

## **PART – A : INDUSTRIAL DISPUTES**

### ***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 readjust 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.

\* \* \* \* \*

***Karnal Leather Karamchari Sanghatan v. Liberty Footwear Co.***

(1989) 4 SCC 448 : AIR 1990 SC 247

**K. JAGANNATHA SHETTY, J.** - This appeal by leave from a decision of the Single Judge of Punjab & Haryana High Court raises a very short but important question of law relating to the validity of an arbitral award made before publishing the arbitration agreement under the Industrial Disputes Act, 1947.

The Respondent 1 is a registered partnership firm carrying on its trading activities in leather footwears at Karnal and some other places under the name and style of 'Liberty Footwear Company'. It has its head office at Karnal in the State of Haryana. It had a serious dispute with the workers. The workers' union complained that the management has illegally terminated more than 200 workers. The Respondent 1 denied that claim and asserted that the persons whose services were alleged to have been terminated were not its employees at the material time. This dispute however, remained unsettled and the workers went on strike which took a violent turn. The management had to lay off certain workers and that added fuel to the fire. The agitation of the workers before the factory premises created law and order problem attracting the police to intervene. The Labour Commissioner and other top officials of the District arrived and they initiated conciliation proceedings. The then Labour Minister and the Public Health Minister of the State Government were also alerted. They also came and extended their good offices to bring about a settlement. They succeeded in their efforts. On 31-3-1988, the parties entered into an agreement containing the terms of settlement of their dispute. On behalf of the management, the agreement was signed by respondents 1, 7 and 8. On behalf of the workers, it was signed by the President and Secretary of the workers' union. It was mutually agreed that a committee consisting of five persons, two from the management and two from the union with the Deputy Commissioner, Karnal as the President should be constituted. They would be the arbitrators to determine the said dispute.

3. The committee of arbitrators was accordingly constituted. The committee gave its award on 29-4-1988 and 11-5-1988 directing the management to reinstate in all 159 workmen. This was the beginning of another dispute which led to frustrated litigation. The management did not reinstate the workers. It challenged the validity of the award by way of writ petition in the High Court. It was claimed inter alia that the arbitration agreement was not published in the official gazette as required under sub-section (3) of Section 10-A of the Act and the award made without such publication would be invalid. The learned Single Judge of the High Court who considered the matter did not examine all the contentions urged by the management. He, however, accepted the writ petition only on the effect of non-publication of the agreement in the gazette. He expressed the view that the requirement of the sub-section (3) is mandatory and its non-compliance would vitiate the award. With this conclusion he quashed the award and directed the State Government to publish the agreement in the gazette. He also directed the committee to determine the dispute afresh and pass an award after publication of the agreement.

4. The employees' union without preferring Letters Patent Appeal before the High Court against the judgment of learned Single Judge has directly appealed to this Court by obtaining special leave. Ordinarily, we would have revoked the leave since the party has not exhausted



the remedy available by way of appeal. But in view of the importance of the question raised and the need to decide it promptly in the interest of industrial adjudication, we proceed to consider the appeal on merits.

5. The principal question that arises for consideration is whether non-publication of the arbitration agreement as required under sub-section (3) of Section 10-A, renders the arbitral award invalid and unenforceable?

6. Before outlining the statutory provisions having a bearing on the question, we may call attention to the relevant terms of the arbitration agreement.

“3. Out of alleged more than 200 terminated workers the workers doing the work of cutting and stitching are taken back with immediate effect and about the reinstatement of the remaining workers a committee is constituted. In the committee two members namely S/Shri Iswar and Ram Badan will represent the workers and S/Shri Sunil Bansal and Mohan Lal Wadwa will be the representatives of the management. The Deputy Commissioner, Karnal would be the President of the committee. This committee will decide this matter that out of those alleged more than 200 workers whose services have been terminated how many and who are workers of Liberty Group. The workers found to be of the Liberty Group would resume work with immediate effect. The committee will take decision in this behalf up to 25-4-1988. In order to ascertain as to which of the workers worked in which factory of the Liberty Group, the President shall have the right to adopt any procedure or method and the decision given by him shall be binding on both the parties.”

7. The parties entered into the above agreement and referred the dispute for arbitration under Section 10-A of the Act.

11. Sub-section (4) of Section 10-A empowers the arbitrator to investigate and adjudicate upon the industrial dispute referred to him under the arbitration agreement. He shall submit an award signed by him. If there are more than one arbitrator, all of them must sign the award. The award shall be submitted to the appropriate government. It is also to be published like any other award under the Act in accordance with the provisions of sub-section (1) of Section 17. Section 17-A provides that an award (including an arbitration award) shall become enforceable on the expiry of 30 days from the date of its publication. Sub-section (2) of Section 18 makes an arbitration award which has become enforceable, binding on the parties to the agreement. Sub-section (3) of Section 18 goes a step further. In a case where notification has been issued under sub-section (3-A) of Section 10-A, the arbitration award would be binding on all parties to the dispute as well as on all other persons summoned to appear in the proceedings as parties to the dispute. Such an award will also bind the successors or assigns of the employer and all present and future workmen employed in the establishment.

12. For completeness of the picture we may refer to the rules framed by the Central Government under Section 38(2)(aa). These rules make provision for the form of arbitration agreement, the place and time of hearing and the powers of the arbitrator to take evidence. Rule 7 of the Industrial Disputes (Central) Rules, 1957 which is relevant for our purpose provides:

“7. **Arbitration agreement.**- An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in Form C and shall be delivered personally or forwarded by registered post to the Secretary to the Government of India in the Ministry of Labour (in triplicate), the Chief Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) concerned. The agreement shall be accompanied by the consent, in writing, of the arbitrator or arbitrators.”

13. In the light of these statutory provisions, it is now necessary to consider whether publication of the arbitration agreement is obligatory and if so, when it should be published? To put the question more precisely: whether it is necessary to publish the agreement within the time prescribed under sub-section (3) of Section 10-A? And what would be the consequences of delayed publication?

14. Arguments before us ranged a good deal wider than they appear to have done in the High Court. The counsel for the appellant claimed that the publication in the gazette is only for general information and not a condition precedent for making the award. When parties have voluntarily agreed and referred their problem to arbitration and also participated in the award proceedings, mere non-publication of the agreement cannot render the award invalid. Such a view, counsel asserted, would defeat the very purpose of industrial adjudication by consent of parties. He also urged that penal consequence for non-publication of the agreement since not prescribed, the requirement of publication is only directory and not mandatory. He finally rounded off his submission by stating that publication of the agreement is necessary, but the period specified under sub-section (3) is only directory.

22. The authorities of the High Courts do not indicate the reasons in support of the views expressed. But the reasons in our opinion, are not far to seek, and are immanent in the importance of provisions of sub-section (3) and the object underlying thereunder. We may read sub-section (3) along with Rule 7. Rule 7 states that the arbitration agreement shall be made in Form C and delivered personally or forwarded by registered post to the Secretary to the Ministry of Labour and Chief Labour Commissioner etc. It shall be accompanied by the consent, in writing, of the arbitrator or arbitrators. Sub-section (3) also requires that a copy of the agreement shall be forwarded to the appropriate government and the appropriate government shall, within one month from the date of receipt of such copy publish it in the official gazette. At both the places it may be noted that the legislature has used the word “shall”. In the context in which this word has been used, there is, in our opinion, little doubt about obligation to publish the agreement in the official gazette. Counsel for the appellant also did not dispute this proposition.

23. The next question for consideration is whether it should be imperative to publish the agreement within the period of one month as prescribed under sub-section (3). This is indeed not an easy question for solution.

24. *Maxwell* tells us: “That it is impossible to lay down any general rule for determining whether a provision is imperative or directory.” (*Interpretation of Statutes*, 12th edn., p. 314).

25. *Craies*, however, gives us some guidelines:

“When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential, and may be disregarded without invalidating the thing to be done, are called directory.” (*Statute Law*, 6th edn., p. 63).

26. It is now well established that the wordings of any provision are not determinative as to whether it is absolute or directory. Even the absence of penal provision for non-compliance does not lead to an inference that it is only directory. The court, therefore, must carefully get into the underlying idea and ascertain the purpose to be achieved notwithstanding the text of the provision.

27. Now look at the provisions of sub-section (3). It is with respect to time for publication of the agreement. But publication appears to be not necessary for validity of the agreement. The agreement becomes binding and enforceable as soon as it is entered into by the parties. Publication is also not an indispensable foundation of jurisdiction of the arbitrator. The jurisdiction of the arbitrator stems from the agreement and not by its publication in the official gazette. Why then publication is necessary? Is it an idle formality? Far from it. It would be wrong to construe sub-section (3) in the manner suggested by counsel for the appellant. The Act seeks to achieve social justice on the basis of collective bargaining. Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion. The dispute is settled peacefully and voluntarily although reluctantly between labour and management. The voluntary arbitration is a part of infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus falls within the rainbow of statutory tribunals. When a dispute is referred to arbitration, it is therefore, necessary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately would bind them. They must know what is referred to arbitration, who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each other and if necessary to place the same before the arbitrator. This is the need for collective bargaining and there cannot be collective bargaining without involving the workers. The union only helps the workers in resolving their disputes with management but ultimately it would be for the workers to take decision and suggest remedies. It seems to us, therefore, that the arbitration agreement must be published before the arbitrator considers the merits of the dispute. Non-compliance of this requirement would be fatal to the arbitral award.

28. This takes us to the nature of the relief to be granted in this appeal. The High Court has directed the State to publish the arbitration agreement in the government gazette. It has further directed the committee of arbitrators to determine the dispute only after its publication. But there are certain problems in this case to pursue that course. The Deputy Commissioner who was the Chairman of the Committee of Arbitrators has since resigned. It appears that he wants to run away from his responsibility. The State Government has created a fresh problem. Under Section 10(1) of the Act, the State Government has referred the dispute to the Industrial Tribunal, Ambala, for adjudication. That dispute relates to termination of 150 employees whose reinstatement was the subject matter of the arbitration agreement. There is

yet another problem from the side of the management. Against the judgment of the learned Single Judge giving certain directions, the management has preferred Letters Patent Appeal the High Court and obtained stay of the directions. Not merely that, the management has also challenged (under Article 226) the reference made by the State Government under Section 10(1) of the Act ... and obtained stay of further proceedings before the Tribunal.

29. It must be recognised that in the modern welfare state, healthy industrial relations are a matter of paramount importance. In attempting to solve industrial disputes, industrial adjudication, therefore, should not be delayed. Voluntary arbitration appears to be the best method for settlement of industrial disputes. The disputes can be resolved speedily and in less than a year, typically in a few months. The Tribunal adjudication of reference under Section 10(1) often drags on for several years, thus defeating the very purpose of the industrial adjudication. Arbitration is also cheaper than litigation with less legal work and no motion practice. It has limited document discovery with quicker hearings and is less formal than trials. The greatest advantage of arbitration is that there is no right of appeal, review or writ petition. Besides, it may, as well reduce company's litigation costs and its potential exposure to ruinous liability apart from redeeming the workmen from frustration.

30. This is with regard to advantages of voluntary arbitration. There is another aspect which was perhaps not realised by the State Government when it referred the dispute under Section 10(1). Sections 10 and 10-A of the Act are the alternative remedies to settle an industrial dispute. An industrial dispute can either be referred to an Industrial Tribunal for adjudication under Section 10, or the parties can enter into an arbitration agreement and refer it to an arbitrator under Section 10-A. But once the parties have chosen their remedy under Section 10-A, the government cannot refer that dispute for adjudication under Section 10. The said reference made by the government under Section 10(1) cannot, therefore, be sustained.

31. With these prefatory observations we make the following directions:

- (i) The State Government shall publish condition No. 3 in the arbitration agreement in the government gazette within four weeks from today;
- (ii) The agreement containing condition No. 3 stands referred to the Industrial Tribunal, Haryana at Ambala for passing arbitration award in accordance with law;
- (iii) The reference made under Section 10(1) of the Act to the Industrial Tribunal is quashed; and
- (iv) The management shall withdraw the aforesaid Letters Patent Appeal and the writ petition pending in the High Court within three weeks from today failing which the High Court shall dispose them of as having become infructuous.

\* \* \* \* \*

***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 Karamchhari 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.

***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 inartistic 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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***Sirsilk Ltd. v. Govt. of A.P.***

(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 a 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.

\* \* \* \* \*

***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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***J.K. Synthetics Ltd. v. K.P. Agrawal***

(2007) 2 SCC 433

**R.V. RAVEENDRAN, J.** - This appeal by special leave is against the judgment dated 28-7-2003 of the Allahabad High Court rejecting Civil Misc. WP No. 10713 of 1983 filed by the appellant challenging the award dated 8-3-1983 and subsequent modification order dated 29-6-1983 of the Labour Court II, Kanpur.

2.1. The first respondent was working as an Assistant in the appellant Company. He was issued three charge-sheets dated 5-2-1977, 17-2-1977 and 24-2-1977 (amended on 1-3-1977). The first respondent filed his objections/ explanation in respect of each charge-sheet. An inquiry was held into the charges. Accepting the report of the inquiry officer, which held that the charges were proved, the employer imposed the punishment of dismissal on the first respondent by order dated 6-4-1977.

2.2. Conciliation proceedings initiated in respect of such dismissal, failed. Consequently, the State Government referred the following dispute to the Labour Court for adjudication:

“Whether the termination of the services of its workman Shri Kashi Prasad (s/o Shri Lala Shyam Lal), Assistant, Accounts Department by the employers from 6-4-1977 is proper, and/or legal? If not, for what benefits/compensation the workman is entitled to and any other, with details.”

2.3. By order dated 20-12-1980, the Labour Court held that the inquiry was not fair and proper, and permitted parties to adduce evidence. The Labour Court made its award on 8-3-1983. The Labour Court held that the charge of insubordination and disorderly behaviour in the first charge-sheet, was not proved. The charge under the second charge-sheet, that the first respondent made false (indecent) allegations against his superior officer, and thereby violated office discipline, was held to be proved. In regard to the charge under the third charge-sheet, the Labour Court found that the employee had admitted that he had not prepared the annual accounts correctly, but gave the employee the “benefit of doubt” by holding that the mistakes in the accounts might not have been committed knowingly or deliberately, and therefore, may not amount to habitual negligence or carelessness. Thus in effect, the findings in regard to three charges were (i) not proved, (ii) proved, and (iii) entitled to benefit of doubt. On the said findings, it made an award dated 8-3-1983, the operative part of which reads thus:

“The workman concerned has been working in the Company for four years and there was no such complaint against him in the past, hence instead of the punishment of termination of service as a result of Ext. E-2 (dated 17-2-1977) being proved against him, I deem it proper that the increments of two years of the workman concerned should be stopped as punishment.”

The said award was published on 27-4-1983 and became enforceable from 27-5-1983.

2.4. On 4-5-1983, the first respondent filed an application under Section 6(6) of the U.P. Industrial Disputes Act, 1947 (“the Act”, for short) seeking corrections of the award, stating that the workman was entitled to reinstatement with continuity of service and full back wages from 6-4-1977. The appellant resisted the said application contending inter alia that (i) the

Labour Court became *functus officio* after publication of the award on 27-4-1983 and therefore, it could not amend the award; (ii) the prayer amounted to seeking review of the award, and there was no jurisdiction or power to grant such relief; and (iii) the first respondent was not entitled to the relief of back wages, as the Labour Court had held that a misconduct was proved.

2.5. The Labour Court by order dated 29-6-1983 allowed the application under Section 6(6) and added the following paragraph at the end of the award, on the ground that it had been omitted due to an accidental slip:

“Hence, it is my decision in this case that the termination of services of Mr Kashi Prasad Agrawal, Assistant, Accounts Department from 6-4-1977 by his employer will not be justified but instead, his two annual increments which were admissible to him after the date of his termination, i.e. 6-4-1977, be stopped. In view of the punishment of stoppage of two annual increments, *the employer shall pay the full wages of the period under unemployment i.e. 6-4-1977 to the date of reinstatement in which the amount which was paid to the workman as interim relief or any other mode, shall be adjusted.*” (emphasis supplied)

2.6. The appellant challenged the said award and the amendment thereto in CMWP No. 10714 of 1983. A learned Single Judge of the High Court vide order dated 28-7-2003 dismissed the petition holding as follows:

“From a perusal of the award of the Labour Court, it is apparent that the tenor of the order is that the workman could not be punished by resorting to termination. The spirit of the order also shows that in fact the Labour Court had in mind to grant back wages to the workman, but by omission, the aforesaid mistake has crept in. The contention of the learned counsel for the petitioner cannot be accepted and in my opinion, there was an omission which could be corrected under Section 6(6). Though a plea has been made that the court becomes *functus officio* after tendering the award, in my view, this argument has only to be stated to be rejected. Section 6(6) gives power to the Labour Court for making corrections in an award.”

Referring to the submission of learned counsel for the employee that he had not been reinstated in spite of refusal of stay, the learned Single Judge observed thus:

“Learned counsel for the respondent workman has submitted that in spite of the aforesaid fact till date the petitioner has not reinstated the workman and, therefore, even equity is against him. A petitioner, who wilfully violates lawful orders is not entitled to equitable discretion under Article 226 of the Constitution of India.”

3. The said order of the learned Single Judge, is challenged in this appeal by special leave. On the contentions urged, the following questions arise for consideration:

(i) Whether a provision enabling a court to correct any clerical or arithmetical mistake, or error in the order arising from any accidental slip or omission, empowers the Labour Court to grant a relief of back wages, which was not granted in the original award.

(ii) When the punishment of dismissal is substituted by a lesser punishment (stoppage of increments for two years), and consequently, the employee is directed to be reinstated, whether the employee is entitled to back wages from the date of termination to the date of reinstatement.

(iii) Whether on the facts and circumstances, the Labour Court was justified in interfering with the punishment of dismissal.

(iv) If the employer was otherwise entitled to relief, whether it could be denied on the ground that it had failed to reinstate the employee, in spite of the non-stay of the direction for reinstatement.

**Re: Question (i)**

4. Section 6(6) of the Act provides that a Labour Court may either on its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistakes in the award or errors arising therein from any accidental slip or omission. The question is whether in exercise of such power, the Labour Court could have awarded back wages, even though the original award was silent on that issue.

5. While considering the scope of a similar provision (Rule 83 of the Orissa Sales Tax Rules), this Court in *Master Construction Co. (P) Ltd. v. State of Orissa* [AIR 1966 SC 1047, 1049] observed thus:

“An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. ... The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge’s inadvertence or the advocate’s mistake. But, however wide the said expressions are construed, they cannot countenance a reargument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance.”

6. Section 6(6) itself was considered in *Tulsipur Sugar Co. Ltd. v. State of U.P.* [(1969) 2 SCC 100]. In that case, two questions were referred to the Labour Court: (i) fitment of certain workmen in a new grade; and (ii) the date from which such fitment should have effect. The Labour Court made an award holding that the workmen should be fitted into certain grades and directed the employer to do so within one month after the award became enforceable. But it omitted to fix the date from which such fitment should be effected. The employer fitted the workmen in the new grades prospectively. The employees’ Union applied under Section 6(6) of the Act to amend the award on the ground that it had omitted to answer the second question referred to it. The Labour Court allowed the application and amended the award and directed the employer to place the workmen in their respective grades from 1-1-1960. The said amendment to the award was challenged on the ground that it was not a consequence of any clerical or arithmetical error or accidental slip/omission. It was also



contended that power under Section 6(6) can only be exercised before the date on which the award became enforceable and not thereafter. This Court negated the said contentions. This Court held that the reference comprised two questions, the first relating to fitment, and the second relating to the date from which such fitment was to have effect; that the award as originally made answered the first question but did not decide the second question; that as the reference was in respect of two questions, the Labour Court was bound to answer the second question also; and the failure to do so was an error in the award due to an accidental slip or omission and that could be corrected under Section 6(6). This Court also held that Section 6(6) does not lay down expressly any time-limit within which the correctional jurisdiction could be exercised and, therefore, was not barred by limitation.

7. Section 6(6) again came up for consideration in *U.P. SRTC v. Imtiaz Hussain* [(2006) 1 SCC 380] which related to the removal of a conductor after he had been found guilty of a charge in domestic inquiry. An industrial dispute was raised questioning the legality of the order of removal. The Labour Court held that the inquiry was not fair and proper and therefore, the removal was bad. The Labour Court ordered reinstatement but held that the employee was not entitled to any back wages, as his name was not found in the list of permanent conductors. An application was filed under Section 6(6) of the Act contending that the conclusion of the Labour Court that he was not in the permanent list was not correct. The Labour Court allowed the application and modified the award. It issued certain directions about payment of salary, allowances, etc., from the date of termination till reinstatement with continuity of service, though his name was not in the waiting list. This Court held that such amendment or modification of the award was impermissible in exercise of power under Section 6(6). This Court observed:

“Section 6(6) of the U.P. Industrial Disputes Act, 1947 is similar to Section 152 CPC. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 CPC are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgment earlier rendered, modify in its entirety or any portion or part of it.”

8. A careful reading of Section 6(6) and the two decisions shows that the two decisions considered two different situations. In *Tulsipur Sugar Co.*, this Court found that the reference to the Labour Court consisted of two parts. The award answered only the first part and had omitted to answer the second (consequential) part. While modifying the award on an application under Section 6(6), the Labour Court neither upset nor altered any of the findings recorded in its original award, but only answered the second part of the reference, which had earlier been omitted. Therefore, this Court held that such correction was permissible. On the other hand in *Imtiaz Hussain*, the Labour Court, in its award had specifically refused back wages to the employee on the ground that his name was not in the list of permanent employees. But on an application under Section 6(6), it re-examined the issue and held that

though his name was not in the list of permanent employees, he was entitled to payment of salary and allowances from the date of termination till the date of reinstatement with continuity of service. In *Tulsipur Sugar Co.*, there was a correction of an omission which fell within Section 6(6). In *Imtiaz Hussain*, there was a review of the original order which of course, was impermissible. We may now summarise the scope of Section 6(6) of the Act thus:

(a) If there is an arithmetical or clerical or typographical error in the order, it can be corrected.

(b) Where the court had said something which it did not intend to say or omitted something which it intended to say, by reason of any accidental slip/omission on the part of the court, such inadvertent mistake can be corrected.

(c) The power cannot be exercised where the matter involves rehearing on merits, or reconsideration of questions of fact or law, or consideration of fresh material, or new arguments which were not advanced when the original order was made. Nor can the power be exercised to change the reasoning and conclusions.

9. In this case, the reference to the Labour Court consisted of two parts - whether the termination of the workman was proper and legal, and if the answer was in the negative, then the benefits or compensation to which the workman was entitled. The award originally made, answered the first part in the negative, but did not answer the consequential second part of the reference. In fact the award ended rather abruptly. On an application being made under Section 6(6), the Labour Court recorded that it had accidentally omitted to answer the second part of the reference and rectified the omission by adding a paragraph. This case, therefore, squarely falls under *Tulsipur Sugar*. We are of the view that the Labour Court had the power to amend the award.

10. But whether such modification was warranted, is a different question. The next question, therefore, is whether the facts and circumstances warrant grant of back wages, assuming that the punishment imposed was excessive.

***Re: Question (ii)***

11. Learned counsel for the employee relied on several decisions of this Court to contend that where the order of dismissal or removal is set aside and the employee is directed to be reinstated, full back wages should follow as a matter of course.

12. *Hindustan Tin Works (P) Ltd.* related to retrenchment of some workmen on the ground that the employer was suffering mounting losses. The Labour Court held that the real reason for retrenchment was the annoyance felt by the management when the employees refused to agree to its terms. Consequently, it directed the reinstatement with full back wages. That was challenged by the employer. This Court granted leave to appeal, only in regard to the question of back wages, as it did not consider it necessary to interfere with the direction for reinstatement. Ultimately, while reducing the back wages to 75%, this Court observed as follows:

“9. ... *If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer.* Speaking realistically, where termination of service is questioned as

invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. *If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages....*

11. In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. *Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure.* At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour." (emphasis supplied)

13. **Surendra Kumar Verma** related to retrenchment of several workmen in violation of Section 25-F of the Industrial Disputes Act, 1947 ("the ID Act", for short). This Court held that when the order of termination is set aside as being invalid and inoperative, it must ordinarily lead to reinstatement as if the order of termination was never made and that would necessarily lead to back wages too. This Court, however, observed that there may be exceptional circumstances which may make it impossible or wholly inequitable vis-à-vis employer and workmen to direct reinstatement with full back wages as for example, when the industry might have closed down or might be in severe financial doldrums or where the employee concerned might have secured other employment elsewhere and in such situations, the court has the discretion to deny full back wages. In the concurring judgment Pathak, J. (as he then was), held as follows:

"Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief. It has not been shown to us on behalf of the respondent why the ordinary rule should not be applied."

14. **Mohan Lal** also related to retrenchment not in consonance with Section 25-F of the ID Act. This Court held:

“As precondition for a valid retrenchment has not been satisfied the termination of service is *ab initio* void, invalid and inoperative. He must, therefore, be deemed to be in continuous service.

If the termination of service is *ab initio* void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as *Ruby General Insurance Co. Ltd. v. P.P. Chopra* [(1969) 3 SCC 653] and *Hindustan Steels Ltd. v. A.K. Roy* [(1969) 3 SCC 513] it was held that the court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case.”

15. But the manner in which “back wages” is viewed, has undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. We may refer to the latest of a series of decisions on this question. In *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey* [(2006) 1 SCC 479] this Court following *Allahabad Jal Sansthan v. Daya Shankar Rai* [(2005) 5 SCC 124] and *Kendriya Vidyalaya Sangathan v. S.C. Sharma* [(2005) 2 SCC 363] held as follows: (*Uday Narain Pandey case*, p 480).

“A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.

Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched. The changes brought about by the subsequent decisions of the Supreme Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act. While granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages cannot be the natural consequence.”

In *G.M., Haryana Roadways v. Rudhan Singh* [(2005) 5 SCC 591], this Court observed:

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.”

16. There has also been a noticeable shift in placing the burden of proof in regard to back wages. In *Kendriya Vidyalaya Sangathan* this Court held:

“When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.”

In *U.P. State Brassware Corpn. Ltd.* this Court observed:

“61. It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman.”

17. There is also a misconception that whenever reinstatement is directed, “continuity of service” and “consequential benefits” should follow, as a matter of course. The disastrous effect of granting several promotions as a “consequential benefit” to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether “continuity of service” and/or “consequential benefits” should also be directed. We may in this behalf refer to the decisions of this Court in *A.P. SRTC v. S. Narsagoud*, [(2003) 2 SCC 212]; *A.P. SRTC v. Abdul Kareem* [(2005) 6 SCC 36] and *Rajasthan SRTC v. Shyam Bihari Lal Gupta* [(2005) 7 SCC 406].

18. Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in *Rudhan Singh* and *Uday Narain Pandey*. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

19. But the cases referred to above, where back wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimisation. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service

is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination.

21. In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all.

***Re: Question (iii)***

22. This takes us to the next question as to whether the Labour Court was justified at all in interfering with the punishment of dismissal. The Labour Court held that one serious charge was proved, another charge was not proved and in regard to the third charge gave “benefit of doubt” to the employee. The Labour Court also relied on the decisions of this Court in ***Rama Kant Misra v. State of U.P.*** [(1982) 3 SCC 346] wherein it was held that the punishment of dismissal was excessive where the employee was found to have uttered indecent words and used abusive language and substituted it by the lesser punishment of stoppage of two annual increments. The said decision depended on its special facts and may not apply to this case. The recent trend in regard to scope of interference with punishment in matters involving discipline at the workplace has been different. We may refer to some of the recent decisions.

23. In ***Hombe Gowda Educational Trust v. State of Karnataka*** [(2006) 1 SCC 430] this Court stressed the need to give importance to discipline at the workplace. This Court observed:

“30. This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seeks 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.”

24. In ***Mahindra and Mahindra Ltd. v. N.B. Narawade*** [(2005) 3 SCC 134] this Court considered a case where a workman used abusive and filthy language against his superior officer, in the presence of his subordinates. He was terminated after conducting an inquiry. The Labour Court found the punishment to be excessive and in exercise of power under Section 11-A of the ID Act, imposed a lesser punishment. This Court held that the misconduct cannot be termed to be an indiscipline calling for lesser punishment than termination. A

similar view was taken in *Orissa Cement Ltd. v. Adikanda Sahu* [(1960) 1 LLJ 518 (SC)] and *New Shorrock Mills v. Maheshbhai T. Rao* [(1996) 6 SCC 590].

25. In *U.P. SRTC v. Subhash Chandra Sharma* [(2000) 3 SCC 324] this Court held that the punishment of removal, for abusing and threatening another employee, was not shockingly disproportionate to the gravity of the offence. In that case also, only one among three charges was established and the Labour Court had interfered with the punishment, which was upheld by the High Court. Reversing such decision, this Court held:

“9. The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent from the service. The charge against the respondent was that he, in a drunken state, along with the Conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of the respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way ‘shockingly disproportionate’ to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in a miscarriage of justice.”

26. In *Bharat Forge Co. Ltd. v. Uttam Manohar Nakate* [(2005) 2 SCC 489]; *P. Electricity Board v. Jagdish Chandra Sharma* [(2005) 3 SCC 401] and *Regional Manager, Rajasthan SRTC v. Ghanshyam Sharma* [(2002) 10 SCC 330] this Court held that power under Section 11-A of the ID Act (or under similar provisions) cannot be used to interfere with the quantum of punishment, on irrational or extraneous factors, or on compassionate grounds. This Court also observed that though Section 11-A gives the jurisdiction and power to the Labour Court to interfere with the quantum of punishment, the discretion has to be used judiciously and not capriciously. This Court observed that harsh punishment wholly disproportionate to the charge should be the criterion for interference.

27. In this case, we have already found that the charge established against the employee was a serious one. The Labour Court did not record a finding that the punishment was harsh or disproportionately excessive. It interfered with the punishment only on the ground that the employee had worked for four years without giving room for any such complaint. It ignored the seriousness of the misconduct. That was not warranted. The consistent view of this Court is that in the absence of a finding that the punishment was shockingly disproportionate to the gravity of the charge established, the Labour Court should not interfere with the punishment. We, therefore, hold that the punishment of dismissal did not call for interference.

**Re: Question (iv)**

28. It is true that when the employer challenged the award of the Labour Court and sought stay of the award, the High Court only stayed the order dated 29-6-1983 in regard to the back wages but did not stay the award dated 8-3-1983 directing reinstatement; and that if he had



been reinstated in 1983, he would have served till 31-3-1991 when he attained the age of superannuation. The learned counsel for the employee made a submission before the High Court at the final hearing that in spite of the award directing reinstatement not being stayed, he was not reinstated. On the said submission, the High Court held that the employer had wilfully violated the lawful order and was not entitled to exercise of equitable discretion under Article 226/227. Firstly, the assumption that there was a lawful order or that there was wilful violation thereof is not sound. Further, the employer was not given an opportunity to explain why the employee was not reinstated. In fact, the contention of employer is that the first respondent did not report back to service, even though it was ready to reinstate him subject to final decision. Be that as it may. The mere fact that the first respondent was not reinstated in pursuance of the award of the Labour Court cannot result in dismissal of the writ petition challenging the award.

***Conclusion***

29. In view of the above, we allow this appeal, set aside the order dated 28-7-2003 of the High Court as also the award dated 8-3-1983 (as modified on 29-6-1983) of the Labour Court and uphold the punishment of dismissal imposed upon the first respondent. Parties to bear their respective costs.

\* \* \* \* \*

***Burn & Co. Ltd. v. Employees***

1956 SCR 781 : AIR 1957 SC 38

**T. L. VENKATARAMA AYYAR, J.** - Disputes having arisen between Messrs Burn and Company, Calcutta, hereinafter called the Company, and a section of their employees in Howrah Iron Works, hereinafter referred to as the Union, the Government of West Bengal issued a notification on 16-12-1952 referring the same to the First Industrial Tribunal for adjudication. Though there were as many as 13 items comprised in the reference, we are concerned in these appeals only with four of them viz. (1) revision of pay of clerical and sub-staff, (2) grades of sarkars and checkers, (3) bonus and (4) reinstatement of four employees, S.N. Chatterjee, Ashimananda Banerjee, Panchanan Rana and Joydeb Banerjee and/ or payment of compensation to them. By his award dated 24-6-1953, Shri Banerji, the Industrial Tribunal, held (1) that there were no grounds for revising the scale of pay of the clerical and sub-staff; (2) that the pay of checkers should be increased and that they should be paid according to the scale as set out in his award; (3) that the profits of the Company did not warrant the grant of any bonus in addition to what had been paid by the Company; and (4) that of the four employees, Shambunath Chatterjee should be re-employed as a checker on his old pay, that Ashimananda Banerjee and Panchanan Rana should be "re-employed in posts equivalent to their own posts as new incumbents" and that Joydeb Banerjee was not entitled either to reinstatement or compensation.

2. Against this award, the Union preferred an appeal to the Labour Appellate Tribunal. By its decision dated 29-4-1955 the Appellate Tribunal substantially modified the award of Shri Banerji in favour of the Union. It held (1) that the minimum pay of the clerical and sub-staff should be raised, and that corresponding changes should be made in the ceiling level, in the increments and in the scales of pay of other grades of the staff; (2) that the scale of pay of the sarkars and checkers should be increased and increments given as laid down in the award; (3) that the employees should be paid a month's bonus in addition to what had been given to them; and (4) that of the employees, Shambunath Chatterjee, Ashimananda Banerjee and Panchanan Rana should not merely be re-employed but reinstated with continuity of service, and that further Shambunath Chatterjee was entitled to compensation at the rate of six months' basic wages with dearness allowance. As for Joydeb Banerjee, the Appellate Tribunal held that though his reinstatement was not desirable, he was entitled to one year's basic wages with dearness allowance as compensation. Against this decision, the Company has preferred Civil Appeal No. 325 of 1955 by special leave, and the Union has likewise preferred Civil Appeal No. 174 of 1956, the leave being limited in the latter to the four points raised by the Company in its appeal.

3. The first question relates to the increase in the minimum wages of the clerical and sub-staff. For a correct understanding of the true position, it is necessary to refer to the facts which form the background of the present dispute. In 1946, the Bengal Chamber of Commerce took up the question of fixing, suitably to the changed conditions brought about by World War II, wages and other terms of service of the employees in industrial concerns, and framed a scheme classifying them under different categories and fixing scales of pay and dearness allowance for the several categories, and that was brought into force in the Company on 1-10-

1946. Disputes then arose between Engineering Firms in the State of West Bengal and their employees as regards fixation of grades, wages and dearness allowance, and by a notification dated 31-10-1947 the Government referred them to the adjudication of the First Engineering Tribunal. The appellant Company and its workmen were parties to the proceedings but not the present Union, which was composed of the clerical and sub-staff. On 30-6-1948 the Tribunal passed an award, the terms whereof were, in general, less favourable to the employees than those fixed by the Bengal Chamber of Commerce and adopted by the Company on 1-10-1946.

4. While the proceedings were pending before the Engineering Tribunal, disputes arose between various Mercantile Firms in Calcutta and their employees as regards wages, dearness allowance and other terms of service, and by notification dated 17-1-1948 the Government of West Bengal referred them to the adjudication of another Tribunal, called the Mercantile Tribunal. This Tribunal pronounced its award on 26-8-1949.

The Union was party No. 192 in those proceedings, but for technical reasons, the Tribunal declined to adjudicate on their disputes. The result was that this award was no more binding on the parties than the one passed by the Engineering Tribunal. But the scale fixed in the award of the Mercantile Tribunal was decidedly more favourable to the employees than either the scale recommended by the Bengal Chamber of Commerce and adopted by the Company on 1-10-1946 or that fixed in the award of the Engineering Tribunal, and it is therefore not surprising that it should have inspired the Union to present a demand for wages and dearness allowance on the scales provided therein. The Company having declined to accept it, there arose an industrial dispute, and by a notification dated 18-1-1950, the Government of West Bengal referred the same for adjudication to one Shri Palit, District Judge. Before him, the Company contended that as the members of the Union were employees in an Engineering concern, the scale of pay applicable to them was that laid down in the award of the Engineering Tribunal, and that as the scale actually in force was more favourable to them than that scale, there was no ground for revision. The Union, on the other hand, contended that not having been a party to the proceedings before the Engineering Tribunal, it was not bound by the award therein, and that as its members were clerical staff and not workers, the scales fixed in the award of the Mercantile Tribunal were more appropriate to them. By his award dated 12-6-1950 Shri Palit held that the nature of the work and the qualifications of the clerical staff were not the same in all business establishments, that the clerks in mercantile concerns were better qualified and had to do more onerous work than the members of the Union, that the latter could not be put in the same position as the former, and that the scale of pay fixed in the scheme of the Bengal Chamber of Commerce which was adopted by the Company was fair and required no revision. He, however, made some slight changes in the incremental scales and the maximum limits of the grades. The Union preferred an appeal against this award, but that was dismissed as barred by limitation.

5. Under Section 19(3) of the Industrial Disputes Act 14 of 1947, an award is to be in operation for a period of one year, and under Section 19(6), it is to continue to be binding on the parties even thereafter, until terminated by either party by giving two months' notice. Acting on this provision, the Union issued a notice to the Company on 12-7-1951 being exactly one year from the date of publication of Shri Palit's award dated 12-6-1950, declaring its intention not to be bound by it. This was followed in November by presentation of

demands including one for raising the scale of pay to the level adopted in the award of the Mercantile Tribunal, and the result was an industrial dispute, which is the subject-matter of the present reference. Shri Banerji, who heard the reference, held that the question as to the scale of pay had been directly adjudicated upon by Shri Palit, that, on principle, the decision of a Tribunal on a matter referred to it should not be disturbed, unless there had been a change of circumstances since the date of the award, and as none such existed, the wage structure as fixed by him should stand. The Appellate Tribunal disagreed with this conclusion. It held that the award of Shri Palit, which Shri Banerji accepted, was bad for the reason that it had failed to examine "the question as to whether the minimum salary fixed by the Managing Agents was adequate to cover the cost of a balanced diet and provide frugal comforts which a workman of the clerical staff must have to maintain the efficiency of his work". It then referred to the opinion of Dr Akroyd that an intake of 2600 calories of food was necessary for efficiency of work, quoted some decisions of the Labour Tribunal in which the minimum pay of the clerical staff had been fixed at Rs 70 and even more, and decided that the minimum pay should be fixed at Rs 65 per mensem for the clerical and sub-staff of the Company. Having raised the floor level of the wage structure as aforesaid, it correspondingly raised the ceiling level and the scales of increment, and further with a view to maintain the differential scales as between the different categories, it raised the minimum pay in scales where it stood at Rs 65 and more, with "consequential change in their incremental scales and the maximum grades".

6. It is argued for the appellant Company that the Appellate Tribunal was in error in brushing aside the award of Shri Palit and in deciding the matter afresh, as if it arose for the first time for determination, that when once a dispute is referred to a Tribunal and that results in an adjudication, that must be taken as binding on the parties thereto, unless there was a change of circumstances, and as none such had been alleged or proved, the award of Shri Palit should have been accepted, as indeed it was by Shri Banerji. In the instant case, the Labour Appellate Tribunal dismissed this argument with the observation that that was "a rule of prudence and not of law". If the Tribunal meant by this observation that the statute does not enact that an award should not be reopened except on the ground of change of circumstances, that would be quite correct. But that is not decisive of the question, because there is no provision in the statute prescribing when and under what circumstances an award could be reopened. Section 19(4) authorises the Government to move the Tribunal for shortening the period during which the award would operate, if "there has been a material change in the circumstances on which it was based". But this has reference to the period of one year fixed under Section 19(3) and if that indicates anything, it is that that would be the proper ground on which the award could be reopened under Section 19(6), and that is what the learned Attorney-General contends. But we propose to consider the question on the footing that there is nothing in the statute to indicate the grounds on which an award could be reopened. What then is the position? Are we to hold that an award given on a matter in controversy between the parties after full hearing ceases to have any force if either of them repudiates it under Section 19(6), and that the Tribunal has no option, when the matter is again referred to it for adjudication, but to proceed to try it *de novo*, traverse the entire ground once again, and come to a fresh decision. That would be contrary to the well-recognised principle that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. It is on this principle that the rule of *res*

*judicata* enacted in Section 11 of the Civil Procedure Code is based. That section is, no doubt, in terms inapplicable to the present matter, but the principle underlying it, expressed in the maxim “*interest rei publicae ut sit finis litium*”, is founded on sound public policy and is of universal application. “The rule of *res judicata* is dictated” observed Sir Lawrence Jenkins, C.J. in *Sheoparsan Singh v. Ramnandan Prasad Singh* [AIR 1916 PC 78], “by a wisdom which is for all time”. And there are good reasons why this principle should be applicable to decisions of Industrial Tribunals also. Legislation regulating the relation between Capital and Labour has two objects in view. It seeks to ensure to the workmen who have not the capacity to treat with capital on equal terms, fair returns for their labour. It also seeks to prevent disputes between employer and employees, so that production might not be adversely affected and the larger interests of the society might not suffer. Now, if we are to hold that an adjudication loses its force when it is repudiated under Section 19(6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it, either party will treat it as a mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour.

On the other hand, if we are to regard them as intended to have long term operation and at the same time hold that they are liable to be modified by change in the circumstances on which they were based, both the purposes of the legislature would be served. That is the view taken by the Tribunals themselves in *Army & Navy Stores Ltd., Bombay v. Workmen* [(1951) 2 LLJ 31] and *Ford Motor Co. of India Ltd. v. Workmen* [(1951) 2 LLJ 231] and we are of opinion that they lay down the correct principle, and that there were no grounds for the Appellate Tribunal for not following them.

7. We should add that the Appellate Tribunal was also in error in thinking that Shri Palit had failed to advert to the principle on which basic wages should be fixed, and that he had not referred to the doctrine of Dr Akroyd about the need for a balanced diet of 2600 calories. It is true that Shri Palit does not in terms refer to these matters in his award. But they were all discussed in the awards of both the Engineering Tribunal and the Mercantile Tribunal. The dispute between the parties was whether the one award or the other should be taken as the basis for fixation of the scale of pay, and Shri Palit decided that it was the Engineering Tribunal’s award and not the other that was more appropriate to the class of employees, of which the Union was composed. In basing his award on the award of the Engineering Tribunal, Shri Palit must be taken to have considered all the factors relied on by the Tribunal for fixing the scales and the criticism that the award does not refer to them once again is one of form rather than of substance. We must, therefore, hold that the decision of the Appellate Tribunal cannot be maintained even on its own ground.

8. The position then is this: The question of scales of pay was decided by Shri Palit in his award dated 12-6-1950, and the Union was a party to it. It is not alleged that there has been any change in circumstances between that date and 16-12-1952 when the present reference was made to Shri Banerji. On the principles stated above, therefore, the award of Shri Palit should not be disturbed.

9. This conclusion would have entailed the reversal of the order of the Appellate Tribunal and the restoration of the award of Shri Banerji. We are of opinion, however, that the scale fixed by the Appellate Tribunal in its order dated 29-4-1955 should not be interfered with, insofar as it fixes the minimum pay of the clerical and sub-staff at Rs 65 per mensem. It is common ground that dearness allowance is payable under the rules of the Company, only when the cost of living index exceeds point 180. The basic wages should therefore be fixed with 180 point as cost of living index. When we turn to the award of the Engineering Tribunal, we find that it fixed the basic wages after taking the cost of living index as 160 points. Before Shri Palit, the Company contended that the scale fixed in the award of the Engineering Tribunal should form the basis of fixation of the pay scale of the Union, and though the Tribunal held that the award was not as such binding on the Union, it agreed with the Company that it was the scale fixed therein and not that fixed in the award of the Mercantile Tribunal that was more appropriate to the clerical staff of an Engineering concern, and adopted the scale fixed by the Company on 31-10-1946 as being "slightly in advance of the terms contained in the Engineering Tribunal's award". It is clear from a reading of the award of Shri Palit that he was not conscious that the basic wages had been fixed by the Engineering Tribunal with point 160 as the cost of living index, and his observation that the scale adopted by the Company was an advance on that fixed by the Engineering Tribunal is consistent only with an assumption by him that the basic wages had been fixed both by the Company and the Engineering Tribunal with point 180 as the cost of living index. Now, if we are to accept the scale fixed in the award of Shri Palit as did Shri Banerji, the position would be that while for purposes of basic wages the cost of living index point would be 160, for purposes of dearness allowance it would be 180, and that would work great injustice on the workers. It is the realisation of this fact that must have led Mr Bose, counsel for the Company, to raise at a late stage of the hearing of the appeal the contention that the cost of living index of the Bengal Chamber of Commerce which was adopted by the Company was different from that of the Government. But this contention went against the admission made by Mr Sen on behalf of the Company at an earlier stage, and was rightly rejected by the Appellate Tribunal, and that was abandoned before us. There is thus, on the face of the record, an error of a fundamental character.

10. It is argued for the appellant that this point is not open to consideration at this stage, as it had not been raised by the Union at any time before, and that, in any event, the matter should be remanded for further enquiry. But the question is whether in view of what appears on the face of the record this is a fit case for our interference in special appeal. The minimum pay fixed by the Appellate Tribunal would be quite proper if the cost of living index is taken, for the purpose of fixing the basic wages, at point 180 instead of 160, and there is no reason why we should not accept it. Nor do we think that a remand is called for in the interests of justice, as, in the face of the undisputed facts, it can only result in the proceedings dragging on and the relationship between the parties deteriorating. Under the circumstances, we do not propose to disturb the minimum pay of Rs 65 per mensem fixed by the Appellate Tribunal. But we see no justification for raising either the ceiling levels or the starting pay of other categories of employees whose initial pay was Rs 65 per mensem or more. We accordingly set aside the scale of pay as fixed by the Appellate Tribunal and restore that of Shri Banerji.

11. The second question relates to the grading of sarkars and checkers. The claim put forward on their behalf is that they should be raised to the category of clerks. This was rejected by Shri Palit in his award dated 12-6-1950 and again by Shri Banerji in those proceedings. The Appellate Tribunal before whom this claim was repeated, while observing that the work of sarkars and checkers was “not of the same nature as that of the members of the clerical staff”, held, nevertheless, that the scales of pay fixed in the award of the Engineering Tribunal for clerks should be applied to them, and that therefore non-matriculate sarkars and checkers should be put on Rs 55-2½-80 scale and matriculate sarkars and checkers on Rs 60-2½-90 scale. We are unable to uphold this order. When once the Appellate Tribunal reached the conclusion that the sarkars and checkers could not be put in the same category as clerks, the question then is simply whether any grounds had been made out for interfering with the fixation of pay scales by Shri Banerji. So far as the sarkars are concerned, the scale had been fixed by Shri Palit, and Shri Banerji adopted it. As no change in the circumstances was alleged in support of a revision thereof, there was no ground for interfering with it. As for checkers, they are hourly-rated workers, and Shri Banerji had revised their pay scale. Apart from stating that “the ends of justice” required it, the Appellate Tribunal gave no reason for modifying his award. We are of opinion that the order of the Appellate Tribunal should be set aside both in respect of sarkars and checkers and the award of Shri Banerji restored.

12. On the question of bonus, the facts are that the Company had an elaborate scheme for granting bonus and the employees had been paid in accordance therewith. But the Union claimed that having regard to the profits made by the Company, the employees should be paid three months’ basic wages as bonus for the years 1950 and 1951. It is not in dispute that the profits of the Company available for distribution for the year 1950 were Rs 3.81 lakhs and for the year 1951, even less. The monthly salary of the clerks, sub-staff, sarkars and checkers was Rs 89,500 and the monthly wages of the workers were Rs 1,75,000, making a total of Rs 2,64,500. This is only for one factory, the Howrah Iron Works. The Company owns nine other units at different places, and there is no evidence as to the monthly salary payable to the employees and workmen in those units. Now, the surplus of Rs 3.81 lakhs in the hands of the Company represents the total profits made by it in all its units, and there cannot be much of a doubt that this amount would be wholly insufficient to pay one month’s basic wages as bonus to the employees of the Company in all its ten units. Shri Banerji accordingly held that the profits of the Company did not justify the grant of any bonus beyond what the Company had granted, and simplifying the complicated scheme of bonus which the Company had evolved, he directed that bonus should be paid, including what had been paid by it, at one month’s basic pay. The Appellate Tribunal when dealing with this question agreed that “if all categories of workmen be paid bonus, there is no scope for the payment of any additional bonus”. But it held that as the other categories of workmen had not made any claim for bonus and as the amount payable to the members of the Union was only Rs 89,000, the surplus was sufficient to justify the award to them only of another month’s basic wages as bonus.

13. Whether we consider the question on principles of law or of equity, this conclusion is clearly unsound. In law, a claim for bonus will be admissible only if the business had resulted during the year in sufficient profits. And as the reasons for the grant of bonus is that workers

should share in the prosperity to which they have contributed, all of them would have the right to participate in it. Therefore, profits can be said to be sufficient to declare a bonus only if they are sufficient to make a payment to all of them. If the profits are not sufficient for that purpose, then the very condition on which bonus could be declared would be absent, and no question of granting any bonus could arise. As it is common ground that the profits of the Company are not sufficient to justify the award of bonus if it is to be paid to all the workers of the Company in all its units, it follows that there is in law no ground for the grant of bonus. Nor can such a claim be sustained in equity. The entire profits of the Company are the result of the labour of all the workmen and employees in all its units. To grant a bonus to a section of them on the basis of the total profits of the Company will be to give them a share in profits to which they have not contributed. We are wholly unable to appreciate the observation of the Appellate Tribunal that to refuse additional bonus to the Union employees would be to penalise them "not for their own fault but for the laches of the co-workers, who abandoned their claim". The Tribunal forgets that, on its own finding, if all the workmen made a claim, no bonus could have been declared. It is not a question of their abandoning their claim but of their realising that they have none. If the order of the Appellate Tribunal is to be given effect to, some of the employees of the Company would get a bonus, while others not, and that must lead to disaffection among the workers and to further industrial disputes. The order of the Appellate Tribunal awarding an additional one month's basic wages as bonus is neither legal nor just and must be set aside and the award of Shri Banerji as regards bonus restored.

14. It remains to deal with the question of the reinstatement and/or compensation of four employees, S.N. Chatterjee, Ashimananda Banerjee, Panchanan Rana and Joydeb Banerjee. It has been already stated that the order of Shri Banerji with reference to them was modified by the Appellate Tribunal by awarding compensation at the rate of six months' basic wages to S.N. Chatterjee and one year's basic wages with dearness allowance to Joydeb Banerjee and by providing that S.N. Chatterjee, Ashimananda Banerjee and Panchanan Rana should not merely be re-employed but reinstated with continuity of service.

15. It is argued for the appellant that under Section 7 of the Industrial Disputes (Appellate Tribunal) Act 48 of 1950, the order of the Tribunal refusing reinstatement was not open to appeal, as it is not one of the matters set out in Section 7(1)(b), and that, in consequence, the order of the Appellate Tribunal insofar as it modified the order of the Tribunal as regards the four employees aforesaid, was without jurisdiction. It must be mentioned that retrenchment is one of the matters enumerated in Section 7(1)(b), in respect of which an appeal would lie. But if the order is one of dismissal, it cannot be said to be one of retrenchment as that word is ordinarily understood, and will not be appealable under Section 7(1)(b). In 1953 the legislature enacted the Industrial Disputes (Amendment) Act 43 of 1953 wherein "retrenchment" was for the first time defined so as to include, subject to certain exceptions, the termination by the employer of the service of workmen for any reason whatsoever. (Vide Section 2(oo)). Under this definition, an appeal would be competent under Section 7(1)(b)(vii) in the case of termination of service, subject to the exceptions specified therein. But this Act came into force on 24th December, 1953, and as there is nothing in it giving retrospective operation to this definition, the rights of the parties to the present appeal would remain unaffected by it. Act 43 of 1953 replaced Ordinance 5 of 1953, wherein also retrenchment



was defined as including, subject to exceptions, all termination of service; but that also came into force only on 24th October, 1953, whereas the present appeal was filed on 19-8-1953. On that date, the order of the Tribunal refusing reinstatement was not open to appeal, and the order of the Appellate Tribunal modifying it would therefore be without jurisdiction and void.

16. But it is argued for the respondent that an award of the Tribunal refusing reinstatement would be appealable under Section 7(1)(a) if it involved a substantial question of law, and that as the contention of the employees was that the orders dismissing them were bad as having been passed in contravention of the rules of natural justice, that was a question of law on which an appeal was competent. It was further contended that when a question arises whether a Tribunal has jurisdiction over the subject-matter, it must be competent to decide whether the preliminary conditions exist, on which its jurisdiction depends, and its decision on that question is not liable to be attacked in civil courts, and that accordingly the assumption of jurisdiction by the Appellate Tribunal on the footing that there was a substantial question of law was not liable to be questioned by the civil court.

17. We agree that an order refusing reinstatement would be open to appeal under Section 7(1)(a) if it involved a substantial question of law. Whether a decision of the Appellate Tribunal that an appeal to it from an award was competent under Section 7(1)(a) on the ground that it involved a substantial question of law is final and not open to question in a civil court is a point on which we do not desire to express an opinion, as in the present case, the correctness of that decision is challenged not collaterally or in independent proceedings, such as an application under Article 226 of the Constitution as in the two cases relied on for the respondent, but by way of appeal under Article 136, and it is open to us to consider as a court of appeal whether, in fact, the order of the Tribunal was vitiated by an error of law, and whether the order of the Appellate Tribunal modifying it is sound. We must now consider the case of the four employees from this standpoint:

18. S.N. Chatterjee had an eye defect, and acting on the advice of its medical officer, the Company discharged him on that ground. The Tribunal has found him to be fit, and directed his re-employment. He now claims compensation on the ground that he had produced a certificate of fitness from a competent medical officer but that the Company discharged him without making any enquiry thereon. The Appellate Tribunal found that the Company had acted bona fide, but that as the order of dismissal was made without due enquiry it was bad, and accordingly awarded compensation at the rate of six months' basic wages. We are unable to hold that on the facts found the Appellate Tribunal had acted without jurisdiction in interfering with the award or that its order is unjust. No case has been made out for our interference with it under Article 136.

19. Ashimananda Banerjee was arrested by the Government under the West Bengal Security Act and detained in jail from 25-1-1949 to 5-4-1951. The Company terminated his services on 22-4-1949. The Tribunal made an order that he should be re-employed, and that is not now in question. But he further claims that he is entitled to be reinstated. The Appellate Tribunal has accepted that claim on the ground that he had been discharged without the Company framing a charge or holding an enquiry, and that the rules of natural justice had been violated. We are unable to agree with this decision. The ground of discharge is the continued absence of the employee, and his inability to do work, and it is difficult to see what

purpose would be served by a formal charge being delivered to him and what conceivable answer he could give thereto. The order of the Appellate Tribunal is manifestly erroneous and must be set aside.

20. The facts relating to Panchanan Rana are similar to those of Ashimananda Banerjee, and for the reasons already given, the order of the Appellate Tribunal in his favour should be set aside.

21. The question as regards Joydeb Banerjee is whether he is entitled to compensation on the ground that he had been wrongly discharged. The facts are that on 16-11-1950 a number of employees participated in an assault on the Works Manager, Mr Davison, and the Company dismissed fourteen of them on that ground, and Joydeb Banerjee was one of them. The Appellate Tribunal has held that as no charge was framed against him or an enquiry held, his dismissal was in contravention of the rules of natural justice. It has accordingly ordered that he should be given one year's basic wages with dearness allowance as compensation. It is true that no charge-sheet was formally drawn up against him, but that would not vitiate the order of dismissal if he knew what the charge against him was and had an opportunity of giving his explanation. It appears from the order of the Tribunal that subsequent to the order of dismissal by the Company, there were conciliation proceedings and an enquiry by the Labour Minister, as a result of which he recommended the reinstatement of seven out of the fourteen who had been dismissed, leaving the order in operation as regards the other seven, of whom Joydeb Banerjee was one. In the face of these facts, it is idle for him to contend that he had been dismissed without hearing or enquiry. The order of the Appellate Tribunal awarding compensation to him should be set aside.

22. In the result, Civil Appeal No. 325 of 1955 is allowed, the order of the Appellate Tribunal set aside and that of Shri Banerji restored, except that (1) the minimum pay of the clerical staff will be Rs 65 per mensem with modifications as to the ceiling level and increments as set out *supra* and (2) that S.N. Chatterjee will be reinstated with compensation as provided in the order of the Appellate Tribunal.

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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 rowdyism 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 enquires 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, rowdiness 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.

\* \* \* \* \*

***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 appellants.

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***Indian Overseas Bank, Anna Salai v. P. Ganesan***

2007 (13) SCALE 446

**S.B. SINHA, J.** - Whether pendency of a criminal case by itself would be a sufficient ground for stay of the departmental proceedings is the principal question which arises for our consideration in this case.

4. Respondents 1 to 4 herein are the office bearers of the All India Indian Overseas Bank SC/ST Employees Welfare Association. Indisputably another association was also operating in the establishment of the appellant known as All India Indian Overseas Bank Employees Union of which respondent No.5 is the President. Registration of similar names gave rise to a dispute between the parties.

5. Indisputably a first information report was lodged on 27th January, 2005 with the "Thousand Lights Police Station, Chennai" alleging that L. Balasubramanian, Respondent No.5, herein was assaulted on 27th January, 2005 at about 12.35 p.m. within the bank premises by Respondents Nos. 1 to 4 as well as by Mr. P. Rajalingam, the Deputy Chief Officer working in the Regional Office of the appellant-bank. All the respondents are indisputably employees of the bank. Their designations are as under:-

"(a) Respondent No.1 (P. Ganesan) is employed as Assistant Manager, Thiruvottiyur Market Branch.. He is also the General Secretary of All India Indian Overseas Bank SC/ST Employees Welfare Association.

(b) Respondent No.2 (S.Vijayakumar) is employed as a clerk in the Central Clearing Office at Chennai. He is also the Vice President of the All India Indian Overseas Bank SC/ST Employees Welfare Association.

(c) Respondent No.3 (R Amalraj) is employed as a Messenger in the Inspection Department, Central Office at Chennai. He is also the Organizing Secretary of the All India Indian Overseas Bank SC/ST Employees Welfare Association.

(d) Respondent No. 4 (A. Dakshinamoorthy) is employed as an Assistant Manager in the Walltax Road Branch, Chennai. He is also the Deputy General Secretary of the All India Indian Overseas Bank SC/ST Employees Welfare Association.

(e) Respondent No.5 (L. Balasubramanian) is employed as Special Assistant in Foreign Exchange Department, Central Office at Chennai. He is also the President of All India Indian Overseas Bank Employees Union (AIOBEU) as well as the President of the National Confederation of Bank Employees (NCBE)."

6. An enquiry was conducted leading to discovery of certain additional facts. It may not be necessary for us to take note of the same at this stage. Respondent No.5 was admitted in the National Hospital for medical treatment. He remained confined therein for a period of twelve days. A charge-sheet was filed by the Investigating Officer in the criminal case against Respondents Nos. 1 to 4 under Sections 341, 323, 324, 427, 307 and 506 (ii) of the Indian Penal Code. Respondent Nos. 1 and 3 were arrested. They were, however, released on bail on 15th February, 2005. Respondents Nos. 2 and 4, however, absconded. On or about 15th February, 2005 they obtained anticipatory bail. Another first information was lodged by



Respondent Nos. 1 to 4 against respondent No.5 in the said Thousand Lights Police Station, Chennai.

7. Respondent Nos. 1 to 4 were placed under suspension by the appellant-bank by an order dated 28th January, 2005. Charge-sheets dated 21st February, 2005 were also served upon them. They were asked to show cause as to why disciplinary action be not taken against them for their acts of indiscipline, insubordination, unruly and disorderly behaviour, use of filthy language and most shameful abuses as well as murderous assault on respondent No.5 within the office premises of the bank as also causing damage to valuable properties and serious impairment to the bank's prestige and reputation in the estimation of public at large. Requests were made by the said respondents to revoke the order of suspension by an application dated 9th March, 2005 assuring the authority that they would fully cooperate with the authorities of the bank in the disciplinary proceedings initiated against them. They, furthermore, requested the bank to grant them one month's time to submit their reply to the show cause. Orders of suspension were revoked on 16th April, 2005. No reply to the show cause notice, however, was filed by them despite opportunities granted. Departmental enquiry was held against them on 18th May, 2005 ; 3rd June, 2005, 17th June, 2005, 28th June, 2005, 8th July, 2005, 19th July, 2005, 29th July, 2005 and 4th August, 2005, the details whereof, as stated by the appellants in their affidavit before the High Court, are as under :-

“(a). The Enquiry was fixed for 18.5.2005 in respect of which the Respondents had been duly intimated fairly in advance. However, the said Enquiry was adjourned to 3.6.2005 acceding to the written request dated 16.5.2005 of the respondents.

(b) The Enquiry was further adjourned to 17.6.2005 in response to the Respondents request for adjournment.

(c) The Enquiry was then fixed for 8.7.2005 in view of the Respondents written request dated 25.6.2005. However, the Respondents remained absent on 8.7.2005, and therefore they were set *ex-parte*, while adjourning the Enquiry to 19.7.2005.

(d) Meanwhile, the list of Management Witnesses was mailed to the Respondent Nos. 1 to 4 who admitted to have received the same.

(e) On 19.7.2005, only Respondent Nos.2 and 4 attended the Enquiry Proceedings, and categorically admitted to have received the List of Management Witnesses, whereas Respondents Nos.1 and 3 remained absent.

(f) The Enquiry was then adjourned to 29.7.2005 and again adjourned to 4.8.2005 when except Respondent No.3 (R. Amalraj), the other Respondent Nos.1, 2 and 4 attended the proceedings, and requested for further postponement, while representing that on the next date of the proceedings, they would either bring their Defence Representative or they would themselves conduct their defence without seeking any further postponement thereof. Accordingly, the Enquiry was finally adjourned to 19.8.2005 to be held on day-to-day basis until conclusion.”

8. While on the one hand the respondents were seeking adjournments and taking time from the Enquiry Officer in the said disciplinary proceedings, they, on the other hand, moved the High Court of Madras by filing writ petitions under Article 226 of the Constitution of India. The said writ petitions were marked as W.P. Nos. 26176, 26177, 26178 and 26179 of 2005. Interlocutory applications were also filed therein praying for stay of proceedings in the

departmental enquiry pursuant to the said charge-sheet dated 21st February, 2005 on the premise that on identical facts criminal cases had been filed against them. An ad interim order of stay was granted by the High Court by an order of 16th August, 2005 stating :-

“Though this Court generally did not entertain Writ Petitions relating to Charge-memos on the ground that Criminal proceedings are pending, the question as to whether the Departmental Proceedings and the Criminal case are based on identical and similar set of facts and whether the Charge in the Criminal case is of the grave nature which involves complicated questions of law and facts are the factors to be examined in the Writ Petitions. “

The said interim order of stay was produced before the Enquiry Officer. As the interim order of stay was granted only for a period of four weeks and the same having not been extended the enquiry proceedings continued. One witness being MW1 was examined on 21st October, 2005. The said departmental enquiry also proceeded on 22nd October, 2005 but the respondents did not participate therein on which date MW2 was examined. Yet again on 24th October, 2005, MW3 and MW4 were examined and the matter was adjourned to 25th October, 2005 when MW5 and MW6 were examined. On 26th October, 2005, MW7 and MW8 were examined-in-chief and the enquiry was adjourned to 27th October, 2005. Yet again on 28th October, 2005, MW9 and MW10 were examined and the enquiry was adjourned to 29th October, 2005 on which date MW11 was examined. It is stated that the respondents attended the enquiry on 29th October, 2005 and nominated their Defence Representative to defend them. A prayer for adjournment made on their behalf, however, was declined by the Enquiry Officer. MW11 was examined-in-chief on that date. The enquiry was adjourned to 31st October, 2005 on which date MW12 and MW13 were examined-in-chief. It was adjourned to 9th December, 2005 for cross-examination of the Management Witnesses.

9. The application for vacating the stay filed by the appellants on 6th September, 2005 was dismissed by a learned Single Judge of the High Court by an order dated 7th December, 2005 stating :-

“Once the Learned Single Judge has indicated the reasons which weighed with him in exercising the extra-ordinary jurisdiction under Article 226 of the Constitution of India against the impugned Charge-Memo, except to expedite the writ them petitions, it may not be proper for this Court to vacate the interim stay at this stage. Accordingly, the vacate stay petitions, viz. WPMPs Nos. 2047 to 2050 of 2005 are dismissed. The Interim stay granted by this Court on 16.8.2005 is made absolute. Expedite the Writ Petitions and post the same for final hearing in the second week of February, 2006.”

10. Writ appeals preferred by the appellants against that order were disposed of by a Division Bench of the Court by reason of the impugned judgment opining:-

“14. In the instant case, there is no dispute that the criminal action and the disciplinary proceedings are founded upon the same set of facts. In fact, the disciplinary proceedings are solely based upon the criminal complaint lodged by the president of a rival union, who is also facing prosecution with regard to the same

incident. It has been conceded before us that the bank had not conducted any independent enquiry before initiating the impugned departmental proceedings.

15. In our opinion, in the peculiar facts and circumstances of the case on hand, fair play requires that postponing of the departmental proceedings till the criminal cases are decided. We are, therefore, of the view that the prayer made by the petitioners for deferring the departmental proceedings till the conclusion of the criminal trial has to be accepted and it is ordered accordingly.”

12. Mr. Altaf Ahmed, learned senior counsel appearing on behalf of the appellants in support of the appeal would, *inter alia*, submit that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that as the enquiry proceedings proceeded to a great extent the same should not have been stayed. Reliance in this behalf has been placed on *Kendriya Vidyalaya Sangathan v. T. Srinivas* [(2004) 7 SCC 442].

13. Mr. G. Prakash, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the High Court having exercised its discretionary jurisdiction upon application of law operating in this behalf, this Court should not exercise its jurisdiction under Article 136 of the Constitution of India. Learned counsel urged that in a matter of this nature where rival parties had clashed with each other and case and counter case have been instituted one investigated by the Assistant Commissioner of Police and another by an Inspector of Police, the respondents would be highly prejudiced if the departmental proceedings are allowed to continue; particularly when the officers of the appellant-bank have been proceeding with a bias. It was contended that the question as to whether there exists any complicated question of law must be judged from the employees point of view, they being belonging to the weaker section

14. Before embarking upon the rival contentions of the parties we may notice that Respondent Nos. 1 to 4 have filed an application for quashing the order taking cognizance against them before the High Court under Section 482 of the Code of Criminal Procedure which was marked as CrI. O.P. No. 18163 of 2006 and by an order dated 17th July, 2006 further proceedings in the criminal case have been stayed.

15. Legal position operating in the field is no longer *res integra*. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

16. In *Delhi Cloth and General Mills Ltd. v. Kushal Bhan* [AIR 1960 SC 806] this Court while holding that the employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the employer does not violate the principle of natural justice, observed :-

“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 wait the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced.”

The same principle was reiterated in *Tata Oil Mills Co. Ltd. v. The Workmen* [AIR 1965 SC 155].

17. In *State of Rajasthan v. B.K. Meena* [(1996) 6 SCC 417] this Court held :-

“The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.”

18. *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* [(1999) 3 SCC 679] also deserves to be noticed. This Court therein held that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. The Court summarized its findings as under :-

“(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

19. The issue came up for consideration yet again in *T. Srinivas* where this Court while analyzing *B.K. Meena* and *Capt. M. Paul Anthony* held that :-

“From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course.”

20. The High Court, unfortunately, although noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stay of the disciplinary proceedings shall not only prejudice the delinquent officers but also the matter involves a complicated question of law.

21. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the bank which was not the subject matter of allegations in a criminal case, the departmental proceedings should not have been stayed.

22. Furthermore Respondent Nos. 1 to 4 have now moved the High Court for quashing of the order taking cognizance of offence against them in the criminal proceedings. The criminal proceedings have been stayed. Thus, even applying the principle laid down in *Capt. M. Paul Anthony* the impugned judgment cannot be sustained. Before the High Court no contention was raised that because Respondent Nos. 1 to 4 are office bearers of a trade union, the authorities were biased against them. Nothing has been shown that any complicated question of law arose for determination in the criminal case.

23. Reliance placed by Mr. Prakash on *Hindustan Petroleum Corporation Ltd.* is not apposite. There were certain special features which were noticed by this Court. In that case itself it was held :-

“There can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case get prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted to, on one hand, prolong the criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.” (emphasis supplied)

Therein the departmental proceeding were allowed to continue despite the fact that the delinquent officer therein had been charged for commission of an offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

24. In *G.M. Tank*, this Court was dealing with a case where the delinquent officer was acquitted. The said decision has no application in the instant case.

25. *Sathi Vijay Kumar* pertains to a case involving election dispute. The question which arose therein was as to whether despite the fact that there was no provision in the Representation of the People Act, 1961 for striking out the pleadings, the Tribunal had the power to do so. We are not concerned with such a question in this matter.

26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.

27. For the reasons abovementioned the impugned judgment cannot be sustained which is hereby set aside. The appeal is accordingly allowed.

28. We would, however, like to observe that in the event any prayer is made by the respondents to cross-examine the witnesses examined on behalf of the appellants, the Enquiry Officer may consider the same in accordance with law.

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***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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## **RIGHT TO LEGAL REPRESENTATION**

### ***Board of Trustees, Port of Bombay v. Dilip Kumar***

(1983) 1 SCC 124 : AIR 1983 SC 109

#### **D.A. DESAI AND R.B. MISRA, JJ. -**

3. A charge-sheet was drawn up against the 1st respondent for the alleged misconduct and an Enquiry Officer was appointed to hold the enquiry against the 1st respondent. Before the enquiry opened, the 1st respondent submitted a request seeking permission to engage a legal practitioner for his defence. The Chairman of the appellant rejected this request and simultaneously appointed two Officers, namely, Shri R.K. Shetty and Shri A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively of the appellant as Presenting Officers before the Enquiry Officer. A copy of this letter was endorsed to the 1st respondent with a foot-note that his request for permitting him to appear through a legal practitioner in the enquiry has been rejected by the Chairman. As a sequel to the rejection of his request, the 1st respondent out of compelling necessity submitted a request that Shri V.V. Nadkarni be permitted to appear in his defence which appears to have been granted. The enquiry opened on April 13, 1976. On May 8, 1976 Bombay Port Trust Employees Regulations, 1976 came into force. Regulation 12(8) reads as under :

The employee may take the assistance of any other employee or, if the employee is a Class III or a Class IV employee, of an "Office Bearer" as defined in clause (d) of Section 2 of the Trade Unions Act, 1926 (16 of 1926) of the union to which he belongs, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

4. It may be mentioned that the date on which the aforementioned regulation came into force, the second out of 25 witnesses for the employer was in the witness-box. It may as well be mentioned that even after the Regulation 12(8) came into force, neither the Enquiry Officer nor the Chairman of the appellant thought fit to review the earlier decision so as to enable the 1st respondent to appear through a legal practitioner. At the end of the enquiry, the 1st respondent was dismissed from service.

5. The 1st respondent challenged the legality and validity of the order of dismissal in Miscellaneous Petition No. 705 of 1979 in the High Court of Judicature at Bombay. A learned Single Judge of the High Court by his judgment and order dated September 13, 1982 quashed and set aside the order of dismissal, *inter alia*, holding that while appointing two Presenting Officers both legally trained, the Chairman of the appellant failed to afford a reasonable opportunity to the 1st respondent to defend himself by refusing him permission to appear through a legal practitioner and the principles of natural justice are violated. An appeal being

O.O.C.J. No. 594 of 1982 by the appellant was dismissed *in limine* by a Division Bench of that High Court. Hence this appeal by special leave.

7. The narrow question which we propose to examine in this appeal is whether where in a disciplinary enquiry by a domestic tribunal, the employer complaining misconduct appoints a legally trained person as Presenting-cum-Prosecuting Officer the denial or refusal of a request by the delinquent employee seeking permission to engage a legal practitioner to defend him at the enquiry, would constitute such denial of reasonable opportunity to defend oneself and thus violate one of the essential principles of natural justice which would vitiate the enquiry ?

8. The time honoured and traditional approach is that a domestic enquiry is a managerial function and that it is best left to management without the intervention of persons belonging to legal profession. This approach was grounded on the view that a domestic tribunal holding an enquiry without being unduly influenced by strict rules of evidence and the procedural juggernaut should hear the delinquent employee in person and in such an informal enquiry, the delinquent officer would be able to defend himself. The essential assumption underlying this belief is questionable but it held the field for some time and there are decisions of this Court in *Brooke Bond India (Pvt) Ltd. v. Subba Roman* [(1961) 2 LLJ 417] and *Dunlop Rubber Co. v. Workmen* [AIR 1965 SC 1392], in which it has been held that in a disciplinary enquiry before a domestic tribunal a person accused of misconduct has to conduct his own case and therefore as a corollary it cannot be said that in such an enquiry against a workman natural justice demands that he ought to be represented by a representative of his union much less a member of the legal profession. While buttressing this approach, an observation was made that unless rules prescribed for holding the enquiry do not make an enabling provision that the workman charged with misconduct is entitled to be represented by a legal practitioner, the Enquiry Officer and/or the employer would be perfectly justified in rejecting such a request as it would vitiate the informal atmosphere of a domestic tribunal. A strikingly different view was sounded by Lord Denning in *Pett v. Greyhound Racing Association Ltd.*, [(1968) 2 All ER 545 (CA)], wherein the concerned authority directed an enquiry to be held into the withdrawal of a trainer's dog from a race at a stadium licensed by the National Greyhound Racing Club. The rules of the Club did not prescribe the procedure to be followed in such an enquiry, and there was negative provision excluding a legal practitioner from such an enquiry. The procedure for enquiry was the routine one of examination and cross-examination of the witnesses. The licensee charged with misconduct sought permission to be represented by counsel and solicitor at the enquiry, which request was turned down by track stewards. When the matter reached the Court of Appeal, Lord Denning observed as under:

I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth, he has also a right to speak by counsel or solicitor.

The trend therefore is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry, to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner. But we want to be very clear that we do not want to go that far in this case because it is not necessary for us to do so. The all important question : where as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to

enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner, is kept open.

9. We concern ourselves in this case with a narrow question whether where in such a disciplinary enquiry by a domestic tribunal, the employer appoints Presenting-cum-Prosecuting Officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice.

10. Even in a domestic enquiry there can be very serious charges, and an adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a Presenting-cum-Prosecuting Officer and an Enquiry Officer - a Judge and a prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his *pay-rolls* labour officers, legal advisers - lawyers in the garb of employees - and they are appointed Presenting-cum-Prosecuting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so ? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere ? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge ? The Enquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not a euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi-judicial tribunal cannot view the matter with equanimity on inequality of representation. This Court in *M.H. Hoskot v. State of Maharashtra* [AIR 1978 SC 1548], clearly ruled that in criminal trial where prosecution is in the hands of public

prosecutor, accused, for adequate representation, must have legal aid at State cost. This will apply *mutatis mutandis* to the present situation.

11. We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the 1st respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s R.K. Shetty and A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively, in the employment of the appellant as Presenting-cum-Prosecuting Officers. What does this signify? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues involving intricate legal propositions that the Enquiry Officer would need the assistance of Presenting-cum-Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the Chairman. While he directed two of his law officers to conduct the enquiry as prosecutor, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the 1st respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action? Can one imagine how the scales were weighted and thereby tilted in favour of the prosecuting officer. In this enquiry the employer would be represented by two legally trained minds at the cost of the Port Trust while the 1st respondent was asked either to fend for himself in person or have the assistance of another employee such as Nadkarni who is not shown to be a legally trained person, but the delinquent employee cannot engage a legal practitioner at his cost. Can this ensure a fair enquiry? The answer is not far to seek. Apart from any legal proposition or formulation we would consider this approach as utterly unfair and unjust. More so in absence of rules, the Chairman of the appellant was not precluded from granting a request because the rules did not enact an inhibition. Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one-sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself. He was pitted against the two legally trained minds and one has to just view the situation where a person not admitted to the benefits of niceties of law is pitted against two legally trained minds and then asked to fend for himself. In such a situation, it does not require a long argument to convince that the delinquent employee was denied a reasonable opportunity to defend himself and the conclusion arrived at would be in violation of one of the essential principles of natural justice, namely, that a person against whom enquiry is held must be afforded a reasonable opportunity to defend himself.

12. Are we charting a new course? The answer is obviously in the negative. In *C.L. Subramaniam v. Collector of Customs, Cochin* [AIR 1972 SC 2178], a government employee requested the Enquiry Officer to permit him to appear through a legal practitioner and even though a trained Public Prosecutor was appointed as Presenting Officer, this request was turned down. When the matter reached this Court, it was held that the enquiry was in breach of the principles of natural justice. The order of the domestic tribunal was sought to be sustained on the submission that sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 that “the Government servant may present

his case with the assistance of any Government servant approved by the Disciplinary Authority but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits'. The submission was that it is a matter within the discretion of the Enquiry Officer whether to grant permission and more so because the relevant rule fetters the claim to appear through a legal practitioner. Negating this contention, this Court held that the fact that the case against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighted against him. This conclusion was recorded after reference to the earlier decisions in **Brooke Bond India (Pvt) Ltd. v. Subba Roman** and **Dunlop Rubber Co. v. Workmen**. Reference was made to **Pett** case, referred to earlier, but it is observed that this case has not commended itself to this Court. The earlier cases of this Court were distinguished. In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. This view has been taken by a learned Single Judge and while dismissing the appeal in limine approved by the Division Bench of the High Court commends to us. Therefore, this appeal is liable to be dismissed.

13. We would reach the same conclusion for a different reason altogether. The 1st respondent while submitting a reply to the charge-sheet dated April 14, 1975 requested the Chairman of the appellant to permit him assistance of an advocate at the enquiry. This request was refused and the decision was conveyed by the Dock Manager as per his letter dated March (*sic*) 1975. The enquiry opened on April 13, 1976. By May 8, 1976 evidence of only one out of 25 witnesses of the employer was offered and the second witness was under examination. On that date Bombay Port Trust Employees Regulations, 1976 admittedly came into force. The relevant Regulation 12(8) is extracted herein before. The latter portion of the regulation practically borrows the language of sub-rule (5) of Rule 15 referred to herein before, in that it provides that the delinquent officer may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is the legal practitioner or the Disciplinary Authority having regard to the circumstances of the case so permits. Now the 1st respondent had already submitted his request for appearing through a legal practitioner at the enquiry. This eminently just request was turned down on untenable grounds, and to make matters worse for the delinquent employee two Law Officers of the appellant were appointed Presenting-cum-Prosecuting Officers. Assuming that in the absence of rules the Chairman has a discretion which was required to be exercised wisely yet taking shelter behind legal facade it was exercised against the 1st respondent because he was not under any statutory obligation to grant this request. However, when Regulation 12(8) came into force, the situation materially altered and the large number of witnesses almost all except one were examined after the regulation came into force and which made it obligatory to grant the request of the 1st respondent because the regulation provided granting of permission to appear and defend by a legal practitioner once the department was represented by legally trained minds. A very feeble submission was made by Mr Nariman that after the Regulation

12(8) came into force, the request was not renewed. In our opinion, that is hardly relevant. The unjustly refused request was already there and obligation under the regulation coupled with fair play in action demanded that the employer should have suo motu reviewed his order refusing the request. In fact one can go so far as to say that the Enquiry Officer in order to be fair and just, whenever he finds the employer appointing legally trained persons as Presenting-cum-Prosecuting Officers must enquire from the delinquent employee before commencement of enquiry whether he would like to take assistance of a legal practitioner. The option then is with the delinquent employee. In this connection, we would like to refer to a weighty observation on this point where despite constitutional inhibition this Court conceded such a right. In *A.K. Roy v. Union of India* [(1982) 1 SCC 271], the learned Chief Justice while rejecting the contention that a detenu should be entitled to appear through a legal adviser before the Advisory Board observed that Article 22(3)(b) makes it clear that the legal practitioner should not be permitted to appear before an Advisory Board for any party. While noting this constitutional mandate, the learned Chief Justice proceeded to examine, what would be the effect if the department is represented before the Advisory Board by a legally trained person. It was held that in such a situation despite the inhibition of Article 22(3)(b) the fair procedure as contemplated by Article 21 requires that a detenu be permitted to appear by a legal practitioner.

And this view was taken as flowing from Article 21 which mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words of Chapter II of *Bhagwad-Gita: Sambhavitasya Cha Kirti Marnadati Richyate*. Therefore in this case, there can be no doubt that for the additional reason that after the Regulation 12(8) came into force, the 1st respondent should have been given a reasonable opportunity to appear through legal practitioner and failure on their part had vitiated the enquiry. For these reasons, this appeal fails and is dismissed with costs quantified at Rs 2000.

14. Now, we may note the consequence of this decision. As the decision reached by the domestic tribunal is held to be vitiated on the ground that the enquiry was held in violation of the principles of natural justice on the ground that the 1st respondent was not afforded a reasonable opportunity to defend himself, the High Court was justified in quashing the order of dismissal. The sequel to our order would certainly mean that it would be open to the appellant to continue the enquiry. But it must be expedited. We therefore direct that while continuing the enquiry, it will be open to the appellant to treat the examination-in-chief of each witness already recorded during the enquiry as proper but all witnesses examined at the enquiry will have to be offered to the 1st respondent for cross-examination and the respondent would be entitled to appear through a lawyer of his choice and even examine witnesses and participate in the enquiry. The earlier cross-examination may also be retained as part of the record. Both sides would be entitled to adduce fresh evidence both document and oral, if considered necessary. The 1st respondent would be entitled to call upon the appellant to

produce any document which he desires for effective adjudication subject to the decision of the Enquiry Officer about its relevance and necessity for efficient and just disposal of the enquiry. As the order of dismissal is being set aside and the enquiry is being continued, the order suspending the 1st respondent from service pending enquiry would be revived and the appellant should pay subsistence allowance throughout this period and till the end of the enquiry which would be continued hereafter after taking credit of whatever payment that had been made since the suspension order and till today.

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***Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union***  
(1999) 1 SCC 626

**S. SAGHIR AHMAD, J.** - The legal battle which started on a larger plane between the parties to this appeal, in 1984, has now narrowed down to only one question, namely, the question relating to the representation of an employee in the disciplinary proceedings through another employee who, though not an employee of the appellant-Corporation was, nevertheless, a member of the Trade Union.

3. On 4-12-1985, the appellant submitted Draft Standing Orders to the Certifying Officer for certification under the Industrial Employment (Standing Orders) Act, 1946 (“the Act”) which were intended to be applicable to the Marketing Division, Western Region, including its Head Office at Bombay. On receipt of the Draft Standing Orders, the Certifying Officer issued notices to various employees’ unions and after following the statutory procedure and after giving the parties an opportunity of hearing, certified the Draft Standing Orders on 14-10-1991 by an order passed under Section 5 of the Act. The Draft Standing Orders, as submitted by the appellant, were not certified in their entirety but were modified in various respects.

4. One of the clauses of the Draft Standing Orders which was not certified by the Certifying Officer, related to the representation of an employee in the disciplinary proceedings. The result was that the provision relating to the representation of an employee during departmental proceedings, as contained in the Model Standing Orders, continued to apply to the appellant’s establishment.

5. Aggrieved by the order passed by the Certifying Officer, two appeals, one by the present appellant and the other by Respondent 1, were filed before the appellate authority and the latter, by its order dated 23-11-1993, certified the Standing Orders as final. The clause relating to the representation of an employee during disciplinary proceedings, as set out in the Draft Standing Orders, was approved and the order of the Certifying Officer in that regard was set aside. The Standing Orders, as finally certified by the appellate authority, were notified by the appellant on 30-11-1993 and it was with effect from this date that they came into force.

6. The order of the appellate authority was challenged by Respondent 1 in Writ Petition No. 231 of 1994 in the Bombay High Court which admitted the petition on 15-3-1994 but refused the interim relief with the direction that during the pendency of the writ petition, a charge-sheeted workman would be permitted to be represented at the departmental enquiry, at his option, by an office-bearer of the trade union of which he is a member. Since this order was contrary to the Standing Orders, as certified by the appellate authority, the appellant filed Special Leave Petition (Civil) No. 12274 of 1994 in which this Court, on 30-9-1994, passed the following order:

“Issue notice. Interim stay of the direction of the High Court by which any office-bearer of the Union who may not be a workman of the petitioner-Corporation is permitted to represent the delinquent workman. It is made clear that in the

meanwhile, the workman may be represented by any other workman who is an employee of the petitioner-Corporation.”

7. By its judgment dated 18-9-1995, this Court set aside the interim order passed by the Bombay High Court and directed the High Court to pass a fresh interim order in the writ petition after hearing the parties.

8. In December 1995, Respondent 1 took out a Notice of Motion but the High Court, by its order dated 11-12-1995, rejected the same. However, the High Court, by its final judgment dated 28-6-1996, allowed the writ petition and the order dated 23-11-1993 passed by the appellate authority by which the clause relating to the representation of an employee during the disciplinary proceedings, as contained in the Draft Standing Orders, was certified, was set aside and the order dated 14-10-1991 passed by the Certifying Officer was maintained. It is against this judgment that the present appeals have been filed and the only question with which we are concerned in these appeals is as to whether an employee, against whom disciplinary proceedings have been initiated, can claim to be represented by a person, who, though, is a member of a trade union but is not an employee of the appellant.

9. Para 14(4)(*ba*) of the Model Standing Orders, as framed by the Central Government under the Act for industrial establishments, not being industrial establishments in coal mines, provides as under:

“In the enquiry, the workman shall be entitled to appear in person or to be represented by an office-bearer of a trade union of which he is a member.”

10. Clause 29.4 of the Draft Standing Orders, as certified by the appellate authority by its judgment dated 23-11-1993, provides as under:

“29.4 If it is decided to hold an enquiry, the workman concerned will be given an opportunity to answer the charge/charges and permitted to be defended by a fellow workman of his choice, who must be an employee of the Corporation. The workman defending shall be given necessary time off for the conduct of the enquiry.”

11. The vital difference between the Model Standing Orders, as set out above, and the Draft Standing Orders, as certified by the appellate authority, is that while under the Model Standing Orders, a workman can be represented in the departmental proceedings by an office-bearer of a trade union of which he is a member, he does not have this right under the Draft Standing Orders, as certified by the appellate authority, which restrict his right of representation by a fellow workman of his choice from amongst the employees of the appellant-Corporation. The contention of the learned counsel for the appellant is that the Model Standing Orders framed by the Central Government under the Industrial Employment (Standing Orders) Central Rules, 1946 can operate only during the period of time when the Standing Orders are not made by the establishment itself. If and when those Standing Orders are made which, in any case, have to be compulsorily made in terms of the Act, they have to be submitted to the Certifying Officer and if they are certified, they take effect from the date on which they are notified and effectively replace the Model Standing Orders. The order of the Certifying Officer is appealable before the appellate authority and the appellate authority can legally interfere with the order passed by the Certifying Officer and set it aside or uphold it. There is no restriction under the Act that the management or the establishment, or, for that

matter, the employer would adopt the Model Standing Orders. It is contended that the Standing Orders have only to be in consonance with the Model Standing Orders besides being fair and reasonable.

12. The submission of the learned counsel for Respondent 1, on the contrary, is that the Standing Orders, as framed by the management, have to be on the lines indicated in the Model Standing Orders and there cannot be a departure either in principle or policy from the Model Standing Orders. It is contended that once it was provided by the Model Standing Orders that an employee of the Corporation can be represented by an employee of another establishment with the only restriction that he should be an office-bearer of a trade union, it was not open to the appellant to have made a provision in their Standing Orders that an employee of the Corporation would be represented in the disciplinary proceedings only by another employee of the Corporation. It is contended that this departure is impermissible in law and, therefore, the High Court was justified in setting aside the order of the appellate authority which had certified the Draft Standing Orders submitted by the appellant.

13. The Industrial Employment (Standing Orders) Act, 1946 was made by Parliament to require employers of all industrial establishments to define formally the conditions of employment on which the workmen would be engaged.

14. The object underlying this Act, which is a beneficent piece of legislation, is to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same and similar work under the industrial establishment and to make the terms and conditions of industrial employees well settled and known to the employees before they accept the employment.

15. The Act applies to every industrial establishment wherein hundred or more workmen are employed.

16. "Model Standing Orders" have been defined in Section 2(*ee*). They mean Standing Orders prescribed under Section 15 which gives rule-making power to the appropriate Government and provides, inter alia, that the Rules so made by the Government may set out Model Standing Orders for the purpose of this Act.

18. Section 12-A provides that the Model Standing Orders will be applicable to an industrial establishment during the period commencing on the date on which the Act becomes applicable to that establishment and the date on which the Standing Orders, as finally certified under this Act, come into operation. Section 7 of the Act sets out the date on which the Standing Orders or amendments made thereto would become operative. The Standing Orders are certified under Section 5. The order certifying the Standing Orders is made under sub-sections (2) and (3) of the Act.

22. After certifying the Standing Orders or the Draft Amendments, the Certifying Officer is required to send copies of the Certified Standing Orders, authenticated in the prescribed manner, to the employer as also to the trade union or other prescribed representatives of the workmen. Once the Standing Orders are certified, they constitute the conditions of service binding upon the management and the employees who are already in employment or who may be employed after certification.

27. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. For example, Rule 1712 of the Railway Establishment Code provides as under:

“The accused railway servant may present his case with the assistance of any other railway servant employed on the same Railway (including a railway servant on leave preparatory to retirement) on which he is working.”

28. The right to representation, therefore, has been made available in a restricted way to a delinquent employee. He has a choice to be represented by another railway employee, but the choice is restricted to the Railway on which he himself is working, that is, if he is an employee of the Western Railway, his choice would be restricted to the employees working on the Western Railway. The choice cannot be allowed to travel to other Railways.

29. Similarly, a provision has been made in Rule 14(8) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, where too, an employee has been given the choice of being represented in the disciplinary proceedings through a co-employee.

35. The contention of the learned counsel for Respondent 1 that the Standing Orders as made by the appellant must conform to the Model Standing Orders cannot be accepted. It is true that originally the jurisdiction of the Certifying Officer as also that of the appellate authority was very limited and the only jurisdiction available to them under the Act was to see whether the Standing Orders made by the establishment and submitted for their certification conformed to the Model Standing Orders. This required the process of comparison of the Draft Standing Orders with the Model Standing Orders and on comparison, if it was found that the Draft Standing Orders were in conformity with the Model Standing Orders, the same would be certified even if they were not reasonable or fair. The workmen practically had no say in the matter and they would not be listened even if they agitated that the Draft Standing Orders were not fair or reasonable.

36. In 1956, radical changes were introduced in the Act by Parliament as a result of which not only the scope of the Act was widened, but jurisdiction was also conferred upon the Certifying Officer as also the appellate authority to adjudicate upon and decide the question relating to fairness or reasonableness of any provision of the Standing Orders.

37. In the instant case, the Standing Orders as finally certified cannot be said either to be not in consonance with the Model Standing Orders or unreasonable or unfair.

38. The Model Standing Orders, no doubt, provided that a delinquent employee could be represented in the disciplinary proceedings through another employee who may not be the employee of the parent establishment to which the delinquent belongs and may be an employee elsewhere, though he may be a member of the trade union, but this rule of representation has not been disturbed by the Certified Standing Orders, inasmuch as it still provides that the delinquent employee can be represented in the disciplinary proceedings through an employee. The only embargo is that the representative should be an employee of the parent establishment. The choice of the delinquent in selecting his representative is affected only to the extent that the representative has to be a co-employee of the same

establishment in which the delinquent is employed. There appears to be some logic behind this as a co-employee would be fully aware of the conditions prevailing in the parent establishment, its Service Rules, including the Standing Orders, and would be in a better position, than an outsider, to assist the delinquent in the domestic proceedings for a fair and early disposal. The basic features of the Model Standing Orders are thus retained and the right of representation in the disciplinary proceedings through another employee is not altered, affected or taken away. The Standing Orders conform to all standards of reasonableness and fairness and, therefore, the appellate authority was fully justified in certifying the Draft Standing Orders as submitted by the appellants.

39. The appeals are consequently allowed. The impugned judgment dated 28-6-1996, passed by the Bombay High Court, insofar as it relates to the clauses in question which are the subject-matter of these appeals, is set aside and the order passed by the appellate authority certifying the Draft Standing Orders is upheld.

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**Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya**

(1997) 2 SCC 699 : AIR 1997 SC 2232

**K. RAMASWAMY, G.T. NANAVALI AND K. VENKATASWAMI, JJ. -**

4. This appeal by special leave arises from the judgment of the Division Bench of the Andhra Pradesh High Court, made on 18-6-1996 in WP No. 612 of 1996. The appellants had initiated disciplinary proceedings against the respondent on the imputation that on 15-9-1995 while driving the Corporation's double-decker vehicle near Gandhi Hospital in Hyderabad City, due to lack of anticipation, he had caused an accident in which a cyclist died. Consequently, action was initiated for misconduct and enquiry was ordered for misconduct under Rule 28(ix) of the Employees Conduct Rules, 1963. It would appear that prosecution has been launched by the police for an offence punishable under Section 304, Part II, IPC and in some cases under Section 338 IPC and they are pending trial. Therefore, the respondents filed writ petition in the High Court for stay of the departmental proceedings. The learned Single Judge stayed the proceedings. On appeal, the Division Bench confirmed the same. Thus, these appeals by special leave.

5. It is contended by Shri Altaf Ahmad, the learned Additional Solicitor General appearing for the appellant that the High Court was not right in directing stay of the departmental enquiry on the ground that it would cause prejudice to the respondents at the trial. In the criminal case, the question is the culpability of rash and negligent driving of the respondent. In the departmental enquiry, the misconduct relates to his failure to anticipate the accident and prevention thereof by his conduct. Therefore, there would be no prejudice in conducting the departmental enquiry. The High Court, therefore, was not right in staying the proceedings.

6. In support thereof, learned counsel has placed reliance on the judgment of this Court in *State of Rajasthan v. B.K. Meena* [(1996) 6 SCC 417]. Shri L.N. Rao, learned counsel for the respondents, on the other hand, has contended that the ratio in that judgment itself would indicate that only in grave cases, the enquiry should be permitted to be completed as expeditiously as possible. Otherwise, the administration would be jeopardised. In this case, such a grave nature does not arise. The facts in both, the criminal case and the disciplinary enquiry, constitute the same cause of action or material disclosure of which would gravely prejudice the defence of the respondents in the criminal cases. Therefore, the High Court was right in staying the proceedings. In support thereof, he placed strong reliance on the judgment of this Court in *Kusheshwar Dubey v. Bharat Coking Coal Ltd.* [(1988) 4 SCC 319]. He also placed reliance on the judgment of this Court in *Food Corpn. of India v. George Varghese* [1991 Supp (2) SCC 143]. Therein, the question was that whether the High Court would be justified in quashing the enquiry proceedings, after the acquittal of the delinquent officer in the criminal case? The High Court had held in that case that it was not expedient to conduct enquiry after acquittal. While interfering with that view and holding that the employer is entitled to initiate the disciplinary proceedings, after the acquittal, this Court made an observation that the employer fairly had stayed its hands till the conclusion of the criminal case so that it would not be contended that the employer intended to overreach the judicial proceedings. That observation, far from helping the respondents, would go to show

that it would be open to the employer to take appropriate disciplinary action based upon the fact-situation; whether it could be proceeded with or not would be left to the disciplinary authority and the facts and circumstances obtainable in each case requires to be considered.

7. The rival contentions give rise to the question whether it would be right to stay the criminal proceedings pending departmental enquiry? This Court in *Meena* case had elaborately considered the entire case law including *Kusheshwar Dubey* case relieving the necessity to consider them once over. The Bench, to which one of us, K. Venkataswami, J., was a member, had concluded thus:

“It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be ‘desirable’, ‘advisable’ or ‘appropriate’ to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is ‘that the defence of the employee in the criminal case may not be prejudiced’. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, ‘advisability’, ‘desirability’, or ‘propriety’, as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated 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] is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly even reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with

promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.”

8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (*sic* duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that



behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings. The appeals are accordingly allowed.

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***Debotosh Pal Choudhury v. Punjab National Bank***  
(2002) 8 SCC 68

**S. RAJENDRA BABU, J.** - The petitioner before us was employed in the establishment of the first respondent Bank. He was dismissed from service by an order made on 8-10-1988 on the basis of an enquiry conducted by an enquiry officer and the report made on 26-9-1988. In challenging by way of a writ petition the order of dismissal the petitioner contended that the enquiry is vitiated as he did not have any reasonable opportunity to have the copies of the documents or inspection thereof; that he was not afforded an opportunity to adduce oral evidence by examining two witnesses, Shri S.C. Tandon and Shri A.K. Dey; that under Regulation 6(18) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 ("the Regulations") 15 days' time should have been given to him for furnishing a written brief after completion of the production of evidence, but the enquiry officer gave him only two days' time; that the copy of the enquiry report was not given to him before imposing the punishment of dismissal.

2. The stand of the respondents is that full opportunity was given to the petitioner by either furnishing copies of documents or inspection thereof; that the production of oral evidence through Shri S.C. Tandon and Shri A.K. Dey was denied as such request was made at a belated stage and their evidence would be irrelevant to the enquiry; that the petitioner having been dismissed by an order made on 8-10-1988 before the decision of this Court in ***Union of India v. Mohd. Ramzan Khan***, non-furnishing of a copy of the enquiry report would not affect the order of dismissal; that the petitioner having made oral submissions pleaded for grant of time to file written brief only in case the presenting officer also did so; that when the presenting officer did not file any written brief, question of the petitioner filing the same would not arise; that even otherwise, the petitioner did not ask for more time than granted and hence, cannot make a grievance of the same.

3. The learned Single Judge, *inter alia*, held that the disciplinary authority did not forward to the inquiring authority the documents and lists of witnesses before commencing the enquiry against the petitioner and accepted each one of the contentions raised by the petitioner and allowed the writ petition. On appeal, the Division Bench reversed the decision of the learned Single Judge and dismissed the writ petition. Hence, this appeal by special leave.

4. Regulation 6(5) of the Regulations requires that the disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority the following documents:

1. a copy of the articles of charge and statement of imputations of misconduct or misbehaviour;
2. a copy of the written statement of defence, if any, submitted by the officer employee;
3. a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;
4. a copy of the statement of the witnesses, if any;
5. evidence proving the delivery of the articles of charge under sub-regulation (3); and
6. a copy of the order appointing the "presenting officer" in terms of sub-regulation (6).

Fulfilment of some of the requirements of this Regulation is purely procedural in character. Unless in a given situation, the aggrieved party can make out a case of prejudice or injustice, mere infraction of this Regulation will not vitiate the entire enquiry.

5. The petitioner had been given documents for inspection as per the list given by the presenting officer and he made a statement on 18-7-1988 that he had verified all the documents and papers and inspected the documents as per the list given in the letter dated 24-5-1988. The inquiring authority allowed the petitioner to file a list of documents and as sought for by his letter dated 24-5-1988, the request for inspection or copies was also allowed. It is thereafter the enquiry officer has relied upon the documents produced by the presenting officer and adverted to various documents produced by the petitioner as well. Therefore, the contention of the petitioner that he did not have reasonable opportunity to inspect the documents is incorrect.

6. We have examined the records of the case with reference to various stages of the proceedings before the inquiring authority only to satisfy ourselves that the petitioner had been afforded a reasonable opportunity to put forward his case. If in the event that he wanted to place reliance upon the evidence of two witnesses Shri S.C. Tandon and Shri A.K. Dey, he would have put forth this contention at the forefront of his defence that he had acted on the verbal instructions of these officers and not on his own, but no such defence appears to have been taken by him. After the Bank's evidence was closed, the enquiry officer asked the petitioner to place his defence when he sought to examine the two witnesses Shri S.C. Tandon and Shri A.K. Dey and rather belatedly such a stand was taken by the petitioner as a pure afterthought. The claim of the petitioner is that he had permitted withdrawals to the borrowers beyond his vested powers and/or in those accounts where the sanction already stood lapsed on the verbal instructions given to him by Shri S.C. Tandon and Shri A.K. Dey. It is, therefore, very difficult to conceive of a position as to whether Shri S.C. Tandon and Shri A.K. Dey would be in a position to recall as to what transpired during the time when the petitioner was the Manager of the Bank at Burrabazar Branch and whether any conclusion could be based upon verbal instructions of the said officers. It is in those circumstances the inquiring authority rejected the permission for examination of these two witnesses as the same would not only be irrelevant but amount to adopting dilatory tactics in delaying their proceedings. Therefore, in the circumstances of the case, the rejection of the request of the petitioner for adducing evidence of Shri S.C. Tandon and Shri A.K. Dey will not vitiate the enquiry. Further, whatever documents the petitioner sought for had been furnished to him and he had full opportunity to inspect the same.

7. So far as Regulation 6(18) of the Regulations is concerned, it provides that

*“the inquiring authority may, after the completion of the production of evidence, hear the presenting officer, if any appointed, and the officer/employee, or permit them to file written briefs of their respective cases within 15 days of the date of completion of the production of evidence, if they so desire”.* (emphasis supplied)

On 22-9-1988 the petitioner while concluding his defence, stated that he did not intend to say anything further provided no written brief was filed by the presenting officer, which if done, should be brought to his notice to enable him to submit the counter-statement, if

necessary. The enquiry officer then gave two days' time to the presenting officer as well as to the petitioner to file written briefs, if any. No written brief was filed by the presenting officer and hence the question of filing a written brief by the petitioner did not arise at all and thus there is no violation of Regulation 6(18). However, the records disclose that a written brief was, in fact, filed by the petitioner within the time given by the enquiry officer. Having participated fully in the enquiry and on the sitting held on 22-9-1988 having confirmed that he did not intend to say anything further, it would not be appropriate for the petitioner to contend that he had not been given any reasonable opportunity to put forth his case.

8. It is true that the petitioner was not provided with a copy of the enquiry report by the disciplinary authority before imposition of the punishment of dismissal, but that circumstance has no bearing on the dismissal of the petitioner in view of the decisions of this Court in **Ramzan Khan** case and **Managing Director, ECIL v. B. Karunakar**. The said two decisions are to the effect that no order of punishment before the date of the decision in **Ramzan Khan** case would be challengeable on the ground that there is failure to furnish inquiry report before imposing the punishment by the disciplinary authority. In the present case, the punishment had been imposed upon the petitioner by the disciplinary authority on 8-10-1988 long before the decision of this Court in **Ramzan Khan** case on 20-11-1990. Therefore, we hardly find any merit in the grievance made by the petitioner.

9. The Division Bench of the High Court has rightly allowed the appeal filed by the respondent resulting in dismissal of the writ petition filed by the petitioner.

10. This matter, therefore, does not call for any interference and the special leave petition stands dismissed.

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***Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd.  
v. The Management***

(1973) 1 SCC 813 : AIR 1973 SC 1223

**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 Decembers, 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 ***Khaddah 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. Ladh 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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***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 denials 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.

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**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 hide 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 an 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 is 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 set 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.

\* \* \* \* \*

***Workmen v. 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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**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 is 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 law 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*.

\* \* \* \* \*

**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, along 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 from 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. Tredgar 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.

**T H E E N D**