

THE
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.

CHIEF EDITOR :

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Senior Advocate, Supreme Court,

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

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Vol. XVII [1959-60]

LAWS OF INDIA PRIVATE LTD.,
THYAGARAYANAGAR :: :: MADRAS-17.

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DISPUTES, EMPLOYEES' INSURANCE, PAYMENT
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under section 2(j); but, with the question of the attorney or doctor or the lawyer we are not directly concerned in the present appeal. We have, however, referred to this decision because, in the course of discussion, the learned Judge has expressed his dissent from the view taken by the Bombay High Court in regard to hospitals, and we wish to make it clear that, in our opinion, the criticism made by the learned Judge against the inclusion of hospitals within section 2(j) is not well-founded. Dealing with a similar case of an attorney, the Bombay High Court has taken the same view in *National Union of Commercial Employees v. M. R. Meher and Others*, [1958] 17 F.J.R. 399.

We would accordingly hold that the High Court was right in holding that the dispute between the appellant and the respondents was an industrial dispute to which section 25-F of the Act applied. The order passed by the High Court on the writ petition filed by the respondents is confirmed and the appeal is dismissed with costs.

[IN THE CALCUTTA HIGH COURT.]

RIFLE FACTORY CO-OPERATIVE SOCIETY LTD.

v.

FOURTH INDUSTRIAL TRIBUNAL, WEST BENGAL
AND OTHERS.

P. B. Mukharji, J.

January 8, 1959.

INDUSTRIAL TRIBUNAL—JURISDICTION—WHETHER CONFINED TO TERMS OF REFERENCE—DETERMINATION OF "WHAT SHOULD BE" CONDITIONS OF SERVICE—WHETHER TRIBUNAL CAN AWARD RETROSPECTIVELY—WHETHER TRIBUNAL HAS JURISDICTION TO INTERPRET PREVIOUS AWARD—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 10 AND 15.

INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950, SECTION 20(1) AND (2)—"COMPUTATION"—MEANING OF—WHETHER INCLUDES INTERPRETATION OF AWARD—WHETHER RETROSPECTIVE EFFECT CAN BE GIVEN TO AWARD UNDER SECTION 20(2)—APPLICATION TO GOVERNMENT UNDER SECTION 20(1)—WHETHER CAN BE CONVERTED INTO ONE UNDER SECTION 20(2).

An Industrial Tribunal is confined, in exercising its jurisdiction, to the actual points of dispute on the terms of the reference made to it. Therefore, where the reference used the expressions "what should be" the fair scales

of pay and whether the present scales of pay "should be" revised, it would not invest the Tribunal with jurisdiction to award retrospectively.

Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950, does not enable an Industrial Tribunal to interpret a previous award to determine whether it was prospective or retrospective in effect, as such determination would not be a matter of "computation" under the section. An Industrial Tribunal being an ad hoc Tribunal with ad hoc jurisdiction to determine specified industrial dispute, there is no scope for an Industrial Tribunal, subsequent to an award made by it, retaining or possessing jurisdiction as a court of construction.

Where an application is made to the appropriate Government under section 20(1) of the Act, it is not open to the Government to convert it into an application under section 20(2) as, under this sub-section, the application should be made in the first instance by the party to the Industrial Tribunal and the Government would only come in later, after the amount had been computed and determined by the Tribunal.

Civil Revision Case No. 262 of 1956.

P. K. Sanyal and K. Mitra for the petitioner.

J. Majumdar, P. K. Banerji and P. K. Sen Gupta for the respondents.

JUDGMENT.

This is an industrial dispute between the Rifle Factory Co-operative Society Ltd. and its workmen. The petitioner applied for and obtained a rule nisi on 25th January, 1956, for a writ in the nature of *mandamus* or prohibition and *certiorari* directed against an award of the Fourth Industrial Tribunal purported to have been made under section 20(2) of the Industrial Disputes (Appellate Tribunal) Act. An interim order was obtained on that day staying all further proceedings and the rule was fixed for hearing on 22nd February, 1956. It has taken all this time to come up for disposal.

The facts may be briefly set out before discussing the points involved in the application. By an order dated 30th August, 1952, the Government referred to the Fourth Industrial Tribunal for adjudication, amongst others, the dispute which was described as "Issue No. 2" in the order of reference in the following terms:

"Whether the graded scale of pay of all categories of employees now in force should be revised; what should be the fair scales of pay of the employees."

The award was made on 18th September, 1953. The material portion of the award relevant for the purpose of determining this application is as follows:

"I, therefore, award that the recommendations of the Sub-Committee will be implemented with effect from 1st April, 1949, so far as the stores are concerned as recommended by the Sub-Committee so far as the scale of pay is concerned as also the question of fitting in of the employees."

Linguistically and grammatically, this particular part of the award is open to criticism. The controversy naturally arose whether the award was prospective or retrospective. The words, "with effect from 1st April, 1949", inspired the argument that the award was retrospective although it was made on 18th September, 1953. On behalf of the petitioner, it is contended that the award was not retrospective and those controversial words, "with effect from 1st April, 1949", only meant that the rates that were prevailing on 1st April, 1949, and which were recommended by the Sub-Committee would be the rates applicable as the graded and fair scale of pay of the employees of the petitioner under Issue No. 2 which I have quoted above from the terms of reference. Before deciding this point, which is the only point before me, I should like to complete the statement of facts.

This award was published on 13th October, 1953, and became operative on or about 13th November, 1953. The petitioner offered to the workmen concerned increased wages on the basis of the award but the workmen did not accept such wages till November, 1954, while accepting the same from December, 1954. There was an appeal by the petitioner before the Labour Appellate Tribunal but being out of time, the appeal was dismissed on the ground of limitation on 15th November, 1954. In June, 1955, the workmen made applications to the Joint Secretary, Government, Labour Department, under section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, for the recovery of their arrears of wages contending that they were entitled to higher wages retrospectively from 1st April, 1949, under the award. These applications were made under section 20(1) of the Industrial Disputes (Appellate Tribunal) Act because all these applications calculated the specific sum of money alleged to be due to each of the workmen under the award, with the particular prayer that the specified sum of money stated in each petition be realised by certificate as arrears of land revenue as provided under section 20(1) of the Industrial Disputes (Appellate Tribunal) Act. The petitioner disputed the claim before the Government and denied that the workmen were entitled to claim higher wages from 1st April, 1949.

What the Government thereafter did was to convert these applications into proceedings under section 20(2) of the Industrial Disputes (Appellate Tribunal) Act and sent these applications to the Industrial

Tribunal which had previously made the award thinking that the whole dispute was a matter of "computation" in terms of money under sub-section (2) of section 20 of the Act. The petitioner contended before the Industrial Tribunal that all these applications were wholly misconceived and not maintainable in law. The Industrial Tribunal, however, on 27th December, 1955, held that it had jurisdiction to entertain those applications and proceeded to interpret the previous award and gave such a construction that the award became retrospective. The material portion of the Tribunal's interpretative order is as follows:

"The Tribunal has accordingly mentioned that the recommendation of the Sub-Committee will be implemented with effect from 1st April, 1949, so far as Stores are concerned as per recommendation of the Sub-Committee. It is admitted by the learned advocate for the employers that if the matter rested here, the plain meaning would have been what I have stated just now. But his argument is that by adding of the words, "so far as the scale of pay is concerned as also the question of fitting in of the employees", the implication has been changed and what has been ordered by the Tribunal was that the scale of pay and the fitting in will be done on the date of enforcement of the award. In other words, the addition of these words has been made by the Tribunal with the object of not allowing the workmen the arrears from 1st April, 1949 to 12th November, 1953. I am unable to believe from the award that this was the intention of the Tribunal, or that the words, "so far as the scale of pay is concerned as also the question of fitting in", have been added with the object of disallowing the arrears. These words, in my opinion, have been added simply to make the points specific. This is my interpretation of the award in consideration of the circumstances of the case as stated in the award. I, therefore, hold that the workers will be entitled to arrears. But it is conceded by the learned advocate for the Union that computation of casual leave and attendance bonus will not strictly speaking come within the purview of section 20, clause (2). So, the claim with regard to them was not rightly pressed and I disallow it.

"With regard to other items, the amounts due may be checked by the parties themselves within 7 days, failing which a Commissioner will be appointed to determine the said amounts."

It is against this interpretation and construction that the present petition is directed. I am afraid, the Fourth Industrial Tribunal, by the order of 27th December, 1955, interpreting the previous award, went beyond its jurisdiction. In fact, I should have thought that casual leave and attendance bonus might be computed in terms of money and might come under section 20(2) of the Act but interpretation

of a previous award construing whether it was prospective or retrospective could not be a matter of "computation" under section 20(2) of the Industrial Disputes (Appellate Tribunal) Act. It is plain that this interpretation cannot stand.

In fact, by reason of such interpretation the Tribunal has put itself in a very false position. If the interpretation is good, then the previous award becomes bad by reason of its thereby being rendered retrospective in operation. The terms of reference on which the original award was made used the expressions, "what should be" the fair scales of pay and whether the present scales of pay "should be" revised. Under those terms of reference, the award could not be made retrospective. A similar point with similar expression, "what should be", did come up before this Court in *Workmen of Bengal Electric Lamp Works Ltd. v. The Bengal Electric Lamp Works Ltd.*, A.I.R. 1958 Cal. 663, where I took the view that the Industrial Tribunal in exercising its jurisdiction was bound by the terms of reference and the jurisdiction of such Tribunal was confined to the actual points of dispute on the terms of reference and that these words "what should be" did not invest the Tribunal with jurisdiction to award retrospectively. In other words, by giving the interpretation on 27th December, 1955, the award of 1953 was thrown open to the charge of being rendered invalid.

While, again, on the other hand, it is being challenged that the interpretation far from being good is without jurisdiction even under section 20(2) of the Industrial Disputes (Appellate Tribunal) Act. The scheme of section 20 of the Industrial Disputes (Appellate Tribunal) Act envisages three different procedures although related to one another. Under sub-section (1), any money due from an employer under an award of a Tribunal can be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award. Sub-section (2) relates to not what is *prima facie* money due under an award but concerns cases of any "benefit" under an award which is capable of being "computed" in terms of money. The "computation" of a benefit in terms of money under this sub-section is made the subject of jurisdiction by that Industrial Tribunal which made the award. In sub-section (3), the Industrial Tribunal is given the auxiliary power to appoint a Commissioner for the purpose of such computation who is to report to the Tribunal after taking any necessary evidence and the Tribunal thereafter shall determine the amount. It is only when the Tribunal has made the computation that the certificate for the recovery of that computed money as arrears of land revenue or public demand can issue.

Reading section 20 as whole, I do not see that there is any scope for the Industrial Tribunal, subsequent to an award made by it, retaining or possessing any jurisdiction thereafter as a court of construction. The jurisdiction of the Industrial Tribunal does not, in my view, include the jurisdiction to construe previous awards so as to give either enhanced or mitigated effect to such awards by such process of interpretation or construction. The Industrial Tribunal is not a court of general and residuary jurisdiction but a Tribunal with specific jurisdiction enumerated by the terms of the order of reference. The Industrial Tribunal is an *ad hoc* Tribunal with *ad hoc* jurisdiction to determine specified industrial dispute.

The language of section 20 (2) of the Act, which is the relevant section with which this application is concerned, may be set out with a view to show that computation is not construction. The words are:

"20 (2). Where any workman is entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to the rules made under this Act, be determined by that industrial tribunal, and the amount so determined may be recovered as provided for in sub-section (1)".

Computing a benefit in terms of money is not construction of a previous award so as to give it a meaning that the award should have retrospective and not prospective effect. That, in my view, is not computation within the meaning of sub-section (2) of section 20 of the Industrial Disputes (Appellate Tribunal) Act. Under section 20 (2) of the Act the Tribunal must take the award as it is and proceed to translate the benefit thereunder in terms of money and do nothing to enlarge or restrict the nature and scope of the award. Under this sub-section (2) of section 20 of the Act the Tribunal can only value the award in terms of money and can do no more.

The nature of computation which is contemplated under section 20 (2) of the Act can be clearly illustrated from the decision of the Supreme Court in *S. S. Shetty v. Bharat Nidhi, Ltd.*, [1957] 13 F.J.R. 218, where the award gave the benefit of reinstatement and what was computed under section 20 (2) was money value of the benefit of reinstatement. As Bhagwati, J., of the Supreme Court points out at page 228, that it is where any benefit which is not expressed in terms of money is awarded to the workman under the terms of the award that it would be necessary to compute in terms of money the value of that benefit before the workman can ask the appropriate Government to help him in such recovery. It was there not a case of construction of the award. The

award was clear enough. It gave benefit of reinstatement. What was to be done thereafter was to compute the value of that benefit under the award, in terms of money. Similarly, in *Sasamusa Sugar Works Ltd. v. State of Bihar*, [1954] 7 F.J.R. 56, there was the question of computation of the benefit of the award because the award in that case decided that the workmen of particular categories were entitled to get retaining allowance for off-seasons and had further laid down certain principles to be worked out in the case of each worker if found to belong to those categories for the payment of his demand on account of such retaining allowance. It did not deal with the claim of any individual workman or determine which workmen belonged to which category. Therefore, in that case, the matter was dealt with under section 20 (2) because the retaining allowance had to be computed and enquiry directed as to which worker belonged to which category for the purpose of such computation.

The order of the Industrial Tribunal of 27th December, 1955, in the present case, therefore, cannot be sustained. If the order giving the interpretation is good, then the award is bad. If the interpretation is without jurisdiction, then the order itself is bad. The argument that this point was not taken in the appeal by the petitioner before the Labour Appellate Tribunal in 1954 has no substance because in 1954 the question had not arisen and this question arose only when the particular construction was given by this Industrial Tribunal by its order on 27th December, 1955.

Before I conclude, it is necessary also to refer to one other feature of these proceedings. The workers made the applications under section 20(1) of the Industrial Disputes (Appellate Tribunal) Act. The Government, in my view, took the wrong step in converting them into proceedings under section 20(2) of the Act. If the Government thought that it could not decide or issue a certificate, then it should have disposed of the applications on that ground by saying that it could not issue the certificate. It has, however, no jurisdiction to convert the workmen's applications for payment of a specific sum into applications for computation of a benefit in terms of money under sub-section (2) of section 20 of the Act. It will appear from the language of sub-section (2) of section 20 that it is only after the amount is computed by the Tribunal that the amount could be recovered under certificate proceedings as land revenue or as public demand under sub-section (1) of the Act and not before that. It is true that sub-section (2) of section 20 of the Act does not say expressly who should make the reference to the Industrial Tribunal but it is plain from the intent and purpose of that sub-section that the workmen entitled to receive the benefit which is capable of

being computed in terms of money is the person who should apply to the Tribunal for such computation and not the appropriate Government. The appropriate Government comes in later after the Industrial Tribunal had computed and determined the amount which could then be recovered as a public demand or as arrears of land revenue by the appropriate Government on the application made to it by the person entitled to the money so found or computed. Therefore, the proceedings which the Government took on receipt of the applications under section 20(1) of the Act in this case were all *ultra vires* and beyond their jurisdiction.

A similar view was expressed by the decision in *Sasamusa Sugar Works Ltd. v. State of Bihar*, [1954] 7 F.J.R. 56, which I have already cited, where it was held that where the action of the Government under section 20(1) of the Act was without jurisdiction, the proceedings taken in pursuance thereof under the Public Demands Recovery Act would also be without jurisdiction. Indeed, that must be so. So also must be without jurisdiction the proceedings taken by the Government purporting to be under section 20(2) but which cannot, in fact and law, be under such provision. The reference in June, 1955, therefore, by the Government in this case, of all these applications to the Industrial Tribunal for computation is *ultra vires* and without jurisdiction and competence of the powers of the Government as also all proceedings that followed including the interpretative order of the Industrial Tribunal dated 27th December, 1955.

I need only refer to two decisions of the Labour Appellate Tribunal of India which are relevant on the point and which were cited at the bar. One is the case of the *Proprietor and Exhibitor, Aryan Cinema, Poona v. V. R. Sant*, [1954] L.A.C. 304 (Bom.). In fact, there it was contended on behalf of the employer that it was not competent for the employees to make an application under section 20(2) of the Act. The contention there was that it was rather the appropriate Government which could apply under section 20(2). This contention was negatived by the Labour Appellate Tribunal and the Labour Appellate Tribunal of India held: "Obviously, the person who should apply is the person who is entitled to the benefit of the award."

The other case is the case of *H. H. Parmar v. S. P. Shinde*, [1934] L.A.C. 771 (Bom.), which appears to have taken the view that the Industrial Tribunal under section 20(2) of the Act is only empowered to determine the amount to which the workman is entitled under an award and not to embark on an interpretation or construction of a previous award. I have already given my reasons why I consider that the

Industrial Tribunal cannot act as a court of construction of a previous award to give it a retrospective effect under section 20(2) of the Act under the guise of a computation of benefit under the award in terms of money.

This disposes of the points urged before me. The application, therefore, must succeed. The rule for *mandamus* or prohibition and *certiorari* must be made absolute. The order of the Industrial Tribunal dated 27th December, 1955, interpreting the award of 18th September, 1953, is set aside and quashed. There will be no order as to costs.

[IN THE MYSORE HIGH COURT.]

MAHBOOB SHAHI KULBARGA MILLS CO., LTD.

v.

K. VITTAL KAMATH AND ANOTHER.

Sadasivayya and Narayana Pai, JJ.

November 7, 1958.

INDUSTRIAL TRIBUNAL—PROCEDURE—ADJOURNMENTS—GRANT OF
—WHETHER DISCRETIONARY—WHETHER HIGH COURT CAN INTERFERE
WITH DISCRETION—CONSTITUTION OF INDIA, ART. 226.

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF DISPUTE
BY APPROPRIATE GOVERNMENT—RIGHT OF PARTY TO IMPUGN RESULT-
ING AWARD FOR WANT OF JURISDICTION—RIGHT TO PROVE THAT MATTER
REFERRED WAS NOT INDUSTRIAL DISPUTE—CONSTITUTION OF INDIA,
ART. 226.

INDUSTRIAL DISPUTE—WHEN INDIVIDUAL DISPUTE BECOMES
INDUSTRIAL DISPUTE—TESTS—NECESSITY FOR NEXUS BETWEEN DIS-
PUTE AND PARTIES—INDIVIDUAL DISPUTE TAKEN UP BY WORKMEN NOT
HAVING SAME CONDITIONS OF SERVICE—WHETHER BECOMES INDUSTRIAL
DISPUTE—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(k).

The granting of adjournments is a matter of discretion with the Court or Tribunal concerned and the High Court acting under article 226 of the Constitution will not interfere with the exercise of such discretion unless it is shown that the discretion has been exercised capriciously or arbitrarily so as to virtually amount to a negation of the principles of natural justice or to occasion failure of justice. While it is desirable that industrial disputes should be

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expeditiously adjudicated upon and settled, the very purpose of such adjudication, viz., the establishment and maintenance of industrial peace, would stand in danger of being defeated if either party should be left with a sense of grievance that he has not been fully or properly heard or that his case has not received the attention which he expects from that Tribunal.

When the appropriate Government refers to an Industrial Tribunal what it considers to be an industrial dispute, although the factual existence of the dispute cannot be canvassed in Courts, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Industrial Disputes Act, 1947, and, that, therefore, the Industrial Tribunal had no jurisdiction to make the award. The jurisdiction of the Tribunal depends entirely upon an industrial dispute being referred to it. If what was referred was not an industrial dispute, the Tribunal would have no jurisdiction to adjudicate upon it.

The crucial test to determine whether an individual dispute has been transformed into an industrial dispute as defined in the Act is to see whether the workmen who espouse the cause of the individual have any direct or substantial interest in the employment, non-employment or conditions of employment of that person. The conditions of employment of the person who raises the dispute must be the same as those of the workmen who espouse his cause. If his conditions of employment are different, the workmen can have no interest in them so as to convert his individual dispute into an 'industrial dispute'. Where, therefore, the conditions of service of a person working in the manufacturing department of an establishment are not the same as the nature of the duties and conditions of service of clerks who are members of a clerks' trade union, the mere fact that the trade union espoused the cause of the person will not furnish the necessary nexus between the dispute and the parties to the dispute to convert his dispute into an industrial dispute so as to give jurisdiction to an Industrial Tribunal to adjudicate upon the same.

Writ Petition No. 197 of 1958.

V. L. Narasimhamurthy for the petitioner.

D. Chandrasekhara, Murlidhar Rao and J. R. Chandrike for the respondents.

JUDGMENT.

The petitioner, the Mahboobshahi Kulbarga Mills Co., Ltd., hereinafter called the Company, prays for the issue of an appropriate writ, direction or order quashing the award of the Labour Court at Hubli, the 1st respondent herein, made in Industrial Dispute No. 2/1957

on its file and published by the Government of Mysore in the Mysore Gazette dated 15th May, 1958. The 2nd respondent is the M. S. K. Mills Clerks' Union, hereinafter referred to as the Union, which raised the dispute culminating in the impugned award.

The essential facts which are not in dispute are the following: One Sri G. R. Kembhavi was employed as the Assistant Spinning Master of the Company. He was getting a remuneration of Rs. 332 per month, inclusive of all allowances. By a letter dated 16th February, 1957, the Company terminated the services of Kembhavi with effect from 17th February, 1957, on payment of one month's salary in lieu of notice period. On 19th February, 1957, Kembhavi wrote to the Company complaining that there was no indication in the company's letter as to the circumstances under which they took this action against him and requesting the company to reconsider the order of termination of his services on principles of fairness and equity. The company did not reply, but it is stated that Kembhavi was orally informed that the order of termination would not be reconsidered.

On 22nd February, 1957, Kembhavi made representations before the Conciliation Officer at Gulbarga complaining that his services had been terminated all of a sudden and requesting the officer to intervene and persuade the management to reconsider their decision and to reinstate him. In reply to the enquiries by the Conciliation Officer the company is reported to have stated that they had sent away Kembhavi because his services were not required by the company and to have contended that he was not a workman at all within the definition under the Industrial Disputes Act. On 14th March, 1957, Kembhavi wrote to the Union requesting them to take up his cause and do the needful in the matter. On 24th March, 1957, a meeting of the General Body was held at which a resolution was passed to espouse the cause of Kembhavi and to demand his immediate reinstatement. The resolution also stated as follows:

"Administrative excesses of this kind undermining security of service cannot be viewed complacently by anybody who loves peace in industry. It is but natural that members of this Union pledged to the cause of progress and promotion of industrial amity and peace do not leave such acts of management unchallenged before further inroads are made into other phases of administration."

During the conciliation proceedings the principal point of discussion appears to have been whether, having regard to the nature of his duties and functions, Kembhavi could be said to be a workman. The parties appeared to be taking very divergent views and the conciliator was unable to settle the dispute and made a report accordingly.

Thereupon, under Notification No. LLH 12 ILD 57 dated 20th November, 1957, the Government of Mysore referred to the 1st respondent the above dispute describing it as an industrial dispute for adjudication by it. The point of dispute referred for adjudication was :

" Whether the management of the M. S. K. Mills Co., Ltd., Gulbarga, was justified in terminating the services of Sri G. R. Kembhavi, the Assistant Spinning Master of the Mills ; if not, to what relief, if any, he is entitled ? "

On this reference the 1st respondent made an award directing the reinstatement of Kembhavi in the service of the company in his old post on the same terms and conditions as before within 15 days of the date when the award becomes enforceable without any break in his service. It was also directed that Kembhavi should be paid 50 per cent. of all the emoluments that he would have been entitled to draw had he continued in service from the date of termination till the date of reinstatement. This award was published by the Government of Mysore in the Mysore Gazette dated 15th May, 1958.

Before proceeding to deal with the merits of the case it would be convenient first to consider the complaint strongly pressed by the learned counsel for the petitioner that the company has not been given sufficient opportunity to place its case fully and properly before the Labour Court. He was particularly critical about the action of the Labour Court in refusing to grant him an adjournment of the hearing by so short a period as two days, in spite of the fact that the Labour Court had been told that five other labour matters were posted for hearing before another Tribunal at Bangalore on the same date, 24th February, 1956, and in refusing to grant certified copies of the depositions and also refusing to grant time to the company's representative to study the material and prepare his arguments.

There can be no doubt that granting of adjournments is a matter of discretion with the Court or Tribunal concerned and the High Court acting under article 226 of the Constitution will not interfere with the exercise of such discretion unless it can be shown that the discretion had been exercised capriciously or arbitrarily so as virtually to amount to a negation of the principles of natural justice or to occasion failure of justice. We have carefully scrutinized the records of this case and do not feel that there is any such ground in this case calling for interference. So far as the filing of the company's counter-statement is concerned, the Labour Court did grant a week's extension asked for by the company.

There is no reason why the company could not file the counter-statement within the period asked for by itself or why thereafter it

never made an attempt to file a written statement although a month elapsed before the matter was actually taken up for hearing. Regarding the adjournment of the date of hearing, although only one witness was examined on the 24th, the Labour Court did wait for the company's representative to return from Bangalore to Gulbarga and took up the further proceedings only after his arrival ; the Labour Court also permitted the company's representative to inspect the records of the case, received his written arguments and also gave the liberty to the company's representative to send his list of authorities by post.

There is, therefore, no case for interference on this ground. It is, however, a matter for regret that the Labour Court should have at all given occasion or room for such criticism. While it is undoubtedly desirable that industrial disputes should be expeditiously adjudicated upon and settled, the very purpose of such adjudication, viz., establishing and maintaining industrial peace, would stand in danger of being defeated if either party should be left with a sense of grievance that he has not been fully or properly heard or that his case has not received the attention which he expects from the Court. Though we are convinced that there has been no failure of justice in this case, we cannot say that the feeling of dissatisfaction given expression to by the learned counsel for the petitioner is entirely unjustified. It was also wrong to have asked the company to state the provision of law under which certified copies are asked for, when it is clear from section 74 of the Evidence Act that records of acts of public tribunals are public records which the parties to the adjudication are entitled to inspect and of which they will, therefore, be entitled to certified copies under section 76 of the same Act. The Labour Court also appears to have overlooked the significance of the provisions in the Industrial Disputes (Mysore) Rules for levy of fees for certified copies.

We go now to the principal point on merits argued before us. Although the arguments covered a very wide range and the contentions classified under several heads, it seems to us that the one and only point is whether the dispute referred to the 1st respondent-Court was or was not an industrial dispute. According to the contention of the petitioner, it was not an industrial dispute. In support of this contention three grounds are stated :

- (1) that Kembhavi is not a workman at all ;
- (2) there was no such community of interest between the Union and Kembhavi as to entitle the Union to espouse his cause and raise an industrial dispute thereon ;
- (3) that the termination of the services of Kembhavi by the company was in accordance with accepted contractual rights of an

employer and not a dismissal by way of punishment for misconduct, and that, in the absence of any proof of mala fides or unfair labour practice on the part of the company, it could not have been made the subject of an industrial dispute at all.

It is now well-established that when a Government refers to an Industrial Court or Tribunal what it considers to be an industrial dispute, although the factual existence of the dispute cannot be canvassed in Courts, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act and that, therefore, the Tribunal had no jurisdiction to make the award. The jurisdiction of a Tribunal depends entirely upon an industrial dispute being referred to it by the Government. If, therefore, what was referred was not an industrial dispute, the Tribunal would have no jurisdiction to adjudicate upon it.

An industrial dispute is defined in clause (k) of section 2 of the Industrial Disputes Act to be:

"any dispute or difference between employers and employees, 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". According to this definition, the parties to the dispute must necessarily be employers and workmen as defined by the Act, although the subject-matter of the dispute may be the employment, non-employment, conditions of employment or conditions of labour of any person. Obviously, the term "any person" at the end of the definition is different from the term "workman" which is specifically defined in the Act. The question whether the term "person" should receive its etymological meaning and be interpreted in all its amplitude or whether it should be restricted in such a way as to relate it in some manner or other with the definition of "workman" has been the subject of difference of opinion between the Courts.

The last word on the controversy is now found stated in the ruling of the Supreme Court of India reported in *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate*, [1958] 14 F.J.R. 41. The judgment of the Supreme Court in this case as well as the judgment of Chagla, C. J., in *Narendra Kumar Sen v. All India Industrial Disputes (Labour Appellate) Tribunal*, [1953] 5 F.J.R. 330, the views stated in which were accepted with approval by the Supreme Court in the first mentioned case, have loomed large in the arguments before us. We cannot do better than state the principles formulated by the Supreme Court and see how far they apply to the proved and admitted facts of this case.

In the case before the Supreme Court, the employer had terminated the services of one Dr. K. P. Banerjee, who had been appointed as Medical Officer of the Tea Estate, and his cause was espoused by the Workers' Union of the Estate, who raised a dispute in respect of it which was referred to a Tribunal by the Government as an industrial dispute. Dr. Banerjee was a member of the Union. It was found by the Industrial Tribunal that Dr. Banerjee was not a workman, that his case could not be described as an industrial dispute under the Industrial Disputes Act and was, therefore, beyond the jurisdiction of the Tribunal. The finding and the conclusion were confirmed on appeal by the Labour Appellate Tribunal and the workmen took the matter up to the Supreme Court. The finding that Dr. Banerjee was not a workman was accepted as a finding of fact by the Supreme Court and the discussion of law proceeded on that basis.

Their Lordships of the Supreme Court, after analysing the provisions and the purposes of the Industrial Disputes Act, concluded that the expression "any person" occurring in the definition of an industrial dispute cannot be given its ordinary etymological meaning but must be so construed as to be consistent with the intents and purposes of the Act. The learned counsel appearing on behalf of the workmen in the Supreme Court formulated four limitations which should properly be placed on the meaning of the term:

(1) that the dispute must be a real and substantial one in respect of which one of the parties to the dispute can give relief to the other;

(2) that the dispute, if raised by the workmen, must relate to the particular establishment or a part of the establishment in which the workmen are employed;

(3) that the person about whom the dispute is raised need not be a workman within the meaning of the Act, but he must answer to the description of an employee discharged or in service or a candidate for the employment;

(4) the workmen raising the dispute must have a nexus with the dispute either because they are personally interested or because they have taken up the cause of another person in the general interest of labour welfare.

While conceding that the first two limitations formulated by the learned counsel for the workmen were really implicit in the definition of the "industrial dispute" itself, their Lordships took the view that the remaining two limitations suggested by the learned counsel are much too widely stated and not quite correct. After pointing out that there is a gap between what is normally understood by the term 'employee' and

the restricted definition of the term 'workman' in the Act and that this gap is sought to be reduced by the extended definition of the term 'workman' under the amendment carried out in 1956, their Lordships held that the Act seeks to confer benefits only upon workmen as defined in the Act and that, therefore, the expression 'any person' in the definition of an industrial dispute means a person in whose employment or non-employment or terms of employment or conditions of labour the workmen as a class have a direct or a substantial interest or with whom they have under the scheme of the Act a community of interest.

The case before their Lordships was governed by the Industrial Disputes Act before it was amended in 1956 under which a person belonging to supervisory staff was not a workman. Their Lordships distinctly state that in the employment, non-employment or terms of employment of a member of the supervisory staff, who cannot himself be a party to an industrial dispute, the workman cannot be said to have any substantial or direct interest. They further observe that although solidarity of labour or general interest of labour welfare may furnish in some cases the necessary nexus of direct or substantial interest in a dispute, the principle of solidarity of labour movement or general welfare of labour before it can furnish such a nexus must be based on or correlated to the principle of community of interest. Their Lordships then refer with approval to the views stated by Chagla, C. J., in the case mentioned above. Among other terse propositions stated by the learned Chief Justice, we must refer to the following passage in his Lordships' judgment :

"It is clear that in this particular case it cannot be said that the workmen of the second respondent-company are interested in the scales of pay of, or the bonus to be given to, divisional heads and foremen. They may strongly feel about the rights of these employees, they may have strong sympathy for their claims, they may even be oppressed by a sense of injustice, but these are all considerations foreign to the object of the Act. It is only primarily in their own employment, in their own terms of employment, in their own conditions of labour that workmen are interested and it is with regard to these that they are entitled to agitate by means of raising an industrial dispute and getting it referred to a Tribunal by Government....."

The crucial test, therefore, of an industrial dispute is to see whether the workmen who raise the dispute in respect of the employment or non-employment or conditions of employment of a person have any direct or substantial interest in those matters or there is between them and that other person a community of interest of the type stated

by their Lordships of the Supreme Court. As pointed out by Chagla, C. J., the primary interest of workmen is in their own conditions of service. They cannot, therefore, be said to have any direct or substantial interest in the conditions of service of another person unless those conditions are the same as the conditions of their own service. As their Lordships of the Supreme Court point out, a workman can have no interest in the conditions of service of a non-workman. Their Lordships state :

"In a case where the party to the dispute is composed of aggrieved workmen themselves and the subject-matter of dispute relates to them or any of them, they clearly have a direct interest in the dispute. Where, however, the party to the dispute also composed of workmen, espouse the cause of another person whose employment or non-employment, etc., may prejudicially affect their interest, the workmen have a substantial interest in the subject-matter of dispute. In both such cases, the dispute is an industrial dispute."

It follows, therefore, that the subject-matter of the dispute should relate to the employment, non-employment or conditions of employment of the workers themselves, who are parties to the dispute or any of them, or where he is not a party to the dispute he should be a workman whose conditions of employment are the same as those of the workmen who are parties to the dispute because if the conditions are different the parties to the dispute can have no interest in them nor can they be said to be prejudicially affected by the employment, non-employment or conditions of employment of the person who is the subject of the dispute.

In the case before the Supreme Court as well as the case before the Bombay High Court the person as to whose employment, non-employment or conditions of employment the dispute was raised was not a workman at all. Hence, it was held there was no community of interest between him and the workmen who were parties to the dispute. The fact that Dr. Banerjee was a member of the Union was held to make no difference to the principle.

Hence in this case the vital controversy on fact has throughout been whether Kambhavi was a workman or not. This dispute arose after the amendment of the Industrial Disputes Act of 1956 and hence members of supervisory staff who draw wages less than Rs. 500 per month and are not employed mainly in managerial or administrative capacity come within the definition of workmen. On the evidence placed before it, the 1st respondent-Court has come to the conclusion that the duties of Kambhavi were only supervisory in nature and even

assuming that some of them may be said to partake of the nature of administrative or managerial work, he was engaged mainly in supervisory work and was drawing a salary of less than Rs. 500 per month. The Court has, therefore, recorded a finding that Kembhavi is a workman. This is a finding of fact and the evidence placed before the Court is such that it cannot be said that the inference drawn by the Court does not properly flow from it. We, therefore, accept this finding and proceed to decide the case on the footing that Kembhavi is a workman.

The only question, therefore, is whether there can be said to be any community of interest between Kembhavi and the Clerks' Union. Admittedly, Kembhavi is not a member of the Clerks' Union. The Union has not placed any material before the Court to displace the suggestion of the management that the Union is composed only of clerks employed in the Company, especially when its very name suggests that it is a Union only of clerks working in the Company. Relying upon the observation of the Supreme Court :

"It is the community of interest of the class as a whole—class of employers or class of workmen—which furnishes the real nexus between the dispute and the parties to the dispute"

the learned counsel for the Union has contended before us that both Kembhavi and the members of the Clerks' Union being workmen, it can be said that workmen as a class or as a whole are directly and substantially interested in the employment, non-employment, conditions of employment of Kembhavi. According to him, the question of community of interest is important and should be considered only where workmen espouse the cause of a non-workman but that when both are workmen that fact itself is sufficient to establish community of interest between them.

On the contrary, the learned counsel for the Company argues that according to the judgment of the Supreme Court if the subject of the dispute is not a workman, there cannot possibly be any community of interest at all, and that this clearly flows from the observations of their Lordships towards the end of paragraph 14 where they say that workmen cannot be said to be interested in the conditions of service of a member of the supervisory staff who was then outside the purview of the definition of the term "workman".

He, therefore, argues that in addition to establishing that the subject of the dispute is himself a workman, it must further be established that the workmen who have raised the dispute have a direct and substantial interest in the employment, non-employment or conditions of employment of that person. It is urged that even among workmen there are several categories and the conditions of service of these different

categories may themselves be different and that this should be so in the nature of things because the type of work done by different categories of workmen will be different in nature and the conditions of service would vary according to the nature of work turned out.

It is also pointed out that an industrial dispute need not relate to an entire establishment but may be confined to a part of the establishment. The several parts of an establishment may be distinguished either according to their geographical location, as, when a company has different branches in several places, or according to the categories of workmen who man those parts. Thus, in a mill like the petitioner-company there are one or more parts of the establishment manned by clerks and one or more parts of the establishment manned by operatives or manufacturing staff.

There may, likewise, be different parts manned by operatives, technicians or laboratory-men. Just as conditions of service of different categories of workmen may vary according to the nature of the work done by them, the conditions of service of workmen working in different localities may, likewise, vary according to the local conditions.

On this basis the learned counsel for the company argues that unless there is identity in the conditions of service of the person who is the subject of dispute and of the workmen, who are parties to the dispute, it cannot be said that there is such community of interest between them as to convert the dispute into an industrial dispute when the workmen espouse the cause of the workman who is the subject of the dispute. The learned counsel for the Union has referred us to the resolution passed by the general body of the 2nd respondent-Union to show how they are interested in or prejudicially affected by the termination of services of Kembhavi.

The learned counsel for the company, however, points out that their Lordships of the Supreme Court have definitely stated that the principle of solidarity of labour movement or general welfare of labour must be based on or correlated to the principle of community of interest and also to the observations of Chagla, C. J., that any such strong feelings or a sense of oppression or injustice as are set out in the resolution of the Union are considerations foreign to the object of the Act.

We are of opinion that the contentions of the learned counsel on behalf of the company are sound and should be accepted. The nature of duties of Kembhavi, who was admittedly working in the manufacturing department of the Mills, cannot be the same as the nature of duties of clerks, who are members of the 2nd respondent-Union. His conditions of service will, therefore, be different from the conditions of service of the clerks. He is not even a member of the Clerks' Union.

The Union cannot, therefore, be interested in his conditions of service unless a substantial majority of the workmen of the class to which Kembhavi belongs are among the members of the Union. Nothing has been pointed out to show how and in what manner the Clerks' Union has any direct or substantial interest in the employment, non-employment or conditions of employment of Kembhavi beyond what is stated in the resolution of the general body of the Union which, in the light of the views expressed by their Lordships of the Supreme Court, cannot, in themselves, furnish the necessary nexus between the dispute and the parties to the dispute. By the mere fact, therefore, of the Union having espoused the cause of Kembhavi it cannot be said that the dispute raised in respect of the termination of his services has become an industrial dispute.

We, therefore, hold that the dispute which the Government of Mysore referred to the 1st respondent-Industrial Court for adjudication in this case is not an industrial dispute within the meaning of the Industrial Disputes Act. Consequently, it has to be held that the 1st respondent-Labour Court had no jurisdiction to entertain and adjudicate upon the dispute.

In the light of this conclusion, it is unnecessary to consider the further argument of the learned counsel for the company that the termination of services of Kembhavi was in exercise of a contractual right not furnishing any ground for raising an industrial dispute. We may also observe that there is not sufficient material on record to clearly establish that Kembhavi's services were terminated in accordance with any specific term of a contract or any specific condition in the Standing Orders applicable to him. Both sides virtually agree that the Standing Orders produced before the Labour Court do not directly apply to Kembhavi or to the clerks either.

In the result, the petition is allowed. A writ of certiorari will issue quashing the award of the Labour Court at Hubli in Industrial Dispute No. 2/1957 on its file published in the Mysore Gazette dated 15th May, 1958. The 2nd respondent-Union will pay the costs of the petitioner-company in this petition. Advocate's fee Rs. 100.

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