



## **LL.B. V Term**

### **LB-503 - Industrial Law (including IDRA)**

**Cases Selected and Edited by**

*Anu*

*Aklavya Anand*

*Daya*

*Dinesh Dayma*

*Namita Vashishtha*

*Naresh Mahipal*

*Parveen*

*Silky Mukherjee*

*Upendra Nath*

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#### **Introduction to Industrial Laws**

Industrial laws primarily deal with industrial relations, employment laws, safety provisions for workers, social securities to employees, employment contracts, etc. Therefore employment relations, broadly referring to the laws that cover the interactions between the work-force and employer, are the basic premises of Industrial Laws.

Economic activities, which are fundamental for development and progress of any nation, entails continuous interactions between the primary factors of production – labour and capital. Since these two aspects represent the two ends of the economic spectrum, their interests, objectives and conditions vary greatly from each other. The capital input is represented through the management or the employer in an industry, and the labour input is represented by the work- force or employees. While the aim of the management is profit maximization through the greatest possible efficiency level of the employees and other operations, the interest of the workers are focused on factors like work conditions, wages, bonus, compensation in case of mishaps, etc. Since the employer occupies the economically powerful pedestal, there are instances of exploitation or clash of interest between the parties.

In this context the function of law is largely that of social engineering as propagated by Roscoe Pound, where law needs to regulate and balance the conflicting interests between the parties. In fact, the importance of Industrial Laws lie in the fact that they not only aim to mitigate conflicts, but also ensure due protection to the parties, particularly the employees, so that they are not denied their rights due to their unequal economic power equations. Hence Industrial Laws are principally social welfare legislations which aim to ensure that the employer-employee relationship is based on justice and good faith. This will safeguard the industrial health so that it manifests cooperation and mutual understanding which will in-turn ensure the best possible economic output.

Industrial Law is taught as a compulsory paper in Term V in the course curriculum of LL.B. at the Faculty of Law, which introduces the students to the rights and legal protections awarded to the workforce of the nation. The curriculum –

- Includes alternative dispute settlement mechanisms and their procedures as provided under the Industrial Disputes Act, 1947;
- Aims to introduce the students with the social security legislations like the Employees' Compensation Act, 1923 and Employees State Insurance Act, 1948;
- Deliberates on the wage concepts under the various wage legislations which have been recently consolidated as the Code on Wages, 2019;

- Discusses various Social Security legislations like the Payment of Bonus Act 1965, Payment of Gratuity Act, 1972, Maternity benefit Act, 1961 and Factories Act, 1948

Along with these, the curriculum also includes a very pertinent area of Industrial and labour laws, which has specific relevance in the present situation – Migrant Workmen Act, 1979. Given the recent nation-wide lockdown declared due to the pandemic COVID 19, a huge crisis relating to the migrant labours surfaced. The course will assist to review the existing law and the gaps that are required to be plugged to ensure a reasonable solution to the issue.

Hence the objective of the course is to appraise the students about the legal framework entailing the employer-employee relation and give a holistic view regarding the various laws determining the same. At the completion of the course, the students will be able to outline the various aspects of the legal structure as to how adequate they are to meet the challenges of globalization and privatisation, and other emergent circumstances, like the present pandemic situation.

As labour legislations are to regulate the conditions of labour, in the industrial milieu, it is required to be adjusted as per the changing requirements of industry. The objectives of a labour legislation are a developing concept and require ceaseless efforts to achieve them on continuous basis. Regulation of employee-employer relationship is a condition precedent for planned, progressive and purposeful development of any society. No one legislation can suffice for achievement of these goals and a comprehensive study is required, in continuation of previous course work, to understand the nuances of industrial relations. Keeping this in mind the present coursework of Industrial Law has been devised with following objectives

### **Course Objectives**

1. To examine whether present legal framework provided by the state is adequate to meet the challenges of globalization and to keep the students abreast of the latest developments in the present economic order.
2. To discuss critically the resultant changes that need to be made in industrial relations law for achieving higher economic growth tempered with social justice.
3. To acquaint the students with Social Security Frame-work prevailing in our country thereby sensitizing them towards the needs of both labour and the employer

### **Learning Outcomes**

1. The student must be able to comprehend the categorisation of different labour legislation along with their full understanding and should have clarity as to how various legislations are in sync with the constitutional provisions of the country.
2. Understand the dispute settlement mechanisms in the Industrial Disputes Act, 1947 and working of various machineries.
3. Differentiate between the concept of social justice and general justice to appreciate the aims, objectives, interpretations and application of various social security legislations.

### **General Readings:**

1. Report of the National Commission on Labour (1969)
2. Report of the Second National Commission on Labour (2002)
3. Report of the Committee on Fair Wages (1948)

### **Prescribed Legislations: Main Readings**

1. The Industrial Disputes Act, 1947
2. The Industrial Employment (Standing Orders) Act, 1946
3. The Labour Wage Code, 2019
4. The Industries Development and Regulation Act of India (1951)
5. Employees compensation Act, 1923
6. Employee State Insurance Act, 1948
7. Maternity benefit Act, 1961
8. Factories Act, 1948

### **Prescribed Books: (List is not exhaustive)**

1. E M. Rao (rev.), *O. P. Malhotra's The Law of Industrial Disputes* (7th ed., 2015)
2. P.K. Padhi, *Labour And Industrial Laws* (4<sup>th</sup> ed., 2019)
3. S. N. Mishra, *Labour & Industrial Laws* (29<sup>th</sup> ed., 2019)
4. V.C Goswami, *Labour and Industrial Laws* (10<sup>th</sup> ed., 2015)
5. H.L. Kumar, *Law Relating to Disciplinary Proceedings in Industries* (10<sup>th</sup> ed., 2019)
6. P.L. Malik (Rev.), *K.D. Srivastava's Industrial Employment (Standing Orders) Act, 1946* (4<sup>th</sup> ed., 2000)
7. P.L. Malik's, *Industrial Law* (21st ed., 2008)
8. S.C. Srivastava (rev.), *Labour Law and Labour Relations: Cases and Materials* (7<sup>th</sup> ed., 2019)

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### **LB – 503 – Industrial Law (including IDRA)**

#### **Unit 1: Dispute Settlement under the Industrial Disputes Act, 1947**

(a) Investigation & Settlement of Industrial Disputes – General (sections 3 – 15)

1.	<i>Bharat Bank Ltd. v Employees</i> , AIR 1950 SC 188	9
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(b) Dispute Settlement Machinery: Conciliation and Adjudication

(i) Conciliation/Mediation as a Dispute Settlement Mechanism

(ii) Adjudication: Voluntary Adjudication/Arbitration and Compulsory Adjudication

#### **Unit 2: Reference of the Industrial Dispute**

(a) Nature & Scope of the Power of the Appropriate Government under section 10

(b) Jurisdiction of Adjudicatory Authorities.

(c) Defective Reference

2.	<i>The State of Madras v C.P. Sarathy</i> , AIR 1953 SC 53	21
3.	<i>State of Bombay v K.P. Krishnan</i> , AIR 1960 SC 1223	26
4.	<i>Telco Convoy Drivers Mazdoor Sangh v State of Bihar</i> , AIR 1989 SC 1565	35
5.	<i>Sharad Kumar v Govt. of NCT of Delhi</i> , AIR 2002 SC 1724	38
6.	<i>The Delhi Cloth &amp; General Mills Co. Ltd. v Workmen</i> , AIR 1967 SC 469	41
7.	<i>M/S. Tata Iron &amp; Steel Co. Ltd v State of Jharkhand &amp; Ors</i> , (2014) 1 SCC 536	47

**Unit 3: Awards and Settlements (a) Settlement: Nature, Duration and Termination (b)  
Awards: Nature and Duration (c) Judicial Review of Industrial Awards**

8.	<i>Sirsilk v Government of Andhra Pradesh</i> , AIR 1964 SC 160	53
9.	<i>Remington Rand of India Ltd. v Workmen</i> , AIR 1968 SC 224	57

**Unit 4: Managerial Prerogative & Disciplinary Action**

10.	<i>Delhi Cloth and General Mills Ltd. v Kushal Bhan</i> , AIR 1960 SC 806	60
11.	<i>Associated Cement Co. Ltd. v Workmen</i> , (1964) 3 SCR 652	61
12.	<i>Tata Oil Mills Co. Ltd. v Workmen</i> , AIR 1965 SC 155	66
13.	<i>Indian Overseas Bank, Anna Salai v P. Ganesan</i> , 2007(13) SCALE 446	*
14.	<i>Kusheshwar Dubey v Bharat Coking Coal Ltd.</i> , AIR 1988 SC 2118)	70
15.	<i>Prem Nath Bali v Registrar, High Court of Delhi &amp; Another</i> , (2015) 16 SCC 415	72

**Unit – 5: Powers of the Adjudicatory Authorities Power in cases of Discharge/Dismissal  
and Application of Doctrine of Proportionality in awarding Punishments (section 11A)**

16.	<i>The Workmen of M/s. Firestone Tyre &amp; Rubber Co. of India P. Ltd. v. The Management</i> , AIR 1973 SC 1227	77
17.	<i>Hombe Gowda Educational Trust v State of Karnataka</i> , (2006) 1 SCC 430	94
18.	<i>Scooters India Limited v Labour Court</i> , AIR 1989 SC 149	100
19.	<i>J.K. Synthetics Ltd. v K.P. Agrawal</i> , (2007) 2 SCC 433	*
20.	<i>Raghubir Singh v General Manager, Haryana Roadways, Hissar</i> , 2014 (6) SLR 6 (SC)	*

### Unit – 6: Restraints on Managerial Prerogatives (section 33 and 33A)

21.	<i>The Management of Hotel Imperial v Hotel Workers Union</i> , AIR 1959 SC 1342	102
22.	<i>Fakirbhai Fulabhai Solanki v Presiding Officer</i> , AIR 1986 SC 1168	109
23.	<i>Ram Lakhan v Presiding Officer</i> , (2000) 10 SCC 201	114

### Unit 7: Wage – Concept and Kinds of Wages

(i) Concept; Kinds - (a) Minimum Wage; (b) Fair Wage; (c) Living Wage

(ii) The Labour Wage Code, 2019 (The Minimum Wage Act, 1948; The Payment of Wages Act, 1936; and Equal Remuneration Act, 1976 being repealed by the new Code)

24.	<i>Crown Aluminum Works Ltd. v Workmen</i> , AIR 1958 SC 130	119
25.	<i>Greaves Cotton and Co. Ltd. v Workmen</i> , AIR 1964 SC 639	126
26.	<i>The Workmen v The Management of Reptakos Brett &amp; Co. Ltd.</i> , AIR 1992 SC 504	133
27.	<i>People's Union for Democratic Rights v Union of India</i> , AIR 1982 SC 1473	140

### Unit 8: Employees compensation Act, 1923 & Employee State Insurance Act, 1948

(a) Definitions

(b) Concept of injury — arising out of and in the course of employment

(c) Disablement: Partial and Total; Temporary and Permanent

28.	<i>B.E.S.T. Undertaking v Agnes</i> , (1964) 3 SCR 930	153
29.	<i>Daivshala and Others v. Oriental Insurance Company Ltd. and Another</i> 2025 SCC OnLine SC 1534	166
30.	<i>Royal Western India Turf Club Ltd. v E.S.I. Corporation</i> , 2016(4) SCC 521	*

**Unit 9: The Labour Wage Code, 2019 (The Payment of Bonus Act 1965 repealed by the new Wage Code, 2019) & Payment of Gratuity Act, 1972 with Payment of Gratuity (Amendment) Act, 2018**

31.	<i>Jalan Trading Co. (P.) Ltd. v Mill Mazdoor Sabha</i> , AIR 1967 SC 691	173
32.	<i>Birla Institute of Technology v State of Jharkhand and Others</i> , (2019) 4 SCC 513	192

**Unit 10: Social Security Legislations: Salient Features**

- (i) Maternity benefit Act, 1961: Relevant Provisions
- (ii) Factories Act, 1948 (Special Emphasis on provisions related to Women and Children)
- (iii) The Inter-State Migrant Workmen (Regulation of Employment and Conditions Of Service) Act, 1979: Salient Features
- (iv) The Industries Development and Regulation Act of India (1951): Preventive, curative and Creative Provisions

32.	<i>Prag Narain v The Crown</i> , AIR 1928 Lah 78	*
33.	<i>Aedeshir H. Bhiwandiwalla v State of Bombay</i> , AIR 1962 SC 29	*
34.	<i>Municipal Cooperation of Delhi v Female Workers (Muster Roll) &amp; Anr</i> , 2000 SCC (L&S) 331	*
35.	<i>Balwant Rai Saluja v Air India Ltd.</i> , (2014) 9 SCC 407	*
36.	<i>Dr Kavita Yadav V Secretary, Ministry Of Health And Family Welfare Department And Others</i> (2024) 1 SCC 421	199



## **Topic-1: Dispute Settlement under the Industrial Disputes Act**

### ***Bharat Bank Ltd. v. Employees***

1950 SCR 459: AIR 1950 SC 188

**M.C. MAHAJAN, J.** - This is an appeal by special leave from the determination of an industrial dispute by the Industrial Tribunal appointed under Ordinance VI of 1949.

22. Bharat Bank Limited, Delhi, the appellant, is a company registered under the Indian Companies Act. Its employees made certain demands and as a result of an unfavourable response from the Bank it appears that they struck work on 9th March, 1949. The Bank in its turn served notices on them to resume work and proceeded to discharge a number of them between the 19th March and 24th March as they failed to do so. The Central Government constituted a Tribunal consisting of three persons for the adjudication of industrial disputes in banking companies under Section 7 of the Industrial Disputes Act (14 of 1947). The disputes mentioned in Schedule II of the notification were referred under Section 10 of the Act to this Tribunal. Item 18 of this schedule reads as follows:

“Retrenchment and victimization (specific cases to be cited by employees).”

23. The dispute under this item between Bharat Bank and its employees was heard by the Tribunal at Delhi and its award was made on the 19th January, 1950. It was published in the Government of India Gazette dated 4th February, 1950, and was declared to be binding for a period of one year. The award of the Tribunal was signed by two out of its three members.

24. A preliminary objection was raised on behalf of the Central Government as well as on behalf of the respondents that this Court had no jurisdiction to grant special leave to appeal against the determination of an Industrial Tribunal inasmuch as it did not exercise the judicial powers of the State and that its determination was not in the nature of a judgment, decree or order of a court so as to be appealable. This being the first case in which special leave was granted from the determination of an Industrial Tribunal, it is necessary to examine the provisions of the Constitution dealing with this matter and if possible, to define the limits of the jurisdiction of this Court under Article 136. This article is in these terms:

“(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.”

25. The article occurs in Chapter IV of Part V of the Constitution: “The Union Judiciary”. Article 124 deals with the establishment and constitution of the Supreme Court. Article 131 confers original jurisdiction on this Court in certain disputes arising between the Government of India and the States etc. Articles 132 and 133 deal with the appellate jurisdiction of the court in appeals from High Courts within the territory of India in civil matters. By Article 134 limited right of appeal in criminal cases has been allowed. The Judicial Committee of the Privy Council which was the highest court of appeal for India prior to 10th October, 1949, was not a court of criminal appeal in the sense in which this Court has been made a court of criminal appeal under Article 134. It could only entertain appeals on the criminal side in exercise of the prerogative of the King. Article 135 empowers this Court to hear all appeals which under existing laws could be heard by the Federal Court of India. By the Abolition of Privy Council Jurisdiction Act, 1949, which came into force on 10th October, 1949, all the powers that were possessed by the Judicial Committee of the Privy Council in regard to cases or matters arising in India became exercisable by the Federal Court of India whether those powers were exercisable by reason of statutory authority or under the prerogative of the King. The powers of the Judicial Committee were conferred upon it by the

Judicial Committee Act, 1844. Appeals lay to His Majesty in Council from judgments, sentences, decrees or orders of any court of justice within any British colony or possession abroad. Closely following Article 135 which confers all the powers of the Judicial Committee on the Supreme Court comes Article 136. The language employed in this article is very wide and is of a comprehensive character. Powers given are of an overriding nature. The article commences with the words “notwithstanding anything in this Chapter”. These words indicate that the intention of the Constitution was to disregard in extraordinary cases the limitations contained in the previous articles on this Court’s power to entertain appeals. These articles dealt with the right of appeal against final decisions of High Courts within the territory of India. Article 136, however, overrides that qualification and empowers this Court to grant special leave even in cases where the judgment has not been given by a High Court but has been given by any court in the territory of India; in other words, it contemplates grant of special leave in cases where a court subordinate to a High Court has passed or made any order and the situation demands that the order should be quashed or reversed even without having recourse to the usual procedure provided by law in the nature of an appeal etc. The word “order” in Article 136 has not been qualified by the word “final”. It is clear, therefore, that the power to grant special leave under this article against an order of a court could be exercised with respect to interlocutory orders also. Another new feature introduced in Article 136 is the power given to grant special leave against orders and determinations etc. of any Tribunal in the territory of India. This word did not find place in the Judicial Committee Act, where the phrase used was “a court of justice”. It is the introduction of this new expression in Article 136 that has led to considerable argument as to its scope.

Another expression that did not find place in the Judicial Committee Act but has been introduced in Article 136 is the word “determination”. A question has been raised as to the meaning to be given to these words in the article. On the one hand, it was contended that the words “determination” and “tribunal” were introduced in the article in order to bring within the scope of the appellate jurisdiction of this Court all orders of tribunals of different varieties and descriptions. On the other hand, it was said that the words “determination” and “tribunal” were added in the article by way of abundant caution and the intention was that if a Tribunal exercised the judicial powers of the State and the decision was passed in the exercise of that power, this Court as the highest judicial court in the Republic would have power, if it considered necessary in the ends of justice, to grant special leave. Clause (2) of Article 136 excludes the jurisdiction of this Court in respect of military courts or tribunal. It is interesting to observe that in Articles 138, 139 and 140 the Constitution has conferred powers on Parliament for further enlargement of the powers of this Court.

26. Two points arise for determination in this case: (1) whether the word “tribunal” in this article has been used in the same sense as “court,” or whether it has been used in a wider sense, and (2) whether the word “determination” in the article includes within its scope the determinations made by Industrial Tribunals or other similarly constituted bodies or whether it has reference only to determinations of a court or a tribunal of a purely judicial character. It was conceded by the learned counsel appearing for the Central Government, Mr Alladi Krishnaswami Aiyar, that if any Tribunal, whether administrative, domestic or quasi-judicial, acts in excess of its jurisdiction, then it can be controlled by the High Courts under the powers conferred on them by Article 226 by the issue of a writ of certiorari. It was said that if the Industrial Tribunal in this case could be proved to have trespassed beyond the limits of its statutory jurisdiction, then the remedy lies elsewhere and not by a petition of special leave under Article 136. Mr Alladi’s contentions may be briefly summarized as follows: (1) The expression “tribunal” means seat of a Judge, or a court of justice. Its necessary attribute is that it can give a final judgment between two parties which carries legal sanction by its own force. That the word “tribunal” in juxtaposition to the word “court” could only mean a tribunal which exercised judicial functions of the State and did not include within its ambit a Tribunal which had quasi-judicial or administrative powers. (2) The kinds of orders against which special leave to appeal could be given under Article 136 have to be of the same nature as passed by a court, in other words, it was said that unless there was a judicial determination of a controversy between two parties, the order would not be appealable. That in the case of an Industrial

Tribunal what gives binding force to the award is the declaration of the Government, that the spark of life to it is given by that declaration and without that, the award of the Tribunal is lifeless and has no enforceability and hence cannot be held to be of an appealable nature. It was further said that in cases between the Government and its employees, by the procedure prescribed in the Act the award could also be rejected, and that being so, by its own determination a tribunal could not impose a liability or affect rights. Dr Bakshi Tek Chand, appearing for the Bank, on the other hand argued that whenever a Tribunal, whether exercising judicial or quasi-judicial functions, determined a matter in a judicial manner, then such a determination is within Article 136. It was said that an Industrial Tribunal has no administrative or executive functions, that its duty is to adjudicate on an industrial dispute i.e. to act as a Judge, on certain kinds of disputes between employers and employees and that its functions are of a judicial nature, though the ambit of the powers conferred is larger than that of an ordinary court of law inasmuch as it can grant reliefs which no court of law could give, but that is because of the powers conferred on it by law. It was argued that the plain words of the article should not be given a narrow meaning when the intention of the Constitution was to confer the widest power on this Court. It was further contended that as between private employers and employees and even in certain cases between the Government and its employees the decision of the Tribunal was binding on the Government and the Government had no power either to affirm, modify or reject it. All that it was authorised to do was to announce it and by its declaration give it enforceability; that fact, however, could not affect the question of appealability of the determination under Article 136. It was finally argued that powers should be exercised by this Court wherever there is a miscarriage of justice by a determination of any Tribunal and that if the intention of the Constitution by use of the word “tribunal” was in the same sense as “court”, then it was not necessary to import it in Article 136, because all tribunals that exercise judicial functions fall within the definition of the word “court” though they may not have been so described.

27. After considerable thought I have reached the conclusion that the preliminary objection should be overruled. I see no cogent reasons to limit the plain words of the statute and to place a narrow interpretation on words of widest amplitude used therein. In construing the articles of the Constitution it has always to be remembered that India has been constituted into a sovereign democratic republic in order to ensure justice to all its citizens. In other words, the foundations of this republic have been laid on the bedrock of justice. To safeguard these foundations so that they may not be undermined by injustice occurring anywhere this Court has been constituted. By Article 32 of the Constitution the Court is empowered to see that the fundamental rights conferred on the citizens by the Constitution are not in any way affected. By Article 136 it has been given overriding power to grant special leave to appeal against orders of courts and tribunals which go against the principle of natural justice and lead to grave miscarriage of justice. The exercise of these powers could only have been contemplated in cases which affect the rights of people living within the territory of India in respect of their person, property or status. The question, therefore, for consideration is whether the jurisdiction conferred by use of unambiguous phraseology and by words which have a plain grammatical meaning and are of the widest amplitude should be limited and restricted on considerations suggested by Mr Alladi. The construction suggested by the learned counsel, if accepted, would in the first instance make the use of certain words in the article unnecessary and redundant and would run counter to the spirit of the Constitution. It must be presumed that the draftsmen of the Constitution knew well the fact that there were a number of tribunals constituted in this country previous to the coming into force of the Constitution which were performing certain administrative, quasi-judicial or domestic functions, that some of them had even the trappings of a court but in spite of those trappings could not be given that description. It must also be presumed that the Constitution-makers were aware of the fact that the highest courts in this country had held that all Tribunals that discharged judicial functions fell within the definition of the expression “court”. If by the use of the word “tribunal” in Article 136 the intention was to give it the same meaning as “Court”, then it was redundant and unnecessary to import it in the article because, by whatever name described, such a tribunal would fall within the definition of the word “court”. The word “court” has a well-known meaning in legislative history and practice.

28. As pointed out in *Halsbury's Laws of England*, the word "court" originally meant the King's Palace but subsequently acquired the meaning of (1) a place where justice was administered, and (2) the person or persons who administer it. In the Indian Evidence Act it is defined as including all judges and Magistrates and all persons except arbitrators legally authorized to take evidence. This definition is by no means exhaustive and has been framed only for the purposes of the Act. There can be no doubt that to be a court, the person or persons who constitute it must be entrusted with judicial functions, that is, of deciding litigated questions according to law. However, by agreement between parties arbitrators may be called upon to exercise judicial powers and to decide a dispute according to law but that would not make the arbitrators a court. It appears to me that before a person or persons can be said to constitute a court it must be held that they derive their powers from the State and are exercising the judicial powers of the State. In *R. v. London County Council* [(1931) 2 KB 215], Saville, L.J. gave the following meaning to the word "court" or "judicial authority":

"It is not necessary that it should be a court in the sense that this Court is a Court, it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a court if it is a Tribunal which has to decide rightly after hearing evidence and opposition."

29. As pointed out in picturesque language by Lord Sankey, L.C. in *Shell Co. of Australia v. Federal Commissioner of Taxation* [(1931) AC 275] there are tribunals with many of the trappings of a court which, nevertheless, are not courts in the strict sense of exercising judicial power. It seems to me that such tribunals though they are not full-fledged courts, yet exercise quasi-judicial functions and are within the ambit of the word "tribunal" in Article 136 of the Constitution. It was pointed out in the above case that a tribunal is not necessarily a court in this strict sense because it gives a final decision, nor because it hears witnesses on oath, nor because two or more contending parties appear before it between whom it has to decide, nor because it gives decisions which affect the rights of subjects nor because there is an appeal to a court, nor because it is a body to which a matter is referred by another body. The intention of the Constitution by use of the word "tribunal" in the article seems to have been to include within the scope of Article 136 tribunals adorned with similar trappings as court but strictly not coming within that definition. Various definitions of the phrase "judicial power" have been given from time to time. The best definition of it on high authority is the one given by Griffith, C.J. in *Huddart, Parker & Co. v. Moorehead* [8 CLR 330, 357] wherein it is defined as follows:

"The words 'judicial power' as used in Section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

30. It was conceded that a tribunal constituted under the Industrial Disputes Act, 1947, exercises quasi-judicial powers. That phrase implies that a certain content of the judicial power of the State is vested in it and it is called upon to exercise it. An attempt was made to define the words "judicial" and "quasi-judicial" in the case of *Cooper v. Wilson* [(1937) 2 KB 309, 340]. The relevant quotation reads thus:

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The

place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice."

32. Reference was made to certain passages from Professor Allen's book on *Law and Order*, Chapter IV, p. 69, where mention is made of the kinds of administrative tribunals functioning in various countries today. There can be no doubt that varieties of administrative tribunals and domestic tribunals are known to exist in this country as well as in other countries of the world but the real question to decide in each case is as to the extent of judicial power of the State exercised by them. Tribunals which do not derive authority from the sovereign power cannot fall within the ambit of Article 136. The condition precedent for bringing a tribunal within the ambit of Article 136 is that it should be constituted by the State. Again a tribunal would be outside the ambit of Article 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties. Tribunals, however, which are found invested with certain functions of a court of justice and have some of its trappings also would fall within the ambit of Article 136 and would be subject to the appellate control of this Court whenever it is found necessary to exercise that control in the interests of justice.

33. It is now convenient to consider whether a tribunal constituted under the Industrial Disputes Act, 1947, exercises all or any one of the functions of a court of justice and whether it discharges them according to law or whether it can act as it likes in its deliberations and is guided by its own notions of right and wrong.

34. Such a dispute concerns the rights of employers and employees. Its decision affects the terms of a contract of service or the conditions of employment. Not only may the pecuniary liability of an employer be considerably affected by the adjudication of such dispute but it may even result in the imposition of punishments on him. It may adversely affect the employees as well. Adjudication of such a dispute affects valuable rights. The dispute and its result can always be translated in terms of money. The point for decision in the dispute usually is how much money has to pass out of the pocket of the employer to the pocket of the employee in one form or another and to what extent the right of freedom of contract stands modified to bring about industrial peace. Power to adjudicate on such a dispute is given by Section 7 of the statute to an Industrial Tribunal and a duty is cast on it to adjudicate it *in accordance with the provisions of Act*. The words underlined clearly imply that the dispute has to be adjudicated according to law and not in any other manner. When the dispute has to be adjudicated in accordance with the provisions of the Act, it follows that the Tribunal has to adhere to law, though that law may be different from the law that an ordinary court of justice administers. It is noteworthy that the Tribunal is to consist of experienced judicial officers and its award is defined as a determination of the dispute. The expression "adjudication" implies that the Tribunal is to act as a judge of the dispute; in other words, it sits as a court of justice and does not occupy the chair of an administrator. It is pertinent to point out that the Tribunal is not given any executive or administrative powers. In Section 38 of the Act power is given to make rules for the purpose of giving effect to the provisions of the Act. Such rules can provide in respect of matters which concern the *powers and procedure* of tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter and as to appearance of legal practitioners in proceedings under this Act. Rule 3 of these Rules provides that any application for the reference of an industrial dispute to a tribunal shall be made in Form (A) and shall be accompanied by a statement setting forth, *inter alia*, the names of the parties to the dispute and the specific matters of dispute. It is in a sense in the nature of a plaint in a suit. In Rule 13 power is given to administer oaths. Rule 14 provides as follows:

"A tribunal may accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit."

Rule 17 provides that at its first sitting the Tribunal is to call upon the parties to *state their case*. In Rule 19 provision has been made for proceedings ex-parte. Rule 21 provides that in addition to the powers conferred by sub-section (3) of Section 11 of the Act, a tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of the following matters, namely, (a) discovery and inspection; (b) granting of adjournment; (c) reception of evidence

taken on affidavit; and that the tribunal may summon and examine *suo motu* any person whose evidence appears to it to be material. It further says that the tribunal shall be deemed to be a civil court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898. Rule 21 says that the representatives of the parties, appearing before a tribunal, shall have the right of examination, cross-examination and re-examination and of addressing the *court or tribunal when all evidence has been called*. In Rule 30 it is provided that a party to a reference may be represented by a legal practitioner with the permission of the tribunal and subject to such conditions as the tribunal may impose. In Section 11(3) it is laid down that a tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of the following matters, namely, (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examination of witnesses; (d) in respect of such other matters as may be prescribed; and every inquiry or investigation by a Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. It is difficult to conceive in view of these provisions that the Industrial Tribunal performs any functions other than that of a judicial nature. The Tribunal has certainly the first three requisites and characteristics of a court as defined above. It has certainly a considerable element of the fourth also inasmuch as the Tribunal cannot take any administrative action, the character of which is determined by its own choice. It has to make the adjudication in accordance with the provisions of the Act as laid down in Section 7. It consists of persons who are qualified to be or have been Judges. It is its duty to adjudicate on a serious dispute between employers and employees as affecting their right of freedom of contract and it can impose liabilities of a pecuniary nature and disobedience of its award is made punishable. The powers exercisable by a tribunal of this nature were considered in a judgment of the Federal Court of India in **Western India Automobile Association v. Industrial Tribunal, Bombay** [(1949) FCR 321] and it was observed that such a Tribunal can do what no court can, namely, add to or alter the terms or conditions of the contract of service. The Tribunal having been entrusted with the duty of adjudicating a dispute of a peculiar character, it is for this reason that it is armed with extraordinary powers. These powers, however, are derived from the statute. These are the Rules of the game and it has to decide according to these Rules. The powers conferred have the sanction of law behind it and are not exercisable by reason of any discretion vested in the members of the Tribunal. The adjudication of the dispute has to be in accordance with evidence legally adduced and the parties have a right to be heard and being represented by a legal practitioner. Right to examine and cross-examine witnesses has been given to the parties and finally they can address the Tribunal when evidence is closed. The whole procedure adopted by the Act and the Rules is modelled on the Code of Civil Procedure. In my opinion, therefore, the Industrial Tribunal has all the necessary attributes of a court of justice. It has no other function except that of adjudicating on a dispute.

It is no doubt true that by reason of the nature of the dispute that they have to adjudicate the law gives them wider powers than are possessed by ordinary courts of law, but powers of such a nature do not affect the question that they are exercising judicial power. Statutes like the Relief of Indebtedness Act, or the Encumbered Estates Act have conferred powers on courts which are not ordinarily known to law and which affect contractual rights. That circumstance does not make them anything else but Tribunals exercising judicial power of the State, though in a degree different from the ordinary courts and to an extent which is also different from that enjoyed by an ordinary court of law. They may rightly be described as quasi-judicial bodies because they are out of the hierarchy of the ordinary judicial system but that circumstance cannot affect the question of their being within the ambit of Article 136.

35. It may also be observed that the Tribunal is deemed to be a civil court for certain purposes as laid down in Rule 21 of the Rules above cited and in Section 11(3) of the Act. As a civil court if it exercises any of the powers contemplated by this section its decisions would become subject to appeal to a District Judge and a fortiori this Court's power under Article 136 would at once be attracted in any case in respect of these matters. Again, in Chapter VI of the Act breach of the terms of an award has been made punishable by Section 29 of the Act. The result therefore, is that disobedience of the terms of an award is punishable under the Act. That being so, a determination of the Tribunal not only affects the freedom of

contract and imposes pecuniary liability on the employer or confers pecuniary benefits on the employees, but it also involves serious consequences as failure to observe those terms makes a person liable to the penalties laid down in Chapter VI. An award which has these serious consequences can hardly be said to have been given by a tribunal which does not exercise some of the most important judicial functions of the State.

38. As regards clause (4), it was conceded rightly that a law dealing with industrial disputes and enacted in the year 1947 could not in any way, affect the provisions of the Constitution laid down in Article 136. It was however, strenuously urged that the award of the Tribunal had no binding force by itself and unless the appropriate Government made a declaration in writing under clause (2) of Section 15, this award was a lifeless document and had no sanction behind it and therefore it could not have been contemplated that it would be appealable even by special leave. In my opinion, this contention is unsound. The provisions of clause (2) of Section 15 leave no discretion in the Government either to affirm, modify or reject the award. It is bound to declare it binding. It has no option in the matter. In such a situation it is the determination by the Tribunal that matters. Without that determination Government cannot function. It does not possess the power either to adjudicate the dispute or to alter it in any manner whatsoever. That power vests in the Tribunal alone. The rights of the parties are really affected by the adjudication contained in the award, not by the Government's declaration which is automatic. It is no doubt true that announcement of the award by the Government gives it binding force but that does not affect the question of the appealability of the determination under Article 136 of the Constitution. The apposite answer to this contention may be given in the language of the decision in ***Rex v. Electricity Commissioners***. The relevant passage runs thus:

“It is necessary, however, to deal with what I think was the main objection of the Attorney-General. In this case he said the Commissioners come to no decision at all. They act merely as advisers. They recommend an order embodying a scheme to the Minister of Transport, who may confirm it with or without modifications. Similarly the Minister of Transport comes to no decision. He submits the order to the Houses of parliament, who may approve it with or without modifications. The Houses of Parliament may put anything into the order they please, whether consistent with the Act of 1919, or not. Until they have approved, nothing is decided, and in truth the whole procedure, draft scheme, inquiry, order, confirmation, approval, is only part of a process by which Parliament is expressing its will, and at no stage is subject to any control by the courts. It is unnecessary to emphasize the constitutional importance of this contention. Given its full effect, it means that the checks and safeguards which have been imposed by Act of Parliament, including the freedom from compulsory taking, can be removed, and new and onerous and inconsistent obligations imposed without an Act of Parliament, and by simple resolution of both Houses of Parliament. I do not find it necessary to determine whether, on the proper construction of the statute, resolutions of the two Houses of Parliament could have the effect claimed. In the provision that the final decision of the Commissioners is not to be operative until it has been approved by the two Houses of Parliament I find nothing inconsistent with the view that they act judicially and within the limits prescribed by Act of Parliament, and that the Courts have power to keep them within those limits. *It is to be noted that it is the order of the Commissioners that eventually takes effect, neither the Minister of Transport who confirms, nor the Houses of Parliament who approve can under the statute make an order which in respect of the matters in question has any operation. I know of no authority which compels me to hold that a proceeding cannot be a judicial proceeding subject to confirmation or approval, even where the approval has to be that of the Houses of Parliament. The authorities are to the contrary.*”

39. The observations, though they relate to a case which concerns the issue of a writ of prohibition and certiorari, have application to the present case. Here no discretion whatsoever has been left in the Government in ordinary cases to either modify or to reject the determination of the Tribunal. The fact that the Government has to make a declaration after the final decision of the Tribunal is not in any way inconsistent with the view that the Tribunal acts judicially. It may also be pointed out that within the

statute itself a clue has been provided which shows that the circumstance that the award has to be declared by an order of Government to be binding does not affect the question of its appealability. In Article 136 clause (2) express provision has been made for excepting from the ambit of Article 136 the decisions of military courts and tribunals. It follows that but for the exception it was considered that these would be within Article 136 clause (1). It is quite clear from the various provisions of the Army Act that the decisions of Military Tribunals or courts are subject to confirmation either by the Commander-in-Chief or various other Military Authorities. It is only after such confirmation that that can operate. It has never been considered that that fact in any way affects the question of their appealability.

**Rex v. Minister of Health** also supports this view. There by the Housing Act, 1925, by Section 40, a local authority which had prepared an improvement scheme was required to present a petition to the Minister praying that an order should be made confirming such scheme. Sub-section (3) provided that the Minister after considering the petition may cause a local inquiry to be made and may by order confirm the scheme with or without conditions or modifications. In sub-section (5) it was stated that the order of the Minister when made shall have effect *as if enacted in this Act*. It was held by the court of appeal that as the order made by the Minister was made without the statutory conditions having been complied with it was *ultra vires* and therefore a writ of certiorari should issue for the purpose of quashing it. Reliance was placed by Scrutton, L.J. on **Rex v. Electricity Commissioners**. It was observed that judicial review by prohibition or a writ of certiorari was permissible if the Minister of Health in confirming the order exceeded his statutory powers. It is clear therefore that simply because an order has to be confirmed by a Minister or by the Government it in any way affects the power of judicial review. As regards Section 19, it was contended that an award declared by the appropriate Government under Section 15 to be binding can only come into operation on such date as may be specified by the appropriate Government and can only remain in operation for such period not exceeding one year, as may be fixed by that Government and it was said that herein the Government had the power to state the period from which the award was to commence and the time for which it was to remain in force. This section does not, in my opinion, affect the question of the appealability of the determination of the Tribunal. Government has certain functions to perform in its own sphere after the award is made. In certain cases it is bound to declare that award binding. In other cases, when it is itself a party to the dispute, it has certain overriding powers and these overriding powers are that if it considers that the award is not in public interests it may refer it to the legislature. The legislature, however, has the power to modify, accept or reject the award. These overriding powers presuppose the existence of a valid determination by a tribunal. If that determination is in excess of jurisdiction or otherwise proceeds in a manner that offends against the rules of natural justice and is set aside by exercise of power under Article 136, then no occasion arises for exercise of governmental power under the Act. Given a valid award, it could not be denied that the Government could exercise its powers in any manner it considered best and the exercise of that power is outside the constitution of this Court.

41. One would have expected that after this opinion the decision would have been that the Judicial Committee had no jurisdiction to entertain the appeal but Their Lordships proceeded to base their decision not on this ground but on the ground that this was not a fit case for the exercise of the prerogative of the King. In my opinion, the observations made in that case have no apposite application to the provisions of the statute with which we are concerned. I do not see any difficulty in this case in testing the propriety of the determination of the Tribunal. This Court is not to substitute its decision for the determination of the Tribunal when granting relief under Article 136. When it chooses to interfere in the exercise of these extraordinary powers, it does so because the Tribunal has either exceeded its jurisdiction or has approached the questions referred to it in a manner which is likely to result in injustice or has adopted a procedure which runs counter to the well-established rules of natural justice. In other words, if it has denied a hearing to a party or has refused to record his evidence or has acted in any other manner, in an arbitrary or despotic fashion. In such circumstances no question arises of this Court constituting itself into a tribunal and assuming powers of settling a dispute. All that the Court when it entertains an appeal would do is to quash the award and direct the Tribunal to proceed within the powers conferred on it and



approach the adjudication of the dispute according to principles of natural justice. This Court under Article 136 would not constitute itself into a mere court of error. Extraordinary powers have to be exercised in rare and exceptional cases and on well-known principles. Considered in the light of these principles, there is no insuperable difficulty in the present case of the nature pointed out in the passage cited above. It was conceded that the High Court could exercise powers under Article 226 and could quash an award but it was said that under Article 136 this power should not be exercised in an appeal. I do not see why? Particularly when after the High Court has passed any decision on an application made to it in exercise of the powers under Article 226, that decision could be brought to this Court in appeal. In the matter of an industrial dispute where expedition is the crux of the matter, it is essential that any abuse of powers by such Tribunals is corrected as soon as possible and with expedition.

43. The phraseology employed in Article 136 itself justifies this course. The article empowers this Court to grant special leave against sentences or orders made by any court. In all other articles of the Constitution right of appeal is conferred against final decisions of the highest court of appeal in the country but under this article power is given to this Court to circumvent that procedure if it is considered necessary to do so. I am, therefore, of the opinion that the mere circumstance that a remedy in the nature of a writ of certiorari is open to the petitioners does not necessarily lead to the conclusion that the power of this Court under Article 136 is circumscribed by that circumstance. Whenever judicial review is permissible in one form or another, this Court as the highest court in the land can exercise its special powers and circumvent ordinary procedure by granting special leave. What it has to ultimately decide it can decide earlier.

44. I now proceed to examine some of the cases to which reference was made by Mr Alladi. Three Australian cases were cited which concern the construction of Sections 51, 71 and 72 of the Australian Constitution. Section 72 requires that every Justice of the High Court and every Justice of any other court created by Parliament of the Commonwealth shall subject to the power of removal contained in the section be appointed for life. Section 71 confers the whole judicial power of the Commonwealth upon the courts therein mentioned and no other tribunal or body can exercise that power. Every court referred to in Section 71 has to be constituted in the manner provided by Section 72. The question in these cases was as to the meaning of the phrase “judicial power of the Commonwealth”. Similar phraseology has not been used in any part of the Constitution of India and in these circumstances it is difficult to derive any assistance from these decisions in solving the problem before us. The Constitution of India is not modelled on the Constitution of Australia and that being so, any observations made in decisions given under that Constitution cannot be held to be a safe guide in the interpretation of language employed in a Constitution differently drafted.

47. It was argued that the Industrial Tribunal here was an Arbitration Tribunal of the same kind as in Australia and exercises similar functions. It is however pertinent to observe that the phraseology employed in Section 15 of the Indian Act is different from that used in the Australian statute. The Indian statute has constituted different bodies for different purposes. An Industrial Tribunal has been constituted only to discharge one function of adjudication. It is not described as an Arbitral Tribunal. The Act has avoided the use of the word “arbitration” either in preamble or in any of its relevant provisions though the determination has been named as an award. In these circumstances it is unsafe to seek any guidance from observations made in this case.

55. The learned counsel contended that the word “tribunal” in Article 136 could only have reference to those Tribunals which exercise functions equivalent to that of a court of justice. I have no hesitation in holding that the Industrial Tribunal has similar attributes as that of a court of justice in view of the various provisions to which I have made reference.

56. It was again urged by Mr Alladi that the word “tribunal” was introduced in the article to provide for cases of tribunals like the Board of Revenue. The suggestion does not appear to be sound, because a Revenue Board has all the attributes of a court of justice and falls within the definition of the word “court” in matters where it adjudicates on rights of parties.

57. The word “tribunal” has been used in previous legislation in a number of statutes and it is difficult to think that the Constitution when it introduced this word in Article 136 intended to limit its meaning to only those Tribunals which though not described as courts strictly speaking, were discharging the same or analogous functions as were being discharged by courts.

58. For the reasons given above I am of the opinion that the word “tribunal” in Article 136 has to be construed liberally and not in any narrow sense and an Industrial Tribunal inasmuch as it discharges functions of a judicial nature in accordance with law comes within the ambit of the article and from its determination an application for special leave is competent.

59. The question now to determine is whether the exercise of overriding powers of this Court can be justified on any ground whatsoever in the present case. Dr Bakshi Tek Chand for the petitioner-bank urged four grounds justifying exercise of the special jurisdiction of this Court. Firstly, he contended that the word “victimization” used in clause 18 of the reference had been interpreted in such a manner by the Tribunal that it had usurped jurisdiction to decide disputes which were never referred to it. In my view this is not a matter which can justify the exercise of the powers under Article 136. This Court is not a mere court of error. The word “victimization” has not been defined in the statute and is not in any sense a term of law or a term of article. It is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with. It was argued that the word has acquired a special meaning in regard to industrial disputes and connotes a person who becomes a victim of the employer’s wrath by reason of his trade union activities and that the word cannot relate to a person who has been merely unjustly dismissed. Be that as it may. The determination of the Tribunal has not been materially affected by this interpretation of the word to any large extent and that being so, it does not call for the exercise of the special power.

61. The second ground urged was that the Tribunal has erred in ordering reinstatement of persons who were guilty of an illegal strike. It was contended that Section 23(b) of the Act has been wrongly construed by it and as a result of this misconstruction persons who were guilty of a wrong and who could not have been reinstated have been reinstated. In brief, the argument was that under Section 23(b) when a matter has been referred to a tribunal in respect of an earlier strike, any strike during the pendency of that dispute is an illegal strike and that was the situation here. The employees of the bank had struck work in December 1948. That dispute had been referred to an Industrial Tribunal. It was during the pendency of that dispute that another strike took place which led to the dismissal of the employees who have now been reinstated by the present award. The Calcutta High Court has held that a strike during the pendency of the period of truce and during the pendency of an earlier dispute before a Tribunal is illegal even if it is brought about as a result of fresh and new demands which are not covered by the earlier dispute. One of the members of the Tribunal thought that the decision laid down the law correctly on the point, but the other member thought that the decision was erroneous. Both of them, however, agreed that whether the strike was legal or illegal that point did not in any way affect the question that they had to decide under Issue 18. The consequences of an illegal strike are laid down in the Act and certain penalties are provided therein. The Act nowhere states that persons guilty of illegal strike cannot be reinstated. Be that as it may. The reference to the Tribunal was made by the Government in respect of an illegal strike and the Tribunal was bound to give its decision on the reference. Item 18 of Schedule II clearly empowers the Tribunal to deal with cases of victimization as a result of the third strike which the petitioner described as illegal. The Tribunal may be wrong in the view they have taken but it seems to me this is again not a question of that vital character which would justify the grant of special leave under Article 136.

62. The next question raised by the learned counsel was that the award of the Tribunal is based on no evidence whatsoever. This contention requires serious consideration. I have examined the proceedings of the Tribunal and it appears that all it did was that as required by Rule 17 at the first sitting it called upon the parties to state their cases. Mr Parwana on behalf of the employees stated their respective cases and Mr Ved Vyas who represented the Bank stated the Bank’s case and after the cases had been stated the proceedings terminated and both parties addressed arguments and the Tribunal proceeded to give its award. Whether the charge of victimization in individual cases was proved or not depended on proof of

certain facts which had to be established by evidence. The onus of proving victimization clearly rested on the employees. No evidence whatsoever was led on their behalf. The statement of the case by Mr Parwana was not on oath. There was no examination or cross-examination of Mr Parwana. No affidavit supporting the facts stated by Mr Parwana was filed by him or by any employee. Mr Parwana produced an abstract of the correspondence but the original correspondence was not produced. The Bank disputed the facts stated by Mr Parwana by means of a lengthy affidavit. It seems no reference was made even to this affidavit by the Tribunal. No counter affidavit was filed in reply to the facts stated in this affidavit. The Bank wanted to call some evidence. Particular reference was made in respect of a scurrilous letter issued by one Bhattacharya on behalf of the employees and distributed by them, which it is alleged considerably shook the credit of the Bank. This opportunity was denied to it. It was contended before us that the Bank wanted to lead evidence on certain matters and that the opportunity to lead it was denied. There is nothing on the record to support this contention. The result therefore is that the facts on the basis of which allegations of victimization have been made are neither supported by an affidavit nor by any evidence and the award is based on no evidence whatsoever. The Act as well as the Rules framed under it contemplate a proper hearing, discovery and inspection of documents and production of evidence etc. None of this procedure was followed by the Tribunal. It is difficult to see on what material the Tribunal has given its award as there is none existing on the present record and the respondents' counsel could not point out to any such material. At one time during the argument I was inclined to think that possibly both parties by agreement consented to treat the statement of case as evidence in the case and did not wish to produce any other evidence, but the affidavit filed on behalf of the Bank disputes all the facts stated by Mr Parwana. The only evidence on the record is the Bank's affidavit and if the facts contained in the affidavit are accepted, then the determination made by the Tribunal cannot stand. It seems to me therefore that the procedure adopted by the Tribunal was against all principles of natural justice and the award is thereby vitiated and should be set aside. It happens that when the safeguard of an appeal is not provided by law the tendency sometimes is to act in an arbitrary manner like a benevolent despot. Benevolent despotism, however, is foreign to a democratic Constitution. The members of the Tribunal seem to have thought that having heard the statement of the cases of the parties they could proceed to a judgment on their own view of its right or wrong unaided by any material. That kind of procedure to my mind is unwarranted by the statute and is foreign to a democratic Constitution. In these circumstances it is the compelling duty of this Court to exercise its extraordinary powers and to quash such an award.

63. The last contention raised by Bakshi Tek Chand was that though a Tribunal consisting of three persons was appointed to adjudicate on the dispute, the award has only been signed by two of them. Reference in this connection was made to Section 16 of the Act which says that the award of a Tribunal shall be in writing and shall be signed by all the members of the Tribunal and that nothing in the section shall be deemed to prevent any member of the Tribunal from recording a minute of dissent. The provisions of the section are mandatory and have not been complied with. It is common ground that the case was stated by the parties at a sitting when all the members of the Tribunal were present and the arguments were heard by all of them. No sitting took place subsequent to this which would have necessitated the carrying on of proceedings by two members of the Tribunal by a quorum. When the matter has been heard by all the three members, the award should have been given by all of them. Therefore the award given by two of them is not the award of the Tribunal constituted by the Government. It is therefore vitiated and has to be quashed. Reference in this connection was made to Section 8 of the Act which reads as follows:

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

64. The Tribunal was never reconstituted by the Government by any notification. Under Section 7 a Tribunal has to be constituted in accordance with the provisions of the Act by the Government. The

Government having constituted a Tribunal of three persons it had power under Section 8 to reconstitute it but did not exercise that power. The result therefore is that the Tribunal as originally constituted was not the Tribunal which gave the award in this reference. Only two members have given the award. It was said that one of the members ceased to be available and the Government was not bound to fill up that vacancy. There is no material on the record to prove whether any member became unavailable and if so, when. But even if a member becomes unavailable and the Government does not choose to fill up the vacancy, still the Government has to reconstitute the Tribunal by saying that two members will now constitute the Tribunal. An affidavit with two telegrams annexed was filed before us on behalf of the respondents which disclosed that Mr Chandrasekhara Aiyar who was one of the members of the Tribunal, in November 1949, was appointed a member of the Boundary Commission in Bengal and that the other two members sent a telegram to the Labour Ministry asking it to fill up the vacancy or to reconstitute the Tribunal. The advice given by the Ministry was that they could proceed as they were and that the Government would later on, if necessary, fill up the vacancy. We are not concerned whether the advice given was right or wrong. But the fact remains that the Tribunal was never reconstituted and it was not denied that Mr Chandrasekhara Aiyar is now sitting in the same Tribunal without being again nominated to it and the Tribunal is hearing the same reference under the other issues referred to it. Moreover, I do not see why after having heard the reference he could not give the award even if he was in Calcutta or sign the award given by the other two members. The idea of three persons hearing a case and two of them deciding it is repugnant to all notions of fairness. It may well have been that the opinion of the third may have influenced the other two or the decision arrived at may have been quite different. It so happened in this case that two members of the Tribunal differed on an important question of law but somehow adjusted their differences and gave a unanimous award. The presence of the third in such a situation may have very vitally affected the result. After a good deal of thought I feel that it would be most dangerous for this Court to condone proceedings of this character. If exceptional powers are not exercised even when a body legally constituted under the statute does not function according to the statute, then they defeat the very purpose of the Constitution. The provisions of Section 18 of the Industrial Disputes Act are also of a peremptory nature.

67. For the reasons given above I would quash this award and direct that the Tribunal which is still functioning should readjudge Item 18 of the reference and then submit its award on this point to the Government. The employees cannot be held responsible for the method of procedure adopted by two members of the Tribunal. The appeal is allowed to the extent indicated above.

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## *State of Madras v. C.P. Sarathy*

1953 SCR 334 : AIR 1953 SC 53

**PATANJALI SASTRI, C.J.** - The proceeding arose out of a charge-sheet filed by the police against the first respondent for an offence under Section 29 of the Industrial Disputes Act, 1947. The charge was that the first respondent failed to implement certain terms of an award dated 15th December, 1947, made by the Industrial Tribunal, Madras, appointed under the Act and thereby committed a breach of those terms which were binding on him.

3. The first respondent raised a preliminary objection before the Magistrate that the latter had no jurisdiction to proceed with the enquiry because the award on which the prosecution was based was ultra vires and void on the ground that the reference to the Industrial Tribunal which resulted in the award was not made by the Government in accordance with the requirements of Section 10 of the Act. As the Magistrate refused to deal with the objection as a preliminary point, the first respondent applied to the High Court under Article 226 of the Constitution for a writ of certiorari to quash the proceeding pending before the Magistrate. The application was heard in the first instance by a Single Judge who referred the matter to a Division Bench in view of the important questions involved, and it was accordingly heard and decided by Govinda Menon and Basheer Ahmed Sayeed, JJ. who upheld the objection and quashed the proceeding by their order dated 15th November, 1950. From that order the State of Madras has preferred this appeal.

4. The second respondent, the South Indian Cinema Employees' Association (hereinafter referred to as the Association) is a registered trade union whose members are employees of various cinema companies carrying on business in the State of Madras. Among these are the 24 cinema houses operating in the city of Madras, including the "Prabhat Talkies". On 8th November, 1946, the Association submitted to the Labour Commissioner of Madras, who had also been appointed as the Conciliation Officer under the Act, a memorandum setting forth certain demands against the employers for increased wages and dearness allowance, annual bonus of three months' wages, increased leave facilities, provident fund, and adoption of proper procedure in imposing punishment and requesting the officer to settle the disputes as the employers were unwilling to concede the demands. After meeting the representatives of the employees and the employers, the Labour Commissioner suggested on 28th April, 1947, certain "minimum terms" which he invited the employers and the union officials to accept. The managers of six cinema companies in the city including "Prabhat Talkies" agreed to accept the terms but the managements of other companies did not intimate acceptance or non-acceptance. It would appear that, in the meantime, a meeting was convened on 22nd February, 1947, of the employees of four cinema companies including "Prabhat Talkies". Ninety-four out of 139 workers attended the meeting and resolutions were passed to the effect that no action need be taken about the demands of the Association as the managements of those companies agreed to some improvement in the matter of wages and leave facilities and promised to look into the workers' grievances if they were real. But as the terms suggested by the Labour Commissioner were not accepted by all the employers, the representatives of the Association met that officer on 13th May, 1947, and reported that the Association had decided to go on strike on any day after 20th May, 1947, if their demands were not conceded. As the conciliation proceedings of the Labour Commissioner thus failed to bring about a settlement of the dispute, he made a report on 13th May, 1947, to the State Government as required by Section 12(4) of the Act stating the steps taken by him to effect a settlement and why they proved unsuccessful. In that report, after mentioning the minimum terms suggested by him and enumerating the ten demands put forward by the employee, the Labour Commissioner stated as follows:

"As the employers have not accepted even the minimum terms suggested by me and as the employees are restive, I apprehend that they may strike work at anytime. I therefore suggest that the above demands made by the workers may be referred to an Industrial Tribunal for adjudication. I have advised the workers to defer further action on their notice pending the orders of Government,"

and he concluded by suggesting the appointment of a retired District and Sessions Judge as the sole Member of the Special Industrial Tribunal “to adjudicate on this dispute”.

5. Thereupon the Government issued the GOMS No. 2227 dated 20th May, 1947, in the following terms:

“Whereas an industrial dispute has arisen between the workers and managements of the cinema talkies in the Madras city in respect of certain matters;

And whereas in the opinion of His Excellency the Governor of Madras, it is necessary to refer the said industrial dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Section 7(1) and (2) read with Section 10(1)(c) of the Industrial Disputes Act, 1947 His Excellency the Governor of Madras hereby constitutes an Industrial Tribunal consisting of one person, namely, Sri Diwan Bahadur K.S. Ramaswami Sastri, Retired District, and Sessions Judge, and directs that the said industrial dispute be referred to that tribunal for adjudication.

The Industrial Tribunal may, in its discretion settle the issues in the light of a preliminary enquiry which it may hold for the purpose and thereafter adjudicate on the said industrial dispute.

The Commissioner of Labour is requested to send copies of the order to the managements of cinema talkies concerned.”

6. The Tribunal sent notices to all the 24 cinema companies in the city and to the Association calling upon them to file statements of their respective cases and to appear before it on 7th July, 1947. Pleadings were accordingly filed on both sides and the Tribunal framed as many as 22 issues of which Issue (3) is material here and runs thus:

“Is there a dispute between the managements of the city theatres and their respective employees justifying the reference by the Government to the Industrial Tribunal for adjudication? Whether such an objection is tenable in law?”

7. It appears to have been claimed on behalf of some of these companies including “Prabhat Talkies” that so far as they were concerned there was no dispute between the management and their employees and therefore they should not be included in the reference or the award. The Tribunal repelled this argument observing:

“That even if some of the theatres have got a staff contented with their lot there is a substantial dispute in the industry taken as a whole. After I arrive at my decision about the basic wages, increments, dearness allowance etc. the same will bind the industry as a whole in the city of Madras if the Government accepts and implements my award.”

8. The Tribunal accordingly held that none of the cinema companies should be “removed from the ambit of this industrial dispute and adjudication”. It also found as a matter of fact that “the idyllic picture of industrial peace and contentment” put forward by the first respondent company was not justified by the evidence. Issue 3 was thus found for the Association. The Tribunal finally passed its award on 15th December, 1947, which was confirmed by the Government on 13th February, 1948, and was declared binding on the workers and the managements with effect from 25th February, 1948, the date of its publication in the Fort St. George Gazette, for a period of one year from that date. It is alleged that the first respondent failed to implement certain provisions of the award when their implementation was due and thereby committed an offence punishable under Section 29 of the Act.

9. No prosecution, however, was instituted till 24th April, 1950, as, in the meanwhile, certain decisions of the Madras High Court tended to throw doubt on the validity of references made in general terms without specifying the particular disputes or the groups of workers and managements between whom such disputes existed, and legislation was considered necessary to validate awards passed on such references. Accordingly the Industrial Disputes (Madras Amendment) Act, 1949, was passed on 10th April, 1949, purporting to provide, inter alia, that all awards made by any Industrial Tribunal constituted before the commencement of that Act shall be deemed to be valid and shall not be called in question in

any court of law on the ground that the dispute to which the award relates was not referred to the Tribunal in accordance with the provisions of the Industrial Disputes Act, 1947 (Section 5). It also purported to validate certain specified awards including “the award in the disputes between the managements of cinema theatres and workers” (Section 6), which obviously refers to the award under consideration in these proceedings.

10. In support of his application to the High Court the first respondent herein raised three contentions. First, the Government had no jurisdiction to make the reference in question as there was no dispute between the management and workers of “Prabhat Talkies” and, therefore, the reference and the award insofar as they related to the first respondent were ultra vires and void; secondly, in any case the notification by the Government purporting to refer an industrial dispute to the Tribunal was not competent under the Act, inasmuch as it did not refer to any specific disputes as arising for adjudication and did not mention the companies or firms in which the disputes are said to have existed or were apprehended; and thirdly, the Madras Amendment Act was unconstitutional and void under Section 107 of the Government of India Act, 1935, being repugnant to the provisions of the Central Industrial Disputes Act, 1947, and also void under Article 13(1) read with Article 14 of the Constitution as being discriminatory in character. The learned Judges, by separate but concurring judgments, upheld these contentions and issued a certificate under Article 132(1) of the Constitution as the case raised substantial questions of law regarding the interpretation of the Constitution. As we considered that the contentions of the appellant on the first two points must prevail, we did not hear arguments on the constitutional issue.

11. Before dealing with the main contentions of the parties, we may dispose of a minor point raised by Mr Krishnaswami Aiyangar, for the first time before us, namely, that the prosecution of the first respondent for the alleged breach of some of the terms of the Tribunal’s award is unsustainable inasmuch as it was instituted after the expiry of the award. In support of this argument learned counsel invoked the analogy of the cases where it has been held that a prosecution for an offence under a temporary statute could not be commenced, or having been commenced when the statute was in force, could not be continued after its expiry. Those decisions have no application here. The first respondent is prosecuted for an offence made punishable under Section 29 of the Act which is a permanent statute and when he committed the alleged breach of some of the terms of the award, which was in force at the time, he incurred the liability to be prosecuted under the Act. The fact that the award subsequently expired cannot affect that liability.

12. On behalf of the appellant, the Advocate-General of Madras urged that the question whether there existed an industrial dispute when the Government made the reference now under consideration was an issue of fact which the High Court ought not to have found in the negative at this preliminary stage before evidence was recorded by the trial court. He submitted, however, that, on the facts already appearing on the record, there could be no reasonable doubt that an industrial dispute did exist at the relevant time. We are inclined to agree. The ten demands set forth in the Labour Commissioner’s letter of 13th May, 1947, which were not agreed to by the managements of the 24 cinema theatres in Madras clearly constituted industrial disputes within the meaning of the Act. Basheer Ahmed Sayeed, J., with whom the other learned Judge concurred, says:

“There is nothing in the letter of the Commissioner which would indicate that these demands made by the South Indian Cinema Employees’ Association were referred to the respective owners of the cinema houses in the city of Madras as a body or to any of them individually.”

13. This, we think, is based on a misapprehension of the true facts. The demands were identical with those mentioned in the Association’s memorandum originally submitted on 8th November, 1946, and they formed the subject of discussion with the representatives of the cinema companies in the city in the course of the conciliation proceedings. That memorandum, which was not made part of the record in the court below, was produced here, and Mr Krishnaswami Aiyangar was satisfied that the demands referred to in that memorandum were the same as those mentioned in the Labour Commissioner’s letter of 13th May, 1947, of which all the employers were thus fully aware. Nor is it correct to say “that the disputes, if

any, which might have existed between the workmen of the petitioner's cinema and the petitioner himself had been settled by the petitioner's ready and willing acceptance of the terms suggested by the Commissioner". The terms accepted by the first respondent were what the Commissioner called "the minimum terms" and were by no means the same as the demands put forward by the Association, which were never accepted by the Association. The Commissioner's letter of the 13th May, 1947, made this clear.

14. But, in truth, it was not material to consider whether there was any dispute outstanding between the first respondent and his employees when the Government made the reference on 20th May, 1947. The learned Judges appear to have assumed that the disputes referred to a tribunal under Section 10(1)(c) of the Act must, in order that the resulting award may be binding on any particular industrial establishment and its employees, have actually arisen between them. "Analysing the order of reference of the Madras Government now under consideration," the learned Judges observe, "it is obvious that there is no mention of the existence of any dispute between the petitioner (the first respondent herein) and his workmen. In fact there was no dispute to be referred to a Tribunal so far as this petitioner is concerned. If, therefore, there was no jurisdiction to make any reference, it follows that the whole reference and the award are both invalid and not binding on the petitioner". This view gives no effect to the words "or is apprehended" in Section 10(1). In the present case, the Government referred "an industrial dispute between the workers and managements of cinema talkies in Madras city in respect of certain matters." As pointed out in the Labour Commissioner's letter to the Government, there were 24 cinema companies in Madras, and the Association, which, as a duly registered trade union, represented their employees, put forward the demands on behalf of the employees of all the cinema houses in the city. Fifteen out of 43 workers of the "Prabhat Talkies" were admittedly members of the Association which thus figured as one of the parties to the dispute. In that situation, the Government may have thought, without a close examination of the conditions in each individual establishment, that disputes which affected the workmen collectively existed in the cinema industry in the city and that, even if such disputes had not actually arisen in any particular establishment, they could, having regard to their collective nature, well be apprehended as imminent in respect of that establishment also. It is not denied that notices were sent by the Tribunal to all the 24 companies and they all filed written statements of their case in answer to the demands made by the Association on behalf of the employees. In these circumstances, it is idle to claim that the Government had no jurisdiction to make the reference and that the award was not binding on the respondent's organisation. The latter was clearly bound by the award under Section 18 of the Act.

15. It was next contended that the reference was not competent as it was too vague and general in its terms containing no specification of the disputes or of the parties between whom the disputes arose. Stress was laid on the definite article in clause (c) and it was said that the Government should crystallise the disputes before referring them to a Tribunal under Section 10(1) of the Act. Failure to do so vitiated the proceedings and the resulting award. In upholding this objection, Govinda Menon, J., who dealt with it in greater detail in his judgment, said, "Secondly, it is contended that the reference does not specify the dispute at all. What is stated in the reference is that an industrial dispute has arisen between the workers and the management of the cinema talkies in the city of Madras in respect of certain matters.

16. This is, however, not to say that the Government will be justified in making a reference under Section 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry, and it is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. But, it must be remembered that in making a reference under Section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The court cannot, therefore, canvas the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt, 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. But if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. The observations in some of the decisions in Madras do not appear to have kept this distinction in view.

17. Moreover, it may not always be possible for the Government, on the material placed before it, to particularise the dispute in its order of reference, for situations might conceivably arise where public interest requires that a strike or a lock-out either existing or imminent should be ended or averted without delay, which, under the scheme of the Act, could be done only after the dispute giving rise to it has been referred to a board or a tribunal [vide Sections 10(3) and 23]. In such cases the Government must have the power, in order to maintain industrial peace and production, to set in motion the machinery of settlement with its sanctions and prohibitions without stopping to enquire what specific points the contending parties are quarrelling about, and it would seriously detract from the usefulness of the statutory machinery to construe Section 10(1) as denying such power to the Government. We find nothing in the language of that provision to compel such construction. The Government must, of course, have sufficient knowledge of the nature of the dispute to be satisfied that it is an industrial dispute within the meaning of the Act, as, for instance, that it relates to retrenchment or reinstatement. But, beyond this no obligation can be held to lie on the Government to ascertain particulars of the disputes before making a reference under Section 10(1) or to specify them in the order.

18. This conclusion derives further support from clause (a) of Section 10(1) which provides in the same language for a reference of the dispute to a board for promoting a settlement. A board is part of the conciliation machinery provided by the Act, and it cannot be said that it is necessary to specify the dispute in referring it to such a body which only mediates between the parties who must, of course, know what they are disputing about. If a reference without particularising the disputes is beyond cavil under clause (a), why should it be incompetent under clause (c)? No doubt, the Tribunal adjudicates, whereas the Board only mediates. But the adjudication by the Tribunal is only an alternative form of settlement of the disputes on a fair and just basis having regard to the prevailing conditions in the industry and is by no means analogous to what an arbitrator has to do in determining ordinary civil disputes according to the legal rights of the parties. Indeed, this notion that a reference to a tribunal under the Act must specify the particular disputes appears to have been derived from the analogy of an ordinary arbitration. The scope of adjudication by a Tribunal under the Act is much wider and it would involve no hardship if the reference also is made in wider terms provided, of course the dispute is one of the kind described in Section 2(k) and the parties between whom such dispute has actually arisen or is apprehended in the view of the Government are indicated either individually or collectively with reasonable clearness. The Rules framed under the Act provide for the Tribunal calling for statements of their respective cases from the parties and, the disputes would thus get crystallised before the Tribunal proceeds to make its award. On the other hand it is significant that there is no procedure provided in the Act or in the Rules for the Government ascertaining the particulars of the disputes from the parties before referring them to a Tribunal under Section 10(1).

19. In view of the increasing complexity of modern life and the interdependence of the various sectors of a planned national economy, it is obviously in the interest of the public that labour disputes should be peacefully and quickly settled within the framework of the Act rather than by resort to methods of direct action which are only too well calculated to disturb the public peace and order and diminish production in the country, and courts should not be astute to discover formal defects and technical flaws to overthrow such settlements.

20. In the result we set aside the order of the High Court and dismiss the first respondent's petition.

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## *State of Bombay v. K.P. Krishnan*

(1961) 1 SCR 227 : AIR 1960 SC 1223

**P.B. GAJENDRAGADKAR, J.** - These two appeals arise from an industrial dispute between the Firestone Tyre and Rubber Co. of India Ltd., and its workmen ("the respondents"), and they raise a short and interesting question about the construction of Section 12(5) of the Industrial Disputes Act 14 of 1947. It appears that the respondents addressed four demands to the company; they were in respect of gratuity, holidays, classification of certain employees and for the payment of an unconditional bonus for the financial year ended October 31, 1953. The respondents' union also addressed the Assistant Commissioner of Labour, Bombay, forwarding to him a copy of the said demands, and intimating to him that since the company had not recognised the respondents' union there was no hope of any direct negotiations between the union and the company. The Assistant Commissioner of Labour, who is also the Conciliation Officer, was therefore requested to commence the conciliation proceedings at an early date. Soon thereafter the company declared a bonus equivalent to 1/4 of the basic earnings for the year 1952-

53. The respondents then informed the company that they were entitled to a much higher bonus having regard to the profits made by the company during the relevant year and that they had decided to accept the bonus offered by the company without prejudice to the demand already submitted by them in that behalf. After holding a preliminary discussion with the parties the Conciliation Officer examined the four demands made by the respondents and admitted into conciliation only two of them; they were in respect of the classification of certain employees and the bonus for the year 1952-53; the two remaining demands were not admitted in conciliation. The conciliation proceedings initiated by the conciliator, however, proved infructuous with the result that on July 5, 1954, the conciliator made his failure report under Section 12(4) of the Act. In his report the conciliator has set out the arguments urged by both the parties before him in respect of both the items of dispute. In regard to the respondents' claim for bonus the conciliator made certain suggestions to the company but the company did not accept them, and so it became clear that there was no possibility of reaching a settlement on that issue. Incidentally the conciliator observed that it appeared to him that there was considerable substance in the case made out by the respondents for payment of additional bonus. The conciliator also dealt with the respondents' demand for classification and expressed his opinion that having regard to the type and nature of the work which was done by the workmen in question it seemed clear that the said work was mainly of a clerical nature and the demand that the said workmen should be taken on the monthly-paid roll appeared to be in consonance with the practice prevailing in other comparable concerns. The management, however, told the conciliator that the said employees had received very liberal increments and had reached the maximum of their scales and so the management saw no reason to accede to the demand for classification. On receipt of this report the Government of Bombay considered the matter and came to the conclusion that the dispute in question should not be referred to an Industrial Tribunal for its adjudication. Accordingly, as required by Section 12(5) on December 11, 1954, the Government communicated to the respondents the said decision and stated that it does not propose to refer the said dispute to the Tribunal under Section 12(5) "for the reason that the workmen resorted to go slow during the year 1952-53". It is this decision of the Government refusing to refer the dispute for industrial adjudication that has given rise to the present proceedings.

2. On February 18, 1955, the respondents filed in the Bombay High Court a petition under Article 226 of the Constitution praying for the issue of a writ of mandamus or a writ in the nature of mandamus or other writ, direction or order against the State of Maharashtra ("the appellant") calling upon it to refer the said dispute for industrial adjudication under Section 10(1) and Section 12(5) of the Act. To this application the company was also impleaded as an opponent. This petition was heard by Tendolkar, J. He held that Section 12(5) in substance imposed an obligation on the appellant to refer the dispute provided it was satisfied that a case for reference had been made, and he came to the conclusion that the reason given by the appellant for refusing to make a reference was so extraneous that the respondents were entitled to a writ of mandamus against the appellant. Accordingly he directed that a mandamus shall issue against the

appellant to reconsider the question of making or refusing to make a reference under Section 12(5) ignoring the fact that there was a slow-down and taking into account only such reasons as are germane to the question of determining whether a reference should or should not be made.

4. Before dealing with the said question it would be convenient to state one more relevant fact. It is common ground that during a part of the relevant year the respondents had adopted go-slow tactics. According to the company the period of go-slow attitude was seven months whereas according to the respondents it was about five months. It is admitted that under clause 23(c) of the Standing Orders of the company wilful slowing-down in performance of work, or abatement, or instigation thereof, amounts to misconduct, and it is not denied that as a result of the go-slow tactics adopted by the respondents disciplinary action was taken against 58 workmen employed by the company. The respondents case is that despite the go-slow strategy adopted by them for some months during the relevant year the total production for the said period compares very favourably with the production for previous years and that the profit made by the company during the relevant year fully justifies their claim for additional bonus. The appellant has taken the view that because the respondents adopted go-slow strategy during the relevant year the industrial dispute raised by them in regard to bonus as well as classification was not to be referred for adjudication under Section 12(5). It is in the light of these facts that we have to consider whether the validity of the order passed by the appellant refusing to refer the dispute for adjudication under Section 12(5) can be sustained.

5. Let us first examine the scheme of the relevant provisions of the Act. Chapter III which consists of Section 10 and 10-A deals with reference of dispute to Boards, Courts or Tribunals. Section 10(1) provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute to one or the other authority specified in clauses (a) to (d). This section is of basic importance in the scheme of the Act. It shows that the main object of the Act is to provide for cheap and expeditious machinery for the decision of all industrial disputes by referring them to adjudication, and thus avoid industrial conflict resulting from frequent lock-outs and strikes. It is with that object that reference is contemplated not only in regard to existing industrial disputes but also in respect of disputes which may be apprehended. This section confers wide and even absolute discretion on the Government either to refer or to refuse to refer an industrial dispute as therein provided. Naturally this wide discretion has to be exercised by the Government bona fide and on a consideration of relevant and material facts. The second proviso to Section 10(1) deals with disputes relating to a public utility service, and it provides that where a notice under Section 22 has been given in respect of such a dispute the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced. It is thus clear that in regard to cases falling under this proviso an obligation is imposed on the Government to refer the dispute unless of course it is satisfied that the notice is frivolous or vexatious or that considerations of expediency required that a reference should not be made. This proviso also makes it clear that reference can be made even if other proceedings under the Act have already commenced in respect of the same dispute. Thus, so far as discretion of the Government to exercise its power of referring an industrial dispute is concerned it is very wide under Section 10(1) but is limited under the second proviso to Section 10(1). Section 10(2) deals with a case where the Government has to refer an industrial dispute and has no discretion in the matter. Where the parties to an industrial dispute apply in the prescribed manner either jointly or separately for a reference of the dispute between them the Government has to refer the said dispute if it is satisfied that the persons applying represent the majority of each party. Thus, in dealing with this class of cases the only point on which the Government has to be satisfied is that the persons applying represent the majority of each party; once that test is satisfied the Government has no option but to make a reference as required by the parties. Similarly Section 10-A deals with cases where the employer and his workmen agree to refer the dispute to arbitration at any time before the dispute has been referred under Section 10, and it provides that they may so refer it to such person or persons as may be specified in the arbitration agreement; and Section 10-

A(3) requires that on receiving such an arbitration agreement the Government shall, within fourteen days, publish the same in the Official Gazette. Section 10-A(4) prescribes that the arbitrator or arbitrators shall investigate the dispute and submit the arbitration award to the appropriate Government; and Section 10-A(5) provides that such arbitrations are outside the Arbitration Act. Thus cases of voluntary reference of disputes to arbitration are outside the scope of any discretion in the Government. That in brief is the position of the discretionary power of the Government to refer industrial disputes to the appropriate authorities under the Act.

6. The appropriate authorities under the Act are the conciliator, the Board, Court of Enquiry, Labour Court, Tribunal and National Tribunal. Section 11(3) confers on the Board, Court of Enquiry, Labour Court, Tribunal and National Tribunal all the powers as are vested in a civil court when trying a suit in respect of the matters specified by clauses (a) to (d). A Conciliation Officer, however, stands on a different footing. Under Section 11(4) he is given the power to call for and inspect any relevant document and has been given the same powers as are vested in civil courts in respect of compelling the production of documents.

7. Section 12 deals with the duties of Conciliation Officers. Under Section 12(1) the Conciliation Officer may hold conciliation proceedings in the prescribed manner where an industrial dispute exists or is apprehended. In regard to an industrial dispute relating to a public utility service, where notice under Section 22 has been given, the Conciliation Officer shall hold conciliation proceedings in respect of it. The effect of Section 12(1) is that, whereas in regard to an industrial dispute not relating to a public utility service the Conciliation Officer is given the discretion either to hold conciliation proceedings or not, in regard to a dispute in respect of a public utility service, where notice has been given, he has no discretion but must hold conciliation proceedings in regard to it. Section 12(2) requires the Conciliation Officer to investigate the dispute without delay with the object of bringing about a settlement, and during the course of his investigation he may examine all matters affecting the merits and the right settlement of the dispute and do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement. The duty and function of the Conciliation Officer is, as his very name indicates, to mediate between the parties and make an effort at conciliation so as to persuade them to settle their disputes amicably between themselves. If the Conciliation Officer succeeds in his mediation Section 12(3) requires him to make a report of such settlement together with the memorandum of the settlement signed by the parties to the dispute. Section 18(3) provides that a settlement arrived at in the course of conciliation proceedings shall be binding on the parties specified therein. It would thus be seen that if the attempts made by the Conciliation Officer to induce the parties to come to a settlement succeeds and a settlement is signed by them it has in substance the same binding character as an award under Section 18(3). Sometimes efforts at conciliation do not succeed either because one of the parties to the dispute refuses to cooperate or they do not agree as to the terms of settlement. In such cases the Conciliation Officer has to send his report to the appropriate Government under Section 12(4). This report must set forth the steps taken by the officer for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of such facts and circumstances and the reasons on account of which in his opinion a settlement could not be arrived at. The object of requiring the Conciliation Officer to make such a full and detailed report is to apprise the Government of all the relevant facts including the reasons for the failure of the Conciliation Officer so that the Government may be in possession of the relevant material on which it can decide what course to adopt under Section 12(5). In construing Section 12(5), therefore, it is necessary to bear in mind the background of the steps which the Conciliation Officer has taken under Section 12(1) to (4). The Conciliation Officer has held conciliation proceedings, has investigated the matter, attempted to mediate, failed in his effort to bring about a settlement between the parties, and has made a full and detailed report in regard to his enquiry and his conclusions as to the reasons on account of which a settlement could not be arrived at.

8. Section 12(5) with which we are concerned in the present appeals provides that if, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such

reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. This section requires the appropriate Government to consider the report and decide whether a case for reference has been made out. If the Government is satisfied that a case for reference has been made out it may make such reference. If it is satisfied that a case for reference has not been made out it may not make such a reference; but in such a case it shall record and communicate to the parties concerned its reasons for not making the reference which in the context means its reasons for not being satisfied that there is a case for reference. The High Court has held that the word “may” in the first part of Section 12(5) must be construed to mean “shall” having regard to the fact that the power conferred on the Government by the first part is coupled with a duty imposed upon it by the second part. The appellant and the company both contend that this view is erroneous. According to them the requirement that reasons shall be recorded and communicated to the parties for not making a reference does not convert “may” into “shall” and that the discretion vesting in the Government either to make a reference or not to make it is as wide as it is under Section 10(1) of the Act. Indeed their contention is that, even after receiving the report, if the Government decides to make a reference it must act under Section 10(1) for that is the only section which confers power on the appropriate Government to make a reference.

9. It is true that Section 12(5) provides that the appropriate Government may make such reference and in that sense it may be permissible to say that a power to make reference is conferred on the appropriate Government by Section 12(5). The High Court was apparently inclined to take the view that in cases falling under Section 12(5) reference can be made only under Section 12(5) independently of Section 10(1). In our opinion that is not the effect of the provisions of Section 12(5). If it is held that in cases falling under Section 12(5) reference can and should be made only under Section 12(5) it would lead to very anomalous consequences. Section 10(3) empowers the appropriate Government by an order to prohibit the continuance of any strike or lockout in connection with an industrial dispute which may be in existence on the date of the reference, but this power is confined only to cases where industrial disputes are referred under Section 10(1). It would thus be clear that if a reference is made only under Section 12(5) independently of Section 10(1) the appropriate Government may have no power to prohibit the continuance of a strike in connection with a dispute referred by it to the Tribunal for adjudication; and that obviously could not be the intention of the legislature. It is significant that Section 23 and 24 prohibit the commencement of strikes and lock-outs during the pendency of proceedings therein specified, and so even in the case of a reference made under Section 12(5) it would not be open to the employer to declare a lock-out or for the workmen to go on strike after such a reference is made; but if a strike has commenced or a lock-out has been declared before such a reference is made, there would be no power in the appropriate Government to prohibit the continuance of such a strike or such a lock-out. Section 24(2) makes it clear that the continuance of a lock-out or strike is deemed to be illegal only if an order prohibiting it is passed under Section 10(3). Thus the power to maintain industrial peace during adjudication proceedings which is so essential and which in fact can be said to be the basis of adjudication proceedings is exercisable only if a reference is made under Section 10(1). What is true about this power is equally true about the power conferred on the appropriate Government by Sections 10(4), (5), (6) and (7). In other words, the material provisions contained in sub-sections (3) to (7) of Section 10(1) which are an integral part of the scheme of reference prescribed by Chapter III of the Act clearly indicate that even if the appropriate Government may be acting under Section 12(5) the reference must ultimately be made under Section 10(1). Incidentally it is not without significance that even in the petition made by the respondents in the present proceedings they have asked for a writ of mandamus calling upon the appellant to make a reference under Sections 10(1) and 12(5).

10. Besides, even as a matter of construction, when Section 12(5) provides that the appropriate Government may make such reference it does not mean that this provision is intended to confer a power to make reference as such. That power has already been conferred by Section 10(1); indeed Section 12(5) occurs in a Chapter dealing with the procedure, powers and duties of the authorities under the Act; and it would be legitimate to hold that Section 12(5) which undoubtedly confers power on the appropriate

Government to act in the manner specified by it, the power to make a reference which it will exercise if it comes to the conclusion that a case for reference has been made must be found in Section 10(1). In other words, when Section 12(5) says that the Government may make such reference it really means it may make such reference under Section 10(1). Therefore it would not be reasonable to hold that Section 12(5) by itself and independently of Section 10(1) confers power on the appropriate Government to make a reference.

11. The next point to consider is whether, while the appropriate Government acts under Section 12(5), it is bound to base its decision only and solely on a consideration of the report made by the Conciliation Officer under Section 12(4). The tenor of the High Court's judgment may seem to suggest that the only material on which the conclusion of the appropriate Government under Section 12(5) should be based is the said report. There is no doubt that having regard to the background furnished by the earlier provisions of Section 12 the appropriate Government would naturally consider the report very carefully and treat it as furnishing the relevant material which would enable it to decide whether a case for reference has been made or not; but the words of Section 12(5) do not suggest that the report is the only material on which Government must base its conclusion. It would be open to the Government to consider other relevant facts which may come to its knowledge or which may be brought to its notice, and it is in the light of all these relevant facts that it has to come to its decision whether a reference should be made or not. The problem which the Government has to consider while acting under Section 12(5)(a) is whether there is a case for reference. This expression means that Government must first consider whether a *prima facie* case for reference has been made on the merits. If the Government comes to the conclusion that a *prima facie* case for reference has been made then it would be open to the Government also to consider whether there are any other relevant or material facts which would justify its refusal to make a reference. The question as to whether a case for reference has been made out can be answered in the light of all the relevant circumstances which would have a bearing on the merits of the case as well as on the incidental question as to whether a reference should nevertheless be made or not. A discretion to consider all relevant facts which is conferred on the Government by Section 10(1) could be exercised by the Government even in dealing with cases under Section 12(5) provided of course the said discretion is exercised *bona fide*, its final decision is based on a consideration of relevant facts and circumstances, and the second part of Section 12(5) is complied with.

12. We have already noticed that Section 12 deals with the conciliation proceedings in regard to all industrial disputes, whether they relate to a public utility service or not. Section 12(1) imposes an obligation on the Conciliation Officer to hold conciliation proceedings in regard to an industrial dispute in respect of public utility service provided a notice under Section 22 has been given. If in such a dispute the efforts at conciliation fail and a failure report is submitted under Section 12(4) Government may have to act under Section 12(5) and decide whether there is a case for reference. Now, in dealing with such a question relating to a public utility service considerations prescribed by the second proviso to Section 10(1) may be relevant, and Government may be justified in refusing to make a reference if it is satisfied that the notice given is frivolous or vexatious or that reference would be inexpedient. Just as discretion conferred on the Government under Section 10(1) can be exercised by it in dealing with industrial disputes in regard to non-public utility services even when Government is acting under Section 12(5), so too the provisions of the second proviso can be pressed into service by the Government when it deals with an industrial dispute in regard to a public utility service under Section 12(5).

13. It would, therefore, follow that on receiving the failure report from the Conciliation Officer Government would consider the report and other relevant material and decide whether there is a case for reference. If it is satisfied that there is such a case for reference it may make a reference. If it does not make a reference it shall record and communicate to the parties concerned its reasons therefor. The question which arises at this stage is whether the word "may" used in the context means "shall", or whether it means nothing more than "may" which indicates that the discretion is in the Government either to refer or not to refer.

14. It is urged for the respondent that where power is conferred on an authority and it is coupled with, the performance of a duty the words conferring power though directory must be construed as mandatory. The argument is that Section 12(5) makes it obligatory on the Government to record and communicate its reasons for not making the reference and this obligation shows that the power to make reference is intended to be exercised for the benefit of the party which raises an industrial dispute and wants it to be referred to the authority for decision. It may be that the legislature intended that this requirement would avoid casual or capricious decisions in the matter because the recording and communication of reasons postulates that the reasons in question must stand public examination and scrutiny and would therefore be of such a character as would show that the question was carefully and properly considered by the Government; but that is not the only object in making this provision. The other object is to indicate that an obligation or duty is cast upon the Government, and since the power conferred by the first part is coupled with the duty prescribed by the second part “may” in the context must mean “shall”. There is considerable force in this argument. Indeed it has been accepted by the High Court and it has been held that if the Government is satisfied that there is a case for reference it is bound to make the reference.

15. On the other hand, if the power to make reference is ultimately to be found in Section 10(1) it would not be easy to read the relevant portion of Section 12(5) as imposing an obligation on the Government to make a reference. Section 12(5) when read with Section 10(1) would mean, according to the appellant, that, even after considering the question, the Government may refuse to make a reference in a proper case provided of course it records and communicates its reasons for its final decision. In this connection the appellant strongly relies on the relevant provisions of Section 13. This section deals with the duties of Boards and is similar to Section 12 which deals with Conciliation Officers. A dispute can be referred to a Board in the first instance under Section 10(1) or under Section 12(5) itself. Like the Conciliation Officer the Board also endeavours to bring about a settlement of the dispute. Its powers are wider than those of a conciliator but its function is substantially the same; and so if the efforts made by the Board to settle the dispute fail it has to make a report under Section 13(3). Section 13(4) provides that if on receipt of the report made by the Board in respect of a dispute relating to a public utility service the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal under Section 10, it shall record and communicate to the parties concerned its reasons therefor. The provisions of Section 13 considered as a whole clearly indicate that the power to make a reference in regard to disputes referred to the Board are undoubtedly to be found in Section 10(1). Indeed in regard to disputes relating to non-public utility services there is no express provision made authorising the Government to make a reference, and even Section 13(4) deals with a case where no reference is made in regard to a dispute relating to a public utility service which means that if a reference is intended to be made it would be under the second proviso to Section 10(1). Incidentally this fortifies the conclusion that whenever reference is made the power to make it is to be found under Section 10(1). Now, in regard to cases falling under Section 13(4) since the reference has to be made under Section 10 there can be no doubt that the considerations relevant under the second proviso to Section 10(1) would be relevant and Government may well justify their refusal to make a reference on one or the other of the grounds specified in the said proviso. Besides, in regard to disputes other than those falling under Section 13(4) if a reference has to be made, it would clearly be under Section 10(1). This position is implicit in the scheme of Section 13. The result, therefore, would be that in regard to a dispute like the present it would be open to Government to refer the said dispute under Section 12(5) to a Board, and if the Board fails to bring about a settlement between the parties Government would be entitled either to refer or to refuse to refer the said dispute for industrial adjudication under Section 10(1). There can be no doubt that if a reference has to be made in regard to a dispute referred to a Board under Section 13, Section 10(1) would apply, and there would be no question of importing any compulsion or obligation on the Government to make a reference. Now, if that be the true position under the relevant provisions of Section 13 it would be difficult to accept the argument that a prior stage when Government is acting under Section 12(5) it is obligatory on it to make a reference as contended by the respondent.

16. The controversy between the parties as to the construction of Section 12(5) is, however, only of academic importance. On the respondents' argument, even if it is obligatory on Government to make a reference provided it is satisfied that there is a case for reference, in deciding whether or not a case for reference is made Government would be entitled to consider all relevant facts, and if on a consideration of all the relevant facts it is not satisfied that there is a case for reference it may well refuse to make a reference and record and communicate its reasons therefor. According to the appellant and the company also though the discretion is with Government its refusal to make a reference can be justified only if it records and communicates its reasons therefor and it appears that the said reasons are not wholly extraneous or irrelevant. In other words, though there may be a difference of emphasis in the two methods of approach adopted by the parties in interpreting Section 12(5) ultimately both of them are agreed that if in refusing to make a reference Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane then its decision may be open to challenge in a court of law. It would thus appear that even the appellant and the Company do not dispute that if a consideration of all the relevant and germane factors leads the Government to the conclusion that there is a case for reference the Government must refer though they emphasise that the scope and extent of relevant consideration is very wide; in substance the plea of the respondents that "may" must mean "shall" in Section 12(5) leads to the same result. Therefore both the methods of approach ultimately lead to the same crucial enquiry: are the reasons recorded and communicated by the Government under Section 12(5) germane and relevant or not?

17. It is common ground that a writ of mandamus would lie against the Government if the order passed by it under Section 10(1) is for instance contrary to the provisions of Section 10(1)(a) to (d) in the matter of selecting the appropriate authority; it is also common ground that in refusing to make a reference under Section 12(5) if Government does not record and communicate to the parties concerned its reasons therefor a writ of mandamus would lie. Similarly it is not disputed that if a party can show that the refusal to refer a dispute is not bona fide or is based on a consideration of wholly irrelevant facts and circumstances a writ of mandamus would lie. The order passed by the Government under Section 12(5) may be an administrative order and the reasons recorded by it may not be justiciable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; in that sense it would be correct to say that the court hearing a petition for mandamus is not sitting in appeal over the decision of the Government; nevertheless if the court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane then the court can issue, and would be justified in issuing, a writ of mandamus even in respect of such an administrative order. After an elaborate argument on the construction of Section 12(5) was addressed to us it became clear that on this part of the case there was no serious dispute between the parties. That is why we think the controversy as to the construction of Section 12(5) is of no more than academic importance.

18. That takes us to the real point of dispute between the parties, and that is whether the reason given by the appellant in the present case for refusing to make a reference is germane or not. The High Court has held that it is wholly extraneous and it has issued a writ of mandamus against the appellant. We have already seen that the only reason given by the appellant is that the workmen resorted to go slow during the year 1952-53. It would appear prima facie from the communication addressed by the appellant to the respondents that this was the only reason which weighed with the Government in declining to refer the dispute under Section 12(5). It has been strenuously urged before us by the appellant and the company that it is competent for the Government to consider whether it would be expedient to refer a dispute of this kind for adjudication. The argument is that the object of the Act is not only to make provision for investigation and settlement of industrial disputes but also to secure industrial peace so that it may lead to more production and help national economy. Cooperation between capital and labour as well as sympathetic understanding on the part of capital and discipline on the part of labour are essential for achieving the main object of the Act; and so it would not be right to assume that the Act requires that every dispute must necessarily be referred to industrial adjudication. It may be open to Government to take into account the facts that the respondents showed lack of discipline in adopting go-slow tactics, and



since their conduct during a substantial part of the relevant year offended against the standing orders that was a fact which was relevant in considering whether the present dispute should be referred to industrial adjudication or not. On the other hand, the High Court has held that the reason given by the Government is wholly extraneous and its refusal to refer the dispute is plainly punitive in character and as such is based on considerations which are not at all germane to Section 12(5). This Court has always expressed its disapproval of breaches of law either by the employer or by the employees, and has emphasised that while the employees may be entitled to agitate for their legitimate claims it would be wholly wrong on their part to take, recourse to any action which is prohibited by the standing orders or statutes or which shows wilful lack of discipline or a concerted spirit of non cooperation with the employer. Even so the question still remains whether the bare and bald reason given in the order passed by the appellant can be sustained as being germane or relevant to the issue between the parties. Though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly, irrelevant or extraneous considerations under the guise of expediency. It may for instance be open to the Government in considering the question of expediency to enquire whether the dispute raises a claim which is very stale, or which is opposed to the provisions of the Act, or is inconsistent with any agreement between the parties, and if the Government comes to the conclusion that the dispute suffers from infirmities of this character, it may refuse to make the reference. But even in dealing with the question as to whether it would be expedient or not to make the reference Government, must not act in a punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances. In exercising its power under Section 10(1) it would not be legitimate for the Government for instance to say that it does not like the appearance, behaviour, or manner of the secretary of the union, or even that it disapproves of the political affiliation of the union, which has sponsored the dispute. Such considerations would be wholly extraneous and must be carefully excluded in exercising the wide discretion vested in the Government. In the present case it is significant that the company has voluntarily paid three months bonus for the relevant year notwithstanding the fact that the workmen had adopted go-slow tactics during the year, and the report of the conciliator would show prima facie that he thought that the respondents' claim was not at all frivolous. The reasons communicated by the Government do not show that the Government was influenced by any other consideration in refusing to make the reference. It is further difficult to appreciate how the misconduct of the respondents on which the decision of the Government is based can have any relevance at all in the claim for the classification of the specified employees which was one of the items in dispute. If the work done by these employees prima facie justified the claim and if as the conciliator's report shows the claim was in consonance with the practice prevailing in other comparable concerns the misconduct of the respondents cannot be used as a relevant circumstance in refusing to refer the dispute about classification to industrial adjudication. It was a claim which would have benefitted the employees in future and the order passed by the appellant deprives them of that benefit in future. Any considerations of discipline cannot, in our opinion, be legitimately allowed to impose such a punishment on the employees. Similarly, even in regard to the claim for bonus, if the respondents are able to show that the profits earned by the company during the relevant year compared to the profits earned during the preceding years justified their demand for additional bonus it would plainly be a punitive action to refuse to refer such a dispute solely on the ground of their misconduct. In this connection it may be relevant to remember that for the said misconduct the company did take disciplinary action as it thought fit and necessary and yet it paid the respondents bonus to which it thought they were entitled. Besides, in considering the question as to whether a dispute in regard to bonus should be referred for adjudication or not it is necessary to bear in mind the well-established principles of industrial adjudication which govern claims for bonus. A claim for bonus is based on the consideration that by their contribution to the profits of the employer the employees are entitled to claim a share in the said profits, and so any punitive action taken by the Government by refusing to refer for adjudication an industrial dispute for bonus would, in our opinion, be wholly inconsistent with the object of the Act. If the Government had given some relevant reasons which were based on, or were the consequence of, the misconduct to which reference is made it might have been another matter. Under these circumstances we

are unable to hold that the High Court was in error in coming to the conclusion that the impugned decision of the Government is wholly punitive in character and must in the circumstances be treated as based on a consideration which is not germane and is extraneous. It is clear that the Act has been passed in order to make provision for the investigation and settlement of industrial disputes, and if it appears that in cases falling under Section 12(5) the investigation and settlement of any industrial dispute is prevented by the appropriate Government by refusing to make a reference on grounds which are wholly irrelevant and extraneous a case for the issue of a writ of mandamus is clearly established. In the result we confirm the order passed by the High Court though not exactly for the same reasons.

19. The appeals accordingly fail and are dismissed.

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## ***Telco Convoy Drivers Mazdoor Sangh v. State of Bihar***

(1989) 3 SCC 271 : AIR 1989 SC 1565

**M.M. DUTT, J.** -. The appellants, Telco Convoy Drivers Mazdoor Sangh, Jamshedpur, and another, have preferred this appeal against the judgment of the Patna High Court whereby the High Court dismissed the writ petition of the appellants challenging the order of the State of Bihar refusing to make a reference of the disputes raised by the appellants to the Industrial Tribunal under Section 10 of the Industrial Disputes Act, 1947, hereinafter referred to as “the Act”.

3. The appellant Sangh represents about 900 convoy drivers. By a letter of demand dated 16-10-1986 addressed to the General Manager of the Tata Engineering and Locomotive Co. Ltd., Jamshedpur, the Sangh demanded that permanent status should be given by the management to all the convoy drivers, and that they should also be given all the facilities as are available to the permanent employees of TELCO on the dates of their appointment. The said demand proceeds on the basis that the convoy drivers are all workmen of TELCO. The dispute that has been raised in the said letter of demand is principally whether the convoy drivers are workmen and/or employees of TELCO or not. In other words, whether there is relationship of employer and employees between TELCO and the convoy drivers.

4. The Deputy Labour Commissioner by his letter dated 26-2-1979 informed the appellant Sangh that in view of the opinion of the Law Department of the year 1973 to the effect that there was no relationship of master and servant between TELCO and the convoy drivers, the demands of the convoy drivers did not come within the purview of the Act and, accordingly, it was not possible to take any action in regard to the dispute of convoy drivers under the Act. The appellant Sangh being aggrieved by the said refusal to make a reference under Section 10(1) of the Act, moved before the Ranchi Bench of the Patna High Court a writ petition praying for a writ of mandamus commanding the State of Bihar to refer the dispute under Section 10(1) of the Act. A learned Single Judge of the High Court, who heard the writ petition, took the view that the letter of the Deputy Labour Commissioner only referred to the Law Departments opinion of the year 1973 without indicating in what context and under what circumstance, he rejected the demand for a reference. In that view of the matter, the learned Judge granted liberty to the Sangh to reagitate the matter before the appropriate government and expressed the hope that the appropriate government would consider the matter in a proper perspective in the light of the documents and the materials that would be placed by the Sangh, in accordance with law. The writ petition was dismissed subject, however, to the observation and direction mentioned above.

5. Pursuant to the liberty granted by the High Court, the Sangh made a representation to the government for a reference of the dispute under Section 10(1) of the Act. The Deputy Labour Commissioner, Jamshedpur, by his letter dated 6-11-1986 gave the same reply and refused to make a reference.

6. Again, the appellant Sangh moved a writ petition before the High Court and, as stated already, the High Court summarily dismissed the same holding that the appellants had failed to prima facie satisfy that they were employed either by TELCO or by the Telco Contractors' Association. Hence this appeal.

7. It has been urged by Mr Pai, learned counsel appearing on behalf of the appellants, that the government exceeded its jurisdiction in purporting to decide the dispute raised by the appellant Sangh in the said letter of demand. Counsel submits that in the facts and circumstances of the case, the government should have made a reference to the Industrial Tribunal under Section 10(1) of the Act for the adjudication of the dispute of the convoy drivers and should not have embarked upon the task of deciding the dispute on its merits through the Deputy Labour Commissioner.

8. On the other hand, it has been vehemently urged by Mr Shanti Bhushan, learned counsel appearing on behalf of TELCO, that the Government has the jurisdiction to consider whether any industrial dispute exists or not and, in considering the same, as the government found that the convoy drivers were not even workmen of TELCO or, in other words, there had been no relationship of master and servants between TELCO and the convoy drivers, the government refused to make a reference of the dispute under Section

10(1) of the Act. It is submitted that the refusal by the Government to make a reference was perfectly within its jurisdiction inasmuch as, in the opinion of the government, there was no existence of any industrial dispute.

9. After conclusion of the hearing, we took the view that the Government should be given one more chance to consider the question of making a reference and, accordingly, we by our order dated 30-3-1989 directed the Government to reconsider the question of referring the dispute raised by the convoy drivers to the Industrial Tribunal under Section 10 of the Act, keeping the appeal pending before us.

10. The learned counsel, appearing on behalf of the government, has produced before us an order dated 13-4-1989 of the government whereby the government has, upon a reconsideration of the matter, refused to make a reference under Section 10(1) of the Act. In refusing to make a reference, the government has adjudicated the dispute on its merits.

11. It is true that in considering the question of making a reference under Section 10(1), the government is entitled to form an opinion as to whether an industrial dispute “exists or is apprehended”, as urged by Mr Shanti Bhushan. The formation of opinion as to whether an industrial dispute “exists or is apprehended” is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the government which is, undoubtedly, not permissible.

12. It is, however, submitted on behalf of TELCO that unless there is relationship of employer and employees or, in other words, unless those who are raising the disputes are workmen, there cannot be any existence of industrial dispute within the meaning of the term as defined in Section 2 (k) of the Act. It is urged that in order to form an opinion as to whether an industrial dispute exists or is apprehended, one of the factors that has to be considered by the government is whether the persons who are raising the disputes are workmen or not within the meaning of the definition as contained in Section 2(k) of the Act.

13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the government cannot delve into the merits of the dispute and take upon itself the determination of the *lis*, which would certainly be in excess of the power conferred on it by Section 10 of the Act.

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the government in exercise of its administrative function under Section 10(1) of the Act. As has been held in

***M.P. Irrigation Karamchari Sangh*** [(1985) 2 SCR 1019], there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the government should be very slow to attempt an examination of the demand with a view to declining reference and courts will always be vigilant whenever the government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

15. We are, therefore, of the view that the State Government, which is the appropriate government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the government and that of the government itself cannot be sustained.

16. It has been already stated that we had given one more chance to the government to reconsider the matter and the government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the government has persistently declined to make a reference under Section 10(1) of the Act, we think we should direct the government to make such a reference. In several instances this Court had to direct the government to make a reference under Section 10(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made.

17. In the circumstances, we direct the State of Bihar to make a reference under Section 10(1) of the Act of the dispute raised by the Telco Convoy Drivers Mazdoor Sangh by its letter dated 16-10-1986 addressed to the General Manager, TELCO, to an appropriate Industrial Tribunal within one month from today.

18. The appeal is allowed and the judgment of the High Court and the impugned orders are set aside.

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## ***Sharad Kumar v. Govt. of NCT of Delhi***

(2002) 4 SCC 490

**D.P. MOHAPATRA, J.** - This appeal filed by the employee is directed against the order dated 10-7-2000 of the Delhi High Court declining to interfere with the order of the Government of National Capital Territory of Delhi refusing to refer the dispute raised by the appellant to the Industrial Tribunal/Labour Court on the sole ground that he is not a “workman” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

3. The appellant was holding the post of “Area Sales Executive” when his service was terminated vide the order dated 20-12-1995. The order was communicated to him on 28-12-1995. No show-cause notice was served nor was any enquiry held before the order terminating the appellant’s service was passed. However, one month’s salary was sent to him along with the termination letter. The appellant questioned the legality and validity of the order of termination of service. The matter was taken up for conciliation. The Conciliation Officer submitted a failure report to the State Government on 23-10-1996. On receipt of the Conciliation Officer’s report the State Government declined to refer the dispute to the Industrial Tribunal or the Labour Court for adjudication vide order dated 14-7-1998. The relevant portion of the order reads:

“All the documents filed and submissions of the parties and the report of the Conciliation Officer have been perused and it is found that this is not a fit case for reference to the Industrial Tribunal or the Labour Court of Delhi for adjudication for the reasons given below:

‘Admittedly, the applicant was designated as Area Sales Executive and performing the duties of an Area Sales Executive, as such he is not covered by the definition of “workman” as defined under Section 2(s) of the Industrial Disputes Act, 1947.’ ”

4. Feeling aggrieved by the said order the appellant filed the writ petition before the High Court of Delhi which was dismissed by order dated 10-7-2000. The said order is under challenge in this appeal.

5. The relevant portion of the impugned order reads as follows:

“The only reason why the respondent refused to make a reference was that the petitioner who is working as an Area Sales Executive is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Learned counsel for the petitioner submits that whether he is a workman or not should be decided by the Labour Court. A reading of Section 2(s) of the Industrial Disputes Act makes it quite clear that an officer appointed as an Area Sales Executive cannot be considered to be a workman within the meaning of Section 2(s) of the Act. Dismissed.”

6. From the order passed by the State Government and the order of the High Court it is clear that the sole reason for declining to refer the dispute relating to discharge/termination of the appellant’s service for adjudication to the Industrial Tribunal or the Labour Court is that he is not a “workman” within the meaning of Section 2(s) of the Act. To put it differently, since the appellant was holding the post of Area Sales Executive at the time of termination of service he was not a workman as defined in Section 2(s) of the Act. The order of refusal of reference of the dispute was passed by the respondent in exercise of the power under Section 10(1) read with Section 12(5) of the Act.

7. The question that arises for consideration is whether on the facts and circumstances of the case the State Government was right in rejecting the appellant’s request for a reference and thereby nipping the proceeding at the threshold. Is it a just and proper exercise of the jurisdiction vested under the statute?

8. Shri S. Prasad, learned counsel appearing for the appellant strenuously contended that the State Government committed error in declining to refer the dispute to the Industrial Tribunal/Labour Court for adjudication merely going by the designation of the post held by the appellant. According to him the appellant was performing multifarious duties which came within the purview of the definition of the expression “workman” in Section 2(s) of the Act and the nature of his duties did not come within any of the exceptions provided in the said section. Shri Prasad also contended that the question whether the

appellant was a workman within the meaning of Section 2(s) or not involves inquiry into facts which could not be finally decided by the State Government while exercising the power under Section 10(1) of the Act. Shri Prasad further submitted that the State Government should have referred the matter to the Industrial Tribunal/Labour Court for adjudication of the dispute including the question whether the respondent was a “workman” within the meaning of Section 2(s) of the Act.

9. Per contra, Shri V.R. Reddy, learned Senior Counsel appearing for the employer M/s Usha International Ltd. contended that in the facts and circumstances of the case the State Government was right in refusing to refer the dispute to the Industrial Tribunal/Labour Court for adjudication. According to Shri Reddy, on the materials produced by the appellant himself in the conciliation proceedings it is clear that he did not come within any of the categories of employees mentioned in the first part of Section 2(s) of the Act, and therefore, he was not a “workman” as defined in Section 2(s).

10. Shri B.A. Mohanty, learned Senior Counsel appearing for the Government of National Capital Territory of Delhi, Respondent 1 herein, supported the order of the State Government refusing to refer the dispute to the Industrial Tribunal/Labour Court. He contended that under Section 10(1) of the Act it was for the appropriate government to take a decision whether the dispute raised was an “industrial dispute” as defined in Section 2(k) of the Act, for which it was necessary to ascertain whether the dispute was between the employer and the workman. According to Shri Mohanty it was absolutely necessary for the Government to satisfy itself whether the appellant was a workman within the meaning of Section 2(s) of the Act, and that was done by the authority in the case. Therefore, the order did not call for any interference by the High Court and the writ petition filed by the appellant was rightly dismissed.

16. In sub-section (4) thereof it is laid down that if no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after the close of the investigation, send to the appropriate government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reason on account of which, in his opinion, a settlement could not be arrived at.

18. It was not disputed before us that the jurisdiction vested in the appropriate government to make a reference or refuse to do so is administrative in nature and depends on the opinion formed by it on perusal of the report and the materials received from the Conciliation Officer. The question on answer of which the decision in this case depends is, what is the scope and extent of the power to be exercised by the appropriate government in such a matter?

19. On a fair reading of the provisions in Section 2(s) of the Act it is clear that “workman” means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward including any such person who has been dismissed, discharged or retrenched.

20. The latter part of the section excludes 4 classes of employees including a person employed mainly in a managerial or administrative capacity, or a person employed in a supervisory capacity drawing wages exceeding Rs 1600 per month or exercises functions mainly of a managerial nature. It has to be taken as an accepted principle that in order to come within the meaning of the expression “workman” in Section 2(s) the person has to be discharging any one of the types of works enumerated in the first portion of the section. If the person does not come within the first portion of the section then it is not necessary to consider the further question whether he comes within any of the classes of workmen excluded under the latter part of the section. The question whether the person concerned comes within the first part of the section depends upon the nature of duties assigned to him and/or discharged by him. The duties of the employee may be spelt out in the service rules or regulations or standing order or the appointment order or in any other material in which the duties assigned to him may be found. When the employee is assigned a particular type of duty and has been discharging the same till the date of the dispute then there may not be any difficulty in coming to a conclusion whether he is a workman within the meaning of Section 2(s). If on the other hand the nature of duties discharged by the employee is multifarious then the

further question that may arise for consideration is which of them is his principal duty and which are the ancillary duties performed by him. In such a case determination of the question is not easy at the stage when the State Government is exercising the administrative jurisdiction vested in it for the limited purpose of satisfying itself whether the dispute raised is an industrial dispute within the meaning of Section 2(k) of the Act. While deciding the question, designation of the employee is not of much importance and certainly not conclusive in the matter as to whether or not he is a workman under Section 2(s) of the Act.

31. Testing the case in hand on the touchstone of the principles laid down in the decided cases, we have no hesitation to hold that the High Court was clearly in error in confirming the order of rejection of reference passed by the State Government merely taking note of the designation of the post held by the respondent i.e. Area Sales Executive. As noted earlier determination of this question depends on the types of duties assigned to or discharged by the employee and not merely on the designation of the post held by him. We do not find that the State Government or even the High Court has made any attempt to go into the different types of duties discharged by the appellant with a view to ascertain whether he came within the meaning of Section 2(s) of the Act. The State Government, as noted earlier, merely considered the designation of the post held by him, which is extraneous to the matters relevant for the purpose. From the appointment order dated 21-4-1983/ 22-4-1983 in which are enumerated certain duties which the appellant may be required to discharge it cannot be held therefrom that he did not come within the first portion of Section 2(s) of the Act. We are of the view that determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered. In such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Thus the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable.

32. Accordingly, the appeal is allowed. The Government of National Capital Territory of Delhi, Respondent 1 herein, is directed to refer the dispute raised by the appellant including the question whether the appellant is a workman under the Act, to the Industrial Tribunal/Labour Court for adjudication.

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## ***Delhi Cloth & General Mills Co. Ltd. v. The Workmen***

(1967) 1 SCR 882 : AIR 1967 SC 469

**G.K. MITTER, J.** - On March 4, 1966, an order under Section 10(1) and Section 12(5) of the Industrial Disputes Act was passed over the signature of Secretary (Industries and Labour), Delhi Administration, Delhi referring to the Special Industrial Tribunal certain matters set forth in the Schedule annexed thereto for adjudication. According to the recitals in the order, it appeared to the Delhi Administration from a report submitted by the Conciliation Officer under Section 12(4) of the Act that an industrial dispute existed between the managements of Delhi Cloth Mills and Swatantra Bharat Mills and their workmen represented by four different Unions and the Chief Commissioner, Delhi, was satisfied on a consideration of the said report that the said dispute should be referred to an Industrial Tribunal. The terms of reference specified in the Schedule are reproduced below:

“... 3. Whether the strike at the Delhi Cloth Mills and the lockout declared by the management on the 24-2-1966 are justified and legal and whether the workmen are entitled to wages for the period of the lockout?

4. Whether the ‘sit-down’ strike at the Swatantra Bharat Mills from 23-2-1966 is justified and legal and whether the workmen are entitled to wages during the period of the strike?”

14. The report of the Conciliation Officer shows that trouble had arisen over the claim of bonus in the Delhi Cloth and General Mills and Swatantra Bharat Mills, two units of the same company. The report also shows that at a meeting convened at 2.30 p.m. on February 23, 1966, the Works Committee recommended that the payment of bonus should be suspended pending examination of the entire issue in conciliation or otherwise. But before this could be announced, workers started demonstration outside the mill premises of the first named unit and became violent. To quote from the report:

“As the situation became tense inside the mill premises and the workers left work, the management closed down the turbine at about 4 p.m. on 23-2-1966. Later on, at about 11.00 p.m. the management put up a notice that in view of the prevailing circumstances in the Mills, it was not possible to work the mills until conditions become normal ... As there was no improvement in the situation and as workers who were inside the mills were reported to have caused further damage to the mill property, the management declared a lockout at about 6 p.m. on 24th February, 1966 ... The workers, however, are very much restive over the management’s declaration of lockout.”

With regard to Swatantra Bharat Mills, the report runs:

“(T)he situation is peaceful although the workers resorted to the stay-in-strike from 7.30 p.m. on 23rd February, 1966 and the strike still continues. It appears that their attitude is that whatever is decided at the DCM level will automatically be applicable to them as well. The workers do not seem to be in a mood to start the work unless the workers of the Delhi Cloth Mills also start work”.

The recommendation in the report was that the dispute should be immediately referred to a Tribunal for adjudication along with the issue of prohibitory orders under Section 10(3) of the Act. The report notes that the Unions’ leaders had pressed that the question of workers’ claim for wages for the strike period in the Swatantra Bharat Mills and lockout period in the Delhi Cloth Mills should also be included and the Tribunal to be constituted should proceed immediately in the matter.

15. The Management filed a statement of case before the Special Tribunal on April 9, 1966 and the Unions filed separate statements of case between April 10, 1966 and April 13, 1966. There were Replications and Rejoinders up to May 21, 1966.

16. On June 3, 1966, the Company prayed before the Industrial Tribunal that Issues 3 and 4 may be decided before the parties were called upon to lead their evidence. As regards Issues 3 and 4, the

contention of the management was that the fundamental basis of these two matters was that there was a strike at the Delhi Cloth Mills and a sit-down strike at the Swatantra Bharat Mills and the only question referred to the Tribunal for decision related to the legality and justification of the said strikes. All the four Unions contended before the Tribunal that there was no strike at the Delhi Cloth Mills. Two of the Unions' case was that the strike at Swatantra Bharat Mills was in sympathy with the workmen of the Delhi Cloth Mills; while the other two Unions' case was that there was a lockout in the Swatantra Bharat Mills. As regards the first issue, the case of the Management was that there was a settlement on December 13, 1965 relating to the computation of bonus for the year 1963-64 between the Company and the two major Unions. It was stated further that the settlement referred to the computation of bonus in accordance with the provisions of the Payment of Bonus Act, 1965 and in arriving at the settlement, all the available and relevant financial statements had been shown to the Unions which accepted the accounts based on allocation of share capital and reserves during the years previous to and including 1963-64. Further, according to the Management, one of the Unions had entered into another settlement with the Management of the DCM Silk Mills with regard to that Union for the year 1964-65, and in view of these settlements, it was not open to the workmen of the Delhi Cloth Mills and Swatantra Bharat Mills to question the correctness and reasonableness of the allocations made by the Management towards share capital and reserves of these two units.

17. The Tribunal considered the pleas put forward before it and several decisions cited in support and came to the conclusion that as the strike covered by Issue 3 and sit-down strike covered by Issue 4 were disputed by the Unions, or at any rate not admitted by all of them "it would be the duty of the Tribunal to decide whether there was a strike at DCM as covered by Issue 3 and whether there was a sit-down strike by S.B.M. as covered by Issue 4." According to the Tribunal, it would not be exceeding its jurisdiction at all and would not be going beyond the scope and ambit of the reference to examine Issues 3 and 4 in the above light and accordingly, the Tribunal held that the parties would be at liberty to adduce such evidence as they liked in confirmation or denial of the fact of a strike and sit-down strike regarding Issues 3 and 4.

20. Proceeding in the order in which the arguments were addressed, we propose to deal with Issues 3 and 4 first. Under Section 10(1)(d) of the Act, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring "the dispute or any matter appearing to be connected with, or relevant to, the dispute, ... to a Tribunal for adjudication." Under Section 10(4) "where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

21. From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word "incidental" means according to ***Webster's New World Dictionary***:

"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:"

"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. In the light of the above, it would appear that the third issue was framed on the basis that there was a strike and there was a lockout and it was for the Industrial Tribunal to examine the facts and circumstances leading to the strike and the lockout and to come to a decision as to whether one or the other or both were justified. On the issue as framed it would not be open to the workmen to question the existence of the strike, or, to the Management to deny the declaration of a

lockout. The parties were to be allowed to lead evidence to show that the strike was not justified or that the lockout was improper. The third issue has also a sub-issue, namely, if the lockout was not legal, whether the workmen were entitled to wages for the period of the lockout. Similarly, the fourth issue proceeds on the basis that there was a sit-down-strike in the Swatantra Bharat Mills on 23-2-1966 and the question referred was as to the propriety or legality of the same. It was not for any of the Unions to contend on the issues as framed that there was no sit-down strike. On their success on the plea of justification of the sit-down strike depended their claim to wages for the period of the strike.

22. Apart from the consideration of the various decisions cited at the Bar, the above is the view which we would take with regard to Issues 3 and 4. We have now to examine the decisions cited and the arguments raised and see whether it was competent to the Tribunal to go into the question as to whether there was a strike at all at the Delhi Cloth Mills or a sit-down strike at the Swatantra Bharat Mills or a lockout declared by the Management on 24-2-1966.

23. The decisions on the point to which our attention was drawn are as follows. In **Burma-Shell Oil Storage & Distributing Co. of India Ltd. v. Workmen** [(1961) 2 LLJ 124] one of the disputes referred to the fifth Industrial Tribunal by the Government of West Bengal under Section 10 of the Industrial Disputes Act was a claim for bonus for 1955 payable in 1956 for the Calcutta Industrial area. The Industrial Tribunal heard both the parties and awarded 4½ months basic salary as bonus for the year 1955 to the clerical staff and the operatives of the companies. This Court referred to the recital in the order of the Government of West Bengal and observed that the reference was between the four appellants and their workmen represented by the named Workers' union on the other. According to this Court, it appeared from the record that the said union represented only the workmen in the categories of labour, service and security employees in the Calcutta industrial area and so prima facie the two demands made by the union would cover the claims of the operatives alone. This Court also relied on the fact that the appellants had dealt with the two categories of employees distinctly and separately. According to Gajendragadkar, J. (as he then was) who delivered the judgment of the Court:

“If the reference does not include the clerical staff and their grievances, it would not be open to the members of the clerical staff to bring their grievances before the tribunal by their individual applications or for the tribunal to widen the scope of the enquiry beyond the terms of reference by entertaining such individual applications.”

Accordingly, it was held that the appellants were right in contending that the tribunal had no authority to include within its award members of the clerical staff employed by the appellants.

24. In **Express Newspapers v. Workmen & Staff** [(1962) 2 LLJ 227] the two items of dispute specified in the order of reference were:

(1) Whether the transfer of the publication of Andhra Prabha and Andhra Prabha Illustrated Weekly to Andhra Prabha (Private) Ltd., in Vijayawada is justified and to what relief the workers and the working journalists are entitled?

(2) Whether the strike of the workers and working journalists from 27th April 1959, and the consequent lockout by the management of the Express Newspapers (Private) Ltd., are justified and to what relief the workers and the working journalists are entitled?

On the same day as the Government of Madras made the order of reference, it issued another order under Section 10(3) of the Act prohibiting the continuance of the strike and the lockout in the appellant concern. Against this latter order, the appellant filed a writ petition in the Madras High Court and the workers also filed another writ petition against the order by which the dispute was referred to the Industrial Tribunal for adjudication. In regard to the second petition, the learned Single Judge of the Madras High Court held on the merits that what the appellant had done did not amount to a lockout but a closure and so the substantial part of the dispute between the parties did not amount to an industrial dispute at all. In the result, he allowed the application of the company in part and directed the tribunal to deal only with the second part of the two questions framed by the impugned reference. There was some modification in the order by a Division Bench of the Madras High Court. The matter then came up to this

Court. It was held by this Court that the High Court could entertain the appellant's petition even at the initial stage of the proceedings before the industrial tribunal and observed:

"If the action taken by the appellant is not a lockout but is a closure, bona fide and genuine, the dispute which the respondents may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance, it is a lockout, but the said action has adopted the disguise of a closure and a dispute is raised in respect of such an action, it would be an industrial dispute which industrial adjudication is competent to deal with. There is no doubt that in law the appellant is entitled to move the High Court even at the initial stage and seek to satisfy it that the dispute is not an industrial dispute and so the Industrial Tribunal has no jurisdiction to embark upon the proposed enquiry."

It was further observed:

"If the Industrial Tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for an appropriate writ, and the power of the High Court to issue an appropriate writ in that behalf cannot be questioned.

It is also true that even if the dispute is tried by the Industrial Tribunal, at the very commencement, the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the appellant is a closure or a lockout. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not."

The Court then proceeded to consider the facts of the case and the contentions raised before the tribunal. It referred to a settlement which had been reached between the parties and embodied in a memorandum drawn up on 6th November, 1958 under Section 12(3) of the Act. This settlement was to operate for two and half years. The case of the respondents was that during the negotiations between the appellant and the union in the presence of the acting Labour Minister and the Labour Commissioner, the appellant had tried to insert a clause in the agreement in respect of the decision that the paper Andhra Prabha would not be shifted for publication to Vijayawada during the period of the settlement and that the workmen would be continued to be employed as before at Madras and this was objected to by the respondent whereupon a verbal assurance was given that the business of the appellant would be carried on at Madras for two and half years. The respondents contended that the said assurance was one of the terms of the conditions of the respondents' service and the transfer effected by the appellant contravened and materially modified the said condition of service. In regard to Issue 2, the argument was that in effect the Government had determined this issue and nothing was left for the tribunal to consider. The Court observed that the wording of this issue was in-artistic and unfortunate and held:

"Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. Thus construed, even the inelegant phraseology in framing the issue cannot conceal the fact that in dealing with the issue, the main point which the tribunal will have to consider is whether the strike of the respondents on 27th April 1959 was justified and whether the action of the appellant which followed the said strike is a lockout or amounts to a closure ... Thus, having regard to the content of the dispute covered by Issue 2, it would not be right to suggest that the reference precludes the tribunal from entertaining the appellant's plea that what it did on 29th April is in fact not a lockout but a closure. The fact that the relevant action of the appellant is called a lockout does not mean that the tribunal must hold it to be a lockout."

25. This decision has been referred to by the Tribunal as giving it jurisdiction to examine the question as to whether there was a strike at all. Both sides have referred to this decision in support of their respective contentions. According to the respondents, the fact that the Tribunal could go into the question as to whether there was a lockout or a closure went to show that the Tribunal's jurisdiction was not

limited because of the use of the word “lockout” in the second issue so that the Tribunal was precluded from examining the question as to whether there was a lockout at all while according to the appellants it was because the Tribunal had always to consider whether the issue referred was an industrial dispute that the Tribunal had to scrutinise whether the cessation of business of the company was due to a lockout which it was competent to adjudicate upon or whether it was due to a closure which was not an industrial dispute at all.

26. In our opinion, there was enough material on the record in that case to show that the company had been trying for some time past to transfer its business elsewhere and the action of the appellant which followed the strike on April 27, 1959 was in fact a closure and not a lockout. The facts of that case were very special and the decision must be limited to those special facts.

27. In *Syndicate Bank v. Workmen* [(1966) 2 LLJ 194], there was a dispute between the appellant bank and its employees with respect to C rank officers which was referred by the Central Government to an Industrial Tribunal in the following terms:

(1) Whether the Canara Industrial and Banking Syndicate, Ltd., Udipi, is justified in imposing the condition that only such of those workmen would be considered for appointment as officer-trainee and promotion to probationary C rank officers who agree to be governed by the rules of the bank applicable to such officers in respect of the scale of pay and other conditions of service? If not, to what relief are such workmen entitled?

(2) Whether the bank is justified in imposing the condition of twelve months training as officer-trainee before appointment as C rank officer in addition to the probation prescribed after the appointment as C rank officer? If not, to what relief are the workmen entitled?

Before the tribunal it was contended on behalf of the appellant that the first term of reference proceeded on the assumption that C rank officers were officers of the bank while the workmen urged that the question whether C rank officers were workmen was implicit in the first term of reference. The Tribunal accepted the plea of the respondents and proceeded to consider that question. It came to the conclusion that C rank officers were workmen. On the question whether the imposition of the condition that workmen would only be promoted as C rank officers if they accepted the condition that they would be governed by the rules of the bank, it found against the appellant. Before this Court it was argued on behalf of the appellant that there was no reference on the question of the status of C rank officers and the tribunal went beyond the terms of reference when it decided that C rank officers were workmen. It was held by this Court:

“that the first term of reference had implicit in it the question whether C rank officers were workmen or not. If that were not so, there would be no sense in the reference, for if C rank officers were assumed to be non-workmen, the bank would be justified in prescribing conditions of service with respect to its officers and there would be no reference under the Act with respect to conditions imposed by the bank on its officers who were not workmen.”

28. In the last mentioned case, the question whether C rank officers were workmen had to be examined by the tribunal, for, if they were not, there could be no reference under the Industrial Disputes Act. In the case before us, there is no such difficulty. The third and the fourth terms of reference in the instant case are founded on the basis that there was a strike at the Delhi Cloth Mills and a sit down strike at the Swatantra Bharat Mills and that there was a lockout declared by the management of the Delhi Cloth Mills on 24-2-1966. On the order of reference, it was not competent to the workmen to contend before the Tribunal that there was no strike at all; equally, it was not open to the management to argue that there was no lockout declared by it. The parties would be allowed by their respective statement of cases to place before the Tribunal such facts and contentions as would explain their conduct or their stand, but they could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge. The cases discussed go to show that it is open to the parties to show that the dispute referred was not an industrial dispute at all and it is certainly open to them to

bring out before the Tribunal the ramifications of the dispute. But they cannot be allowed to challenge the very basis of the issue set forth in the order of reference.

29. On behalf of the respondents, Mr Chari put before us four propositions which according to him the Tribunal had to consider before coming to a decision on these two issues. They were: (i) The fact that there was a recital of dispute in the order of reference did not show that the Government had come to a decision on the dispute; (ii) The order of reference only limited the Tribunal's jurisdiction in that it was not competent to go beyond the heads or points of dispute; (iii) Not every recital of fact mentioned in the order of Government was irrebuttable; and (iv) In order to fix the ambit of the dispute it was necessary to refer to the pleadings of the parties. No exception can be taken to the first two points. The correctness of the third proposition would depend on the language of the recital.

30. So far as the fourth proposition is concerned, Mr Chari argued that the Tribunal had to examine the pleadings of the parties to see whether there was a strike at all. In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under Section 10(4) of the Act it is not competent to the Tribunal to entertain such a question.

31. In our opinion, therefore, the Tribunal had to examine Issues 3 and 4 on the basis that there was a strike at the DCM unit and a sit-down strike at Swatantra Bharat Mills and that there was a lockout declared with regard to the former as stated in the third term of reference. It was for the Tribunal to examine the evidence only on the question as to whether the strikes were justified and legal. It then had to come to its decision as to whether the workmen were entitled to the wages for the period of the lockout in the Delhi Cloth Mills and for the period of the sit-down strike at the Swatantra Bharat Mills.

37. In the result, the preliminary objection of the Management with regard to Issues 3 and 4 succeeds.

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**A.K. SIKRI, J.**

1. Leave granted.

2. We heard the Counsel for the parties at length. Having regard to the nature of issue involved that needs to be answered by us, it would be enough to take note of some admitted facts, eschewing detailed factual discussion which may unnecessarily burden this judgment.

3. The appellant before us is M/s. Tata Iron & Steel Company Limited (rechristened as Tata Steel Ltd.). Apart from manufacturing steel, its core business, the appellant company was having cement division as well. In the era of globalization, liberalization and also because of economic compulsions, the appellant decided to follow the policy of disinvestment. Persuaded by these considerations it sold its cement division to Lafarge India Pvt. Ltd (hereinafter to be referred as 'M/s. Lafarge') vide Business Transfer Agreement (BTA) dated 9.3.1999 which was to be effected from 1.11.1999. This agreement, inter alia provided that M/s. Lafarge would take over the company personnel, including, in terms of Section 25 FF of the Industrial Disputes Act, 1947. It was on the condition that:

(a) The services of the company personnel shall not be or deemed to be interrupted by such transfer.

(b) The terms and conditions of service applicable to the company personnel after such transfer are not in any way less favourable to the company personnel than those applicable to them immediately before the transfer.

(c) The purchaser is, under the terms of transfer herein, legally liable to pay to the company personnel in the event of their retrenchment, compensation on the basis that services have been continued and have not been interrupted by the transfer of business.

4. This decision to hive off and transfer the cement division by the appellant to M/s Lafarge was communicated to the employees of the cement division as well. According to the appellant, consequent upon this agreement, with the transfer of business, the employees working in the cement division were also taken over by M/s Lafarge & M/s Lafarge issued them fresh letters of appointments. These included Respondent Nos. 8-82 herein who started working with M/s Lafarge.

5. It appears that these workers were not satisfied with the working conditions in M/s. Lafarge. They submitted a statement of demand to the appellant on 15.9.2003, stating inter alia that they were directed to work with M/s. Lafarge without taking their consent. As per these respondents/ employees, impression given to them was that they would work in different departments in M/s. Lafarge for some days for smooth functioning of that establishment, which was a part of the appellant organization and thereafter they would be posted back to the parent department. They

had obeyed these orders faithfully believing in the said representation. However, the concerned employees were not given all the benefits by M/s Lafarge which they were enjoying in their parent department. Thus, the demand was made to take them back with the appellant company. The company did not pay any heed to this demand. These employees approached the Deputy Labour Commissioner, Jamshedpur, raising their grievances and requesting to resolve the dispute.

6. Notices were issued to the appellant to participate in the Conciliation Proceedings. The appellant appeared and took the plea that on and from 1.11.1999, the cement division was sold to M/s. Lafarge and these workmen had become the employees of M/s. Lafarge. It was also stated that fresh appointment letters issued by M/s. Lafarge and they ceased to be the employees of the appellant. Since no amicable settlement could take place and conciliation proceedings resulted in failure. The failure report was sent by the Labour Department to the Government of Jharkhand which resulted in two reference orders, thereby referring the disputes between the parties to the Labour Court, Jamshedpur, for adjudication. The dispute was referred under Section 10(1) of the Industrial Dispute Act, 1947 with following terms and reference.

“Whether not to take back Shri K. Chandrashekhar Rao and 73 other workmen (list enclosed) of M/s TISCO Limited, Jamshedpur in service by their own TISCO Management after their transfer to M/s. Lafarge India Limited, is justified? If not what relief they are entitled to?” Other reference was also worded identically.

7. According to the appellant, the manner in which the references are worded, do not depict the true nature of the dispute between the parties. It was their submission that the concerned workmen were no longer in their employment and, therefore, could not have raised the grievance or any dispute against the appellant company and thus, no industrial dispute at all existed between the appellant and the respondent workmen. They took a specific plea that if M/s. Lafarge did not provide assured service terms, these respondents could raise the dispute only against M/s. Lafarge which was their real employer and M/s. Lafarge was not even made partial in the present proceedings. As per the appellant, the Conciliation Officer had not considered material on record and without applying its mind submitted the failure report leading to the reference in question. On that basis, Writ Petitions were filed by the appellant before the High Court of Jharkhand at Ranchi seeking quashing of the said reference.

8. These Writ Petitions came up before the learned Single Judge who dismissed these Writ Petitions with the observation that the Labour Court, which was already in seisin of the matter, can very well adjudicate and answer the reference after considering all the points raised by the parties and on the basis of evidence led by the parties in the reference proceeding before the Labour Court. Intra Court Appeals preferred by the appellant have been dismissed by the Division Bench of the said Court observing that as there is a dispute between parties and, therefore, the learned Single Judge rightly dismissed the Writ Petitions.

9. It is how the parties are before us in the present proceedings.

10. At the outset, we would like to observe that the High Court is right in holding that the Industrial Dispute has arisen between the parties in as much as the contention of the workers is



that they are entitled to serve the appellant as they continued to be the workers of the appellant and were wrongly “transferred” to M/s. Lafarge. On the other hand, the appellant contends that with the hiving off the cement division and transferring the same to M/s. Lafarge along with the workers who gave their consent to become the employees of the transferee company, the relationship of employers and employees ceased to exist and, therefore, the workmen have no right to come back to the appellant. This obviously is the “dispute” within the meaning of [Section 2\(k\)](#) of the Industrial Disputes Act. [Section 2 \(k\)](#) of the [Industrial Disputes Act](#) which defines Industrial Dispute reads as under:

“2(k) “industrial dispute” means any dispute or difference between employers and employers, 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.”

11. No doubt, as per the aforesaid provision, industrial dispute has to be between the employer and its workmen. Here, the appellant is denying the respondents to be its workmen. On the other hand, respondents are asserting that they continue to be the employees of the appellant company. This itself would be a “dispute” which has to be determined by means of adjudication. Once these respective contentions were raised before the Labour Department, it was not within the powers of the Labour Department/ appropriate Government decide this dispute and assume the adjudicatory role as its role is confined to discharge administrative function of referring the matter to the Labour Court/ Industrial Tribunal. Therefore, this facet of dispute also needs to be adjudicated upon by the Labour Court. It cannot, therefore, be said that no dispute exists between the parties. Of course, in a dispute like this, M/s. Lafarge also becomes a necessary party.

12. Having said so, we are of the opinion that the terms of reference are not appropriately worded in as much as these terms of reference do not reflect the real dispute between the parties. The reference pre-supposes that the respondents workmen are the employees of the appellant. The reference also proceeds on the foundation that their services have been “transferred” to M/s. Lafarge. On these suppositions the limited scope of adjudication is confined to decide as to whether appellant is under an obligation to take back these workmen in service. Obviously, it is not the reflective of the real dispute between the parties. It not only depicts the version of the respondents workmen, but in fact accepts the same viz. they are the employees of the appellant and mandates the Labour Court/ Industrial Tribunal to only decide as to whether the appellant is required to take them back in its fold. On the contrary, as pointed out above, the case set up by the appellant is that it was not the case of transfer of the workmen to M/s Lafarge but their services were taken over by M/s. Lafarge which is a different company/ entity altogether. As per the appellant they were issued fresh appointment letters by the new employer and the relationship of employer-employee between the appellant and the workmen stood snapped. This version of the appellant goes to the root of the matter. Not only it is not included in the reference, the appellant’s right to put it as its defence, as a demurrer, is altogether shut and taken away, in the manner the references are worded.

13. We would hasten to add that, though the jurisdiction of the Tribunal is confined to the terms of reference, but at the same time it is empowered to go into the incidental issues. Had the reference been appropriately worded, as discussed later in this judgment, probably it was still

open to the appellant to contend and prove that the Respondent workmen ceased to be their employees. However, the reference in the present form does not leave that scope for the appellant at all.

14. A full Bench of High Court of Delhi in the case of [Indian Tourism Development Corporation \(ITDC\) v. Delhi Administration and Ors.](#) 1982 (LAB) IC 1309 had an occasion to deal with issue of this nature i.e. pertaining to the “Terms of Reference”. Various writ petitions were heard together and disposed of by the common judgment. One of the writ petitions, in which this issue arose, was C.W.P No. 1472/1981. One worker working at the sweets counter of the Sona Rupa Restaurant of the management was caught red handed while misappropriating the sale proceeds of sweets sold to the customers. Though initially he admitted the theft but later he instigated other employees to resort to militant and violent acts in which various workers indulged in and abstained from work. In view of the violent and subversive activities of the workers, the management decided to close down the restaurant and informed the workmen accordingly. Notice of closure was issued wherein workmen were informed that their accounts would be settled in full and final. The workmen approached the Labour Department and raised the dispute alleging that there was a “lock-out” declared by the management. The management appeared in the conciliation proceedings and stated that it was a case of “closure” of the restaurant and not of lock-out. Since conciliation proceedings failed, the matter was referred by the appropriate Government to the Industrial Tribunal, Delhi, for adjudication with following terms of reference:

“Whether the workmen as shown in Annexure ‘A’ are entitled to wages for a period of lock-out w.e.f. 1.1.81 and if so, what directs are necessary in this respect.”

15. The Management filed the Writ Petition under [Article 226](#) challenging the notification of reference on the plea that the real dispute about the existence or otherwise of the lockout had not been referred to. Instead lock-out was presumed in the reference itself on imagining and fictitious basis with the result, it was not open to the management to urge before the Tribunal whether there was at all a lock out, and instead it was a case of closure, prompted by workers’ violent attitude. The High Court accepted these contentions on the analogy that the jurisdiction of the Court/ Industrial Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible for it to go beyond the terms of reference. The High Court further pointed out that though the existence of lock-out itself was the real dispute between the management and its workmen, the terms of reference proceeded on the assumption that there was a lock-out declared by the management. This way the management was precluded from proving before the Industrial Tribunal that there was no lock out and, in fact it was a case of closure. Thus, the real dispute between the parties as to whether there was at all a lock-out or whether there was violence by the workmen which compelled the management to close the restaurant, was not referred.

16. Later this judgment was followed by a Single Bench of Delhi High Court in the case of [Moolchand Kharati Ram Hospital vs. Labour Commissioner and Ors.](#) 1998 (III) LLJ 1139 Del, where also dispute was as to whether the workmen had resorted to strike, as contended by the management or it is the management which had declared a lock-out, which was the stand of the workmen. However, the terms of reference stipulated were: whether the workmen were entitled to wages for the lock-out period? The Court concluded that since there was a dispute

about the existence of lock-out itself, this kind of reference would not permit the management to prove that it was in fact a case of “strike” resorted to by the workmen. Reference was accordingly quashed. The court relied upon the full Bench judgment in ITDC(supra). Some judgments of this Court were also referred to for the proposition that the jurisdiction of the Tribunal is limited to the extent of what is referred to it. We would like to reproduce that portion of the judgment where decisions of this Court are discussed:-

“25. Their Lordship of the Supreme Court in the matter of [Management of Express Newspapers \(Private\) Ltd., Madras v. The Workers and Ors.](#), MANU/SC/0267/1962: (1962)ILLJ227SC, held that "since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it under [Section 10](#) is limited by [Section 10\(4\)](#) to the point specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided.

26. In [Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal of Gujarat and Ors.](#) MANU/SC/0233/1967 : (1968)ILLJ834SC , their Lordships of the Supreme Court have emphasised the importance of drafting of reference under [Section 10](#) of the Industrial Disputes Act. This has been observed in this case as under at p. 839 :

"If no dispute at all is raised by the employees with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and workmen. The Government has to come to an opinion that an industrial dispute does exist and that opinion can only be formed on the basis that there was a dispute between the employee and the employer.

Where the retrenched employee and the Union had confined their demand to the management to retrenchment compensation only and did not make any demand for reinstatement the reference made by the Government under [Section 10](#) in respect of reinstatement is not competent."

17. Appeals against the aforesaid decision was dismissed by this Court in [Moolchand Kharati Ram Hospital vs. Labour Commissioner and Ors.](#) 2002 (10) SCC 708. This shows that view of the Delhi High Court in the aforesaid cases has been given imprimatur by this Court.

18. The Industrial Tribunal/ Labour Court constituted under the [Industrial Disputes Act](#) is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject matter of reference and cannot travel beyond the same. This is the view taken by this Court in number of cases including in the case of [National Engineering Industries Limited v. State of Rajasthan & Ors.](#) 2000 (1) SCC 371.

19. It is for this reason that it becomes the bounden duty of the appropriate Government to make the reference appropriately which is reflective of the real/ exact nature of “dispute” between the parties. In the instant case, the bone of contention is as to whether the respondent workmen were simply transferred by the appellant to M/s. Lafarge or their services were taken over by M/s. Lafarge and they became the employees of the M/s. Lafarge. Second incidental question which

would follow therefrom would be as to whether they have right to join back the services with the appellant in case their service conditions including salary etc. which they were enjoying with the appellant are not given or protected by M/s. Lafarge? If it is proved that their service conditions are violated, another question would be as to whether they can claim the service benefits/ protection from M/s. Lafarge or they have the right to go back to the appellant?

20. It follows from the above that the reference in the present form is clearly defective as it does not take care of the correct and precise nature of the dispute between the parties. On the contrary, the manner in which the reference is worded shows that it has already been decided that the respondent workmen continue to be the employees of the appellant and further that their services were simply transferred to M/s. Lafarge. This shall preclude the appellant to put forth and prove its case as it would deter the labour court to go into those issues. It also implies that by presuming so, the appropriate Government has itself decided those contentious issues and assumed the role of an adjudicator which is, otherwise, reserved for the Labour Court/ Industrial Tribunal.

21. As a consequence, this appeal is allowed and the impugned judgment of the High Court is set aside. Sequitur to that would be to quash the references made in the present form. However, at the same time, direction is given to the appropriate Government to make fresh reference, incorporating real essence of the dispute as discussed in this judgment, within a period of two months from the date of receipt of the copy of this judgment.

22. The appeals are allowed and disposed of in the aforesaid terms with no order as to costs.

[K.S. RADHAKRISHNAN] J.

[A.K. SIKRI] J

### **Topic-3: Awards and Settlement**

***Sirsilk Ltd. v. Government of Andhra Pradesh***  
(1964) 2 SCR 448 : AIR 1964 SC 160

**K.N. WANCHOO. J.-** Briefly the facts in Appeal No. 220 are that an order referring certain disputes between the appellant and its workmen was made to the Industrial Tribunal, Andhra Pradesh on 6-6-1956. The Tribunal sent its award to Government in September 1957. Under Section 17 of the Industrial Disputes Act 14 of 1947, the award has to be published by the appropriate Government within a period of thirty days from the date of its receipt by the Government in such manner as the Government thinks fit. Before however the Government could publish the award under Section 17, the parties to the dispute which had been referred for adjudication came to a settlement and on 1-10-1957, a letter was written to Government signed jointly on behalf of the employer and the employees intimating that the dispute which had been pending before the Tribunal had been settled and a request was made to Government not to publish the award. The Government however expressed its inability to withhold the publication of the award, the view taken by the Government being that Section 17 of the Act was mandatory and the Government was bound to publish the award. Thereupon the appellants filed writ petitions before the High Court under Article 226 of the Constitution praying that the Government may be directed not to publish the award sent to it by the Industrial Tribunal. The High Court held that Section 17 was mandatory and it was not open to Government to withhold publication of an award sent to it by an Industrial Tribunal. Therefore it was not open to the High Court to direct the Government not to publish the award when the law enjoined upon it to publish it. The writ petitions were therefore dismissed. There were then applications for certificates which were granted and that is how the matter has come up before us.

3. The main contention on behalf of the appellants before us is that Section 17 of the Act when it provides for the publication of an award is directory and not mandatory. In the alternative, it is contended that even if Section 17 is mandatory some *via media* has to be found in view of the conflict that would arise between an award published under Section 17(1) and a settlement which is binding under Section 18(1) and therefore where there is a settlement which is binding under Section 18(1), it would be open to the Government not to publish the award in these special circumstances.

4. We are of opinion that the first contention on behalf of the appellants, namely, that the publication of the award under Section 17(1) is directory cannot be accepted. Section 17(1) lays down that every award shall within a period of thirty days from the date of its receipt by the appropriate Government be published in such manner as the appropriate Government thinks fit. The use of the “word” shall is a pointer to Section 17(1) being mandatory, though undoubtedly in certain circumstances the word “shall” used in a statute may be equal to the word “may”. In the present case, however it seems to us that when the word “shall” was used in Section 17(1) the intention was to give a mandate to Government to publish the award within the time fixed therein. This is enforced by the fact that sub-section (2) of Section 17 provides that “the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever”. Obviously when the legislature intended the award on publication to be final, it could not have intended that the Government concerned had the power to withhold publication of the award. Further Section 17-A shows that whatever power the Government has in the matter of an award is specifically provided in that section, which allows the Government in certain circumstances to declare that the award shall not become enforceable on the expiry of thirty days from the date of its publication, which under Section 17-A is the date of the enforceability of the award. Section

17-A also envisages that the award must be published though the Government may declare in certain contingencies that it may not be enforceable. Sub-section (2) of Section 17-A also gives power to Government to make an order rejecting or modifying the award within ninety days from the date of its publication. It is clear therefore reading Section 17 and Section 17-A together that the intention behind Section 17(1) is that a duty is cast on government to publish the award within thirty days of its receipt and the provision for its publication is mandatory and not merely directory.

5. This however does not end the matter, particularly after the amendment of the Act by Central Act 36 of 1956 by which Sections 18(1) was introduced in the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. "Settlement" is defined in Section 2(p) as meaning a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the Conciliation Officer. When such an agreement has been arrived at though not in the course of conciliation proceedings, it becomes a settlement and Section 18(1) lays down that such a settlement shall be binding on the parties thereto. Further Section 18(3) provides that an award which has become enforceable shall be binding on all parties to the industrial dispute and others. Section 19(1) provides that a settlement comes into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of settlement is signed by the parties to the dispute. In the present case the settlement that was arrived at between the parties to the dispute was signed on 1-10-1957, and as it had not fixed any date for its coming into force, it became operative from 1-10-1957 itself and was binding on the parties to the agreement who were also before the Industrial Tribunal and would be bound by the award after its publication.

6. The contention on behalf of the appellant in the alternative is this. It is said that the main purpose of the Act is to maintain peace between the parties in an industrial concern. Where therefore parties to an industrial dispute have reached a settlement which is binding under Section 18(1), the dispute between them really comes to an end. In such a case it is urged that the settlement arrived at between the parties should be respected and industrial peace should not be allowed to be disturbed by the publication of the award which might be different from the settlement. There is no doubt that a settlement of the dispute between the parties themselves is to be preferred where it can be arrived at to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award, as it is arrived at by the free will of the parties and is a pointer to there being goodwill between them. Even though this may be so, we have still to reconcile the mandatory character of the provision contained in Section 17(1) for the publication of the award to the equally mandatory character of the binding nature of the settlement arrived at between the parties as provided in Section 18(1). Ordinarily there should be no difficulty about the matter, for if it settlement has been arrived at between the parties while the dispute is pending before the tribunal, the parties would file the settlement before the tribunal and the tribunal would make the award in accordance with the settlement. In *State of Bihar v. D.N. Ganguly* [(1959) SCR 1191], dealing with an argument urged before this Court that where a settlement has been arrived at between the parties while an industrial dispute *is* pending before a tribunal, the only remedy for giving effect to such a settlement would be to cancel the reference, this Court observed that though the Act did not contain any provision specifically authorising the Industrial Tribunal, to record a compromise and pass an award in its terms corresponding to the provisions of Order 23 Rule 3 of the Code of Civil Procedure, it would be very unreasonable to assume that the Industrial Tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties, and there can

be no doubt that if a dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties. In that case this Court dealt with what would happen if a settlement was arrived at while the matter was pending before the tribunal. The difficulty arises in the present case because the proceedings before the Tribunal had come to an end, and the Tribunal had sent its award to Government before the settlement was arrived at on 1-10-1957. There is no provision in the Act dealing with such a situation just as there was no provision in the Act dealing with the situation which arose where the parties came to an agreement while the dispute was pending before the Tribunal. This Court held in *Ganguly* case that in such a situation the settlement or compromise would have to be filed before the Tribunal and the Tribunal would make an award thereupon in accordance with the settlement. Difficulty however arises when the matter has gone beyond the purview of the Tribunal as in the present case. That difficulty in our opinion has to be resolved in order to avoid possible conflict between Section 18(1) which makes the settlement arrived at between the parties otherwise than in the course of conciliation proceeding binding on the parties and the terms of an award which are binding under Section 18(3) on publication and which may not be the same as the terms of the settlement binding under Section 18(1). The only way in our view to resolve the possible conflict which would arise between a settlement which is binding under Section 18(1) and an award which may become binding under Section 18(3) on publication is to withhold the publication of the award once the Government has been informed jointly by the parties that a settlement binding under Section 18(1) has been arrived at. It is true that Section 17(1) is mandatory and ordinarily the Government has to publish an award sent to it by the Tribunal; but where a situation like the one in the present cases arises which may lead to a conflict between a settlement under Section 18(1) and an award binding under Section 18(3) on publication, the only solution is to withhold the award from publication. This would not in our opinion in any way affect the mandatory nature of the provision in Section 17(1), for the Government would ordinarily have to publish the award but for the special situation arising in such cases.

7. The matter may be looked at in another way. The reference to the Tribunal is for the purpose of resolving the dispute that may have arisen between employers and their workmen. Where a settlement is arrived at between the parties to a dispute before the Tribunal after the award has been submitted to Government but before its publication, there is in fact no dispute left to be resolved by the publication of the award. In such a case, the award sent to Government may very well be considered to have become infructuous and so the Government should refrain from publishing such an award because no dispute remains to be resolved by it.

8. It is however urged that the view we have taken may create a difficulty inasmuch as it is possible for one party or the other to represent to the Government that the settlement has been arrived at as a result of fraud, misrepresentation or undue influence or that it is not binding as the workmen's representative had bartered away their interests for personal considerations. This difficulty, if it is a difficulty, will always be there even in a case where a settlement has been arrived at ordinarily between the parties and is binding under Section 18(1), even though no dispute has been referred in that connection to a tribunal. Ordinarily however such difficulty should not arise at all, if we read Sections 2(p), 18(1) and 19(1) of the Act together. Section 2(p) lays down what a settlement is and it includes "a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate government and the Conciliation Officer". Therefore the settlement has to be signed in the manner prescribed by the rules and a copy of it

has to be sent to the Government and the Conciliation Officer. This should ordinarily ensure that the agreement has been arrived at without any of those defects to which we have referred above, if it is in accordance with the rules. Then Section 18(1) provides that such a settlement would be binding between the parties and Section 19(1) provides that it shall come into force on the date it was signed or on the date on which it says that it shall come into force. Therefore as soon as an agreement is signed in the prescribed manner and a copy of it is sent to the Government and the Conciliation Officer it becomes binding at once on the parties to it and comes into operation on the date it is signed or on the date which might be mentioned in it for its coming into operation. In such a case there is no scope for any inquiry by Government as to the bona fide character of the settlement which becomes binding and comes into operation once it is signed in the manner provided in the rules and a copy is sent to the Government and the Conciliation Officer. The settlement having thus become binding and in many cases having already come into operation, there is no scope for any enquiry by the Government as to the bona fides of the settlement. In such a case in view of the possibility of conflict between the settlement in view of its binding nature under Section 18(1) and an award which might become binding on publication under Section 18(3), the proper course for the Government is to withhold the award from publication to avoid this conflict. If any dispute of the nature referred to above arises as to a settlement, that would be another industrial dispute, which the Government may refer for adjudication and if on such an adjudication the settlement is found not to be binding under Section 18(1) of the Act it will always be open to the Government then to publish the award which it had withheld, though we do not think that such instances are likely to be anything but extremely rare. We are therefore of opinion that though Section 17(1) is mandatory and the Government is bound to publish the award received by it from an Industrial Tribunal, the situation arising in a case like the present is of an exceptional nature and requires reconciliation between Section 18(1) and Section 18(3), and in such a situation the only way to reconcile the two provisions is to withhold the publication of the award, as a binding settlement has already come into force in order to avoid possible conflict between a binding settlement under Section 18(1) and a binding award under Section 18(3). In such a situation we are of opinion that the Government ought not to publish the award under Section 17(1) and in cases where government is going to publish it, it can be directed, not to publish the award in view of the binding settlement arrived at between the parties under Section 18(1) with respect to the very matters which were the subject-matter of adjudication under the award. We therefore allow the appeals and direct the Government not to publish the awards sent to it by the Industrial Tribunal in these cases in view of the binding nature of the settlements arrived at between the parties under Section 18(1) of the Act.

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***The Remington Rand of India Ltd. v. The Workmen***

(1968) 1 SCR 164 : AIR 1968 SC 224

**G.K. MITTER, J.** - This appeal by the Remington Rand of India Ltd. against their workmen arises out of an award dated 5th October, 1965 made by the Industrial Tribunal, Alleppey published in the Kerala Gazette dated 15th November, 1966.

2. The first point taken against this award is that it cannot be given effect to as it was published beyond the period fixed in the Act. The notification accompanying the gazette publication stated that Government had received the award on 14th October, 1966. It was argued by Mr Gokhale that in terms of Section 17(1) of the Industrial Disputes Act the award had to be published “within a period of thirty days from the date of its receipt by the appropriate Government”. According to learned counsel, the award having reached Government on 14th October, 1966 it should have been published at the latest on 12th November, 1966 as Section 17(1) of the Act was mandatory. Our attention was also drawn to sub-section (2) of Section 17 according to which it is only the award published under sub-section (1) of Section 17 that is final and cannot be called in question by any court in any manner. We were also referred to Section 17-A and Section 19. Under sub-section (1) of Section 17-A an award becomes enforceable on the expiry of thirty days from the date of its publication under Section 17 and under sub-section

(3) of Section 19 an award is to remain in operation for a period of one year from the date on which the award becomes enforceable under Section 17-A. From all these provisions it was argued that the limits of time mentioned in the sections were mandatory and not directory and if an award was published beyond the period of thirty days, in contravention of Section 17(1) it could not be given effect to.

Keeping the above principles in mind, we cannot but hold that a provision as to time in Section 17(1) is merely directory and not mandatory. Section 17(1) makes it obligatory on the Government to publish the award. The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possible. For instance, there may be a strike in the press or there may be any other good and sufficient cause by reason of which the publication could not be made within thirty days. If we were to hold that the award would therefore be rendered invalid, it would be attaching undue importance to a provision not in the mind of the legislature. It is well known that it very often takes a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless harassment to the parties. The non-publication of the award within the period of thirty days does not entail any penalty and this is another consideration which has to be kept in mind. What was said in *Sirsilk Ltd. v. Government of Andhra Pradesh* merely shows that it was not open to Government to withhold publication but this Court never meant to lay down that the period of time fixed for publication was mandatory.

4. Coming to the merits of the case, Mr Gokhale argued that the Tribunal had gone wrong in revising the wage scales as it had done. The head of dispute referred to the Tribunal was “revision of wages as per award of the Madras Labour Tribunal in 38 of 1960”. The arguments advanced in this case were the same as in the Bangalore case (just now disposed of) and the Tribunal after noting the phenomenal progress of the Company and the enormous profits it was making, came to the conclusion that there was no reason why there should be any disparity in

wages between the employees of a branch and the regional office when they were doing the same or similar work. In this case also, there was no evidence of comparable concerns. In our view, what we have said on this point of the dispute with regard to the Bangalore branch applies equally with regard to the Kerala branch and the matter will have to go back to the Tribunal for fixing the wages and the adjustment of the workers in the revised scale in the light of the observations made in that case bearing in mind Mr Gokhale's offer on behalf of the Company to increase the wages as in the other appeal.

5. With regard to dearness allowance again, what was said in the Bangalore appeal applies equally to this appeal. Here again the Tribunal said:

“It is also an accepted fact that the cost of living both at Trivandrum and at Ernakulam is higher than the cost of living at Madras. Therefore, there is no justification in perpetuating the disparity in the payment of D.A. to the workmen working at Madras and those working in the Trivandrum Branch.”

In the result, the Tribunal directed that the workmen of Ernakulam branch should get dearness allowance “at the rate at which and in the manner in which” the pay and dearness allowance was being paid to the employees of Madras Regional Office. In our view, dearness allowance should be the same as decided in the case of the workers of the Bangalore branch.

6. The scheme for gratuity is the same as in the case of the Bangalore branch with the only difference that the maximum fixed was 20 months' wages after 20 years service. In our view, there is no reason why the scheme for gratuity should not be the same in the Ernakulam branch as in the Bangalore branch in case of termination of service for misconduct and the qualifying period should be 15 years' service.

7. Again, on principles already formulated, we hold that leave facilities at Ernakulam should be the same as those prevailing at Madras.

8. Next comes the dispute with regard to the working hours. The working hours of the employees of Trivandrum and Ernakulam as prevalent were from 9 a.m. to 1 p.m. and from 2 p.m. to 5-30 p.m. on week days and from 9 a.m. to 1 p.m. on Saturdays. At Madras the Company's workers work only for five days in a week from 9 a.m. to 1 p.m. and 1- 45 p.m. to 5- 30 p.m. The total working hours were therefore somewhat less than those at Trivandrum and Ernakulam. The complaint of the union before the Tribunal was that although by circular dated 24th March 1963 the Company had fixed the working hours from 9.30 a.m. for clerks and 9 a.m. for mechanics and peons, it was extracting half an hour's work per day extra contrary to their own orders. The Tribunal held that the circular should be given effect to and that the clerical staff should work from 9.30 a.m. to 1 p.m. and from 2 p.m. to 5.30 p.m. on working days and from 9.30 a.m. to 1 p.m. on Saturdays. We see no reason to disturb this portion of the award.

9. Another head of dispute related to work load. The complaint of the union was that the workload was too heavy and that the method of calculation of workload was arbitrary. According to them, the workload fixed by agreement between the Company and its employees in Delhi and Lucknow was seven machines per day or 150 machines per month, while the workload at Trivandrum was 10 machines per day. According to the Management the workload fixed i.e. 10 machines per day, was not too much and there was no reason for disturbing the prevailing arrangement. But the Management did not deny that during the course of negotiations they had agreed to reduce the workload to seven machines per day or 150 machines per month and the Tribunal adopted this in the award with a rider that “all the machines attended to, whether new or

old, whether under the service contract or not, will be counted for the sake of workload”. No satisfactory reason has been adduced as to why we should disturb the award.

10. The last head of dispute was with regard to “moving staff allowance”. The union demanded that workmen who were deputed on tour on Company’s work should be given a day off if they had to travel two nights consecutively. Demand was also made that travelling staff should be paid overtime for the work done on holidays while on tour at double the normal wages for the day. The Management disputed this claim on the ground that it was not possible to calculate the number of hours worked by the employee at the out-station while on tour. The Tribunal found on examining a mechanic that the jurisdiction of the branch was limited to the districts Trivandrum, Quilon, Alleppey and Kottayam and even if he was forced to work on holidays he was given overtime wages. The Tribunal held that it was only just and reasonable that touring mechanics should be given a day off if they travelled on two consecutive days for reaching a place of work and also overtime wages at double the wages for the work done on holidays. It appears to us that with the limitation as to jurisdiction noted above, the occasion for a mechanic spending two consecutive nights for reaching a place of work will arise very seldom, but if it does, there is no reason why he should not get overtime wages as awarded by the Tribunal and we see no reason to interfere with this portion of the award.

11. In the result, the matter will go back to the Tribunal for disposal of the issue as to the revision of wage scales and adjustment of the workers in the revised scales. The scheme for gratuity will stand modified as indicated in our judgment in Civil Appeal No. 2105 of 1966 delivered today. The rest of the award will stand. The appellant will pay the respondent the costs of this appeal.

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## ***Delhi Cloth & General Mills Ltd. v. Kushal Bhan***

(1960) 3 SCR 227 : AIR 1960 SC 806

**K.N. WANCHOO, J.** - This is an appeal by special leave in an industrial matter. The appellant is a Company carrying on the manufacture of textiles. The respondent Kushal Bhan was in the employ of the Company as a peon. It appears that the cycle of Ram Chandra, Head Clerk of the Folding Department was stolen on 24-8-1957. The matter was reported to the police. Sometime later, the cycle was recovered from the railway station cycle stand at the instance of the respondent who took the police there and picked out the stolen cycle from among 50/60 cycles standing there. This matter was apparently brought to the notice of the Company in October 1957 and thereupon a charge-sheet was served on the respondent to the effect that he had stolen the cycle of Ram Chandra, Head Clerk, that it had been recovered at his instance and that a criminal case was pending against him with the police. He was asked to show cause why he should not be dismissed for misconduct. The respondent submitted his explanation on 13-10-1957. As his explanation was unsatisfactory, 14-11-1957 was fixed for enquiry. The respondent appeared before the enquiry committee but stated that as the case was pending against him, he did not want to produce any defence till the matter was decided by the court. He further stated that he did not want to take part in the enquiry and was not prepared to give any answers to questions put to him. When questions were put to him at the enquiry he refused to answer them and eventually he left the place. The company, however completed the enquiry and directed the dismissal of the respondent on the ground that the misconduct had been proved against him. Thereafter an application was made under Section 33(2) of the Industrial Disputes Act, 14 of 1947, by the Company to the Tribunal for approval of the action taken against the respondent. The matter came before the Tribunal on 6-5-1958. In the meantime, the respondent had been acquitted by the criminal court on 8-4-1958, on the ground that the case against him was not free from doubt. The copy of the judgment of the criminal court was produced before the Tribunal and it refused to approve the order of dismissal. The Company thereupon applied for special leave to this Court resulting in the present appeal.

2. The main contention on behalf of the appellant Company is that the Company was not bound to wait for the result of the trial in the criminal court and that it could, and did, hold a fair enquiry against the respondent, and if the respondent refused to participate in it and left the place where the enquiry was being held, the Company could do no more than to complete it and come to such conclusion as was possible on the evidence before it. Learned counsel for the respondent, on the other hand, urges that principles of natural justice require that an employer should wait at least for the decision of the criminal trial court before taking disciplinary action, and that inasmuch as the employer did not do so in this case the employee was justified in not taking part in the disciplinary proceedings which dealt with the very same matter which was the subject-matter of trial in the criminal court.

3. It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. The present, however, is a case of a very simple nature and so the employer cannot be blamed for the course adopted by him. In the circumstances, there was in our opinion no failure of natural justice in this case and if the respondent did not choose to take part in the enquiry no fault can be found with that enquiry. We are of opinion that this was a case in which the Tribunal patently erred in not granting approval under Section 33(2) of the Industrial Disputes Act. Besides it is apparent that in making the order under appeal, the Tribunal has completely lost sight of the limits of its jurisdiction under Section 33(2). We therefore allow the appeal and setting aside the order of the Tribunal grant approval to the order of the appellant dismissing the respondent. In the circumstances we pass no order as to costs.

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## ***Associated Cement Co. v. Workmen***

(1964) 3 SCR 652

**P.B. GAJENDRAGADKAR, J.** - This appeal arises out of an industrial dispute between the appellant, the Associated Cement Companies Ltd., and the respondents, their workmen. The dispute was in regard to the dismissal of five workmen employed by the appellant at its Bhupendra Cement Works, Surajpur. The said workmen are: (1) Mehnga Ram, Bar Bender, (2) Janak Raj Soni, Store-Clerk, (3) Vishwa Nath Bali, Painter, (4) Daulat Singh, Motor Driver and (5) Malak Ram Khanna, Turner. The respondents contended that the dismissal of the said workmen was unjustified, and they demanded that the said dismissed workmen should be reinstated and their wages for the period of enforced unemployment should be paid to them. The Government of Punjab referred this dispute for adjudication to the Industrial Tribunal Punjab, Patiala, under Section 10(1)(d) of the Industrial Disputes Act, 1947.

2. It appears that on May 1, 1952, the appellant's management had arranged a cinema show in the Club grounds at Surajpur for the entertainment of its workmen. At about 8 p.m. when the film was being exhibited, confusion was created in the Hall by some employees and shouts were raised. Amongst the workmen who raised these shouts was Malak Ram. Owing to the rowdiness thus created by the workmen, the cinema show had to be cancelled. It was in respect of the misconduct alleged to have been committed by Malak Ram on May 1, 1952 that a charge-sheet was given to him and an enquiry held against him.

3. On August 12, 1952, at 7.00 a.m., Mehnga Ram, Janak Raj and Daulat Singh, it was alleged, had stopped workmen from getting into the factory and starting their work in time after they had punched their cards and taken their tokens. The said three workmen are also alleged to have shouted slogans causing cessation of work in the factory for about half-an-hour. In respect of this alleged misconduct of the said three workmen, charges were supplied to them and an enquiry was held against them.

4. On October 14, 1952, at 4 p.m., Mehnga Ram and Janak Raj who were concerned with the incident of August 12, are alleged to have collected some workers in front of the main office building on the way to the grain-shop and in the meeting so organised they instigated their co-workers to go on strike and to resort to violence. In consequence, some of the officers of the appellant were abused and the noise created at the meeting disturbed the office work. This incident also gave rise to charge-sheets against the said two workmen and a subsequent enquiry.

5. On October 20, 1952, at about 7 a.m., Mehnga Ram, Janak Raj, Vishwa Nath and Daulat Singh are alleged to have stopped workmen at the Factory Gate from entering the factory and to have prevented them from going to their duties for some time. At this time, the said workmen are also alleged to have indulged in shouting hostile slogans. This incident gave rise to charge-sheets and an enquiry.

6. The record shows that three different Boards of enquiry were constituted to hold enquiries into the several charge-sheets served on the different workmen in question. The first enquiry was about the incident of May 1, 1952 and it was confined to Malak Ram. The second enquiry was about the incident of August 12, 1952, and it concerned Mehnga Ram, Janak Raj and Daulat Singh; and the last enquiry was in regard to the incidents which took place on October 14, and October 20, 1952 — in regard to the first of these Mehnga Ram and Janak Raj were involved and in regard to the second one Mehnga Ram, Janak Raj, Vishwa Nath and Daulat Singh were concerned. It is thus clear that Malak Ram was concerned with the incident of May 1, 1952 and Vishwa Nath with the incident of October 20, 1952. As a result of the findings recorded at the said enquiries, the appellant dismissed all the five workmen concerned.

7. Before the Industrial Tribunal, it was urged by the respondents that none of the three enquiries was conducted according to the principles of natural justice, and so, the dismissals of the 5 workmen which were based on the findings recorded at the said enquiries could not be said to be legal or valid. The appellant did not attempt to justify the dismissals by leading evidence before the Tribunal but it contended itself with producing the evidence of the enquiry proceedings and urged that the enquiries were properly held and that the Tribunal had no jurisdiction to sit in appeal over the findings recorded at the said enquiries and the orders of dismissal passed in consequence of the said findings. The Tribunal has upheld

the respondents' case that all the three enquiries were not conducted according to the principles of natural justice, and so, it has held that the dismissals of the five workmen were unjustified and accordingly, an award has been made directing the appellant to reinstate the five workmen with continuity of service, coupled with the direction that the said workmen should be paid their full wages from the date of their dismissal to the date of their reinstatement as compensation for wrongful dismissal. It is against this award that the appellant has come to this Court by special leave.

8. In respect of Mehnga Ram, Janak Raj and Daulat Singh, parties have agreed to take an order by consent. It is agreed that the award passed by the Tribunal in respect of these three workmen should be set aside, and the order of dismissal against them should be treated as an order of discharge simpliciter. Mr Kolah for the appellant has agreed to pay to each one of the said three workmen Rs 3500, provided the amounts paid to them in pursuance of the order passed by this Court in the present appeal while granting stay are deducted. Mr Kolah has also agreed that the amount of gratuity and provident fund to which the said workmen may be entitled would be paid to them as well. Mr Sule for the respondents has agreed to these terms. In view of this agreement between the parties, we direct that the award in regard to these three workmen should be set aside and an order passed in terms of this agreement. That leaves the question of two workmen to be considered; they are Malak Ram and Vishwa Nath.

9. In the case of Malak Ram, charge-sheet was served on him on May 20, 1952, in which he was told that he was found to be one of the persons who had instigated, and who also took active part in, rowdyism and hooliganism during the cinema show on May 1, 1952 and so, he was asked to see the Manager of the Bhupendra Cement Works on May 22, at 2.30 p.m. with his written explanation as to why disciplinary action should not be taken against him. Malak Ram did not appear before the Manager on May 22 as required by the said charge-sheet. That is why a further notice was given to him on June 4, 1952 calling upon him to show cause why disciplinary action should not be taken against him, and it was added that his behaviour amounted to misconduct under Standing Order 16, sub-clause (1). Thereupon, Malak Ram gave his explanation on June 5, 1952. In this explanation, he denied that he had taken part in hooliganism as alleged in the charge-sheet and urged that he had in fact tried his best to control the disturbance at the cinema show. On the same day, another notice was served on Malak Ram in which the Manager stated "we are not prepared to accept all that you have stated by way of explanation as it is not borne out by all that we actually saw and also all that was seen by other independent witnesses." Malak Ram was accordingly required to meet the Manager at 10 a.m. on June 11, 1952 to enable him to hold the necessary enquiry.

10. On June 11, 1952, an enquiry was held by the Manager, the Assistant Manager and the Chief Engineer. This enquiry began with the examination of Malak Ram himself. He was elaborately questioned about the allegations made against him and after his examination was over, four other witnesses were examined against him. When these four witnesses gave evidence, Malak Ram was asked whether he wanted to cross-examine any of them. He told the enquiry officers that he did not want to cross-examine them. Then a 5th witness, gave evidence and that closed the enquiry. As soon as the 5th witness gave evidence, Malak Ram protested that he had done nothing wrong and urged that the evidence against him was false, the Manager observed that the evidence against him was overwhelming and three officers, made a finding that "from the enquiry we are satisfied that you were one of the ring leaders who instigated and took active part in hooliganism and rowdyism during the cinema show on the night of 1st May".

11. After this finding was recorded, the Manager served an order on Malak Ram on June 12, 1952. By this letter Malak Ram was suspended indefinitely from June 13, 1952 pending final action. While suspending him indefinitely, the Manager told Malak Ram in this letter that this explanation was in variance with the evidence against him and also the evidence that the Assistant Manager Mr Mohan had been maltreated and against what the enquiry officers had actually seen. This order was, in due course, followed by the final order of dismissal.

12. On these facts; the question which arises for our decision is whether the Tribunal was justified in holding that the enquiry was not conducted in accordance with the principles of natural justice. It is true that domestic enquiries need not be conducted in accordance with the technical requirements of criminal trials, but they must be fairly conducted and in holding them, considerations of fair play and natural justice must govern the conduct of the enquiry officer. In the present case, the first serious infirmity from which the enquiry suffers proceeds from the fact that the three enquiry officers claimed that they themselves had witnessed the alleged misconduct of Malak Ram. Mr Kolah contends that if the Manager and the other officers saw Malak Ram committing the act of misconduct, that itself would not disqualify them from holding the domestic enquiry. We are not prepared to accept this argument. If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eyewitness of the impugned incident. As we have repeatedly emphasised, domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. If an officer claims that he had himself seen the misconduct alleged against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer. How the knowledge claimed by the enquiry officer can vitiate the entire proceedings of the enquiry is illustrated by the present enquiry itself. We have already noticed that when the Manager rejected the written explanation given by Malak Ram, he told him in terms that the said explanation could not be accepted because it was contrary to what the Manager, the Assistant Manager and the Chief Engineer had themselves seen. He was also told that his explanation was inconsistent with what other independent witnesses had told the Manager. It is hardly necessary to emphasise that these statements betray complete ignorance as to the requirements of a proper domestic enquiry. In deciding the question as to whether the explanation given by Malak Ram was true or not, the enquiry officer should not have imported his personal knowledge and the knowledge of his colleagues and should not have also relied on the reports received from other witnesses. We are inclined to think that the injustice which is likely to result if a domestic enquiry is held by an officer who has himself witnessed the alleged incident, is very eloquently illustrated by the statements contained in the Manager's letter to Malak Ram. That is why we think it is desirable that the conduct of domestic enquiries should be left to such officers of the employer who are not likely to import their personal knowledge into the proceedings which they are holding as enquiry officers.

13. The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, given an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr Sule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.

14. It appears that before the enquiry was actually held on June 11, 1952, notice was not given to Malak Ram telling him about the specific date of the enquiry. It may be that failure to intimate to the workman concerned about the date of the enquiry may, by itself, not constitute an infirmity in the enquiry, but, on the other hand, it is necessary to bear in mind that it would be fair if the workman is told as to when the enquiry is going to be held so that he has an opportunity to prepare himself to make his defence at the said enquiry and to collect such evidence as he may wish to lead in support of his defence. On the

whole, it would not be right that the workman should be called on any day without previous intimation and the enquiry should begin straightaway. Such a course should ordinarily be avoided in holding domestic enquiries in industrial matters.

15. There is yet another infirmity in this enquiry and that is furnished by the communication sent by the Manager to Malak Ram on June 12, 1952. In this letter, Manager told Malak Ram that his version was inconsistent with the evidence that the Asstt. Manager Mr Mohan had been maltreated and with what the enquiry officers had themselves seen. Mr Mohan was one of the enquiry officers, so that it is clear that what weighed with the enquiry officers was the fact that Mr Mohan had been maltreated by Malak Ram and that Malak Ram's misconduct had been seen by the enquiry officers themselves. It is thus obvious that in coming to the conclusion that Malak Ram was guilty of the misconduct, the enquiry officers have plainly relied upon their own knowledge, and that is reasonably calculated to create an impression in the mind of Malak Ram that the present enquiry was nothing more than a sham or an empty formality. Therefore, we are satisfied that the view taken by the Tribunal that the enquiry held against Malak Ram was not conducted in accordance with the principles of natural justice, cannot be successfully challenged by the appellant. As we have already observed, the appellant did not lead evidence before the Tribunal to justify the dismissal on the merits, and so, the Tribunal had no alternative but to hold that Malak Ram's dismissal was unjustified, and that inevitably led to the order of reinstatement and payment of wages during the period of the employee's enforced unemployment.

16. That takes us to the case of Vishwa Nath. A charge-sheet was served on Vishwa Nath on October 21, 1952. This charge-sheet alleged that on October 20, 1952 at about 7 A.M. Vishwa Nath had stopped workmen entering the works at the Factory Gate and prevented them from going on their respective duties for some time. He was also charged with having indulged in disorderly behaviour by shouting hostile slogans. The allegation was that this conduct amounted to misconduct under Standing Order No. 16, sub-clause(ix). On receiving this charge-sheet, Vishwa Nath gave his explanation on October 25, 1952, and stated that on October 20, 1952, he was not present at 7 A.M. and had not shouted any hostile slogans and had not prevented anybody from going to duty. Thereupon, an enquiry was held on the same day. This enquiry was conducted by the manager and the Asstt. Manager. At this enquiry also, Vishwa Nath was first examined and then five witnesses gave evidence in support of the charge. After the enquiry was over, the enquiry officers recorded their conclusions that the misconduct alleged against Vishwa Nath under Standing Order No. 16(ix) was proved.

17. It appears that Vishwa Nath later moved the enquiry officers for leave to cite witnesses in his favour and permission was given to him to examine those witnesses. Accordingly, Vishwa Nath examined four witnesses and after this evidence was recorded, the enquiry officers noted their conclusions on November 25, 1952. In recording these conclusions, the enquiry officers have given reasons why they were not prepared to believe the evidence given by the witnesses examined by Vishwa Nath. The first reason is that in the original list of 43 witnesses cited by Vishwa Nath, some were absent from duty on October 20, 1952 and the enquiry officers thought that that clearly showed that the person charge-sheeted manouvered to produce false witnesses. The other reason given for disbelieving the said evidence was that out of the four witnesses examined by Vishwa Nath, Bakhtawar Singh was present on duty on October 20, at 3 P.M., whereas he mentioned in cross-examination that he came to duty between 6.45 A.M. and 7.0 A.M. There is yet another reason which was given for disbelieving the said evidence and this reason was that whereas Vishwa Nath's witnesses denied that there was any gathering at 7 A.M. on October 20 at the Factory Gate, the witnesses who were produced in defence by Daulat Singh against whom a separate enquiry was held, clearly admitted that there was a gathering at the gate and that Daulat Singh did address the gathering.

18. It would be noticed that each one of the three reasons set out in the report in support of the conclusion that the version of Vishwa Nath's witnesses could not be believed, introduces a serious infirmity in the enquiry and the report. The first reason refers to the fact that some of the witnesses cited by Vishwa Nath were absent from duty on October 20, 1952. Now, it is plain that this fact had been



ascertained by the officers from the attendance register, and Vishwa Nath was not given an opportunity to give his explanation and a chance to produce the said witnesses to say what they had to say on the point. Besides, it is not unlikely that even if the witnesses may not have attended duty, they may have been able to depose to what happened near the gate on October 20 at 7 A.M. Therefore, the first reason on which the enquiry officers relied is based on information received by them from a resister without notice to Vishwa Nath.

19. The second reason is also open to serious challenge. When Bakhtawar Singh was examined, he was not asked why he was shown as on duty at 3 P.M. when in fact he claimed that he came to duty between 6.4.5 A.M. and 7 A.M. The rule that a witness should not be disbelieved on the ground of an inconsistency between his statement and another document unless he is given a chance to explain the said document, cannot be treated as a technical rule of evidence. The principle on which the said rule is based is one of natural justice, and so, it seems, that in disbelieving Bakhtawar Singh on a ground not put to him, the enquiry officers acted unfairly against Vishwa Nath.

20. The third reason given in the report for disbelieving Vishwa Nath's witnesses is based on the evidence recorded by the enquiry officers in the enquiry held against Daulat Singh. If one enquiry had been held against Daulat Singh and Vishwa Nath, it would have been another matter; but if two separate enquiries were held against the two workmen, it would, we think, be very unfair to rely upon the evidence in the enquiry against Daulat Singh when the officers were dealing with the case of Vishwa Nath. The evidence given in Daulat Singh's enquiry was not recorded in Vishwa Nath's presence and Vishwa Nath had no opportunity to test the said evidence by cross-examination. Therefore, it is plain that the final conclusion of the enquiry officers is based on grounds which have introduced an element of unfairness in the whole enquiry. We are, therefore, satisfied that the Tribunal was right in holding that the report made by the enquiry officers against Vishwa Nath cannot be accepted as a report made after holding a proper enquiry in accordance with the principles of natural justice. That being our view, we must confirm the order passed by the Tribunal in respect of Vishwa Nath.

21. The result is, the award is set aside in respect of the three workmen, Mehnga Ram, Janak Rai and Daulat Singh in terms of compromise arrived at between the parties before the Court, and the award made in respect of Malak Ram and Vishwa Nath is confirmed. There would be no order as to costs.

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## ***Tata Oil Mills Co. Ltd. v. Workmen***

(1964) 7 SCR 555 : AIR 1965 SC 155

**P.B. GAJENDRAGADKAR, C.J.** - This appeal by special leave raises a short question about the validity of the order passed by the Industrial Tribunal, Ernakulam, directing the appellant, the Tata Oil Mills Co. Ltd., to reinstate its workman K.K. Raghavan whom it had dismissed with effect from the 14th of November, 1955. The appellant is a public limited concern engaged in the industry of soaps and toilet articles. It owns three factories in addition to 12 sales offices. One of these factories is located at Tatapuram, Ernakulam, in the State of Kerala. Mr Raghavan was working with the appellant at its factory at Tatapuram. It was reported to the appellant that on 12th November, 1955, Mr Raghavan and another employee of the appellant, Mr Mathews by name, waylaid Mr C.A. Augustine, the Chargeman of the Soap Plant of the company's factory at Tatapuram while he was returning home after his duty in the second shift and assaulted him. That is why charge-sheets were issued against both Messrs Raghavan and Mathews on 14th November, 1955. Pursuant to the service of the charge-sheets, two officers were appointed by the appellant to hold an enquiry; but the respondent Union represented to the appellant that justice would not be done to Raghavan and Mathews unless somebody outside Tatapuram was invited to hold the enquiry. Thereupon, the General Manager of the appellant appointed Mr Y.D. Joshi, who is a Law Officer of the appellant in the Head Office, to hold the enquiry. Mr Joshi held the enquiry from 27th to 30th December, 1955, and subsequently, he made his report to the General Manager of the appellant on 7th January, 1956. At that time, an industrial dispute was pending between the appellant and its employees, and so, the appellant applied to the Industrial Tribunal for approval of the dismissal of Messrs Raghavan and Mathews. The Tribunal approved of the dismissal of Raghavan, but did not accord its approval of the dismissal of Mathews. Acting in pursuance of the approval accorded by the Tribunal, the appellant dismissed Raghavan with effect from 14th November, 1955. Not satisfied with the order of dismissal, the respondent raised an industrial dispute in regard to the propriety and validity of the said dismissal of Raghavan and that has become the subject-matter of the present reference which was ordered on the 3rd of December, 1958. It is on this reference that the Industrial Tribunal has held that the appellant was not justified in dismissing Raghavan, and so, has ordered his reinstatement. This is the order which has given rise to the present appeal by special leave.

2. The first point which calls for our decision in this appeal is whether the Tribunal was right in holding that the facts proved against Raghavan did not attract the provisions of Standing Order 22(viii) of the certified standing orders of the appellant. The said standing order provides that without prejudice to the general meaning of the term "misconduct", it shall be deemed to mean and include, *inter alia*, drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory. It is common ground that the alleged assault took place outside the factory, and, in fact, at a considerable distance from it. The Tribunal has held that the assault in question can be treated as a purely private matter between Raghavan and Augustine with which the appellant was not concerned and as a result of which Standing Order 22(viii) cannot be invoked against Raghavan. Mr Menon who has appeared for the respondent before us, has contended that in construing standing orders of this character, we must take care to see that disputes of a purely private or individual type are not brought within their scope. He argues that on many occasions, individual employees may have to deal with private disputes and sometimes, as a result of these private disputes, assault may be committed. Such an assault may attract the relevant provisions of the Indian Penal Code, but it does not fall under Standing Order 22(viii). In our opinion, this contention is well-founded. It would, we think, be unreasonable to include within Standing Order 22(viii) any riotous behaviour without the factory which was the result of purely private and individual dispute, and in course of which tempers of both the contestants became hot. In order that Standing Order 22(viii) may be attracted, the appellant should be able to show that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim.

3. In the present case, however, it is quite clear that the assault committed by Raghavan on Augustine was not a purely private or individual matter. What the occasion for this assault was and what motive

actuated it, have been considered by the domestic Tribunal and the findings of the domestic Tribunal on these points must be accepted in the present proceedings, unless they are shown to be based on no evidence or are otherwise perverse. Now, when we look at the report of the Enquiry Officer, it is clear that on the evidence given by Mr M.M. Augustine and K.T. Joseph it appeared that the assault was committed by Raghavan on C.A. Augustine, because he was in favour of the introduction of the Incentive Bonus Scheme. It appears that the introduction of this incentive bonus scheme was approved by one set of workmen and was opposed by another, with the result that the two rival unions belonging to these two sets respectively were arrayed against each other on that question. The evidence of the two witnesses to whom we have just referred clearly shows that when Raghavan assaulted C.A. Augustine, he expressly stated that Augustine was a black-leg (Karinkali) who was interested in increased production in the company with a view to obtain bonus; and the report further shows that the Enquiry Officer believed this evidence and came to the conclusion that the assault was motivated by this hostility between Raghavan and C.A. Augustine. In fact, the charge framed clearly suggested that the assault was made for that motive. It was alleged in the charge that Augustine was assaulted to terrorise the workmen who had been responsible for giving increased production under the incentives bonus scheme. According to the charge such acts were highly subversive of discipline. The Enquiry Officer has held that in the light of the evidence given by M.M. Augustine and K.T. Joseph, the charge as framed had been proved. This finding clearly means that the assault was not the result of a purely individual or private quarrel between the assailant and his victim, but it was referable to the difference of opinion between the two in regard to the introduction of the incentive bonus scheme on which the two unions were sharply divided. Therefore, if Raghavan assaulted Augustine solely for the reason that Augustine was supporting the plea for more production, that cannot be said to be outside the purview of Standing Order 22(viii).

4. The next point which needs to be considered arises out of a plea which has been strenuously urged before us by Mr Menon that the Tribunal was justified in holding that the Enquiry Officer did not conduct the enquiry in accordance with the principles of natural justice, and so, the Tribunal was entitled to go into the evidence itself and decide whether Raghavan's dismissal was justified or not. The legal position in this matter is not in doubt. If it appears that the domestic enquiry was not conducted in accordance with the principles of natural justice and a reasonable opportunity was not, for instance, given to Raghavan to lead evidence in support of his defence, that would be a valid ground on which the Tribunal can discard the finding of the domestic enquiry and consider the matter on the merits uninfluenced by the said finding. Unfortunately for the respondent, however, on the material on record it is very difficult to sustain the finding of the Tribunal that the Enquiry Officer did not conduct the enquiry in accordance with the principles of natural justice.

5. The whole of this contention is based on the fact that Raghavan wanted to examine two witnesses, Messrs M.P. Menon and Chalakudi. It appears that Raghavan told the Enquiry Officer that he wanted to examine these two witnesses and he requested him to invite the said two witnesses to give evidence. The Enquiry Officer told Raghavan that it was really not a part of his duty to call the said two witnesses and that Raghavan should in fact have kept them ready himself. Even so, in order to assist Raghavan, the Enquiry Officer wrote letters to the two witnesses. Mr Menon replied expressing his inability to be present before the Enquiry Officer, and the Enquiry Officer communicated this reply to Raghavan, so that for Raghavan's failure to examine Menon no blame can be attributed to the enquiry officer at all. In regard to Chalakudi, it appears that he sent one letter addressed to the Enquiry Officer and it reached him on the 31st December, 1955, the day on which he was leaving for Bombay. This letter was not signed, and so, the Enquiry Officer took no action on it and gave no time to Chalakudi to appear three or four days later as had been suggested in that unsigned letter. The Tribunal thought that this attitude on the part of the Enquiry Officer was unsympathetic and that introduced an element of unfairness in the enquiry itself. We are unable to appreciate how such a conclusion can follow on facts which are admitted. We do not think the Enquiry Officer was called upon to accept an unsigned letter and act upon it. Besides, the Enquiry Officer had gone to Ernakulam from Bombay for holding this enquiry, because the respondent Union itself wanted that the enquiry should be held by some other officer outside the local station and it

was known that the Bombay Officer would go back as soon as the enquiry was over. In such a case, if Raghavan did not take steps to produce his witnesses before the Enquiry Officer, how can it be said that the Enquiry Officer did not conduct the enquiry in accordance with the principles of natural justice? Mr Menon has suggested that the Enquiry Officer should have taken steps to get the witnesses M.P. Menon and Chalakudi brought before him for giving evidence. This suggestion is clearly untenable. In a domestic enquiry, the officer holding the enquiry can take no valid or effective steps to compel the attendance of any witness; just as the appellant produced its witnesses before the officer, Raghavan should have taken steps to produce his witnesses. His witness Menon probably took the view that it was beneath his dignity to appear in a domestic enquiry, and Chalakudi was content to send an unsigned letter and that to so as to reach the Enquiry Officer on the day when he was leaving Ernakulam for Bombay. It would be unreasonable to suggest that in a domestic enquiry, it is the right of the charge-sheeted employee to ask for as many adjournments as he likes. It is true that if it appears that by refusing to adjourn the hearing at the instance of the charge-sheeted workman the Enquiry Officer failed to give the said workman a reasonable opportunity to lead evidence that may in a proper case be considered to introduce an element of infirmity in the enquiry; but in the circumstances of this case we do not think it would be possible to draw such an inference.

The record shows that the Enquiry Officer went out of his way to assist Raghavan; and if the witnesses did not turn up to give evidence in time it was not his fault. We must accordingly hold that the Tribunal was in error in coming to the conclusion that the enquiry suffered from the infirmity that it was conducted contrary to the principles of natural justice.

6. Let us then consider whether the dismissal of Raghavan is actuated by mala fides or amounts to victimisation. In regard to the plea of victimisation, the Tribunal has definitely found against the respondent. “I do not for a moment believe”, says the Tribunal, “that the management foisted a case against the ex-worker. Regarding the allegation of victimisation, there is no sufficient evidence in the case that the management or its Manager Mr John was motivated with victimisation or unfair labour practice”. This finding is quite clearly in favour of the appellant. The Tribunal, however, thought that because the Enquiry Officer did not give an adjournment to Raghavan to examine his witnesses, that introduced an element of mala fides. It has also observed that since the case against Raghavan did not fall within the purview of Standing Order 22(viii) and yet, the appellant framed a charge against Raghavan under that standing order, that introduced another element of mala fides. It is on these grounds that the conclusion as to mala fides recorded by the Tribunal seems to rest.

7. In regard to the first ground, we have already held that the Tribunal was not justified in blaming the Enquiry Officer for not adjourning the case beyond 31st December, 1955. In regard to the second ground, we are surprised that the Tribunal should have taken the view that since in its opinion, Standing Order 22(viii) did not apply to the facts of this case, the framing of the charge under the said standing order and the finding of the domestic Tribunal in favour of the appellant on that ground showed mala fides. It seems to us that the Tribunal has completely overlooked an elementary principle of judicial approach that even if a judge or tribunal may reach an erroneous conclusion either of fact or of law, the mere error of the conclusion does not make the conclusion mala fide. Besides, as we have just indicated, on the merits we are satisfied that the Tribunal was in error in holding that Standing Order 22(viii) did not apply. Therefore, the finding of the Tribunal that the dismissal of Raghavan was mala fide, cannot possibly be sustained.

8. There is one more point which has been pressed before us by Mr Menon. In *Phulbari Tea Estate v. Workmen* [(1960) 1 SCR 32], this Court has held that even if a domestic enquiry is found to be defective, the employer may seek to justify the dismissal of his employee by leading evidence before the Tribunal to which an industrial dispute arising out of the impugned dismissal has been referred for adjudication. Mr Menon contends that by parity of reasoning, in cases where the employee is unable to lead his evidence before the domestic Tribunal for no fault of his own, a similar opportunity should be given to him to prove his case in proceedings before the Industrial Tribunal. In our opinion, this

contention is not well-founded. The decision in the case of *Phulbari Tea Estate* proceeds on the basis which is of basic importance in industrial adjudication that findings properly recorded in domestic enquiries which are conducted, fairly, cannot be re-examined by industrial adjudication unless the said findings are either perverse, or are not supported by any evidence, or some other valid reason of that character. In such a case, the fact that the finding is not accepted by the Industrial Tribunal would not necessarily preclude the employer from justifying the dismissal of his employee on the merits, provided, of course, he leads evidence before the Industrial Tribunal and persuades the Tribunal to accept his case. That, however, is very different from a case like the present. In the case before us, the enquiry has been fair; the Enquiry Officer gave Raghavan ample opportunity to lead his evidence. If a reasonable opportunity had been denied to the employee, that would have made the enquiry itself bad and then the employer would have been required to prove his case before the Industrial Tribunal, and in dealing with the dispute the Industrial Tribunal would have been justified in completely ignoring the findings of the domestic enquiry. But if the enquiry has been fairly conducted, it means that all reasonable opportunity has been given to the employee to prove his case by leading evidence. In such a case, how can the court hold that merely because the witnesses did not appear to give evidence in support of the employee's case, he should be allowed to lead such evidence before the Industrial Tribunal. If this plea is upheld, no domestic enquiry would be effective and in every case, the matter would have to be tried afresh by the Industrial Tribunal. Therefore, we are not prepared to accede to Mr Menon's argument that the Tribunal was justified in considering the merits of the dispute for itself in the present reference proceedings. Since the enquiry has been fairly conducted, and the findings recorded therein are based on evidence which is believed, there would be no justification for the Industrial Tribunal to consider the same facts for itself. Findings properly recorded at such enquiries are binding on the parties, unless, of course, it is known that the said findings are perverse, or are not based on any evidence.

9. There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in the *Delhi Cloth and General Mills Ltd. v. Kushal Bhan* [(1960) 3 SCR 227], it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from anything that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide. In fairness, we ought to add that Mr Menon did not seek to justify this extreme position. Therefore, we must hold that the Industrial Tribunal was in error when it characterised the result of the domestic enquiry as mala fide partly because the enquiry was not stayed pending the criminal proceedings against Raghavan. We accordingly hold that the domestic enquiry in this case was properly held and fairly conducted and the conclusions of fact reached by the Enquiry Officer are based on evidence which he accepted as true. That being so, it was not open to the Industrial Tribunal to reconsider the same questions of fact and come to a contrary conclusion.

10. The result is, the appeal is allowed. The order passed by the Industrial Tribunal is set aside and the reference made to it is answered in favour of the appellant.

***Kusheshwar Dubey v. Bharat Coking Coal Ltd.***

(1988) 4 SCC 319 : AIR 1988 SC 2118

**RANGANATH MISRA AND M. N. VENKATACHALIAH, JJ. -**

2. The appellant is an employee in the Balihari Colliery of respondent 1 and in 1986 was working as an electrical helper. On the allegation that he physically assaulted a supervising officer by name S. K. Mandal, he was subjected to disciplinary proceedings as also a criminal prosecution. Since the disciplinary proceeding as also the criminal trial were taken simultaneously, the appellant filed a civil action in the court of Munsif at Dhanbad asking for injunction against the disciplinary action pending criminal trial. On December 6, 1986, the Munsif made an order staying further proceedings in the disciplinary action till disposal of the criminal case. The appeal of Respondent 1 against the order of learned Munsif was dismissed on March 31, 1987, by the appellate court. Thereupon Respondent 1 moved the High Court in its revisional jurisdiction. The High Court by its order dated July 7, 1987 held :

“First information report was lodged against the opposite party (appellant) and the same was pending before the competent court. Meanwhile the petitioners (respondents) started departmental proceeding against the opposite party. The opposite party filed a suit before the trial court for declaration that appointment of the Enquiry Officer was illegal and for restraining the petitioners permanently from continuing with the departmental proceeding during the pendency of the criminal case. That was allowed by the trial court and confirmed by the lower court. There is no bar for an employer to proceed with the departmental proceeding with regard to the same allegation for which a criminal case is pending.

I am, therefore, of the opinion that the courts below were wrong in granting injunction in favour of the opposite party.

In the result, this application is allowed and the order impugned is set aside.”

3. According to Mr Jain for the appellant, the legal position settled by this Court supported the stand that the disciplinary action had to be stayed till the criminal case was over. He relied upon the decisions in ***Delhi Cloth and General Mills Ltd. v. Kushal Bhan***, [AIR 1960 SC 806] and ***Tata Oil Mills Co. Ltd. v. Workmen*** [AIR 1965 SC 155]. He also referred in the course of his submission to the decisions of different High Courts in support of his propositions. Two cases out of the several ones of the High Courts he relied upon are ***Kushi Ram v. Union of India*** [1974 Lab IC 553] and ***Protect Manager, ONGC v. Lalchand Vazirchand Chandna*** [(1982) 1 SLR 654]. Pathak, C.J., as he then was, in the Himachal case indicated that fair play required the postponing of the criminal trial and Thakkar, J. as our learned Brother then was in the Gujarat case had also taken a similar view.

5. Mr Jain contended that we should settle the law in a strait-jacket formula as judicial opinion appeared to be conflicting. We do not propose to hazard such a step as that would create greater hardship and individual situations may not be available to be met and thereby injustice is likely to ensue.

6. In the ***Delhi Cloth & General Mills*** case, it was pointed out by this Court:

“It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In ***Bimal Kanta Mukherjee v. M/s Newsmen's Printing Works*** this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced.”

In ***Tata Oil Mills*** case. Gajendragadkar, C.J., spoke for a three Judge Bench thus:

“There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the

domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in the *Delhi Cloth and General Mills Ltd. v. Kushal Bhan*, it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer, should stay the domestic enquiry pending the final disposal of the criminal case.”

In *Jang Bahadur* case this Court said:

“The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers.”

7. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

8. In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court’s order of injunction which had been affirmed in appeal. The appeal is allowed and the order of the High Court is vacated and that of the trial court as affirmed in appeal is restored.

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***Prem Nath Bali v. Registrar, High Court of Delhi & Anr***  
**(2015) 16 SCC 415**

**Abhay Manohar Sapre, J.**

1. This appeal is filed against the final judgment and order dated 21.08.2008 of the High Court of Delhi at New Delhi in Writ Petition(c) No. 2046 of 2001 whereby the High Court dismissed the petition filed by the appellant herein.

2. In order to appreciate the issue involved in this appeal, which lies in a narrow compass, it is necessary to set out the relevant facts in brief infra.

3. On 01.10.1965, the appellant joined the office of District & Sessions Court, Delhi as Lower Division Clerk. He was confirmed w.e.f. 06.07.1976. Thereafter on 26.07.1986, he was promoted as Upper Division Clerk (U.D.C.). In May, 1989, he was posted as U.D.C. as in - charge of copying agency criminal side at Patiala House Court, New Delhi.

4. While working as U.D.C. and in-charge of Copying Agency (Criminal) at Patiala House Court, on 23.01.1990, the appellant submitted a written complaint against one Window Clerk, namely, Smt. Brij Bala, to the officer in-charge of the Copying Agency, Patiala House Courts stating therein that she is not discharging her duty effectively and she often used to close the counter of the Copying Agency before the prescribed time and after lunch also she used to resume her duty after the prescribed time. Therefore, the litigants had occasion to make a complaint to the appellant and he had to depute other official to attend the work. The appellant requested for her transfer.

5. On the same day, Smt. Brij Bala also made a statement to the superior officer that on 22.01.1990 after closing the application register at 1.00 p.m., she came to know that some applications, which were not even entered in the register on that day, were entered in CD2/Dak register subsequently and the certified copies were prepared of those applications on the same date. She was also pressurized to deliver the copies on the same date at 2.30 p.m. When she refused to deliver the copy, the appellant quarrelled with her and used unwanted words in the office, which were uncalled for.

6. The office-in-charge forwarded the aforesaid statement of Smt. Brij Bala to the District Judge. On the basis of said complaint, a preliminary enquiry was made. Thereafter a departmental enquiry was also held against the appellant. On 06.02.1990, the appellant was placed under suspension.

7. A memorandum dated 18.07.1990 was served on the appellant by the office of the District & Sessions Judge, Delhi that the authority proposes to hold an enquiry against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short "the CCS Rules") which included the statement of articles of charges and other relevant documents.



8. The disciplinary proceedings, which commenced on 18.07.1990, continued for more than nine years. Pending disciplinary proceedings, the appellant sought revocation of suspension order but such representation made by the appellant was not considered. Subsequently, vide order dated 01.03.1999, the then District & Sessions Judge, exercising the powers conferred under Clause C of sub- rule 5 of Rule 10 of CCS Rules revoked the order of suspension with immediate effect. The issue, whether the period of suspension is to be reckoned as period on duty, was not decided and directed to be taken up after conclusion of the disciplinary proceedings.

9. The District & Sessions Judge, Delhi passed two orders dated 27.10.1999 and 28.10.1999 imposing a major penalty of compulsory retirement on the appellant. It was also ordered that the appellant will not be entitled to any amount more than the allowances already paid during the period of suspension.

10. Challenging the said order, the appellant filed an appeal before the Administrative Judge of the High Court of Delhi. Vide order dated 21.08.2000, the Administrative Judge dismissed the appeal.

11. Against the said order, the appellant filed W.P.No. 2046 of 2001 before the High Court. The High Court, by impugned judgment dated 21.08.2008, dismissed the petition.

12. Aggrieved by the said order, the appellant filed this appeal by way of special leave before this Court.

13. The appellant appeared in-person. Mr. Wasim Qadari, learned counsel appeared for respondents. Since the appellant had no legal assistance, he was appearing in person. We requested Mr. Sreegesh, learned counsel, who was present in Court, to appear for the appellant to enable us to decide the appeal.

14. Heard Mr. Sreegesh, learned counsel for the appellant and Mr. Wasim A. Qadri, learned counsel for the respondents.

15. We record our appreciation for Mr. Sreegesh, learned counsel, who on our request argued the case ably with fairness for the appellant and rendered his valuable assistance on every date of hearing.

16. Submissions of Mr. Sreegesh were three-fold. In the first place, he contended that no case whatsoever is made out against the appellant for imposing the punishment of compulsory retirement. He also made attempt to find fault in departmental inquiry proceedings and contended that the manner in which the proceedings were held would indicate that the appellant did not get fair opportunity to meet the charges and, therefore, the departmental proceedings are rendered bad in law having been conducted in violation of principle of natural justice.

17. In the second place, learned counsel contended that in any event the punishment of compulsory retirement imposed on the appellant was not commensurate with the gravity of charge and being wholly disproportionate to the nature of charges, this Court should interfere in

the quantum of punishment and reduce it to make the same in tune with the gravity of the charges.

18. In the third place, learned counsel contended that the appellant was kept under suspension for a long period of 9 years and 26 days (06.02.1990 to 01.03.1999) without any justifiable cause on the part of the respondents and yet the respondents excluded this period while calculating the appellant's pension, which according to him was not justified and, therefore, a direction be issued to the respondents to count the period of suspension for determining the appellant's pension and other retiral benefits.

19. In reply, learned counsel for the respondents supported the impugned order. As regards the last submission of the learned counsel for the appellant, his reply was that since the departmental proceedings were delayed due to the appellant's seeking frequent adjournments from time to time and hence he is not entitled to claim the benefit of period of suspension for fixing his pension which, according to him, was rightly fixed after excluding the suspension period.

20. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force only in the third submission of the appellant's counsel whereas the first two submissions are concerned, we find no substance.

21. We have perused the record of the departmental proceedings and find that the inquiry officer fully observed principle of natural justice while conducting the departmental proceedings. It is not in dispute that the appellant was served with detailed charge sheet along with the documents referred to therein. He filed reply to the charge sheet. The parties were then given full opportunity to adduce evidence and which they availed of by examining witnesses in their support and by cross-examining each of them. What more, in our opinion, is then required in any departmental proceedings? The writ court examined this issue in detail and rightly recorded the finding that the inquiry officer observed the principle of natural justice in the departmental proceedings and found no fault in the proceedings so as to entitle the court to interfere in writ jurisdiction.

22. We find no good ground to take a different view on this issue and reject this submission being devoid of any merit.

23. This takes us to the next question as to whether the punishment of compulsory retirement inflicted on the appellant was justified or not. It was the submission of learned counsel for the appellant that the punishment of compulsory retirement was not justified. However, in our view, it was rightly inflicted.

24. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

25. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the Courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment.

26. Such power is exercised when the Court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the Court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.

27. Learned counsel for the appellant was not, however, able to show us with reference to the facts of the case that the case of the appellant satisfies any of the aforementioned grounds so as to entitle this Court to interfere in the quantum of punishment and hence, in our considered view, the punishment of compulsory retirement inflicted upon the appellant by the appointing authority having regard to the nature of proved charges appears to be just and proper and does not call for any interference.

28. This takes us to the last submission of learned counsel for the appellant, which in our considered view, deserves serious consideration.

29. One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental proceedings was not wholly attributable to the appellant but it was equally attributable to the respondents as well. Due to such unreasonable delay, the appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.

30. We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion of the departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

31. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

34. Now coming to the facts of the case in hand, we find that the respondent has fixed the appellant's pension after excluding the period of suspension (9 years and 26 days). In other words, the respondents while calculating the qualifying service of the appellant for determining his pension did not take into account the period of suspension from 06.02.1990 to 01.03.1999.

35. Having regard to the totality of the facts and the circumstances, which are taken note of supra, we are of the view that the period of suspension should have been taken into account by the respondents for determining the appellant's pension and we accordingly do so.

36. In view of foregoing discussion, the appeal succeeds and is allowed in part only to the extent indicated above in relation to fixation of appellant's pension. The respondents are accordingly directed to re-determine the appellant's pension by taking into account the period of suspension (06.02.1990 to 01.03.1999) and then pay to the appellant arrears of the difference amount from the date he became eligible to claim pension and then to continue to pay the appellant re- determined pension regularly in future as per Rules. It is to be done within three months from the date of receipt of this order.

No costs.

J. CHELAMESWAR]  
J. [ABHAY MANOHAR SAPRE]  
New Delhi,  
December 16, 2015.

***Workmen of M/S Firestone Tyre & Rubber Co. of India (P) Ltd.***

***v. The Management***

(1973) 1 SCC 813 : AIR 1973 SC 1227

**C.A. VAIDIALINGAM, J.** - In these appeals, by special leave, two common questions arise for consideration—

- (1) proper interpretation of Section 11-A of the Industrial Disputes Act; and
- (2) whether the above section applies to industrial disputes which have already been referred to for adjudication and were pending as on December 15, 1971.

2. Section 11-A was incorporated in the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) by Section 3 of the Industrial Disputes (Amendment) Act, 1971 (hereinafter referred to as the Amendment Act). The Amendment Act passed by Parliament received the assent of the President on Decemblers, 1971. Sub-section (2) of Section 1 provided for its coming into force on such date as the Central Government by notification in the official Gazette appoints. The Central Government by Notification No. F.S. 110-13/1/71-LRI, dated December 14, 1971, appointed the 15th day of December 1971, as the date on which the said Act would come into force. Accordingly, the Amendment Act came into force with effect from December 15, 1971. The Amendment Act introduced various amendments to the Act. In particular by Section 3, it inserted the new Section 11-A in the Act.

3. Regarding Section 11-A, in the Statement of Objects and Reasons it is stated as follows:

“In *Indian Inn and Steel Company Limited v. Their Workmen* [AIR 1958 SC 130 at 138], the Supreme Court, while considering the Tribunal’s power to interfere with the management’s decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.

The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer, adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and that other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal’s power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any letter punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947....”

4. There is no controversy that in all the four appeals, the reference had been made long before the date of coming into force of Section 11-A and the Industrial Disputes were pending adjudication at the hands of the concerned authorities on December 15, 1971. In respect of such disputes the concerned Labour Court or Tribunal had to consider the question whether Section 11-A applies to those proceedings and also the further question as to the powers to be exercised by them in respect of such disputes. On

behalf of the companies, it appears to have been urged that the section does not apply to the disputes which had already been referred to for adjudication and that the management had a right to adduce evidence to justify the action taken against the workmen even though no enquiry had been held before the order of discharge or dismissal had been passed and also in cases where the enquiry held is found to be defective. This claim was resisted on behalf of the labour on the ground that the section applies to all proceedings which were pending as on December 15, 1971 and that the management, if it had not held any enquiry or if the enquiry conducted by it was found to be defective, has no right to adduce evidence before the authority to justify its action. Different views have been expressed by the Tribunals concerned as will be seen from what is stated below.

5. In Civil Appeal No. 1461 of 1972, the Reference (I.T.) No. 307 of 1968, related to the question of reinstatement of a number of workmen, who had been dismissed. The Industrial Tribunal, Maharashtra, Bombay considered the question whether Section 11-A applies to the reference, which had been made as early as August 12, 1968. The Industrial Tribunal by its order, dated April 21, 1972, has held that the restrictions imposed upon the powers of the Labour Court or Tribunal to interfere with orders of dismissal passed by the management, have been removed by Section 11-A, which has the effect of affecting the substantive part of the law of master and servant and, therefore, the said section has no retrospective effect. The Tribunal has held that the concerned reference will have to be disposed of as though Section 11-A was not in the statute. The workmen have come up in appeal.

6. Civil Appeal No. 1995 of 1972 arises out of the order, dated June 28, 1972 of the Fifth Labour Court at Bombay in Reference (I.D.A.) No. 268 of 1970. The Labour Court has held that Section 11-A applies even to all proceedings pending adjudication as on December 15, 1971, as it only deals with matters of procedure. The said Court has further held that the new section makes it clear that there must be a proper enquiry by an employer before dismissing or discharging a workman and that if no enquiry has been held or if the enquiry held is found to be defective, there is no option but to reinstate the employee. In this view, the Labour Court has further held that an employer under those circumstances has no right to adduce evidence in the adjudication proceedings to justify his action. Against all these three orders the company has filed appeals.

7-8. The management and the workmen concerned in certain other disputes have also intervened in these appeals and they have placed before us copies of the orders passed by other authorities. It will be useful to refer to the views expressed by some of those authorities. In Reference (IDA) No. 79 of 1971, the Second Labour Court in its order, dated April 13, 1972, has held as follows:

Section 11-A gives power to the Labour Court to scrutinise domestic enquiries similar to that of an appellate court. The said section comes into play only after the court has come to a conclusion that the enquiry held by an employer was proper. Both parties have still a right to adduce evidence to prove the legality or otherwise of the domestic enquiry. Even if no enquiry has been held by an employer or if the enquiry is held to be defective, reinstatement cannot be ordered straight away as urged by the labour. On the other hand, an employer has got a right to adduce evidence to justify the action taken by him. But Section 11-A deals only with procedural matters and, therefore, it operates retrospectively.

9. Similarly in Reference (IDA) No. 41 of 1966, the First Labour Court Bombay in its order, dated January 3, 1973, has held that the section is retrospective in its operation and that the employer has got a right to lead evidence before the Labour Court, if the domestic enquiry has not been held or is found to be defective.

10. From what is stated above, it is clear that there is a very wide divergence of views expressed by the various authorities, both regarding the applicability of the section to pending proceedings as well as the interpretation to be placed on the said section.

11. We will first take up the question regarding the proper interpretation to be placed on Section 11-A. The contentions of Mr Deshmukh, learned counsel, who advanced the main arguments in this regard on behalf of the workmen are as follows.

12. Originally limitation had been placed by Judicial decisions in respect of the jurisdiction of the Labour Tribunals when considering the action of an employer in the matter of discharge or dismissal of a workman. If a domestic enquiry had been held by an employer on the basis of which a workman is dismissed or discharged, the Labour Courts can interfere with the decision of the management only if the domestic enquiry is vitiated by the circumstances mentioned by this Court in *Indian Iron and Steel Co. Ltd. v. Their Workmen*. Once the Tribunals hold that the domestic enquiry has been conducted properly and the action of an employer is bona fide and the conclusions arrived at therein are plausible, they had no jurisdiction to substitute their own judgment. In cases where the misconduct is found to be proved by a valid and proper domestic enquiry, the Tribunal had no power to alter the punishment imposed by an employer. Even in cases where the domestic enquiry is held to be defective or even if no domestic enquiry had been conducted by an employer before passing an order of termination or discharge, the employer was given an opportunity to adduce evidence before the Tribunal to justify his action. Once the Tribunal accepts that evidence and holds that the misconduct is proved, it had no power to interfere with the discretion of the management regarding the quantum of punishment.

13. The above position has been completely changed by Section 11-A. It is now obligatory on an employer to hold a proper domestic enquiry in which all material evidence will have to be adduced. When a dispute is referred for adjudication and it is found that the domestic enquiry conducted by the management is defective or if it is found that no domestic enquiry at all had been conducted, the order of discharge or termination passed by the employer becomes, without anything more, unjustified and the Labour Tribunals have no option but to direct the reinstatement of the workman concerned, as his discharge or dismissal is illegal. Even in cases where a domestic enquiry has been held and finding of misconduct recorded, the Labour Tribunals have now full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. Even if the enquiry proceedings are held to be proper and the finding of misconduct is also accepted, the Tribunal has now power to consider whether the punishment of dismissal or discharge was necessary for the type of misconduct of which the workman is found guilty. In such circumstances, the Tribunal can also give any other relief to the workman, including the imposing of a lesser punishment. In case's where an employer had not conducted any enquiry or when the enquiry conducted by him is held to be defective, the employer will not be given any opportunity to adduce evidence before the Labour Tribunal for justifying his action. Various decisions of this Court have emphasised that there is an obligation on the part of an employer to hold a proper enquiry before dismissing or discharging a workman. And it has also been stated that the enquiry should conform to certain well defined principles and that it should not be an empty formality. If the management, being fully aware of this position in law, does not conduct an enquiry or conducts a defective enquiry, the order passed by it is illegal and it cannot take advantage of such illegality or wrong committed by it and seek a further opportunity before the Tribunal of adducing evidence for the first time. Generally, the Standing Orders also provide for the conduct of an enquiry before imposing a punishment. The Standing Orders have been held to be statutory terms of conditions of service. If an employer does not conform to the provisions of the Standing Orders, he commits an illegality and an order passed, which is illegal, has only to be straight-away set aside by the Tribunal. Decisions of this Court, while recognising that an opportunity has to be given to an employer to adduce evidence before the Tribunal for the first time, have not given due importance to the effect of a breach of a statutory obligation committed by an employer in not conducting a proper and valid enquiry as per the Standing Orders. This anomaly has now been removed by the Legislature.

14. The above is the line of argument adopted by Mr Deshmukh. He referred us to certain decisions of this Court in support of his contentions that the opportunity that was so far directed to be given to an employer to adduce evidence for the first time before the Tribunal was not by way of recognising a right in an employer but really for the benefit of the workman, who will otherwise be jeopardised by a further enquiry being conducted by the employer after filling up the lacunae that are found in the original enquiry. He pointed out that when the Tribunals have now been clothed with full power to reappraise the evidence adduced in the domestic enquiry, which an employer is under obligation to conduct, and when

they have been clothed with powers to hold as unjustified an order of termination because of the enquiry proceeding being defective or on the ground that no enquiry at all was conducted, the basis for giving an employer an opportunity to adduce evidence before the Tribunal no longer survives Mr Deshmukh was prepared to accept that even now it is open to the parties to adduce evidence before the Tribunal, strictly limited to the validity or otherwise of a domestic enquiry conducted by an employer. The counsel relied very heavily on the proviso to Section 11-A in support of his contention that it is obligatory now for an employer to conduct a proper and valid enquiry before passing an order of dismissal or discharge.

15. The above contentions of Mr Deshmukh have been adopted by Miss Indra Jai Singh, Mr Madan Mohan and Mr Bhandare, counsel appearing for certain other workmen. Mr Bhandare, however, was prepared to take a slightly different stand regarding the proviso to Section 11-A. According to him only such evidence, which could and should have been produced by the parties in the domestic enquiry, is not allowed to be adduced before the Tribunal.

16. Mr Damania, learned counsel, who advanced the leading arguments on behalf of the employers broadly contended as follows:

The restrictions imposed upon the jurisdiction exercised by the Labour Tribunals in respect of disputes arising out of orders passed by way of dismissal or discharge, as laid down by this Court in a number of decisions over a period of years, have not been altered by the new section. The right of an employer to manage his affairs in his own way, provided he does not act arbitrarily, is kept intact. The common law relationship of master and servant was recognised, except to the extent that it was modified by the decision of this Court in *Indian Iron and Steel Co. Ltd. and Another v. Their Workmen*. An employer is expected to hold a domestic enquiry before an order of dismissal or termination is passed. He is also bound to follow, in such cases, the principles of natural justice and the procedure laid down by the relevant Standing Orders. The Tribunal will not interfere with the finding recorded by an employer in a proper enquiry merely on the ground that it would have come to a different conclusion. The punishment to be meted out was entirely within the powers and jurisdiction of an employer and it was no part of the jurisdiction of a Tribunal to decide whether the said punishment was justified except in very rare cases where the punishment imposed is so grossly out of proportion, so as to suggest victimisation or unfair labour practices. This was the position vis-a-vis the management as on December 15, 1971. But under Section 11-A, after the Tribunal holds that the enquiry has been conducted properly by an employer and that the finding about misconduct is correct, it has jurisdiction to consider whether the punishment requires modification. If it holds that the punishment has to be modified, it has power to do so and award a lesser punishment. Section 11-A comes into effect only at the time when the Tribunal considers about the punishment to be imposed. While previously the Tribunal had no power to interfere with the punishment, it is now clothed with such a power. This is the only modification regarding the powers of the management that has been introduced by Section 11-A. Neither the fact that no enquiry at all has been held by an employer nor the circumstances that the enquiry, if any held, is found to be defective, stands in the way of an employer adducing evidence before the Tribunal for the first time to justify his action taken against a workman.

17. Mr Setalvad, learned counsel, appearing for Larsen and Toubro Ltd. adopted these contentions of Mr Damania. He, however, referred us to the provisions of Section 33 of the Act. According to him when the previous permission or an approval for dismissing or discharging a workman has been obtained under Section 33, the Tribunal concerned would have applied its mind and satisfied itself at least prima facie that the proposed action of the employer was justified. Such satisfaction may be arrived at on perusal of the records of domestic enquiry, if one had been conducted or on the basis of evidence placed before the Tribunal by an employer for the first time. The said order of dismissal or discharge can nevertheless be the subject of an industrial dispute. When such dispute is being adjudicated by the Tribunal, the records pertaining to the proceedings under Section 33 will be relied on by an employer as material on record. It



will lead to an anomaly if it is held that the Tribunal can straight-away order reinstatement merely because no domestic enquiry has been held or the domestic enquiry conducted is defective for one reason or other. Therefore, he pointed out that the proper way of interpreting Section 11-A would be to hold that it comes into play after a Tribunal has held the enquiry proceedings conducted by the management to be proper and the finding of guilt justified. It is then that the Tribunal can consider whether the punishment imposed is justified. If it is of the opinion that the punishment is not justified, it can alter the same.

18. We have broadly indicated above the stand taken on behalf of the workmen and the employers regarding the interpretation of Section 11-A.

19. Before we proceed to consider the contents of the section, having due regard to the arguments advanced before us, it is necessary to indicate the legal position, as on December 15, 1971, regarding the powers of a Labour Court or Tribunal when deciding a dispute arising out of dismissal or discharge of a workman. There are several decisions of this Court, as also of the Labour Appellate Tribunal laying down the principles in this regard, but we will refer only to a few of them.

21. In discussing the nature of the jurisdiction exercised by an Industrial Tribunal when adjudicating a dispute relating to dismissal or discharge, it has been emphasised by this Court in ***Indian Iron Steel and Co. Ltd.***, as follows:

“Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere: (i) when there is want of good faith; (ii) when there is victimisation or unfair labour practice; (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse.”

22. This is the decision which has been referred to in the Statement of Objects and Reasons already adverted to. It may be noted that the four circumstances pointed out by this Court justifying interference at the hands of the Tribunal are substantially the same as laid down by the Labour Appellate Tribunal in ***Buckingham and Carnatic Company*** case.

23. Following the decision in ***Indian Iron and Steel Co. Ltd.*** case, this Court in ***Punjab National Bank Ltd. v. Its Workmens***, held:

“In cases where an industrial dispute is raised on the ground of dismissal and it is referred to the tribunal for adjudication, the tribunal naturally wants to know whether the impugned dismissal was preceded by a proper enquiry or not. Where such a proper enquiry has been held in accordance with the provisions of the relevant standing orders and it does not appear that the employer was guilty of victimisation or any unfair labour practice, that tribunal is generally reluctant to interfere with the impugned order.”

It was further emphasised that:

“There is another principle which has to be borne in mind when the tribunal deals with an industrial dispute arising from the dismissal of an employee. We have already pointed out that before an employer can dismiss his employee he has to hold a proper enquiry into the alleged misconduct of the employee and that such an enquiry must always begin with the supply of a specific charge-sheet to the employee.”

The effect of an employer not holding an enquiry has been stated as follows:

“But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved,

and if yes, what would be proper order to make. In such a case the point about the exercise of managerial functions does not arise at all.”

24. In *M/s Bharat Sugar Mills Ltd. v. Shri Jai Singh*, the question arose regarding the powers of an Industrial Tribunal to permit an employer to adduce evidence before it justifying its action after the domestic enquiry was held to be defective. It was contended on behalf of the workmen that when once the domestic enquiry was found to be defective, the tribunal had no option but to dismiss the application filed by an employer for approval and that it cannot allow an employer to adduce evidence before it justifying its action. This Court rejected this contention as follows:

“When an application for permission for dismissal is made on the allegation that the workman has been guilty of some misconduct for which the management considers dismissal the appropriate punishment the Tribunal has to satisfy itself that there is a prima facie case for such dismissal. Where there has been a proper enquiry by the management itself the Tribunal, it has been settled by a number of decisions of this Court, has to accept the finding arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way of performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of both sides in respect of the alleged misconduct. When such evidence is adduced before the Tribunal the management is deprived of the benefit of having the findings of the domestic tribunal being accepted as prima facie proof of the alleged misconduct unless the finding is perverse and to prove to the satisfaction of the Tribunal itself that the workman was guilty of the alleged misconduct. We do not think it either just to the management or indeed even fair to the workman himself that in such a case the Industrial Tribunal should refuse to take evidence and thereby drive the management to make a further application for permission after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct.”

25. In the above decision, this Court quoted with approval the decision of the Labour Appellate Tribunal in *Buckingham and Camatic Company Ltd.*, holding that the materials on which a Tribunal acts may consist of—

“(i) entirely the evidence taken by the management at the enquiry and the proceedings of the enquiry, or

(2) that evidence and in addition thereto further evidence led before the Tribunal, or

(3) evidence placed before the Tribunal for the first time in support of the charges.”

It was further emphasised that:

“For a long time now, it has been settled law that in the case of an adjudication of a dispute arising out of a dismissal of a workman by the management (as distinct from an application for permission to dismiss under Section 33), evidence can be adduced for the first time before the Industrial Tribunal. The important effect of the omission to hold an enquiry is merely this, that the Tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made.”

The observations made by this Court in *The Punjab National Bank Ltd.* case, were quoted with approval. It was further held that the reasons for which it is proper for a Tribunal to take evidence itself as regards the alleged misconduct when adjudicating upon a dispute arising out of an order of dismissal are equally present in a case where the management makes an application for permission to dismiss an employee without holding a proper enquiry. Ultimately, this Court upheld the order of the Tribunal allowing the employer to adduce evidence before it in support of if application for permission to dismiss an employee even though the domestic enquiry held by it was held to be highly defective.

26. The powers of a Tribunal when a proper enquiry has been held by an employer as well as the procedure to be adopted when no enquiry at all has been held or an enquiry held was found to be defective, again came up for consideration in ***Management of Ritz Theatre (P) Ltd. v. Its Workmen***. Regarding the powers of a Tribunal when there has been a proper and fair enquiry, it was held:

“It is well settled that if an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry, it would be open to him to act upon the report submitted to him by the enquiry officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the impugned dismissal is vindictive or mala fide, and amounts to an unfair labour practice. In such an enquiry before the Tribunal, it is not open to the Tribunal to sit in appeal over the findings recorded at the domestic enquiry. This Court has held that when a proper enquiry has been held, it would be open to the enquiry officer holding the domestic enquiry to deal with the matter on the merits bona fide and come to his own conclusion.”

Again regarding the procedure to be adopted when there has been no enquiry or when there has been a defective enquiry, it was stated:

“It has also been held that if it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follows if no enquiry has been held at all. In other words, where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the enquiry officer are perverse, the whole issue is at large before the Tribunal. This position also is well settled.”

It was further held that it is only where a Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded is perverse that the Tribunal derives jurisdiction to deal with merits of the dispute, when permission has to be given to an employer to adduce additional evidence.

27. The right of an employer to lead evidence before the Tribunal to justify his action was again reiterated in ***Khardah Co. Ltd. v. Their Workmen***, as follows:

“It is well settled that if the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal, and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee.”

28. In ***Workmen of Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory*** the employer bad charge-sheeted certain workmen and without conducting any enquiry, as required by the standing orders, passed orders discharging the workmen. Before the Tribunal, the employer adduced evidence justifying the action taken against the workmen. The workmen were also given an opportunity to adduce evidence in rebuttal. After a consideration of such evidence, the Tribunal held that the workmen were guilty of misconduct alleged against them and that the orders of discharge passed by the employer were fully justified. Before this Court it was contended on behalf of the workmen that when no enquiry whatsoever had been conducted by the employer, as required by the standing orders, before passing an order of dismissal or discharge, the Tribunal had no jurisdiction to hold an enquiry itself by permitting the employer to adduce evidence before it for the first time. In rejecting this contention, it was held:

“It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited question open to a tribunal where domestic enquiry has been properly held... but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified.... If the enquiry is defective or if no enquiry has been held as required by standing orders, the entire case would be open before the Tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper.... A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.”

28-A. The reasons for allowing an employer to lead evidence before the Tribunal justifying his action have been stated thus:

“If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the domestic enquiry is invalid and those where the enquiry has in fact been held.”

29. The rights of an employer to avail itself of an opportunity to satisfy the Tribunal by adducing evidence, when an enquiry held by it was found to be defective or when no enquiry at all has been held, have been stated in *State Bank of India v. R.K. Jain* as follows:

“It should be remembered that when an order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under those circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry

that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduce evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised, that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity.”

30. This Court in its recent decision in *Delhi Cloth and General Mills Co. Ltd. v. Ludh Budh Singh* after a review of all the earlier cases, has summarized the principles flowing out of those decisions. It has been emphasized that when no enquiry has been held by an employer or when the enquiry held has been found to be defective, the employer has got a right to adduce evidence before the Tribunal justifying its action. The stage at which the employer should invoke the jurisdiction of the Tribunal to allow him to adduce evidence before it, has also been discussed in the said decision.

31. We have exhaustively referred to the various decisions of this Court, as they give a clear picture of the principles governing the jurisdiction of the Tribunals when adjudicating disputes relating to dismissal or discharge.

32. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straight away, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in ***Management of Panitole Tea Estate v. The Workmen*** within the judicial decision of a Labour Court or Tribunal.

32-A. The above was the law as laid down by this Court as on December 15, 1971, applicable to all industrial adjudications arising out of orders of dismissal or discharge.

33. The question is whether Section 11-A has made any changes in the legal position mentioned above and if so, to what extent? The Statement of Objects and Reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what the legislature wanted to achieve. At the time of introducing Section 11-A in the Act, the legislature must have been aware of the several principles laid down in the various decisions of this Court referred to above. The object is stated to be that the Tribunal should have power in cases, where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment. The Statement of Objects and Reasons has specifically referred to the limitations on the powers of an Industrial Tribunal, as laid down by this Court in ***Indian Iron and Steel Co. Ltd.*** case.

34. This will be a convenient stage to consider the contents of Section 11-A. To invoke Section 11-A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence. Even a mere reading of the section, in our opinion, does indicate that a change in the law, as laid down by this Court has been effected. According to the workmen the entire law has been completely altered; whereas according to the employers, a very minor change has been effected giving power to the Tribunal only to alter the punishment, after having held that the misconduct is proved. That is, according to the employers, the Tribunal has a mere power to alter the punishment after it holds that the misconduct is proved. The workmen, on the other hand, claim that the law has been re-written.

35. We cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be

interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and, if so, whether there is a clear expression of that intention in the language of the section.

36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in *Indian Iron & Steel Co. Ltd.* case, existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or, unfair labour practice. This position, in our view, has now been changed by Section 11-A. The words “in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified” clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron & Steel Co. Ltd.* case, can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter.

37. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly, there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in *Delhi Cloth and General Mills Co. Ltd. can.* No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management, then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years.

38. All parties are agreed that even after Section 11-A, the employer and employee can adduce evidence regarding the legality or validity of the domestic enquiry, if one had been held by an employer.

39. Having held that the right of the employer to adduce evidence continues even under the new section, it is needless to state that, when such evidence is adduced for the first time, it is the Tribunal

which has to be satisfied on such evidence about the guilt or otherwise of the workman concerned. The law, as laid down by this Court that under such circumstances, the issue about the merits of impugned order of dismissal or discharge is at large before the Tribunal and that it has to decide for itself whether the misconduct alleged is proved, continues to have full effect. In such a case, as laid down by this Court, the exercise of managerial functions does not arise at all.

40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to re-appraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11-A.

41-A. Another change that has been effected by Section 11-A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under Section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11-A.

42. Mr Deshmukh, rather strenuously urged that in all its previous decisions, this Court had not considered a breach - or an illegality, as he calls it - committed by an employer in not holding a domestic enquiry. The learned counsel urged that this Court has consistently held in several decisions that there is an obligation on the part of an employer to conduct a proper domestic enquiry in accordance with the Standing Orders before passing an order of discharge or dismissal. Hence an order passed without such an enquiry is, on the face of it, illegal. The effect of such an illegal order deprives the employer of an opportunity being given to him to adduce evidence for the first time before the Tribunal to justify his action. These aspects, according to the learned counsel, have not been considered by this Court when it recognised an opportunity to be given to an employer to adduce evidence before the Tribunal.

43. The above aspect was stressed before us by Mr Deshmukh in support of the contention that Section 11-A has taken note of such an illegality committed by employers and has now made it obligatory to conduct a domestic enquiry. According to him, if no such proper and valid domestic enquiry precedes



the order imposing punishment, the Tribunal now has no alternative but to order reinstatement on that ground alone.

44. We have already indicated our views regarding the scope of Section 11-A and held that the right of an employer to adduce such evidence before the Tribunal has not been taken away. Mr Deshmukh referred us to Section 23 of the Act prohibiting a workman from going on strike in the circumstances mentioned therein and further pointed out that if a strike is illegal, it cannot be lawful. Similarly, an illegal act of an employer in not holding a domestic enquiry cannot be made legal.

45-46. In our opinion, the analogy placed before us by the counsel cannot stand scrutiny. It is not doubtful that Standing Orders, which have been certified under the Industrial Employment (Standing Orders) Act, 1946, become part of the statutory terms and conditions of service between the employer and his employee and that they govern the relationship between the parties. But there is no provision either in this statute or in the the Act which states that an order of dismissal or discharge is illegal if it is not preceded by a proper and valid domestic enquiry. No doubt it has been emphasised in the various decisions of this Court that an employer is expected to hold a proper enquiry before dismissing or discharging a workman. If that requirement is satisfied, an employer will by and large escape the attack that he has acted arbitrarily or mala fide or by way of victimisation. If he has held a proper enquiry, normally his bona fides will be established. But it is not correct to say that this Court, when it laid down that an employer has a right to adduce evidence for the first time before the Tribunal, was not aware of a breach committed by an employer of the provisions of the Standing Orders. A similar contention, though in a different form, advanced on behalf of the workmen was rejected by this Court in ***Workmen of Motipur Sugar Factory (Private) Limited***. It was specifically contended before this Court by the workmen therein that when an employer had held no enquiry, as required by the Standing Orders, it was not open to him to adduce evidence before the Tribunal for the first time and justify the order of discharge. This contention was rejected by this Court and it was held that if the enquiry was defective or no enquiry had been held, as required by the Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify, on evidence as well that its order of dismissal or discharge was proper. Therefore, this contention cannot be accepted. We may also state that the Industrial Employment (Standing Orders) Act, 1946, applies only to those industrial establishments which are covered by Section 1(3). But the field of operation of the Act is such wider and it applies to employers who may have no Standing Orders at all. If the contention of Mr Deshmukh, regarding Standing Orders is accepted, then the Act will have to be applied in a different manner to employers, who have no Standing Orders, and employers who are obliged to have Standing Orders. That is certainly not the scheme of the Act.

45. We will now pass on to consider the Proviso to Section 11-A. Mr Deshmukh relied on the terms of the Proviso in support of his contention that it is now obligatory to hold a proper domestic enquiry and the Tribunal can only take into account the materials placed at that enquiry. The counsel emphasised that the Proviso places an obligation on the Tribunal ‘to rely only on the materials on record’ and it also prohibits the Tribunal from taking ‘any fresh evidence’ in relation to the matters. According to him, the expression ‘materials on records’ refers to the materials available before the management at the domestic enquiry and the expression ‘fresh evidence’ refers to the evidence that was being adduced by an employer for the first time before the Tribunal. From the wording of the Proviso he wants us to infer that the right of an employer to adduce evidence for the first time has been taken away, as the Tribunal is obliged to confine its scrutiny only to the materials available at the domestic enquiry.

48-49. We are not inclined to accept the above contention of Mr Deshmukh. The Proviso specifies matters which the Tribunal shall take into account as also matters which it shall not. The expression ‘materials on record’, occurring in the Proviso, in our opinion, cannot be confined only to the materials which were available at the domestic enquiry. On the other hand, the “materials on record” in the Proviso must be held to refer to materials on record before the Tribunal. They take in -

- (1) the evidence taken by the management at the enquiry and the proceedings of the enquiry,  
or  
(2) the above evidence and in addition, any further evidence led before the Tribunal, or  
(3) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen contra.

The above items by and large should be considered to be the 'materials on record' as specified in the Proviso. We are not inclined to limit that expression as meaning only that material that has been placed in a domestic enquiry. The Proviso only confines the Tribunal to the materials on record before it as specified above, when considering the justification or otherwise of the order of discharge or dismissal. It is only on the basis of these materials that the Tribunal is obliged to consider whether the misconduct is proved and the further question whether the proved misconduct justifies the punishment of dismissal or discharge. It also prohibits the Tribunal from taking any fresh evidence either for satisfying itself regarding the misconduct or for altering the punishment. From the Proviso it is not certainly possible to come to the conclusion that when once it is held that an enquiry has not been held or is found to be defective, an order reinstating the workman will have to be made by the Tribunal. Nor does it follow that the Proviso deprives an employer of his right to adduce evidence for the first time before the Tribunal. The expression 'fresh evidence' has to be read in the context in which it appears namely, as distinguished from the expression 'materials on record'. If so read, the Proviso does not present any difficulty at all.

50. The legislature in Section 11-A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the Proviso. The Proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The 'matter' in the Proviso refers to the order of discharge or dismissal that is being considered by the Tribunal.

51. It is to be noted that an application made by an employer under Section 33(1) for permission or Section 33(2) for approval has still to be dealt with according to the principles laid down by this Court in its various decisions. No change has been effected in that section by the Amendment Act. It has been held by this Court that even in cases where no enquiry has been held by an employer before passing an order of dismissal or discharge, it is open to him to adduce evidence for the first time before the Tribunal. Though the Tribunal is exercising only a very limited jurisdiction, under this section nevertheless, it would have applied its mind before giving permission or approval. Section 33 only imposes a ban. An order of dismissal or discharge passed even with the permission or approval of the Tribunal can form the subject of a dispute and as such referred for adjudication. Quite naturally, when the dispute is being adjudicated, the employer will rely upon the proceedings that were already held before a Tribunal under Section 33. They will form part of the materials on record before the Tribunal. The contention of Mr Deshmukh, that if no enquiry is held, the order of dismissal will have to be set aside, if accepted, will lead to very incongruous results. The Tribunal would have allowed an employer to adduce evidence before it in proceedings under Section 33 for the first time, even though no domestic enquiry had been held. If it is held that another Tribunal, which adjudicates the main dispute, has to ignore those proceedings and straight away order reinstatement on the ground that no domestic enquiry had been held by an employer, it will lead to very startling results. Therefore, an attempt must be made to construe Section 11-A in a

reasonable manner. Thus is another reason for holding that the right to adduce evidence for the first time recognised in an employer, has not been disturbed by Section 11-A

52. There may be other instances where an employer with limited number of workmen may himself be a witness to a misconduct committed by a workman. He will be disabled from conducting an enquiry against the workman because he cannot both be an enquiry officer and also a witness in the proceedings. Any enquiry held by him will not be in keeping with the principles of natural justice. But he will certainly be entitled to take disciplinary action for which purpose he can serve a charge-sheet and, after calling for explanation, impose the necessary punishment without holding any enquiry. This will be a case where no enquiry at all has been held by an employer. But the employer will have sufficient material available with him which could be produced before any Tribunal to satisfy it about the justification for the action taken. Quite naturally, the employer will place before the Tribunal, for the first time, in the adjudication proceedings material to support his action. That material will have to be considered by the Tribunal. But if the contention of Mr Deshmukh is accepted, then the mere fact that no enquiry has been held, will be sufficient to order reinstatement. Such reinstatement, under the circumstances mentioned above, will not be doing justice either to the employer or to the workman and will not be conducive to preserving industrial peace.

53. We have indicated the changes effected in the law by Section 11-A. We should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal. This Court has consistently been holding that an employer is expected to hold a proper enquiry according to the Standing Orders and principles of natural justice. It has also been emphasised that such an enquiry should not be an empty formality. If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Further by holding a proper enquiry, the employer will also escape the charge of having acted arbitrarily or mala fide. It cannot be overemphasized that conducting of a proper and valid enquiry by an employer will conduce to harmonious and healthy relationship between him and the workmen and it will serve the cause of industrial peace. Further it will also enable an employer to persuade the Tribunal to accept the enquiry as proper and the finding also as correct.

54. Having dealt with the proper interpretation to be placed on Section 11-A, we will now proceed to consider the second point regarding the applicability of the section to industrial disputes which had already been referred for adjudication and were pending with the Tribunal on December 15, 1971. We have earlier referred to the fact that the Amendment Act received the assent of the President on December 8, 1971. But the Amendment Act did not come into force immediately. It came into force only with effect from December 15, 1971, as per the Notification issued by the Central Government on December 14, 1971, under Section 1, sub-section (2).

55. Miss Indra Jai Singh, learned counsel for the appellant-workmen, in Civil Appeal No. 1461 of 1972, advanced the main arguments in this regard. Mr Deshmukh appearing for the workmen in the other appeals, adopted her arguments. According to the learned counsel, Section 11-A applies not only to references, which are made on or after December 15, 1971, but also to all references already made and which were pending adjudication on that date. It is pointed out that Section 11-A has been incorporated in Chapter IV of the Act dealing with procedure, powers and duties of authorities. According to them, Section 11-A deals with matters of procedure. Applying the well known canon of interpretation, procedural laws apply to pending proceedings also. No right, much less any vested right, of the employers has been taken away or affected by Section 11-A. Considerable stress has been laid on the use of the expressions 'has been referred' occurring in Section 11-A, as conclusively indicating the applicability of the section even to disputes already referred. It was stressed that even assuming that an employer has a right to adduce evidence for the first time before the Tribunal, that right enures to him only after the Tribunal had adjudicated upon the validity of the domestic enquiry. It cannot be characterized even as a

right, much less a vested right, because it is contingent or dependent upon the Tribunal's adjudication on the domestic enquiry. The Tribunal, when it adjudicates a dispute on or after December 15, 1971, has to exercise the powers conferred on it by Section 11-A, even though the dispute may have been referred prior to that date. Hence it is clear that the section applies even to all proceedings pending adjudication on December 15, 1971.

56. Mr Damania, learned counsel for the employers, contended that retrospective operation should not be given unless it appears very clearly by the terms of the section or arise by necessary and distinct interpretation. The counsel pointed out that the employers would have moulded their behaviour according to the principles laid down by a series of decisions and if the rights recognised in an employer are to be taken away, that can be done so only by a clear expression to that effect; or such intention to take away or interfere with those rights must appear by necessary intendment. The words of the section clearly show that it applies only to disputes in respect of which a reference is made after the section has come into force i. e. December 15, 1971. The expressions 'has been referred' in the section only signify that on the happening of a particular event, namely, a reference made in future, the powers given to the Tribunal, whatever they may be, can be exercised. Mr M.G. Setalvad and Mr Tarkunde, learned counsel, appearing for other employers, adopted the contentions of Mr Damania. A faint argument was also advanced that for Section 11-A to apply, even the order of discharge or dismissal should be one passed on or after December 15, 1971. But this was not pursued, quite rightly in our opinion, in view of the wording of the section. But the main contention on the side of the employers is that the section applies only to disputes which are referred for adjudication on or after December 15, 1971.

57. The learned counsel on both sides have referred us to several decisions where a statute or a section thereof, has been held to be either retrospective or not. They have also referred us to certain passages in text-books on interpretation thereof. It is needless to state that a decision has to be given one way or other having regard to the scheme of the statute and the language used therein. Hence we do not propose to refer to those decisions, nor to the passages in the text-books, as the principle is well established that a retrospective operation is not to be given to a statute so as to impair an existing right. This is the general rule. But the legislature is competent to pass a statute so as to have retrospective operation, either by clearly expressing such intention or by necessary and distinct intendment.

58. Miss Indra Jai Singh, learned counsel, placed considerable reliance on the use of the expressions 'has been referred' in Section 11-A as indicating that the section applies even to all the references made before December 16, 1971. In our opinion, those words cannot be isolated from the context. The said expressions may have different connotations when they are used in different context. A reference may be made to Section 7(3) and Section 7-A(3) of the Act, laying down qualifications for being appointed as a Presiding Officer of a Labour Court or a Tribunal retrospectively. Sub-section 3 of Section 7 enumerates the qualifications which a person should possess for appointment as Presiding Officer of a Labour Court.

The words 'has been a Judge of a High Court' denote a past event, on the date of his appointment, he must have been a Judge of a High Court. Same is the position under clause (e) regarding the office mentioned therein. A similar interpretation will have to be placed on the expressions 'has been' occurring in sub-section (3) of Section 7-A regarding the qualifications to be possessed by a person for appointment as Presiding Officer of a Tribunal. The words 'has been' occurring in these sub-sections, immediately after the word 'is' or even separately clearly show that they refer to a past event.

59. The words 'has been referred' in Section 11-A are no doubt capable of being interpreted as making the section applicable to references made even prior to December 15, 1971. But is the section so expressed as to plainly make it applicable to such references? In our opinion, there is no such indication in the section. In the first place, as we have already pointed out, the section itself has been brought into effect only some time after the Act had been passed. The proviso to Section 11-A, which is as much part of the section, refers to "in any proceeding under this section". Those words are very significant. There cannot be a "proceeding under this section", before the section itself has come into force. A proceeding

under that section can only be on or after December 15, 1971. That also gives an indication that Section 11-A applies only to disputes which are referred for adjudication after the section has come into force.

65. We have already expressed our view regarding the interpretation of Section 11-A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognised certain managerial rights in an employer. We have pointed out that this position has now been changed by Section 11-A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. Hence in order to make the section applicable even to disputes which had been referred prior to the coming into force of the section, there should be such a clear, express and manifest indication in the section. There is no such express indication. An inference that the section applies to proceedings, which are already pending, can also be gathered by necessary intendment. In the case on hand, no such inference can be drawn as the indications are to the contrary. We have already referred to the Proviso to Section 11-A, which states 'in any proceeding under this section'. A proceeding under the section can only be after the section has come into force. Further the section itself was brought into force some time after the Amendment Act was passed. These circumstances, as well as the scheme of the section and particularly the wording of the proviso indicate that Section 11-A does not apply to disputes which had been referred prior to December 15, 1971. The section applies only to disputes which are referred for adjudication on or after December 15, 1971. To conclude, in our opinion. Section 11-A has no application to disputes referred prior to December 15, 1971. Such disputes have to be dealt with according to the decisions of this Court already referred to.

66. In Civil Appeal No. 1461 of 1972, the Industrial Tribunal had considered only the question regarding the applicability of the section to disputes which had been referred before the section came into force. The Tribunal has held that the section does not apply to such disputes. This view is in accordance with our decision and as such is correct. This appeal is hence dismissed.

67. In the three other orders, which are the subject of consideration in Civil Appeals Nos. 1995 of 1972, 1996 of 1972 and 2386 of 1972, the Labour Court, Bombay has held that Section 11-A applies even to disputes which had been referred prior to December 15, 1971. This view, according to our judgment, is erroneous. The Labour Court has also expressed some views on the construction to be placed on Section 11-A. Part of the views expressed therein is correct; but the rest are wrong. To the extent that the decision of the Labour Court in the three orders are contrary to our decision on both the points, they are set aside and the appeals allowed to that extent. The Tribunal and the Labour Courts concerned in all these appeals, will proceed with the adjudication of the disputes in accordance with the views expressed in this judgment. There will be order as to costs in these appeals.

\* \* \* \* \*

## ***Hombe Gowda Educational v. State of Karnataka***

(2006) 1 SCC 430

**S.B. SINHA, J.** - One Venkappa Gowda, Respondent 3 herein, was at all material times a lecturer in Kuvempu Mahavidyalaya, Appellant 2 herein. The said institution is under the management of Appellant 1

2. The private institutions in the State of Karnataka are governed by the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (for short “the Act”).

3. Respondent 3 herein was subjected to a disciplinary proceeding on an allegation that he had assaulted the Principal of Appellant 2 with a “chappal”. He was found guilty of the said charge and dismissed from service. An appeal was preferred by him before the Educational Appellate Tribunal (“the Tribunal”) in terms of Section 8 of the said Act. The said Tribunal is constituted in terms of Section 10 thereof. The proceeding before the said Tribunal by a legal fiction is treated to be a judicial proceeding. It is not in dispute that Appellant 2 received grant-in-aid from the State of Karnataka in terms of the Grant- in-Aid Code framed by the Karnataka Collegiate Education Department. Before the Tribunal, the State of Karnataka as also the Director of Collegiate Education were impleaded as parties. A preliminary issue was framed as to whether the departmental proceedings held against Respondent 3 were in consonance with the provisions of Rule 14(2) of the CCS (CCA) Rules. While deciding the preliminary issue, it was held that the departmental proceeding was invalid in law. The appellants, therefore, adduced evidence before the Tribunal to prove the charges against Respondent 3. The Tribunal having regard to the pleading of the parties formulated the following questions for its determination:

“1. Whether Respondents 1 and 2 have proved by acceptable evidence that the allegation that the appellant had absented from duty unauthorisedly and as to whether his conduct was unbecoming of a lecturer?

2. Whether the evidence establishes that the appellant had misbehaved on 18-9-1987 and as to whether he had indulged in physical assault upon the Principal?

3. If so, whether the punishment of dismissal imposed upon the appellant is justified in this case and if not what punishment is deserved?”

4. Upon consideration of the evidence adduced before it, the Tribunal held that the first charge had not been satisfactorily proved by cogent and acceptable evidence. As regards the second charge, it was found:

“RW 1 has himself stated that he did not permit the appellant to sign the attendance register in the morning of 18-9-1987. It led to verbal altercation and then turned into a heated argument. According to RW 1 the appellant abused him in vulgar language as: (*Boli magane, mudi goobe, neenyaru nnann, jekijethus*). RW 1 pushed him. This particular part of his evidence is sought to be corroborated to evidence of C.S. Dhanpal. Dhanpal has stated he was present in the chamber of the Principal when the appellant arrived. He also says that the Principal refused to permit the appellant to sign the attendance register. Dhanpal further stated that RW 1 told the appellant that he will not permit him to sign even morning registers if he does not sign afternoon registers. After hearing such talk Venkappa Gowda replied ‘It is not a proper conduct of Principal’ and rushed towards him. Then the Principal took away the register from Venkappa Gowda. At that juncture Venkappa Gowda caught hold of his collar. Simultaneously, the Principal, RW 1 pushed Venkappa Gowda down which resulted in his fall. After falling down Venkappa Gowda got up and hit the Principal with a chappal.”

5. It was held:

“Since I am only appreciating facts placed before me, it is but necessary that the facts so projected should be considered collectively and not in isolation. Each fact spoken by the witnesses has woven a web clearly indicating that all was not well between the Principal and the

appellant and therefore, the incident on 18-9-1987 took a violent turn. The evidence has to be weighed according to the norms of reasonable probabilities, but not in a tradesman's scale. While doing this exercise I have formed an opinion that the incident would not have occurred had the Principal employed restraint upon his words and action. Any way even the act of the appellant in using chappal to assault the Principal cannot under any circumstances be justified. Both persons involved are teachers, what is taught should be practised. If what their action shows is any indication, an impression is gathered that the Principal and the appellant have acted in an undesirable manner and unbecoming of academicians, to say the least teachers, their acts are demeaning to the profession they have adopted."

6. Despite holding that although it could be said that Respondent 3 acted in retaliation to the action of the Principal, but such conduct was not justifiable, he opined that the assault by Respondent 3 on the Principal was proved. However, he awarded punishment of withholding of three increments only in place of the order of dismissal passed by the appellants.

7. It was further held:

"The appellant shall be taken back to service and will be entitled to all pecuniary benefits like salary and allowances retrospectively from the date of dismissal minus and subject to withholding of three increments. Respondents 1 and 2 are held liable to make payment of amount due to the appellant. I also hold Respondents 3 and 4 vicariously liable to discharge the claim of the appellant."

8. Aggrieved, the management, the State of Karnataka as also Respondent 3 preferred separate writ petitions before the Karnataka High Court.

9. The High Court in its judgment came to the following findings:

"When the action of the petitioner in assaulting the Principal with chappal stands proved by the evidence of RWs 1 to 5, whatever may be the provocation for such a conduct, the said conduct of the petitioner cannot be justified under any circumstances. Therefore, the Tribunal was fully justified in holding that the misconduct alleged against the petitioner stands proved partly."

10. The High Court noticed that the punishment imposed by the Tribunal could not be given effect to as Respondent 3 in the meantime reached the age of superannuation within three months from the date of the order and, thus, held that the appellants should be directed to pay back wages to the extent of 60% only. It was further held that though the primary liability to make such payment is that of the management, when the management could claim the same by way of advance grant or by way of reimbursement from the Government, its liability to pay the said amount cannot be disputed.

12. Mr R.S. Hegde and Mr S.R. Hegde, the learned counsel appearing on behalf of the appellants in their respective appeals, would submit that as a finding of fact was arrived at both by the Tribunal as also the High Court that the respondents committed a misconduct, which is grave in nature, there was absolutely no justification in directing payment of 60% back wages after setting aside the order of punishment of dismissal imposed by the management.

13. Mr S.N. Bhat, the learned counsel appearing on behalf of Respondent 3, on the other hand, would contend that a finding of fact has been arrived at by the Tribunal which has been affirmed by the High Court that it was the Principal who provoked Respondent 3. It is not in dispute, Mr Bhat submitted, that the Principal was also at fault but curiously enough he was not proceeded against. As both Respondent 3 and the Principal of the College having been found guilty, it was argued, it was obligatory on the part of the management to initiate a departmental proceeding against the Principal also. The management of the institution being guilty of being selectively vindictive, Mr Bhat urged, it is a fit case where this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution.

14. It was further submitted that the question should also be considered from the angle that Charge 1 framed against Respondent 3 was not proved. Our attention was also drawn to the fact that the

management had sought for time for complying with the order of the High Court, which having been granted, the appellants are estopped and precluded from maintaining this appeal.

15. It is now well settled that by seeking extension of time to comply with the order of the High Court by itself does not preclude a party aggrieved to question the correctness or otherwise of the order of the High Court as thereby a party to a *lis* does not waive his right to file an appeal before this Court.

16. Respondent 3 is a teacher. He was charge-sheeted for commission of a serious offence. He was found guilty by the Tribunal. Both the Tribunal as also the High Court, as noticed hereinbefore, have arrived at a concurrent finding of fact that despite grave provocation, Respondent 3 cannot be absolved of the charges levelled against him. It may be true that no departmental disciplinary proceeding was initiated against the Principal of the institution, but the same by itself would not be a relevant fact for imposing a minor punishment upon the respondent. It may further be true that Respondent 3 committed the offence under a grave provocation, but as noticed hereinbefore, the Tribunal as also the High Court categorically held that the charges against him were established.

17. The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, *inter alia*, it is found to be grossly disproportionate.

18. This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be *inter alia* on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment.

19. Assaulting a superior at a workplace amounts to an act of gross indiscipline. The respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as to shock one's conscience.

20. A person, when dismissed from service, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court.

21. In **Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh** [(2004) 8 SCC 200], this Court held:

“29. This leaves us to consider whether the punishment of dismissal awarded to the workmen concerned *dehors* the allegation of extortion is disproportionate to the misconduct proved against them. From the evidence proved, we find the workmen concerned entered the Estate armed with deadly weapons with a view to *gherao* the manager and others, in that process they caused damage to the property of the Estate and wrongfully confined the manager and others from 8.30 p.m. on 12th of October to 3 a.m. on the next day. These charges, in our opinion, are grave enough to attract the punishment of dismissal even without the aid of the allegation of extortion. The fact that the management entered into settlement with some of the workmen who were also found guilty of the charge would not, in any manner, reduce the gravity of the misconduct in regard to the workmen concerned in this appeal because these workmen did not agree with the settlement to which others agreed, instead chose to question the punishment.”

22. Yet again in **Muriadih Colliery v. Bihar Colliery Kamgar Union** [(2005) 3 SCC 331], the law has been laid down in the following terms:

“13. It is well-established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid



reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the victim did not die is not a mitigating circumstance to reduce the sentence of dismissal.” (See also *Mahindra and Mahindra Ltd. v. N.B. Narawade* [(2005) 3 SCC 134].

23. In *V. Ramana v. A.P. SRTC* [(2005) 7 SCC 338], relying upon a large number of decisions, this Court opined:

“11. The common thread running through in all these decisions is that the court should not interfere with the administrator’s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* (1948) 1 KB 223] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”

24. In *Bharat Forge Co. Ltd. v. Uttam Manohar Nakate* [(2005) 2 SCC 489], it was held:

“30. Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four corners thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.

31. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.

32. In *Regional Manager, Rajasthan SRTC v. Sohan Lal* [(2004) 8 SCC 218], it has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or other wise arbitrary.”

25. In *M.P. Electricity Board v. Jagdish Chandra Sharma* [(2005) 3 SCC 401] this Court held:

“9. In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the workplace, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organisation. Discipline at the workplace in an organisation like the employer herein, is the *sine qua non* for the efficient working of the organisation. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the

punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan,

‘discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large’.

Obviously this idea is more relevant in considering the working of an organisation like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one’s natural rights. It is essential for the prosperity of the organisation as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion.”

26. In ***Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane*** [(2005) 3 SCC 254], this Court held:

“9. From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of ***State of Haryana v. Rattan Singh*** [(1977) 2 SCC 491] is not a condition precedent.”

It was further held:

“12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation’s funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.”

27. In ***Municipal Board, Pratabgarh v. Mahendra Singh Chawla*** [(1982) 3 SCC 331], whereupon reliance has been placed by Mr Bhat, the employee concerned, an overseer, having accepted a paltry amount of Rs. 200 was convicted and sentenced under Section 161 IPC. Upon taking into consideration various circumstances including the fact that he was advanced in age, this Court modified the sentence of dismissal from withholding of back wages from 31-8-1965 till the date of reinstatement. No law had been laid down therein.

28. It is no doubt true, as has been contended by Mr Bhat, in some cases, this Court may not exercise its discretionary jurisdiction under Article 136 of the Constitution, although it may be lawful to do so; but the circumstances mentioned by Mr Bhat for not exercising the said jurisdiction do not appeal to us to accept the said contention.

29. Indiscipline in an educational institution should not be tolerated. Only because the Principal of the institution had not been proceeded against, the same by itself cannot be a ground for not exercising the discretionary jurisdiction by us. It may or may not be that the management was selectively vindictive but no management can ignore a serious lapse on the part of a teacher whose conduct should be an example to the pupils.

30. This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected. With the avowed object of fast industrial growth of

the country, in several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same.

31. In *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engg. Works (P) Ltd.* [(1997) 6 SCC 450], it was held:

“32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily have the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

32. Yet again in *D. Navinchandra and Co. v. Union of India* [(1987) 3 SCC 66], Mukharji, J. (as His Lordship then was) speaking for a three-Judge Bench of this Court stated the law in the following terms:

“Generally legal positions laid down by the court would be binding on all concerned even though some of them have not been made parties nor were served nor any notice of such proceedings given.”

33. For the reasons aforementioned, the impugned judgments cannot be sustained, which are set aside accordingly. The appeals are allowed.

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## ***Scooters India Ltd. v. Labour Court***

AIR 1989 SC 149

### **R.S. PATHAK, C.J. AND S. NATARAJAN, J. -**

1. The special leave petition is directed against the dismissal of Writ Petition No. 2305 of 1986 filed by the petitioner in the High Court of Allahabad against the award of the Labour Court in a reference made to it under Section 4(k) of the U.P. Industrial Disputes Act, 1947 in favour of the respondent employee and substituting the order of termination of service of the respondent by an order of reinstatement together with 75 per cent back wages. The respondent too had filed a writ petition i.e. WP No. 6769 of 1986 to challenge the Labour Court's award insofar as it provided only for 75 per cent back wages instead of full back wages. The High Court heard both the writ petitions together and by a common order dismissed both the petitions. This special leave petition is directed against the dismissal of WP No. 2305 of 1986 and there is no challenge by the respondent against the dismissal of his writ petition WP No. 6769 of 1986.

2. Notice was ordered on the special leave petition and the respondent appeared in person and has filed his affidavit in reply. We have heard the learned counsel for the petitioner as well as the respondent and after a careful consideration of the matter we find that the order of the High Court declining to quash the award passed by the Labour Court does not call for any interference at our hands.

3. It is true that the respondent was issued charge memos on three different occasions viz. 23-3-1981, 30-4-1981 and 21-7-1981, and separate enquiries were held in respect of the charges contained in each of the three charge memos. It is equally true that the charges framed against the respondent pertained to acts of major misconduct. All the charges were held proved in the respective enquiries and the Presiding Officer of the Labour Court has held that the enquiries conformed to the statutory prescriptions and the principles of natural justice and were not vitiated in any manner and as such the findings rendered by the Inquiry Officer and accepted by the Disciplinary Authority were not open to challenge. Even so the Presiding Officer of the Labour Court held as follows:

“Having regard to all these circumstances and the reasons given above I would hold that the order of termination was not justified in the circumstances of this case. I would therefore set aside the order of termination of service and direct that the workman shall be reinstated within one month of the award becoming enforceable. The workman has unfortunately to blame himself for much of the bad blood which has developed between him and the management and therefore his conduct, motivated by ideals which are not relevant has been far from satisfactory. Insofar as it was rough, bordering on rudeness and with highly exaggerated sense of his duties. In these circumstances it will meet the ends of justice if back wages to the extent of 75 per cent are allowed to the workman. I would make my award accordingly but there shall be no order as to costs.”

4. The High Court, while sustaining the award passed by the Labour Court, adverted to Section 6(2- A) of the Act which is analogous to Section 11-A of the Industrial Disputes Act and pointed out that the section confers wide powers on the Labour Court to interfere with an order of discharge or dismissal of a workman and to direct the setting aside of the discharge or dismissal and ordering the reinstatement of the workman on such terms and conditions as it may think fit, including the substitution of any lesser punishment for discharge or dismissal as the circumstances of the case may require and as such the Labour Court was well within its jurisdiction in setting aside the order of termination of services of the respondent and instead ordering his reinstatement together with 75 per cent back wages.

5. Mr. Manoj Swarup, learned counsel for the petitioner contended before us that the order of the High Court suffers from three errors viz. (1) the High Court has proceeded on the basis that there was only one order of termination of service passed against the respondent in respect of all the three enquiries whereas an order of termination of service has been passed on the findings rendered in each one of the

three enquiries; (2) the High Court was in error in taking the view that since the distribution of an offensive pamphlet by the respondent on 19-3-1981 had taken place outside the factory premises para 14.2(13) of the Certified Standing Orders would not be attracted because it refers to distribution or exhibition of offensive handbills, pamphlets etc. inside the factory premises whereas the subversive act complained of would clearly fall under Section 14.2(20) of the Certified Standing Orders; and (3) when the Labour Court had found that the enquiry proceedings had been conducted fairly and they were not vitiated in any manner and as such the findings did not call for any interference, the Labour Court could not be said to have exercised its powers under Section 6(2-A) of the Act in a judicial manner.

6. Insofar as the first contention is concerned, we do not find any merit in it because the order of termination of service refers only to Clause 14.2(13) of the Certified Standing Orders and not to Clause 14.2(20) of the Standing Orders. With reference to the second contention, the High Court has referred in detail in its order to all the three charge-sheets and the findings rendered on those charges and as such the High Court cannot be said to have committed a serious error by mistakenly stating in its judgment as follows :

“The Labour Court after analysing the evidence found that the order of dismissal of the workman was passed on the basis of the first charge-sheet. Separate orders were not passed in regard to the other charge-sheets though the record of other charge-sheets also finds place in the dismissal order.”

7. The High Court has considered at length the nature of the powers conferred on the Labour Court by Section 6(2-A) of the Act for setting aside an order of discharge or dismissal of a workman and substituting it with an order of lesser punishment and as such it cannot be said that the High Court has failed to consider the facts in their entirety. As regards the third contention, we may only state that the Labour Court was not unaware of the nature of the charges framed against the respondent or the findings rendered by the Inquiry Officer and the acceptance of those findings by the Disciplinary Authority. The Labour Court has observed as follows :

“The workman has unfortunately to blame himself for much of the bad blood which has developed between him and the management and therefore his conduct, motivated by ideals which are not relevant has been far from satisfactory. Insofar as it was rough, bordering on rudeness and with highly exaggerated sense of his duties. In these circumstances it will meet the ends of justice if back wages to the extent of 75 per cent are allowed to the workman.”

It cannot therefore be said that the Labour Court had exercised its powers under Section 6(2-A) of the Act in an arbitrary manner and not in a judicial manner. The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner company. It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers under Section 6(2-A) of the Act.

8. For the aforesaid reasons, the special leave petition fails and will stand dismissed. Before parting with the matter, we would however like to observe that we hope and trust that the respondent will conduct himself in future in such a manner as to prove himself to be a dedicated and worthy employee of a public sector concern. It will not only be in the interests of the respondent but in the interests of all the workers as well as the petitioner company if the respondent and all the workers like him perform their duties in such a manner as to promote the interests and welfare of a public sector concern like the petitioner company.

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## ***The Management of Hotel Imperial v. Hotel Workers' Union***

(1960) 1 SCR 476 : AIR 1959 SC 1342

**K.N. WANCHOO, J.** - These are three appeals by special leave from three decisions of the Labour Appellate Tribunal of India. We shall dispose of them by one judgment, as they raise common points. The three appellants are the managements of (1) Imperial Hotel, New Delhi, (2) Maiden's Hotel, Delhi, and (3) Swiss Hotel, Delhi, the respondents being their respective workmen represented by the Hotel Workers' Union, Katra Shahanshahi, Chandni Chowk, Delhi.

2. It seems that disputes were going on between these Hotels and their workmen for some time past about the conditions of labour of the workmen employed therein. Matters seem to have come to a head about the end of September 1955 and a strike of all the workmen in all the three Hotels took place on October 5, 1955. Before this general strike in the three Hotels, there had been trouble in Imperial Hotel only in August 1955. In that connection charge-sheets were served on 22 workmen and an enquiry was held by the management which came to the conclusion that the workmen were guilty of misconduct and therefore decided to dismiss them. Consequently, notices were served on October 4, 1955, upon these workmen informing them that the management had decided to dismiss them subject to obtaining permission under Section 33 of the Industrial Disputes Act, 1947, (hereinafter called the Act). It seems that this action of the management of Imperial Hotel led to the general strike in all the three Hotels on October 5, 1955. Thereupon the three managements issued notices to the workmen on October 5, 1955, directing them to re-join their duties within three hours failing which action would be taken against them. As the workmen did not join within this time, fresh notices were issued the same day asking them to show cause why disciplinary action should not be taken against them. In the meantime they were informed that they would be under suspension. On October 7, 1955, the three managements issued notices to the workmen informing them that it had been decided to dismiss them and that they were being suspended pending the obtaining of permission under Section 33 of the Act.

3. As the disputes between the Hotels and their workmen were already under consideration of Government, an order of reference was made on October 12, 1955, relating to Imperial Hotel. In this reference a large number of matters were referred to adjudication including the case of 22 workman whom the management of the Hotel had decided to dismiss on October 4, 1955. This reference with respect to Imperial Hotel, however, did not refer to the workmen whom the management had decided to dismiss on October 7, 1955. Further enquiries seem to have been made by the management in this connection and eventually it was decided to confirm the action taken on October 7 with respect to nineteen workmen. These nineteen workmen had in the meantime applied under Section 33-A of the Act on the ground that they had been suspended without pay for an indefinite period and had thus been punished in breach of Section 33. Thus the dispute so far as Imperial Hotel is concerned was with respect to 44 workmen in all, 25 of whom were included in the reference of October 12, 1955, and the remaining 19 had filed an application under Section 33-A of the Act. It does not appear, however, that Imperial Hotel made any application under Section 33 of the Act for permission to dismiss these 19 workmen, though an application under that section was made on October 22, 1955, with respect to 22 workmen whose dismissal was decided upon on October 4, 1955.

4. So far as Maiden's Hotel is concerned, the case relates to 26 workmen whose dismissal was finally considered by the management to be necessary on further enquiry after October 7, 1955. An order of reference was made in the case of this Hotel on November 23, 1955, in which the case of 26 workmen was referred to the Tribunal along with other matters. Later, however, 12 of these workmen were re-employed on December 10, 1955, and the real dispute therefore so far as this Hotel is concerned related to 14 workmen.

5. In the case of Swiss Hotel also there were further enquiries after the notices of October 7. In the meantime, an application was made under Section 33-A of the Act by the Union to the conciliation

officer. Eventually, it appears that on November 10, 1955, reference was made with respect to 14 workmen to the Tribunal for adjudication.

6. We now come to the proceedings before the Industrial Tribunal. In all three cases, applications were filed on behalf of the workmen for interim relief, the date of the application being October 22 in case of Imperial Hotel and November 26 in case of Maiden's Hotel and Swiss Hotel. Replies to these applications were filed by the managements on December 5, 1955. On the same day, the Industrial Tribunal passed an order granting interim relief. In the case of Imperial Hotel, it ordered that 43, out of 44 workmen, who had applied for interim relief should be paid their wages plus a sum of Rs 25 per month per head in lieu of food till final decision in the matter of the dismissal of these workmen. In the case of Maiden's Hotel, the management was prepared to take back 12 workmen and they were ordered to report for duty on or before December 10, 1955. It was also ordered that these 12 workmen till they were re-employed and the "remaining" 13 workmen till the decision of their case would be paid by way of interim relief their wages from October 1, 1955, plus Rs 25 per month per head in lieu of food. No order was passed with respect to the 26th workman, namely, Chiranjilal sweeper. In the case of Swiss Hotel, the management was prepared to take back six of the workmen and they were ordered to report for duty on or before December 10, 1955. In other respects, the order was in the same terms as in the case of Maiden's Hotel.

7. Then followed three appeals by the three Hotels against the three orders granting interim relief. These appeals were dismissed by the Labour Appellate Tribunal on May 28, 1956. Thereupon the three Hotels applied for special leave to appeal to this Court, which was granted. They also applied for stay of the order of the Industrial Tribunal relating to payment of wages plus Rs 25 per month per head in lieu of food. Stay was granted by this court on June 5, 1956, on condition that the employers would pay to the employees a sum equal to half of the amount adjudged payable by the orders dated December 5, 1955, in respect of the arrears accrued due till then and continue to pay in the same proportion in future until determination of the dispute between the parties. It appears that after this order of June 5, 1956, even those workmen who had not been re-employed after the order of December 5, 1955, were taken back in service on July 15, 1956, by the three Hotels. Thus, 2 workmen in the case of Swiss Hotel, 13 workmen in the case of Maiden's Hotel and 43 workmen in the case of Imperial Hotel were taken back in service.

8. The main contentions on behalf of the Hotels are two, namely, (1) are any wages payable at all to workmen who are suspended pending permission being sought under Section 33 of the Act for their dismissal?, and (2) is an Industrial Tribunal competent to grant interim relief without making an interim award which should have been published?

***Re (1)*** - 9. The contention of the appellants under this head is that suspension of the workmen pending permission under Section 33 of the Act imposes an absolute bar to the payment of any wages to the suspended workmen. On the other hand, it is contended on behalf of the respondents that suspension of workmen involving non-payment of wages is not contemplated at all under the ordinary law of master and servant in the absence of an express term in the contract of employment to that effect; and as in these cases there were admittedly no standing orders providing suspension without payment of wages, it was not open to the appellants to withhold wages as the orders of suspension made in these cases merely amounted to this that the employers were not prepared to take work from the workmen. Even so, the right of the workmen to receive wages remained and the employer was bound to pay the wages during the period of so-called suspension. The Industrial Tribunal as well as the Appellate Tribunal took the view that in the absence of an express term in the contract of employment, wages could not be withheld, even though the employer might suspend the workman in the sense that he was not prepared to take any work from them.

10. The first question therefore that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary law of master and servant. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute

governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. These principles of the ordinary law of master and servant are well settled and have not been disputed before us by either party.

11. The next question that falls for consideration is whether these principles also apply to a case where the master has decided to dismiss a servant, but cannot do so at once as he has to obtain the permission necessary under Section 33 of the Act and therefore suspends the workman till he gets such permission. This brings us to the sphere of industrial law. Ordinarily, if Section 33 of the Act did not intervene, the master would be entitled to exercise his power of dismissing the servant in accordance with the law of master and servant and payment of wages would immediately cease as the contract would come to an end. But Section 33 of the Act has introduced a fundamental change in the law of master and servant so far as cases which fall within the Act are concerned. It has therefore to be seen whether Industrial Tribunals which are dealing with the matter under the Act must follow the ordinary law of master and servant as indicated above or can imply a term in the contract in the peculiar circumstances supervening under Section 33 of the Act, to the effect that where the master has concluded his enquiry and come to the decision that the servant should be dismissed and thereupon suspends him pending permission under Section 33, he has the power to order such suspension, which would result in temporarily suspending the relation of master and servant, so that the servant is not bound to render service and the master is not bound to pay wages. The power of Industrial Tribunal in matters of this kind arising out of industrial disputes was considered by the Federal Court in ***Western India Automobile Association v. Industrial Tribunal, Bombay*** [(1949) FCR 321] and the following observations of Mahajan, J. (as he then was) at p. 345 are apposite:

“Adjudication does not, in our opinion, mean adjudication according to the strict law of master and servant. The award of the tribunal may contain provisions for settlement of a dispute which no court could order if it was bound by ordinary law, but the tribunal is not fettered in any way by these limitations. In Volume 1 of ***Labour Disputes and Collective Bargaining*** by Ludwig Teller, it is said at p. 536 that industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements. In our opinion, it is a true statement about the functions of an Industrial Tribunal in labour disputes.”

12. This Court in ***Rohtas Industries Ltd. v. Brijnandan Pandey*** [(1956) SCR 800] also recognised the correctness of the dictum laid down in the above Federal Court decision and observed that there was a distinction between commercial and industrial arbitration, and after referring to the same passage in ***Labour Disputes and Collective Bargaining*** by Ludwig Teller (Vol. 1, p. 536), proceeded to lay down as follows at p. 810:

“A court of law proceeds on the footing that no power exists in the courts to make contracts for people; and the parties must make their own contracts. The courts reach their limit of power when they enforce contracts which the parties have made. An Industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and to prevent unfair practice or victimisation.”

13. It is clear therefore that Industrial Tribunals have the power to go beyond the ordinary law of master and servant, if circumstances justify it. In these cases the decision of the Labour Appellate Tribunal has proceeded strictly on the basis of the ordinary law of master and servant without regard to



the fundamental change introduced in that law by the enactment of Section 33 of the Act. All the cases to which we have been referred with respect to the ordinary law of master and servant had no occasion to consider the impact of Section 33 of the Act on that law as to the power of the master to suspend. We have, therefore, to see whether it would be reasonable for an Industrial Tribunal where it is dealing with a case to which Section 33 of the Act applies, to imply a term in the contract giving power to the master to suspend a servant when the master has come to the conclusion after necessary enquiry that the servant has committed misconduct and ought to be dismissed, but cannot do so because of Section 33. It is urged on behalf of the respondents that there is nothing in the language of Section 33 to warrant the conclusion that when an employer has to apply under it for permission, he can suspend the workmen concerned. This argument, however, begs the question because if there were any such provision in Section 33, it would be an express provision in the statute authorising such suspension and no further question of an implied term would arise. What we have to see is whether in the absence of an express provision to that effect in Section 33, it will be reasonable for an Industrial Tribunal in these extraordinary circumstances arising out of the effect of Section 33 to imply a term in the contract giving power to the employer to suspend the contract of employment, thus relieving himself of the obligation to pay wages and relieving the servant of the corresponding obligation to render service. We are of opinion that in the peculiar circumstances which have arisen on account of the enactment of Section 33, it is but just and fair that Industrial Tribunals should imply such a term in the contract of employment.

14. This Court had occasion to consider this matter in four cases, though the point was not specifically argued in the manner in which it has been argued before us now. But a consideration of these cases will show that, though the point was not specifically argued, the view of this Court has consistently been that in such cases a term should be implied giving power to the master to suspend the contract of employment after he has come to the conclusion on a proper enquiry that the servant should be dismissed and has to apply to the tribunal for permission under Section 33.

15. In *Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup* [(1956) SCR 916], there was a provision in the standing orders for suspension for four days without pay. In actual fact, however, the employer in that case after having come to the conclusion that the employees should be dismissed suspended them without pay pending permission of the tribunal and it was held that such suspension was not punishment, even though it exceeded four days. This was the main point which was under consideration in that case; but it was further observed that such a suspension was only an interim measure and would last till the application for permission to punish the workman was made and the tribunal had passed orders thereon. If the permission was accorded the workman would not be paid during the period of suspension; but if the permission was refused, he would have to be paid for the whole period.

16. In *Management of Ranipur Colliery v. Bhuban Singh*, it was pointed out that but for this ban the employer would have been entitled to dismiss the employee immediately after the completion of his enquiry on coming to the conclusion that the employee was guilty of misconduct. The contract of service would thus be brought to an end by an immediate dismissal after the conclusion of the enquiry and the employee would not be entitled to any further wages. But Section 33 steps in and stops the employer from dismissing the employee immediately on the conclusion of his enquiry and compels him to seek permission of the tribunal. It was, therefore, reasonable that the employer having done all that he could do to bring the contract of service to an end should not be expected to continue paying the employee thereafter. It was pointed out that in such a case the employer would be justified in suspending the employee without pay as the time taken by the tribunal to accord permission under Section 33 of the Act was beyond the control of the employer. Lastly, it was pointed out that this would not cause any hardship to the employee; for if the tribunal granted permission, the employee would not get anything from the date of his suspension without pay, while if the permission was refused he would be entitled to his back wages from such date. *Lakshmi Devi Sugar Mills Ltd.* was referred to and it was explained that the principle laid down in that case would only apply where Section 33 would be applicable.

19. It is urged on behalf of the respondents that there were at any rate some standing orders, particularly in *Lakshmi Devi Sugar Mills Ltd* and *Management of Ranipur Colliery*, [CA 768 of 1957, decided on April 20, 1959], giving power to suspend for some period of time and therefore further suspension might be justified on the basis of those standing orders. In the case of *Sasa Musa Sugar Works (P) Ltd.*, [CAs 746 & 747 of 1957, decided on April 29, 1959], however, there were no standing orders till then in force. The ratio of the decision in these cases was, however, not based on the presence or absence of the standing orders; for there is very little difference in principle between the cases where standing orders provided a few days suspension without pay and the suspension was continued for a much longer period and where there were no standing orders providing suspension without pay. We are of opinion that though these cases did not expressly proceed on the basis of an implied term in the contract of employment to suspend the employee and thus suspend the relation of master and servant temporarily, that must be the implicit basis on which these decisions were given. But for such a term being implied, it would not be possible at all to lay down, as was laid down in these cases, that if a proper enquiry had been held and the employer had decided to dismiss the workman and apply for permission and in consequence had suspended the workman, there would be no obligation on him to pay wages from the date of suspension if permission was accorded to him under Section 33. We are, therefore, of opinion that the ordinary law of master and servant as to suspension can be and should be held to have been modified in view of the fundamental change introduced by Section 33 in that law and a term should be implied by Industrial Tribunals in the contract of employment that if the master has held a proper enquiry and come to the conclusion that the servant should be dismissed and in consequence suspends him pending the permission required under Section 33, he has the power to order such suspension, thus suspending the contract of employment temporarily, so that there is no obligation on him to pay wages and no obligation on the servant to work. In dealing with this point the basic and decisive consideration introduced by Section 33 must be borne in mind. The undisputed common law right of the master to dismiss his servant for proper cause has been subjected by Section 33 to a ban; and that in fairness must mean that, pending the removal of the said statutory ban, the master can after holding a proper enquiry temporarily terminate the relationship of master and servant by suspending his employee pending proceedings under Section 33. It follows therefore that if the tribunal grants permission, the suspended contract would come to an end and there will be no further obligation to pay any wages after the date of suspension. If, on the other hand, the permission is refused, the suspension would be wrong and the workman would be entitled to all his wages from the date of suspension.

20. This, however, does not conclude the matter so far as the grant of interim relief in these cases is concerned. Even though there may be an implied term giving power to the employer to suspend a workman in the circumstances mentioned above, it would not affect the power of the tribunal to grant interim relief, for such a power of suspension in the employer would not, on the principles already referred to above, take away the power of the tribunal to grant interim relief if such power exists under the Act. The existence of such an implied term cannot bar the tribunal from granting interim relief if it has the power to do so under the Act. This brings us to the second point, which has been canvassed in these appeals.

**Re (2:)** 21. After a dispute is referred to the tribunal under Section 10 of the Act, it is enjoined on it by Section 15 to hold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate Government. An “award” is defined in Section 2(b) of the Act as meaning “an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto”. Where an order referring an industrial dispute has been made specifying the points of dispute for adjudication, the tribunal has to confine its adjudication to those points and *matters incidental thereto*; [Section 10(4)]. It is urged on behalf of the appellants that the Tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no force in this argument, in view of the words “incidental thereto” appearing in Section 10(4). There can be no doubt that if, for example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of

granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under Section 10(4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.

22. The next question is as to how the tribunal should proceed in the matter if it decides to grant interim relief. The definition of the word “award” shows that it can be either an interim or final determination either of the whole of the dispute referred to the tribunal or of any question relating thereto. Thus it is open to the tribunal to give an award about the entire dispute at the end of all proceedings. This will be final determination of the industrial dispute referred to it. It is also open to this tribunal to make an award about some of the matters referred to it whilst some others still remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by Section 17. Such awards are however not in the nature of interim relief for they decide the industrial dispute or some question relating thereto. Interim relief, on the other hand, is granted under the power conferred on the tribunal under Section 10(4) with respect to matters incidental to the points of dispute for adjudication.

23. It is, however, urged on behalf of the appellants that even if the Tribunal has power under Section 10(4) of the Act to grant interim relief of the nature granted in these cases it can only do so by submitting an award under Section 15 to the appropriate Government. Reference in this connection is made to Sections 15, 17 and 17-A of the Act. It is submitted that as soon as the tribunal makes a determination whether interim or final, it must submit that determination to government which has to publish it as an award under Section 17 and thereafter the provisions of Section 17-A will apply. In reply the respondents rely on a decision of the Labour Appellate Tribunal in *Allen Berry and Co Ltd. v. Workmen* [(1951) 1 LLJ 228], where it was held that an interim award had not to be sent like a final award to the Government for publication and that it would take effect from the date of the order. We do not think it necessary to decide for present purposes whether an order granting interim relief of this kind is an award within the meaning of Section 2(b) and must therefore be published under Section 17. We shall assume that the interim order passed by the Tribunal on December 5, 1955, could not be enforced as it was in the nature of an award and should have been submitted to the Government and published under Section 17 to become enforceable under Section 17-A. It is however, still open to us to consider whether we should pass an order giving interim relief in view of this alleged technical defect in the order of the Industrial Tribunal. We have the power to grant interim relief in the same manner as the Industrial Tribunal could do and our order need not be sent to government for publication, for Sections 15, 17 and 17-A do not apply to the order of this Court just as they did not apply to the decision of the Appellate Tribunal which was governed by the Industrial Disputes (Appellate Tribunal) Act, 1950, (48 of 1950), (since repealed). We have already mentioned that this court passed an order on June 5, 1956, laying down conditions on which it stayed the operation of the order of December 5, 1955, made by the Industrial Tribunal. We are of opinion that that order is the right order to pass in the matter of granting interim relief to the workmen in these cases. Ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. In fairness to the Industrial Tribunal and the Appellate Tribunal we must say that they granted the entire wages plus Rs 25 per mensem per head in lieu of food on the view that no suspension was possible at all in those cases and therefore the contract of service continued and full wages must be paid. Their orders might have been different if they had held otherwise. It seems to us just and fair in the circumstances therefore to order that the appellants shall pay to their respective workmen concerned half the amount adjudged payable by the order dated December 5, 1955, with respect to the entire period, as the case may be, from October 1, 1955 to December 10, 1955 or July 15, 1956, by which date, as we have already pointed out, practically all the workmen were taken back in service. We, therefore, order accordingly.

24. Lastly, it is urged on behalf of the respondents that as all the workmen concerned were taken back in service they should be paid full wages for the interim period as their re-employment means that the decision to dismiss them and the consequent order of suspension were waived. This is a matter on which

we do not propose to express any opinion. The proceedings are so far at the initial stage and the effect of re-employment, in the absence of full facts, on the question of waiver cannot be determined at this stage. It is enough to point out that the order we have passed above is an interim relief and it will be liable to be modified one way or the other, when the Industrial Tribunal proceeds to make the final determination of the questions referred to it in the light of the observations we have made on the matter of suspension. The appeals are partly allowed and the order dated December 5, 1955, granting interim relief is modified in the manner indicated above. In the circumstances, we order the parties to bear their own costs of this Court. As more than three years have gone by in these preliminaries since the references were made, we trust that the Industrial Tribunal will now dispose of the matter as expeditiously as possible.

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***Fakirbhai Fulabhai Solanki v. Presiding Officer***

(1986) 3 SCC 131 : AIR 1986 SC 1168

**E.S. VENKATARAMIAH, J.** - 2. During the pendency of a reference made under the Industrial Disputes Act, 1947 to the Industrial Tribunal, Gujarat the management served a charge-sheet on the appellant who was one of the workmen working in the factory belonging to the management of the Alembic Chemical Works Co. Ltd., Baroda asking him to show cause why disciplinary action should not be taken against him for an alleged act of misconduct said to have been committed by him on July 12, 1979. The act of misconduct attributed to the appellant was that he was playing cards along with two other workmen during the working hours of the factory. It was alleged that the appellant had given a letter addressed to Shri R.A. Desai, Manager, Industrial Relations, Alembic Chemical Works Co. Ltd. admitting his guilt and tendering apology. The disciplinary enquiry was held against all the three workmen including the appellant. At the conclusion of the enquiry the appellant was found guilty of the act of misconduct alleged to have been committed by him by the Inquiry Officer Shri J.N. Patel, Director (Manufacturing) of the Alembic Chemical Works Co. Ltd. and it was decided by the management to dismiss him but because the appellant was a protected workman as defined in the Explanation to sub-section (3) of Section 33 of the Act and the permission of the Tribunal had to be obtained before dismissing him as required by sub-section (3) of Section 33 of the Act, the management made an Application (IT) No. 88 of 1979 before the Tribunal for such permission. The appellant was, however, suspended from service with effect from August 13, 1979 pending disposal of the application before the Tribunal after he had been found guilty at the domestic enquiry but without any wages or allowances. The appellant also filed an application before the Tribunal under Section 33-A of the Act complaining violation of Section 33 of the Act by the management. The complaint of the appellant was registered as Complaint (IT) No. 124 of 1979 in Reference (IT) No. 434 of 1978. Both, the application under Section 33(3) of the Act and the complaint under Section 33-A of the Act, were filed in the year 1979. The Tribunal was able to dispose of them finally only on August 5, 1985. The Tribunal granted permission to the management to dismiss the appellant and rejected the complaint filed by him. Aggrieved by the said decision of the Tribunal the appellant has filed these two appeals.

3. In the standing orders governing the appellant there was no provision for payment of any subsistence allowance (either the whole of the allowance which the workman was entitled to draw or a part thereof) during the pendency of an application made by the management under Section 33(3) of the Act for permission to dismiss a protected workman. Admittedly the appellant was not paid any allowance from August 13, 1979 to August 5, 1985 on which date the Tribunal accorded its permission to the management to dismiss him from service.

4. In these appeals the learned counsel for the appellant has confined his submission to the effect of non-payment of any subsistence allowance on the decision of the Tribunal under Section 33(3) of the Act. It is urged by the learned counsel for the appellant that since the appellant was denied the subsistence allowance it was not possible for him to defend himself effectively before the Tribunal in the proceedings relating to the permission prayed for by the management under Section 33(3) of the Act and, therefore, the permission accorded by the Tribunal was vitiated. In support of his case he has relied upon the decision of this Court in *State of Maharashtra v. Chandrabhan Tale* [(1983) 3 SCC 387]. In that case the respondent Chandrabhan Tale was a government servant. He was convicted and sentenced to imprisonment by the trial court in a criminal case. He filed an appeal against his conviction and sentence and remained on bail throughout without undergoing the sentence of imprisonment. He was, however, kept under suspension pending trial of the criminal case and was paid normal subsistence allowance under the main Rule 21 of the Bombay Civil Services Rules, 1959 from the date of his suspension until the date "on which he was convicted and sentenced to imprisonment by the trial court. But from the date of his conviction the subsistence allowance was reduced to the nominal sum of Re 1 per month under the second proviso to Rule 15(1)(ii)(b) of the Bombay Civil Services Rules, 1959. The order reducing his subsistence allowance was questioned in this Court in the above case. The Court held that the second proviso to Rule

15(1)(ii)(b) of the Bombay Civil Services Rules, 1959 which directed the reduction of the subsistence allowance to Re 1 per month was unreasonable and void. The Court further held that a civil servant under suspension was entitled to the normal subsistence allowance even after his conviction by the trial court pending consideration of his appeal filed against his conviction until the appeal was disposed of finally one way or the other, whether he was on bail or lodged in prison on conviction by the trial court. Relying upon the above decision the learned counsel for the appellant contended that there was denial of reasonable opportunity to the appellant to defend himself before the Tribunal in the proceedings initiated by the application made under Section 33(3) of the Act.

5. Sub-section (3) of Section 33 of the Act provides that notwithstanding anything contained in sub-section (2) thereof no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute - (a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; before or (b) by discharging or punishing whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending. It follows from the provisions of sub-section (3) of Section 33 of the Act that the workman does not cease to be a workman until the Tribunal grants permission to dismiss the workman and the management dismisses the workman pursuant to such permission. An order of suspension by itself does not put an end to the employment. The workman continues to be an employee during the period of suspension and it is for this reason ordinarily the various standing orders in force in several factories and industrial establishments provide for payment of subsistence allowance which is normally less than the usual salary and allowance that are paid to the workman concerned. An order of suspension no doubt prevents the employee from rendering his service but it does not put an end to the relationship of master and servant between the management and the workman. When an application is made under Section 33(3) of the Act the workman is entitled to defend himself before the Tribunal. In these proceedings it is open to him to show that the domestic enquiry held against him was not in accordance with law and principles of natural justice and the action proposed to be taken against him by the management is unjust and should not be permitted. Sometimes it may be necessary to either of the parties to lead evidence even before the Tribunal. The proceedings before the Tribunal very often take a long time to come to an end. In this very case the proceedings were pending before the Tribunal for nearly six years. Most of the workmen are not in a position to maintain themselves and the members of their families during the pendency of such proceedings. In addition to the cost of maintenance of his family the workman has to find money to meet the expenses that he has to incur in connection with the proceedings pending before the Tribunal. In this case the appellant was in receipt of salary and allowances till the end of the disciplinary enquiry. But from August 13, 1979 he was not paid even the barest subsistence allowance till August 5, 1985 when the Tribunal passed its order/award on the application of the management and the complaint of the appellant. It is true that in the instant case the Tribunal granted the application of the management and rejected the complaint of the appellant. It was also quite possible that the Tribunal could have rejected the application of the management and upheld the complaint of the appellant in which case the appellant would have been entitled to continue to be an employee under the management of the factory and the disciplinary enquiry had against him would have had no effect at all. Because it is difficult to anticipate the result of the application made before the Tribunal it is reasonable to hold that the workman against whom the application is made should be paid some amount by way of subsistence allowance to enable him to maintain himself and the members of his family and also to meet the expenses of the litigation before the Tribunal. And if no amount is paid during the pendency of such an application it has to be held that the workman concerned has been denied a reasonable opportunity to defend himself in the proceedings before the Tribunal. Such denial leads to violation of principles of natural justice and consequently vitiates the proceedings before the Tribunal under sub-section (3) of Section 33 of the Act and any decision given in those proceedings against the workman concerned. No material has been placed before us in this case to show that the appellant had sufficient means to defend himself before the Tribunal.

6. The learned counsel for the management however relied upon the decision of this Court in *Management of Hotel Imperial, New Delhi v. Hotel Workers' Union* [AIR 1959 SC 1342]. In that case this Court was mainly concerned with the right of the management to suspend a workman where the management had taken a decision to dismiss him but could not immediately give effect to such decision owing to the restriction imposed by Section 33(1) of the Act which required the management to obtain the permission of the Tribunal when a reference was pending adjudication before it. In that case this Court observed at pp. 485, 488-89 thus:

“We have, therefore, to see whether it would be reasonable for an Industrial Tribunal where it is dealing with a case to which Section 33 of the Act applies, to imply a term in the contract giving power to the master to suspend a servant when the master has come to the conclusion after necessary enquiry that the servant has committed misconduct and ought to be dismissed, but cannot do so because of Section 33. It is urged on behalf of the respondents that there is nothing in the language of Section 33 to warrant the conclusion that when an employer has to apply under it for permission he can suspend the workmen concerned. This argument, however, begs the question because if there were any such provision in Section 33, it would be an express provision in the statute authorising such suspension and no further question of an implied term would arise. What we have to see is whether in the absence of an express provision to that effect in Section 33, it will be reasonable for an Industrial Tribunal in these extraordinary circumstances arising out of the effect of Section 33 to imply a term in the contract giving power to the employer to suspend the contract of employment, thus relieving himself of the obligation to pay wages and relieving the servant of the corresponding obligation to render service. We are of opinion that in the peculiar circumstances which have arisen on account of the enactment of Section 33, it is but just and fair that Industrial Tribunals should imply such a term in the contract of employment....

We are, therefore, of opinion that the ordinary law of master and servant as to suspension can be and should be held to have been modified in view of the fundamental change introduced by Section 33 in that law and a term should be implied by Industrial Tribunals in the contract of employment that if the master has held a proper enquiry and come to the conclusion that the servant should be dismissed and in consequence suspends him pending the permission required under Section 33 he has the power to order such suspension, thus suspending the contract of employment temporarily, so that there is no obligation on him to pay wages and no obligation on the servant to work. In dealing with this point the basic and decisive consideration introduced by Section 33 must be borne in mind. The undisputed common law right of the master to dismiss his servant for proper cause has been subjected by Section 33 to a ban; and that in fairness must mean that, pending the removal of the said statutory ban, the master can after holding a proper enquiry temporarily terminate the relationship of master and servant by suspending his employee pending proceedings under Section 33. It follows therefore that if the tribunal grants permission, the suspended contract would come to an end and there will be no further obligation to pay any wages after the date of suspension. If, on the other hand, the permission is refused, the suspension would be wrong and the workmen would be entitled to all his wages from the date of suspension.”

7. In the above decision it was laid down that the management should be deemed to possess the power to suspend an employee in respect of whom a decision had been taken to dismiss him but an application for permission had to be filed until the application for permission was decided. The court in giving the above decision also relied on an earlier decision of the court in *Rampur Colliery v. Bhuban Singh* [AIR 1959 SC 833]. In that case it was pointed out that but for the ban on the employer by Section 33(1) the employer would have been entitled to dismiss the employee immediately after the completion of his enquiry on coming to the conclusion that the employee was guilty of misconduct but Section 33 stepped in and stopped the employer from dismissing the employee immediately on the conclusion of his enquiry and compelled him to seek permission of the Tribunal. It was, therefore, held that it was reasonable that the employer having done all that he could do to bring the contract of service to an end should not be

expected to continue paying the employee thereafter. It was pointed out that in such a case the employer would be justified in suspending the employee without pay as the time taken by the Tribunal to accord permission under Section 33 of the Act was beyond the control of the employer. Lastly, it was observed that this would not cause any hardship to the employee for if the Tribunal granted permission the employee would not get anything from the date of his suspension without pay while if the permission was refused he would be entitled to his back wages from such date.

8. But in neither of the above two decisions the court considered the question from the angle from which we have approached the problem. In neither of them the court had the occasion to consider whether the denial of payment of subsistence allowance during the pendency of the proceedings under Section 33(3) of the Act would amount to violation of principles of natural justice. They approached the question from the angle of the common law right of a master to keep a workman under suspension either during the pendency of a domestic enquiry into an act of misconduct alleged to have been committed by a workman or during the pendency of an application under Section 33 of the Act. Those were perhaps halcyon days when such applications were being disposed of quickly. If the court had realised that such applications would take nearly six years as it has happened in this case their view would have been different. An unscrupulous management may by all possible means delay the proceedings so that the workman may be driven to accept its terms instead of defending himself in the proceedings under Section 33(3) of the Act. To expect an ordinary workman to wait for such a long time in these days is to expect something which is very unusual to happen. Denial of payment of at least a small amount by way of subsistence allowance would amount to gross unfairness.

9. Apart from the violation of the principles of natural justice, the very concept of the relationship of master and servant has undergone a sea-change since the date on which *Hotel Imperial* case was decided. We have pointed out that in that case this Court recognised the power of suspension without pay vested in the management after it had decided to dismiss an employee where it had to make an application for permission under Section 33(1) of the Act. The case falling under Section 33(1) of the Act is not in any way different from a case falling under sub-section (3) of Section 33 and in both these cases previous permission of the authority concerned should be obtained before any action is taken against the workman concerned unlike a case falling under Section 33(2) (b) of the Act where only its approval to an action already taken is required to be sought. This Court further observed in the above decision that the management could relieve itself of the obligation to pay wages during the period of such suspension. Now what is the effect of suspension? Does it put an end to the relationship of master and servant altogether? It does not. This Court has in its subsequent decision in *Khem Chand v. Union of India* [AIR 1963 SC 687 at 236-37] observed thus:

“An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension.... The real effect of the order of suspension is that though he continued to be a member of the government service he was not permitted to work, and further, during the period of his suspension he was paid only some allowance - generally called “subsistence allowance” - which is normally less than his salary - instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects a government servant injuriously. There is no basis for thinking however that because of the order of suspension he ceases to be a member of the service.”

10. If the order passed at the conclusion of domestic enquiry is only one of suspension (even though the management has decided to dismiss him) where the workman has a chance of being reinstated with back wages on the permission being refused under Section 33(3) of the Act, it cannot be said that the workman is not entitled to any monetary relief at all. In such a case the right of the workman to receive some reasonable amount which may be fixed either by the standing orders or in the absence of any standing order by the authority before which the application is pending by way of subsistence allowance during the pendency of the application under Section 33(3) of the Act with effect from the date of



suspension should be implied as a term of the contract of employment having regard to the observations made in ***Khem Chand*** case. In the two earlier decisions referred to above this aspect of the matter has not been considered.

\* \* \* \* \*

## ***Ram Lakhan v. Presiding Officer***

(2000) 10 SCC 201

**S. SAGHIR AHMAD, J.** - 2. The appellants were the employees of Swatantra Bharat Mill against whom charge-sheets were issued in the year 1986 and they were subsequently suspended.

3. Since an industrial dispute was already pending before the Industrial Tribunal vide Delhi Administration Notification No. F-24(798)/94-Lab dated 1-4-1986, an application was filed by the Management under Section 33(1) of the Industrial Disputes Act, 1947 for permission to dismiss the employees on completion of inquiry. This application was opposed by the appellants who filed objections and claimed that they were entitled to be paid subsistence allowance during the pendency of the disciplinary proceedings for the period of suspension. On this, the Tribunal framed the following preliminary issue:

“At what rate, if any, the Management is to pay the subsistence allowance to the workman.”

4. The Presiding Officer, Industrial Tribunal, Tis Hazari, Delhi, relying upon the decision of this Court in ***Hotel Imperial v. Hotel Workers’ Union*** [AIR 1959 SC 1342], dismissed the objections of the appellants and held that they were not entitled to any subsistence allowance. The appellants thereafter filed writ petitions in the High Court of Delhi which were dismissed by the impugned judgment reading as under:

“In view of the decision of the larger Bench of the Supreme Court in the case of ***Hotel Imperial v. Hotel Workers’ Union***, we are not inclined to interfere in this petition.  
Dismissed.”

5. It appears that the decision of this Court in ***Fakirbhai Fulabhai Solanki v. Presiding Officer***, AIR 1986 SC 1168, was cited before the High Court, but it did not follow the decision and preferred to follow the judgment in ***Hotel Imperial*** case.

6. This Court, while entertaining these appeals had passed the following order on 2-1-1996:

“In view of the fact that the judgment in ***Hotel Imperial*** case was rendered by a three-Judge Bench, we consider it appropriate that these petitions be listed before a three-Judge Bench. Appropriate order from the Hon’ble the Chief Justice may be obtained in this behalf.

In the event the special leave petitions cannot be listed within the next two weeks, the application for interim stay may be put up before the three-Judge Bench within that period.”

7. It is in these circumstances that the matter has come up before us.

8. In ***Hotel Imperial*** case, this Court had laid down as under:

“We have, therefore, to see whether it would be reasonable for an Industrial Tribunal where it is dealing with a case to which Section 33 of the Act applies, to imply a term in the contract giving power to the master to suspend a servant when the master has come to the conclusion after necessary inquiry that the servant has committed misconduct and ought to be dismissed, but cannot do so because of Section 33. It is urged on behalf of the respondents that there is nothing in the language of Section 33 to warrant the conclusion that when an employer has to apply under it for permission, he can suspend the workmen concerned. This argument, however, begs the question because if there were any such provision in Section 33, it would be an express provision in the statute authorising such suspension and no further question of an implied term would arise. What we have to see is whether in the absence of an express provision to that effect in Section 33, it will be reasonable for an Industrial Tribunal in these extraordinary circumstances arising out of the effect of Section 33 to imply a term in the contract giving power to the employer to suspend the contract of employment, thus relieving himself of the obligation to pay wages and relieving the servant of the corresponding obligation to render service. We are of the opinion that

in the peculiar circumstances which have arisen on account of the enactment of Section 33, it is but just and fair that Industrial Tribunals should imply such a term in the contract of employment.

We are, therefore, of opinion that the ordinary law of master and servant as to suspension can be and should be held to have been modified in view of the fundamental change introduced by Section 33 in that law and a term should be implied by Industrial Tribunals in the contract of employment *that if the master has held a proper inquiry and come to the conclusion that the servant should be dismissed and in consequence suspends him pending the permission required under Section 33, he has the power to order such suspension, thus suspending the contract of employment temporarily, so that there is no obligation on him to pay wages and no obligation on the servant to work.* In dealing with this point the basic and decisive consideration introduced by Section 33 must be borne in mind. The undisputed common law right of the master to dismiss his servant for proper cause has been subjected by Section 33 to a ban; and that in fairness must mean that, pending the removal of the said statutory ban, the master can after holding a proper inquiry temporarily terminate the relationship of master and servant by suspending his employee pending proceedings under Section 33. It follows therefore that if the Tribunal grants permission, the suspended contract would come to an end and there will be no further obligation to pay any wages after the date of suspension. If, on the other hand, the permission is refused, the suspension would be wrong and the workman would be entitled to all his wages from the date of suspension.”

9. This Court in ***Hotel Imperial*** case was thus concerned with the preliminary question whether the Management during the pendency of its application under Section 33(1) of the Industrial Disputes Act can legally suspend the employees after holding a proper departmental enquiry. The question whether an employee would be entitled to subsistence allowance during the period of suspension was not directly involved in that case, in which it was held that if the master had held a proper inquiry and come to the conclusion that the servant was to be dismissed and in consequence thereof suspends him pending the permission required under Section 33, he could legally do so with the result that the contract of employment would stand suspended temporarily so that “there would be no obligation on him to pay wages and no obligation on the servant to work”. This observation reflects the well-recognised rule that when an employee is suspended, he does not get full wages and he is also not put on duty. He gets only reduced salary (subsistence allowance), prescribed by the rules.

10. The view expressed in ***Hotel Imperial*** case was reiterated in ***T. Cajee v. U. Jormanik Siem*** [AIR 1961 SC 276]. To the same effect is the decision of this Court in ***R.P. Kapur v. Union of India*** [AIR 1964 SC 787]. Thereafter, the Court rendered its decision in ***Balvantrai Ratilal Patel v. State of Maharashtra*** [AIR 1968 SC 800], in which it was laid down that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It was further observed that the power to suspend, in the sense of a right to forbid an employee to work, is not an implied term in an ordinary contract between master and servant and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. The Court further observed that the absence of such a power either as an express term in the contract or in the rules framed under some statute would mean that an employer would have no power to suspend an employee and if he does so, in the sense that he forbids the employee to work, he will have to pay the employee’s wages during the period of suspension. The Court also came to the conclusion that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld.

11. The whole case-law was reviewed by this Court in ***V.P. Gidroniya v. State of M.P.***, [AIR 1970 SC 1494], in which the decisions in ***Hotel Imperial*** case as also in the case of ***Balvantrai Ratilal*** both

referred to above, were considered. *Gidroniya* decision was followed in *Vice-Chancellor, Jammu University v. Dushiant Kumar Rampal* and it was laid down as under:

“It will, therefore, be seen that where there is power conferred on the employer either by an express term in the contract or by the rules governing the terms and conditions of service to suspend an employee, the order of suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the employee is not bound to render service and the employer is not bound to pay. In such a case the employee would not be entitled to receive any payment at all from the employer unless the contract of employment or the rules governing the terms and conditions of service provide for payment of some subsistence allowance.”

12. In *State of M.P. v. State of Maharashtra* [AIR 1977 SC 1466], it was laid down that an order of suspension does not put an end to the government service. It was further observed that suspension merely suspends the claim of salary as the employee is paid suspension allowance during the period of suspension. For this purpose, reliance was placed upon an earlier decision of this Court in *Khem Chand v. Union of India* [AIR 1963 SC 687].

13. The right to life, guaranteed to a person under Article 21 of the Constitution, was read into the Service Rules relating to payment of subsistence allowance and it was for this reason that this Court in *State of Maharashtra v. Chandrabhan Tale* [AIR 1983 SC 803], struck down a Service Rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension.

14. In *Fakirbhai Fulabhai Solanki v. Presiding Officer* the decision of this Court in *Hotel Imperial* case was considered and it was laid down as under:

“6. The learned counsel for the management however relied upon the decision of this Court in *Hotel Imperial v. Hotel Workers’ Union*. In that case this Court was mainly concerned with the right of the management to suspend a workman where the management had taken a decision to dismiss him but could not immediately give effect to such decision owing to the restriction imposed by Section 33(1) of the Act which required the management to obtain the permission of the Tribunal when a reference was pending adjudication before it.”

It was further observed as under:

“7. In the above decision it was laid down that the management should be deemed to possess the power to suspend an employee in respect of whom a decision had been taken to dismiss him but an application for permission had to be filed until the application for permission was decided. The Court in giving the above decision also relied on an earlier decision of the Court in *Ranipur Colliery v. Bhuban Singh* [AIR 1959 SC 833]. In that case it was pointed out that but for the ban on the employer by Section 33(1) the employer would have been entitled to dismiss the employee immediately after the completion of his inquiry on coming to the conclusion that the employee was guilty of misconduct but Section 33 stepped in and stopped the employer from dismissing the employee immediately on the conclusion of his inquiry and compelled him to seek permission of the Tribunal. *It was, therefore, held that it was reasonable that the employer having done all that he could do to bring the contract of service to an end should not be expected to continue paying the employee thereafter. It was pointed out that in such a case the employer would be justified in suspending the employee without pay as the time taken by the Tribunal to accord permission under Section 33 of the Act was beyond the control of the employer.* Lastly, it was observed that this would not cause any hardship to the employee for if the Tribunal granted permission the employee would not get anything from the date of his suspension without pay while if the permission was refused he would be entitled to his back wages from such date.” (emphasis supplied)

It was also observed as under:

“8. But in neither of the above two decisions the Court considered the question from the angle from which we have approached the problem. In neither of them the Court had the occasion to

consider whether the denial of payment of subsistence allowance during the pendency of the proceedings under Section 33(3) of the Act would amount to violation of principles of natural justice. They approached the question from the angle of the common law right of a master to keep a workman under suspension either during the pendency of a domestic inquiry into an act of misconduct alleged to have been committed by a workman or during the pendency of an application under Section 33 of the Act. Those were perhaps halcyon days when such applications were being disposed of quickly. If the Court had realised that such applications would take nearly six years as it has happened in this case their view would have been different. An unscrupulous management may by all possible means delay the proceedings so that the workman may be driven to accept its terms instead of defending himself in the proceedings under Section 33(3) of the Act. To expect an ordinary workman to wait for such a long time in these days is to expect something which is very unusual to happen. Denial of payment of at least a small amount by way of subsistence allowance would amount to gross unfairness.”

15. This Court thus explained the decision in *Hotel Imperial* case and held that the principal question involved in that case related to the right of the employer to suspend an employee under the general law of master and servant and not whether he would be entitled to suspension allowance.

16. In another decision, namely, in *O.P. Gupta v. Union of India* (1987) 4 SCC 328, it was held as under:

“An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in *Khem Chand v. Union of India* is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance - generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. *The very expression ‘subsistence allowance’ has an undeniable penal significance. The dictionary meaning of the word ‘subsist’ as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is ‘to remain alive as on food; to continue to exist’. ‘Subsistence’ means - means of supporting life, especially a minimum livelihood.*”  
(emphasis supplied)

17. In *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* [(1999) 3 SCC 679], it was observed as under:

“26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Government of India and the State Governments. [See: for example, Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules.] Even under the General Clauses Act, 1897, this right is conceded to the employer by Section 16 which, *inter alia*, provides that power to appoint includes power to suspend or dismiss.”

18. Applying the principles laid down in the decisions referred to above to the facts of this case, it has to be conceded that if the Management has held a departmental enquiry against an employee, it has the right to place that employee under suspension, if on the basis of the findings recorded at the departmental enquiry, the Management is, *prima facie*, of the opinion that the employee, on account of the charges having been proved was liable to be dismissed from service, but the final order of dismissal could not be passed on account of a reference raised under the Industrial Disputes Act, 1947, which was already pending before the Tribunal. In such a situation, if the Management makes an application under Section 33(1) of the Industrial Disputes Act for permission of the Tribunal to dismiss such employee from service, the Management can, pending disposal of its application under Section 33(1), place that employee under suspension. Once the employee is placed under suspension, the Management cannot take any work from the suspended employee nor can the employee claim full salary from the Management. But the Management has to pay the subsistence allowance to the employee so that he may sustain himself till the application under Section 33(1) is finally disposed of.

19. Read in the light of the above discussion, there will not be found any conflict of opinion between the decisions rendered by this Court in ***Hotel Imperial*** case and in ***Fakirbhai*** case. While right to place an employee under suspension pending disposal of the application under Section 33(1) is to be conceded to the Management on the basis of the decision in ***Hotel Imperial*** case the right of the employee to receive subsistence allowance during the period of such suspension has to be conceded to the employee on the basis of the decision in ***Fakirbhai*** case and other decisions of this Court referred to above wherein the employee has been held to be entitled to subsistence allowance during the period of suspension.

20. We are conscious of the observation made by this Court in ***Hotel Imperial*** case that the Management has no control over the disposal of application under Section 33(1) filed before the Industrial Tribunal and, therefore, if it has placed the employee under suspension, it will not be under any obligation to pay salary to the suspended employee for the period over which the application under Section 33(1) remains pending with the Tribunal. The Court further observed that if the application under Section 33(1) is allowed, the employee would be dismissed from service but if the application is rejected, the employee would be paid all the arrears of salary.

21. Just as the employer has no control over the disposal of the application under Section 33(1) of the Industrial Disputes Act, so also the employee has no control over the disposal of that application. Whether the employee would be retained in service or removed would be dependent upon the fate of the application. While the Management can afford to wait for the disposal of that application, it would be impossible for an employee who survives only on his salary to wait for the disposal of that application for an indefinite period. It would not be possible for him to sustain himself. It is in this light that the right to receive reduced salary (subsistence allowance) for the period of suspension has to be read along with the right of the Management to place the employee under suspension pending disposal of the application under Section 33(1) of the Industrial Disputes Act. Thus, the right of the Management to suspend and the right of the employee to receive subsistence allowance are intertwined and both must survive together.

22. For the reasons stated above, the appeals are allowed, the impugned judgments passed by the Delhi High Court as also the judgment passed by the Industrial Tribunal are set aside with the direction that the subsistence allowance shall be paid to the appellants for the whole of the period of suspension at such rates as is provided under the Standing Orders or the Service Rules and if there is no such provision, they would be entitled to be paid full salary even during the period of suspension. The arrears of subsistence allowance shall be paid to the appellants within three months from the date on which the certified copy of this order is produced before the officer concerned.

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## **PART – B : WAGES**

### ***Crown Aluminium Works v. Workmen***

1958 SCR 651 : AIR 1958 SC 130

**P.B. GAJENDRAGADKAR, J.** - This appeal by special leave arises out of an industrial dispute between the appellant M/s Crown Aluminium Works, Belur, represented by Jeewanlal (1929) Ltd. and its workmen represented by Bengal Aluminium Workers' Union. By their order dated 31-7-1952, the Government of West Bengal referred thirteen matters for adjudication to Shri S.K. Niyogi who was appointed to constitute the Sixth Industrial Tribunal for adjudication under Section 10 of the Industrial Disputes Act, 1947. The learned Adjudicator considered the pleas raised, and the evidence led, by the parties before him, investigated into the financial position of the appellant and pronounced his award on 9-10-1953, on all matters referred to him. Both parties were aggrieved by the award and that led to two cross appeals. On July 11, 1955, the Labour Appellate Tribunal disposed of these appeals by a consolidated order. The workmen appear to be satisfied with this order but the appellant is not and so the present appeal. The main grievance which Mr Sen has made before us on behalf of the appellant is in respect of the revision made by the Appellate Tribunal in the wage structure which was constituted by the original Tribunal. Thus, the controversy between the parties in the present appeal lies within a very narrow compass; nevertheless, it would be necessary to mention the history of the dispute in some detail in order to appreciate properly the points at issue between them.

2. It appears that in 1947 the first Omnibus Engineering Tribunal was constituted to adjudicate upon the industrial disputes for the engineering industry in West Bengal and the matters referred to the Tribunal included inter alia disputes in regard to basic wages, dearness allowance and leave. This Tribunal gave a comprehensive award which was published on 30-6-1948. The appellant was a party to these adjudication proceedings and was governed by the said award. Soon thereafter industrial disputes again arose between the engineering industry and its employees and these were referred to another Tribunal which in due course examined the disputes and pronounced its award. This award was published on 21-9-1950. By this award the dearness allowance fixed by the first Tribunal was increased on the ground of rise in the cost of living index and the leave rules prescribed by the earlier award were modified in the light of the provisions of the Indian Factories Act, 1948. After the first award had come into force the appellant revised its facility bonus from time to time with the object of keeping pace with the rise in the cost of living index. The result was that several components which constituted the wage structure paid by the appellant to its workmen left no cause for grievance to the workmen. So they did not raise any dispute for increase in their dearness allowance and, the appellant and its workmen were not parties to the second arbitration proceedings. Meanwhile, a minor industrial dispute arose between the appellant and its workmen and it was referred to the arbitration of Shri G. Palit by the Government of West Bengal by their order dated 24-11-1950. One of the points referred to the Tribunal was in regard to the amount of increment which should be granted to workers in 1950 and the date from which it should be so granted. The appellant denied its liability to pay the increment on the ground that there was no wage structure which permitted such a claim. The appellant also urged before Shri Palit that its workers were on the whole handsomely remunerated. In this connection reliance was placed by the appellant on the payments made by the appellant to its workmen by way of special allowance and bonus, besides dearness allowance and standard wages. It would thus appear that the appellant resisted the claim of its workmen for the increment in wages on the ground that in the wage structure of the appellant additional components had been introduced which made ample provision for the rise in the cost of living. Shri Palit was, however, not impressed with this plea. He thought that by introducing these components in the wage structure the Managing Director "chose to hold the key in his own hands so that he can manipulate the quantum of benefit under this head and could adjust it to the output in the factory". Shri Palit, therefore, granted the workmen's demands by allowing one anna per day increment though he frankly confessed that this was not based on any actual calculation. He accordingly directed the appellant to pay the arrears within one

month of the award coming into operation to all workmen who were in the roll of the appellant at the end of 1950. Then Shri Palit addressed a word of caution to the appellant and said that it was necessary that the appellant should fix a wage structure as soon as practicable to secure durable peace in the factory. "It will be prudent", observed Shri Palit in his award, "for the company to have a fixed bound wage structure instead of having so many flexible component parts of the wage which merely will create unrest". This in brief is the previous history of the dispute between the appellant and its workmen.

3. On 28-3-1952, the appellant issued a notice to its workmen proposing to make certain modifications. The notice indicated that a reduction of the factory hours from 47 to 40 would be made, the facility bonus would be reduced by 3 annas per day and temporary dearness allowance for the salaried workers would be similarly reduced by 10% of the then current rates. The appellant pleaded in this notice that these economy measures had become necessary owing to the financial set back of the appellant and would come into effect on 1-6-1952. The Union opposed these changes. A joint discussion was then arranged on June 2 and 26-6-1952. It appears that further economy measures were introduced for discussion between the parties by the notice dated 30-5-1952. These further economy measures related to the reduction of the facility bonus by a further amount of 6 annas per day, withdrawal of two hours' concession of special bonus and discharge of workers of the rolling mills department. The Union did not agree to any of these measures except the reduction of working hours from 47 to 42½ hours a week. Since joint consultations did not lead to any agreement, the appellant, by its notice dated 27-6-1952, intimated to the workers that the reduction of working hours and in the facility bonus and dearness allowance as notified on 28-3-1952, would be brought into operation from 1-6-1952. The workers were also told that the two hours' concession would be withdrawn from 1-7-1952, and the workers in the rolling mills department would be discharged with effect from 1-8-1952. The workmen resisted these proposals and took the industrial dispute arising therefrom to the Labour Commissioner immediately. Thereafter a joint conference of the appellant and its workmen was held on 4-7-1952. The intervention of the Labour Commissioner was not effective as the proposals made by him to resolve the dispute between the parties amicably were not acceptable to the parties. The appellant thereupon discharged the workmen of the rolling mills department, 52 in number, with 14 days' notice pay and retrenched other 227 workers of various categories as from 26-7-1952, with a similar notice pay. The Government of West Bengal found that conciliation was not possible and so the industrial dispute in question was referred to the Sixth Industrial Tribunal for adjudication.

4. As we are concerned in the present appeal only with the constitution of the wage structure and some questions incidental thereto we will now refer to the decisions of the lower Tribunals only in respect of these matters. The Sixth Industrial Tribunal considered the financial position of the appellant and revised and reconstituted the wage structure and the dearness allowance in the light of the Omnibus Engineering Awards in West Bengal published in 1948 and 1950. The Tribunal held that the two hours' concession, facility bonus and the food concession were in the nature of bounty gratuitously paid by the appellant and as such they could be withdrawn by the appellant at its pleasure. The Tribunal also came to the conclusion that since the wage structure had been revised and reconstituted properly, the appellant should be given liberty to abolish the said three concessional payments. It may be relevant to observe that the Tribunal's conclusion in regard to the character of the alleged concessional payments was based principally on the view that in his award Shri Palit had held that these payments were purely concessional payments and that the workmen had no right to claim them as constituents of their wage structure.

5. The Labour Appellate Tribunal has not agreed with this conclusion. The view that the Appellate Tribunal has taken is that these so-called concessional payments have been enjoyed by the workmen for a pretty long time as of right and as part of their basic wages and dearness allowance and as such they have become a term of the conditions of their service. Besides, the Appellate Tribunal has observed that it has been the convention with Industrial Tribunals not to reduce the existing emoluments of the workmen to their prejudice. In the result the wage structure constituted by the Tribunal was modified by the award of the Appellate Tribunal in respect of existing workmen. The main conditions introduced by these modifications were three:



“1. The total basic wages of a time-rated worker together with the two hours’ concession immediately before 1-6-52 shall hereinafter be called his existing basic wage.

2. The total of the temporary dearness allowance and the facility bonus as was available to a worker prior to 1-6-1952 and the food concession wherever admissible to a worker under the rules of the company shall hereinafter be called his existing dearness allowance, no matter if any portion of these benefits has been curtailed or stopped in the meantime.

3. The two hours’ concession, the facility bonus and the food concession shall cease to have any separate existence distinct from the basic wages and dearness allowance of the worker on and from the date when this decision comes into force, hereinafter called the relevant date.”

Both the original and the Appellate Tribunals have agreed in providing that the existing basic wages and the existing total emoluments shall not be reduced.

6. For the appellant Mr Sen has contended that the Labour Appellate Tribunal was in error in assuming that it has been the convention in industrial adjudications not to reduce the existing emoluments of the workmen to their prejudice in any case. He contends that just as the rise in the cost of living index or similar relevant factors may justify the revision of the wage structure in favour of the workmen, so should the revision of the wage structure be permissible in favour of the employer in case the financial position of the employer has considerably deteriorated or other relevant factors indicate such a revision. Indeed Mr Sen made it clear during the course of his arguments that in the present appeal he was more concerned to challenge the validity of the assumption made by the Labour Appellate Tribunal in that behalf, rather than the propriety or correctness of the actual modifications made by the Appellate Tribunal in its award. The point thus raised by Mr Sen is no doubt of general importance and it must be considered in all its aspects.

7. Before dealing with this point, it would be relevant to refer to the findings made by both the Tribunals in regard to the financial position of the appellant. The present unit of the aluminium industry which was originally started by the Americans was taken over by the appellant from the Americans on August 9, 1951. The main business of the appellant is to manufacture household utensils from aluminium circles. These circles were imported until the last war. During the war, import of these articles became difficult and so a rolling mills department for manufacturing circles from scrap materials was started. It is true that utensils made from such circles were inferior in quality, but import difficulties were insurmountable and so even these inferior utensils found a good market. As soon, however, as better quality circles became available the demand for these utensils rapidly decreased and the business began to incur loss. The management was thus compelled to close down the rolling mills permanently in February 1952. As we have already mentioned, the workmen employed in the rolling mills were ultimately discharged on 15-7-1952.

8. The appellant placed before the tribunals below the relevant figures from the statements of accounts from 1947 to September 1952. Both the Tribunals have examined these figures and have come to the conclusion that the economic position of the appellant on the whole was none too bright. Fall in the sale of utensils was noticeable during these years and if the utensils were not disposed of in the market quickly they are likely to lose their lustre and glaze and would be even stained if they were to be stored in the godown for any length of time. This in turn would involve extra expenditure and would contribute to further losses. It appears to be the concurrent finding of both the Tribunals that the manufacturing cost in 1952, as in some preceding years, exceeded the sale price and this undoubtedly would be a disquieting feature in any industrial concern. The original tribunal did not see any prospect of improvement in the appellant’s financial position; whereas the Appellate Tribunal was disposed to take the view that as a result of the substantial retrenchment effected by the appellant “financial position of the relevant unit of the aluminium industry appears to have improved”. It is in the background of these findings that Mr Sen has contended that the wage structure constituted by the Appellate Tribunal would work a hardship on the appellant and his grievance is that in reconstituting the wage structure the Appellate Tribunal was very

much influenced by the assumption that the wage structure can never be revised to the prejudice of workmen.

9. In dealing with this question, it is essential to bear in mind the main objectives which industrial adjudication in a modern democratic welfare state inevitably keeps in view in fixing wage structures. "It is well known", observes Sir Frank Tillyard, "that English common law still regards the wage bargain as a contract between an individual employer and an individual worker, and that the general policy of the law has been and is to leave to the two contracting parties a general liberty of bargaining, so long as there are no terms against public policy. In India as well as in England and other democratic welfare States great inroad has been made on this view of the common law by labour welfare legislation such as the Minimum Wages' Act and the Industrial Disputes Act. With the emergence of the concept of a welfare state, collective bargaining between trade unions and capital has come into its own and has received statutory recognition; the state is no longer content to play the part of a passive onlooker in an industrial dispute. The old principle of the absolute freedom of contract and the doctrine of *laissez faire* have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording "a bulwark against the dangers of a depression, safeguard against unfair methods of competition between employers and a guaranty of wages necessary for the minimum requirements of employees." There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a welfare state, to secure "to all citizens justice social and economic". To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good to which we have just referred.

10. Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted cooperation in the task of production. It is obvious that cooperation between capital and labour would lead to more production and that naturally helps national economy and, progress. In achieving this immediate objective, industrial adjudication takes into account several principles such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay. The application of these and other relevant principles leads to the constitution of different categories of wage structures. These categories are sometimes described as living wage, fair wage and minimum wage. These terms, or their variants, the comfort or decency level, the subsistence level and the poverty or the floor level, cannot and do not mean the same thing in all countries nor even in different industries in the same country. It is very difficult to define or even to describe accurately the content of these different concepts. In the case of an expanding national economy the contents of these expressions are also apt to expand and vary. What may be a fair wage in a particular industry in one country may be a living wage in the same industry in another country. Similarly, what may be a fair wage in a given industry today may cease to be fair and may border on the minimum wage in future. Industrial adjudication has naturally to apply carefully the relevant principles of wage structure and decide every industrial dispute so as to do justice to both labour and capital. In deciding industrial disputes in regard to wage structure, one of the primary objectives is and has to be the restoration of peace and goodwill in the industry itself on a fair and just basis to be determined in the light of all relevant considerations. There is, however, one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms. In considering the pros and cons of the argument urged before us by Mr Sen, this position must be borne in mind.

11. The question posed before us by Mr Sen is: Can the wage structure fixed in a given industry be never revised to the prejudice of its workmen? Considered as a general question in the abstract it must be answered in favour of Mr Sen. We do not think it would be correct to say that in no conceivable circumstances can the wage structure be revised to the prejudice of workmen. When we make this observation, we must add that even theoretically no wage structure can or should be revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage. If the wage structure in question falls in a higher category, then it would be open to the employer to claim its revision even to the prejudice of the workmen provided a case for such revision is made out on the merits to the satisfaction of the Tribunal. In dealing with a claim for such revision, the Tribunal may have to consider, as in the present case whether the employer's financial difficulties could not be adequately met by retrenchment in personnel already effected by the employer and sanctioned by the Tribunal. The Tribunal may also enquire whether the financial difficulties facing the employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that, after considering all the relevant facts, if the Tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the Tribunal to accede to the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the tribunal may deem fit or expedient to impose. The Tribunal must also keep in mind some important practical considerations. Substantial reduction in the wage structure is likely to lead to discontent among workmen and may result in disharmony between the employer and his employees; and that would never, be for the benefit of the industry as a whole. On the other hand, in assessing the value or importance of possible discontent amongst workmen resulting from the reduction of wages, Industrial Tribunals will also have to take into account the fact that if any industry is burdened with a wage structure beyond its financial capacity, its very existence may be in jeopardy and that would ultimately lead to unemployment. It is thus clear that in all such cases all relevant considerations have to be carefully weighed and an attempt has to be made in each case to reach a conclusion which would be reasonable on the merits and would be fair and just to both the parties. It would be interesting to notice in this connection that all the Tribunals that have dealt with the present dispute have consistently directed that existing wages should not be reduced to the prejudice of the workmen. In other words, though each Tribunal attempted to constitute a wage structure in the light of materials furnished to it, a saving clause has been added every time protecting the interests of such workmen as were drawing higher wages before. Even so, it would not be right to hold that there is a rigid and inexorable convention that the wage structure once fixed by Industrial Tribunals can never be changed to the prejudice of workmen. In our opinion, therefore, the point raised by Mr Sen must be answered in his favour subject to such relevant considerations and limitations as we have briefly indicated.

12. Mr Sen is, however, not right in contending that the final decision of the Appellate Tribunal is based solely or even chiefly on the alleged convention to which the Appellate Tribunal has referred. As we have already pointed out, the Tribunal has also found that substantial retrenchment which has been sanctioned by both the Tribunals would improve the financial position of the appellant. In the opinion of the Appellate Tribunal, the downward tendency in the cost of living index on which the appellant partly relied could not be considered in the present proceedings since no specific issue had been referred to the Tribunal in that behalf. Besides, enough material had not been produced to show to what extent the cost of living index had fallen and whether this fall was temporary or had come to stay. The Appellate Tribunal, it appears, thought that the wages paid by the appellant to its workmen "are the irreducible minimum or may at best be in the region of fair wages with a small margin over the minimum wage". If, in reaching its final conclusions, the Appellate Tribunal has relied not only upon the alleged convention but also upon the other circumstances just mentioned, it would not be fair to say that its conclusion is vitiated in law or is otherwise unsound. Normally, this Court would be slow to entertain an objection that

some of the considerations which have weighed with the Appellate Tribunal in reaching its final decision are either invalid or are not borne out by sufficient evidence on record.

13. There is another point which Mr Sen has raised before us in regard to the true character of the concessional payments made by the appellant to its workmen and which have been incorporated by the Appellate Tribunal in the wage structure. The Appellate Tribunal has taken the view that these concessional payments really amounted to payments made to the workmen as a matter of right and it is the correctness of this conclusion that is challenged before us by Mr Sen. Let us then consider the genesis of these payments. Prior to the new Factories Act, the appellant's workmen worked on an average for 59 hours of work made up of the usual 54 hours of work and overtime. After the Factories Act came into force, the working hours had to be reduced but in order to compensate the time-rate workers for reduction in their wages, the management added to the daily earnings of such workers the wages for two hours. The additional two hours' wages thus awarded to the workers came to be known as two hours' concession or special bonus. This bonus was introduced in August 1946. In April 1945, facility bonus had been introduced at annas per day for workers getting basic wages equal to or less than 10 annas per day and 4 annas per day for workers whose basic wages were over 10 annas per day.

It appears that this facility bonus was revised from time to time in the upward direction, and it used to be paid prior to June 1952 at a graduated scale linked to the basic wages in slabs varying from 6 annas to 12 annas per day. Besides, the appellant introduced food concession to workers employed prior to 1951. Thus the constitution of the wage structure in the appellant's concern included dearness allowance, facility bonus and food concession. In dealing with the true nature of these payments it is necessary to take into account the appellant's case as deposed to by the appellant's Labour Officer and Assistant to the Manager, Shri Jaisuklal Shah. According to Shri Shah, the facility bonus was an additional allowance for the high cost of living very much on the same footing as dearness allowance. " 'Two hours' allowance", said Shri Shah, "is referred to as special bonus or extra bonus. It was paid *because the workers demanded* and it was possible to pay it at that time". These statements lend considerable support to the workmen's case that the payments in question constituted a part of the wage structure of the appellant. Indeed, even in the statement of the appellant before the Industrial Tribunal in the present proceedings, it is specifically averred in para 2 that prior to June 1952, the company's pay structure consisted of five items, viz (1) basic wage, (2) dearness allowance, (3) special bonus or extra bonus, (4) facility bonus or special allowance, and (5) food concession. The attitude adopted by the appellant before Shri Palit is also consistent with this pleading and with the evidence given by Shri Shah in the present proceedings. Before Shri Palit, the appellant had urged that there was no occasion to grant increment to its workmen because under the categories of several allowances the company had substantially constituted its wage structure to the benefit of the workmen. In this connection, it would also be material to point out that it was because these additional payments were made by the appellant to its workmen that the workmen did not raise any dispute and did not join the arbitration before the Second Engineering Tribunal. Besides, these payments have been made for some years and that also is a relevant factor to consider in dealing with the true character of these payments. If the Labour Appellate Tribunal took into account all these facts and held that the payments in question are not matters of bounty but that, in essence and in substance, they form part of the basic wage and dearness allowance payable to the workmen, we see no reason to interfere with its conclusion. It is not disputed before us that if this conclusion is right, the Labour Appellate Tribunal has properly revised the wage structure as constituted by the original Tribunal and included the payments in question in appropriate categories.

14. There is one more point which may be mentioned before we part with this case. Mr Sen incidentally argued that the result of the award passed by the Labour Appellate Tribunal is that there will be two scales of wage structure, one for those who are already in the employment of the appellant and the other for the new entrants. Since we have held that the modifications made by the Appellate Tribunal in favour of the existing workmen cannot be successfully challenged by the appellant, we do not think it necessary to consider whether wage structure which has been fixed by their Appellate Tribunal in regard to new entrants into the service of the appellant is justified or not.

15. The result is that both the contentions raised by Mr Sen substantially fail. The appeal must accordingly be dismissed.

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## ***Greaves Cotton & Co. Ltd. v. Workmen***

(1964) 5 SCR 362 : AIR 1964 SC 689

**K.N. WANCHOO, J.** - These nine appeals by special leave arise out of the awards of the Industrial Tribunal, Bombay and will be dealt with together. There were disputes between the four appellants-companies and the respondents their workmen, which were referred for adjudication to the Industrial Tribunal by nine reference-orders on various dates between April to December 1959. The main dispute which gave rise to the references was with respect to wages, dearness allowance and gratuity. The references included other items also but we are not concerned in the present appeals with those items. Of the four companies who are the appellants before us, Greaves Cotton and Co. is the first company and its main activity is to invest money in manufacturing concerns. The second company is Greaves Cotton and Crompton Parkinson Private Limited and its main business is distribution of the products of a manufacturing concern known as Crompton Parkinson (Works) India Limited and service and repair to the said products at its workshop. The third company is Kenyon Greaves Private Limited and its main business is to manufacture high grade interstranded ropes for the textile industry. The last company is Ruston and Hornsby (India) Private Limited and its main business is to manufacture oil engines and pumps. The last three companies are controlled by the first company, namely Greaves Cotton and Co. in one way or the other and that is how the main dispute relating to wages and dearness allowance was dealt with together by the Tribunal. There were two references each with respect to the first three companies and three references with respect to Ruston and Hornsby Private Limited; and that is how there are nine appeals before us. There were nine awards, though the main award dealing with the main dispute relating to wages and dearness allowance was common.

2. It appears that wages and dearness allowance prevalent in the four companies had been continuing since 1950 when the last award was made between the parties. It may also be stated that there was no serious dispute before the Tribunal as to the financial capacity of the companies and further, as the first Company controls the other three companies, the wages and dearness allowance are the same so far as the clerical and subordinate staff are concerned. The same appears to be the case with respect to factory- workmen.

3. The Tribunal dealt with clerical and subordinate staff separately from the factory-workmen. So far as the clerical and subordinate staff are concerned, the Tribunal, after a comparison of wages and dearness allowance prevalent in the four companies with wages and dearness allowance prevalent in comparable concerns revised them. Further it provided how the clerical and subordinate staff would be fitted in the new scales after making certain adjustments and in that connection it gave one to three extra increments depending upon length of service between 1950 to 1959. Finally it ordered that the award would have effect from April 1, 1959, which was a week before the first reference was made with respect to the first Company. The Tribunal then dealt with the case of the factory-workmen and prescribed certain rates of wages. Further it gave the same dearness allowance to the factory-workmen as to the clerical and subordinate staff and directed adjustments also on the same basis. Finally it considered the question of gratuity and the main provision in that respect was that the maximum gratuity allowable would be up to 20 months and a provision was also made to the effect that if and employee was dismissed or discharged for misconduct which caused financial loss to the employer, gratuity to the extent of that loss only will not be paid to the employee concerned.

4. The main attack of the appellants is on the award as regards wages and dearness allowance. It is urged that the industry-cum-region formula, which is the basis for fixation of wages and dearness allowance has not been properly applied by the Tribunal and it had been carried away by the recommendations of the tripartite conference which suggested need-based minimum wages. It is also urged that whatever comparison was made was with concerns which were not comparable and the wages awarded were even higher than those prevalent in any comparable concern. It is also urged that the Tribunal did not consider the total effect of the increase it was granting in basic wage and dearness allowance together as it should have done, for the purpose of finding out whether the total pay packet in

the appellants' concerns can bear comparison with the total pay packet of the concerns with which the tribunal had compared the appellants' concerns. In this connection it is urged that in fixing scales of wages the Tribunal increased the maximum and the minimum and the annual rate of increment and decreased the span of years in which the maximum would be reached. Adjustments made by the Tribunal are also attacked and so is the order making the award enforceable from April 1, 1959. As to the factory- workmen it is urged that the Tribunal made no attempt to make a comparison with wages prevalent even in what it considered to be comparable concerns. Lastly it is urged that the Tribunal created a new category of factory workmen called higher unskilled which was not demanded and which in any case did not exist in any comparable concern.

5. The first question therefore which falls for decision is whether the Tribunal went wrong in not following the industry-cum-region principle and in leaning on the recommendations of the tripartite conference. It is true that the Tribunal begins its award with a reference to the recommendations of the tripartite conference wherein the need-based minimum wage was evolved. It is urged that this disposed the Tribunal to pitch wage-scales too high. It is however clear from the award that though the Tribunal discussed the recommendations of the tripartite conference at some length, when it actually came to make the award it did not follow those recommendations. The reason why it referred to those recommendations was that the respondents-workmen based their claim on them and wanted that the Tribunal should fix wage-scales accordingly. But the tribunal's conclusion was that it was not feasible to do so, though looking at the financial stability of the appellants, emoluments needed upgrading. It then went on to consider the wages prevalent in comparable concerns and finally fixed wages for the appellants on the basis of wages prevalent in such concerns. Though therefore the recommendations of the tripartite conference are referred to in the tribunal's award, its final decision is not based on them and what the Tribunal has done is to make comparisons with what it considered comparable concerns so far as clerical and subordinate staff are concerned. We are therefore not prepared to say that reference to the recommendations of the tripartite conference in the opening part of the award was irrelevant and therefore the rest of the award must be held to be vitiated on that ground alone.

6. The main contention of the appellants however is that the Tribunal has gone wrong in applying the industry-cum-region formula which is the basis for fixing wages and dearness and has made comparison with concerns which are not comparable. It is also urged that the Tribunal has relied more on the region aspect of the industry-cum-region formula and not on the industry aspect when dealing with clerical and subordinate staff and in this it went wrong. Reference in this connection is made to two decisions of this Court, namely, *Workmen of Hindusthan Motors v. Hindusthan Motors* [(1962) 2 LLJ 352] and *French Motor Car Company v. Workmen* [(1962) 2 LLJ 744] and it is emphasised that the principles laid down in *Hindusthan Motors* case were more applicable to the present case than the principles laid down in *French Motor Car Co.* case. In the *Hindusthan Motors* case, this Court observed that it was ordinarily desirable to have as much uniformity as possible in the wage-scales of different concerns of the same industry working in the same region, as this puts similar industries more or less on an equal footing in their production struggle. This Court therefore applied the wage-scales awarded by the Third Major Engineering Tribunal in Bengal in the case of *Hindusthan Motors* also. It is urged that the Tribunal should have taken into account comparable concerns in the same industry and provided wage-scales on the same lines so that, so far as manufacturing concerns in the present appeals are concerned, there will be equality in the matter of competition. In *French Motor Car Co.* case however this Court held so far as clerical staff and subordinate staff are concerned that it may be possible to take into account even those concerns which are engaged in different lines of business for the work of clerical and subordinate staff is more or less the same in all kinds of concerns. We are of opinion that there is no inconsistency as urged in the principles laid down in these two cases. As we have already said the basis of fixation of wages and dearness allowance is industry-cum-region. Where there are a large number of industrial concerns of the same kind in the same region it would be proper to put greater emphasis on the industry part of the industry-cum-region principle as that would put all concerns on a more or less equal footing in the matter of production costs and therefore in the matter of competition in the market and this will equally apply to

clerical and subordinate staff whose wages and dearness allowance also go into calculation of production costs.

But where the number of comparable concerns is small in a particular region and therefore the competition aspect is not of the same importance, the region part of the industry-cum-region formula assumes greater importance particularly with reference to clerical and subordinate staff and this was what was emphasised in *French Motor Car Co.* case where that company was already paying the highest wages in the particular line of business and therefore comparison had to be made with as similar concerns as possible in different lines of business for the purpose of fixing wage-scales and dearness allowance. The principle therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage-scales the Tribunal should lay stress on the industry part of the formula if there are large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries, namely, industries of the same kind. But where the number of industries of the same kind in a particular region is small it is the region part of the industry-cum-region formula which assumes importance particularly in the case of clerical and subordinate staff, for as pointed out in *French Motor Car Co.* case there is not much difference in the work of this class of employees in different industries. In the present cases it does appear that the Tribunal has leaned more on the region part of the industry-cum-region formula and less on the industry part. But we think that it cannot be said that the Tribunal was wrong in doing so for two reasons. In the first place these four companies are not engaged in the same line of industry; but on account of certain circumstances, namely, that Greaves Cotton and Co. is the controlling Company of the other three, it has been usual to keep the same scales for clerical and subordinate staff in all these concerns. In the second place, it is not clear, as was clear in the *Hindusthan Motors* case that there are a large number of comparable concerns in the same region. As a matter of fact the main company out of these four is Greaves Cotton and Co, Limited, which is in the main an investment and financial company and the Tribunal was therefore right in taking for comparison such companies as would stand comparison with the main company in the present appeals (namely, Greaves Cotton and Co.).

7. Both parties filed scales of wages prevalent in what they considered to be comparable concerns and it is clear from the documents filed that some of the comparable concerns were the same in the documents filed by the two parties. On the whole therefore we do not think the Tribunal was wrong in putting emphasis on the region aspect of the industry-cum-region formula in the present case insofar as clerical and subordinate staff was concerned, for the four companies before us do not belong to the same industry and Greaves Cotton and Co. controls the other three. Considering therefore the standing of the main company (namely, Greaves Cotton and Co. Ltd.), it was not improper for the Tribunal in the present cases to rely on the comparable concerns which were cited on behalf of the respondents, some of which were common with the comparable concerns cited on behalf of the appellants. What the Tribunal did thereafter was to consider the minimum for various categories of clerical and subordinate staff prevalent in these comparable concerns and the maximum prevalent therein and also the annual increments and the span of years in which the maximum would be reached. The Tribunal then went on to fix scales for various categories of clerical and subordinate staff of the appellants which were in-between the scales found in various concerns. Further, as the financial capacity of the appellants was not disputed, the Tribunal pitched these scales nearer the highest scales taking into account the fact that for nine years after 1950 there had been no increase in wage scales. We do not think therefore that the wage-scales fixed by the tribunal, leaning as it did, on the region aspect of the industry-cum-region formula, for the clerical and subordinate staff can be successfully assailed by the appellants.

8. It has however been urged that the Tribunal overlooked considering what would be the total wage packet including basic wages and dearness allowance and that has made the total wages (i.e. basic wage and dearness allowance) fixed by the Tribunal much higher in the case of the appellants than in comparable concerns which it took into account. It is true that the Tribunal has not specifically considered what the total wage packet would be on the basis of the scales of wages and dearness allowance fixed by



it as it should have done; but considering that wage-scales fixed are less than the highest in the comparable concerns though more than the lowest, it cannot be said that the total wage packet in the case of the appellants would be necessarily higher than in the case of the other comparable concerns. This will be clear when we deal with the dearness allowance which has been fixed by the tribunal, for it will appear that the dearness allowance fixed is more or less on the same lines i.e. less than the highest but more than the lowest in other comparable concerns. On this basis it cannot be said that the total wage packet fixed in these concerns would be the highest in the region. Though therefore the Tribunal has not specifically considered this aspect of the matter - which it should have done - its decision cannot be successfully assailed on the ground that the total wage packet fixed is the highest in the region.

9. This brings us to the case of factory - workmen. We are of opinion that there is force in the contention of the appellants insofar as the fixation of wage-scales for factory-workmen is concerned. The respondents wanted that separate wages should be fixed for each category of workmen. The Tribunal however rejected this contention and held that the usual pattern of having unskilled, semi-skilled and skilled grades should be followed and the various workmen, though they should be known by their designation and not by the class in which they were being placed, should be fitted in these categories. In the present concerns, there were six categories from before, namely (i) unskilled, (ii) semi-skilled I (iii) semi-skilled II, (iv) skilled I, (v) skilled II, and (vi) skilled III. The Tribunal kept these categories though it introduced a seventh category called the higher unskilled. It is not seriously disputed that this category of higher unskilled does not exist in comparable concerns; nor have we been able to understand how the unskilled category can be sub-divided into two, namely, lower and higher unskilled, though we can understand the semi-skilled and skilled categories being sub-divided, depending upon the amount of skill. But there cannot be degrees of want of skill among the unskilled class. The Tribunal therefore was not justified in creating the class of higher unskilled. It is neither necessary nor desirable to create a higher unskilled category and only the six categories which were prevalent from before should continue.

10. The main attack of the appellants on the wages fixed for these six categories is that in doing so, the Tribunal completely overlooked the wages prevalent for these categories in concerns which it had considered comparable. A look at the award shows that it is so. The Tribunal has nowhere considered what the wages for these categories in comparable concerns are, though it appears that some exemplars were filed before it; but the way in which the Tribunal has dealt with the matter shows that it paid scant regard to the exemplars filed before it and did not care to make the comparison for factory-workmen in the same way in which it had made comparison for clerical and subordinate staff. In these circumstances, wage-scales fixed for factory-workmen must be set aside and the matter remanded to the Tribunal to fix wage-scales for factory-workmen dividing them into six categories as at present and then fixing wage after taking into account wages prevalent in comparable concerns. The parties will be at liberty to lead further evidence in this connection.

11. Then we come to the question of dearness allowance. So far as clerical staff is concerned, dearness allowance prevalent in the appellants' concerns was on the costs of living index of 411-420. A comparison of these figures will show that on the first hundred and the third hundred there is no difference in the scale fixed by the tribunal; but there is a slight improvement on the second hundred and a very slight one above three hundred. This scale fixed by the Tribunal is in line with some scales of dearness allowance recently fixed by tribunals in that region. The main improvement is on the second hundred and it cannot really be said that employees in that wage range do not require the higher relief granted to them by tribunals in view of the rise in prices. We do not think therefore that the dearness allowance fixed by the tribunal, taking into account what was already prevalent in these concerns and also taking into account the trend in that region can be successfully assailed so far as clerical staff is concerned.

12. This brings us to the case of subordinate staff. It appears that in these concerns, subordinate staff was getting dearness allowance on different scales based on the old textile scale of dearness allowance. The Tribunal has put the subordinate staff in the same scale of dearness allowance as clerical staff. The

reason given by it for doing so is that incongruity in the payment of dearness allowance between clerical and subordinate staff should be removed. It appears that on account of different scales of dearness allowance for subordinate and clerical staff, a member of the subordinate staff drawing the same wages would get less dearness allowance than a member of the clerical staff. The discrepancy is very glaring as between clerical staff and factory-workmen who also have different scales of dearness allowance. The Tribunal therefore thought that dearness allowance which is meant to neutralise the rise in cost of living, should be paid to clerical staff, subordinate staff as well as factory workmen on the same scale, for the need for neutralisation was uniformly felt by all kinds of employees. It also pointed that there was a trend towards uniformity in the matter of scales of dearness allowance as between clerical staff and other staff and factory workmen and referred to a number of firms where same scales prevailed for all the staff. It has however been urged on behalf of the appellants that the pattern in the region is that there are different scales of dearness allowance for clerical staff and other staff including factory workmen and the Tribunal therefore should have followed this pattern. The reasons given by the Tribunal for giving the same scales of dearness allowance to all the categories of staff, including the factory-workmen, appear to us to be sound. Time has now come when employees getting same wages should get the same dearness allowance irrespective of whether they are working as clerks, or members of subordinate staff or factory-workmen. The pressure of high prices is the same on these various kinds of employees. Further subordinate staff and factory workmen these days are as keen to educate their children as clerical staff and in the circumstances there should be no difference in the amount of dearness allowance between employees of different kinds getting same wages.

Further an employee whether he is of one kind or another getting the same wage hopes for the same amenities of life and there is no reason why he should not get them, simply because he is for example, a factory workman though he may be coming from the same class of people as a member of clerical staff. On the whole therefore the Tribunal was in our opinion right in following the trend that has begun in this region and in fixing the same scale of dearness allowance for subordinate staff and factory-workmen as in the case of clerical staff. So far therefore as subordinate and clerical staff are concerned, we see no reason to disagree with the rate of dearness allowance fixed by the tribunal.

13. This brings us to the case of the dearness allowance for factory-workmen. In their case we have set aside the award relating to wage scales. It follows that we must also set aside the award relating to dearness allowance as we have already indicated that the Tribunal has to take into consideration the total pay packet in fixing wages and dearness allowance. When therefore the case goes back to the Tribunal for fixing wages and dearness allowance for factory-workmen, it will be open to the Tribunal to fix the same rates of dearness allowance for factory-workmen as for clerical staff; but in doing so the Tribunal must when making comparisons take into account the total wage packet (i.e. basic wages fixed by it as well as dearness allowance) and then compare it with the total wage packet of comparable concerns and thus arrive at a just figure for basic wage, for each category of factory-workmen. But the entire matter is left to the Tribunal and it may follow such method as it thinks best so long as it arrives at a fair conclusion after making the necessary comparison.

14. This brings us to the question of adjustment. We have already said that the Tribunal allowed one to three increments depending upon the length of service between 1950 and 1959. It has been urged that no adjustment should have been allowed taking into account the fact that incremental scales were in force previously also in these concerns and the Tribunal has increased both the minimum and the maximum in its award and has granted generous annual increments reducing the total span within which a particular employee belonging to clerical and subordinate staff will reach the maximum. Reliance in this connection has been placed on the *French Motor Car Co.* case. It is true that the Tribunal has given larger increments thus reducing the span of years for reaching the maximum. That alone however is no reason for not granting adjustment. But it is said that in *French Motor Co.* case this Court held that where scales of pay were existing from before no adjustment should be granted by giving extra increments and that that case applies with full force to the facts of the present case. Now in that case this Court pointed out on a review of a large number of awards dealing with adjustments that “generally adjustments are granted

when scales of wages are fixed for the first time. But there is nothing in law to prevent the Industrial Tribunal from granting adjustments to the employees in the revised wage-scales even in a case where previously pay-scales were in existence; but this has to be done sparingly taking into consideration the facts and circumstances of each case. The usual reason for granting adjustment even where wage-scales were formerly in existence is that the increments provided in the former wage-scales were particularly low and therefore justice required that adjustment should be granted a second time". Another reason for the same was that the scales of pay were also low. In those circumstances adjustments have been granted by tribunals a second time. This Court then pointed out in that case that the incremental scales prevalent in that Company were the highest for that kind of industry and therefore struck down the adjustments granted and ordered that clerical staff should be fixed on the next higher step in the new scales if there was no step corresponding to the salary drawn by a clerk in the new scale. The question therefore whether adjustment should be granted or not is always a question depending upon the facts and circumstances of each case.

15. Let us therefore see what the circumstances in the present cases are? Tables of comparative rates of increments were filed before the Tribunal for various grades of clerks. It is clear from the examination of these tables and pay-scales prevalent in the appellants concerns from 1950 that pay scales were not high as compared to pay scales in comparable concerns. If anything, they were on the low side. Further, as an example, in the case of junior clerks, the first rate of increment was Rs 5 in the appellants' concerns and this rate went on for 13 years; in other concerns where the first rate of increment was Rs 5 it lasted for a much shorter period, which in no case exceeded eight years and was in many cases three or four years. In some concerns the first rate of increment was higher than Rs 5. Almost similar was the case with senior clerks. So it appears that in the appellants' concerns the first rate of increment was generally on the low side and lasted for a longer period than in the case of comparable concerns. In these circumstances if the Tribunal decided to give increments by way of adjustments it cannot be said that the Tribunal went wrong. The facts in these cases are different from the facts in the case of *French Motor car Co.* case and therefore we see no reason for interfering with the order of adjustment. After the change in wage-scales, dearness allowance and adjustment, the employees of the appellants concerns will stand comparison with some of the best concerns in that region. But considering that there is no question of want of financial capacity and that Greaves Cotton and Co. which is the main Company concerned in these appeals, has a high standing in that region, we do not think that the total wage packet fixed is abnormal or so disproportionate as compared to the total wage packet in other comparable concerns as to call for any interference with adjustments.

16. The next question is about the so-called retrospective effect of the award. The first reference was made to the Tribunal on April 8, 1959 while the last was in December 1959. What the Tribunal has done it to grant wage-scales etc. from April 1, 1959. This cannot in our opinion be said to be really retrospective, because it is practically from the date of the first reference in the case of the main company. On the whole therefore we see no reason to interfere with the order of the Tribunal fixing the date from which the award would come into force.

17. Lastly we come to the question of gratuity. The attack in this connection is on two aspects of the gratuity scheme. The first is about the fixation of 20 months as the maximum instead of 15 months, which was usual so far. The second is with respect to deduction from gratuity only to the extent of the financial loss occasioned by misconduct in case of dismissal for misconduct. So far as the second provision is concerned it cannot be disputed that this is the usual provision that is being made in that region. So far as the increase in the maximum from 15 months to 20 months is concerned, it appears that the Tribunal has relied on a number of cases in which the maximum is higher than fifteen months wages. In these circumstances considering that tribunals have now begun to give a higher ceiling and in one concern, namely, Mackinnon Mackenzie, the ceiling has been next even so high as thirty months by agreement, we do not think that any interference is called for in the present case.

18. We therefore dismiss the appeals so far as retrospective effect and adjustments as also fixation of wages and dearness allowance with respect to clerical and subordinate staff are concerned. We allow the appeal with respect to factory-workmen and send the cases back to the Tribunal for fixing the wage structure including basic wage and dearness allowance and for granting adjustments in the light of the observations made by us. The new award pursuant to this remand will also come into force from the same date, namely, April 1, 1959. The appeals with respect to gratuity are dismissed. In the circumstances we order parties to bear their own costs. Two months from today is allowed to pay up the arrear.

\* \* \* \* \*

## ***The Workmen v The Management of Reptakos Brett & Co. Ltd.***

(1992) 1 SCC 290 : AIR 1992 SC 504

**KULDIP SINGH, J.** - The Reptakos Brett & Co. Ltd. (the 'Company') is engaged in the manufacture of pharmaceutical and dietetic speciality products and is having three units, two at Bombay and one at Madras. The Madras factory, with which we are concerned, was set up in the year 1959. The Company on its own provided slab system of dearness allowance (DA) which means the DA paid to the workmen was linked to cost of living index as well as the basic wage. The said double-linked DA scheme was included in various settlements between the Company and the workman and remained operative for about thirty years. The question for our consideration is whether the Company is entitled to restructure the DA scheme by abolishing the slab system and substituting the same by the scheme - prejudicial to the workmen - on the ground that the slab system has resulted in over-neutralisation thereby landing the workmen in the high-wage island.

3. The first settlement between the Company and the workmen was entered into on August 11, 1964. While accepting the double-linked DA it further provided variable DA limited to the cost of living index up to 5.41-5.50. Further relief was given to the workmen in the settlement dated July 18, 1969 when the limit on the variable DA was removed. The Company revised the rates of DA on August 7, 1971. Thereafter, two more settlements were entered into on July 4, 1974, and January 4, 1979, respectively. Slab system with variable DA continued to be the basic constituent of the wage structure in the Company from its inception.

4. The position which emerges is that in the year 1959 the Company on its own introduced slab system of DA. In 1964 in addition, variable DA to the limited extent was introduced but the said limit was removed in the 1969 settlement. The said DA scheme was reiterated in the 1979 settlement. It is thus obvious that the slab system of DA introduced by the Company in the year 1959 and its progressive modifications by various settlements over a period of almost thirty years, has been consciously accepted by the parties and it has become a basic feature of the wage structure in the Company.

5. The workmen raised several demands in the year 1983 which were referred for adjudication to the Industrial Tribunal, Madras. The Company in turn made counter demands which were also referred to the said Tribunal. One of the issues before the Tribunal was as under:

“Whether the demand of the management for restructuring of the dearness allowance scheme is justified, if so, to frame a scheme?”

The Tribunal decided the above issue in favour of the Company and by its award dated October 14, 1987 abolished the existing slab system of DA and directed that in future dearness allowance in the Company, be linked only to the cost of living index at 33 paise per point over 100 points of the Madras City Cost of Living Index 1936 base. The Tribunal disposed of the two references by a common award. The Company as well as the workmen filed separate writ petitions before the Madras High Court challenging the award of the Tribunal. While the two writ petitions were pending the parties filed a joint memorandum dated June 13, 1988, before the High Court in the following terms:

“In view of the settlement dated May 13, 1988 entered into between the parties, a copy of which is enclosed, both the parties are not pressing their respective writ petitions except with regard to the issue relating to restructuring of dearness allowance.”

6. The learned Single Judge of the High Court upheld the findings of the Tribunal on the sole surviving issue and dismissed the writ petition of the workmen. The writ appeal filed by the workmen was also dismissed by the High Court by its judgment dated September 14, 1989. The present appeal by special leave is against the award of the Tribunal as upheld by the High Court.

7. Mr M.K. Ramamurthi, learned counsel for the appellants has raised the following points for our consideration:

“(i) The Tribunal and the High Court grossly erred in taking Rs 26 as a pre-war wage of a worker in Madras region and, on that arithmetic, reaching a conclusion that the rate of neutralisation on the basis of cost of living index in December 1984 was 192 per cent.

(ii) Even if it is assumed that there was over-neutralisation - unless the pay structure of the workmen is within the concept of a ‘living wage’ and in addition it is proved that financially the Company is unable to bear the burden - the existing pay structure/DA scheme cannot be revised to the prejudice of the workmen.

(iii) In any case the DA scheme - which was voluntarily introduced by the Company and reiterated in various settlements cannot be altered to the detriment of the workmen.”

8. Before the points are dealt with, we may have a fresh look into various concepts of wage structure in the industry. Broadly, the wage structure can be divided into three categories - the basic “minimum wage” which provides bare subsistence and is at poverty line level, a little above is the “fair wage” and finally the “living wage” which comes at a comfort level. It is not possible to demarcate these levels of wage structure with any precision. There are, however, well accepted norms which broadly distinguish one category of pay structure from another. The Fair Wages Committee, in its report published by the Government of India, Ministry of Labour, in 1949, defined the “living wage” as under:

“(T)he living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.”

9. The Committee’s view regarding “minimum wage” was as under:

“the minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities.”

The Fair Wages Committee’s Report has been broadly approved by the Court in *Express Newspapers (P) Ltd. v. Union of India* [AIR 1958 SC 578] and *Standard Vacuum Refining Co. of India v. Its Workmen* [AIR 1961 SC 895].

10. The Tripartite Committee of the Indian Labour Conference held in New Delhi in 1957 declared the wage policy which was to be followed during the Second Five Year Plan. The Committee accepted the following five norms for the fixation of ‘minimum wage’:

“(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr Aykroyd for an average Indian adult of moderate activity.

(iii) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give the average workers’ family of four, a total of 72 yards.

(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government’s Industrial Housing Scheme, should be taken into consideration in fixing the minimum wage.

(v) Fuel, lighting and other ‘miscellaneous’ items of expenditure should constitute 20 per cent of the total minimum wage.”

11. This Court in *Standard Vacuum Refining Company* case has referred to the above norms with approval.

12. The concept of ‘minimum wage’ is no longer the same as it was in 1936. Even 1957 is way behind. A worker’s wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic

aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:

“(vi) children’s education, medical requirement minimum recreation including festivals/ceremonies and provision for old age marriages etc. should further constitute 25 per cent of the total minimum wage.”

13. The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.

14. A living wage has been promised to the workers under the Constitution. A ‘socialist’ framework to enable the working people a decent standard of life, has further been promised by the 42nd Amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are piling up but the day of fulfilment is nowhere in sight. Industrial wage - looked at as a whole - has not yet risen higher than the level of minimum wage.

15. Adverting to the first point raised by Mr Ramamurthi it would be convenient to quote - from the award - the contentions of the company and the findings reached by the Tribunal. The Company’s case as noticed by the Tribunal is as under:

“It is stated that the pre-war wage of a worker in the Madras Region was Rs 26. It is evidenced by the decision of the Labour Appellate Tribunal reported in: *Buckingham and Carnatic Mills Ltd. v. Their Workers* [(1951) 2 LLJ 314] and *Good Pastor Press v. Their Workers* [(1951) 2 LLJ 718]. It is contended that taking the pre-war minimum wage of worker at Madras being Rs 26 per month equivalent to 100 per cent neutralisation the rate of dearness allowance at 26 paise for every point above 100 points of cost of living index would work out to 100 per cent neutralisation. On the above basis at 2780 points of cost of living index in December 1984, the 100 per cent neutralised wage should be Rs 722.80 (basic wage of Rs 26 plus dearness allowance of Rs 696.80). As against the above wage a workman of lower grade in the petitioner-Company in December 1984 was getting a total wage of Rs 1394 comprising basic plus dearness allowance plus house rent allowance and the rate of neutralisation of dearness allowance correspondingly works out to 192 per cent.”

16. The Tribunal accepted the above contentions of the Company. The evidence produced by the Company, regarding prevailing DA schemes in the comparable industries in the region, was also taken into consideration. The Tribunal finally decided as under:

“Taking an overall view of the rate of dearness allowance paid by these comparable concerns in the region and the higher total emoluments received by the workmen in this establishment, the slab system of dearness allowance now in existence shall stand abolished and in future, dearness allowance in the petitioner management would be linked only to the cost of living index at 33 paise per point over 100 points of the Madras City Cost of Living Index 1936 base and it shall be effective from the month in which the award is published in the Tamil Nadu gazette.”

17. The learned Single Judge of the High Court upheld the above findings of the Tribunal. The Division Bench of the High Court, in writ appeal, approved the award and the judgment of the learned Single Judge in the following words:

“The learned Judge has observed that the counsel for the management had taken him through all the relevant materials which were filed in the form of exhibits before the Tribunal in order to show that the matter of overneutralisation cannot be in dispute. Thus the learned Judge proceeded on the basis that there is overneutralisation which called for devising a scheme for restructuring the wage scale. This finding cannot be interfered with as no materials have been placed before us by the learned counsel for the appellant to show that the exhibits which were perused by the learned Judge do not support his conclusion. Hence, we hold that the contention that there are no compelling circumstances in this case to revise the pattern of dearness allowance is unsustainable.”

18. According to the Company the only purpose of DA is to enable a worker - in the event of a rise in cost of living - to purchase the same amount of goods of basic necessity as before. In other words the DA is to neutralise the rise in prices. The said purpose can be achieved by providing maximum of 100 per cent neutralisation. Accepting the calculations of the Company based on Rs 26 being the pre-war (1936) minimum wage in Madras region the Tribunal came to the finding that there was 192 per cent neutralisation.

19. The Tribunal accepted Rs 26 as the pre-war minimum wage in Madras region on the basis of the decisions of Labour Appellate Tribunal of India in *Buckingham and Carnatic Mills Ltd. v. Their Workers* and *Good Pastor Press v. Their Workers*.

20. In *Buckingham* case the Appellate Tribunal came to the conclusion that the basic wage of the lowest category of operatives on the cost of living index of the year 1936 was Rs 28. The said wage included Rs 16 1/2 as expenses on diet. The workers relied upon the Textile Enquiry Committee's report to claim 25 per cent addition to the diet expenses. The Appellate Tribunal rejected the report on the ground that the recommendations in the said report were for the purpose of attaining the standard of "living wage" and not of 'minimum wage'. The Appellate Tribunal stated as under:

"The Union however, contends that Dr Aykroyd revised his opinion when submitting a specially prepared note to assist the Textile Enquiry Committee, Bombay of which Mr Justice Divatia was the Chairman, where he is said to have stated that 25 per cent more will have to be added for obtaining a balanced diet for a minimum wage earner. The report of that Enquiry Committee, which was published in 1940, however, shows that Dr Aykroyd added 25 per cent as the costs of the extra items to his standard menu such as sugar etc., for the purpose of attaining the standard menu of 'living wages' (Final Report of the Textile Labour Enquiry Committee 1940, Vol. II, pages 70 to 71). Therefore, for the purpose of fixing 'minimum wages' that 25 per cent is not to be added. "

21. The question as to whether the recommendations of Textile Enquiry Committee were in relation to 'living wage' or 'minimum wage' came for consideration before this Court in *Standard Vacuum* case. This Court held as under:

It is obvious that the Committee was really thinking of what is today described as the minimum need-based wage, and it found that judged by the said standard the current wages were deficient. In its report the Committee has used the word 'minimum' in regard to some of the constituents of the concept of living wage, and its calculations show that it did not proceed beyond the minimum level in respect of any of the said constituents. Therefore, though the expression 'living wage standard' has been used by the Committee in its report we are satisfied that Rs 50 to Rs 55 cannot be regarded as anything higher than the need-based minimum wage at the time. If that be the true position the whole basis adopted by the appellant in making its calculations turns out to be illusory.

22. This Court, therefore, in *Standard Vacuum* case came to the conclusion that the Textile Labour Committee Report in the year 1940 in its calculations did not proceed beyond the minimum level of the wage structure. It was further held that Rs 50 to Rs 55 was the need-based minimum wage in the year 1940.

23. The Appellate Tribunal in *Buckingham* case therefore, misread the Textile Committee Report and was not justified in rejecting the same on the ground that it related to the category of 'living wage'.

24. We are of the view that it would not be safe to accept the findings of the Appellate Tribunal in *Buckingham* case as the basis for fixing the wage structure to the prejudice of the workmen. This Court in *Standard Vacuum* case has further held that in Bombay the minimum wage in the year 1940 was Rs 50 to Rs 55. On that finding it is not possible to accept that the minimum wage in the year 1936 in Madras region was Rs 26/28. So far as the *Good Pastor Press* case is concerned the question of determining the minimum wage in pre-war 1936 was not before the Appellate Tribunal. It only mentioned the fact that Rs 26 was held to be so by some of the subordinate tribunals. There was no discussion at all on this point. The Tribunal's reliance on this case was wholly misplaced.



25. In any case we are of the opinion that purchasing power of today's wage cannot be judged by making calculations which are solely based on 30/40 years old wage structure. The only reasonable way to determine the category of wage structure is to evaluate each component of the category concerned in the light of the prevailing prices. There has been sky-rocketing rise in the prices and the inflation chart is going up so fast that the only way to do justice to the labour is to determine the money value of various components of the minimum wage in the context of today.

26. We may now move on the second and third point raised by Mr Ramamurthi. We take up these points together. Mr F.S. Nariman, learned counsel appearing for the Company, contended that the existing DA scheme can be revised even to the prejudice of the workmen and for that proposition he relied upon the judgment of this Court in **Crown Aluminium Works v. Their Workmen** [AIR 1958 SC 30]. Mr Ramamurthi has however, argued that even if the contention of Mr Nariman is accepted in principle, the Company has not been able to make out a case for such a revision. In **Crown Aluminium Works** case this Court speaking through Gajendragadkar, J. (as he then was) held as under:

“The question posed before us by Mr Sen is: Can the wage structure fixed in a given industry be never revised to the prejudice of its workmen? Considered as a general question in the abstract it must be answered in favour of Mr Sen. We do not think it would be correct to say that in no conceivable circumstances can the wage structure be revised to the prejudice of workmen. When we make this observation, we must add that even theoretically no wage structure can or should be revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage. If the wage structure in question falls in a higher category, then it would be open to the employer to claim its revision even to the prejudice of the workmen provided a case for such revision is made out on the merits to the satisfaction of the tribunal. In dealing with a claim for such revision, the tribunal may have to consider, as in the present case whether the employer's financial difficulties could not be adequately met by retrenchment in personnel already effected by the employer and sanctioned by the tribunal. The tribunal may also enquire whether the financial difficulties facing the employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that, after considering all the relevant facts, if the tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the tribunal to accede to the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the tribunal may deem fit or expedient to impose.”

27. The above dicta was reiterated by this Court in **Ahmedabad Mills Owners' Association v. Textile Labour Association** [AIR 1966 SC 497], wherein this Court through Gajendragadkar, C.J. laid down as under:

“The other aspect of the matter which cannot be ignored is that if a fair wage structure is constructed by industrial adjudication, and in course of time, experience shows that the employer cannot bear the burden of such wage structure, industrial adjudication can, and in a proper case should, revise the wage structure, though such revision may result in the reduction of the wages paid to the employees if it appears that the employer cannot really bear the burden of the increasing wage bill, industrial adjudication, on principle, cannot refuse to examine the employer's case and should not hesitate to give him relief if it is satisfied that if such relief is not given, the employer may have to close down his business ....

This principle, however, does not apply to cases where the wages paid to the employees are no better than the basic minimum wage. If, what the employer pays to his employees is just the basic subsistence wage, then it would not be open to the employer to contend that even such a wage is beyond his paying capacity.”

28. The ratio which emerges from the judgments of this Court is that the management can revise the wage structure to the prejudice of the workmen in a case where due to financial stringency it is unable to bear the burden of the existing wage. But in an industry or employment where the wage structure is at the level of minimum wage, no such revision at all, is permissible not even on the ground of financial

stringency. It is, therefore, for the management which is seeking restructuring of DA scheme to the disadvantage of the workmen to prove to the satisfaction of the tribunal that the wage structure in the industry concerned is well above minimum level and the management is financially not in a position to bear the burden of the existing wage structure.

29. Mr Ramamurthi further relied upon this Court's judgment in *Monthly Rated Workmen at the Wadala factory of the Indian Hume Pipe Co. Ltd. v. Indian Hume Pipe Co. Ltd., Bombay* [(1986) 2 SCR 484] and contended that an employer cannot be permitted to abolish the DA scheme which has worked smoothly for almost thirty years on the plea that the said scheme is more beneficial than the DA scheme adopted by other industries in the region. In the *Indian Hume Pipe Co. Ltd.* case the management pleaded that the dearness allowance enjoyed by the workmen was so high in certain cases that neutralisation was at rates much higher than 100 per cent. It was further contended that the management did not have the capacity to pay the slab system of DA and in the event of a claim for similar DA by other workmen the management might have to close down the factories.

30. We agree with Mr Ramamurthi that the DA scheme - which had stood the test of time for almost thirty years and had been approved by various settlements between the parties - has been unjustifiably abolished by the courts below and as such the award of the tribunal and the High Court judgments are unsustainable.

31. Mr Nariman has also relied on the judgment of this Court in *Killick Nixon Ltd. v. Killick & Allied Companies Employees Union* (1975) 2 SCC 260 to support the findings of the tribunal and the High Court. The said case does not lay down that in all cases the slab system of DA should be abolished to the prejudice of the workers. In the said case this Court on the facts of the case came to the conclusion that the employer had made out a case for putting a ceiling on the dearness allowance. The ratio of that case cannot be extended to interfere with the existing DA schemes in every case where such schemes are beneficial to the workmen.

32. Mr Nariman has invited our attention to para 20 of the award wherein the tribunal has held as under:

“These figures as detailed in Ex. M-13 would establish that the company is not in a financial position to bear the additional burden on account of increased wages.”

33. From the above finding it was sought to be shown that the Company has proved to the satisfaction of the Tribunal that financially it was not in a position to bear the burden of the existing DA scheme. We do not agree with the learned counsel. The Tribunal gave the above finding in the reference made on behalf of the workmen asking for bonus increase and various other monetary benefits. While rejecting the demands of the workmen the Tribunal gave the above finding which related to the additional burden accruing in the event of acceptance of the workers' demands. The tribunal nowhere considered the financial position of the Company *vis-a-vis* the existing DA scheme. The Company neither pleaded nor argued before the tribunal that its financial position had so much deteriorated that it was not possible for it to bear the burden of the slab system of DA. The tribunal has not dealt with this aspect of the matter while considering the demand of the Company for restructuring the DA scheme.

34. It has been pleaded by the Company that its workmen are in a high wage island and as such the revision of DA scheme was justified. The Company also produced evidence before the Tribunal to show that comparable concerns in the region were paying lesser DA to its workmen. On the basis of the material produced before the tribunal all that the Company has been able to show is that the DA paid by the Company is somewhat higher than what is being paid by the other similar industries in the region. There is, however, no material on the record to show that what is being paid by the Company is higher than what would be required by the concept of need based minimum wage. In any case there is a very long way between the need based wage and the living wage.

35. Mr Nariman reminded us of the limits on our jurisdiction under Article 136 of the Constitution of India and relying upon *Shaw Wallace & Co. Ltd. v. Workmen*, AIR 1978 SC 977 and *Statesman Ltd. v.*

**Workmen** [AIR 1976 SC 758], contended that so long as there is “some basis, some material to validate the award” the “jurisdiction under Article 136 stands repelled”. The tribunal and the High Court, in this case, has acted in total oblivion of the legal position as propounded by this Court in various judgments referred to by us. Manifest injustice has been caused to the workmen by the award under appeal. We see no force in the contention of the learned counsel.

36. In view of the above discussion we are of the view that the tribunal was not justified in abolishing the slab system of DA which was operating in the Company for almost thirty years. We allow the appeal and set aside the award of the tribunal and the judgment of the learned Single Judge in the writ petition and of the Division Bench in the writ appeal. The reference of the Company on the issue of restructuring of the dearness allowance is declined and rejected. The appellant-workmen shall be entitled to their costs throughout which we assess at Rs 25,000.

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**Case on Minimum Wages**  
***People's Union for Democratic Rights v. Union of India***

AIR 1982 SC 1473

**BHAGWATI, J.** :-This is a writ petition brought by way of public interest litigation in order to ensure observance of the provisions of various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. The matter was brought to the attention of the Court by the first petitioner which is an organisation formed for the purpose of protecting democratic, rights by means of a letter addressed to one of us (Bhagwati J.). The letter was based on a report made by a team of three social scientists who were commissioned by the first petitioner for the purpose of investigating and inquiring into the conditions under which the workmen engaged in the various Asiatic Projects were working. Since the letter addressed by 1st petitioner was based on the report made by three social scientists after personal investigation and study, it was treated as a writ petition on the judicial side and notice was issued upon it inter alia to the Union of India, Delhi Development Authority and Delhi Administration which were arrayed as respondents to the writ petition. These respondents filed their respective affidavits in reply to the allegations contained in the writ petition and an affidavit was filed on behalf of the petitioner in rejoinder to the affidavits in reply and the writ petition was argued before us on the basis of these pleadings.

4. The Asian Games take place periodically in different parts of Asia and this time India is hosting the Asian Games. It is a highly prestigious undertaking and in order to accomplish it successfully according to international standard the Government, of India had to embark upon various construction projects which included building of flyovers, stadia, swimming pool, hotels and Asian Games village complex. This construction work was farmed out by the Government of India amongst various authorities such as the Delhi Administration, the Delhi Development Authority and the New Delhi Municipal Committee. It is not necessary for the purpose of the present writ petition to set out what particular project was entrusted to which authority because it is not the purpose of this writ petition to find fault with any particular authority for not observing in the labour laws in relation to the workmen employed in the projects which are being executed by it, but to ensure that in future the labour laws are implemented and the rights of the workers under the labour laws are not violated. These various authorities to whom the execution of the different projects was entrusted engaged contractors for the purpose of carrying out the construction work of the projects and they were registered as principal employers under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractors started the construction work of the projects and for the purpose of carrying out the construction work they engaged workers through jamadars. The jamadars brought the workers from different parts of India and particularly the States of Rajasthan, Uttar Pradesh and Orissa and got them employed by the contractors. The workers were entitled to a minimum wage of Rs. 9.25 per day, that being the minimum wage fixed for workers employed on the construction of roads and in building operations but the case of the petitioners was, that the workers were not paid this minimum wage and they were exploited by the contractors and the jamadars. The Union of India in the affidavit reply filed on its behalf by Madan Mohan Under Secretary, Ministry of Labour asserted that the contractors and the minimum wage of Rs. 9.25 per day but frankly admitted that this minimum wage was paid to the jamadars through whom the workers were recruited and the jamadars deducted rupee one per day per worker as their commission and paid only Rs. 8.25 by way of wage to the workers. The result was that in fact the workers did not get the minimum wage of Rs. 9.25 per day. The petitioners also alleged in the writ petition that the provisions of

the Equal Remuneration Act 1976 were violated and women worker, were paid only Rs. 7 per day and the balance of the amount of the wage was being misappropriated by the jamaridars. It was also pointed out by the petitioners that there was violation of Art., 24 of the Constitution and of the provisions of the Employment of Children Act 1938 inasmuch as children below the age of 14 years were (employed by the contractors in the construction work of the various projects. The petitioners also alleged violation of the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and pointed out various breaches of those provisions by the contractors which resulted in deprivation and exploitation of the workers employed in the construction work of most of the projects. It was also the case of the petitioners that the workers were denied proper living conditions and medical and other facilities to which they were entitled under the provisions of the Contract Labour (Regulation and Abolition) Act 1970. The petitioners also complained that the contractors were not implementing the provisions of the Inter-- State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 though that Act was brought in force in the Union Territory of Delhi as far back as 2nd October 1980. The report of the team of three social scientists on which the writ petition was based set out various instances of violations of the provisions of the Minimum Wages Act, 1948, the Equal Remuneration Act 1976, Article 24 of the Constitution. The Employment of Children Act 1938 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979.

5. These averments made on behalf of the petitioners were denied in the affidavits in reply filed on behalf of the Union of India the Delhi Administration and the Delhi Development Authority. It was asserted by these authorities that so far as the Equal Remuneration Act 1976 and the Contract Labour (Regulation and Abolition) Act 1970 were concerned, the provisions of these labour laws were being complied with by the contractors and whenever any violations of these labour laws were brought to the attention of the authorities as a result of periodical inspections carried out by them, action by way of prosecution was being taken against the contractors. The provisions of the Minimum Wages Act 1948 were, according to the Delhi Development Authority, being observed by the contractors and it was pointed out by the Delhi Development Authority in its affidavit reply that the construction work of the projects entrusted to it was being carried out by the contractors under a written contract entered into with them and this written contract incorporated "Model Rules for the protection of Health, and Sanitary Arrangements for Workers employed by Delhi Development Authority or its Contractors" which provided for various facilities to be given to the workers employed in the construction work and also ensured to them payment of minimum wage. The Delhi Administration was not so categorical as the Delhi Development Authority in regard to the observance of the provisions of the Minimum Wages Act 1948 and in its affidavit in reply it conceded that the jamadars through whom the workers were recruited might be deducting rupee one per day per worker from the minimum wage payable to the workers. The Union of India was however more frank and it clearly admitted in its affidavit in reply that the jamadars were deducting rupee one per day per worker from the wage payable to the workers with the result that the workers did not get the minimum wage of Rs. 9.25 per day and there was violation of the provisions of the Minimum Wages Act, 1948.

8. We may conveniently at this stage before proceeding to examine the factual aspects of the case, deal with two preliminary objections raised on behalf of the respondents against the maintainability of the writ petition. The first preliminary objection was that the petitioners had no locus standi to maintain the writ petition since, even on the averments made in the writ

petition, the rights said to have been violated were those of the workers employed in the construction work of the various Asiad Projects and not of the petitioners and the petitioners could not therefore have any cause of action. The second preliminary objection urged on behalf of the respondents was that in any event no writ petition could lie against the respondents, because the workmen whose rights were said to have been violated were employees of the contractors and not of the respondents and the cause of action of the workmen, if any, was therefore against the contractors and not against the respondents. It was also contended as part of this preliminary objection that no writ petition under Article 32 of the Constitution could lie against the respondents for the alleged violations of the rights of the workmen under the various labour laws and the remedy, if any, was only under the provisions of those laws. These two preliminary objections were pressed before us on behalf of the Union of India, the Delhi Administration and the Delhi Development Authority with a view to shutting out an inquiry by this Court into the violations of various labour laws alleged in the writ petition but we do not think there is any substance in them and they must be rejected. Our reasons for saying so are as follows :

9. The first preliminary objection raises the question of locus standi of the petitioners to maintain the writ petition. It is true that the complaint of the petitioners in the writ petition is in regard to the violations of the provisions of various labour laws designed for the welfare of workmen and therefore from a strictly traditional point of view, it would be only the workmen whose legal rights are violated who would be entitled to approach the court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon system of jurisprudence have been broken and a new dimension has been given to the doctrine of locus standi which has revolutionised the whole concept of access to justice in a way not known before to the western system of jurisprudence. This Court has taken the view that having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed and it is therefore necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may become easily available to the lowly and the lost. It has been held by this Court in its recent judgment in the Judges Appointment and Transfer case\*in a major break- through which in the years to come is likely to impart new significance and relevance in the judicial system and to transform it into an instrument of socio-economic change, that where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial redress, any member of the public acting bona fide and not out of any extraneous motivation may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the Court. Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the Court and the Court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the Court to such legal injury or legal wrong. Court

would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it. That is what has happened in the present case. Here the workmen, whose rights are said to have been violated and to whom a life of basic human dignity has been denied are poor, ignorant, illiterate humans who by reason of their poverty and social and economic disability, are unable to approach the Courts for judicial redress and hence the petitioners have under the liberalised rule of standing, locus standi to maintain the present writ petition espousing the cause of the workmen. It is not the case of the respondents that the petitioners; are acting mala fide or out of extraneous motives and in fact the respondents cannot so allege, since the first petitioner is admittedly an organisation dedicated to the protection and enforcement of Fundamental Rights and making Directive Principles of State Policy enforceable and justiciable. There can be no doubt that it is out of a sense of public service that the present litigation has been brought by the petitioners and it is clearly maintainable.

10. We must then proceed to consider the first limb of the second preliminary objection. It is true that the workmen whose cause has been championed by the petitioners are employees of the contractors but the Union of India, the Delhi Administration and the Delhi Development Authority which have entrusted the construction work of Asiad Projects to the contractors cannot escape their obligation for observance of the various labour laws by the contractors. So far as the Contract Labour (Regulation and Abolition) Act 1970 is concerned it is clear that under S. 20 if any amenity required to be provided under Ss. 16, 17, 18 or 19 for the benefit of the workmen employed in an establishment is not provided by the contractor, the obligation to provide such amenity rests on the principal employer and therefore if in the construction work of the Asiad Projects, the contractors do not carry out the obligations imposed upon them by any of these sections, the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers would be liable and these obligations would be enforceable against them. The same position obtains in regard to the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. In the case of this Act also, Ss. 17 and 18 make the principal employer liable to make payment of the wages to the migrant workmen employed by the contractor as also to pay the allowances provided under Ss. 14 and 15 and to provide the facilities specified in S. 16 to such migrant workmen. In case the contractor fails to do so and these obligations are also therefore clearly enforceable against the Union of India, the Delhi Administration and the Delhi Development Authority as principal employers. So far as Article 24 of the Constitution is concerned, it embodies a fundamental right which is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment and since, as pointed out above construction work is a hazardous employment, no child below the age of 14 years can be employed in construction work and, therefore, not only are the contractors under a constitutional mandate not to employ any child below the age of 14 years, but it is also the duty of the Union of India, the Delhi Administration and the Delhi Development Authority to ensure that this constitutional obligation is obeyed by the contractors to whom they have entrusted the construction work of the various Asiad Projects. The Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors. So also with regard to the observance of the provisions of the Equal Remuneration Act 1976, the Union of India, the Delhi Administration and the Delhi Development Authority cannot avoid their obligation to ensure that these provisions are complied with by the contractors. It is the principle of equality embodied in Art. 14 of the Constitution which finds expression in the

provisions of the Equal Remuneration Act 1976 and if the Union of India, the Delhi Administration or the Delhi Development Authority at any time finds that the provisions of the Equal Remuneration Act 1976 are not observed and the principles of equality before the law enshrined in Art. 14 is violated by its own contractors, it cannot ignore such violation and sit quiet by adopting a non-interfering attitude and taking shelter under the executive that the violation is being committed by the contractors and not by it. If any particular contractor is committing a breach of the provisions of the Equal Remuneration Act 1976 and thus denying equality before the law to the workmen, the Union of India, the Delhi Administration or the Delhi Development Authority as the case may be, would be under an obligation to ensure that the contractor observes the provisions of the Equal Remuneration Act 1976 and does not breach the equality clause enacted in Art. 14. The Union of India, the Delhi Administration and the Delhi Development Authority must also ensure that the minimum wage is paid to the workmen as provided under the Minimum Wages Act 1948. The contractors are, of course, liable to pay the minimum wage to the workmen employed by them but the Union of India, the Delhi Administration and the Delhi Development Authority who have entrusted the construction work to the contractors would equally be responsible to ensure that the minimum wage is paid to the workmen by their contractors. This obligation which even otherwise rests on the Union of India, the Delhi Administration and the Delhi Development Authority is additionally reinforced by S. 17 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 in so far as migrant workmen are concerned. It is obvious, therefore, that the Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of these labour laws by the contractors and if these labour laws are not complied with by the contractors, the workmen would clearly have a cause of action against the Union of India, the Delhi Administration and the Delhi Development Authority.

11. That takes us to a consideration of the other limb of the second preliminary objection. The argument of the respondents under this head of preliminary objection was that a writ petition under Art. 32 cannot be maintained unless it complains of a breach of some fundamental right or the other and since what were alleged in the present writ petition were merely violations of the labour laws enacted for the benefit of the workmen and not breaches of any fundamental rights, the present writ petition was not maintainable and was liable to be dismissed. Now it is true that the present writ petition cannot be maintained by the petitioners unless they can show some violation of a fundamental right, for it is only for enforcement of a fundamental right that a writ petition can be maintained in this Court under Art. 32. So far we agree with the contention of the respondents but there our agreement ends. We cannot accept the plea of the respondents that the present writ petition does not complain of any breach of a fundamental right. The complaint of violation of Art. 24 based on the averment that children below the age of 14 years are employed in the construction work of the Asiad Projects is clearly a complaint of violation of a fundamental right. So also when the petitioners allege non-observance of the provisions of the Equal Remuneration Act 1976, it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Art. 14 and it can hardly be disputed that such a complaint can legitimately form the subject matter of a writ petition under Art. 32. Then there is the complaint of non-observance of the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 and this is also in our opinion a complaint relating to violation of Art. 21. This Article has acquired a new dimension as a result of the decision of this Court in



*Maneka Gandhi v. Union of India*. (1978) 2 SCR 621 (663) : (AIR 1978 SC 597) and it has received its most expansive interpretation in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* (1981) 2 SCR 516 : (AIR 1981 SC 746). Where it has been held by this Court that the right of life guaranteed under this Article is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes within its scope and ambit the right to live with basic human dignity and the State cannot deprive any one of this precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just. Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Art. 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen. That leaves for consideration the complaint in regard to non-payment of minimum wage to the workmen under the Minimum Wages Act 1948. We are of the view that this complaint is also one relating to breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Art. 23 which is violated by non-payment of minimum wage to the workmen.

12. Art. 23 enacts a very important fundamental right in the following terms :

"Art. 23 : Prohibition of traffic in human beings and forced labour -

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Now many of the fundamental rights enacted in Part III operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found *inter alia* in Articles 17, 23 and 24. We have already discussed the true scope and ambit of Article 24 in an earlier portion of this judgment and hence we do not propose to say anything more about it. So also we need not expatiate on the proper meaning and effect of the fundamental right enshrined in Art. 17 since we are not concerned with that Article in the present writ petition. It is Art. 23 with which we are concerned and that Article is clearly designed to protect the individual not only against the State but also against other private citizens. Article 23 is not limited in its application against the State but it prohibits "traffic in human beings and begar and other similar forms of forced labour" practised by anyone else. The sweep of Article 23 is wide and unlimited and it strikes at "traffic in human beings and begar and other similar forms of forced labour" wherever they are found. The reason for enacting this provision in the chapter on fundamental rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted. The Constitution makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching

social and economic justice to the common man. Large masses of people, bled white by well-nigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society with little respect for the dignity of the individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about their total advancement and welfare. Political freedom had no meaning unless it was accompanied by social and economic freedom and it was therefore necessary to carry forward the social and economic revolution with a view to creating socio-economic conditions in which every one would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the Constitution makers enacted the Directive Principles of State Policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order. Now there was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large parts of the country. This evil was the relic of a feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which "We the people of India" were determined to build and constituted a gross and most revolting denial of basic human dignity. It was therefore necessary to eradicate this pernicious practice and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such practice could not be allowed to continue to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the Directive Principles of State Policy, because then the outlawing of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of the basic constitutional norms and values until some appropriate legislation could be brought by the legislature forbidding such practice. The Constitution makers therefore, decided to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the chapter on fundamental rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force. This is the reason why the provision enacted in Art. 23 was included in the chapter on fundamental rights. The prohibition against "traffic in human beings and begar and other similar forms of forced labour" is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice.

13. The question then is as to what is the true scope and meaning of the expression "traffic in human beings" and begar and other similar forms of forced labour" in Art. 23? What are the forms of 'forced labour' prohibited by that Article and what kind of labour provided by a person can be regarded as 'forced labour' so as to fall within this prohibition?

14. When the Constitution makers enacted Art. 23 they had before them Art. 4 of the Universal Declaration of Human Rights but they deliberately departed from its language and employed words which would make the reach and content of Art. 23 much wider than that of Article 4 of the Universal Declaration of Human Rights. They banned 'traffic in human beings which is an expression of much larger amplitude than 'slave trade' and they also interdicted "begar and other similar forms of forced labour". The question is what is the scope and ambit of the expression 'begar and other similar forms of forced labour'? Is this expression wide enough to include every

conceivable form of forced labour and what is the true scope, and meaning of the words "forced labour?" The word 'begar' in this Article is not a word of common use in English language. It is a word of Indian origin which like many other words has found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word 'begar', but there can be no doubt that it is a form of forced labour under which a person is compelled to work without receiving any remuneration. Molesworth describes 'begar' as "labour or service exacted by a government or person in power without giving remuneration for it". Wilson's glossary of Judicial and Revenue Terms gives the following meaning of the word 'begar' : "a forced labourer, one pressed to carry burthens for individuals or the public. Under the old system, when pressed for public service, no pay was given. The Begari, though still liable to be pressed for public objects, now receives pay. Forced labour for private service is prohibited." "Begar" may therefore be loosely described as labour or service which a person is forced to give without receiving any remuneration for it. That was the meaning of the word 'begar' accepted by a Division Bench of the Bombay High Court in *S. Vasudevan v. S. D. Mital*, AIR 1962 Bom 53. 'Begar' is thus clearly a form of forced labour. Now it is not merely 'begar' which is unconstitutionally prohibited by Art. 23 but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values. The practice of forced labour is condemned in almost every international instrument dealing with human rights. It is interesting to find that as far back as 1930 long before the Universal Declaration of Human Rights came into being. International Labour Organisation adopted Convention No. 29 laying down that every member of the International Labour Organisation which ratifies this convention shall "suppress the use of forced or compulsory labour in all its forms" and this prohibition was elaborated in Convention No. 105 adopted by the International Labour Organisation in 1957. The words "forced or compulsory labour" in Convention No. 29 had of course a limited meaning but that was so on account of the restricted definition of these words given in Art. 2 of the Convention. Article 4 of the European Convention of Human Rights and Article 8 of the International Covenant on Civil and Political Rights also prohibit forced or compulsory labour. Art. 23 is in the same strain and it enacts a prohibition against forced labour in whatever form it may be found. The learned counsel appearing on behalf of the respondent laid some emphasis on the word 'similar' and contended that it is not every form of forced labour which is prohibited by Art. 23 but only such form of forced labour as is similar to 'begar' and since 'begar' means labour or service which a person is forced to give without receiving any remuneration for it, the interdict of Art. 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all and if some remuneration is paid, though it be inadequate, it would not fall within the words 'other similar forms of forced labour'. This contention seeks to unduly restrict the amplitude of the prohibition against forced labour enacted in Art. 23 and is in our opinion not well founded. It does not accord with the principle enunciated by this Court in *Maneka Gandhi v. Union of India* (1978) 2 SCR 621 : (AIR 1978 SC 597) (supra) that when interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content. It is difficult, to imagine that the Constitution makers should have intended to strike only at certain forms of forced labour leaving it open to the socially or economically powerful sections of the community to exploit the poor and weaker sections by resorting to other forms of forced labour. Could there be any logic or reason in enacting that if a person is forced to give labour or service to another without receiving any remuneration at all, it should be regarded as a pernicious practice

sufficient to attract the condemnation of Art. 23, but if some remuneration is paid for it, then it should be outside the inhibition of that Article? If this were the true interpretation, Art. 23 would be reduced to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant clan to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Article 23. We do not think it would be right to place on the language of Art. 23 an interpretation which would emasculate its beneficent provisions and defeat the very purpose of enacting them. We are clear of the view that Article 23 is intended to abolish every form of forced labour. The words "other similar forms of forced labour" are used in Art. 23 not with a view to importing the particular characteristic of 'begar' that labour or service should be exacted without payment of any remuneration but with a view to bringing within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the Constitution makers used the words "other similar forms of forced labour". If the requirement that labour or work should be exacted, without any remuneration were imported in other forms of forced labour, they would straightway come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "other similar forms of forced labour". These words would be rendered futile and meaningless and it is a well recognised rule of interpretation that the court should avoid a construction which has the effect of rendering any words used by the legislature superfluous or redundant. The object of adding these words was clearly to expand the reach and content of Art. 23 by including, in addition to 'begar', other forms of forced labour within the prohibition of that Article. Every form of forced labour, 'begar' or otherwise, is within the inhibition of Art. 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion. Take for example a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years. If a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Art. 23. That is why specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer without breaching the injunction of Art. 23. This was precisely the view taken by the Supreme Court of United State in *Bailey v. Alabama*, (1910) 219 US 219: 55 Law Ed 191 while dealing with a similar provision in the Thirteenth Amendment. There a legislation enacted by the Alabama State providing that when a person with intent to injure or defraud his employer enters into a contract in writing for the purpose of any service and obtains money or other property from the employer and without refunding the money or the property refuses or fails to perform such service, he will be punished with a fine. The constitutional validity of this legislation was challenged on the ground that it violated the Thirteenth Amendment which inter alia provides : "Neither slavery nor involuntary servitude.....shall exist within the United States or any place subject to their jurisdiction". This challenge was upheld by a majority of the Court and Mr. Justice Hughes delivering the majority opinion said :

"We cannot escape the conclusion that although the statute in terms, is to punish fraud, still its

natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt, and judging its purpose by its effect that it seeks in this way to provide the means of compulsion through which performance of such service may be secured. The question is whether such a statute is constitutional." The learned Judge proceeded to explain the scope and ambit of the expression 'involuntary servitude' in the following words :

"The plain intention was to abolish slavery of whatever name and form and all its badges and incidents; to render impossible any state of bondage; to make labour free by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude."

Then, dealing with the contention that the employee in that case had voluntarily contracted to perform the service which was sought to be compelled and there was therefore no violation of the provisions of the Thirteenth Amendment, the learned Judge observed :

"The fact that the debtor contracted to perform the labour which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the statute. The full intent of the constitutional provision could be "defeated with obvious facility if through the guise of contracts under which advances had been made, debtors could be held to compulsory service. It is the compulsion of the service that the statute inhibits, for when that occurs, the condition of servitude is created which would be not less involuntary because of the original agreement to work out the indebtedness. The contract exposes the debtor to liability for the loss due to the breach, but not to enforced labour. "

and proceeded to elaborate this thesis by pointing out :

"Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary performance of labour or rendering of services in payment of a debt. In the latter case the debtor though contracting to pay his indebtedness by labour or service, and subject like any other contractor to an action for damages for breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service."

It is therefore clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced, by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour within the inhibition of Art. 23. This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service vide *Pollock v. Williams*, (1943) 322 US 4 : 88 Law Ed 1095. The reason is that it offends against human dignity to compel a person to provide labour or service to another who does not wish to do so, even though it be in breach of the contract entered into by him. There should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or

to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article 23 therefore, says that no one shall be forced to provide labour or service against his will, even though it be under a contract of service.

15. Now the next question that arises for consideration is whether there is any breach of Art. 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service, to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise; in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. Where a person is suffering, from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly, 'forced labour'. There is no reason why the word 'forced' should be read in, a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less

than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is, lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Art. 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Art. 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Art. 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Art. 23.

16. Before leaving this subject, we may point out with all the emphasis at our command that whenever any fundamental right which is enforceable against private individuals such as, for example, a fundamental right enacted in Arts. 17 or 23, or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. Of course, the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker section of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Union of India, the Delhi Administration and the Delhi Development Authority must therefore be held to be under an obligation to ensure observance of these various labour laws by the contractors and if the provisions of any of these labour laws are violated by the contractors the petitioners vindicating the cause of the workmen are entitled to enforce this obligation against the Union of India, the Delhi Administration and the Delhi Development Authority by filing the present writ petition. The preliminary objections urged on behalf of the respondents must accordingly be rejected.

17. Having disposed of these preliminary objections, we may turn to consider whether there was any violation of the provisions of the Minimum Wages Act 1948, Art. 24 of the Constitution, the Equal Remuneration Act 1976, the Contract Labour (Regulation and Abolition) Act 1970 and the Inter - State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 by the contractors. The Union of India in its affidavit in reply admitted that there were certain violations committed by the contractors but hastened to add that for these violations prosecutions were initiated against the errant contractors and no violation of any of the labour laws was allowed to go unpunished. The Union of India also conceded in its affidavit in reply that Re. 1/- per worker per day was deducted by the jamadars from the wage payable to the workers with the result that the workers did not get the minimum wage of Rs. 9.25 per day but stated that proceedings had been taken for the purpose of recovering the amount of the shortfall in the minimum wage from the contractors. No particulars were however given of such proceedings adopted by the Union of India or the Delhi Administration or the Delhi Development Authority. It was for this reason that we directed by our Order dated 11th May 1982 that whatever is the

minimum wage for the time being or if the wage payable is higher than such wage. shall be paid by the contractors to the workmen directly without the intervention of the jamadars and that the jamadars shall not be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise. We would also direct in addition that if the Union of India or the Delhi Administration or the Delhi Development Authority finds and for this purpose it may hold such inquiry as is possible in the circumstances that any of the workmen has not received the minimum wage payable to him, it shall take the necessary legal action against the contractors whether by way of prosecution or by way of recovery of the amount of the shortfall. We would also suggest that hereafter whenever any contracts are given by the government or any other governmental authority including a public sector corporation, it should be ensured by introducing a suitable provision in the contracts that wage shall be paid by the contractors to the workmen directly without the intervention of any jamadars or thekadars and that the contractors shall ensure that no amount by way of commission or otherwise is deducted or recovered by the jamadars from wage of the workmen. So far as observance of the other labour laws by the contractors is concerned, the Union of India, the Delhi Administration and the Delhi Development Authority disputed the claim of the petitioners that the provisions of these labour laws were not being implemented by the contractors save in a few instances where prosecutions had been launched against the contractors. Since it would not be possible for this Court to take evidence for the purpose of deciding this factual dispute between the parties and we also wanted to ensure that in any event the provisions of these various laws enacted for the benefit of the workmen were strictly observed and implemented by the contractors, we by our order dated 11th May, 1982 appointed three Ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of ascertaining whether the provisions of these labour laws were being carried out and the workers were receiving the benefits and amenities provided for them under these beneficent statutes or whether there were any violations of these provisions being committed by the contractors so that on the basis of the reports of the three Ombudsmen, this Court could give further direction in the matter if found necessary. We may add that whenever any construction work is being carried out either departmentally or through contractors, the government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed and they should not wait for any complaint to be received from the workmen in regard to non-observance of any such provisions before proceeding to take action against the erring officers or contractors but they should institute an effective system of periodic inspections coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and the workmen are not denied the rights and benefits to which they are entitled under such provisions and if any such violations are found, immediate action should be taken against defaulting officers or contractors. That is the least which a government or a governmental authority or a public sector corporation is expected to do in a social welfare State.

18. These are the reasons for which we made our order dated 11th May, 1982.

Order accordingly



## PART – D : WORKMEN’S COMPENSATION

### ***B.E.S.T. Undertaking v. Agnes***

(1964) 3 SCR 930

**K. SUBBA RAO, J.** (*Majority*) - The Bombay Municipal Corporation, hereinafter called the Corporation runs a public utility transport service in Greater Bombay and the said transport service is managed by a Committee known as the Bombay Electricity Supply and Transport Committee. The said Committee conducts the transport service in the name of Bombay Electric Supply and Transport Undertaking. The Undertaking owns a number of buses and the Corporation employs a staff, including bus drivers, for conducting the said service. One P. Nanu Raman was one of such bus drivers employed by the corporation. There are various depots in different parts of the City wherein buses feeding that part are garaged and maintained. A bus driver has to drive a bus allotted to him from morning till evening with necessary intervals, and for that purpose he has to reach the depot concerned early in the morning and go back to his home after his work is finished and the bus is lodged in the depot. The efficiency of the service depends inter alia, on the facility given to a driver for his journey to and from his house and the depot. Presumably for that reason Rule 19 of the Standing Rules of the Bombay Municipality B.E.S.T. Undertaking permits a specified number of the traffic outdoor staff in uniform to travel standing in a bus without payment of fares. Having regard to the long distances to be covered in a city like Bombay, the statutory right conferred under the rule is conducive to the efficiency of the service. On July 20, 1957, the said Nanu Raman finished his work for the day at about 7.45 p.m. at Jogeshwari bus depot. After leaving the bus in the depot, he boarded another bus in order to go to his residence at Santa Cruz. The said bus collided with a stationary lorry parked at an awkward angle on Ghodbunder Road near Erla Bridge, Andheri. As a result of the said collision, Nanu Raman was thrown out on the road and injured. He was removed to hospital for treatment where he expired on July 26, 1957. The respondent, his widow, filed an application in the Court of the Commissioner for Workmen’s Compensation, Bombay, claiming a sum of Rs 3500 as compensation by reason of the death of her husband in an accident alleged to have arisen “out of and in the course of his employment”. To that application the General Manager of the B.E.S.T. Undertaking, Bombay, was made the respondent, and he contended, *inter alia*, that the accident did not arise “out of and in the course of the employment” of the deceased. The Commissioner dismissed the application accepting the contention of the General Manager of the B.E.S.T. Undertaking. On appeal, the High Court of Bombay held that the said accident arose “out of and in the course of the employment” of the said deceased and, on that finding, passed a decree, in favour of the widow for a sum of Rs 3500 with costs. The General Manager of the B.E.S.T. Undertaking has preferred the present appeal against the order of the High Court.

3. Section 3(1) of the Act reads:

“If personal injury is caused to a workman by accident arising *out of and in the course of his employment*, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.”

Mr Pathak, learned counsel for the appellant, contends that the words “arising out of and in the course of his employment” are *pari materia* with those found in the corresponding section of English statute, that the said words have been authoritatively construed by the House of Lords in more than one decision, that an accident happening to an employee in the course of his transit to his house after he left the precincts of his work would be outside the scope of the said words unless he has an obligation under the terms of the contract of service or otherwise to travel in the vehicle meeting with an accident and that in the present case Nanu Raman finished his work and had no obligation to go in the bus which met with the accident, and his position was no better than any other member of the public who travelled by the same bus.

4. On the other hand, Mr Ganapati Iyer, who was appointed *amicus curiae*, argued that the interpretation sought to be put on the said words by the appellant was too narrow and that the true interpretation is that there should be an intimate relationship between employment and the accident and that in the present case whether there was a contractual obligation on the part of the deceased to travel by that particular bus or not, he had a right to do so under the contract and in the circumstances it was also his duty in a wider sense to do so as an incident of his service.

6. In *Cremins v. Guest, Keen and Nettlefolds. Ltd.* [(1908) 1 KB 469], the court of appeal had to deal with a similar problem, Cremins was a collier in the employment of the company. He, alone with other employees, lived at Dowlais, six miles from the colliery. A train composed of carriages belonging to the appellants, but driven by the Great Western Railway Company’s men, daily conveyed Cremins and many other colliers from Dowlais to a platform at Bedlinog erected by the appellants, on land belonging to the said Railway Company. The platform was repaired and lighted by the appellants, and was under their control. The colliers were the only persons allowed to use the platform, but there was a station open to the public at a short distance. The colliers walked from the platform by a high road to the colliery, which was about a quarter of a mile from the platform. A similar train conveyed the colliers from the platform to Dowlais. The colliers were conveyed free of charge. Cremins was waiting on the platform to get into the return train, when he was knocked down and was killed by the train. His widow applied for compensation under the Workmen’s Compensation Act, 1906. Under Section 1 of the Act of 1906 she would be entitled to compensation if the accident arose “out of and in the course of his employment.” The Court of Appeal held that the widow was entitled for compensation. Cozens-Hardy M.R. gave his reason for so holding thus “... I base my judgment on the implied term of the contract of service ....” Elaborating the principle, he said:

“(It) was an implied term of the contract of service that these trains should be provided by the employers, and that the colliers should have the right, if not the obligation, to travel to and fro without charge.”

Fletcher Moulton, L.J. in a concurrent judgment said much to the same effect thus:

“It appears to me that the workman were expected to travel to and from the colliery by the trains and in the carriages provided for them by the employers, and that it was intended by both parties that this should be part of the contract of employment.”

Though the accident took place on the platform, this decision accepted the principle that it was an implied term of the contract of service that the colliers had to travel to and from the colliery by the trains provided by the employers. In that case, there was certainly a right in the colliers to use the train, but it is doubtful whether there was a legal duty on them to do so. But the Court was prepared to give a popular meaning to the word “duty” to take in the “expectation” of user in the particular circumstances of the case.

7. The House of Lords in *St. Helens Colliery Company Ltd. v. Hewltson* [(1924) AC 59] had taken a stricter and legalistic view of the concept of “duty”. There, a workman employed at the colliery was injured in a railway accident while travelling in a special colliers’ train from his work to his home at Maryport. By an agreement between the colliery company and the railway company the latter agreed to provide special trains for the conveyance of the colliery company’s workmen to and from the colliery and Maryport, and the colliery company agreed to indemnify the railway company against claims by the workmen in respect of accident, injury or loss while using the trains. Any workman who desired to travel by these trains signed an agreement with the railway company releasing them from all claims in case of accident, and the colliery company then provided him with a pass and charged him a sum representing less than the full amount of the agreed fare, and this sum was deducted week by week from his wages. The House of Lords by a majority held that there being no obligation on the workmen to use the train, the injury did not arise in the course of the employment within the meaning of the Workman’s Compensation Act, 1906. Lord Buckmaster, after citing the passage already extracted by us in *Cremins* case stated, “I find it difficult to accept this test” and proceeded to observe:

“The workman was under no control in the present case, nor bound in any way either to use the train or, when he left, to obey, directions; though he was where he was in consequence of his employment, I do not think it was in its course that the accident occurred.”

Lord Atkinson also accepted the said principle, but he made an important observation, at p.70: “It must, however, be borne in mind that if the physical features of the locality be such that the means of transit offered by the employer are the only means of transit available to transport the workman to his work, there may, in the workman’s contract of service, be implied a term that there was an obligation on the employer to provide such means and a reciprocal obligation on the workman to avail himself of them.”

The learned Lord had conceded that a term of obligation on the part of the employee to avail himself of a particular means of transit could be implied, having regard to the peculiar circumstances of a case. Lord Shaw in a dissent gave a wider meaning to the terms of the section. According, to him the expression “arising out of the employment” applied to the employment as such ... to its nature, its conditions, its obligations, and its incidents. He added that a man’s employment was just as wide as his control. After noticing the terms of the bargain between the parties, he concluded thus, at p. 86:

“These arrangements continued for the whole twelve years of service. The company and the man were thus brought into intimate and continual daily relations.

The workman secured his access to his work, the company provided the means of transport.”

Lord Wrenbury accepted the majority view and laid down the test thus, at p. 92:

“A useful test in many cases is whether, at the moment of the accident, the employer would have been entitled to give the workman an order, and the man would have owed the duty to obey it.”

The learned Lord was also prepared to imply a term of duty under some circumstances, for he observed:

“And there are cases which would I suppose be within what are called above the “incidents” of the employment, in which the journey to and from work may fall within the employment, because by implication, but not by express words, the employer has indicated that route: and the man owes the duty to obey. But the mere fact that the man is going to or coming from his work, although it is a necessary incident of his employment, is not enough.”

This decision accepts the principle that, there should be a duty or obligation on the part of the employee to avail himself of the means of transit offered by the employer; the said duty may be expressed or implied in the contract of service.

8. The House of Lords again in *Alderman v. Great Western Railway Co.* [(1937) AC 454, 462] considered this question in a different context. There, the applicant, a travelling ticket collector in the employment of the respondent railway company had, in the course of his duty, to travel from Oxford, where his home was, to Swansea, where he had to stay overnight, returning thence on the following day to Oxford. He had an unfettered right as to how he spent his time at Swansea between signing off and signing on, and he could reach the station by any route or by any method he chose. In proceeding one morning from his lodgings to Swansea station to perform his usual duty, he fell in the street and sustained an injury in respect of which he claimed compensation. The House of Lords held that the Applicant was not performing any duty under his contract of service and therefore the accident did not arise in the course of his employment. The reason for the decision is found at p. 462 and it is:

“(W)hen he, (the applicant) set out from the house in which he had chosen to lodge in Swansea to go to sign on at the station he was (and had been ever since he had signed off on the previous afternoon) subject to no control and he was for all purposes in the same position as an ordinary member of the public, using the streets in transit to his employer’s premises.”

This case, therefore, applies the principle that if the employee at the time of the accident occupies the same position as an ordinary member of the public, it cannot be said that the accident occurred in the course of his employment. This is a simple case of an employee going to the station as any other member of the public would do, though his object was to sign on at the said station.

9. In *Weaver v. Tredgar Iron and Coal Co. Ltd.* [(1940) 3 All ER 157], the House of Lords re-viewed the entire law and gave a wider meaning to the concept of “duty”. It was also a case of a collier. He was caught up in a press of fellow-workmen trying to board a train and

was pushed off the railway platform and injured. The platform and train were both owned, managed and controlled by a railway, company, but the platform was situated by the side of a railway line which ran through the colliery premises owned by the workmen's employers, and was accessible from the colliery premises only. It was not open to the public, and its name did not appear in the company's timetable. Employees of the colliery used it under an arrangement between their employers and the company whereby specified trains were stopped at the platform to take the men to and from their homes at a reduced fare, which was deducted by the employers from the men's wages. The men were free to go home by means of the main road which ran past the colliery, but in practice every employee used the railway. The injured workman claimed compensation. The House of Lords by a majority held that the accident arose in the course of and out of the employment and the injured workman was entitled to compensation. Lord Atkin posed the question thus: Is he doing something in discharge of a duty to his employer directly or indirectly imposed upon him by his contract of service? and answered:

“(T)he word ‘duty’ in the test has such a wide connotation that it gives little assistance as a practical guide.”

10. The court of appeal in *Dunn v. A.G. Lockwood and Co.* [(1917) 1 All ER 146], implied such a term of duty under the following circumstances. A workman, who lived at Whitstable was employed to work at Margate. The term of the employment were that the workman might, though it was not obligatory, travel from Whitstable, to Margate by the 7.40 a.m. train from Whitstable, which arrived at Margate at 8.15 a.m. and that he was to be paid as from 8.15 a.m. While proceeding one morning from Whitstable station by the most expeditious route to his work he slipped and injured himself. The Court held that there was a contractual obligation imposed on the workman by the concession to go to his work as quickly as possible after arrival at Margate station; and that the accident, therefore, arose “out of and, in the course of the employment” within the meaning of the Workmen's Compensation Act. Lord Oaksey, L.J., said that the accident arose in the course of the workman's employment, because at that time he was performing a duty which he owed to his employer by virtue of his contract. From the permission given to use the 7.40 a.m. train, although he was to be paid from 8 a.m., obligation was implied on the part of the employee to proceed as quickly as possible to his work by the most expeditious route after his arrival at Margate. This decision illustrates the wider meaning given to the test “duty”, though the result was achieved by implying an obligation in the circumstances of the case. In *Hill v. Butterley Co. Ltd.* [(1948) 1 All ER 233], a workman while crossing her employers' premises on her way to the office to “clock in” before starting work, slipped on an icy slope and was injured. Though there was no public right of way, the inhabitants of the neighbouring village were using the part of the premises, where the accident happened, without objection from the owners for reaching an adjoining railway station. The Court held that the accident arose out of and in the course of the employment. The fact that the premises were used as a path-way by the other members of the public did not prevent the Court from holding that the employee met with the accident in the course of her employment.

11. The court of appeal in *Jenkins v. Elder Dempster Lines Ltd.* [(1953) 2 All ER 1133], once again construed the expression “arising out of and in the course of employment”. There,

the ship in which the deceased was employed against the harbour mole of Las Palmas. At the landward end of the mole was a gateway where police were stationed for the purpose, ostensibly, of keeping unauthorized persons off the mole, but all kinds of people were allowed there and entry to it was practically unrestricted. Shortly after the ship moored, the deceased and other members of the crew went ashore for a short while. When they were returning to the ship, the policemen at the gate of the mole asked them which was their ship and allowed them to enter the mole. In the darkness, the deceased fell over the side of the mole and was drowned. In a claim by the widow against the employers for compensation under the Workmen's Compensation Acts, her claim was not allowed. Sir Raymond Evershed, M.R., posed the question thus: "Was the workman at the relevant time acting in the scope of his employment?" and answered:

"(T)he explanation, it is true, which the cases have added will entitle him to say that he was if his presence at the point where he met with the accident is so related to his employment as to lead to the conclusion that he was acting within its scope."

This decision, lays down a wider test, namely, that there should be a nexus between the accident and the employment. This Court has considered the scope of the section in *Saurashtra Salt Manufacturing Co. v. Bai Valu Raja* [AIR 1958 SC 881, 882] and accepted the doctrine of "notional extension" of the employer's premises in the context of an accident to an employee. Imam, J., delivering the judgment of the Court laid down the law thus:

"As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman keeping in view at all times this theory of notional extension."

On the facts of that case, this Court held that the accident did not take place in the course of the employment.

12. Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension as both the entry and exit by time and space. The scope of such extension "must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves this tools but also when he used the means of access and egress to and from the place of employment. A

contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area, of the field of employment to the course of the said transport. Though at the beginning the word “duty” has been strictly construed, the later decisions have liberalized this concept. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion. But none of the decisions cited at the Bar deals with a transport service operating over a large area like Bombay. They are, therefore, of little assistance, except insofar as they laid down the principles of general application. Indeed, some of the law Lords expressly excluded from the scope of their discussion cases where the exigencies of work compel an employee to traverse public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority.

13. At this stage to appreciate the scope of “duty” of a bus driver in its wider sense, the relevant Standing Rules of the B.E.S.T. Undertaking may be scrutinized. We are extracting only the rules made in regard to permanent bus drivers material to the present enquiry.

**“Rule 31.** (a) All applications for Bus Drivers’ tests should be Written and signed by the applicant himself.

(i) *Bus Drivers.*- (1) The applicant shall be not less than 20 years of age and not more than 40 years of age. Birth Certificates must be produced in doubtful cases.

(1) After recruiting, the Undertaking’s rules and regulations shall be explained to those men by the Recruiting Clerk.

**Rule 5.** All permanent members of the Traffic Outdoor Staff will be supplied with uniforms as per the chart attached.

**Rule 3.** Calling time must be marked in ink by the Starters on the time cards once a week in the case of permanent men, and daily in the case of extra men.

**Rule 9.** (a) Duty-Hours: 8 hours per day for ... Bus Drivers....

**Rule 10. Duties-Permanent.**- (a) Men who arrive in time and who work the duty, they are booked for, will be marked for 1 day’s pay. If, however, the hours of work exceed the duty hours as laid down in Rule 9(a), the excess hours will be entered as overtime, payable as shown in Rule 25.

(b) Men who do not arrive at their call or miss their cars will drop to the bottom of Extra List for the day and are not to be given work unless there is work actually available for them, in which case they will be marked as having come late and will only be paid for the number of hours worked. However, men given no work are to be marked “Late-No-Work”, and will receive no pay for the day.

(c) Any man who misses his car more than three times in a month whether he gets work or not, will be reverted to Extra List.

*All drivers (Buses ) who are late on duty by more than one hour will be marked ‘ABSENT’.*

**Rule 12.** (a) All exchange of duties requests to be addressed to Traffic Assistants-in- charge of Depots for their sanction.

**Rule 19.** (a) Four members of the Traffic Outdoor staff in uniform are permitted to travel standing on a double deck bus irrespective of their designation, two on the lower deck and two on the upper deck. On a single deck bus two members are only permitted.

(b) Traffic Staff in uniform shall not occupy seats even on payment of fares.

**Rule 39.** (a) Men can be transferred from one Depot to another only under the orders of a Senior Traffic Officer. This will only be considered if the succeeding depot is short of staff.”

The gist of the aforesaid rules may be stated thus: A bus driver is recruited to the service of the B.E.S.T. Undertaking. Before appointment the rules and regulations of the Undertaking are explained to him and he enters into an agreement with the Undertaking on the basis of those terms. He is allotted to one depot, but he may be transferred to another depot. The working hours are fixed at 8 hours a day and he is under a duty to appear punctually at the depot at the calling time. If he is late by more than one hour he will be marked absent. If he does not appear at the calling time or “misses his car”, he will not be given any work for the day unless there is actually work available for him. If he “misses his car” more than three times in a month, he will be reverted to the extra list i.e. the list of employees other than permanent. He is given a uniform. He is permitted to travel free of charge in a bus in the said uniform. So long as he is in the uniform he can only travel in the bus standing and he cannot occupy a seat even on payment of the prescribed fare, indicating thereby that he is travelling in that bus only in his capacity as bus driver of the Undertaking. He can also be transferred to different depots. It is manifest from the aforesaid rules that the timings are of paramount importance in the day’s work of bus driver. If he misses his car he will be punished. If he is late by more than one hour he will be marked absent for the day; and if he is absent for 3 days in a month, he will be taken out of the permanent list. Presumably to enable him to keep up punctuality and to discharge his onerous obligations, he is given the facility in his capacity as a driver to travel in any bus belonging to the Undertaking. Therefore, the right to travel in the bus in order to discharge his duties punctually and efficiently condition is a of his service.

14. Bombay is a city of distances. The transport service practically covers the entire area of Greater Bombay. Without the said right, it would be very difficult for a driver to sign on and sign off at the depots at the scheduled timings for he has to traverse a long distance. But for this right, not only punctuality and timings cannot be maintained, but his efficiency will also suffer. DW 1 a Traffic Inspector of B.E.S.T. Undertaking, says that instructions are give all the drivers and conductors that they can travel in other buses. This supports the practice of the drivers using the buses for their travel from home to the depot and *vice versa*. Having regard to the class of employees, it would be futile to suggest that they could as well go by local suburban trains or by walking. The former, they could not afford, and the latter, having regard to the long distances involved, would not be practicable. As the free transport is provided in the interest of service, having regard to the long distance a driver has to traverse to go to the depot from his house and *vice versa*, the user of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty. He is not exercising the right as a member of the public, but only as one belonging to a service. The entire Greater Bombay is the field or area of the service and every bus is an integrated part of the service. The decisions relating to accidents occurring to an employee in a factory or in premises belonging to the employer providing ingress or egress to the factory are not of much relevance to a case where an employee has to operate over a larger area in a bus which is in itself an integrated part of a fleet of buses operating in the entire area. Though the doctrine of reasonable or notional extension of employment developed in the context of



specific workshops, factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adopted to meet its peculiar requirements. While in a case of a factory, the premises of the employer which gives ingress or egress to the factory is a limited one, in the case of a city transport service, by analogy, the entire fleet of buses forming the service would be the “premises”. An illustration may make our point clear. Suppose, in view of the long distances to be covered by the employees, the Corporation, as a condition of service, provides a bus for collecting all the drivers from their houses so that they may reach their depots in time and to take them back after the day’s work so that after the heavy work till about 7 p.m. they may reach their homes without further strain on their health. Can it be said that the said facility is not one given in the course of employment? It can even be said that it is the duty of the employees in the interest of the service to utilize the said bus both for coming to the depot and going back to their homes. If that be so, what difference would it make if the employer, instead of providing a separate bus, throws open his entire fleet of buses for giving the employees the said facility? They are given that facility not as members of the public but as employees; not as a grace but as of right because efficiency of the service demands it. We would, therefore, hold that when a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment.

15. We, therefore, agree with the High Court that the accident occurred to Nanu Raman during the course of his employment and therefore his wife is entitled to compensation. No attempt was made to question the correctness of the quantum of compensation fixed by the High Court.

16. Before leaving the case we must express our thanks to Mr Ganapati Iyer for helping us as *amicus curiae*.

17. In the result, the appeal fails and in the circumstances is dismissed without cost.

**RAGHUBAR DAYAL, J.** (*Minority*) - I am of opinion that this appeal should be allowed.

19. The deceased, Nanu Raman was a bus driver of the appellant Corporation. On July 20, 1957, he met with an accident after he had finished his duty for the day. The duty finished at about 7.41 p.m. at Jogeshwari Bus Depot. He then boarded another bus in order to go to his house and the bus met with an accident and, as a result of the injuries received in that accident he died. The question is whether those injuries were caused to him out of and in the course of his employment. If the injuries so arose, the appellant Corporation would be liable to pay the compensation. If they did not so arise, the appellant Corporation will not be bound to pay compensation in pursuance of the provisions of Section 3 of the Workmen’s Compensation Act, 1923.

20. It is clear that the deceased was off duty when he received the injuries. He had finished his duty for the day. He had left the bus on which he was posted that day. He had not only left that bus, but had boarded the other bus as a passenger. In view of Rule 19 of the Standing Rules of the Traffic Department of the B.E.S.T. Undertaking, he was allowed to travel as he was in uniform. The question is whether this concession was by way of a term of his service and a part of the contract of service. I am of opinion that it was not a part of the

contract of service or a condition of his service. Rule 19 is not with respect to the bus drivers or with respect to the traffic staff of the Corporation alone. The rule does not permit any number of the employees of the traffic staff to travel by a bus free. The rule deals with the persons who are allowed the concessions of free travelling on buses. The rule reads:

*“Free Travelling on Buses”.*(a) Four members of the Traffic Outdoor Staff in uniform are permitted to travel standing on a double deck bus irrespective of their designation, two on the lower deck and two on the upper deck. On a single deck bus two members are only permitted.

(b) Traffic Staff in uniform shall not occupy seats even on payment of fares.

(c) Municipal Councillors and non-Councillors, Members of the Schools Committee holding Tram-cum-Bus passes must occupy a seat. They are not permitted to travel by standing or in excess.

(d) One police officer above the rank of a Jamadar is allowed to travel free by standing. All other ranks must occupy seats and pay their fares.

(e) Meter Readers and Bill Collectors of the Consumers’ Department and Public Lighters of the Public Lighting Department are permitted to travel in buses outside the Tramway Areas when on Duty either in uniform or on production of the Undertaking’s badge by payment of Undertaking’s tokens. These tokens stamped ‘Service’ will be accepted in lieu of cash and ticket issued.

(f) Traffic Officer and only those Officers holding a Bus-cum-Tram Pass and Silver Badge and Bombay Motor Vehicle Inspectors holding passes are permitted to travel standing and may board the bus outside the Queue Order.”

Clauses (c) to (e) allow the concession of free travelling to persons other than the traffic staff. The rule cannot be a term of contract with these persons. It is just a privilege and a concession allowed to those persons. The privilege is restricted in certain respects.

21. Clauses (a), and (f) deal with concessions allowed to the members of the traffic staff. It appears from clause (a) that the number of traffic outdoor staff which can travel by a bus is limited to 4 on double decker buses and to 2 on a single decker. They have to be in uniform. Even if they purchase tickets on payment of fares they cannot occupy seats if they happen to be in uniform. If this concession of free travelling had anything to do with the condition of service in order to ensure punctuality and efficiency on the part of bus drivers keeping in consideration the possibility of their travelling long distance to and from their houses, in order to return from duty or to join duty there should not have been any limitation on the number of such staff travelling by a particular bus. It can be possible that more than two or four members of the traffic outdoor staff may be residing in neighbouring localities and may have to join duty or to return to duty at about the same time. Further, it would have been more conducive for the efficient discharge of their duty if at least on their way to join duty they were allowed to have a seat on the bus in preference to travelling standing. There could have been no justification for not allowing them to occupy a seat on payment of fare. This is not allowed. These considerations indicate to any mind that this rule allowing the members of the traffic out-door staff to travel free, but under certain limitations, on the buses, was not connected with their service conditions or with the question of their observing punctuality and discharging their duties efficiently, but was merely a concession from the employer to their employees. Such a conclusion is further strengthened when the rule does not provide that this

concession is available to the staff only when they are travelling from their houses to join duty or when they are returning home after finishing their duty. They can take advantage of this privilege whenever they have to travel by a bus. They have to simply put on uniform at that time. The availability of the concession on their being in uniform is not on account of their being supposed to be on duty, on the way to or from their houses but on account of the fact that the wearing of uniform would be an indication and the guarantee of their being members of the traffic out-door staff.

22. I therefore do not construe Rule 19 as a condition of service of the bus-drivers of the Corporation and therefore do not construe it to artificially extend the period of their duty and consequently the course of employment by the time occupied in travelling by the bus if the bus driver, after discharging his duty or on his way to join duty happens to travel by bus.

23. The bus driver is not bound to travel by bus. He is not bound to put on his uniform when travelling to such bus. If he does not want to have the concession and prefers to travel comfortably by paying the necessary fare to occupy a seat, he can do so by simply taking off his uniform and then boarding bus. There is nothing in the circumstances of the bus driver's service, as shown to us, which should induce me to hold that he had to travel perforce by the bus on his way to join duty or on his return journey after discharging his duty. Bombay may be a city of distances but every bus driver need not be residing far from the place where he had to join duty or to leave his duty. There is nothing on the record to indicate that the salaries of these bus drivers are such as would make it impossible for them to spend on the railway tickets if they wish to travel by train or on the bus sitting if they want to travel in comfort by purchasing tickets. It is not therefore a case that out of necessity the persons had to travel by the buses of the Corporation and therefore it is not a case for notionally extending the territorial area of the premises within which they had to discharge their duty.

24. It is true that the bus service of the Corporation extends over the entire city of Bombay but that does not mean that the area of duty of a bus driver also becomes as extensive as the area controlled by the buses of the Corporation. The notional extension of the premises or the area within which the bus driver works can at best be extended to the bus which he is given to run during his duty hours. The premises of the bus driver can be deemed to include the bus, and the responsibility of the employer can be reasonably extended for injuries to bus drivers up to the bus driver's boarding the bus for discharging his duty and up to his leaving the bus after discharging his duty. Before his boarding the bus, the bus driver is not on actual duty. He is not on duty subsequent to his leaving the bus after the expiry of his duty hours. In this view of the matter, the moment the deceased left the bus at Jogeshwari Bus Depot after finishing his duty at 7.41 p.m., he was off duty. He was then free to travel as he liked, for the purpose of returning home. The employers had no control over him except insofar as he would not be permitted to travel in uniform in the bus if there be already the permissible number of traffic staff in uniform on the bus. This control is exercised over him not because he was the bus driver of the Corporation, but because he wanted to travel in uniform against the provisions of Rule 19. The deceased had no duty connected with his employment as bus driver towards the Corporation after he had left his bus and boarded the other bus for going to his residence.

25. In these circumstances, it is not possible to say that the deceased was on duty when he was travelling by the other bus and met with the accident and that the accident arose out of and in the exercise of his employment.

26. In *S.S. Manufacturing Co. v. Bail Valu Raja* [AIR 1958 SC 881], this Court laid down the following propositions in connection with the construction of the expression “in the course of employment”. They are: (i) as a rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment; (ii) as a rule the journey to and from the place of employment is not included within the expression ‘in the course of employment’ (iii) the aforesaid two propositions are subject to the theory of notional extension of the employers’ premises so as to include the area which the workman passes and re-passes in the going to and in leaving the actual place of work; there may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employers’ premises; (iv) the facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose within and in the course of employment of a workman keeping in view at all times the theory of notional extension.

27. On the basis of the first two propositions, the deceased cannot be said to have received the injuries in an accident arising out of and in the course of his employment. The third proposition does not cover the present case as I have indicated above. The expression ‘an area which the workman passes and re-passes in going to and in leaving the actual place of work, in Proposition 3, does not, in view of what is said in proposition 2, mean the route covered necessarily in his trip from his house to the place of employment or on his way back from the place of employment to the house. This expression means such areas which the employee had to pass as a matter of necessity and only in his capacity as employee. Such areas would be areas lying between the place of employment and the public place or the public road up to which any member of the public can reach or use at any time he likes. Such areas then would be areas which the employees had as a matter of necessity to pass and re-pass on his way to and from the place of employment and will either be areas belonging to the employer or areas belonging to third persons from whom the employer had obtained permission for the use of that area by his employees. The passing and re-passing over such areas is a matter of necessity as it is presumed, in this context, that without passing over such land or such area, the employee could not have reached the place of his employment. It is in that context that the area of the place of employment is extended to include such areas over which the employee had, as a matter of necessity, to pass and repass.

28. After discussing the facts of the particular case in the light of the general propositions noted above, this Court said at p. 883:

“It is well settled that when a workman is on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside

of which the employer is not liable to pay compensation for any accident happening to him.”

The view I have expressed above is consistent with these observations.

29. I may just note that the expression “unless the very nature of his employment makes it necessary for him to be there” in the above observation, contemplates employments or duties of his employee necessitating the employee’s using the public road or public place or a public transport in the discharge of his duty. One such case is the one reported as *Dennis v. A.J. White, and Company* [1917 AC 479].

30. Reference may be made to the cases reported as *Sir Helens Colliery Co. v. Aewitson*, [1924 AC 59] and *Weaver v. Tredegar Iron and Coal, Ltd.* [(1940) 3 All ER 157]. In the former case a colliery worker was travelling by the special train ran by the railway company under contract with the employer for the convenience of the workman to and from the colliery and the place of residence of the worker. He met with an accident while so travelling. The question was whether he was entitled to compensation from his employer. It was held by the House of Lords that it was an inseparable part of the contract of employment that the employee had obtained a pass enabling him to travel and that he released his rights to compensation in the case of accidents against the railway company. Still it was considered that this was not sufficient to determine his right to compensation. The facts of the present case are different and do not justify the conclusion that it was a term of the contract of employment of the deceased by the appellant that he would be allowed to travel free by the buses of the corporation. He is not granted any such privilege of free travel. He had to do nothing in return for such a privilege. The employee in the aforesaid case had released his rights against the railway company. The deceased in the present case did not release any of his rights against the Corporation. Any way, the House of Lords held that the employee was not entitled to any compensation. Lord Buckmaster said at p. 66:

“The real question to my mind is whether, when he entered the train in the morning, it was in the course of his employment within the meaning of the Act. I find it difficult to fix the test by which this question can be answered in favour of the respondent.”

A similar question can be put in the instant case. It will be difficult to say that the deceased entered the bus which met with the accident in the course of his employment.

Lord Buckmaster further observed at p. 67:

“The workman was under no control in the present case, nor bound in any way either to use the train or, when he left to obey directions; though he was where he was in consequence of his employment, I do not think it was in its course that the accident occurred.”

It can be similarly said with respect to the deceased that he was under no control of his employer when he was on the bus and that he was not bound in any way to use the bus or to obey the directions of his employer after he had left the bus on which he was deputed for the day.

31. In the *Weaver* case the employee was held entitled to compensation. The distinction in the facts of the two cases is well indicated by Lord Romer in his speech at p. 176:

“My Lords, upon this principle, it would seem reasonably plain that the appellant in the present case was entitled to compensation which he seeks. After finishing his work at the colliery, he proposed returning to his home by train. In order to get to the train, he passed directly from the colliery premises on to a platform, which was the only means of access from the colliery to the train, and upon which he had no right to be except by virtue of his status as an employee of the colliery. While on the platform, and by reason of his being on the platform, he met with an accident. In my opinion, it was an accident arising out of and in the course of his employment. The country court judge and the court of appeal, however, considered that they were precluded from giving the appellant relief by the decisions of your Lordships’ House in *St. Helens Colliery Co., Ltd. v. Hewitson* and *Newton v. Guest, Keen and Nettlefolds, Ltd.* [135 LT 386]. My Lords if I am to accept the conclusion that the effect of these two decisions is to deprive the appellant in the present case of any right to compensation under the Act, I must, as it seems to me, necessarily suppose that they lay down a principle inconsistent with the principle which had already been established by your Lordships’ House in *Longhurst* case [(1917) AC 249] and accepted in *M. Robb* case [(1918) AC 304] and has since been affirmed and applied in *Mccullum* case [147 LT 361]. As this is an altogether impossible supposition, it is necessary to ascertain what really were the grounds of the decisions in *Hewitson* case and *Newton* case. I need not state in detail the facts in *Hewitson* case. It is sufficient to say that, if, in the present case, an accident to the appellant had occurred while he was actually in the train travelling towards his home, the case would have been in all material circumstances comparable to *Hewitson* case. The two cases would have been indistinguishable. The workman in *Hewitson* case, however, failed, upon the ground that he was under no contractual obligation to his employer to be in train. All their Lordships who were responsible for the decision were at pains to ascertain whether or not Hewitson was under any such obligation. It would seem to follow from this that they did not regard Hewitson when in the train as being engaged upon one of those acts which are always considered as being part of a workman’s employment because they are incidental to the employment proper. They must have regarded him, in other words, as a workman who had left the scene of his labour and “the means of access thereto” within the meaning attributed to those words in the cases to which I have previously referred, for, when a workman is engaged in performing an act which is merely incidental to his employment proper, it is hardly, if ever, true to say that he is under a contractual obligation to his employer to perform it.”

32. In view of what I have stated above, I hold that Nanu Raman did not die of the injuries received in an accident arising out of and in the course of his employment and that therefore the respondent is not entitled to receive any compensation from the appellant under Section 3 of the Workman’s Compensation Act 1923. Therefore I would allow the appeal with costs and set aside the order of the court below.

### **DECISION**

Following the opinion of the majority, the appeal is dismissed.

**Daivshala and Others v. Oriental Insurance Company Ltd. and Another**

2025 INSC 904

**K.V. Viswanathan J.**

**“Take a case where a man is going to or from his place of work on his own bicycle, or in his own car. He might be said to be doing something ‘reasonably incidental’ to his employment. But, if he has an accident on the way, it is well settled that it does not ‘arise out of and in the course of his employment’. See *Alderman v. Great Western Rly. Co.*, [[1937] 2 All ER 408 : [1937] A.C. 454]; *Netherton v. Coles*, [[1945] 1 All ER 227]. Even if his employer provides the transport, so that he is going to work as a passenger in his employer's vehicle (which is surely ‘reasonably incidental’ to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment : see *Vandyke v. Fender*, [[1970] 2 All ER 335, 340 : [1970] 2 Q.B. 292, 305]. It needed a special ‘deeming’ provision in a statute to make it ‘deemed’ to arise out of and in the course of his employment (see **Section 8 of the 1965 Act**).”**

**35.** It will be noticed that, in the extract above, towards the end a mention is made of special deeming provision which covered cases of accidents happening while travelling in employer's transport. This scenario is very similar to Section 51C of the ESI Act which deals with accidents happening while on employer's transport, which was introduced with effect from 28.01.1968.

**36.** However, before we discuss Section 51C of the ESI Act, we need to discuss the judgment of this Court dated 10.05.1963 in *Agnes* (Supra). In *Agnes* (Supra), one Nanu Raman a bus driver of the appellant company therein after finishing his work boarded another bus to go to his residence. That bus was involved in an accident resulting in his death. Agnes - his widow sued for compensation under the EC Act and contended that her husband died in an accident arising out of and in the course of employment. This Court, while affirming the judgment of the High Court, which granted compensation by a majority held as under:—

**“12. Under s. 3 (1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The ques-tion, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the “down tool” signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension of both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he uses the means of access and egress to and from the place of employment.....**

**14. ....As the free transport is provided in the interest of ser-vice, having regard to the long distance a driver has to traverse to go to the depot from his house and vice versa, the user of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty. He is not exercising the right as a member of the public, but only as one belonging to a service. The entire Greater Bombay is the field or area of the service and every bus is an integrated part of the service. The decisions relating to accidents occur-ring to an**

employee in a factory or in premises belonging to the employer providing ingress or egress to the factory are not of much relevance to a case where an employee has to operate over a larger area in a bus which is in itself an integrated part of a fleet of buses operating in the entire area. **Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshops, factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adapted to meet its peculiar requirements.** While in a case of a factory, the premises of the employer which gives ingress or egress to the factory is a limited one, one, in the case of a city transport service, by analogy, the entire fleet of buses forming the service would be the “premises”. An illustration may make our point clear. Suppose, in view of the long distances to be covered by the employees, the Corporation, as a condition of service, provides a bus for collecting all the drivers from their houses so that they may reach their depots in time and to take them back after the day's work so that after the heavy work till about 7 p.m. they may reach their homes without further strain on their health. Can it be said that the said facility is not one given in the course of employment? It can even be said that it is the duty of the employees in the interest of the service to utilize the said bus both for coming to the depot and going back to their homes. **If that be so, what difference would it make if the employer, instead of providing a separate bus, throws open his entire fleet of buses for giving the employees the said facility? They are given that facility not as members of the public but as employees; not as a grace but as of right because efficiency of the service demands it. We would, therefore, hold that when a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment.”**

**37.** In *Mackinnon Mackenzie and Co. (P) Ltd. v. Ibrahim Mahmmmed Issak*, (1969) 2 SCC 607, this Court dealing with the phrase “arising out of and in the course of employment” held as under:—

“5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words “in the course of the employment” mean “in the course of the work which the workman is employed to do and which is incidental to it.” The words “arising out of employment” are understood to mean that “during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered.” In other words there must be a causal relationship between the accident and the employment. **The expression “arising out of employment” is again not confined to the mere nature of the employment. The expression applies to employment as such — to its nature, its conditions, its obligations and its incidents.** If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises ‘out of employment’. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act....”

Here again, the court used the phrase to mean nature, condition, obligation and incidents of employment. It will be noticed that this Court in *Agnes* (supra) too, while applying the theory of notional extension, adapted it in its application to the facts of the said case.

**38.** *Agnes* (supra) was delivered on 10.05.1963. By an amendment with effect from 28.01.1968 (added by Act 44 of 1966), Section 51C was introduced in the ESI Act in the following terms:—



**“51C. Accidents happening while travelling in employer's transport.**

(1) An accident happening while an employee is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if

(a) the accident would have been deemed so to have arisen had he been under such obligation; and

(b) at the time of the accident, the vehicle

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and

(ii) is not being operated in the ordinary course of public transport service.

(2) In this section Vehicle includes vessel and an aircraft.”

**39.** It will be noticed that a law which came to be laid down in *Agnes* (supra) while interpreting the phrase “arising out of and in the course of employment” in the EC Act was given effect by a statutory recognition in the ESI Act. This is set out to demonstrate the cognate nature of the EC Act and the ESI Act. Both the statutes seek to ameliorate the conditions of workmen and provide them social security benefits and improve their conditions of service.

**40.** The 62<sup>nd</sup> Report of the Law Commission of India on the EC Act was submitted in October, 1974 under the Chairmanship of Chief Justice (Retired) P.B. Gajendragadkar. As rightly set out in the Report, the purpose of Workmen's Compensation laws was to eliminate the hardship experienced under the common law system by providing for payment of benefits regardless of fault and with a minimum of legal formality. Further, the Law Commission Report analyzed several provisions of the ESI Act including Section 51A, 51B, 51C and 51D. In para 3.3 of the Report, while discussing Section 51C of the ESI Act, the following crucial observations were made:—

“Having carefully considered all aspects of the matter, we are of the view that Section 51C of the ESI Act should be adopted with modification that **it should not be necessary that the transport of provided by the employer if the workman is travelling directly to or from the place of employment.**”

(Emphasis supplied)

**41.** These observations were made after exhaustive analysis of the legal position prevailing in different jurisdictions on the issue of accidents occurring outside the employer's premises while the workman is on his way to and from his work. The Law Commission Report also discussed the International Labour Convention of 1964 for compensation on way to work accidents.

**42.** The High Courts in India were also engaged with this issue about the interpretation of the phrase “arising out of and in the course of employment” with regard to accidents occurring while proceeding to the place of work by the employee. In *Sadgunaben Amrutlal v. ESI*

*Corporation*, 1981 Lab IC 1653 a judgment doubted by this Court in *Francis De Costa* (supra), the Division Bench of the Gujarat High Court took the view that the theory of notional extension is an elastic and flexible formula to be applied in a purposeful manner. The High Court in that case extended the benefits to the dependents of the employee even though the death occurred at a public bus stop while the employee was boarding the bus to reach the workplace.

**43.** Earlier in *Bhagubai v. Central Railway*, (1954) 2 LLJ 403 even though the employee was proceeding to the workplace, since he was proceeding through the premises belonging to the employer, where he was stabbed the dependents were given the benefit. This Court in *Francis De Costa* (supra) did not adversely comment on the said judgment.

**44.** This parade of case law is only to highlight that there was considerable doubt and ambiguity surrounding the phrase “accident arising out of and in the course of employment” insofar as cases concerning accident occurring to employees while proceeding to work and vice versa, and different rulings had, depending on facts, interpreted them differently. Even the theory of notional extension had its own peculiarities. It was to clarify and put beyond doubt the meaning of the phrase “accident arising out of and in the course of employment” insofar as accidents occurring to employees while proceeding to the workplace and vice versa that Section 51E was enacted in the ESI Act. In view of that, we have no manner of doubt that the said amendment is clarificatory in character and will have retrospective effect.

#### **MEANING OF THE PHRASE “DEEMED TO HAVE” IN SECTION 51E OF THE ESI ACT:—**

**45.** There is one more aspect to be dealt with here. The words “deemed to have” used in Section 51E is not in the context of legal fiction. It is well settled that the expression “deemed” is sometimes used to impose for the purpose of a statute an artificial construction for a word or phrase that would not otherwise prevail. Very often, it is also used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that it includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible. [See *Hira H. Advani v. State of Maharashtra*, (1969) 2 SCC 662]

**46.** In *St. Aubyn v. Attorney-General*, [1951] 2 All ER 473, Lord Radcliffe felicitously explained the concept as under:—

“The word ‘deemed’ is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.”

It is very clear that the word “deemed” in Section 51E is employed to put beyond doubt a particular construction, that hitherto was uncertain.

#### **STATUTES ‘IN PARI MATERIA’:—**

**47.** The question further remains whether assuming Section 51E is retrospective would the interpretation flowing out of 51E of the ESI Act be imported into the EC Act to interpret the phrase

“accident arising out of and in the course of employment” to decide whether it will include accidents happening to employees while commuting to the place of work and vice versa. Before we answer the question, we would make it absolutely clear that it is not our endeavour to import Section 51E of the ESI Act into the EC Act. All that we are examining here is whether a meaning given to the phrase “arising out of and in the course of employment” insofar as it dealt with accidents happening while commuting to the place of work and vice versa in the ESI Act, could be said to be the same for the phrase “accident arising out of and in the course of employment” occurring in Section 3 of the EC Act.

**48.** First of all, the operative phraseology occurring in Section 3 of the EC Act is the same as the one that it occurs in Section 2(8) of the ESI Act which defines, ‘employment injury’. Secondly, as held by this Court and as noticed hereinabove, both Acts are beneficial legislations intended as social security measures to ameliorate the conditions of employees. As rightly noticed by Chief Justice (Retd.) Ganjendragadkar in the 62<sup>nd</sup> Law Commission Report the only difference between the two statutes was that while the ESI Act applied to factories and notified establishments, the EC Act applied to other employers, as defined. The case law, as noticed hereinabove, also indicates how *Saurashtra Salt* (supra) and *Agnes* (supra) which were under the EC Act was applied in *Francis De. Costa* (supra), a case arising under the ESI Act. Equally, the High Court of Gujarat in *Sadgunaben Amrutlal* (supra) a case under the ESI Act, had discussed the ratio in *Saurashtra Salt* (supra) which arose under the EC Act.

**49.** It is well settled that where statutes in *pari materia* serve a common object in absence of any provision indicating to the contrary, it is permissible for a court of law to ascertain the meaning of the provision in the enactment by comparing its language with the other enactment relating to the same subject matter.

**50.** In Justice G.P. Singh's *Principles of Statutory Interpretation* (14<sup>th</sup> Edition), dealing with statutes in *pari materia*, the following passage finds mention:—

#### **“Statutes in *pari materia*”**

It has already been seen that a statute must be read as a whole as words are to be understood in their context. **Extension of this rule of context permits reference to other statutes in *pari materia*, i.e. statutes dealing with the same subject-matter or forming part of the same system. VISCOUNT SIMONDS in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including “other statutes in *pari materia*”. As stated by LORD MANSFIELD: “Where there are different statutes in *pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other.”**

(Emphasis supplied)

**51.** In the *State of Madras v. A. Vaidyanatha Iyer*, 1958 SCR 580, this Court held as under:—

“... Therefore where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. **It may here be mentioned that the**

legislature has chosen to use the words ‘shall presume’ and not ‘may presume’ the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but s. 4 of the Prevention of Corruption Act is in *pari materia* with the Evidence Act because it deals with a branch of law of evidence, e.g. presumptions, and therefore should have the same meaning....”

(Emphasis supplied)

**52.** In *Craies on Legislation* (9<sup>th</sup> Edition) dealing with statutes in *pari materia* has the following observation in para 20.1.26.

**“Statutes in *pari materia***

Two Acts are said to be in *pari materia* if taking all their circumstances into account it is natural to construe them as if they formed part of a single code on a particular matter. Where this is found to be the case the result is that definitions in one may be applied to expressions found in another, and decided cases setting out principles of application to one will be applied to the other.

The fact that two statutes have the same titles may be indicative of their being in *pari materia*. As Bridge L.J. said in *R. v. Wheatley*-

“Looking at the two statutes [the Explosives Act, 1875 and the Explosive Substances Act, 1883], at the nature of the provisions which they both contain, and in particular at the short and long titles of both statutes, it appears to this court that clearly they are in *pari materia*, and that conclusion alone would seem to us to be sufficient to justify the conclusion which the judge reached that the definition of the word ‘explosive’ found in the 1875 Act is available to be adopted and applied under the provisions of the 1883 Act.”

**53.** In *State of Assam v. Deva Prasad Barua*, (1969) 1 SCR 698, this Court while construing Section 19 of the Assam Agricultural Income-tax Act, 1939 gave it the construction given to Section 22 of the Indian Income-tax Act and held as under:—

“... Moreover s. 19 is in *pari materia* with s. 22 of the Income-tax Act and the law which has been laid down by this Court, while interpreting the provisions of that section, must govern the construction of the provisions of s. 19 as well.”

**54.** In *AG v. Prince Ernest Augustus of Hanover*, Lord Viscount Simonds observed as follows:—

“For words, and particularly general words, cannot be read in isolation : their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use “context” in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia*, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy.”

(Emphasis supplied)

**55.** Applying the above principle, we interpret the phrase “accident arising out of and in the course

of his employment” occurring in Section 3 of the EC Act to include accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, provided the nexus between the circumstances, time and place in which the accident occurred and the employment is established.

**56.** The following undisputed facts emerge in this case:—

- a) The deceased - Shahu Sampatrao Jadhavar was employed with the respondent No. 2-Sugar factory;
- b) He was employed as watchman and his duty hours on 22.04.2003 was 3 AM to 11 AM.
- c) It is undisputed that he was proceeding to his workplace when the accident occurred at place which was 5 kms (approx.) from the workplace while the employee was proceeding towards the workplace.

In view of the above, considering that the deceased was a night watchman and was dutifully proceeding to his workplace to be well on time, there was a clear nexus between the circumstances, time and place in which the accident occurred and his employment as watchman. The accident having clearly arisen out of and in the course of employment, the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad was justified in ordering the claim under the EC Act by his judgment of 26.06.2009.

**57.** The appeal is allowed and the judgment of the High Court of Judicature at Bombay, Bench at Aurangabad dated 01.12.2011 in First Appeal No. 2015 of 2011 is set aside and the judgment of the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad in Workmen's Compensation Application No. 28 of 2005 dated 26.06.2009 is restored. No order as to costs.

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## **PART – C : BONUS**

### ***Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Sabha***

(1967) 1 SCR 15 : AIR 1967 SC 691

**J. C. SHAH, J.** - During the pendency, before the Industrial Court, Bombay, of a reference under Section 73-A of the Bombay Industrial Relations Act, 1946, which arose out of a demand for payment of bonus for the years 1961 and 1962, the Payment of Bonus Ordinance 3 of 1965 was promulgated by the President on May 29, 1965, with immediate effect. The representatives of the workmen claimed that even if the plea of the employers that the profit and loss account of the establishment for the years in question disclosed a loss, the Ordinance governed the dispute and that the employees were entitled to receive bonus at the minimum rate of 4 per cent of the salary or wages or Rs 40 whichever is higher. The Industrial Court upheld the plea of the workmen and directed the employers subject to the provisions of the Bonus Ordinance, 1965, to pay to each employee bonus for the year 1962 equivalent to 15 days of the salary or wages or Rs 40 whichever is higher.

4. A synopsis of the development in the industrial law which led to the enactment of the Payment of Bonus Act, 1965 will facilitate appreciation of the questions argued at the Bar. Claims to receive bonus, it appears, were made by industrial employees for the first time in India in the towns of Bombay and Ahmedabad, after the commencement of the First World War when as a result of inflationary trends there arose considerable disparity between the living wage and the contractual remuneration earned by workmen in the textile industry. The employers paid to the workmen increase in wages, initially called “war bonus” and later called “special allowance”. A committee appointed by the Government of Bombay in 1922 to consider, inter alia, “the nature and basis” of this bonus payments, reported that the workmen had a just claim against the employers to receive bonus, but the claim was not “customary, legal or equitable”. During the Second World War the employers in the textile industry granted cash bonus equivalent to a fraction of actual wages (not including dearness allowance) but even this was a voluntary payment made with a view to keep labour contented.

5. In the dispute for payment of bonus for the years 1948 and 1949 in the textile industry in Bombay, the Industrial Court expressed the view that since labour as well as capital employed in the industry contribute to the profits of the industry, both are entitled to claim a legitimate return out of the profits of an establishment, and evolved a formula for charging certain prior liabilities on the gross profits of the accounting year, and awarding a percentage of the balance as bonus to the workmen. In adjudicating upon the claim for bonus, the Industrial Court excluded establishments which had suffered loss in the year under consideration from the liability to pay bonus. In appeals against the award relating to the year 1949, the Labour Appellate Tribunal broadly approved of the method for computing bonus as a fraction of surplus profit.

6. According to the formula which came to be known as the “Full Bench formula”, surplus available for distribution had to be determined by debiting the following prior charges against gross profits:

- (1) Provision for depreciation;
- (2) Reserve for rehabilitation;
- (3) Return of 6 per cent on the paid-up capital;
- (4) Return on the working capital at a lower rate than the return on paid-up capital;

and from the balance called “available surplus” the workmen were to be awarded a reasonable share by way of bonus for the year.

7. This Court considered the applicability of this formula to claims for bonus in certain decisions: [*Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur* (1955) 1 SCR 991; *Baroda Borough Municipality v. Its Workmen* (1957) SCR 33; *Sree Meenakshi Mills Ltd. v. Workmen* (1958) SCR 878 and *State of Mysore v. Workers of Kolar Gold Mines* (1959) SCR 915]. The Court did not commit itself to acceptance of the formula in its entirety, but ruled that bonus is not a gratuitous payment made by the employer to his workmen, nor a deferred wage, and that where wages fall short of the living standard and the industry makes profit part of which is due to the contribution of labour, a claim for bonus may legitimately be made by the workmen. The Court however did not examine the propriety nor the order of priorities as between the several charges and their relative importance nor did it examine the desirability of making any variation, change or addition in the formula. These problems were for the first time elaborately considered by this Court in the *Associated Cement Companies Ltd. v. Workmen* [(1959) SCR 925]. Since that decision numerous cases have come before this Court in which the basic formula has been accepted with some elaboration. The principal incidents of the formula as evolved by the decisions of this Court may be briefly stated: Each year for which bonus is claimed is a self contained unit and bonus will be computed on the profits of the establishment in that year. In giving effect to the formula as a general rule from the gross profits determined after debiting the wages and dearness allowances paid to the employees, and other items of expenditure against total receipts, as disclosed by the profit and loss account are accepted, unless it appears that the debit entries are not supported by recognized accountancy practice or are posted mala fide with the object of reducing gross profits. Debit items which are wholly extraneous to or unrelated to the determination of trading profits are ignored. Similarly income which is wholly extraneous to the conduct of the business e.g. book profits on account of revaluation of assets may not be included in the gross profits. Against the gross profits so ascertained the following items are charged as prior debits: (1) Depreciation: such depreciation being only the normal or notional depreciation; (2) Income tax payable for the accounting year on the balance remaining after deducting statutory depreciation. The income tax to be deducted is not the actual amount, but the notional amount of tax at the rate for the year, even if on assessment no tax is determined to be payable. For the purpose of the Full Bench formula income tax at the rate provided must be deducted, but in the computation of income tax statutory depreciation under the Indian Income Tax Act only may be allowed. (3) Return on paid-up capital at, 6 per cent and on reserves used as working capital at a lower rate. In the *Associated Cement Companies* case it was suggested that this

rate should be 2 per cent in later cases 4 per cent on the working capital was regarded as appropriate. (4) Expenditure for rehabilitation which includes replacement and modernisation of plant, machinery and buildings, but not for expansion of building, or additions to the machinery.

8. It is not open to the Tribunal in ascertaining the available surplus to extend by analogy the prior charges to be debited to gross profits. Therefore for example (a) allocations for debenture redemption fund; (b) losses in previous years which are written off at the end of the year; (c) donations to a political fund are not deducted from gross profits.

9. Rebate of income tax available to the employer on the amount of bonus paid to the workmen cannot be added to the available surplus of profits determined in accordance with the Full Bench formula which should be taken into account only in distributing the available surplus between workmen, industry and employers.

10. The formula it is clear was not based on any strict theory of legal rights or obligations: it was intended to make an equitable division of distributable profits after making reasonable allocations for prior charges.

11. Attempts made from time to time to secure revision of the formula failed before this Court. In *Associated Cement Companies* case, this Court observed:

“The plea for the revision of the formula raised an issue which affects all industries; and before any change is made in it, all industries and their workmen would have to be heard and their pleas carefully considered. It is obvious that while dealing with the present group of appeals, it would be difficult, unreasonable and inexpedient to attempt such a task.”

But the Court threw out a suggestion that the question may be “comprehensively considered by a high powered commission”, this suggestion was repeated in *Ahmedabad Miscellaneous Industrial Workers’ Union v. Ahmedabad Electricity Co. Ltd.* [(1962) 2 SCR 934].

12. The Government of India then set up a commission on December 6, 1961 inter alia to define the concept of bonus, to consider in relation to industrial employments the question of payment of bonus based on profits and to recommend principles for computation of such bonus and methods of payment, to determine what the prior charges should be in different circumstances and how they should be calculated, to consider whether there should be lower limits irrespective of losses in particular establishments and upper limits for distribution in one year, and if so the manner of carrying forward profits and losses over a prescribed period, and to suggest appropriate machinery and method for the settlement of bonus disputes. The Commission held an elaborate enquiry and reported that “bonus” was paid to the workers as a share in the prosperity of the establishment and recommended adherence to the basic scheme of the bonus formula viz. determination of bonus as a percentage of gross profits reduced by certain prior charges viz. normal depreciation admissible under the Indian Income Tax Act including multiple shift allowance, income tax and super-tax at the current standard rate applicable for the year for which bonus is to be calculated (but not super profits tax) and return on paid-up capital raised by issue of preference shares at the actual rate of dividend payable, on other paid-up capital at 7 per cent and on reserves used as capital at 4 per cent but



not provision for rehabilitation. The Commission recommended that sixty per cent of the available surplus should be distributed as bonus, the excess being carried forward and taken into account in the next year: the balance of forty per cent, should remain with the establishment into which would merge the saving in tax on bonus payable, and the aggregate balance thus left to the establishment may be intended to provide for gratuity, other necessary reserves, rehabilitation in addition to the provision made by way of depreciation in the prior charges : annual provision required for redemption of debentures, return of borrowings, payment of superprofits tax and additional return on capital.

They recommended that the distinction between basic wages and dearness allowance for the purposes of expressing the bonus quantum should be abolished and that bonus should be related to wages and dearness allowance taken together : that minimum bonus should be 4 per cent of the total basic wage and dearness allowance paid during the year or Rs 40 to each worker, whichever is higher, and in the case of children the minimum should be equivalent to 4 per cent of their basic wage and dearness allowance, or Rs 25 whichever is higher subject to reduction *pro rata* for employees who have not worked for the whole year, and that the maximum bonus should be equivalent to 20 per cent of the total basic wage and dearness allowance paid during the year: that the bonus formula proposed should be deemed to include bonus to employees drawing a total basic pay and dearness allowance upto Rs 1600 per month regardless of whether they were “workmen” as defined in the Industrial Disputes Act or other relevant statutes, but subject to the proviso that the quantum of bonus payable to employees drawing total basic pay and dearness allowance over Rs 750 per month shall be limited to what it would be if their pay and dearness allowance were only Rs 750 per month. It was proposed that the general formula should not apply to new establishments until they had recouped all early losses including all arrears of normal depreciation admissible under the Income Tax Act, subject to a time limit of six years. They also suggested that the scheme recommended should be made applicable to all bonus matters relating to the accounting year ending on any day in the calendar year 1962 other than those matters in which settlements had been reached or decisions had been given.

13. The Government of India accepted a majority of the recommendations and the President issued on May 29, 1965 the Payment of Bonus Ordinance, 1965, providing for payment of bonus to all employees drawing salary not exceeding Rs 1600 under the formula devised by the commission. It is not necessary to set out the provisions of the Ordinance, for the Ordinance was replaced, by the Payment of Bonus Act 21 of 1965 and by Section 40(2) it was provided that notwithstanding such repeal, anything done or any action taken under the Payment of Bonus Ordinance, 1965, shall be deemed to have been done or taken under the Act as if the Act had commenced on May 29, 1965. Since the action taken under the Ordinance is to be deemed to have been taken under the Act, in these cases validity of the provisions of the Act alone need be considered.

14. It may be broadly stated that bonus which was originally a voluntary payment out of profits to workmen to keep them contented, acquired the character, under the bonus formula, of right to share in the surplus profits, and enforceable through the machinery of the Industrial Disputes Act. Under the Payment of Bonus Act, liability to pay bonus has become a statutory obligation imposed upon employers covered by the Act.

15. Counsel for Jalan Trading Company urged that the Act was invalid in that it amounts to fraud on the Constitution or otherwise is a colourable exercise of legislative power. That argument has no force. It is not denied that the Parliament has power to legislate in respect of bonus to be paid to industrial employees. By enacting the Payment of Bonus Act, the Parliament has not attempted to trespass upon the province of the State Legislature. It is true that by the impugned legislation certain principles declared by this Court e.g. in *Express Newspapers (Private) Ltd. v. Union of India* in respect of grant of bonus were modified, but on that account it cannot be said that the legislation operates as fraud on the Constitution or is a colourable exercise of legislative power. Parliament has normally power within the framework of the Constitution to enact legislation which modifies principles enunciated by this Court as applicable to the determination of any dispute, and by exercising that power the Parliament does not perpetrate fraud on the Constitution. An enactment may be charged as colourable, and on that account void, only if it be found that the legislature has by enacting it trespassed upon a field outside its competence.

16. The provisions of the Act and its scheme may now be summarised. The Payment of Bonus Act was published on September 25, 1965. By Section 1(4) save as otherwise provided in the Act, the provisions of the Act shall, in relation to a factory or other establishment to which the Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year. Section 2(4) defines “allocable surplus” as meaning (a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income Tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year; (b) in any other case, sixty per cent of such available surplus, and includes any amount treated as such under sub-section (2) of Section 34. “Available surplus” is defined in Section 2(6) as meaning the available surplus computed under Section 5. “Employee” is defined in Section 2(13) as meaning any person (other than an apprentice) employed on a salary or wage not exceeding one thousand and six hundred rupees per mensem in any industry to do any skilled or un-skilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. By Section 2(21) “salary or wage” is defined as meaning all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include certain specified allowances, commissions, value of amenities etc. Section 4 provides for computation of gross profit in the manner provided by the First Schedule in the case of a banking company and in other case in the manner provided by the Second Schedule. By Section 5 available surplus in respect of any accounting year is the gross profits for that year after deducting therefrom the sums referred to in Section 6. The sums liable to be deducted from gross profits under Section 6 are:

- (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income Tax Act, or in accordance with the provisions of the agricultural income tax law, as the case may be;
- (b) any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the Income Tax Act;
- (c) any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year; and
- (d) such further sums as are specified in respect of the employer in the Third Schedule.

Section 7 deals with calculation of direct taxes payable by the employer for any accounting year for the purpose of clause (c) of Section 6. Sections 8 and 9 deal with eligibility for and disqualifications for receiving bonus. Sections 10 to 15 deal with payment of minimum and maximum bonus and the scheme for “set-on” and “set-off”. Every employer is by Section 10 bound to pay to every employee in an accounting year minimum bonus which shall be four per cent, of the salary or wage earned by the employee during the accounting year or Rs 40 whichever is higher, whether there are profits in the accounting year or not. In case of employees below the age of 15, the minimum is Rs 25. By Section 11 where in respect of any accounting year the allocable surplus exceeds the amount of minimum bonus payable the employer shall be bound to pay to every employee in the accounting year bonus which shall be an amount proportionate to the salary or wage earned by the employee during the accounting year, subject to a maximum of twenty per cent, of such salary or wage.

Section 15 provides that if for any accounting year the allocable surplus exceeds the amount of maximum bonus payable the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that account year, be carried forward for being “set on” in the succeeding accounting year, upto and inclusive of the fourth account year, and be utilised for the purpose of payment of bonus. By sub-section (2) it is provided that where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10, and there is no amount or sufficient amount carried forward and “set on” under sub-section (1) capable of being utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, shall be carried forward for being set off in the succeeding accounting year upto and inclusive of the fourth accounting year. By “Sub-section (3) it is provided that principle of “set-on” and “set-off” as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub- section (2) for the purpose of payment of bonus under the Act. Bonus payable to an employee drawing wage or salary exceeding Rs 750 per mensem has to be calculated as if the salary or wage were Rs 750 per mensem, and an employee who has not worked for all the working days in an accounting year, the minimum bonus of Rs 40 or Rs 25 would be proportionately reduced (Sections 12 and 13). Section 16 makes special provisions relating to payment of bonus to employees of establishments which have been newly set up. Sections 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 deal with certain procedural and administrative matters. By Section 20 establishments in the public sector are, in certain eventualities, also made

subject to the provisions of the Act. Section 32 excludes from the operation of the Act employees of certain classes and certain industries specified therein. By Section 33 the Act is made applicable to pending industrial disputes (regarding payment of bonus relating to any accounting year not being an accounting year earlier than the accounting year ending on any day in the year 1962) immediately before May 29, 1965, before the appropriate Government or any tribunal or other authority under the Industrial Disputes Act, 1947, or under any corresponding law, or where it is pending before the Conciliation Officer or for adjudication. By Section 34(1) the provisions of the Act are declared to have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service made before May 29, 1965. Sub-section (2) of Section 34 makes special overriding provisions regarding payment of bonus to employees computed as a percentage of gross profits reduced by direct taxes payable for the year (subject to the maximum prescribed by Section 11), when bonus has been paid by the employer to workmen in the “base year” as defined in Explanation II. By Section 36 the appropriate Government is authorised, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, to exempt for such period as may be specified therein such establishment or class of establishments from all or any of the provisions of the Act and by Section 37 power is conferred upon the Central Government by order to make provision, not inconsistent with the purposes of the Act, for removal of difficulties or doubts in giving effect to the provisions of the Act.

17. The scheme of the Act, broadly stated, is four dimensional:

- (1) to impose statutory liability upon an employer of every establishment covered by the Act to pay bonus to employees in the establishment;
- (2) to define the principle of payment of bonus according to the prescribed formula;
- (3) to provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of “set-off and set-on”; and
- (4) to provide machinery for enforcement of the liability for payment of bonus.

Ordinarily a scheme imposing fresh liability, would, it is apprehended, be made prospective, leaving the pending disputes to be disposed of according to the law in force before the Act. But the legislature has given by Section 33 retrospective operation to the Act to certain pending disputes, and has sought to provide by Section 34 while extinguishing all pre-existing agreements, settlements or contracts of service for freezing the ratio which existed in the base year on which the bonus would be calculated in subsequent years.

18. It was urged by counsel for the employers that Section 10 which provides for payment of minimum bonus, Section 32 which seeks to exclude certain classes of employees from the operation of the Act, Section 33 which seeks to apply the Act to certain pending disputes regarding payment of bonus and sub-section (2) of Section 34 which freezes the ratio at which the available surplus in any accounting year has (subject to Section 11) to be distributed if in the base year bonus has been paid, are *ultra vires*, because they infringe Articles 14, 19 and 31 of the Constitution. It was also urged that conferment of power of exemption under Section 36 is *ultra vires* the Parliament in that it invests the appropriate Government with authority to exclude from the application of the Act, establishments or a class of

establishments, if the Government are of the opinion having regard to the financial position and other relevant circumstances that it would not be in the public interest to apply all or any of the provisions of the Act. Power conferred upon the Government under Section 37 is challenged on the ground that it amounts to delegation of legislative power when the Central Government is authorised to remove doubt or difficulty which had arisen in giving effect to the provisions of the Act.

19. The plea of invalidity of Sections 32, 36 and 37 may be dealt with first. It is true that several classes of employees set out in clauses (i) to (xi) of Section 32 are excluded from the operation of the Act. But the petitions and the affidavits in support filed in this Court are singularly lacking in particulars showing how the employees in the specified establishment or classes of establishments were similarly situate and that discrimination was practised by excluding those specified classes of employees from the operation of the Act while making it applicable to others. Neither the employees, nor the Government of India have chosen to place before us any materials on which the question as to the *vires* of the provisions of Section 32 which excludes from the provisions of the Act to an establishment or class of establishments, and mined. There is a presumption of constitutionality of a statute when the challenge is founded on Article 14 of the Constitution, and the onus of proving unconstitutionality of the statute lies upon the person challenging it. Again many classes of employees are excluded by Section 32 and neither those employees, nor their employers, have been impleaded before us. Each class of employees specified in Section 32 requires separate treatment having regard to special circumstances and conditions governing their employment. We therefore decline to express any opinion on the plea of unconstitutionality raised before us in respect of the inapplicability of the Act to employees described in Section 32.

20. By Section 36 the appropriate Government is invested with power to exempt an establishment or a class of establishments from the operation of the Act, provided the Government is of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act. Condition for exercise of that power is that the Government holds the opinion that it is not in the public interest to apply all or any of the provisions of the Act to an establishment or class of establishments, and that opinion is founded on a consideration of the financial position and other relevant circumstances. Parliament has clearly laid down principles and has given adequate guidance to the appropriate Government in implementing the provisions of Section 36. The power so conferred does not amount to delegation of legislative authority. Section 36 amounts to conditional legislation, and is not void. Whether in a given case, power has been properly exercised by the appropriate Government would have to be considered when that occasion arises.

21. But Section 37 which authorises the Central Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act, in our judgment, delegates legislative power which is not permissible. Condition of the applicability of Section 37 is the arising of the doubt or difficulty in giving effect to the provisions of the Act. By providing that the order made must not be inconsistent with the purposes of the Act, Section 37 is not saved from the vice of delegation of legislative authority. The section authorises the

Government to determine for itself what the purposes of the Act are and to make provisions for removal of doubts or difficulties. If in giving effect to the provisions of the Act any doubt or difficulty arises, normally it is for the legislature to remove that doubt or difficulty. Power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that cannot be delegated to an executive authority. Sub-section (2) of Section 37 which purports to make the order of the Central Government in such cases final accentuates the vice in sub-section (1), since by enacting that provision the Government is made the sole judge whether difficulty or doubt had arisen in giving effect to the provisions of the Act, whether it is necessary or expedient to remove the doubt or difficulty, and whether the provision enacted is not in consistent with the purposes of the Act.

22. We may now turn to the challenge to Section 10. Under the Full Bench formula bonus being related to available surplus it can only be made payable by an employer of an establishment who makes profit in the accounting year to which the claim for bonus relates. If no profit was made there was no liability to pay bonus. As pointed out by this Court in *Muir Mills Company* case:

“It is therefore clear that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage. The dividends can only be paid out of profits and unless and until profits are made no occasion or question can also arise for distribution of any sum as bonus amongst the employees. If the industrial concern has resulted in a trading loss, there would be no profits of the particular year available for distribution of dividends, much less could the employees claim the distribution of bonus during that year.”

But by Section 10 it is provided that even if there has resulted trading loss in the accounting year, the employer is bound to pay bonus at 4% of the salary or wage earned by the employee or Rs 40 whichever is higher. This, it was urged, completely alters the character of bonus and converts what is a share in the year's profits in the earning of which the labour has contributed into additional wage. It was pointed out to us that in giving effect to the Full Bench formula, this Court set aside the directions made by the Industrial Tribunal awarding minimum bonus where the establishment had suffered loss, and remanded the case for a fresh determination consistently with the terms of the Full Bench formula: *New Maneck Chowk Spg. & Weaving Co. Ltd. v. Textile Labour Association* [(1961) 3 SCR 1]. In that case there was a five year pact between the Ahmedabad Millowners' Association and the Textile Labour Association. After the expiry of the period, the Labour Association demanded bonus on the basis of the pact, but the Millowners claimed that the pact was contrary to the Full Bench formula, and the claim was not sustainable. The Industrial Tribunal held that the pact did not “run counter to the law laid down by this Court in the *Associated Cement Companies* case and the extension of the agreement for one more year would help in promoting peace in the industry in Ahmedabad. This Court held that the agreement departed from the Full Bench formula in the matter of bonus and when the Tribunal extended the agreement after the expiry of the stipulated period, it ignored the law as laid down by this Court as to what profit bonus

was and how it should be worked out, and that the Tribunal had no power to do by extending the agreement to direct payment of minimum bonus for the year 1958 when there was no available surplus to pay minimum bonus.

23. Indisputably Parliament has the power to enact legislation within the constitutional limits to modify the Full Bench formula even after it has received the approval of this Court. It was urged, however, that exercise of that power by treating establishments inherently dissimilar as in the same class and subject to payment of minimum bonus, amounted to making unlawful discrimination. It was said that establishments which suffered losses and establishments which made profits; establishments paying high rates of wages and establishments paying low rates of wages; establishments paying “bonus-added wages” and establishments paying ordinary wages; establishments paying higher dearness allowance and establishments paying lower dearness allowance, do not belong to the same class, and by imposing liability upon all these establishments to pay bonus at the statutory rate not below the minimum irrespective of the differences between them, the Parliament created inequality. It was also submitted that by directing establishments passing through a succession of lean years in which losses have accumulated and establishments which had made losses in the accounting year alone, to pay minimum bonus, unlawful discrimination was practised.

24. Section 10 at first sight may appear to be a provision for granting additional wage to employees in establishments which have not on the year’s working an adequate allocable surplus to justify payment of bonus at the rate of 4% on the wages earned by each employee. But the section is an integral part of a scheme for providing for payment of bonus at rates which do not widely fluctuate from year to year and that is sought to be secured by restricting the quantum of bonus payable to the maximum rate of 20% and for carrying forward the excess remaining after paying bonus at that rate into the account of the next year, and by providing for carrying forward the liability for amounts drawn from reserves or capital to meet the obligation to pay bonus at the minimum rate. Under the Act, for computing the rate of payment of bonus each accounting year is distinct and bonus has to be worked out on the profits of the establishment in the accounting year. But it is not in the interest of capital or labour that there should be wide fluctuations in the payment of bonus by an establishment year after year. The object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour, Parliament has provided that bonus in a given year shall not exceed 1/5th and shall not be less than 1/25th of the total earning of each individual employee, and has directed that the excess share shall be carried forward to the next year, and that the amount paid by way of minimum bonus not absorbed by the available profits shall be carried to the next year and be set off against the profits of the succeeding years. This scheme of prescribing maximum and minimum rates of bonus together with the scheme of “set off” and “set on” not only secures the right of labour to share in the prosperity of the establishment, but also ensures a reasonable degree of uniformity.

25. Equal protection of the laws is denied if in achieving a certain object persons, objects or transactions similarly circumstanced are differently treated by law and the principle underlying that different treatment has no rational relation to the object sought to be achieved

by the law. Examined in the light of the object of the Act and the scheme of “set-off” and “set on”, the provision for payment of minimum bonus cannot be said to be discriminatory between different establishments which are unable on the profits of the accounting year to pay bonus merely because a uniform standard of minimum rate of bonus is applied to them.

26. The judgment of this Court in *Kunnathat Thathunni Moopll Nair v. State of Kerala* [(1961) 3 SCR 77] and especially the passage in the judgment of the majority of the Court at p. 92, has not enunciated any broad proposition as was contended for on behalf of the employers, that when, persons or objects which are unequal are treated in the same manner and are subjected to the same burden or liability, discrimination inevitably results. In *Moopil Nair* case the validity of the Travancore-Cochin Land Tax Act, 1955, was challenged. By Section 4 of the Act all lands in the State, of whatever description and held under whatever tenure, were charged with payment of land tax at a uniform rate to be called the basic tax. Owners of certain forest lands challenged certain provisions of the Act pleading that those provisions contravened Articles 14, 19(1)(f) and 31(1) of the Constitution. This Court held that the Act which obliged every person who held land to pay the tax at a uniform rate, whether he made any income but of the land, or whether the land was capable of yielding any income, attempted no classification and that lack of classification by the Act itself created inequality, and was on that account hit by the prohibition against denial of equality before the law contained in Article 14. The Court also held that the Act was confiscatory in character since it had the effect of eliminating private ownership of land through the machinery of the Act, without proposing to acquire privately owned forests for the State. The Travancore-Cochin Land Tax Act, it is clear, contained several peculiar features: it was in the context of these features that the Court held that imposition of a uniform liability upon lands which were inherently unequal in productive capacity amounted to discrimination, and that lack of classification created inequality. It was not said by the Court in that case that imposition of uniform liability upon persons, objects or transactions which are unequal must of necessity lead to discrimination. Ordinarily it may be predicated of unproductive agricultural land that it is incapable of being put to profitable agricultural use at any time. But that cannot be so predicated of an industrial establishment which has suffered loss in the accounting year, or even over several years successively. Such an establishment may suffer loss in one year and make profit in another. Section 10 undoubtedly places in the same class establishments which have made inadequate profits not justifying payment of bonus, establishments which have suffered marginal loss, and establishments which have suffered heavy loss. The classification so made is not unintelligible : all establishments which are unable to pay bonus under the scheme of the Act, on the result of the working of the establishment, are grouped together. The object of the Act is to make an equitable distribution of the surplus profits of the establishment with a view to maintain peace and harmony between the three agencies which contribute to the earning of profits. Distribution of profits which is not subject to great fluctuations year after year, would certainly conduce to maintenance of peace and harmony and would be regarded as equitable, and provision for payment of bonus at the statutory minimum rate, even if the establishment has not earned profit is clearly enacted to ensure the object of the Act.



27. Whether the scheme for payment of minimum bonus is the best in the circumstances, or a more equitable method could have been devised so as to avoid in certain cases undue hardship is irrelevant to the enquiry in hand. If the classification is not patently arbitrary, the Court will not rule it discriminatory merely because it involves hardship or inequality of burden. With a view to secure a particular object a scheme may be selected by the Legislature, wisdom whereof may be open to debate; it may even be demonstrated that the scheme is not the best in the circumstances and the choice of the legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under Article 14. Invalidity of legislation is not established by merely finding faults with the scheme adopted by the Legislature to achieve the purpose it has in view. Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law. Plea of invalidity of Section 10 on the ground that it infringes Article 14 of the Constitution must therefore fail.

28. We need say nothing at this date about the plea that Section 10 by imposing unreasonable restrictions infringes the fundamental freedom under Article 19(1)(g) of the Constitution, for by the declaration of emergency by the President under Article 352, the protection of Article 19 against any legislative measure, or executive order which is otherwise competent, stands suspended. The plea that Section 10 infringes the fundamental freedom under Article 31(1) of the Constitution also has no force. Clause (1) of Article 31 guarantees the right against deprivation of property otherwise than by authority of law. Compelling an employer to pay sums of money to his employees which he has not contractually rendered himself liable to pay may amount to deprivation of property, but the protection against depriving a person of his property under clause (1) of Article 31 is available only if the deprivation is not by authority of law. Validity of the law authorising deprivation of property may be challenged on three grounds: (i) incompetence of the authority which has enacted the law; (ii) infringement by the law of the fundamental rights guaranteed by Chapter III of the Constitution, and (iii) violation by the law of any express provisions of the Constitution. Authority of the Parliament to legislate in respect of bonus is not denied and the provision for payment of bonus is not open to attack on the ground of infringement of fundamental rights other than those declared by Article 14 and Article 19(1)(g) of the Constitution. Our attention has not been invited to any prohibition imposed by the Constitution which renders a statute relating to payment of bonus invalid. We are therefore of the view that Section 10 of the Bonus Act is not open to attack on the ground that it infringes Article 31(1).

29. We may now turn to Section 33 of the Act. The section provides:

“Where, immediately before 29th May, 1965, any industrial dispute regarding payment of bonus relating to any accounting year, not being an accounting year earlier than the accounting year ending on any day in the year 1962, was pending before the appropriate Government or before any tribunal or other authority under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in a State, then, the bonus shall be payable in accordance with the provisions of this Act in relation to the accounting

year to which the dispute relates and any subsequent accounting year, notwithstanding that in respect of that subsequent accounting year no such dispute was pending.

**Explanation.**- A dispute shall be deemed to be pending before the appropriate Government where no decision of that Government on any application made to it under the said Act or such corresponding law for reference of that dispute to adjudication has been made or where having received the report of the Conciliation Officer (by whatever designation known) under the said Act or law, the appropriate Government has not passed any order refusing to make such reference.”

The section plainly seeks to apply the provisions of the Act to a pending dispute, if the dispute relates to payment of bonus for any accounting year not being an accounting year earlier than the accounting year ending on any day in the year, 1962 and is pending on May 29, 1965 before the Government or other authority under the Industrial Disputes Act or any other corresponding law. The provisions of the Act also apply even if there be no dispute pending for the year subsequent to the year ending on any day in the year 1962, provided there is a dispute pending in respect of an earlier year. By Section 1(4) the provisions of the Act have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year. But by the application of Section 33 the scheme of the Act is related back to three accounting years ending on any day in 1962, in 1963 and in 1964.

30. In considering the effect of Section 33 regard must first be had to Section 34(1) which provides that save as otherwise provided in the section, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith, contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service made before May 29, 1965. All previous awards, agreements, settlements or contract of service made before May 29, 1965, therefore are, since the commencement of the Act rendered ineffective, and if there be a dispute relating to bonus pending on the date specified for the year ending on any day in 1962 or thereafter, before any appropriate Government or before any authority under the Industrial Disputes Act, bonus shall be computed and paid in the manner provided by the Act. Even if in respect of a year there is no such dispute pending on May 29, 1965, because of a dispute pending in respect of an earlier year, not being earlier than the year ending on any day in 1962, the same consequences follow.

31. Application of the Act involves departure in many respects from the scheme of computation of bonus under the Full Bench formula. Under the Full Bench formula bonus was a percentage of total wage not inclusive of dearness allowance, and in the computation of available surplus rehabilitation allowance was admissible as a deduction. It was also well- settled that an establishment which suffered loss in the accounting year was not liable to pay bonus: and a reference under the Industrial Disputes Act on a claim to bonus could be adjudicated upon only if the claimants were workmen as defined in the Industrial Disputes Act. Since the expression “industrial dispute” used in Section 33 has not been defined in the Payment of Bonus Act, the definition of that expression in the Industrial Disputes Act will apply vide *Section 2(22)*. The expression “industrial dispute” under the Industrial Disputes Act inter alia means a dispute or difference between employer 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: Section 2(k): and the expression “workmen” is defined in Section 2(s) of the Industrial Disputes Act. Therefore no dispute relating to bonus between an employer and persons employed in managerial or administrative capacity or persons employed in supervisory capacity drawing wages exceeding Rs 500 per mensem could be referred under the Industrial Disputes Act. But under Section 33 a pending industrial dispute between the workmen and the employer, by reason of the application of the Act gives rise to a statutory liability in favour of all employees of the establishment as defined under the Act by Section 2(13) for payment of bonus under the scheme of the Act. Whereas under the Industrial Disputes Act a dispute could only be raised by employees who were workmen within the meaning of the Act, under the scheme of the Act statutory liability is imposed upon the employer to pay to all his employees as defined in Section 2(13) bonus at the rates prescribed by the Act. Even if before May 29, 1965, there had been a settlement with some workmen or those workmen had not made any claim previously, and there would on that account be no industrial dispute pending qua those workmen, pendency of a dispute relating to bonus in which some other workmen are interested imposes statutory liability upon the employer to pay bonus to all employees in the establishment. Even if the employer had suffered loss or the available surplus was inadequate, the employer will by virtue of Section 33 be liable to pay minimum bonus at the statutory rate: the formula for computation of gross profits and available surplus will be retrospectively altered and a percentage of wages inclusive of dearness allowance will be allowed as bonus to all employees (whether they were under the Full Bench formula entitled to bonus or not), in computing the available surplus rehabilitation will not be taken into account, and bonus will also have to be paid to employees who were not entitled thereto in the year of account. Application of the Act for the year for which the bonus dispute is pending therefore creates an onerous liability on the employer concerned because:

(1) employees who could not claim bonus under the Industrial Disputes Act become entitled thereto merely because there was a dispute pending between the workmen in that establishment, or some of them and the employer qua bonus;

(2) workmen who had under agreements, settlements, contracts or awards become entitled to bonus at certain rates cease to be bound by such agreements, settlements, contracts or even award; and become entitled to claim bonus at the rate computed under the scheme of the Act;

(3) basis of the computation of gross profits, available surplus and bonus is completely changed;

(4) the scheme of “set on” and “set off” prescribed by Section 15 of the Act becomes operative and applies to establishments as from the year in respect of which the bonus dispute is pending; and

(5) the scheme of the Act operates not only in respect of the year for which the bonus dispute was pending, but also in respect of subsequent years for which there is no bonus dispute pending.

32. If therefore in respect of an establishment there had been a settlement or an agreement for a subsequent year, pendency of a dispute for an earlier year before the authority specified

in Section 33 is sufficient to upset that agreement or settlement and a statutory liability for payment of bonus according to the scheme of the Act is imposed upon the employer. Application of the Act retrospectively therefore depends upon the pendency immediately before May 29, 1965, of an industrial dispute regarding payment of bonus relating to any accounting year not earlier than the year ending on any day in 1962. If there be no such dispute pending immediately before the date on which the Act becomes operative, an establishment will be governed by the provisions of the Full Bench formula and will be liable to pay bonus only if there be adequate profits which would justify payment of bonus. If however, a dispute is pending immediately before May 29, 1965, the scheme of the Act will apply not only for the year for which the dispute is pending, but even in respect of subsequent years. Assuming that the classification is founded on some intelligible differentia which distinguishes an establishment, from other establishments, the differentia has no rational relation to the object sought to be achieved by the statutory provision viz. of ensuring peaceful relations between capital and labour by making an equitable distribution of the surplus profits of the year. Arbitrariness of the classification becomes more pronounced when it is remembered that in respect of the year subsequent to the year for which the dispute is pending, liability prescribed under the Act is attracted even if for such subsequent years no dispute is pending, whereas to an establishment in respect of which no dispute is pending immediately before May 29, 1965, no such liability is attracted. Therefore two establishments similarly circumstanced having no dispute pending relating to bonus between the employers and the workmen in a particular year would be liable to be dealt with differently if in respect of a previous year (covered by Section 33) there is a dispute pending between the employer and the workmen in one establishment and there is no such dispute pending in the other.

33. Liability imposed by the Act for payment of bonus is for reasons already set out more onerous than the liability which had arisen under the Full Bench formula prior to the date of the Act. Imposition of this onerous liability depending solely upon the fortuitous circumstance that a dispute relating to bonus is pending between workmen or some of them immediately before May 29, 1965, is plainly arbitrary and classification made on that basis is not reasonable.

34. There is one other ground which emphasizes the arbitrary character of the classification. If a dispute relating to bonus is pending immediately before May 29, 1965, in respect of the years specified in Section 33 before the appropriate Government or before any authority under the Industrial Disputes Act or under any corresponding law, the provision of the Act will be attracted: if the dispute is pending before this Court in appeal or before the High Court in a petition under Article 226, the provisions of the Act will not apply. It is difficult to perceive any logical basis for making a distinction between pendency of a dispute relating to bonus for the years in question before this Court or the High Court, and before the Industrial Tribunal or the appropriate Government. This Court is under the Constitution competent to hear and decide a dispute pending on May 29, 1965 relating to bonus as a court of appeal, but is not required to apply the provisions of the Act. If because of misconception of the nature of evidence or failure to apply rules of natural justice or misapplication of the law, this Court sets aside an award made by the Industrial Tribunal and remands the case which was pending on May 29, 1965, for rehearing, the Industrial court will have to deal with

the case under the Full Bench formula and not under the provisions of the Act. The High Court has also jurisdiction in a petition under Article 226 to issue an order or direction declaring an order of the Industrial Tribunal invalid, and issue of such writ, order or direction will ordinarily involve retrial of the proceeding. Again pendency of a dispute in respect of the previous year before the appropriate Government or the Industrial Tribunal will entail imposition of a statutory liability to pay bonus in respect of the year for which the dispute is pending, and also in respect of years subsequent thereto, but if immediately before May 29, 1965, a proceeding arising out of a dispute relating to bonus is pending before a superior court, even if it be for the years which are covered by Section 33, statutory liability to pay bonus to employees will not be attracted. Take two industrial units — one has a dispute with its workmen or some of them, pending before the Government or before the authority under the Industrial Disputes Act and relating to an accounting year ending in the year 1962. For the years 1962, 1963 and 1964 this industrial unit will be liable to pay bonus according to the statutory formula prescribed by the Act, whereas another industrial unit in the same industry which may be regarded as reasonably similar would be under no such obligation, if it has on May 29, 1965, no dispute relating to bonus pending because the dispute has not been raised or has been settled by agreement or by award or that the dispute having been determined by an award, had reached a superior court by way of appeal or in exercise of the writ jurisdiction. There appears neither logic nor reason in the different treatment meted out to the two establishments. It is difficult to appreciate the rationality of the nexus - if there be any - between the classification and the object of the Act. In our view therefore Section 33 is patently discriminatory.

36. The sub-section of section 34 makes a departure from the scheme for payment of bonus which pervades the rest of the Act. The expression “allocable surplus” in Section 34(2) does not mean a percentage of the available surplus under Section 2(4) read with Sections 5 and 6, as that expression is understood in the rest of the Act. It is a figure computed according to a special method. Under Section 34(2) if the total bonus payable in any accounting year after the Act had come into force is less than the total bonus paid or payable in the “base year” under any award, agreement, settlement or contract of service, then, bonus for the accounting year has to be determined according to the following scheme:

37. First determine the ratio of the bonus paid or payable to all employees (not workmen merely as defined in the Industrial Disputes Act) for the base year as defined in Explanation II(a) to the gross profits as defined in Explanation II(b) of that year, and apply that ratio to the gross profits as defined in Explanation II to the accounting year and determine the allocable surplus. That allocable surplus will be distributed among the employees subject to the restriction that no employee shall be paid bonus which exceeds 20% of the salary or wage earned by an employee, and that if the allocable surplus so computed exceeds the amount of maximum bonus payable to the employees in the establishment then the provisions of Section 15 shall so far as may be apply to the excess.

38. Gross profits which are to be taken into account for determining the ratio both in the accounting year and the base year are also specially defined for the purpose of this sub- section. They are not the gross profits as determined under the Full Bench formula, nor under Section 4 of the Act, but by a method specially prescribed by the Explanation: they are gross

profits under Section 4 as reduced by the direct taxes payable by the employer in respect of that year. Under the Full Bench formula bonus was determined as a percentage of the gross profits minus prior charges. Under Section 5 of the Act available surplus of which the normal allocable surplus is a percentage is determined by deducting from the gross profits of the year the four heads of charges which are referred to under Section 4 - depreciation, development rebate or development allowance, direct taxes and other sums specified in the Third Schedule. But in applying the scheme under Section 34 only the direct taxes are debited. Bonus which becomes payable under Section 34(2) is therefore not worked out as a percentage of the available surplus, but as a fraction of gross profits computed according to the special formula. The expression "base year" is also a variable unit: in any case where a dispute of the nature specified in Section 33 is pending immediately before May 29, 1965, before the authorities specified in Section 33, the accounting year immediately preceding the accounting year to which the dispute relates is the base year : in other cases a period of twelve months immediately preceding the accounting year in respect of which the Act becomes applicable to the establishment, in the base year. For instance, if there be a dispute pending in respect of the accounting year on any day ending in 1962, 1963 or 1964, the base years will be the accounting years ending on a day in 1961, 1962 or 1963 as the case may be. If there be no dispute pending the period of twelve months immediately preceding the accounting year in which the Act becomes applicable to the establishment is the base year. Determination of the base year therefore depends upon the pendency or otherwise of a bonus dispute immediately before May 29, 1965, for any of the years ending on any day in 1962, 1963 and 1964.

39. There is also a special method for determining whether the total bonus payable to all the employees is less than the total bonus paid or payable in respect of the base year. By the First Explanation it is provided that the total bonus in respect of any accounting year shall be deemed to be less than the total bonus paid or payable in respect of the base year, if the ratio of bonus payable in respect of the accounting year to the gross profits of that year is less than the ratio of bonus paid or payable in respect of the base year to the gross profits of that year.

40. Section 34(2) contemplates a somewhat complicated enquiry into the determination of the bonus payable. Gross profits of the base year being determined in the manner prescribed by the Act and reduced by the direct taxes payable by the employers in respect of that year, the ratio between the gross profits and the bonus paid or payable in respect of that base year is to be applied to the gross profits of the accounting year to determine the allocable surplus. Apart from the complexity of the calculation involved it was forcefully pointed out before us that in certain cases the ratio may be unduly large or even infinite. In order to buy peace and in the expectation that in future the working of the establishments would be more profitable, employers had in certain cases paid bonus out of reserves, even though there was no gross profit or insufficient gross profit, and those establishments are under Section 34(2) saddled with liability to allocate large sums of money wholly disproportionate to or without any surplus profits, and even to the amount which would be payable if the scheme of the Act applied. For in cases where there were no gross profit, the ratio between the amount paid or payable as bonus and gross profit would reach infinity : in cases where the gross profits were small and substantial amounts were paid or became payable by way of bonus, the ratio may become unduly large. These are not cases hypothetical but practical, which had arisen in fact,

and application of the ratio irrevocably fixes the liability of the establishment to set apart year after year large amounts whether the establishment made profits or not towards allocable surplus.

41. Payment of bonus by agreement was generally determined not by legalistic considerations and not infrequently generous allowances were made by employers as bonus to workmen to buy peace especially where industrywise settlements were made in certain regions, and weak units were compelled to fall in line with prosperous units in the same industry and had to pay bonus even though on the result of the working of the units no liability to pay bonus on the application of the Full Bench formula could arise. But if in the base year such payment was made, for the duration of the Act the ratio becomes frozen and the total bonus payable to the employees in the establishment under the Act can never be less than the bonus worked out on the application of the ratio prescribed by Section 34(2).

42. Here again units or establishments which had paid bonus in the base year and those which had not paid bonus in the base year are separately classified without taking into consideration the special circumstances which operated upon the payment of bonus in the base year which may vary from establishment to establishment. The ratio under Section 34(2), so long as the Act remains on the statute-book, determines the minimum allocable surplus for each accounting year of those establishments which had paid bonus in the base year. The fact that under sub-section (3) the employees and the employers are not precluded from entering into agreements for granting bonus to the employees under a formula which is different from that prescribed under the Act has little significance. If by statute a certain ratio is fixed which determines the bonus payable by the employer whether or not the profits of the accounting year warrant payment of bonus at that rate, it would be futile to expect the employees to accept anything less than what has been statutorily prescribed.

43. In our view Section 34 imposes a special liability to pay bonus determined on the gross profits of the base year on an assumption that the ratio which determines the allocable surplus is the normal ratio not affected by any special circumstance and perpetuates for the duration of the Act that ratio for determining the minimum allocable surplus each year. If bonus contemplated to be paid under the Act is intended to make an equitable distribution of the surplus profits of a particular year, a scheme for computing labour's share which cannot be less than the amount determined by the application of a ratio derived from the working of the base year without taking into consideration the special circumstances governing that determination is *ex facie* arbitrary and unreasonable. The Additional Solicitor-General appearing for the Union of India and the representatives of the Labour Unions and counsel appearing for them contended in support of their plea that Section 34(2) was not invalid because the ratio was intended to stabilize the previous grant of bonus and to maintain in favour of labour whatever was achieved by collective bargaining in the base year. But the validity of a statute is subject to judicial scrutiny in the context of fundamental freedoms guaranteed to employers as well as employees and the freedom of equal protection of the laws becomes chimerical, if the only ground in support of the validity of a statute *ex facie* discriminatory is that Parliament intended, inconsistently with the very concept of bonus evolved by it to maintain for the benefit of labour an advantage which labour had obtained in an earlier year, based on the special circumstances of that year, without any enquiry whether

that advantage may reasonably be granted in subsequent years according to the principles evolved by it and for securing the object of the Act. If the concept of bonus as allocation of an equitable share of the surplus profits of an establishment to the workmen who have contributed to the earning has reality, any condition that the ratio on which the share of one party computed on the basis of the working of an earlier year, without taking into consideration the special circumstances which had a bearing on the earning of the profits and payment of bonus in that year, shall not be touched, is in our judgment arbitrary and unreasonable. The vice of the provision lies in the position of an arbitrary ratio governing distribution of surplus profits. In our view, Section 34(2) is invalid on the ground that it infringes Article 14 of the Constitution. It is in the circumstances unnecessary to consider whether the provisions of Section 33 and Section 34(2) are invalid as infringing the fundamental rights conferred by Articles 19(1)(g) and 31(1).

44. But the invalidity of Sections 33 and 34(2) does not affect the validity of the remaining provisions of the Act. These two provisions are plainly severable. All proceedings which are pending before the Act came into force including those which are covered by Section 33 will therefore be governed by the Full Bench formula and that in the application of the Act the special ratio for determining the allocable surplus under Section 34(2) will be ignored, for application of the Full Bench formula to pending proceedings on May 29, 1965, and refusal to apply the special ratio in the determination of allocable surplus under Section 34(2) does not affect the scheme of the rest of the Act. The declaration of invalidity of Section 37 which confers upon the Central Government power to remove difficulties also does not affect the validity of the remaining provisions of the Act.

45. The Industrial Tribunal has awarded to the workmen of Jalan Trading Company bonus at the minimum rate relying upon Section 33 of the Act. The claim for bonus related to the year 1962, and could be upheld only if Section 10 was attracted by the operation of Section 33. But we have held that Section 33 is invalid. It is now common ground that the appellant Company had suffered loss in 1962. The profit and loss account was accepted by the workmen before the Tribunal. Civil Appeal No. 187 of 1966 will therefore be allowed and the order passed by the Industrial Tribunal imposing liability for payment of minimum bonus set aside. In Writ Petitions Nos. of 1966 and 32 of 1966, it is declared that Sections 33 and 34(2) are invalid as infringing Article 14 of the Constitution, and that Section 37 is invalid in that it delegates to the executive authority legislative powers.

*[As per the judgment of M. Hidayatullah, J., the Bonus Act was validly enacted.]*

#### **ORDER.**

88. In accordance with the opinion of the majority, the appeal is allowed and the order of the Industrial Tribunal set aside. The writ petitions are allowed in part and Sections 33, 34(2) and 37 are declared *ultra vires*.

\* \* \* \* \*



***Birla Institute of Technology v. The State of Jharkhand***

AIR 2019 SC 1309

**Abhay Manohar Sapre, J.**

1. On 07.01.2019, this Court placing reliance on the decision of this Court in Ahmadabad Pvt. Primary Teachers Association vs. Administrative Officer and Signature Not Verified Others (2004) 1 SCC 755, which was brought to the Digitally signed by ASHOK RAJ SINGH Date: 2019.03.07 17:29:15 IST Reason:

Court's notice by the learned counsel appearing for the appellant, allowed the appeal and set aside the order of the High Court.

2. However, after the pronouncement of the order in this appeal, it came to the notice of this Court that consequent upon the decision of this Court rendered in Ahmadabad Pvt. Primary Teachers Association (supra), the Parliament amended the definition of the word "employee" as defined in Section 2(e) of the Payment of Gratuity Act, 1972 by Amending Act No. 47 of 2009 on 31.12.2009 with retrospective effect from 03.04.1997. This amendment was not brought to our notice while passing the order on 07.01.2019 in this appeal.

3. This Court, therefore, suo motu took up the appeal to its file and directed it to be listed on the Board. On 09.01.2019 the appeal was accordingly listed for orders. This Court then stayed its order dated 07.01.2019 and passed the following order: " On 07.01.2019 this Court delivered the judgment allowing the appeal and setting aside the order of the High Court impugned therein.

Today, we have listed the matter suo motu. The reason being that during the course of hearing of the appeal it was not brought to the notice of the Bench that the judgment of this Court in Ahmedabad Pvt. Primary Teachers Association vs. Administrative Officer & Ors. (2004) 1 SCC 755 on which the reliance was placed for allowing the appeal necessitated the Parliament to amend the definition of "employee" under Section 2(e) of the Payment of Gratuity Act by Amending Act No.47 of 2009 with retrospective effect from 03.04.1997.

In other words, though the definition was amended in 2009 by Act No.47 of 2009, yet the same was given retrospective effect from 03.04.1997 so as to bring the amended definition on Statute Book, from 03.04.1997.

Keeping in view the amendment made in the definition of Section 2(e), which as stated above was not brought to the notice of the Bench, this issue was not considered though had relevance for deciding the question involved in the appeal. It is for this reason, we prima facie find error in the judgment and, therefore, are inclined to stay the operation of our judgment dated 07.01.2019 passed in this appeal. The judgment dated 07.01.2019 shall not be given effect to till the matter is reheard finally by the appropriate Bench. The Registry is directed to list this matter for rehearing before the appropriate Bench

comprising of Hon'ble Mr.Justice Abhay Manohar Sapre and Hon'ble Ms.Justice Indu Malhotra as early as possible.”

4. It is in the light of the aforementioned order, the matter was listed before this Bench for passing the appropriate order in the disposed of appeal.

5. We heard the learned counsel for the parties. Both the parties have also filed their written submissions.

6. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions, we are inclined to recall our order dated 07.01.2019 because, in our view, it contains an error apparent on the face of the order.

7. The apparent error is that it was not brought to our notice that the Parliament, consequent upon the decision of this Court in Ahmadabad Pvt. Primary Teachers Association (supra), had amended the definition of “employee” as defined in Section 2(e) of the Payment of Gratuity Act by amending Act No. 47 of 2009 with retrospective effect from 03.04.1997. This amendment, in our opinion, had a direct bearing over the issue involved in this appeal.

8. What was brought to our notice was only the decision of this Court rendered in Ahmadabad Pvt. Primary Teachers Association (supra) by contending that the issue involved in this appeal remains no longer res integra and stands answered in appellant’s favour. We accepted this submission.

9. In our view, the error mentioned above is an error apparent on the face of the record of the case because the material, subsequent event, which came into existence, had a direct bearing over the controversy involved in this appeal, was not brought to our notice at the time of hearing the appeal. It is this apparent error, which led to passing of the order dated 07.01.2019 in favour of the appellant.

10. In view of the aforesaid discussion, we recall our order dated 07.01.2019 passed in this appeal. As a consequence, the appeal (Civil Appeal No. 2530 of 2012) is restored to its original number for its disposal on merits in accordance with law.

11. We now proceed to decide the appeal afresh on its merits.

12. This appeal is directed against the final judgment and order dated 02.04.2008 passed by the High Court of Jharkhand at Ranchi in LPA No.53 of 2007 whereby the Division Bench of the High Court dismissed the LPA filed by the appellant herein and confirmed the order dated 12.01.2007 passed by the Single Judge of the High Court in W.P. No.2572 of 2005.

13. The controversy involved in this appeal is a short one as would be clear from the facts stated infra.

14. The appellant is a premier technical educational institute of repute in the country. It is known as “Birla Institute of Technology” (BIT).

15. Respondent No.4 joined the appellantInstitute as Assistant Professor on 16.09.1971 and superannuated on 30.11.2001 after attaining the age of superannuation.

16. Respondent No.4 then made a representation to the appellant and prayed therein for payment of gratuity amount which, according to respondent, was payable to him by the appellant under the Payment of Gratuity Act, 1972. The appellant, however, declined to pay the amount of gratuity as demanded by respondent No.4.

17. Respondent No.4, therefore, filed an application before the controlling authority under the Act against the appellant and claimed the amount of gratuity which, according to him, was payable to him under the Act.

18. By order dated 07.09.2002, the controlling authority (respondent No.3) allowed the application filed by respondent No.4 and directed the appellant to pay a sum of Rs.3,38,796/ along with interest at the rate of 10% p.a. towards the gratuity to respondent No.4.

19. The appellant felt aggrieved and filed appeal before the appellate authority under the Act. By order dated 15.04.2005, the appellate authority dismissed the appeal. The appellant felt aggrieved and carried the matter to the High Court in a writ petition. The High Court (Single Judge) by order dated 12.01.2007 dismissed the writ petition and upheld the orders of the authorities passed under the Act. The appellant then filed Letters Patent Appeal before the Division Bench against the order passed by the Single Judge. The LPA was also dismissed by the impugned order which has given rise to filing of the present appeal by way of special leave by the appellantInstitute in this Court.

20. The short question, which arises for consideration in this appeal, is whether the Courts below were justified in holding that respondent No.4 was entitled to claim gratuity amount from the appellant (employer) under the Act.

21. Heard Mr. Shambo Nandy, learned counsel for the appellant and Mr. Anil Kumar Jha, learned counsel for respondent Nos.13 and Mr. Sunil Roy, learned counsel for respondent No.4.

22. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.

23. As mentioned above, the issue in question was subject matter of the decision rendered in the case of Ahmadabad Pvt. Primary Teachers Association (supra). This Court had examined the question in the light of the definition of the word “employee” defined in Section 2(e) of the Act as it stood then. The definition reads as under:

“2. (e) ‘employee’ means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semiskilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any

such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

24. This is what was held in paras 22 to 26 of the decision:

“22. In construing the abovementioned three words which are used in association with each other, the rule of construction *noscitur a sociis* may be applied. The meaning of each of these words is to be understood by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. The actual order of these three words in juxtaposition indicates that meaning of one takes colour from the other. The rule is explained differently: “that meaning of doubtful words may be ascertained by reference to the meaning of words associated with it”. [See Principles of Statutory Interpretation by Justice G.P. Singh, 8th Edn., Syn. 8, at p. 379.]

23. The word “unskilled” is opposite of the word “skilled” and the word “semi- skilled” seems to describe a person who falls between the two categories i.e. he is not fully skilled and also is not completely unskilled but has some amount of skill for the work for which he is employed. The word “unskilled” cannot, therefore, be understood dissociated from the word “skilled” and “semiskilled” to read and construe it to include in it all categories of employees irrespective of the nature of employment. If the legislature intended to cover all categories of employees for extending benefit of gratuity under the Act, specific mention of categories of employment in the definition clause was not necessary at all. Any construction of definition clause which renders it superfluous or otiose has to be avoided.

24. The contention advanced that teachers should be treated as included in the expression “unskilled” or “skilled” cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in the industrial field or service jurisprudence as a “skilled employee”. Such adjective generally is used for an employee doing manual or technical work. Similarly, the words “semi skilled” and “unskilled” are not understood in educational establishments as describing nature of job of untrained teachers. We do not attach much importance to the arguments advanced on the question as to whether “skilled”, “semiskilled” and “unskilled” qualify the words “manual”, “supervisory”, “technical” or “clerical” or the above words qualify the word “work”. Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not “skilled”, “semiskilled”, “unskilled”, “manual”, “supervisory”, “technical” or “clerical” employees. They are also not employed in “managerial” or “administrative” capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in “managerial” or “administrative” capacity. The teachers are clearly not intended to be covered by the definition of “employee”.

25. The legislature was alive to various kinds of definitions of the word “employee” contained in various previous labour enactments when the Act was passed in 1972. If it

intended to cover in the definition of “employee” all kinds of employees, it could have as well used such wide language as is contained in Section 2(f) of the Employees’ Provident Funds Act, 1952 which defines “employee” to mean “any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment ...”. Nonuse of such wide language in the definition of “employee” in Section 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition.

26. Our conclusion should not be misunderstood that teachers although engaged in a very noble profession of educating our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subjectmatter solely of the legislature to consider and decide.”

25. The decision rendered in Ahmadabad Pvt. Primary Teachers Association (supra), therefore, led the Parliament to amend the definition of "employee" as defined in Section 2 (e) of the Payment of Gratuity Act by amending Act No. 47 of 2009 on 31.12.2009 with retrospective effect from 03.04.1997.

26. It is clear from the statement of Objects and Reasons of the Payment of Gratuity (Amendment) Bill, 2009 introduced in the Lok Sabha on 24.02.2009, which reads as under:

“STATEMENT OF OBJECTS AND REASONS The Payment of Gratuity Act, 1972 provides for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishment and for matters connected therewith or incidental thereto. Clause (c) of subsection (3) of section 1 of the said Act empowers the Central Government to apply the provisions of the said Act by notification in the Official Gazette to such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day preceding twelve months.

Accordingly, the Central Government had extended the provisions of the said Act to the educational institutions employing ten or more persons by notification of the Government of India in the Ministry of Labour and Employment vide number S.O. 1080, dated the 3rd April, 1997.

2. The Hon'ble Supreme Court in its judgment in Civil Appeal No. 6369 of 2001, dated the 13th January, 2004, in Ahmedabad Private Primary Teachers' Association vs. Administrative Officer and others [AIR 2004 Supreme Court 1426] had held that if it was extended to cover in the definition of 'employee', all kind of employees, it could have as well used such wide language as is contained in clause (f) of section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which defines 'employee' to mean any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment. It had been held that nonuse of such

wide language in the definition of 'employee' under clause (e) of section 2 of the Payment of Gratuity Act, 1972 reinforces the conclusion that teachers are clearly not covered in the said definition.

3. Keeping in view the observations of the Hon'ble Supreme Court, it is proposed to widen the definition of 'employee' under the said Act in order to extend the benefit of gratuity to the teachers. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was introduced in Lok Sabha on the 26th November, 2007 and same was referred to the Standing Committee on Labour which made certain recommendations. After examining those recommendations, it was decided to give effect to the amendment retrospectively with effect from the 3rd April, 1997, the date on which the provisions of the said Act were made applicable to educational institutions.

4. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was withdrawn and a new Bill, namely, this Payment of Gratuity (Amendment) Bill, 2009 having retrospective effect was introduced in the Lok Sabha on 24th February, 2009. However, due to dissolution of the Fourteenth Lok Sabha, the said Bill lapsed. In view of the above, it is considered necessary to bring the present Bill.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 12th November, 2009” MALLIKARJUN KHARGE.”

27. The definition of “employee” as defined under Section 2(e) was accordingly amended with effect from 03.04.1997 retrospectively vide Payment of the Gratuity (Amendment) Act, 2009 (No. 47 of 2009) published on 31.12.2009. The amended definition reads as under:

“(e) “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

28. In the light of the amendment made in the definition of the word “employee” as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997.

29. In other words, the teachers were brought within the purview of “employee” as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997.

30. The effect of the amendment made in the Payment of Gratuity Act vide Amending Act No. 47 of 2009 on 31.12.2009 was twofold. First, the law laid down by this Court in the case of Ahmadabad Pvt. Primary Teachers Association (supra) was no longer applicable against the teachers, as if not rendered, and Second, the teachers were held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 03.04.1997.

31. In our considered opinion, in the light of the amendment made in the Payment of Gratuity Act as detailed above, reliance placed by the learned counsel appearing for the appellant (employer) on the decision of Ahmedabad Pvt. Primary Teachers Association (supra) is wholly misplaced and does not help the appellant in any manner. It has lost its binding effect.

32. Learned counsel for the appellant then urged that the constitutional validity of Amending Act No. 47 of 2009 is under challenge in this Court in a writ petition, which is pending.

33. Be that as it may, in our view, pendency of any writ petition by itself does not affect the constitutionality of the Amending Act, and nor does it affect the right of respondent No.4 (teacher) in any manner in claiming gratuity amount from the appellant(employer) under the Act.

34. It is only when the Court declares a Statute as being ultra vires the provisions of the Constitution then the question may arise to consider its effect on the rights of the parties and that would always depend upon the declaration rendered by the Court and the directions given in that case. Such is not the case here as of now.

35. In the light of the foregoing discussion, we find no merit in this appeal, which fails and is hereby dismissed with costs quantified at Rs.25,000/ payable by the appellant to respondent No.4(teacher).

[ABHAY MANOHAR SAPRE]

J.

[INDU MALHOTRA]

J

New Delhi; March

07, 2019

**UNIT 10: Social Security Legislation: Salient Features**  
***Dr Kavita Yadav V Secretary, Ministry of Health and Family Welfare***  
***Department and Others***

(2024) 1 SCC 421

**Aniruddha Bose, Sanjay Kumar, and S. V. N. Bhatti JJ.** - 1. The appellant, a pathology doctor, was appointed as Senior Resident (Pathology) in Janakpuri Super Specialty Hospital, an autonomous institute under the Government of NCT of Delhi, on 6-6-2014. Her appointment letter specified that it was purely temporary and as per the residency scheme, such appointment was initially to be for a period of one year, extendable on yearly basis up to a maximum of three years. Her date of joining was 12-6-2014. Her services were extended twice, for one year period each, on 12-6-2015 and 12-6-2016. Her last extension was for the period of one year from 12-6-2016 to 11-6-2017.

2. On 24-5-2017, the appellant had applied for maternity benefits from 1-6-2017, in terms of Section 5 of the Maternity Benefit Act, 1961 ("the 1961 Act"). The employer, however, informed her that only 11 days of maternity benefits could be granted since, as per the residency scheme, her tenure came to an end on 11-6-2017 and no further extension was allowed/permissible under the applicable rules.

3. The appellant unsuccessfully challenged the said action before the Central Administrative Tribunal, Principal Bench, New Delhi, and subsequently failed in the High Court also, on the very same reasoning based on which the employer had rejected her claim of maternity benefits for a total of 26 weeks in terms of the 1961 Act. The reasoning of the High Court would appear from paras 9 and 10 of the judgment delivered on 19-8-2019, and we quote below the said two paragraphs: (*Kavita Yadav* case, SCC Online Del paras 9-10)

"9. Reliance placed on Section 5(2) of the said Act by the petitioner to claim that once the female employee has rendered service for 180 days continuously prior to the expected date of delivery, she would be entitled to maternity benefit is, in our view, irrelevant, since the respondents have not denied the maternity benefit to the petitioner. The only issue is whether she would be entitled to such benefit after 11-6-2017, when her contract of employment ended.

10. Sub-section (1) of Section 5 of the said Act provides that subject to provisions of the Act, every woman should be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of average daily wage 'for the period of her actual absence... The use of the expression "actual absence" pre-supposes that but for the maternity leave, the woman employee would be expected to remain "present". However, where the contractual employment is time bound with an outer limit, and the same comes to an end during the period of pregnancy, or even after child birth, but during the period when the woman employee would be entitled to avail of maternity benefits under the Act, there would be no question of the woman employee remaining actually "absent", since she would not be expected to remain present post the termination of her contractual employment. The purpose of the aforesaid Act is not to extend the period of the contract for which the woman employee is in service. If the submission of the learned counsel for the petitioner is accepted that the petitioner should be granted leave for 180 days, despite her contract expiring within a few days from the start of maternity leave, it would clearly tantamount to unintended extension of the contractual employment."

4. It is this judgment which is assailed before us. For effective adjudication of this appeal, we reproduce below the following provisions of the 1961 Act:

**"5. Right to payment of maternity benefit.**-(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately



preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Explanation. For the purpose of this sub-section, "the average daily wage" means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, [the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest.]

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than (eighty days) in the twelve months immediately preceding the date of her expected delivery: Provided that the qualifying period of (eighty days) foresaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration. Explanation. For the purpose of calculating under the sub-section the days on which a woman has actually worked in the establishment (the days for which she has been laid-off or was on holidays declared under any law for the time being in force to be holidays with wages) during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be (twenty-six weeks of which not more than eight weeks) shall precede the date of her expected delivery: [Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:]

[Provided further that] where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

[[Provided also that] where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of death of the child.]

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

**8. Payment of medical bonus.** (1) Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of one thousand rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

(2) The Central Government may before every three years, by notification in the Official Gazette, increase the amount of medical bonus subject to the maximum of twenty thousand rupees.

**12. Dismissal during absence or pregnancy.**-(1) Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such

a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(2)(a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in Section 8. shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided that where the dismissal is for any prescribed gross misconduct the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) Any woman deprived of maternity benefit or medical bonus or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which the order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1).

**27. Effect of laws and agreements inconsistent with this Act.** -(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matters which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favorable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter, which are more favourable to her than those to which she would be entitled under this Act."

5. On behalf of the appellant, Mr. Sourabh Gupta, learned counsel, argued that once the appellant fulfilled the prerequisite for availing maternity benefits, as contemplated in Section 5(2) of the 1961 Act, even as a contractual employee, she would be entitled to the full benefits as envisaged therein. The entitlement of a contractual employee to obtain such benefits is not in dispute in this case as the employer had extended such benefits to the appellant during her first pregnancy. The appellant also fulfilled the requirement of having worked for a period exceeding 80 days in the 12 months immediately preceding the date of her expected delivery, in terms of Section 5(2) of the 1961 Act.

6. The main question which falls for determination in this appeal is as to whether the maternity benefits, as contemplated in the 1961 Act, would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period.

7. Ms. Rachita Garg, learned counsel appearing for the respondent employer, sought to defend the reasoning given in the judgment under appeal. Her main argument is that once the term or tenure of the contract ends, there cannot be a notional extension of the same by giving the employee the benefits of the 1961 Act in full, as contemplated in Section 5(2) thereof. It is her submission that any benefits that the appellant would be entitled to ought to be within the contractual period.

8. We have reproduced earlier in this judgment the provisions of Section 12(2)(a) of the 1961 Act. The aforesaid provision contemplates entitlement to the benefits under the 1961 Act even for an employee who is dismissed or discharged at any time during her pregnancy if the woman, but for such discharge or dismissal, would have been entitled to maternity benefits or medical bonus. Thus, continuation of maternity benefits is in-built in the statute itself, where the benefits would survive and continue despite the cessation of employment. In our opinion, what this legislation envisages is entitlement to maternity benefits, which accrues on fulfilment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also. It is not coterminous with the employment tenure.

9. A Two-Judge Bench of this Court in *MCD v. Female Workers (Muster Roll)*, while dealing with a similar claim by female muster roll workers who were employed on daily wages, opined that the provisions relating to maternity benefits in the 1961 Act would be applicable in their cases as well. That dispute had reached this Court through the Industrial Tribunal and the High Court. Before both these fora, the Union espousing the cause of the female workers was successful. In that case, point of discrimination was highlighted as regular woman employees were extended the benefits of the said Act but not those who were employed on casual basis or on muster roll on daily-wage basis. This Court observed, in para 27 of the said judgment: [*Female Workers (Muster Roll)* case, SCC pp. 234-35)

27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular woman employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis."

10. Broadly, a similar view is reflected in a more recent judgment of this Court in *Deepika Singh v. PGIMER, Chandigarh*. Though this decision dealt with the Central Civil Services (Leave) Rules, 1972, in relation to maternity leave and the 1961 Act was not directly applicable in that case, this Court analysed certain provisions of this Act to derive some guidance on a cognate legislation.

11. This Court observed in *Deepika Singh* (SCC paras 19-20)

19. Sub-section (1) of Section 5 confers an entitlement on a woman to the payment of maternity benefits at a stipulated rate for the period of her actual absence beginning from the period Immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Sub-section (3) specifies the maximum period for which any woman shall be entitled to maternity benefit. These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder. her entitlement to receive wages for that period or for that matter for the period during which she should be granted leave in order to look after her child after the birth takes place.

20. The 1961 Act was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire. In *MCD v. Female Workers (Muster Roll)*, a two-Judge Bench of this Court placed reliance on the obligations under Articles 14, 15, 39, 42 and 43 of the Constitution, and India's international obligations under the Universal Declaration of Human Rights, 1948 ("UDHR") and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") to extend benefits under the 1961 Act to workers engaged on a casual basis or on muster roll on daily wages by the Municipal Corporation of Delhi. The Central Civil Services (Leave) Rules, 1972, it is well to bear in mind, are also formulated to entrench and enhance the objects of Article 15 of the Constitution and other relevant constitutional rights and protections."

**12.** In the light of the ratio laid down in the aforesaid two authorities and having regard to Section 27 of the 1961 Act, which gives overriding effect to the statute on any award, agreement or contract of service, in our opinion, the High Court erred in law in holding that the appellant was not entitled to maternity benefits beyond 11-6-2017.

**13.** The respondents sought to distinguish the present dispute from Female Workers (Muster Roll) on the ground that the said case arose from an award of the Industrial Tribunal and that there was a finding by the Tribunal that the muster roll lady workers were working for a long period of time. But the fact remains that in law, daily-wage workers cannot be said to have continuity of service for an unlimited period. The effect of that judgment was that their tenure also stood notionally extended so far as application of maternity benefits under the 1961 Act was concerned.

**14.** Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof. The expression employed in the legislation is "maternity benefits" [in Section 3(h)] and not "leave". Section 5(2) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. Section 5(3) lays down the maximum period for which such benefits could be granted. The last proviso to Section 5(3) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her absence. This embargo has been imposed under Section 12 (2)(a) of the Act. The expression "discharge" is of wide import, and it would include "discharge on conclusion of the contractual period". Further, by virtue of operation of Section 27, the Act overrides any agreement or contract of service found inconsistent with the 1961 Act.

**15.** In our opinion, a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in Section 12 (2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.

**16.** We, accordingly, set aside the judgment and order of the High Court and as a consequence thereof, the Tribunal's decision shall also stand invalidated. We allow this appeal and direct the employer to extend maternity benefits as would have been available to the appellant in terms of Sections 5 and 8 of the 1961 Act, after deducting therefrom any sum that may already have been paid to the appellant under the same head or for such purpose. Such benefits, as may be quantified in monetary units, shall be extended to her within a period of three months from the date of communication of this judgment. The orders of the employer rejecting the appellant's claim on this count shall stand quashed.

**17.** The present appeal is, accordingly allowed in the above terms.

**18.** Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

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