjudicate upon the complaint as if it were a dispute referred to it or pending before it, but the fiction of law involved in this section cannot be taken farther than the limits prescribed in the section itself and cannot turn the complaint into an industrial dispute capable of being referred under section 10 of the Act. Only those disputes which are actually covered by the definition of the words "industrial dispute" as given in section 2(k) can be referred by the Government to the Tribunal under section 10 of the Act, and if any particular dispute does not fall within the ambit of the definition of the "industrial dispute" it cannot, obviously, be the subject of a reference by the Government. Complaints are only individual disputes and affect only the employees regarding whom provisions of section 33 have been contravened. There is no doubt that if a complaint is made to the Tribunal before whom the industrial dispute was previously pending and during the pendency of which the employers have acted in contravention of section 33, that particular Tribunal has to adjudicate upon the complaint as if it were a dispute referred to or pending before *it*. This, however, does not mean that the complaint automatically becomes an industrial dispute capable of being referred by the Government under section 10 of the Act to any Industrial Tribunal. We are, therefore, of the opinion that the references made by the Government in respect of the petitioners in the five cases covered by this judgment are beyond the jurisdiction of the Government and the Tribunal has no power to hear and decide the same.

In the result, we accept all the five petitions and issue a writ in the nature of *certiorari* quashing the impugned references made to the Tribunal as also to the entire proceedings taken or being taken by the Tribunal in pursuance of the said references. The respondents will pay the petitioners' costs. Counsel's fee Rs. 100 in each case.

[IN THE PUNJAB HIGH COURT.]

AERON STEEL ROLLING MILLS
v.
STATE OF PUNJAB AND OTHERS.

Bishan Narain, J.

April 11, 1958.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33B—ORDER TRANSFERRING PROCEEDINGS FROM ONE TRIBUNAL TO ANOTHER—ORDER NOT STATING REASONS FOR TRANSFER—WHETHER VALID.

Under section 33B of the Industrial Disputes Act, 1947, (introduced by the Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956), the appropriate Government is empowered to transfer any proceedings from one Industrial Tribunal to another by an order in writing and for reasons to be stated therein. On the question whether an order transferring proceedings from one Tribunal to another under this section which did not state the reasons for the transfer was valid, Held, *that the direction that the reasons should be stated in the order was only directory and that its non-observance would not invalidate the order.*

Civil Writ No. 1112 of 1957.

Bhagirath Dass for the petitioner.

Anand Swaroop for the respondent.

JUDGMENT.

The industrial dispute between the Aeron Steel Rolling Mills, Jullundur City, and its workmen was referred to the Second Industrial Tribunal on 10th March, 1956. This reference was still pending when the Industrial Disputes Act, 1947, was amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (XXXVI of 1956). The Amending Act came into force on 28th August, 1956, and introduced a new section 33B which gave the Government power to transfer certain proceedings from one Tribunal to another. Acting under this new section the Government by order dated 31st October, 1957, withdrew all cases then pending before the Second Tribunal and transferred them all to the Industrial Tribunal, Punjab, constituted by notification dated 4th June, 1957, under the Act as it stood after its amendment in 1956. The petitioning mill feels aggrieved at this transfer and has filed this petition under article 226 of the Constitution challenging the validity of the order of transfer.

The order of the Government reads:

"In exercise of the powers conferred by sub-section (1) of section 33B of the Industrial Disputes Act, 1947, the Governor of Punjab is pleased to withdraw all the references pending before the Second Industrial Tribunal, Punjab, Amritsar, and to transfer the same for adjudication and disposal to the Industrial Tribunal, Punjab, Jullundur, constituted vide Notification No. 7183-C-Lab. 57 11196 dated the 4th of June, 1957, from the stage it had been left by the previous Tribunal. This also includes all the cases under sections 33 and 33-A of the Industrial Disputes Act, 1947."

The only objection raised by the learned counsel for the petitioning mill is that it does not give any reason for the transfer and thus violates the provisions of section 33B of the Act. The learned counsel also urged that by this order his clients are seriously prejudiced as proceedings by the new Tribunal are to be taken from the stage they were left by the previous Tribunal.

Now, there was no specific provision permitting transfer of a reference from one Tribunal to another Tribunal in the 1947 Act, and yet the Supreme Court in, *Minerva Mills Limited* v. *Workers of the Minerva Mills* [1953] 5 F.J.R. 164, held that the Government could withdraw the dispute referred to a Tribunal and refer it to another Tribunal. This is all that has been done in the present case. It is true that in that case it was left open to the new Tribunal to start proceedings *de novo*, but that circumstance does not affect the power of the Government to withdraw the case from one Tribunal and refer it to another Tribunal. After the amendment of the Act this power has been specifically given to the Government under section 33B, although in section 30 it has been left open to the Government to leave the case with the old Tribunal and not to transfer it. In the present case, the Government has chosen to transfer the cases to a Tribunal constituted in accordance with the provisions of section 7A of the Act, but, in the order it has given no reason for adopting this course.

It has been urged on behalf of the petitioning-mill that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all, and reliance has been placed on *Nazir Ahmed* v. *King-Emperor*, A.I.R. 1936 P.C. 253, and *Cutler* v. *Wandsworth Stadium Ld.* 1949 A.C. 398, 407. The contention is that the order of transfer could be made only for reasons which must be stated in the order, and if no such reason is given, then the order is invalid. The decision on the point raised depends on the determination whether this direction is merely directory or is mandatory and its non-observance would invalidate the order. Now, there is no doubt that the rule enunciated by the learned counsel is a general rule, but Lord Simonds in *Cutler's case* (1949 A.C. 398) has observed that this general rule is subject to exceptions and that the answer to the question depends on a consideration of the whole Act and the circumstances including the pre-existing law in which it was enacted. The matter is expressed by Maxwell in these words (10th Edn. at p. 376):

"It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and, when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature."

Now the intention of the Legislature is to enable the Government to transfer cases from one Tribunal or from one type of Tribunal to another In the present case all the cases which were pending before one Tribunal have been transferred to another Tribunal, and it is not that one particular case has been transferred. In such circumstances it is not clear to me way the omission to give reasons for transfer of the case should invalidate the order of transfer. Moreover it is well established that statutes pertaining to official acts should be construed as directory. Crawford in his *Interpretation of Statutes* has stated the law in these words:

"As a general rule, a statute which regulates the manner in which public officials shall exercise the power vested in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity, order, and convenience, and neither public nor private rights will be injured or impaired thereby. If the statute is negative in form, or if nothing is stated regarding the consequences or effect of non-compliance, the indication is all the stronger that it should not be considered mandatory."

The power of transfer is obviously in public interest and omission to give reasons therefor does not impair any public or private right. Section 33B does not lay down that the order of transfer will not be effective if reasons therefor are not given. In this particular case, the transferee Tribunal has been directed to start proceedings from the stage left by the previous Tribunal. I cannot see how this circumstance

adversely affects the employers unless it be that they are anxious to delay decision by the Tribunal. The order in question obviously will result in saving time and expense of the parties.

For all these reasons I am of the opinion that the omission to give reasons in the order of transfer does not invalidate that order. The petition, therefore, fails and is dismissed with costs. Counsel's fees Rs. 100.

[IN THE BOMBAY HIGH COURT.]

JAIRAM SONU
v.
NEW INDIA RAYON MILL CO., LTD., AND OTHERS.

Dixit and Badkas, JJ.

October 30, 1957.

STRIKE—PARTICIPATION IN ILLEGAL STRIKE—WHETHER BREAKS CONTINUITY OF SERVICE.

RETRENCHMENT—COMPENSATION—"CONTINUOUS SERVICE" AND "COMPLETED YEAR OF SERVICE", MEANINGS OF—QUANTUM OF COMPENSATION—DETERMINATION OF—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2 (eee), 25B, 25C, AND 25F.

CONSTITUTION OF INDIA, ARTICLE 227—PETITION UNDER—DELAY IN FILING PETITION—NORMAL RULE OF DISMISSAL—PRESENCE OF EXCEPTIONAL CIRCUMSTANCES.

Once an employee is in the service of an employer, the employee continues to be in service until he is dismissed or discharged. When an employee takes part in an illegal strike the employee is in the service of the employer and the fact that he has taken part in an illegal strike will not put an end to, or, cause a break in, his service.

The effect of the provisions of Chapter V-A of the Industrial Disputes Act, 1947, in respect of retrenchment compensation is that (a) an employee who has been in "continuous service" as defined as section 2(eee) of the Act for not less than a year becomes entitled to retrenchment compensation and (b) the quantum of the compensation is 15 days average pay for every completed year of service (any year in which the workman has worked for 240 days or over being taken as a completed year of service).

The rule that a petition under article 227 of the Constitution should be filed with the utmost expedition is not an absolute rule and petitions should *not be dismissed* in limine *on the ground of delay where exceptional circumstance exists and no prejudice is caused by the delay to the other parties.*

Special Civil Application No. 1816 of 1957.

N. V. Phadke and *M. V. Paranjpe* for the petitioner.

R. J. Kolah with *B. G. Thakore* for the respondents.

JUDGMENT.

DIXIT, J.—This Special Civil Application raises a short and interesting question under section 25F of the Industrial Disputes Act, 1947. The facts of the case, in which the question arises, are briefly these.

The petitioner was in service of the respondent company from January 1945 to the date of his retrenchment, which occurred on 15th October, 1954. There is no dispute that the petitioner is a workman within the meaning of the Industrial Disputes Act, 1947. The respondent company is a factory and is responsible for the payment of wages to the petitioner under section 3 of the Payment of Wages Act, 1936. While the petitioner was in service of the respondent company, the petitioner was given a notice on 31st August, 1954, purporting to be a notice under section 25F of the Act, informing the petitioner that the respondent company desired to close the department in which the petitioner was working; and that the services of the petitioner were proposed to be terminated with effect from 1st October 1954. Certain disputes between the workmen of the respondent company and the company were, at the material time, pending before the Labour Appellate Tribunal; so that the respondent company made an application under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, in order to obtain permission of the Tribunal for effecting the proposed retrenchment, as required by law. The learned members of the Tribunal granted the permission asked for; and the petitioner was retrenched with effect from 15th October, 1954.

The petitioner, by his present application, then claimed an amount of Rs. 712-8-0, being the amount of compensation payable to him on the basis of 9 years and 10½ months of completed service, under section 25F of the Act. The respondent company refused to pay the amount, but offered only a sum of Rs. 203 by way of retrenchment compensation. The petitioner, in his application before the Payment of Wages Authority at Bombay, claimed to recover a sum of Rs. 509-8-0, being the difference between the amount of compensation payable to him under section 25F and the amount actually offered to the petitioner by the respondent company. The Authority under the Payment of Wages Act

dismissed the petitioner's application; and upon an appeal, made to the Court of Small Causes at Bombay, a learned judge of that Court dismissed the petitioner's application; and it is the correctness of this order, which Mr. Phādke, on behalf of the petitioner, has challenged in this petition under article 227.

On this petition, two questions arise for decision. The first question is whether by reason of the petitioner having taken part in a strike between 6th October, 1951, and 24th November, 1951, the petitioner was not, during that period, in service of the respondent company; and the second question, which arises is whether the petitioner is entitled to the amount of compensation claimed by him. In order to appreciate these two questions, it is necessary to mention some material facts. There is no dispute that the petitioner joined the service of the respondent company in January of 1945. There is also no dispute that the petitioner was retrenched with effect from 15th October, 1954. There is again no dispute that there was a strike between 6th October, 1951, and 24th November, 1951. While, according to the petitioner, the strike was not illegal, according to the respondent company, the strike was illegal; and for the purposes of this case, I will assume that the strike was illegal. Moreover, learned counsel, appearing for the petitioner, has proceeded upon the footing that the strike between these two dates was illegal. The learned Authority under the Payment of Wages Act took the view—and we think rightly—that assuming that the petitioner took part in the illegal strike between 6th October, 1951, and 24th November, 1951, there was no break in the service of the petitioner and the strike notwithstanding, the petitioner continued to be in the service of the respondent company. This view was repelled by the learned Judge of the Small Causes Court, who took the view that in view of the fact that the petitioner took part in an illegal strike, the petitioner was not in continuous service of the respondent company; and the first question, which we have to consider, is which of these two views is right. Now, there can be, I think, no dispute about the fact that once an employee is in the service of a company, the employee would continue to be in service until he is dismissed or discharged. When a strike takes place and an employee takes part in an illegal strike, at the date when the strike takes place, the employee is in the service of the company, and unless an employee is in the service of the company, it is inconceivable that he will take part in a strike while he is not in the service of the company. Therefore, the petitioner was in service of the company between January, 1945 and October, 1954, unless we agree with the view of the learned Judge of the Small Causes Court that between 6th October, 1951, and 24th November, 1951, the petitioner was not in service of the company, because he took part in an illegal strike. Now, the learned Judge, after quoting section 2(eee) of the Act said in the course of his judgment:

"It follows, therefore, that when a workman takes part in an illegal strike the 'continuity' of his service comes to an end and he must be deemed to be re-employed after the period of the illegal strike for the purpose of retrenchment compensation."

With respect, it is difficult to accept as sound this reasoning. Taking part in an illegal strike amounts to misconduct on the part of an employee and for misconduct an employee invites an order of dismissal; but unless an employee is dismissed from service, it is difficult to see how there can be no continuity of service so far as an employee is concerned. The learned Judge says that the applicant must be deemed to be re-employed. This would imply that there was an order of dismissal made by the respondent company and the pettioner was re-employed upon a fresh employment after the dismissal. In this case, there is no suggestion that the petitioner was at any time dismissed from service. Actually, the petitioner was retrenched on 15th October, 1954; and, in our view, the learned Judge was not right in concluding the the continuity of the service of the petitioner was broken by reason of his having taken part in an illegal strike. In this connection, Mr. Phadke, appearing for the petitioner, has referred to sections 35, 36, 37, 38 and 40 of the Bombay Industrial Relations Act; and has also pointed out a standing order at item No. 21, which gives several categories of acts of misconduct; and has further referred to a standing order at item No. 22, which is standing order dealing with the question of dismissal. It is clear, therefore, and there can be no doubt that the petitioner continued in the service of the respondent company from January of 1945 to 15th October, 1954. Further, the learned Judge has, in our view, wrongly relied upon the expression "continuous service", as defined in section 2(eee) for the purpose of holding that the petitioner was not in continuous service of the respondent company. I shall have occasion to deal with the expression "continuous service" as occurring in section 2(eee) a little later. For the moment, it is sufficient to observe that "continuous service", referred to in section 2(eee) is for the purpose of understanding that expression as occurring in section 25B and section 25F of the Act. In our view, therefore, the learned Authority was right in concluding that notwithstanding the strike, which I shall assume to be an illegal strike, the petitioner continued to be in the service of the respondent company from January 1945 to 15th October, 1954; and that the learned Judge was wrong in holding that by reason of the petitioner having taken part in an illegal strike, there was a break in the continuity of service of the petitioner.

The second question is as to what exactly are the rights of the petitioners as regards retrenchment compensation. In order to understand this question, it is necessary to refer to three sections of the Act. The first of these is section 25F, which, so far as is material, provides that no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until; (b) the workman has been paid, at the time of retrenchment, compensation, which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months.

To begin with, section 25F first mentions certain conditions, which are conditions precedent to the retrenchment of a workman; and those conditions are set out in clause (a), clause (b) and clause (c) of that section. The condition with which we are concerned in this proceeding is the condition mentioned in clause (b). Then, section 25F also refers to the basis of the right on which the claim of a workman rests and the basis of the right to claim retrenchment compensation depends upon the workman proving that he was in continuous service for not less than one year. Section 25F(b) also shows as to what a workmon is to get by way of retrenchment compensation. Now, the expression "continuous service" is defined in section 2(eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not to due to any fault on the part of the workman. It is obvious that the definition of the expression "continuous service" as occurring in section 2 (eee) consists of two parts. The first part is the meaning of the expression "continuous service" and the second part is an inclusive definition. In other words, in order that service may be continuous, it must be uninterrupted. That is the first part of the definition. The second part of the definition says that notwithstanding an interruption in the continuity of service, the service may well be uninterrupted when, for example, the service is interrupted on account of sickness, or on account of authorized leave, or on account of an accident, or on account of a strike which is not illegal, or on account of a lock-out, or on account of a cessation of work which is not due to any fault on the part of the workman. In the second category of cases, notwithstanding the fact that the service is interrupted, it is still continuous service, because the categories mentioned in the latter part of the definition, are categories as to which the section intends that the service should be continuous and, therefore, should be uninterrupted, Then, the other section, which remains to be noticed, is section 25B, and indeed, one has to read section 25F and section 25B together. As already mentioned, the conditions precedent to retrenchment of workmen are indicated in section 25F, and one of the conditions precedent to retrenchment of workmen is mentioned in clause (b); and that condition is that the workman must be paid, at the time of retrenchment, compensation, which shall be equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months. Therefore, a workman would be entitled to compensation, provided the workman has, to his credit, a completed year of service or any part thereof in excess of six months and what the workman is entitled to get is the amount equivalent to 15 days' average pay; so that on section 25F, it is clear that the basis of the workman's claim rests upon the workman being in continuous service for not less than one year. The moment a workman shows that he has been in continuous service for not less than one year, he forthwith becomes entitled to be paid the amount of retrenchment compensation on the basis indicated in clause (b) of section 25F. But this is not all. A workman is entitled also to some other concession and that concession is indicated in section 25B, which provides that, for the purposes of sections 25C and 25F, a workman, who, during a period of twelve calendar months, has, actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry. It is obvious that section 25B gives a sort of artificial definition of the expression "every completed year" because in section 25F(b) it is suggested that it should be service of one completed year. It is sufficient for the purpose of section 25F, read with section 25B, that if a workman has worked for not less than two hundred and forty days, he should be deemed to have done every completed year of service. It is clear, therefore, that to the extent to which the law permits a workman to get retrenchment compensation upon the basis of his working for two hundred and forty days, it is really an amplification of section 25F, clause (b). The purpose underlying section 25F is, in my view clear. The principle is that there must be a continuity of service, but, continuity of service does not necessarily mean that a workman must have one completed year of service in every year. It is sufficient that continuity of service exists and arises even if a workman works for two hundred and forty days in any particular year of 12 calendar months. There is evidently a reason for giving retrenchment compensation. When an employee is retrenched, he loses his employment. Though he is willing to continue in service, the employer terminates the employment of a workman for reasons of his own; bu tthe qualification is that to claim retrenchment compensation, an employee's service must be continuous and the service should be continuous as indicated in section 25B; and where a workman works for two hundred and forty days, it is still, continuous service for the purpose of section 25F. There can be no doubt that the Industrial Disputes Act is a piece of benevolent legislation. If a workman is retrenched, it is possible that he may not find immediate employment, and he would be inviting hardship without any fault of his own. In order to meet such a contingency, section 25F has provided for payment of retrenchment compensation; and once the service of a workman is continuous, as I have already stated above, there can be no question that he would be entitled to the payment of retrenchment compensation. In other words, if a workman establishes that he has, begin with, put in continuous service for not less than one year, he would forth with be entitled to claim retrenchment compensation for every completed year of service and this would be so notwithstanding the fact that, in any particular calendar year, he has worked only for two hundred and forty days.

Now, the view, which prevailed with the Authority under the Payment of Wages Act, was something different. The Authority considered that a workman would not be entitled to the payment of retrenchment compensation if the workman has not done service for every completed year. In saying this, the learned authority has ignored the effect of section 25B, and, in our opinion, the learned Judge of the Small Causes Court was right in holding that the view of the learned Authority did not commend itself to him. But the learned Judge said that even so, the petitioner was not entitled to payment of retrenchment compensation for the period prior to the date when the strike took place. In other words, what he said was that although the petitioner would be entitled to retrenchment compensation as from 24th November, 1951, he would not be entitled to retrenchment compensation prior to the date of the strike, and this is because of the view which he took that, on account of the illegal strike, there was a break in the continuity of the service of the petitioner. As we have not accepted the view of the learned Judge as correct, we must hold that the petitioner is entitled to the payment of retrenchment compensation not merely from 24th November, 1951, but for the entire period commencing from January 1945 to 15th October 1954. In order, however, to be entitled to payment of retrenchment compensation for that period, a workman will have to establish that he has worked for at least two hundred and forty days in a calendar year; and on this finding, it seems to us that the order of the learned Judge would have to be set aside.

If these were the only questions arising in this application, there was no difficulty in making an order in favour of the petitioner. But, Mr. R. J. Kolah, appearing for the respondent company, raised an important question of practice, which he took up by way of a preliminary objection, and the question which he raised was that as the petitioner has not come up to this Court for relief under article 227 as expeditiously as possible, it would not be right to grant the petitioner relief under article 227. As this was a preliminary objection, it was in the nature of things, really the first question for determination, before dealing with the merits of the applicant's contention. But I have perhaps deliberately reversed the process of considering the objection, raised on behalf of the respondent company, because, in order to consider the validity of the objection, it is perhaps necessary also to appreciate the case of the applicant on its merits; and as the claim of the petitioner on the merits succeeds, we have now to consider whether we should uphold the preliminary objection. In order to understand this objection, a few dates would be relevant. The date of the order of the learned Authority was 11th July, 1955; the date of the order made on appeal was 18th January, 1957, and the present petition under article 227 was filed on 17th June, 1957. Speaking broadly, the petition is, therefore, filed after about five months from the date of the order; and Mr. Kolah's objection is that inasmuch as the petitioner has come up for relief under article 227 after considerable delay, he is entitled to no relief under article 227. Now, the generally accepted principle, as regards this question, is that a party has to come up for relief as quickly as possible. But this is too elastic to admit of any precise period within which an applicant is required to prefer his application. If a period of five months is the period after which the applicant has come up under article 227, it is evident that the petitioner has not come up as quickly as he should have done. But does it follow, because he has not come up as quickly as possible, that therefore this application under article 227 should fail upon that ground? Just as Mr. Kolah has raised an important question of practice, Mr. Phadke, appearing for the applicant, has raised a question of principle. He says that if a person is entitled to relief either under article 226 or article 227, it would not only be unfair but also inequitable if his application is thrown out merely on the ground of delay. Now, it is evident that there is no rule of limitation fixed for the preferring of this application. Indeed, such a rule cannot be fixed, because, this right which is an important right, is given to a party under article 227 of the Constitution. Article 227, in terms, does not provide for any rule of limitation. But, as I pointed out, the generally accepted rule is that a party must come to the Court as expeditiously as possible. Now, in this case, if the question has to be decided merely by the length of time, I should have no hesitation in holding that this application should be dismissed *in limine* on account of delay. But, there are other considerations which induce us not to adopt that course, and there are two principal reasons for not adopting that course. What happened was really this. Immediately after the order in appeal was pronounced, an application for a certified copy was put in on the same day, that is, on 18th January, 1957; charges for obtaining a certified copy were paid on 30th January, 1957; the certified copy was ready on 1st February, 1957. This is, it is evident, with utmost expedition. But what follows is nothing but dilatory. The copy was not received until 5th March, 1957. Now, if a certified copy was ready on 1st February, 1957, it should not be difficult for a party to obtain the copy within a short time and it should not take as much as a month and a little more to take charge of a certified copy. But the petitioner has explained the reasons as to why there was delay in making this application. In the first place, he points out in the affidavit made by Sowani that he was appointed as an election agent by one Shenoy, who had on 29th January, 1957, filed a nomination paper for election to the Bombay Legislative Assembly from the Parel constituency. Accordingly, he was entrusted with the duties as an election agent, and this is how the affidavit puts it :

> "The new responsibility was so heavy that I had to request the office of my Union that I should be relieved from my routine work as the Secretary until the election was over. Accordingly I was relieved."

It is important to bear in mind that Sowani has filed this application on behalf of the workman and in his capacity as the Secretary of the Mill Mazdoor Sabha. Being busy with the election, the affidavit goes on to say that the Secretary appointed one Shri Gupte in order to look after the obtaining of the copy from the office of the Small Causes Court. Now, Gupte has not put in an affidavit stating that he was entrusted with this work, but Sowani points out that about this time the election campaign was in full swing, and he did not go to the office of the Small Causes Court, and when he went to the office of the Small Causes Court on March 5, 1957, he got a certified copy of the decision given by the Small Causes Court. According to Sowani, the elections were over on 11th March, and the counting of votes took place on 12th March, 1957. Now, it may be urged that as soon as the elections were over and the counting had been done on the 12th March, 1957, it should not have been difficult for Sowani to obtain legal advice and to file a petition immediately thereafter. But Sowani says, in the course of his affidavit, that as election agent, he had to prepare certain papers, that is, bills, and vouchers had to be collected and the accounts had to be submitted to the Returning Officer, and this was to be done on or about 11th April, 1957. Sowani says further, that he happened to meet Mr. N. V. Phadke on or about 14th April, 1957, and he enquired as to what his advice would be in the case in question. He says that on April 18, he handed over the certified copy to Mr. N. V. Phadke, who, upon a perusal of the order, advised that a petition should be filed in the High Court. The summer vacation of the High Court commenced on 22nd April, 1957, and the last date on which a petition could have been accepted was 20th April, 1957. There should have been no difficulty to file a petition on or before 20th April, 1957; but the petition came to be filed on 17th June, 1957, which was the reopening date of the High Court, after the summer vacation. If one has regard to the course of events, which I have described above, one cannot but feel that there was lack of diligence on the part of Sowani; and there would have been little difficulty in preferring the application which could have been as well done either in March or April, 1957. But, one has to remember the course of events in the light of what is stated in the affidavit. If I understand the affidavit correctly, it seems to me that the weight of the election campaign was so much upon Sowani that he had little or no time to look after matters which immediately concerned him. And one has to put himself into his position to realise that it is possible that he could not give sufficient attention to these matters which he should have ordinarily done. Now, there is a question of principle. Sowani is the Secretary of the Mill Mazdoor Union. The person affected by the order is a workman and presumbly, a poor workman. The question, therefore, is whether this petition of a poor workman should be thrown out *in limine* on the only ground that this petition is not filed with utmost expedition. If this was a private dispute, the position would have been different. There is no excuse for a person saying that he had no time to look after his own business; and if this petition had raised a question merely of the rights of a private party, I would have at least no hesitation in throwing out this petition as not being filed with utmost expedition. But, there are other considerations; one of the consideration is that this proceeding is being fought as a test case, which suggests that cases similar to this would arise for consideration before the Authorities or the Courts. Another reason is given in para. 12 of the affidavit, which says:

"Because of this decison of the Small Causes Court, an unfortunate situation has arisen with regard to the workers' right to receive compensation on retrenchment. There are several matters pending before the Authority under the Payment of Wages Act, awaiting the decision of this case." As far as I have been able to gather, there is no

affirmative denial of this averment; so that this proceeding is a sort of a test case, and the decision given in this case, will govern others of a similar nature. This is a strong reason, which would induce us, not to throw out this petition on the only ground that the petitioner has not come up with utmost expedition. The question raised by this petition is one of general importance; and this again is a consideration which should weigh with us an deciding whether to throw out this petition *in limine* on the ground of delay or laches. In the determination of this case also arises an important question in the administration of industrial law. Sowani, if I may put it without exaggeration, was himself engaged in public activities; and, if these are the considerations, we are disposed not to dismiss the petition on the ground that this petition has not been filed with utmost expedition.

Mr. R. J. Kolah, appearing for the respondent, has referred to a decision of this Court, and he says that in circumstances similiar to those occurring in this case, an application had been dismissed on the ground of laches on the part of the petitioner. The decision is in *Mill Mazdoor Sabha* v. *New Mahalaxmi Silk Mills Ltd.* (1955) Special Civil Application No. 2758 of 1954, decided by Chagla, C. J., and Tendolkar, J., on 23rd February, 1955 (unreported) and in that case it was observed as follows:

"It is necessary once again to emphasize the fact that if a petitioner seeks relief either under article 226 or 227 of the Constitution, he must show the utmost diligence and must approach this Court as expeditiously as possible. It is perfectly true that there is no limitation laid down by any law for the presentation of a petition under article 226 or article 227, It is equally true that in proper cases the Court would permit a petitioner to approach this Court after a long lapse of time. But ordinarily when there are no exceptional circumstances, any undue delay would be sufficient to disentitle a petitioner from obtaining relief under article 226 or article 227." So that the filing of a petition with the utmost expedition is not an absolute rule. Exceptional circumstances may arise, where, notwithstanding the delay, it would be open to the Court to entertain a petition and deal with the matter on its merits. We think that the present is a case in which we should accept the principle that there are exceptional circumstances in the case, and we should, therefore, not throw out this petition on the only ground of delay. In the first place, as I have already said, there is no rule of limitation as such. In the second place, the question of delay may be considered in one of two ways. It may happen that notwithstanding delay, there is no alteration in the position of the opposite party. Cases may also arise wherein, by reason of delay, the position of the opposite party may well be affected. In the latter class of cases, the Court may enforce the rule of expedition very strictly. But, where there is no question of the other side being prejudiced one way or the other, it is, indeed, a salutary rule that a petition under article 227 should not be dismissed *in limine* on the only ground of delay, if there are present exceptional circumstances in the case. On this ground, I think, we are not disposed to agree with the contention of Mr. R. J. Kolah that on the facts of this particular case we should reject the application as not having been filed with the utmost expedition.

But Mr. Kolah has raised a further point. He contends that upon the construction of section 25F two views may be possible; and if two views are possible it would not be right for this Court to interfere with the order of the Court below under article 227 of the Constitution. In this connection, he relies upon a decision of this Court reported is *Batuk K. Vyas* v. *Salim M. Merchant*, [1952] 4 F.J.R. 471. Paragraph 2 of the head-note is as follows:

"The mere fact that two views are possible on a question of law does not make the decision of a Tribunal with jurisdiction bad on the ground that it has erred in law and the error is apparent on the face of the record. Only that error will be corrected by the High Court which is clearly apparent on the face of the record and which does not become apparent only by a process of examination or argument."

With respect, the principle could not have been stated with greater clarity. But this case was referred to in a decision of the Supreme Court in *Hari Vishnu Kamath* v. *Syed Ahmad Ishaque*, [1955] 7 F.J.R. 521 With regard to the writ of *certiorari*, their Lordships of the Supreme Court said at page 532 of the report:

"It may therefore be taken as settled that a writ of *certiorari* could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C. J., in *Batuk* v. *Surat Municipality*, [1952] 4 F.J.R. 471, that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to estabish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case." So that the principle as to whether an error is apparent on the face of the record is left to be determined on the facts of each case, and, as we read the order made by the learned Judge of the Small Cause Court, we have no hesitation in saying that he was wrong in taking the view that a break is occasioned in the continuity of service of a workman by his taking part in an illegal strike. One has only to read his reasoning to realise that it cannot be supported. In our view, therefore, while we are in respectful agreement with the principle laid down in *Batuk* v. *Surat Municipality*, [1952] 4 F.J.R. 471, we must follow the principle laid down in a case decided by the Supreme Court, namely, *Hari Vishnu Kamath's* case. We are not, therefore, satisfied that this ground is valid and should prevail.

There will, therefore, be an order in favour of the applicant for a sum of Rs. 404.50 nP. It may be pointed out that there is no dispute about the correctness of this amount, and this is an agreed amount between the parties.

The result is that this application will be allowed. The rule will be made absolute. The order of the learned Judge of the Small Causes Court dated 18th January, 1957, will be set aside.

The question of costs remains and Mr. Thakore, for the respondent company, says that as the petition has been filed after some considerable delay, the petitioner will not be entitled to the costs of this application. Mr. Phadke, appearing for the petitioner, on the other hand, says that as the applicant succeeds, the usual rule must follow, namely, costs must follow the event. We, however, think that there has been delay in this case; but we have exercised our jurisdiction under article 227 because we thought that exceptional circumstances are present in this case. We think that the fair order to make in this petition would be that there will be no order as to costs.

[IN THE PUNJAB HIGH COURT.]

SHORILAL

v.

SECOND INDUSTRIAL TRIBUNAL, PUNJAB AND ANOTHER.

Gosain, J.

April 10, 1958.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10(1)(c)—REFERENCE OF DISPUTE TO INDUSTRIAL TRIBUNAL—REFERENCE OF DISPUTE AS TO RIGHTS OF WORKMEN ON CLOSURE OF INDUSTRY—WHETHER TRIBUNAL CAN GO INTO BONA FIDES OF CLOSURE.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(k)—'INDUSTRIAL DISPUTE'—MEANING OF—DISPUTE AS TO RIGHTS OF WORKMEN ON CLOSURE OF INDUSTRY—WHETHER DISPUTE ARISING AFTER CLOSURE—WHETHER 'INDUSTRIAL DISPUTE'.

Where the appropriate Government refers to an Industrial Tribunal under section 10(1)(c) of the Industrial Disputes Act, 1947, the question of the benefits to which certain workmen are entitled on the closure of an industry, it cannot be assumed either that the Government has proceeded on the basis that the closure is bona fide or that the Industrial Tribunal is precluded from going into the bona fides of the closure.

The rights of the workmen in respect of the closure of a business must be deemed to arise simultaneously with the closure and not after the closure. Therefore, disputes relating to such rights must be held to have arisen when the industry was in existence and fall within the definition of 'industrial dispute' in section 2(k) of the Act.

PIPRAICH SUGAR MILLS *v.* PIPRAICH SUGAR MILLS MAZDOOR UNION [1957] II F.J.R. 262 *applied.*

Civil Writ No. 992 of 1957.

Bhagirath Dass for the petitioner.

Anand Swaroop for the respondents.

JUDGMENT.

The facts giving rise to this case are as under: Messrs. Raj Krishna Textile Mills were carrying on the business of manufacturing textiles at Amritsar. On the 17th January, 1956, they served a notice on all the workmen of the concern that the Mill would be closed with effect from the 24th February, 1956. It appears that the workmen of the Mill sent letters to the employers that the proposed closure was not *bona fide* and was only a camouflage to deprive the workmen of their just rights. The Mill stopped working on 24th February, 1956, and the employees laid claims for payment of gratuity and wages etc., etc. An industrial dispute having thus arisen, the Punjab Government made a reference of the matter to the Second Industrial Tribunal, Punjab, by means of a notification on 23rd August 1956. The dispute mentioned in the said notification was as under:

"Whether the workmen of Raj Krishna Textile Mills, Amritsar, as per list attached are entitled to gratuity and other benefits admissible under the Industrial Disputes (Amendment) Act, 1953, consequent upon the closure of the said factory and if so, how much is each workman entitled to."

The list attached to the same contains the names of sixteen workers. When the proceedings were taken up by the Tribunal, the Mill pleaded that the Punjab Government had no jurisdiction to refer the aforesaid dispute as the Mill had closed on 24th February 1956, and the point referred for adjudication could not be termed an industrial dispute within the meaning of the words "industrial dispute" as defined in the Industrial Disputes Act, 1947. The main contention was that the industry had ceased to exist on 24th February, 1956, and the dispute referred had arisen after the said date. The Tribunal did not agree with the said contention and gave an award giving to the workmen certain reliefs as specified in the same. Shri Shori Lal, ex-partner of the employer firm, has come up to this Court under ariticle 226 of the Constitution of India praying for the issuance of a writ in the nature of *certiorari* for quashing the proceedings resulting in the award dated 5th September, 1957 and a writ in the nature of *mandamus* restraining the State of Punjab from enforcing the said award.

The contentions raised in the petition are materially the same which were raised before the Tribunal except that the award of the Tribunal has also been challenged on the ground that the Tribunal had no jurisdiction to decide that the closure of the Mill was not *bona fide*. On behalf of the petitioner it has vehemently been contended by Mr. Bhagirath Das that the Punjab Government accepted the position that the Mill had been closed *bona fide*, and the only question referred by them was, "whether the workmen were entitled to gratuity and other benefits *consequent upon the closure of the said factory?*" Mr. Anand Swaroop, on behalf of the respondents, contended that the Punjab Government never accepted that the closure was *bona fide* and that the words "consequent upon the closure of the said factory" only mean consequent upon the alleged closure of the said factory. In my opinion, the interpretation put upon the notification by Mr. Bhagirath Das cannot possibly be accepted. The notification does not say whether the closure was *bona fide* or *mala fide*. According to the affidavit filed by the Labour Commissioner, Punjab, the workmen had served notices on the management on 9th February, 1956, and 17th February, 1956, challenging the *bona fides* of the closure. Copies of the said notices have been produced by the Labour Commissioner in this Court as annexures R. 2 and R. 3 to the affidavit. In the said notices the employees challenged the *bona fides* of the closure of the said factory and made claims for their wages and gratutity etc. It is reasonable to presume that the Punjab Government referred the dispute to the Tribunal in the light of R. 2 and R. 3. If the Government had accepted that the closure was *bona fide*, there was no question of making any reference to the Tribunal, because according to the law then in force a claim for gratuity etc., could not have been made by the workmen on the *bona fide* closure of the factory. The word 'closure' used in the notification is not preceded by the word '*bona fide*' or '*mala fide*', and it is obvious that the Government referred the dispute as a whole to the Tribunal and it was for the Tribunal to decide whether the alleged closure was *bona fide* or *mala fide* and the Tribunal was in my opinion justified in going into this matter. On the above finding arrived at by me, it is not necessary to go into the second question whether the industry had ceased to exist before the present dispute arose. It was for the Tribunal to decide whether the industry ceased to exist by the *bona fide* closure of the Mill. If the closure is not *bona fide* the industry must be deemed to be existing and the dispute referred by the Government must be deemed to be an industrial dispute. On the merits of the second question, however, I am of the opinion that the dispute referred by the Punjab Government must be held to be an industrial dispute because it did not arise after the closure of the Mill. The rights of the workmen in respect of the closure must be deemed to have arisen simultaneously with the closure and not after the same. They are in fact disputes so intimately connected with the closure that they cannot be said to have arisen after the closure had come into existence. In a case arising under the Uttar Pradesh Industrial Disputes Act, the provisions of which are analogous to those of the Industrial Disputes Act, it has been held by their Lordships of the Supreme Court in *Pipraich Sugar Mills Limited* v. *Pipraich Sugar Mills Mazdoor Union*, [1957] 11 F.J.R. 262, that the power of the State to make a reference under section 3 of the Uttar Pradesh Industrial Disputes Act must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business.

In the result, I dismiss the petition with costs. Counsel's fee Rs. 100.

[IN THE BOMBAY HIGH COURT.]

STATE OF BOMBAY

v.

KESHAVLAL AMRITLAL OZA AND ANOTHER.

Mudholkar, J.

November 21, 1957.

MINES ACT, 1952, SECTIONS 23(2) AND 79—PROSECUTION FOR BREACH OF PROVISIONS OF ACT—LIMITATION—INSPECTOR ACQUIRING KNOWLEDGE OF BREACH DURING ENQUIRY—COMMENCEMENT OF LIMITATION—DELAY IN HOLDING ENQUIRY—EFFECT.

Section 79 of the Mines Act, 1952, which lays down the period of limitation within which a complaint should be laid for a prosecution under the Act, is not governed by section 23(2) of the Act which lays down the time within which an enquiry into an accident should be commenced. Where an Inspector comes to know of the breach of certain provisions during an enquiry into an accident, the period of limitation under section 79 is six months from the date on which he comes to know of the breach and the fact that there was delay in holding the enquiry will not affect this period.

Criminal Reference No. 229 of 1957.

Special Government Pleader for the State.

K. G. Chendke and *G. N. Hastak* for the respondents.

JUDGMENT.

This case has been reported under section 438 of the Criminal Procedure Code by the Additional Sessions Judge, Chanda.

The relevant facts are briefly these: On 18th October, 1955, there was a fatal accident in the Mahakali Coal Mines at Chanda. The non-applicant No. 1, Keshavlal, is the managing director of these mines while the non-applicant No. 2, Walkar, is the manager thereof. Notices of the accident were given immediately by telegrams to the Chief Inspector of Mines, Dhanbad and the Regional Inspector of Mines, Chhindwara. Similarly, notices of the accident under section 23(1) of the Mines Act, 1952, were also given immediately.

for an accident but there is penalty for the breach of a statutory provision or of a rule. Again, an inquiry is made obligatory in respect of certain kinds of accidents, but not in respect of every breach of rules or statutory provisions. I, therefore, hold that the two provisions are wholly independent of one another.

It was then said that had an inquiry been instituted earlier, the Inspector would have come to know of the breach in question earlier and so limitation must be deemed to have started running from the date of the notice of the accident or at most from the expiry of two months of the giving of the notice. It is common ground that the knowledge of an accident is not the same thing as the knowledge of an "offence", that is of a breach which is made penal. Therefore, the date of notice of the accident can in no circumstances be regarded as a starting point for the commencement of limitation. The expiry of two months from the date of notice cannot, for the same reason, be regarded as a starting point of limitation.

No doubt, had the inquiry been made earlier the fact of the commission of the breach or offence would have come to the knowledge of the Inspector earlier. But section 79(ii) does not say that the date on which an Inspector would or ought to have acquired knowledge of the commission o fan offence if had been diligent or had he complied faithfully with the provisions Act, would also be a starting point of limitation. In the circumstances, therefore, the delay in making the inquiry howsoever irregular or deplorable cannot affect the question of limitation.

I may point out that where a Court of Inquiry has been appointed under section 24 of the Act, it was thought necessary by the Legislature to provide for a special period of limitation for filing a complaint based upon the findings in that inquiry. It, therefore, enacted a special provision, which is section 79(iii). There is no such provision with respect to an inquiry under section 23. The proper inference to be drawn would thus be that the Legislature did not intend to provide a special period of limitation for making a complaint in a case where an inquiry under section 23 has been made. This fact, therefore, lends support to my view that in the matter of limitation for filing a complaint, the Legislature has kept the provisions of section 79(ii) independent of those of section 23.

Upon this view, I hold that the complaint is within time. The report is accordingly rejected.

[IN THE PUNJAB HIGH COURT.]

GOLDEN SILK MILLS, AMRITSAR
v.
CENTRAL PROVIDENT FUND COMMISSIONER AND ANOTHER.

Bhandari, C.J. and Dulat, J.

April 25, 1958.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 1(3)—APPLICABILITY OF ACT—NUMBER OF PERSONS EMPLOYED FALLING BELOW FIFTY—EFFECT—WHETHER ACT CEASES TO APPLY—SPLITTING UP OF ESTABLISHMENT ON DISSOLUTION OF PARTNERSHIP—EFFECT.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 19A—SCOPE OF—DIRECTION BY GOVERNMENT—FINALITY OF—DIRECTION CONTRARY TO PROVISIONS OF ACT—RIGHT OF HIGH COURT TO INTERFERE UNDER ARTICLE 226, CONSTITUTION OF INDIA.

A textile mill owned by three persons and employing more than 50 persons when the Employees' Provident Funds Act, 1952, came into force fell within the purview of the Act. Later on, the partnership was dissolved and the accounts settled between the partners. One of the erstwhile partners obtained one-third of the looms which he separated by building a wall in the old premises and obtained a separate licence for his factory which employed only about 16 to 18 persons. The Employees' Provident Fund authorities sought to continue to make this employer liable under the Act, even though he employed less than 50 persons, on the grounds: (i) that once the Act applied to a particular factory, it continued to apply even if the number of persons employed in the factory fell below 50; and (ii) that the mere building of a wall did not constitute his factory a separate 'factory' from the 'factory' to which the Act had been applied.

Held, *repelling both the contentions, (i) that the Act was applicable only to employers who employed 50 or more persons and was not intended to apply to small establishments in which less than 50 persons were employed, and that the Act would cease to apply as soon as the number of persons employed fell below 50; and (ii) that there being no suggestion that the dissolution of partnership was not real or that persons other than the erstwhile partner had any interest in the separated factory, two separate factories had come into existence and the Act would not apply to either of them unless 50 or more persons were employed therein.*

STATE *v.* HATHIWALA TEXTILE MILLS AND OTHERS [1957] 13 F.J.R. 257, *not followed.*

If the direction given by the Central Government under section 19A of the Employees' Provident Funds Act, 1952, is found by the High Court, in *a petition under article 226 of the Constitution of India, to be inconsistent with the provisions of the Act, the direction cannot stand merely because that section makes such a direction final.*

Civil Writs Nos. 291 and 383 of 1955, 534, 535, 579 and 603 of 1956 and 32 of 1957.

Bhagirath Dass for the petitioners.

S. M. Sikri, Advocate-General for the respondents.

JUDGMENT.

In these petitions (Civil Writs Nos. 291 of 1955, 383 of 1955, 534 of 1956, 535 of 1956, 579 of 1956, 603 of 1956 and 32 of 1957) under article 226 of the Constitution, the petitioners claim that they are not liable to contribute to the Employees' Provident Fund set up under the Employees' Provident Funds Act, 1952, because the factories belonging to the petitioners do not employ fifty or more persons and the Act in question is, therefore, not applicable to them. The respondents, being the Central Provident Fund Commissioner and the Regional Provident Fund Commissioner, maintain that the petitioners' factories are still within the mischief of the Act even though, at present, less than fifty men are employed in each of those factories. The facts in these several cases are not identical, but they ultimately raise the same question of interpretation and for the sake of convenience, therefore, I propose to mention the facts concerning one of the petitions first, namely, Civil writ No. 291 of 1955 (*Golden Silk Mill* v. *The Central Provident Fund Commissioner*), and to consider the arguments on the question of law and then to determine whether, on a proper view of the law, the facts of the other cases put them outside the Act.

The Employees' Provident Funds Act (Act XIX of 1952), came into force on the 1st November, 1952. At that time the Golden Silk Mills as such was not in existence and instead there was a factory carrying on business in the name of Golden Textile Mills. This factory was owned by three persons—Ram Lal, Kanahya Lal and Muni Lal—each of them having one-third share. Further, at that time the Golden Textile Mills as it existed, did employ fifty or more than fifty persons. On the 10th October, 1953, however, the three partners owning the factory decided to dissolve the partnership and accounts were gone into and a deed of dissolution was executed. According to this arrangement, Muni Lal entirely severed his connection with the Golden Textile Mills and having obtained his share of the assets of the concern, including one-third of the looms, he started the present factory in the name of the Golden Silk Mills. The looms that fell to the share of Muni Lal, petitioner, were

separated from the other looms by erecting a wall in the old factory, and the petitioner actually got his premises registered as a separate factory. The petitioner has since the date of dissolution been running his separate looms and his factory is since then employing only 16 to 18 persons. His claim is that his factory, *i.e.*, the Golden Silk Mills, does not employ fifty or more persons and he, therefore, cannot be compelled to contribute to the Employees' Provident Fund.

None of the facts is disputed. It is not denied that the dissolution of partnership made on the 10th October, 1953, was genuine, and there is no suggestion that that transaction or any other transaction connected with this case was only a device, and the case has thus been argued on the assumption that the facts are as stated by the petitioners. The position is the same regarding the other connected cases, so that the ground is clear for the legal controversy between the parties.

One matter which was raised at one stage of the arguments but which was ultimately not pressed for reasons which will presently appear, concerned the validity of section 19A of the Employees' Provident Funds Act, 1952. This section says—

"19A. If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to—

(i) whether an establishment which is a factory, is engaged in any industry specified in Schedule I;

(ia) whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of a notification under clause (b) of sub-section (3) of section 1;

(ii) whether fifty or more persons are employed in an establishment; or

(iii) whether three years have elapsed from the establishment of an establishment; or

(iv) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer,

the Central Goverment may, by order, make such provision or give such direction, *not inconsistent with the provisions of this Act*, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; *and the order of the Central Government, in such cases, shall be final.*"

Mr. Sikri relied on this provision, because in the present cases a reference was at one stage made to the Central Government and a direction has admittedly been received that in spite of the facts stated by the petitioners the Act in question still applies to these various factories, and the submission made therefore was that these directions or findings by the Central Government are final. Mr. Sikri, however admitted that the decision of the Central Government in this respect does not rest on any view of the facts different from what has been stated by the petitioners, but rests solely on their interpretation of the Act, or in other words that the conclusion of the Central Government is a conclusion of law based on their interpretation of the provisions of the Act. Further, Mr. Sikri conceded that in case this Court finds that the interpretation of the Act adopted by the Central Government is erroneous, the decision must be reversed and that the finality, which section 19A of the Act attaches to Government decisions, does not debar this Court from considering whether the Government's view of the law is or is not sound. To put it in another way, the position is that if the decision made by the Central Government is found by this Court to be inconsistent with the provisions of the Act, the decision cannot stand merely because section 19A of the Act makes such a decision final.

In reply to Mr. Sikri's submission, it was contended by Mr. Bhagirath Dass for the petitioners that section 19A is itself invalid, being inconsistent with certain provisions of our Constitution, bu the did not press that matter much further in view of Mr. Sikri's admission that it is open to us now to consider whether the conclusion of the Central Government is or is not in conformity with the provisions of the Act. It is, in the circumstances, unnecesary for us in these cases to pronounce on the constitutional validity of section 19A of the Act.

The main question then is whether the Golden Silk Mills, employing no more than 16 to 18 persons in the factory since the 10th of October, 1953, is still covered by the Act. Mr. Sikri's contention is that it is, because on the date the Act came into force the old factory called the Golden Textile Mills was employing more than fifty persons. To appreciate the argument it is neceseary to consider some of the provisions of the Act of 1952. Section 1 of the Act, is in these terms—

"1. (1) This Act may be called the Fmployees' Provident Funds Act, 1952.

"(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry *specified in Schedule I and in which fifty or more persons are employed, and*

(b) to any other establishment employing fifty or more persons or class of such establishments which the Central Government may, by

notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than fifty as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Government, whether on an application made to it in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, it may, by notification in the Official Gazette, apply the provisions of this Act to that establishment."

Section 16 referred to in the above section is as follows—

"16(1) This Act shall not apply to—

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

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

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

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

It would appear on a reading of these two provisions that Parliament's intention was that initially the Act will not be applied to small establishments employing less than fifty persons or to new establishments that had not been in existence for at least three years, although, of course, provision was made in certain circumstances and in certain conditions to extend the application of the Act even to small or new establishments. It is argued, however, that the smallness of an establishment is to be judged with reference to its size at the time the Act came into force or in other words that if a question arises whether a particular establishment does or does not employ fifty or more persons, attention is to be directed to the number of persons employed on the date of the Act, *i.e.*, the Ist November, 1952, and any subsequent reduction in number is of no avail. The argument comes to this that if on the 1st November, 1952, a factory, employed fifty persons but shortly afterwards found it impossible to employ as many and was forced to reduce its size and thus employed only ten persons it would still be covered by the Act.

I am unable to agree that such was Parliament's intention. Reliance was placed for the respondents on a decision of the Bombay High Court in *The State* v. *Hathiwala Textile Mills and others*, [1957] 13 F.J.R. 257, where the view taken was that once the Employees' Provident Funds Act, 1952, applies to a particular factory it continues to apply even if the number of persons employed in the factory falls below fifty, the main argument employed being that there is in the Act itself no specific provision for the discontinuance of the Act. It is not my impression, however, that statutes contain such specific provisions, and the ordinary rule is that as soon as conditions for the application of a statute cease to exist the statute itself ceases to apply. There are obvious difficulties in adopting the view that the number of persons employed is with reference to the date of the Act for, if that be so, then the Act would not apply to factories employing less than fifty persons on the 1st November, 1952, which might later become prosperous enough to employ many more persons and also perhaps the Act would not apply at all to factories coming into existence after the 1st November, 1952. With great respect to the learned Judges, who decided *The State* v. *Hathiwala Textile Mills and others*, it seems to me that the purpose behind the distinction made by Parliament between factories employing fifty or more persons and those employing a smaller number has more significance than has been attached to it, and as I read the Act the intention is not to burden small factories employing less than fifty persons with liabilities imposed by the Act. It follows that the liability would cease as soon as a factory falls out of the category of factories employing fifty or more persons. It is admitted, of course, that the petitioner's factory is engaged in a scheduled industry, but since it is admittedly not employing anything like fifty persons, it is, in my opinion, not within the mischief of the Act.

Mr. Sikri in this connection drew our attention to the definition of a "factory" contained in section 2 of the Act as meaning "any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power", and contended that since the premises have not changed and only a wall has been built to separate the looms falling to the petitioner's share from the remaining looms, it should be held that the petitioner's factory is still the old factory. This seems to be a very artificial way of looking at the facts. Mr. Sikri does not suggest that there has been no real separation among the old partners, nor that anybody but the present petitioner has anything to do with the factory now owned by the petitioner, and that being so, it is difficult to understand how the petitioner's present factory can be confused with the old factory which at one time employed fifty or more persons. It is, on the other hand, clear that since the 10th October, 1953, there have existed two factories, and one of them belonging to the petitioner does not employ fifty or more persons. The liability under the Act is of an employer and is limited to the employer of fifty or more persons in a factory engaged in a scheduled industry. On the facts of the present case it seems to me impossible to say that the petitioner is in any manner connected with a factory employing fifty or more persons.

Several decisions were, in the course of arguments, mentioned by Mr. Bhagirath Dass, but those touched on side issues which it seems to me unnecessary to consider. The question involved is short. The petitioner owns a factory which has not since the 10th October, 1953, employed fifty or more persons, and on the view of the Act taken by me this factory styled 'Golden Silk Mills' is not hit by the provisions of the Employees' Provident Funds Act, 1952. The petitioner's claim must, therefore, be allowed.

In Civil Writ No. 579 of 1956 (*Shri Ram Lal* v. *The Regional Provident Fund Commissioner and another*), the facts are connected with the previous case. When the original partnership owning the Golden Textile Mills was dissolved on the 10th October, 1953, and Muni Lal entirely separated from the concern, the other two partners, namely, Ram Lal and Kanhaya Lal continued the business under the name of The Golden Textile Mills. In March, 1954, however, a suit was brought for the dissolution of that partnership also, and a decree for dissolution was granted by Court on the 22nd April, 1954. The assets of the partnership were then divided. Seven powerlooms fell to the share of Ram Lal, who started a concern of his own under the style 'Ravinder Weaving Mills'. This was in the end of April, 1954, and since then Ram Lal or the Ravinder Weaving Mills has never employed more than 16 to 17 persons in the factory. Again, it is not suggested that the dissolution between Ram Lal and Kanhaya Lal was not genuine. Ram Lal's claim on behalf of Ravinder Weaving Mills, therefore, is that his factory has never employed fifty or more persons and since the 22nd April, 1954, his factory, which is separetely registered and which was started with the sanction of the Textile Commissioner, is not hit by the Employees' Provident Funds Act. There being no suspicion as to the geunineness of the facts alleged, the petitioner's claim must be allowed on the view adopted in the previous case that a factory employing less than fifty persons is not covered by the Act. The petition must in this case also succeed.

In Civil Writ No. 383 of 1955 (*Radhe Sham* v. *The Regional Provident Fund Commissioner*), the facts are these:— A textile manufacturing business was originally started in September, 1951, and owned by six persons in partnership, namely, Gian Chand, Siri Gopal, Bal Kishan, Yesh Pal, Mohan Lal and Radhe Sham. This concern suffered losses for three or four years and on the 18th March, 1954, therefore, the partnership was dissolved by a deed registered on the 22nd April, 1954. It is admitted that previously the factory was employing more than fifty persons and a provident fund for the employees was actually in existence, but on dissolution the employees were allowed to withdraw their respective contributions. In September, 1954, Radhe Sham put up a shed and installed under it six powerlooms, which had fallen to his share, and thus started a factory. In this factory at no time more than twenty persons have been employed. The factory as such has been separately registered and has been recognised by the Central Excise Department. The respondent's claim is that in spite of the dissolution of the old concern and in spite of the fact that the petitioner's factory at present does not employ fifty or more persons, the factory is still coverd by the Act. This view is not, in my opinion, tenable for the reasons stated already, and I must therefore hold that as from September, 1954, the petitioner's factory is not liable to contribute to the Employees' Provident Fund, and the present petition must therefore be allowed.

The facts concerning Civil Writ No. 534 of 1956 (*Messrs. Ishwar Textile Mills* v. *The Regional Provident Fund Commissioner and another*) and Civil Writ No. 535 of 1956 (*Messrs. Vijay Woollen and Silk Mills* v. *The Regional Provident Fund Commissioner and another*) are interconnected. A textile manufacturing factory called the E. P. Textile Mills was in existence prior to June, 1954, and it was owned and run by two partners —Shri Kali Charan and Shri Raj Kumar—having one-half share each. On the 6th June, 1954, the partnership was dissolved and each partner received his share of the assets. It appears that 14 powerlooms fell to the share of Raj Kumar and 14 looms to the share of Kali Charan. Raj Kumar sold his 14 looms to three persons—Ishar Dass Khanna, Diwan Chand Khanna and Om Prakash Khanna—and these three persons

started a factory with these 14 looms which is called the Ishwar Textile Mills. This factory has never employed more than twenty persons and it is, therefore, claimed in Civil Writ No. 534 of 1956 that the factory is not covered by the Act.

Kali Charan leased his 14 powerlooms to three other persons— Shiv Prakash, Kewal Krishan and Shiv Nath—and those three persons started a textile manufacturing concern called Vijay Woollen and Silk Mills. They have never in their factory employed fifty or more persons. It is not suggested in either of these cases that the dissolution of the original partnership or the formation of the new concerns or the sale or the lease of the powerlooms were not genuine transactions, and the question therefore merely is whether these two factories now employing since June, 1954, less than fifty persons can be covered by the Act. The answer, in my opinion, must be in the negative and the petitions (Civil Writs Nos. 534 and 535 of 1956) in these two cases also must be allowed.

In Civil Writ No. 603 of 1956 (*Messrs. Gujjar Singh and Sons* v. *The Regional Provident Fund Commissioner and another*) the facts are these; Gujjar Singh and two other partners—Sadhu Singh and Shankar Singh— were carrying on a business for the manufacture of agricultural implements. It was called Messrs. Gujjar Singh Sadhu Singh and Brothers. This partnership was dissolved on the 1st April, 1954, and Gujjar Singh got one-third share of the machinery and other assets. On the 10th April, 1954, Gujjar Singh joined with him four other persons—Kishan Singh, Rattan Singh, Piara Singh and Ajit Singh—and started with his share of the machinery a new concern called Messrs. Gujjar Singh and Sons. This factory has never employed more than forty employees. It has been registered separately under the Factories Act. The really important fact is that since the 10th April, 1954, this factory—whether it be called a new factory or an old factory—has not employed fifty or more persons, and it is, therefore, not possible to say that after the 10th April, 1954, the factory continues to be covered by the Act. That is the claim of the petitioner and it must, in my opinion, be allowed.

The last case is Civil Writ No. 32 of 1957 (*Shri Moti Sagar* v. *The Regional Provident Fund Commissioner and another*). In this case also a previous concern, manufacturing textiles, was in existence and was called the Keshav Silk Mills and it employed nearly 180 workmen, having started work in February, 1950. Moti Sagar was one of the partners owning this concern and there were two more—Madan Chand Kapur and Sat Pal Kapur. On the 1st May, 1955, this concern was dissolved and the partnership assets were distributed. The machinery happened to be all allotted to Madan Chand Kapur and Sat Pal Kapur, while Moti Sagar got his share in other form. On the 13th July 1955, Moti Sagar hired one of the sheds in the old factory and he there set up four powerlooms and thus started a factory which is called G. M. Textile Mills. It has of course been registered as a factory since then. This factory has never employed more than twenty persons and the claim, therefore, is that since the 13th July, 1955, the petitioner's factory is not liable to contribute to the Employees' Provident Fund. This claim, in my opinion, must succeed.

The result is that I would allow the petitions (Civil Writs Nos. 291 of 1955, 383 of 1955, 534 of 1956, 535 of 1956, 579 of 1956, 603 of 1956 and 32 of 1957) and make the rule in each case, absolute, but, in the circumstances of these cases, leave the parties to their own costs.
